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## I

*(Legislative acts)*

## REGULATIONS

## COUNCIL REGULATION (EU) 2018/2056

of 6 December 2018

**amending Regulation (EU) No 216/2013 on the electronic publication of the *Official Journal of the European Union***

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 352 thereof,

Having regard to the proposal from the European Commission,

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

Having regard to the consent of the European Parliament,

Acting in accordance with a special legislative procedure,

Whereas:

- (1) Council Regulation (EU) No 216/2013 <sup>(1)</sup> provides that the electronic edition of the Official Journal is to bear an advanced electronic signature based on a qualified certificate and created with a secure-signature-creation device, in accordance with Directive 1999/93/EC of the European Parliament and of the Council <sup>(2)</sup>.
- (2) Regulation (EU) No 910/2014 of the European Parliament and of the Council <sup>(3)</sup> lays down a legal framework for electronic signatures, electronic seals, electronic time stamps, electronic documents, electronic registered delivery services and certificate services for website authentication.
- (3) Authentication by electronic seal offers comparable guarantees as those provided by electronic signature. The use of an electronic seal to authenticate the Official Journal would accelerate the procedure for the publication of the Official Journal on the EUR-Lex website.
- (4) Regulation (EU) No 216/2013 should therefore be amended,

HAS ADOPTED THIS REGULATION:

*Article 1*

In Article 2 of Regulation (EU) No 216/2013, paragraph 1 is replaced by the following:

‘1. The electronic edition of the Official Journal shall bear a qualified electronic signature defined in accordance with Regulation (EU) No 910/2014 of the European Parliament and of the Council <sup>(\*)</sup>, or a qualified electronic seal defined in accordance with Regulation (EU) No 910/2014. Qualified certificates for electronic signature or for

<sup>(1)</sup> Council Regulation (EU) No 216/2013 of 7 March 2013 on the electronic publication of the *Official Journal of the European Union* (OJ L 69, 13.3.2013, p. 1).

<sup>(2)</sup> Directive 1999/93/EC of the European Parliament and of the Council of 13 December 1999 on a Community framework for electronic signatures (OJ L 13, 19.1.2000, p. 12).

<sup>(3)</sup> Regulation (EU) No 910/2014 of the European Parliament and of the Council of 23 July 2014 on electronic identification and trust services for electronic transactions in the internal market and repealing Directive 1999/93/EC (OJ L 257, 28.8.2014, p. 73).

electronic seal and renewals thereof shall be published on the EUR-Lex website to allow the public to verify the qualified electronic signature or qualified electronic seal and the authenticity of the electronic edition of the Official Journal.

(\*) Regulation (EU) No 910/2014 of the European Parliament and of the Council of 23 July 2014 on electronic identification and trust services for electronic transactions in the internal market and repealing Directive 1999/93/EC (OJ L 257, 28.8.2014, p. 73).'

#### *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, 6 December 2018.

*For the Council*

*The President*

H. KICKL

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# DIRECTIVES

## COUNCIL DIRECTIVE (EU) 2018/2057

of 20 December 2018

**amending Directive 2006/112/EC on the common system of value added tax as regards the temporary application of a generalised reverse charge mechanism in relation to supplies of goods and services above a certain threshold**

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 113 thereof,

Having regard to the proposal from the European Commission,

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

Having regard to the opinion of the European Parliament <sup>(1)</sup>,

Having regard to the opinion of the European Economic and Social Committee <sup>(2)</sup>,

Acting in accordance with a special legislative procedure,

Whereas:

- (1) In its communication of 7 April 2016 on an action plan on VAT, the Commission announced its intentions to come forward with a proposal for a definitive value added tax (VAT) regime for cross-border business-to-business trade between Member States on the basis of the taxation of cross-border supplies of goods and services.
- (2) In light of the current level of VAT fraud and the fact that not all Member States are equally affected by such fraud, and given that it will take several years for the definitive VAT regime to be implemented, some urgent and specific measures may be necessary.
- (3) In this context, certain Member States have asked to be allowed to implement a temporary generalised reverse charge mechanism ('GRCM') with a certain threshold per transaction which would derogate from one of the general principles of the current VAT system, as regards the fractionated payment system, in order to address endemic carousel fraud. Carousel fraud finds notably its roots in the current exemption for intra-Community supplies that allows for goods to be obtained VAT-free. A number of traders subsequently engage in tax fraud by not paying to the tax authorities the VAT received from their customers. Those customers, however, being in receipt of valid invoices, remain entitled to a tax deduction. The same goods can be supplied several times over by including again exempt intra-Community supplies. Similar carousel fraud can also occur when services are supplied. By designating the taxable person to whom the goods or services are supplied as the person liable for payment of VAT, the derogation would remove the opportunity to engage in that form of tax fraud.
- (4) Member States showing differences in development of the capacities of their tax authorities sustain a special effort, in terms of addressing higher levels of VAT fraud and revenue losses, in the implementation of the VAT regime, as referred to in the first paragraph of Article 27 of the Treaty on the Functioning of the European Union.
- (5) In order to limit the risk of fraud shifting between Member States, Member States that fulfil certain criteria as regards their fraud level, in particular in relation to carousel fraud, and that are able to establish that other control measures are not sufficient to combat that fraud, should be allowed to use the GRCM. In addition, they should establish that estimated gains in tax compliance and collection expected as a result of the introduction of the GRCM outweigh the estimated overall additional burden on businesses and tax authorities and that businesses and tax authorities will not incur costs that are higher than those incurred as a result of the application of other control measures.

<sup>(1)</sup> Opinion of 11 December 2018 (P8\_TA(2018)0496).

<sup>(2)</sup> Opinion of 31 May 2017 (OJ C 288, 31.8.2017, p. 52).

- (6) If Member States choose to apply the GRCM, they should apply it to all non-cross-border supplies of goods and services above a defined threshold per transaction. The application of the GRCM should not be restricted to any specific sector.
- (7) Member States choosing to apply the GRCM should introduce specific electronic reporting obligations on taxable persons so as to ensure the effective functioning and monitoring of the application of the GRCM. They should detect and prevent all new forms of tax fraud, such as artificial splitting of the taxable amount of transactions.
- (8) In order to be able to assess whether the introduction of the GRCM in one Member State results in fraud shifting towards other Member States and to be able to assess the degree of possible disturbance to the functioning of the internal market, it is appropriate to provide for a specific obligation to exchange information between the Member States that apply the GRCM and those that do not. All exchanges of information are subject to the applicable provisions on the protection of personal data and confidentiality, which include exemptions and restrictions for safeguarding the interests of the Member States or of the Union in the area of taxation.
- (9) In order to assess the effect of the application of the GRCM on fraudulent activities in a transparent manner, predefined evaluation criteria should be established by those Member States, to enable an assessment of the level of fraud before and after the application of the GRCM.
- (10) The decisions authorising the application of the GRCM would have a budgetary impact which could be significant for one or more Member States. Accordingly, the power to authorise the application of the GRCM should be conferred on the Council.
- (11) A Member State choosing to apply the GRCM should request the Commission to propose the application of the GRCM and provide relevant information to enable the Commission to assess such request. Where necessary, the Commission should be able to request additional information.
- (12) Given the unexpected effects that the application of the GRCM might have on the functioning of the internal market because of a possible shift in fraud to other Member States that do not apply the GRCM, the Council should be able, as a safeguard measure, to repeal all implementing decisions authorising the application of the GRCM. In view of the need to react quickly in a situation where a considerable negative impact on the internal market has been established, reversed unanimity voting should be used.
- (13) In view of the uncertain effects that the GRCM might have, the application thereof should be limited in time.
- (14) To closely monitor the impact on the internal market, all Member States should, where the GRCM is used in at least one Member State, present reports to the Commission so as to enable an assessment of the impact on fraud, the compliance costs for businesses and a shift in fraudulent activities due to the application of the GRCM.
- (15) Council Directive 2006/112/EC <sup>(1)</sup> should therefore be amended accordingly,

HAS ADOPTED THIS DIRECTIVE:

#### *Article 1*

In Directive 2006/112/EC, the following Article is inserted:

##### *'Article 199c*

1. By way of derogation from Article 193, a Member State may, until 30 June 2022, introduce a generalised reverse charge mechanism ('GRCM') on non-cross-border supplies, providing that the person liable for payment of VAT is the taxable person to whom all supplies of goods and services are made above a threshold of EUR 17 500 per transaction.

<sup>(1)</sup> Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax (OJ L 347, 11.12.2006, p. 1).

A Member State wishing to introduce the GRCM shall comply with all of the following conditions:

- (a) it had in 2014, in accordance with the method and figures set out in the 2016 final report dated 23 August 2016 on the VAT gap published by the Commission, a VAT gap, expressed as a percentage of the VAT total tax liability, of at least 5 percentage points above the Community median VAT gap;
- (b) it has, based on the impact assessment that accompanied the legislative proposal for this Article, a carousel fraud level within its total VAT gap of more than 25 %;
- (c) it establishes that other control measures are not sufficient to combat carousel fraud on its territory, in particular by specifying the control measures applied and the particular reasons for their lack of effectiveness, as well as the reasons why administrative cooperation in the field of VAT has proven insufficient;
- (d) it establishes that the estimated gains in tax compliance and collection expected as a result of the introduction of the GRCM outweigh the expected overall additional burden on businesses and tax authorities by at least 25 %; and
- (e) it establishes that the introduction of the GRCM will not result in businesses and tax authorities incurring costs that are higher than those incurred as a result of the application of other control measures.

The Member State shall attach to the request referred to in paragraph 3 the calculation of the VAT gap according to the method and figures available in the report on the VAT gap published by the Commission, as referred to in point (a) of the second subparagraph of this paragraph.

2. Member States that apply the GRCM shall establish appropriate and effective electronic reporting obligations for all taxable persons and, in particular, for taxable persons who supply or receive goods or services to which the GRCM applies to ensure the effective functioning and monitoring of the application of the GRCM.

3. Member States wishing to apply the GRCM shall submit a request to the Commission and provide the following information:

- (a) a detailed justification of fulfilment of the conditions referred to in paragraph 1;
- (b) the starting date of application of the GRCM and the period to be covered by the GRCM;
- (c) actions to be taken to inform taxable persons of the introduction of the application of the GRCM; and
- (d) a detailed description of the accompanying measures referred to in paragraph 2.

If the Commission considers that it does not have all the necessary information, it shall request additional information, including underlying methods, assumptions, studies and other supporting documents, within one month of receipt of the request. The requesting Member State shall submit the required information within a month of receipt of the notification.

4. Where the Commission considers that a request complies with the requirements set out in paragraph 3, it shall, no later than three months after it has received all the necessary information, submit a proposal to the Council. The Council, acting unanimously on such a proposal from the Commission, may authorise the requesting Member State to apply the GRCM. Where the Commission considers that a request is not compliant with the requirements set out in paragraph 3, it shall, within the same deadline, communicate its reasons to the requesting Member State and to the Council.

5. Where a considerable negative impact on the internal market has been established in accordance with the second subparagraph of this paragraph, the Commission shall, no later than three months after it has received all the necessary information, propose the repeal of all the implementing decisions referred to in paragraph 4, at the earliest six months after the entry into force of the first implementing decision authorising a Member State to apply the GRCM. Such repeal shall be deemed to be adopted by the Council unless the Council decides by unanimity to reject the Commission's proposal within 30 days of the Commission's adoption thereof.

A considerable negative impact shall be considered established where the following conditions are fulfilled:

- (a) at least one Member State that does not apply the GRCM informs the Commission of an increase of VAT fraud on its territory due to the application of the GRCM; and

(b) the Commission establishes, including on the basis of the information provided by the Member States referred to in point (a) of this subparagraph, that the increase of VAT fraud on their territory is related to the application of the GRCM in one or more Member States.

6. Member States that apply the GRCM shall submit the following information in electronic format to all Member States:

- (a) the names of the persons who, in the 12 months preceding the starting date of application of the GRCM, have been subject to proceedings, whether criminal or administrative, for VAT fraud; and
- (b) the names of the persons, including in the case of legal persons the names of their directors, whose VAT registration in that Member State is terminated after the introduction of the GRCM; and
- (c) the names of the persons, including in the case of legal persons the names of their directors, who have failed to submit a VAT return for two consecutive tax periods after the introduction of the GRCM.

The information referred to in points (a) and (b) of the first subparagraph shall be submitted no later than three months after the introduction of the GRCM and shall be updated every three months thereafter. The information referred to in point (c) of the first subparagraph shall be submitted no later than nine months after the introduction of the GRCM and shall be updated every three months thereafter.

Member States that apply the GRCM shall submit an interim report to the Commission no later than one year after the start of application of the GRCM. That report shall provide a detailed assessment of the effectiveness of the GRCM. Three months after the end of the application of the GRCM, Member States that apply the GRCM shall submit a final report on its overall impact.

7. Member States that do not apply the GRCM shall submit an interim report to the Commission as regards the impact in their territory of the application of GRCM by other Member States. That report shall be submitted to the Commission within three months following the application of the GRCM for at least one year in one Member State.

If at least one Member State applies the GRCM, Member States that do not apply the GRCM shall, by 30 September 2022, submit a final report to the Commission as regards the impact in their territory of the GRCM applied by other Member States.

8. In the reports referred to in paragraph 6, Member States shall assess the impact of the application of the GRCM on the basis of the following evaluation criteria:

- (a) the evolution of the VAT gap;
- (b) the evolution of VAT fraud, in particular carousel fraud and fraud at retail level;
- (c) the evolution of the administrative burden on taxable persons;
- (d) the evolution of administrative costs for the tax authorities.

9. In the reports referred to in paragraph 7, Member States shall assess the impact of the application of the GRCM on the basis of the following evaluation criteria:

- (a) the evolution of VAT fraud, in particular carousel fraud and fraud at retail level;
- (b) a shift in fraud from those Member States that apply or have applied the GRCM.

## Article 2

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

It shall apply until 30 June 2022.



*Article 3*

This Directive is addressed to the Member States.

Done at Brussels, 20 December 2018.

*For the Council*  
*The President*  
E. KÖSTINGER

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## II

*(Non-legislative acts)*

## REGULATIONS

**COUNCIL REGULATION (EU) 2018/2058****of 17 December 2018****fixing for 2019 the fishing opportunities for certain fish stocks and groups of fish stocks in the Black Sea**

THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to the proposal from the European Commission,

Whereas:

- (1) Article 43(3) of the Treaty provides that the Council, on a proposal from the Commission, is to adopt measures on the fixing and allocation of fishing opportunities.
- (2) Regulation (EU) No 1380/2013 of the European Parliament and of the Council <sup>(1)</sup> requires that conservation measures be adopted taking into account available scientific, technical and economic advice, including, where relevant, reports drawn up by the Scientific, Technical and Economic Committee for Fisheries (STECF).
- (3) It is incumbent upon the Council to adopt measures on the fixing and allocation of fishing opportunities by fishery or group of fisheries in the Black Sea, including, where appropriate, certain conditions functionally linked thereto. In accordance with Article 16(1) and (4) of Regulation (EU) No 1380/2013, fishing opportunities are to be allocated to Member States in such a way as to ensure the relative stability of the fishing activities of each Member State for each fish stock or fishery, and in accordance with the objectives of the common fisheries policy established in Article 2(2) of that Regulation.
- (4) At its 41st Annual Meeting in 2017, the General Fisheries Commission for the Mediterranean adopted recommendation GFCM/41/2017/4 on a multiannual management plan for turbot fisheries in geographical sub-area 29 (Black Sea). The recommendation establishes a total allowable catch (TAC) for turbot for two years (2018-2019) with a temporary allocation of quotas. That measure should be implemented in Union law.
- (5) The fishing opportunities should be established on the basis of the available scientific advice, taking into account biological and socioeconomic aspects whilst ensuring fair treatment between fishing sectors, as well as in the light of the opinions expressed during the consultation of stakeholders.
- (6) In accordance with the scientific advice provided by STECF, it is necessary to maintain the current level of fishing mortality to ensure the sustainability of the sprat stock in the Black Sea.

<sup>(1)</sup> Regulation (EU) No 1380/2013 of the European Parliament and of the Council of 11 December 2013 on the Common Fisheries Policy, amending Council Regulations (EC) No 1954/2003 and (EC) No 1224/2009 and repealing Council Regulations (EC) No 2371/2002 and (EC) No 639/2004 and Council Decision 2004/585/EC (OJ L 354, 28.12.2013, p. 22).

- (7) The use of fishing opportunities set out in this Regulation is subject to Council Regulation (EC) No 1224/2009 <sup>(1)</sup> and, in particular, to Articles 33 and 34 thereof concerning the recording of catches and the notification of data on the exhaustion of fishing opportunities. It is therefore necessary to specify the codes to be used by Member States when sending data to the Commission relating to landings of stocks subject to this Regulation.
- (8) In accordance with Article 2 of Council Regulation (EC) No 847/96 <sup>(2)</sup>, the stocks that are subject to the various measures referred to therein must be identified.
- (9) As regards the turbot stock, further conservation measures should be taken. Maintaining the currently applicable two months closure period, from 15 April to 15 June, would continue to provide protection for the stock during the spawning season of turbot. Managing the fishing effort and limiting the fishing days to 180 per year would have a positive conservation impact on the turbot stock.
- (10) In order to avoid interruption of fishing activities and to ensure the livelihood of Union fishermen, it is important to open the fisheries concerned in the Black Sea on 1 January 2019. For reasons of urgency, this Regulation should enter into force immediately after its publication.
- (11) Fishing opportunities should be used in full compliance with applicable Union law,

HAS ADOPTED THIS REGULATION:

#### CHAPTER I

### SUBJECT MATTER, SCOPE AND DEFINITIONS

#### Article 1

#### Subject matter

This Regulation fixes for 2019 the fishing opportunities available to Union fishing vessels flying the flag of Bulgaria and of Romania for the following stocks in the Black Sea:

- (a) sprat (*Sprattus sprattus*);
- (b) turbot (*Psetta maxima*).

#### Article 2

#### Scope

This Regulation shall apply to Union fishing vessels flying the flag of Bulgaria or Romania and operating in the Black Sea.

#### Article 3

#### Definitions

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

- (a) 'Black Sea' means the geographical sub-area 29 as defined in Annex I to Regulation (EU) No 1343/2011 of the European Parliament and of the Council <sup>(3)</sup>;
- (b) 'fishing vessel' means any vessel equipped for commercial exploitation of marine biological resources;
- (c) 'Union fishing vessel' means a fishing vessel flying the flag of a Member State and registered in the Union;

<sup>(1)</sup> Council Regulation (EC) No 1224/2009 of 20 November 2009 establishing a Union control system for ensuring compliance with the rules of the common fisheries policy, amending Regulations (EC) No 847/96, (EC) No 2371/2002, (EC) No 811/2004, (EC) No 768/2005, (EC) No 2115/2005, (EC) No 2166/2005, (EC) No 388/2006, (EC) No 509/2007, (EC) No 676/2007, (EC) No 1098/2007, (EC) No 1300/2008, (EC) No 1342/2008 and repealing Regulations (EEC) No 2847/93, (EC) No 1627/94 and (EC) No 1966/2006 (OJ L 343, 22.12.2009, p. 1).

<sup>(2)</sup> Council Regulation (EC) No 847/96 of 6 May 1996 introducing additional conditions for year-to-year management of TACs and quotas (OJ L 115, 9.5.1996, p. 3).

<sup>(3)</sup> Regulation (EU) No 1343/2011 of the European Parliament and of the Council of 13 December 2011 on certain provisions for fishing in the GFCM (General Fisheries Commission for the Mediterranean) Agreement area and amending Council Regulation (EC) No 1967/2006 concerning management measures for the sustainable exploitation of fishery resources in the Mediterranean Sea (OJ L 347, 30.12.2011, p. 44).

- (d) 'stock' means a marine biological resource that occurs in a given management area;
- (e) 'total allowable catch' (TAC) means the quantity of each stock that can be caught over the period of a year;
- (f) 'Union autonomous quota' means a catch limit autonomously allocated to Union fishing vessels in the absence of an agreed TAC;
- (g) 'analytical quota' means a Union autonomous quota for which an analytical assessment is available;
- (h) 'analytical assessment' means a quantitative evaluation of trends in a given stock, based on data about the stock's biology and exploitation, which scientific review has indicated to be of sufficient quality to provide scientific advice on options for future catches.

## CHAPTER II

### FISHING OPPORTUNITIES

#### Article 4

#### **Allocation of fishing opportunities**

1. The Union autonomous quota for sprat, the allocation of such quota among Member States and, where appropriate, the conditions functionally linked thereto are set out in the Annex.
2. The TAC for turbot, applicable in Union waters and for Union fishing vessels, the allocation of such TAC among Member States and, where appropriate, the conditions functionally linked thereto are set out in the Annex.

#### Article 5

#### **Special provisions on allocations**

The allocation of fishing opportunities among Member States as set out in this Regulation shall be without prejudice to any of the following:

- (a) exchanges made pursuant to Article 16(8) of Regulation (EU) No 1380/2013;
- (b) deductions and reallocations made pursuant to Article 37 of Regulation (EC) No 1224/2009;
- (c) deductions made pursuant to Articles 105 and 107 of Regulation (EC) No 1224/2009.

#### Article 6

#### **Management of fishing effort for turbot**

Union fishing vessels authorised to fish for turbot in the Black Sea, irrespective of the vessels' length overall, shall not exceed 180 fishing days per year.

## CHAPTER III

### FINAL PROVISIONS

#### Article 7

#### **Data transmission**

When, pursuant to Articles 33 and 34 of Regulation (EC) No 1224/2009, Member States send to the Commission data relating to landings of quantities of stocks caught, they shall use the stock codes set out in the Annex to this Regulation.

#### Article 8

#### **Entry into force**

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

It shall apply from 1 January 2019.

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

Done at Brussels, 17 December 2018.

*For the Council*

*The President*

E. KÖSTINGER

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## ANNEX

The tables in this Annex set out TACs and quotas in tonnes live weight and, where appropriate, conditions functionally linked thereto.

<b>Species:</b>		<b>Zone:</b>
Sprat <i>Sprattus sprattus</i>		Union waters in the Black Sea (SPR/F3742C)
Bulgaria	8 032,50	
Romania	3 442,50	
Union	11 475	
TAC	Not relevant/Not agreed	Analytical quota Article 3 of Regulation (EC) No 847/96 shall not apply. Article 4 of Regulation (EC) No 847/96 shall not apply.
<b>Species:</b>		<b>Zone:</b>
Turbot <i>Psetta maxima</i>		Union waters in the Black Sea (TUR/F3742C)
Bulgaria	57	
Romania	57	
Union	114 (*)	
TAC	644	Analytical TAC Article 3 of Regulation (EC) No 847/96 shall not apply. Article 4 of Regulation (EC) No 847/96 shall not apply.

(\*) No fishing activity, including transshipment, taking on board, landing and first sale shall be permitted from 15 April to 15 June 2019.

# DECISIONS

## COUNCIL DECISION (EU) 2018/2059

of 29 November 2018

**on the position to be adopted, on behalf of the European Union, within the EEA Joint Committee concerning the amendment of Annex IX (Financial Services) 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 <sup>(1)</sup>, 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 <sup>(2)</sup> ('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 IX to that Agreement, which contains provisions on financial services.
- (3) Regulation (EU) 2015/847 of the European Parliament and of the Council <sup>(3)</sup> is to be incorporated into the EEA Agreement.
- (4) Directive (EU) 2015/849 of the European Parliament and of the Council <sup>(4)</sup> is to be incorporated into the EEA Agreement.
- (5) Commission Delegated Regulation (EU) 2016/1675 <sup>(5)</sup> is to be incorporated into the EEA Agreement.
- (6) Annex IX to the EEA Agreement should therefore be amended accordingly.
- (7) The position of the Union within the EEA Joint Committee should therefore be based on the attached draft decisions,

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 of Annex IX (Financial Services) to the EEA Agreement, shall be based on the draft decisions of the EEA Joint Committee attached to this Decision.

<sup>(1)</sup> OJ L 305, 30.11.1994, p. 6.

<sup>(2)</sup> OJ L 1, 3.1.1994, p. 3.

<sup>(3)</sup> Regulation (EU) 2015/847 of the European Parliament and of the Council of 20 May 2015 on information accompanying transfers of funds and repealing Regulation (EC) No 1781/2006 (OJ L 141, 5.6.2015, p. 1).

<sup>(4)</sup> Directive (EU) 2015/849 of the European Parliament and of the Council of 20 May 2015 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, amending Regulation (EU) No 648/2012 of the European Parliament and of the Council, and repealing Directive 2005/60/EC of the European Parliament and of the Council and Commission Directive 2006/70/EC (OJ L 141, 5.6.2015, p. 73).

<sup>(5)</sup> Commission Delegated Regulation (EU) 2016/1675 of 14 July 2016 supplementing Directive (EU) 2015/849 of the European Parliament and of the Council by identifying high-risk third countries with strategic deficiencies (OJ L 254, 20.9.2016, p. 1).

*Article 2*

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

Done at Brussels, 29 November 2018.

*For the Council*  
*The President*  
M. SCHRAMBÖCK

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DRAFT

**DECISION OF THE EEA JOINT COMMITTEE No .../...**  
**of ...**  
**amending Annex IX (Financial services) 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) 2015/847 of the European Parliament and of the Council of 20 May 2015 on information accompanying transfers of funds and repealing Regulation (EC) No 1781/2006 <sup>(1)</sup> is to be incorporated in the EEA Agreement.
- (2) Regulation (EU) 2015/847 repeals Regulation (EC) No 1781/2006 which is incorporated into the EEA Agreement and which is consequently to be repealed under the EEA Agreement.
- (3) Annex IX to the EEA Agreement should therefore be amended accordingly,

HAS ADOPTED THIS DECISION:

*Article 1*

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

1. The text of point 23ba (Commission Directive 2006/70/EC) is replaced by the following:

**'32015 R 0847:** Regulation (EU) 2015/847 of the European Parliament and of the Council of 20 May 2015 on information accompanying transfers of funds and repealing Regulation (EC) No 1781/2006 (OJ L 141, 5.6.2015, p. 1).

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

By way of derogation from Articles 4 and 6, as regards transfers of funds in Swiss Francs in Liechtenstein and from and to Liechtenstein within its Currency Union with Switzerland, the information required by Articles 4 and 6 shall be collected and made available when requested by the payment service provider of the payee within three working days, but need not be transferred immediately with the transfers of funds as foreseen in Articles 4 and 6. This derogation shall be applicable for a transitional period expiring on 31 December 2022.'

2. The text of point 23d (Regulation (EC) No 1781/2006 of the European Parliament and of the Council) is deleted.

*Article 2*

The text of Regulation (EU) 2015/847 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 3*

This Decision shall enter into force on [...], provided that all the notifications under Article 103(1) of the EEA Agreement have been made <sup>(\*)</sup> or on the day of the entry into force of Decision of the EEA Joint Committee No .../... of ... <sup>(2)</sup> [incorporating AMLD IV (celex 32015L0849) into the EEA Agreement], whichever is the later.

<sup>(1)</sup> OJ L 141, 5.6.2015, p. 1.

<sup>(\*)</sup> [No constitutional requirements indicated.] [Constitutional requirements indicated.]

<sup>(2)</sup> OJ L ...

*Article 4*

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*

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DRAFT

**DECISION OF THE EEA JOINT COMMITTEE No .../...**  
**of ...**  
**amending Annex IX (Financial services) 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) Directive (EU) 2015/849 of the European Parliament and of the Council of 20 May 2015 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, amending Regulation (EU) No 648/2012 of the European Parliament and of the Council, and repealing Directive 2005/60/EC of the European Parliament and of the Council and Commission Directive 2006/70/EC <sup>(1)</sup> is to be incorporated into the EEA Agreement.
- (2) Commission Delegated Regulation (EU) 2016/1675 of 14 July 2016 supplementing Directive (EU) 2015/849 of the European Parliament and of the Council by identifying high-risk third countries with strategic deficiencies <sup>(2)</sup> is to be incorporated into the EEA Agreement.
- (3) Directive (EU) 2015/849 repeals Directive 2005/60/EC of the European Parliament and of the Council <sup>(3)</sup> and Commission Directive 2006/70/EC <sup>(4)</sup>, which are incorporated into the EEA Agreement and which are consequently to be repealed under the EEA Agreement.
- (4) Annex IX to the EEA Agreement should therefore be amended accordingly,

HAS ADOPTED THIS DECISION:

*Article 1*

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

1. The text of point 23b (Directive 2005/60/EC of the European Parliament and of the Council) is replaced by the following:

**'32015 L 0849:** Directive (EU) 2015/849 of the European Parliament and of the Council of 20 May 2015 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, amending Regulation (EU) No 648/2012 of the European Parliament and of the Council, and repealing Directive 2005/60/EC of the European Parliament and of the Council and Commission Directive 2006/70/EC (OJ L 141, 5.6.2015, p. 73).

The provisions of the Directive shall, for the purposes of this Agreement, be read with the following adaptation:

- (a) Point (d) of Article 3(4) shall be replaced by the following:

“fraud affecting the Union's financial interests, where it is at least serious, as defined below:

- (i) in respect of expenditure, any intentional act or omission relating to:

- the use or presentation of false, incorrect or incomplete statements or documents, which has as its effect the misappropriation or wrongful retention of funds from the general budget of the European Union or budgets managed by, or on behalf of, the European Union,
- non-disclosure of information in violation of a specific obligation, with the same effect,
- the misapplication of such funds for purposes other than those for which they were originally granted;

<sup>(1)</sup> OJ L 141, 5.6.2015, p. 73.

<sup>(2)</sup> OJ L 254, 20.9.2016, p. 1.

<sup>(3)</sup> OJ L 309, 25.11.2005, p. 15.

<sup>(4)</sup> OJ L 214, 4.8.2006, p. 29.

(ii) in respect of revenue as defined in Council Decision of 29 September 2000 on the system of the European Communities' own resources <sup>(1)</sup> any intentional act or omission relating to:

- the use or presentation of false, incorrect or incomplete statements or documents, which has as its effect the illegal diminution of the resources of the general budget of the European Union or budgets managed by, or on behalf of, the European Union,
- non-disclosure of information in violation of a specific obligation, with the same effect,
- misapplication of a legally obtained benefit, with the same effect.

Serious fraud shall be considered to be fraud involving a minimum amount not to be set at a sum exceeding Euro 50 000.”

2. The text of point 23ba (Commission Directive 2006/70/EC) is replaced by the following:

‘**32016 R 1675**: Commission Delegated Regulation (EU) 2016/1675 of 14 July 2016 supplementing Directive (EU) 2015/849 of the European Parliament and of the Council by identifying high-risk third countries with strategic deficiencies (OJ L 254, 20.9.2016, p. 1).’

3. The following indent is added in point 31bc (Regulation (EU) No 648/2012 of the European Parliament and of the Council):

‘— **32015 L 0849**: Directive (EU) 2015/849 of the European Parliament and of the Council of 20 May 2015 (OJ L 141, 5.6.2015, p. 73).’

#### Article 2

The texts of Directive (EU) 2015/849 and Delegated Regulation (EU) 2016/1675, 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 3

This Decision shall enter into force on [...], provided that all the notifications under Article 103(1) of the EEA Agreement have been made (\*).

#### Article 4

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*

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<sup>(1)</sup> OJ L 253, 7.10.2000, p. 42.

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

**Declaration of the EFTA States****to Decision No [...] incorporating Directive (EU) 2015/849 into the EEA Agreement**

Directive (EU) 2015/849 contains provisions with references to acts adopted under Title V TFEU. It is recalled that the incorporation of acts with such provisions into the EEA Agreement is without prejudice to the understanding that European Union legislation adopted pursuant to Title V TFEU falls outside the scope of the EEA Agreement.

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**Joint Declaration by the Contracting Parties****to Decision No [...] incorporating Directive (EU) 2015/849 into the EEA Agreement**

The Contracting Parties have agreed to include serious fraud affecting the financial interests of the European Union in the list of predicate offences to money laundering. For practical reasons, the Fourth Money Laundering Directive (Directive (EU) 2015/849) has been incorporated without a reciprocal agreement likewise to protect the financial interests of the EEA EFTA States. Nevertheless, the principles of reciprocity and homogeneity as laid down in Article 1 of the EEA Agreement and referred to in Recital 4 thereof, remain fully applicable also to the mutual protection against criminal activity affecting the financial interests of the Contracting Parties within the meaning of [this Decision].

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**COUNCIL IMPLEMENTING DECISION (EU) 2018/2060****of 20 December 2018****amending Decision 2009/791/EC authorising Germany to continue to apply a measure derogating from Articles 168 and 168a of Directive 2006/112/EC on the common system of value added tax**

THE COUNCIL OF THE EUROPEAN UNION,

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

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

Having regard to the proposal from the European Commission,

Whereas:

- (1) Articles 168 and 168a of Directive 2006/112/EC govern the right of taxable persons to deduct value added tax (VAT) charged on goods and services supplied to them for the purposes of their taxed transactions. Germany was authorised to introduce a derogating measure intended to exclude VAT borne on goods and services from the right of deduction where those goods and services are used by the taxable person for more than 90 % for his private purposes or for purposes of his employees, or in general for non-business purposes or non-economic activities.
- (2) Initially, Council Decision 2000/186/EC <sup>(2)</sup> authorised Germany to introduce and apply special measures derogating from Articles 6 and 17 of Council Directive 77/388/EEC <sup>(3)</sup> until 31 December 2002. Council Decision 2003/354/EC <sup>(4)</sup> authorised Germany to apply a measure derogating from Article 17 of Directive 77/388/EEC until 30 June 2004. Council Decision 2004/817/EC <sup>(5)</sup> extended the authorisation until 31 December 2009.
- (3) By means of Council Decision 2009/791/EC <sup>(6)</sup> Germany was authorised to continue to apply a special measure derogating from Article 168 of Directive 2006/112/EC until 31 December 2012. Council Implementing Decision 2012/705/EU <sup>(7)</sup> authorised Germany to apply a special measure derogating from Articles 168 and 168a until 31 December 2015, and Council Implementing Decision (EU) 2015/2428 <sup>(8)</sup> until 31 December 2018.
- (4) By letter registered with the Commission on 10 September 2018, Germany requested the authorisation to continue to apply the special measure derogating from Articles 168 and 168a of Directive 2006/112/EC in order to entirely exclude from the right of deduction the VAT borne on goods and services that are used by a taxable person for more than 90 % for private or non-business purposes, including non-economic activities. The request was accompanied by a report on the application of the special measure, including a review of the apportionment rate applied on the right to deduct VAT as required by Article 2 of Decision 2009/791/EC.

<sup>(1)</sup> OJ L 347, 11.12.2006, p. 1.

<sup>(2)</sup> Council Decision 2000/186/EC of 28 February 2000 authorising the Federal Republic of Germany to apply measures derogating from Articles 6 and 17 of the Sixth Directive 77/388/EEC on the harmonisation of the laws of the Member States relating to turnover taxes — common system of value added tax: uniform basis of assessment (OJ L 59, 4.3.2000, p. 12).

<sup>(3)</sup> Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonisation of the laws of the Member States relating to turnover taxes — Common system of value added tax: uniform basis of assessment (OJ L 145, 13.6.1977, p. 1).

<sup>(4)</sup> Council Decision 2003/354/EC of 13 May 2003 authorising Germany to apply a measure derogating from Article 17 of the Sixth Directive 77/388/EEC on the harmonisation of the laws of the Member States relating to turnover taxes (OJ L 123, 17.5.2003, p. 47).

<sup>(5)</sup> Council Decision 2004/817/EC of 19 November 2004 authorising Germany to apply a measure derogating from Article 17 of the Sixth Directive 77/388/EEC on the harmonisation of the laws of the Member States relating to turnover taxes (OJ L 357, 2.12.2004, p. 33).

<sup>(6)</sup> Council Decision 2009/791/EC of 20 October 2009 authorising the Federal Republic of Germany to continue to apply a measure derogating from Article 168 of Directive 2006/112/EC on the common system of value added tax (OJ L 283, 30.10.2009, p. 55).

<sup>(7)</sup> Council Implementing Decision 2012/705/EU of 13 November 2012 amending Decision 2009/791/EC and Implementing Decision 2009/1013/EU authorising Germany and Austria respectively to continue to apply a measure derogating from Articles 168 and 168a of Directive 2006/112/EC on the common system of value added tax (OJ L 319, 16.11.2012, p. 8).

<sup>(8)</sup> Council Implementing Decision (EU) 2015/2428 of 10 December 2015 amending Decision 2009/791/EC and Implementing Decision 2009/1013/EU authorising Germany and Austria respectively to continue to apply a measure derogating from Articles 168 and 168a of Directive 2006/112/EC on the common system of value added tax (OJ L 334, 22.12.2015, p. 12).

- (5) In accordance with the second subparagraph of Article 395(2) of Directive 2006/112/EC, the Commission transmitted the request made by Germany to the other Member States, by letters dated 14 September 2018. By letter dated 17 September 2018, the Commission notified Germany that it had all the necessary information for the appraisal of the request.
- (6) According to Germany, the special measure has proven very effective in simplifying the collection of VAT and preventing tax evasion and avoidance. The measure reduces the administrative burden for businesses and tax administrations, as there is no need for any monitoring of the subsequent use of the goods and services to which the exclusion from deduction applied at the time of their acquisition. Germany should therefore be authorised to continue to apply the special measure for a further limited period until 31 December 2021.
- (7) In the event that Germany considers that an extension beyond 2021 is necessary, it should, by 31 March 2021, submit to the Commission a request for an extension accompanied by a report on the application of the special measure that includes a review of the apportionment rate applied.
- (8) The special measure will have no adverse impact on the Union's own resources accruing from VAT.
- (9) Decision 2009/791/EC should therefore be amended accordingly,

HAS ADOPTED THIS DECISION:

*Article 1*

Article 2 of Decision 2009/791/EC is replaced by the following:

*'Article 2*

This Decision shall expire on 31 December 2021.

Any request for the extension of the derogating measure provided for in this Decision shall be submitted to the Commission by 31 March 2021.

Such request shall be accompanied by a report on the application of this measure which includes a review of the apportionment rate applied on the right to deduct VAT on the basis of this Decision.'

*Article 2*

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

It shall apply from 1 January 2019.

*Article 3*

This Decision is addressed to the Federal Republic of Germany.

Done at Brussels, 20 December 2018.

*For the Council*  
*The President*  
E. KÖSTINGER

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**POLITICAL AND SECURITY COMMITTEE DECISION (CFSP) 2018/2061****of 18 December 2018****extending the mandate of the Head of Mission of the European Union Integrated Border Management Assistance Mission in Libya (EUBAM Libya) (EUBAM Libya/2/2018)**

THE POLITICAL AND SECURITY COMMITTEE,

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

Having regard to Council Decision 2013/233/CFSP of 22 May 2013 on the European Union Integrated Border Management Assistance Mission in Libya (EUBAM Libya) <sup>(1)</sup>, and in particular Article 9(1) thereof,

Whereas:

- (1) Pursuant to Decision 2013/233/CFSP, the Political and Security Committee (PSC) is authorised, in accordance with Article 38 of the Treaty, to take the relevant decisions for the purpose of exercising political control and strategic direction of EUBAM Libya, including, in particular, the decision to appoint a Head of Mission.
- (2) On 30 August 2016 the PSC adopted Decision (CFSP) 2016/1634 <sup>(2)</sup>, appointing Mr Vincenzo TAGLIAFERRI as Head of Mission of EUBAM Libya from 1 September 2016 to 21 August 2017.
- (3) On 17 July 2017 the Council adopted Decision (CFSP) 2017/1342 <sup>(3)</sup>, extending the mandate of EUBAM Libya from 22 August 2017 to 31 December 2018.
- (4) On 18 July 2017 the PSC adopted Decision (CFSP) 2017/1401 <sup>(4)</sup>, extending the mandate of Mr Vincenzo TAGLIAFERRI as Head of Mission of EUBAM Libya from 22 August 2017 to 21 August 2018.
- (5) On 20 March 2018 the PSC adopted Decision (CFSP) 2018/558 <sup>(5)</sup>, extending the mandate of Mr Vincenzo TAGLIAFERRI as Head of Mission of EUBAM Libya from 22 August 2018 to 31 December 2018.
- (6) On 17 December 2018 the Council adopted Decision (CFSP) 2018/2009 <sup>(6)</sup>, extending the mandate of EUBAM Libya from 1 January 2019 until 30 June 2020.
- (7) The High Representative of the Union for Foreign Affairs and Security Policy has proposed to extend the mandate of Mr Vincenzo TAGLIAFERRI as Head of Mission of EUBAM Libya from 1 January 2019 to 31 December 2019,

HAS ADOPTED THIS DECISION:

*Article 1*

The mandate of Mr Vincenzo TAGLIAFERRI as Head of Mission of EUBAM Libya is hereby extended until 31 December 2019.

<sup>(1)</sup> OJ L 138, 24.5.2013, p. 15.

<sup>(2)</sup> Political and Security Committee Decision (CFSP) 2016/1634 of 30 August 2016 on the appointment of the Head of Mission of the European Union Integrated Border Management Assistance Mission in Libya (EUBAM Libya) (EUBAM Libya/1/2016) (OJ L 243, 10.9.2016, p. 10).

<sup>(3)</sup> Council Decision (CFSP) 2017/1342 of 17 July 2017 amending and extending Decision 2013/233/CFSP on the European Union Integrated Border Management Assistance Mission in Libya (EUBAM Libya) (OJ L 185, 18.7.2017, p. 60).

<sup>(4)</sup> Political and Security Committee Decision (CFSP) 2017/1401 of 18 July 2017 extending the mandate of the Head of Mission of the European Union Integrated Border Management Assistance Mission in Libya (EUBAM Libya) (EUBAM Libya/1/2017) (OJ L 199, 29.7.2017, p. 13).

<sup>(5)</sup> Political and Security Committee Decision (CFSP) 2018/558 of 20 March 2018 extending the mandate of the Head of the European Union Integrated Border Management Assistance Mission in Libya (EUBAM Libya) (EUBAM Libya/1/2018) (OJ L 93, 11.4.2018, p. 3).

<sup>(6)</sup> Council Decision (CFSP) 2018/2009 of 17 December 2018 amending and extending Decision 2013/233/CFSP on the European Union Integrated Border Management Assistance Mission in Libya (EUBAM Libya) (OJ L 322, 18.12.2018, p. 25).



*Article 2*

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

It shall apply from 1 January 2019.

Done at Brussels, 18 December 2018.

*For the Political and Security Committee*

*The Chairperson*

S. FROM-EMMESBERGER

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**POLITICAL AND SECURITY COMMITTEE DECISION (CFSP) 2018/2062****of 18 December 2018****extending the mandate of the Head of the European Union Capacity Building Mission in Somalia (EUCAP Somalia) (EUCAP Somalia/1/2018)**

THE POLITICAL AND SECURITY COMMITTEE,

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

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

Whereas:

- (1) Pursuant to Article 9(1) of Decision 2012/389/CFSP, the Political and Security Committee (PSC) is authorised, in accordance with Article 38 of the Treaty, to take the relevant decisions for the purpose of exercising the political control and strategic direction of the European Union Mission on Regional Maritime Capacity Building in the Horn of Africa (EUCAP NESTOR), including the decision to appoint a Head of Mission.
- (2) On 12 December 2016, Council Decision (CFSP) 2016/2240 <sup>(2)</sup> extended the mandate of the Mission EUCAP Nestor until 31 December 2018 and renamed it as EUCAP Somalia. The Council Decision replaced 'Regional Maritime Capacity Building Mission in the Horn of Africa (EUCAP Nestor)' with 'Capacity Building Mission in Somalia (EUCAP Somalia)'.
- (3) On 10 December 2018, Council Decision (CFSP) 2018/1942 <sup>(3)</sup> extended the mandate of the Mission EUCAP Somalia until 31 December 2020.
- (4) On 26 July 2016, the PSC adopted Decision EUCAP NESTOR/1/2016 <sup>(4)</sup> appointing Ms Maria-Cristina STEPANESCU as Head of EUCAP NESTOR from 1 September 2016 to 12 December 2016.
- (5) On 10 January 2017, the PSC adopted Decision EUCAP Somalia/1/2017 <sup>(5)</sup> extending the mandate of Ms Maria-Cristina STEPANESCU as Head of EUCAP Somalia from 13 December 2016 until 12 December 2017.
- (6) On 31 October 2017, the PSC adopted Decision EUCAP Somalia/2/2017 <sup>(6)</sup>, extending the mandate of Ms Maria-Cristina STEPANESCU as Head of EUCAP Somalia from 13 December 2017 to 31 December 2018.
- (7) The High Representative of the Union for Foreign Affairs and Security Policy has proposed to extend the mandate of Ms Maria-Cristina STEPANESCU as Head of EUCAP Somalia from 1 January 2019 to 31 August 2019,

HAS ADOPTED THIS DECISION:

*Article 1*

The mandate of Ms Maria-Cristina STEPANESCU as Head of EUCAP Somalia is hereby extended until 31 August 2019.

<sup>(1)</sup> OJ L 187, 17.7.2012, p. 40.

<sup>(2)</sup> Council Decision (CFSP) 2016/2240 of 12 December 2016 amending Decision 2012/389/CFSP on the European Union Mission on Regional Maritime Capacity Building in the Horn of Africa (EUCAP NESTOR) (OJ L 337, 13.12.2016, p. 18).

<sup>(3)</sup> Council Decision (CFSP) 2018/1942 of 10 December 2018 extending and amending Decision 2012/389/CFSP on the European Union Capacity Building Mission in Somalia (EUCAP Somalia) (OJ L 314, 11.12.2018, p. 56).

<sup>(4)</sup> Political and Security Committee Decision (CFSP) 2016/1633 of 26 July 2016 on the appointment of the Head of Mission of the European Union Mission on Regional Maritime Capacity Building in the Horn of Africa (EUCAP NESTOR) (EUCAP NESTOR/1/2016) (OJ L 243, 10.9.2016, p. 8).

<sup>(5)</sup> Political and Security Committee Decision (CFSP) 2017/114 of 10 January 2017 extending the mandate of the Head of the European Union Capacity Building Mission in Somalia (EUCAP Somalia/1/2017) (OJ L 18, 24.1.2017, p. 49).

<sup>(6)</sup> Political and Security Committee Decision (CFSP) 2017/2059 of 31 October 2017 extending the mandate of the Head of the European Union Capacity Building Mission in Somalia (EUCAP Somalia) (EUCAP Somalia/2/2017) (OJ L 294, 11.11.2017, p. 40).

*Article 2*

This Decision shall enter into force on 1 January 2019.

Done at Brussels, 18 December 2018.

*For the Political and Security Committee*

*The Chairperson*

S. FROM-EMMESBERGER

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**POLITICAL AND SECURITY COMMITTEE DECISION (CFSP) 2018/2063  
of 18 December 2018**

**extending the mandate of the Head of Mission of the European Union CSDP mission in Mali  
(EUCAP Sahel Mali) (EUCAP Sahel Mali/2/2018)**

THE POLITICAL AND SECURITY COMMITTEE,

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

Having regard to Council Decision 2014/219/CFSP of 15 April 2014 on the European Union CSDP mission in Mali (EUCAP Sahel Mali) <sup>(1)</sup>, and in particular Article 7(1) thereof,

Whereas:

- (1) Pursuant to Decision 2014/219/CFSP, the Political and Security Committee (PSC) is authorised, in accordance with Article 38 of the Treaty, to take the relevant decisions for the purpose of exercising political control and strategic direction of the EUCAP Sahel Mali mission, including the decision to appoint a Head of Mission.
- (2) On 9 January 2018 the PSC adopted Decision (CFSP) 2018/57 <sup>(2)</sup>, appointing Mr Philippe RIO as Head of Mission of EUCAP Sahel Mali from 15 January 2018 to 14 January 2019.
- (3) On 17 December 2018, the Council adopted Decision (CFSP) 2018/2008 <sup>(3)</sup>, extending the mandate of EUCAP Sahel Mali until 28 February 2019.
- (4) The High Representative of the Union for Foreign Affairs and Security Policy has proposed to extend the mandate of Mr Philippe RIO as Head of Mission of EUCAP Sahel Mali from 15 January 2019,

HAS ADOPTED THIS DECISION:

*Article 1*

The mandate of Mr Philippe RIO as Head of Mission of EUCAP Sahel Mali is hereby extended from 15 January 2019.

*Article 2*

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

It shall expire on 28 February 2019.

Done at Brussels, 18 December 2018.

*For the Political and Security Committee*

*The Chairperson*

S. FROM-EMMESBERGER

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<sup>(1)</sup> OJ L 113, 16.4.2014, p. 21.

<sup>(2)</sup> Political and Security Committee Decision (CFSP) 2018/57 of 9 January 2018 extending the mandate of the Head of Mission of the European Union CSDP mission in Mali (EUCAP Sahel Mali) (EUCAP Sahel Mali/1/2018) (OJ L 10, 13.1.2018, p. 14).

<sup>(3)</sup> Council Decision (CFSP) 2018/2008 of 17 December 2018 amending and extending Decision 2014/219/CFSP on the European Union CSDP Mission in Mali (EUCAP Sahel Mali) (OJ L 322, 18.12.2018, p. 24).

**EUROPEAN SECURITIES AND MARKETS AUTHORITY DECISION (EU) 2018/2064****of 14 December 2018****renewing the temporary prohibition on the marketing, distribution or sale of binary options to retail clients**

THE EUROPEAN SECURITIES AND MARKETS AUTHORITY BOARD OF SUPERVISORS,

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

Having regard to Regulation (EU) No 1095/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Securities and Markets Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/77/EC <sup>(1)</sup>, and in particular Articles 9(5), 43(2) and 44(1) thereof,

Having regard to Regulation (EU) No 600/2014 of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Regulation (EU) No 648/2012 <sup>(2)</sup>, and in particular Article 40 thereof,

Having regard to Commission Delegated Regulation (EU) 2017/567 of 18 May 2016 supplementing Regulation (EU) No 600/2014 of the European Parliament and of the Council with regard to definitions, transparency, portfolio compression and supervisory measures on product intervention and positions <sup>(3)</sup>, and in particular Article 19 thereof,

Whereas:

- (1) By Decision (EU) 2018/795 <sup>(4)</sup>, the European Securities and Markets Authority (ESMA) prohibited the marketing, distribution or sale of binary options to retail clients with effect from 2 July 2018 for a period of three months.
- (2) In accordance with Article 40(6) of Regulation (EU) No 600/2014, ESMA must review a temporary product intervention measure at appropriate intervals and at least every three months.
- (3) By Decision (EU) 2018/1466 <sup>(5)</sup>, ESMA renewed and amended the temporary prohibition on the marketing, distribution or sale of binary options to retail clients with effect from 2 October 2018 for a period of three months.
- (4) ESMA's further review of the prohibition on binary options has been informed by, inter alia, a survey amongst national competent authorities <sup>(6)</sup> (NCAs) on the practical application and impact of the product intervention measure as well as additional information provided by NCAs and stakeholders.
- (5) NCAs detected only limited examples of non-compliance with the ESMA product intervention measures. Furthermore, no new authorisations have been provided to firms that market, distribute or sell binary options since the announcement of the agreed measures on 27 March 2018.
- (6) NCAs noticed a slight increase in the number of clients treated as professional clients on request. However, the number of professional clients on request is relatively small in comparison to the previous number of retail clients of providers of binary options. ESMA is aware that some third-country firms are actively approaching Union clients. However, without authorisation or registration in the Union, these firms are only allowed to offer

<sup>(1)</sup> OJ L 331, 15.12.2010, p. 84.

<sup>(2)</sup> OJ L 173, 12.6.2014, p. 84.

<sup>(3)</sup> OJ L 87, 31.3.2017, p. 90.

<sup>(4)</sup> European Securities and Markets Authority Decision (EU) 2018/795 of 22 May 2018 to temporarily prohibit the marketing, distribution or sale of binary options to retail clients in the Union in accordance with Article 40 of Regulation (EU) No 600/2014 of the European Parliament and of the Council (OJ L 136, 1.6.2018, p. 31).

<sup>(5)</sup> European Securities and Markets Authority Decision (EU) 2018/1466 of 21 September 2018 renewing and amending the temporary prohibition in Decision (EU) 2018/795 on the marketing, distribution or sale of binary options to retail clients (OJ L 245, 1.10.2018, p. 17).

<sup>(6)</sup> 24 NCAs have responded: Financial Market Authority (AT – FMA), Cyprus Securities and Exchange Commission (CY-CySEC), Czech National Bank (CZ – CNB), Bundesanstalt für Finanzdienstleistungsaufsicht (DE – BaFin), Finanstillsynet (DK-Finanstillsynet), Hellenic Capital Markets Commission (EL-HCMC), Comisión Nacional del Mercado de Valores (ES – CNMV), Finnish Financial Supervisory Authority (FI – FSA), Autorité des Marchés Financiers (FR – AMF), Magyar Nemzeti Bank (HU – MNB), Central Bank of Ireland (IE – CBI), Financial Supervisory Authority (IS – FME), Commissione Nazionale per le Società e la Borsa (IT – Consob), Commission de Surveillance du Secteur Financier (LU – CSSF), Malta Financial Services Authority (MT – MFSA), Autoriteit Financiële Markten (NL-AFM), Finanstillsynet (Finanstillsynet-NO), Komisja Nadzoru Finansowego (PL-KNF), Comissão do Mercado de Valores Mobiliários (PT – CMVM), Romanian Financial Supervisory Authority (RO – FSA), Finansinspektionen (SE- Finansinspektionen), Agencija za trg vrednostnih papirjev (SI-ATVP), National Bank Slovakia (NBS-SK), Financial Conduct Authority (UK- FCA).

services to clients established or situated in the Union at the client's own exclusive initiative. ESMA is also aware that firms are starting to provide other speculative investment products. ESMA will continue to monitor the offer of these other products to determine whether any other Union measures are appropriate.

- (7) Since the adoption of Decision (EU) 2018/795, ESMA did not obtain evidence contradicting its overall finding of a significant investor protection concern identified in Decision (EU) 2018/795 or Decision (EU) 2018/1466 (Decisions). ESMA has therefore concluded that the significant investor protection concern identified in the Decisions would persist if the temporary prohibition on the marketing, distribution or sale of binary options to retail clients is not renewed.
- (8) Moreover, the applicable existing regulatory requirements under Union law have not changed and continue not to address the threat identified by ESMA. Furthermore, NCAs have not taken action to address the threat or the actions taken do not adequately address the threat. In particular, since the adoption of Decision (EU) 2018/795, no NCA has adopted its own national product intervention measure under Article 42 of Regulation (EU) No 600/2014 <sup>(1)</sup>.
- (9) The renewal of the prohibition does not have a detrimental effect on the efficiency of financial markets or on investors that is disproportionate to the benefits of the action and does not create a risk of regulatory arbitrage for the same reasons set out in the Decisions.
- (10) If the temporary prohibition is not renewed, ESMA continues to consider it likely that binary options will again be offered to retail clients and that the same or similar products will return to the market that gave rise to the consumer detriment identified in the Decisions.
- (11) In view of these reasons, taken together with the reasons set out in the Decisions, ESMA has decided to renew the prohibition on the same terms as those set out in Decision (EU) 2018/1466 for a further three-month period to address the significant investor protection concern.
- (12) As the proposed measures may, to a limited extent, relate to agricultural commodities derivatives, ESMA has consulted the public bodies competent for the oversight, administration and regulation of physical agricultural markets under Council Regulation (EC) No 1234/2007 <sup>(2)</sup>. None of those bodies has raised any objections to the proposed renewal of the measures.
- (13) ESMA has notified NCAs of the proposed renewal Decision,

HAS ADOPTED THIS DECISION:

#### *Article 1*

### **Temporary prohibition on binary options in respect of retail clients**

1. The marketing, distribution or sale to retail clients of binary options is prohibited.
2. For the purposes of paragraph 1, irrespective of whether it is traded on a trading venue, a binary option is a derivative that meets the following conditions:
  - (a) it must be settled in cash or may be settled in cash at the option of one of the parties other than by reason of default or other termination event;
  - (b) it only provides for payment at its close-out or expiry;
  - (c) its payment is limited to:
    - (i) a predetermined fixed amount or zero if the underlying of the derivative meets one or more predetermined conditions; and
    - (ii) a predetermined fixed amount or zero if the underlying of the derivative does not meet one or more predetermined conditions.

<sup>(1)</sup> On 4 June 2018, a competent authority of an EEA EFTA State, NO-Finanstilsynet, adopted national product intervention measures that have the same terms and dates of application of ESMA's measures. Furthermore, on 5 July 2018, the Financial Supervisory Authority of Iceland published that it considers the marketing, distribution or sale of binary options to be contrary to proper and sound business procedures and practices in securities trading according to its national law (Article 5 of Act No 108/2007 on Securities Transactions). Furthermore, on 6 July 2018 in Romania national law started to apply that has similar terms as ESMA's measures.

<sup>(2)</sup> Council Regulation (EC) No 1234/2007 of 22 October 2007 establishing a common organisation of agricultural markets and on specific provisions for certain agricultural products (Single CMO Regulation) (OJ L 299, 16.11.2007, p. 1).

3. The prohibition in paragraph 1 does not apply to:
- (a) a binary option for which the lower of the two predetermined fixed amounts is at least equal to the total payment made by a retail client for the binary option, including any commission, transaction fees and other related costs;
  - (b) a binary option that meets the following conditions:
    - (i) the term from issuance to maturity is at least 90 calendar days;
    - (ii) a prospectus drawn up and approved in accordance with Directive 2003/71/EC of the European Parliament and of the Council <sup>(1)</sup> is available to the public; and
    - (iii) the binary option does not expose the provider to market risk throughout the term of the binary option and the provider or any of its group entities do not make a profit or loss from the binary option, other than previously disclosed commission, transaction fees or other related charges.

#### *Article 2*

#### **Prohibition of participating in circumvention activities**

It shall be prohibited to participate, knowingly and intentionally, in activities the object or effect of which is to circumvent the requirements in Article 1, including by acting as a substitute for the binary option provider.

#### *Article 3*

#### **Entry into force and application**

1. This Decision enters into force on the day following that of its publication in the *Official Journal of the European Union*.
2. This Decision shall apply from 2 January 2019 for a period of 3 months.

Done at Paris, 14 December 2018.

*For the Board of Supervisors*  
Steven MAIJOR  
*The Chair*

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<sup>(1)</sup> Directive 2003/71/EC of the European Parliament and of the Council of 4 November 2003 on the prospectus to be published when securities are offered to the public or admitted to trading and amending Directive 2001/34/EC (OJ L 345, 31.12.2003, p. 64).

## ACTS ADOPTED BY BODIES CREATED BY INTERNATIONAL AGREEMENTS

### **DECISION No 1/2018 OF THE JOINT EUROPEAN UNION/SWITZERLAND AIR TRANSPORT COMMITTEE SET UP UNDER THE AGREEMENT BETWEEN THE EUROPEAN COMMUNITY AND THE SWISS CONFEDERATION ON AIR TRANSPORT**

**of 12 December 2018**

**replacing the Annex to the Agreement between the European Community and the Swiss  
Confederation on Air Transport [2018/2065]**

THE EUROPEAN UNION/SWITZERLAND AIR TRANSPORT COMMITTEE,

Having regard to the Agreement between the European Community and the Swiss Confederation on Air Transport, hereinafter referred to as 'the Agreement', and in particular Article 23(4) thereof,

HAS DECIDED AS FOLLOWS:

#### *Sole Article*

The Annex to this Decision replaces the Annex to the Agreement, as from 1 February 2019.

Done at Brussels, 12 December 2018.

*For the Joint Committee*

*The Head of the European Union Delegation*  
Filip CORNELIS

*The Head of the Swiss Delegation*  
Christian HEGNER

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## ANNEX

For the purposes of this Agreement:

- By virtue of the Treaty of Lisbon, entered into force on 1 December 2009, the European Union shall replace and succeed the European Community;
- Wherever acts specified in this Annex contain references to Member States of the European Community, as replaced by the European Union, or a requirement for a link with the latter, the references shall, for the purpose of the Agreement, be understood to apply equally to Switzerland or to the requirement of a link with Switzerland;
- The references to Council Regulations (EEC) No 2407/92 and (EEC) No 2408/92 made in the Articles 4, 15, 18, 27 and 35 of the Agreement, shall be understood as references to Regulation (EC) No 1008/2008 of the European Parliament and of the Council;
- Without prejudice to Article 15 of this Agreement, the term ‘Community air carrier’ referred to in the following Community directives and regulations shall include an air carrier which is licensed and has its principal place of business and, if any, its registered office in Switzerland in accordance with the provisions of Regulation (EC) No 1008/2008. Any reference to Council Regulation (EEC) No 2407/92 shall be understood as reference to Regulation (EC) No 1008/2008;
- Any reference in the following texts to Articles 81 and 82 of the Treaty or to Articles 101 and 102 of the Treaty on the Functioning of the European Union shall be understood to mean Articles 8 and 9 of this Agreement.

#### 1. Aviation liberalisation and other civil aviation rules

No 1008/2008

Regulation of the European Parliament and of the Council of 24 September 2008 on common rules for the operation of air services in the Community, OJ L 293, 31.10.2008, p. 3.

No 2000/79

Council Directive of 27 November 2000 concerning the implementation of the European Agreement on the Organisation of Working Time of Mobile Workers in Civil Aviation concluded by the Association of European Airlines (AEA), the European Transport Workers' Federation (ETF), the European Cockpit Association (ECA), the European Regions Airline Association (ERA) and the International Air Carrier Association (IACA), OJ L 302, 1.12.2000, p. 57.

No 93/104

Council Directive of 23 November 1993 concerning certain aspects of the organisation of working time OJ L 307, 13.12.1993, p. 18, as amended by:

- Directive 2000/34/EC, OJ L 195, 1.8.2000, p. 41.

No 437/2003

Regulation of the European Parliament and of the Council of 27 February 2003 on statistical returns in respect of the carriage of passengers, freight and mail by air, OJ L 66, 11.3.2003, p. 1.

No 1358/2003

Commission Regulation of 31 July 2003 implementing Regulation (EC) No 437/2003 of the European Parliament and of the Council on statistical returns in respect of the carriage of passengers, freight and mail by air and amending Annexes I and II thereto, OJ L 194, 1.8.2003, p. 9, as amended by:

- Commission Regulation (EC) No 158/2007, OJ L 49, 17.2.2007, p. 9.

No 785/2004

Regulation of the European Parliament and of the Council of 21 April 2004 on insurance requirements for air carriers and aircraft operators OJ L 138, 30.4.2004, p. 1, as amended by:

- Commission Regulation (EU) No 285/2010, OJ L 87, 7.4.2010, p. 19.

No 95/93

Council Regulation of 18 January 1993 on common rules for the allocation of slots at Community airports, OJ L 14, 22.1.1993, p. 1 (Articles 1-12), as amended by:

— Regulation (EC) No 793/2004, OJ L 138, 30.4.2004, p. 50.

No 2009/12

Directive of the European Parliament and of the Council of 11 March 2009 on airport charges, OJ L 70, 14.3.2009, p. 11.

No 96/67

Council Directive of 15 October 1996 on access to the groundhandling market at Community airports, OJ L 272, 25.10.1996, p. 36.

(Articles 1-9, 11-23, and 25)

No 80/2009

Regulation of the European Parliament and of the Council of 14 January 2009 on a Code of Conduct for computerised reservation systems and repealing Council Regulation (EEC) No 2299/89, OJ L 35, 4.2.2009, p. 47.

## 2. Competition rules

No 1/2003

Council Regulation of 16 December 2002 on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty, OJ L 1, 4.1.2003, p. 1 (Articles 1-13, 15-45)

(To the extent that this Regulation is relevant for the application of this agreement. The insertion of this Regulation does not affect the division of tasks according to this agreement)

No 773/2004

Commission Regulation of 7 April 2004 relating to proceedings by the Commission pursuant to Articles 81 and 82 of the EC Treaty, OJ L 123, 27.4.2004, p. 18, as amended by:

— Commission Regulation (EC) No 1792/2006, OJ L 362, 20.12.2006, p. 1.

— Commission Regulation (EC) No 622/2008, OJ L 171, 1.7.2008, p. 3.

No 139/2004

Council Regulation of 20 January 2004 on the control of concentrations between undertakings (the EC Merger Regulation), OJ L 24, 29.1.2004, p. 1.

(Article 1-18, 19(1)-(2), and 20-23)

With respect to Article 4(5) of the Merger Regulation the following shall apply between the European Community and Switzerland:

- (1) With regard to a concentration as defined in Article 3 of Regulation (EC) No 139/2004 which does not have a Community dimension within the meaning of Article 1 of that Regulation and which is capable of being reviewed under the national competition laws of at least three EC Member States and the Swiss Confederation, the persons or undertakings referred to in Article 4(2) of that Regulation may, before any notification to the competent authorities, inform the EC Commission by means of a reasoned submission that the concentration should be examined by the Commission.
- (2) The European Commission shall transmit all submissions pursuant to Article 4(5) of Regulation (EC) No 139/2004 and the previous paragraph to the Swiss Confederation without delay.

- (3) Where the Swiss Confederation has expressed its disagreement as regards the request to refer the case, the competent Swiss competition authority shall retain its competence, and the case shall not be referred from the Swiss Confederation pursuant to this paragraph.

With respect to time limits referred to in Articles 4(4) and (5), Articles 9(2) and (6), and Articles 22(2) of the Merger Regulation:

- (1) The European Commission shall transmit all the relevant documents pursuant to Articles 4(4) and (5), Articles 9(2) and (6) and Article 22(2) to the competent Swiss competition authority without delay.
- (2) The calculation of the time limits referred to in Articles 4(4) and (5), Articles 9(2) and (6), and Article 22(2) of Regulation (EC) No 139/2004 shall start, for the Swiss Confederation, upon receipt of the relevant documents by the competent Swiss competition authority.

No 802/2004

Commission Regulation of 7 April 2004 implementing Council Regulation (EC) No 139/2004 on the control of concentrations between undertakings, OJ L 133, 30.4.2004, p. 1 (Articles 1-24), as amended by:

- Commission Regulation (EC) No 1792/2006, OJ L 362, 20.12.2006, p. 3,
- Commission Regulation (EC) No 1033/2008, OJ L 279, 22.10.2008, p. 3,
- Commission Implementing Regulation (EU) No 1269/2013, OJ L 336, 14.12.2013, p. 1.

No 2006/111

Commission Directive of 16 November 2006 on the transparency of financial relations between Member States and public undertakings as well as on financial transparency within certain undertakings, OJ L 318, 17.11.2006, p. 17.

No 487/2009

Council Regulation of 25 May 2009 on the application of Article 81(3) of the Treaty to certain categories of agreements and concerted practices in the air transport sector, OJ L 148, 11.6.2009, p. 1.

### 3. Aviation safety

No 216/2008

Regulation of the European Parliament and of the Council of 20 February 2008 on common rules in the field of civil aviation and establishing a European Aviation Safety Agency, and repealing Council Directive 91/670/EEC, Regulation (EC) No 1592/2002 and Directive 2004/36/EC, OJ L 79, 19.2.2008, p. 1, as amended by:

- Commission Regulation (EC) No 690/2009, OJ L 199, 31.7.2009, p. 6,
- Regulation (EC) No 1108/2009, OJ L 309, 24.11.2009, p. 51,
- Commission Regulation (EU) No 6/2013, OJ L 4, 9.1.2013, p. 34,
- Commission Regulation (EU) 2016/4, OJ L 3, 6.1.2016, p. 1.

The Agency shall enjoy also in Switzerland the powers granted to it under the provisions of the Regulation.

The Commission shall enjoy also in Switzerland the powers granted to it for decisions pursuant to Article 11(2), Article 14(5),(7), Article 24(5), Article 25(1), Article 38(3)(i), Article 39(1), Article 40(3), Article 41(3),(5), Article 42(4), Article 54(1) and Article 61(3).

Notwithstanding the horizontal adaptation provided for in the second indent of the Annex to the Agreement between the European Community and the Swiss Confederation on Air Transport, the references to the 'Member States' made in Article 65 of the Regulation or in the provisions of Decision 1999/468/EC mentioned in that provision shall not be understood to apply to Switzerland.

Nothing in this Regulation shall be construed so as to transfer to the EASA authority to act on behalf of Switzerland under international agreements for other purposes than to assist in the performance of its obligations pursuant to such agreements.

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

(a) Article 12 is amended as follows:

- (i) in paragraph 1, the words 'or Switzerland' shall be inserted after the words 'the Community';
- (ii) in paragraph 2(a), the words 'or Switzerland' shall be inserted after the words 'the Community';
- (iii) in paragraphs 2 points (b) and (c) are deleted;
- (iv) the following paragraph is added:

'3. Whenever the Community negotiates with a third country in order to conclude an agreement providing that a Member State or the Agency may issue certificates on the basis of certificates issued by the aeronautical authorities of that third country, it shall endeavour to obtain for Switzerland an offer of a similar agreement with the third country in question. Switzerland shall, in turn, endeavour to conclude with third countries agreements corresponding to those of the Community'.

(b) In Article 29, the following paragraph shall be added:

'4. By way of derogation from Article 12(2)(a) of the Conditions of Employment of Other Servants of the European Communities, Swiss nationals enjoying their full rights as citizens may be engaged under contract by the Executive Director of the Agency.'

(c) In Article 30, the following paragraph is added:

'Switzerland shall apply to the Agency the Protocol on the Privileges and Immunities of the European Union, which is set out as Annex A to the present Annex, in accordance with the Appendix to Annex A.'

(d) In Article 37, the following paragraph is added:

'Switzerland shall participate fully in the Management Board and shall within it have the same rights and obligations as European Union Member States, except for the right to vote'.

(e) In Article 59, the following paragraph shall be added:

'12. Switzerland shall participate in the financial contribution referred to in paragraph 1(b), according to the following formula:

$$S (0,2/100) + S [1 - (a + b) 0,2/100] c/C$$

where:

S = the part of the budget of the Agency not covered by the fees and charges mentioned in paragraph 1 (c) and (d)

a = the number of Associated States

b = the number of EU Member States

c = the contribution of Switzerland to the ICAO budget,

C = the total contribution of the EU Member States and of the Associated States to the ICAO budget.'

(f) In Article 61, the following paragraph is added:

'The provisions relating to financial control by the Community in Switzerland concerning the participants in the activities of the Agency are set out in Annex B to the present Annex.'

(g) Annex II to the Regulation shall be extended to include the following aircraft as products covered by Article 2(3) (a)(ii) of Commission Regulation (EC) No 1702/2003 of 24 September 2003 laying down implementing rules for the airworthiness and environmental certification of aircraft and related products, parts and appliances, as well as for the certification of design and production organisations <sup>(1)</sup>:

A/c - [HB-IMY, HB-IWY] – type Gulfstream G-IV

A/c - [HB-IMJ, HB-IVZ, HB-JES] – type Gulfstream G-V

A/c - [HB-ZDF] – type MD900.

<sup>(1)</sup> OJ L 243, 27.9.2003, p. 6.

*No 1178/2011*

Commission Regulation of 3 November 2011 laying down technical requirements and administrative procedures related to civil aviation aircrew pursuant to Regulation (EC) No 216/2008 of the European Parliament and of the Council, OJ L 311, 25.11.2011, p. 1, as amended by:

- Commission Regulation (EU) No 290/2012, OJ L 100, 5.4.2012, p. 1,
- Commission Regulation (EU) No 70/2014, OJ L 23, 28.1.2014, p. 25,
- Commission Regulation (EU) No 245/2014, OJ L 74, 14.3.2014, p. 33,
- Commission Regulation (EU) 2015/445, OJ L 74, 18.3.2015, p. 1,
- Commission Regulation (EU) 2016/539, OJ L 91, 7.4.2016, p. 1.

*No 3922/91*

Council Regulation of 16 December 1991 on the harmonisation of technical requirements and administrative procedures in the field of civil aviation, OJ L 373, 31.12.1991, p. 4 (Articles 1-3, 4(2), (5-11, and 13), as amended by:

- Regulation (EC) No 1899/2006, OJ L 377, 27.12.2006, p. 1,
- Regulation (EC) No 1900/2006, OJ L 377, 27.12.2006, p. 176,
- Commission Regulation (EC) No 8/2008, OJ L 10, 12.1.2008, p. 1,
- Commission Regulation (EC) No 859/2008, OJ L 254, 20.9.2008, p. 1.

*No 996/2010*

Regulation of the European Parliament and of the Council of 20 October 2010 on the investigation and prevention of accidents and incidents in civil aviation and repealing Directive 94/56/EC, OJ L 295, 12.11.2010, p. 35, as amended by:

- Regulation (EU) No 376/2014, OJ L 122, 24.4.2014, p. 18.

*No 104/2004*

Commission Regulation of 22 January 2004 laying down rules on the organisation and composition of the Board of Appeal of the European Aviation Safety Agency, OJ L 16, 23.1.2004, p. 20.

*No 2111/2005*

Regulation of the European Parliament and of the Council of 14 December 2005 on the establishment of a Community list of air carriers subject to an operating ban within the Community and on informing air transport passengers of the identity of the operating air carrier, and repealing Article 9 of directive 2004/36/EC, OJ L 344, 27.12.2005, p. 15.

*No 473/2006*

Commission Regulation of 22 March 2006 laying down implementing rules for the Community list of air carriers which are subject to an operating ban within the Community referred to in Chapter II of Regulation (EC) No 2111/2005 of the European Parliament and of the Council, OJ L 84, 23.3.2006, p. 8.

*No 474/2006*

Commission Regulation of 22 March 2006 establishing the Community list of air carriers which are subject to an operating ban within the Community referred to in Chapter II of Regulation (EC) No 2111/2005 of the European Parliament and of the Council, OJ L 84, 23.3.2006, p. 14, as last amended by:

- Commission Implementing Regulation (EU) 2018/871, OJ L 152, 15.6.2018, p. 5.

*No 1332/2011*

Commission Regulation of 16 December 2011 laying down common airspace usage requirements and operating procedures for airborne collision avoidance, OJ L 336, 20.12.2011, p. 20, as amended by:

— Commission Regulation (EU) 2016/583, OJ L 101, 16.4.2016, p. 7.

*No 646/2012*

Commission Implementing Regulation of 16 July 2012 laying down detailed rules on fines and periodic penalty payments pursuant to Regulation (EC) No 216/2008 of the European Parliament and of the Council, OJ L 187, 17.7.2012, p. 29.

*No 748/2012*

Commission Regulation of 3 August 2012 laying down implementing rules for the airworthiness and environmental certification of aircraft and related products, parts and appliances, as well as for the certification of design and production organisations, OJ L 224, 21.8.2012, p. 1, as amended by:

- Commission Regulation (EU) No 7/2013, OJ L 4, 9.1.2013, p. 36,
- Commission Regulation (EU) No 69/2014, OJ L 23, 28.1.2014, p. 12,
- Commission Regulation (EU) 2015/1039, OJ L 167, 1.7.2015, p. 1,
- Commission Regulation (EU) 2016/5, OJ L 3, 6.1.2016, p. 3.

*No 965/2012*

Commission Regulation of 5 October 2012 laying down technical requirements and administrative procedures related to air operations pursuant to Regulation (EC) No 216/2008 of the European Parliament and of the Council, OJ L 296, 25.10.2012, p. 1, as amended by:

- Commission Regulation (EU) No 800/2013, OJ L 227, 24.8.2013, p. 1,
- Commission Regulation (EU) No 71/2014, OJ L 23, 28.1.2014, p. 27,
- Commission Regulation (EU) No 83/2014, OJ L 28, 31.1.2014, p. 17,
- Commission Regulation (EU) No 379/2014, OJ L 123, 24.4.2014, p. 1,
- Commission Regulation (EU) 2015/140, OJ L 24, 30.1.2015, p. 5,
- Commission Regulation (EU) 2015/1329, OJ L 206, 1.8.2015, p. 21,
- Commission Regulation (EU) 2015/640, OJ L 106, 24.4.2015, p. 18,
- Commission Regulation (EU) 2015/2338, OJ L 330, 16.12.2015, p. 1,
- Commission Regulation (EU) 2016/1199, OJ L 198, 23.7.2016, p. 13,
- Commission Regulation (EU) 2017/363, OJ L 55, 2.3.2017, p. 1,
- Commission Regulation (EU) 2018/394, OJ L 71, 14.3.2018, p. 1

*No 2012/780*

Commission Decision of 5 December 2012 on access rights to the European Central Repository of Safety Recommendations and their responses established by Article 18(5) of Regulation (EU) No 996/2010 of the European Parliament and of the Council on the investigation and prevention of accidents and incidents in civil aviation and repealing Directive 94/56/EC, OJ L 342, 14.12.2012, p. 46.

*No 628/2013*

Commission Implementing Regulation of 28 June 2013 on working methods of the European Aviation Safety Agency for conducting standardisation inspections and for monitoring the application of the rules of Regulation (EC) No 216/2008 of the European Parliament and of the Council and repealing Commission Regulation (EC) No 736/2006, OJ L 179, 29.6.2013, p. 46.

*No 139/2014*

Commission Regulation of 12 February 2014 laying down requirements and administrative procedures related to aerodromes pursuant to Regulation (EC) No 216/2008 of the European Parliament and of the Council, OJ L 44, 14.2.2014, p. 1, as amended by:

- Commission Regulation (EC) No 2017/161, OJ L 27, 1.2.2017, p. 99,
- Commission Regulation (EC) No 2018/401, OJ L 72, 15.3.2018, p. 17

*No 319/2014*

Commission Regulation of 27 March 2014 on the fees and charges levied by the European Aviation Safety Agency, and repealing Regulation (EC) No 593/2007, OJ L 93, 28.3.2014, p. 58.

*No 376/2014*

Regulation of the European Parliament and of the Council of 3 April 2014 on the reporting, analysis and follow-up of occurrences in civil aviation, amending Regulation (EU) No 996/2010 of the European Parliament and of the Council and repealing Directive 2003/42/EC of the European Parliament and of the Council and Commission Regulations (EC) No 1321/2007 and (EC) No 1330/2007, OJ L 122, 24.4.2014, p. 18.

*No 452/2014*

Commission Regulation of 29 April 2014 laying down technical requirements and administrative procedures related to air operations of third country operators pursuant to Regulation (EC) No 216/2008 of the European Parliament and of the Council, OJ L 133, 6.5.2014, p. 12, as amended by:

- Commission Regulation (EU) 2016/1158, OJ L 192, 16.7.2016, p. 21.

*No 1321/2014*

Commission Regulation of 26 November 2014 on the continuing airworthiness of aircraft and aeronautical products, parts and appliances, and on the approval of organisations and personnel involved in these tasks, OJ L 362, 17.12.2014, p. 1, as amended by:

- Commission Regulation (EU) 2015/1088, OJ L 176, 7.7.2015, p. 4,
- Commission Regulation (EU) 2015/1536, OJ L 241, 17.9.2015, p. 16,
- Commission Regulation (EU) 2017/334, OJ L 50, 28.2.2017, p. 13.

*No 2015/340*

Commission Regulation of 20 February 2015 laying down technical requirements and administrative procedures relating to air traffic controllers' licences and certificates pursuant to Regulation (EC) No 216/2008 of the European Parliament and of the Council, amending Commission Implementing Regulation (EU) No 923/2012 and repealing Commission Regulation (EU) No 805/2011, OJ L 63, 6.3.2015, p. 1.

*No 2015/640*

Commission Regulation of 23 April 2015 on additional airworthiness specifications for a given type of operations and amending Regulation (EU) No 965/2012, OJ L 106, 24.4.2015, p. 18, as amended by:

- Commission Regulation (EU) 2018/394, OJ L 71, 14.3.2018, p. 1.

*No 2015/1018*

Commission Implementing Regulation of 29 June 2015 laying down a list classifying occurrences in civil aviation to be mandatorily reported according to Regulation (EU) No 376/2014 of the European Parliament and of the Council, OJ L 163, 30.6.2015, p. 1.

No 2016/2357

Commission Decision of 19 December 2016 regarding the lack of effective compliance with Regulation (EC) No 216/2008 of the European Parliament and of the Council and its implementing rules in respect of certificates issued by the Hellenic Aviation Training Academy (HATA), and Part-66 licenses issued on the basis thereof, OJ L 348, 21.12.2016, p. 72.

No 2018/395

Commission Regulation of 13 March 2018 laying down detailed rules for the operation of balloons pursuant to Regulation (EC) No 216/2008 of the European Parliament and of the Council, OJ L 71, 14.3.2018, p. 10.

#### 4. Aviation Security

No 300/2008

Regulation of the European Parliament and of the Council of 11 March 2008 on common rules in the field of civil aviation security and repealing Regulation (EC) No 2320/2002, OJ L 97, 9.4.2008, p. 72.

No 272/2009

Commission Regulation of 2 April 2009 supplementing the common basic standards on civil aviation security laid down in the Annex to Regulation (EC) No 300/2008 of the European Parliament and of the Council, OJ L 91, 3.4.2009, p. 7, as amended by:

- Commission Regulation (EU) No 297/2010, OJ L 90, 10.4.2010, p. 1,
- Commission Regulation (EU) No 720/2011, OJ L 193, 23.7.2011, p. 19,
- Commission Regulation (EU) No 1141/2011, OJ L 293, 11.11.2011, p. 22,
- Commission Regulation (EU) No 245/2013, OJ L 77, 20.3.2013, p. 5.

No 1254/2009

Commission Regulation of 18 December 2009 setting criteria to allow Member States to derogate from the common basic standards on civil aviation security and to adopt alternative security measures, OJ L 338, 19.12.2009, p. 17, as amended by:

- Commission Regulation (EU) 2016/2096, OJ L 326, 1.12.2016, p. 7.

No 18/2010

Commission Regulation of 8 January 2010 amending Regulation (EC) No 300/2008 of the European Parliament and of the Council as far as specifications for national quality control programmes in the field of civil aviation security are concerned, OJ L 7, 12.1.2010, p. 3.

No 72/2010

Commission Regulation of 26 January 2010 laying down procedures for conducting Commission inspections in the field of aviation security, OJ L 23, 27.1.2010, p. 1, as amended by:

- Commission Implementing Regulation (EU) 2016/472, OJ L 85, 1.4.2016, p. 28.

No 2015/1998

Commission Implementing Regulation of 5 November 2015 laying down detailed measures for the implementation of the common basic standards on aviation security, OJ L 299, 14.11.2015, p. 1, as amended by:

- Commission Implementing Regulation (EU) 2015/2426, OJ L 334, 22.12.2015, p. 5,
- Commission Implementing Regulation (EU) 2017/815, OJ L 122, 13.5.2017, p. 1,
- Commission Implementing Regulation (EU) 2018/55, OJ L 10, 13.1.2018, p. 5.



No C(2015) 8005

Commission Implementing Decision of 16 November 2015 laying down detailed measures for the implementation of the common basic standards on aviation security containing information, as referred to in point (a) of Article 18 of Regulation (EC) No 300/2008 as amended by:

- Commission Implementing Decision C(2017) 3030
- Commission Implementing Decision C(2018) 4857

## 5. Air traffic management

No 549/2004

Regulation of the European Parliament and of the Council of 10 March 2004 laying down the framework for the creation of the Single European Sky (the Framework Regulation), OJ L 96, 31.3.2004, p. 1, as amended by:

- Regulation (EC) No 1070/2009, OJ L 300, 14.11.2009, p. 34.

The Commission shall enjoy in Switzerland the powers granted to it pursuant to Articles 6, 8, 10, 11 and 12.

Article 10 shall be amended as follows:

In paragraph 2, the words ‘at Community level’ should be replaced by words ‘at Community level, involving Switzerland’.

Notwithstanding the horizontal adjustment referred to in the second indent of the Annex to the Agreement between the European Community and the Swiss Confederation on Air Transport, the references to the ‘Member States’ made in Article 5 of Regulation (EC) No 549/2004 or in the provisions of Decision 1999/468/EC mentioned in that provision shall not be understood to apply to Switzerland.

No 550/2004

Regulation of the European Parliament and of the Council of 10 March 2004 on the provision of air navigation services in the Single European Sky (the Service Provision Regulation), as amended by:

- Regulation (EC) No 1070/2009, OJ L 300, 14.11.2009, p. 34.

The Commission shall enjoy towards Switzerland the powers granted to it pursuant to Articles 9a, 9b, 15, 15a, 16 and 17.

The provisions of the Regulation shall, for the purposes of this Agreement, be amended as follows:

- (a) Article 3 shall be amended as follows:

In paragraph 2, the words ‘and Switzerland’ shall be inserted after the words ‘the Community’.

- (b) Article 7 is amended as follows:

In paragraph 1 and paragraph 6, the words ‘and Switzerland’ shall be inserted after the words ‘the Community’.

- (c) Article 8 is amended as follows:

In paragraph 1, the words ‘and Switzerland’ shall be inserted after the words ‘the Community’.

- (d) Article 10 is amended as follows:

In paragraph 1, the words ‘and Switzerland’ shall be inserted after the words ‘the Community’.

- (e) Article 16(3) is replaced by the following:

‘3. The Commission shall address its decision to the Member States and inform the service provider thereof, in so far as it is legally concerned.’

*No 551/2004*

Regulation of the European Parliament and of the Council of 10 March 2004 on the organisation and use of the airspace in the Single European Sky (the Airspace Regulation), OJ L 96, 31.3.2004, p. 20, as amended by:

— Regulation (EC) No 1070/2009, OJ L 300, 14.11.2009, p. 34.

The Commission shall enjoy in Switzerland the powers granted to it pursuant to Articles 3a, 6 and 10.

*No 552/2004*

Regulation of the European Parliament and of the Council of 10 March 2004 on the interoperability of the European Air Traffic Management network (the Interoperability Regulation), OJ L 96, 31.3.2004, p. 26, as amended by:

— Regulation (EC) No 1070/2009, OJ L 300, 14.11.2009, p. 34.

The Commission shall enjoy in Switzerland the powers granted to it pursuant to Articles 4, 7 and 10(3).

The provisions of the Regulation shall, for the purposes of this Agreement, be amended as follows:

(a) Article 5 is amended as follows:

In paragraph 2, the words 'or Switzerland' shall be inserted after the words 'the Community'.

(b) Article 7 is amended as follows:

In paragraph 4, the words 'or Switzerland' shall be inserted after the words 'the Community'.

(c) Annex III shall be amended as follows:

In section 3, second and last indents, the words 'or Switzerland' shall be inserted after the words 'the Community'.

*No 2150/2005*

Commission Regulation of 23 December 2005 laying down common rules for the flexible use of airspace, OJ L 342, 24.12.2005, p. 20.

*No 1033/2006*

Commission Regulation of 4 July 2006 laying down the requirements on procedures for flight plans in the pre-flight phase for the Single European Sky, OJ L 186, 7.7.2006, p. 46, as amended by:

— Commission Implementing Regulation (EU) No 923/2012, OJ L 281, 13.10.2012, p. 1,

— Commission Implementing Regulation (EU) No 428/2013, OJ L 127, 9.5.2013, p. 23,

— Commission Implementing Regulation (EU) 2016/2120, OJ L 329, 3.12.2016, p. 70,

— Commission Implementing Regulation (EU) 2018/139, OJ L 25, 30.1.2018, p. 4.

*No 1032/2006*

Commission Regulation of 6 July 2006 laying down requirements for automatic systems for the exchange of flight data for the purpose of notification, coordination and transfer of flights between air traffic control units, OJ L 186, 7.7.2006, p. 27, as amended by:

— Commission Regulation (EC) No 30/2009, OJ L 13, 17.1.2009, p. 20.

*No 219/2007*

Council Regulation of 27 February 2007 on the establishment of a Joint Undertaking to develop the new generation European air traffic management system (SESAR), OJ L 64, 2.3.2007, p. 1, as amended by:

— Council Regulation (EC) No 1361/2008, OJ L 352, 31.12.2008, p. 12,

— Council Regulation (EU) No 721/2014, OJ L 192, 1.7.2014, p. 1.

*No 633/2007*

Commission Regulation of 7 June 2007 laying down requirements for the application of a flight message transfer protocol used for the purpose of notification, coordination and transfer of flights between air traffic control units, OJ L 146, 8.6.2007, p. 7, as amended by:

— Commission Regulation (EU) No 283/2011, OJ L 77, 23.3.2011, p. 23.

*No 2017/373 <sup>(1)</sup>*

— Commission Implementing Regulation of 1 March 2017 laying down common requirements for providers of air traffic management/air navigation services and other air traffic management network functions and their oversight, repealing Regulation (EC) No 482/2008, Implementing Regulations (EU) No 1034/2011, (EU) No 1035/2011 and (EU) 2016/1377 and amending Regulation (EU) No 677/2011, OJ L 62, 8.3.2017, p. 1.

*No 29/2009*

Commission Regulation of 16 January 2009 laying down requirements on data link services for the Single European Sky, OJ L 13, 17.1.2009, p. 3, as amended by:

— Commission Implementing Regulation (EU) 2015/310, OJ L 56, 27.2.2015, p. 30.

The text of the Regulation shall, for the purposes of this Agreement, be read with the following adaptation:

‘Switzerland UIR’ is added in Annex I, part A.

*No 262/2009*

Commission Regulation of 30 March 2009 laying down requirements for the coordinated allocation and use of Mode S interrogator codes for the Single European Sky, OJ L 84, 31.3.2009, p. 20, as amended by:

— Commission Implementing Regulation (EU) 2016/2345, OJ L 348, 21.12.2016, p. 11.

*No 73/2010*

Commission Regulation of 26 January 2010 laying down requirements on the quality of aeronautical data and aeronautical information for the Single European Sky, OJ L 23, 27.1.2010, p. 6, as amended by:

— Commission Implementing Regulation (EU) No 1029/2014, OJ L 284, 30.9.2014, p. 9.

*No 255/2010*

Commission Regulation of 25 March 2010 laying down common rules on air traffic flow management, OJ L 80, 26.3.2010, p. 10, as amended by:

— Commission Implementing Regulation (EU) No 923/2012, OJ L 281, 13.10.2012, p. 1,

— Commission Implementing Regulation (EU) 2016/1006, OJ L 165, 23.6.2016, p. 8,

— Commission Implementing Regulation (EU) 2017/2159, OJ L 304, 21.11.2017, p. 45.

*No C(2010)5134*

Commission Decision of 29 July 2010 on the designation of the Performance Review Body of the Single European Sky

*No 176/2011*

Commission Regulation of 24 February 2011 on the information to be provided before the establishment and modification of a functional airspace block, OJ L 51, 25.2.2011, p. 2.

<sup>(1)</sup> Regulation (EU) 2017/373 is applicable only as of January 2020. However, Article 9(2) is applicable as of the date of the entry into force of Regulation (EU) 2017/373; in respect of the Agency Article 4(1), (2), (5), (6) and (8) and Article 5 will also apply from the date of entry into force. In respect of data services providers, Article 6 will apply from 1 January 2019 and, where such a provider applies for and is granted a certificate in accordance with Article 6, from the date of entry into force of Regulation (EU) 2017/373. In the meantime also the relevant articles of Regulation (EC) No 482/2008 continue to apply.

*No 677/2011*

Commission Regulation of 7 July 2011 laying down detailed rules for the implementation of air traffic management (ATM) network functions and amending Regulation (EU) No 691/2010, OJ L 185, 15.7.2011, p. 1, as amended by:

- Commission Implementing Regulation (EU) No 970/2014, OJ L 272, 13.9.2014, p. 11,
- Commission Implementing Regulation (EU) 2017/373, OJ L 62, 8.3.2017, p. 1

*No 2011/4130*

Commission Decision of 7 July 2011 on the nomination of the Network Manager for the air traffic management (ATM) network functions of the single European sky

*No 1034/2011*

Commission Implementing Regulation of 17 October 2011 on safety oversight in air traffic management and air navigation services and amending Regulation (EU) No 691/2010, OJ L 271, 18.10.2011, p. 15.

*No 1035/2011*

Commission Implementing Regulation of 17 October 2011 laying down common requirements for the provision of air navigation services and amending Regulations (EC) No 482/2008 and (EU) No 691/2010, OJ L 271, 18.11.2011, p. 23, as amended by:

- Commission Implementing Regulation (EU) No 923/2012, OJ L 281, 13.10.2012, p. 1,
- Commission Implementing Regulation (EU) No 448/2014, OJ L 132, 3.5.2014, p. 53.

*No 1206/2011*

Commission Implementing Regulation of 22 November 2011 laying down requirements on aircraft identification for surveillance for the single European sky, OJ L 305, 23.11.2011, p. 23.

The text of the Regulation shall, for the purposes of this Agreement, be read with the following adaptation:

‘Switzerland UIR’ is added in Annex I.

*No 1207/2011*

Commission Implementing Regulation of 22 November 2011 laying down requirements for the performance and the interoperability of surveillance for the single European sky, OJ L 305, 23.11.2011, p. 35, as amended by:

- Commission Implementing Regulation (EU) No 1028/2014, OJ L 284, 30.9.2014, p. 7,
- Commission Implementing Regulation (EU) 2017/386, OJ L 59, 7.3.2017, p. 34.

*No 923/2012*

Commission Implementing Regulation of 26 September 2012 laying down the common rules of the air and operational provisions regarding services and procedures in air navigation and amending Implementing Regulation (EU) No 1035/2011 and Regulations (EC) No 1265/2007, (EC) No 1794/2006, (EC) No 730/2006, (EC) No 1033/2006 and (EU) No 255/2010, OJ L 281, 13.10.2012, p. 1, as amended by:

- Commission Regulation (EU) 2015/340, OJ L 63, 6.3.2015, p. 1,
- Commission Implementing Regulation (EU) 2016/1185, OJ L 196, 21.7.2016, p. 3.

*No 1079/2012*

Commission Implementing Regulation of 16 November 2012 laying down requirements for voice channels spacing for the single European sky, OJ L 320, 17.11.2012, p. 14, as amended by:

- Commission Implementing Regulation (EU) No 657/2013, OJ L 190, 11.7.2013, p. 37,
- Commission Implementing Regulation (EU) 2016/2345, OJ L 348, 21.12.2016, p. 11,
- Commission Implementing Regulation (EU) 2017/2160, OJ L 304, 21.11.2017, p. 47.

No 390/2013

Commission Implementing Regulation of 3 May 2013 laying down a performance scheme for air navigation services and network functions, OJ L 128, 9.5.2013, p. 1.

No 391/2013

Commission Implementing Regulation of 3 May 2013 laying down a common charging scheme for air navigation services, OJ L 128, 9.5.2013, p. 31.

No 409/2013

Commission Implementing Regulation of 3 May 2013 on the definition of common projects, the establishment of governance and the identification of incentives supporting the implementation of the European Air Traffic Management Master Plan, OJ L 123, 4.5.2013, p. 1.

No 2014/132

Commission Implementing Decision of 11 March 2014 setting the Union-wide performance targets for the air traffic management network and alert thresholds for the second reference period 2015-19, OJ L 71, 12.3.2014, p. 20.

No 716/2014

Commission Implementing Regulation of 27 June 2014 on the establishment of the Pilot Common Project supporting the implementation of the European Air Traffic Management Master Plan, OJ L 190, 28.6.2014, p. 19.

No 2015/2224

Commission Implementing Decision of 27 November 2015 on the appointment of the chairperson, the members and their alternates of the Network Management Board for the air traffic management network functions for the second reference period (2015-2019), OJ L 316, 2.12.2015, p. 9.

No 2016/1373

Commission Implementing Decision of 11 August 2016 approving the Network Performance Plan for the second reference period of the Single European Sky performance scheme (2015-2019), OJ L 217, 12.8.2016, p. 51.

## 6. Environment and noise

No 2002/30

Directive of the European Parliament and of the Council of 26 March 2002 on the establishment of rules and procedures with regard to the introduction of noise-related operating restrictions at Community airports (Articles 1-12, and 14-18), OJ L 85, 28.3.2002, p. 40.

(The amendments to Annex I, arising from Annex II, Chapter 8 (Transport policy), Section G (Air transport), point 2 of the Act concerning the conditions of accession of the Czech Republic, the Republic of Estonia, the Republic of Cyprus, the Republic of Latvia, the Republic of Lithuania, the Republic of Hungary, the Republic of Malta, the Republic of Poland, the Republic of Slovenia and the Slovak Republic and the adjustments to the Treaties on which the European Union is founded, shall apply).

No 89/629

Council Directive of 4 December 1989 on the limitation of noise emissions from civil subsonic jet aeroplanes, OJ L 363, 13.12.1989, p. 27.

(Articles 1-8)

No 2006/93

Directive of the European Parliament and of the Council of 12 December 2006 on the regulation of the operation of aeroplanes covered by Part II, Chapter 3, Volume 1 of Annex 16 to the Convention on International Civil Aviation, second edition (1988), OJ L 374, 27.12.2006, p. 1.

## 7. Consumer protection

*No 90/314*

Council Directive of 13 June 1990 on package travel, package holidays and package tours, OJ L 158, 23.6.1990, p. 59.

(Articles 1-10)

*No 93/13*

Council Directive of 5 April 1993 on unfair terms in consumer contracts, OJ L 95, 21.4.1993, p. 29.

(Articles 1-11)

*No 2027/97*

Council Regulation of 9 October 1997 on air carrier liability in the event of accidents, OJ L 285, 17.10.1997, p. 1 (Articles 1-8), as amended by:

— Regulation (EC) No 889/2002, OJ L 140, 30.5.2002, p. 2.

*No 261/2004*

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

(Articles 1-18)

*No 1107/2006*

Regulation of the European Parliament and of the Council of 5 July 2006 concerning the right of disabled persons and persons with reduced mobility when travelling by air, OJ L 204, 26.7.2006, p. 1.

## 8. Miscellaneous

*No 2003/96*

Council Directive of 27 October 2003 restructuring the Community framework for the taxation of energy products and electricity, OJ L 283, 31.10.2003, p. 51.

(Article 14(1)(b), and Article 14(2).

## 9. Annexes

A: Protocol on the Privileges and Immunities of the European Union

B: Provisions on financial control by the European Union as regards Swiss participants in activities of the EASA

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## ANNEX A

**Protocol on the privileges and immunities of the European Union**

THE HIGH CONTRACTING PARTIES,

CONSIDERING that, in accordance with Article 343 of the Treaty on the Functioning of the European Union and Article 191 of the Treaty establishing the European Atomic Energy Community ('EAEC'), the European Union and the EAEC shall enjoy in the territories of the Member States such privileges and immunities as are necessary for the performance of their tasks,

HAVE AGREED upon the following provisions, which shall be annexed to the Treaty on European Union, the Treaty on the Functioning of the European Union and the Treaty establishing the European Atomic Energy Community:

## CHAPTER I

**PROPERTY, FUNDS, ASSETS AND OPERATIONS OF THE EUROPEAN UNION***Article 1*

The premises and buildings of the Union shall be inviolable. They shall be exempt from search, requisition, confiscation or expropriation. The property and assets of the Union shall not be the subject of any administrative or legal measure of constraint without the authorisation of the Court of Justice.

*Article 2*

The archives of the Union shall be inviolable.

*Article 3*

The Union, its assets, revenues and other property shall be exempt from all direct taxes.

The governments of the Member States shall, wherever possible, take the appropriate measures to remit or refund the amount of indirect taxes or sales taxes included in the price of movable or immovable property, where the Union makes, for its official use, substantial purchases the price of which includes taxes of this kind. These provisions shall not be applied, however, so as to have the effect of distorting competition within the Union.

No exemption shall be granted in respect of taxes and dues which amount merely to charges for public utility services.

*Article 4*

The Union shall be exempt from all customs duties, prohibitions and restrictions on imports and exports in respect of articles intended for its official use: articles so imported shall not be disposed of, whether or not in return for payment, in the territory of the country into which they have been imported, except under conditions approved by the government of that country.

The Union shall also be exempt from any customs duties and any prohibitions and restrictions on import and exports in respect of its publications.

## CHAPTER II

**COMMUNICATIONS AND LAISSEZ-PASSER***Article 5*

For their official communications and the transmission of all their documents, the institutions of the Union shall enjoy in the territory of each Member State the treatment accorded by that State to diplomatic missions.

Official correspondence and other official communications of the institutions of the Union shall not be subject to censorship.

*Article 6*

*Laissez-passer* in a form to be prescribed by the Council, acting by a simple majority, which shall be recognised as valid travel documents by the authorities of the Member States, may be issued to members and servants of the institutions of the Union by the Presidents of these institutions. These *laissez-passer* shall be issued to officials and other servants under conditions laid down in the Staff Regulations of officials and the Conditions of Employment of other servants of the Union.

The Commission may conclude agreements for these *laissez-passer* to be recognised as valid travel documents within the territory of third countries.

## CHAPTER III

**MEMBERS OF THE EUROPEAN PARLIAMENT***Article 7*

No administrative or other restriction shall be imposed on the free movement of Members of the European Parliament travelling to or from the place of meeting of the European Parliament.

Members of the European Parliament shall, in respect of customs and exchange control, be accorded:

- (a) by their own government, the same facilities as those accorded to senior officials travelling abroad on temporary official missions;
- (b) by the government of other Member States, the same facilities as those accorded to representatives of foreign governments on temporary official missions.

*Article 8*

Members of the European Parliament shall not be subject to any form of inquiry, detention or legal proceedings in respect of opinions expressed or votes cast by them in the performance of their duties.

*Article 9*

During the sessions of the European Parliament, its Members shall enjoy:

- (a) in the territory of their own State, the immunities accorded to members of their parliament;
- (b) in the territory of any other Member State, immunity from any measure of detention and from legal proceedings.

Immunity shall likewise apply to Members while they are travelling to and from the place of meeting of the European Parliament.

Immunity cannot be claimed when a Member is found in the act of committing an offence and shall not prevent the European Parliament from exercising its right to waive the immunity of one of its Members.

## CHAPTER IV

**REPRESENTATIVES OF MEMBER STATES TAKING PART IN THE WORK OF THE INSTITUTIONS OF THE EUROPEAN UNION***Article 10*

Representatives of Member States taking part in the work of the institutions of the Union, their advisers and technical experts shall, in the performance of their duties and during their travel to and from the place of meeting, enjoy the customary privileges, immunities and facilities.

This Article shall also apply to members of the advisory bodies of the Union.



## CHAPTER V

## OFFICIALS AND OTHER SERVANTS OF THE EUROPEAN UNION

*Article 11*

In the territory of each Member State and whatever their nationality, officials and other servants of the Union shall:

- (a) subject to the provisions of the Treaties relating, on the one hand, to the rules on the liability of officials and other servants towards the Union and, on the other hand, to the jurisdiction of the Court of Justice of the European Union in disputes between the Union and its officials and other servants, be immune from legal proceedings in respect of acts performed by them in their official capacity, including their words spoken or written. They shall continue to enjoy this immunity after they have ceased to hold office;
- (b) together with their spouses and dependent members of their families, not be subject to immigration restrictions or to formalities for the registration of aliens;
- (c) in respect of currency or exchange regulations, be accorded the same facilities as are customarily accorded to officials of international organisations;
- (d) enjoy the right to import free of duty their furniture and effects at the time of first taking up their post in the country concerned, and the right to re-export free of duty their furniture and effects, on termination of their duties in that country, subject in either case to the conditions considered to be necessary by the government of the country in which this right is exercised;
- (e) have the right to import free of duty a motor car for their personal use, acquired either in the country of their last residence or in the country of which they are nationals on the terms ruling in the home market in that country, and to re-export it free of duty, subject in either case to the conditions considered to be necessary by the government of the country concerned.

*Article 12*

Officials and other servants of the Union shall be liable to a tax for the benefit of the Union on salaries, wages and emoluments paid to them by the Union, in accordance with the conditions and procedure laid down by the European Parliament and the Council, acting by means of regulations in accordance with the ordinary legislative procedure and after consultation of the institutions concerned.

They shall be exempt from national taxes on salaries, wages and emoluments paid by the Union.

*Article 13*

In the application of income tax, wealth tax and death duties and in the application of conventions on the avoidance of double taxation concluded between Member States of the Union, officials and other servants of the Union who, solely by reason of the performance of their duties in the service of the Union, establish their residence in the territory of a Member State other than their country of domicile for tax purposes at the time of entering the service of the Union, shall be considered, both in the country of their actual residence and in the country of domicile for tax purposes, as having maintained their domicile in the latter country provided that it is a member of the Union. This provision shall also apply to a spouse, to the extent that the latter is not separately engaged in a gainful occupation, and to children dependent on and in the care of the persons referred to in this Article.

Movable property belonging to persons referred to in the preceding paragraph and situated in the territory of the country where they are staying shall be exempt from death duties in that country; such property shall, for the assessment of such duty, be considered as being in the country of domicile for tax purposes, subject to the rights of third countries and to the possible application of provisions of international conventions on double taxation.

Any domicile acquired solely by reason of the performance of duties in the service of other international organisations shall not be taken into consideration in applying the provisions of this Article.

*Article 14*

The European Parliament and the Council, acting by means of regulations in accordance with the ordinary legislative procedure and after consultation of the institutions concerned, shall lay down the scheme of social security benefits for officials and other servants of the Union.

*Article 15*

The European Parliament and the Council, acting by means of regulations in accordance with the ordinary legislative procedure, and after consulting the other institutions concerned, shall determine the categories of officials and other servants of the Union to whom the provisions of Article 11, the second paragraph of Article 12, and Article 13 shall apply, in whole or in part.

The names, grades and addresses of officials and other servants included in such categories shall be communicated periodically to the governments of the Member States.

## CHAPTER VI

**PRIVILEGES AND IMMUNITIES OF MISSIONS OF THIRD COUNTRIES ACCREDITED TO THE EUROPEAN UNION***Article 16*

The Member State in whose territory the Union has its seat shall accord the customary diplomatic immunities and privileges to missions of third countries accredited to the Union.

## CHAPTER VII

**GENERAL PROVISIONS***Article 17*

Privileges, immunities and facilities shall be accorded to officials and other servants of the Union solely in the interests of the Union.

Each institution of the Union shall be required to waive the immunity accorded to an official or other servant wherever that institution considers that the waiver of such immunity is not contrary to the interests of the Union.

*Article 18*

The institutions of the Union shall, for the purpose of applying this Protocol, cooperate with the responsible authorities of the Member States concerned.

*Article 19*

Articles 11 to 14 and Article 17 shall apply to Members of the Commission.

*Article 20*

Articles 11 to 14 and Article 17 shall apply to the Judges, the Advocates-General, the Registrars and the Assistant Rapporteurs of the Court of Justice of the European Union, without prejudice to the provisions of Article 3 of the Protocol on the Statute of the Court of Justice of the European Union relating to immunity from legal proceedings of Judges and Advocates-General.

*Article 21*

This Protocol shall also apply to the European Investment Bank, to the members of its organs, to its staff and to the representatives of the Member States taking part in its activities, without prejudice to the provisions of the Protocol on the Statute of the Bank.

The European Investment Bank shall in addition be exempt from any form of taxation or imposition of a like nature on the occasion of any increase in its capital and from the various formalities which may be connected therewith in the State where the Bank has its seat. Similarly, its dissolution or liquidation shall not give rise to any imposition. Finally, the activities of the Bank and of its organs carried on in accordance with its Statute shall not be subject to any turnover tax.

*Article 22*

This Protocol shall also apply to the European Central Bank, to the members of its organs and to its staff, without prejudice to the provisions of the Protocol on the Statute of the European System of Central Banks and the European Central Bank.

The European Central Bank shall, in addition, be exempt from any form of taxation or imposition of a like nature on the occasion of any increase in its capital and from the various formalities which may be connected therewith in the State where the bank has its seat. The activities of the Bank and of its organs carried on in accordance with the Statute of the European System of Central Banks and of the European Central Bank shall not be subject to any turnover tax.

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*Appendix***Procedures for the application in Switzerland of the protocol on privileges and immunities of the European Union****1. Extension of application to Switzerland**

Wherever the Protocol on the privileges and immunities of the European Union (hereinafter called 'the Protocol') contains references to Member States, the references are to be understood to apply equally to Switzerland, unless the following provisions determine otherwise.

**2. Exemption of the Agency from indirect taxation (including VAT)**

Goods and services exported from Switzerland are not to be subject to Swiss value added tax (VAT). In the case of goods and services provided to the Agency in Switzerland for its official use, in accordance with the second paragraph of Article 3 of the Protocol, exemption from VAT is by way of refund. Exemption from VAT shall be granted if the actual purchase price of the goods and services mentioned in the invoice or equivalent document totals at least 100 Swiss francs (inclusive of tax).

The VAT refund is to be granted on presentation to the Federal Tax Administration's VAT Main Division of the Swiss forms provided for the purpose. As a rule, refund applications must be processed within the three months following the date on which they were lodged together with the necessary supporting documents.

**3. Procedures for the application of the rules relating to the Agency's staff**

As regards the second paragraph of Article 12 of the Protocol, Switzerland shall exempt, according to the principles of its national law, officials and other servants of the Agency within the meaning of Article 2 of Regulation (Euratom, ECSC, EEC) No 549/69 of the Council <sup>(1)</sup> from federal, cantonal and communal taxes on salaries, wages and emoluments paid to them by the European Union and subject to an internal tax for its own benefit.

Switzerland shall not be considered as a Member State within the meaning of point 1 above for the application of Article 13 of the Protocol.

Officials and other servants of the Agency and members of their families who are members of the social insurance system applicable to officials and other servants of the European Union are not obliged to be members of the Swiss social security system.

The Court of Justice of the European Union shall have exclusive jurisdiction in any matters concerning relations between the Agency or the Commission and its staff with regard to the application of Regulation (EEC, Euratom, ECSC) No 259/68 of the Council <sup>(2)</sup> and the other provisions of the European Union law laying down working conditions.

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<sup>(1)</sup> Regulation (Euratom, ECSC, EEC) No 549/69 of the Council of 25 March 1969 determining the categories of officials and other servants of the European Communities to whom the provisions of Article 12, the second paragraph of Article 13 and Article 14 of the Protocol on the Privileges and Immunities of the Communities apply (OJ L 74, 27.3.1969, p. 1).

<sup>(2)</sup> Regulation (EEC, Euratom, ECSC) No 259/68 of the Council of 29 February 1968 laying down the Staff Regulations of Officials and the Conditions of Employment of Other Servants of the European Communities and instituting special measures temporarily applicable to officials of the Commission (Conditions of Employment of Other Servants) (OJ L 56, 4.3.1968, p. 1).

## ANNEX B

**Financial control as regards Swiss participants in activities of the European Aviation Agreement***Article 1***Direct communication**

The Agency and the Commission shall communicate directly with all persons or entities established in Switzerland and participating in activities of the Agency, as contractors, participants in Agency programmes, recipients of payments from the Agency or the Community budget, or subcontractors. Such persons may send directly to the Commission and to the Agency all relevant information and documentation which they are required to submit on the basis of the instruments referred to in this Decision and of contracts or agreements concluded and any decisions taken pursuant to them.

*Article 2***Checks**

1. In accordance with Council Regulation (EC, Euratom) No 1605/2002 <sup>(1)</sup> and the Financial Regulation adopted by the Management Board of the Agency on 26 March 2003, with Commission Regulation (EC, Euratom) No 2343/2002 <sup>(2)</sup> and with the other instruments referred to in this Decision, contracts or agreements concluded and decisions taken with beneficiaries established in Switzerland may provide for scientific, financial, technological or other audits to be conducted at any time on the premises of the beneficiaries and of their subcontractors by Agency and Commission officials or by other persons mandated by the Agency and the Commission.
2. Agency and Commission officials and other persons mandated by the Agency and the Commission shall have appropriate access to sites, works and documents and to all the information required in order to carry out such audits, including in electronic form. This right of access shall be stated explicitly in the contracts or agreements concluded to implement the instruments referred to in this Decision.
3. The European Court of Auditors is to have the same rights as the Commission.
4. The audits may take place until five years after the expiry of this Decision or under the terms of the contracts or agreements concluded and the decisions taken.
5. The Swiss Federal Audit Office is to be informed in advance of audits conducted on Swiss territory. This information will not be a legal condition for carrying out such audits.

*Article 3***On-the-spot checks**

1. Under this Agreement, the Commission (OLAF) is authorised to carry out on-the-spot checks and inspections on Swiss territory, under the terms and conditions set out in Council Regulation (Euratom, EC) No 2185/96 <sup>(3)</sup>.
2. On-the-spot checks and inspections shall be prepared and conducted by the Commission in close cooperation with the Swiss Federal Audit Office or with other competent Swiss authorities appointed by the Swiss Federal Audit Office, which shall be notified in good time of the object, purpose and legal basis of the checks and inspections, so that they can provide all the requisite help. To that end, the officials of the competent Swiss authorities may participate in the on-the-spot checks and inspections.
3. If the Swiss competent authorities concerned so wish, the on-the-spot checks and inspections may be carried out jointly by the Commission and the Swiss competent authorities.

<sup>(1)</sup> Council Regulation (EC, Euratom) No 1605/2002 of 25 June 2002 on the Financial Regulation applicable to the general budget of the European Communities (OJ L 248, 16.9.2002, p. 1).

<sup>(2)</sup> Commission Regulation (EC, Euratom) No 2343/2002 of 19 November 2002 on the framework Financial Regulation for the bodies referred to in Article 185 of Council Regulation (EC, Euratom) No 1605/2002 on the Financial Regulation applicable to the general budget of the European Communities (OJ L 357, 31.12.2002, p. 72).

<sup>(3)</sup> Council Regulation (Euratom, EC) No 2185/96 of 11 November 1996 concerning on-the-spot checks and inspections carried out by the Commission in order to protect the European Communities' financial interests against fraud and other irregularities (OJ L 292, 15.11.1996, p. 2).

4. Where the participants in the programme resist an on-the-spot check or inspection, the Swiss authorities, acting in accordance with national rules, shall give the Commission inspectors such assistance as they need to allow them to discharge their duty in carrying out an on-the-spot check or inspection.

5. The Commission shall report as soon as possible to the Swiss Federal Audit Office any fact or suspicion relating to an irregularity which has come to its notice in the course of the on-the-spot check or inspection. In any event the Commission is required to inform the aforementioned authority of the result of such checks and inspections.

#### *Article 4*

### **Information and consultation**

1. For the purposes of proper implementation of this Annex, the competent Swiss and Community authorities shall exchange information regularly and, at the request of one of the Parties, shall conduct consultations.

2. The competent Swiss authorities shall inform the Agency and the Commission without delay of any fact or suspicion which has come to their notice relating to an irregularity in connection with the conclusion and implementation of the contracts or agreements concluded in application of the instruments referred to in this Decision.

#### *Article 5*

### **Confidentiality**

Information communicated or acquired in any form whatsoever pursuant to this Annex will be covered by professional confidentiality and protected in the same way as similar information is protected by the national legislation of Switzerland and by the corresponding provisions applicable to the Community institutions. Such information shall not be communicated to persons other than those within the Community institutions, in the Member States, or in Switzerland whose functions require them to know it, nor may it be used for purposes other than to ensure effective protection of the financial interests of the Contracting Parties.

#### *Article 6*

### **Administrative measures and penalties**

Without prejudice to application of Swiss criminal law, administrative measures and penalties may be imposed by the Agency or the Commission in accordance with Regulation (EC, Euratom) No 1605/2002 and Commission Regulation (EC, Euratom) No 2342/2002 <sup>(1)</sup> and with Council Regulation (EC, Euratom) No 2988/95 <sup>(2)</sup>.

#### *Article 7*

### **Recovery and enforcement**

Decisions taken by the Agency or the Commission within the scope of this Decision which impose a pecuniary obligation on persons other than States shall be enforceable in Switzerland.

The enforcement order must be issued, without any further control than verification of the authenticity of the act, by the authority designated by the Swiss government, which must inform the Agency or the Commission thereof. Enforcement must take place in accordance with the Swiss rules of procedure. The legality of the enforcement decision is subject to control by the Court of Justice of the European Union.

Judgments given by the Court of Justice of the European Union pursuant to an arbitration clause are enforceable on the same terms.

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<sup>(1)</sup> Commission Regulation (EC, Euratom) No 2342/2002 of 23 December 2002 laying down detailed rules for the implementation of Council Regulation (EC, Euratom) No 1605/2002 on the Financial Regulation applicable to the general budget of the European Communities (OJ L 357, 31.12.2002, p. 1).

<sup>(2)</sup> Council Regulation (EC, Euratom) No 2988/95 of 18 December 1995 on the protection of the European Communities' financial interests (OJ L 312, 23.12.1995, p. 1).

**CORRIGENDA****Corrigendum to Council Directive (EU) 2018/1695 of 6 November 2018 amending Directive 2006/112/EC on the common system of value added tax as regards the period of application of the optional reverse charge mechanism in relation to supplies of certain goods and services susceptible to fraud and of the Quick Reaction Mechanism against VAT fraud**

*(Official Journal of the European Union L 282 of 12 November 2018)*

On page 7, Article 1, the following point is added:

‘(4) Article 193 is replaced by the following:

“Article 193

VAT shall be payable by any taxable person carrying out a taxable supply of goods or services, except where it is payable by another person in the cases referred to in Articles 194 to 199b and Article 202.”.

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**Corrigendum to Council Implementing Decision (EU) 2018/1921 of 4 December 2018 amending Implementing Decision 2013/191/EU authorising Latvia to introduce a special measure derogating from point (a) of Article 26(1) and Articles 168 and 168a of Directive 2006/112/EC on the common system of value added tax**

*(Official Journal of the European Union L 311 of 7 December 2018)*

The title on the contents page and the title on page 36:

*for:* ‘Council Implementing Decision (EU) 2018/1921 of 4 December 2018 amending Implementing Decision 2013/191/EU authorising Latvia to introduce a special measure derogating from point (a) of Article 26(1) and Articles 168 and 168a of Directive 2006/112/EC on the common system of value added tax’,

*read:* ‘Council Implementing Decision (EU) 2018/1921 of 4 December 2018 amending Implementing Decision (EU) 2015/2429 authorising Latvia to introduce a special measure derogating from point (a) of Article 26(1) and Articles 168 and 168a of Directive 2006/112/EC on the common system of value added tax’.

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