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Contents

II *Non-legislative acts*

REGULATIONS

- ★ **Commission Regulation (EU) 2023/923 of 3 May 2023 amending Annex XVII to Regulation (EC) No 1907/2006 of the European Parliament and of the Council as regards lead and its compounds in PVC ⁽¹⁾** 1

DECISIONS

- ★ **Council Decision (EU) 2023/924 of 24 April 2023 on the position to be adopted, on behalf of the European Union, within the EEA Joint Committee concerning amendments to Annex I (Veterinary and phytosanitary matters) and Annex II (Technical regulations, standards, testing and certification) to the EEA Agreement ⁽¹⁾** 7
- ★ **Council Decision (EU) 2023/925 of 24 April 2023 on the position to be adopted, on behalf of the European Union, within the EEA Joint Committee concerning an amendment to Annex II (Technical regulations, standards, testing and certification) and Annex XIII (Transport) to the EEA Agreement (EASA Regulation) ⁽¹⁾** 13
- ★ **Council Decision (EU) 2023/926 of 24 April 2023 on the position to be adopted, on behalf of the European Union, within the EEA Joint Committee concerning an amendment to Protocol 31 to the EEA Agreement, on cooperation in specific fields outside the four freedoms (EU-OSHA) ⁽¹⁾** ... 22
- ★ **Council Decision (CFSP) 2023/927 of 5 May 2023 on an assistance measure under the European Peace Facility to support the Ukrainian Armed Forces through the provision of ammunition** 27

⁽¹⁾ Text with EEA relevance.

EN

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

The titles of all other acts are printed in bold type and preceded by an asterisk.

ACTS ADOPTED BY BODIES CREATED BY INTERNATIONAL AGREEMENTS

- ★ **Decision No 1/2023 of the Joint Committee established by the Agreement between the European Union and Ukraine on the carriage of freight by road of 16 March 2023 as regards the adoption of its Rules of Procedure [2023/928]** 32

- ★ **Decision No 2/2023 of the Joint Committee established by the Agreement between the European Union and Ukraine on the carriage of freight by road of 16 March 2023 as regards the continuation of the Agreement [2023/929]** 36

- ★ **Decision No 1/2023 of the Eu-Ukraine Association Committee in Trade configuration of 24 April 2023 modifying Appendix XVII-3 (Rules applicable to telecommunication services) of Annex XVII to the Association Agreement between the European Union and the European Atomic Energy Community and their Member States, of the one part, and Ukraine, of the other part [2023/930]** 38

II

(Non-legislative acts)

REGULATIONS

COMMISSION REGULATION (EU) 2023/923**of 3 May 2023****amending Annex XVII to Regulation (EC) No 1907/2006 of the European Parliament and of the Council as regards lead and its compounds in PVC***(Text with EEA relevance)*

THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EC) No 1907/2006 of the European Parliament and of the Council of 18 December 2006 concerning the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH), establishing a European Chemicals Agency, amending Directive 1999/45/EC and repealing Council Regulation (EEC) No 793/93 and Commission Regulation (EC) No 1488/94 as well as Council Directive 76/769/EEC and Commission Directives 91/155/EEC, 93/67/EEC, 93/105/EC and 2000/21/EC ⁽¹⁾, and in particular Article 68(1) thereof,

Whereas:

- (1) On 16 December 2016, the European Chemicals Agency ('the Agency') submitted, at the request of the Commission, a dossier ⁽²⁾ pursuant to Article 69(1) of Regulation (EC) No 1907/2006 ('the Annex XV dossier'), demonstrating that releases of lead from articles produced from polymers or copolymers of vinyl chloride ('PVC') containing lead stabilisers, during their life-cycle, contribute directly and indirectly to human exposure to lead. The Agency suggested in the Annex XV dossier to restrict the placing on the market or use of lead in articles produced from PVC if the concentration of lead is equal to or greater than 0,1 % by weight of the PVC material. Considering that lead compounds cannot stabilise PVC in an effective way at concentrations below approximately 0,5 % by weight, the concentration limit proposed should ensure that the intentional addition of lead compounds as stabilisers during PVC compounding can no longer occur in the Union. The Agency also included in the Annex XV dossier a number of derogations to this suggested restriction, notably for PVC articles containing recovered PVC. 'Recovered' is used in line with the definition of 'material recovery' in Article 3, point 15a, of Directive 2008/98/EC of the European Parliament and of the Council ⁽³⁾.
- (2) Lead is a toxic substance which affects the development of the nervous system, produces chronic kidney disease and has adverse effects on blood pressure. Although no threshold for neurodevelopmental effects in children and for renal effects has been established, according to the European Food Safety Agency the current human exposure to lead from food and other sources still exceeds the tolerable exposure levels and leads to adverse neurodevelopmental effects in children ⁽⁴⁾.

⁽¹⁾ OJ L 396, 30.12.2006, p. 1.

⁽²⁾ <https://echa.europa.eu/documents/10162/e70aee23-157b-b2a4-2cae-c42a1278072c> (report); <https://echa.europa.eu/documents/10162/cc1c37a8-22f9-7a7a-cb33-5c29edba7094> (annex).

⁽³⁾ 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).

⁽⁴⁾ EFSA Panel on Contaminants in the Food Chain (CONTAM); Scientific Opinion on Lead in Food. *EFSA Journal* 2010; 8(4):1570.

- (3) Lead stabilisers increase the thermal stability of PVC during compounding and article production. They also protect PVC against photo-degradation. Industry in the Union voluntarily phased out the use of lead stabilisers in PVC compounding and PVC articles and reported that that process was successfully completed in 2015 ⁽⁵⁾. PVC articles containing lead, especially construction products, have long service lives, remaining in use for periods exceeding several decades, after which they become waste upon disposal and may undergo recycling, potentially re-introducing lead into products via the recovered PVC. The Annex XV dossier showed that 90 % of the estimated total emissions of lead from PVC articles in the Union in the year 2016 was attributable to imported PVC articles, due to the phase-out of lead stabilisers in the Union.
- (4) To facilitate the enforcement of the proposed restriction, it is appropriate to restrict any lead present in PVC regardless of its intended function.
- (5) On 5 December 2017, the Agency's Committee for Risk Assessment ('RAC') adopted its final opinion ⁽⁶⁾, concluding that the restriction proposed by the Agency is the most appropriate Union-wide measure to address the identified risks posed by lead compounds present as stabilisers in PVC articles in terms of effectiveness in reducing such risks, practicality and monitorability.
- (6) RAC proposed to ban the use of any concentration of lead in PVC articles. RAC also agreed with the Agency that a derogation should be laid down for PVC articles containing recovered PVC. RAC however proposed that higher lead content limits for certain PVC articles containing recovered rigid and flexible PVC should be established, respectively, at 2 % and 1 % by weight. That proposal took account of the estimation that the alternative to recycling such articles, i.e. disposal of PVC waste via landfilling and incineration, would increase the emissions to the environment and not reduce the risk. The different limits proposed took into account the estimated average lead content of rigid and flexible PVC waste in 2013, the expected impact on recycling volumes and the fact that the release of lead from flexible PVC is known to be higher compared to the one from rigid PVC. Due account was taken of the fact that some articles have a high content of recovered PVC that may reach 100 % by weight of the PVC in the final article.
- (7) On 15 March 2018, the Agency's Committee for Socio-Economic Analysis ('SEAC') adopted its final opinion ⁽⁷⁾ in which it concluded that the restriction proposed by the Agency, as modified by both RAC and SEAC, was the most appropriate Union-wide measure to address the identified risk, in terms of its socioeconomic benefits and socioeconomic costs. SEAC reached that conclusion based on best available evidence, taking into account the properties of lead as a non-threshold toxic substance and its impact on human health, and the affordability of the costs associated with the proposed restriction. SEAC considered that there are suitable alternatives widely available and already used in the Union. It also considered the cost-effectiveness of the restriction. Finally, it concluded that even limited human health impacts in terms of intelligence quotient loss, would be sufficient to break even with the costs of the restriction.
- (8) SEAC agreed with the proposal in the Annex XV dossier that, considering the projected evolution of the concentration of lead in recovered PVC, that concentration would decrease sufficiently by 2035 – 2040 to allow PVC articles containing recovered PVC to comply with the proposed general lead concentration limit of 0,1 %. Therefore, the derogation for certain PVC articles containing recovered PVC should apply for 15 years from the entry into force of the restriction. SEAC further agreed that, in order to account for the uncertainty with respect to the future trends regarding the amount of PVC waste going to recycling and its lead content, that period of application should be reassessed within 10 years from the entry into force of the restriction. In line with the aim of the 2015 EU Action Plan for the Circular Economy ⁽⁸⁾ to promote non-toxic material cycles and preserve the high level of protection for human health and the environment, the Commission considered that that period of application should be reassessed within 7,5 years from the entry into force of the restriction.

⁽⁵⁾ VinylPlus progress report of 2017, p. 14; see https://vinylplus.eu/uploads/downloads/VinylPlus_Progress_Report_2017.pdf

⁽⁶⁾ <https://echa.europa.eu/documents/10162/86b00b9e-2852-d8d4-5fd7-be1e747ad7fa>

⁽⁷⁾ <https://echa.europa.eu/documents/10162/86b00b9e-2852-d8d4-5fd7-be1e747ad7fa>

⁽⁸⁾ Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions. Closing The Loop – An EU Action Plan for the Circular Economy. COM/2015/0614 final.

- (9) The Agency's Forum for Exchange of Information on Enforcement was consulted on the proposed restriction and its opinion was taken into account, resulting in a modified description of the scope and of the derogations from the proposed restriction.
- (10) On 26 April 2018, the Agency submitted the final opinions of RAC and SEAC to the Commission.
- (11) Taking into account the Annex XV dossier and the opinions of RAC and SEAC, and considering that there is an unacceptable risk to human health from lead in PVC articles, the Commission proposed a draft Commission regulation restricting the use of any concentration of lead and its compounds in PVC articles and the placing on the market of lead and its compounds in PVC articles in a concentration equal to or greater than 0,1 % by weight of the PVC material ("the draft regulation"). The draft regulation received a favourable opinion of the Committee established under Article 133 of Regulation (EC) No 1907/2006 on 20 November 2019.
- (12) In accordance with the regulatory procedure with scrutiny referred to in Article 133(4) of Regulation (EC) No 1907/2006, a resolution objecting to the draft regulation was adopted by the European Parliament plenary on 12 February 2020 ⁽⁹⁾. Consequently, the draft regulation was not adopted by the Commission.
- (13) In its resolution, the Parliament asked the Commission to remove the derogations for recovered PVC, as it would lead to the carry-over of lead into new products. The Parliament also requested the removal of the derogation for the two lead pigments subject to the authorisation regime under REACH. Furthermore, the Commission was asked to delete the proposed marking requirements for PVC articles containing recovered PVC as it considered it misleading and not reflecting that recovered PVC contains higher amounts of lead than newly produced PVC. Finally, the Parliament asked the Commission to reduce the proposed transitional period for when the provisions of the regulation shall apply.
- (14) The Commission has carefully assessed the resolution of the Parliament and acknowledges the need to address certain concerns. In addition, it considers that there is still an unacceptable risk to human health from lead in PVC articles, which needs to be addressed on a Union-wide basis. Against this background, the Commission decided to amend some of the provisions of the draft regulation to reflect the arguments brought forward by the Parliament and take into account relevant new data received from the Agency and stakeholders.
- (15) In particular, the Commission considers that clean recycling technologies which allow the removal of legacy substances of concern, including lead, from PVC waste should be encouraged. Current recycling technologies, however, can reduce but not completely eliminate legacy substances. It is therefore necessary to set a concentration limit of 0,1 % of lead by weight not only for the placing on the market but also the use of lead and its compounds in PVC, in order to allow both the placing on the market of articles containing less than 0,1 % of lead by weight of the PVC material and the continued use in articles of PVC material containing lead below that limit, such as PVC material recovered through chemical recycling or solvent dissolution and containing very small amounts of lead.
- (16) As a means of limiting the carryover of lead in new products, the derogation for PVC articles containing recovered flexible PVC should be removed from the draft regulation. However, economic operators should be granted a 24-month period to adapt to the new requirements.
- (17) However, a derogation for certain PVC articles containing recovered rigid PVC should be laid down to achieve an appropriate balance between the overall long-term benefits from the circular use of those materials and the overall long-term health concerns relating to that recovered material. Following industry reports that the average lead concentration in recovered rigid PVC is below 1,5 % due to routine mixing of pre- and post-consumer waste, the allowed lead concentration limit in recovered rigid PVC should be reduced from 2 % to 1,5 % by weight. To prevent the possible leaching of lead and the formation of lead-containing dust, recovered rigid PVC in derogated articles should be entirely enclosed within a layer of newly produced PVC, recovered PVC or other suitable material that

⁽⁹⁾ European Parliament resolution of 12 February 2020 on the draft Commission regulation amending Annex XVII to Regulation (EC) No 1907/2006 of the European Parliament and of the Council on the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH) as regards lead and its compounds (OJ C 294, 23.7.2021, p. 2).

contains less than 0,1 % of lead by weight, unless the derogated article is inaccessible during normal use. In addition, the Commission agrees with the Parliament that the benefits to health protection to be achieved with the restriction should be pursued faster. Consequently, the duration of the derogation should be decreased from 15 to 10 years. A review of the derogation should take place at the latest 5 years after the entry into force of the restriction. The review should include verifying trends regarding lead concentration in recovered PVC, the availability of adequate decontamination techniques and the socioeconomic impact of removing the derogation, considering the risk to human health and to the environment.

- (18) To limit the presence of lead from recovered rigid PVC to certain known articles, rigid PVC recovered from profiles and sheets in buildings and civil engineering works and containing more than 0,1 % of lead by weight of the PVC should only be used to produce new PVC profiles and sheets for the same applications. In combination with appropriate marking obligations, this should ensure the identification of lead-containing products and facilitate future decontamination activities. It should also promote a separate collection and recycling of PVC pipes (currently rarely recycled), as pipe producers who currently use PVC recovered from profiles and sheets to produce new pipes will need to replace it with an alternative PVC source. However, in order to allow economic operators sufficient time to put in place dedicated PVC waste collection and recycling, re-organise their supply chains and, where needed, procure recovered PVC from other origin than profiles and sheets, this obligation should apply after 36 months from the entry into force of this Regulation.
- (19) For enforcement purposes and to ensure that professionals and consumers are adequately informed of possible risks, PVC articles containing recovered rigid PVC should be marked if they contain lead in a concentration equal or greater than 0,1 % by weight of the PVC material. This should also facilitate the separate collection of lead-containing waste.
- (20) Considering the difficulties to determine if PVC in articles is of recovered origin, suppliers of PVC articles benefitting from derogations associated to their content in recovered PVC should be able to prove the recovered origin of the material by presenting documentary evidence. In the Union, several certification schemes, all of which are based on technical specifications in EN 15343:2007 ⁽¹⁰⁾, are available to recyclers to support claims on the traceability of recovered PVC. Given the lack of suitable practical means for enforcement authorities to verify recovery claims associated to recovered PVC in imported articles, such claims should be substantiated via independent third party certification.
- (21) The specific derogation previously proposed for the lead pigments "lead sulfochromate yellow" and "lead chromate molybdate sulfate red" should be removed from the draft regulation. In view of recent case law ⁽¹¹⁾ and the Agency's intention to submit a restriction dossier pursuant to Article 69(2) of Regulation (EC) No 1907/2006 related to the risks stemming from the use of those two lead pigments, the Commission considers that that derogation has become unnecessary.
- (22) In view of the low risks and the lack of suitable alternatives, a derogation for PVC-silica separators in lead batteries should be set out for a period of 10 years from the entry into force of this Regulation, after which suitable alternatives are expected to be available.
- (23) To avoid double regulation, a derogation should be laid down for articles already covered by Regulation (EC) No 1907/2006 or other Union legislation regulating lead content in PVC.

⁽¹⁰⁾ Standard EN 15343:2007 on Plastics – Recycled Plastics – Plastics recycling traceability and assessment of conformity and recycled content, approved by the European Committee for Standardization on 2 November 2007.

⁽¹¹⁾ *European Commission v Kingdom of Sweden*, Case C-389/19 P, ECLI:EU:C:2021:131.

- (24) As industry in the Union has not been using lead stabilisers in PVC since 2015, a period of 18 months is considered sufficient for most economic operators to be able to adapt to the new requirements, dispose of their stock and communicate relevant information on the restriction within their supply chains. Furthermore, the restriction should not apply to PVC articles already placed on the market before the end of that period, as that would give rise to considerable enforcement difficulties.
- (25) Regulation (EC) No 1907/2006 should therefore be amended accordingly.
- (26) The measures provided for in this Regulation are in accordance with the opinion of the Committee established under Article 133 of Regulation (EC) No 1907/2006,

HAS ADOPTED THIS REGULATION:

Article 1

Annex XVII to Regulation (EC) No 1907/2006 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, 3 May 2023.

For the Commission
The President
Ursula VON DER LEYEN

ANNEX

In entry 63, column 2, of Annex XVII to Regulation (EC) No 1907/2006, the following paragraphs are added:

	‘15. Shall not be placed on the market or used in articles produced from polymers or copolymers of vinyl chloride (‘PVC’), if the concentration of lead is equal to or greater than 0,1 % by weight of the PVC material. 16. Paragraph 15 shall apply with effect from 29 November 2024. 17. By way of derogation, paragraph 15 shall not apply to PVC articles containing recovered flexible PVC until 28 May 2025. 18. By way of derogation, paragraph 15 shall not apply to the following PVC articles containing recovered rigid PVC until 28 May 2033, if the concentration of lead is lower than 1,5 % by weight of the recovered rigid PVC: (a) profiles and sheets for exterior applications in buildings and civil engineering works, excluding decks and terraces; (b) profiles and sheets for decks and terraces, provided that the recovered PVC is used in a middle layer and is entirely covered with a layer of PVC or other material for which the concentration of lead is lower than 0,1 % by weight; (c) profiles and sheets for use in concealed spaces or voids in buildings and civil engineering works (where they are inaccessible during normal use, excluding maintenance, for example, cable ducts); (d) profiles and sheets for interior building applications, provided that the entire surface of the profile or sheet facing the occupied areas of a building after installation is produced using PVC or other material for which the concentration of lead is lower than 0,1 % by weight; (e) multi-layer pipes (excluding pipes for drinking water), provided that the recovered PVC is used in a middle layer and is entirely covered with a layer of PVC or other material for which the concentration of lead is lower than 0,1 % by weight; (f) fittings, excluding fittings for pipes for drinking water. From 28 May 2026, rigid PVC recovered from the categories of articles referred to in points (a) to (d) shall only be used for the production of new articles of any of those categories. Suppliers of PVC articles containing recovered rigid PVC with a concentration of lead equal to or greater than 0,1 % by weight of the PVC material shall ensure, before placing those articles on the market, that they are visibly, legibly and indelibly marked with the statement: “Contains ≥ 0,1 % lead”. Where the marking cannot be provided on the article due to the nature of the article, it shall be on the packaging of the article. Suppliers of PVC articles containing recovered rigid PVC shall submit to national enforcement authorities upon request documentary evidence to substantiate the claims on the recovered origin of the PVC in those articles. Certificates issued by schemes to provide proof of traceability and recycled content, such as those developed according to EN 15343:2007 or equivalent recognised standards, may be used to substantiate such claims for PVC articles produced in the Union. Claims made on the recovered origin of the PVC in imported articles shall be accompanied by a certificate that provides equivalent proof of traceability and recycled content, issued by an independent third party. By 28 May 2028, the Commission shall review this paragraph in light of new scientific information and, if appropriate, modify it accordingly. 19. By way of derogation, paragraph 15 shall not apply to: (a) PVC-silica separators in lead acid batteries, until 28 May 2033; (b) articles covered by paragraph 1, in accordance with paragraphs 2 to 5, and by paragraph 7 in accordance with paragraphs 8 and 10; (c) articles within the scope of: (i) Regulation (EC) No 1935/2004; (ii) Directive 2011/65/EU; (iii) Directive 94/62/EC; (iv) Directive 2009/48/EC. 20. By way of derogation, paragraph 15 shall not apply to PVC articles placed on the market until 28 November 2024.’
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DECISIONS

COUNCIL DECISION (EU) 2023/924

of 24 April 2023

on the position to be adopted, on behalf of the European Union, within the EEA Joint Committee concerning amendments to Annex I (Veterinary and phytosanitary matters) and Annex II (Technical regulations, standards, testing and certification) to the EEA Agreement

(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 114 in conjunction with Article 218(9) thereof,

Having regard to Council Regulation (EC) No 2894/94 of 28 November 1994 concerning arrangements for implementing the Agreement on the European Economic Area ⁽¹⁾, and in particular Article 1(3) thereof,

Having regard to the proposal from the European Commission,

Whereas:

- (1) The Agreement on the European Economic Area ⁽²⁾ ('the EEA Agreement') entered into force on 1 January 1994.
- (2) Pursuant to Article 98 of the EEA Agreement, the EEA Joint Committee established by the EEA Agreement ('the EEA Joint Committee') may decide to amend, inter alia, Annex I (Veterinary and phytosanitary matters) and Annex II (Technical regulations, standards, testing and certification) to the EEA Agreement.
- (3) Regulation (EU) 2019/1009 of the European Parliament and of the Council ⁽³⁾ is to be incorporated into the EEA Agreement.
- (4) Annexes I and II to the EEA Agreement should therefore be amended accordingly.
- (5) The position of the Union within the EEA Joint Committee should therefore be based on the attached draft Decision,

HAS ADOPTED THIS DECISION:

Article 1

The position to be adopted, on behalf of the Union, within the EEA Joint Committee on the proposed amendments to Annex I (Veterinary and phytosanitary matters) and Annex II (Technical regulations, standards, testing and certification) to the EEA Agreement shall be based on the draft Decision of the EEA Joint Committee attached to this Decision.

Article 2

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

⁽¹⁾ OJ L 305, 30.11.1994, p. 6.

⁽²⁾ OJ L 1, 3.1.1994, p. 3.

⁽³⁾ Regulation (EU) 2019/1009 of the European Parliament and of the Council of 5 June 2019 laying down rules on the making available on the market of EU fertilising products and amending Regulations (EC) No 1069/2009 and (EC) No 1107/2009 and repealing Regulation (EC) No 2003/2003 (OJ L 170, 25.6.2019, p. 1).

Done at Luxembourg, 24 April 2023.

For the Council

The President

J. BORRELL FONTELLES

DRAFT**DECISION OF THE EEA JOINT COMMITTEE No [...]****of [...]****amending Annex I (Veterinary and phytosanitary matters) and Annex II (Technical regulations, standards, testing and certification) to the EEA Agreement**

THE EEA JOINT COMMITTEE,

Having regard to the Agreement on the European Economic Area ('the EEA Agreement'), and in particular Article 98 thereof,

Whereas:

- (1) Regulation (EU) 2019/1009 of the European Parliament and of the Council of 5 June 2019 laying down rules on the making available on the market of EU fertilising products and amending Regulations (EC) No 1069/2009 and (EC) No 1107/2009 and repealing Regulation (EC) No 2003/2003 ⁽¹⁾, as corrected by OJ L 83, 10.3.2022, p. 66 and OJ L 161, 16.6.2022, p. 121, is to be incorporated into the EEA Agreement.
- (2) Commission Delegated Regulation (EU) 2021/1768 of 23 June 2021 amending, for the purpose of its adaptation to technical progress, Annexes I, II, III and IV to Regulation (EU) 2019/1009 of the European Parliament and of the Council laying down rules on the making available on the market of EU fertilising products ⁽²⁾ is to be incorporated into the EEA Agreement.
- (3) Commission Decision (EU) 2020/1178 of 27 July 2020 on the national provisions notified by the Kingdom of Denmark pursuant to Article 114(4) of the Treaty of the Functioning of the European Union concerning cadmium content in fertilisers ⁽³⁾ is to be incorporated into the EEA Agreement.
- (4) Commission Decision (EU) 2020/1184 of 17 July 2020 on the national provisions notified by Hungary pursuant to Article 114(4) of the Treaty on the Functioning of the European Union concerning the cadmium content in phosphate fertilisers ⁽⁴⁾ is to be incorporated into the EEA Agreement.
- (5) Commission Decision (EU) 2020/1205 of 6 August 2020 on the national provisions notified by the Slovak Republic pursuant to Article 114(4) of the Treaty on the Functioning of the European Union concerning the cadmium content in phosphate fertilisers ⁽⁵⁾ is to be incorporated into the EEA Agreement.
- (6) Communication from the Commission concerning the visual appearance of the label on EU fertilising products referred to in Annex III to Regulation (EU) 2019/1009 of the European Parliament and of the Council ⁽⁶⁾ is to be incorporated into the EEA Agreement.
- (7) Regulation (EU) 2019/1009 repeals Regulation (EC) No 2003/2003 of the European Parliament and of the Council ⁽⁷⁾, which is incorporated into the EEA Agreement and which is consequently to be repealed under the EEA Agreement.
- (8) The derogation enabling the EFTA States to limit the marketing of fertilisers in their markets due to cadmium contents has been in place in the EEA Agreement since its entry into force in 1994. As for the EU Member States which have been granted the same derogations with regard to cadmium content in fertilisers, the factual circumstances necessitating this derogation remain valid.

⁽¹⁾ OJ L 170, 25.6.2019, p. 1.

⁽²⁾ OJ L 356, 8.10.2021, p. 8.

⁽³⁾ OJ L 259, 10.8.2020, p. 14.

⁽⁴⁾ OJ L 261, 11.8.2020, p. 42.

⁽⁵⁾ OJ L 270, 18.8.2020, p. 7.

⁽⁶⁾ OJ C 119, 7.4.2021, p. 1.

⁽⁷⁾ OJ L 304, 21.11.2003, p. 1.

- (9) Commission Regulations (EC) No 2076/2004 ⁽⁸⁾, (EC) No 162/2007 ⁽⁹⁾, (EC) No 1107/2008 ⁽¹⁰⁾, (EC) No 1020/2009 ⁽¹¹⁾, (EU) No 137/2011 ⁽¹²⁾, (EU) No 223/2012 ⁽¹³⁾, (EU) No 463/2013 ⁽¹⁴⁾, (EU) No 1257/2014 ⁽¹⁵⁾, (EU) 2016/1618 ⁽¹⁶⁾, (EU) 2019/1102 ⁽¹⁷⁾, (EU) 2020/1666 ⁽¹⁸⁾ and (EU) 2021/862 ⁽¹⁹⁾, which are incorporated into the EEA Agreement, have become obsolete and are consequently to be repealed under the EEA Agreement.
- (10) This Decision contains provisions regarding veterinary matters. Legislation regarding veterinary matters shall not apply to Liechtenstein as long as the application of the Agreement between the European Community and the Swiss Confederation on trade in agricultural products is extended to Liechtenstein, as specified in the sectoral adaptations to Annex I.
- (11) Annexes I and II to the EEA Agreement should therefore be amended accordingly,

HAS ADOPTED THIS DECISION:

Article 1

The following indent is added in point 9b (Regulation (EC) No 1069/2009 of the European Parliament and of the Council) in Part 7.1 of Chapter I of Annex I to the EEA Agreement:

‘— **32019 R 1009**: Regulation (EU) 2019/1009 of the European Parliament and of the Council of 5 June 2019 (OJ L 170, 25.6.2019, p. 1), as corrected by OJ L 83, 10.3.2022, p. 66 and OJ L 161, 16.6.2022, p. 121.’.

Article 2

Annex II to the EEA Agreement shall be amended as follows:

1. The text of point 1 (Regulation (EC) No 2003/2003 of the European Parliament and of the Council) of Chapter XIV shall be replaced by the following:

‘**32019 R 1009**: Regulation (EU) 2019/1009 of the European Parliament and of the Council of 5 June 2019 laying down rules on the making available on the market of EU fertilising products and amending Regulations (EC) No 1069/2009 and (EC) No 1107/2009 and repealing Regulation (EC) No 2003/2003 (OJ L 170, 25.6.2019, p. 1), as corrected by OJ L 83, 10.3.2022, p. 66 and OJ L 161, 16.6.2022, p. 121, as amended by:

— **32021 R 1768**: Commission Delegated Regulation (EU) 2021/1768 of 23 June 2021 (OJ L 356, 8.10.2021, p. 8).

The provisions of the Regulation shall, for the purposes of this Agreement, be read with the following adaptations:

- (a) The EFTA States shall be free to continue to apply their national limit values for cadmium in phosphate fertilisers existing at the date of entry into force of Decision of the EEA Joint Committee No .../... of [this decision] until such time as harmonised limit values for cadmium content in phosphate fertilisers which are equal to or lower than those limit values become applicable in the European Economic Area.
- (b) In Article 1(2), the following points shall be added after point (p):
- “(q) the national plant health law of the EFTA States;
- (r) the national law on invasive alien species of the EFTA States.”;

⁽⁸⁾ OJ L 359, 4.12.2004, p. 25.

⁽⁹⁾ OJ L 51, 20.2.2007, p. 7.

⁽¹⁰⁾ OJ L 299, 8.11.2008, p. 13.

⁽¹¹⁾ OJ L 282, 29.10.2009, p. 7.

⁽¹²⁾ OJ L 43, 17.2.2011, p. 1.

⁽¹³⁾ OJ L 75, 15.3.2012, p. 12.

⁽¹⁴⁾ OJ L 134, 18.5.2013, p. 1.

⁽¹⁵⁾ OJ L 337, 25.11.2014, p. 53.

⁽¹⁶⁾ OJ L 242, 9.9.2016, p. 24.

⁽¹⁷⁾ OJ L 175, 28.6.2019, p. 25.

⁽¹⁸⁾ OJ L 377, 11.11.2020, p. 3.

⁽¹⁹⁾ OJ L 190, 31.5.2021, p. 74.

(c) In Article 52, as regards the EFTA States, the words “or the date of entry into force of Decision of the EEA Joint Committee No .../... of [this decision], whichever is the later” are inserted after the words “16 July 2022”.

2. The following is inserted after point 5 (Commission Decision 2006/390/EC) of Chapter XIV:

‘6. **32020 D 1178**: Commission Decision (EU) 2020/1178 of 27 July 2020 on the national provisions notified by the Kingdom of Denmark pursuant to Article 114(4) of the Treaty of the Functioning of the European Union concerning cadmium content in fertilisers (OJ L 259, 10.8.2020, p. 14).

7. **32022 D 1184**: Commission Decision (EU) 2020/1184 of 17 July 2020 on the national provisions notified by Hungary pursuant to Article 114(4) of the Treaty on the Functioning of the European Union concerning the cadmium content in phosphate fertilisers (OJ L 261, 11.8.2020, p. 42).

8. **32020 D 1205**: Commission Decision (EU) 2020/1205 of 6 August 2020 on the national provisions notified by the Slovak Republic pursuant to Article 114(4) of the Treaty on the Functioning of the European Union concerning the cadmium content in phosphate fertilisers (OJ L 270, 18.8.2020, p. 7).

ACTS OF WHICH THE CONTRACTING PARTIES SHALL TAKE NOTE

The Contracting Parties shall take note of the following acts:

1. **52021XC0407(04)**: Communication from the Commission concerning the visual appearance of the label on EU fertilising products referred to in Annex III to Regulation (EU) 2019/1009 of the European Parliament and of the Council (OJ C 119, 7.4.2021, p. 1).

3. Point 13 (Regulation (EC) No 1107/2009 of the European Parliament and of the Council) of Chapter XV is amended as follows:

(i) the following indent is added:

‘– **32019 R 1009**: Regulation (EU) 2019/1009 of the European Parliament and of the Council (OJ L 170, 25.6.2019, p. 1), as corrected by OJ L 83, 10.3.2022, p. 66 and OJ L 161, 16.6.2022, p. 121.’

(ii) adaptations (i) and (j) are renumbered as adaptations (j) and (k), respectively.

(iii) the following adaptation is inserted after adaptation (h):

‘(i) In Article 80(8), as regards the EFTA States, the words “15 July 2019” shall read “the date of entry into force of Decision of the EEA Joint Committee No .../... of [this decision]”.’

Article 3

The texts of Regulation (EU) 2019/1009, as corrected by OJ L 83, 10.3.2022, p. 66 and OJ L 161, 16.6.2022, p. 121, Delegated Regulation (EU) 2021/1768, Decisions (EU) 2020/1178, (EU) 2020/1184 and (EU) 2020/1205, and of the Communication from the Commission concerning the visual appearance of the label on EU fertilising products referred to in Annex III to Regulation (EU) 2019/1009 of the European Parliament and of the Council in the Icelandic and Norwegian languages, to be published in the EEA Supplement to the *Official Journal of the European Union*, shall be authentic.

Article 4

This Decision shall enter into force on the day following the last notification under Article 103(1) of the EEA Agreement *.

(*) [No constitutional requirements indicated.] [Constitutional requirements indicated.]

Article 5

This Decision shall be published in the EEA Section of, and in the EEA Supplement to, the *Official Journal of the European Union*.

Done at Brussels, [...].

For the EEA Joint Committee
The President

The Secretaries
To the EEA Joint Committee

COUNCIL DECISION (EU) 2023/925**of 24 April 2023****on the position to be adopted, on behalf of the European Union, within the EEA Joint Committee concerning an amendment to Annex II (Technical regulations, standards, testing and certification) and Annex XIII (Transport) to the EEA Agreement (EASA Regulation)****(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 100(2) in conjunction with Article 218(9) thereof,

Having regard to Council Regulation (EC) No 2894/94 of 28 November 1994 concerning arrangements for implementing the Agreement on the European Economic Area ⁽¹⁾, and in particular Article 1(3) thereof,

Having regard to the proposal from the European Commission,

Whereas:

- (1) The Agreement on the European Economic Area ⁽²⁾ ('the EEA Agreement') entered into force on 1 January 1994.
- (2) Pursuant to Article 98 of the EEA Agreement, the EEA Joint Committee may decide to amend, inter alia, Annex II (Technical regulations, standards, testing and certification) and Annex XIII (Transport) to the EEA Agreement.
- (3) Regulation (EU) 2018/1139 of the European Parliament and of the Council ⁽³⁾ should be incorporated into the EEA Agreement.
- (4) Annex II (Technical regulations, standards, testing and certification) and Annex XIII (Transport) to the EEA Agreement should therefore be amended accordingly.
- (5) The position of the Union within the EEA Joint Committee should therefore be based on the attached draft decision,

HAS ADOPTED THIS DECISION:

Article 1

The position to be adopted, on behalf of the Union, within the EEA Joint Committee on the proposed amendment to Annex II (Technical regulations, standards, testing and certification) and Annex XIII (Transport) to the EEA Agreement, shall be based on the draft decision of the EEA Joint Committee attached to this Decision.

Article 2

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

⁽¹⁾ OJ L 305, 30.11.1994, p. 6.

⁽²⁾ OJ L 1, 3.1.1994, p. 3.

⁽³⁾ Regulation (EU) 2018/1139 of the European Parliament and of the Council of 4 July 2018 on common rules in the field of civil aviation and establishing a European Union Aviation Safety Agency, and amending Regulations (EC) No 2111/2005, (EC) No 1008/2008, (EU) No 996/2010, (EU) No 376/2014 and Directives 2014/30/EU and 2014/53/EU of the European Parliament and of the Council, and repealing Regulations (EC) No 552/2004 and (EC) No 216/2008 of the European Parliament and of the Council and Council Regulation (EEC) No 3922/91 (OJ L 212, 22.8.2018, p. 1).

Done at Luxembourg, 24 April 2023.

For the Council

The President

J. BORRELL FONTELLES

DRAFT

DECISION OF THE EEA JOINT COMMITTEE No [...]

of ...

amending Annex II (Technical regulations, standards, testing and certification) and Annex XIII (Transport) to the EEA Agreement

THE EEA JOINT COMMITTEE,

Having regard to the Agreement on the European Economic Area ('the EEA Agreement'), and in particular Article 98 thereof,

Whereas:

- (1) Regulation (EU) 2018/1139 of the European Parliament and of the Council of 4 July 2018 on common rules in the field of civil aviation and establishing a European Union Aviation Safety Agency, and amending Regulations (EC) No 2111/2005, (EC) No 1008/2008, (EU) No 996/2010, (EU) No 376/2014 and Directives 2014/30/EU and 2014/53/EU of the European Parliament and of the Council, and repealing Regulations (EC) No 552/2004 and (EC) No 216/2008 of the European Parliament and of the Council and Council Regulation (EEC) No 3922/91 ⁽¹⁾ is to be incorporated into the EEA Agreement.
- (2) The activities of the European Union Aviation Safety Agency ('the Agency') may affect the level of civil aviation safety within the European Economic Area.
- (3) Regulation (EU) 2018/1139 should therefore be incorporated into the EEA Agreement in order to allow for the full participation of the EFTA States in the activities of the Agency.
- (4) Some air traffic management/air navigation services provisions of Regulation (EU) 2018/1139, and the delegated and implementing acts adopted on the basis thereof, originate from Annexes to the Convention on International Civil Aviation (Chicago Convention), Procedures for Air Navigation Services (PANS) and Regional Supplementary Procedures (SUPPS) applicable to the ICAO European (EUR) and/or Africa-Indian Ocean (AFI) regions, which may be ill-suited or incompatible with those applicable to the ICAO North-Atlantic (NAT) region. While Iceland is committed to fulfilling and complying with the provisions of Regulation (EU) 2018/1139, its location in the NAT region implies fulfilment and compliance with the SUPPS applicable to the NAT region. Therefore, NAT SUPPS and guidance material specific to the NAT region may be considered as appropriate Acceptable Means of Compliance (AMC) and Guidance Material (GM) for Iceland.
- (5) Annexes II and XIII to the EEA Agreement should therefore be amended accordingly,

HAS ADOPTED THIS DECISION:

Article 1

Annex II to the EEA Agreement shall be amended as follows:

1. The following is added in point 7e (Directive 2014/30/EU of the European Parliament and of the Council) of Chapter X:

‘, as amended by:

— **32018 R 1139**: Regulation (EU) 2018/1139 of the European Parliament and of the Council of 4 July 2018 (OJ L 212, 22.8.2018, p. 1).’

⁽¹⁾ OJ L 212, 22.8.2018, p. 1.

2. The following is added in point 4zzr (Directive 2014/53/EU of the European Parliament and of the Council) of Chapter XVIII:

‘, as amended by:

- **32018 R 1139**: Regulation (EU) 2018/1139 of the European Parliament and of the Council of 4 July 2018 (OJ L 212, 22.8.2018, p. 1).’

Article 2

Annex XIII to the EEA Agreement shall be amended as follows:

1. Point 64a (Regulation (EC) No 1008/2008 of the European Parliament and of the Council) is amended as follows:

- (i) the following indent is added:

‘— **32018 R 1139**: Regulation (EU) 2018/1139 of the European Parliament and of the Council of 4 July 2018 (OJ L 212, 22.8.2018, p. 1).’

- (ii) the following adaptation is added after adaptation (c):

‘(d) The following paragraph shall be added in Article 25:

“3. The EFTA States shall participate fully in the committee established pursuant to paragraph 1 and shall within it have the same rights and obligations as EU Member States, except for the right to vote. The EFTA Surveillance Authority shall have observer status in the committee.”

2. The following indent is added in points 66a (Council Regulation (EEC) No 3922/91), 66n (Regulation (EC) No 216/2008 of the European Parliament and of the Council) and 66w (Regulation (EC) No 552/2004 of the European Parliament and of the Council):

‘— **32018 R 1139**: Regulation (EU) 2018/1139 of the European Parliament and of the Council of 4 July 2018 (OJ L 212, 22.8.2018, p. 1).’

3. The following is added in points 66d (Regulation (EU) No 996/2010 of the European Parliament and of the Council) and 66gc (Regulation (EU) No 376/2014 of the European Parliament and of the Council):

‘, as amended by:

- **32018 R 1139**: Regulation (EU) 2018/1139 of the European Parliament and of the Council of 4 July 2018 (OJ L 212, 22.8.2018, p. 1).’

4. Point 66za (Regulation (EC) No 2111/2005 of the European Parliament and of the Council) is amended as follows:

- (i) the following is added:

‘, as amended by:

- **32018 R 1139**: Regulation (EU) 2018/1139 of the European Parliament and of the Council of 4 July 2018 (OJ L 212, 22.8.2018, p. 1).’

- (ii) the text of adaptation (c) shall be replaced by the following:

‘The following paragraph shall be added in Article 15:

“6. The EFTA States shall participate fully in the committee established pursuant to paragraph 1 and shall within it have the same rights and obligations as EU Member States, except for the right to vote. The EFTA Surveillance Authority shall have observer status in the committee.”

5. The following is inserted after point 66zab (Commission Regulation (EC) No 474/2006):

‘66zb. **32018 R 1139**: Regulation (EU) 2018/1139 of the European Parliament and of the Council of 4 July 2018 on common rules in the field of civil aviation and establishing a European Union Aviation Safety Agency, and amending Regulations (EC) No 2111/2005, (EC) No 1008/2008, (EU) No 996/2010, (EU) No 376/2014 and Directives 2014/30/EU and 2014/53/EU of the European Parliament and of the Council, and repealing Regulations (EC) No 552/2004 and (EC) No 216/2008 of the European Parliament and of the Council and Council Regulation (EEC) No 3922/91 (OJ L 212, 22.8.2018, p. 1).

The provisions of the Regulation shall, for the purposes of this Agreement, be read with the following adaptations:

- (a) Unless otherwise stipulated below, and notwithstanding the provisions of Protocol 1 to the Agreement, the term “Member State(s)” and other terms referring to their public entities contained in the Regulation shall be understood to include, in addition to its meaning in the Regulation, the EFTA States and their public entities. Paragraph 11 of Protocol 1 shall apply.
- (b) As regards the EFTA States, the Agency shall, as and when appropriate, assist the EFTA Surveillance Authority or the Standing Committee of the EFTA States, as the case may be, in the performance of their respective tasks. The Agency and the EFTA Surveillance Authority or the Standing Committee of the EFTA States, as the case may be, shall cooperate and exchange information as and when appropriate.
- (c) Nothing in this Regulation shall be construed so as to transfer to the Agency authority to act on behalf of the EFTA States under international agreements for other purposes than to assist in the performance of their obligations pursuant to such agreements.
- (d) Relevant Air traffic management/air navigation services requirements in the Regulation, its implementing and delegated acts, which stem from provisions applicable to the ICAO European (EUR) and/or Africa-Indian Ocean (AFI) regions should be understood as not being a requirement for Iceland, where Iceland complies with ICAO North Atlantic (NAT) Regional Supplementary Procedures. The latter may be considered to be Acceptable Means of Compliance (AMC) and Guidance Material (GM) for Iceland.

Air traffic management/air navigation services references in the Regulation, or in its implementing and delegated acts, to other EU Regulations which are limited in their geographical scope to the ICAO EUR and or AFI regions, are not binding on Iceland, unless Iceland has specifically stated that such regulations are applicable in Iceland.

- (e) Where Iceland complies with NAT Regional Supplementary Procedures (SUPPS) and or guidance material (GM) specific to the NAT region, the use of Alternative Means of Compliance (AltMOC) and subsequent notification thereof, is not required.
- (f) The EFTA States shall participate in the repository of information set up by the Agency in cooperation with the Commission, the EFTA Surveillance Authority and the national competent authorities referred to in Article 74.
- (g) In Article 62:
 - (i) in paragraph 1, the words “the EFTA Surveillance Authority,” shall be inserted after the words “The Commission,”.
 - (ii) in paragraph 5(a), the words “and an EFTA State” shall be inserted after the words “those Member States”.
 - (iii) as regards the EFTA States, the second subparagraph of paragraph 5 shall read as follows:

“The EFTA States concerned shall, at the latest six months after the date of entry into force of Decision of the EEA Joint Committee No .../... of ... [this decision], notify the Commission, the Agency and the EFTA Surveillance Authority of their joint-responsibility decision and provide them with all relevant information, in particular the agreement referred to in point (a) and the measures taken to ensure that those tasks are carried out effectively in accordance with point (b). The Commission and the EFTA Surveillance Authority shall cooperate on their assessment of the notification.”.
 - (iv) in the third subparagraph of paragraph 5, the words “or, as regards the EFTA States, the EFTA Surveillance Authority” shall be inserted after the words “the Commission”, and the words “, the EFTA Surveillance Authority” shall be inserted after the words “inform the Commission”.
 - (v) in paragraph 9, the words “the EFTA Surveillance Authority,” shall be inserted after the words “the Commission,”.

- (h) In Article 66:
 - (i) in paragraph 1, the words “or, as regards the EFTA States, the EFTA Surveillance Authority” shall be inserted after the words “the Commission”.
 - (ii) in paragraph 3, the words “, the EFTA Surveillance Authority” shall be inserted after the words “the Commission”.
 - (iii) in paragraph 4, the words “or the EFTA Surveillance Authority, as the case may be,” shall be inserted after the words “the Commission”.
- (i) In Article 68:
 - (i) in paragraph 1(a), the words “, an EFTA State or EFTA States” shall be inserted after the words “the Union”.
 - (ii) in paragraph 1(c), the words “, an EFTA State or EFTA States” shall be inserted after the words “a Member State”.
 - (iii) the following subparagraph shall be added to paragraph 3:

“Whenever the Union enters into consultations with a third country with the aim of concluding agreements concerning the recognition of certificates or concludes such agreements, the EFTA States shall be kept duly informed and the Union and its Member States will endeavour to open the possibility for the EFTA States to accede to that agreement or to obtain for the EFTA States an offer of a similar agreement with that third country. The EFTA States shall, in turn, endeavour to conclude with third countries agreements corresponding to those of the Union.”.
- (j) In Article 72:
 - (i) in paragraphs 1 and 6, the words “, the EFTA Surveillance Authority” shall be inserted after the words “the Commission”.
 - (ii) in paragraph 4, the words “or, as regards the EFTA States, the EFTA Surveillance Authority,” shall be inserted after the words “the Commission”.
 - (iii) the following paragraph shall be added:

“8. Information or data stemming from the EFTA States and the EFTA Surveillance Authority should at all times be afforded equivalent protection to information or data stemming from the EU Member States, the Agency and the Commission.”.
- (k) In Article 74(1) to (7), the words “or, as regards the EFTA States, the EFTA Surveillance Authority” shall be inserted after the words “the Commission”.
- (l) The following paragraph shall be added to Article 75:

“3. The Agency shall also assist the EFTA Surveillance Authority with measures and tasks pursuant to this Article.”.
- (m) In Article 76:
 - (i) in paragraph 2, the words “or, as regards the EFTA States, the EFTA Surveillance Authority” shall be inserted after the words “the Commission”.
 - (ii) in the third subparagraph of paragraph 4, the words “, the EFTA Surveillance Authority” shall be inserted after the words “the Commission”.
- (n) In Article 84:
 - (i) the following subparagraph shall be added to paragraph 1:

“The power to impose fines and periodic penalty payments on the natural or legal person to which the Agency has issued a certificate, or who has made a declaration to it, in accordance with this Regulation, shall in the case where such a natural or legal person has its principal place of business in an EFTA State or, if that person has no principal place of business, where it has its place of residence or place of establishment in an EFTA State, be vested in the EFTA Surveillance Authority.”.

- (ii) in paragraph 3, the words “or, as regards the EFTA States, the EFTA Surveillance Authority” shall be inserted after the words “the Commission”.
- (iii) in paragraph 5, the words “or, as regards the EFTA States, the EFTA Court,” shall be inserted after the words “The Court of Justice” and the words “and, as regards the EFTA States, the EFTA Surveillance Authority” shall be inserted after the words “the Commission”.
- (iv) in paragraph 6, the words “or, as regards the EFTA States, the EFTA Surveillance Authority” shall be inserted after the words “the Commission”.
- (o) In Article 85, the following subparagraph shall be added in paragraph 1:

“The Agency shall also assist the EFTA Surveillance Authority and provide it with the same support, where such measures and tasks fall within the competence of the EFTA Surveillance Authority pursuant to the EEA Agreement. The Agency shall report to the EFTA Surveillance Authority on inspections and other monitoring activities conducted in an EFTA State.”.
- (p) In Article 88:
 - (i) in paragraph 1, the words “, the EFTA Surveillance Authority,” shall be inserted after the words “the Commission”.
 - (ii) in paragraph 2, the words “and the EFTA Surveillance Authority” shall be inserted after the words “the Commission”.
 - (iii) in paragraph 3, the words “or, as regards the EFTA States, the EFTA Surveillance Authority,” shall be inserted after the words “the Commission”.
- (q) In Article 89(1), the words “, the EFTA Surveillance Authority,” shall be inserted after the words “the Commission”.
- (r) In Article 90(4), the words “, the EFTA Surveillance Authority” shall be inserted after the words “the Commission”.
- (s) In Article 93, the words “and the EFTA Surveillance Authority” shall be inserted after the words “the Commission”.
- (t) The following paragraph shall be added to Article 95:

“3. By way of derogation from Articles 12(2)(a) and 82(3)(a) of the Conditions of Employment of Other Servants, nationals of the EFTA States enjoying their full rights as citizens may be engaged under contract by the Executive Director of the Agency.

By way of derogation from Articles 12(2)(e), 82(3)(e) and 85(3) of the Conditions of Employment of Other Servants of the European Union, the languages referred to in Article 129(1) of the EEA Agreement shall be considered by the Agency, in respect of its staff, as languages of the Union referred to in Article 55(1) of the Treaty on European Union.”.
- (u) The following shall be added to Article 96:

“The EFTA States shall grant privileges and immunities to the Agency and its staff equivalent to those contained in Protocol (No 7) on the privileges and immunities of the European Union annexed to the Treaty on European Union and to the TFEU.”.
- (v) The following paragraph shall be added to Article 99:

“6. The EFTA States shall participate fully in the Management Board and shall within it have the same rights and obligations as EU Member States, except for the right to vote. The EFTA Surveillance Authority, as observer, shall appoint one representative and an alternate.”
- (w) The following paragraph shall be added to Article 106:

“7. Nationals of the EFTA States shall be eligible as members, including Chairpersons, of the Boards of Appeal. When the Commission draws up the list of qualified candidates referred to in paragraph 1, it shall also consider EFTA nationals as candidates.”
- (x) In Article 114(3), the words “, the EFTA Surveillance Authority and EFTA States” shall be inserted after the words “Member States”.

- (y) In Article 119:
- (i) in paragraph 1, the following sentence shall be inserted after the words “held by the Agency.”:
“Regulation (EC) No 1049/2001 shall, for the application of this Regulation, apply to any documents of the Agency regarding the EFTA States.”.
 - (ii) in paragraph 3, the words “, Icelandic and Norwegian” shall be inserted after the words “the Union”.
 - (iii) in paragraph 5, the words “or in Icelandic or Norwegian” shall be inserted after the words “the Union”.
- (z) The following paragraph shall be added to Article 120:
- “13. The EFTA States shall participate in the financial contribution from the Union referred to in paragraph 1(a). For this purpose, the procedures laid down in Article 82(1)(a) of and Protocol 32 to the Agreement shall apply *mutatis mutandis*.”.
- (za) The following paragraph shall be added to Article 127:
- “5. The EFTA States shall participate fully in the committee established pursuant to paragraph 1 and shall within it have the same rights and obligations as EU Member States, except for the right to vote. The EFTA Surveillance Authority shall have observer status in the committee.”.
- (zb) In Article 128(4), the words “and EFTA State” shall be inserted after the words “each Member State”.
- (zc) Article 140(6) shall not apply to the EFTA States.
- (zd) Where applicable, and unless otherwise provided, the above adaptations shall apply *mutatis mutandis* to other Union legislation conferring powers on the Agency and incorporated into this Agreement.’

Article 3

The text of Regulation (EU) 2018/1139 in the Icelandic and Norwegian languages, to be published in the EEA Supplement to the *Official Journal of the European Union*, shall be authentic.

Article 4

This Decision shall enter into force on ..., or on the day following the last notification under Article 103(1) of the EEA Agreement *, whichever is the later.

Article 5

This Decision shall be published in the EEA Section of, and in the EEA Supplement to, the *Official Journal of the European Union*.

Done at Brussels,

For the EEA Joint Committee
The President

The Secretaries
To the EEA Joint Committee

(*) [No constitutional requirements indicated.] [Constitutional requirements indicated.]

**Joint Declaration by the Contracting Parties to Decision No .../... incorporating Regulation
(EU) 2018/1139 of the European Parliament and of the Council into the Agreement**

The parties acknowledge that the incorporation of this act is without prejudice to the direct application of Protocol 7 on the privileges and immunities of the European Union to the nationals of EFTA States in the territory of each Member State of the European Union, pursuant to Article 11 of that Protocol.

COUNCIL DECISION (EU) 2023/926**of 24 April 2023****on the position to be adopted, on behalf of the European Union, within the EEA Joint Committee concerning an amendment to Protocol 31 to the EEA Agreement, on cooperation in specific fields outside the four freedoms (EU-OSHA)****(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 153(2) in conjunction with Article 218(9) thereof,

Having regard to Council Regulation (EC) No 2894/94 of 28 November 1994 concerning arrangements for implementing the Agreement on the European Economic Area ⁽¹⁾, and in particular Article 1(3) thereof,

Having regard to the proposal from the European Commission,

Whereas:

- (1) The Agreement on the European Economic Area ⁽²⁾ ('the EEA Agreement') entered into force on 1 January 1994.
- (2) Pursuant to Article 98 of the EEA Agreement, the EEA Joint Committee may decide to amend, inter alia, Protocol 31 to the EEA Agreement, on cooperation in specific fields outside the four freedoms.
- (3) It is appropriate to extend the cooperation of the Contracting Parties to the EEA Agreement to include Regulation (EU) 2019/126 of the European Parliament and of the Council ⁽³⁾.
- (4) Protocol 31 to the EEA Agreement should therefore be amended in order to allow for this extended cooperation to take place from 1 January 2023.
- (5) The position of the Union within the EEA Joint Committee should therefore be based on the attached draft Decision,

HAS ADOPTED THIS DECISION:

Article 1

The position to be adopted, on behalf of the Union, within the EEA Joint Committee on the proposed amendment to Protocol 31 to the EEA Agreement, on cooperation in specific fields outside the four freedoms, shall be based on the draft decision of the EEA Joint Committee attached to this Decision.

Article 2

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

⁽¹⁾ OJ L 305, 30.11.1994, p. 6.

⁽²⁾ OJ L 1, 3.1.1994, p. 3.

⁽³⁾ Regulation (EU) 2019/126 of the European Parliament and of the Council of 16 January 2019 establishing the European Agency for Safety and Health at Work (EU-OSHA), and repealing Council Regulation (EC) No 2062/94 (OJ L 30, 31.1.2019, p. 58).

Done at Luxembourg, 24 April 2023.

For the Council

The President

J. BORRELL FONTELLES

DRAFT

DECISION No ... OF THE EEA JOINT COMMITTEE

of ...

amending Protocol 31 to the EEA Agreement, on cooperation in specific fields outside the four freedoms

THE EEA JOINT COMMITTEE,

Having regard to the Agreement on the European Economic Area ('the EEA Agreement'), and in particular Article 98 thereof,

Whereas:

- (1) It is appropriate to extend the cooperation of the Contracting Parties to the EEA Agreement to include Regulation (EU) 2019/126 of the European Parliament and of the Council of 16 January 2019 establishing the European Agency for Safety and Health at Work (EU-OSHA), and repealing Council Regulation (EC) No 2062/94 ⁽¹⁾.
- (2) Regulation (EU) 2019/126 repeals Council Regulation (EC) No 2062/94 ⁽²⁾, which is included in the EEA Agreement and which is consequently to be repealed under the EEA Agreement.
- (3) Protocol 31 to the EEA Agreement should therefore be amended in order to allow for this extended cooperation to take place from 1 January 2023,

HAS ADOPTED THIS DECISION:

Article 1

The text of paragraph 11 of Article 5 of Protocol 31 shall be replaced by the following:

'(a) The EFTA States shall participate fully in the European Agency for Safety and Health at Work (EU-OSHA), hereinafter referred to as the "Agency", as set up by the following Union act:

— **32019 R 0126**: Regulation (EU) 2019/126 of the European Parliament and of the Council of 16 January 2019 establishing the European Agency for Safety and Health at Work (EU-OSHA), and repealing Council Regulation (EC) No 2062/94 (OJ L 30, 31.1.2019, p. 58).

- (b) The EFTA States shall contribute financially to the activities referred to under (a) in accordance with Article 82(1)(a) and Protocol 32 of the Agreement.
- (c) The EFTA States shall participate fully in the Management Board and shall within it have the same rights and obligations as EU Member States, except for the right to vote.
- (d) The term 'Member State(s)' and other terms referring to their public entities contained in Article 12 of the Regulation shall be understood to include, in addition to their meaning in the Regulation, the EFTA States and their public entities.
- (e) The Agency shall have legal personality. It shall enjoy in all the states of the Contracting Parties the most extensive legal capacity accorded to legal persons under their laws.
- (f) The EFTA States shall grant privileges and immunities to the Agency and its staff equivalent to those contained in the Protocol on Privileges and Immunities of the European Union.
- (g) By way of derogation from Article 12(2)(a) and 82(3)(a) of the Conditions of Employment of Other Servants of the European Union, nationals of EFTA States enjoying their full rights as citizens may be engaged under contract by the Executive Director of the Agency.

⁽¹⁾ OJ L 30, 31.1.2019, p. 58.

⁽²⁾ OJ L 216, 20.8.1994, p. 1.

- (h) By way of derogation from Articles 12(2)(e), 82(3)(e) and 85(3) of the Conditions of Employment of Other Servants of the European Union, the languages referred to in Article 129(1) of the Agreement shall be considered by the Agency, in respect of its staff, as languages of the Union referred to in Article 55(1) of the Treaty on European Union.
- (i) By virtue of Article 79(3) of the Agreement, Part VII (Institutional Provisions) of the Agreement shall apply to this paragraph.
- (j) Regulation (EC) No 1049/2001 of the European Parliament and the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents ⁽³⁾ shall, for the application of Regulation (EU) 2019/126, apply to any documents of the Agency regarding the EFTA States as well.’.

Article 2

This Decision shall enter into force on the day following the last notification under Article 103(1) of the EEA Agreement *.

It shall apply from 1 January 2023.

Article 3

This Decision shall be published in the EEA Section of, and in the EEA Supplement to, the *Official Journal of the European Union*.

Done at Brussels,

*For the EEA Joint Committee
The President*

*The Secretaries
To the EEA Joint Committee*

⁽³⁾ OJ L 145, 31.5.2001, p. 43.

^(*) [No constitutional requirements indicated.] [Constitutional requirements indicated.]

**Joint Declaration by the Contracting Parties to Decision No .../...
incorporating Regulation (EU) 2019/126 of the European Parliament and of the Council into the
Agreement**

The parties acknowledge that the incorporation of this act is without prejudice to the direct application of Protocol 7 on the privileges and immunities of the European Union to the nationals of EFTA states in the territory of each Member State of the European Union, pursuant to Article 11 of that Protocol.

COUNCIL DECISION (CFSP) 2023/927**of 5 May 2023****on an assistance measure under the European Peace Facility to support the Ukrainian Armed Forces through the provision of ammunition**

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on European Union, and in particular Articles 28(1) and 41(2) thereof,

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

Whereas:

- (1) Council Decision (CFSP) 2021/509 ⁽¹⁾ establishes the European Peace Facility (EPF) for the financing by Member States of Union actions under the common foreign and security policy (CFSP) to preserve peace, prevent conflicts and strengthen international security pursuant to Article 21(2), point (c), of the Treaty. In particular, pursuant to Article 1(2) of Decision (CFSP) 2021/509, the EPF is to be used for the financing of assistance measures such as actions to strengthen the capacities of third States and regional and international organisations relating to military and defence matters.
- (2) The Ukrainian Armed Forces have been countering Russian aggression, with continued military and civilian casualties, for several years. The Russian aggression dramatically escalated in February 2022 due to an unprovoked full-scale invasion of Ukraine by armed forces of the Russian Federation.
- (3) On 25 February 2022, the Government of Ukraine made an urgent request to the Union for assistance through the provision of military equipment. In response, support has been provided under the EPF since 28 February 2022, pursuant to Council Decisions (CFSP) 2022/338 ⁽²⁾ and (CFSP) 2022/339 ⁽³⁾.
- (4) During the 24th EU-Ukraine summit on 3 February 2023, the Union and its Member States reiterated their continued support for Ukraine and the Ukrainian people against Russia's ongoing war of aggression for as long as it takes. At the special meeting of the European Council on 9 and 10 February 2023, the President of Ukraine emphasised the urgent need for further military support for Ukraine.
- (5) On 2 March 2023, the High Representative of the Union for Foreign Affairs and Security Policy ('the High Representative') received a request from Ukraine for the Union to assist the Ukrainian Armed Forces with the supply of 155-mm-calibre artillery rounds.
- (6) On 20 March 2023, the Council agreed on a three-track approach with a view to, in particular, speeding up delivery and joint procurement, aiming at one million rounds of artillery ammunition for Ukraine in a joint effort within the next 12 months, and called for the swift implementation of those three tracks, which are interlinked and need to be pursued in parallel and in a coordinated way. The Council called on Member States to urgently deliver ground-to-ground and artillery ammunition to Ukraine and, if requested, missiles. As regards the third track, the Council also invited the Commission to present concrete proposals to urgently support the ramp-up of the manufacturing capacities of the European defence industry, secure supply chains, facilitate efficient procurement procedures, address shortfalls in production capacities and promote investments, including, where appropriate, mobilising the Union budget.

⁽¹⁾ Council Decision (CFSP) 2021/509 of 22 March 2021 establishing a European Peace Facility, and repealing Decision (CFSP) 2015/528 (OJ L 102, 24.3.2021, p. 14).

⁽²⁾ Council Decision (CFSP) 2022/338 of 28 February 2022 on an assistance measure under the European Peace Facility for the supply to the Ukrainian Armed Forces of military equipment, and platforms, designed to deliver lethal force (OJ L 60, 28.2.2022, p. 1).

⁽³⁾ Council Decision (CFSP) 2022/339 of 28 February 2022 on an assistance measure under the European Peace Facility to support the Ukrainian Armed Forces (OJ L 61, 28.2.2022, p. 1).

- (7) The Council further called on Member States to jointly procure 155-mm-calibre ammunition and, if requested, missiles for Ukraine in the fastest way possible before 30 September 2023 from the European defence industry (and Norway) within the parameters defined in the context of an existing European Defence Agency (EDA) project or through complementary joint acquisition projects led by a Member State.
- (8) The terms and conditions as laid down in this Decision are relevant only for joint procurements referred to in paragraph 3 of the note on 'Speeding up delivery and joint procurement of ammunition for Ukraine' approved by the Council on 20 March 2023 and are without prejudice to any terms and conditions of future decisions or regulations concerning the European defence industry.
- (9) Assistance measures are to be implemented taking into account the principles and requirements set out in Decision (CFSP) 2021/509, in particular compliance with Council Common Position 2008/944/CFSP ⁽⁴⁾, and in accordance with the rules for the implementation of revenue and expenditure financed under the EPF ('the EPF implementing rules'), including the rules on the origin of military equipment. By way of derogation from Article 50 of Book 3 of the EPF implementing rules, and due to the particular circumstances, participation in joint procurement procedures for ammunitions and missiles to be financed through this assistance measure is open only to economic operators established in the Union or Norway, and producing these ammunitions and missiles in the Union or Norway, without prejudice to any future decisions. The rules of origin laid down in Article 60 of Regulation (EU) No 952/2013 of the European Parliament and of the Council ⁽⁵⁾ should apply. Ammunitions and missiles which have undergone an important stage of manufacture in the Union or Norway which consists of final assembly should also be deemed eligible. Supply chains of these operators may include operators established or having their production outside of the Union or Norway. The security and defence interests of the Member States should be taken into account in this regard.
- (10) The Council reaffirms its determination to protect, promote and fulfil human rights, fundamental freedoms and democratic principles and to strengthen the rule of law and good governance, in compliance with the United Nations Charter, with the Universal Declaration of Human Rights and with international law, in particular international human rights law and international humanitarian law.
- (11) The Council will receive regular monthly updates on the implementation of the assistance measure under this Decision in order to monitor progress towards achieving the aim of providing one million rounds of artillery ammunition to Ukraine. Regular meetings at the level of the National Armament Directors with the Defence Joint Procurement Task Force (Commission, European External Action Service, EDA) will also be organised to assess the needs and the industrial capabilities as well as to ensure the necessary close coordination, especially regarding the provision from stocks, the reprioritisation of existing orders and the different joint acquisition projects, in order to ensure the adequate implementation of the three different tracks.
- (12) The Permanent Representatives Committee will monitor the coordinated and parallel implementation of the three-track approach.
- (13) The Council also noted that it remains committed to providing political and military support to Ukraine, in particular through the EPF and the EU Military Assistance Mission in support of Ukraine, without prejudice to the specific character of the security and defence policies of certain Member States and ensuring that the security and defence interests of all Member States are duly taken into account,

⁽⁴⁾ Council Common Position 2008/944/CFSP of 8 December 2008 defining common rules governing control of exports of military technology and equipment (OJ L 335, 13.12.2008, p. 99).

⁽⁵⁾ Regulation (EU) No 952/2013 of the European Parliament and of the Council of 9 October 2013 laying down the Union Customs Code (OJ L 269, 10.10.2013, p. 1).

HAS ADOPTED THIS DECISION:

Article 1

Establishment, objectives, scope and duration

1. An assistance measure benefitting Ukraine ('the beneficiary') to be financed under the European Peace Facility (EPF) ('the assistance measure') is hereby established.
2. The objective of the assistance measure is to contribute to strengthening the capabilities and resilience of the Ukrainian Armed Forces to defend the independence, sovereignty and territorial integrity of Ukraine, and protect the civilian population against the ongoing military aggression, through the provision of 155-mm-calibre artillery rounds and, if requested, missiles, jointly procured from the European defence industry in the fastest way possible.
3. To achieve the objective set out in paragraph 2, the assistance measure shall finance the provision to the Ukrainian Armed Forces of 155-mm-calibre artillery rounds, and, if requested, missiles. Such ammunition and missiles shall be jointly procured from economic operators established in the Union or Norway and producing these ammunitions and missiles in the Union or Norway. The rules of origin laid down in Article 60 of Regulation (EU) No 952/2013 shall apply. Ammunitions and missiles which have undergone an important stage of manufacture in the Union or Norway which consists of final assembly shall also be deemed eligible. Supply chains of these operators may include operators established or having their production outside of the Union or Norway. The security and defence interests of the Member States shall be taken into account in this regard. The joint procurements made under this assistance measure shall be carried out by the entities listed in Article 4(3) within the parameters defined in the context of an existing European Defence Agency project or through complementary joint acquisition projects led by a Member State.
4. The duration of the assistance measure shall be 56 months from the date of adoption of this Decision.

Article 2

Financial arrangements

1. The financial reference amount intended to cover the expenditure related to the assistance measure shall be EUR 1 000 000 000.
2. All expenditure shall be managed in accordance with Decision (CFSP) 2021/509 and the rules for the implementation of revenue and expenditure financed under the EPF ('the EPF implementing rules'), including the rules on the origin of military equipment. By way of derogation from Article 50 of Book 3 of the EPF implementing rules, participation in joint procurement procedures shall be open only to economic operators as referred to in Article 1(3).
3. In accordance with Article 29(5) of Decision (CFSP) 2021/509, the administrator for assistance measures may call for contributions following the adoption of this Decision, up to EUR 1 000 000 000. The funds called by the administrator for assistance measures shall only be used to pay expenditure within the limits approved by the Committee established by Decision (CFSP) 2021/509 in the related amending and annual budgets corresponding to the assistance measure.
4. Procurement contracts or purchase orders related to the implementation of the assistance measure shall be concluded in the fastest way possible between 20 March 2023 and 30 September 2023. Related expenditure shall be eligible from 20 March 2023 and until a date to be determined by the Council.

Article 3

Arrangements with the beneficiary

1. The High Representative shall make the necessary arrangements with the beneficiary to ensure its compliance with international law, in particular international human rights and international humanitarian law, and Article 62(2) of Decision (CFSP) 2021/509, as a condition for the provision of support under the assistance measure.

2. The arrangements referred to in paragraph 1 shall include provisions on the suspension and termination of support under the assistance measure in the event of the beneficiary being found in breach of the obligations referred to in paragraph 1.

Article 4

Implementation

1. The High Representative shall be responsible for ensuring the implementation of this Decision in accordance with Decision (CFSP) 2021/509 and the EPF implementing rules, in line with the Integrated Methodological Framework for assessing and identifying the required measures and controls for assistance measures under the EPF.

2. The specifications of the 155-mm-calibre artillery rounds and missiles to be provided under the assistance measure shall correspond to the priorities communicated by Ukraine via the EU Military Staff. The Committee established by Decision (CFSP) 2021/509 shall decide on the framework applicable to the financing of the activities outlined in Article 1(3) and on the arrangements for reimbursement, where appropriate.

3. The implementation of the activities referred to in Article 1(3) may be carried out by the following:

- (a) the Ministry of Defence of Belgium;
- (b) the Ministry of Defence of Bulgaria;
- (c) the Ministry of Defence of Croatia;
- (d) the Ministry of Defence of Cyprus;
- (e) the Ministry of Defence of the Czech Republic;
- (f) the Ministry of Defence of Denmark;
- (g) the Estonian Centre for Defence Investments (ECDI) on behalf of the Ministry of Defence of Estonia;
- (h) the Ministry of Defence of Finland;
- (i) the Ministry of Defence of France;
- (j) the Ministry of Defence, the Federal Foreign Office and the Federal Ministry of the Interior and Community of Germany;
- (k) the Ministry of Defence of Greece;
- (l) the Ministry of Defence of Italy;
- (m) the Ministry of Defence of Latvia and the State Defence Logistics and Procurement Centre of Latvia;
- (n) the Ministry of National Defence of Lithuania;
- (o) the Directorate of Defence of the Ministry of Foreign and European Affairs of Luxembourg;
- (p) the Ministry of Defence of the Netherlands;
- (q) the Ministry of Defence of Poland;
- (r) the Ministry of Defence of Portugal;
- (s) the Ministry of National Defence of Romania;
- (t) the Ministry of Defence of the Slovak Republic;
- (u) the Ministry of Defence of Slovenia;
- (v) the Ministry of Defence of Spain;
- (w) the Ministry of Defence of Sweden/the Swedish Defence Materiel Administration.

*Article 5***Support by Member States**

The Member States shall permit the transit of 155-mm-calibre artillery rounds and missiles, including accompanying personnel, through their territories, including their airspace, in a manner consistent with Article 56(3) of Decision (CFSP) 2021/509.

*Article 6***Monitoring, control and evaluation**

1. The High Representative shall monitor the compliance by the beneficiary with the obligations set out in Article 3. This monitoring shall be used to provide awareness of the context and the risks of breaches of the obligations established in accordance with Article 3, and to contribute to the prevention of such breaches, including violations of international human rights law and international humanitarian law by units of the Ukrainian Armed Forces supported under the assistance measure.
2. The post-shipment control of equipment shall be organised in a manner consistent with the Integrated Methodological Framework for assessing and identifying the required measures and controls for assistance measures under the EPF.

*Article 7***Reporting**

During the period of implementation, the High Representative shall provide the Political and Security Committee (PSC) with six-monthly reports on the implementation of the assistance measure, in accordance with Article 63 of Decision (CFSP) 2021/509. This will be supplemented by regular monthly updates to the Council on the implementation of the assistance measure including on the progress made towards achieving its objective, based on information, provided by the Member States, on deliveries of 155-mm-calibre artillery rounds, and if requested, missiles. The administrator for assistance measures shall regularly inform the Facility Committee established by Decision (CFSP) 2021/509 on the implementation of revenue and expenditure in accordance with Article 38 of that Decision, including by providing information on the suppliers and subcontractors involved.

*Article 8***Suspension and termination**

1. The PSC may decide to suspend wholly or partially the implementation of the assistance measure in accordance with Article 64 of Decision (CFSP) 2021/509.
2. The PSC may also recommend that the Council terminate the assistance measure.

*Article 9***Entry into force**

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

It shall apply from 20 March 2023.

Done at Brussels, 5 May 2023.

For the Council
The President
J. ROSWALL

ACTS ADOPTED BY BODIES CREATED BY INTERNATIONAL AGREEMENTS

DECISION No 1/2023 OF THE JOINT COMMITTEE ESTABLISHED BY THE AGREEMENT BETWEEN THE EUROPEAN UNION AND UKRAINE ON THE CARRIAGE OF FREIGHT BY ROAD

of 16 March 2023

as regards the adoption of its Rules of Procedure [2023/928]

THE JOINT COMMITTEE,

Having regard to the Agreement between the European Union and Ukraine on the carriage of freight by road ⁽¹⁾, and in particular Article 7(6) thereof,

Whereas pursuant to Article 7(6) of the Agreement between the European Union and Ukraine on the carriage of freight by road ('the Agreement'), the Joint Committee is to adopt its rules of procedure. The Rules of Procedure as set out in the Annex to this Decision should therefore be adopted,

HAS ADOPTED THIS DECISION:

Article 1

Rules of Procedure

The Rules of Procedure of the Joint Committee, as set out in the Annex to this Decision, are hereby adopted.

Article 2

Entry into force

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

Done at Brussels, 16 March 2023.

For the Joint Committee
The Co-chairs
Oleksandr KUBRAKOV
Kristian SCHMIDT

⁽¹⁾ OJ L 179, 6.7.2022, p. 4.

ANNEX

RULES OF PROCEDURE OF THE JOINT COMMITTEE*Article 1***Heads of delegation**

1. The Joint Committee shall be composed of representatives of the Parties. Each Party shall appoint the Head and, where necessary, Deputy Head of its delegation. The Head of Delegation may be replaced by the Deputy Head or by a designee for a particular meeting.
2. The Joint Committee shall be chaired in turn by a representative of the European Union and a representative of Ukraine. The Head of the relevant delegation, or in that person's absence, the Deputy Head or the designee appointed to replace them shall act as chair.

*Article 2***Meetings**

1. The Joint Committee shall meet as and when necessary. Either Party may request the convening of a meeting. The Joint Committee shall also be convened at the latest three months before the expiry of the Agreement, in order to assess and decide on the need for the continuation of the Agreement in accordance with Article 6(2) thereof.
2. The Joint Committee shall hold meetings in person or via other means (e.g. conference calls or videoconferences).
3. Meetings shall take place, as much as possible, alternately in a European Union Member State and in Ukraine, unless agreed otherwise by the Parties.
4. The working language shall be English.
5. Once the date and the place of the meetings have been agreed between the Parties, meetings shall be convened by the European Commission for the European Union and by the Ministry in charge of road transport for Ukraine.
6. Except as otherwise agreed by the Parties, the meetings of the Joint Committee shall not be public. If necessary, a press release may be drafted by mutual agreement at the end of the meeting.

*Article 3***Delegations**

1. Prior to each meeting, the Heads of Delegation shall inform each other of the intended composition of their delegations for the meeting.
2. Road transport industry stakeholder representatives may be invited to attend meetings or parts of the meetings as observers, if the Joint Committee so agrees by consensus.
3. The Joint Committee may invite, if so agreed by consensus, other interested parties or experts to attend its meetings or parts thereof in order to provide information on particular subjects.
4. Observers shall not take part in the decision-making process of the Joint Committee.

*Article 4***Secretariat**

An official of the European Commission services and an official of the Ministry in charge of road transport of Ukraine shall act jointly as secretaries of the Joint Committee.

*Article 5***Agenda of the meetings**

1. The Heads of Delegation shall establish the provisional agenda of each meeting by mutual agreement. The provisional agenda shall be sent by the secretaries to the members of the delegations at the latest fifteen days before the date of the meeting.
2. The agenda shall be adopted by the Joint Committee at the beginning of each meeting. Items other than those appearing on the provisional agenda may be included in the agenda if the Joint Committee so agrees.
3. The Heads of Delegation may shorten the time limit specified in paragraph 1 in order to take account of the requirements or urgency of a particular matter.

*Article 6***Minutes**

1. Draft minutes of each Joint Committee meeting shall be drawn up after each meeting. They shall indicate the items discussed and decisions adopted.
2. Within one month following the meeting, the draft minutes shall be submitted by the hosting Head of Delegation to the other Head of Delegation, via the Joint Committee secretaries, for approval by written procedure.
3. When approved, the minutes shall be signed in duplicate by the Heads of Delegation and one original copy shall be filed by each of the Parties. The Heads of Delegation may decide that signing and exchanging electronic copies satisfies this requirement.
4. The minutes of the Joint Committee meetings shall be public unless otherwise requested by one of the Parties.
5. The Heads of Delegation may shorten the time limit specified in paragraph 2 and agree on a date as regards the approval specified in paragraph 3 in order to take account of the requirements or urgency of a particular matter.

*Article 7***Written procedure**

Where necessary and duly motivated, decisions of the Joint Committee may be adopted by written procedure. To that end, the Heads of Delegation shall exchange on the draft measures on which the decision of the Joint Committee is requested, which may then be confirmed by exchange of correspondence. Any Party may, however, request that the Joint Committee be convened to discuss the matter.

*Article 8***Deliberations**

1. The Joint Committee shall take decisions on the basis of consensus of the Parties.
2. The decisions of the Joint Committee shall be entitled 'Decision' and followed by a serial number, the date of their adoption and a description of their subject.
3. The decisions of the Joint Committee shall be signed by the Heads of Delegation and attached to the minutes.
4. The decisions adopted by the Joint Committee shall be implemented by the Parties in accordance with their own internal procedures.

5. The decisions adopted by the Joint Committee may be published by the Parties in their respective official publications. One original copy of the decisions shall be filed by each of the Parties.

Article 9

Working groups

1. The Joint Committee may set up working groups to assist the Joint Committee in carrying out its duties. Terms of reference for a working group shall be approved by the Joint Committee in accordance with Article 7(5) of the Agreement and be included in an annex to the decision setting up the working group.
2. The working groups shall be composed of representatives of the Parties.
3. The working groups shall work under the authority of the Joint Committee, to which they shall report after each of their meetings. They shall not take decisions, but may make recommendations to the Joint Committee.
4. The Joint Committee may at any time decide to abolish existing working groups, modify their terms of reference or establish new working groups to assist it in carrying out its duties.

Article 10

Expenses

1. The Parties shall each defray the expenses related to their participation in the meetings of the Joint Committee and of working groups, both in respect of staff, travelling and subsistence expenditure and of postal and telecommunications costs.
2. Any other expenditure relating to the material organisation of meetings shall be borne by the Party hosting the meeting.

Article 11

Amendment of the Rules of Procedure

The Joint Committee may, at any time, amend these Rules of Procedure by means of a decision taken in accordance with Article 7(5) of the Agreement.

**DECISION No 2/2023 OF THE JOINT COMMITTEE ESTABLISHED BY THE AGREEMENT
BETWEEN THE EUROPEAN UNION AND UKRAINE ON THE CARRIAGE OF FREIGHT BY ROAD**

of 16 March 2023

as regards the continuation of the Agreement [2023/929]

THE JOINT COMMITTEE,

Having regard to the Agreement between the European Union and Ukraine on the carriage of freight by road ⁽¹⁾, and in particular Article 7 thereof,

Whereas:

- (1) The Joint Committee has adopted its Rules of Procedure by its Decision No 1/2023 of 16 March 2023.
- (2) Pursuant to Article 6(1) of the Agreement between the European Union and Ukraine on the carriage of freight by road ('the Agreement'), the Agreement is to apply until 30 June 2023.
- (3) Pursuant to Article 7(2) of the Agreement, the Joint Committee is to be convened at the latest three months before the expiry of the Agreement in order to assess and decide on the need for the continuation of the Agreement, including its duration.
- (4) The monitoring of the Agreement has shown that it has become essential for the good functioning of the EU-Ukraine solidarity lanes.
- (5) The prolongation of the Agreement is therefore an answer to the call from the European Union heads of State and Government to the European Union to 'continue to improve the efficiency of all the Solidarity Lanes' as they 'have made possible the export of significant volumes of Ukrainian crops, agricultural products and fertilisers to the countries most in need' ⁽²⁾.
- (6) The Agreement has also been positive for the European Union since it has allowed an increase in exports to Ukraine. However, the Agreement has only led to a limited increase in operations by Ukrainian road transport operators on territory of the European Union, and has not raised the level of competition for EU road transport operators in an unacceptable way.
- (7) The Agreement has also supported the action by authorities of the Member States competent for the control of driver documents regarding the fight against fraud and forgery.
- (8) The prolongation of the Agreement should be understood as also contributing to the reconstruction of Ukraine beyond Russia's war of aggression against Ukraine.
- (9) It is therefore appropriate to prolong the Agreement until 30 June 2024,

HAS ADOPTED THIS DECISION:

Article 1

Continuation of the Agreement

The Agreement between the European Union and Ukraine on the carriage of freight by road is hereby prolonged until 30 June 2024.

⁽¹⁾ OJ L 179, 6.7.2022, p. 4.

⁽²⁾ Conclusions of the European Council meeting of 20 and 21 October 2022, point 15 (EUCO 31/22, 21.10.2022).

*Article 2***Entry into force**

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

Done at Brussels, 16 March 2023.

For the Joint Committee
The Co-chairs
Oleksandr KUBRAKOV
Kristian SCHMIDT

DECISION No 1/2023 OF THE EU-UKRAINE ASSOCIATION COMMITTEE IN TRADE CONFIGURATION

of 24 April 2023

modifying Appendix XVII-3 (Rules applicable to telecommunication services) of Annex XVII to the Association Agreement between the European Union and the European Atomic Energy Community and their Member States, of the one part, and Ukraine, of the other part [2023/930]

THE ASSOCIATION COMMITTEE IN TRADE CONFIGURATION (hereafter referred to as the 'Trade Committee'),

Having regard to the Association Agreement between the European Union and the European Atomic Energy Community and their Member States, of the one part, and Ukraine, of the other part, and in particular Article 465(3) thereof and Article 11 of Annex XVII thereto,

Whereas:

- (1) The Association Agreement between the European Union and the European Atomic Energy Community and their Member States, of the one part, and Ukraine, of the other part (the 'Agreement') entered into force on 1 September 2017.
- (2) Article 1(2), point (d), of the Agreement provides that the aim of the Agreement is, inter alia, to support Ukrainian efforts to complete the transition into a functioning market economy by means of, inter alia, the progressive approximation of its legislation to that of the Union.
- (3) In Article 124 of the Agreement, the Parties recognise the importance of the approximation of Ukraine's existing legislation to that of the Union in the telecommunication services sector. Ukraine committed to ensure that its existing laws and future legislation are made compatible with the Union acquis. Such approximation is foreseen to gradually extend to all the acts of the Union acquis referred to in Appendices XVII-2 to XVII-5 of Annex XVII to the Agreement and should, once the conditions for it have been fulfilled, lead to Ukraine's gradual integration in the EU internal market, notably through the reciprocal granting of internal market treatment in accordance with 4(3) of Annex XVII to the Agreement.
- (4) Ukraine has requested further integration with regard to roaming on public mobile communications networks in the Union, in particular internal market treatment for the purpose of roaming on public mobile communications networks.
- (5) Rules on roaming form part of the Union telecommunications acquis, but were not included in Appendix XVII-3 (Rules applicable to telecommunication services) of Annex XVII to the Agreement. Therefore Appendix XVII-3 should be complemented by the relevant Union acts relating to roaming on public mobile communications networks.
- (6) At the current stage of economic and legal development of the EU internal market related to telecommunications services, the relevant Union acts relating to roaming are the following: Directive (EU) 2018/1972 of the European Parliament and of the Council ⁽¹⁾, Regulation (EU) 2022/612 of the European Parliament and of the Council ⁽²⁾, Commission Implementing Regulation (EU) 2016/2286 ⁽³⁾, and Commission Delegated Regulation (EU) 2021/654 ⁽⁴⁾.

⁽¹⁾ Directive (EU) 2018/1972 of the European Parliament and of the Council of 11 December 2018 establishing the European Electronic Communications Code (OJ L 321, 17.12.2018, p. 36).

⁽²⁾ Regulation (EU) 2022/612 of the European Parliament and of the Council of 6 April 2022 on roaming on public mobile communications networks within the Union (OJ L 115, 13.4.2022, p. 1.).

⁽³⁾ Commission Implementing Regulation (EU) 2016/2286 of 15 December 2016 laying down detailed rules on the application of fair use policy and on the methodology for assessing the sustainability of the abolition of retail roaming surcharges and on the application to be submitted by a roaming provider for the purposes of that assessment (OJ L 344, 17.12.2016, p. 46.).

⁽⁴⁾ Commission Delegated Regulation (EU) 2021/654 of 18 December 2020 supplementing Directive (EU) 2018/1972 of the European Parliament and of the Council by setting a single maximum Union-wide mobile voice termination rate and a single maximum Union-wide fixed voice termination rate (OJ L 137, 22.4.2021, p. 1.).

- (7) Directive (EU) 2018/1972 is already included in Appendix XVII-3 of Annex XVII to the Agreement. It is necessary to include the other acts relevant to roaming on public mobile communications networks in that Appendix in order to enable the gradual transition of Ukraine to full enactment and complete and full implementation of all applicable provisions for the telecommunications sector and notably those on roaming on public mobile communications networks.
- (8) A positive assessment of the Ukrainian legislation, its implementation and enforcement conducted in line with the principles set out in Annex XVII to the Agreement is a necessary precondition for any decision by the Trade Committee to grant internal market treatment pursuant to Article 4(3) of Annex XVII with respect to a particular sector. In the context of the Union *acquis* regarding roaming on public mobile communications networks, the requirement to attain full enactment and complete and full implementation prior to the adoption of the decision on internal market treatment under Article 4(3) of Annex XVII should not be understood as entailing the application between the Parties of the Agreement of the safeguard limits for average wholesale charges for the provision of regulated services related to roaming on public mobile communications networks. The same applies to the regulated maximum voice termination rates for the service of terminating a call to an end user on its network. These are to be granted reciprocally between the Parties of the Agreement as from the date specified in an eventual decision by the Trade Committee to grant internal market treatment for roaming on public mobile communications networks pursuant to Article 4(3) of Annex XVII.
- (9) The gradual integration of Ukraine in the EU internal market, in particular for telecommunication services, will, *inter alia*, require the full and complete implementation of Delegated Regulation (EU) 2021/654, in line with the objectives of that Regulation. Ukraine is presently not in a position to transpose and fully implement the single maximum Union-wide termination rates for the purpose of national termination services in Ukraine. The implementation of the single maximum Union-wide termination rates also for the purpose of national voice termination services in Ukraine, is however not absolutely necessary for further integration with respect to roaming on public mobile communications networks. A different timeline for implementation is therefore provided for that aspect of Delegated Regulation (EU) 2021/654, with respect to which Ukraine commits to fully implement within three years from an eventual decision by the Trade Committee to grant internal market treatment for roaming on public mobile communications networks pursuant to Article 4(3) of Annex XVII to the Agreement.
- (10) Delegated Regulation (EU) 2021/654 also applies under certain conditions to calls originated from third-country numbers, with the aim of applying the single maximum Union-wide voice termination rates in an open, transparent and non-discriminatory way, and to limit the exclusion of calls originated from third country-numbers to what is strictly necessary to ensure the achievement of the internal market objectives and to ensure proportionality. Ukraine is presently not in a position to transpose and fully implement the single maximum Union-wide voice termination rates for the purpose of calls originating from third-country numbers. While the implementation of the single maximum Union-wide termination rates also for the purpose of termination from third-country numbers, is not absolutely necessary for further integration with respect to roaming on public mobile communications networks, full enactment and complete and full implementation of Delegated Regulation (EU) 2021/654 by Ukraine would be needed to ensure alignment with the applicable rules in the EU internal market for telecommunications services. A different timeline for implementation is therefore provided for with regard to that aspect of Delegated Regulation (EU) 2021/654, with respect to which Ukraine commits to fully implement before an eventual decision by the Trade Committee to grant internal market treatment for telecommunication services pursuant to Article 4(3) of Annex XVII to the Agreement.
- (11) Article 1(4) of Regulation (EU) 2022/612 and Article 3(2) and (3) of Delegated Regulation (EU) 2021/654 refer to reference exchange rates published by the European Central Bank in the *Official Journal of the European Union*. The European Central Bank does not publish exchange rates for the Ukrainian hryvnia at present. An adaptation is therefore needed with respect to those provisions to provide for the use of the exchange rates between the euro and the Ukrainian hryvnia published by the National Bank of Ukraine for as long as the European Central Bank does not publish exchange rates for the Ukrainian hryvnia.

- (12) Article 11 of Annex XVII to the Agreement empowers the Trade Committee to add the remaining four Union acts to Annex XVII to the Agreement by way of modification thereof.
- (13) Once Ukraine considers that a particular Union legal act has been properly enacted and implemented, Ukraine is to submit the relevant transposition tables, together with an official English translation of the implementing Ukrainian legal act, to the Union co-secretary of the Trade Committee in order for the European Commission to proceed with the comprehensive assessment provided for in Appendix XVII-6 of Annex XVII to the Agreement.
- (14) In view of the ongoing Russian war of aggression against Ukraine, the implementation of the obligations laid down in this Decision may turn out to be objectively impossible or exceedingly difficult within the provided timelines. In that event, Ukraine should submit the matter to the Trade Committee, in accordance with Article 11 of Annex XVII to the Agreement, which is to consider the matter in conformity with Article 3(4) and (5) of Annex XVII to the Agreement,

HAS ADOPTED THIS DECISION:

Article 1

Appendix XVII-3 (Rules applicable to telecommunication services) of Annex XVII to the Agreement is hereby modified as set out in the Annex to this Decision.

Article 2

This Decision has been established 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, Swedish and Ukrainian languages, each text being equally authentic.

Article 3

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

Done at Brussels, 24 April 2023.

For the Association Committee in Trade configuration

The Chair
Léon DELVAUX

Secretaries
Rikke MENGEL-JØRGENSEN
Oleksandra NECHYPORENKO

ANNEX

Appendix XVII-3 (Rules applicable to telecommunication services) shall be modified by adding under section 'A. Overall European electronic communications policy' and after the item related to 'Directive 2014/61/EU of the European Parliament and of the Council of 15 May 2014 on measures to reduce the cost of deploying high-speed electronic communications networks' the following:

'Regulation (EU) 2022/612 of the European Parliament and of the Council of 6 April 2022 on roaming on public mobile communications networks within the Union (recast)

The provisions of the Regulation shall, for the purposes of this Agreement, be read with the following adaptation: Article 1(4) refers to reference exchange rates published by the European Central Bank in the *Official Journal of the European Union*. For as long as the European Central Bank does not publish exchange rates for the Ukrainian hryvnia, exchange rates between the euro and the Ukrainian hryvnia published by the National Bank of Ukraine shall be used for the purposes of applying Article 1(4). The reference periods and conditions laid down in Article 1(4) remain unchanged.

— Implement all provisions with the exception of:

— Article 7 - Implementation of fair use policy and of sustainability mechanism, Paragraphs 1-3. The exception regarding Article 7(1)-(3) is without prejudice to Ukraine's obligation to implement the Implementing Acts on the application of fair use policies, the methodology for assessing sustainability of the provision of retail roaming services at domestic prices and the application to be submitted by a roaming provider for the purpose of the assessment of the sustainability

— Article 20 - Committee procedure

Timetable: the provisions of Regulation (EU) 2022/612 shall be implemented within 12 months after the date of entry into force of Decision [1/2023].

Commission Implementing Regulation (EU) 2016/2286 of 15 December 2016 laying down detailed rules on the application of fair use policy and on the methodology for assessing the sustainability of the abolition of retail roaming surcharges and on the application to be submitted by a roaming provider for the purposes of that assessment

Timetable: the provisions of Commission Implementing Regulation (EU) 2016/2286 shall be implemented within 12 months after the date of entry into force of Decision [1/2023].

Commission Delegated Regulation (EU) 2021/654 of 18 December 2020 supplementing Directive (EU) 2018/1972 of the European Parliament and of the Council by setting a single maximum Union-wide mobile voice termination rate and a single maximum Union-wide fixed voice termination rate

The provisions of the Regulation shall, for the purposes of this Agreement, be read with the following adaptations: Article 3(2) and (3) refer to reference exchange rates published by the European Central Bank in the *Official Journal of the European Union*. For as long as the European Central Bank does not publish exchange rates for the Ukrainian hryvnia, exchange rates between the euro and the Ukrainian hryvnia published by the National Bank of Ukraine shall be used for the purposes of applying Article 3(2) and (3). The reference periods and conditions laid down in Article 3(2) and (3) remain unchanged.

Timetable: the provisions of Commission Delegated Regulation (EU) 2021/654 shall be implemented before those of Regulation (EU) 2022/612 and within 11 months after the date of entry into force of Decision [1/2023], with the following exceptions:

— With regard to national calls originated from and terminated to Ukrainian numbers in Ukraine, Article 1(3) shall become applicable within 3 years from the date specified in an eventual decision by the Trade Committee to grant internal market treatment for roaming pursuant to Article 4(3) of Annex XVII

— Article 1(4) shall be implemented before an eventual decision by the Trade Committee to grant internal market treatment for telecommunications services pursuant to Article 4(3) of Annex XVII

Regulation (EU) 2018/1971 of the European Parliament and of the Council of 11 December 2018 establishing the Body of European Regulators for Electronic Communications (BEREC) and the Agency for Support for BEREC (BEREC Office), amending Regulation (EU) 2015/2120 and repealing Regulation (EC) No 1211/2009

- The national regulatory authority of Ukraine with primary responsibility for overseeing the day-to-day operation of the markets for electronic communications networks and services shall participate fully in the work of the Board of Regulators of BEREC, the working groups of BEREC and the Management Board of the BEREC Office. The national regulatory authority of Ukraine shall have the same rights and obligations as the national regulatory authorities of the EU Member States, except for the right to vote and for the Chairmanship of the Board of Regulators and of the Management Board
- In light thereof, the national regulatory authority of Ukraine shall be represented at an appropriate level in accordance with the provisions of the BEREC Regulation. In accordance with the relevant rules of the EU regulations mentioned above, BEREC and the BEREC Office shall, as the case may be, assist the national regulatory authority of Ukraine in the performance of its tasks.
- The national regulatory authority of Ukraine shall take the utmost account of any guideline, opinion, recommendation, common position and best practices adopted by BEREC with the aim of ensuring the consistent implementation of the regulatory framework for electronic communications.

Timetable: the provisions of Regulation (EU) 2018/1971 shall be implemented within 12 months after the date of entry into force of Decision [1/2023].'

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