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I

(Legislative acts)

DIRECTIVES

COUNCIL DIRECTIVE (EU) 2022/2523**of 14 December 2022****on ensuring a global minimum level of taxation for multinational enterprise groups and large-scale domestic groups in the Union**

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 115 thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Parliament ⁽¹⁾,

Having regard to the opinion of the European Economic and Social Committee ⁽²⁾,

Acting in accordance with a special legislative procedure,

Whereas:

- (1) In recent years, the Union has adopted landmark measures to reinforce the fight against aggressive tax planning within the internal market. The anti-tax avoidance directives have laid down rules against the erosion of tax bases in the internal market and the shifting of profits out of the internal market. Those rules converted into Union law the recommendations made by the Organisation for Economic Cooperation and Development (OECD) in the context of the initiative against base erosion and profit shifting (BEPS) to ensure that profits of multinational enterprises (MNEs) are taxed where the economic activities generating those profits are performed and where value is created.
- (2) In a continued effort to put an end to tax practices of MNEs that allow them to shift profits to jurisdictions where they are subject to no or very low taxation, the OECD has further developed a set of international tax rules to ensure that MNEs pay a fair share of tax wherever they operate. That major reform aims to put a floor on competition over corporate income tax rates through the establishment of a global minimum level of taxation. By removing a substantial part of the advantages of shifting profits to jurisdictions with no or very low taxation, the global minimum tax reform will level the playing field for businesses worldwide and allow jurisdictions to better protect their tax bases.

⁽¹⁾ OJ C 290, 29.7.2022, p. 52.

⁽²⁾ Opinion of 19 May 2022 (not yet published in the Official Journal).

- (3) That political objective has been translated into the Tax Challenges Arising from the Digitalisation of the Economy – Global Anti-Base Erosion Model Rules (Pillar Two) ('OECD Model Rules') approved on 14 December 2021 by the OECD/G20 Inclusive Framework on BEPS to which Member States have committed. In its report to the European Council on tax issues approved by the Council on 7 December 2021, the Council reiterated its firm support of the global minimum tax reform and committed to a swift implementation of that reform by means of Union law. In that context, it is essential that Member States effectively implement their commitment to achieve a global minimum level of taxation.
- (4) In a Union of closely integrated economies, it is crucial that the global minimum tax reform be implemented in a sufficiently coherent and coordinated fashion. Considering the scale, detail and technicalities of those new international tax rules, only a common Union framework would prevent a fragmentation of the internal market in the implementation of them. Moreover, a common Union framework, designed to be compatible with the fundamental freedoms guaranteed by the Treaty on the Functioning of the European Union, would provide taxpayers with legal certainty when implementing such rules.
- (5) It is necessary to lay down rules in order to establish an efficient and coherent framework for the global minimum level of taxation at Union level. That framework creates a system of two interlocked rules, together referred to also as the 'GloBE rules', through which an additional amount of tax (a 'top-up tax') should be collected each time that the effective tax rate of an MNE in a given jurisdiction is below 15 %. In such cases, the jurisdiction should be considered to be low-taxed. Those two interlocked rules are called the Income Inclusion Rule (IIR) and the Undertaxed Profit Rule (UTPR). Under that system, the parent entity of an MNE located in a Member State should be obliged to apply the IIR to its share of top-up tax relating to any entity of the group that is low-taxed, whether that entity is located within or outside the Union. The UTPR should act as a backstop to the IIR through a reallocation of any residual amount of top-up tax in cases where the entire amount of top-up tax relating to low-taxed entities could not be collected by parent entities through the application of the IIR.
- (6) It is necessary to implement the OECD Model Rules agreed by the Member States in a way that remains as close as possible to the global agreement, in order to ensure that the rules implemented by the Member States pursuant to this Directive are qualified within the meaning of the OECD Model Rules. This Directive closely follows the content and structure of the OECD Model Rules. To ensure compatibility with primary Union law, and in particular with the principle of freedom of establishment, the rules of this Directive should apply to entities resident in a Member State as well as to non-resident entities of a parent entity located in that Member State. This Directive should also apply to large-scale purely domestic groups. In that way, the legal framework would be designed to avoid any risk of discrimination between cross-border and domestic situations. All entities located in a Member State that is low-taxed, including the parent entity that applies the IIR, should be subject to the top-up tax. Equally, constituent entities of the same parent entity that are located in another Member State that is low-taxed should be subject to the top-up tax.
- (7) While it is necessary to ensure that tax avoidance practices are discouraged, adverse impacts on smaller MNEs in the internal market should be avoided. For that purpose, this Directive should only apply to entities located in the Union that are members of MNE groups or large-scale domestic groups that meet the annual threshold of at least EUR 750 000 000 of consolidated revenue. That threshold would be consistent with the threshold of existing international tax rules such as the country-by-country reporting rules set out in Council Directive 2011/16/EU ⁽³⁾, introduced by Council Directive (EU) 2016/881 ⁽⁴⁾. Entities within the scope of this Directive are referred to as 'constituent entities'. Certain entities should be excluded from the scope of this Directive based on their particular purpose and status. Excluded entities should be those that generally do not carry on a trade or business and perform activities in the general interest, such as providing public health care and education or building public infrastructure, and which, for those reasons, might not be subject to tax in the Member State in which they are located. It is therefore necessary to exclude from the scope of this Directive governmental entities, international organisations, pension funds, and non-profit organisations including organisations for purposes such as public health. It should be possible that non-profit organisations also include health care insurers which do not seek or make any profit other than for the benefit of public health care. Investment funds and real estate investment vehicles should also be excluded from the scope of this Directive when they are at the top of the ownership chain, since the income earned by those entities is taxed at the level of their owners.

⁽³⁾ 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).

⁽⁴⁾ Council Directive (EU) 2016/881 of 25 May 2016 amending Directive 2011/16/EU as regards mandatory automatic exchange of information in the field of taxation (OJ L 146, 3.6.2016, p. 8).

- (8) The ultimate parent entity of an MNE group or of a large-scale domestic group, where that parent entity directly or indirectly owns a controlling interest in all other constituent entities of the MNE group or large-scale domestic group, stands at the heart of the system. Since the ultimate parent entity is normally required to consolidate the financial accounts of all the entities of the MNE group or large-scale domestic group or, if that is not the case, would be so required under an acceptable financial accounting standard, it holds critical information and would be best placed to ensure that the level of taxation per jurisdiction for the group complies with the agreed minimum tax rate. Where the ultimate parent entity is located in the Union, it should therefore incur the primary obligation under this Directive to apply the IIR to its allocable share of top-up tax relating to all low-taxed constituent entities of the MNE group, whether they are located in or outside the Union. The ultimate parent entity of a large-scale domestic group should apply the IIR to the entire amount of top-up tax in respect of its low-taxed constituent entities.
- (9) In certain circumstances, that obligation to apply the IIR should move down to other constituent entities of the MNE group located in the Union. First, when the ultimate parent entity is an excluded entity or is located in a third-country jurisdiction that has not implemented the OECD Model Rules or equivalent rules and thus does not have a qualified IIR, intermediate parent entities situated below the ultimate parent entity in the ownership chain and located in the Union should be obliged under this Directive to apply the IIR up to their allocable share of the top-up tax. However, where an intermediate parent entity that is required to apply the IIR owns a controlling interest in another intermediate parent entity, the IIR should be applied by the first-mentioned intermediate parent entity.
- (10) Second, regardless of whether the ultimate parent entity is located in a jurisdiction that has a qualified IIR, partially-owned parent entities located in the Union that are more than 20 % owned by interest holders outside the group should be obliged under this Directive to apply the IIR up to their allocable share of the top-up tax. Such partially-owned parent entities should however not apply the IIR when they are wholly-owned by another partially-owned parent entity which is required to apply the IIR. Third, when the ultimate parent entity is an excluded entity or is located in a jurisdiction without a qualified IIR, the constituent entities of the group should apply the UTPR to any residual amount of top-up tax that has not been subject to the IIR in proportion to an allocation formula based on their number of employees and tangible assets. Fourth, where the ultimate parent entity is located in a third-country jurisdiction with a qualified IIR, the constituent entities of the MNE group should apply the UTPR to the constituent entities located in that third-country jurisdiction, in cases where that third-country jurisdiction is low-taxed based on the effective tax rate of all constituent entities in that jurisdiction, including that of the ultimate parent entity.
- (11) In accordance with the policy objectives of the global minimum tax reform regarding fair tax competition amongst jurisdictions, the computation of the effective tax rate should take place at a jurisdictional level. For the purpose of computing the effective tax rate, this Directive should provide for a common set of specific rules for the computation of the tax base, referred to as 'qualifying income or loss', and for the taxes paid, referred to as 'covered taxes'. The starting point should be the financial accounts used for consolidation purposes, which should then be subject to a series of adjustments, including accommodating timing differences, in order to avoid any distortions between jurisdictions. Furthermore, the qualifying income or loss and the covered taxes of certain entities should be allocated to other, relevant entities within the MNE group to ensure neutrality in the tax treatment of qualifying income or loss that might be subject to covered taxes in several jurisdictions, either because of the nature of the entities (for example, flow-through entities, hybrid entities or permanent establishments) or because of the specific tax treatment of the income (for example, dividend payment or controlled foreign company tax regime). As regards covered taxes, this Directive should be interpreted in the light of any further guidance provided by the OECD, which should be taken into account by Member States in order to ensure a uniform identification of the covered taxes of all Member States and third-country jurisdictions.
- (12) The effective tax rate of an MNE group in each jurisdiction where it carries out activities or of a large-scale domestic group should be compared to the agreed minimum tax rate of 15 % in order to determine whether the MNE group or large-scale domestic group should be liable to pay a top-up tax and consequently should apply the IIR or the UTPR. The minimum tax rate of 15 % agreed by the OECD/G20 Inclusive Framework on BEPS reflects a balance amongst corporate tax rates worldwide. In cases where the effective tax rate of an MNE group falls below the minimum tax rate in a given jurisdiction, the top-up tax should be allocated to the entities in the MNE group that are liable to pay that tax in accordance with the application of the IIR and the UTPR, in order to comply with the globally agreed minimum effective rate of 15 %. In cases where the effective tax rate of a large-scale domestic group falls below the minimum tax rate, the ultimate parent entity of the large-scale domestic group should apply the IIR in respect of its low-taxed constituent entities, in order to ensure that such group is liable to pay tax at an effective minimum tax rate of 15 %.

- (13) In order to allow Member States to benefit from the top-up tax revenues collected on the low-taxed constituent entities located in their territory, Member States should be able to elect to apply a qualified domestic top-up tax system. Member States should notify the Commission when they elect to apply a qualified domestic top-up tax, with the objective of providing tax authorities of other Member States and third-country jurisdictions, as well as MNE groups, with sufficient certainty as regards the applicability of the qualified domestic top-up tax to low-taxed constituent entities in that Member State. Constituent entities of an MNE group that are located in a Member State which has elected to implement such a system in its own domestic tax system should pay the top-up tax to that Member State. Such system should ensure that the minimum effective taxation of the qualifying income or loss of the constituent entities is computed in the same way as the top-up tax is computed in accordance with this Directive.
- (14) To ensure a proportionate approach, this Directive should take into consideration certain specific situations in which BEPS risks are reduced. Therefore, this Directive should include a substance-based income exclusion based on the costs associated with employees and the value of tangible assets in a given jurisdiction. That exclusion would resolve, to a certain extent, situations where an MNE group or a large-scale domestic group carries out economic activities which require material presence in a low-taxed jurisdiction, as in such case BEPS practices would be unlikely to flourish. The specific case of MNE groups that are at the initial phase of their international activity should also be considered, in order not to discourage the development of cross-border activities by MNE groups that benefit from low taxation in their domestic jurisdiction in which they predominantly operate. Therefore, the low-taxed domestic activities of such MNE groups should be excluded from the application of the rules for a transitional period of five years, provided that the MNE group does not have constituent entities in more than six jurisdictions. In order to ensure equal treatment for large-scale domestic groups, the income from the activities of such groups should also be excluded for a transitional period of five years.
- (15) In addition, in order to address the particular situation of Member States in which very few groups are headquartered and which accommodate such a low number of constituent entities as to make it disproportionate to immediately require the application of the IIR and UTPR by the tax administrations of those Member States, and given the status of a common approach of the GloBE rules, it would be adequate to enable those Member States to elect not to apply the IIR and the UTPR for a limited period of time. Member States making such election should notify the Commission by the deadline for transposition of this Directive.
- (16) Member States that elect not to apply the IIR and the UTPR temporarily should transpose this Directive in such a way as to ensure the proper functioning of the system of global minimum level of taxation for multinational enterprise groups and large-scale domestic groups in the Union. This concerns in particular the obligation of domestic constituent entities in those Member States to provide information to constituent entities in other Member States and third-country jurisdictions, so that other Member States and third-country jurisdictions are able to apply the UTPR. The administrative burden for the tax administrations of the Member States which have made that election should be limited to the greatest possible extent, while preserving the effective application of this Directive throughout the Union. Therefore, those Member States should also have the possibility of entering into a discussion with the Commission, seeking its guidance and assistance with a view to a common understanding on the practical arrangements concerning the transposition of this Directive into national law.
- (17) Due to the highly volatile nature and long economic cycle of the shipping sector, it is traditionally subject to alternative or supplementary taxation regimes in Member States. To avoid undermining that policy rationale and to allow Member States to continue applying a specific tax treatment to the shipping sector in line with international practice and State aid rules, shipping income should be excluded from the system.
- (18) In order to achieve a balance between the objectives of the global minimum tax reform and the administrative burden for tax administrations and taxpayers, this Directive should provide for a de minimis exclusion for MNE groups or large-scale domestic groups that have an average revenue of less than EUR 10 000 000 and an average qualifying income or loss of less than EUR 1 000 000 in a jurisdiction. Such MNE groups or large-scale domestic groups should not pay a top-up tax even if their effective tax rate is below the minimum tax rate in that jurisdiction.

- (19) The application of the rules of this Directive to MNE groups and large-scale domestic groups that fall within its scope for the first time could give rise to distortions resulting from the existence of tax attributes, including losses from prior fiscal years, or from timing differences, and require transitional rules to eliminate such distortions. A gradual decrease of the rates for the payroll and the tangible assets carve-outs over ten years should also apply to allow a smooth transition to the new tax system.
- (20) Considering that MNE groups and large-scale domestic groups should pay tax at a minimum level in a given jurisdiction and for a given fiscal year, a top-up tax should exclusively aim to ensure that the profits of such groups be subject to tax at a minimum effective tax rate in a given fiscal year. For that reason, the rules on a top-up tax should not operate as a tax levied directly on the income of an entity but instead should apply to the excess profit in accordance with a standardised base and specific tax computation mechanics in order to identify low-taxed income within the groups concerned and impose a top-up tax that would bring a group's effective tax rate on that income up to the agreed minimum level of tax. The design of the IIR and UTPR as top-up taxes, however, does not prevent a jurisdiction from applying those rules under a corporate income tax system in its domestic law.
- (21) As a result of the political agreement reached at international level, the distribution tax systems taken into account by the GloBE rules should be those in force on or before 1 July 2021, the date of the first statement of the OECD/G20 Inclusive Framework on BEPS entitled "Statement on a Two-Pillar Solution to Address the Tax Challenges Arising From the Digitalisation of the Economy", which agreed the special treatment of eligible distribution tax systems. This should not prevent changes to a jurisdiction's distribution tax system that are in line with its existing design.
- (22) For an efficient application of the system, it is crucial that procedures are coordinated at a group level. It will be necessary to operate a system ensuring the unobstructed flow of information within the MNE group and towards tax administrations where constituent entities are located. The primary responsibility of filing the top-up tax information return should lie with the constituent entity itself. A waiver of such responsibility should however apply where the MNE group has designated another entity to file the top-up tax information return. It could be either a local entity, or an entity from another jurisdiction that has a competent authority agreement in place with the Member State of the constituent entity. Information filed as part of the top-up tax information return should allow the tax administrations where the constituent entities are located to evaluate the correctness of a constituent entity's liability for the top-up tax or the qualified domestic top-up tax, as the case may be, by application of domestic procedures, including for filing of domestic tax returns. Further guidance to be developed in the OECD's GloBE Implementation Framework will be a useful source of illustration and interpretation in that respect, and Member States might choose to incorporate such guidance into domestic law. Considering the compliance adjustments that the implementation of this Directive requires, groups that fall within the scope of this Directive for the first time should be granted a period of 18 months to comply with the information requirements.
- (23) Considering the benefits of transparency in the field of tax, it is encouraging that a significant amount of information will be filed with the tax authorities in all participating jurisdictions. MNE groups within the scope of this Directive should be obliged to provide comprehensive and detailed information on their profits and effective tax rate in every jurisdiction where they have constituent entities. Such extensive reporting could be expected to increase transparency.
- (24) In implementing this Directive, Member States should use the OECD Model Rules and the explanations and examples in the Tax Challenges Arising from the Digitalisation of the Economy – Commentary to the Global Anti-Base Erosion Model Rules (Pillar Two) released by the OECD/G20 Inclusive Framework on BEPS, as well as the GloBE Implementation Framework, including its safe harbour rules, as a source of illustration or interpretation in order to ensure consistency in application across Member States to the extent that those sources are consistent with this Directive and Union law. Such safe harbour rules should be of relevance as regards MNE groups as well as large-scale domestic groups.

- (25) The effectiveness and fairness of the global minimum tax reform heavily relies on its worldwide implementation. In order to ensure a proper enforcement of the rules under this Directive, Member States should apply adequate penalties, in particular towards entities that do not comply with their obligations to file a top-up tax information return and pay their share of top-up tax. When determining those penalties, Member States should take particular account of the need to address the risk that an MNE group does not declare the information necessary for applying the UTPR. To address that risk, Member States should lay down dissuasive penalties.
- (26) It will also be vital that all major trading partners of the Union apply either a qualified IIR or an equivalent set of rules on minimum taxation. As regards the question of whether an IIR implemented by a third-country jurisdiction that adheres to the global agreement is a qualified IIR within the meaning of the global agreement, it is appropriate to refer to the assessment to be carried out at OECD level. Furthermore, and in support of legal certainty and efficiency of the global minimum tax rules, it is important to further delineate the conditions under which the rules implemented in a third-country jurisdiction which will not transpose the rules of the global agreement can be granted equivalence to a qualified IIR. The objective of the assessment of the equivalence is mainly to clarify and delineate the Member State's application of this Directive, in particular as regards the UTPR. To that end, this Directive should provide for an assessment, prepared by the Commission following the OECD assessment, of the equivalence criteria based on certain specific parameters. The determination of the third-country jurisdictions applying legal frameworks considered to be equivalent to a qualified IIR should directly result from the objective criteria set out in this Directive and should strictly follow the OECD assessment. It is therefore appropriate, in such a specific context, to provide for a delegated act. In particular, the recourse to a delegated act in such a specific context should not be considered to be a precedent for other legislative instruments adopted under the special legislative procedure, given the decision-making process proper to tax matters.
- (27) It is essential to ensure a consistent application of the rules set out in this Directive with respect to any third-country jurisdiction which does not transpose the rules of the global agreement and is not granted equivalence of its domestic rules to a qualified IIR. In that context, it is necessary to develop a common methodology for allocating amounts, which would be treated as covered taxes under the rules of the global agreement, to entities within an MNE group that would be subject to top-up tax in accordance with the rules of this Directive. For that purpose, Member States should use the OECD GloBE Implementation Framework guidance as their reference for the allocation of such covered taxes.
- (28) In order to supplement certain non-essential elements of this Directive, the power to adopt acts in accordance with Article 290 of the Treaty on the Functioning of the European Union should be delegated to the Commission in respect of determining, following an assessment by the Commission, the jurisdictions with a domestic legal framework which can be considered to be equivalent to a qualified IIR. It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level, and that those consultations be conducted in accordance with the principles laid down in the Interinstitutional Agreement of 13 April 2016 on Better Law-Making ⁽⁵⁾.
- (29) With this Directive entering into force in 2022 and the time limit for transposition by the Member States being set at the latest for 31 December 2023, the Union will act in line with the timeline set out in the Statement on a Two-Pillar Solution to Address the Tax Challenges Arising from the Digitalisation of the Economy agreed by the OECD/G20 Inclusive Framework on BEPS on 8 October 2021 (the 'October 2021 statement of the OECD/G20 Inclusive Framework on BEPS'), according to which Pillar Two is to be brought into law in 2022, to be effective in 2023, with the UTPR coming into effect in 2024.
- (30) The rules of this Directive on the application of the UTPR should apply as of 2024 to enable third-country jurisdictions to apply the IIR in the first phase of the implementation of the OECD Model Rules.

⁽⁵⁾ OJ L 123, 12.5.2016, p. 1.

- (31) The October 2021 statement of the OECD/G20 Inclusive Framework on BEPS provides for a two-pillar solution. The Detailed Implementation Plan set out in the Annex thereto sets the timelines for the implementation of each pillar. As this Directive has the aim of implementing Pillar Two, while the work on Pillar One awaits accomplishment, it is necessary to ascertain that Pillar One is also implemented. To that end, this Directive includes a provision obliging the Commission to prepare a report assessing the progress achieved at the OECD/G20 Inclusive Framework on BEPS. It is acknowledged that the Commission can, if it deems it appropriate, submit a legislative proposal to address the tax challenges arising from the digitalisation of the economy, for consideration by the Member States.
- (32) The Council should, before the end of each semester starting from 1 July 2022, assess the situation regarding the implementation of Pillar One of the October 2021 statement of the OECD/G20 Inclusive Framework on BEPS.
- (33) Since the objective of this Directive, namely to create a common framework for a global minimum level of taxation within the Union on the basis of the common approach contained in the OECD Model Rules, cannot be sufficiently achieved by each Member State acting alone, because independent action by Member States would further risk fragmenting the internal market and because it is critical to adopt solutions that function for the internal market as a whole, but can rather, by reason of the scale of the global minimum tax reform, be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality as set out in that Article, this Directive does not go beyond what is necessary in order to achieve that objective.
- (34) The European Data Protection Supervisor was consulted in accordance with Article 42(1) of Regulation (EU) 2018/1725 of the European Parliament and of the Council ⁽⁶⁾ and delivered formal comments on 10 February 2022. The right to protection of personal data pursuant to Article 8 of the EU Charter of Fundamental Rights as well as Regulation 2016/679 of the European Parliament and of the Council ⁽⁷⁾ applies to the processing of personal data carried out within the framework of this Directive,

HAS ADOPTED THIS DIRECTIVE:

CHAPTER I

GENERAL PROVISIONS

Article 1

Subject-matter

1. This Directive establishes common measures for the minimum effective taxation of multinational enterprise (MNE) groups and large-scale domestic groups in the form of:
- (a) an income inclusion rule (IIR) in accordance with which a parent entity of an MNE group or of a large-scale domestic group computes and pays its allocable share of top-up tax in respect of the low-taxed constituent entities of the group; and
 - (b) an undertaxed profit rule (UTPR) in accordance with which a constituent entity of an MNE group has an additional cash tax expense equal to its share of top-up tax that was not charged under the IIR in respect of the low-taxed constituent entities of the group.

⁽⁶⁾ Regulation (EU) 2018/1725 of the European Parliament and of the Council of 23 October 2018 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data, and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC (OJ L 295, 21.11.2018, p. 39).

⁽⁷⁾ Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (OJ L 119, 4.5.2016, p. 1).

2. Member States may elect to apply a qualified domestic top-up tax in accordance with which top-up tax shall be computed and paid on the excess profit of all the low-taxed constituent entities located in their jurisdiction pursuant to this Directive.

Article 2

Scope

1. This Directive applies to constituent entities located in a Member State that are members of an MNE group or of a large-scale domestic group which has an annual revenue of EUR 750 000 000 or more, including the revenue of the excluded entities referred to in paragraph 3, in its ultimate parent entity's consolidated financial statements in at least two of the four fiscal years immediately preceding the tested fiscal year.

2. Where one or more of the four fiscal years referred to in paragraph 1 is longer or shorter than 12 months, the revenue threshold referred to in that paragraph shall be adjusted proportionally for each of those fiscal years.

3. This Directive does not apply to the following entities ('excluded entities'):

- (a) a governmental entity, an international organisation, a non-profit organisation, a pension fund, an investment fund that is an ultimate parent entity or a real estate investment vehicle that is an ultimate parent entity;
- (b) an entity where at least 95 % of the value of the entity is owned by one or more entities referred to in point (a), directly or through one or several excluded entities, except pension services entities, and that:
 - (i) operates exclusively, or almost exclusively, to hold assets or invest funds for the benefit of the entity or entities referred to in point (a); or
 - (ii) exclusively carries out activities ancillary to those performed by the entity or entities referred to in point (a);
- (c) an entity where at least 85 % of the value of the entity is owned, directly or through one or several excluded entities, by one or more entities referred to in point (a), except pension services entities, provided that substantially all of its income is derived from dividends or equity gains or losses that are excluded from the computation of the qualifying income or loss in accordance with Article 16(2), points (b) and (c).

By way of derogation from the first subparagraph of this paragraph, the filing constituent entity may make an election, in accordance with Article 45(1), not to treat an entity referred to in points (b) and (c) of that subparagraph as an excluded entity.

Article 3

Definitions

For the purposes of this Directive, the following definitions apply:

- (1) 'entity' means any legal arrangement that prepares separate financial accounts or any legal person;
- (2) 'constituent entity' means:
 - (a) any entity that is part of an MNE group or of a large-scale domestic group; and
 - (b) any permanent establishment of a main entity that is part of an MNE group referred to in point (a);
- (3) 'group' means:
 - (a) a collection of entities which are related through ownership or control as defined by the acceptable financial accounting standard for the preparation of consolidated financial statements by the ultimate parent entity, including any entity that may have been excluded from the consolidated financial statements of the ultimate parent entity solely based on its small size, on materiality grounds or on the grounds that it is held for sale; or

- (b) an entity that has one or more permanent establishments, provided that it is not part of another group as defined in point (a);
- (4) 'MNE group' means any group that includes at least one entity or permanent establishment which is not located in the jurisdiction of the ultimate parent entity;
- (5) 'large-scale domestic group' means any group of which all constituent entities are located in the same Member State;
- (6) 'consolidated financial statements' means:
 - (a) the financial statements prepared by an entity in accordance with an acceptable financial accounting standard, in which the assets, liabilities, income, expenses and cash flows of that entity and of any entities in which it has a controlling interest are presented as those of a single economic unit;
 - (b) for groups defined in point (3)(b), the financial statements prepared by an entity in accordance with an acceptable financial accounting standard;
 - (c) the financial statements of the ultimate parent entity that are not prepared in accordance with an acceptable financial accounting standard and that have been subsequently adjusted to prevent any material competitive distortions; and
 - (d) where the ultimate parent entity does not prepare financial statements as described in point (a), (b) or (c), the financial statements that would have been prepared if the ultimate parent entity were required to prepare such financial statements in accordance with:
 - (i) an acceptable financial accounting standard; or
 - (ii) another financial accounting standard, and provided such financial statements have been adjusted to prevent any material competitive distortions;
- (7) 'fiscal year' means the accounting period with respect to which the ultimate parent entity of an MNE group or of a large-scale domestic group prepares its consolidated financial statements or, if the ultimate parent entity does not prepare consolidated financial statements, the calendar year;
- (8) 'filing constituent entity' means an entity filing a top-up tax information return in accordance with Article 44;
- (9) 'governmental entity' means an entity that meets all the following criteria:
 - (a) it is part of, or wholly owned by, a government, including any political subdivision or local authority thereof;
 - (b) it does not carry on a trade or business and has the principal purpose of:
 - (i) fulfilling a government function; or
 - (ii) managing or investing that government's or jurisdiction's assets through the making and holding of investments, asset management, and related investment activities for that government's or jurisdiction's assets;
 - (c) it is accountable to a government on its overall performance, and provides annual information reporting to that government; and
 - (d) its assets vest in a government upon dissolution and, to the extent it distributes net earnings, such net earnings are distributed solely to that government with no portion of its net earnings inuring to the benefit of any private person;
- (10) 'international organisation' means any intergovernmental organisation, including a supranational organisation, or wholly-owned agency or instrumentality thereof that meets all the following criteria:
 - (a) it is comprised primarily of governments;
 - (b) it has in effect a headquarters or substantially similar agreement with the jurisdiction in which it is established, for example arrangements that entitle the organisation's offices or establishments in that jurisdiction to privileges and immunities; and
 - (c) law or its governing documents prevent its income inuring to the benefit of private persons;

(11) 'non-profit organisation' means an entity that meets all the following criteria:

- (a) it is established and operated in its jurisdiction of residence:
 - (i) exclusively for religious, charitable, scientific, artistic, cultural, athletic, educational or other similar purposes; or
 - (ii) as a professional organisation, business league, chamber of commerce, labour organisation, agricultural or horticultural organisation, civic league or an organisation operated exclusively for the promotion of social welfare;
- (b) substantially all the income from the activities mentioned in point (a) is exempt from income tax in its jurisdiction of residence;
- (c) it has no shareholders or members who have a proprietary or beneficial interest in its income or assets;
- (d) the income or assets of the entity may not be distributed to, or applied for the benefit of, a private person or non-charitable entity other than:
 - (i) pursuant to the conduct of the entity's charitable activities;
 - (ii) as payment of reasonable compensation for services rendered or for the use of property or capital; or
 - (iii) as payment representing the fair market value of property which the entity has purchased; and
- (e) upon termination, liquidation or dissolution of the entity, all of its assets are to be distributed to or revert to a non-profit organisation or to the government, including any governmental entity, of the entity's jurisdiction of residence or any political subdivision thereof;
- (f) it does not carry on a trade or business that is not directly related to the purposes for which it was established;

(12) 'flow-through entity' means an entity to the extent it is fiscally transparent with respect to its income, expenditure, profit or loss in the jurisdiction where it was created unless it is tax resident and subject to a covered tax on its income or profit in another jurisdiction;

a flow-through entity is deemed to be:

- (a) a tax-transparent entity with respect to its income, expenditure, profit or loss to the extent that it is fiscally transparent in the jurisdiction in which its owner is located;
- (b) a reverse hybrid entity with respect to its income, expenditure, profit or loss to the extent that it is not fiscally transparent in the jurisdiction in which its owner is located;

for the purposes of this definition, a 'fiscally transparent entity' means an entity whose income, expenditure, profit or loss is treated by the laws of a jurisdiction as if it were derived or incurred by the direct owner of that entity in proportion to its interest in that entity;

an ownership interest in an entity or a permanent establishment that is a constituent entity shall be treated as held through a tax transparent structure if that ownership interest is held indirectly through a chain of tax transparent entities;

a constituent entity that is not tax resident and not subject to a covered tax or a qualified domestic top-up tax based on its place of management, place of creation or similar criteria shall be treated as a flow-through entity and a tax transparent entity in respect of its income, expenditure, profit or loss, to the extent that:

- (a) its owners are located in a jurisdiction that treats the entity as fiscally transparent;
- (b) it does not have a place of business in the jurisdiction where it was created; and
- (c) the income, expenditure, profit or loss is not attributable to a permanent establishment;

(13) 'permanent establishment' means:

- (a) a place of business or a deemed place of business located in a jurisdiction where it is treated as a permanent establishment in accordance with an applicable tax treaty, provided that such jurisdiction taxes the income attributable to it in accordance with a provision similar to Article 7 of the OECD Model Tax Convention on Income and Capital, as amended;
- (b) if there is no applicable tax treaty, a place of business or a deemed place of business located in a jurisdiction which taxes the income attributable to such place of business on a net basis in a manner similar to which it taxes its own tax residents;
- (c) if a jurisdiction has no corporate income tax system, a place of business or a deemed place of business located in such jurisdiction that would be treated as a permanent establishment in accordance with the OECD Model Tax Convention on Income and Capital, as amended, provided that such jurisdiction would have had the right to tax the income that would have been attributable to the place of business in accordance with Article 7 of that Convention; or
- (d) a place of business or a deemed place of business that is not described in points (a) to (c) through which operations are conducted outside the jurisdiction where the entity is located, provided that such jurisdiction exempts the income attributable to such operations;

(14) 'ultimate parent entity' means:

- (a) an entity that owns, directly or indirectly, a controlling interest in any other entity and that is not owned, directly or indirectly, by another entity with a controlling interest in it; or
- (b) the main entity of a group as defined in point (3)(b);

(15) 'minimum tax rate' means fifteen percent (15 %);

(16) 'top-up tax' means the top-up tax computed for a jurisdiction or a constituent entity pursuant to Article 27;

(17) 'controlled foreign company tax regime' means a set of tax rules, other than a qualified IIR, under which a direct or indirect shareholder of a foreign entity, or the main entity of a permanent establishment, is subject to taxation on its share of part or all of the income earned by that foreign constituent entity, irrespective of whether that income is distributed to the shareholder;

(18) 'qualified IIR' means a set of rules that is implemented in the domestic law of a jurisdiction, provided that such jurisdiction does not provide any benefits that are related to those rules, and that is:

- (a) equivalent to the rules laid down in this Directive or, as regards third-country jurisdictions, the Tax Challenges Arising from the Digitalisation of the Economy Global Anti-Base Erosion Model Rules (Pillar Two) ('OECD Model Rules'), in accordance with which the parent entity of an MNE group or of a large-scale domestic group computes and pays its allocable share of top-up tax in respect of the low-taxed constituent entities of that group;
- (b) administered in a way that is consistent with the rules laid down in this Directive or, as regards third-country jurisdictions, with the OECD Model Rules;

(19) 'low-taxed constituent entity' means:

- (a) a constituent entity of an MNE group or of a large-scale domestic group that is located in a low-tax jurisdiction; or
- (b) a stateless constituent entity that, in respect of a fiscal year, has qualifying income and an effective tax rate which is lower than the minimum tax rate;

(20) 'intermediate parent entity' means a constituent entity that owns, directly or indirectly, an ownership interest in another constituent entity in the same MNE group or large-scale domestic group and that does not qualify as an ultimate parent entity, a partially-owned parent entity, a permanent establishment or an investment entity;

- (21) 'controlling interest' means an ownership interest in an entity whereby the interest holder is required, or would have been required, to consolidate the assets, liabilities, income, expenses and cash flows of the entity on a line-by-line basis, in accordance with an acceptable financial accounting standard; a main entity is deemed to hold the controlling interests in its permanent establishments;
- (22) 'partially-owned parent entity' means a constituent entity that owns, directly or indirectly, an ownership interest in another constituent entity of the same MNE group or large-scale domestic group, and for which more than 20 % of the ownership interest in its profits is held, directly or indirectly, by one or several persons that are not constituent entities of that MNE group or large-scale domestic group and that does not qualify as an ultimate parent entity, a permanent establishment or an investment entity;
- (23) 'ownership interest' means any equity interest that carries rights to the profits, capital or reserves of an entity or of a permanent establishment;
- (24) 'parent entity' means an ultimate parent entity which is not an excluded entity, an intermediate parent entity or a partially-owned parent entity;
- (25) 'acceptable financial accounting standard' means International Financial Reporting Standards (IFRS or IFRS as adopted by the Union pursuant to Regulation (EC) No 1606/2002 of the European Parliament and of the Council ⁽⁸⁾) and the generally accepted accounting principles of Australia, Brazil, Canada, the Member States of the European Union, the Member States of the European Economic Area, Hong Kong (China), Japan, Mexico, New Zealand, the People's Republic of China, the Republic of India, the Republic of Korea, Russia, Singapore, Switzerland, the United Kingdom and the United States of America;
- (26) 'authorised financial accounting standard' means, in respect of an entity, a set of generally acceptable accounting principles permitted by an authorised accounting body in the jurisdiction where that entity is located; for the purposes of this definition, 'authorised accounting body' means the body with legal authority in a jurisdiction to prescribe, establish or accept accounting standards for financial reporting purposes;
- (27) 'material competitive distortion' means, in respect of the application of a specific principle or procedure under a set of generally acceptable accounting principles, an application that results in an aggregate variation of income or expense of more than EUR 75 000 000 in a fiscal year as compared to the amount that would have been determined by applying the corresponding principle or procedure under International Financial Reporting Standards (IFRS or IFRS as adopted by the Union pursuant to Regulation (EC) No 1606/2002);
- (28) 'qualified domestic top-up tax' means a top-up tax that is implemented in the domestic law of a jurisdiction provided that such jurisdiction does not provide any benefits that are related to those rules, and that:
- (a) provides for the determination of the excess profits of the constituent entities located in that jurisdiction in accordance with the rules laid down in this Directive or, as regards third-country jurisdictions, the OECD Model Rules and the application of the minimum tax rate to those excess profits for the jurisdiction and the constituent entities in accordance with the rules laid down in this Directive or, as regards third-country jurisdictions, the OECD Model Rules; and
 - (b) is administered in a way that is consistent with the rules laid down in this Directive or, as regards third-country jurisdictions, the OECD Model Rules;
- (29) 'net book value of tangible assets' means the average of the beginning and end values of tangible assets after taking into account accumulated depreciation, depletion and impairment, as recorded in the financial statements;

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

(30) 'investment entity' means:

- (a) an investment fund or a real estate investment vehicle;
- (b) an entity that is at least 95 % owned directly by an entity referred to in point (a) or through a chain of such entities and that operates exclusively or almost exclusively to hold assets or invest funds for their benefit; or
- (c) an entity where a minimum of 85 % of the value of the entity is owned by an entity referred to in point (a), provided that substantially all of its income is derived from dividends or equity gains or losses that are excluded from the computation of the qualifying income or loss for the purposes of this Directive;

(31) 'investment fund' means an entity or arrangement that meets all the following conditions:

- (a) it is designed to pool financial or non-financial assets from a number of investors, some of which are non-connected;
- (b) it invests in accordance with a defined investment policy;
- (c) it allows investors to reduce transaction, research and analytical costs or to spread risk collectively;
- (d) it is primarily designed to generate investment income or gains, or protection against a particular or general event or outcome;
- (e) its investors have a right to return from the assets of the fund or income earned on those assets, based on the contribution they made;
- (f) it, or its management, is subject to the regulatory regime, including appropriate anti-money laundering and investor protection regulation, for investment funds in the jurisdiction in which it is established or managed; and
- (g) it is managed by investment fund management professionals on behalf of the investors;

(32) 'real estate investment vehicle' means a widely held entity that holds predominantly immovable property and that is subject to a single level of taxation, either in its hands or in the hands of its interest holders, with at most one year of deferral;

(33) 'pension fund' means:

- (a) an entity that is established and operated in a jurisdiction exclusively or almost exclusively to administer or provide retirement benefits and ancillary or incidental benefits to individuals where:
 - (i) that entity is regulated as such by that jurisdiction or one of its political subdivisions or local authorities; or
 - (ii) those benefits are secured or otherwise protected by national regulations and funded by a pool of assets held through a fiduciary arrangement or trustor to secure the fulfilment of the corresponding pension obligations against a case of insolvency of the MNE group and large-scale domestic group;
- (b) a pension services entity;

(34) 'pension services entity' means an entity that is established and operated exclusively or almost exclusively to invest funds for the benefit of entities referred to in point (33)(a) or to carry out activities that are ancillary to the regulated activities referred to in point (33)(a), provided that the pension services entity forms part of the same group as the entities carrying out those regulated activities;

(35) 'low-tax jurisdiction' means, in respect of an MNE group or a large-scale domestic group in any fiscal year, a Member State or a third-country jurisdiction in which the MNE group or the large-scale domestic group has a qualifying income and is subject to an effective tax rate which is lower than the minimum tax rate;

(36) 'qualifying income or loss' means the financial accounting net income or loss of a constituent entity adjusted in accordance with the rules set out in Chapters III, VI and VII;

(37) 'disqualified refundable imputation tax' means any tax, other than a qualified imputation tax, accrued or paid by a constituent entity that is:

- (a) refundable to the beneficial owner of a dividend distributed by such constituent entity in respect of that dividend or creditable by the beneficial owner against a tax liability other than a tax liability in respect of such dividend; or
- (b) refundable to the distributing company upon distribution of a dividend to a shareholder;

for the purposes of this definition, a 'qualified imputation tax' means a covered tax accrued or paid by a constituent entity, including a permanent establishment, that is refundable or creditable to the beneficial owner of the dividend distributed by the constituent entity or, in the case of a covered tax accrued or paid by a permanent establishment, a dividend distributed by the main entity, to the extent that the refund is payable or the credit is provided:

- (a) by a jurisdiction other than the jurisdiction which imposed the covered taxes;
- (b) to a beneficial owner of the dividend that is subject to tax at a nominal rate that equals or exceeds the minimum tax rate on the dividend received under the domestic law of the jurisdiction which imposed the covered taxes on the constituent entity;
- (c) to an individual who is the beneficial owner of the dividend and tax resident in the jurisdiction which imposed the covered taxes on the constituent entity and who is subject to tax at a nominal rate that equals or exceeds the standard tax rate applicable to ordinary income; or
- (d) to a governmental entity, an international organisation, a resident non-profit organisation, a resident pension fund, a resident investment entity that is not part of the MNE group or the large-scale domestic group, or a resident life insurance company to the extent that the dividend is received in connection with resident pension fund activities and is subject to tax in a similar manner as a dividend received by a pension fund;

for the purposes of point (d):

- (i) a non-profit organisation or pension fund is resident in a jurisdiction if it is created and managed in that jurisdiction;
- (ii) an investment entity is resident in a jurisdiction if it is created and regulated in that jurisdiction;
- (iii) a life insurance company is resident in the jurisdiction in which it is located;

(38) 'qualified refundable tax credit' means:

- (a) a refundable tax credit designed in such a way that it is to be paid as a cash payment or a cash equivalent to a constituent entity within four years from the date when the constituent entity is entitled to receive the refundable tax credit under the laws of the jurisdiction granting the credit; or
- (b) if the tax credit is refundable in part, the portion of the refundable tax credit that is payable as a cash payment or a cash equivalent to a constituent entity within four years from the date when the constituent entity is entitled to receive the partial refundable tax credit;

a qualified refundable tax credit does not include any amount of tax creditable or refundable pursuant to a qualified imputation tax or a disqualified refundable imputation tax;

(39) 'non-qualified refundable tax credit' means a tax credit that is not a qualified refundable tax credit but that is refundable in whole or in part;

- (40) 'main entity' means an entity that includes the financial accounting net income or loss of a permanent establishment in its financial statements;
- (41) 'constituent entity-owner' means a constituent entity that owns, directly or indirectly, an ownership interest in another constituent entity of the same MNE group or large-scale domestic group;
- (42) 'eligible distribution tax system' means a corporate income tax system that:
- (a) imposes income tax on profits only when those profits are distributed or deemed to be distributed to shareholders, or when the company incurs certain non-business expenses;
 - (b) imposes tax at a rate equal to, or in excess of, the minimum tax rate; and
 - (c) was in force on or before 1 July 2021;
- (43) 'qualified UTPR' means a set of rules implemented in the domestic law of a jurisdiction, provided that such jurisdiction does not provide any benefits that are related to those rules, and that:
- (a) is equivalent to the rules laid down in this Directive or, as regards third-country jurisdictions, the OECD Model Rules, in accordance with which a jurisdiction collects its allocable share of top-up tax of an MNE group that was not charged under the IIR in respect of the low-taxed constituent entities of that MNE group;
 - (b) is administered in a way that is consistent with the rules laid down in this Directive or, as regards third-country jurisdictions, the OECD Model Rules;
- (44) 'designated filing entity' means the constituent entity, other than the ultimate parent entity, that has been appointed by the MNE group or large-scale domestic group to fulfil the filing obligations set out in Article 44 on behalf of the MNE group or the large-scale domestic group.

Article 4

Location of a constituent entity

1. For the purposes of this Directive, an entity other than a flow-through entity shall be determined to be located in the jurisdiction where it is considered to be resident for tax purposes based on its place of management, its place of creation or similar criteria.

Where it is not possible to determine the location of an entity other than a flow-through entity based on the first subparagraph, it shall be deemed to be located in the jurisdiction where it was created.

2. A flow-through entity shall be considered to be stateless, unless it is the ultimate parent entity of an MNE group or of a large-scale domestic group or it is required to apply an IIR in accordance with Articles 5, 6, 7 and 8, in which case the flow-through entity shall be deemed to be located in the jurisdiction where it was created.

3. A permanent establishment as defined in Article 3, point (13)(a), shall be determined to be located in the jurisdiction where it is treated as a permanent establishment and is liable to tax under the applicable tax treaty.

A permanent establishment as defined in Article 3, point (13)(b), shall be determined to be located in the jurisdiction where it is subject to net basis taxation based on its business presence.

A permanent establishment as defined in Article 3, point (13)(c), shall be determined to be located in the jurisdiction where it is situated.

A permanent establishment as defined in Article 3, point (13)(d), shall be considered to be stateless.

4. Where a constituent entity is located in two jurisdictions and those jurisdictions have an applicable tax treaty, the constituent entity shall be deemed to be located in the jurisdiction where it is considered to be resident for tax purposes under that tax treaty.

Where the applicable tax treaty requires that the competent authorities reach a mutual agreement on the deemed residence for tax purposes of the constituent entity, and no agreement is reached, paragraph 5 shall apply.

Where there is no relief for double taxation under the applicable tax treaty due to the fact that a constituent entity is resident for tax purposes in both contracting parties, paragraph 5 shall apply.

5. Where a constituent entity is located in two jurisdictions and those jurisdictions do not have an applicable tax treaty, the constituent entity shall be deemed to be located in the jurisdiction which charged the higher amount of covered taxes for the fiscal year.

For the purpose of computing the amount of covered taxes referred to in the first subparagraph, the amount of tax paid in accordance with a controlled foreign company tax regime shall not be taken into consideration.

If the amount of covered taxes due in the two jurisdictions is the same or zero, the constituent entity shall be deemed to be located in the jurisdiction where it has the higher amount of substance-based income exclusion computed on an entity basis in accordance with Article 28.

If the amount of the substance-based income exclusion in the two jurisdictions is the same or zero, the constituent entity shall be considered to be stateless, unless it is an ultimate parent entity, in which case it shall be deemed to be located in the jurisdiction where it was created.

6. Where, as a result of applying paragraphs 4 and 5, a parent entity is located in a jurisdiction where it is not subject to a qualified IIR, it shall be deemed to be subject to the qualified IIR of the other jurisdiction, unless an applicable tax treaty prohibits the application of such rule.

7. Where a constituent entity changes its location in the course of a fiscal year, it shall be deemed to be located in the jurisdiction where it was deemed to be located under this Article at the beginning of that fiscal year.

CHAPTER II

IIR AND UTPR

Article 5

Ultimate parent entity in the Union

1. Member States shall ensure that an ultimate parent entity that is a constituent entity located in a Member State is subject to the top-up tax (the 'IIR top-up tax') for the fiscal year in respect of its low-taxed constituent entities that are located in another jurisdiction or that are stateless.

2. Member States shall ensure that, where a constituent entity that is the ultimate parent entity of an MNE group or of a large-scale domestic group is located in a Member State that is a low-tax jurisdiction, it is subject to the IIR top-up tax in respect of itself and of all low-taxed constituent entities of the group located in the same Member State for the fiscal year.

Article 6

Intermediate parent entity in the Union

1. Member States shall ensure that an intermediate parent entity located in a Member State and held by an ultimate parent entity that is located in a third-country jurisdiction is subject to the IIR top-up tax for the fiscal year in respect of its low-taxed constituent entities that are located in another jurisdiction or that are stateless.

2. Member States shall ensure that, where an intermediate parent entity is located in a Member State that is a low-tax jurisdiction and held by an ultimate parent entity that is located in a third-country jurisdiction, it is subject to the IIR top-up tax in respect of itself and of its low-taxed constituent entities located in the same Member State for the fiscal year.

3. Paragraphs 1 and 2 shall not apply where:

- (a) the ultimate parent entity is subject to a qualified IIR for that fiscal year; or
- (b) another intermediate parent entity is located in a jurisdiction where it is subject to a qualified IIR for that fiscal year and owns, directly or indirectly, a controlling interest in the intermediate parent entity.

Article 7

Intermediate parent entity located in the Union and held by an excluded ultimate parent entity

1. Member States shall ensure that, where an intermediate parent entity located in a Member State is held by an ultimate parent entity that is an excluded entity, it is subject to the IIR top-up tax for the fiscal year in respect of its low-taxed constituent entities that are located in another jurisdiction or that are stateless.

2. Member States shall ensure that, where an intermediate parent entity located in a Member State that is a low-tax jurisdiction is held by an ultimate parent entity that is an excluded entity, it is subject to the IIR top-up tax in respect of itself and its low-taxed constituent entities that are located in the same Member State for the fiscal year.

3. Paragraphs 1 and 2 shall not apply where another intermediate parent entity is located in a jurisdiction where it is subject to a qualified IIR for that fiscal year and owns, directly or indirectly, a controlling interest in the intermediate parent entity referred to in paragraphs 1 and 2.

Article 8

Partially-owned parent entity in the Union

1. Member States shall ensure that a partially-owned parent entity located in a Member State is subject to the IIR top-up tax for the fiscal year in respect of its low-taxed constituent entities that are located in another jurisdiction or that are stateless.

2. Member States shall ensure that, where a partially-owned parent entity is located in a Member State that is a low-tax jurisdiction, it is subject to the IIR top-up tax in respect of itself and of its low-taxed constituent entities located in the same Member State for the fiscal year.

3. Paragraphs 1 and 2 shall not apply where the ownership interests of the partially-owned parent entity are wholly held, directly or indirectly, by another partially-owned parent entity that is subject to a qualified IIR for that fiscal year.

Article 9

Allocation of the top-up tax under the IIR

1. The IIR top-up tax due by a parent entity in respect of a low-taxed constituent entity pursuant to Article 5(1), Article 6(1), Article 7(1) and Article 8(1) shall be equal to the top-up tax of the low-taxed constituent entity, as computed in accordance with Article 27, multiplied by the parent entity's allocable share in such top-up tax for the fiscal year.

2. A parent entity's allocable share in the top-up tax with respect to a low-taxed constituent entity shall be the proportion of the parent entity's ownership interest in the qualifying income of the low-taxed constituent entity. That proportion shall be equal to the qualifying income of the low-taxed constituent entity for the fiscal year, reduced by the amount of such income attributable to ownership interests held by other owners, divided by the qualifying income of the low-taxed constituent entity for the fiscal year.

The amount of qualifying income attributable to ownership interests in a low-taxed constituent entity held by other owners shall be the amount that would have been treated as attributable to such owners under the principles of the acceptable financial accounting standard used in the ultimate parent entity's consolidated financial statements if the low-taxed constituent entity's net income were equal to its qualifying income and:

- (a) the parent entity had prepared consolidated financial statements in accordance with that accounting standard (the 'hypothetical consolidated financial statements');
- (b) the parent entity owned a controlling interest in the low-taxed constituent entity such that all of the income and expenses of the low-taxed constituent entity were consolidated on a line-by-line basis with those of the parent entity in the hypothetical consolidated financial statements;
- (c) all of the low-taxed constituent entity's qualifying income were attributable to transactions with persons that are not group entities; and
- (d) all ownership interests not directly or indirectly held by the parent entity were held by persons other than group entities.

3. In addition to the amount allocated to a parent entity in accordance with paragraph 1 of this Article, the IIR top-up tax due by a parent entity pursuant to Article 5(2), Article 6(2), Article 7(2) and Article 8(2) shall include, for the fiscal year, in accordance with Article 27:

- (a) the full amount of top-up tax computed for that parent entity; and
- (b) the amount of top-up tax computed for its low-taxed constituent entities located in the same Member State multiplied by the parent entity's allocable share in such top-up tax for the fiscal year.

Article 10

IIR offset mechanism

Where a parent entity located in a Member State holds an ownership interest in a low-taxed constituent entity indirectly through an intermediate parent entity or a partially-owned parent entity that is subject to a qualified IIR for the fiscal year, the top-up tax due pursuant to Articles 5 to 8 shall be reduced by an amount equal to the portion of the first-mentioned parent entity's allocable share of the top-up tax which is due by the intermediate parent entity or the partially-owned parent entity.

Article 11

Election to apply a qualified domestic top-up tax

1. Member States may elect to apply a qualified domestic top-up tax.

If a Member State where constituent entities of an MNE group or of a large-scale domestic group are located elects to apply a qualified domestic top-up tax, all low-taxed constituent entities of the MNE group or the large-scale domestic group in that Member State shall be subject to that domestic top-up tax for the fiscal year.

Under a qualified domestic top-up tax, the domestic excess profits of the low-taxed constituent entities may be computed based on an acceptable financial accounting standard or an authorised financial accounting standard permitted by the authorised accounting body and adjusted to prevent any material competitive distortions, rather than the financial accounting standard used in the consolidated financial statements.

2. Where a parent entity of an MNE group or of a large-scale domestic group is located in a Member State, and its directly or indirectly held constituent entities located either in that Member State or in another jurisdiction are subject to a qualified domestic top-up tax for the fiscal year in those jurisdictions, the amount of any top-up tax computed in accordance with Article 27 due by the parent entity pursuant to Articles 5 to 8 shall be reduced, up to zero, by the amount of qualified domestic top-up tax due either by itself or by those constituent entities.

Notwithstanding the first subparagraph, if the qualified domestic top-up tax has been computed for a fiscal year in accordance with the ultimate parent entity's acceptable financial accounting standard or International Financial Reporting Standards (IFRS or IFRS as adopted by the Union pursuant to Regulation (EC) No 1606/2002), no top-up tax shall be computed in accordance with Article 27 for that fiscal year in respect of the constituent entities of that MNE group or large-scale domestic group located in that Member State. This subparagraph is without prejudice to the computation of any additional top-up tax pursuant to Article 29 in the case where a Member State does not apply a qualified domestic top-up tax to collect any additional top-up tax arising under Article 29.

3. Where the amount of qualified domestic top-up tax for a fiscal year has not been paid within the four fiscal years following the fiscal year in which it was due, the amount of qualified domestic top-up tax that was not paid shall be added to the jurisdictional top-up tax computed in accordance with Article 27(3) and shall not be collected by the Member State which made the election pursuant to paragraph 1 of this Article.

4. Member States that elect to apply a qualified domestic top-up tax shall notify the Commission of that election within four months following the adoption of their national laws, regulations and administrative provisions introducing a qualified domestic top-up tax. Such election shall be valid and may not be revoked for a period of three years. At the end of each period of three years, the election shall be renewed automatically, unless the Member State revokes its election. Any revocation of the election shall be notified to the Commission no later than four months before the end of the three-year period.

Article 12

Application of a UTPR across the MNE group

1. Where the ultimate parent entity of an MNE group is located in a third-country jurisdiction that does not apply a qualified IIR, or where the ultimate parent entity of an MNE group is an excluded entity, Member States shall ensure that the constituent entities located in the Union are subject, in the Member State in which they are located, to an adjustment equal to the UTPR top-up tax amount allocated to that Member State for the fiscal year in accordance with Article 14.

For that purpose, such adjustment may take the form of either a top-up tax due by those constituent entities or a denial of deduction against the taxable income of those constituent entities resulting in an amount of tax liability necessary to collect the UTPR top-up tax amount allocated to that Member State.

2. Where a Member State applies the adjustment pursuant to paragraph 1 of this Article in the form of a denial of deduction against taxable income, such adjustment shall apply to the extent possible with respect to the taxable year in which the fiscal year for which the UTPR top-up tax amount was computed and allocated to a Member State in accordance with Article 14 ends.

Any UTPR top-up tax amount that remains due with respect to a fiscal year as a result of the application of a denial of deduction against taxable income for that fiscal year shall be carried forward to the extent necessary and shall be subject, with respect to each following fiscal year, to the adjustment pursuant to paragraph 1 until the full UTPR top-up tax amount allocated to that Member State for that fiscal year has been paid.

3. Constituent entities that are investment entities shall not be subject to this Article.

Article 13

Application of the UTPR in the jurisdiction of an ultimate parent entity

1. Where the ultimate parent entity of an MNE group is located in a low-tax third country jurisdiction, Member States shall ensure that the constituent entities located in the Union are subject, in the Member State in which they are located, to an adjustment equal to the UTPR top-up tax amount allocated to that Member State for the fiscal year in accordance with Article 14.

For that purpose, such adjustment may take the form of either a top-up tax due by those constituent entities or a denial of deduction against the taxable income of those constituent entities resulting in an amount of tax liability necessary to collect the UTPR top-up tax amount allocated to that Member State.

The first subparagraph shall not apply where the ultimate parent entity in a low-tax third-country jurisdiction is subject to a qualified IIR in respect of itself and its low-taxed constituent entities located in that jurisdiction.

2. Where a Member State applies the adjustment pursuant to paragraph 1 of this Article in the form of a denial of deduction against taxable income, such adjustment shall apply to the extent possible with respect to the taxable year in which the fiscal year for which the UTPR top-up tax amount was computed and allocated to a Member State in accordance with Article 14 ends.

Any UTPR top-up tax amount that remains due with respect to a fiscal year as a result of the application of a denial of deduction against taxable income for that fiscal year shall be carried forward to the extent necessary and shall be subject, with respect to each following fiscal year, to the adjustment pursuant to paragraph 1 until the full UTPR top-up tax amount allocated to that Member State for that fiscal year has been paid.

3. Constituent entities that are investment entities shall not be subject to this Article.

Article 14

Computation and allocation of the UTPR top-up tax amount

1. The UTPR top-up tax amount allocated to a Member State shall be computed by multiplying the total UTPR top-up tax, as determined in accordance with paragraph 2, by the Member State's UTPR percentage, as determined in accordance with paragraph 5.

2. The total UTPR top-up tax for a fiscal year shall be equal to the sum of the top-up tax computed for each low-taxed constituent entity of the MNE group for that fiscal year in accordance with Article 27, subject to the adjustments set out in paragraphs 3 and 4 of this Article.

3. The UTPR top-up tax of a low-taxed constituent entity shall be equal to zero where, for the fiscal year, all of the ultimate parent entity's ownership interests in such low-taxed constituent entity are held directly or indirectly by one or more parent entities that are required to apply a qualified IIR in respect of that low-taxed constituent entity for that fiscal year.

4. Where paragraph 3 does not apply, the UTPR top-up tax of a low-taxed constituent entity shall be reduced by a parent entity's allocable share of the top-up tax of that low-taxed constituent entity that is brought into charge under qualified IIR.

5. A Member State's UTPR percentage shall be computed, for each fiscal year and for each MNE group, according to the following formula:

$$50\% \times \frac{\text{number of employees in the Member State}}{\text{number of employees in all UTPR jurisdictions}} + 50\% \times \frac{\text{the total value of tangible assets in the Member State}}{\text{the total value of tangible assets in all UTPR jurisdictions}}$$

where:

(a) the number of employees in the Member State is the total number of employees of all the constituent entities of the MNE group located in that Member State;

- (b) the number of employees in all UTPR jurisdictions is the total number of employees of all the constituent entities of the MNE group located in a jurisdiction that has a qualified UTPR in force for the fiscal year;
- (c) the total value of tangible assets in the Member State is the sum of the net book value of tangible assets of all the constituent entities of the MNE group located in that Member State;
- (d) the total value of tangible assets in all UTPR jurisdictions is the sum of the net book value of tangible assets of all the constituent entities of the MNE group located in a jurisdiction that has a qualified UTPR in force for the fiscal year.

6. The number of employees shall be the number of employees on a full-time equivalent basis of all constituent entities located in the relevant jurisdiction, including independent contractors provided that they participate in the ordinary operating activities of the constituent entity.

The tangible assets shall include the tangible assets of all constituent entities located in the relevant jurisdiction but shall not include cash or cash equivalent, intangible or financial assets.

7. The employees whose payroll costs are included in the separate financial accounts of a permanent establishment as determined by Article 18(1) and adjusted in accordance with Article 18(2) shall be allocated to the jurisdiction in which the permanent establishment is located.

Tangible assets included in the separate financial accounts of a permanent establishment as determined by Article 18(1) and adjusted in accordance with Article 18(2) shall be allocated to the jurisdiction in which the permanent establishment is located.

The number of employees and the tangible assets allocated to the jurisdiction of a permanent establishment shall not be taken into account for the number of employees and the tangible assets of the jurisdiction of the main entity.

The number of employees and the net book value of tangible assets held by an investment entity shall be excluded from the elements of the formula set out in paragraph 5.

The number of employees and the net book value of tangible assets of a flow-through entity shall be excluded from the elements of the formula set out in paragraph 5, unless they are allocated to a permanent establishment or, in the absence of a permanent establishment, to the constituent entities that are located in the jurisdiction where the flow-through entity was created.

8. By way of derogation from paragraph 5, a jurisdiction's UTPR percentage for an MNE group shall be deemed to be zero for a fiscal year as long as the UTPR top-up tax amount allocated to that jurisdiction in a prior fiscal year has not resulted in the constituent entities of that MNE group located in that jurisdiction having an additional cash tax expense equal, in total, to the UTPR top-up tax amount for that prior fiscal year allocated to that jurisdiction.

The number of employees and the net book value of tangible assets of the constituent entities of an MNE group which is located in a jurisdiction with a UTPR percentage of zero for a fiscal year shall be excluded from the elements of the formula for allocating the total UTPR top-up tax to the MNE group for that fiscal year.

9. Paragraph 8 shall not apply for a fiscal year if all jurisdictions with a qualified UTPR in force for the fiscal year have a UTPR percentage of zero for the MNE group for that fiscal year.

CHAPTER III

COMPUTATION OF THE QUALIFYING INCOME OR LOSS

Article 15

Determination of the qualifying income or loss

1. The qualifying income or loss of a constituent entity shall be computed by making the adjustments set out in Articles 16 to 19 to the financial accounting net income or loss of the constituent entity for the fiscal year before any consolidation adjustments for eliminating intra-group transactions, as determined under the accounting standard used in the preparation of the consolidated financial statements of the ultimate parent entity.
2. Where it is not reasonably practicable to determine the financial accounting net income or loss of a constituent entity based on the acceptable financial accounting standard or authorised financial accounting standard used in the preparation of the consolidated financial statements of the ultimate parent entity, the financial accounting net income or loss of the constituent entity for the fiscal year may be determined using another acceptable financial accounting standard or an authorised financial accounting standard provided that:
 - (a) the financial accounts of the constituent entity are maintained based on that accounting standard;
 - (b) the information contained in the financial accounts is reliable; and
 - (c) permanent differences in excess of EUR 1 000 000 that arise from the application of a particular principle or standard to items of income or expense or transactions, where that principle or standard differs from the financial standard used in the preparation of the consolidated financial statements of the ultimate parent entity, are adjusted to conform to the treatment required for that item under the accounting standard used in the preparation of the consolidated financial statements.
3. Where an ultimate parent entity has not prepared its consolidated financial statements in accordance with an acceptable financial accounting standard as referred to in Article 3, point (6)(c), the consolidated financial statements of the ultimate parent entity shall be adjusted to prevent any material competitive distortion.
4. Where an ultimate parent entity does not prepare consolidated financial statements as referred to in Article 3, points (6)(a), (b) and (c), the consolidated financial statements of the ultimate parent entity referred to in Article 3, point (6)(d), shall be those that would have been prepared if the ultimate parent entity were required to prepare such consolidated financial statements in accordance with:
 - (a) an acceptable financial accounting standard; or
 - (b) an authorised financial accounting standard, provided that such consolidated financial statements are adjusted to prevent any material competitive distortion.
5. Where a qualified domestic top-up tax is applied by a Member State or a third-country jurisdiction, the financial accounting net income or loss of the constituent entities located in that Member State or third-country jurisdiction may be determined in accordance with an acceptable financial accounting standard or an authorised financial accounting standard that is different from the financial accounting standard used in the preparation of the consolidated financial statements of the ultimate parent entity, provided that such financial accounting net income or loss is adjusted to prevent any material competitive distortion.
6. Where the application of a specific principle or procedure under a set of generally accepted accounting principles results in a material competitive distortion, the accounting treatment of any item or transaction subject to that principle or procedure shall be adjusted to conform to the treatment required for the item or transaction under International Financial Reporting Standards (IFRS or IFRS as adopted by the Union pursuant to Regulation (EC) No 1606/2002).

*Article 16***Adjustments to determine the qualifying income or loss**

1. For the purposes of this Article, the following definitions apply:

(a) 'net taxes expense' means the net amount of the following items:

- (i) covered taxes accrued as an expense and any current and deferred covered taxes included in the income tax expense, including covered taxes on income that is excluded from the qualifying income or loss computation;
- (ii) deferred tax assets attributable to a loss for the fiscal year;
- (iii) qualified domestic top-up taxes accrued as an expense;
- (iv) taxes arising pursuant to the rules of this Directive or, as regards third-country jurisdictions, the OECD Model Rules, accrued as an expense; and
- (v) disqualified refundable imputation taxes accrued as an expense;

(b) 'excluded dividend' means a dividend or other distribution received or accrued in respect of an ownership interest, except a dividend or other distribution received or accrued in respect of:

- (i) an ownership interest:
 - held by the group in an entity, that carries rights to less than 10 % of the profits, capital or reserves, or voting rights of that entity at the date of the distribution or disposition (a 'portfolio shareholding'); and
 - that is economically owned by the constituent entity that receives or accrues the dividend or other distribution for less than one year at the date of the distribution;

(ii) an ownership interest in an investment entity that is subject to an election pursuant to Article 43;

(c) 'excluded equity gain or loss' means a gain, profit or loss, included in the financial accounting net income or loss of the constituent entity, arising from:

- (i) gains and losses arising from changes in the fair value of an ownership interest, except for a portfolio shareholding;
- (ii) profits or losses in respect of an ownership interest that is included under the equity method of accounting; and
- (iii) gains and losses from the disposal of an ownership interest, except for the disposal of a portfolio shareholding;

(d) 'included revaluation method gain or loss' means a net gain or loss, increased or decreased by any associated covered taxes for the fiscal year, arising from the application of an accounting method or practice that, in respect of all property, plant and equipment:

- (i) periodically adjusts the carrying value of such property, plant and equipment to its fair value;
- (ii) records the changes in value in other comprehensive income; and
- (iii) does not subsequently report the gain or loss accrued in other comprehensive income through profit and loss;

(e) 'asymmetric foreign currency gain or loss' means a foreign currency gain or loss of an entity whose accounting and tax functional currencies are different and that is:

- (i) included in the computation of the taxable income or loss of a constituent entity and that is attributable to fluctuations in the exchange rate between the accounting functional currency and the tax functional currency of the constituent entity;
- (ii) included in the computation of the financial accounting net income or loss of a constituent entity and that is attributable to fluctuations in the exchange rate between the accounting functional currency and the tax functional currency of the constituent entity;

- (iii) included in the computation of the financial accounting net income or loss of a constituent entity and that is attributable to fluctuations in the exchange rate between a third foreign currency and the accounting functional currency of the constituent entity; and
- (iv) attributable to fluctuations in the exchange rate between a third foreign currency and the tax functional currency of the constituent entity, irrespective of whether such third foreign currency gain or loss is included in the taxable income;

the tax functional currency is the functional currency used to determine the constituent entity's taxable income or loss for a covered tax in the jurisdiction in which it is located; the accounting functional currency is the functional currency used to determine the constituent entity's financial accounting net income or loss; a third foreign currency is a currency that is not the constituent entity's tax functional currency or accounting functional currency;

- (f) 'policy disallowed expense' means:
 - (i) an expense accrued by the constituent entity for illegal payments, including bribes and kickbacks; and
 - (ii) an expense accrued by the constituent entity for fines and penalties that equal or exceed EUR 50 000 or an equivalent amount in the functional currency in which the financial accounting net income or loss of the constituent entity is computed;
 - (g) 'prior period errors and changes in accounting principles' means a change in the opening equity of a constituent entity at the beginning of a fiscal year that is attributable to:
 - (i) a correction of an error in the determination of the financial accounting net income or loss in a previous fiscal year that affected the income or expenses able to be included in the computation of the qualifying income or loss in that previous fiscal year, except to the extent such correction of an error resulted in a material decrease of a liability for covered taxes subject to Article 25; and
 - (ii) a change in accounting principles or policy that affected the income or expenses included in the computation of the qualifying income or loss;
 - (h) 'accrued pension expense' means the difference between the amount of pension liability expense included in the financial accounting net income or loss and the amount contributed to a pension fund for the fiscal year.
2. The financial accounting net income or loss of a constituent entity shall be adjusted by the amount of the following items to determine its qualifying income or loss:
- (a) net taxes expenses;
 - (b) excluded dividends;
 - (c) excluded equity gains or losses;
 - (d) included revaluation method gains or losses;
 - (e) gains or losses from the disposal of assets and liabilities excluded pursuant to Article 35;
 - (f) asymmetric foreign currency gains or losses;
 - (g) policy disallowed expenses;
 - (h) prior period errors and changes in accounting principles; and
 - (i) accrued pension expenses.

3. At the election of the filing constituent entity, a constituent entity may substitute the amount allowed as a deduction for the computation of its taxable income in its location for the amount expensed in its financial accounts for a cost or expense of such constituent entity that was paid with stock-based compensation.

Where the option to use the stock-options has not been exercised, the amount of stock-based compensation cost or expense that has been deducted from the financial accounting net income or loss of the constituent entity for the computation of its qualifying income or loss for all previous fiscal years shall be included in the fiscal year in which that option has expired.

Where part of the amount of stock-based compensation cost or expense has been recorded in the financial accounts of the constituent entity in fiscal years prior to the fiscal year in which the election is made, an amount equal to the difference between the total amount of stock-based compensation cost or expense that has been deducted for the computation of its qualifying income or loss in those previous fiscal years and the total amount of stock-based compensation cost or expense that would have been deducted for the computation of its qualifying income or loss in those previous fiscal years if the election had been made in such fiscal years shall be included in the computation of the qualifying income or loss of the constituent entity for that fiscal year.

The election shall be made in accordance with Article 45(1) and shall apply consistently to all constituent entities located in the same jurisdiction for the year in which the election is made and all subsequent fiscal years.

In the fiscal year in which the election is revoked, the amount of unpaid stock-based compensation cost or expense deducted pursuant to the election that exceeds the financial accounting expense accrued shall be included in the computation of the qualifying income or loss of the constituent entity.

4. Any transaction between constituent entities located in different jurisdictions that is not recorded in the same amount in the financial accounts of both constituent entities or that is not consistent with the arm's length principle shall be adjusted so as to be in the same amount and consistent with the arm's length principle.

A loss from a sale or other transfer of an asset between two constituent entities located in the same jurisdiction that is not recorded consistently with the arm's length principle shall be adjusted based on the arm's length principle if that loss is included in the computation of the qualifying income or loss.

For the purposes of this paragraph, 'arm's length principle' means the principle under which transactions between constituent entities are to be recorded by reference to the conditions that would have been obtained between independent enterprises in comparable transactions and under comparable circumstances.

5. Qualified refundable tax credits referred to in Article 3, point (38), shall be treated as income for the computation of the qualifying income or loss of a constituent entity. Non-qualified refundable tax credits shall not be treated as income for the computation of the qualifying income or loss of a constituent entity.

6. At the election of the filing constituent entity, gains and losses in respect of assets and liabilities that are subject to fair value or impairment accounting in the consolidated financial statements for a fiscal year may be determined on the basis of the realisation principle for the computation of the qualifying income or loss.

Gains or losses which result from applying fair value or impairment accounting in respect of an asset or a liability shall be excluded from the computation of the qualifying income or loss of a constituent entity under the first subparagraph.

The carrying value of an asset or a liability for the purpose of determining a gain or a loss under the first subparagraph shall be the carrying value at the time the asset was acquired or the liability was incurred, or on the first day of the fiscal year in which the election is made, whichever date is the latest.

The election shall be made in accordance with Article 45(1) and shall apply to all constituent entities located in the jurisdiction to which the election is made, unless the filing constituent entity chooses to limit the election to the tangible assets of the constituent entities or to investment entities.

In the fiscal year in which the election is revoked, an amount equal to the difference between the fair value of the asset or liability and the carrying value of the asset or liability on the first day of the fiscal year in which the revocation is made, determined pursuant to the election, shall be included, if the fair value exceeds the carrying value, or deducted, if the carrying value exceeds the fair value, for the computation of the qualifying income or loss of the constituent entities.

7. At the election of the filing constituent entity, the qualifying income or loss of a constituent entity located in a jurisdiction arising from the disposal of local tangible assets located in that jurisdiction by such constituent entity to third parties, other than a member of the group, for a fiscal year may be adjusted as set out in this paragraph. For the purposes of this paragraph, the local tangible assets are immovable property located in the same jurisdiction as the constituent entity.

The net gain arising from the disposal of local tangible assets as referred to in the first subparagraph in the fiscal year in which the election is made shall be offset against any net loss of a constituent entity located in that jurisdiction arising from the disposal of local tangible assets as referred to in the first subparagraph in the fiscal year in which the election is made and in the four fiscal years prior to that fiscal year (the 'five-year period'). The net gain shall be offset first against the net loss, if any, that has arisen in the earliest fiscal year of the five-year period. Any residual amount of net gain shall be carried forward and offset against any net losses that have arisen in subsequent fiscal years of the five-year period.

Any residual amount of net gain that remains after applying the second subparagraph shall be spread evenly over the five-year period for the computation of the qualifying income or loss of each constituent entity located in that jurisdiction that has made a net gain from the disposal of local tangible assets as referred to in the first subparagraph in the fiscal year in which the election is made. The residual amount of net gain allocated to a constituent entity shall be proportionate to the net gain of that constituent entity divided by the net gain of all constituent entities.

Where no constituent entity in a jurisdiction has made a net gain from the disposal of local tangible assets as referred to in the first subparagraph in the fiscal year in which the election is made, the residual amount of net gain as referred to in the third subparagraph shall be allocated equally to each constituent entity in that jurisdiction and spread evenly over the five-year period for the computation of the qualifying income or loss of each of those constituent entities.

Any adjustment under this paragraph for the fiscal years preceding the fiscal year in which the election is made shall be subject to adjustments in accordance with Article 29(1). The election shall be made annually in accordance with Article 45(2).

8. Any expense related to a financing arrangement whereby one or more constituent entities provides credit to or otherwise makes an investment in one or more other constituent entities of the same group (the 'intra-group financing arrangement') shall not be taken into consideration in the computation of the qualifying income or loss of a constituent entity if the following conditions are met:

- (a) the constituent entity is located in a low-tax jurisdiction or in a jurisdiction that would have been low-taxed if the expense had not been accrued by the constituent entity;
- (b) it can reasonably be anticipated that, over the expected duration of the intra-group financing arrangement, the intra-group financing arrangement will increase the amount of expenses taken into account for the computation of the qualifying income or loss of that constituent entity, without resulting in a commensurate increase in the taxable income of the constituent entity providing the credit (the 'counterparty');
- (c) the counterparty is located in a jurisdiction that is not a low-tax jurisdiction or in a jurisdiction that would not have been low-taxed if the income related to the expense had not been accrued by the counterparty.

9. An ultimate parent entity may elect to apply its consolidated accounting treatment to eliminate income, expense, gains and losses from transactions between constituent entities that are located in the same jurisdiction and included in a tax consolidation group for the purpose of computing the net qualifying income or loss of those constituent entities.

The election shall be made in accordance with Article 45(1).

In the fiscal year in which the election is made or revoked, appropriate adjustments shall be made so that items of qualifying income or loss are not taken into consideration more than once or omitted as a result of such election or revocation.

10. An insurance company shall exclude from the computation of its qualifying income or loss any amount charged to policyholders for taxes paid by the insurance company in respect of returns to the policyholders. An insurance company shall include in the computation of its qualifying income or loss any returns to policyholders that are not reflected in its financial accounting net income or loss to the extent that the corresponding increase or decrease in liability to the policyholders is reflected in its financial accounting net income or loss.

11. Any amount that is recognised as a decrease in the equity of a constituent entity and is the result of distributions made or due in respect of an instrument issued by that constituent entity pursuant to prudential regulatory requirements (the 'additional tier one capital') shall be treated as an expense in the computation of its qualifying income or loss.

Any amount that is recognised as an increase in the equity of a constituent entity and is the result of distributions received or due to be received in respect of an additional tier one capital held by the constituent entity shall be included in the computation of its qualifying income or loss.

Article 17

International shipping income exclusion

1. For the purposes of this Article, the following definitions apply:

- (a) 'international shipping income' means net income obtained by a constituent entity from the following activities, provided that the transportation is not carried out via inland waterways within the same jurisdiction:
 - (i) transportation of passengers or cargo by ship in international traffic, whether the ship is owned, leased or otherwise at the disposal of the constituent entity;
 - (ii) transportation of passengers or cargo by ship in international traffic under slot-chartering arrangements;
 - (iii) leasing of a ship to be used for the transportation of passengers or cargo in international traffic on charter fully equipped, crewed and supplied;
 - (iv) leasing of a ship used for the transportation of passengers or cargo in international traffic, on a bareboat charter basis, to another constituent entity;
 - (v) participation in a pool, a joint business or an international operating agency for the transportation of passengers or cargo by ship in international traffic; and
 - (vi) sale of a ship used for the transportation of passengers or cargo in international traffic, provided that the ship has been held for use by the constituent entity for a minimum of one year;
- (b) 'qualified ancillary international shipping income' means net income obtained by a constituent entity from the following activities, provided that such activities are performed primarily in connection with the transportation of passengers or cargo by ships in international traffic:
 - (i) leasing of a ship, on a bareboat charter basis, to another shipping enterprise that is not a constituent entity, provided that the duration of the charter does not exceed three years;
 - (ii) sale of tickets issued by other shipping enterprises for the domestic leg of an international voyage;
 - (iii) leasing and short-term storage of containers or detention charges for the late return of containers;
 - (iv) provision of services to other shipping enterprises by engineers, maintenance staff, cargo handlers, catering staff and customer services personnel; and
 - (v) investment income, where the investment that generates the income is made as an integral part of the carrying on of the business of operating ships in international traffic.

2. The international shipping income and the qualified ancillary international shipping income of a constituent entity shall be excluded from the computation of its qualifying income or loss, provided that the constituent entity demonstrates that the strategic or commercial management of all ships concerned is effectively carried on from within the jurisdiction where the constituent entity is located.

3. Where the computation of a constituent entity's international shipping income and qualified ancillary international shipping income results in a loss, such loss shall be excluded from the computation of the constituent entity's qualifying income or loss.

4. The aggregated qualified ancillary international shipping income of all constituent entities located in a jurisdiction shall not exceed 50 % of those constituent entities' international shipping income.

5. The costs incurred by a constituent entity that are directly attributable to its international shipping activities listed in paragraph 1, point (a), and qualified ancillary international shipping activities listed in paragraph 1, point (b), shall be allocated to such activities for the purpose of computing the net international shipping income and the net qualified ancillary international shipping income of the constituent entity.

The costs incurred by a constituent entity that indirectly result from its international shipping activities and qualified ancillary international shipping activities shall be deducted from the constituent entity's revenues from such activities to compute the international shipping income and qualified ancillary international shipping income of the constituent entity on the basis of its revenues from such activities in proportion to its total revenues.

6. All direct and indirect costs attributed to a constituent entity's international shipping income and qualified ancillary international shipping income in accordance with paragraph 5 shall be excluded from the computation of its qualifying income or loss.

Article 18

Allocation of the qualifying income or loss between a main entity and a permanent establishment

1. Where a constituent entity is a permanent establishment as defined in Article 3, point (13)(a), (b) or (c), its financial accounting net income or loss shall be the net income or loss reflected in the separate financial accounts of that permanent establishment.

Where a permanent establishment does not have separate financial accounts, its financial accounting net income or loss shall be the amount that would have been reflected in its separate financial accounts if they had been prepared on a standalone basis and in accordance with the accounting standard used in the preparation of the consolidated financial statements of the ultimate parent entity.

2. Where a constituent entity meets the definition of a permanent establishment in Article 3, point (13)(a) or (b), its financial accounting net income or loss shall be adjusted to reflect only the amounts and items of income and expense that are attributable to it in accordance with the applicable tax treaty or domestic law of the jurisdiction where it is located, regardless of the amount of income subject to tax and the amount of deductible expenses in that jurisdiction.

Where a constituent entity meets the definition of a permanent establishment in Article 3, point (13)(c), its financial accounting net income or loss shall be adjusted to reflect only the amounts and items of income and expense that would have been attributable to it in accordance with Article 7 of the OECD Model Tax Convention on Income and Capital, as amended.

3. Where a constituent entity meets the definition of a permanent establishment in Article 3, point (13)(d), its financial accounting net income or loss shall be computed based on the amounts and items of income that are exempt in the jurisdiction where the main entity is located and attributable to the operations conducted outside of that jurisdiction and the amounts and items of expense that are not deducted for tax purposes in the jurisdiction where the main entity is located and that are attributable to such operations.

4. The financial accounting net income or loss of a permanent establishment shall not be taken into account in determining the qualifying income or loss of the main entity, except as provided in paragraph 5.

5. A qualifying loss of a permanent establishment shall be treated as an expense of the main entity for the computation of its qualifying income or loss to the extent that the loss of the permanent establishment is treated as an expense in the computation of domestic taxable income of such main entity and is not set off against an item of the domestic taxable income that is subject to tax under the laws of both the jurisdiction of the main entity and the jurisdiction of the permanent establishment.

Qualifying income that is subsequently earned by the permanent establishment shall be treated as qualifying income of the main entity up to the amount of the qualifying loss that was previously treated as an expense of the main entity under the first subparagraph.

Article 19

Allocation of the qualifying income or loss of a flow-through entity

1. The financial accounting net income or loss of a constituent entity that is a flow-through entity shall be reduced by the amount allocable to its owners that are not group entities and that hold their ownership interest in such flow-through entity directly or through a chain of tax transparent entities, unless:

- (a) the flow-through entity is an ultimate parent entity; or
- (b) the flow-through entity is held, directly or through a chain of tax transparent entities, by an ultimate parent entity referred to in point (a).

2. The financial accounting net income or loss of a constituent entity that is a flow-through entity shall be reduced by the financial accounting net income or loss that is allocated to another constituent entity.

3. Where a flow-through entity wholly or partially carries out business through a permanent establishment, its financial accounting net income or loss which remains after applying paragraph 1 of this Article shall be allocated to that permanent establishment in accordance with Article 18.

4. Where a tax transparent entity is not the ultimate parent entity, the financial accounting net income or loss of the flow-through entity which remains after applying paragraphs 1 and 3 shall be allocated to its constituent entity-owners in accordance with their ownership interests in the flow-through entity.

5. Where a flow-through entity is a tax transparent entity that is the ultimate parent entity or a reverse hybrid entity, any financial accounting net income or loss of the flow-through entity which remains after applying paragraphs 1 and 3 shall be allocated to the ultimate parent entity or the reverse hybrid entity.

6. Paragraphs 3, 4 and 5 shall be applied separately with respect to each ownership interest in the flow-through entity.

CHAPTER IV

COMPUTATION OF ADJUSTED COVERED TAXES

Article 20

Covered taxes

1. The covered taxes of a constituent entity shall include:

- (a) taxes recorded in the financial accounts of a constituent entity with respect to its income or profits, or its share of the income or profits of a constituent entity in which it owns an ownership interest;

- (b) taxes on distributed profits, deemed profit distributions, and non-business expenses imposed under an eligible distribution tax system;
 - (c) taxes imposed in lieu of a generally applicable corporate income tax; and
 - (d) taxes levied by reference to retained earnings and corporate equity, including taxes on multiple components based on income and equity.
2. The covered taxes of a constituent entity shall not include:
- (a) the top-up tax accrued by a parent entity under a qualified IIR;
 - (b) the top-up tax accrued by a constituent entity under a qualified domestic top-up tax;
 - (c) taxes attributable to an adjustment made by a constituent entity as a result of the application of a qualified UTPR;
 - (d) disqualified refundable imputation tax; and
 - (e) taxes paid by an insurance company in respect of returns to policyholders.
3. Covered taxes in respect of any net gain or loss arising from the disposal of local tangible assets as referred to in Article 16(7), first subparagraph, in the fiscal year in which the election referred to in that subparagraph is made shall be excluded from the computation of the covered taxes.

Article 21

Adjusted covered taxes

1. The adjusted covered taxes of a constituent entity for a fiscal year shall be determined by adjusting the sum of the current tax expense accrued in its financial accounting net income or loss with respect to covered taxes for the fiscal year, by:
- (a) the net amount of its additions and reductions to covered taxes for the fiscal year as set out in paragraphs 2 and 3;
 - (b) the total deferred tax adjustment amount as set out in Article 22; and
 - (c) any increase or decrease in covered taxes recorded in equity or other comprehensive income relating to amounts included in the computation of qualifying income or loss that will be subject to tax under local tax rules.
2. The additions to the covered taxes of a constituent entity for the fiscal year shall include:
- (a) any amount of covered taxes accrued as an expense in the profit before taxation in the financial accounts;
 - (b) any amount of qualifying loss deferred tax asset that has been used pursuant to Article 23(2);
 - (c) any amount of covered taxes relating to an uncertain tax position previously excluded under paragraph 3, point (d), that is paid in the fiscal year; and
 - (d) any amount of credit or refund in respect of a qualified refundable tax credit that was accrued as a reduction to the current tax expense.
3. The reductions to the covered taxes of a constituent entity for the fiscal year shall include:
- (a) the amount of current tax expense with respect to income excluded from the computation of qualifying income or loss under Chapter III;
 - (b) any amount of credit or refund in respect of a non-qualified refundable tax credit that was not recorded as a reduction to the current tax expense;
 - (c) any amount of covered taxes refunded or credited to a constituent entity that was not treated as an adjustment to current tax expense in the financial accounts, unless it relates to a qualified refundable tax credit;

- (d) the amount of current tax expense that relates to an uncertain tax position; and
- (e) any amount of current tax expense that is not expected to be paid within three years after the end of the fiscal year.

4. For the purpose of computing adjusted covered taxes, where an amount of covered tax is described in more than one point in paragraphs 1, 2 and 3, it shall only be taken into account once.

5. Where, for a fiscal year, there is no net qualifying income in a jurisdiction and the amount of adjusted covered taxes for that jurisdiction is negative and less than an amount equal to the net qualifying loss multiplied by the minimum tax rate (the 'expected adjusted covered taxes'), the amount equal to the difference between the amount of adjusted covered taxes and the amount of expected adjusted covered taxes shall be treated as an additional top-up tax for that fiscal year. The amount of additional top-up tax shall be allocated to each constituent entity in the jurisdiction in accordance with Article 29(3).

Article 22

Total deferred tax adjustment amount

1. For the purposes of this Article, the following definitions apply:

(a) 'disallowed accrual' means:

- (i) any movement in deferred tax expense accrued in the financial accounts of a constituent entity which relates to an uncertain tax position; and
- (ii) any movement in deferred tax expense accrued in the financial accounts of a constituent entity which relates to distributions from a constituent entity;

(b) 'unclaimed accrual' means any increase in a deferred tax liability recorded in the financial accounts of a constituent entity for a fiscal year that is not expected to be paid within the time period set out in paragraph 7 of this Article and which the filing constituent entity annually elects, in accordance with Article 45(2), not to include in the total deferred tax adjustment amount for such fiscal year.

2. Where the tax rate applied for the purpose of computing the deferred tax expense is equal or below the minimum tax rate, the total deferred tax adjustment amount to be added to the adjusted covered taxes of a constituent entity for a fiscal year pursuant to Article 21(1), point (b), shall be the deferred tax expense accrued in its financial accounts with respect to covered taxes, subject to the adjustments under paragraphs 3 to 6 of this Article.

Where the tax rate applied for the purpose of computing the deferred tax expense is above the minimum tax rate, the total deferred tax adjustment amount to be added to the adjusted covered taxes of a constituent entity for a fiscal year pursuant to Article 21(1), point (b), shall be the deferred tax expense accrued in its financial accounts with respect to covered taxes recast at the minimum tax rate, subject to the adjustments under paragraphs 3 to 6 of this Article.

3. The total deferred tax adjustment amount shall be increased by:

- (a) any amount of disallowed accrual or unclaimed accrual paid during the fiscal year; and
- (b) any amount of recaptured deferred tax liability determined in a preceding fiscal year that has been paid during the fiscal year.

4. Where, for a fiscal year, a loss deferred tax asset is not recognised in the financial accounts because the recognition criteria are not met, the total deferred tax adjustment amount shall be reduced by the amount that would have reduced the total deferred tax adjustment amount if a loss deferred tax asset for the fiscal year had been accrued.

5. The total deferred tax adjustment amount shall not include:

- (a) the amount of deferred tax expense with respect to items excluded from the computation of qualifying income or loss under Chapter III;

- (b) the amount of deferred tax expense with respect to disallowed accruals and unclaimed accruals;
- (c) the impact of a valuation adjustment or accounting recognition adjustment with respect to a deferred tax asset;
- (d) the amount of deferred tax expense arising from a re-measurement with respect to a change in the applicable domestic tax rate; and
- (e) the amount of deferred tax expense with respect to the generation and use of tax credits.

6. Where a deferred tax asset that is attributable to a qualifying loss of a constituent entity has been recorded for a fiscal year at a rate lower than the minimum tax rate, it may be recast at the minimum tax rate in the same fiscal year, provided that the taxpayer is able to demonstrate that the deferred tax asset is attributable to a qualifying loss.

Where a deferred tax asset is increased pursuant to the first subparagraph, the total deferred tax adjustment amount shall be reduced accordingly.

7. A deferred tax liability that is not reversed and whose amount is not paid within the five subsequent fiscal years shall be recaptured to the extent it was taken into account in the total deferred tax adjustment amount of a constituent entity.

The amount of the recaptured deferred tax liability determined for the current fiscal year shall be treated as a reduction to the covered taxes in the fifth fiscal year preceding the current fiscal year, and the effective tax rate and top-up tax of that fiscal year shall be recomputed in accordance with Article 29(1). The recaptured deferred tax liability for the current fiscal year shall be the amount of the increase in the category of deferred tax liability that was included in the total deferred tax adjustment amount in the fifth fiscal year preceding the current fiscal year that has not reversed by the end of the last day of the current fiscal year.

8. By way of derogation from paragraph 7, where a deferred tax liability is a recapture exception accrual, it shall not be recaptured even if it is not reversed or paid within the five subsequent years. A recapture exception accrual shall be the amount of tax expense accrued that is attributable to changes in associated deferred tax liabilities, in respect of the following items:

- (a) cost recovery allowances on tangible assets;
- (b) cost of a licence or similar arrangement from a government for the use of immovable property or exploitation of natural resources which entails significant investment in tangible assets;
- (c) research and development expenses;
- (d) de-commissioning and remediation expenses;
- (e) fair value accounting on unrealised net gains;
- (f) foreign currency exchange net gains;
- (g) insurance reserves and insurance policy deferred acquisition costs;
- (h) gains from the sale of tangible property located in the same jurisdiction as the constituent entity that are reinvested in tangible property in the same jurisdiction; and
- (i) additional amounts accrued as a result of accounting principle changes with respect to items listed in points (a) to (h).

Article 23

Qualifying loss election

1. By way of derogation from Article 22, a filing constituent entity may make a qualifying loss election for a jurisdiction according to which a qualifying loss deferred tax asset shall be determined for each fiscal year in which there is a net qualifying loss in that jurisdiction. For that purpose, the qualifying loss deferred tax asset shall be equal to the net qualifying loss for a fiscal year for the jurisdiction multiplied by the minimum tax rate.

A qualifying loss election shall not be made for a jurisdiction with an eligible distribution tax system under Article 40.

2. The qualifying loss deferred tax asset determined pursuant to paragraph 1 shall be used in any subsequent fiscal year in which there is net qualifying income for the jurisdiction in an amount equal to the net qualifying income multiplied by the minimum tax rate or, if lower, the amount of qualifying loss deferred tax asset that is available.
3. The qualifying loss deferred tax asset determined pursuant to paragraph 1 shall be reduced by the amount that is used for a fiscal year and the balance shall be carried forward to subsequent fiscal years.
4. Where a qualifying loss election is revoked, any remaining qualifying loss deferred tax asset determined pursuant to paragraph 1 shall be reduced to zero as of the first day of the first fiscal year in which the qualifying loss election is no longer applicable.
5. The qualifying loss election shall be filed with the first top-up tax information return referred to in Article 44 of the MNE group or large-scale domestic group that includes the jurisdiction for which the election is made.
6. Where a flow-through entity which is the ultimate parent entity of an MNE group or of a large-scale domestic group makes a qualifying loss election under this Article, the qualifying loss deferred tax asset shall be computed by reference to the qualifying loss of the flow-through entity after reduction pursuant to Article 38(3).

Article 24

Specific allocation of covered taxes incurred by certain types of constituent entities

1. A permanent establishment shall be allocated the amount of any covered taxes that are included in the financial accounts of a constituent entity and that relate to qualifying income or loss of that permanent establishment.
2. A constituent entity-owner shall be allocated the amount of any covered taxes that are included in the financial accounts of a tax transparent entity and that relate to qualifying income or loss allocated to that constituent entity-owner in accordance with Article 19(4).
3. A constituent entity shall be allocated the amount of any covered taxes included in the financial accounts of its direct or indirect constituent entity-owners under a controlled foreign company tax regime, on their share of the controlled foreign company's income.
4. A constituent entity that is a hybrid entity shall be allocated the amount of any covered taxes included in the financial accounts of its constituent entity-owner and which relate to qualifying income of the hybrid entity.

A 'hybrid entity' means an entity treated as a separate person for income tax purposes in the jurisdiction where it is located but as fiscally transparent in the jurisdiction in which its owner is located.

5. A constituent entity that made a distribution during the fiscal year shall be allocated the amount of any covered taxes accrued in the financial accounts of its direct constituent entity-owners on such distribution.
6. A constituent entity that was allocated covered taxes pursuant to paragraphs 3 and 4 in respect of passive income shall include such covered taxes in its adjusted covered taxes in an amount equal to the covered taxes allocated in respect of such passive income.

By way of derogation from the first subparagraph, the constituent entity referred to in the first subparagraph shall include in its adjusted covered taxes the amount resulting from the multiplication of the top-up tax percentage for the jurisdiction by the amount of the constituent entity's passive income that is included under a controlled foreign company tax regime or a fiscal transparency rule where the result is lower than the amount determined under the first subparagraph. For the purposes of this subparagraph, the top-up tax percentage for the jurisdiction shall be determined without regard to covered taxes incurred with respect to such passive income by the constituent entity-owner.

Any covered taxes of the constituent entity-owner incurred with respect to such passive income that remains after the application of this paragraph shall not be allocated under paragraphs 3 and 4.

For the purposes of this paragraph, 'passive income' means the following items of income included in qualifying income to the extent a constituent entity-owner has been subject to tax under a controlled foreign company tax regime or as a result of an ownership interest in a hybrid entity:

- (a) a dividend or dividend equivalents;
- (b) interest or interest equivalents;
- (c) rent;
- (d) royalty;
- (e) annuity; or
- (f) net gains from property of a type that produces income described in points (a) to (e).

7. Where the qualifying income of a permanent establishment is treated as qualifying income of the main entity in accordance with Article 18(5), any covered taxes arising in the jurisdiction where the permanent establishment is located and associated with such income shall be treated as covered taxes of the main entity for an amount not exceeding such income multiplied by the highest tax rate on ordinary income in the jurisdiction where the main entity is located.

Article 25

Post-filing adjustments and tax rate changes

1. Where a constituent entity records an adjustment to its covered taxes for a previous fiscal year in its financial accounts, such adjustment shall be treated as an adjustment to covered taxes in the fiscal year in which the adjustment is made, unless the adjustment relates to a fiscal year in which there is a decrease in covered taxes for the jurisdiction.

Where there is a decrease in covered taxes that were included in the constituent entity's adjusted covered taxes for a previous fiscal year, the effective tax rate and top-up tax for such fiscal year shall be recomputed in accordance with Article 29(1) by reducing adjusted covered taxes by the amount of the decrease in covered taxes. The qualifying income for the fiscal year and any previous fiscal years shall be adjusted accordingly.

At the annual election of the filing constituent entity, made in accordance with Article 45(2), an immaterial decrease in covered taxes may be treated as an adjustment to covered taxes in the fiscal year in which the adjustment is made. An immaterial decrease in covered taxes shall be an aggregate decrease of less than EUR 1 000 000 in the adjusted covered taxes determined for the jurisdiction for the fiscal year.

2. Where the applicable domestic tax rate is reduced below the minimum tax rate and such reduction results in a deferred tax expense, the amount of the resulting deferred tax expense shall be treated as an adjustment to the constituent entity's liability for covered taxes that are taken into consideration pursuant to Article 21 for a previous fiscal year.

3. Where a deferred tax expense was taken into account at a rate lower than the minimum tax rate and the applicable tax rate is later increased, the amount of deferred tax expense that results from such increase shall be treated upon payment as an adjustment to a constituent entity's liability for covered taxes claimed for a previous fiscal year in accordance with Article 21.

The adjustment under the first subparagraph shall not exceed an amount equal to the deferred tax expense recast at the minimum tax rate.

4. Where more than EUR 1 000 000 of the amount accrued by a constituent entity as current tax expense and included in adjusted covered taxes for a fiscal year is not paid within three years after the end of that fiscal year, the effective tax rate and top-up tax for the fiscal year in which the unpaid amount was claimed as a covered tax shall be recomputed in accordance with Article 29(1) by excluding such unpaid amount from the adjusted covered taxes.

CHAPTER V

COMPUTATION OF THE EFFECTIVE TAX RATE AND THE TOP-UP TAX

Article 26

Determination of the effective tax rate

1. The effective tax rate of an MNE group or of a large-scale domestic group shall be computed, for each fiscal year and for each jurisdiction provided that there is net qualifying income in the jurisdiction, in accordance with the following formula:

$$\text{Effective tax rate} = \frac{\text{adjusted covered taxes of the constituent entities in the jurisdiction}}{\text{net qualifying income of the constituent entities in the jurisdiction}}$$

where the adjusted covered taxes of the constituent entities are the sum of the adjusted covered taxes of all the constituent entities located in the jurisdiction determined in accordance with Chapter IV.

2. The net qualifying income or loss of the constituent entities in the jurisdiction for a fiscal year shall be determined in accordance with the following formula:

$$\text{Net qualifying income or loss} = \text{qualifying income of the constituent entities} - \text{qualifying losses of the constituent entities}$$

where:

- (a) the qualifying income of the constituent entities is the positive sum, if any, of the qualifying income of all constituent entities located in the jurisdiction determined in accordance with Chapter III;
- (b) the qualifying losses of the constituent entities are the sum of the qualifying losses of all constituent entities located in the jurisdiction determined in accordance with Chapter III.

3. Adjusted covered taxes and qualifying income or loss of constituent entities that are investment entities shall be excluded from the computation of the effective tax rate in accordance with paragraph 1 and the computation of the net qualifying income in accordance with paragraph 2.

4. The effective tax rate of each stateless constituent entity shall be computed, for each fiscal year, separately from the effective tax rate of all other constituent entities.

Article 27

Computation of the top-up tax

1. Where the effective tax rate of a jurisdiction in which constituent entities are located is below the minimum tax rate for a fiscal year, the MNE group or a large-scale domestic group shall compute the top-up tax separately for each of its constituent entities that have qualifying income included in the computation of net qualifying income of that jurisdiction. The top-up tax shall be computed on a jurisdictional basis.

2. The top-up tax percentage for a jurisdiction for a fiscal year shall be the positive percentage point difference, if any, computed in accordance with the following formula:

$$\text{Top-up tax percentage} = \text{minimum tax rate} - \text{effective tax rate}$$

where the effective tax rate is the rate computed in accordance with Article 26.

3. The jurisdictional top-up tax for a fiscal year shall be the positive amount, if any, computed in accordance with the following formula:

$$\text{Jurisdictional top-up tax} = (\text{top-up tax percentage} \times \text{excess profit}) + \text{additional top-up tax} - \text{domestic top-up tax}$$

where:

- (a) the additional top-up tax is the amount of tax as determined in accordance with Article 29 for the fiscal year;
- (b) the domestic top-up tax is the amount of tax for the fiscal year as determined in accordance with Article 11 or under a qualified domestic top-up tax of a third-country jurisdiction.

4. The excess profit for the jurisdiction for the fiscal year referred to in paragraph 3 shall be the positive amount, if any, computed in accordance with the following formula:

$$\text{Excess profit} = \text{net qualifying income} - \text{substance-based income exclusion}$$

where:

- (a) the net qualifying income is the income determined in accordance with Article 26(2) for the jurisdiction;
- (b) the substance-based income exclusion is the amount determined in accordance with Article 28 for the jurisdiction.

5. The top-up tax of a constituent entity for the current fiscal year shall be computed in accordance with the following formula:

$$\text{Top-up tax of a constituent entity} = \text{jurisdictional top-up tax}$$

$$\times \frac{\text{qualifying income of the constituent entity}}{\text{aggregate qualifying income of all constituent entities}}$$

where:

- (a) the qualifying income of the constituent entity for a jurisdiction for a fiscal year is the income determined in accordance with Chapter III;
- (b) the aggregate qualifying income of all constituent entities for a jurisdiction for a fiscal year is the sum of the qualifying income of all the constituent entities located in the jurisdiction for the fiscal year.

6. If the jurisdictional top-up tax results from a recomputation pursuant to Article 29(1) and there is no net qualifying income in the jurisdiction for the fiscal year, the top-up tax shall be allocated to each constituent entity using the formula set out in paragraph 5 of this Article, based on the qualifying income of the constituent entities in the fiscal years for which the recomputations pursuant to Article 29(1) are performed.

7. The top-up tax of each stateless constituent entity shall be computed, for each fiscal year, separately from the top-up tax of all other constituent entities.

Article 28

Substance-based income exclusion

1. For the purposes of this Article, the following definitions apply:

- (a) 'eligible employees' means full-time or part-time employees of a constituent entity and independent contractors participating in the ordinary operating activities of the MNE group or large-scale domestic group under the direction and control of the MNE group or large-scale domestic group;

- (b) 'eligible payroll costs' means employee compensation expenditures, including salaries, wages and other expenditures that provide a direct and separate personal benefit to the employee, such as health insurance and pension contributions, payroll and employment taxes, and employer social security contributions;
- (c) 'eligible tangible assets' means:
 - (i) property, plant and equipment located in the jurisdiction;
 - (ii) natural resources located in the jurisdiction;
 - (iii) a lessee's right of use of tangible assets located in the jurisdiction; and
 - (iv) a licence or similar arrangement from the government for the use of immovable property or exploitation of natural resources that entails significant investment in tangible assets.

2. Unless a filing constituent entity of an MNE group or of a large-scale domestic group elects, in accordance with Article 45(2), not to apply the substance-based income exclusion for the fiscal year, the net qualifying income for a jurisdiction shall be reduced, for the purpose of computing the top-up tax, by an amount equal to the sum of the payroll carve-out referred to in paragraph 3 of this Article and the tangible asset carve-out referred to in paragraph 4 of this Article for each constituent entity located in the jurisdiction.

3. The payroll carve-out of a constituent entity located in a jurisdiction shall be equal to 5 % of its eligible payroll costs of eligible employees who perform activities for the MNE group or large-scale domestic group in such jurisdiction, with the exception of eligible payroll costs that are:

- (a) capitalised and included in the carrying value of eligible tangible assets;
- (b) attributable to income that is excluded in accordance with Article 17.

4. The tangible asset carve-out of a constituent entity located in a jurisdiction shall be equal to 5 % of the carrying value of the eligible tangible assets located in the jurisdiction, with the exception of:

- (a) the carrying value of property, including land and buildings, that is held for sale, lease or investment;
- (b) the carrying value of tangible assets used to derive income that is excluded in accordance with Article 17.

5. For the purposes of paragraph 4, the carrying value of eligible tangible assets shall be the average of the carrying value of eligible tangible assets at the beginning and end of the fiscal year, as recorded for the purpose of preparing the consolidated financial statements of the ultimate parent entity, reduced by any accumulated depreciation, amortisation and depletion and increased by any amount attributable to the capitalisation of payroll expenses.

6. For the purposes of paragraphs 3 and 4, the eligible payroll costs and eligible tangible assets of a constituent entity which is a permanent establishment shall be those that are included in its separate financial accounts in accordance with Article 18(1) and (2), provided that the eligible payroll costs and eligible tangible assets are located in the same jurisdiction as the permanent establishment.

The eligible payroll costs and eligible tangible assets of a permanent establishment shall not be taken into account for the eligible payroll costs and eligible tangible assets of the main entity.

Where the income of a permanent establishment was wholly or partially excluded pursuant to Article 19(1) and Article 38(5), the eligible payroll costs and eligible tangible assets of such permanent establishment shall be excluded in the same proportion from the computation under this Article for the MNE group or large-scale domestic group.

7. Eligible payroll costs of eligible employees paid by, and eligible tangible assets owned by, a flow-through entity that are not allocated under paragraph 6 shall be allocated to:

- (a) the constituent entity-owners of the flow-through entity, in proportion to the amount allocated to them pursuant to Article 19(4), provided that the eligible employees and eligible tangible assets are located in the jurisdiction of the constituent entity-owners; and
- (b) the flow-through entity if it is the ultimate parent entity, reduced in proportion to the income excluded from the computation of the qualifying income of the flow-through entity pursuant to Article 38(1) and (2), provided that the eligible employees and eligible tangible assets are located in the jurisdiction of the flow-through entity.

All other eligible payroll costs and eligible tangible assets of the flow-through entity shall be excluded from the substance-based income exclusion computations of the MNE group or large-scale domestic group.

8. The substance-based income exclusion of each stateless constituent entity shall be computed, for each fiscal year, separately from the substance-based income exclusion of all other constituent entities.

9. The substance-based income exclusion computed under this Article shall not include the payroll carve-out and the tangible asset carve-out of constituent entities that are investment entities in that jurisdiction.

Article 29

Additional top-up tax

1. Where, pursuant to Article 11(3), Article 16(7), Article 22(6), Article 25(1) and (4) and Article 40(5), an adjustment to covered taxes or qualifying income or loss results in the recomputation of the effective tax rate and top-up tax of the MNE group or the large-scale domestic group for a prior fiscal year, the effective tax rate and top-up tax shall be recomputed in accordance with the rules set out in Articles 26, 27 and 28. Any amount of incremental top-up tax arising from such recomputation shall be treated as an additional top-up tax for the purposes of Article 27(3) for the fiscal year during which the recomputation is made.

2. Where there is an additional top-up tax and no net qualifying income for the jurisdiction for the fiscal year, the qualifying income of each constituent entity located in that jurisdiction shall be an amount equal to the top-up tax allocated to such constituent entities pursuant to Article 27(5) and (6) divided by the minimum tax rate.

3. Where, pursuant to Article 21(5), additional top-up tax is due, the qualifying income of each constituent entity located in the jurisdiction shall be an amount equal to the top-up tax allocated to such constituent entity divided by the minimum tax rate. The allocation shall be made pro-rata, to each constituent entity, based on the following formula:

$$(\text{Qualifying income or loss} \times \text{minimum tax rate}) - \text{adjusted covered taxes}$$

The additional top-up tax shall only be allocated to constituent entities that record an amount of adjusted covered tax that is less than zero and less than the qualifying income or loss of such constituent entities multiplied by the minimum tax rate.

4. Where a constituent entity is allocated additional top-up tax in accordance with this Article and Article 27(5) and (6), such constituent entity shall be treated as a low-taxed constituent entity for the purposes of Chapter II.

Article 30

De minimis exclusion

1. By way of derogation from Articles 26 to 29 and Article 31, at the election of the filing constituent entity, the top-up tax due for the constituent entities located in a jurisdiction shall be equal to zero for a fiscal year if, for such fiscal year:

- (a) the average qualifying revenue of all constituent entities located in such jurisdiction is less than EUR 10 000 000; and

- (b) the average qualifying income or loss of all constituent entities in such jurisdiction is a loss or is less than EUR 1 000 000.

The election shall be made annually in accordance with Article 45(2).

2. The average qualifying revenue or average qualifying income or loss referred to in paragraph 1 shall be the average of the qualifying revenue or qualifying income or loss of the constituent entities located in the jurisdiction for the fiscal year and the two preceding fiscal years.

If there are no constituent entities with qualifying revenue or qualifying loss located in the jurisdiction in the first or second preceding fiscal year, or both, such fiscal year or years shall be excluded from the computation of the average qualifying revenue or qualifying income or loss of that jurisdiction.

3. The qualifying revenue of the constituent entities located in a jurisdiction for a fiscal year shall be the sum of all the revenues of the constituent entities located in that jurisdiction, reduced or increased by any adjustment carried out in accordance with Chapter III.

4. The qualifying income or loss of the constituent entities located in a jurisdiction for a fiscal year shall be the net qualifying income or loss of that jurisdiction as computed in accordance with Article 26(2).

5. The *de minimis* exclusion set out in paragraphs 1 to 4 shall not be applicable to stateless constituent entities and investment entities. The revenue and qualifying income or loss of such entities shall be excluded from the computation of the *de minimis* exclusion.

Article 31

Minority-owned constituent entities

1. For the purposes of this Article, the following definitions apply:
- (a) 'minority-owned constituent entity' means a constituent entity in which the ultimate parent entity has a direct or indirect ownership interest of 30 % or less;
 - (b) 'minority-owned parent entity' means a minority-owned constituent entity that holds, directly or indirectly, the controlling interests of another minority-owned constituent entity, except where the controlling interests of the former entity are held, directly or indirectly, by another minority-owned constituent entity;
 - (c) 'minority-owned subgroup' means a minority-owned parent entity and its minority-owned subsidiaries; and
 - (d) 'minority-owned subsidiary' means a minority-owned constituent entity whose controlling interests are held, directly or indirectly, by a minority-owned parent entity.
2. The computation of the effective tax rate and the top-up tax for a jurisdiction in accordance with Chapters III to VII with respect to members of a minority-owned subgroup shall apply as if each minority-owned subgroup were a separate MNE group or large-scale domestic group.

The adjusted covered taxes and qualifying income or loss of members of a minority-owned subgroup shall be excluded from the determination of the residual amount of the effective tax rate of the MNE group or large-scale domestic group computed in accordance with Article 26(1) and from the net qualifying income computed in accordance with Article 26(2).

3. The effective tax rate and top-up tax of a minority-owned constituent entity that is not a member of a minority-owned subgroup shall be computed on an entity basis in accordance with Chapters III to VII.

The adjusted covered taxes and qualifying income or loss of the minority-owned constituent entity shall be excluded from the determination of the residual amount of the effective tax rate of the MNE group or large-scale domestic group computed in accordance with Article 26(1) and from the net qualifying income computed in accordance with Article 26(2).

This paragraph shall not apply to a minority-owned constituent entity that is an investment entity.

Article 32

Safe harbours

By way of derogation from Articles 26 to 31, Member States shall ensure that, at the election of the filing constituent entity, the top-up tax due by a group in a jurisdiction shall be deemed to be zero for a fiscal year if the effective level of taxation of the constituent entities located in that jurisdiction fulfils the conditions of a qualifying international agreement on safe harbours.

For the purposes of the first paragraph, 'qualifying international agreement on safe harbours' means an international set of rules and conditions which all Member States have consented to and which grants groups in the scope of this Directive the possibility of electing to benefit from one or more safe harbours for a jurisdiction.

CHAPTER VI

SPECIAL RULES FOR CORPORATE RESTRUCTURING AND HOLDING STRUCTURES

Article 33

Application of the consolidated revenue threshold to group mergers and demergers

1. For the purposes of this Article, the following definitions apply:
 - (a) 'merger' means any arrangement where:
 - (i) all or substantially all of the group entities of two or more separate groups are brought under common control in a way that they constitute entities of a combined group; or
 - (ii) an entity that is not a member of any group is brought under common control with another entity or group in a way that they constitute entities of a combined group;
 - (b) 'demerger' means any arrangement where the group entities of a single group are separated into two or more different groups that are no longer consolidated by the same ultimate parent entity.
2. Where two or more groups merge to form a single group in any of the last four consecutive fiscal years immediately preceding the tested fiscal year, the consolidated revenue threshold of the MNE group or large-scale domestic group referred to in Article 2 shall be deemed to be met for any fiscal year prior to the merger if the sum of the revenue included in each of their consolidated financial statements for that fiscal year is EUR 750 000 000 or more.
3. Where an entity that is not a member of a group (the 'target') merges with an entity or a group (the 'acquiring entity') in the tested fiscal year, and either the target or the acquiring entity did not have consolidated financial statements in any of the last four consecutive fiscal years immediately preceding the tested fiscal year, the consolidated revenue threshold of the MNE group or large-scale domestic group shall be deemed to be met for that year if the sum of the revenue included in each of their financial statements or consolidated financial statements for that fiscal year is EUR 750 000 000 or more.

4. Where a single MNE group or large-scale domestic group within the scope of this Directive demerges into two or more groups (each a 'demerged group'), the consolidated revenue threshold shall be deemed to be met by a demerged group where:

- (a) with respect to the first tested fiscal year ending after the demerger, the demerged group has an annual revenue of EUR 750 000 000 or more in that fiscal year;
- (b) with respect to the second to fourth tested fiscal years ending after the demerger, the demerged group has an annual revenue of EUR 750 000 000 or more in at least two of those fiscal years.

Article 34

Constituent entities joining and leaving an MNE group or a large-scale domestic group

1. Where an entity (the 'target') becomes or ceases to be a constituent entity of an MNE group or of a large-scale domestic group as a result of a transfer of direct or indirect ownership interests in the target, or where the target becomes the ultimate parent entity of a new group during a fiscal year (the 'acquisition year'), the target shall be treated as a member of the MNE group or large-scale domestic group for the purposes of this Directive provided that a portion of its assets, liabilities, income, expenses and cash flows is included on a line-by-line basis in the consolidated financial statements of the ultimate parent entity in the acquisition year.

The effective tax rate and top-up tax of the target shall be computed in accordance with paragraphs 2 to 8.

2. In the acquisition year, an MNE group or large-scale domestic group shall take into account only the financial accounting net income or loss and adjusted covered taxes of the target that are included in the consolidated financial statements of the ultimate parent entity for the purposes of this Directive.

3. In the acquisition year, and in each subsequent fiscal year, the qualifying income or loss and adjusted covered taxes of the target shall be based on the historical carrying value of its assets and liabilities.

4. In the acquisition year, the computation of the eligible payroll costs of the target pursuant to Article 28(3) shall take into account only the costs that are reflected in the consolidated financial statements of the ultimate parent entity.

5. The computation of the carrying value of the eligible tangible assets of the target pursuant to Article 28(4) shall be adjusted, where applicable, in proportion to the period of time in which the target was a member of the MNE group or large-scale domestic group during the acquisition year.

6. With the exception of the qualifying loss deferred tax asset as referred to in Article 23, the deferred tax assets and deferred tax liabilities of a target that are transferred between MNE groups or large-scale domestic groups shall be taken into account by the acquiring MNE group or large-scale domestic group in the same manner and to the same extent as if the acquiring MNE group or large-scale domestic group controlled the target when such assets and liabilities arose.

7. Deferred tax liabilities of the target that have previously been included in its total deferred tax adjustment amount shall be treated as reversed, for the purposes of Article 22(7), by the disposing MNE group or large-scale domestic group and as arising from the acquiring MNE group or large-scale domestic group in the acquisition year, except that in such a case any subsequent reduction of covered taxes pursuant to Article 22(7) shall have effect in the year in which the amount is recaptured.

8. Where the target is a parent entity and is a group entity in two or more MNE groups or large-scale domestic groups during the acquisition year, it shall apply separately the IIR to its allocable shares of the top-up tax of low-taxed constituent entities determined for each MNE group or large-scale domestic group.

9. By way of derogation from paragraphs 1 to 8, the acquisition or disposal of a controlling interest in a target shall be treated as an acquisition or disposal of assets and liabilities if the jurisdiction in which the target is located, or in the case of a tax transparent entity the jurisdiction in which the assets are located, treats the acquisition or disposal of that controlling interest in the same, or in a similar, manner as an acquisition or disposal of assets and liabilities, and imposes a covered tax on the seller based on the difference between the tax basis and the consideration paid in exchange for the controlling interest or the fair value of the assets and liabilities.

Article 35

Transfer of assets and liabilities

1. For the purposes of this Article, the following definitions apply:
 - (a) 'reorganisation' means a transformation or transfer of assets and liabilities such as in a merger, demerger, liquidation or similar transaction where:
 - (i) the consideration for the transfer is, in whole or in significant part, equity interests issued by the acquiring constituent entity or by a person connected with the acquiring constituent entity, or, in the case of a liquidation, equity interests of the target, or, when no consideration is provided, where the issuance of an equity interest would have no economic significance;
 - (ii) the disposing constituent entity's gain or loss on those assets is not subject to tax, in whole or in part; and
 - (iii) the tax laws of the jurisdiction in which the acquiring constituent entity is located require the acquiring constituent entity to compute taxable income after the disposal or acquisition using the disposing constituent entity's tax basis in the assets, adjusted for any non-qualifying gain or loss on the disposal or acquisition;
 - (b) 'non-qualifying gain or loss' means the lesser of the gain or loss of the disposing constituent entity arising in connection with a reorganisation that is subject to tax in the disposing constituent entity's location and the financial accounting gain or loss arising in connection with the reorganisation.
2. A constituent entity that disposes of assets and liabilities (the 'disposing constituent entity') shall include the gain or loss arising from such disposal in the computation of its qualifying income or loss.

A constituent entity that acquires assets and liabilities (the 'acquiring constituent entity') shall determine its qualifying income or loss on the basis of its carrying value of the acquired assets and liabilities determined under the financial accounting standard used in preparing consolidated financial statements of the ultimate parent entity.

3. By way of derogation from paragraph 2, where a disposal or acquisition of assets and liabilities is performed in the context of a reorganisation:
 - (a) the disposing constituent entity shall exclude any gain or loss arising from such disposal from the computation of its qualifying income or loss; and
 - (b) the acquiring constituent entity shall determine its qualifying income or loss on the basis of the carrying value of the acquired assets and liabilities of the disposing constituent entity upon disposal.
4. By way of derogation from paragraphs 2 and 3, where the disposal of assets and liabilities is performed in the context of a reorganisation which results, for the disposing constituent entity, in a non-qualifying gain or loss:
 - (a) the disposing constituent entity shall include the gain or loss on the disposal in the computation of its qualifying income or loss to the extent of the non-qualifying gain or loss; and

- (b) the acquiring constituent entity shall determine its qualifying income or loss after the acquisition using the disposing constituent entity's carrying value of the acquired assets and liabilities upon disposal, as adjusted consistently with local tax rules of the acquiring constituent entity to account for the non-qualifying gain or loss.

5. At the election of the filing constituent entity, where a constituent entity is required or permitted to adjust the basis of its assets and the amount of its liabilities to fair value for tax purposes in the jurisdiction where it is located, such constituent entity may:

- (a) include, in the computation of its qualifying income or loss, an amount of gain or loss in respect of each of its assets and liabilities, which shall be:
 - (i) equal to the difference between the carrying value for financial accounting purposes of the asset or liability immediately before the date of the event that triggered the tax adjustment (the 'triggering event') and the fair value of the asset or liability immediately after the triggering event; and
 - (ii) decreased (or increased) by the non-qualifying gain or loss, if any, arising in connection with the triggering event;
- (b) use the fair value for financial accounting purposes of the asset or liability immediately after the triggering event to compute qualifying income or loss in the fiscal years ending after the triggering event; and
- (c) include the net total of the amounts determined in point (a) in the constituent entity's qualifying income or loss in one of the following ways:
 - (i) the net total of those amounts is included in the fiscal year in which the triggering event occurs; or
 - (ii) an amount equal to the net total of those amounts divided by five is included in the fiscal year in which the triggering event occurs and in each of the immediate four subsequent fiscal years, unless the constituent entity leaves the MNE group or large-scale domestic group in a fiscal year within this period, in which case the remaining amount will be wholly included in that fiscal year.

Article 36

Joint ventures

1. For the purposes of this Article, the following definitions apply:

- (a) 'joint venture' means an entity whose financial results are reported under the equity method in the consolidated financial statements of the ultimate parent entity, provided that the ultimate parent entity holds, directly or indirectly, at least 50 % of its ownership interest.

A joint venture does not include:

- (i) an ultimate parent entity of an MNE group or of a large-scale domestic group that is to apply the IIR;
- (ii) an excluded entity as defined by Article 2(3);
- (iii) an entity whose ownership interests held by the MNE group or large-scale domestic group are held directly through an excluded entity referred to in Article 2(3) and which meets one of the following conditions:
 - it operates exclusively or almost exclusively to hold assets or invest funds for the benefit of its investors;
 - it carries out activities that are ancillary to those carried out by the excluded entity; or
 - substantially all of its income is excluded from the computation of qualifying income or loss in accordance with Article 16(2), points (b) and (c).

- (iv) an entity that is held by an MNE group or large-scale domestic group composed exclusively of excluded entities; or
 - (v) a joint venture affiliate;
- (b) 'joint venture affiliate' means:
- (i) an entity whose assets, liabilities, income, expenses and cash flows are consolidated by a joint venture under an acceptable financial accounting standard or would have been consolidated had the joint venture been required to consolidate such assets, liabilities, income, expenses and cash flows under an acceptable financial accounting standard; or
 - (ii) a permanent establishment whose main entity is a joint venture or an entity referred to in point (i). In such cases the permanent establishment shall be treated as a separate joint venture affiliate.
2. A parent entity that holds a direct or indirect ownership interest in a joint venture or a joint venture affiliate shall apply the IIR with respect to its allocable share of the top-up tax of that joint venture or joint venture affiliate in accordance with Articles 5 to 10.
3. The computation of the top-up tax of the joint venture and its joint venture affiliates (together a 'joint venture group') shall be made in accordance with Chapters III to VII, as if they were constituent entities of a separate MNE group or large-scale domestic group and the joint venture was the ultimate parent entity of that group.
4. The top-up tax due by the joint venture group shall be reduced by each parent entity's allocable share of the top-up tax under paragraph 2 of each member of the joint venture group that is brought into charge under paragraph 3. Any remaining amount of top-up tax shall be added to the total UTPR top-up tax amount pursuant to Article 14(2).

For the purposes of this paragraph, 'top-up tax due by the joint venture group' means the parent entity's allocable share of the top-up tax of the joint venture group.

Article 37

Multi-parented MNE groups

1. For the purposes of this Article, the following definitions apply:
- (a) 'multi-parented MNE group or large-scale domestic group' means two or more groups where the ultimate parent entities enter into an arrangement that is a stapled structure or a dual-listed arrangement that includes at least one entity or permanent establishment of the combined group which is located in a different jurisdiction with respect to the location of the other entities of the combined group;
 - (b) 'stapled structure' means an arrangement entered into by two or more ultimate parent entities of separate groups under which:
 - (i) 50 % or more of the ownership interests in the ultimate parent entities of separate groups which are, if they are listed, quoted at a single price, and are, by reason of form of ownership, restrictions on transfer, or other terms or conditions, combined with each other, and cannot be transferred or traded independently; and
 - (ii) one of the ultimate parent entities prepares consolidated financial statements in which the assets, liabilities, income, expenses and cash flows of all the entities of the groups concerned are presented together as those of a single economic unit and that are required by a regulatory regime to be externally audited;
 - (c) 'dual-listed arrangement' means an arrangement entered into by two or more ultimate parent entities of separate groups under which:
 - (i) the ultimate parent entities agree to combine their business by contract alone;
 - (ii) pursuant to contractual arrangements the ultimate parent entities will make distributions, with respect to dividends and in liquidation, to their shareholders based on a fixed ratio;
 - (iii) the ultimate parent entities' activities are managed as a single economic unit under contractual arrangements while retaining their separate legal identities;

- (iv) the ownership interests of the ultimate parent entities that comprise the agreement are quoted, traded or transferred independently in different capital markets; and
- (v) the ultimate parent entities prepare consolidated financial statements in which the assets, liabilities, income, expenses and cash flows of entities in all of the groups are presented together as those of a single economic unit, and are required by a regulatory regime to be externally audited.

2. Where entities and constituent entities of two or more groups form part of a multi-parented MNE group or large-scale domestic group, the entities and constituent entities of each group shall be treated as members of one multi-parented MNE group or large-scale domestic group.

An entity, other than an excluded entity referred to in Article 2(3), shall be treated as a constituent entity if it is consolidated on a line-by-line basis by the multi-parented MNE group or large-scale domestic group or if its controlling interests are held by entities in the multi-parented MNE group or large-scale domestic group.

3. The consolidated financial statements of the multi-parented MNE group or large-scale domestic group shall be the combined consolidated financial statements referred to in the definitions of a stapled structure or a dual-listed arrangement in paragraph 1, prepared under an acceptable financial accounting standard, which is deemed to be the accounting standard of the ultimate parent entity.

4. The ultimate parent entities of the separate groups that compose the multi-parented MNE group or large-scale domestic group shall be the ultimate parent entities of the multi-parented MNE group or large-scale domestic group.

When applying this Directive in respect of a multi-parented MNE group or large-scale domestic group, any references to an ultimate parent entity shall apply, as required, as if they are references to multiple ultimate parent entities.

5. The parent entities of the multi-parented MNE group or large-scale domestic group located in a Member State, including each ultimate parent entity, shall apply the IIR in accordance with Articles 5 to 10 with respect to their allocable share of the top-up tax of the low-taxed constituent entities.

6. The constituent entities of the multi-parented MNE group or large-scale domestic group located in a Member State shall apply the UTPR in accordance with Articles 12, 13 and 14, taking into account the top-up tax of each low-taxed constituent entity that is a member of the multi-parented MNE group or large-scale domestic group.

7. The ultimate parent entities of the multi-parented MNE group or large-scale domestic group shall be required to file the top-up tax information return in accordance with Article 44 unless they appoint a single designated filing entity within the meaning of Article 44(3), point (b). That return shall include information concerning each of the groups that compose the multi-parented MNE group or large-scale domestic group.

CHAPTER VII

TAX NEUTRALITY AND DISTRIBUTION REGIMES

Article 38

Ultimate parent entity that is a flow-through entity

1. The qualifying income of a flow-through entity that is an ultimate parent entity shall be reduced, for the fiscal year, by the amount of qualifying income that is attributable to the holder of an ownership interest (the 'ownership holder') in the flow-through entity, provided that:

- (a) the ownership holder is subject to tax on such income for a taxable period that ends within 12 months after the end of that fiscal year at a nominal rate that equals or exceeds the minimum tax rate; or

(b) it can be reasonably expected that the aggregated amount of adjusted covered taxes of the ultimate parent entity and taxes paid by the ownership holder on such income within 12 months after the end of the fiscal year equals or exceeds an amount equal to that income multiplied by the minimum tax rate.

2. The qualifying income of a flow-through entity that is an ultimate parent entity shall also be reduced, for the fiscal year, by the amount of qualifying income that is allocated to the ownership holder in the flow-through entity provided that the ownership holder is:

- (a) a natural person that is tax resident in the jurisdiction where the ultimate parent entity is located and that holds ownership interests representing a right to 5 % or less of the profits and assets of the ultimate parent entity; or
- (b) a governmental entity, an international organisation, a non-profit organisation or a pension fund that is tax resident in the jurisdiction where the ultimate parent entity is located and that holds ownership interests representing a right to 5 % or less of the profits and assets of the ultimate parent entity.

3. The qualifying loss of a flow-through entity that is an ultimate parent entity shall be reduced, for the fiscal year, by the amount of qualifying loss that is attributable to the ownership holder in the flow-through entity.

The first subparagraph shall not apply to the extent the ownership holder is not allowed to use such loss for the computation of its taxable income.

4. The covered taxes of a flow-through entity that is an ultimate parent entity shall be reduced proportionally to the amount of qualifying income reduced in accordance with paragraphs 1 and 2.

5. Paragraphs 1 to 4 shall apply to a permanent establishment through which a flow-through entity that is an ultimate parent entity wholly or partly carries out its business or through which the business of a tax transparent entity is wholly or partly carried out, provided that the ultimate parent entity's ownership interest in that tax transparent entity is held directly or through a chain of tax transparent entities.

Article 39

Ultimate parent entity subject to a deductible dividend regime

1. For the purposes of this Article, the following definitions apply:

- (a) 'deductible dividend regime' means a tax regime that applies a single level of taxation on the income of the owners of an entity by deducting or excluding from the income of the entity the profits distributed to the owners or by exempting a cooperative from taxation;
- (b) 'deductible dividend' means, with respect to a constituent entity that is subject to a deductible dividend regime:
 - (i) a distribution of profits to the holder of an ownership interest in the constituent entity that is deductible from the taxable income of the constituent entity under the laws of the jurisdiction in which it is located; or
 - (ii) a patronage dividend to a member of a cooperative; and
- (c) 'cooperative' means an entity that collectively markets or acquires goods or services on behalf of its members and that is subject to a tax regime in the jurisdiction where it is located that ensures the tax neutrality in respect of goods or services that are sold or acquired by its members through the cooperative.

2. An ultimate parent entity of an MNE group or of a large-scale domestic group that is subject to a deductible dividend regime shall reduce, up to zero, for the fiscal year, its qualifying income by the amount that is distributed as deductible dividend within 12 months after the end of the fiscal year, provided that:

- (a) the dividend is subject to tax in the hands of the recipient for a taxable period that ends within 12 months after the end of the fiscal year at a nominal rate that equals or exceeds the minimum tax rate; or
- (b) it can be reasonably expected that the aggregate amount of adjusted covered taxes and taxes of the ultimate parent entity paid by the recipient on such dividend equals or exceeds that income multiplied by the minimum tax rate.

3. An ultimate parent entity of an MNE group or of a large-scale domestic group that is subject to a deductible dividend regime shall also reduce, up to zero, for the fiscal year, its qualifying income by the amount that it distributes as deductible dividend within 12 months after the end of the fiscal year, provided that the recipient is:

- (a) a natural person, and the dividend received is a patronage dividend from a supply cooperative;
- (b) a natural person that is tax resident in the same jurisdiction where the ultimate parent entity is located and that holds ownership interests representing a right to 5 % or less of the profits and assets of the ultimate parent entity; or
- (c) a governmental entity, an international organisation, a non-profit organisation or a pension fund other than a pension services entity, that is tax resident in the jurisdiction where the ultimate parent entity is located.

4. The covered taxes of an ultimate parent entity, other than the taxes for which the dividend deduction was allowed, shall be reduced proportionally to the amount of qualifying income reduced in accordance with paragraphs 2 and 3.

5. Where the ultimate parent entity holds an ownership interest in another constituent entity that is subject to a deductible dividend regime, directly or through a chain of such constituent entities, paragraphs 2, 3 and 4 shall apply to any other constituent entity located in the jurisdiction of the ultimate parent entity that is subject to the deductible dividend regime, to the extent that its qualifying income is further distributed by the ultimate parent entity to recipients that meet the requirements set out in paragraphs 2 and 3.

6. For the purposes of paragraph 2, a patronage dividend distributed by a supply cooperative shall be treated as subject to tax in the hands of the recipient insofar as such dividend reduces a deductible expense or cost in the computation of the recipient's taxable income or loss.

Article 40

Eligible distribution tax systems

1. A filing constituent entity may make an election for itself or with respect to another constituent entity that is subject to an eligible distribution tax system to include the amount determined as a deemed distribution tax in accordance with paragraph 2 in the adjusted covered taxes of the constituent entity for the fiscal year.

The election shall be made annually in accordance with Article 45(2) and shall apply to all the constituent entities that are located in a jurisdiction.

2. The amount of deemed distribution tax shall be the lesser of:

- (a) the amount of adjusted covered taxes necessary to increase the effective tax rate as computed in accordance with Article 27(2) for the jurisdiction for the fiscal year to the minimum tax rate; or
- (b) the amount of tax that would have been due if the constituent entities located in the jurisdiction had distributed all of their income that is subject to the eligible distribution tax system during such fiscal year.

3. Where an election is made under paragraph 1, a deemed distribution tax recapture account shall be established for each fiscal year in which such election applies. The amount of deemed distribution tax determined in accordance with paragraph 2 for the jurisdiction shall be added to the deemed distribution tax recapture account for the fiscal year in which it was established.

At the end of each subsequent fiscal year, the outstanding balances in the deemed distribution tax recapture accounts established for prior fiscal years shall be reduced in chronological order, up to zero, by the taxes paid by the constituent entities during the fiscal year in relation to actual or deemed distributions.

Any residual amount in the deemed distribution tax recapture accounts remaining after the application of the second subparagraph shall be reduced, up to zero, by an amount equal to the net qualifying loss of a jurisdiction multiplied by the minimum tax rate.

4. Any residual amount of net qualifying loss multiplied by the minimum tax rate remaining after the application of paragraph 3, third subparagraph, for the jurisdiction, shall be carried forward to the following fiscal years and shall reduce any residual amount in the deemed distribution tax recapture accounts remaining after the application of paragraph 3.

5. The outstanding balance, if any, of the deemed distribution tax recapture account on the last day of the fourth fiscal year after the fiscal year for which such account was established shall be treated as a reduction to the adjusted covered taxes previously determined for such fiscal year. The effective tax rate and top-up tax for such fiscal year shall be recomputed accordingly, in accordance with Article 29(1).

6. Taxes that are paid during the fiscal year in relation to actual or deemed distributions shall not be included in adjusted covered taxes to the extent they reduce a deemed distribution tax recapture account in accordance with paragraphs 3 and 4.

7. Where a constituent entity that is subject to an election under paragraph 1 leaves the MNE group or large-scale domestic group or substantially all of its assets are transferred to a person that is not a constituent entity of the same MNE group or large-scale domestic group located in the same jurisdiction, any outstanding balance of the deemed distribution tax recapture accounts in previous fiscal years in which such account was established shall be treated as a reduction to the adjusted covered taxes for each of those fiscal years in accordance with Article 29(1).

Any additional top-up tax amount due shall be multiplied by the following ratio to determine the additional top-up tax due for the jurisdiction:

$$\frac{\text{Qualifying income of the constituent entity}}{\text{Net qualifying income of the jurisdiction}}$$

where:

- (a) the qualifying income of the constituent entity is determined in accordance with Chapter III for each fiscal year in which there is an outstanding balance of the deemed distribution tax recapture accounts for the jurisdiction; and
- (b) the net qualifying income of the jurisdiction is determined in accordance with Article 26(2) for each fiscal year in which there is an outstanding balance of the deemed distribution tax recapture accounts for the jurisdiction.

Article 41

Determination of the effective tax rate and top-up tax of an investment entity

1. Where a constituent entity of an MNE group or of a large-scale domestic group is an investment entity that is not a tax transparent entity and that has not made an election in accordance with Articles 42 and 43, the effective tax rate of such investment entity shall be computed separately from the effective tax rate of the jurisdiction in which it is located.

2. The effective tax rate of the investment entity as referred to in paragraph 1 shall be equal to its adjusted covered taxes divided by an amount equal to the allocable share of the MNE group or large-scale domestic group in the qualifying income or loss of that investment entity.

Where more than one investment entity is located in a jurisdiction, their effective tax rate shall be computed by combining their adjusted covered taxes as well as the allocable share of the MNE group or large-scale domestic group in their qualifying income or loss.

3. The adjusted covered taxes of an investment entity as referred to in paragraph 1 shall be the adjusted covered taxes that are attributable to the allocable share of the MNE group or large-scale domestic group in the qualifying income of the investment entity and the covered taxes allocated to the investment entity in accordance with Article 24. The investment entity's adjusted covered taxes shall not include any covered taxes accrued by the investment entity attributable to income that is not part of the MNE group or large-scale domestic group's allocable share of the investment entity's income.

4. The top-up tax of an investment entity as referred to in paragraph 1 shall be an amount equal to the top-up tax percentage of the investment entity multiplied by an amount equal to the difference between the allocable share of the MNE group or large-scale domestic group in the qualifying income of the investment entity and the substance-based income exclusion computed for the investment entity.

The top-up tax percentage of an investment entity shall be a positive amount equal to the difference between the minimum tax rate and the effective tax rate of such investment entity.

Where more than one investment entity is located in a jurisdiction, their effective tax rate shall be computed by combining their substance-based income exclusion amounts as well as the allocable share of the MNE group or large-scale domestic group in their qualifying income or loss.

The substance-based income exclusion of an investment entity shall be determined in accordance with Article 28(1) to (7). The eligible payroll costs of eligible employees and eligible tangible assets taken into account for such investment entity shall be reduced in proportion to the allocable share of the MNE group or large-scale domestic group in the qualifying income of the investment entity divided by the total qualifying income of such investment entity.

5. For the purposes of this Article, the allocable share of the MNE group or large-scale domestic group in the qualifying income or loss of an investment entity shall be determined in accordance with Article 9, taking into account only interests that are not subject to an election in accordance with Article 42 or 43.

Article 42

Election to treat an investment entity as a tax transparent entity

1. For the purposes of this Article, an 'insurance investment entity' means an entity that would meet the definition of an investment fund set out in Article 3, point (31), or a real estate investment vehicle set out in Article 3, point (32), if it had not been established in relation to liabilities under an insurance or annuity contract and if it were not wholly owned by an entity that is subject to regulation in the jurisdiction where it is located as an insurance company.

2. At the election of the filing constituent entity, a constituent entity that is an investment entity or an insurance investment entity may be treated as a tax transparent entity if the constituent entity-owner is subject to tax in the jurisdiction in which it is located under a fair market value or a similar regime based on the annual changes in the fair value of its ownership interests in such entity and the tax rate applicable to the constituent entity-owner on such income equals or exceeds the minimum tax rate.

3. A constituent entity that indirectly owns an ownership interest in an investment entity or in an insurance investment entity through a direct ownership interest in another investment entity or an insurance investment entity shall be considered to be subject to tax under a fair market value or similar regime with respect to its indirect ownership interest in the first-mentioned entity or insurance investment entity if it is subject to a fair market value or similar regime with respect to its direct ownership interest in the second-mentioned entity or insurance investment entity.

4. The election under paragraph 2 of this Article shall be made in accordance with Article 45(1).

If the election is revoked, any gain or loss from the disposal of an asset or a liability held by the investment entity or an insurance investment entity shall be determined on the basis of the fair market value of the asset or liability on the first day of the year the revocation is made.

Article 43

Election to apply a taxable distribution method

1. At the election of the filing constituent entity, a constituent entity-owner of an investment entity may apply a taxable distribution method with respect to its ownership interest in the investment entity, provided that the constituent entity-owner is not an investment entity and can be reasonably expected to be subject to tax on distributions from the investment entity at a tax rate that equals or exceeds the minimum tax rate.

2. Under the taxable distribution method, distributions and deemed distributions of the qualifying income of an investment entity shall be included in the qualifying income of the constituent entity-owner that received the distribution, provided that it is not an investment entity.

The amount of covered taxes incurred by the investment entity that is creditable against the tax liability of the constituent entity-owner arising from the distribution of the investment entity shall be included in the qualifying income and adjusted covered taxes of the constituent entity-owner that received the distribution.

The share of the constituent entity-owner in the undistributed net qualifying income of the investment entity referred to in paragraph 3 arising in the third year preceding the fiscal year (the 'tested year') shall be treated as qualifying income of that investment entity for the fiscal year. The amount equal to such qualifying income multiplied by the minimum tax rate shall be treated as top-up tax of a low-taxed constituent entity for the fiscal year for the purposes of Chapter II.

The qualifying income or loss of an investment entity and the adjusted covered taxes attributable to such income for the fiscal year shall be excluded from the computation of the effective tax rate in accordance with Chapter V and with Article 41(1) to (4), except for the amount of covered taxes referred to in the second subparagraph of this paragraph.

3. The undistributed net qualifying income of an investment entity for the tested year shall be the amount of qualifying income of that investment entity for the tested year reduced, up to zero, by:

- (a) the covered taxes of the investment entity;
- (b) distributions and deemed distributions to shareholders that are not investment entities during the period starting with the first day of the third year preceding the fiscal year and ending with the last day of the reporting fiscal year in which the ownership interest was held (the 'testing period');
- (c) qualifying losses arising during the testing period; and
- (d) any residual amount of qualifying losses that has not already reduced the undistributed net qualifying income of that investment entity for a previous tested year, namely the investment loss carry-forward.

The undistributed net qualifying income of an investment entity shall not be reduced by distributions or deemed distributions that already reduced the undistributed net qualifying income of that investment entity for a previous tested year in application of the first subparagraph, point (b).

The undistributed net qualifying income of an investment entity shall not be reduced by the amount of qualifying losses that already reduced the undistributed net qualifying income of that investment entity for a previous tested year in application of the first subparagraph, point (c).

4. For the purposes of this Article, a deemed distribution shall arise when a direct or indirect ownership interest in the investment entity is transferred to an entity that does not belong to the MNE group or large-scale domestic group and is equal to the share of the undistributed net qualifying income attributable to such ownership interest on the date of such transfer, determined without regard to the deemed distribution.

5. The election under paragraph 1 of this Article shall be made in accordance with Article 45(1).

If the election is revoked, the share of the constituent entity-owner in the undistributed net qualifying income of the investment entity for the tested year at the end of the fiscal year preceding the fiscal year the revocation is made shall be treated as qualifying income of the investment entity for the fiscal year. The amount equal to such qualifying income multiplied by the minimum tax rate shall be treated as top-up tax of a low-taxed constituent entity for the fiscal year for the purposes of Chapter II.

CHAPTER VIII

ADMINISTRATIVE PROVISIONS

Article 44

Filing obligations

1. For the purposes of this Article, the following definitions apply:

- (a) 'designated local entity' means the constituent entity of an MNE group or of a large-scale domestic group that is located in a Member State and has been appointed by the other constituent entities of the MNE group or large-scale domestic group located in the same Member State to file the top-up tax information return or submit the notifications in accordance with this Article on their behalf;
- (b) 'qualifying competent authority agreement' means a bilateral or multilateral agreement or arrangement between two or more competent authorities that provides for the automatic exchange of annual top-up tax information returns.

2. A constituent entity located in a Member State shall file a top-up tax information return with its tax administration in accordance with paragraph 5.

Such return may be filed by a designated local entity on behalf of the constituent entity.

3. By way of derogation from paragraph 2, a constituent entity shall not have the obligation to file a top-up tax information return with its tax administration if such return has been filed, in accordance with the requirements set out in paragraph 5, by:

- (a) the ultimate parent entity located in a jurisdiction that has, for the reporting fiscal year, a qualifying competent authority agreement in effect with the Member State in which the constituent entity is located; or
- (b) the designated filing entity located in a jurisdiction that has, for the reporting fiscal year, a qualifying competent authority agreement in effect with the Member State in which the constituent entity is located.

4. Where paragraph 3 applies, the constituent entity located in a Member State, or the designated local entity on its behalf, shall notify its tax administration of the identity of the entity that is filing the top-up tax information return as well as the jurisdiction in which it is located.

5. The top-up tax information return shall be filed in a standard template and include the following information with respect to the MNE group or large-scale domestic group:

- (a) identification of the constituent entities, including their tax identification numbers, if any, the jurisdiction in which they are located and their status under the rules of this Directive;

- (b) information on the overall corporate structure of the MNE group or large-scale domestic group, including the controlling interests in the constituent entities held by other constituent entities;
- (c) the information that is necessary in order to compute:
 - (i) the effective tax rate for each jurisdiction and the top-up tax of each constituent entity;
 - (ii) the top-up tax of a member of a joint venture group;
 - (iii) the allocation of top-up tax under the IIR and the UTPR top-up tax amount to each jurisdiction; and
- (d) a record of the elections made in accordance with this Directive.

6. By way of derogation from paragraph 5, where a constituent entity is located in a Member State with an ultimate parent entity located in a third-country jurisdiction that applies rules which have been assessed as equivalent to the rules of this Directive pursuant to Article 52, the constituent entity or the designated local entity shall file a top-up tax information return containing the following information:

- (a) all information that is necessary for the application of Article 8, including:
 - (i) identification of all the constituent entities in which a partially-owned parent entity located in a Member State holds, directly or indirectly, an ownership interest at any time during the fiscal year and the structure of such ownership interests;
 - (ii) all information that is necessary to compute the effective tax rate of the jurisdictions in which a partially-owned parent entity located in a Member State holds ownership interests in constituent entities identified under point (i) and the top-up tax due; and
 - (iii) all information that is relevant for that purpose in accordance with Article 9, 10 or 11;
- (b) all information that is necessary for the application of Article 13, including:
 - (i) identification of all the constituent entities located in the ultimate parent entity jurisdiction and the structure of such ownership interests;
 - (ii) all information that is necessary in order to compute the effective tax rate of the ultimate parent entity's jurisdiction and its top-up tax due; and
 - (iii) all information necessary for the allocation of such top-up tax based on the UTPR allocation formula set out in Article 14;
- (c) all information that is necessary for the application of a qualified domestic top-up tax by any Member State that has made the election to apply such a top-up tax, in accordance with Article 11.

7. The top-up tax information return referred to in paragraphs 5 and 6 and any relevant notifications shall be filed with the tax administration of the Member State in which the constituent entity is located no later than 15 months after the last day of the reporting fiscal year.

Article 45

Elections

1. The elections referred to in Article 2(3), second subparagraph, Article 16(3), (6), and (9), and Articles 42 and 43 shall be valid for a period of five years, starting from the year in which the election is made. The election shall be renewed automatically unless the filing constituent entity revokes the election at the end of the five-year period. A revocation of the election shall be valid for a period of five years, starting from the end of the year in which the revocation is made.

2. The elections referred to in Article 16(7), Article 22(1), point (b), Article 25(1), Article 28(2), Article 30(1) and Article 40(1) shall be valid for a period of one year. The election shall be renewed automatically unless the filing constituent entity revokes the election at the end of the year.

3. The elections referred to in Article 2(3), second subparagraph, Article 16(3), (6), (7), and (9), Article 22(1), point (b), Article 25(1), Article 28(2), Article 30(1), Article 40(1), and Articles 42 and 43 shall be made to the tax administration of the Member State in which the filing constituent entity is located.

Article 46

Penalties

Member States shall lay down the rules on penalties applicable to infringements of national provisions adopted pursuant to this Directive, including those pertaining to the obligation of a constituent entity to file and pay its share of top-up tax or to have an additional cash tax expense, and shall take all measures necessary to ensure that they are implemented. The penalties provided for shall be effective, proportionate and dissuasive.

CHAPTER IX

TRANSITION RULES

Article 47

Tax treatment of deferred tax assets, deferred tax liabilities and transferred assets upon transition

1. For the purposes of this Article, a 'transition year' for a jurisdiction' means the first fiscal year in which an MNE group or a large-scale domestic group falls within the scope of this Directive in respect of that jurisdiction.
2. When determining the effective tax rate for a jurisdiction in a transition year, and for each subsequent fiscal year, the MNE group or a large-scale domestic group shall take into account all the deferred tax assets and deferred tax liabilities reflected or disclosed in the financial accounts of all the constituent entities in a jurisdiction for the transition year.

Deferred tax assets and deferred tax liabilities shall be taken into account at the lower of the minimum tax rate and the applicable domestic tax rate. However, a deferred tax asset that has been recorded at a tax rate lower than the minimum tax rate may be taken into account at the minimum tax rate if the taxpayer is able to demonstrate that the deferred tax asset is attributable to a qualifying loss.

The impact of any valuation adjustment or accounting recognition adjustment with respect to a deferred tax asset shall be disregarded.

3. Deferred tax assets arising from items excluded from the computation of qualifying income or loss in accordance with Chapter III shall be excluded from the computation referred to in paragraph 2 when such deferred tax assets are generated in a transaction that takes place after 30 November 2021.
4. In the case of a transfer of assets between constituent entities after 30 November 2021 and before the commencement of a transition year, the basis in the acquired assets, other than inventory, shall be based upon the disposing constituent entity's carrying value of the transferred assets upon disposal with deferred tax assets and liabilities determined on that basis.

*Article 48***Transitional relief for the substance-based income exclusion**

1. For the purpose of applying Article 28(3), the value of 5 % shall be replaced, for each fiscal year beginning from 31 December of the following calendar years, with the values set out in the following table:

2023	10 %
2024	9,8 %
2025	9,6 %
2026	9,4 %
2027	9,2 %
2028	9,0 %
2029	8,2 %
2030	7,4 %
2031	6,6 %
2032	5,8 %

2. For the purpose of applying Article 28(4), the value of 5 % shall be replaced, for each fiscal year beginning from 31 December of the following calendar years, with the values set out in the following table:

2023	8 %
2024	7,8 %
2025	7,6 %
2026	7,4 %
2027	7,2 %
2028	7,0 %
2029	6,6 %
2030	6,2 %
2031	5,8 %
2032	5,4 %

*Article 49***Initial phase of exclusion from the IIR and UTPR of MNE groups and large-scale domestic groups**

1. The top-up tax due by an ultimate parent entity located in a Member State in accordance with Article 5(2), or by an intermediate parent entity located in a Member State in accordance with Article 7(2) when the ultimate parent entity is an excluded entity, shall be reduced to zero:

- (a) in the first five years of the initial phase of the international activity of the MNE group, notwithstanding the requirements laid down in Chapter V;
- (b) in the first five years, starting from the first day of the fiscal year in which the large-scale domestic group falls within the scope of this Directive for the first time.

2. Where the ultimate parent entity of an MNE group is located in a third-country jurisdiction, the top-up tax due by a constituent entity located in a Member State in accordance with Article 14(2) shall be reduced to zero in the first five years of the initial phase of the international activity of that MNE group, notwithstanding the requirements laid down in Chapter V.

3. An MNE group shall be considered to be in the initial phase of its international activity if, for a fiscal year:

- (a) it has constituent entities in no more than six jurisdictions; and
- (b) the sum of the net book value of the tangible assets of all the constituent entities of the MNE group located in all jurisdictions other than the reference jurisdiction does not exceed EUR 50 000 000.

For the purposes of the first subparagraph, point (b), 'reference jurisdiction' means the jurisdiction in which the constituent entities of the MNE group have the highest total value of tangible assets in the fiscal year in which the MNE group originally falls within the scope of this Directive. The total value of tangible assets in a jurisdiction shall be the sum of the net book values of all tangible assets of all the constituent entities of the MNE group that are located in that jurisdiction.

4. The period of five years referred to in paragraph 1, point (a), and in paragraph 2 shall start from the beginning of the fiscal year in which the MNE group originally falls within the scope of this Directive.

For MNE groups that are within the scope of this Directive when it enters into force, the five-year period referred to in paragraph 1, point (a), shall start on 31 December 2023.

For MNE groups that are within the scope of this Directive when it enters into force, the five-year period referred to in paragraph 2 shall start on 31 December 2024.

For large-scale domestic groups that are within the scope of this Directive when it enters into force, the five-year period referred to in paragraph 1, point (b), shall start on 31 December 2023.

5. The designated filing entity referred to in Article 44 shall inform the tax administration of the Member State in which it is located of the start of the initial phase of the MNE group's international activity.

Article 50

Election for a delayed application of the IIR and UTPR

1. By way of derogation from Articles 5 to 14, Member States in which no more than twelve ultimate parent entities of groups within the scope of this Directive are located may elect not to apply the IIR and the UTPR for six consecutive fiscal years beginning from 31 December 2023. Member States that make such election shall notify the Commission by 31 December 2023.

2. Where the ultimate parent entity of an MNE group is located in a Member State that has made an election pursuant to paragraph 1 of this Article, the Member States, other than the one in which the ultimate parent entity is located, shall ensure that the constituent entities of that MNE group are subject, in the Member State in which they are located, to the UTPR top-up tax amount allocated to that Member State for the fiscal years beginning from 31 December 2023 in accordance with Article 14.

The ultimate parent entity referred to in the first subparagraph shall nominate a designated filing entity in a Member State other than the Member State in which the ultimate parent entity is located or, if the MNE group has no constituent entity in another Member State, in a third-country jurisdiction that has, for the reporting fiscal year, a qualifying competent authority agreement in effect with the Member State in which the ultimate parent entity is located.

In such cases, the designated filing entity shall file a top-up tax information return in accordance with the requirements set out in Article 44(5). The constituent entities located in the Member State that has made an election pursuant to paragraph 1 of this Article shall provide the designated filing entity with information necessary to comply with Article 44(5) and shall be exempted from the filing obligation referred to in Article 44(2).

3. The UTPR percentage determined for a Member State that has made an election pursuant to paragraph 1 shall be deemed to be zero for the fiscal year.

Article 51

Transitional relief for filing obligations

Notwithstanding Article 44(7), the top-up tax information return and the notifications referred to in Article 44 shall be filed with the tax administration of the Member States no later than 18 months after the last day of the reporting fiscal year that is the transition year referred to in Article 47.

CHAPTER X

FINAL PROVISIONS

Article 52

Assessment of equivalence

1. The legal framework implemented in the domestic law of a third-country jurisdiction shall be considered to be equivalent to a qualified IIR set out in Chapter II, and shall not be treated as a controlled foreign company tax regime, if it fulfils the following conditions:

- (a) it enforces a set of rules in accordance with which the parent entity of an MNE group shall compute and pay its allocable share of top-up tax in respect of the low-taxed constituent entities of the MNE group;
- (b) it establishes a minimum effective tax rate of at least 15 % below which a constituent entity is considered to be low-taxed;
- (c) for the purpose of computing the minimum effective tax rate, it only allows the blending of income of entities located within the same jurisdiction; and
- (d) for the purpose of computing a top-up tax under the equivalent qualified IIR, it provides for relief for any top-up tax that was paid in a Member State in application of the qualified IIR and for any qualified domestic top-up tax set out in this Directive.

2. The Commission is empowered to adopt delegated acts in accordance with Article 53, in order to determine the list of third-country jurisdictions that have implemented a legal framework in their domestic law which is considered to be equivalent to a qualified IIR in conformity with the conditions laid down in paragraph 1 of this Article, and to update that list as a result of a subsequent assessment of the legal framework implemented by a third-country jurisdiction in its domestic law.

Article 53

Exercise of the delegation

- 1. The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article.
- 2. The power to adopt delegated acts referred to in Article 52 shall be conferred on the Commission for an indeterminate period of time from 23 December 2022.

3. The delegation of power referred to in Article 52 may be revoked at any time by the Council. A decision to revoke shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the *Official Journal of the European Union* or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.
4. Before adopting a delegated act, the Commission shall consult experts designated by each Member State in accordance with the principles laid down in the Interinstitutional Agreement of 13 April 2016 on Better Law-Making.
5. As soon as it adopts a delegated act, the Commission shall notify it to the Council.
6. A delegated act adopted pursuant to Article 52 shall enter into force only if no objection has been expressed by the Council within a period of two months of notification of that act to the Council or if, before the expiry of that period, the Council has informed the Commission that it will not object. That period shall be extended by two months at the initiative of the Council.

Article 54

Informing the European Parliament

The European Parliament shall be informed by the Commission of the adoption of delegated acts, of any objection formulated to them, and of the revocation of the delegation of powers by the Council.

Article 55

Bilateral agreement on simplified reporting obligations

The Union may conclude agreements with third-country jurisdictions whose legal frameworks have been assessed as equivalent to a qualified IIR in accordance with Article 52, with a view to arranging a framework for simplifying the reporting procedures laid down in Article 44(6).

Article 56

Transposition

Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 31 December 2023. They shall immediately communicate the text of those measures to the Commission.

They shall apply those measures in respect of the fiscal years beginning from 31 December 2023.

However, with the exception of the arrangement provided for in Article 50(2), they shall apply the measures necessary to comply with Articles 12, 13 and 14 in respect of the fiscal years beginning from 31 December 2024.

When Member States adopt those measures, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such reference is to be made.

Article 57

Review by the Commission of the implementation of Pillar One

The Commission shall, by 30 June 2023, submit a report to the Council assessing the situation regarding the implementation of Pillar One of the Statement on a Two-Pillar Solution to Address the Tax Challenges Arising from the Digitalisation of the Economy agreed by the OECD/G20 Inclusive Framework on BEPS on 8 October 2021 and, if appropriate, submit a legislative proposal to address those tax challenges in the absence of the implementation of the Pillar One solution.

*Article 58***Entry into force**

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

*Article 59***Addressees**

This Directive is addressed to the Member States.

Done at Brussels, 14 December 2022.

For the Council
The President
M. BEK

II

(Non-legislative acts)

INTERNATIONAL AGREEMENTS

COUNCIL DECISION (EU) 2022/2524

of 12 December 2022

on the conclusion, on behalf of the Union, of the Agreement between the European Union and New Zealand pursuant to Article XXVIII of the General Agreement on Tariffs and Trade (GATT) 1994 relating to the modification of concessions on all the tariff-rate quotas included in the EU Schedule CLXXV as a consequence of the United Kingdom's withdrawal from the European Union

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 207(4), first subparagraph, in conjunction with Article 218(6), second subparagraph, point (a)(v), thereof,

Having regard to the proposal from the European Commission,

Having regard to the consent of the European Parliament ⁽¹⁾,

Whereas:

- (1) On 15 June 2018 the Council authorised the Commission to open negotiations pursuant to Article XXVIII of the General Agreement on Tariffs and Trade (GATT) 1994 on the apportionment of the tariff-rate quotas included in the EU Schedule CLXXV as a consequence of the United Kingdom's withdrawal from the Union.
- (2) Negotiations with New Zealand were concluded on 20 December 2021 with the initialling of the Agreement between the European Union and New Zealand pursuant to Article XXVIII of the General Agreement on Tariffs and Trade (GATT) 1994 relating to the modification of concessions on all the tariff-rate quotas included in the EU Schedule CLXXV as a consequence of the United Kingdom's withdrawal from the European Union ('the Agreement').
- (3) The Agreement was signed on behalf of the Union on 20 July 2022, subject to its conclusion at a later date, in accordance with Council Decision (EU) 2022/781 ⁽²⁾.
- (4) The Agreement should be approved,

⁽¹⁾ Consent of 22 November 2022 (not yet published in the Official Journal).

⁽²⁾ Council Decision (EU) 2022/781 of 16 May 2022 on the signing, on behalf of the Union, of the Agreement between the European Union and New Zealand pursuant to Article XXVIII of the General Agreement on Tariffs and Trade (GATT) 1994 relating to the modification of concessions on all the tariff-rate quotas included in the EU Schedule CLXXV as a consequence of the United Kingdom's withdrawal from the European Union (OJ L 140, 19.5.2022, p. 1).

HAS ADOPTED THIS DECISION:

Article 1

The Agreement between the European Union and New Zealand pursuant to Article XXVIII of the General Agreement on Tariffs and Trade (GATT) 1994 relating to the modification of concessions on all the tariff-rate quotas included in the EU Schedule CLXXV as a consequence of the United Kingdom's withdrawal from the European Union is hereby approved on behalf of the Union ⁽³⁾.

Article 2

The President of the Council shall, on behalf of the Union, give the notification provided for in Article 5(1) of the Agreement ⁽⁴⁾.

Article 3

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

Done at Brussels, 12 December 2022.

For the Council
The President
Z. NEKULA

⁽³⁾ See page 61 of this Official Journal.

⁽⁴⁾ The date of entry into force of the Agreement will be published in the *Official Journal of the European Union* by the General Secretariat of the Council.

**AGREEMENT BETWEEN THE EUROPEAN UNION AND NEW ZEALAND PURSUANT TO ARTICLE XXVIII OF
THE GENERAL AGREEMENT ON TARIFFS AND TRADE (GATT) 1994 RELATING TO THE MODIFICATION OF
CONCESSIONS ON ALL THE TARIFF RATE QUOTAS INCLUDED IN THE EU SCHEDULE CLXXV AS A
CONSEQUENCE OF THE UNITED KINGDOM'S WITHDRAWAL FROM THE EUROPEAN UNION**

THE EUROPEAN UNION,

hereinafter referred to as 'the Union'

and

NEW ZEALAND,

hereinafter jointly referred to as 'the Parties',

HAVING REGARD to the negotiations which took place under the frame of Article XXVIII of the General Agreement on Tariffs and Trade (GATT) 1994 relating to the proposed modification of concessions on tariff rate quotas included in the European Union Tariff Schedule CLXXV as a consequence of the United Kingdom's withdrawal from the Union as communicated to WTO Members in document G/SECRET/42/Add.2,

NOTING that the approach taken in this case reflects the unique circumstances resulting from the United Kingdom's withdrawal from the Union;

HAVE AGREED AS FOLLOWS:

Article 1

Objectives

Without prejudice to future negotiations under Article XXVIII of the GATT 1994 and for the purposes of United Kingdom's withdrawal from the Union only, the objective of this Agreement is to agree on the modification of the concessions of tariff rate quotas and the resulting quantitative commitments of the Union that no longer includes the United Kingdom, in respect of the tariff rate quotas for which New Zealand has negotiating or consultation rights under Article XXVIII of the GATT 1994.

Article 2

Approach to be taken to tariff rate quota volumes in this case

The Union and New Zealand understand that the approach to be taken to these WTO tariff rate quota volumes in the unique circumstances of the United Kingdom's withdrawal from the Union will be such that the scheduled quantitative commitments in the form of these WTO tariff rate quotas taken on by the Union, together with the counterpart WTO tariff rate quotas taken on by the United Kingdom following its departure from the Union, will not exceed the volumes for these quotas set out in the Union (EU-28) Tariff Schedule.

Article 3

Tariff rate quotas of the Union that no longer includes the United Kingdom

1. With respect to the tariff rate quotas below, New Zealand and the Union agree on the following changes to scheduled commitments as follows:

- (a) Tariff rate quota 006 (high quality meat of bovine animals, fresh, chilled or frozen): the Union volume of this New Zealand country-specific quota shall be adjusted to 1 102 tonnes;
- (b) Tariff rate quota 020 (sheep meat): the Union volume of this New Zealand country-specific quota shall be adjusted to 125 769 tonnes;

- (c) Tariff rate quota 030 (skimmed-milk powder): the Union volume of this *erga omnes* quota shall be adjusted to 62 917 tonnes.
2. With respect to the tariff rate quotas below, New Zealand and the Union agree on the following changes to scheduled commitments to facilitate the usage of some tariff rate quotas:
- (a) Tariff rate quota 011 (meat of bovine animals, frozen; edible offal of bovine animals, frozen): the Union shall reduce the *ad valorem* part of the in-quota duty from 20 % to 15 %;
- (b) Tariff rate quota 032 (butter): the Union shall remove the specific product specifications that have applied under this tariff rate quota and align the product specifications to the Combined Nomenclature definition for butter and extend the eligibility to the entire HS code 0405 10; the Union shall also repeal the monitoring obligation contained in Article 51 of Commission Implementing Regulation (EU) 2020/761, currently in place for the weight and fat content of the products imported under this tariff rate quota;
- (c) Tariff rate quota 040 (whole Cheddar cheeses): the Union shall remove the specific product specifications that have applied under this tariff rate quota and extend the eligibility to benefit from this tariff rate quota to the entire CN code 0406 90 21.
3. In respect of the other tariff rate quotas where New Zealand has negotiating or consultation rights under Article XXVIII of the GATT 1994 New Zealand agrees to the proposed tariff rate quota commitments as set out in Document G/SECRET/42/Add.2 taken on by the Union after the withdrawal of the United Kingdom, subject to any adjustments arising from Article 4 below.

Article 4

The Union's ongoing negotiations under Article XXVIII of the GATT 1994

1. The Parties acknowledge that the Union is continuing to conduct negotiations and consultations with other WTO Members holding negotiating or consultation rights under Article XXVIII of the GATT 1994 as a consequence of the United Kingdom's withdrawal from the Union as communicated to WTO Members.
2. As a result of those negotiations and consultations, the Union may consider a change to the shares and quantities or other conditions set out in Article 3 or those in document G/SECRET/42/Add.2. In the event of such a change with regard to a prior tariff rate quota commitment of the Union as referred to in Article 3 for which New Zealand has a negotiating or consultation right, the Union shall consult New Zealand with a view to seeking a mutually satisfactory outcome before proceeding to any such change, without prejudice to each party's rights under Article XXVIII of the GATT 1994.

Article 5

Final provisions

1. This Agreement shall enter into force on the day following the date on which the Parties have notified each other of the completion of their respective internal legal procedures necessary for this purpose.
2. This arrangement constitutes an international agreement between the Union and New Zealand, including for the purposes of Article XXVIII:3(a) and (b) of the GATT 1994.
3. This Agreement shall be drawn up in duplicate in the Bulgarian, Croatian, Czech, Danish, Dutch, English, Estonian, Finnish, French, German, Greek, Hungarian, Irish, Italian, Latvian, Lithuanian, Maltese, Polish, Portuguese, Romanian, Slovak, Slovenian, Spanish and Swedish languages, each text being equally authentic.

IN WITNESS WHEREOF, the undersigned Plenipotentiaries, duly authorised to this effect, have signed this Agreement.

**Notice concerning the date of entry into force of the amendment of Annexes 10-A and 10-B of the
Free Trade Agreement between the European Union and the Republic of Korea**

The amendment of Annexes 10-A and 10-B of the Free Trade Agreement between the European Union and the Republic of Korea ⁽¹⁾, signed in Brussels on 6 October 2010, enters into force on 1 January 2023.

⁽¹⁾ OJ L 127, 14.5.2011, p. 6.

REGULATIONS

COUNCIL IMPLEMENTING REGULATION (EU) 2022/2525

of 21 December 2022

implementing Regulation (EU) 2016/44 concerning restrictive measures in view of the situation in Libya

THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to Council Regulation (EU) 2016/44 of 18 January 2016 concerning restrictive measures in view of the situation in Libya and repealing Regulation (EU) No 204/2011 ⁽¹⁾, and in particular Article 21(6) thereof,

Having regard to the proposal from the High Representative of the Union for Foreign Affairs and Security Policy,

Whereas:

- (1) On 18 January 2016, the Council adopted Regulation (EU) 2016/44.
- (2) Following the judgment of the General Court in Case T-627/20 ⁽²⁾, the entry for one listed entity should be deleted.
- (3) Annex III to Regulation (EU) 2016/44 should therefore be amended accordingly,

HAS ADOPTED THIS REGULATION:

Article 1

Annex III to Regulation (EU) 2016/44 is amended in accordance with 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, 21 December 2022.

For the Council
The President
M. BEK

⁽¹⁾ OJ L 12, 19.1.2016, p. 1.

⁽²⁾ Judgment of the General Court of 28 September 2022, *Libyan African Investment Company (Laico) v Council*, T-627/20.

ANNEX

In Annex III to Regulation (EU) 2016/44 (List of natural and legal persons, entities or bodies referred to in Article 6(2)), Part B (Entities), the following entry is deleted:

‘1. Libyan Arab African Investment Company – LAAICO (a.k.a. LAICO)’.

COMMISSION DELEGATED REGULATION (EU) 2022/2526
of 23 September 2022
amending Regulation (EU) 2017/852 of the European Parliament and of the Council as regards the
temporary storage of mercury waste in liquid form
(Text with EEA relevance)

THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EU) 2017/852 of the European Parliament and of the Council of 17 May 2017 on mercury, and repealing Regulation (EC) No 1102/2008 ⁽¹⁾, and in particular Article 13(2) thereof,

Whereas:

- (1) Article 11 of Regulation (EU) 2017/852 establishes that mercury and mercury compounds, whether in pure form or in mixtures and originating from four large sources specified in that Article are to be considered as waste within the meaning of Directive 2008/98/EC of the European Parliament and of the Council ⁽²⁾, which are destined for final disposal.
- (2) Article 13(3) of Regulation (EU) 2017/852 requires that mercury waste, including waste produced by the four concerned large sources, is to undergo, prior to final disposal, specific treatment operations, i.e. conversion and, where intended to be permanently disposed of in above-ground facilities, conversion and solidification.
- (3) Article 13(1) of Regulation (EU) 2017/852 allows, by way of derogation from Article 5(3), point (a), of Council Directive 1999/31/EC ⁽³⁾, that mercury waste in liquid form pending conversion and solidification is temporarily stored in dedicated and equipped landfills until 31 December 2022, in accordance with the requirements on environmental and human health protection set out in Directive 1999/31/EC.
- (4) Information reported by Member States in May 2022 indicated that over 2 000 tonnes of liquid mercury waste remained in temporary storage in the Union and that the conversion and solidification of that waste required more time. The extension of the period allowed for such a storage until 31 December 2025 is considered necessary to ensure that the temporary storage in landfills continues to take place in accordance with the applicable requirements set out in Directive 1999/31/EC.
- (5) Regulation (EU) 2017/852 should therefore be amended accordingly,

HAS ADOPTED THIS REGULATION:

Article 1

In Article 13(1) of Regulation (EU) 2017/852, the second subparagraph is replaced by the following:

‘The derogation set out in the first subparagraph shall cease to apply as from 1 January 2026.’

⁽¹⁾ OJ L 137, 24.5.2017, p. 1.

⁽²⁾ Directive 2008/98/EC of the European Parliament and of the Council of 19 November 2008 on waste and repealing certain Directives (OJ L 312, 22.11.2008, p. 3).

⁽³⁾ Council Directive 1999/31/EC of 26 April 1999 on the landfill of waste (OJ L 182, 16.7.1999, p. 1).

Article 2

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

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

Done at Brussels, 23 September 2022.

For the Commission
The President
Ursula VON DER LEYEN

COMMISSION DELEGATED REGULATION (EU) 2022/2527**of 17 October 2022****repealing Delegated Regulation (EU) No 807/2014 supplementing Regulation (EU) No 1305/2013 of the European Parliament and of the Council on support for rural development by the European Agricultural Fund for Rural Development (EAFRD) and introducing transitional provisions**

THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EU) No 1305/2013 of the European Parliament and of the Council of 17 December 2013 on support for rural development by the European Agricultural Fund for Rural Development (EAFRD) and repealing Council Regulation (EC) No 1698/2005 ⁽¹⁾, and in particular Articles 2(3), 14(5), 16(5), 19(8), 22(3), 28(10) and (11), 29(6), 30(8), 33(4), 34(5), 35(10), 36(5), 45(6), 47(6) and Article 89 thereof,

Whereas:

- (1) Regulation (EU) 2021/2115 of the European Parliament and of the Council ⁽²⁾ lays down a new legal framework for the common agricultural policy (CAP) to improve its delivery on the Union's objectives set out in the Treaty on the Functioning of the European Union. That Regulation further specifies these Union objectives to be achieved by the CAP and defines the types of intervention as well as the common Union requirements applicable to Member States, while leaving flexibility for Member States in the design of the interventions to be provided in their CAP Strategic Plans for the period 1 January 2023 to 31 December 2027.
- (2) Regulation (EU) 2021/2115 provides for types of intervention for rural development. As a consequence, it repeals Regulation (EU) No 1305/2013 with effect from 1 January 2023.
- (3) In that context, the Commission has adopted additional requirements pursuant to Regulation (EU) 2021/2115 for the design of the interventions to be specified in the CAP Strategic Plans, namely by Commission Delegated Regulation (EU) 2022/126 ⁽³⁾. That Delegated Regulation replaces the rules currently laid down in Commission Delegated Regulation (EU) No 807/2014 ⁽⁴⁾.
- (4) In the interest of clarity and legal certainty, Delegated Regulation (EU) No 807/2014 should be repealed with effect from 1 January 2023. However, in accordance with Article 154(1) of Regulation (EU) 2021/2115, it should continue to apply to the implementation of rural development programmes pursuant to Regulation (EU) No 1305/2013 until 31 December 2025 and to expenditure incurred by the beneficiaries and paid by the paying agency in the framework of those rural development programmes until 31 December 2025,

⁽¹⁾ OJ L 347, 20.12.2013, p. 487.

⁽²⁾ Regulation (EU) 2021/2115 of the European Parliament and of the Council of 2 December 2021 establishing rules on support for strategic plans to be drawn up by Member States under the common agricultural policy (CAP Strategic Plans) and financed by the European Agricultural Guarantee Fund (EAGF) and by the European Agricultural Fund for Rural Development (EAFRD) and repealing Regulations (EU) No 1305/2013 and (EU) No 1307/2013 (OJ L 435, 6.12.2021, p. 1).

⁽³⁾ Commission Delegated Regulation (EU) 2022/126 of 7 December 2021 supplementing Regulation (EU) 2021/2115 of the European Parliament and of the Council with additional requirements for certain types of intervention specified by Member States in their CAP Strategic Plans for the period 2023 to 2027 under that Regulation as well as rules on the ratio for the good agricultural and environmental condition (GAEC) standard 1 (OJ L 20, 31.1.2022, p. 52).

⁽⁴⁾ Commission Delegated Regulation (EU) No 807/2014 of 11 March 2014 supplementing Regulation (EU) No 1305/2013 of the European Parliament and of the Council on support for rural development by the European Agricultural Fund for Rural Development (EAFRD) and introducing transitional provisions (OJ L 227, 31.7.2014, p. 1).

HAS ADOPTED THIS REGULATION:

Article 1

Repeal and transitional provisions

Delegated Regulation (EU) No 807/2014 is repealed with effect from 1 January 2023.

However, it shall continue to apply to the implementation of rural development programmes pursuant to Regulation (EU) No 1305/2013 until 31 December 2025 and to expenditure incurred by the beneficiaries and paid by the paying agency in the framework of those rural development programmes until 31 December 2025.

Article 2

Entry into force

This Regulation shall enter into force on the seventh 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, 17 October 2022.

For the Commission
The President
Ursula VON DER LEYEN

COMMISSION DELEGATED REGULATION (EU) 2022/2528**of 17 October 2022****amending Delegated Regulation (EU) 2017/891 and repealing Delegated Regulations (EU) No 611/2014, (EU) 2015/1366 and (EU) 2016/1149 applicable to aid schemes in certain agricultural sectors**

THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EU) No 1308/2013 of the European Parliament and of the Council of 17 December 2013 establishing a common organisation of the markets in agricultural products and repealing Council Regulations (EEC) No 922/72, (EEC) No 234/79, (EC) No 1037/2001 and (EC) No 1234/2007 ⁽¹⁾, and in particular Article 30, Article 37, points (a)(i), (ii), (iii) and (vi), (b), (c), (d) and (e)(i), Article 53 and Articles 56(1), 223(2) and 231(1) thereof,

Having regard to Regulation (EU) No 1306/2013 of the European Parliament and of the Council of 17 December 2013 on the financing, management and monitoring of the common agricultural policy and repealing Council Regulations (EEC) No 352/78, (EC) No 165/94, (EC) No 2799/98, (EC) No 814/2000, (EC) No 1290/2005 and (EC) No 485/2008 ⁽²⁾, and in particular Articles 62(1), 63(4), 64(6) and 106(5) thereof,

Whereas:

- (1) Regulation (EU) 2021/2115 of the European Parliament and of the Council ⁽³⁾ lays down a new legal framework for the common agricultural policy (CAP) to improve its delivery on the Union's objectives set out in the Treaty on the Functioning of the European Union. That Regulation further specifies these Union objectives to be achieved by the CAP and defines the types of intervention as well as the common Union requirements applicable to Member States, while leaving flexibility for Member States in the design of the interventions to be provided in their CAP Strategic Plans for the period 1 January 2023 to 31 December 2027.
- (2) Regulation (EU) 2021/2115 sets out all types of intervention in certain agricultural sectors referred to in Regulation (EU) No 1308/2013. As a consequence, Regulation (EU) 2021/2117 of the European Parliament and of the Council ⁽⁴⁾ deletes the provisions on aid in the olive oil and table olive sector, in the fruit and vegetables sector, in the wine sector, in the apiculture sector and in the hops sector laid down in Regulation (EU) No 1308/2013 with effect from 1 January 2023.

⁽¹⁾ OJ L 347, 20.12.2013, p. 671.

⁽²⁾ OJ L 347, 20.12.2013, p. 549.

⁽³⁾ Regulation (EU) 2021/2115 of the European Parliament and of the Council of 2 December 2021 establishing rules on support for strategic plans to be drawn up by Member States under the common agricultural policy (CAP Strategic Plans) and financed by the European Agricultural Guarantee Fund (EAGF) and by the European Agricultural Fund for Rural Development (EAFRD) and repealing Regulations (EU) No 1305/2013 and (EU) No 1307/2013 (OJ L 435, 6.12.2021, p. 1).

⁽⁴⁾ Regulation (EU) 2021/2117 of the European Parliament and of the Council of 2 December 2021 amending Regulations (EU) No 1308/2013 establishing a common organisation of the markets in agricultural products, (EU) No 1151/2012 on quality schemes for agricultural products and foodstuffs, (EU) No 251/2014 on the definition, description, presentation, labelling and the protection of geographical indications of aromatised wine products and (EU) No 228/2013 laying down specific measures for agriculture in the outermost regions of the Union (OJ L 435, 6.12.2021, p. 262).

- (3) In that context, the Commission has adopted additional requirements pursuant to Regulation (EU) 2021/2115 for the design of the interventions to be specified in the CAP Strategic Plans, namely by Commission Delegated Regulation (EU) 2022/126 ⁽³⁾. That Delegated Regulation replaces the rules currently laid down in Commission Delegated Regulations (EU) No 611/2014 ⁽⁴⁾, (EU) 2015/1366 ⁽⁵⁾, (EU) 2016/1149 ⁽⁶⁾ and (EU) 2017/891 ⁽⁷⁾.
- (4) Delegated Regulations (EU) 2015/1366, (EU) 2016/1149 and (EU) 2017/891 contain certain provisions related to checks, controls, penalties or specification of the operative event as regards aid in the fruit and vegetables sector, in the apiculture sector and in the wine sector that were adopted on the basis of Regulation (EU) No 1306/2013.
- (5) Regulation (EU) 2021/2116 of the European Parliament and of the Council ⁽¹⁰⁾ lays down rules on the financing, management and monitoring of the common agricultural policy and repeals Regulation (EU) No 1306/2013. In accordance with the approach introduced by Regulation (EU) 2021/2115 for the delivery of the Union objectives, that Regulation also leaves more flexibility to Member States, in particular as regards the checks and controls to be carried out and the penalties to be imposed.
- (6) Consequently, the relevant Articles of, and Annexes to, Delegated Regulation (EU) 2017/891 should be deleted with effect from 1 January 2023. However, in accordance with Article 5(4) and (6), point (c), of Regulation (EU) 2021/2117 and in accordance with Article 104(1), point (a)(ii) and (iii), of Regulation (EU) 2021/2116, they should continue to apply as regards expenditure incurred and payments made for operations implemented before 1 January 2023 within the aid scheme in the fruit and vegetables sector and as regards operational programmes that continue to operate until their end, including those operational programmes which Member States have approved in 2022 in accordance with Regulation (EU) No 1308/2013 and Delegated Regulation (EU) 2017/891 before 1 January 2023.
- (7) Delegated Regulations (EU) No 611/2014 and (EU) 2015/1366 should be repealed with effect from 1 January 2023. However, in accordance with Article 5(4) of Regulation (EU) 2021/2117, they should continue to apply as regards expenditure incurred and payments made for operations implemented before 1 January 2023 within the aid schemes in the olive oil and table olives sector and the apiculture sector, respectively.
- (8) In accordance with Article 5(7) of Regulation (EU) 2021/2117, Delegated Regulation (EU) 2016/1149 should be repealed with effect from 16 October 2023 and continue to apply as regards expenditure incurred and payments made for operations implemented before 16 October 2023 within the support programmes in the wine sector and as regards expenditure incurred and payments made for operations implemented pursuant to Articles 46 and 50 of Regulation (EU) No 1308/2013 before 16 October 2025, provided that the conditions set out in Article 5(7) of Regulation (EU) 2021/2117 have been fulfilled,

⁽³⁾ Commission Delegated Regulation (EU) 2022/126 of 7 December 2021 supplementing Regulation (EU) 2021/2115 of the European Parliament and of the Council with additional requirements for certain types of intervention specified by Member States in their CAP Strategic Plans for the period 2023 to 2027 under that Regulation as well as rules on the ratio for the good agricultural and environmental condition (GAEC) standard 1 (OJ L 20, 31.1.2022, p. 52).

⁽⁴⁾ Commission Delegated Regulation (EU) No 611/2014 of 11 March 2014 supplementing Regulation (EU) No 1308/2013 of the European Parliament and of the Council as regards the support programmes for the olive-oil and table-olives sector (OJ L 168, 7.6.2014, p. 55).

⁽⁵⁾ Commission Delegated Regulation (EU) 2015/1366 of 11 May 2015 supplementing Regulation (EU) No 1308/2013 of the European Parliament and of the Council with regard to aid in the apiculture sector (OJ L 211, 8.8.2015, p. 3).

⁽⁶⁾ Commission Delegated Regulation (EU) 2016/1149 of 15 April 2016 supplementing Regulation (EU) No 1308/2013 of the European Parliament and of the Council as regards the national support programmes in the wine sector and amending Commission Regulation (EC) No 555/2008 (OJ L 190, 15.7.2016, p. 1).

⁽⁷⁾ Commission Delegated Regulation (EU) 2017/891 of 13 March 2017 supplementing Regulation (EU) No 1308/2013 of the European Parliament and of the Council with regard to the fruit and vegetables and processed fruit and vegetables sectors and supplementing Regulation (EU) No 1306/2013 of the European Parliament and of the Council with regard to penalties to be applied in those sectors and amending Commission Implementing Regulation (EU) No 543/2011 (OJ L 138, 25.5.2017, p. 4).

⁽¹⁰⁾ Regulation (EU) 2021/2116 of the European Parliament and of the Council of 2 December 2021 on the financing, management and monitoring of the common agricultural policy and repealing Regulation (EU) No 1306/2013 (OJ L 435, 6.12.2021, p. 187).

HAS ADOPTED THIS REGULATION:

Article 1

Amendments to Delegated Regulation (EU) 2017/891 and transitional provisions

Article 2, points (f) to (m), Articles 22 to 54, Articles 56, 57 and 58, Article 59(7) and (8), Articles 60 to 67, Article 76, Article 77, point (a), and Articles 78, 79 and 80 of Delegated Regulation (EU) 2017/891 and Annexes I, II, III, IV and V to that Regulation are deleted with effect from 1 January 2023.

However, those deleted Articles and Annexes shall continue to apply:

- (a) as regards expenditure incurred and payments made for operations implemented before 1 January 2023 within the aid scheme referred to in Articles 32 to 38 of Regulation (EU) No 1308/2013;
- (b) as regards operational programmes that continue to operate until their end under the conditions applicable under Regulation (EU) No 1308/2013 in accordance with Article 5(6), point (c), of Regulation (EU) 2021/2117 or that Member States have approved in accordance with Regulation (EU) No 1308/2013 and Delegated Regulation (EU) 2017/891 before 1 January 2023.

Article 2

Repeal of Delegated Regulations (EU) No 611/2014, (EU) 2015/1366 and (EU) 2016/1149 and transitional provisions

1. Delegated Regulation (EU) No 611/2014 is repealed with effect from 1 January 2023.

However, it shall continue to apply as regards expenditure incurred and payments made for operations implemented before 1 January 2023 within the aid scheme referred to in Articles 29, 30 and 31 of Regulation (EU) No 1308/2013.

2. Delegated Regulation (EU) 2015/1366 is repealed with effect from 1 January 2023.

However, it shall continue to apply as regards expenditure incurred and payments made for operations implemented before 1 January 2023 within the aid scheme referred to in Articles 55, 56 and 57 of Regulation (EU) No 1308/2013.

3. Delegated Regulation (EU) 2016/1149 is repealed with effect from 16 October 2023.

However, it shall continue to apply as regards:

- (a) expenditure incurred and payments made for operations implemented pursuant to Regulation (EU) No 1308/2013 before 16 October 2023 within the aid scheme referred to in Articles 39 to 52 of that Regulation;
- (b) expenditure incurred and payments made for operations implemented pursuant to Articles 46 and 50 of Regulation (EU) No 1308/2013 before 16 October 2025, provided that by 15 October 2023 such operations have been partially implemented and the expenditure incurred amounts to at least 30 % of the total planned expenditure and that such operations are fully implemented by 15 October 2025.

Article 3

Entry into force

This Regulation shall enter into force on the seventh 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, 17 October 2022.

For the Commission
The President
Ursula VON DER LEYEN

COMMISSION DELEGATED REGULATION (EU) 2022/2529**of 17 October 2022****repealing Delegated Regulation (EU) No 639/2014 supplementing Regulation (EU) No 1307/2013 of the European Parliament and of the Council establishing rules for direct payments to farmers under support schemes within the framework of the common agricultural policy and amending Annex X to that Regulation**

THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EU) No 1307/2013 of the European Parliament and of the Council of 17 December 2013 establishing rules for direct payments to farmers under support schemes within the framework of the common agricultural policy and repealing Council Regulation (EC) No 637/2008 and Council Regulation (EC) No 73/2009 ⁽¹⁾, and in particular Articles 4(3), 8(3), 9(5), 35(1), (2) and (3), 36(6), 39(3), 43(12), 44(5), 45(5) and (6), 46(9), 50(11), 52(9), 57(3), 58(5), 59(3) and 67(1) and (2) thereof,

Whereas:

- (1) Regulation (EU) 2021/2115 of the European Parliament and of the Council ⁽²⁾ lays down a new legal framework for the common agricultural policy (CAP) to improve its delivery on the Union's objectives set out in the Treaty on the Functioning of the European Union. That Regulation further specifies these Union objectives to be achieved by the CAP and defines the types of intervention as well as the common Union requirements applicable to Member States, while leaving flexibility for Member States in the design of the interventions to be provided in their CAP Strategic Plans for the period 1 January 2023 to 31 December 2027.
- (2) Regulation (EU) 2021/2115 provides for types of intervention for direct payments. As a consequence, it repeals Regulation (EU) No 1307/2013 with effect from 1 January 2023.
- (3) In that context, the Commission has adopted additional requirements pursuant to Regulation (EU) 2021/2115 for the design of the interventions to be specified in the CAP Strategic Plans, namely by Commission Delegated Regulation (EU) 2022/126 ⁽³⁾. That Delegated Regulation replaces the rules currently laid down in Commission Delegated Regulation (EU) No 639/2014 ⁽⁴⁾.
- (4) In the interest of clarity and legal certainty, Delegated Regulation (EU) No 639/2014 should be repealed with effect from 1 January 2023. However, in accordance with Article 154(2) of Regulation (EU) 2021/2115, it should continue to apply in respect of aid applications relating to claim years starting before 1 January 2023,

⁽¹⁾ OJ L 347, 20.12.2013, p. 608.

⁽²⁾ Regulation (EU) 2021/2115 of the European Parliament and of the Council of 2 December 2021 establishing rules on support for strategic plans to be drawn up by Member States under the common agricultural policy (CAP Strategic Plans) and financed by the European Agricultural Guarantee Fund (EAGF) and by the European Agricultural Fund for Rural Development (EAFRD) and repealing Regulations (EU) No 1305/2013 and (EU) No 1307/2013 (OJ L 435, 6.12.2021, p. 1).

⁽³⁾ Commission Delegated Regulation (EU) 2022/126 of 7 December 2021 supplementing Regulation (EU) 2021/2115 of the European Parliament and of the Council with additional requirements for certain types of intervention specified by Member States in their CAP Strategic Plans for the period 2023 to 2027 under that Regulation as well as rules on the ratio for the good agricultural and environmental condition (GAEC) standard 1 (OJ L 20, 31.1.2022, p. 52).

⁽⁴⁾ Commission Delegated Regulation (EU) No 639/2014 of 11 March 2014 supplementing Regulation (EU) No 1307/2013 of the European Parliament and of the Council establishing rules for direct payments to farmers under support schemes within the framework of the common agricultural policy and amending Annex X to that Regulation (OJ L 181, 20.6.2014, p. 1).

HAS ADOPTED THIS REGULATION:

Article 1

Repeal and transitional provisions

Delegated Regulation (EU) No 639/2014 is repealed with effect from 1 January 2023.

However, it shall continue to apply in respect of aid applications relating to claim years starting before 1 January 2023.

Article 2

Entry into force

This Regulation shall enter into force on the seventh 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, 17 October 2022.

For the Commission
The President
Ursula VON DER LEYEN

COMMISSION IMPLEMENTING REGULATION (EU) 2022/2530**of 1 December 2022****repealing Implementing Regulation (EU) No 641/2014 laying down rules for the application of Regulation (EU) No 1307/2013 of the European Parliament and of the Council establishing rules for direct payments to farmers under support schemes within the framework of the common agricultural policy**

THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EU) No 1307/2013 of the European Parliament and of the Council of 17 December 2013 establishing rules for direct payments to farmers under support schemes within the framework of the common agricultural policy and repealing Council Regulation (EC) No 637/2008 and Council Regulation (EC) No 73/2009 ⁽¹⁾, and in particular Articles 24(11), 31(2), 34(5), 36(4), 39(4), 43(13), 45(7), 55(2), 57(4) and 67(3) thereof,

Whereas:

- (1) Regulation (EU) 2021/2115 of the European Parliament and of the Council ⁽²⁾ lays down a new legal framework for the common agricultural policy (CAP) to improve its delivery on the Union's objectives set out in the Treaty on the Functioning of the European Union. That Regulation further specifies these Union objectives to be achieved by the CAP and defines the types of intervention as well as the common Union requirements applicable to Member States, while leaving flexibility for Member States in the design of the interventions to be provided in their CAP Strategic Plans for the period 1 January 2023 to 31 December 2027.
- (2) Regulation (EU) 2021/2115 provides for types of intervention in the form of direct payments. As a consequence, Regulation (EU) No 1307/2013 of the European Parliament and of the Council is repealed with effect from 1 January 2023.
- (3) In that context, the Commission has adopted additional requirements pursuant to Regulation (EU) 2021/2115 for the design of the interventions to be specified in the CAP Strategic Plans, inter alia, for direct payments, namely by Commission Delegated Regulation (EU) 2022/126 ⁽³⁾. That Delegated Regulation replaces the rules currently laid down in Commission Implementing Regulation (EU) No 641/2014 ⁽⁴⁾.
- (4) Implementing Regulation (EU) No 641/2014 should be repealed with effect from 1 January 2023. However, in accordance with Article 154(2) of Regulation (EU) 2021/2115, it should continue to apply in respect of aid applications relating to claim years starting before 1 January 2023.
- (5) The measures provided for in this Regulation are in accordance with the opinion of the Committee for Direct Payments,

⁽¹⁾ OJ L 347, 20.12.2013, p. 608.

⁽²⁾ Regulation (EU) 2021/2115 of the European Parliament and of the Council of 2 December 2021 establishing rules on support for strategic plans to be drawn up by Member States under the common agricultural policy (CAP Strategic Plans) and financed by the European Agricultural Guarantee Fund (EAGF) and by the European Agricultural Fund for Rural Development (EAFRD) and repealing Regulations (EU) No 1305/2013 and (EU) No 1307/2013 (OJ L 435, 6.12.2021, p. 1).

⁽³⁾ Commission Delegated Regulation (EU) 2022/126 of 7 December 2021 supplementing Regulation (EU) 2021/2115 of the European Parliament and of the Council with additional requirements for certain types of intervention specified by Member States in their CAP Strategic Plans for the period 2023 to 2027 under that Regulation as well as rules on the ratio for the good agricultural and environmental condition (GAEC) standard 1 (OJ L 20, 31.1.2022, p. 52).

⁽⁴⁾ Commission Implementing Regulation (EU) No 641/2014 of 16 June 2014 laying down rules for the application of Regulation (EU) No 1307/2013 of the European Parliament and of the Council establishing rules for direct payments to farmers under support schemes within the framework of the common agricultural policy (OJ L 181, 20.6.2014, p. 74).

HAS ADOPTED THIS REGULATION:

Article 1

Repeal of Implementing Regulation (EU) No 641/2014 and transitional provision

Implementing Regulation (EU) No 641/2014 is repealed.

However, it shall continue to apply in respect of aid applications relating to claim years starting before 1 January 2023.

Article 2

Entry into force

This Regulation shall enter into force on the seventh 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, 1 December 2022.

For the Commission
The President
Ursula VON DER LEYEN

COMMISSION IMPLEMENTING REGULATION (EU) 2022/2531**of 1 December 2022****repealing Implementing Regulation (EU) No 808/2014 laying down rules for the application of Regulation (EU) No 1305/2013 of the European Parliament and of the Council on support for rural development by the European Agricultural Fund for Rural Development (EAFRD)**

THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EU) No 1305/2013 of the European Parliament and of the Council of 17 December 2013 on support for rural development by the European Agricultural Fund for Rural Development (EAFRD) and repealing Council Regulation (EC) No 1698/2005 ⁽¹⁾, and in particular Article 8(3), Article 12, Article 14(6), Article 41, Article 54(4), Article 66(5), Article 67, Article 75(5) and Article 76(1) thereof,

Whereas:

- (1) Regulation (EU) 2021/2115 of the European Parliament and of the Council ⁽²⁾ lays down a new legal framework for the common agricultural policy (CAP) to improve its delivery on the Union's objectives set out in the Treaty on the Functioning of the European Union. That Regulation further specifies these Union objectives to be achieved by the CAP and defines the types of intervention as well as the common Union requirements applicable to Member States, while leaving flexibility for Member States in the design of the interventions to be provided in their CAP Strategic Plans for the period 1 January 2023 to 31 December 2027.
- (2) Regulation (EU) 2021/2115 provides for types of intervention for rural development. As a consequence, Regulation (EU) No 1305/2013 of the European Parliament and of the Council ⁽³⁾ is repealed with effect from 1 January 2023.
- (3) In that context, the Commission has adopted additional requirements pursuant to Regulation (EU) 2021/2115 for the design of the interventions to be specified in the CAP Strategic Plans, inter alia, for rural development, namely by Commission Delegated Regulation (EU) 2022/126 ⁽⁴⁾. That Delegated Regulation replaces the rules currently laid down in Commission Implementing Regulation (EU) No 808/2014 ⁽⁵⁾.
- (4) Implementing Regulation (EU) No 808/2014 should be repealed with effect from 1 January 2023. However, in accordance with Article 154(1) of Regulation (EU) 2021/2115, it should continue to apply as regards the implementation of rural development programmes pursuant to Regulation (EU) No 1305/2013 until 31 December 2025 and as regards expenditure incurred by the beneficiaries and paid by the paying agency in the framework of those rural development programmes until 31 December 2025.
- (5) The measures provided for in this Regulation are in accordance with the opinion of the Rural Development Committee,

⁽¹⁾ OJ L 347, 20.12.2013, p. 487.

⁽²⁾ Regulation (EU) 2021/2115 of the European Parliament and of the Council of 2 December 2021 establishing rules on support for strategic plans to be drawn up by Member States under the common agricultural policy (CAP Strategic Plans) and financed by the European Agricultural Guarantee Fund (EAGF) and by the European Agricultural Fund for Rural Development (EAFRD) and repealing Regulations (EU) No 1305/2013 and (EU) No 1307/2013 (OJ L 435, 6.12.2021, p. 1).

⁽³⁾ Regulation (EU) No 1305/2013 of the European Parliament and of the Council of 17 December 2013 on support for rural development by the European Agricultural Fund for Rural Development (EAFRD) and repealing Council Regulation (EC) No 1698/2005 (OJ L 347, 20.12.2013, p. 487).

⁽⁴⁾ Commission Delegated Regulation (EU) 2022/126 of 7 December 2021 supplementing Regulation (EU) 2021/2115 of the European Parliament and of the Council with additional requirements for certain types of intervention specified by Member States in their CAP Strategic Plans for the period 2023 to 2027 under that Regulation as well as rules on the ratio for the good agricultural and environmental condition (GAEC) standard 1 (OJ L 20, 31.1.2022, p. 52).

⁽⁵⁾ Commission Implementing Regulation (EU) No 808/2014 of 17 July 2014 laying down rules for the application of Regulation (EU) No 1305/2013 of the European Parliament and of the Council on support for rural development by the European Agricultural Fund for Rural Development (EAFRD) (OJ L 227, 31.7.2014, p. 18).

HAS ADOPTED THIS REGULATION:

Article 1

Repeal of Implementing Regulation (EU) No 808/2014 and transitional provision

Implementing Regulation (EU) No 808/2014 is repealed with effect from 1 January 2023.

However, it shall continue to apply as regards the implementation of rural development programmes pursuant to Regulation (EU) No 1305/2013 until 31 December 2025 and as regards expenditure incurred by the beneficiaries and paid by the paying agency in the framework of those rural development programmes until 31 December 2025.

Article 2

Entry into force

This Regulation shall enter into force on the seventh 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, 1 December 2022.

For the Commission
The President
Ursula VON DER LEYEN

COMMISSION IMPLEMENTING REGULATION (EU) 2022/2532**of 1 December 2022****amending Implementing Regulation (EU) 2017/892 and repealing Regulation (EU) No 738/2010 and Implementing Regulations (EU) No 615/2014, (EU) 2015/1368 and (EU) 2016/1150 applicable to aid schemes in certain agricultural sectors**

THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EU) No 1308/2013 of the European Parliament and of the Council of 17 December 2013 establishing a common organisation of the markets in agricultural products and repealing Council Regulations (EEC) No 922/72, (EEC) No 234/79, (EC) No 1037/2001 and (EC) No 1234/2007 ⁽¹⁾, and in particular Articles 31, 38, 54, Article 57, first subparagraph, points (a) and (c), Article 60, and Article 174(1), point (d), and Article 223(3) thereof,

Having regard to Regulation (EU) No 1306/2013 of the European Parliament and of the Council of 17 December 2013 on the financing, management and monitoring of the common agricultural policy and repealing Council Regulations (EEC) No 352/78, (EC) No 165/94, (EC) No 2799/98, (EC) No 814/2000, (EC) No 1290/2005 and (EC) No 485/2008 ⁽²⁾, and in particular Articles 58(4), points (a) and (b), 62(2), points (a) to (d) and (h), and Articles 63(5), 64(7), 66(4) and 106(5) thereof,

Whereas:

- (1) Regulation (EU) 2021/2115 of the European Parliament and of the Council ⁽³⁾ lays down a new legal framework for the common agricultural policy (CAP) to improve its delivery on the Union's objectives set out in the Treaty on the Functioning of the European Union. That Regulation further specifies these Union objectives to be achieved by the CAP and defines the types of intervention as well as the common Union requirements applicable to Member States, while leaving flexibility for Member States in the design of the interventions to be provided in their CAP Strategic Plans for the period 1 January 2023 to 31 December 2027.
- (2) Regulation (EU) 2021/2115 sets out all types of intervention in certain agricultural sectors referred to in Regulation (EU) No 1308/2013. As a consequence, Regulation (EU) 2021/2117 of the European Parliament and of the Council ⁽⁴⁾ deletes the provisions on aid in the olive oil and table olive sector, in the fruit and vegetables sector, in the wine sector, in the apiculture sector and in the hops sector laid down in Regulation (EU) No 1308/2013 with effect from 1 January 2023.

⁽¹⁾ OJ L 347, 20.12.2013, p. 671.

⁽²⁾ OJ L 347, 20.12.2013, p. 549.

⁽³⁾ Regulation (EU) 2021/2115 of the European Parliament and of the Council of 2 December 2021 establishing rules on support for strategic plans to be drawn up by Member States under the common agricultural policy (CAP Strategic Plans) and financed by the European Agricultural Guarantee Fund (EAGF) and by the European Agricultural Fund for Rural Development (EAFRD) and repealing Regulations (EU) No 1305/2013 and (EU) No 1307/2013 (OJ L 435, 6.12.2021, p. 1).

⁽⁴⁾ Regulation (EU) 2021/2117 of the European Parliament and of the Council of 2 December 2021 amending Regulations (EU) No 1308/2013 establishing a common organisation of the markets in agricultural products, (EU) No 1151/2012 on quality schemes for agricultural products and foodstuffs, (EU) No 251/2014 on the definition, description, presentation, labelling and the protection of geographical indications of aromatised wine products and (EU) No 228/2013 laying down specific measures for agriculture in the outermost regions of the Union (OJ L 435, 6.12.2021, p. 262).

- (3) In that context, the Commission has adopted additional requirements pursuant to Regulation (EU) 2021/2115 for the design of the interventions to be specified in the CAP Strategic Plans, namely by Commission Delegated Regulation (EU) 2022/126 ⁽⁵⁾. That Delegated Regulation replaces the rules currently laid down in Commission Regulation (EU) No 738/2010 ⁽⁶⁾, as well as in Commission Implementing Regulations (EU) No 615/2014 ⁽⁷⁾, (EU) 2015/1368 ⁽⁸⁾, (EU) 2016/1150 ⁽⁹⁾ and (EU) 2017/892 ⁽¹⁰⁾.
- (4) Those Regulations contain certain provisions related to checks, controls, penalties, securities as regards aid in the olive oil and table olives sector, the fruit and vegetables sector, in the apiculture sector, in the wine sector and in the hops sector that were adopted on the basis of Regulation (EU) No 1306/2013.
- (5) Regulation (EU) 2021/2116 of the European Parliament and of the Council ⁽¹¹⁾ lays down rules on the financing, management and monitoring of the common agricultural policy and repeals Regulation (EU) No 1306/2013. In accordance with the approach introduced by Regulation (EU) 2021/2115 for the delivery of the Union objectives, that Regulation also leaves more flexibility to Member States, in particular as regards the checks and controls to be carried out and the penalties to be imposed.
- (6) Consequently, the relevant Articles of, and Annexes to, Implementing Regulation (EU) 2017/892 should be deleted with effect from 1 January 2023. However, in accordance with Article 5(4) and (6), point (c), of Regulation (EU) 2021/2117 and in accordance with Article 104(1), point (a)(ii) and (iii), of Regulation (EU) 2021/2116, they should continue to apply as regards expenditure incurred and payments made for operations implemented before 1 January 2023 within the aid scheme in the fruit and vegetables sector and as regards operational programmes that continue to operate until their end, including those operational programmes which Member States have approved in 2022 in accordance with Regulation (EU) No 1308/2013 and Commission Delegated Regulation (EU) 2017/891 ⁽¹²⁾ before 1 January 2023.
- (7) Implementing Regulations (EU) No 615/2014 and (EU) 2015/1368 should be repealed with effect from 1 January 2023. However, in accordance with Article 5(4) of Regulation (EU) 2021/2117, they should continue to apply as regards expenditure incurred and payments made for operations implemented before 1 January 2023 within the aid schemes in the olive oil and table olives sector and the apiculture sector, respectively.

⁽⁵⁾ Commission Delegated Regulation (EU) 2022/126 of 7 December 2021 supplementing Regulation (EU) 2021/2115 of the European Parliament and of the Council with additional requirements for certain types of intervention specified by Member States in their CAP Strategic Plans for the period 2023 to 2027 under that Regulation as well as rules on the ratio for the good agricultural and environmental condition (GAEC) standard 1 (OJ L 20, 31.1.2022, p. 52).

⁽⁶⁾ Commission Regulation (EU) No 738/2010 of 16 August 2010 laying down detailed rules on payments to German producer organisations in the hops sector (OJ L 216, 17.8.2010, p. 11).

⁽⁷⁾ Commission Implementing Regulation (EU) No 615/2014 of 6 June 2014 laying down detailed rules for the application of Regulation (EU) No 1306/2013 of the European Parliament and of the Council and Regulation (EU) No 1308/2013 of the European Parliament and of the Council in respect of work programmes to support the olive oil and table olives sectors (OJ L 168, 7.6.2014, p. 95).

⁽⁸⁾ Commission Implementing Regulation (EU) 2015/1368 of 6 August 2015 laying down rules for the application of Regulation (EU) No 1308/2013 of the European Parliament and of the Council with regard to aid in the apiculture sector (OJ L 211, 8.8.2015, p. 9).

⁽⁹⁾ Commission Implementing Regulation (EU) 2016/1150 of 15 April 2016 laying down rules for the application of Regulation (EU) No 1308/2013 of the European Parliament and of the Council as regards the national support programmes in the wine sector (OJ L 190, 15.7.2016, p. 23).

⁽¹⁰⁾ Commission Implementing Regulation (EU) 2017/892 of 13 March 2017 laying down rules for the application of Regulation (EU) No 1308/2013 of the European Parliament and of the Council with regard to the fruit and vegetables and processed fruit and vegetables sectors (OJ L 138, 25.5.2017, p. 57).

⁽¹¹⁾ Regulation (EU) 2021/2116 of the European Parliament and of the Council of 2 December 2021 on the financing, management and monitoring of the common agricultural policy and repealing Regulation (EU) No 1306/2013 (OJ L 435, 6.12.2021, p. 187).

⁽¹²⁾ Commission Delegated Regulation (EU) 2017/891 of 13 March 2017 supplementing Regulation (EU) No 1308/2013 of the European Parliament and of the Council with regard to the fruit and vegetables and processed fruit and vegetables sectors and supplementing Regulation (EU) No 1306/2013 of the European Parliament and of the Council with regard to penalties to be applied in those sectors and amending Commission Implementing Regulation (EU) No 543/2011 (OJ L 138, 25.5.2017, p. 4).

- (8) In accordance with Article 5(7) of Regulation (EU) 2021/2117, Implementing Regulation (EU) 2016/1150 should be repealed with effect from 16 October 2023 and continue to apply as regards expenditure incurred and payments made for operations implemented before 16 October 2023 within the support programmes in the wine sector and as regards expenditure incurred and payments made for operations implemented pursuant to Articles 46 and 50 of Regulation (EU) No 1308/2013 before 16 October 2025, provided that the conditions set out in Article 5(7) of Regulation (EU) 2021/2117 have been fulfilled.
- (9) Regulation (EU) No 738/2010 should be repealed with effect from 1 January 2023. However, in accordance with Article 5(5) of Regulation (EU) 2021/2117, it should continue to apply as regards expenditure incurred and payments made before 1 January 2023 within the aid scheme in the hops sector.
- (10) The measures provided for in this Regulation are in accordance with the opinion of the Committee for the Common Organisation of Agricultural Markets,

HAS ADOPTED THIS REGULATION:

Article 1

Amendments to Implementing Regulation (EU) 2017/892 and transitional provisions

Articles 2 to 21 and Articles 25 to 35 of Implementing Regulation (EU) 2017/892 and Annexes I to VI to that Regulation are deleted with effect from 1 January 2023.

However, those deleted Articles and Annexes shall continue to apply:

- (a) as regards expenditure incurred and payments made for operations implemented before 1 January 2023 within the aid scheme referred to Articles 32 to 38 of Regulation (EU) No 1308/2013;
- (b) as regards operational programmes that continue to operate until their end under the conditions applicable under Regulation (EU) No 1308/2013 in accordance with Article 5(6), point (c), of Regulation (EU) 2021/2117 or that Member States have approved in accordance with Regulation (EU) No 1308/2013 and Regulation (EU) 2017/891 before 1 January 2023.

Article 2

Repeal of Implementing Regulations (EU) No 615/2014, (EU) 2015/1368, (EU) 2016/1150 and Regulation (EU) No 738/2010 and transitional provisions

1. Implementing Regulation (EU) No 615/2014 is repealed with effect from 1 January 2023.

However, it shall continue to apply as regards expenditure incurred and payments made for operations implemented before 1 January 2023 within the aid scheme referred to in Articles 29, 30 and 31 of Regulation (EU) No 1308/2013.

2. Implementing Regulation (EU) 2015/1368 is repealed with effect from 1 January 2023.

However, it shall continue to apply as regards expenditure incurred and payments made for operations implemented before 1 January 2023 within the aid scheme referred to in Articles 55, 56 and 57 of Regulation (EU) No 1308/2013.

3. Implementing Regulation (EU) 2016/1150 is repealed with effect from 16 October 2023.

However, it shall continue to apply as regards:

- (a) expenditure incurred and payments made for operations implemented pursuant to Regulation (EU) No 1308/2013 before 16 October 2023 within the aid scheme referred to in Articles 39 to 52 of that Regulation;

(b) expenditure incurred and payments made for operations implemented pursuant to Articles 46 and 50 of Regulation (EU) No 1308/2013 before 16 October 2025, provided that by 15 October 2023 such operations have been partially implemented and the expenditure incurred amounts to at least 30 % of the total planned expenditure and that such operations are fully implemented by 15 October 2025.

4. Regulation (EU) No 738/2010 is repealed with effect from 1 January 2023.

However, it shall continue to apply as regards expenditure incurred and payments made before 1 January 2023 within the aid scheme referred to in Articles 58, 59 and 60 of Regulation (EU) No 1308/2013.

Article 3

Entry into force

This Regulation shall enter into force on the seventh 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, 1 December 2022.

For the Commission
The President
Ursula VON DER LEYEN

COMMISSION IMPLEMENTING REGULATION (EU) 2022/2533

of 15 December 2022

approving non-minor amendments to the specification for a name entered in the register of protected designations of origin and protected geographical indications [‘Miele della Lunigiana’ (PDO)]

THE EUROPEAN COMMISSION,

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

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

Whereas:

- (1) Pursuant to the first subparagraph of Article 53(1) of Regulation (EU) No 1151/2012, the Commission has examined Italy’s application for the approval of amendments to the specification for the protected designation of origin ‘Miele della Lunigiana’, registered under Commission Regulation (EC) No 1845/2004 ⁽²⁾.
- (2) Since the amendments in question are not minor within the meaning of Article 53(2) of Regulation (EU) No 1151/2012, the Commission published the amendment application in the *Official Journal of the European Union* ⁽³⁾ as required by Article 50(2)(a) of that Regulation.
- (3) As no statement of opposition under Article 51 of Regulation (EU) No 1151/2012 has been received by the Commission, the amendments to the specification should be approved,

HAS ADOPTED THIS REGULATION:

Article 1

The amendments to the specification published in the *Official Journal of the European Union* regarding the name ‘Miele della Lunigiana’ (PDO) are hereby approved.

Article 2

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

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

Done at Brussels, 15 December 2022.

*For the Commission,
On behalf of the President,
Janusz WOJCIECHOWSKI
Member of the Commission*

⁽¹⁾ OJ L 343, 14.12.2012, p. 1.

⁽²⁾ Commission Regulation (EC) No 1845/2004 of 22 October 2004 supplementing the Annex to Regulation (EC) No 2400/96 on the entry of certain names in the ‘Register of protected designations of origin and protected geographical indications’ (Tergeste, Lucca, Miele della Lunigiana and Άγιος Ματθαίος Κέρκυρας (Agios Mathaios Kerkiras)) (OJ L 322, 23.10.2004, p. 14).

⁽³⁾ OJ C 327, 30.8.2022, p. 20.

COMMISSION IMPLEMENTING REGULATION (EU) 2022/2534**of 21 December 2022****authorising the placing on the market of bovine milk beta-lactoglobulin (β -lactoglobulin) as a novel food and amending Implementing Regulation (EU) 2017/2470****(Text with EEA relevance)**

THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EU) 2015/2283 of the European Parliament and of the Council of 25 November 2015 on novel foods, amending Regulation (EU) No 1169/2011 of the European Parliament and of the Council and repealing Regulation (EC) No 258/97 of the European Parliament and of the Council and Commission Regulation (EC) No 1852/2001 ⁽¹⁾, and in particular Article 12(1) thereof,

Whereas:

- (1) Regulation (EU) 2015/2283 provides that only novel foods authorised and included in the Union list of novel foods may be placed on the market within the Union.
- (2) Pursuant to Article 8 of Regulation (EU) 2015/2283, Commission Implementing Regulation (EU) 2017/2470 ⁽²⁾ has established a Union list of novel foods.
- (3) On 22 July 2020, the company Arla Foods Ingredients Group P/S ('the applicant') submitted an application to the Commission in accordance with Article 10(1) of Regulation (EU) 2015/2283 to place bovine milk beta-lactoglobulin (β -lactoglobulin), isolated from bovine whey under acidic or neutral conditions, on the Union market as a novel food. The applicant requested for bovine milk beta-lactoglobulin to be used in soft drinks marketed in relation to physical exercise, whey powder, milk based drinks and similar products, and in foods for special medical purposes as defined in Regulation (EU) No 609/2013 of the European Parliament and of the Council ⁽³⁾ intended for the general population older than three years of age excluding pregnant and lactating women.
- (4) On 22 July 2020, the applicant also made a request to the Commission for the protection of proprietary scientific studies and data and submitted in support of the application, namely, a bacterial reverse mutation test ⁽⁴⁾; an in vitro micronucleus assay with human lymphocytes ⁽⁵⁾; a 14-day range-finding oral toxicity study in rodents ⁽⁶⁾; a 90-day oral sub-chronic toxicity study in rodents ⁽⁷⁾; the results of compositional analyses and the analytical certificates for 23 additional batches of the novel food and 20 batches of commercial whey protein isolate ⁽⁸⁾; and, the results of total microbial plate count analyses of the novel food and their certificates ⁽⁹⁾.
- (5) On 5 November 2020, the Commission requested the European Food Safety Authority ('the Authority') to carry out an assessment of beta-lactoglobulin as a novel food.

⁽¹⁾ OJ L 327, 11.12.2015, p. 1.

⁽²⁾ Commission Implementing Regulation (EU) 2017/2470 of 20 December 2017 establishing the Union list of novel foods in accordance with Regulation (EU) 2015/2283 of the European Parliament and of the Council on novel foods (OJ L 351, 30.12.2017, p. 72).

⁽³⁾ Regulation (EU) No 609/2013 of the European Parliament and of the Council of 12 June 2013 on food intended for infants and young children, food for special medical purposes, and total diet replacement for weight control and repealing Council Directive 92/52/EEC, Commission Directives 96/8/EC, 1999/21/EC, 2006/125/EC and 2006/141/EC, Directive 2009/39/EC of the European Parliament and of the Council and Commission Regulations (EC) No 41/2009 and (EC) No 953/2009 (OJ L 181, 29.6.2013, p. 35).

⁽⁴⁾ Arla Foods Ingredients Group P/S (2019a, unpublished).

⁽⁵⁾ Arla Foods Ingredients Group P/S (2019b, unpublished).

⁽⁶⁾ Arla Foods Ingredients Group P/S (2019c, unpublished).

⁽⁷⁾ Arla Foods Ingredients Group P/S (2019d, unpublished).

⁽⁸⁾ Arla Foods Ingredients Group P/S (2021 and 2022, unpublished).

⁽⁹⁾ Arla Foods Ingredients Group P/S (2022, unpublished).

- (6) On 28 February 2022, the Authority adopted its scientific opinion on the 'Safety of beta-lactoglobulin as a novel food pursuant to Regulation (EU) 2015/2283' ⁽¹⁰⁾ in accordance with Article 11 of Regulation (EU) 2015/2283.
- (7) In its scientific opinion, the Authority concluded that bovine milk beta-lactoglobulin is safe under the proposed conditions of use. Therefore, that scientific opinion gives sufficient grounds to establish that bovine milk beta-lactoglobulin, when used in soft drinks marketed in relation to physical exercise, whey powder, milk based drinks and similar products, and in foods for special medical purposes as defined in Regulation (EU) No 609/2013, intended for the general population older than three years of age excluding pregnant and lactating women, fulfils the conditions for its placing on the market in accordance with Article 12(1) of Regulation (EU) 2015/2283.
- (8) In its scientific opinion, the Authority also noted that its conclusion on the safety of the novel food was based on the scientific studies and data on the bacterial reverse mutation test; the in vitro micronucleus assay with human lymphocytes; the 14-day range-finding oral toxicity study in rodents; the 90-day oral sub-chronic toxicity study in rodents; the results of compositional analyses; and, the analytical certificates for 23 additional batches of the novel food and the 20 batches of commercial whey protein isolate and the results of total microbial plate count analyses of the novel food and their certificates, contained in the applicant's file, without which it could not have assessed the novel food and reached its conclusion.
- (9) The Commission requested the applicant to further clarify the justification provided with regard to their proprietary claim over those scientific studies and data and to clarify their claim to an exclusive right of reference to them in accordance with Article 26(2)(b) of Regulation (EU) 2015/2283.
- (10) The applicant declared that they held proprietary and exclusive rights of reference to the scientific studies and data on the bacterial reverse mutation test; the in vitro micronucleus assay with human lymphocytes; the 14-day range-finding oral toxicity study in rodents; the 90-day oral sub-chronic toxicity study in rodents; the results of compositional analyses and the analytical certificates for 23 additional batches of the novel food and the 20 batches of commercial whey protein isolate; and, the results of total microbial plate count analyses of the novel food and their certificates, at the time they submitted the application and that third parties cannot lawfully access, use or refer to those data.
- (11) The Commission assessed all the information provided by the applicant and considered that they have sufficiently substantiated the fulfilment of the requirements laid down in Article 26(2) of Regulation (EU) 2015/2283. Therefore, the scientific studies and data on the bacterial reverse mutation test; the in vitro micronucleus assay with human lymphocytes; the 14-day range-finding oral toxicity study in rodents; the 90-day oral sub-chronic toxicity study in rodents; the results of compositional analyses and the analytical certificates for 23 additional batches of the novel food and the 20 batches of commercial whey protein isolate; and, the results of total microbial plate count analyses of the novel food and their certificates, should be protected in accordance with Article 27(1) of Regulation (EU) 2015/2283. Accordingly, only the applicant should be authorised to place bovine milk beta-lactoglobulin on the market within the Union during a period of five years from the entry into force of this Regulation.
- (12) However, restricting the authorisation of bovine milk beta-lactoglobulin and the reference to the scientific studies and data contained in the applicant's file for the sole use by them does not prevent subsequent applicants from applying for an authorisation to place on the market the same novel food provided that their application is based on legally obtained information supporting such an authorisation.

⁽¹⁰⁾ EFSA Journal 2022;20(4):7204.

- (13) As the source of the novel food comes from bovine milk, which is listed in Annex II to Regulation (EU) No 1169/2011 of the European Parliament and of the Council ⁽¹¹⁾ as one of a number of substances or products which cause allergies or intolerances, foods containing beta-lactoglobulin, should be appropriately labelled following the requirements of Article 21 of that Regulation.
- (14) It is appropriate that the inclusion of bovine milk beta-lactoglobulin as a novel food in the Union list of novel foods contains the information referred to in Article 9(3) of Regulation (EU) 2015/2283.
- (15) Bovine milk beta-lactoglobulin should be included in the Union list of novel foods set out in Implementing Regulation (EU) 2017/2470. The Annex to Implementing Regulation (EU) 2017/2470 should therefore be amended accordingly.
- (16) 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

1. Bovine milk beta-lactoglobulin (β -lactoglobulin) is authorised to be placed on the market within the Union.

Bovine milk beta-lactoglobulin (β -lactoglobulin) shall be included in the Union list of novel foods set out in Implementing Regulation (EU) 2017/2470.

2. The Annex to Implementing Regulation (EU) 2017/2470 is amended in accordance with the Annex to this Regulation.

Article 2

Only the company Arla Foods Ingredients Group P/S ⁽¹²⁾ is authorised to place on the market within the Union the novel food referred to in Article 1, for a period of 5 years from 11 January 2023, unless a subsequent applicant obtains an authorisation for that novel food without reference to the scientific data protected pursuant to Article 3 or with the agreement of Arla Foods Ingredients Group P/S.

Article 3

The scientific data contained in the application file and fulfilling the conditions laid down in Article 26(2) of Regulation (EU) 2015/2283 shall not be used for the benefit of a subsequent applicant for a period of 5 years from the date of entry into force of this Regulation without the agreement of Arla Foods Ingredients Group P/S.

Article 4

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

⁽¹¹⁾ Regulation (EU) No 1169/2011 of the European Parliament and of the Council of 25 October 2011 on the provision of food information to consumers, amending Regulations (EC) No 1924/2006 and (EC) No 1925/2006 of the European Parliament and of the Council, and repealing Commission Directive 87/250/EEC, Council Directive 90/496/EEC, Commission Directive 1999/10/EC, Directive 2000/13/EC of the European Parliament and of the Council, Commission Directives 2002/67/EC and 2008/5/EC and Commission Regulation (EC) No 608/2004 (OJ L 304, 22.11.2011, p. 18).

⁽¹²⁾ Address: Sønderhøj 10-12, 8260 Viby J, Denmark.

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

Done at Brussels, 21 December 2022.

For the Commission
The President
Ursula VON DER LEYEN

The Annex to Implementing Regulation (EU) 2017/2470 is amended as follows:

(1) in Table 1 (Authorised novel foods), the following entry is inserted:

Authorised novel food	Conditions under which the novel food may be used		Additional specific labelling requirements	Other requirements	Data Protection
'Bovine milk beta-lactoglobulin (β-lactoglobulin)	<i>Specified food category</i>	<i>Maximum levels (g NF/100 ml)</i>	The designation of the novel food on the labelling of the foodstuffs containing it shall be 'bovine milk beta-lactoglobulin' or 'bovine milk β -lactoglobulin'.		Authorised on 11 January 2023. This inclusion is based on proprietary scientific evidence and scientific data protected in accordance with Article 26 of Regulation (EU) 2015/2283. Applicant: Arla Foods Ingredients Group P/S, Sønderhøj 10-12, 8260 Viby J, Denmark. During the period of data protection, the novel food beta-lactoglobulin (β-lactoglobulin) is authorised for placing on the market within the Union only by Arla Foods Ingredients Group P/S unless a subsequent applicant obtains authorisation for the novel food without reference to the proprietary scientific evidence or scientific data protected in accordance with Article 26 of Regulation (EU) 2015/2283 or with the agreement of Arla Foods Ingredients Group P/S. End date of the data protection: 11 January 2028.'
	Soft drinks marketed in relation to physical exercise	25			
	Whey powder (reconstituted)	8			
	Milk based drinks and similar products	12			
	Foods for special medical purposes as defined in Regulation (EU) No 609/2013 intended for the general population older than 3 years of age, excluding pregnant and lactating women	In accordance with the particular nutritional requirements of the persons for whom the products are intended			

(2) in Table 2 (Specifications), the following entry is inserted in alphabetical order:

Authorised novel food	Specification
Bovine milk beta-lactoglobulin (β-lactoglobulin)	Description: Beta-lactoglobulin (β-lactoglobulin) protein is a white to cream powder produced from bovine whey by a series of steps involving filtration, concentration, crystallisation, re-dissolution (in water), pH adjustment to acidic or neutral pH, re-concentration and drying. CAS number: 9045-23-2 Molecular weight: 36,7 kDa (dimer); 18,3 kDa (monomer) Characteristics/Composition: pH (10 % solution): 3,5-8,0 Protein (N x 6,38) (%): $\geq 86,0$ Beta-lactoglobulin (% of protein): $\geq 90,0$ Lactose (%): $\leq 1,0$ Fat (%): $\leq 1,0$ Ash (%): $\leq 5,0$ Moisture (%): $\leq 5,5$ Heavy Metals: Cadmium (mg/kg): $< 0,2$ Lead (mg/kg): $< 0,1$ Mercury (mg/kg): $< 0,01$ Contaminants: Aflatoxin M1 ($\mu\text{g/kg}$): $< 0,01$ Microbiological criteria: Total plate count: $\leq 5\,000$ CFU/g Total yeast/moulds count: ≤ 10 CFU/g Enterobacteriaceae: ≤ 10 CFU/g <i>Salmonella</i> spp.: Absent in 25 g <i>Bacillus cereus</i>: < 100 CFU/g <i>Listeria monocytogenes</i>: Absent in 25 g <i>Staphylococcus aureus</i>: < 10 CFU/g Sulfite-reducing clostridia: < 10 CFU/g CFU: Colony Forming Units; kDa: kiloDaltons'

COMMISSION IMPLEMENTING REGULATION (EU) 2022/2535

of 21 December 2022

authorising the placing on the market of the freeze-dried powder form of *Antrodia camphorata* mycelia as a novel food and amending Implementing Regulation (EU) 2017/2470

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EU) 2015/2283 of the European Parliament and of the Council of 25 November 2015 on novel foods, amending Regulation (EU) No 1169/2011 of the European Parliament and of the Council and repealing Regulation (EC) No 258/97 of the European Parliament and of the Council and Commission Regulation (EC) No 1852/2001 ⁽¹⁾, and in particular Article 12(1) thereof,

Whereas:

- (1) Regulation (EU) 2015/2283 provides that only novel foods authorised and included in the Union list of novel foods may be placed on the market within the Union.
- (2) Pursuant to Article 8 of Regulation (EU) 2015/2283, Commission Implementing Regulation (EU) 2017/2470 ⁽²⁾ has established a Union list of novel foods.
- (3) On 5 November 2018, the company Golden Biotechnology Corp ('the applicant') submitted an application to the Commission in accordance with Article 10(1) of Regulation (EU) 2015/2283 to place freeze-dried powder form of *Antrodia camphorata* mycelia on the Union market as a novel food. The applicant requested for freeze-dried powder form of *Antrodia camphorata* mycelia to be used in food supplements as defined in Directive 2002/46/EC of the European Parliament and of the Council ⁽³⁾ at a maximum dose of 990 mg per day, for the general population.
- (4) On 12 May 2020, the Commission requested the European Food Safety Authority ('the Authority') to carry out an assessment of the freeze-dried powder form of *Antrodia camphorata* mycelia as a novel food.
- (5) On 18 May 2022, the Authority adopted its scientific opinion on the 'Safety of freeze-dried mycelia of *Antrodia camphorata* as a novel food pursuant to Regulation (EU) 2015/2283' ⁽⁴⁾ in accordance with Article 11 of Regulation (EU) 2015/2283.
- (6) In its scientific opinion, the Authority concluded that the freeze-dried mycelia of *Antrodia camphorata* were safe for adults and adolescents above 14 years old when added to food supplements at a maximum daily dose of 990 mg/day. However, the Authority has not established the safety of the novel food in food supplements intended for individuals younger than 14 years at the maximum intake level of 990 mg/day as proposed by the applicant, because the intake would exceed the safe level (16,5 mg/kg bw per day) established by the Authority. Therefore, the opinion of the Authority gives sufficient grounds to establish that the freeze-dried mycelia of *Antrodia camphorata*, when used at a maximum daily dose of 990 mg/day in food supplements, intended for individuals aged 14 years and above, fulfil the conditions for their placing on the market in accordance with Article 12(1) of Regulation (EU) 2015/2283.

⁽¹⁾ OJ L 327, 11.12.2015, p. 1.

⁽²⁾ Commission Implementing Regulation (EU) 2017/2470 of 20 December 2017 establishing the Union list of novel foods in accordance with Regulation (EU) 2015/2283 of the European Parliament and of the Council on novel foods (OJ L 351, 30.12.2017, p. 72).

⁽³⁾ Directive 2002/46/EC of the European Parliament and of the Council of 10 June 2002 on the approximation of the laws of the Member States relating to food supplements (OJ L 183, 12.7.2002, p. 51).

⁽⁴⁾ EFSA Journal 2022; 20(6):7380.

- (7) In its scientific opinion, the Authority considers that although there is no evidence available of an allergenicity risk, given the protein content of the novel food, some risk cannot be excluded. A literature search performed by the applicant did not identify any published evidence concerning the allergenic potential of *Anetrodia camphorata*, and other information or data normally needed to confirm or exclude the potential risk of allergenicity, is lacking. The Commission however, considers that at present, the potential of *Anetrodia camphorata* mycelia powder to cause allergenicity is unlikely to manifest itself in real life and consequently no specific labelling requirement should be included in the Union list of novel foods in this regard.
- (8) A clear designation of the novel food and a labelling requirement should be laid down for food supplements containing freeze-dried powder form of *Anetrodia camphorata* mycelia, in order to ensure that those food supplements are not consumed by children and adolescents of less than 14 years of age.
- (9) It is therefore appropriate that the inclusion of freeze-dried powder form of *Anetrodia camphorata* mycelia as a novel food in the Union list of novel foods contains the information referred to in Article 9 of Regulation (EU) 2015/2283.
- (10) The freeze-dried powder form of *Anetrodia camphorata* mycelia should be included in the Union list of novel foods set out in Implementing Regulation (EU) 2017/2470. The Annex to Implementing Regulation (EU) 2017/2470 should therefore be amended accordingly.
- (11) 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

1. The freeze-dried powder form of *Anetrodia camphorata* mycelia is authorised to be placed on the market within the Union.

The freeze-dried powder form of *Anetrodia camphorata* mycelia shall be included in the Union list of novel foods set out in Implementing Regulation (EU) 2017/2470.

2. The Annex to Implementing Regulation (EU) 2017/2470 is amended in accordance with the Annex to this Regulation.

Article 2

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

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

Done at Brussels, 21 December 2022.

For the Commission
The President
Ursula VON DER LEYEN

The Annex to Implementing Regulation (EU) 2017/2470 is amended as follows:

(1) in Table 1 (Authorised novel foods), the following entry is inserted:

Authorised novel food	Conditions under which the novel food may be used		Additional specific labelling requirements	Other requirements
'Antrodia camphorata mycelia powder'	<i>Specified food category</i>	<i>Maximum levels</i>	1. The designation of the novel food on the labelling of food supplements containing it shall be ' <i>Antrodia camphorata</i> mycelia powder'. 2. The labelling of the food supplements containing <i>Antrodia camphorata</i> mycelia powder shall bear a statement that this food supplement should not be consumed by infants, children, and adolescents younger than 14 years of age.'	
	Food supplements as defined in Directive 2002/46/EC, excluding infants, children, and adolescents younger than 14 years of age	990 mg/day		

(2) in Table 2 (Specifications), the following entry is inserted:

Authorised novel food	Specification
'Antrodia camphorata mycelia powder'	Description/Definition: The novel food is the freeze-dried mycelia of the fungus <i>Antrodia camphorata</i> (strain BCRC 39106), which has been grown by solid-state cultivation. The freeze-dried mycelia are then milled into a powder. <i>Antrodia camphorata</i> is a synonym of <i>Taiwanofungus camphoratus</i> (family: Fomitopsidaceae). Characteristics/Composition: Loss on drying (Moisture): < 10 % Carbohydrates: ≤ 80 g/100 g Protein: ≤ 20 g/100 g Ash: ≤ 6 g/100g Fat: ≤ 6 g/100 g Total triterpenoids: 1,0 – 10,0 g/100 g Antroquinonol: 1,0 – 20,0 mg/g Heavy metals: Arsenic: < 0,5 mg/kg Microbiological criteria: Total aerobic microbial count: ≤ 10³ CFU/g Total yeast and mould count: ≤ 100 CFU/g <i>Escherichia coli</i>: Not detected in 10 g <i>Salmonella</i> spp.: Not detected in 25 g <i>Staphylococcus aureus</i>: Not detected in 10 g *CFU: Colony Forming Units'

DECISIONS

COUNCIL DECISION (EU) 2022/2536

of 12 December 2022

on the conclusion of the Agreement between the European Union and the Swiss Confederation on the application of certain provisions of Council Decision 2008/615/JHA on the stepping up of cross-border cooperation, particularly in combating terrorism and cross-border crime, of Council Decision 2008/616/JHA on the implementation of Decision 2008/615/JHA on the stepping up of cross-border cooperation, particularly in combating terrorism and cross-border crime, and the Annex thereto, and of Council Framework Decision 2009/905/JHA on accreditation of forensic service providers carrying out laboratory activities

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular point (d) of the second subparagraph of Article 82(1) and point (a) of Article 87(2), in conjunction with point (a) of the second subparagraph of Article 218(6) thereof,

Having regard to the proposal from the European Commission,

Having regard to the consent of the European Parliament, ⁽¹⁾

Whereas:

- (1) In accordance with Council Decision (EU) 2019/1187 ⁽²⁾, the Agreement between the European Union and the Swiss Confederation on the application of certain provisions of Council Decision 2008/615/JHA on the stepping up of cross-border cooperation, particularly in combating terrorism and cross-border crime, of Council Decision 2008/616/JHA on the implementation of Decision 2008/615/JHA on the stepping up of cross-border cooperation, particularly in combating terrorism and cross-border crime, and the Annex thereto, and of Council Framework Decision 2009/905/JHA on accreditation of forensic service providers carrying out laboratory activities ('the Agreement') was signed on 27 June 2019, subject to its conclusion at a later date.
- (2) The improvement of law enforcement information exchange for the purpose of maintaining security in the Union cannot be sufficiently achieved by the Member States in isolation, due to the nature of international crime, which is not confined to the Union borders. The possibility for all the Member States and the Swiss Confederation to have reciprocal access to national databases regarding DNA analysis files, dactyloscopic identification systems and vehicle registration data is of central importance in fostering cross-border law enforcement cooperation.
- (3) In accordance with Article 8(3) of the Agreement, Article 5(1) and (2) of the Agreement have been applied on a provisional basis since the date of signature of the Agreement.

⁽¹⁾ Consent of 17 December 2019 (not yet published in the Official Journal).

⁽²⁾ Council Decision (EU) 2019/1187 of 6 June 2019 on the signing, on behalf of the European Union, and on provisional application of certain provisions of the Agreement between the European Union and the Swiss Confederation on the application of certain provisions of Council Decision 2008/615/JHA on the stepping up of cross-border cooperation, particularly in combating terrorism and cross-border crime, of Council Decision 2008/616/JHA on the implementation of Decision 2008/615/JHA on the stepping up of cross-border cooperation, particularly in combating terrorism and cross-border crime, and the Annex thereto, and of Council Framework Decision 2009/905/JHA on accreditation of forensic service providers carrying out laboratory activities (OJ L 187, 12.7.2019, p. 1).

- (4) Ireland is bound by Council Decision 2008/615/JHA ⁽³⁾, Council Decision 2008/616/JHA ⁽⁴⁾ and the Annex thereto, and Council Framework Decision 2009/905/JHA ⁽⁵⁾, and is therefore taking part in the adoption and application of this Decision.
- (5) In accordance with Articles 1 and 2 of Protocol No 22 on the position of Denmark, annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union, Denmark is not taking part in the adoption of this Decision and is not bound by it or subject to its application.
- (6) The Agreement should be approved,

HAS ADOPTED THIS DECISION:

Article 1

The Agreement between the European Union and the Swiss Confederation on the application of certain provisions of Council Decision 2008/615/JHA on the stepping up of cross-border cooperation, particularly in combating terrorism and cross-border crime, of Council Decision 2008/616/JHA on the implementation of Decision 2008/615/JHA on the stepping up of cross-border cooperation, particularly in combating terrorism and cross-border crime, and the Annex thereto, and of Council Framework Decision 2009/905/JHA on accreditation of forensic service providers carrying out laboratory activities is hereby approved on behalf of the Union. ⁽⁶⁾

Article 2

The President of the Council shall, on behalf of the Union, give the notification provided for in Article 8(1) of the Agreement ⁽⁷⁾.

Article 3

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

Done at Brussels, 12 December 2022.

For the Council
The President
Z. NEKULA

⁽³⁾ Council Decision 2008/615/JHA of 23 June 2008 on the stepping up of cross-border cooperation, particularly in combating terrorism and cross-border crime (OJ L 210, 6.8.2008, p. 1).

⁽⁴⁾ Council Decision 2008/616/JHA of 23 June 2008 on the implementation of Decision 2008/615/JHA on the stepping up of cross-border cooperation, particularly in combating terrorism and cross-border crime (OJ L 210, 6.8.2008, p. 12).

⁽⁵⁾ Council Framework Decision 2009/905/JHA of 30 November 2009 on accreditation of forensic service providers carrying out laboratory activities (OJ L 322, 9.12.2009, p. 14).

⁽⁶⁾ The text of the Agreement has been published in OJ L 187, 12.7.2019, p. 3, together with the decision on signature.

⁽⁷⁾ The date of entry into force of the Agreement will be published in the *Official Journal of the European Union* by the General Secretariat of the Council.

COUNCIL DECISION (EU) 2022/2537**of 12 December 2022**

on the conclusion of the Agreement between the European Union and the Principality of Liechtenstein on the application of certain provisions of Council Decision 2008/615/JHA on the stepping up of cross-border cooperation, particularly in combating terrorism and cross-border crime, of Council Decision 2008/616/JHA on the implementation of Decision 2008/615/JHA on the stepping up of cross-border cooperation, particularly in combating terrorism and cross-border crime, and the Annex thereto, and of Council Framework Decision 2009/905/JHA on accreditation of forensic service providers carrying out laboratory activities

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular point (d) of the second subparagraph of Article 82(1) and point (a) of Article 87(2), in conjunction with point (a) of the second subparagraph of Article 218(6) thereof,

Having regard to the proposal from the European Commission,

Having regard to the consent of the European Parliament, ⁽¹⁾

Whereas:

- (1) In accordance with Council Decision (EU) 2019/1172 ⁽²⁾, the Agreement between the European Union and the Principality of Liechtenstein on the application of certain provisions of Council Decision 2008/615/JHA on the stepping up of cross-border cooperation, particularly in combating terrorism and cross-border crime, of Council Decision 2008/616/JHA on the implementation of Decision 2008/615/JHA on the stepping up of cross-border cooperation, particularly in combating terrorism and cross-border crime, and the Annex thereto, and of Council Framework Decision 2009/905/JHA on accreditation of forensic service providers carrying out laboratory activities ('the Agreement') was signed on 27 June 2019, subject to its conclusion at a later date.
- (2) The improvement of law enforcement information exchange for the purpose of maintaining security in the Union cannot be sufficiently achieved by the Member States in isolation, due to the nature of international crime, which is not confined to the Union borders. The possibility for all the Member States and the Principality of Liechtenstein to have reciprocal access to national databases regarding DNA analysis files, dactyloscopic identification systems and vehicle registration data is of central importance in fostering cross-border law enforcement cooperation.
- (3) In accordance with Article 8(3) of the Agreement, Article 5(1) and (2) of the Agreement have been applied on a provisional basis since the date of signature of the Agreement.
- (4) Ireland is bound by Council Decision 2008/615/JHA ⁽³⁾, Council Decision 2008/616/JHA ⁽⁴⁾ and the Annex thereto, and Council Framework Decision 2009/905/JHA ⁽⁵⁾, and is therefore taking part in the adoption and application of this Decision.

⁽¹⁾ Consent of 17 December 2019 (not yet published in the Official Journal).

⁽²⁾ Council Decision (EU) 2019/1172 of 6 June 2019 on the signing, on behalf of the European Union, and on the provisional application of certain provisions of the Agreement between the European Union and the Principality of Liechtenstein on the application of certain provisions of Council Decision 2008/615/JHA on the stepping up of cross-border cooperation, particularly in combating terrorism and cross-border crime, of Council Decision 2008/616/JHA on the implementation of Decision 2008/615/JHA on the stepping up of cross-border cooperation, particularly in combating terrorism and cross-border crime, and the Annex thereto, and of Council Framework Decision 2009/905/JHA on accreditation of forensic service providers carrying out laboratory activities (OJ L 184, 10.7.2019, p. 1).

⁽³⁾ Council Decision 2008/615/JHA of 23 June 2008 on the stepping up of cross-border cooperation, particularly in combating terrorism and cross-border crime (OJ L 210, 6.8.2008, p. 1).

⁽⁴⁾ Council Decision 2008/616/JHA of 23 June 2008 on the implementation of Decision 2008/615/JHA on the stepping up of cross-border cooperation, particularly in combating terrorism and cross-border crime (OJ L 210, 6.8.2008, p. 12).

⁽⁵⁾ Council Framework Decision 2009/905/JHA of 30 November 2009 on accreditation of forensic service providers carrying out laboratory activities (OJ L 322, 9.12.2009, p. 14).

- (5) In accordance with Articles 1 and 2 of Protocol No 22 on the position of Denmark, annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union, Denmark is not taking part in the adoption of this Decision and is not bound by it or subject to its application.
- (6) The Agreement should be approved,

HAS ADOPTED THIS DECISION:

Article 1

The Agreement between the European Union and the Principality of Liechtenstein on the application of certain provisions of Council Decision 2008/615/JHA on the stepping up of cross-border cooperation, particularly in combating terrorism and cross-border crime, of Council Decision 2008/616/JHA on the implementation of Decision 2008/615/JHA on the stepping up of cross-border cooperation, particularly in combating terrorism and cross-border crime, and the Annex thereto, and of Council Framework Decision 2009/905/JHA on accreditation of forensic service providers carrying out laboratory activities is hereby approved on behalf of the Union. ⁽⁶⁾

Article 2

The President of the Council shall, on behalf of the Union, give the notification provided for in Article 8(1) of the Agreement ⁽⁷⁾.

Article 3

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

Done at Brussels, 12 December 2022.

For the Council
The President
Z. NEKULA

⁽⁶⁾ The text of the Agreement has been published in OJ L 184, 10.7.2019, p. 3, together with the decision on signature.

⁽⁷⁾ The date of entry into force of the Agreement will be published in the *Official Journal of the European Union* by the General Secretariat of the Council.

POLITICAL AND SECURITY COMMITTEE DECISION (CFSP) 2022/2538**of 13 December 2022****on the appointment of the Head of Mission of the European Union Capacity Building Mission in Somalia (EUCAP Somalia) (EUCAP Somalia/1/2022)**

THE POLITICAL AND SECURITY COMMITTEE,

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

Having regard to Council Decision 2012/389/CFSP of 16 July 2012 on the European Union Capacity Building Mission in Somalia (EUCAP Somalia) ⁽¹⁾, and in particular Article 9(1) thereof,

Whereas:

- (1) Pursuant to Article 9(1) of Decision 2012/389/CFSP, the Political and Security Committee (PSC) is authorised, in accordance with the third paragraph of Article 38 of the Treaty, to take the relevant decisions for the purpose of exercising the political control and strategic direction of the European Union Capacity Building Mission in Somalia (EUCAP Somalia), including the decision to appoint a Head of Mission.
- (2) On 7 December 2021, the PSC adopted Decision (CFSP) 2021/2210 ⁽²⁾ extending the mandate of Mr Christopher REYNOLDS as Head of Mission of EUCAP Somalia from 1 January 2022 to 31 December 2022.
- (3) On 12 December 2022, Council adopted Decision (CFSP) 2022/2445 ⁽³⁾ extending the mandate of EUCAP Somalia until 31 December 2024.
- (4) On 17 November 2022, the High Representative of the Union for Foreign Affairs and Security Policy proposed the appointment of Mr Kauko AALTOMAA as Head of Mission EUCAP Somalia from 1 January 2023 to 31 December 2023,

HAS ADOPTED THIS DECISION:

Article 1

Mr Kauko AALTOMAA is hereby appointed as Head of Mission of the European Union Capacity Building Mission in Somalia (EUCAP Somalia) from 1 January 2023 to 31 December 2023.

Article 2

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

It shall apply from 1 January 2023.

Done at Brussels, 13 December 2022.

For the Political and Security Committee
The Chairperson
D. PRONK

⁽¹⁾ OJ L 187, 17.7.2012, p. 40.

⁽²⁾ Political and Security Committee Decision (CFSP) 2021/2210 of 7 December 2021 extending the mandate of the Head of Mission of the European Union Capacity Building Mission in Somalia (EUCAP Somalia) (EUCAP Somalia/1/2021) (OJ L 447, 14.12.2021, p. 3).

⁽³⁾ Council Decision (CFSP) 2022/2445 of 12 December 2022 amending Decision 2012/389/CFSP on the European Union Capacity Building Mission in Somalia (EUCAP Somalia) (OJ L 319, 13.12.2022, p 91).

POLITICAL AND SECURITY COMMITTEE DECISION (CFSP) 2022/2539**of 13 December 2022****on the appointment of the EU Force Commander for the European Union military operation in Bosnia and Herzegovina and repealing Decision (CFSP) 2022/59 (BiH/34/2022)**

THE POLITICAL AND SECURITY COMMITTEE,

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

Having regard to Council Joint Action 2004/570/CFSP of 12 July 2004 on the European Union military operation in Bosnia and Herzegovina ⁽¹⁾, and in particular Article 6(1) thereof,

Whereas:

- (1) Pursuant to Article 6(1) of Joint Action 2004/570/CFSP, the Council authorised the Political and Security Committee (PSC) to take the relevant decisions on the appointment of the EU Force Commander for the European Union military operation in Bosnia and Herzegovina (Operation ALTHEA) (the 'EU Force Commander').
- (2) On 10 January 2022, the PSC adopted Decision (CFSP) 2022/59 ⁽²⁾, appointing Major General Anton WESSELY as the EU Force Commander.
- (3) On 13 October 2022, the Austrian military authorities recommended the appointment of Major General Helmut HABERMAYER to succeed Major General Anton WESSELY as the EU Force Commander as from 20 January 2023.
- (4) The Operation Commander for Operation ALTHEA supported the recommendation from the Austrian military authorities.
- (5) On 24 November 2022, the EU Military Committee agreed to the recommendation from the Austrian military authorities.
- (6) Decision (CFSP) 2022/59 should therefore be repealed.
- (7) On 12 and 13 December 2002, the Copenhagen European Council adopted a declaration stating that the 'Berlin plus' arrangements and the implementation thereof will apply only to those Member States of the Union which are NATO members or are in the Partnership for Peace programme, and which have consequently concluded bilateral security agreements with NATO,

HAS ADOPTED THIS DECISION:

Article 1

Major General Helmut HABERMAYER is hereby appointed EU Force Commander for the European Union military operation in Bosnia and Herzegovina (Operation ALTHEA) as from 20 January 2023.

Article 2

Decision (CFSP) 2022/59 is repealed.

⁽¹⁾ OJ L 252, 28.7.2004, p. 10.

⁽²⁾ Political and Security Committee Decision (CFSP) 2022/59 of 10 January 2022 on the appointment of the EU Force Commander for the European Union military operation in Bosnia and Herzegovina and repealing Decision (CFSP) 2021/5 (BiH/32/2022) (OJ L 10, 17.1.2022, p. 77).

Article 3

This Decision shall enter into force on 20 January 2023.

Done at Brussels, 13 December 2022.

For the Political and Security Committee

The Chairperson

D. PRONK

COUNCIL DECISION (EU) 2022/2540**of 19 December 2022****appointing a member, proposed by the Kingdom of Belgium, of the European Economic and Social Committee**

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 302 thereof,

Having regard to Council Decision (EU) 2019/853 of 21 May 2019 determining the composition of the European Economic and Social Committee ⁽¹⁾,

Having regard to the proposal of the Belgian Government,

After consulting the European Commission,

Whereas:

- (1) Pursuant to Article 300(2) of the Treaty, the Economic and Social Committee is to consist of representatives of organisations of employers, of the employed, and of other parties representative of civil society, notably in socio-economic, civic, professional and cultural areas.
- (2) On 2 October 2020, the Council adopted Decision (EU) 2020/1392 ⁽²⁾, appointing the members of the European Economic and Social Committee for the period from 21 September 2020 to 20 September 2025.
- (3) A member's seat on the European Economic and Social Committee has become vacant following the resignation of Mr Dominique MICHEL.
- (4) The Belgian Government has proposed Mr Olivier JORIS, *Executive Manager du Centre de compétence Europe et International de la Fédération des Entreprises de Belgique (FEB)* (Executive Manager, European and International affairs Department, Federation of Enterprises in Belgium), as a member of the European Economic and Social Committee for the remainder of the current term of office, which runs until 20 September 2025,

HAS ADOPTED THIS DECISION:

Article 1

Mr Olivier JORIS, *Executive Manager du Centre de compétence Europe et International de la Fédération des Entreprises de Belgique (FEB)* (Executive Manager, European and International affairs Department, Federation of Enterprises in Belgium), is hereby appointed as a member of the European Economic and Social Committee for the remainder of the current term of office, which runs until 20 September 2025.

Article 2

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

⁽¹⁾ OJ L 139, 27.5.2019, p. 15.

⁽²⁾ Council Decision (EU) 2020/1392 of 2 October 2020 appointing the members of the European Economic and Social Committee for the period from 21 September 2020 to 20 September 2025, and repealing and replacing the Council Decision appointing the members of the European Economic and Social Committee for the period 21 September 2020 to 20 September 2025 adopted on 18 September 2020 (OJ L 322, 5.10.2020, p. 1).

Done at Brussels, 19 December 2022.

For the Council
The President
J. SÍKELA

COUNCIL DECISION (EU) 2022/2541**of 19 December 2022****appointing a member, proposed by the Federal Republic of Germany, of the European Economic and Social Committee**

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 302 thereof,

Having regard to Council Decision (EU) 2019/853 of 21 May 2019 determining the composition of the European Economic and Social Committee ⁽¹⁾,

Having regard to the proposal of the German Government,

After consulting the European Commission,

Whereas:

- (1) Pursuant to Article 300(2) of the Treaty, the Economic and Social Committee is to consist of representatives of organisations of employers, of the employed, and of other parties representative of civil society, notably in socioeconomic, civic, professional and cultural areas.
- (2) On 2 October 2020, the Council adopted Decision (EU) 2020/1392 ⁽²⁾, appointing the members of the European Economic and Social Committee for the period from 21 September 2020 to 20 September 2025.
- (3) A member's seat on the European Economic and Social Committee has become vacant following the resignation of Ms Gabriele MÜLLER-LIST.
- (4) The German Government has proposed Mr Andreas KRUSE, *Mitglied im Vorstand der Bundesarbeitsgemeinschaft der Seniorenorganisation e.V. (BAGSO)* (Member of the Board of the German National Association of Senior Citizens' Organizations (BAGSO)), as a member of the European Economic and Social Committee for the remainder of the current term of office, which runs until 20 September 2025,

HAS ADOPTED THIS DECISION:

Article 1

Mr Andreas KRUSE, *Mitglied im Vorstand der Bundesarbeitsgemeinschaft der Seniorenorganisation e.V. (BAGSO)* (Member of the Board of the German National Association of Senior Citizens' Organizations (BAGSO)), is hereby appointed as a member of the European Economic and Social Committee for the remainder of the current term of office, which runs until 20 September 2025.

⁽¹⁾ OJ L 139, 27.5.2019, p. 15.

⁽²⁾ Council Decision (EU) 2020/1392 of 2 October 2020 appointing the members of the European Economic and Social Committee for the period from 21 September 2020 to 20 September 2025, and repealing and replacing the Council Decision appointing the members of the European Economic and Social Committee for the period 21 September 2020 to 20 September 2025 adopted on 18 September 2020 (OJ L 322, 5.10.2020, p. 1).

Article 2

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

Done at Brussels, 19 December 2022.

For the Council

The President

J. SÍKELA

COUNCIL IMPLEMENTING DECISION (EU) 2022/2542**of 19 December 2022****amending Implementing Decision (EU) 2018/1904 authorising the Netherlands to introduce a special measure derogating from Article 285 of Directive 2006/112/EC on the common system of value added tax**

THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax ⁽¹⁾, and in particular Article 395(1) thereof,

Having regard to the proposal from the European Commission,

Whereas:

- (1) By Council Implementing Decision (EU) 2018/1904 ⁽²⁾, the Netherlands was authorised to introduce a special measure derogating from Article 285 of Directive 2006/112/EC to exempt from value added tax (VAT) taxable persons whose annual turnover is no higher than EUR 25 000 (the 'special measure').
- (2) Implementing Decision (EU) 2018/1904 is to expire on 31 December 2022. By letter dated 23 August 2022, the Netherlands requested authorisation to continue to apply the special measure for a further period until 31 December 2024, the date by which Member States are to transpose Council Directive (EU) 2020/285 ⁽³⁾. It follows from that Directive that, from 1 January 2025, Member States will be allowed to exempt from VAT the supply of goods and services made by taxable persons whose annual turnover in a given Member State does not exceed a threshold of EUR 85 000 or the equivalent in national currency.
- (3) Pursuant to Article 395(2), second subparagraph, of Directive 2006/112/EC, the Commission transmitted the request made by the Netherlands to the other Member States, except Spain, by letter dated 25 August 2022. By letter dated 26 August, the Commission transmitted that request to Spain. By letter dated 29 August 2022, the Commission notified the Netherlands that it had all the information necessary for the appraisal of the request.
- (4) The special measure is in line with Directive 2006/112/EC, as amended by Directive (EU) 2020/285, which seeks to reduce the compliance burden of small enterprises and avoid distortions of competition in the internal market.
- (5) The special measure will remain optional for taxable persons as they may still opt for the normal VAT arrangements pursuant to Article 290 of Directive 2006/112/EC.
- (6) According to information provided by the Netherlands, the special measure will only have a negligible effect on the overall amount of the tax revenue collected at the stage of final consumption.
- (7) Following the entry into force of Council Regulation (EU, Euratom) 2021/769 ⁽⁴⁾, there is to be no compensation calculation carried out by the Netherlands with regard to the VAT-based own resource statement for the financial year 2022 onwards.

⁽¹⁾ OJ L 347, 11.12.2006, p. 1.

⁽²⁾ Council Implementing Decision (EU) 2018/1904 of 4 December 2018 authorising the Netherlands to introduce a special measure derogating from Article 285 of Directive 2006/112/EC on the common system of value added tax (OJ L 310, 6.12.2018, p. 25).

⁽³⁾ Council Directive (EU) 2020/285 of 18 February 2020 amending Directive 2006/112/EC on the common system of value added tax as regards the special scheme for small enterprises and Regulation (EU) No 904/2010 as regards the administrative cooperation and exchange of information for the purpose of monitoring the correct application of the special scheme for small enterprises (OJ L 62, 2.3.2020, p. 13).

⁽⁴⁾ Council Regulation (EU, Euratom) 2021/769 of 30 April 2021 amending Regulation (EEC, Euratom) No 1553/89 on the definitive uniform arrangements for the collection of own resources accruing from value added tax (OJ L 165, 11.5.2021, p. 9).

- (8) Given that the special measure has had a positive impact on the simplification of VAT-related obligations, as it has reduced the administrative burden and compliance costs for both small enterprises and tax authorities, and given that it lacks any major impact on the total VAT revenue generated, it is appropriate to allow the Netherlands to apply the special measure set out in Implementing Decision (EU) 2018/1904.
- (9) The application of the special measure should be limited in time. The time limit should be sufficient to allow the Commission to evaluate the effectiveness and appropriateness of the current threshold. Moreover, pursuant to Article 3(1) of Directive (EU) 2020/285, Member States are to adopt and publish, by 31 December 2024, the laws, regulations and administrative provisions necessary to comply with Article 1 of that Directive, and are to apply those provisions from 1 January 2025. It is therefore appropriate to authorise the Netherlands to apply the special measure until 31 December 2024.
- (10) Implementing Decision (EU) 2018/1904 should therefore be amended accordingly,

HAS ADOPTED THIS DECISION:

Article 1

Article 2 of Implementing Decision (EU) 2018/1904 is replaced by the following:

‘Article 2

This Decision shall apply from 1 January 2020 until 31 December 2024.’.

Article 2

This Decision shall take effect on the date of its notification.

Article 3

This Decision is addressed to the Kingdom of the Netherlands.

Done at Brussels, 19 December 2022.

For the Council
The President
J. SÍKELA

COUNCIL IMPLEMENTING DECISION (CFSP) 2022/2543
of 21 December 2022
implementing Decision (CFSP) 2015/1333 concerning restrictive measures in view of the situation in
Libya

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on European Union, and in particular Article 31(2) thereof,

Having regard to Council Decision (CFSP) 2015/1333 of 31 July 2015 concerning restrictive measures in view of the situation in Libya, and repealing Decision 2011/137/CFSP ⁽¹⁾, and in particular Article 12(2) thereof,

Having regard to the proposal from the High Representative of the Union for Foreign Affairs and Security Policy,

Whereas:

- (1) On 31 July 2015, the Council adopted Decision (CFSP) 2015/1333.
- (2) Following the judgment of the General Court in Case T-627/20 ⁽²⁾, the entry for one listed entity should be deleted.
- (3) Decision (CFSP) 2015/1333 should therefore be amended accordingly,

HAS ADOPTED THIS DECISION:

Article 1

Annex IV to Decision (CFSP) 2015/1333 is amended in accordance with the Annex to this Decision.

Article 2

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

Done at Brussels, 21 December 2022.

For the Council
The President
M. BEK

⁽¹⁾ OJ L 206, 1.8.2015, p. 34.

⁽²⁾ Judgment of the General Court of 28 September 2022, *Libyan African Investment Company (Laico) v Council*, T-627/20.

ANNEX

In Annex IV to Decision (CFSP) 2015/1333 (List of persons and entities referred to in Article 9(2)), Part B (Entities), the following entry is deleted:

‘1. Libyan Arab African Investment Company – LAAICO (a.k.a. LAICO)’.

COMMISSION IMPLEMENTING DECISION (EU, Euratom) 2022/2544**of 19 December 2022****establishing the arrangements for the administration and implementation of the EU borrowing and debt management operations under the diversified funding strategy and related lending operations**

THE EUROPEAN COMMISSION,

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

Having regard to the Treaty establishing the European Atomic Energy Community,

Having regard to Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council of 18 July 2018 on the financial rules applicable to the general budget of the Union, amending Regulations (EU) No 1296/2013, (EU) No 1301/2013, (EU) No 1303/2013, (EU) No 1304/2013, (EU) No 1309/2013, (EU) No 1316/2013, (EU) No 223/2014, (EU) No 283/2014, and Decision No 541/2014/EU and repealing Regulation (EU, Euratom) No 966/2012 ⁽¹⁾, and in particular Article 220a thereof,

Whereas:

- (1) Regulation (EU, Euratom) 2022/2434 of the European Parliament and of the Council ⁽²⁾ amended Regulation (EU, Euratom) 2018/1046 (the 'Financial Regulation') by establishing the diversified funding strategy as a single funding method for the implementation of borrowing and debt management operations carried out by the Commission. Article 220a of the Financial Regulation is to apply to programmes of financial assistance for which the basic acts enter into force on or after 9 November 2022. The diversified funding strategy is not to apply to existing programmes, under which borrowing and lending operations should continue to be carried out under the traditional back-to-back method, in accordance with Article 220 of the Financial Regulation. The back-to-back method might also apply, by way of exception, to new financial assistance programmes and shall apply to any Euratom programmes.
- (2) Pursuant to Article 220a of the Financial Regulation, the Commission is to establish the necessary arrangements for the implementation of the diversified funding strategy. These arrangements should comprise a governance framework, risk management procedures and a cost allocation methodology, which should ensure that all costs incurred by the Union that relate to financial assistance are to be borne by the beneficiary country. It is therefore necessary to establish the arrangements applicable to borrowing and debt management operations carried out by the Commission under the diversified funding strategy and to the related lending operations.
- (3) The Commission has applied for the first time the diversified funding strategy to borrowing operations in the context of NextGenerationEU ('NGEU'), the Union's temporary instrument to support the economic recovery from the COVID-19 crisis. This has allowed the successful mobilisation of funds for non-repayable support and loans under Regulation (EU) 2021/241 of the European Parliament and of the Council ⁽³⁾ and other Union programmes referred to in Article 2(2) of Council Regulation (EU) 2020/2094 ⁽⁴⁾.

⁽¹⁾ OJ L 193, 30.7.2018, p. 1.

⁽²⁾ Regulation (EU, Euratom) 2022/2434 of the European Parliament and of the Council of 6 December 2022 amending Regulation (EU, Euratom) 2018/1046 as regards the establishment of a diversified funding strategy as a general borrowing method (OJ L 319, 13.12.2022, p. 1).

⁽³⁾ Regulation (EU) 2021/241 of the European Parliament and of the Council of 12 February 2021 establishing the Recovery and Resilience Facility (OJ L 57, 18.2.2021, p. 17).

⁽⁴⁾ Council Regulation (EU) 2020/2094 of 14 December 2020 establishing a European Union Recovery Instrument to support the recovery in the aftermath of the COVID-19 crisis (OJ L 433 I, 22.12.2020, p. 23).

- (4) The governance model and the processes needed for the implementation of the diversified funding strategy under NGEU have been established in accordance with Commission Implementing Decision C(2021) 2502 ⁽⁵⁾. These arrangements include among others a governance framework, risk management and compliance procedures. A cost allocation methodology was developed in Commission Implementing Decision (EU) 2021/1095 ⁽⁶⁾. It is appropriate to base the arrangements for the implementation of the diversified funding strategy pursuant to Article 220a of the Financial Regulation on the governance model for NGEU.
- (5) Although this Decision should apply mainly to operations carried out under the diversified funding strategy, it is appropriate to extend some of the arrangements laid down therein to operations carried under the back-to-back method. This approach would ensure consistency across the different programmes, to the extent applicable. It would also guarantee that all operations are covered by the highest standard of rules, in accordance with the principle of sound financial management. This should be the case for arrangements relating to risk management and compliance procedures.
- (6) An annual borrowing decision should set out the elements of the planned borrowing operations under the diversified funding strategy over a period of one year. In particular, it should determine the dimensions of the borrowing and debt management operations to be undertaken with a view to framing the overall exposure of the Union's budget and of loan beneficiaries. To this end, it should set a range for maximum issuance amounts of long-term funding for all purposes, a maximum outstanding amount of short-term funding, the maximum average maturity of the Union's long-term funding, a limit for the final outstanding amount per issuance and, if applicable, the maximum amount of Commission issuances which can be held on its own account and can be used as an additional funding source or to support the secondary market.
- (7) In order to ensure that the required funds are available to meet commitments under the related financial assistance programmes as they fall due for payment, borrowing and debt management operations under the diversified funding strategy should be undertaken on the basis of biannual funding plans. The funding plans would frame those operations during this period by reference to the payments that must be made to implement the related programmes. The establishment of the funding plan should therefore ensure a direct link to the payment needs to satisfy the expenditure commitments that have been entered into under the corresponding basic acts. The funding plan should be established based on the limits set out in the annual borrowing decision. The funding plan is the basis to inform market participants of the indicative funding plans in the period ahead.
- (8) By fixing an indicative maximum amount of borrowing covering, as a rule, a period of six months, and establishing certain other key parameters of the planned operations, the funding plan would also ensure higher predictability of issuances, while maintaining flexibility and providing for transparency in the markets. The targeted investor base needs information about upcoming issuances and an indication on the timing to prepare investment planning on their side.
- (9) The annual borrowing decision and the funding plan should serve as a basis for information by the Commission to the European Parliament and the Council in accordance with Article 220a(2) of the Financial Regulation, as well as for communication to the markets and to the public. Furthermore, the Commission should report to the European Parliament and the Council about all aspects of its borrowing and debt management strategy, in a comprehensive manner and on a regular basis, pursuant to Article 220a(2) of the Financial Regulation.
- (10) The definition of accurate and meaningful funding plans under the diversified funding strategy depends on the regular and timely communication of information by authorising officers responsible for the implementation of the financial assistance programmes within the time frames and amounts for expected payment approvals. This information should be communicated to the Directorate-General for the Budget, as the service responsible for the definition and implementation of the funding plans, through the Commission financial forecasting tool.

⁽⁵⁾ Commission Implementing Decision of 14 April 2021 establishing the necessary arrangements for the administration of the borrowing operations under Council Decision (EU, Euratom) 2020/2053 and for the lending operations related to loans granted in accordance with Article 15 of Regulation (EU) 2021/241 of the European Parliament and of the Council.

⁽⁶⁾ Commission Implementing Decision (EU) 2021/1095 of 2 July 2021 establishing the methodology for allocating costs related to borrowing and debt management operations under NextGenerationEU (OJ L 236, 5.7.2021, p. 75).

- (11) The diversified funding strategy should seek to obtain the most advantageous financial conditions for the Union, through the sound planning and smooth execution of transactions on the best possible terms in the prevailing market conditions. Given the need to raise funding in order to allow disbursements to be made to the respective programmes, the Commission has limited discretion as regards the timing of market transactions. The diversified funding strategy would equip the Commission with a wider range of funding techniques, including short-term financing, allowing it to reduce market execution risk when required to raise funds in more adverse market circumstances.
- (12) Funding instruments under the diversified funding strategy should include, inter alia, a variety of benchmark bonds and EU-Bills. Borrowing operations under the diversified funding strategy should be organised as auctions, syndicated transactions or private placements, whichever is most appropriate given the size and nature of the operations.
- (13) The diversified funding strategy should include the ability to issue short-term instruments and maintain a liquidity buffer, enabling the Commission to absorb mismatches in timing between borrowing and disbursements, and to meet a disbursement request in case of adverse funding conditions. Short-term borrowing operations via EU-Bills should be implemented through regular auctions to provide flexibility and efficiency. Those auctions should be organised in such a manner as to ensure a transparent and predictable issuer status of the Union and an equal treatment of participants.
- (14) Debt management operations under the diversified funding strategy enable better management of interest rate and other financial risks. It is therefore appropriate to allow the use of derivatives such as swaps to manage interest rate or other financial risks in relation to loans for the beneficiary countries, while always respecting the principle of budgetary balance, or enter into secured or unsecured money market transactions with debt management offices of Member States, supranational institutions, national public sector agencies, credit institutions and investment firms with an appropriate credit standing or central counterparties. In this context, the Commission should also be authorised to buy back and/or hold its own bonds for the purposes of liquidity management and supporting liquidity in the market for EU bonds.
- (15) Lending operations should be carried out in accordance with the relevant basic act and the corresponding loan agreements. It is appropriate to lay down minimum conditions under which loans are disbursed. It should also be ensured that beneficiary countries bear all costs related to the loan incurred by the Union in accordance with a methodology laid down by the Commission in a separate decision complemented by detailed guidelines for calculating such costs.
- (16) Beneficiary countries should be offered the possibility to request the Commission to arrange loans at a fixed hedging of interest rate. This would require the Commission to use financial instruments such as interest rate swaps in order to offer fixed rate loans. The costs for managing risks with derivatives should be borne by the beneficiary country.
- (17) Borrowing operations under existing financial assistance programmes are carried out under the 'EU-Euratom Debt Issuance Programme' established in 2019 and updated in 2021 (the 'Debt Issuance Programme'). This includes, inter alia, an Offering Circular containing all the required information to the markets according to the applicable legislation, and operational and contractual arrangements with counterparties that are instrumental to borrowing activities. Borrowing operations under the diversified funding strategy should be carried out under the Debt Issuance Programme, following the introduction of the necessary amendments in the existing documentation.
- (18) In order to implement borrowing and debt management operations under the diversified funding strategy, appropriate operational capacities should be established, including transaction settlement capacities, an auction platform, and the possibility to have recourse to repurchase transactions and swaps.
- (19) In order to carry out borrowing and debt management operations under the diversified funding strategy and related lending operations, the Commission should open dedicated accounts exclusively for the purpose of these operations. The same considerations as for the accounts for NGEU operations should apply to these accounts. In particular, to address the liquidity risk stemming from these operations, secure and purpose-specific prudential cash holdings for payments should be established. The requirement to hold such a dedicated prudential cash buffer represents an integral and indispensable part of the risk management approach for a diversified funding strategy. In order to

ensure that these critical cash holdings are not subject to any counterparty risk arising from failure of the institution with whom these reserves are kept, it is imperative that these prudential cash holdings be held with a central bank. Those cash holdings should be held in a dedicated account with the ECB and should be kept to the lowest level needed to meet upcoming payments during a short-term period, but may vary in amount as a function of the issuance and disbursement schedule. A contract on fiscal agency services should be concluded with the ECB allowing the coverage of the related costs.

- (20) Furthermore, a risk management and compliance framework for borrowing, debt management and lending operations should ensure the protection of the financial interests of the Union and ensure that all activities are conducted in a manner consistent with the highest standards of integrity, probity and sound financial and risk management. In that respect, the role of Chief Risk Officer previously established under Commission Decision C(2021) 2502 should be extended to apply to all operations under the diversified funding strategy under this Decision. The Chief Risk Officer should be supported by the Risk and Compliance Committee in the fulfilment of her or his tasks.
- (21) The Chief Risk Officer, in accordance with best practices and recognised international standards should draw up a High Level Risk and Compliance Policy that contains risk and compliance guidelines for the implementation of the operations in full independence.
- (22) In particular, the Chief Risk Officer should ensure that operations comply with the High Level Risk and Compliance Policy and that risks related to these operations are identified, understood, managed, and reported to the Chief Risk Officer. In carrying out those tasks, the Chief Risk Officer should be supported by a Compliance Officer, who should report directly to the Chief Risk Officer on matters regarding conformity with rules, procedures and prevention of money laundering and terrorist financing.
- (23) To ensure that arrangements applicable to all operations implemented through the diversified funding strategy are uniform, it is appropriate to repeal Decision C(2021) 2502.
- (24) To ensure that the upcoming borrowing operations under the instrument to provide support to Ukraine ⁽⁷⁾ will benefit from the diversified funding strategy, this Decision should enter into force as a matter of urgency on the day following that of its publication in the *Official Journal of the European Union*,

HAS ADOPTED THIS DECISION:

CHAPTER 1

SUBJECT MATTER AND DEFINITIONS

Article 1

Subject matter and scope

1. This Decision establishes the arrangements for the implementation of the diversified funding strategy for borrowing and debt management operations within the scope of Article 220a of the Financial Regulation, as well as to the related lending operations.
2. Chapter 4 shall also apply to borrowing and lending operations carried out according to the back-to-back method.

⁽⁷⁾ Regulation (EU) 2022/2463 of the European Parliament and of the Council of 14 December 2022 establishing an instrument for providing support to Ukraine for 2023 (macro-financial assistance +) (OJ L 322, 16.12.2022, p. 1).

*Article 2***Definitions**

For the purposes of this Decision, the following definitions apply:

- (1) 'borrowing operations' means operations on the markets, in particular debt issuances to borrow, including roll-over borrowing;
- (2) 'debt management operations' means market operations related to the debt resulting from the borrowing operations to optimise the structure of outstanding debt, to mitigate interest rate, liquidity and other financial risks and operations to support secondary market liquidity;
- (3) 'lending operations' means operations related to the implementation of loans and credit lines for financial assistance under Article 220 of the Financial Regulation;
- (4) 'disbursement' means the passing of proceeds obtained through borrowing and debt management operations to finance repayable or non-repayable support to a beneficiary;
- (5) 'programme authorising officer' means the authorising officer responsible, in accordance with Annex I to the Internal Rules established by Commission Decision C(2018) 5120 ⁽⁸⁾, for the implementation of the budget lines of a financial assistance programme and a programme financed under Article 2(2) of Regulation (EU) 2020/2094, in so far as it implements measures referred to in Article 1(2) of that Regulation;
- (6) 'swap' means swap as defined in Section 1, point 10, of Annex III to Commission Delegated Regulation (EU) 2017/583 ⁽⁹⁾;
- (7) 'derivatives' means derivatives as defined in Article 2(5) of Regulation (EU) No 648/2012 of the European Parliament and of the Council ⁽¹⁰⁾;
- (8) 'repurchase transaction' or 'reverse repurchase transaction' mean repurchase transaction or reverse repurchase transaction as defined in Article 3(9) of Regulation (EU) 2015/2365 of the European Parliament and of the Council ⁽¹¹⁾;
- (9) 'buy-sell back transaction' or 'sell-buy back transaction' mean buy-sell back transaction and sell-buy back transaction as defined in Article 3(8) of Regulation (EU) 2015/2365;
- (10) 'syndicated transaction' means a transaction whereby financing is offered by a group of lenders, referred to as a syndicate, to a single borrower;
- (11) 'auction' means the issuance process of the Union and Euratom debt securities based on competitive bids through an auction platform;
- (12) 'long-term funding' means funding by borrowing operations for a term of more than one year, excluding the amounts held on own account;
- (13) 'short-term funding' means funding by borrowing operations for a term below or equal to one year and the use of unsecured money market transactions and secured money market transactions using securities held on own account.

⁽⁸⁾ Commission Decision C(2018) 5120 final of 3 August 2018 on the Internal Rules on the implementation of the general budget of the European Union (European Commission section) for the attention of the Commission departments.

⁽⁹⁾ Commission Delegated Regulation (EU) 2017/583 of 14 July 2016 supplementing Regulation (EU) No 600/2014 of the European Parliament and of the Council on markets in financial instruments with regard to regulatory technical standards on transparency requirements for trading venues and investment firms in respect of bonds, structured finance products, emission allowances and derivatives (OJ L 87, 31.3.2017, p. 229).

⁽¹⁰⁾ Regulation (EU) No 648/2012 of the European Parliament and of the Council of 4 July 2012 on OTC derivatives, central counterparties and trade repositories (OJ L 201, 27.7.2012, p. 1).

⁽¹¹⁾ Regulation (EU) 2015/2365 of the European Parliament and of the Council of 25 November 2015 on transparency of securities financing transactions and of reuse and amending Regulation (EU) No 648/2012 (OJ L 337, 23.12.2015, p. 1).

CHAPTER 2

BORROWING, DEBT MANAGEMENT AND LENDING OPERATIONS

SECTION 1

Funding strategy*Article 3***Annual borrowing decision**

1. The Commission shall adopt a framework borrowing decision which sets the maximum limits for the borrowing operations and debt management operations, which shall cover a period of one year ('annual borrowing decision').
2. The annual borrowing decision shall set out the following funding parameters:
 - (a) the maximum annual amount of long-term funding based on expected volumes of planned disbursements and of refinancing needs;
 - (b) the maximum outstanding amount of short-term funding, including through the issuance of EU-Bills, the use of unsecured money market transactions, based on the expected needs for liquidity management, temporary funding and, where relevant, the use of secured money market transactions using own issuances held on own account including to support the secondary market in EU bonds;
 - (c) the maximum final outstanding amount per issuance reflecting the concentration risk at maturity;
 - (d) the maximum average maturity of long-term funding;
 - (e) if appropriate, the maximum outstanding amount of own issuances which can be held on the Commission's own account and can be used for secured money market transactions or to support the secondary market in EU bonds.
3. The following factors shall be taken into consideration for the preparation of the annual borrowing decision:
 - (a) the requirements stemming from the underlying basic acts, in particular basic acts referred to in Article 220(1) of the Financial Regulation;
 - (b) the payment obligations to service outstanding debt and repayment of the principal, in accordance with the annual work programme and taking into account the financial programming;
 - (c) the compatibility with the limits set out in the Decision (EU, Euratom) 2020/2053 and, as appropriate, Council Regulation (EU, Euratom) 2020/2093 ⁽¹²⁾, and with the limits of maximum duration or maximum average maturity set out in the underlying basic act. In respect of NGEU, those limits shall be those set out in Article 6 of Decision (EU, Euratom) 2020/2053 for the additional own resources ceiling of 0,6 percentage points of the Member States' GNIs, and, for the case of planned repayment of borrowing from the Union's budget, with the limit set out in Article 5(2), third subparagraph, of that Decision;
 - (d) the loan maturities set out in the loan agreements concluded between the Commission and the beneficiary country;
 - (e) other factors relevant for the determination of the borrowing and debt management operations.
4. The annual borrowing decision shall be adopted before the commencement of the period covered by it.

⁽¹²⁾ Council Regulation (EU, Euratom) 2020/2093 of 17 December 2020 laying down the multiannual financial framework for the years 2021 to 2027 (OJ L 433 I, 22.12.2020, p. 11).

5. The annual borrowing decision may be amended in particular in case of serious risk that the maximum average maturity could not be respected for reason of under-execution of issuances of the amounts of long-term funding or in case of the change to one or more factors referred to in paragraph 3.
6. The Commission shall communicate the annual borrowing decision to the European Parliament and the Council.

Article 4

Funding plan

1. The funding plan shall fix an indicative target for the funds to be raised through borrowing operations and managed through debt management operations, which shall cover as a rule a period of six months.
2. The funding plan shall indicate the planned borrowing operations and, as the case may be, debt management operations, to be carried out under the diversified funding strategy. Within the limits set out in the annual borrowing decision and taking into account the factors referred to in Article 3(3) and financial conditions in the primary and secondary market, the funding plan shall include, inter alia, the following funding parameters:
 - (a) the maximum expected amount of short-term and long-term funding for the period;
 - (b) the weighted maximum average maturity of long-term funding to be undertaken;
 - (c) an upper bound on the expected average liquidity to be available as reserve to meet payment needs for the planned period;
 - (d) if appropriate, the maximum outstanding amount of own issuances which can be held on the Commission's own account and can be used for secured money market transactions or to support the secondary market.

When establishing the funding plan, the opinion of the Chief Risk Officer referred to in Article 18(2)(a) shall be duly taken into account.

3. The funding plan shall be adopted before the commencement of the period covered by it.
4. The funding plan may be amended in case of substantial change to one or more factors referred to in Article 3(3).
5. On the basis of the adopted funding plan, the Commission shall inform the European Parliament and the Council.

Article 5

Communication of projected disbursement needs for the purposes of preparing and implementing the funding plan

1. The funding plan shall be established on the basis of up-to-date information, to be provided to the Directorate-General for the Budget by programme authorising officers, regarding the schedule of expected payments over the course of the six months period in question. The information provided shall be to the extent possible accurate and reliable.
2. One month before the adoption of the funding plan, programme authorising officers shall provide a detailed projection of disbursement needs for the respective programmes.
3. Programme authorising officers shall provide to the extent possible regular, accurate and reliable updates of the information provided in respect of projected disbursements, including changes in timelines for completion of procedures for payment approvals.
4. Programme authorising officers shall use the electronic system for the communication and updating of information on projected disbursement needs for the transmission of the information on payment forecasts provided for in Article 11(2)(h) for the purposes of communicating information required under paragraphs 1 to 3 of this Article.

*Article 6***Implementation of the borrowing operations and debt management operations**

1. The individual borrowing operations shall be undertaken in line with the latest applicable update of the funding plan for the period in question.

Based on the regular updates, provided under Article 5(3), of the information regarding the amounts and expected timing for approval of disbursements from programme authorising officers, the Director-General of the Directorate-General for the Budget shall issue regular instructions regarding the amounts to be raised through debt issuance.

2. The instructed amounts shall be raised by applying the diversified funding strategy defined in Article 7 while respecting the funding parameters of the funding plan set out in Article 4(2).

The borrowing operations and debt management operations shall respect the principle of sound financial management, which comprises the appropriate segregation of roles and responsibilities, information and reporting flows aimed at guaranteeing the independent oversight and accountability, and the legality and regularity of all transactions. Those operations shall be carried out in accordance with best practice in the market and respecting market conventions.

*Article 7***Diversified funding strategy**

1. In implementing the diversified funding strategy, the Commission services shall apply the following principles, as appropriate, in full respect of the principle of sound financial management, to borrow the required funding to meet in due time the needs of the relevant programmes for repayable and non-repayable support, and to manage the resulting debt as efficiently and expeditiously as possible, while seeking to obtain the most advantageous financial conditions under the prevailing market conditions for the Union budget and beneficiary countries, and aiming at regular capital market presence:

- (a) borrowing operations and debt management operations may be conducted on the primary market, on the secondary market and on money markets;
- (b) borrowing operations shall be organised through a set of individual borrowings of different maturities, ranging from short-term to long-term funding;
- (c) borrowing operations may be organised through a mix of syndicated transactions and auctions, and private placements, in both cases relying on the services of credit institutions and investment firms who are members of the primary dealers network established under Commission Decision (EU, Euratom) 2021/625 ⁽¹³⁾;
- (d) the resulting debt may be rolled-over for the sake of maturity management;
- (e) cash flow mismatches and liquidity risk shall be managed through measures of short-term liquidity management of amounts held on a dedicated account using secured and unsecured money market transactions.

2. Where required to ensure a better management of interest rate and other financial risks arising in the execution of the diversified funding strategy, the Commission services may also use debt management operations that may consist of using derivatives such as swaps to manage interest rate or other financial risks, or may imply entering into secured or unsecured money market transactions with debt management offices of Member States, supranational institutions, national public sector agencies, credit institutions and investment firms with an appropriate credit standing and central counterparties. For this purpose, the Commission services may buy back and hold its own bonds. In particular, swaps may only be used for the hedging of interest rate risks borne by countries benefitting from loans. The costs for managing risks with derivatives shall be borne by the beneficiary of the risk management operation.

⁽¹³⁾ Commission Decision (EU, Euratom) 2021/625 of 14 April 2021 on the establishment of the primary dealer network and the definition of eligibility criteria for lead and co-lead mandates for syndicated transactions for the purposes of the borrowing activities by the Commission on behalf of the Union and of the European Atomic Energy Community (OJ L 131, 16.4.2021, p. 170).

SECTION 2

Lending operations

Article 8

Lending operations

The implementation of lending operations shall be carried out in accordance with the specific rules laid down in the relevant basic act, as well as the conditions laid down in the loan agreements concluded between the Commission and the beneficiary country in accordance with the relevant basic act.

Article 9

Disbursements and acceleration of the loan

The disbursement of loan instalments or tranches shall be done as efficiently and expeditiously as possible, subject to availability of funding. The loan agreements shall contain an unconditional and irrevocable commitment of the beneficiary country to bear all costs related to the borrowing, including administrative costs, and to repay the principal amount and interests and may allow the use of derivatives, in particular swaps.

Loan agreements under Regulation (EU) 2021/241 shall contain an acceleration clause that entitles the Commission to ask for early repayment of the loan, inter alia, in accordance with Articles 22(5) and 24(9) of Regulation (EU) 2021/241 and for recovery of pre-financing not cleared.

Article 10

Costs of the loan

All costs, inclusive those associated with the management of interest rate and other financial risks, incurred by the Union in relation to the borrowing of funds for the loans shall be borne by the beneficiary countries, in accordance with Article 220 of the Financial Regulation and the relevant basic acts and shall be calculated according to a methodology laid down by the Commission in Commission Implementing Decision (EU, Euratom) 2022/2545 ⁽¹⁴⁾, complemented by specific guidelines, in full respect of the principles of transparency and equal treatment.

Any costs incurred by the Union for derivatives shall be borne by the beneficiary country.

The costs shall be regularly invoiced to the beneficiary country.

SECTION 3

Implementation and reporting

Article 11

Establishment of operational capacities

1. The implementation of the borrowing and debt management operations under the diversified funding strategy and the related lending operations shall incorporate the establishment and management of the operational capacities ensuring that the systems put in place uphold sound financial management and are subject to robust risk management and documentation of processes and decisions.

⁽¹⁴⁾ Commission Implementing Decision (EU, Euratom) 2022/2545 of 19 December 2022 on establishing the framework for allocating costs related to borrowing and debt management operations under the diversified funding strategy (see page 123 of this Official Journal).

2. These operational capacities shall in particular include:
- (a) negotiating, reviewing and signing of agreements with public or private credit institutions and national or international central securities depositories required for the conclusion of transaction settlement;
 - (b) reviewing, amending, changing, redrafting and finalising the borrowing documentation, including the documentation under the Debt Issuance Programme;
 - (c) establishing arrangements and rules for the organisation of auctions, including agreements with external providers of systems and constant oversight of the performance of auctions;
 - (d) implementing individual borrowing transactions through syndicated transactions, auctions and private placements;
 - (e) calculating costs incurred in accordance with the methodology to be laid down by the Commission in specific guidelines to be charged to the Union's budget and to the beneficiary countries in the context of lending operations;
 - (f) establishing arrangements and negotiating, reviewing and signing of agreements, including agreements with counterparties and trading system providers, required for conducting the following transactions and instruments:
 - (i) repurchase transactions or reverse-repurchase transactions, buy-sell back transactions or sell-buy back transactions and other transactions giving rise to liabilities;
 - (ii) derivatives, such as swaps, for the purpose of management and hedging of risks for the sole purpose of loans.
 - (g) carrying out secondary market transactions, unsecured and secured money market transactions, including those referred to in points (f)(i) and (ii) above;
 - (h) establishing and managing the electronic system for the communication and updating of information on projected disbursements needs referred to in Article 5(4).

Article 12

Reporting on the implementation of borrowing, debt management and lending operations

The Commission shall establish a report twice per year on all aspects of its borrowing and debt management strategy, such as legal basis, outstanding amounts of bonds and bills, maturity profile, disbursed grants and loans, repayment schedule of the disbursed loans, cost of funding and the amount that the Commission intends to issue in the coming semester. The report shall be submitted to the European Parliament and the Council.

CHAPTER 3

ACCOUNTING AND THE ACCOUNTING OFFICER

Article 13

Account for management of proceeds

1. The proceeds related to the borrowing, debt management and lending operations shall be managed through an account opened by the Commission's Accounting Officer. The Accounting Officer shall delegate the management of this account to relevant services in the Directorate-General of the Budget who shall manage it in line with the rules, principles and procedures set out in this Decision.
2. The account shall be held with the ECB on the basis of a contract on fiscal agency services. It shall be used for dedicated prudential cash holdings which shall be adapted to the amounts of upcoming payments.

*Article 14***Accounting for borrowing, debt management and lending operations**

The Accounting Officer shall be responsible for ensuring the appropriate accounting for all borrowing, debt management and lending operations in accordance with the Union accounting rules and with Title XIII of the Financial Regulation.

*Article 15***Establishment of financial statements**

1. The Accounting Officer shall be responsible for the preparation of annual financial statements in respect of the borrowing, debt management and lending operations in accordance with the Union accounting rules and based on the information supplied by the programme authorising officers.
2. These financial statements shall be part of the consolidated annual accounts of the Union budget.

CHAPTER 4

RISK MANAGEMENT AND COMPLIANCE*Article 16***Role of Chief Risk Officer for borrowing, debt management and lending operations**

1. There shall be a Chief Risk Officer for borrowing, debt management and lending operations, whose powers and functions are laid down in the present decision.
2. The role of Chief Risk Officer is to ensure that the systems and processes used to implement the borrowing, debt management and lending operations are designed and implemented in a manner that ensures to the greatest extent possible the protection of the financial interests of the Union and the sound financial management of the borrowing, debt management and lending operations.
3. The role of Chief Risk Officer shall be exercised independently of the functions and tasks related to the planning, implementation, execution and accounting for operations. The Chief Risk Officer shall enjoy autonomy in carrying out the tasks and responsibilities described in this Chapter and shall be provided with the necessary resources.
4. The Chief Risk Officer shall report directly to the Member of the College responsible for the Budget with respect to the responsibilities set out in this Chapter.
5. A staff member entrusted with the role of Compliance Officer shall report directly to the Chief Risk Officer on matters set out in Article 17(4).

*Article 17***Establishment of a High Level Risk and Compliance Policy**

1. The Chief Risk Officer shall draw up a High Level Risk and Compliance Policy that shall identify the principal risks to the financial interests of the Union arising from the implementation of the borrowing, debt management and lending operations. In this context, the Chief Risk Officer shall take into account the principles for risk recognition and assessment, according to which an effective internal control system identifies and continuously assesses the principal risks.
2. The High Level Risk and Compliance Policy shall set the strategic risk objectives and shall provide the overarching framework for the risk management guidelines applicable to borrowing, debt management and lending operations.

3. The High Level Risk and Compliance Policy shall identify all associated risks, including liquidity, market, funding, credit, counterparty and operational risks, arising from the implementation of the borrowing, debt management and lending operations. The High Level Risk and Compliance Policy shall set for each risk the high-level risk appetite, the general methodologies to measure the risk exposure, the monitoring and reporting requirements as well as the escalation mechanism to be taken in case of breaches or non-compliance. It shall verify the solidity of procedures needed to ensure the probity, integrity and transparency of those operations and shall limit any financial or operational risk appropriately.
4. The High Level Risk and Compliance Policy shall include the following rules and procedures:
 - (a) rules and procedures to be respected by persons who are responsible for the operational implementation and execution of the diversified funding strategy, and;
 - (b) rules and procedures to prevent money laundering, terrorist financing, execution of borrowing, debt management and lending operations by entities incorporated in or established in jurisdictions listed under the relevant policy on non-cooperative jurisdictions or that are identified as high-risk countries pursuant to Article 9(2) of Directive (EU) 2015/849 of the European Parliament and of the Council ⁽¹⁵⁾, or that do not effectively comply with Union or internationally agreed tax standards on transparency and exchange of information, breaches of sanction regimes and other relevant financial irregularities.
5. The High Level Risk and Compliance Policy shall be reviewed at least annually and revised if necessary.
6. The High Level Risk and Compliance Policy shall be submitted by the Chief Risk Officer to the Member of the College responsible for the Budget for approval.

Article 18

Role of the Chief Risk Officer

1. The Chief Risk Officer shall monitor that the High Level Risk and Compliance Policy is implemented in a comprehensive and consistent manner.
2. In particular, the Chief Risk Officer shall carry out the following tasks:
 - (a) issue an opinion on the draft funding plan;
 - (b) review internal rules and guidance documents issued by the Director-General of the Directorate-General for the Budget for the implementation of this Decision for consistency with the High Level Risk and Compliance Policy, that he or she may request to modify;
 - (c) establish and oversee continued compliance with robust processes for risk identification, quantification and monitoring;
 - (d) identify potential breaches of the High Level Risk and Compliance Policy or of other risk related guidelines, policies and limits and recommend possible steps to be taken in case of breaches or non-compliance.

Article 19

Reporting by the Chief Risk Officer

1. The Chief Risk Officer shall regularly report on material risks and on the compliance with rules and procedures set according to Article 17(4) to the Member of the College responsible for the Budget, to the Risk and Compliance Committee, to the Director-General of the Directorate-General for the Budget and to the Accounting Officer. The Chief Risk Officer shall also provide regular information on risks and limits to persons who are responsible for the operational execution of the diversified funding strategy.

⁽¹⁵⁾ Directive (EU) 2015/849 of the European Parliament and of the Council of 20 May 2015 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, amending Regulation (EU) No 648/2012 of the European Parliament and of the Council, and repealing Directive 2005/60/EC of the European Parliament and of the Council and Commission Directive 2006/70/EC (OJ L 141, 5.6.2015, p. 73).

The Director-General of the Directorate-General for the Budget shall, without undue delay, take necessary measures to address those findings and provide explanations on the measures undertaken to the Chief Risk Officer.

When reporting to the Member of the College responsible for the Budget, the Chief Risk Officer may also, as appropriate, inform that Member about the findings referred to in the second subparagraph and about the deliberations of the Risk and Compliance Committee.

2. The Chief Risk Officer shall report on the implementation of the High Level Risk and Compliance Policy to the Commission once per year.

Article 20

Role of the Risk and Compliance Committee

1. A Risk and Compliance Committee shall be established to support the Chief Risk Officer in the conduct of responsibilities of that officer.

2. The Risk and Compliance Committee shall:

- (a) be consulted by the Chief Risk Officer on the High Level Risk and Compliance Policy;
- (b) support the Chief Risk Officer in the tasks referred to in Article 18(2), points (a), (b) and (c);
- (c) participate in evaluating, monitoring and approving practices regarding the implementation of the High Level Risk and Compliance Policy and relating to the risk management of the borrowing, debt management and lending operations;
- (d) support the Chief Risk Officer in assessing emerging risk exposures in connection with borrowing, debt management and lending operations, and be informed by the Chief Risk Officer about exceeding of limits set to reduce risks or non-compliance with the High Level Risk and Compliance Policy, and other risk related guidelines, policies and limits.

Article 21

Members and organisation of the Risk and Compliance Committee

1. Members of the Risk and Compliance Committee shall be the Chief Risk Officer, the Accounting Officer of the Commission, the Compliance Officer, two staff members from Directorates-General whose functions entail knowledge of risk management and of financial markets supervision, and two staff members of the Directorate-General for the Budget designated by the Director-General of the Directorate-General for the Budget.

2. The Chief Risk Officer shall invite two external experts to the meetings of the Risk and Compliance Committee. The external experts shall give opinions and participate in deliberations without voting rights on matters brought before the Committee.

3. The Risk and Compliance Committee shall, where possible, adopt positions on the basis of consensus or, when a consensus is not reached, on the basis of a simple majority of its members. In the event of a tied vote, the vote of the Chief Risk Officer shall be decisive.

4. The Risk and Compliance Committee shall adopt its rules of procedure.

CHAPTER 5

TRANSITIONAL AND FINAL PROVISION

Article 22

Repeal

Decision C(2021) 2502 is repealed.

References to the repealed decision shall be construed as references to this Decision.

Article 23

Entry into force

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

Done at Brussels, 19 December 2022.

For the Commission
The President
Ursula VON DER LEYEN

COMMISSION IMPLEMENTING DECISION (EU, Euratom) 2022/2545**of 19 December 2022****on establishing the framework for allocating costs related to borrowing and debt management operations under the diversified funding strategy**

THE EUROPEAN COMMISSION,

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

Having regard to the Treaty establishing the European Atomic Energy Community,

Having regard to Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council of 18 July 2018 on the financial rules applicable to the general budget of the Union, amending Regulations (EU) No 1296/2013, (EU) No 1301/2013, (EU) No 1303/2013, (EU) No 1304/2013, (EU) No 1309/2013, (EU) No 1316/2013, (EU) No 223/2014, (EU) No 283/2014, and Decision No 541/2014/EU and repealing Regulation (EU, Euratom) No 966/2012 ⁽¹⁾, and in particular Article 220a thereof,

Whereas:

- (1) Regulation (EU, Euratom) 2022/2434 of the European Parliament and of the Council ⁽²⁾ introduces the diversified funding strategy as a single funding method for the implementation of borrowing and debt management operations carried out by the Commission into Regulation (EU, Euratom) 2018/1046 (the 'Financial Regulation'). After the entry into force of Regulation (EU, Euratom) 2022/2434 the diversified funding strategy is to apply to programmes of financial assistance for which the basic acts enter into force on or after 9 November 2022.
- (2) The Commission should establish the necessary arrangements for the implementation of the diversified funding strategy. The application of the diversified funding strategy requires the adoption of a set of rules to determine the allocation of respective costs to the relevant financial assistance programmes, which should ensure that all costs incurred by the Union that relate to financial assistance are to be charged to the beneficiary.
- (3) The methodology for allocating costs related to the implementation of the diversified funding strategy under NextGenerationEU (NGEU) has been established by Commission Implementing Decision (EU) 2021/1095 ⁽³⁾. It is appropriate to extend these arrangements to borrowing and debt management operations carried out under the diversified funding strategy pursuant to Article 220a of the Financial Regulation.
- (4) The repayment obligations should remain with the beneficiaries of the financial assistance, in compliance with Article 220(5), point (e) of the Financial Regulation and in line with the budgetary principles of sound financial management and equilibrium. All costs should be charged to the beneficiaries based on a single cost allocation methodology that ensures transparent and proportional allocation of costs.
- (5) The cost allocation methodology should ensure that there is no cross-subsidisation of costs by one category of beneficiary by another. Costs of loans should be fully imputed to the beneficiaries of those loans, on the one hand, and costs of non-repayables to the EU Budget, on the other hand, based on actual costs incurred for raising and disbursing the respective share of proceeds to the different beneficiaries. The methodology should cover all the costs incurred by the Union for borrowing and debt management operations, including all administrative costs, and should ensure that different categories of costs be calculated for each disbursement.

⁽¹⁾ OJ L 193, 30.7.2018, p. 1.

⁽²⁾ Regulation (EU, Euratom) 2022/2434 of the European Parliament and of the Council of 6 December 2022 amending Regulation (EU, Euratom) 2018/1046 as regards the establishment of a diversified funding strategy as a general borrowing method (OJ L 319, 13.12.2022, p. 1).

⁽³⁾ Commission Implementing Decision (EU) 2021/1095 of 2 July 2021 establishing the methodology for allocating costs related to borrowing and debt management operations under NextGenerationEU (OJ L 236, 5.7.2021, p. 75).

- (6) To ensure fair and equal treatment between beneficiaries, the Commission should implement a common and unified methodology for costs, applicable to all type of disbursements (those repaid by the Union budget, and those repaid by beneficiaries), that impute costs to the beneficiaries on the basis of the share of proceeds received.
- (7) This cost calculation and allocation methodology should distinguish between three categories of cost: the cost of funding, the cost of liquidity management and administrative costs. The cost of funding derives from the interest rate and other charges that the Commission must pay on the different instruments issued to finance the disbursements in question. The costs of liquidity management are the costs incurred as a result of amounts issued and held temporarily on liquidity accounts as reserves to meet upcoming payments. This ongoing operational overhead is an intrinsic feature of the diversified funding strategy and should be shared fairly across all beneficiaries. The third cost category are the administrative costs of building the technical and operational capacity to implement a diversified funding strategy and which arise clearly as a result of the implementation of the diversified funding strategy.
- (8) The fair and proportionate attribution of costs shall be conducted via the compartmentalisation of disbursements and related funding instruments into time-periods (hereafter 'time compartments'). Pre-existing disbursements and related borrowing transactions issued under the diversified funding strategy, that are already assigned to time compartments shall remain unaffected by the addition of disbursements under programmes of financial assistance within the scope of Article 220a of the Financial Regulation. From the start of such loan disbursements onwards, any disbursement funded through the diversified funding strategy, will have its costs calculated and attributed identically. The paramount advantage of this approach is that the cost of funding is the same for all disbursements attributed to the same time-compartment ensuring that borrowings are tailored to disbursement needs.
- (9) It should be ensured that there is no impact on costs distribution for any of the programmes to which the cost allocation methodology would apply. The cost allocation methodology would as of its adoption apply to NGEU borrowings and the loans under Regulation (EU) 2022/2463 of the European Parliament and of the Council ⁽⁴⁾, which have similar duration and structure. Therefore, it is possible to include them into the same time compartments. If a new programme of financial assistance is established, with a different duration and structure, likely to have an impact on the costs, this methodology should be reviewed as appropriate.
- (10) The calculation of the cost of funding that results from borrowing transactions should be derived from the costs arising from all borrowing operations during the six-month time period around the date of the disbursement. This compartmentalisation of funding costs is needed to ensure that the cost of funding charged to the disbursement is closely linked to the prevailing market rates at the time at which it is made. This approach means that the precise cost of funding is fixed only upon completion of the funding pool at the closure of the six-month time compartment, but indicative prices will be available to loan beneficiaries prior to the final costing. Loan beneficiaries or, for the external assigned revenue under Article 3(1) of Council Regulation (EU) 2020/2094 ⁽⁵⁾, the EU budget should pay the same charge. This avoids arbitrariness or chance that characterises the traditional back-to-back method where the costs for any particular beneficiary were the terms that could be obtained on the particular day that the borrowing took place.
- (11) Each time compartment should be active during a period of six months starting on 1 January or on 1 July. However, the first time compartment should cover the period from 1 June 2021 until 31 December 2021 as referred to in article 4 of the Decision.
- (12) While the cost of funding may vary between the six-month time compartments because of differences in funding conditions beyond the control of the Commission, the Commission will manage borrowing and debt management operations in order to ensure that each time compartment bears similar maturity profiles to the greatest extent possible.

⁽⁴⁾ Regulation (EU) 2022/2463 of the European Parliament and of the Council of 14 December 2022 establishing an instrument for providing support to Ukraine for 2023 (macro-financial assistance +) (OJ L 322, 16.12.2022, p. 1).

⁽⁵⁾ Council Regulation (EU) 2020/2094 of 14 December 2020 establishing a European Union Recovery Instrument to support the recovery in the aftermath of the COVID-19 crisis (OJ L 433 I, 22.12.2020, p. 23).

- (13) The Commission's funding strategy enables better management of interest rate risk and other financial risks. While interest rates charged to loan beneficiaries will be stable, periodic and marginal recalculation of rates will be necessary when maturing instruments in the funding pool need to be replaced. If warranted, the Commission will develop its capacity to use derivatives such as swaps to manage any remaining interest rate risk and offer the option of fixed interest rate loans to a beneficiary. The costs of this fixed interest rate facility should be borne fully and exclusively by the beneficiary exercising this option.
- (14) The amounts of disbursements in a time compartment should equal the amount of long-term funding instruments attributed to that time compartment. In most cases, the disbursement of proceeds will occur in and be attributed to the same time compartment as the issuance of the long-term funding instruments used to raise the proceeds. However, unforeseen delays in making the disbursement may result in situations where the proceeds of the long-term funding have been raised but cannot be disbursed as initially scheduled. Under this scenario, the disbursement may be delayed from one time compartment to the following time compartment. However, if the funds for these particular funding needs have already been raised and attributed to the previous time compartment, they cannot be used for other needs in this time compartment. Under these circumstances, it should be possible to attribute disbursements to the time compartment to which the funding instruments have been issued. It should equally be possible to attribute long-term funding instruments of the following time compartment to the previous time compartment in case the amount of long-term funding instruments of that time compartment is not sufficient to cover the amount of disbursements.
- (15) The Commission will also need some means to anticipate, in the preceding time compartment, disbursement needs arising early in the life of the next time compartment. To cater for such situations and ensure that the Commission has the resources available on advantageous terms to make disbursements taking place close to the transition between time compartments, the Commission should have the possibility to attribute long-term funding instruments to the following time compartment.
- (16) The ability to manage liquidity of the funding operations by accessing short-term borrowing and holding cash for prudential purposes is a central and defining feature of the diversified funding strategy. This liquidity management will enable the Commission to meet all payment needs and adapt issuance to market conditions. This capacity gives rise to costs raising proceeds through issuance of short-term paper, and holding some proceeds on a temporary basis on a liquidity account in order to guarantee the ability to make all payments on demand. Debt management operations under the diversified funding strategy enable better management of interest rate and other financial risk. They may include the use of derivatives such as swaps to manage interest rate or other financial risks in relation to loans for the beneficiaries, or enter into secured or unsecured money market transactions. Costs incurred in relation to buy backs and/or holding of own bonds for the purposes of liquidity management should be considered as liquidity management costs. This Decision should establish a basis for calculating these liquidity costs and charging them on a fair and equitable basis to all relevant beneficiaries of proceeds over the course of the year in question.
- (17) Higher disbursement needs than the amount of long-term funding instruments allocated to the respective time compartment or interest payments, may result in a liquidity deficit of a time compartment. Lower disbursement needs than the amount of long-term funding instruments allocated to the respective time compartment or redemption payments received in relation to the outstanding disbursements allocated to the compartment may result in a liquidity surplus. Compensating these liquidity surpluses or deficits are unavoidable requirements of the implementation of the diversified funding strategy. These costs should not be borne by the respective time-compartments, but should be isolated and managed as part of a distinct liquidity management overhead. This Decision should establish a mechanism to disentangle costs arising from liquidity deficits or surpluses so that they can be absorbed by the wider funding programme in the form of liquidity management costs. The Commission should use the liquidity management compartment to level any positive or negative cash balances in the time compartments to the total amount of disbursements.
- (18) Implementing the diversified funding strategy requires the acquisition of new capacities needed to obtain the most advantageous access to capital markets and ensure the maintenance of such infrastructure in a continuous and effective manner. This includes the costs needed to maintain liquidity accounts, to acquire capacity to run auctions for EU-bills and bonds and to implement new internal data-processing capacities. Such costs that result directly from the implementation of borrowing and disbursement operations should be treated as overheads that distinguish costs related to the set-up and to the maintenance of borrowing and payment infrastructure. These costs should be captured by the cost of service for administrative overheads.

- (19) The cost of service for administrative overheads combines all administrative costs incurred directly in the implementation of the diversified funding strategy. These costs are to occur either as set-up costs, relating to one-off costs of building operational capacities or as recurring costs, which are unavoidable costs directly attributable to borrowing and debt management operations under the diversified funding strategy and which occur over time. While the recurring costs are regular annual costs charged to the disbursements that take place in a given year, the set-up costs should be imputed as one-off charges.
- (20) Costs related to the set-up and capacity building of these operations have been incurred since 2021 and have already been attributed to beneficiaries of NGEU financial support programmes, through a specific set-up cost overhead. Therefore, the beneficiaries of other programmes of financial assistance within the scope of Article 220a of the Financial Regulation, should not bear costs related to this previous capacity building but only future expenditure related to the maintenance of this infrastructure. The share of administrative costs of programmes of financial assistance within the scope of Article 220a of the Financial Regulation, other than NGEU, should therefore be restricted to recurring costs, and be treated as any beneficiary of the diversified funding strategy.
- (21) Administrative costs included in the cost of service for administrative overheads should be confined to a closed list of eligible costs, which are directly related to the diversified funding strategy. Contractual fees for recruitment of external consultant staff are added to the list of eligible administrative expenditure following agreements reached in the context of the Annual Budget for 2023. The extension of the list of eligible administrative expenditures has been communicated to Member States authorities prior to the adoption of this Decision. Aggregate cost of service for administrative overheads represents a very limited share of aggregate costs from diversified funding strategy operations.
- (22) The *ex post* invoicing process is designed to ensure that costs are recovered in the following year and until the moment costs are no longer generated by borrowing, debt and payment management operations under the diversified funding strategy.
- (23) Exceptionally for the financial assistance loans to Ukraine granted under Regulation (EU) 2022/2463, the Union might bear the cost of interests and administrative costs related to the borrowing and lending in accordance with Article 17 of Regulation (EU) 2022/2463. The necessary resources would be provided by contributions from the Member States in accordance with Article 5(1) of Regulation (EU) 2022/2463. The invoicing of those costs should therefore be aligned with the invoicing of costs in respect to disbursements as external assigned revenue under Article 3(1) of Regulation (EU) 2020/2094 and be grouped per quarter of the year.
- (24) The Commission should issue a confirmation notice concerning each disbursement, including non-repayable support within the meaning of Article 2(2)(a) and (c) of Regulation (EU) 2020/2094, repayable support to Members States within the meaning of Article 2(2)(b) of Regulation (EU) 2020/2094, and loans to a Member State or third country under programmes of financial assistance within the scope of Article 220a of the Financial Regulation.
- (25) Loans under the diversified funding strategy are to be implemented on standard financial terms (maturity and repayment profile) for each disbursement. For non-repayable support, the confirmation notice should be the main supporting element determining these financial terms for the EU Budget. The confirmation notice is to determine the claim for cost based on its financial terms. These terms should include the date of disbursement, the amount of financial support, the date of cost of funding payments and the maturity date. The confirmation notice constitutes the essential basis underpinning the EU's budgetary planning, financial circuits and accounting for non-repayable support.
- (26) Appropriate references in the loan agreements will clarify that the costs of disbursements are determined by the application of the methodology set forth by this Decision.
- (27) This Decision should apply to all borrowing transactions and disbursements under the NGEU programme, including those that have occurred prior to its entry into force.

HAS ADOPTED THIS DECISION:

CHAPTER 1

SUBJECT MATTER, DEFINITIONS AND GENERAL RULES

Article 1

Subject matter, scope and governing principle

1. This Decision establishes a single and unified methodology to allocate costs incurred as a result of borrowing and debt management operations conducted under programmes of financial assistance within the scope of Article 220a of the Financial Regulation and non-repayable support under Article 5(1) of Council Decision (EU, Euratom) 2020/2053 ⁽⁶⁾ ('CAM programmes').
2. The implementation of the cost allocation methodology shall be guided by the principles of fairness and equal treatment, ensuring costs are spread based on the relative share of support received.

Article 2

Definitions

For the purposes of this Decision, the following definitions apply:

- (1) 'beneficiary' means a Member State or a third country that is a party to a loan agreement under a CAM programme, or the Union budget for non-repayable support under Article 5(1) of Decision (EU, Euratom) 2020/2053;
- (2) 'disbursement' means the transfer of proceeds obtained through borrowing and debt management operations to finance repayable or non-repayable support to a beneficiary;
- (3) 'funding instruments' means bonds, notes, commercial paper, EU-bills or any other appropriate short and/or long-term financial transactions under the diversified funding strategy;
- (4) 'interest period' means a period of twelve (12) months, or such other period which may be specified in the confirmation notice, commencing on the date of disbursement or the precedent interest payment date;
- (5) 'liquidity management' means management of cash flows related to funding instruments and disbursements;
- (6) 'loan agreement' means an agreement between the Commission and a beneficiary under a CAM programme;
- (7) 'borrowing operations' means operations referred to in Article 2(1) of the Implementing Decision (EU, Euratom) 2022/2544 ⁽⁷⁾;
- (8) 'debt management operations' means operations referred to in Article 2(2) of the Implementing Decision (EU, Euratom) 2022/2544;
- (9) 'short-term funding' means funding referred to in Article 2(11) of the Implementing Decision (EU, Euratom) 2022/2544;
- (10) 'long-term funding' means funding referred to in Article 2(10) of the Implementing Decision (EU, Euratom) 2022/2544.

⁽⁶⁾ Council Decision (EU, Euratom) 2020/2053 of 14 December 2020 on the system of own resources of the European Union and repealing Decision 2014/335/EU, Euratom (OJ L 424, 15.12.2020, p. 1).

⁽⁷⁾ Commission Implementing Decision (EU, Euratom) 2022/2544 of 19 December 2022 establishing the arrangements for the administration and implementation of the EU borrowing and debt management operations under the diversified funding strategy and related lending operations (see page 109 of this Official Journal).

*Article 3***Types of costs**

The following categories of costs shall be established:

- (a) cost of funding;
- (b) cost of liquidity management;
- (c) cost of service for administrative overheads.

CHAPTER 2

COST OF FUNDING AND COSTS OF LIQUIDITY MANAGEMENT

SECTION 1

Compartments*Article 4***Time compartments**

1. A time compartment shall be active during a period of six months starting on 1 January or on 1 July. However, the first time compartment shall cover the period from 1 June 2021 until 31 December 2021.

2. The time compartment shall be constituted by the disbursements made during its active period and the related funding instruments allocated to it. Any disbursement shall be attributed to the time compartment active on the date of that disbursement.

By derogation from the first subparagraph, in case the amount of proceeds of long-term funding instruments attributed to the previous time compartment exceed the amount of disbursements attributed to that compartment in accordance with the first subparagraph, the disbursements shall continue to be allocated to that time compartment until the amount of disbursements reaches the amount of the proceeds of that long term funding instruments.

The disbursement shall remain attributed to the time compartment in respect to any outstanding amount which is yet to be repaid.

3. Without prejudice to Article 6(2), long-term funding instruments' proceeds shall be attributed to a time compartment.

4. Long-term funding instruments other than those referred to in paragraph 5 shall be attributed to the time compartment active at the moment of the conclusion of the borrowing operation generating them.

By derogation from the first subparagraph,

- (a) funding instruments raised with a view of funding a disbursement in the following time compartment may be attributed to that time compartment;
- (b) in case the amount of disbursements at the end of the active time compartment exceeds the amount of proceeds of long-term funding instruments, the long-term funding instruments generated from the borrowing operations after the end of the active period of the time compartment shall be attributed to that time compartment until the amount of proceeds of long-term funding instruments reaches the amount of disbursements of that time compartment.

5. Long-term funding instruments replacing maturing long-term funding instruments shall be attributed to the same time compartment. Article 6 shall apply in case of a mismatch between maturity date of the maturing long-term instrument and the date of borrowing of the long-term instrument replacing it.

*Article 5***Liquidity management compartment**

1. The liquidity management compartment shall operate until the borrowing operations authorised in CAM programmes are fully repaid.
2. Short-term funding instruments, debt management operations and the costs arising from them shall be attributed to the liquidity management compartment.

*Article 6***Levelling of liquidity balances**

1. The level of liquidity holdings in a time compartment shall be calculated on a daily basis as the difference between inflows and outflows, as set out in step 3 of point 1 of the Annex.
2. Any positive amount referred to in paragraph 1 ('liquidity surplus') shall be on a daily basis allocated from the time compartment to the liquidity management compartment, as set out in step 4 of point 1 of the Annex at the cost of funding of the relevant time compartment on that day.
3. Any amount corresponding to the negative amount referred to in paragraph 1 ('liquidity deficit') shall be on a daily basis attributed from the liquidity management compartment to the time compartment, as set out in step 6 of point 1 of the Annex, at the cost of funding of the liquidity management compartment on that day.

*SECTION 2****Calculation of costs of funding and of costs of liquidity management****Article 7***Calculation of cost of funding of a time compartment**

1. Costs of funding shall be calculated on a daily basis.
2. Cost of funding of a funding instrument shall comprise the daily interest in relation to each funding instrument and a potential agio/disagio based on the all-in issuance price.
3. The daily cost of funding of the time compartment shall comprise the daily cost of funding of the funding instruments attributed to the time compartment after the results of the application of Article 6(2) and (3).

*Article 8***Calculation of cost of liquidity management**

1. The cost of liquidity management shall be the sum of cost of carry in the liquidity management compartment, as set out in point 2 of the Annex.
2. The cost of carry shall be the difference between the interest accrued under the relevant funding instruments of the liquidity management compartment, the costs and returns resulting from the levelling of any liquidity surpluses or liquidity deficits referred to in Article 6(2) and (3), and the return on investment generated by the holdings.
3. The costs of liquidity management shall be calculated on a daily basis.

*Article 9***Allocation of costs of liquidity management**

1. The costs of liquidity management shall be calculated as the sum of the daily costs of liquidity management over a quarter. These costs shall be attributed to each disbursement on a pro rata basis of the relative share of the disbursement to total outstanding amounts of disbursements at the end of the quarter.
2. The cost of liquidity management shall be calculated based on the methodology and the steps set out in point 2 of the Annex.

*Article 10***Attribution of cost of funding to a disbursement**

1. The disbursements of the same time compartment shall bear the same average daily cost of funding until their repayment.
2. For each outstanding disbursement, the daily cost of funding shall be calculated by multiplying the total cost of funding of the compartment after application of Article 6(2) and (3) with the disbursement amount divided by the total outstanding amounts of disbursements of the time compartment to which the disbursement is attributed.

CHAPTER 3

COST OF SERVICE FOR ADMINISTRATIVE OVERHEADS*Article 11***Cost of service for administrative overheads**

The cost of service for administrative overheads shall comprise recurring administrative costs for beneficiaries and set-up costs for RRF loans. They shall be calculated in accordance with point 3 of the Annex.

*Article 12***Recurring administrative costs**

1. Recurring administrative costs shall comprise any costs incurred by the Commission in the execution of the borrowing and debt management operations, comprised of the following types: legal fees such as those incurred for legal opinions, account management recurring costs, costs for external audit, auction platform maintenance fees, rating agency fees, listing, taxes, registration, publication and settlement fees, information-technology, market related research expenses, and contractual agent fees related to the implementation of the diversified funding strategy.
2. To the extent that such costs are common to borrowing operations implemented for other financial assistance programmes, the costs included in the calculation shall be calculated based on the pro rata share attributed to borrowing and debt management operations in the relevant calendar year.
3. Recurring administrative costs shall be calculated for each disbursement received under each loan agreement on a pro rata basis of the disbursement to the total amounts of disbursements at the end of the calendar year.

*Article 13***Set-up costs for RRF loans**

1. Set-up costs for RRF loans shall comprise any costs incurred by the Commission in building the capacity for conducting NGEU borrowing, debt management and payment management operations. They include costs related to the establishment of NGEU accounts, the establishment of an auction platform, an investor management tool, other information-technology costs and market related research and consulting fees.
2. Member States who sign RRF loan agreements shall bear 48 % of the total set up costs.
3. In 2021, 2022 and 2023, the Member States shall pay the set-up costs referred to in paragraph 1 on a pro rata basis of the amount of loan under the signed RRF loan agreement to the total amount of loans under all signed RRF loan agreements, as set out in point 3(2)(a) and 3(2)(b) of the Annex.
4. By 30 June 2024, any unallocated set-up costs to Member States who have signed RRF loan agreements shall be allocated on a pro rata basis to the amount of loans signed under each RRF loan agreement to the total amounts of loans under all signed RRF loan agreements until 31 December 2023, as set out in point 3(2)(c) of the Annex.
5. No additional set-up costs for borrowing operations shall be due after the end of the year 2023 or allocated to CAM programmes, unless they fall within the scope of Article 5(1) of Decision (EU, Euratom) 2020/2053.

CHAPTER 4

INVOICING*Article 14***Confirmation notice**

1. In relation to each disbursement, a confirmation notice shall be established which contains the terms giving rise to the cost claim from the Commission.
2. The confirmation notice shall determine terms for cost of funding payment and principal repayment to be repaid from the Union's budget under Article 5(1) first subparagraph of Decision (EU, Euratom) 2020/2053 for non-repayable support and by the beneficiaries of loan agreements.
3. The confirmation notice shall contain the following elements:
 - (a) the amount of the disbursement,
 - (b) the maturity,
 - (c) the repayment schedule,
 - (d) the attribution of the disbursement to a time compartment,
 - (e) interest period indicating the payment date.
4. The confirmation notice for loans shall also contain additional elements indicated in the loan agreements.

*Article 15***Invoicing of costs of funding**

1. The cost of funding shall be calculated in relation to each disbursement at the end of the interest period determined in the confirmation notice.

2. The invoicing shall take place at the end of the interest period determined in the confirmation notice. In relation to disbursements as external assigned revenue under Article 3(1) of Regulation (EU) 2020/2094 and to disbursements under the MFA+ instrument, in case Ukraine requests subsidisation of related costs, the invoices may be grouped per quarter of the year.

Article 16

Invoicing of cost of liquidity management

The cost of liquidity management shall be invoiced at the beginning of each calendar year for cost incurred during the previous calendar year.

Article 17

Invoicing of cost of service for administrative overheads

Beneficiaries of loans shall be invoiced at the beginning of each calendar year for cost of service for administrative overheads incurred during the previous calendar year, with respect to aggregate costs allocated under article 11.

Payments by beneficiaries for the costs of service shall constitute internal assigned revenue within the meaning of Article 21(3)(a) of the Financial Regulation.

Article 18

Repeal

Decision (EU) 2021/1095 is repealed.

References to the repealed decision shall be construed as references to this Decision.

Article 19

Entry into force

The decision enters into force the day following its publication in the *Official Journal of the European Union*.

Done at Brussels, 19 December 2022.

For the Commission
The President
Ursula VON DER LEYEN

ANNEX

1. Calculation of the cost of funding

The cost of funding shall be calculated in the following steps:

Step 1: Calculation of the daily total costs of an individual funding instrument in a time compartment or in liquidity management compartment

The daily accruals shall be calculated:

$$ACC_{daily} = (notional : 100) * coupon * (1 : days p.a.)$$

For each funding instrument, the agio/disagio shall be linearly distributed over the lifetime of the instrument:

$$agio/disagio_{daily} = (100 - issuance price) / (maturity date - issuance date)$$

where Issuance price = All-in Price (including bank fees)

For each funding instrument, the daily total costs shall be calculated:

$$CoF_{daily} \text{ daily per instrument} = ACC + agio/disagio_{daily}$$

Step 2: Calculation of the aggregate daily total costs of funding

For each time compartment (TC1-TC11), the daily total costs for the compartment before the levelling referred to in Article 5 shall be the sum of all daily total costs of each funding instrument attributed to the time compartment:

$$CoF_{dailyTC(x)pre-levelling} = \sum CoF_{daily} \text{ per instrument allocated to the TC(x)}$$

For the liquidity management compartment the Cost of Funding shall be:

$$CoF_{dailyLMCpre-levelling} = \sum CoF_{daily} \text{ per instrument allocated to the LMC}$$

Step 3: Calculation of the liquidity balances in the time compartments

The level of liquidity holdings shall be calculated on daily basis as follows:

$$Liquidity_{TC(x)} = Inflows [Issuance proceeds + Interest_{loans/grants} + Repayments_{loans/grants}] - Outflows [Disbursements + Coupons_{outstanding debt} + Debt Redemptions]$$

Step 4: Calculation of the cost of funding of funding instruments affected by liquidity surplus

This step identifies the part of the CoF of the time compartments with a liquidity surplus that can be attributed to the liquidity held in that compartment.

The costs of funding related to the funding instruments shall be calculated as follows:

$$\begin{aligned} CoF_{Liquidity\ surplus TC(surplus)} &= \\ CoF_{dailyTC(surplus)pre-levelling} * Liquidity_{TC(surplus)} : TC(surplus) &= \\ CoF_{dailyTC(surplus)post-levelling} &= CoF_{dailyTC(surplus)pre-levelling} - CoF_{Liquidity\ surplus TC(surplus)} \end{aligned}$$

Step 5: Calculation of the cost of liquidity management compartment in case cost of funding are attributed to it from the time compartment with liquidity surplus

In case the liquidity management compartment receives surplus from the time compartment, the cost of liquidity management compartment shall be calculated as follows:

$$CoF_{dailyLMCpost-levelling} = CoF_{dailyLMCpre-levelling} + \sum CoF_{Liquidity\ surplus TC(surplus)}$$

Step 6: Calculation of the cost of funding of the time compartment with liquidity deficit

Any liquidity deficit in a time compartment is levelled with a transfer of liquidity from the liquidity management compartment at its daily costs of funding (Step 5).

For time compartments with a positive liquidity balance, the post-levelling cost of funding already result from Step 4 above.

$$\begin{aligned} CoF_{Liquidity\ transfer\ from\ LMC} &= CoF_{dailyLMCpost-levelling} * Transfer\ amount: LMC \\ CoF_{dailyTC(deficit)post-levelling} &= CoF_{dailyTC(deficit)pre-levelling} + CoF_{Liquidity\ transfer\ from\ LMC} \end{aligned}$$

While the cost of funding may vary between six-month time compartments because of differences in funding conditions beyond the control of the Commission, the Commission shall manage borrowing and debt management operations in order to ensure that each time-compartment bears similar maturity profiles to the greatest extent possible.

Step 7: Calculation of the daily cost of funding of a disbursement

The daily cost of funding of disbursement shall be the amount of the disbursement multiplied by the relative share of the disbursement in relation to the time compartment to which it is allocated.

CoF of disbursement in TC(x) =

$$\text{CoF}_{\text{dailyTC}(x)\text{post-levelling}} * \text{outstand amount of disbursement: } \sum \text{outstanding disbursements in TC}(x)$$

2. Calculation of Cost of Liquidity Management

The costs of liquidity management per disbursement shall be calculated as the sum of the daily costs of the liquidity management compartment holding after the levelling of liquidity balances of the time compartments over the calculation period. Any returns (or costs in case of negative rates) shall be deducted as follows:

$$\text{LIQM}_{\text{quarter}} = \sum \text{CoF}_{\text{dailyLMCpost-levelling}} \text{ over the quarter} - \text{RoI of liquidity holdings}_{\text{quarter}}$$

The LIQM shall be attributed to each disbursement as follows:

LIQM of disbursement =

$$\text{LIQM}_{\text{quarter}} *$$

$$\sum \text{outstanding disbursement}_{\text{end of quarter}} : \sum \text{outstanding disbursements}_{\text{end of quarter}}$$

3. Calculation of Cost of Service for administrative overheads

3.1. Calculation of recurring administrative costs

Recurring administrative costs shall be calculated as follows:

$$\text{annual recurring administrative costs}_{\text{total}} = \sum \text{recurring administrative cost items for calendar year}$$

Recurring administrative costs shall be allocated as follows:

$$\text{annual recurring administrative costs}_{\text{per beneficiary}} = \text{annual recurring administrative costs}_{\text{total}} *$$

$$\sum \text{disbursement outstanding towards beneficiary}_{\text{end of year}} : \sum \text{outstanding disbursements}_{\text{end of year}}$$

3.2. Calculation and allocation of set-up costs

The set-up costs per beneficiary of RRF loans shall be calculated in the following two steps:

(a) The set-up costs for RRF loans shall be calculated as follows:

$$\text{set-up costs}_{\text{for RRF loans}} = 48 \% * \sum \text{set-up cost items}$$

(b) The set-up costs for RRF loans shall be allocated for the years 2021, 2022 and 2023 to each Member State having signed an RRF loan agreement as follows:

$$\text{set-up costs}_{\text{per RRF loan signed}} = \text{set-up costs}_{\text{for RRF loans}} *$$

$$\text{amount of loan signed per Member State}_{\text{end of year}} : \text{total maximum amount of RRF loans}$$

(c) As of 1 January 2024, any unallocated set-up costs shall be calculated as follows:

$$\text{unallocated set-up cost for RRF loans} = \text{set-up costs}_{\text{for RRF loans}} - \sum \text{allocated set-up cost items to RRF loans}_{\text{in 2021, 2022 and 2023}}$$

They shall be allocated as additional set-up costs to disbursements to Member States under RRF loan agreement as follows:

additional set-up costs_{per beneficiary} = unallocated set-up cost for RRF loans_{end 2023}*

$\sum$ amounts of loan signed per beneficiary_{end 2023}: total amount of loans under signed RRF loan agreements_{end 2023}

3.3. Calculation of Cost of Service per beneficiary

$CoS_{Annual} = \sum \text{Recurring administrative cost items} + \sum \text{Set-up administrative cost items}$

4. Glossary of acronyms

ACC _{daily}	Accrued interest costs broken down by day
(ACC) daily	Daily accruals of an individual funding instrument
agio/disagio _{daily}	agio or disagio broken down by day
Beneficiary	Member State or a third country that is a party to a loan agreement under a CAM programme, or the Union budget for non-repayable support under Article 5(1) of Decision (EU, Euratom) 2020/2053
CoF of an individual claim in TC(x)	CoF of a claim in time compartment X
CoF _{daily per instrument}	CoF per day per funding instrument
CoF _{dailyLMCpost-levelling}	CoF per day for the LMC after the levelling
CoF _{dailyLMCpre-levelling}	CoF per day for the LMC before the levelling
CoF _{dailyTC(deficit)post-levelling}	CoF per day after the levelling for the compartments with an initial liquidity deficit
CoF _{dailyTC(surplus)post-levelling}	CoF per day after the levelling for the compartments with an initial liquidity surplus
CoF _{dailyTC(x)pre-levelling}	CoF per day before the levelling of compartment X
CoF _{Liquidity surplusTC(surplus)}	CoF per day related to the liquidity surplus in the time compartment
CoF _{Liquidity transfer from LMC}	CoF per day related to the liquidity that is transferred to the LMC
CoS _{Annual}	Sum of administrative cost of service during the calendar year
Coupon	Interests paid by the issuer on the bond
Liquidity _{TC(x)}	Amount of liquidity in the time compartment X. Surplus or deficit is indicated following Step 3
LMC Costs _{quarter}	Costs of the liquidity management over a quarter
notional	Nominal amount
RoI of liquidity holdings _{quarter}	Return on investment of the liquidity holdings over a quarter
TC(x)	Total sum of claims and liquidity of time compartment X

DECISION (EU) 2022/2546 OF THE EUROPEAN CENTRAL BANK
of 16 December 2022
amending Decision ECB/2010/29 on the issue of euro banknotes (ECB/2022/46)

THE GOVERNING COUNCIL OF THE EUROPEAN CENTRAL BANK,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 128(1) thereof,

Having regard to the Statute of the European System of Central Banks and of the European Central Bank, and in particular Article 16 thereof,

Whereas:

- (1) Pursuant to Article 1 of Council Decision (EU) 2022/1211 ⁽¹⁾, in accordance with Article 140(2) of the Treaty on the Functioning of the European Union (TFEU), Croatia fulfils the necessary conditions for the adoption of the euro and the derogation in favour of Croatia referred to in Article 5 of the 2012 Act of Accession ⁽²⁾ will be abrogated with effect from 1 January 2023.
- (2) Article 1(d) of Decision ECB/2010/29 of the European Central Bank ⁽³⁾ defines the 'banknote allocation key' and refers to Annex I to that Decision, which specifies the banknote allocation key applying since 1 February 2020. Given that Croatia will adopt the euro on 1 January 2023 new capital key weightings will apply from that date, Decision ECB/2010/29 needs to be amended in order to determine the banknote allocation key applying from 1 January 2023,

HAS ADOPTED THIS DECISION:

Article 1

Amendments

Decision ECB/2010/29 is amended as follows:

- (1) the final sentence of Article 1(d) is replaced by the following:
'Annex I to this Decision specifies the banknote allocation key that shall apply from 1 January 2023.';
- (2) Annex I is replaced by the Annex to this Decision.

Article 2

Entry into force

This Decision shall enter into force on 1 January 2023.

Done at Frankfurt am Main, 16 December 2022.

The President of the ECB
Christine LAGARDE

⁽¹⁾ Council Decision (EU) 2022/1211 of 12 July 2022 on the adoption by Croatia of the euro on 1 January 2023 (OJ L 187, 14.7.2022, p. 31).

⁽²⁾ Act concerning the conditions of accession of the Republic of Croatia and the adjustments to the Treaty on European Union, the Treaty on the Functioning of the European Union and the Treaty establishing the European Atomic Energy Community (OJ L 112, 24.4.2012, p. 21).

⁽³⁾ Decision ECB/2010/29 of the European Central Bank of 13 December 2010 on the issue of euro banknotes (OJ L 35, 9.2.2011, p. 26).

ANNEX

‘ANNEX I

BANKNOTE ALLOCATION KEY FROM 1 JANUARY 2023

	%
European Central Bank	8,0000
Nationale Bank van België/Banque Nationale de Belgique	3,3250
Deutsche Bundesbank	24,0575
Eesti Pank	0,2570
Central Bank of Ireland	1,5455
Bank of Greece	2,2575
Banco de España	10,8825
Banque de France	18,6390
Hrvatska narodna banka	0,7400
Banca d'Italia	15,5035
Central Bank of Cyprus	0,1965
Latvijas Banka	0,3555
Lietuvos bankas	0,5280
Banque centrale du Luxembourg	0,3005
Central Bank of Malta	0,0960
De Nederlandsche Bank	5,3480
Oesterreichische Nationalbank	2,6710
Banco de Portugal	2,1360
Banka Slovenije	0,4395
Národná banka Slovenska	1,0450
Suomen Pankki	1,6765
TOTAL	100,0000'

RECOMMENDATIONS

COUNCIL RECOMMENDATION (EU) 2022/2547

of 13 December 2022

amending Recommendation (EU) 2022/107 on a coordinated approach to facilitate safe free movement during the COVID-19 pandemic

(Text with EEA relevance)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 21(2), Article 168(6) and Article 292, first and second sentence thereof,

Having regard to the proposal from the European Commission,

Whereas:

- (1) On 25 January 2022, the Council adopted Recommendation (EU) 2022/107 ⁽¹⁾. Recommendation (EU) 2022/107 follows a ‘person-based’ approach regarding restrictions to free movement linked to the COVID-19 pandemic, by providing that a person who is in the possession of a valid certificate issued on the basis of Regulation (EU) 2021/953 of the European Parliament and the Council ⁽²⁾ (‘EU Digital COVID Certificate’) should in principle not be subject to additional restrictions, such as tests or quarantine, regardless of their place of departure in the Union. Persons who are not in possession of a valid EU Digital COVID Certificate could be required to undergo a test prior to or no later than 24 hours after arrival. Recommendation (EU) 2022/107 also adapted the methodology of the traffic light map indicating the epidemiological situation at regional level across the Union established by Council Recommendation (EU) 2020/1475 ⁽³⁾ and published weekly by the European Centre for Disease Prevention and Control.
- (2) On 25 November 2021, when the Commission adopted its proposal ⁽⁴⁾ for what would become Recommendation (EU) 2022/107, the epidemiological situation concerning the COVID-19 pandemic was significantly different from today. At that point in time, the Delta variant of concern was still prevalent in the Union. More than ten months later, the highly transmissible Omicron variant has – in the form of different sub-variants – become the dominant variant in the Union.
- (3) Omicron is less severe than the previously observed Delta variant, which can be attributed at least partially to the protective effect of vaccination and previous infection ⁽⁵⁾. As a result, and in combination with higher levels of protection resulting from vaccination and prior infection, pressure on healthcare systems currently remains at manageable levels, even during momentary peaks of infections such as the wave driven by the Omicron BA.4 and BA.5 sub-variants observed during the summer of 2022.
- (4) Any free movement restrictions put in place in response to the COVID-19 pandemic are not to extend beyond what is strictly necessary to safeguard public health. As noted in points 1 and 2 of Recommendation (EU) 2022/107, any such restrictions should, in accordance with the principles of necessity and proportionality, be lifted as soon as the epidemiological situation allows. By August 2022, all Member States had lifted all measures affecting free movement of persons in the Union, including the requirement for travellers to hold an EU Digital COVID Certificate.

⁽¹⁾ Council Recommendation (EU) 2022/107 of 25 January 2022 on a coordinated approach to facilitate safe free movement during the COVID-19 pandemic and replacing Recommendation (EU) 2020/1475 (OJ L 18, 27.1.2022, p. 110).

⁽²⁾ Regulation (EU) 2021/953 of the European Parliament and of the Council of 14 June 2021 on a framework for the issuance, verification and acceptance of interoperable COVID-19 vaccination, test and recovery certificates (EU Digital COVID Certificate) to facilitate free movement during the COVID-19 pandemic (OJ L 211, 15.6.2021, p. 1).

⁽³⁾ Council Recommendation (EU) 2020/1475 of 13 October 2020 on a coordinated approach to the restriction of free movement in response to the COVID-19 pandemic (OJ L 337, 14.10.2020, p. 3).

⁽⁴⁾ Proposal for a Council Recommendation on a coordinated approach to facilitate safe free movement during the COVID-19 pandemic and replacing Recommendation (EU) 2020/1475 (COM(2021) 749 final).

⁽⁵⁾ <https://www.ecdc.europa.eu/en/covid-19/latest-evidence/clinical>

- (5) Therefore the approach set out in Recommendation (EU) 2022/107 should be adapted. In particular, that Recommendation should be amended to provide that Member States should in principle not impose any pandemic-related restrictions to the free movement of persons on the grounds of public health. The summer wave of 2022 exemplifies how high virus circulation, following the emergence of a new variant of concern, does not necessarily lead to substantial pressure on national healthcare systems. This highlights the importance of a prudent approach when considering the introduction of restrictions to the free movement of persons based on the number of cases or on the presence of a new variant.
- (6) At the same time, the global COVID-19 pandemic is not over. New waves of infections that could cause the epidemiological situation to worsen, including as a result of the emergence of a new variant of concern or interest, cannot be excluded. It is thus important to continue coordinating preparedness efforts across the Union. As part of these efforts, on 29 June 2022, the European Parliament and the Council extended the period of application of Regulation (EU) 2021/953 on the EU Digital COVID Certificate until 30 June 2023.
- (7) The extension of the EU Digital COVID Certificate framework ensures that Union citizens can continue to benefit from interoperable and mutually accepted certificates of COVID-19 vaccination, test and recovery, in situations where Member States might consider it necessary to temporarily reintroduce certain restrictions to free movement based on public health. At the same time, it is important to underline that Regulation (EU) 2021/953 in no way obliges Member States to require proof of vaccination, test or recovery status in the context of the exercise of free movement.
- (8) Where, in response to a severe worsening of the epidemiological situation, a Member State considers that free movement restrictions are nevertheless necessary to safeguard public health and proportionate, those restrictions should be limited to requiring travellers to be in the possession of a valid EU Digital COVID Certificate. In particular, persons travelling within the Union who are in the possession of a valid EU Digital COVID Certificate should, in such situations, not be required to undergo quarantine, self-isolation or additional testing. To determine whether a situation should be qualified as a severe worsening of the epidemiological situation, Member States should in particular take into account the strain on their healthcare system due to COVID-19, notably in terms of admissions and number of hospital and intensive-care unit inpatients, the severity of circulating SARS-CoV-2 variants, as well as the information provided by the European Centre for Disease Prevention and Control as to the development of the epidemiological situation. In this context, the European Centre for Disease Prevention and Control publishes relevant data on the development of the epidemiological situation.
- (9) Member States should also assess whether such restrictions are likely to have a positive impact on the epidemiological situation, including a significant decrease in the strain placed on national healthcare systems, given that domestic factors are normally more powerful drivers of the epidemiological situation than cross-border travel. In such situations, domestic non-pharmaceutical interventions, such as mask-wearing, ventilation and physical distancing, rather than travel restrictions, may be effective in slowing down the spread of COVID-19, if implemented early and comprehensively and sufficiently put into practice by society ⁽⁶⁾.
- (10) When it comes to the possible requirement to be in the possession of a valid EU Digital COVID Certificate, the amendments to Regulation (EU) 2021/953 introduced by Regulation (EU) 2022/1034 of the European Parliament and of the Council ⁽⁷⁾ should be reflected in Recommendation (EU) 2022/107. First, it should be mentioned that EU Digital COVID Certificates issued to persons participating in clinical trials for COVID-19 vaccines may be accepted by other Member States in order to waive restrictions to free movement. To facilitate the exercise of free movement

⁽⁶⁾ See also Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on COVID-19 – Sustaining EU preparedness and response: Looking ahead (COM(2022) 190 final).

⁽⁷⁾ Regulation (EU) 2022/1034 of the European Parliament and of the Council of 29 June 2022 amending Regulation (EU) 2021/953 on a framework for the issuance, verification and acceptance of interoperable COVID-19 vaccination, test and recovery certificates (EU Digital COVID Certificate) to facilitate free movement during the COVID-19 pandemic (OJ L 173, 30.6.2022, p. 37).

of Union citizens who have received a COVID-19 vaccine that has completed the WHO emergency use listing procedure, Member States are also recommended to accept EU Digital COVID Certificates issued following the administration of such vaccines. In addition, test and recovery certificates can now be issued on the basis of laboratory-based antigenic assays.

- (11) Given their specific situation or essential function, certain categories of travellers should be exempted from a possible requirement to be in the possession of an EU Digital COVID Certificate, when exercising this essential function. In light of the current security situation, it is important that this list expressly includes diplomats, staff of international organisations, people invited by international organisations, military personnel, humanitarian aid workers and civil protection personnel. The list should also include persons covered by Article 2 of Council Implementing Decision (EU) 2022/382 ⁽⁸⁾ and be consistent with Council Recommendation (EU) 2022/2548 ⁽⁹⁾. At the same time, this should not prevent Member States from offering vaccination and testing to these categories of persons.
- (12) To be able to react quickly to newly emerging SARS-CoV-2 variants, the 'emergency brake', that is to say, the possibility to take other measures in addition to the EU Digital COVID Certificate, should be maintained. This 'emergency brake' procedure could be used in response to the emergence of a new SARS-CoV-2 variant of concern or interest, with the aim of slowing down its spread by means of travel restrictions, buying time to mobilise surge hospital capacity, and triggering vaccine development. It could also be used in situations where the epidemiological situation worsens rapidly and severely in a way that suggests the emergence of a new SARS-CoV-2 variant of concern or interest.
- (13) Where a Member State introduces a requirement to present a valid EU Digital COVID Certificate, or where it takes additional measures in accordance with the emergency brake procedure, it should swiftly inform the Commission and other Member States accordingly through the Integrated Political Crisis Response ('IPCR') network, and provide information as to the reasons, expected impact, entry into force and duration of any such travel restrictions. This should include information as to why the introduction of such travel restrictions complies with the principles of necessity and proportionality, for example because of the particular geographical situation of the Member State concerned or the particular vulnerabilities of its national healthcare system. This should also serve to ensure consistency with the rules on travel from third countries. To ensure effective coordination at Union level, the IPCR network should swiftly convene to review the situation if a Member State triggers the emergency brake.
- (14) To obtain timely, relevant and representative information on the emergence and circulation of SARS-CoV-2 variants of concern or interest, Member States should assess the circulation of different SARS-CoV-2 variants in the community by selecting representative samples for sequencing, carry out genetic characterisation and report variant typing results in line with the sequencing guidance published by the European Centre for Disease Prevention and Control ⁽¹⁰⁾.
- (15) It also remains important to ensure that information on any new measures is publicly available as early as possible. Indeed, as noted by the Commission in its Communication of 2 September 2022 ⁽¹¹⁾, Member States should do their utmost to ensure that potential travellers are well-informed about possible travel restrictions they may face when entering another Member State. The Re-Open EU web platform remains a key point of reference for anyone travelling in the Union.

⁽⁸⁾ Council Implementing Decision (EU) 2022/382 of 4 March 2022 establishing the existence of a mass influx of displaced persons from Ukraine within the meaning of Article 5 of Directive 2001/55/EC, and having the effect of introducing temporary protection (OJ L 71, 4.3.2022, p. 1).

⁽⁹⁾ Council Recommendation (EU) 2022/2548 of 13 December 2022 on a coordinated approach to travel to the Union during the COVID-19 pandemic and replacing Council Recommendation (EU) 2020/912 (see page 146 of this Official Journal).

⁽¹⁰⁾ <https://www.ecdc.europa.eu/en/publications-data/methods-detection-and-characterisation-sars-cov-2-variants-second-update>

⁽¹¹⁾ Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions – EU response to COVID-19: preparing for autumn and winter 2023 (COM(2022) 452 final).

- (16) It is appropriate to discontinue the traffic light map published by the European Centre for Disease Prevention and Control since the adoption of Recommendation (EU) 2020/1475 in October 2020. In view of epidemiological developments, the methodology of the map was adapted multiple times. Its latest iteration, using the 14-day notification rate weighted by vaccine uptake, was based on experiences with the Delta variant. However, the high infection numbers caused by the Omicron variant resulted in large parts of the map being marked in 'dark red', despite all Member States having lifted their free movement restrictions. In addition, as Member States adapted their testing regimes, multiple regions appeared in 'dark grey' due to reported testing rates having fallen below the threshold established by Recommendation (EU) 2022/107. This shift of testing strategies towards representative samples of the population will not change in the foreseeable future. As a result, the traffic light map had become an inadequate depiction of the epidemiological situation in the Union. Following discussions with the Member States and the Commission, the European Centre for Disease Prevention and Control already temporarily suspended the publication of the map in July 2022.
- (17) Consequently, the references to specific additional measures for persons travelling from 'dark red' areas should be removed from Recommendation (EU) 2022/107 together with the traffic light map.
- (18) The mandatory submission of passenger locator forms ('PLF') in the context of intra-EU travel for contact-tracing purposes constitutes an additional requirement for the exercise of free movement. Such a requirement is thus justified only if necessary and proportionate. In particular, Member States should not require travellers using private transport, be it cars, bikes or on foot, to submit PLF. This is because their exposure is necessarily less intensive than in the case of public transport and because they will typically know the identities of their fellow travelling companions.
- (19) At the same time, should Member States wish to activate contact-tracing of cross-border passengers, common tools, such as the EU digital Passenger Locator Form and Early Warning and Response System selective exchange module, are available to exchange passenger data to enhance their contact-tracing capabilities while limiting burdens on passengers and transport operators. To avoid the need for the submission of PLF, Member States could, where possible under national law and in compliance with data protection rules, also consider using existing passenger data for the purposes of contact-tracing.
- (20) The Commission, with the support of the European Centre for Disease Prevention and Control, should continue its regular review of Recommendation (EU) 2022/107, and transmit its findings to the Council for its consideration, together with a proposal to amend that Recommendation, where necessary,

HAS ADOPTED THIS RECOMMENDATION:

Recommendation (EU) 2022/107 is amended as follows:

- (1) the heading 'Coordinated framework to facilitate safe free movement during the COVID-19 pandemic' after point 10 is replaced by the following:
- 'Coordinated framework on free movement during the COVID-19 pandemic';
- (2) point 11 is replaced by the following:
- '11. Member States should not impose any pandemic-related restrictions on the right to free movement of persons on grounds of public health except in the situations covered by points 11a and 22.';
- (3) the following points 11a, 11b and 11c are inserted:
- '11a. Without prejudice to the emergency brake procedure set out in point 22, a Member State should introduce pandemic-related restrictions on the right to free movement of persons on grounds of public health only in accordance with the general principles set out in points 1 to 10 and in response to a severe worsening of the epidemiological situation.

To determine whether a situation should, for the purposes of the first subparagraph, be qualified as severely worsening, Member States should take into account, in particular, the strain on their healthcare systems due to COVID-19, notably in terms of admissions and number of hospital and intensive-care unit inpatients, the severity of circulating SARS-CoV-2 variants, as well as the information regularly provided by the European Centre for Disease Prevention and Control as to the development of the epidemiological situation.

Before introducing such restrictions, the Member State concerned should assess whether they are likely to have a positive impact on the epidemiological situation, including a significant decrease in the strain placed on national healthcare systems.

- 11b. If a Member State imposes restrictions pursuant to point 11a, travellers should only be required to be in the possession of a valid EU Digital COVID Certificate issued pursuant to Regulation (EU) 2021/953 meeting the conditions of point 12.

In this context, the following derogations should apply:

- (a) the exemptions from the need to be in the possession of a valid EU Digital COVID Certificate set out in point 16;
 - (b) additional measures taken in accordance with the emergency brake procedure set out in point 22 to delay the spread of new SARS CoV-2 variants of concern or interest.
- 11c. If a Member State imposes restrictions pursuant to point 11a, it should swiftly inform the Commission and the other Member States accordingly through the Integrated Political Crisis Response (IPCR) network. To that end, the Member State should provide the following information:
- (a) the reasons for such a requirement, including its compliance with the principles of necessity and proportionality;
 - (b) an estimate of the expected impact of such a requirement on the epidemiological situation;
 - (c) the entry into force, date of review where relevant, and planned duration of such a requirement.

In addition, such restrictions should be discussed within the IPCR network, including with a view to ensuring consistency with Recommendation (EU) 2022/2548.’

- (4) point 12 is replaced by the following:

‘12. The following EU Digital COVID Certificates should be accepted if their authenticity, validity and integrity can be verified:

- (a) vaccination certificates issued in accordance with Regulation (EU) 2021/953 for a COVID-19 vaccine covered by Article 5(5), first subparagraph, of that Regulation or a COVID-19 vaccine that has completed the WHO emergency use listing procedure and which indicate that the holder has:

- completed the primary vaccination series and at least 14 days have passed since the last dose; or
- received one or more booster doses following the completion of the primary vaccination series;

provided that the acceptance period set out in Regulation (EU) 2021/953 has not yet elapsed.

Member States could also accept vaccination certificates issued for other COVID-19 vaccines covered by Article 5(5), second subparagraph, of Regulation (EU) 2021/953 or vaccination certificates issued pursuant to Article 5(5), fourth subparagraph, of Regulation (EU) 2021/953.

On the basis of further scientific evidence, the Commission should regularly re-evaluate the approach set out in point (a).

(b) test certificates issued in accordance with Regulation (EU) 2021/953 indicating a negative test result obtained:

- not more than 72 hours before departure, in case of a molecular nucleic acid amplification test (NAAT); or
- not more than 24 hours before departure, in case of an antigen test listed in the EU common list of COVID-19 antigen tests agreed by the Health Security Committee ⁽¹²⁾.

For the purpose of travel in exercise of free movement rights, Member States should accept both types of tests.

Member States should seek to ensure that test certificates are issued as soon as possible after the collection of the test sample.

(c) certificates of recovery issued in accordance with Regulation (EU) 2021/953 provided that the validity period in line with that Regulation has not yet elapsed.’;

(5) point 15 is replaced by the following:

‘15. If a Member State introduces a requirement to be in the possession of a valid EU Digital COVID Certificate, persons not having it in their possession could be required to undergo an NAAT or antigen test listed in the EU common list of COVID-19 antigen tests prior to or no later than 24 hours after arrival. This does not apply to persons exempted from holding an EU Digital COVID Certificate in accordance with point 16.’;

(6) in point 16, point (a) is replaced by the following:

‘(a) the following categories of travellers with an essential function or need, when exercising this essential function or need:

- transport workers or transport service providers, including drivers and crew of freight vehicles carrying goods for use in the territory as well as those merely transiting;
- healthcare professionals, health researchers, and elderly care professionals;
- passengers travelling for imperative medical or family reasons;
- diplomats, staff of international organisations, people invited by international organisations, military personnel, humanitarian aid workers, civil protection personnel and persons covered by Article 2 of Council Implementing Decision (EU) 2022/382 ⁽¹³⁾;
- passengers in transit;
- seafarers;
- persons working on critical or otherwise essential infrastructures.’;

(7) the heading ‘EU traffic light map and exceptions and additional measures based thereon’ after point 16 is deleted;

(8) points 17, 18 and 19 are deleted;

(9) in point 20, the second subparagraph is replaced by the following:

‘To support Member States, the European Centre for Disease Prevention and Control should continue to publish information and data on SARS-CoV-2 variants of concern or interest.’;

(10) points 21, 22 and 23 are replaced by the following:

‘21. Member States should assess the circulation of different SARS-CoV-2 variants in the community by selecting representative samples for sequencing, carry out genetic characterisation and report variant typing results in line with the sequencing guidance published by the European Centre for Disease Prevention and Control.

⁽¹²⁾ Available at: https://ec.europa.eu/info/live-work-travel-eu/coronavirus-response/public-health/high-quality-covid-19-testing_en

⁽¹³⁾ Council Implementing Decision (EU) 2022/382 of 4 March 2022 establishing the existence of a mass influx of displaced persons from Ukraine within the meaning of Article 5 of Directive 2001/55/EC, and having the effect of introducing temporary protection (OJ L 71, 4.3.2022, p. 1).

22. Where, in response to the emergence of a new SARS-CoV-2 variant of concern or interest, a Member State requires travellers, including holders of EU Digital COVID Certificates, to undergo, after entry into its territory, quarantine or self-isolation or to be tested for SARS-CoV-2 infection, or if it imposes other restrictions on the holders of such certificates, it should, through the IPCR network, swiftly inform the Commission and the other Member States accordingly, including by providing the information referred to in point 11c of this Recommendation, and Article 11(2) of Regulation (EU) 2021/953. If possible, such information should be provided 48 hours in advance of the introduction of such new restrictions. Wherever possible, such measures should be limited to the regional level. Member States should privilege testing over other measures.

This should also apply to situations where the epidemiological situation worsens rapidly and severely in a way that suggests the emergence of a new SARS-CoV-2 variant of concern or interest.

23. Where a Member State triggers the emergency brake and, as a result, requires transport workers and transport service providers to undergo a test for COVID-19 infection, rapid antigen tests should be used and no quarantine be required, which should not lead to transport disruptions. Should transport or supply chain disruptions occur, Member States should lift or repeal any such systematic testing requirements immediately in order to preserve the functioning of the 'Green Lanes'. In addition, other types of travellers falling under points 16(a) and (b) should not be required to undergo quarantine or self-isolation.';

(11) point 24 is replaced by the following:

'Where a Member State considers triggering the emergency brake in response to the emergence of a new SARS-CoV-2 variant of concern or of interest, the IPCR network should be convened within the next 48 hours to discuss the necessity of coordinated measures across the EU to delay the spread of the new variant, in close cooperation with the Commission and supported by the European Centre for Disease Prevention and Control. During such a coordination meeting, the Member State concerned should outline why it considers triggering the emergency break. The measures discussed should be implemented by the Member States if appropriate in a coordinated manner.

The Commission, based on the regular assessment of new evidence on variants by the European Centre for Disease Prevention and Control, relevant public health discussions in the Health Security Committee and the analysis provided by the European expert group on SARS-CoV-2 variants, may also suggest a discussion within the Council on a new SARS-CoV-2 variant of concern or interest.';

(12) point 27 is replaced by the following:

- '27. Where, in the context of point 11a or 22, Member States require persons travelling to their territory by means of collective transport modes with pre-assigned seat or cabin to submit Passenger Locator Forms ('PLF') for contact-tracing purposes in accordance with data protection requirements, they are encouraged to make use of the EU digital Passenger Locator Form developed by the EU Healthy Gateways ⁽¹⁴⁾ and make use of the Early Warning and Response System (EWRS) selective exchange functionality, established by Article 8 of Decision No 1082/2013/EU of the European Parliament and of the Council ⁽¹⁵⁾, including any relevant structured information for crossborder contact-tracing. Member States should not require the submission of PLF for travel with private transport. Where possible under national law and in compliance with data protection rules, Member States could also consider using existing passenger data for the purposes of contact-tracing.';

(13) points 29 and 30 are replaced by the following:

- '29. In accordance with Article 11 of Regulation (EU) 2021/953, Member States should provide relevant stakeholders and the general public with clear, comprehensive and timely information about any measures affecting the right of free movement and any accompanying requirements, such as the need to submit a PLF. This includes information about the lifting or absence of such requirements. The information should also be published in a machine-readable format.

⁽¹⁴⁾ <https://www.euplf.eu/en/home/index.html>

⁽¹⁵⁾ Decision No 1082/2013/EU of the European Parliament and of the Council of 22 October 2013 on serious cross-border threats to health and repealing Decision No 2119/98/EC (OJ L 293, 5.11.2013, p. 1).

30. This information should be regularly updated by Member States and also be made available on the 'Re-Open EU' web platform in a timely manner. Member States should also provide, on 'Re-open EU', information on any domestic use of EU Digital COVID Certificates.

Information on any new measures should be published as early as possible and, as a general rule, at least 24 hours before they come into effect, taking into account that some flexibility is required for epidemiological emergencies.';

(14) the Annex is deleted.

Done at Brussels, 13 December 2022.

For the Council
The President
M. BEK

COUNCIL RECOMMENDATION (EU) 2022/2548**of 13 December 2022****on a coordinated approach to travel to the Union during the COVID-19 pandemic and replacing Council Recommendation (EU) 2020/912**

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 77(2), points (b) and (e) and Article 292, first and second sentence thereof,

Having regard to the proposal from the European Commission,

Whereas:

- (1) On 30 June 2020, the Council adopted Recommendation (EU) 2020/912 on the temporary restriction on non-essential travel into the EU and the possible lifting of such restriction ⁽¹⁾.
- (2) Since then, the increasing vaccination uptake worldwide, with vaccines that offer high levels of protection against severe disease cases and deaths, as well as the circulation of the Omicron BA.4 and BA.5 strains, which have been dominant worldwide since July 2022 and tend to cause less severe outcomes than the previous Delta variants, have led to a significant improvement of the epidemiological situation.
- (3) Therefore, in view of the current and expected epidemiological situation, it seems appropriate to recommend the removal of the restrictions on travels into the Union. All Member States and countries to whom the Schengen *acquis* applies have already repealed these restrictions over the summer.
- (4) Recommendation (EU) 2020/912 introduced, amongst others, in its Annex I, a list of those third countries, special administrative regions, and other entities and territorial authorities ('third countries or regions') meeting the epidemiological criteria set out in that Recommendation and from which the restriction on non-essential travel into the Union could be lifted. With the relaxation of the restrictions, that list is no longer needed and should, therefore, be repealed.
- (5) However, the SARS-CoV-2 virus is still circulating. Therefore, Member States should stand ready to act in a coordinated and proportionate manner in case the epidemiological situation deteriorates significantly, including due to the emergence of a new variant of concern or of interest.
- (6) In particular, where the epidemiological situation in a third country or region worsens significantly, Member States should, where necessary, limit non-essential travel with the exception of persons who have been vaccinated or recovered, or have been tested negatively by Nucleic Acid Amplification Test (NAAT) within 72 hours before their departure. This should not prevent Member States from taking additional measures upon arrival such as, for example, additional testing, self-isolation or quarantine.
- (7) Whenever a Member State introduces COVID-19-related restrictions in accordance with Council Recommendation 2022/107 ⁽²⁾, Member States should, within the Council structures and in close cooperation with the Commission, the European Centre for Disease Prevention and Control (ECDC) and the Health Security Committee, coordinate with a view to determining whether similar restrictions should be introduced regarding travel from third countries to Member States. Information on any new measures should be published as early as possible and, as a general rule, at least 48 hours before they come into effect, taking into account that some flexibility is required for epidemiological emergencies.

⁽¹⁾ Council Recommendation (EU) 2020/912 of 30 June 2020 on the temporary restriction on non-essential travel into the EU and the possible lifting of such restriction (OJ L 208 I, 1.7.2020, p. 1).

⁽²⁾ Council Recommendation (EU) 2022/107 of 25 January 2022 on a coordinated approach to facilitate safe free movement during the COVID-19 pandemic and replacing Recommendation (EU) 2020/1475 (OJ L 18, 27.1.2022, p. 110).

- (8) In this context, the EU Digital COVID certificate established by Regulations (EU) 2021/953 of the European Parliament and of the Council ⁽³⁾ and (EU) 2021/954 of the European Parliament and of the Council ⁽⁴⁾ should remain the point of reference for proving vaccination, recovery and testing. This should also cover certificates issued by third countries that are covered by an implementing decision adopted pursuant to Article 3(10) or Article 8(2) of Regulation (EU) 2021/953.
- (9) Furthermore, when a variant of concern or of interest emerges in a third country or region, Member States should continue to have the possibility to take, in a coordinated manner, urgent, time-limited and flexible measures in order to delay and prepare for the introduction of such a variant of concern or of interest.
- (10) This Recommendation should also provide for the necessary exemptions from restrictions on travel from third countries to the Member States. Persons travelling for an essential need or function should be allowed to travel to the Member States and other countries to whom the Schengen *acquis* applies also where the emergency brake applies. For this purpose, the list of essential travellers should be adapted to limit it to those persons who must be able to travel even in such situations.
- (11) Similarly, Union citizens and third-country nationals legally residing in the Union should always be able to return to their Member State of nationality or residence, but may be subject to measures upon arrival. Children under 12 years of age should not be required to be in the possession of a proof of vaccination, recovery or a test.
- (12) In accordance with Articles 1 and 2 of Protocol No 22 on the Position of Denmark annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union, Denmark is not taking part in the adoption of this Recommendation. Given that this Recommendation builds upon the Schengen *acquis*, Denmark should, in accordance with Article 4 of the said Protocol, decide within a period of six months after the Council has decided on this Recommendation whether it will implement it.
- (13) This Recommendation constitutes a development of the provisions of the Schengen *acquis* in which Ireland does not take part, in accordance with Council Decision 2002/192/EC ⁽⁵⁾. Ireland is therefore not taking part in its adoption and is not subject to its application.
- (14) As regards Iceland and Norway, this Recommendation constitutes a development of the provisions of the Schengen *acquis* within the meaning of the Agreement concluded by the Council of the European Union and the Republic of Iceland and the Kingdom of Norway concerning the latter's association with the implementation, application and development of the Schengen *acquis* ⁽⁶⁾ which fall within the area referred to in Article 1, point A, of Council Decision 1999/437/EC ⁽⁷⁾.

⁽³⁾ Regulation (EU) 2021/953 of the European Parliament and of the Council of 14 June 2021 on a framework for the issuance, verification and acceptance of interoperable COVID-19 vaccination, test and recovery certificates (EU Digital COVID Certificate) to facilitate free movement during the COVID-19 pandemic (OJ L 211, 15.6.2021, p. 1).

⁽⁴⁾ Regulation (EU) 2021/954 of the European Parliament and of the Council of 14 June 2021 on a framework for the issuance, verification and acceptance of interoperable COVID-19 vaccination, test and recovery certificates (EU Digital COVID Certificate) with regard to third-country nationals legally staying or residing in the territories of Member States during the COVID-19 pandemic (OJ L 211, 15.6.2021, p. 24).

⁽⁵⁾ Council Decision 2002/192/EC of 28 February 2002 concerning Ireland's request to take part in some of the provisions of the Schengen *acquis* (OJ L 64, 7.3.2002, p. 20).

⁽⁶⁾ OJ L 176, 10.7.1999, p. 36.

⁽⁷⁾ Council Decision 1999/437/EC of 17 May 1999 on certain arrangements for the application of the Agreement concluded by the Council of the European Union and the Republic of Iceland and the Kingdom of Norway concerning the association of those two States with the implementation, application and development of the Schengen *acquis* (OJ L 176, 10.7.1999, p. 31).

- (15) As regards Switzerland, this Recommendation constitutes a development of the provisions of the Schengen *acquis* within the meaning of the Agreement between the European Union, the European Community and the Swiss Confederation on the Swiss Confederation's association with the implementation, application and development of the Schengen *acquis* ⁽⁸⁾ which fall within the area referred to in Article 1, point A, of Decision 1999/437/EC read in conjunction with Article 3 of Council Decision 2008/146/EC ⁽⁹⁾.
- (16) As regards Liechtenstein, this Recommendation constitutes a development of provisions of the Schengen *acquis* within the meaning of the Protocol between the European Union, the European Community, the Swiss Confederation and the Principality of Liechtenstein on the accession of the Principality of Liechtenstein to the Agreement between the European Union, the European Community and the Swiss Confederation on the Swiss Confederation's association with the implementation, application and development of the Schengen *acquis* ⁽¹⁰⁾ which fall within the area referred to in Article 1 point A, of Decision 1999/437/EC read in conjunction with Article 3 of Council Decision 2011/350/EU ⁽¹¹⁾.
- (17) All Member States should, in the interest of the proper functioning of the Schengen area, decide on any reintroduction of restrictions on non-essential travel into the Union in a coordinated manner,

HAS ADOPTED THIS RECOMMENDATION:

Lifting of the restrictions on travels

- (1) As of 22 December 2022, all COVID-19 related restrictions for travellers to the Union should be lifted.

Requirements for travels in case of severe worsening of the epidemiological situation

- (2) Where necessary to address a severe worsening of the epidemiological situation, either in the Member States or in third countries, Member States, where necessary, should decide, in a coordinated manner in the Council and in close cooperation with the Commission, to reintroduce appropriate requirements for travellers prior to their departure. Such requirements could be one, or a combination of, the following:
- (a) having received at the latest 14 days before entering the Union, the last recommended dose of a primary vaccination series of one of the COVID-19 vaccines authorised in the Union pursuant to Regulation (EC) No 726/2004 of the European Parliament and of the Council ⁽¹²⁾ or of one of the COVID-19 vaccines having completed the WHO Emergency Use Listing process; where the traveller is aged 18 years or above, not more than 270 days are to have passed since the administration of the dose indicated in the vaccination certificate for the completion of the primary vaccination series or, after that period of 270 days, an additional dose must have been received following the completion of the primary vaccination series;

⁽⁸⁾ OJ L 53, 27.2.2008, p. 52.

⁽⁹⁾ Council Decision 2008/146/EC of 28 January 2008 on the conclusion, on behalf of the European Community, of the Agreement between the European Union, the European Community and the Swiss Confederation on the Swiss Confederation's association with the implementation, application and development of the Schengen *acquis* (OJ L 53, 27.2.2008, p. 1).

⁽¹⁰⁾ OJ L 160, 18.6.2011, p. 21.

⁽¹¹⁾ Council Decision 2011/350/EU of 7 March 2011 on the conclusion, on behalf of the European Union, of the Protocol between the European Union, the European Community, the Swiss Confederation and the Principality of Liechtenstein on the accession of the Principality of Liechtenstein to the Agreement between the European Union, the European Community and the Swiss Confederation on the Swiss Confederation's association with the implementation, application and development of the Schengen *acquis*, relating to the abolition of checks at internal borders and movement of persons (OJ L 160, 18.6.2011, p. 19).

⁽¹²⁾ Regulation (EC) No 726/2004 of the European Parliament and of the Council of 31 March 2004 laying down Community procedures for the authorisation and supervision of medicinal products for human and veterinary use and establishing a European Medicines Agency (OJ L 136, 30.4.2004, p. 1).

- (b) having recovered from COVID-19 not more than 180 days after the date of the first positive NAAT test result prior to travelling to the Member States;
 - (c) having tested negative to a Nucleic Acid Amplification Test (NAAT) taken not more than 72 hours before departure to the Member States;
- (3) To determine whether a situation should, for the purposes of the point 2, be qualified as severely worsening, Member States should take into account, in particular, the strain on their healthcare systems due to COVID-19, notably in terms of admissions to and number of hospital and intensive-care unit inpatients, the severity of circulating SARS-CoV-2 variants, as well as the information regularly provided by the European Centre for Disease Prevention and Control as to the development of the epidemiological situation.
- (4) Furthermore, if one or more Member States reintroduce restrictions based on Council Recommendation (EU) 2022/107 ⁽¹³⁾, regarding travel within the Union, Member States should discuss, in close cooperation with the Commission and the European Centre for Disease Prevention and Control established by Regulation (EC) No 851/2004 of the European Parliament and of the Council ⁽¹⁴⁾, whether similar restrictions should be introduced under this Recommendation regarding travel from third countries to Member States.
- (5) When restrictions have been reintroduced in accordance with points 2 or 4, travellers should be in possession of one or more of the following:
 - (a) a valid proof of vaccination issued on the basis of a COVID-19 vaccine authorised in the Union pursuant to Regulation (EC) No 726/2004;
 - (b) a valid proof of vaccination issued on the basis of COVID-19 vaccines that has completed the WHO Emergency Use Listing process but does not appear on the list of vaccines authorised in the Union pursuant to Regulation (EC) No 726/2004;
 - (c) a valid proof of recovery;
 - (d) a valid proof of a negative Nucleic Acid Amplification Test (NAAT) not more than 72 hours before departure.
- (6) Children under the age of 12 should not be subject to any requirement prior to departure.
- (7) The Member States could also apply additional measures on arrival in accordance with Union and national law, such as, for example, additional testing, self-isolation and quarantine.
- (8) However:
 - (a) travellers with an essential function or need referred to in the Annex ⁽¹⁵⁾ should not be subject to any measures on arrival that would impede the very purpose of the travel;
 - (b) for transport personnel, seafarers and frontier workers, Member States should not require more than a negative Rapid Antigen Test (RAT) on arrival to enter into any of the Member States;
 - (c) air crews should be exempted from any testing if their stay in a third country was less than 12 hours.
- (9) Where Member States impose additional measures on arrival, as set out in point 7, they should make available appropriate information to the travellers in an easily accessible manner.

⁽¹³⁾ Council Recommendation (EU) 2022/107 on a coordinated approach to facilitate safe free movement during the COVID-19 pandemic and replacing Recommendation (EU) 2020/1475.

⁽¹⁴⁾ Regulation (EC) No 851/2004 of the European Parliament and of the Council of 21 April 2004 establishing a European Centre for disease prevention and control (OJ L 142, 30.4.2004, p. 1).

⁽¹⁵⁾ See also Commission Guidance of 28 October 2020 (COM(2020)686 final, 28.10.2020).

Proofs of vaccination, recovery and testing

- (10) In addition to certificates issued pursuant to Regulations (EU) 2021/953, Member States should accept proofs of COVID-19 vaccination, recovery or testing covered by an implementing act adopted pursuant to Article 3(10) or Article 8(2) of that Regulation.
- (11) Where no such implementing act has been adopted, for the purposes of point 5, Member States could decide to accept, for the purposes of this Recommendation, in accordance with national law, a proof of vaccination, recovery or testing issued by a third country, taking into account the need to be able to verify the authenticity, validity and integrity of the document and whether it contains all relevant data as provided for in Regulation (EU) 2021/953.

Addressing variants of concern or interest and emergency brake mechanism

- (12) Where a variant of concern or of interest has been detected in a third country or region, Member States should take urgent measures ('emergency brake') to contain the spread of the variant to the Union. In response to the emergence of such new variant of concern or of interest in a third country or a region, a meeting within the Council structures should be convened within the next 48 hours to discuss the necessity of coordinated measures for travel to the Union to delay the spread of the new variant, in close cooperation with the Commission and supported by the European Centre for Disease Prevention and Control. Where necessary, Member States should decide, in a coordinated manner in the Council on any appropriate requirements. Member States might exceptionally establish within the Council structures an urgent, common and temporary restriction on all travels to their territories for third country nationals who have stayed in that third country or region at any time during the 14 days before departure towards the Member States. This should also apply to situations where the epidemiological situation deteriorates rapidly and severely in a way that suggests the emergence of a new SARS-CoV-2 variant of concern or interest.
- (13) The Member States, within the Council structures and in close cooperation with the Commission, should regularly review the situation in a coordinated manner.
- (14) Such restrictions should expire after 21 calendar days, unless Member States decide, within the procedure set out in points 12 and 13, to shorten them or extend them for an additional period.
- (15) The European Centre for Disease Prevention and Control should publish and regularly update a map presenting the situation with regard to variants of concern and variants of interest in third countries.

Exemptions from temporary travel restrictions

- (16) Travellers with an essential function or need referred to in the Annex should not be subject to the travel restrictions referred to in points 2 and 12.
- (17) The following categories of persons could be subject to the travel restrictions mentioned in points 2 and 12, but should maintain the possibility to return to the Union:
- (a) Union citizens and third-country nationals who, under agreements between the Union and its Member States, on the one hand, and those third countries, on the other hand, enjoy rights of free movement equivalent to those of Union citizens, as well as their respective family members ⁽¹⁶⁾;

⁽¹⁶⁾ As defined in Articles 2 and 3 of Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States amending Regulation (EEC) No 1612/68 and repealing Directives 64/221/EEC, 68/360/EEC, 72/194/EEC, 73/148/EEC, 75/34/EEC, 75/35/EEC, 90/364/EEC, 90/365/EEC and 93/96/EEC (OJ L 158, 30.4.2004, p. 77).

- (b) third-country nationals who are long-term residents under Council Directive 2003/109/EC⁽¹⁷⁾ and persons deriving their right to reside from other instruments of Union law or national law or who hold national long-term visas, as well as their respective family members.

Where such persons are not in possession of a valid EU Digital COVID Certificate, they could be subject upon arrival to the additional measures mentioned under point 7.

- (18) The additional measures that could be applied on arrival as set out in point 7 should continue to apply to travellers exempted from restrictions in accordance with points 16 and 17.

Communication and information to the public

- (19) Information on any new measures under point 5 should be published as early as possible and, as a general rule, at least 48 hours before they come into effect.

Final provisions

- (20) For the purpose of this Recommendation, residents of Andorra, Monaco, San Marino and the Vatican/Holy See should be considered as third-country nationals falling within the scope of point 17(b).

- (21) This Recommendation replaces Recommendation (EU) 2020/912. It should apply from 22 December 2022.

Done at Brussels, 13 December 2022.

For the Council
The President
M. BEK

⁽¹⁷⁾ Council Directive 2003/109/EC of 25 November 2003 concerning the status of third-country nationals who are long-term residents (OJ L 16, 23.1.2004, p. 44).

ANNEX

Categories of persons travelling in the exercise of an essential function or a need:

- i. Healthcare professionals, health researchers, and elderly care professionals;
 - ii. Frontier workers;
 - iii. Transport personnel;
 - iv. Diplomats, staff of international organisations and people invited by international organisations, military personnel and humanitarian aid workers and civil protection personnel;
 - v. Passengers in transit;
 - vi. Passengers travelling for imperative family or medical reasons;
 - vii. Seafarers;
 - viii. Persons working on critical or otherwise essential infrastructures;
 - ix. Persons in need of international protection or for other humanitarian reasons;
-

ACTS ADOPTED BY BODIES CREATED BY INTERNATIONAL AGREEMENTS

DECISION No 2/2022 OF THE PARTNERSHIP COUNCIL ESTABLISHED BY THE TRADE AND COOPERATION AGREEMENT BETWEEN THE EUROPEAN UNION AND THE EUROPEAN ATOMIC ENERGY COMMUNITY, OF THE ONE PART, AND THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND, OF THE OTHER PART

of 21 December 2022

as regards the second and last extension of the interim period during which the United Kingdom may derogate from the obligation to delete Passenger Name Record data of passengers after their departure from the United Kingdom [2022/2549]

THE PARTNERSHIP COUNCIL,

Having regard to the Trade and Cooperation Agreement between the European Union and the European Atomic Energy Community, of the one part, and the United Kingdom of Great Britain and Northern Ireland, of the other part (the 'Trade and Cooperation Agreement'), and in particular Article 552 thereof,

HAS ADOPTED THIS DECISION:

Article 1

The interim period during which the United Kingdom may derogate from the obligation under Article 552(4) of the Trade and Cooperation Agreement to delete Passenger Name Record data of passengers after their departure from the United Kingdom is extended for a second and last time until 31 December 2023 pursuant to Article 552(13) of that Agreement.

Article 2

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

Done at Brussels and London, 21 December 2022.

For the Partnership Council

The Co-chairs

Maroš ŠEFČOVIČ

James CLEVERLY

DECISION No 3/2022 OF THE PARTNERSHIP COUNCIL ESTABLISHED BY THE TRADE AND COOPERATION AGREEMENT BETWEEN THE EUROPEAN UNION AND THE EUROPEAN ATOMIC ENERGY COMMUNITY, OF THE ONE PART, AND THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND, OF THE OTHER PART

of 21 December 2022

establishing a list of individuals who are willing and able to serve as members of an arbitration tribunal under the Trade and Cooperation Agreement [2022/2550]

THE PARTNERSHIP COUNCIL,

Having regard to the Trade and Cooperation Agreement between the European Union and the European Atomic Energy Community, of the one part, and the United Kingdom of Great Britain and Northern Ireland, of the other part ⁽¹⁾ (the 'Trade and Cooperation Agreement'), and in particular Article 752(1) thereof,

Whereas:

- (1) Pursuant to Article 752(1) of the Trade and Cooperation Agreement, the Partnership Council is to establish a list of individuals who are willing and able to serve as members of an arbitration tribunal. The list shall comprise at least 15 persons and be composed of three sub-lists: (a) one sub-list of individuals established on the basis of proposals by the Union; (b) one sub-list of individuals established on the basis of proposals by the United Kingdom; and (c) one sub-list of individuals who are not nationals of either Party who shall serve as chairperson to the arbitration tribunal.
- (2) Each sub-list shall include at least five individuals.
- (3) Pursuant to Article 741 of the Trade and Cooperation Agreement, all arbitrators shall be persons whose independence is beyond doubt, who possess the qualifications required for appointment to high judicial office in their respective countries or who are jurisconsults of recognised competence. They shall have demonstrated expertise in law and international trade, including on specific matters covered by Titles I to VII, Chapter 4 of Title VIII, Titles IX to XII of Heading One or Heading Six of Part Two, or in law and any other matter covered by the Trade and Cooperation Agreement or by any supplementing agreement and, in the case of a chairperson, also have experience in dispute settlement procedures.
- (4) In accordance with Article 752(3) of the Trade and Cooperation Agreement, the list shall not comprise persons who are members, officials or other servants of the Union institutions, of the Government of a Member State, or of the Government of the United Kingdom.
- (5) On the basis of the proposals of the Union and the United Kingdom, it is appropriate for the Partnership Council to agree on the two sub-lists of six persons for the position of members of the arbitration tribunal, and on the sub-list of eight persons for the position of chairperson of the arbitration tribunal,

HAS ADOPTED THIS DECISION:

Article 1

The list of individuals willing and able to serve as arbitrators under the Trade and Cooperation Agreement between the European Union and the European Atomic Energy Community, of the one part, and the United Kingdom of Great Britain and Northern Ireland, of the other part, is set out in the Annex.

⁽¹⁾ OJ L 149, 30.4.2021, p. 10.

Article 2

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

Done at Brussels and London, 21 December 2022.

For the Partnership Council

The Co-chairs

Maroš ŠEFČOVIČ

James CLEVERLY

ANNEX

- (a) sub-list of individuals established on the basis of proposals by the Union;
 - Laurence BOISSON DE CHAZOURNES
 - Irina BUGA
 - Hélène RUIZ FABRI
 - Michael HAHN
 - Crenguta LEAUA
 - Peter Leo Henri VAN DEN BOSSCHE
 - (b) sub-list of individuals established on the basis of proposals by the United Kingdom;
 - Lorand Alexander BARTELS
 - Lawrence COLLINS
 - Jean E. KALICKI
 - Surya P. SUBEDI
 - David UNTERHALTER
 - Janet M. WHITTAKER
 - (c) sub-list of individuals who should serve as chairperson to the arbitration tribunal.
 - Leora BLUMBERG
 - Thomas COTTIER
 - William J. DAVEY
 - Gavan GRIFFITH
 - Valerie HUGHES
 - Campbell MCLACHLAN
 - Penelope Jane RIDINGS
 - J. Christopher THOMAS
-

DECISION No 4 OF THE EU-KOREA TRADE COMMITTEE**of 30 November 2022****on the amendment of Annexes 10-A and 10-B to the Free Trade Agreement between the European Union and its Member States, of the one part, and the Republic of Korea, of the other part [2022/2551]**

THE TRADE COMMITTEE,

Having regard to the Free Trade Agreement between the European Union and its Member States, of the one part, and the Republic of Korea, of the other part, and in particular Articles 10.24.1, 10.25.1, 10.25.3, 15.1.4(c) and 15.5.2 thereof,

Whereas:

- (1) Pursuant to Article 15.1.4(c) of the Free Trade Agreement between the European Union and its Member States, of the one part, and the Republic of Korea, of the other part ⁽¹⁾ ('the Agreement'), the Trade Committee may consider amendments to the Agreement or amend provisions of the Agreement in cases specifically provided for in the Agreement.
- (2) Article 15.5.2 of the Agreement provides that a decision of the Trade Committee to amend the Annexes, Appendices, Protocols and Notes to the Agreement may be adopted by the Parties, subject to their respective applicable legal requirements and procedures.
- (3) Article 10.24.1 of the Agreement allows the Parties to add geographical indications to be protected to Annexes 10-A and 10-B in accordance with the procedure set out in Article 10.25.
- (4) Pursuant to Article 10.25.1 of the Agreement, the Working Group on Geographical Indications ('GI Working Group') may make recommendations and adopt decisions by consensus.
- (5) Pursuant to Article 10.25.3 of the Agreement, the GI Working Group may decide to modify Annexes 10-A and 10-B to add individual geographical indications of the EU or of Korea or to remove individual geographical indications that cease to be protected by the Party of origin or no longer meet the conditions to be considered a geographical indication in the other Party. It may also decide that a reference to legislation in the Agreement should be deemed to be a reference to that legislation as amended and replaced and in force at a particular date after the entry into force of the Agreement.
- (6) Pursuant to Article 5.2 of Decision No 1/2019 of the EU-Korea Working Group on Geographical Indications of 17 September 2019 concerning the adoption of its rules of procedure ('rules of procedure'), the GI Working Group may decide by consensus to recommend the addition or removal of geographical indications for final decision in the Trade Committee in accordance with Article 10.21.4, Article 10.24 and Article 10.25 of the Agreement.
- (7) Pursuant to Article 5.3 of the rules of procedure referring to Articles 15.3.5 and 15.5.2 of the Agreement, the Trade Committee may undertake the task assigned to the GI Working Group and decide to modify Annexes 10-A and 10-B, and the Parties may adopt the decision subject to their respective applicable legal requirements and procedures.
- (8) In application of Article 10.25.3(c) of the Agreement, the Parties have confirmed the following matters related to references to legislation in the Agreement:
 - (a) On 17 April 2019, Regulation (EC) No 110/2008 of the European Parliament and of the Council of 15 January 2008 on the definition, description, presentation, labelling and the protection of geographical indications of spirit drinks and repealing Council Regulation (EEC) No 1576/89 ⁽²⁾ referred to in Sub-section C 'Geographical Indications' of the Agreement was repealed by Regulation (EU) 2019/787 of the European Parliament and of

⁽¹⁾ OJ L 127, 14.5.2011, p. 1.

⁽²⁾ OJ L 39, 13.2.2008, p. 16.

the Council of 17 April 2019 on the definition, description, presentation and labelling of spirit drinks, the use of the names of spirit drinks in the presentation and labelling of other foodstuffs, the protection of geographical indications for spirit drinks, the use of ethyl alcohol and distillates of agricultural origin in alcoholic beverages, and repealing Regulation (EC) No 110/2008 ⁽³⁾. Therefore, a reference to Regulation (EC) No 110/2008 in the Agreement should be deemed to be a reference to Regulation (EU) 2019/787.

- (b) On 21 November 2012, Council Regulation (EC) No 510/2006 of 20 March 2006 on the protection of geographical indications and designations of origin for agricultural products and foodstuffs ⁽⁴⁾ referred to in Sub-section C 'Geographical Indications' was repealed by Regulation (EU) No 1151/2012 of the European Parliament and of the Council of 21 November 2012 on quality schemes for agricultural products and foodstuffs ⁽⁵⁾. Therefore, a reference to Regulation (EC) No 510/2006 in the Agreement should be deemed to be a reference to Regulation (EU) No 1151/2012.
- (c) On 26 February 2014, Council Regulation (EEC) No 1601/91 of 10 June 1991 laying down general rules on the definition, description and presentation of aromatized wines, aromatized wine-based drinks and aromatized wine-product cocktails ⁽⁶⁾ referred to in Sub-section C 'Geographical Indications' was repealed by Regulation (EU) No 251/2014 of the European Parliament and of the Council of 26 February 2014 on the definition, description, presentation, labelling and the protection of geographical indications of aromatised wine products and repealing Council Regulation (EEC) No 1601/91 ⁽⁷⁾. Therefore, a reference to Regulation (EEC) No 1601/91 in the Agreement should be deemed to be a reference to Regulation (EU) No 251/2014.
- (d) On 29 April 2008, Council Regulation (EC) No 1493/1999 of 17 May 1999 on the common organisation of the market in wine ⁽⁸⁾ referred to in Sub-section C 'Geographical Indications' was repealed by Council Regulation (EC) No 479/2008 of 29 April 2008 on the common organisation of the market in wine, amending Regulations (EC) No 1493/1999, (EC) No 1782/2003, (EC) No 1290/2005, (EC) No 3/2008 and repealing Regulations (EEC) No 2392/86 and (EC) No 1493/1999. The latter Regulation has been repealed by Council Regulation (EC) No 491/2009 of 25 May 2009 amending Regulation (EC) No 1234/2007 establishing a common organisation of agricultural markets and on specific provisions for certain agricultural products (Single CMO Regulation) ⁽⁹⁾ and its provisions were integrated in Council Regulation (EC) No 1234/2007 of 22 October 2007 establishing a common organisation of agricultural markets and on specific provisions for certain agricultural products (Single CMO Regulation) ⁽¹⁰⁾. Therefore, a reference to Regulation (EC) No 1493/1999 in the Agreement should be deemed to be a reference to Regulation (EC) No 491/2009.
- (e) On 17 December 2013, Regulation (EC) No 1234/2007 referred to in Sub-section C 'Geographical Indications' was repealed by Regulation (EU) No 1308/2013 of the European Parliament and of the Council of 17 December 2013 establishing a common organisation of the markets in agricultural products and repealing Council Regulations (EEC) No 922/72, (EEC) No 234/79, (EC) No 1037/2001 and (EC) No 1234/2007 ⁽¹¹⁾. Therefore, a reference to Regulation (EC) No 1234/2007 in the Agreement should be deemed to be a reference to Regulation (EU) No 1308/2013.
- (f) The Agricultural Products Quality Control Act (Act No. 9759, Jun. 9, 2009) of Korea referred to in Sub-section C 'Geographical Indications' has been amended. On 21 December 2021, Agricultural and Fishery Products Quality Control Act (Act No. 18599, Dec. 21, 2021) has been applied ⁽¹²⁾. Therefore, a reference to the Agricultural Products Quality Control Act (Act No. 9759, Jun. 9, 2009) in the Agreement should be deemed to be a reference to the Agricultural and Fishery Products Quality Control Act (Act No. 18599, Dec. 21, 2021).

⁽³⁾ OJ L 130, 17.5.2019, p. 1.

⁽⁴⁾ OJ L 93, 31.3.2006, p. 12.

⁽⁵⁾ OJ L 343, 14.12.2012, p. 1.

⁽⁶⁾ OJ L 149, 14.6.1991, p. 1.

⁽⁷⁾ OJ L 84, 20.3.2014, p. 14.

⁽⁸⁾ OJ L 179, 14.7.1999, p. 1.

⁽⁹⁾ OJ L 154, 17.6.2009, p. 1.

⁽¹⁰⁾ OJ L 299, 16.11.2007, p. 1.

⁽¹¹⁾ OJ L 347, 20.12.2013, p. 671.

⁽¹²⁾ 대한민국정부 관보 제20151호 (official gazette 20151), 2021.12.21, p. 47.

- (g) The Liquor Tax Act (Act No. 8852, Feb. 29, 2008) of Korea referred to in Sub-section C 'Geographical Indications' has been amended. On 1 January 2021, specific provisions with respect to the administrative procedures related to production and sales, etc. of liquor stipulated in the Liquor Tax Act have been incorporated in the Liquor License Act (unofficial translation / Act No. 17761, Dec. 29, 2020) and have been applied ⁽¹³⁾. As of January 2022, both the Liquor Tax Act (Act No. 18593, Dec. 21, 2021) ⁽¹⁴⁾ and The Liquor License Act (Act No. 18723, Jan. 6, 2022) ⁽¹⁵⁾ have been applied. Therefore, a reference to the Liquor Tax Act (Act No. 8852, Feb. 29, 2008) in the Agreement should be deemed to be a reference to the Liquor Tax Act (Act No. 18593, Dec. 21, 2021) and the Liquor License Act (Act No. 18723, Jan. 6, 2022).
- (9) The Parties have agreed to add 44 geographical indications of the EU and 41 geographical indications of Korea to Annexes 10-A and 10-B through the following process:
- (a) During the seventh meeting of the GI Working Group, held in Seoul on 6 November 2019, the Parties discussed the modalities to amend Annexes 10-A and 10-B to the Agreement pursuant to Articles 10.24 and 10.25.3 and agreed to continue discussions in the following months aiming to reach an agreement related to the addition of new geographical indications at the following GI Working Group.
- (b) Following the request of the Parties and pursuant to Articles 10.18.3 and 10.18.4, as well as to Articles 10.24 and 10.25 of the Agreement, the EU has completed the opposition procedure and the examination of 41 geographical indications of Korea. Korea has completed the opposition procedure and the examination of 44 geographical indications of the EU.
- (10) The Parties have agreed to remove three geographical indications of the EU and four geographical indications of Korea from Annexes 10-A and 10-B through the following process:
- (a) On 25 October 2016, the EU notified Korea on the cessation of protection of a Spanish geographical indication and requested the removal of the name 'Pacharán' from the Annex 10-B to the Agreement, in accordance with Article 10.25.3(b), as it ceased to be protected in the EU.
- (b) Having reviewed the geographical indications of the EU protected in the Agreement and in light of Commission Regulation (EU) 2019/674 of 29 April 2019 amending Annex III to Regulation (EC) No 110/2008 of the European Parliament and of the Council on the definition, description, presentation, labelling and the protection of geographical indications of spirit drinks ⁽¹⁶⁾, the EU requested in November 2020 the removal of the name 'Polish Cherry' from Annex 10-B to the Agreement, in accordance with Article 10.25.3(b), as it ceased to be protected in the EU.
- (c) On 15 March 2021, Korea notified and requested the removal of the geographical indications 'Muan White Lotus Tea (무안백련차)' and 'Cheongyang Powdered Hot Pepper (청양고춧가루)' from the list of geographical indications of Korea in Part B of Annex 10-A to the Agreement, in accordance with Article 10.25.3(b), as those ceased to be protected in Korea.
- (d) Following the withdrawal of the United Kingdom from the Union as from 1 January 2021, the Parties confirmed, during the virtual technical meeting held on 16 March 2021, that the geographical indication 'Scotch Whisky' should be removed from the names listed in Annex 10-B to the Agreement.
- (e) During the ninth meeting of the GI Working Group held on 8 December 2021, Korea notified and requested the removal of the geographical indications 'Seosan Garlic (서산마늘)' and 'Yeoju Sweet Potato (여주고구마)' from the list of geographical indications of Korea in Part B of Annex 10-A to the Agreement, in accordance with Article 10.25.3(b), as those ceased to be protected in Korea.

⁽¹³⁾ 대한민국정부 관보 제19907호 (official gazette 19907), 2020.12.29, p. 110.

⁽¹⁴⁾ 대한민국정부 관보 제20151호 (official gazette 20151), 2021.12.21, p. 39.

⁽¹⁵⁾ 대한민국정부 관보 제20163호 별권1 (official gazette 20163, separate volume 1), 2022.1.6, p. 4.

⁽¹⁶⁾ OJ L 114, 30.4.2019, p. 7.

- (11) The Parties have agreed to replace four geographical indications of the EU in Annex 10-A to the Agreement which underwent name changes with the updated corresponding geographical indications through the following process:
- (a) On 13 July 2017, the EU notified Korea that four geographical indications protected in the Agreement underwent name changes ⁽¹⁷⁾. The EU proposed to update the corresponding names and transcriptions in the list of EU geographical indications currently protected in Korea.
 - (b) In the same notification, the EU requested that the geographical indication ‘Originali lietuviška degtinė/vodka lituanienne originale’, proposed for addition to Annex 10-B, be changed to ‘Originali lietuviška degtinė/Original Lithuanian vodka’ (transcription 오리지널 리투아니아 보드카).
- (12) Pursuant to Article 12.2 of the Annex to Decision No 1 of the EU-Korea Trade Committee of 23 December 2011 ⁽¹⁸⁾, the Trade Committee can adopt decisions by written procedure, if both Parties agree, in the period between the meetings of the Trade Committee. The written procedure would consist of an exchange of notes between the Chairpersons of the Trade Committee,

HAS ADOPTED THIS DECISION:

Article 1

References to EU and Korean legislation in Chapter 10, Section B, Sub-section C ‘Geographical Indications’ footnotes (51), (53)-(55) in the version of the Agreement published in the EU or the same footnotes numbered as (2), (4)-(6) in the version of the Agreement published in Korea ⁽¹⁹⁾, shall be deemed as references to that legislation as amended or replaced in accordance with Annex I to this Decision.

Article 2

Annexes 10-A and 10-B to the Agreement are amended as follows:

- (1) addition of the geographical indications listed in Annex II to this Decision under the corresponding list of geographical indications of the respective Member State in Part A of Annex 10-A to the Agreement;
- (2) addition of the geographical indications listed in Annex III to this Decision under the corresponding list of geographical indications of Korea in Part B of Annex 10-A to the Agreement;
- (3) addition of the geographical indications listed in Annex IV to this Decision under the corresponding list of geographical indications of the respective Member State in Section 1 and Section 2 of Part A of Annex 10-B to the Agreement;
- (4) addition of the geographical indications listed in Annex V to this Decision under the corresponding list of geographical indications of Korea in Part B of Annex 10-B to the Agreement;
- (5) removal of the geographical indications ‘Pacharán’ (Spain), ‘Polska Wiśniówka/Polish Cherry’ (Poland) and ‘Scotch Whisky’ (United Kingdom) from the list of geographical indications in Section 2 of Part A of Annex 10-B to the Agreement;

⁽¹⁷⁾ ‘Huile essentielle de lavande de Haute-Provence’ became ‘Huile essentielle de lavande de Haute-Provence/Essence de lavande de Haute-Provence’ (transcription: 월 에쎄씨엘 드 라방드 드 오프 프로방스 / 에쎄스 드 라방드 드 오프 프로방스 (오프 프로방스 라방드 에센스 오일)) – ‘Prosciutto di S. Daniele’ became ‘Prosciutto di San Daniele’ (transcription remains the same) – ‘Jamon de Teruel’ became ‘Jamón de Teruel/Paleta de Teruel’ (transcription: 하몬 데 테루엘 / 팔레타 데 테루엘) – ‘Jamón de Huelva’ became ‘Jabugo’ (transcription: 하부고).

⁽¹⁸⁾ Decision No 1 of the EU-Korea Trade Committee of 23 December 2011 on the adoption of the rules of procedure of the Trade Committee (OJ L 58, 1.3.2013, p. 9).

⁽¹⁹⁾ 대한민국 관보 제17538호(그2) (official gazette 17538, separate volume 2), 2011.6.28, p. 800.

- (6) removal of the geographical indications 'Seosan Garlic (서산마늘)', 'Muan White Lotus Tea (무안백련차)', 'Cheongyang Powdered Hot Pepper (청양고춧가루)' and 'Yeoju Sweet Potato (여주고구마)' from the list of geographical indications of Korea in Part B of Annex 10-A to the Agreement; and
- (7) replacement of the geographical indications which underwent name changes in the list of geographical indications of the respective Member State in Part A of Annex 10-A to the Agreement with the corresponding names of geographical indications listed in Annex VI to this Decision.

Article 3

This Decision shall enter into force on the first day of the month following the date on which the Parties exchange written notifications through diplomatic channels certifying that they have completed their respective applicable legal requirements and procedures necessary for its entry into force.

ANNEX I

References to EU and Korean legislation in Chapter 10, Section B, Sub-section C 'Geographical Indications' footnotes (51), (53)-(55) in the version of the Agreement published in the EU or the same footnotes numbered as (2), (4)-(6) in the version of the Agreement published in Korea, shall be deemed to be references to that legislation as amended or replaced in the following ways:

(1) For the references to EU legislation:

- (a) References to 'Regulation (EC) No 110/2008 of the European Parliament and of the Council of 15 January 2008 on the definition, description, presentation, labelling and the protection of geographical indications of spirit drinks and repealing Council Regulation (EEC) No 1576/89' shall be replaced by references to 'Regulation (EU) 2019/787 of the European Parliament and of the Council of 17 April 2019 on the definition, description, presentation and labelling of spirit drinks, the use of the names of spirit drinks in the presentation and labelling of other foodstuffs, the protection of geographical indications for spirit drinks, the use of ethyl alcohol and distillates of agricultural origin in alcoholic beverages, and repealing Regulation (EC) No 110/2008';
- (b) References to 'Council Regulation (EC) No 510/2006 of 20 March 2006 on the protection of geographical indications and designations of origin for agricultural products and foodstuffs' shall be replaced by references to 'Regulation (EU) No 1151/2012 of the European Parliament and of the Council of 21 November 2012 on quality schemes for agricultural products and foodstuffs';
- (c) References to 'Council Regulation (EEC) No 1601/91 of 10 June 1991 laying down general rules on the definition, description and presentation of aromatized wines, aromatized wine-based drinks and aromatized wine-product cocktails' shall be replaced by references to 'Regulation (EU) No 251/2014 of the European Parliament and of the Council of 26 February 2014 on the definition, description, presentation, labelling and the protection of geographical indications of aromatised wine products and repealing Council Regulation (EEC) No 1601/91';
- (d) References to 'Council Regulation (EC) No 1493/1999 of 17 May 1999 on the common organisation of the market in wine', which was repealed by 'Council Regulation (EC) No 479/2008 of 29 April 2008 on the common organisation of the market in wine, amending Regulations (EC) No 1493/1999, (EC) No 1782/2003, (EC) No 1290/2005, (EC) No 3/2008 and repealing Regulations (EEC) No 2392/86 and (EC) No 1493/1999', shall be replaced by references to 'Council Regulation (EC) No 491/2009 of 25 May 2009 amending Regulation (EC) No 1234/2007 establishing a common organisation of agricultural markets and on specific provisions for certain agricultural products (Single CMO Regulation)'; and
- (e) References to 'Council Regulation (EC) No 1234/2007 of 22 October 2007 establishing a common organisation of agricultural markets and on specific provisions for certain agricultural products (Single CMO Regulation)' shall be replaced by references to 'Regulation (EU) No 1308/2013 of the European Parliament and of the Council of 17 December 2013 establishing a common organisation of the markets in agricultural products and repealing Council Regulations (EEC) No 922/72, (EEC) No 234/79, (EC) No 1037/2001 and (EC) No 1234/2007'.

(2) For the references to Korean legislation:

- (a) References to the Agricultural Products Quality Control Act (Act No. 9759, Jun. 9, 2009) shall be replaced by references to the Agricultural and Fishery Products Quality Control Act (Act No. 18599, Dec. 21, 2021); and
 - (b) References to the Liquor Tax Act (Act No. 8852, Feb. 29, 2008) shall be replaced by references to the Liquor Tax Act (Act No. 18593, Dec. 21, 2021) and the Liquor License Act (Act No. 18723, Jan. 6, 2022).
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ANNEX II

Country Code	Name to be protected	Product	Transcription into Korean alphabet
AT	Steirisches Kürbiskernöl	Pumpkin seed oil	슈타이리셰스 퀴르비스케른윌
CY	Λουκούμι Γεροσκήπου / Loukoumi Geroskipou	Confectionery	루꾸미 게로스끼뿌
DE	Hopfen aus der Hallertau	Hops	할러타우 홉펜
DE	Lübecker Marzipan	Confectionery	뤼베커 마르지판
DE	Nürnberger Lebkuchen	Confectionery	뉘른베르거 렘쿠헤
DE	Schwarzwälder Schinken	Ham	슈바르츠벨더 쉰켄
DK	Danablu	Cheese	다나블루
ES	Aceite de Terra Alta/Oli de Terra Alta	Olive oil	아세이떼 데 떼라 알따; 올리 데 떼라 알따
ES	Aceite Monterrubbio	Olive oil	아세이떼 몬테루비오
ES	Estepa	Olive oil	에스테빠
ES	Les Garrigues	Olive oil	레스 가리게스
ES	Sierra de Cazorla	Olive oil	씨에라 데 까소를라
ES	Siurana	Olive oil	씨우라나
EL	Καλαμάτα / Kalamata ⁽¹⁾	Olive oil	칼라마타
EL	Σητεία Λασιθίου Κρήτης / Sitia Lasithiou Kritis	Olive oil	시티아 라시티우 크리티스
EL	Λακωνία / Lakonia	Olive oil	라코니아
EL	Γραβιέρα Κρήτης / Graviera Kritis	Cheese	그라비에라 크리티스
EL	Κασέρι / Kasseri	Cheese	카세리
IT	Aceto Balsamico di Modena	Vinegar	아체토 발사미코 디 모데나
IT	Bresaola della Valtellina	Ham	브레사올라 델라 발텔리나
IT	Kiwi Latina	Kiwi	키위 라티나
IT	Mela Alto Adige / Südtiroler Apfel	Apple	멜라 알토 아디제; 수드티롤레르 아펠
IT	Toscano	Olive oil	토스카노
IT	Pecorino Toscano	Cheese	페코리노 토스카노
IT	Salamini italiani alla cacciatora	Salami	살라미니 이탈리아니 알라 카차토라
NL	Edam Holland	Cheese	에담 홀란드
NL	Gouda Holland	Cheese	고다 홀란드

⁽¹⁾ The protection of the GI 'Kalamata' shall not prevent the use of the name of a plant variety with respect to olives in the territory of Korea. That formulation does not alter or diminish the protection already given by the Agreement to the protected GI 'Elia Kalamatas'.

ANNEX III

Name to be protected	Product	Transcription into Latin alphabet
천안배 (Cheonan Bae (Pear))	Pear	Cheonan Bae
나주배 (Naju Bae (Pear))	Pear	Naju Bae
안성배 (Anseong Bae (Pear))	Pear	Anseong Bae
고려흑삼제품 (Korean Black Ginseng Product)	Black Ginseng Products	Goryeo Heuksamjepum
예산사과 (Yesan Apple)	Apple	Yesan Sagwa
안성쌀 (Anseong Ssal (Rice))	Rice	Anseong Ssal
영월고춧가루 (Yeongwol Red Pepper Powder)	Red Pepper Powder	Yeongwol Gochutgaru
고려흑삼 (Korean Black Ginseng)	Black Ginseng	Goryeo Heuksam
보성웅치올벼쌀 (Boseong Ungchi Olbyeossal)	Rice	Boseong Ungchi Olbyeossal
김포쌀 (Gimpo Ssal (Rice))	Rice	Gimpo Ssal
진도검정쌀 (Jindo Black Rice)	Rice	Jindo Geomjeong Ssal
군산쌀 (Gunsan Ssal (Rice))	Rice	Gunsan Ssal
영월고추 (Yeongwol Red Pepper)	Red Pepper	Yeongwol Gochu
영천포도 (Yeongcheon Grapes)	Grape	Yeongcheon Podo
무주사과 (Muju Apple)	Apple	Muju Sagwa
삼척마늘 (Samcheok Garlic)	Garlic	Samcheok Maneul
김천자두 (Gimcheon Jadu (Plum))	Plum	Gimcheon Jadu
영동포도 (Yeongdong Grapes)	Grape	Yeongdong Podo
문경오미자 (Mungyeong Omija)	Omija	Mungyeong Omija
청도반시 (Cheongdo Seedless Flat Persimmon)	Persimmon	Cheongdo Bansi
평창산양삼 (PyeongChang Wild-cultivated Ginseng)	Wild-cultivated Ginseng	PyeongChang Sanyangsam
보은대추 (Boeun Jujube)	Jujube	Boeun Daechu
충주밤 (Chungju Bam (Chestnut))	Chestnut	Chungju Bam
가평잣 (Gapyeong Korean Pine nuts)	Pine Nut	Gapyeong Jat
정선곤드레 (Jeongseon Gondre)	Gondre (Korean Thistle)	Jeongseon Gondre
영동곶감 (Yeongdong Persimmon Dried)	Persimmon	Yeongdong Gotgam
부여표고 (Buyeo Pyogo (Oak mushroom))	Oak Mushroom	Buyeo Pyogo
완도미역 (Wando Sea mustard)	Sea Mustard	Wando Miyeok
완도다시마 (Wando Sea tangle)	Sea Tangle	Wando Dasima
기장미역 (Gijang sea mustard)	Sea Mustard	Gijang Miyeok
기장다시마 (Gijang sea tangle)	Sea Tangle	Gijang Dasima

Name to be protected	Product	Transcription into Latin alphabet
완도김 (Wando Laver)	Laver	Wando Gim
장흥김 (Jangheung Laver)	Laver	Jangheung Gim
여수굴 (Yeosu Gul (Yeosu Oyster))	Oyster	Yeosu Gul
고흥미역 (Goheung Dried Sea mustard)	Sea Mustard	Goheung Miyeok
고흥다시마 (Goheung Dried Sea tangle)	Sea Tangle	Goheung Dasima
신안김 (Sinan Gim (Laver))	Laver	Sinan Gim
해남김 (Haenam Gim (Laver))	Laver	Haenam Gim
고흥김 (Goheung Laver)	Laver	Goheung Gim
고흥굴 (Goheung Gul (Oyster))	Oyster	Goheung Gul

ANNEX IV

SECTION 1

WINES ORIGINATING IN THE EUROPEAN UNION

Country Code	Designation Name	Transcription into Korean alphabet
CY	Κουμανδάρια (transcription into Latin alphabet: Commandaria)	꼬만다리아
DE	Franken	프랑켄
ES	Utiel-Requena	우띠엘 레께나
FR	Pays d'Oc	페이 독 / 뽀이 독
FR	Romanée-Conti	로마네 콘티 / 로마네 콩띠
FR	Pauillac	포이약 / 뽀이약
FR	Saint-Estèphe	세인트 에스테브 / 썩 에스테프
IT	Prosecco	프로세코
RO	Cotnari	코트나리
SI	Vipavska dolina	비파브스카 돌리나
SK	Vinohradnícka oblasť Tokaj	비노흐라드니스카 오블라스트 토카이

SECTION 2

SPIRITS ORIGINATING IN THE EUROPEAN UNION

Country Code	Designation Name	Transcription into Korean alphabet
CY	Ζιβανία/Τζιβανία/Ζιβάνα/Zivania	지바니아
ES	Brandy del Penedés	브란디 델 뽀네데스
EL	Τσίπουρο/Tsipouro	치푸로
IE	Irish Cream	아이리쉬 크림
LT	Originali lietuviška degtinė/Original Lithuanian vodka	오리지널 리투아니아 보드카
BE+NL+FR+DE	Genièvre/Jenever/Genever	예네이버/제니버

ANNEX V

Name to be protected	Transcription into Latin alphabet
무주머루와인 (Muju Wild Grape Wine)	Muju Meoru Wine

ANNEX VI

FRANCE

Huile essentielle de lavande de Haute-Provence/Essence de lavande de Haute-Provence ⁽¹⁾	Lavender essential oil	윌 에쎝씨엘 드 라벵드 드 오뜨 프로방스 / 에쎝스 드 라벵드 드 오뜨 프로방스 (오뜨 프로방스 라벵드 에센스 오일)
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ITALY

Prosciutto di San Daniele ⁽²⁾	Ham	프로슈토 디 산 다니엘레(생햄)
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SPAIN

Jamón de Teruel/Paleta de Teruel ⁽³⁾	Ham	하몬 데 떼루엘 / 팔레타 데 떼루엘
Jabugo ⁽⁴⁾	Ham	하부고

⁽¹⁾ 'Huile essentielle de lavande de Haute-Provence' became 'Huile essentielle de lavande de Haute-Provence/Essence de lavande de Haute-Provence'.

⁽²⁾ 'Prosciutto di S. Daniele' became 'Prosciutto di San Daniele'.

⁽³⁾ 'Jamon de Teruel' became 'Jamón de Teruel/Paleta de Teruel'.

⁽⁴⁾ 'Jamón de Huelva' became 'Jabugo'.

CORRIGENDA

Corrigendum to Regulation (EU) 2022/2400 of the European Parliament and of the Council of 23 November 2022 amending Annexes IV and V to Regulation (EU) 2019/1021 on persistent organic pollutants*(Official Journal of the European Union L 317 of 9 December 2022)*

On page 29, in the Annex, point (1)(c), fourth column of the table, point (a):

for: 'a) until 29 December 2027, 500 mg/kg';

read: 'a) until 29 December 2025, 500 mg/kg';

on page 29, in the Annex, point (1)(c), fourth column of the table, point (b):

for: 'b) from 30 December 2025 until 28 December 2027, 350 mg/kg, or, if higher, the sum of the concentration of those substances where they are present in mixtures or articles, as set out in the fourth column, point 2, of Annex I for the substances tetrabromodiphenyl ether, pentabromodiphenyl ether, hexabromodiphenyl ether, heptabromodiphenyl ether and decabromodiphenyl ether';

read: 'b) from 30 December 2025 until 29 December 2027, 350 mg/kg, or, if higher, the sum of the concentration of those substances where they are present in mixtures or articles, as set out in the fourth column, point 2, of Annex I for the substances tetrabromodiphenyl ether, pentabromodiphenyl ether, hexabromodiphenyl ether, heptabromodiphenyl ether and decabromodiphenyl ether';

Corrigendum to Council Decision (EU) 2022/2353 of 1 December 2022 on an assistance measure under the European Peace Facility to strengthen the capacities of the Armed Forces of Bosnia and Herzegovina

(Official Journal of the European Union L 311 of 2 December 2022)

The title on the contents page and the title on page 149:

for: 'Council Decision (EU) 2022/2353 ...',

read: 'Council Decision (CFSP) 2022/2353 ...'.

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