

Official Journal

of the European Union

L 295



English edition

Legislation

Volume 53

12 November 2010

Contents

I *Legislative acts*

REGULATIONS

- ★ **Regulation (EU) No 994/2010 of the European Parliament and of the Council of 20 October 2010 concerning measures to safeguard security of gas supply and repealing Council Directive 2004/67/EC ⁽¹⁾** 1
 - ★ **Regulation (EU) No 995/2010 of the European Parliament and of the Council of 20 October 2010 laying down the obligations of operators who place timber and timber products on the market ⁽¹⁾** 23
 - ★ **Regulation (EU) No 996/2010 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 ⁽¹⁾** 35
-

Price: EUR 4

(Continued overleaf)

⁽¹⁾ Text with EEA relevance

EN

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

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

II *Non-legislative acts*

INTERNATIONAL AGREEMENTS

2010/669/EU:

- ★ **Council Decision of 27 September 2010 on the position to be taken by the European Union in the Joint CARIFORUM-EU Council established by the Economic Partnership Agreement between the CARIFORUM States, of the one part, and the European Community and its Member States, of the other part, with regard to the amendment of Annex IV to the Agreement by incorporating the commitments of the Commonwealth of The Bahamas 51**

I

(Legislative acts)

REGULATIONS

REGULATION (EU) No 994/2010 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL**of 20 October 2010****concerning measures to safeguard security of gas supply and repealing Council Directive 2004/67/EC****(Text with EEA relevance)**

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 194(2) thereof,

Having regard to the proposal from the European Commission,

Having regard to the opinion of the European Economic and Social Committee ⁽¹⁾,

Having consulted the Committee of the Regions,

Acting in accordance with the ordinary legislative procedure ⁽²⁾,

Whereas:

- (1) Natural gas (gas) is an essential component in the energy supply of the European Union, constituting one quarter of primary energy supply and contributing mainly to electricity generation, heating, feedstock for industry and fuel for transportation.
- (2) Gas consumption in Europe has increased rapidly during the last 10 years. With decreasing domestic production, gas imports have increased even more rapidly, thus creating a higher import dependence and the need to

address security of gas supply aspects. In addition, some Member States find themselves on a gas island as a result of an absence of infrastructure connections with the rest of the Union.

- (3) Given the importance of gas in the energy mix of the Union, this Regulation aims at demonstrating to gas customers that all the necessary measures are being taken to ensure their continuous supply, particularly in case of difficult climatic conditions and in the event of disruption. It is recognised that these objectives should be achieved through the most cost-efficient measures in order not to affect the relative competitiveness of this fuel compared to other fuels.
- (4) Council Directive 2004/67/EC ⁽³⁾ established for the first time a legal framework at Community level to safeguard security of gas supply and to contribute to the proper functioning of the internal gas market in the case of supply disruptions. It established the Gas Coordination Group which has been useful to exchange information and define common actions between Member States, the Commission, the gas industry and consumers. The Network of Energy Security Correspondents endorsed by the European Council in December 2006 has improved the capacity to collect information and has provided early warning of potential threats to the security of energy supply. The new internal energy market legislation adopted by the European Parliament and the Council in July 2009 constitutes an important step to complete the internal energy market and has an explicit objective to enhance the Union's security of energy supply.
- (5) However, under the current measures regarding the security of gas supply that have been taken at Union level, Member States still enjoy a large margin of discretion as to the choice of measures. Where the

⁽¹⁾ Opinion of 20 January 2010 (not yet published in the Official Journal).

⁽²⁾ Position of the European Parliament of 21 September 2010 (not yet published in the Official Journal) and decision of the Council of 11 October 2010.

⁽³⁾ OJ L 127, 29.4.2004, p. 92.

security of supply of a Member State is threatened, there is a clear risk that measures developed unilaterally by that Member State may jeopardise the proper functioning of the internal gas market and the supply of gas to customers. Recent experience has demonstrated the reality of that risk. In order to allow the internal gas market to function even in the face of a shortage of supply, it is necessary to provide for solidarity and coordination in the response to supply crises, both concerning preventive action and the reaction to concrete disruptions of supply.

- (6) Low calorific gas is supplied in certain regions in the Union. Given its characteristics, low calorific gas cannot be used in appliances designed for high calorific gas. It is, however, possible to use high calorific gas in appliances designed for low calorific gas, provided that it has been converted into low calorific gas, for instance by adding nitrogen. The specificities of low calorific gas should be considered at national and regional levels and should be taken into account in the risk assessment and the Preventive Action and Emergency Plans at national and regional levels.
- (7) The diversification of gas routes and of sources of supply for the Union is essential for improving the security of supply of the Union as a whole and its Member States individually. Security of supply will depend in the future on the evolution of the fuel mix, the development of production in the Union and in third countries supplying the Union, investments in storage facilities and in the diversification of gas routes and of sources of supply within and outside the Union including Liquefied Natural Gas (LNG) facilities. In this context particular attention should be given to priority infrastructure actions as identified in the Commission communication of 13 November 2008 entitled 'Second Strategic Energy Review — An EU energy security and solidarity action plan', e.g. the southern gas corridor (Nabucco and Interconnector Turkey Greece Italy), a diversified and adequate LNG supply for Europe, effective interconnection of the Baltic region, the Mediterranean Energy Ring and adequate north-south gas interconnections within central and south-east Europe.
- (8) In order to reduce the impact of potential crises triggered by the disruption of gas supplies, Member States should facilitate the diversification of energy sources and gas delivery routes and supply sources.
- (9) A major disruption of gas supply to the Union can affect all Member States, the Union as a whole and Contracting Parties to the Treaty establishing the Energy Community⁽¹⁾, signed in Athens on 25 October 2005. It can also lead to severe economic damage across the Union's economy. Likewise, the disruption of gas supply can have a severe social impact, in particular on vulnerable groups of customers.

- (10) Certain customers, including, inter alia, households and customers providing essential social services such as healthcare and childcare activities, educational activities and other social and welfare services as well as services indispensable for the functioning of a Member State, are particularly vulnerable and might need protection. A wide definition of such protected customers should not conflict with European solidarity mechanisms.
- (11) The Report on the Implementation of the European Security Strategy approved by the European Council in December 2008 highlights the growing reliance on imported energy as a significant additional risk for the Union's security of energy supply and stresses energy security as one of the new challenges for security policy. The internal gas market is a central element to increase the security of energy supply in the Union and to reduce the exposure of individual Member States to the harmful effects of supply disruptions.
- (12) For a well functioning internal gas market it is essential that measures taken to safeguard the security of gas supply do not unduly distort competition or the effective functioning of the internal gas market.
- (13) The failure of the single largest gas infrastructure, the so-called N – 1 principle, is a realistic scenario. Using the failure of such an infrastructure as a benchmark of what Member States should be able to compensate is a valid starting point for an analysis of the security of gas supply of each Member State.
- (14) Sufficient and diversified gas infrastructure within a Member State and across the Union, including in particular new gas infrastructure connecting current isolated systems forming gas islands to their neighbouring Member States, is essential for tackling supply interruptions. Common minimum criteria on security of gas supply should ensure a level playing field for security of gas supply while taking into account national or regional specificities and should create significant incentives to build the necessary infrastructure and to improve the level of preparedness in case of crisis. Demand-side measures such as fuel switching may have a valuable role to play in ensuring energy security where they can be applied quickly and reduce demand appreciably to react to a supply disruption. The efficient use of energy should be further promoted, in particular where demand-side measures are needed. The environmental impact of the proposed demand and supply-side measures should be taken into due account and preference should be given as far as possible to measures with the least impact on the environment while taking into account security of supply aspects.

⁽¹⁾ OJ L 198, 20.7.2006, p. 18.

- (15) Investments in new gas infrastructure should be strongly promoted and should be effected only after an appropriate environmental impact assessment, in accordance with the relevant legal acts of the Union. Such new infrastructure should enhance the security of gas supply while ensuring the proper functioning of the internal market in gas. Investments should as a matter of principle be made by undertakings and be based on economic incentives. Due account should be taken of the need to facilitate the integration of gas from renewable energy sources into the gas network infrastructure. Where an infrastructure investment is of cross-border nature the Agency for the Cooperation of Energy Regulators (the Agency) established by Regulation (EC) No 713/2009 of the European Parliament and of the Council⁽¹⁾ and the European Network of Transmission System Operators for Gas (the ENTSO for Gas) established by Regulation (EC) No 715/2009 of the European Parliament and of the Council of 13 July 2009 on conditions for access to the natural gas transmission networks⁽²⁾ should be closely involved, within the areas of their respective competences, in order to take better account of the cross-border implications. It is recalled that, in accordance with Regulation (EC) No 713/2009, the Agency may issue opinions or recommendations on cross-border issues within its area of competence and activity. The Agency and the ENTSO for Gas, together with other market participants, play an important role in the establishment and implementation of the Union-wide 10-year network development plan which will include, inter alia, a European supply adequacy outlook and, regarding cross-border interconnections, should, inter alia, build on the reasonable needs of different network users.
- (16) The Competent Authorities or the Member States should ensure that the gas market is tested as one of the necessary steps in the course of the process leading to compliance with the infrastructure standard.
- (17) In carrying out the tasks specified in this Regulation, the Competent Authorities should closely cooperate with other relevant national authorities, in particular national regulatory authorities, as appropriate and without prejudice to their competences under Directive 2009/73/EC of the European Parliament and of the Council of 13 July 2009 concerning common rules for the internal market in natural gas⁽³⁾.
- (18) Where new cross-border interconnections are needed or existing ones need to be extended, close cooperation between the Member States concerned, Competent Authorities and the national regulatory authorities, where they are not the Competent Authorities, should take place at an early stage.
- (19) Different sources of Union funding are available to support Member States to finance the necessary investment in production, infrastructure and energy-efficiency measures at regional and local level, notably loans and guarantees from the European Investment Bank or funding from regional, structural or cohesion funds. The European Investment Bank as well as the Union's external instruments such as the European Neighbourhood and Partnership Instrument, the Instrument for Pre-accession Assistance and the Financing Instrument for Development Cooperation can also finance actions in third countries in order to improve security of energy supply.
- (20) This Regulation should enable natural gas undertakings and customers to rely on market mechanisms for as long as possible when coping with disruptions. It should also provide for emergency mechanisms to be used when markets alone are no longer able to deal adequately with a gas supply disruption. Even in an emergency, market-based instruments should be given priority to mitigate the effects of the supply disruption.
- (21) Following the entry into force of the new internal energy market legislation adopted in July 2009, new provisions will apply to the gas sector, creating clear roles and responsibilities for Member States, national regulatory authorities, transmission system operators and the Agency, and improving the transparency of the market to enhance its functioning, the security of supply and the protection of customers.
- (22) The completion of the internal gas market and effective competition within that market offer the Union the highest level of security of supply for all Member States, provided that the market is allowed to function fully in the event of disruption of supply affecting a part of the Union, whatever the cause of the disruption. To this end, a comprehensive and effective common approach to security of supply is required, particularly transparency, solidarity and non-discriminatory policies compatible with the functioning of the internal market, avoiding market distortions and the undermining of market responses to disruptions.
- (23) Security of gas supply is a shared responsibility of natural gas undertakings, Member States, notably through their Competent Authorities, and the Commission within their respective areas of activities and competence. Where appropriate, the national regulatory authorities, where they are not the Competent Authorities, should also contribute to security of gas supply within their areas of activities and competence in accordance with Directive 2009/73/EC. Moreover, customers using gas for electricity generation or industrial purposes may also have an important role to play in security of gas supply through their ability to respond to a crisis with demand-side measures, for instance interruptible contracts and fuel switching, as this directly impacts on the supply/demand balance.

⁽¹⁾ OJ L 211, 14.8.2009, p. 1.

⁽²⁾ OJ L 211, 14.8.2009, p. 36.

⁽³⁾ OJ L 211, 14.8.2009, p. 94.

- (24) The precise definition of the roles and responsibilities of all natural gas undertakings and Competent Authorities is therefore crucial in maintaining a well-functioning internal gas market, particularly in supply disruptions and crisis situations. Such roles and responsibilities should be established in such a way as to ensure that a three-level approach is respected which would involve first the relevant natural gas undertakings and industry, then Member States at national or regional level, and then the Union. In the event of a supply crisis, market players should be given sufficient opportunity to respond to the situation with market-based measures. Where the reactions of market players are not sufficient, Member States and their Competent Authorities should take measures to remove or mitigate the effects of the supply crisis. Only where these measures are insufficient should measures be taken at regional or Union level to remove or mitigate the effects of the supply crisis. Regional solutions should be sought as far as possible.
- (25) In a spirit of solidarity, regional cooperation, involving public authorities and natural gas undertakings, will be widely established to implement this Regulation in order to optimise the benefits in terms of coordination of measures to mitigate the risks identified and to implement the most cost-effective measures for the parties concerned.
- (26) Sufficiently harmonised security of supply standards covering at least the situation that occurred in January 2009, taking into account the difference between Member States, should be established, taking into account public service obligations and customer protection measures as referred to in Article 3 of Directive 2009/73/EC. Such security of supply standards should be stable, so as to provide the necessary legal certainty, should be clearly defined, and should not impose unreasonable and disproportionate burdens on natural gas undertakings, including new entrants and small undertakings, or on end users. Those standards should also guarantee equality of access for natural gas undertakings of the Union to national customers. Measures necessary to ensure the fulfilment of the supply standard may include additional storage capacities and volumes, linepack, supply contracts, interruptible contracts or any other measures that have a similar effect, as well as the necessary technical measures to ensure the safety of gas supply.
- (27) It is essential in the interests of a well-functioning gas market that the necessary investments in indigenous production and infrastructures, such as interconnections, in particular those providing access to the gas network of the Union, equipment allowing physical bi-directional gas flows on pipelines as well as storage and LNG re-gasification facilities, be made by natural gas undertakings in good time, bearing in mind possible supply disruptions such as the one that occurred in January 2009. When forecasting the financial needs for gas infrastructure in relation to Union instruments, the Commission should give, as appropriate, priority to the infrastructure projects which support the integration of the internal gas market and security of gas supply.
- (28) Transmission system operators should not be prevented from considering the situation where investments enabling physical capacity to transport gas in both directions (bi-directional capacity) in cross-border interconnections with third countries could contribute to improving security of supply, especially in the case of third countries which ensure transit flows between two Member States.
- (29) It is important that gas supply be maintained particularly as regards household customers, as well as a limited number of additional customers, especially customers delivering essential social services, which can be defined by the Member States concerned, in cases in which the market cannot continue to supply them. It is essential that the measures to be taken during a crisis be defined in advance and respect safety requirements, including where protected customers are connected to the same distribution network as other customers. Such measures may involve the use of pro-rata reductions in proportion to the originally booked capacity in cases where capacity for access to infrastructure is reduced for technical reasons.
- (30) As a rule, the Competent Authorities should abide by their Emergency Plan. In duly justified exceptional circumstances they may take action which deviates from those Plans.
- (31) A large choice of instruments is available to comply with security of supply obligations. Those instruments should be used in national, regional and Union contexts, as appropriate, to ensure that they deliver a consistent and cost-effective result.
- (32) The security of supply aspects of long-term planning of investments in sufficient cross-border capacities and other infrastructures, ensuring the long-term ability of the system to guarantee security of supply and meet reasonable demands, are addressed by Directive 2009/73/EC. Meeting the security of supply standards may require a transitional period to allow the necessary investments to be made. The Union-wide 10-year network development plan drawn up by the ENTSO for Gas and supervised by the Agency is a fundamental tool to identify the required investments needed at Union level, inter alia, in order to implement the infrastructure requirements laid down in this Regulation.
- (33) The ENTSO for Gas and the Agency, as members of the Gas Coordination Group, should be fully involved, within their areas of responsibility, in the process of cooperation and consultations at Union level.

- (34) The Gas Coordination Group is the main body to be consulted by the Commission in the context of the establishment of the Preventive Action Plans and the Emergency Plans. It is recalled that the ENTSO for Gas and the Agency are members of the Gas Coordination Group and will be consulted in that context.
- (35) In order to ensure the highest level of preparedness in the event of supply disruption, Emergency Plans should be established by the Competent Authorities, after consulting the natural gas undertakings. Such plans should not be inconsistent with each other at national, regional or Union level. Their content should follow best practices among existing Plans and should define clear roles and responsibilities for all natural gas undertakings and Competent Authorities concerned. Joint Emergency Plans at regional level should be established where possible and necessary.
- (36) To strengthen solidarity between Member States in the event of a Union emergency and in particular to support Member States which are exposed to less favourable geographical or geological conditions, Member States should devise measures to exercise solidarity. Natural gas undertakings should devise measures such as commercial agreements, which may comprise increased gas exports or increased releases from storages. It is important to encourage the conclusion of arrangements between natural gas undertakings. The actions of the Emergency Plan should include mechanisms, where appropriate, ensuring fair and equitable compensation of the natural gas undertakings. Solidarity measures may be particularly appropriate between Member States for which the Commission recommends the establishment of joint Preventive Action Plans or Emergency Plans at regional level.
- (37) In the context of this Regulation, the Commission has an important role to play in the event of an emergency, be it at Union or regional level.
- (38) European solidarity should also, where needed, take the form of civil protection assistance provided by the Union and its Member States. Such assistance should be facilitated and coordinated by the Community Civil Protection Mechanism established by Council Decision 2007/779/EC, Euratom ⁽¹⁾.
- (39) The sovereign rights of Member States over their own energy resources are not affected by this Regulation.
- (40) Council Directive 2008/114/EC of 8 December 2008 on the identification and designation of European critical infrastructures and the assessment of the need to improve their protection ⁽²⁾ lays down a process with a view to enhancing the security of designated European critical infrastructures, including certain gas infrastructures, in the Union. Directive 2008/114/EC together with this Regulation contribute to creating a comprehensive approach to the energy security of the Union.
- (41) Emergency Plans should be updated regularly and published. They should be subject to peer review and tested.
- (42) The Gas Coordination Group should act as adviser to the Commission to facilitate the coordination of security of supply measures in the event of a Union emergency. It should also monitor the adequacy and appropriateness of measures to be taken under this Regulation.
- (43) This Regulation aims at empowering natural gas undertakings and Competent Authorities of the Member States to ensure that the internal gas market works effectively for as long as possible in the event of a supply disruption, prior to measures being taken by Competent Authorities to address the situation in which the market can no longer deliver the required gas supplies. Such exceptional measures should be fully compliant with Union law and should be notified to the Commission.
- (44) Since gas supplies from third countries are central to the security of gas supply of the Union, the Commission should coordinate the actions with regard to third countries, working with the supplying and transiting third countries on arrangements to handle crisis situations and to ensure a stable gas flow to the Union. The Commission should be entitled to deploy a task force to monitor gas flows into the Union in crisis situations, in consultation with the third countries involved, and, where a crisis arises due to difficulties in a third country, to assume a mediation and facilitation role.
- (45) It is important that the conditions for the supply from third countries do not distort competition and are in accordance with internal market rules.
- (46) Where there is reliable information of a situation outside the Union that threatens the security of supply of one or several Member States and that may trigger an early warning mechanism between the Union and a third country, the Commission should inform the Gas Coordination Group without delay and the Union should take appropriate actions to try to defuse the situation.

⁽¹⁾ OJ L 314, 1.12.2007, p. 9.

⁽²⁾ OJ L 345, 23.12.2008, p. 75.

- (47) In February 2009, the Council concluded that transparency and reliability should be increased through the meaningful exchange of information between the Commission and Member States on energy relations with third countries, including long-term supply arrangements, while preserving commercially sensitive information.
- (48) While rules contained in the Treaty on European Union and in the Treaty on the Functioning of the European Union, in particular the rules on competition, apply to services of general economic interest in so far as the application of such rules does not obstruct the performance of such services, Member States enjoy a wide discretion in providing for, commissioning and organising public service obligations.
- (49) Since the objective of this Regulation, namely to ensure the security of gas supply in the Union, cannot be sufficiently achieved by the Member States alone and can therefore, by reason of the scale or effects of the action, be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality, as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve that objective.
- (50) Directive 2004/67/EC should be repealed,

HAVE ADOPTED THIS REGULATION:

Article 1

Subject matter

This Regulation establishes provisions aimed at safeguarding the security of gas supply by ensuring the proper and continuous functioning of the internal market in natural gas (gas), by allowing for exceptional measures to be implemented when the market can no longer deliver the required gas supplies and by providing for a clear definition and attribution of responsibilities among natural gas undertakings, the Member States and the Union regarding both preventive action and the reaction to concrete disruptions of supply. This Regulation also provides transparent mechanisms, in a spirit of solidarity, for the coordination of planning for, and response to, an emergency at Member State, regional and Union levels.

Article 2

Definitions

For the purpose of this Regulation the definitions of Directive 2009/73/EC, Regulation (EC) No 713/2009 and Regulation (EC) No 715/2009 shall apply.

In addition the following definitions shall apply:

1. 'protected customers' means all household customers connected to a gas distribution network and, in addition, where the Member State concerned so decides, may also include:
 - (a) small and medium-sized enterprises, provided that they are connected to a gas distribution network, and essential social services, provided that they are connected to a gas distribution or transmission network, and provided that all these additional customers do not represent more than 20 % of the final use of gas; and/or
 - (b) district heating installations to the extent that they deliver heating to household customers and to the customers referred to in point (a) provided that these installations are not able to switch to other fuels and are connected to a gas distribution or transmission network.

As soon as possible and no later than 3 December 2011 Member States shall notify the Commission whether they intend to include points (a) and/or (b) in their definition of protected customers;

2. 'Competent Authority' means the national governmental authority or the national regulatory authority designated by each Member State to be responsible for ensuring the implementation of the measures set out in this Regulation. This is without prejudice to the ability of Member States to allow the Competent Authority to delegate specific tasks set out in this Regulation to other bodies. Such delegated tasks shall be performed under the supervision of the Competent Authority and shall be specified in the plans referred to in Article 4.

Article 3

Responsibility for security of gas supply

1. Security of gas supply is a shared responsibility of natural gas undertakings, Member States, notably through their Competent Authorities, and the Commission, within their respective areas of activities and competence. Such shared responsibility requires a high degree of cooperation between them.
2. As soon as possible and no later than 3 December 2011, each Member State shall designate a Competent Authority that ensures the implementation of the measures provided for in this Regulation. Where appropriate, until the Competent Authority is formally designated, the national entities currently responsible for security of gas supply shall carry out the measures to be implemented by the Competent Authority in accordance with this Regulation. Those measures shall include the carrying out of the risk assessment referred to in Article 9, and, on the basis

of that risk assessment, the establishment of a Preventive Action Plan and an Emergency Plan, and the regular monitoring of security of gas supply at national level. Competent Authorities shall cooperate with each other to seek to prevent a supply disruption and to limit damages in such an event. Nothing shall prevent Member States from adopting implementing legislation, if needed, to comply with the requirements of this Regulation.

3. Each Member State shall notify to the Commission without delay the name of the Competent Authority, once designated, and, where appropriate, the names of the national entities responsible for security of gas supply acting as provisional Competent Authority in accordance with paragraph 2. Each Member State shall make such designations public.

4. When implementing the measures provided for in this Regulation, the Competent Authority shall establish the roles and responsibilities of the different actors involved in such a way as to ensure that a three-level approach is respected which involves first the relevant natural gas undertakings and industry, then Member States at national or regional level, and then the Union.

5. The Commission shall, where appropriate, coordinate the action of the Competent Authorities at regional and Union levels, as set out in this Regulation, inter alia, through the Gas Coordination Group referred to in Article 12 or the crisis management group referred to in Article 11(4), in particular in the event of a Union or regional emergency as defined in Article 11(1).

6. The measures to ensure the security of supply contained in the Preventive Action Plans and in the Emergency Plans shall be clearly defined, transparent, proportionate, non-discriminatory and verifiable, shall not unduly distort competition and the effective functioning of the internal market in gas and shall not endanger the security of gas supply of other Member States or of the Union as a whole.

Article 4

Establishment of a Preventive Action Plan and an Emergency Plan

1. The Competent Authority of each Member State, after consulting the natural gas undertakings, the relevant organisations representing the interests of household and industrial gas customers and the national regulatory authority, where it is not the Competent Authority, shall, without prejudice to paragraph 3, establish at national level:

(a) a Preventive Action Plan containing the measures needed to remove or mitigate the risks identified, in accordance with the risk assessment undertaken pursuant to Article 9; and

(b) an Emergency Plan containing the measures to be taken to remove or mitigate the impact of a gas supply disruption in accordance with Article 10.

2. Before adopting a Preventive Action Plan and an Emergency Plan at national level, the Competent Authorities shall, by 3 June 2012, exchange their draft Preventive Action Plans and Emergency Plans and consult each other at the appropriate regional level, and the Commission, with a view to ensuring that their draft Plans and measures are not inconsistent with the Preventive Action Plan and the Emergency Plan of another Member State and that they comply with this Regulation and with other provisions of Union law. Such consultation shall be carried out in particular between neighbouring Member States, notably between isolated systems forming gas islands and their neighbouring Member States, and may cover for instance those Member States identified in the indicative list of Annex IV.

3. Based on the consultations referred to in paragraph 2 and possible recommendations from the Commission, the Competent Authorities concerned may decide to establish joint Preventive Action Plans at regional level (joint Preventive Action Plans) and joint Emergency Plans at regional level (joint Emergency Plans), in addition to the Plans established at national level. In the case of joint Plans, the Competent Authorities concerned shall endeavour, where appropriate, to conclude agreements in order to implement regional cooperation. If necessary, these agreements shall be formally endorsed by Member States.

4. When establishing and implementing the Preventive Action Plan and the Emergency Plan at national and/or regional level, the Competent Authority shall take due account of the safe operation of the gas system at all times and address and set out in those Plans the technical constraints affecting the operation of the network, including the technical and safety reasons which may lead to the reduction of flows in the event of an emergency.

5. No later than 3 December 2012, the Preventive Action Plans and Emergency Plans, including, where applicable, joint Plans, shall be adopted and made public. Such Plans shall be notified to the Commission without delay. The Commission shall inform the Gas Coordination Group. Competent Authorities shall ensure the regular monitoring of the implementation of such Plans.

6. Within 3 months of the notification by the Competent Authorities of the Plans referred to in paragraph 5:

(a) the Commission shall assess those Plans, in accordance with point (b). In order to do so, the Commission shall consult the Gas Coordination Group on those Plans and duly take its opinion into account. The Commission shall report its assessment of the Plans to the Gas Coordination Group; and

(b) where the Commission, based on these consultations:

(i) assesses that a Preventive Action Plan or an Emergency Plan is not effective to mitigate the risks as identified in the risk assessment, it may recommend to the Competent Authority or Competent Authorities concerned to amend the relevant Plan;

(ii) considers that a Preventive Action Plan or an Emergency Plan is inconsistent with the risk scenarios or with the Plans of another Competent Authority, or that it does not comply with the provisions of this Regulation or other provisions of Union law, it shall request that the relevant Plan be amended;

(iii) considers that the Preventive Action Plan endangers the security of gas supply of other Member States or of the Union as a whole, it shall decide to require the Competent Authority to review that Preventive Action Plan and may present specific recommendations for amending it. The Commission shall give detailed reasons for its decision.

7. Within 4 months of notification of the Commission's request referred to in paragraph 6(b)(ii), the Competent Authority concerned shall amend its Preventive Action Plan or Emergency Plan and notify the amended Plan to the Commission, or shall inform the Commission of the reasons for which it does not agree with the request. In the event of disagreement, the Commission may, within 2 months of the reply of the Competent Authority, withdraw its request or convene the Competent Authorities concerned and, where the Commission deems it necessary, the Gas Coordination Group, in order to consider the issue. The Commission shall set out its detailed reasoning for requesting any amendments to the Plan. The Competent Authority shall take full account of the position of the Commission. Where the final decision of the Competent Authority diverges from the Commission's position, the Competent Authority shall provide and make public, together with that decision and the Commission position, the reasoning underlying such decision within 2 months of receipt of the position of the Commission. Where applicable, the Competent Authority shall without delay make the amended Plan public.

8. Within 3 months of notification of the Commission's decision referred to in paragraph 6(b)(iii), the Competent Authority concerned shall amend its Preventive Action Plan and notify the amended Plan to the Commission, or shall inform the Commission of the reasons for which it does not agree with the decision. In the event of disagreement, the Commission may, within 2 months of the reply of the Competent Authority, decide to amend or withdraw its request. If the Commission maintains its request, the Competent Authority concerned shall amend the Plan within 2 months of the notification of the Commission's decision, taking utmost account of the Commission's recommendations

referred to in paragraph 6(b)(iii), and shall notify it to the Commission.

The Commission shall inform the Gas Coordination Group and duly take into account their recommendations when drafting its opinion on the amended Plan, which shall be delivered within 2 months of the notification of the Competent Authority. The Competent Authority concerned shall take utmost account of the Commission's opinion and within 2 months of receipt of the Commission's opinion shall adopt and make public the resulting amended Plan.

9. The confidentiality of commercially sensitive information shall be preserved.

Article 5

Content of the national and joint Preventive Action Plans

1. The national and joint Preventive Action Plans shall contain:

- (a) the results of the risk assessment as laid down in Article 9;
- (b) the measures, volumes, capacities and the timing needed to fulfil the infrastructure and supply standards, as laid down in Articles 6 and 8, including where applicable, the extent to which demand-side measures can sufficiently compensate, in a timely manner, for a supply disruption as referred to in Article 6(2), the identification of the single largest gas infrastructure of common interest in the case of application of Article 6(3) and any increased supply standard under Article 8(2);
- (c) obligations imposed on natural gas undertakings and other relevant bodies, including for the safe operation of the gas system;
- (d) the other preventive measures, such as those relating to the need to enhance interconnections between neighbouring Member States and the possibility to diversify gas routes and sources of supply, if appropriate, to address the risks identified in order to maintain gas supply to all customers as far as possible;
- (e) the mechanisms to be used for cooperation with other Member States for preparing and implementing joint Preventive Action Plans and joint Emergency Plans, as referred to in Article 4(3), where applicable;
- (f) information on existing and future interconnections, including those providing access to the gas network of the Union, cross-border flows, cross-border access to storage facilities and the physical capacity to transport gas in both directions (bi-directional capacity), in particular in the event of an emergency;
- (g) information on all public service obligations that relate to security of gas supply.

2. The national and joint Preventive Action Plans, in particular the actions to meet the infrastructure standard as laid down in Article 6, shall take into account the Union-wide 10-year network development plan to be elaborated by the ENTSO for Gas pursuant to Article 8(10) of Regulation (EC) No 715/2009.

3. The national and joint Preventive Action Plans shall be based primarily on market measures, and shall take into account the economic impact, effectiveness and efficiency of the measures, the effects on the functioning of the internal energy market and the impact on the environment and on consumers, and shall not put an undue burden on natural gas undertakings, nor negatively impact on the functioning of the internal market in gas.

4. The national and joint Preventive Action Plans shall be updated every 2 years, unless circumstances warrant more frequent updates, and shall reflect the updated risk assessment. The consultation provided for between Competent Authorities under Article 4(2) shall be carried out before the adoption of the updated Plan.

Article 6

Infrastructure standard

1. Member States or, where a Member State so provides, the Competent Authority shall ensure that the necessary measures are taken so that by 3 December 2014 at the latest, in the event of a disruption of the single largest gas infrastructure, the capacity of the remaining infrastructure, determined according to the $N - 1$ formula as provided in point 2 of Annex I, is able, without prejudice to paragraph 2 of this Article, to satisfy total gas demand of the calculated area during a day of exceptionally high gas demand occurring with a statistical probability of once in 20 years. This is without prejudice, where appropriate and necessary, to the responsibility of system operators to make the corresponding investments and to the obligations of transmission system operators as laid down in Directive 2009/73/EC and Regulation (EC) No 715/2009.

2. The obligation to ensure that the remaining infrastructure has the capacity to satisfy total gas demand, as referred to in paragraph 1, shall also be considered to be fulfilled where the Competent Authority demonstrates in the Preventive Action Plan that a supply disruption may be sufficiently compensated for, in a timely manner, by appropriate market-based demand-side measures. For that purpose, the formula provided in point 4 of Annex I shall be used.

3. Where appropriate, according to the risk assessment referred to in Article 9, the Competent Authorities concerned may decide that the obligation set out in paragraph 1 of this Article shall be fulfilled at a regional level, instead of at national level. In that event, joint Preventive Action Plans pursuant to Article 4(3) shall be established. Point 5 of Annex I shall apply.

4. Each Competent Authority shall, after consulting the relevant natural gas undertakings, report to the Commission without delay any non-compliance with the obligation set out in paragraph 1 and inform the Commission of the reasons for such non-compliance.

5. The transmission system operators shall enable permanent bi-directional capacity on all cross-border interconnections between Member States as early as possible and at the latest by 3 December 2013, except:

- (a) in the case of connections to production facilities, to LNG facilities and to distribution networks; or
- (b) where an exemption has been granted in accordance with Article 7.

By 3 December 2013, the transmission system operators shall adapt the functioning of the transmission systems in part or as a whole so as to enable physical gas flows in both directions on cross-border interconnections.

6. Where bi-directional capacity already exists or is under construction for a particular cross-border interconnection, the obligation referred to in the first subparagraph of paragraph 5 shall be deemed to be met for that interconnection except where an enhancement of capacity is requested by one or more Member States for security of supply reasons. Where such a request for enhancement is made, the procedure set out in Article 7 shall apply.

7. Member States or, where a Member State so provides, the Competent Authority, shall ensure that, as a first step, the market is always tested in a transparent, detailed and non-discriminatory manner to assess whether the investment in infrastructure needed to fulfil the obligations set out in paragraphs 1 and 5 is required by the market.

8. National Regulatory Authorities shall take into account the efficiently incurred costs of fulfilling the obligation set out in paragraph 1 and the costs of enabling permanent bi-directional capacity so as to grant appropriate incentives when fixing or approving, in a transparent and detailed manner, the tariffs or methodologies in accordance with Article 41(8) of Directive 2009/73/EC and Article 13 of Regulation (EC) No 715/2009. In so far as an investment for enabling bi-directional capacity is not required by the market and where this investment incurs costs in more than one Member State or in one Member State for the benefit of one or more other Member States, the national regulatory authorities of all Member States concerned shall jointly decide on cost allocation before any investment decision is taken. The cost allocation shall in particular take into account the proportion of the benefits of the infrastructure investments for the increase of security of supply of the Member States concerned. Article 8(1) of Regulation (EC) No 713/2009 shall apply.

9. The Competent Authority shall ensure that any new transmission infrastructure contributes to the security of supply through the development of a well-connected network, including, where appropriate, by means of a sufficient number of cross-border entry and exit points according to market demand and the risks identified. The Competent Authority shall, where appropriate, assess in the risk assessment where internal bottlenecks exist and whether national entry capacity and infrastructures, in particular transmission networks, are capable of adapting the national gas flows to the scenario of the disruption of the single largest gas infrastructure identified in the risk assessment.

10. Luxembourg, Slovenia and Sweden shall, by way of exception, not be bound by, but shall endeavour to meet, the obligation set out in paragraph 1 of this Article, while ensuring the gas supplies to protected customers in accordance with Article 8. That exception shall apply for as long as:

- (a) in the case of Luxembourg: it has at least two interconnectors with other Member States, at least two different sources of supply and no gas storage facilities or an LNG facility on its territory;
- (b) in the case of Slovenia: it has at least two interconnectors with other Member States, at least two different sources of supply and no gas storage facilities or an LNG facility on its territory;
- (c) in the case of Sweden: it has no gas transit to other Member States on its territory, an annual gross inland gas consumption of less than 2 Mtoe and less than 5 % of total primary energy consumption from gas.

Those three Member States shall ensure, in a transparent, detailed and non-discriminatory manner, regular market testing for investments in infrastructure and make public the results of those tests.

The Member States referred to in the first subparagraph shall inform the Commission of any change in respect of the conditions set out in that subparagraph. The exception laid down in the first subparagraph shall cease to apply where at least one of those conditions is no longer fulfilled.

By 3 December 2018, each of the Member States referred to in the first subparagraph shall transmit a report to the Commission describing the situation with respect to the respective conditions set out in that subparagraph and the prospects for the compliance with the obligation in paragraph 1, taking into account the economic impact of meeting the infrastructure standard, the results of the market testing and the gas market development and gas infrastructure projects in the region. On the basis of the report and if the respective conditions set out in the first subparagraph of this paragraph are still met, the Commission may decide that the exception set out in the first subparagraph can continue to apply for 4 more

years. In the event of a positive decision, the procedure set out in this subparagraph shall be repeated after 4 years.

Article 7

Procedure for enabling bi-directional capacity or seeking exemption

1. For each cross-border interconnection between Member States, except for those exempted under Article 6(5)(a) and except where bi-directional capacity already exists or is under construction and no enhancement has been requested by one or more Member States for security of supply reasons, transmission system operators shall, not later than 3 March 2012, submit to their Member States or, where Member States so provide, their Competent Authorities or their regulatory authorities (together referred to in this Article as the 'authorities concerned'), after consulting with all other transmission system operators concerned:

- (a) a proposal for bi-directional capacity concerning the reverse direction (reverse flow capacity); or
- (b) a request for an exemption from the obligation to enable bi-directional capacity.

2. The proposal for reverse flow capacity or the request for exemptions referred to in paragraph 1 shall be based on an assessment of market demand, projections for demand and supply, technical feasibility, the costs of reverse flow capacity, including the consequent reinforcement of the transmission system, and the benefits for security of supply, taking also into account, where appropriate, the possible contribution of reverse flow capacity to meeting, together with other possible measures, the infrastructure standard set out in Article 6 in the case of the Member States benefiting from the reverse flow capacity.

3. The authority concerned receiving the proposal or exemption request shall notify the authorities concerned of the other Member States that could, according to the risk assessment, benefit from reverse flow capacity and the Commission of the proposal or the exemption request without delay. That authority concerned shall give those authorities concerned and the Commission the possibility to issue an opinion within a period of 4 months following receipt of that notification.

4. Within 2 months of the expiry of the period referred to in paragraph 3, the authority concerned, on the basis of the criteria referred to in paragraph 2 and of the risk assessment carried out in accordance with Article 9, and taking utmost account of the opinions received in accordance with paragraph 3 of this Article, and taking into account aspects that are not strictly economic, such as security of gas supply and the contribution to the internal gas market, shall:

- (a) grant an exemption if reverse flow capacity would not significantly enhance the security of supply of any Member State or region or if the investment costs would significantly outweigh the prospective benefits for security of supply; or
- (b) accept the proposal for reverse flow capacity; or
- (c) require the transmission system operator to amend its proposal.

The authority concerned shall notify its decision without delay to the Commission, together with all relevant information showing the reasons for the decision, including the opinions received in accordance with paragraph 3 of this Article. The authorities concerned shall endeavour to ensure that mutually dependent decisions which concern the same interconnection or interconnected pipelines do not contradict each other.

5. Within 2 months of receipt of that notification, and where there are discrepancies between the decision of the authority concerned and the opinions of other authorities concerned, the Commission may require that the authority concerned amend its decision. That period may be extended by 1 month where additional information is sought by the Commission. Any proposal by the Commission requiring amendment to the decision of the authority concerned shall be made on the basis of the elements and criteria set out in paragraph 2 and point (a) of paragraph 4, taking into account the reasons for the decision of the authority concerned. The authority concerned shall comply with the request by amending its decision within a period of 4 weeks. In the event that the Commission does not act within that 2-month period, it shall be deemed not to have raised objections to the decision of the authority concerned.

6. Where additional reverse flow capacity is needed according to the results of the risk assessment carried out in accordance with Article 9, the procedure set out in paragraphs 1 to 5 of this Article shall be repeated upon the request of a transmission system operator, an authority concerned or the Commission.

7. The Commission and the authority concerned shall preserve the confidentiality of commercially sensitive information at all times.

Article 8

Supply standard

1. The Competent Authority shall require the natural gas undertakings, that it identifies, to take measures to ensure gas

supply to the protected customers of the Member State in the following cases:

- (a) extreme temperatures during a 7-day peak period occurring with a statistical probability of once in 20 years;
- (b) any period of at least 30 days of exceptionally high gas demand, occurring with a statistical probability of once in 20 years; and
- (c) for a period of at least 30 days in case of the disruption of the single largest gas infrastructure under average winter conditions.

The Competent Authority shall identify the natural gas undertakings referred to in the first subparagraph by 3 June 2012 at the latest.

2. Any increased supply standard going beyond the 30-day period referred to in points (b) and (c) of paragraph 1 or any additional obligation imposed for reasons of security of gas supply shall be based on the risk assessment referred to in Article 9, shall be reflected in the Preventive Action Plan and shall:

- (a) comply with Article 3(6);
- (b) not unduly distort competition or hamper the functioning of the internal market in gas;
- (c) not impact negatively on the ability of any other Member State to supply its protected customers in accordance with this Article in the event of a national, Union or regional emergency; and
- (d) comply with the criteria specified in Article 11(5) in the event of a Union or regional emergency.

In a spirit of solidarity, the Competent Authority shall identify in the Preventive Action Plan and the Emergency Plan how any increased supply standard or additional obligation imposed on natural gas undertakings may be temporarily reduced in the event of a Union or regional emergency.

3. After the periods defined by the Competent Authority in accordance with paragraphs 1 and 2, or under more severe conditions than those defined in paragraph 1, the Competent Authority and natural gas undertakings shall endeavour to maintain, as far as possible, the gas supply, in particular for protected customers.

4. The obligations imposed on natural gas undertakings for the fulfilment of the supply standards laid down in this Article shall be non-discriminatory and shall not impose an undue burden on those undertakings.

5. Natural gas undertakings shall be allowed to meet these obligations at a regional or Union level, where appropriate. The Competent Authority shall not require the standards laid down in this Article to be met based on infrastructure located only within its territory.

6. The Competent Authority shall ensure that conditions for supplies to protected customers are established without prejudice to the proper functioning of the internal market in gas and at a price respecting the market value of the supplies.

Article 9

Risk assessment

1. By 3 December 2011, each Competent Authority shall make a full assessment, on the basis of the following common elements, of the risks affecting the security of gas supply in its Member State by:

- (a) using the standards specified in Articles 6 and 8, showing the calculation of the $N - 1$ formula, the assumptions used, including those for the calculation of the $N - 1$ formula at regional level, and the data necessary for such calculation;
- (b) taking into account all relevant national and regional circumstances, in particular market size, network configuration, actual flows, including outflows from the Member State concerned, the possibility of physical gas flows in both directions including the potential need for consequent reinforcement of the transmission system, the presence of production and storage and the role of gas in the energy mix, in particular with respect to district heating and electricity generation and for the operation of industries, and safety and gas quality considerations;
- (c) running various scenarios of exceptionally high gas demand and supply disruption, such as failure of the main transmission infrastructures, storages or LNG terminals, and disruption of supplies from third country suppliers, taking into account the history, probability, season, frequency and duration of their occurrence as well as, where appropriate, geopolitical risks, and assessing the likely consequences of these scenarios;
- (d) identifying the interaction and correlation of risks with other Member States, including, inter alia, as regards inter-

connections, cross-border supplies, cross-border access to storage facilities and bi-directional capacity;

- (e) taking into account the maximal interconnection capacity of each border entry and exit point.

2. Where Article 4(3) applies, the Competent Authorities concerned shall also perform a joint risk assessment at regional level.

3. Natural gas undertakings, industrial gas customers, the relevant organisations representing the interests of household and industrial gas customers as well as Member States and the national regulatory authority, where it is not the Competent Authority, shall cooperate with the Competent Authority and provide it upon request with all necessary information for the risk assessment.

4. The risk assessment shall be updated for the first time at the latest 18 months after adoption of the Preventive Action and Emergency Plans referred to in Article 4, and thereafter every 2 years before 30 September of the relevant year unless circumstances warrant more frequent updates. The risk assessment shall take account of progress made in investments needed to cope with the infrastructure standard defined in Article 6 and of country-specific difficulties encountered in the implementation of new alternative solutions.

5. The risk assessment, including updated versions, shall be made available to the Commission without delay.

Article 10

Emergency Plans and Crisis Levels

1. The national and joint Emergency Plans shall:

- (a) build upon the crisis levels set out in paragraph 3;
- (b) define the role and responsibilities of natural gas undertakings and of industrial gas customers including relevant electricity producers, taking account of the different extents to which they are affected in the event of gas supply disruptions, and their interaction with the Competent Authorities and where appropriate with the national regulatory authorities at each of the crisis levels defined in paragraph 3;
- (c) define the role and responsibilities of the Competent Authorities and of the other bodies to which tasks have been delegated as referred to in Article 2(2) at each of the crisis levels defined in paragraph 3 of this Article;

- (d) ensure that natural gas undertakings and industrial gas customers are given sufficient opportunity to respond at each crisis level;
- (e) identify, if appropriate, the measures and actions to be taken to mitigate the potential impact of a gas supply disruption on district heating and the supply of electricity generated from gas;
- (f) establish detailed procedures and measures to be followed for each crisis level, including the corresponding schemes on information flows;
- (g) designate a crisis manager or team and define its role;
- (h) identify the contribution of market-based measures, notably those listed in Annex II, for coping with the situation at alert level and mitigating the situation at emergency level;
- (i) identify the contribution of non-market based measures planned or to be implemented for the emergency level, notably those listed in Annex III, and assess the degree to which the use of such non-market based measures is necessary to cope with a crisis, assess their effects and define the procedures to implement them, taking into account the fact that non-market based measures are to be used only when market-based mechanisms alone can no longer ensure supplies, in particular to protected customers;
- (j) describe the mechanisms used to cooperate with other Member States for each crisis level;
- (k) detail the reporting obligations imposed on natural gas undertakings at alert and emergency levels;
- (l) establish a list of predefined actions to make gas available in the event of an emergency, including commercial agreements between the parties involved in such actions and the compensation mechanisms for natural gas undertakings where appropriate, taking due account of the confidentiality of sensitive data. Such actions may involve cross-border agreements between Member States and/or natural gas undertakings.

2. The national and joint Emergency Plans shall be updated every 2 years, unless circumstances warrant more frequent updates, and shall reflect the updated risk assessment. The consultation provided for between Competent Authorities under Article 4(2) shall be carried out before the adoption of the updated Plans.

3. The three main crisis levels shall be as follows:

- (a) early warning level (early warning): when there is concrete, serious and reliable information that an event may occur which is likely to result in significant deterioration of the supply situation and is likely to lead to the alert or the emergency level being triggered; the early warning level may be activated by an early warning mechanism;
- (b) alert level (alert): when a supply disruption or exceptionally high gas demand occurs which results in significant deterioration of the supply situation, but the market is still able to manage that disruption or demand without the need to resort to non-market measures;
- (c) emergency level (emergency): in the event of exceptionally high gas demand, significant supply disruption or other significant deterioration of the supply situation and in the event that all relevant market measures have been implemented but the supply of gas is insufficient to meet the remaining gas demand so that non-market measures have to be additionally introduced with a view, in particular, to safeguarding supplies of gas to protected customers according to Article 8.

4. The national and joint Emergency Plans shall ensure that cross-border access to infrastructure in accordance with Regulation (EC) No 715/2009 is maintained as far as technically and safely possible in the event of an emergency. The Plans shall be in accordance with Article 3(6) of this Regulation and shall not introduce any measure unduly restricting the flow of gas across borders.

5. When the Competent Authority declares any of the crisis levels referred to in paragraph 3, it shall immediately inform the Commission and provide it with all the necessary information, in particular with information on the action it intends to take. In the event of an emergency which may result in a call for assistance from the Union and its Member States, the Competent Authority of the Member State concerned shall without delay notify the Commission's Civil Protection Monitoring and Information Centre.

6. When the Competent Authority declares an emergency, it shall follow the pre-defined action as defined in its Emergency Plan and shall immediately inform the Commission in particular of the action it intends to take in accordance with paragraph 1. In duly justified exceptional circumstances, the Competent Authority may take action deviating from the Emergency Plan. The Competent Authority shall immediately inform the Commission of any such action and shall provide a justification therefore.

7. The Member States and, in particular, the Competent Authorities shall ensure that:

- (a) no measures are introduced which unduly restrict the flow of gas within the internal market at any time;
- (b) no measures are introduced that are likely to endanger seriously the gas supply situation in another Member State; and
- (c) cross-border access to infrastructure in accordance with Regulation (EC) No 715/2009 is maintained as far as technically and safely possible, in accordance with the Emergency Plan.

8. The Commission shall verify, as soon as possible, but in any case within 5 days of receiving the information of the Competent Authority referred to in paragraph 5, whether the declaration of an emergency is justified in accordance with point (c) of paragraph 3 and whether the measures taken follow as closely as possible the actions listed in the Emergency Plan and are not imposing an undue burden on natural gas undertakings and are in accordance with paragraph 7. The Commission may, at the request of a Competent Authority, natural gas undertakings or on its own initiative, request the Competent Authority to modify the measures where they are contrary to the conditions established in paragraph 7 and in the first sentence of this paragraph. The Commission may also request the Competent Authority to lift the declaration of emergency where it considers that such declaration is not or no longer justified according to point (c) of paragraph 3.

Within 3 days of the notification of the Commission's request, the Competent Authority shall modify the measures and notify the Commission thereof, or shall inform the Commission of the reasons for which it does not agree with the request. In that case, the Commission may within 3 days amend or withdraw its request or, in order to consider the issue, convene the Competent Authority or, where appropriate, the Competent Authorities concerned, and, where the Commission deems it necessary, the Gas Coordination Group. The Commission shall set out its detailed reasoning for requesting any changes to the action. The Competent Authority shall take full account of the position of the Commission. Where the final decision of the Competent Authority diverges from the Commission's position, the Competent Authority shall provide the reasoning underlying such decision.

Article 11

Union and regional emergency responses

1. At the request of a Competent Authority that has declared an emergency and following the verification in accordance with

Article 10(8), the Commission may declare a Union emergency or a regional emergency for a specifically affected geographical region. At the request of at least two Competent Authorities that have declared an emergency and following the verification in accordance with Article 10(8), and where the reasons for these emergencies are linked, the Commission shall declare, as appropriate, a Union or regional emergency. In all cases, the Commission, using the means of communication most appropriate to the situation, shall gather the views of, and take due account of all the relevant information provided by, the other Competent Authorities. When it assesses that the underlying basis for the Union or regional emergency no longer justifies a declaration of emergency, the Commission shall declare an end to the Union or regional emergency. In all cases, the Commission shall give its reasons and inform the Council of its decision.

2. The Commission shall convene the Gas Coordination Group as soon as it declares a Union or regional emergency. During the Union or regional emergency, at the request of at least three Member States, the Commission may restrict participation in the Gas Coordination Group, for an entire meeting or part thereof, to the representatives of the Member States and the Competent Authorities.

3. In a Union or regional emergency as referred to in paragraph 1, the Commission shall coordinate the action of the Competent Authorities, taking full account of relevant information from, and the results of, the consultation of the Gas Coordination Group. In particular, the Commission shall:

- (a) ensure the exchange of information;
- (b) ensure the consistency and effectiveness of action at Member State and regional levels in relation to the Union level;
- (c) coordinate the actions with regard to third countries.

4. The Commission may convene a crisis management group composed of the crisis managers referred to in Article 10(1)(g), of the Member States concerned by the emergency. The Commission, in agreement with the crisis managers, may invite other relevant stakeholders to participate. The Commission shall ensure that the Gas Coordination Group is regularly informed about the work undertaken by the crisis management group.

5. The Member States and in particular the Competent Authorities shall ensure that:

- (a) no measures are introduced which unduly restrict the flow of gas within the internal market at any time, notably the flow of gas to the affected markets;

(b) no measures are introduced that are likely to endanger seriously the gas supply situation in another Member State; and

(c) cross-border access to infrastructure in accordance with Regulation (EC) No 715/2009 is maintained as far as technically and safely possible, in accordance with the Emergency Plan.

6. Where, at the request of a Competent Authority or a natural gas undertaking or on its own initiative, the Commission considers that, in a Union or regional emergency, an action taken by a Member State or a Competent Authority or the behaviour of a natural gas undertaking is contrary to paragraph 5, the Commission shall request that Member State or Competent Authority to change its action or to take action in order to ensure compliance with paragraph 5, informing it of the reasons therefore. Due account shall be taken of the need to operate the gas system safely at all times.

Within 3 days of notification of the Commission's request, the Member State or the Competent Authority shall change its action and notify the Commission or shall set out to the Commission the reasons for which it does not agree with the request. In that case, the Commission may within 3 days amend or withdraw its request or convene the Member State or the Competent Authority and, where the Commission deems it necessary, the Gas Coordination Group in order to consider the issue. The Commission shall set out its detailed reasoning for requesting any changes to the action. The Member State or the Competent Authority shall take full account of the position of the Commission. Where the final decision of the Competent Authority or the Member State diverges from the Commission's position, the Competent Authority or the Member State shall provide the reasoning underlying such decision.

7. The Commission, after consulting the Gas Coordination Group, shall establish a permanent reserve list for a monitoring task force consisting of industry experts and representatives of the Commission. This monitoring task force may be deployed outside the Union when necessary and shall monitor and report on the gas flows into the Union, in cooperation with the supplying and transiting third countries.

8. The Competent Authority shall provide to the Commission's Civil Protection Monitoring and Information Centre the information on any need for assistance. The Civil Protection Monitoring and Information Centre shall assess the overall situation and provide advice on the assistance that

should be provided to the most affected Member States, and where appropriate to third countries.

Article 12

Gas Coordination Group

1. A Gas Coordination Group is established to facilitate the coordination of measures concerning security of gas supply. The Group shall be composed of representatives of the Member States, in particular of their Competent Authorities, as well as the Agency, the ENTSO for Gas and representative bodies of the industry concerned and those of relevant customers. The Commission shall, in consultation with the Member States, decide on the composition of the Group, ensuring it is fully representative. The Commission shall chair the Group. The Group shall establish its rules of procedure.

2. In accordance with this Regulation, the Gas Coordination Group shall be consulted and shall assist the Commission in particular on the following issues:

- (a) security of gas supply, at any time and more specifically in the event of an emergency;
- (b) all information relevant for security of gas supply at national, regional and Union levels;
- (c) best practices and possible guidelines to all the parties concerned;
- (d) the level of security of supply, benchmarks and assessment methodologies;
- (e) national, regional and Union scenarios and testing the levels of preparedness;
- (f) the assessment of the Preventive Action Plans and the Emergency Plans and the implementation of the measures foreseen therein;
- (g) the coordination of measures to deal with an emergency within the Union, with third countries that are Contracting Parties to the Treaty establishing the Energy Community and with other third countries;
- (h) assistance needed by the most affected Member States.

3. The Commission shall convene the Gas Coordination Group on a regular basis and shall share the information received from the Competent Authorities whilst preserving the confidentiality of commercially sensitive information.

*Article 13***Information exchange**

1. Where Member States have existing public service obligations that relate to security of gas supply, they shall make these public by 3 January 2011. Any subsequent updates or additional public service obligations that relate to security of gas supply shall also be made public as soon as adopted by Member States.

2. During an emergency, the natural gas undertakings concerned shall make available in particular the following information to the Competent Authority on a daily basis:

- (a) daily gas demand and supply forecasts for the following 3 days;
- (b) daily flow of gas at all cross-border entry and exit points as well as all points connecting a production facility, a storage facility or an LNG terminal to the network, in mcm/d;
- (c) the period, expressed in days, for which it is expected that gas supply to the protected customers can be ensured.

3. In the event of a Union or regional emergency, the Commission is entitled to request that the Competent Authority provide it without delay with at least:

- (a) the information set out in paragraph 2;
- (b) information on the measures planned to be undertaken and already implemented by the Competent Authority to mitigate the emergency, and information on their effectiveness;
- (c) the requests made for additional measures to be taken by other Competent Authorities;
- (d) the measures implemented at the request of other Competent Authorities.

4. The Competent Authorities and the Commission shall preserve the confidentiality of commercially sensitive information.

5. After an emergency, the Competent Authority shall, as soon as possible and at the latest 6 weeks after the lifting of the emergency, provide to the Commission a detailed assessment of the emergency and the effectiveness of the imple-

mented measures, including an assessment of the economic impact of the emergency, the impact on the electricity sector and the assistance provided to, and/or received from, the Union and its Member States. Such assessment shall be made available to the Gas Coordination Group and shall be reflected in the updates of the Preventive Action Plans and the Emergency Plans.

The Commission shall analyse the assessments of the Competent Authorities and shall inform the Member States, the European Parliament and the Gas Coordination Group of the results of its analysis in aggregate form.

6. In order to allow the Commission to assess the situation of the security of supply at Union level:

- (a) by 3 December 2011 at the latest, Member States shall communicate to the Commission the existing inter-governmental agreements concluded with third countries which have an impact on the development of gas infrastructures and gas supplies. When concluding new inter-governmental agreements with third countries which have such an impact, the Member States shall inform the Commission;
- (b) for existing contracts by 3 December 2011 at the latest, as well as for new contracts or in the event of changes to existing contracts, natural gas undertakings shall notify the Competent Authorities concerned of the following details of contracts with a duration of more than 1 year concluded with suppliers from third countries:
 - (i) contract duration;
 - (ii) contracted volumes in total, on an annual basis and the average volume per month;
 - (iii) in the event of an alert or emergency, contracted maximal daily volumes;
 - (iv) contracted delivery points.

The Competent Authority shall notify these data in aggregate form to the Commission. In the event of new contracts being concluded or changes being made to existing contracts, the whole set of data shall be notified again in aggregate form on a regular basis. The Competent Authority and the Commission shall ensure the confidentiality of the information.

*Article 14***Monitoring by the Commission**

The Commission shall carry out continuous monitoring of, and reporting on, security of gas supply measures, notably through an annual assessment of the reports referred to in Article 5 of Directive 2009/73/EC, and the information relating to the implementation of Article 11 and Article 52(1) of that Directive and, once available, the information provided in the risk assessment and the Preventive Action Plans and Emergency Plans to be established in accordance with this Regulation.

By 3 December 2014 at the latest, the Commission, on the basis of the report referred to in Article 4(6) and after consulting the Gas Coordination Group shall:

- (a) draw conclusions as to possible means to enhance security of supply at Union level, assess the feasibility of carrying out risk assessments and establishing Preventive Action Plans and Emergency Plans at Union level and report to the European Parliament and the Council on the implementation of this Regulation, including, *inter alia*, the progress made on market interconnectivity; and
- (b) report to the European Parliament and the Council on the overall consistency of Member States' Preventive Action Plans and Emergency Plans as well as their contribution to solidarity and preparedness from a Union perspective.

The report shall include, where appropriate, recommendations for improvement of this Regulation.

*Article 15***Repeal**

Without prejudice to the obligations of Member States concerning the deadlines for transposition and application of Directive 2004/67/EC, that Directive is repealed from 2 December 2010 with the exception of Article 4(1) and (2) of that Directive which shall apply until the Member State concerned has defined protected customers in accordance with Article 2(1) of this Regulation and has identified the natural gas undertakings in accordance with Article 8(1) of this Regulation.

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

Done at Strasbourg, 20 October 2010.

For the European Parliament
The President
J. BUZEK

For the Council
The President
O. CHASTEL

Notwithstanding the first paragraph of this Article, Article 4(1) and (2) of Directive 2004/67/EC shall no longer apply after 3 June 2012.

*Article 16***Derogation**

This Regulation shall not apply to Malta and Cyprus for as long as no gas is supplied on their respective territories. For Malta and Cyprus the deadlines implied by point (1) of the second paragraph of Article 2 and Article 3(2), Article 4(2) and (5), Article 6(1) and (5), Article 8(1) and Article 9(1), and Article 13(6)(a) and (b) shall apply as follows:

- (a) for point (1) of the second paragraph of Article 2, Article 3(2), Article 9(1) and Article 13(6)(a) and (b): 12 months;
- (b) for Article 4(2) and Article 8(1): 18 months;
- (c) for Article 4(5): 24 months;
- (d) for Article 6(5): 36 months;
- (e) for Article 6(1): 48 months;

from the day gas is first supplied on their respective territories.

*Article 17***Entry into force**

This Regulation shall enter into force on the 20th day following its publication in the *Official Journal of the European Union*.

Article 6(8), the first sentence of Article 10(4), Article 10(7)(c) and Article 11(5)(c) shall apply from 3 March 2011.

ANNEX I

CALCULATION OF THE N – 1 FORMULA

1. Definition of the N – 1 formula

The N – 1 formula describes the ability of the technical capacity of the gas infrastructure to satisfy total gas demand in the calculated area in the event of disruption of the single largest gas infrastructure during a day of exceptionally high gas demand occurring with a statistical probability of once in 20 years.

Gas infrastructure includes the gas transmission network including interconnectors as well as production, LNG and storage facilities connected to the calculated area.

The technical capacity ⁽¹⁾ of all remaining available gas infrastructure in the event of disruption of the single largest gas infrastructure should be at least equal to the sum of the total daily gas demand of the calculated area during a day of exceptionally high gas demand occurring with a statistical probability of once in 20 years.

The results of the N – 1 formula, as calculated below, should at least equal 100 %.

2. Calculation method of the N – 1 formula

$$N - 1 [\%] = \frac{EP_m + P_m + S_m + LNG_m - I_m}{D_{max}} \times 100, N - 1 \geq 100 \%$$

3. Definitions of the parameters of the N – 1 formula:

‘Calculated area’ means a geographical area for which the N – 1 formula is calculated, as determined by the Competent Authority.

Demand-side definition

‘D_{max}’ means the total daily gas demand (in mcm/d) of the calculated area during a day of exceptionally high gas demand occurring with a statistical probability of once in 20 years.

Supply-side definitions

‘EP_m’: technical capacity of entry points (in mcm/d), other than production, LNG and storage facilities covered by P_m, S_m and LNG_m, means the sum of the technical capacity of all border entry points capable of supplying gas to the calculated area.

‘P_m’: maximal technical production capability (in mcm/d) means the sum of the maximal technical daily production capability of all gas production facilities which can be delivered to the entry points in the calculated area.

‘S_m’: maximal technical storage deliverability (in mcm/d) means the sum of the maximal technical daily withdrawal capacity of all storage facilities which can be delivered to the entry points of the calculated area, taking into account their respective physical characteristics.

‘LNG_m’: maximal technical LNG facility capacity (in mcm/d) means the sum of the maximal technical daily send-out capacities at all LNG facilities in the calculated area, taking into account critical elements like offloading, ancillary services, temporary storage and re-gasification of LNG as well as technical send-out capacity to the system.

‘I_m’ means the technical capacity of the single largest gas infrastructure (in mcm/d) with the highest capacity to supply the calculated area. When several gas infrastructures are connected to a common upstream or downstream gas infrastructure and cannot be separately operated, they shall be considered as one single gas infrastructure.

⁽¹⁾ According to Article 2(1)(18) of Regulation (EC) No 715/2009, ‘technical capacity’ means the maximum firm capacity that the transmission system operator can offer to the network users, taking account of system integrity and the operational requirements of the transmission network.

4. Calculation of the N – 1 formula using demand-side measures

$$N - 1[\%] = \frac{EP_m + P_m + S_m + LNG_m - I_m}{D_{max} - D_{eff}} \times 100, N - 1 \geq 100 \%$$

Demand-side definition

'D_{eff}' means the part (in mcm/d) of D_{max} that in case of a supply disruption can be sufficiently and timely covered with market-based demand-side measures in accordance with Article 5(1)(b) and Article 6(2).

5. Calculation of the N – 1 formula at regional level

The calculated area referred to in point 3 shall be extended to the appropriate regional level where applicable, as determined by the Competent Authorities of the Member States concerned. For the calculation of the N – 1 formula at regional level, the single largest gas infrastructure of common interest shall be used. The single largest gas infrastructure of common interest to a region is the largest gas infrastructure in the region that directly or indirectly contributes to the supply of gas to the Member States of that region and shall be defined in the joint Preventive Action Plan.

The regional N – 1 calculation can only replace the national N – 1 calculation, where the single largest gas infrastructure of common interest is of major importance for the gas supply of all Member States concerned according to the joint risk assessment.

ANNEX II

LIST OF MARKET-BASED SECURITY OF GAS SUPPLY MEASURES

In developing the Preventive Action Plan and the Emergency Plan the Competent Authority shall take into account the indicative and non-exhaustive list of measures set out in this Annex. The Competent Authority shall duly take into account the environmental impact of the measures proposed when developing the Preventive Action Plan and the Emergency Plan and shall give preference, as far as possible, to those measures which have the least impact on the environment while taking into account security of supply aspects.

Supply-side measures:

- increased production flexibility,
- increased import flexibility,
- facilitating the integration of gas from renewable energy sources into the gas network infrastructure,
- commercial gas storage — withdrawal capacity and volume of gas in storage,
- LNG terminal capacity and maximal send-out capacity,
- diversification of gas supplies and gas routes,
- reverse flows,
- coordinated dispatching by transmission system operators,
- use of long-term and short-term contracts,
- investments in infrastructure, including bi-directional capacity,
- contractual arrangements to ensure security of gas supply.

Demand-side measures:

- use of interruptible contracts,
 - fuel switch possibilities including use of alternative back-up fuels in industrial and power generation plants,
 - voluntary firm load shedding,
 - increased efficiency,
 - increased use of renewable energy sources.
-

ANNEX III

LIST OF NON-MARKET BASED SECURITY OF GAS SUPPLY MEASURES

In developing the Preventive Action Plan and the Emergency Plan the Competent Authority shall consider the contribution of the following indicative and non-exhaustive list of measures only in the event of an emergency:

Supply-side measures:

- use of strategic gas storage,
- enforced use of stocks of alternative fuels (e.g. in accordance with Council Directive 2009/119/EC of 14 September 2009 imposing an obligation on Member States to maintain minimum stocks of crude oil and/or petroleum products ⁽¹⁾),
- enforced use of electricity generated from sources other than gas,
- enforced increase of gas production levels,
- enforced storage withdrawal.

Demand-side measures:

- Various steps of compulsory demand reduction including:
 - enforced fuel switching,
 - enforced utilisation of interruptible contracts, where not fully utilised as part of market measures,
 - enforced firm load shedding.

⁽¹⁾ OJ L 265, 9.10.2009, p. 9.

ANNEX IV

REGIONAL COOPERATION

In accordance with Article 194 of the Treaty on the Functioning of the European Union and as underlined in Article 6 of Directive 2009/73/EC and Article 12 of Regulation (EC) No 715/2009, regional cooperation reflects the spirit of solidarity and is also an underlying concept of this Regulation. Regional cooperation is required in particular for the establishment of the risk assessment (Article 9), the Preventive Action Plans and the Emergency Plans (Articles 4, 5 and 10), the infrastructure and supply standards (Articles 6 and 8) and the provisions for Union and regional emergency responses (Article 11).

The regional cooperation under this Regulation builds on existing regional cooperation involving natural gas undertakings, Member States and national regulatory authorities to enhance, among other objectives, the security of supply and the integration of the internal energy market, such as the three regional gas markets under the Gas Regional Initiative, the Gas Platform, the High Level Group of the Baltic Energy Market Interconnection Plan, and the Security of Supply Coordination Group of the Energy Community. However, the specific security of supply requirements are likely to foster new cooperation frameworks, and existing areas of cooperation will have to be adapted in order to guarantee the best efficiency.

In the light of the increasingly interconnected and interdependent markets and the completion of the internal gas market, cooperation between the following Member States, as an example and among others, including between parts of neighbouring Member States, can enhance their individual and collective security of gas supply:

- Poland and the three Baltic States (Estonia, Latvia and Lithuania),
- the Iberian Peninsula (Spain and Portugal) and France,
- Ireland and the United Kingdom,
- Bulgaria, Greece and Romania,
- Denmark and Sweden,
- Slovenia, Italy, Austria, Hungary and Romania,
- Poland and Germany,
- France, Germany, Belgium, the Netherlands and Luxembourg,
- Germany, the Czech Republic and Slovakia,
- others.

Where necessary and appropriate, regional cooperation between Member States may be extended to strengthen cooperation with neighbouring Member States, in particular in the case of gas islands, notably with a view to enhancing interconnections. Member States may also be part of different cooperation clusters.

**REGULATION (EU) No 995/2010 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL
of 20 October 2010**

laying down the obligations of operators who place timber and timber products on the market

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 192(1) thereof,

Having regard to the proposal from the European Commission,

Having regard to the opinion of the European Economic and Social Committee ⁽¹⁾,

After consulting the Committee of the Regions,

Acting in accordance with the ordinary legislative procedure ⁽²⁾,

Whereas:

(1) Forests provide a broad variety of environmental, economic and social benefits including timber and non-timber forest products and environmental services essential for humankind, such as maintaining biodiversity and ecosystem functions and protecting the climate system.

(2) Due to the growing demand for timber and timber products worldwide, in combination with the institutional and governance deficiencies that are present in the forest sector in a number of timber-producing countries, illegal logging and the associated trade have become matters of ever greater concern.

(3) Illegal logging is a pervasive problem of major international concern. It poses a significant threat to forests as it contributes to the process of deforestation and forest degradation, which is responsible for about 20 % of global CO₂ emissions, threatens biodiversity, and undermines sustainable forest management and

development including the commercial viability of operators acting in accordance with applicable legislation. It also contributes to desertification and soil erosion and can exacerbate extreme weather events and flooding. In addition, it has social, political and economic implications, often undermining progress towards good governance and threatening the livelihood of local forest-dependent communities, and it can be linked to armed conflicts. Combating the problem of illegal logging in the context of this Regulation is expected to contribute to the Union's climate change mitigation efforts in a cost-effective manner and should be seen as complementary to Union action and commitments in the context of the United Nations Framework Convention on Climate Change.

(4) Decision No 1600/2002/EC of the European Parliament and of the Council of 22 July 2002 laying down the Sixth Community Environment Action Programme ⁽³⁾ identifies as a priority action the examination of the possibility of taking active measures to prevent and combat trade in illegally harvested wood and the continuation of the active participation of the Union and of Member States in the implementation of global and regional resolutions and agreements on forest-related issues.

(5) The Commission Communication of 21 May 2003 entitled 'Forest Law Enforcement, Governance and Trade (FLEGT): Proposal for an EU Action Plan' proposed a package of measures to support international efforts to tackle the problem of illegal logging and associated trade in the context of overall efforts of the Union to achieve sustainable forest management.

(6) The European Parliament and the Council welcomed that Communication and recognised the need for the Union to contribute to global efforts to address the problem of illegal logging.

(7) In accordance with the aim of that Communication, namely to ensure that only timber products which have been produced in accordance with the national legislation of the timber-producing country enter the Union, the Union has been negotiating Voluntary Partnership Agreements (FLEGT VPAs) with timber-producing countries (partner countries), which create a legally binding obligation for the parties to implement a licensing scheme and to regulate trade in timber and timber products identified in those FLEGT VPAs.

⁽¹⁾ OJ C 318, 23.12.2009, p. 88.

⁽²⁾ Position of the European Parliament of 22 April 2009 (OJ C 184 E, 8.7.2010, p. 145), position of the Council at first reading of 1 March 2010 (OJ C 114 E, 4.5.2010, p. 17) and position of the European Parliament of 7 July 2010 (not yet published in the Official Journal).

⁽³⁾ OJ L 242, 10.9.2002, p. 1.

- (8) Given the major scale and urgency of the problem, it is necessary to support the fight against illegal logging and related trade actively, to complement and strengthen the FLEGT VPA initiative and to improve synergies between policies aimed at the conservation of forests and the achievement of a high level of environmental protection, including combating climate change and biodiversity loss.
- (9) The efforts made by countries which have concluded FLEGT VPAs with the Union and the principles incorporated in them, in particular with regard to the definition of legally produced timber, should be recognised and further encouragement for countries to conclude FLEGT VPAs should be given. It should be also taken into account that under the FLEGT licensing scheme only timber harvested in accordance with the relevant national legislation and timber products derived from such timber are exported into the Union. Therefore, timber embedded in timber products listed in Annexes II and III to Council Regulation (EC) No 2173/2005 of 20 December 2005 on the establishment of a FLEGT licensing scheme for imports of timber into the European Community⁽¹⁾, originating in partner countries listed in Annex I to that Regulation, should be considered to have been legally harvested provided those timber products comply with that Regulation and any implementing provisions.
- (10) Account should also be taken of the fact that the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) places a requirement on parties to CITES only to grant a CITES permit for export when a CITES-listed species has been harvested, inter alia, in compliance with national legislation in the exporting country. Therefore timber of species listed in Annex A, B or C to Council Regulation (EC) No 338/97 of 9 December 1996 on the protection of species of wild fauna and flora by regulating trade therein⁽²⁾ should be considered to have been legally harvested provided it complies with that Regulation and any implementing provisions.
- (11) Bearing in mind that the use of recycled timber and timber products should be encouraged, and that including such products in the scope of this Regulation would place a disproportionate burden on operators, used timber and timber products that have completed their lifecycle, and would otherwise be disposed of as waste, should be excluded from the scope of this Regulation.
- (12) The placing on the internal market for the first time of illegally harvested timber or timber products derived from such timber should be prohibited as one of the measures of this Regulation. Taking into account the complexity of illegal logging, its underlying causes and its impacts, specific measures should be taken, such as those that target the behaviour of operators.
- (13) In the context of the FLEGT Action Plan the Commission and, where appropriate, Member States may support and conduct studies and research on the levels and nature of illegal logging in different countries and make such information publicly available, as well as support the provision of practical guidance to operators on applicable legislation in timber-producing countries.
- (14) In the absence of an internationally agreed definition, the legislation of the country where the timber was harvested, including regulations as well as the implementation in that country of relevant international conventions to which that country is party, should be the basis for defining what constitutes illegal logging.
- (15) Many timber products undergo numerous processes before and after they are placed on the internal market for the first time. In order to avoid imposing any unnecessary administrative burden, only operators that place timber and timber products on the internal market for the first time should be subject to the due diligence system, while a trader in the supply chain should be required to provide basic information on its supplier and its buyer to enable the traceability of timber and timber products.
- (16) On the basis of a systemic approach, operators placing timber and timber products for the first time on the internal market should take the appropriate steps in order to ascertain that illegally harvested timber and timber products derived from such timber are not placed on the internal market. To that end, operators should exercise due diligence through a system of measures and procedures to minimise the risk of placing illegally harvested timber and timber products derived from such timber on the internal market.
- (17) The due diligence system includes three elements inherent to risk management: access to information, risk assessment and mitigation of the risk identified. The due diligence system should provide access to information about the sources and suppliers of the timber and timber products being placed on the internal market for the first time, including relevant information such as compliance with the applicable legislation, the country of harvest, species, quantity, and where applicable sub-national region and concession of harvest. On the basis of this information, operators should carry out a risk assessment. Where a risk is identified, operators should mitigate such risk in a manner proportionate to the risk identified, with a view to preventing illegally harvested timber and timber products derived from such timber from being placed on the internal market.
-
- ⁽¹⁾ OJ L 347, 30.12.2005, p. 1.
⁽²⁾ OJ L 61, 3.3.1997, p. 1.

- (18) In order to avoid any unnecessary administrative burden, operators already using systems or procedures which comply with the requirements of this Regulation should not be required to set up new systems.
- (19) In order to recognise good practice in the forestry sector, certification or other third party verified schemes that include verification of compliance with applicable legislation may be used in the risk assessment procedure.
- (20) The timber sector is of major importance for the economy of the Union. Organisations of operators are important actors in the sector as they represent the interests of the latter on a large scale and interact with a diverse range of stakeholders. Those organisations also have the expertise and capacity to analyse relevant legislation and facilitate the compliance of their members, but should not use this competence to dominate the market. In order to facilitate the implementation of this Regulation and to contribute to the development of good practices it is appropriate to recognise organisations which have developed due diligence systems meeting the requirements of this Regulation. Recognition and withdrawal of recognition of monitoring organisations should be performed in a fair and transparent manner. A list of such recognised organisations should be made public in order to enable operators to use them.
- (21) Competent authorities should carry out checks at regular intervals on monitoring organisations to verify that they effectively fulfil the obligations laid down in this Regulation. Moreover, competent authorities should endeavour to carry out checks when in possession of relevant information, including substantiated concerns from third parties.
- (22) Competent authorities should monitor that operators effectively fulfil the obligations laid down in this Regulation. For that purpose the competent authorities should carry out official checks, in accordance with a plan as appropriate, which may include checks on the premises of operators and field audits, and should be able to require operators to take remedial actions where necessary. Moreover, competent authorities should endeavour to carry out checks when in possession of relevant information, including substantiated concerns from third parties.
- (23) Competent authorities should keep records of the checks and the relevant information should be made available in accordance with Directive 2003/4/EC of the European Parliament and of the Council of 28 January 2003 on public access to environmental information ⁽¹⁾.
- (24) Taking into account the international character of illegal logging and related trade, competent authorities should cooperate with each other and with the administrative authorities of third countries and the Commission.
- (25) In order to facilitate the ability of operators who place timber or timber products on the internal market to comply with the requirements of this Regulation, taking into account the situation of small and medium-sized enterprises, Member States, assisted by the Commission where appropriate, may provide operators with technical and other assistance and facilitate the exchange of information. Such assistance should not release operators from their obligation to exercise due diligence.
- (26) Traders and monitoring organisations should refrain from measures which could jeopardise the attainment of the objective of this Regulation.
- (27) Member States should ensure that infringements of this Regulation, including by operators, traders and monitoring organisations, are sanctioned by effective, proportionate and dissuasive penalties. National rules may provide that, after effective, proportionate and dissuasive penalties are applied for infringements of the prohibition of placing on the internal market of illegally harvested timber or timber products derived from such timber, such timber and timber products should not necessarily be destroyed but may instead be used or disposed of for public interest purposes.
- (28) The Commission should be empowered to adopt delegated acts in accordance with Article 290 of the Treaty on the Functioning of the European Union (TFEU) concerning the procedures for the recognition and withdrawal of recognition of monitoring organisations, concerning further relevant risk assessment criteria that may be necessary to supplement those already provided for in this Regulation and concerning the list of timber and timber products to which this Regulation applies. It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level.
- (29) In order to ensure uniform conditions for implementation, implementing powers should be conferred on the Commission to adopt detailed rules with regard to the frequency and the nature of the checks by competent authorities on monitoring organisations and to the due diligence systems except as regards further relevant risk assessment criteria. In accordance with Article 291 TFEU, rules and general principles concerning mechanisms for the control by Member States of the Commission's exercise of implementing powers are to be laid down in advance by a regulation adopted in accordance with the ordinary legislative procedure. Pending the adoption

⁽¹⁾ OJ L 41, 14.2.2003, p. 26.

of that new regulation Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission ⁽¹⁾ continues to apply, with the exception of the regulatory procedure with scrutiny, which is not applicable.

- (30) Operators and competent authorities should be given a reasonable period in order to prepare themselves to meet the requirements of this Regulation.
- (31) Since the objective of this Regulation, namely the fight against illegal logging and related trade, cannot be achieved by the Member States individually and can therefore, by reason of its scale, be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality, as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve that objective,

HAVE ADOPTED THIS REGULATION:

Article 1

Subject matter

This Regulation lays down the obligations of operators who place timber and timber products on the internal market for the first time, as well as the obligations of traders.

Article 2

Definitions

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

- (a) 'timber and timber products' means the timber and timber products set out in the Annex, with the exception of timber products or components of such products manufactured from timber or timber products that have completed their lifecycle and would otherwise be disposed of as waste, as defined in Article 3(1) of Directive 2008/98/EC of the European Parliament and of the Council of 19 November 2008 on waste ⁽²⁾,
- (b) 'placing on the market' means the supply by any means, irrespective of the selling technique used, of timber or timber products for the first time on the internal market for distribution or use in the course of a commercial activity, whether in return for payment or free of charge. It also includes the supply by means of distance

communication as defined in Directive 97/7/EC of the European Parliament and of the Council of 20 May 1997 on the protection of consumers in respect of distance contracts ⁽³⁾. The supply on the internal market of timber products derived from timber or timber products already placed on the internal market shall not constitute 'placing on the market';

- (c) 'operator' means any natural or legal person that places timber or timber products on the market;
- (d) 'trader' means any natural or legal person who, in the course of a commercial activity, sells or buys on the internal market timber or timber products already placed on the internal market;
- (e) 'country of harvest' means the country or territory where the timber or the timber embedded in the timber products was harvested;
- (f) 'legally harvested' means harvested in accordance with the applicable legislation in the country of harvest;
- (g) 'illegally harvested' means harvested in contravention of the applicable legislation in the country of harvest;
- (h) 'applicable legislation' means the legislation in force in the country of harvest covering the following matters:
- rights to harvest timber within legally gazetted boundaries,
 - payments for harvest rights and timber including duties related to timber harvesting,
 - timber harvesting, including environmental and forest legislation including forest management and biodiversity conservation, where directly related to timber harvesting,
 - third parties' legal rights concerning use and tenure that are affected by timber harvesting, and
 - trade and customs, in so far as the forest sector is concerned.

Article 3

Status of timber and timber products covered by FLEGT and CITES

Timber embedded in timber products listed in Annexes II and III to Regulation (EC) No 2173/2005 which originate in partner countries listed in Annex I to that Regulation and which comply with that Regulation and its implementing provisions shall be considered to have been legally harvested for the purposes of this Regulation.

⁽¹⁾ OJ L 184, 17.7.1999, p. 23.

⁽²⁾ OJ L 312, 22.11.2008, p. 3.

⁽³⁾ OJ L 144, 4.6.1997, p. 19.

Timber of species listed in Annex A, B or C to Regulation (EC) No 338/97 and which complies with that Regulation and its implementing provisions shall be considered to have been legally harvested for the purposes of this Regulation.

Article 4

Obligations of operators

1. The placing on the market of illegally harvested timber or timber products derived from such timber shall be prohibited.

2. Operators shall exercise due diligence when placing timber or timber products on the market. To that end, they shall use a framework of procedures and measures, hereinafter referred to as a 'due diligence system', as set out in Article 6.

3. Each operator shall maintain and regularly evaluate the due diligence system which it uses, except where the operator makes use of a due diligence system established by a monitoring organisation referred to in Article 8. Existing supervision systems under national legislation and any voluntary chain of custody mechanism which fulfil the requirements of this Regulation may be used as a basis for the due diligence system.

Article 5

Obligation of traceability

Traders shall, throughout the supply chain, be able to identify:

- (a) the operators or the traders who have supplied the timber and timber products; and
- (b) where applicable, the traders to whom they have supplied timber and timber products.

Traders shall keep the information referred to in the first paragraph for at least five years and shall provide that information to competent authorities if they so request.

Article 6

Due diligence systems

1. The due diligence system referred to in Article 4(2) shall contain the following elements:

- (a) measures and procedures providing access to the following information concerning the operator's supply of timber or timber products placed on the market:

- description, including the trade name and type of product as well as the common name of tree species and, where applicable, its full scientific name,

- country of harvest, and where applicable:

- (i) sub-national region where the timber was harvested; and

- (ii) concession of harvest,

- quantity (expressed in volume, weight or number of units),

- name and address of the supplier to the operator,

- name and address of the trader to whom the timber and timber products have been supplied,

- documents or other information indicating compliance of those timber and timber products with the applicable legislation;

- (b) risk assessment procedures enabling the operator to analyse and evaluate the risk of illegally harvested timber or timber products derived from such timber being placed on the market.

Such procedures shall take into account the information set out in point (a) as well as relevant risk assessment criteria, including:

- assurance of compliance with applicable legislation, which may include certification or other third-party-verified schemes which cover compliance with applicable legislation,

- prevalence of illegal harvesting of specific tree species,

- prevalence of illegal harvesting or practices in the country of harvest and/or sub-national region where the timber was harvested, including consideration of the prevalence of armed conflict,

- sanctions imposed by the UN Security Council or the Council of the European Union on timber imports or exports,

- complexity of the supply chain of timber and timber products.

- (c) except where the risk identified in course of the risk assessment procedures referred to in point (b) is negligible, risk mitigation procedures which consist of a set of measures and procedures that are adequate and proportionate to minimise effectively that risk and which may include requiring additional information or documents and/or requiring third party verification.

2. Detailed rules necessary to ensure the uniform implementation of paragraph 1, except as regards further relevant risk assessment criteria referred to in the second sentence of paragraph 1(b) of this Article, shall be adopted in accordance with the regulatory procedure referred to in Article 18(2). Those rules shall be adopted by 3 June 2012.

3. Taking into account market developments and the experience gained in the implementation of this Regulation, in particular as identified through the exchange of information referred to in Article 13 and the reporting referred to in Article 20(3), the Commission may adopt delegated acts in accordance with Article 290 TFEU as regards further relevant risk assessment criteria that may be necessary to supplement those referred to in the second sentence of paragraph 1(b) of this Article with a view to ensuring the effectiveness of the due diligence system.

For the delegated acts referred to in this paragraph the procedures set out in Articles 15, 16 and 17 shall apply.

Article 7

Competent authorities

1. Each Member State shall designate one or more competent authorities responsible for the application of this Regulation.

Member States shall inform the Commission of the names and addresses of the competent authorities by 3 June 2011. Member States shall inform the Commission of any changes to the names or addresses of the competent authorities.

2. The Commission shall make publicly available, including on the Internet, a list of the competent authorities. The list shall be regularly updated.

Article 8

Monitoring organisations

1. A monitoring organisation shall:

- (a) maintain and regularly evaluate a due diligence system as set out in Article 6 and grant operators the right to use it;
- (b) verify the proper use of its due diligence system by such operators;

(c) take appropriate action in the event of failure by an operator to properly use its due diligence system, including notification of competent authorities in the event of significant or repeated failure by the operator.

2. An organisation may apply for recognition as a monitoring organisation if it complies with the following requirements:

- (a) it has legal personality and is legally established within the Union;
- (b) it has appropriate expertise and the capacity to exercise the functions referred to in paragraph 1; and
- (c) it ensures the absence of any conflict of interest in carrying out its functions.

3. The Commission, after consulting the Member State(s) concerned, shall recognise as a monitoring organisation an applicant that fulfils the requirements set out in paragraph 2.

The decision to grant recognition to a monitoring organisation shall be communicated by the Commission to the competent authorities of all the Member States.

4. The competent authorities shall carry out checks at regular intervals to verify that the monitoring organisations operating within the competent authorities' jurisdiction continue to fulfil the functions laid down in paragraph 1 and comply with the requirements laid down in paragraph 2. Checks may also be carried out when the competent authority of the Member State is in possession of relevant information, including substantiated concerns from third parties or when it has detected shortcomings in the implementation by operators of the due diligence system established by a monitoring organisation. A report of the checks shall be made available in accordance with Directive 2003/4/EC.

5. If a competent authority determines that a monitoring organisation either no longer fulfils the functions laid down in paragraph 1 or no longer complies with the requirements laid down in paragraph 2, it shall without delay inform the Commission.

6. The Commission shall withdraw recognition of a monitoring organisation when, in particular on the basis of the information provided pursuant to paragraph 5, it has determined that the monitoring organisation no longer fulfils the functions laid down in paragraph 1 or the requirements laid down in paragraph 2. Before withdrawing recognition of a monitoring organisation, the Commission shall inform the Member States concerned.

The decision to withdraw recognition of a monitoring organisation shall be communicated by the Commission to the competent authorities of all the Member States.

7. In order to supplement the procedural rules with regard to the recognition and withdrawal of recognition of monitoring organisations and, if experience so requires, to amend them, the Commission may adopt delegated acts in accordance with Article 290 TFEU, while ensuring that the recognition and withdrawal of recognition are performed in a fair and transparent manner.

For the delegated acts referred to in this paragraph the procedures set out in Articles 15, 16 and 17 shall apply. Those acts shall be adopted by 3 March 2012.

8. Detailed rules concerning the frequency and the nature of the checks referred to in paragraph 4, necessary to ensure the effective oversight of monitoring organisations and the uniform implementation of that paragraph, shall be adopted in accordance with the regulatory procedure referred to in Article 18(2). Those rules shall be adopted by 3 June 2012.

Article 9

List of monitoring organisations

The Commission shall publish the list of the monitoring organisations in the *Official Journal of the European Union*, C series, and shall make it available on its website. The list shall be regularly updated.

Article 10

Checks on operators

1. The competent authorities shall carry out checks to verify if operators comply with the requirements set out in Articles 4 and 6.

2. The checks referred to in paragraph 1 shall be conducted in accordance with a periodically reviewed plan following a risk-based approach. In addition, checks may be conducted when a competent authority is in possession of relevant information, including on the basis of substantiated concerns provided by third parties, concerning compliance by an operator with this Regulation.

3. The checks referred to in paragraph 1 may include, inter alia:

(a) examination of the due diligence system, including risk assessment and risk mitigation procedures;

(b) examination of documentation and records that demonstrate the proper functioning of the due diligence system and procedures;

(c) spot checks, including field audits.

4. Operators shall offer all assistance necessary to facilitate the performance of the checks referred to in paragraph 1, notably as regards access to premises and the presentation of documentation or records.

5. Without prejudice to Article 19, where, following the checks referred to in paragraph 1, shortcomings have been detected, the competent authorities may issue a notice of remedial actions to be taken by the operator. Additionally, depending on the nature of the shortcomings detected, Member States may take immediate interim measures, including inter alia:

(a) seizure of timber and timber products;

(b) prohibition of marketing of timber and timber products.

Article 11

Records of checks

1. The competent authorities shall keep records of the checks referred to in Article 10(1), indicating in particular their nature and results, as well as of any notice of remedial actions issued under Article 10(5). Records of all checks shall be kept for at least five years.

2. The information referred to in paragraph 1 shall be made available in accordance with Directive 2003/4/EC.

Article 12

Cooperation

1. Competent authorities shall cooperate with each other, with the administrative authorities of third countries and with the Commission in order to ensure compliance with this Regulation.

2. The competent authorities shall exchange information on serious shortcomings detected through the checks referred to in Articles 8(4) and 10(1) and on the types of penalties imposed in accordance with Article 19 with the competent authorities of other Member States and with the Commission.

Article 13

Technical assistance, guidance and exchange of information

1. Without prejudice to the operators' obligation to exercise due diligence under Article 4(2), Member States, assisted by the Commission where appropriate, may provide technical and other assistance and guidance to operators, taking into account the situation of small and medium-sized enterprises, in order to facilitate compliance with the requirements of this Regulation, in particular in relation to the implementation of a due diligence system in accordance with Article 6.

2. Member States, assisted by the Commission where appropriate, may facilitate the exchange and dissemination of relevant information on illegal logging, in particular with a view to assisting operators in assessing risk as set out in Article 6(1)(b), and on best practices regarding the implementation of this Regulation.

3. Assistance shall be provided in a manner which avoids compromising the responsibilities of competent authorities and preserves their independence in enforcing this Regulation.

Article 14

Amendments of the Annex

In order to take into account, on the one hand, the experience gained in the implementation of this Regulation, in particular as identified through the reporting referred to in Article 20(3) and (4) and through the exchange of information as referred to in Article 13, and, on the other hand, developments with regard to technical characteristics, end-users and production processes of timber and timber products, the Commission may adopt delegated acts in accordance with Article 290 TFEU by amending and supplementing the list of timber and timber products set out in the Annex. Such acts shall not create a disproportionate burden on operators.

For the delegated acts referred to in this Article the procedures set out in Articles 15, 16 and 17 shall apply.

Article 15

Exercise of the delegation

1. The power to adopt the delegated acts referred to in Articles 6(3), 8(7) and 14 shall be conferred on the Commission for a period of seven years from 2 December 2010. The Commission shall make a report in respect of the delegated powers not later than three months before the end of a three-year period after the date of application of this Regulation. The delegation of powers shall be automatically extended for periods of an identical duration, unless the European Parliament or the Council revokes it in accordance with Article 16.

2. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.

3. The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in Articles 16 and 17.

Article 16

Revocation of the delegation

1. The delegation of powers referred to in Articles 6(3), 8(7) and 14 may be revoked at any time by the European Parliament or by the Council.

2. The institution which has commenced an internal procedure for deciding whether to revoke the delegation of powers shall endeavour to inform the other institution and the Commission within a reasonable time before the final decision is taken, indicating the delegated powers which could be subject to revocation and possible reasons for a revocation.

3. The decision of revocation shall put an end to the delegation of the powers specified in that decision. It shall take effect immediately or at a later date specified therein. It shall not affect the validity of the delegated acts already in force. It shall be published in the *Official Journal of the European Union*.

Article 17

Objections to delegated acts

1. The European Parliament or the Council may object to a delegated act within a period of two months from the date of notification. At the initiative of the European Parliament or the Council this period shall be extended by two months.

2. If, on expiry of that period, neither the European Parliament nor the Council has objected to the delegated act, it shall be published in the *Official Journal of the European Union* and shall enter into force on the date stated therein.

The delegated act may be published in the *Official Journal of the European Union* and enter into force before the expiry of that period if the European Parliament and the Council have both informed the Commission of their intention not to raise objections.

3. If the European Parliament or the Council objects to a delegated act, the act shall not enter into force. The institution which objects shall state the reasons for objecting to the delegated act.

Article 18

Committee

1. The Commission shall be assisted by the Forest Law Enforcement Governance and Trade (FLEGT) Committee established under Article 11 of Regulation (EC) No 2173/2005.

2. Where reference is made to this paragraph, Articles 5 and 7 of Decision 1999/468/EC shall apply, having regard to the provisions of Article 8 thereof.

The period laid down in Article 5(6) of Decision 1999/468/EC shall be set at three months.

Article 19

Penalties

1. The Member States shall lay down the rules on penalties applicable to infringements of the provisions of this Regulation and shall take all measures necessary to ensure that they are implemented.

2. The penalties provided for must be effective, proportionate and dissuasive and may include, inter alia:

(a) fines proportionate to the environmental damage, the value of the timber or timber products concerned and the tax losses and economic detriment resulting from the infringement, calculating the level of such fines in such way as to make sure that they effectively deprive those responsible of the economic benefits derived from their serious infringements, without prejudice to the legitimate right to exercise a profession, and gradually increasing the level of such fines for repeated serious infringements;

(b) seizure of the timber and timber products concerned;

(c) immediate suspension of authorisation to trade.

3. The Member States shall notify those provisions to the Commission and shall notify it without delay of any subsequent amendments affecting them.

Article 20

Reporting

1. Member States shall submit to the Commission, by 30 April of every second year following 3 March 2013, a report on the application of this Regulation during the previous two years.

2. On the basis of those reports the Commission shall draw up a report to be submitted to the European Parliament and to the Council every two years. In preparing the report, the Commission shall have regard to the progress made in respect of the conclusion and operation of the FLEGT VPAs pursuant to Regulation (EC) No 2173/2005 and their contribution to minimising the presence of illegally harvested timber and timber products derived from such timber on the internal market.

3. By 3 December 2015 and every six years thereafter, the Commission shall, on the basis of reporting on and experience with the application of this Regulation, review the functioning and effectiveness of this Regulation, including in preventing illegally harvested timber or timber products derived from such timber being placed on the market. It shall in particular consider the administrative consequences for small and medium-sized enterprises and product coverage. The reports may be accompanied, if necessary, by appropriate legislative proposals.

4. The first of the reports referred to in paragraph 3 shall include an evaluation of the current Union economic and trade situation with regard to the products listed under Chapter 49 of the Combined Nomenclature, taking particularly into account the competitiveness of the relevant sectors, in order to consider their possible inclusion in the list of timber and timber products set out in the Annex to this Regulation.

The report referred to in the first subparagraph shall also include an assessment of the effectiveness of the prohibition of the placing on the market of illegally harvested timber and timber products derived from such timber as set out in Article 4(1) as well as of the due diligence systems set out in Article 6.

Article 21

Entry into force and application

This Regulation shall enter into force on the 20th day following its publication in the *Official Journal of the European Union*.

It shall apply as from 3 March 2013. However, Articles 6(2), 7(1), 8(7) and 8(8) shall apply as from 2 December 2010.

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

Done at Strasbourg, 20 October 2010.

For the European Parliament
The President
J. BUZEK

For the Council
The President
O. CHASTEL

ANNEX

Timber and timber products as classified in the Combined Nomenclature set out in Annex I to Council Regulation (EEC) No 2658/87 ⁽¹⁾, to which this Regulation applies

- 4401 Fuel wood, in logs, in billets, in twigs, in faggots or in similar forms; wood in chips or particles; sawdust and wood waste and scrap, whether or not agglomerated in logs, briquettes, pellets or similar forms
- 4403 Wood in the rough, whether or not stripped of bark or sapwood, or roughly squared
- 4406 Railway or tramway sleepers (cross-ties) of wood
- 4407 Wood sawn or chipped lengthwise, sliced or peeled, whether or not planed, sanded or end-jointed, of a thickness exceeding 6 mm
- 4408 Sheets for veneering (including those obtained by slicing laminated wood), for plywood or for other similar laminated wood and other wood, sawn lengthwise, sliced or peeled, whether or not planed, sanded, spliced or end-jointed, of a thickness not exceeding 6 mm
- 4409 Wood (including strips and friezes for parquet flooring, not assembled) continuously shaped (tongued, grooved, rebated, chamfered, V-jointed, beaded, moulded, rounded or the like) along any of its edges, ends or faces, whether or not planed, sanded or end-jointed
- 4410 Particle board, oriented strand board (OSB) and similar board (for example, waferboard) of wood or other ligneous materials, whether or not agglomerated with resins or other organic binding substances
- 4411 Fibreboard of wood or other ligneous materials, whether or not bonded with resins or other organic substances
- 4412 Plywood, veneered panels and similar laminated wood
- 4413 00 00 Densified wood, in blocks, plates, strips or profile shapes
- 4414 00 Wooden frames for paintings, photographs, mirrors or similar objects
- 4415 Packing cases, boxes, crates, drums and similar packings, of wood; cable-drums of wood; pallets, box pallets and other load boards, of wood; pallet collars of wood

(Not packing material used exclusively as packing material to support, protect or carry another product placed on the market.)

- 4416 00 00 Casks, barrels, vats, tubs and other coopers' products and parts thereof, of wood, including staves
- 4418 Builders' joinery and carpentry of wood, including cellular wood panels, assembled flooring panels, shingles and shakes

⁽¹⁾ Council Regulation (EEC) No 2658/87 of 23 July 1987 on the tariff and statistical nomenclature and on the Common Customs Tariff (OJ L 256, 7.9.1987, p. 1).

- Pulp and paper of Chapters 47 and 48 of the Combined Nomenclature, with the exception of bamboo-based and recovered (waste and scrap) products
 - 9403 30, 9403 40, 9403 50 00, 9403 60 and 9403 90 30 Wooden furniture
 - 9406 00 20 Prefabricated buildings
-

**REGULATION (EU) No 996/2010 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**

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE
EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European
Union and in particular Article 100(2) thereof,

Having regard to the proposal from the European Commission,

Having regard to the opinion of the European Economic and
Social Committee ⁽¹⁾,

After consulting the Committee of the Regions,

Having regard to the opinion of the European Data Protection
Supervisor ⁽²⁾,

Acting in accordance with the ordinary legislative procedure ⁽³⁾,

Whereas:

- (1) A high general level of safety should be ensured in civil aviation in Europe and all efforts should be made to reduce the number of accidents and incidents to ensure public confidence in air transport.
- (2) The expeditious holding of safety investigations of civil aviation accidents and incidents improves aviation safety and helps to prevent the occurrence of accidents and incidents.
- (3) Reporting, analysis, and dissemination of findings of safety related incidents are fundamentally important to improving air safety. Therefore the Commission should

bring forward a proposal to revise Directive 2003/42/EC of the European Parliament and of the Council of 13 June 2003 on occurrence reporting in civil aviation ⁽⁴⁾ before 31 December 2011.

- (4) The sole objective of safety investigations should be the prevention of future accidents and incidents without apportioning blame or liability.
- (5) Account should be taken of the Convention on International Civil Aviation, signed in Chicago on 7 December 1944 (the Chicago Convention), which provides for the implementation of the measures necessary to ensure the safe operation of aircraft. Particular account should be taken of Annex 13 to the Chicago Convention and of its subsequent amendments, which lay down international standards and recommended practices for aircraft accident and incident investigation, as well as the understanding of the terms of State of Registry, State of the Operator, State of Design, State of Manufacture and State of Occurrence used therein.
- (6) According to the international standards and recommended practices set out in Annex 13 to the Chicago Convention, the investigation of accidents and serious incidents is to be conducted under the responsibility of the State where the accident or serious incident occurs, or the State of Registry when the location of the accident or serious incident cannot definitely be established as being in the territory of any State. A State may delegate the task of conducting the investigation to another State or request its assistance. Safety investigations in the Union should be conducted in a similar way.
- (7) The lessons learned from the implementation of Council Directive 94/56/EC of 21 November 1994 establishing the fundamental principles governing the investigation of civil aviation accidents and incidents ⁽⁵⁾ should be used to improve the efficiency of the investigation and prevention of civil aviation accidents and incidents in the Union.

⁽¹⁾ Opinion of 27 May 2010 (not yet published in the Official Journal).

⁽²⁾ OJ C 132, 21.5.2010, p. 1.

⁽³⁾ Position of the European Parliament of 21 September 2010 (not yet published in the Official Journal) and decision of the Council of 11 October 2010.

⁽⁴⁾ OJ L 167, 4.7.2003, p. 23.

⁽⁵⁾ OJ L 319, 12.12.1994, p. 14.

- (8) Account should be taken of the changes in the institutional and regulatory framework governing civil aviation safety in the Union which have taken place since the adoption of Directive 94/56/EC and in particular the establishment of the European Aviation Safety Agency (EASA). The Union dimension of safety recommendations should be also taken into account, given that aviation safety is increasingly regulated at Union level.
- (9) EASA carries out on behalf of the Member States the functions and tasks of the State of Design, Manufacture and Registry when related to design approval, as specified in the Chicago Convention and its Annexes. Therefore EASA, in accordance with Annex 13 to the Chicago Convention, should be invited to participate in a safety investigation in order to contribute, within the scope of its competence, to its efficiency and to ensure the safety of aircraft design, without affecting the independent status of the investigation. National civil aviation authorities should be similarly invited to participate in safety investigations.
- (10) Given their safety responsibilities, persons designated by EASA, as well as by the national civil aviation authorities, should have access to information of relevance for assessing the effectiveness of safety requirements.
- (11) In order to ensure better prevention of aviation accidents and incidents, EASA, in cooperation with the competent authorities of the Member States, should also participate in the exchange and analysis of information in the framework of the occurrence reporting systems in accordance with Directive 2003/42/EC, whilst avoiding any conflict of interest. This information should be adequately protected from unauthorised use or disclosure.
- (12) It is recognised that the participation of EASA and of the competent authorities of the Member States in the exchange and analysis of information covered by Directive 2003/42/EC could benefit safety investigations through on-line access to relevant safety related information contained in the central repository of information on civil aviation occurrences.
- (13) The scope of safety investigations should depend on the lessons which can be drawn from them for the improvement of aviation safety, especially taking into account the need for the cost-efficient utilisation of investigation resources in the Union.
- (14) The safety investigation of accidents and incidents should be conducted by or under the control of an independent safety investigation authority in order to avoid any conflict of interest and any possible external interference in the determination of the causes of the occurrences being investigated.
- (15) The safety investigation authorities play a core role in the safety investigation process. Their work is of the utmost importance in determining the causes of an accident or incident. It is therefore essential that they should be able to conduct their investigations entirely independently and also that they should possess the financial and human resources required to conduct effective and efficient investigations.
- (16) The capacity of safety investigation authorities of the Member States should be strengthened and cooperation between them is necessary to improve the efficiency of the investigation and prevention of civil aviation accidents and incidents in the Union.
- (17) The coordination role of safety investigation authorities should be recognised and reinforced in a European context, in order to generate real added value in aviation safety, by building upon the already existing cooperation between such authorities and the investigation resources available in the Member States which should be used in the most efficient manner. That recognition and reinforcement could be best achieved by the European Network of Civil Aviation Safety Investigation Authorities (the Network), with clearly defined role and tasks.
- (18) The Network should pursue its coordination activities in a transparent and independent manner and be actively supported by the Union.
- (19) The objectives of this Regulation may be better achieved through cooperation with third countries, which could be allowed to participate as observers, in the work of the Network.
- (20) As it is essential to ensure clear rights for safety investigations, Member States should, in compliance with the legislation in force on the powers of the authorities responsible for judicial investigations and, where appropriate, in close collaboration with those authorities, ensure that safety investigation authorities are allowed to carry out their tasks in the best possible conditions in the interest of aviation safety. The safety investigation authorities should therefore be granted immediate and unrestricted access to the site of the accident and all the elements necessary to satisfy the requirements of a safety investigation should be made available to them, without compromising the objectives of a judicial investigation.

- (21) Efficient safety investigation is possible only if important pieces of evidence are duly preserved.
- (22) The civil aviation safety system is based on feedback and lessons learned from accidents and incidents which require the strict application of rules on confidentiality in order to ensure the future availability of valuable sources of information. In this context sensitive safety information should be protected in an appropriate way.
- (23) An accident raises a number of different public interests such as the prevention of future accidents and the proper administration of justice. Those interests go beyond the individual interests of the parties involved and beyond the specific event. The right balance among all interests is necessary to guarantee the overall public interest.
- (24) The civil aviation system should equally promote a non-punitive environment facilitating the spontaneous reporting of occurrences and thereby advancing the principle of 'just culture'.
- (25) The information provided by a person in the framework of a safety investigation should not be used against that person, in full respect of constitutional principles and national law.
- (26) Member States should have the option to limit the cases in which a decision of disclosure regarding information obtained during a safety investigation could be taken, without affecting the smooth functioning of the judicial system.
- (27) It is important for the prevention of accidents and incidents to communicate in the shortest time possible relevant information, including in particular reports and safety recommendations resulting from safety investigations.
- (28) The safety recommendations resulting from an accident or serious incident investigation or other sources, such as safety studies, should always be considered by the competent authority and, as appropriate, acted upon to ensure adequate prevention of accidents and incidents in civil aviation.
- (29) Progress on research into both the real-time tracking of aircraft and the possibility of accessing flight-recorder information without the flight recorder being physically present should be encouraged to improve the tools available to investigators for determining the causes of accidents and to enhance capabilities for preventing recurrent incidents. Such developments would be an important step forward in aviation safety.
- (30) Experience has shown that reliable lists of persons on board an aircraft are sometimes difficult to obtain in a rapid manner but also that it is important to establish a deadline within which an airline can be required to produce such a list. In addition, the data contained in such lists should be protected from unauthorised use or disclosure. Similarly, the availability of information about the dangerous goods on board an aircraft involved in an accident is necessary to minimise the risks to safety investigators at the site of the occurrence.
- (31) Following an air accident it is not easy to identify rapidly the appropriate contact person to inform of a passenger's presence on board. The possibility of designating a contact person should therefore be offered to passengers.
- (32) Assistance to the victims of air accidents and their relatives should be adequately specified.
- (33) The manner in which an accident and its consequences are dealt with by Member States and airlines is crucially important. In this respect, Member States should have an emergency plan providing for, in particular, airport emergency services and assistance to the victims of civil aviation accidents and their relatives. Airlines should also have a plan for assistance to the victims of civil aviation accidents and their relatives. Particular attention should be given to the support to and the communication with victims and their relatives, and their associations.
- (34) The rules on access to data, data processing and the protection of individuals laid down in relevant legal acts of the Union should be fully respected in the application of this Regulation.
- (35) Penalties should, in particular, allow for the sanctioning of any person who contrary to this Regulation releases information protected by this Regulation; obstructs the actions of a safety investigation authority by preventing the investigators from performing their duties or by refusing to provide useful recordings, material information and documents, hiding, altering or destroying them; or, having knowledge of any occurrence of an accident or serious incident, does not inform the relevant authorities thereof.

(36) Since the objective of this Regulation, namely the establishment of common rules in the field of civil aviation safety investigation cannot be sufficiently achieved by the Member States and can therefore, by reason of its Europe-wide scale and effects, be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality, as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve that objective.

(37) Directive 94/56/EC should therefore be repealed.

(38) The Ministerial Statement on Gibraltar Airport, agreed in Cordoba on 18 September 2006 during the first Ministerial meeting of the Forum of Dialogue on Gibraltar, will replace the Joint Declaration on Gibraltar Airport made in London on 2 December 1987, and full compliance with it will be deemed to constitute compliance with the 1987 Declaration,

HAVE ADOPTED THIS REGULATION:

Article 1

Subject matter

1. This Regulation aims to improve aviation safety by ensuring a high level of efficiency, expediency, and quality of European civil aviation safety investigations, the sole objective of which is the prevention of future accidents and incidents without apportioning blame or liability, including through the establishment of a European Network of Civil Aviation Safety Investigation Authorities. It also provides for rules concerning the timely availability of information relating to all persons and dangerous goods on board an aircraft involved in an accident. It also aims to improve the assistance to the victims of air accidents and their relatives.

2. The application of this Regulation to the airport of Gibraltar is understood to be without prejudice to the respective legal positions of the Kingdom of Spain and the United Kingdom of Great Britain and Northern Ireland with regard to the dispute over sovereignty over the territory in which the airport is situated.

Article 2

Definitions

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

(1) 'accident' means an occurrence associated with the operation of an aircraft which, in the case of a manned

aircraft, takes place between the time any person boards the aircraft with the intention of flight until such time as all such persons have disembarked, or in the case of an unmanned aircraft, takes place between the time the aircraft is ready to move with the purpose of flight until such time it comes to rest at the end of the flight and the primary propulsion system is shut down, in which:

(a) a person is fatally or seriously injured as a result of:

— being in the aircraft, or,

— direct contact with any part of the aircraft, including parts which have become detached from the aircraft, or,

— direct exposure to jet blast,

except when the injuries are from natural causes, self-inflicted or inflicted by other persons, or when the injuries are to stowaways hiding outside the areas normally available to the passengers and crew; or

(b) the aircraft sustains damage or structural failure which adversely affects the structural strength, performance or flight characteristics of the aircraft, and would normally require major repair or replacement of the affected component, except for engine failure or damage, when the damage is limited to a single engine, (including its cowlings or accessories), to propellers, wing tips, antennas, probes, vanes, tires, brakes, wheels, fairings, panels, landing gear doors, windcreens, the aircraft skin (such as small dents or puncture holes) or minor damages to main rotor blades, tail rotor blades, landing gear, and those resulting from hail or bird strike, (including holes in the radome); or

(c) the aircraft is missing or is completely inaccessible;

(2) 'accredited representative' means a person designated by a State, on the basis of his or her qualifications, for the purpose of participating in a safety investigation conducted by another State. An accredited representative designated by a Member State shall be from a safety investigation authority;

(3) 'adviser' means a person appointed by a State, on the basis of his or her qualifications, for the purpose of assisting its accredited representative in a safety investigation;

- (4) 'causes' means actions, omissions, events, conditions, or a combination thereof, which led to the accident or incident; the identification of causes does not imply the assignment of fault or the determination of administrative, civil or criminal liability;
- (5) 'fatal injury' means an injury which is sustained by a person in an accident and which results in his or her death within 30 days of the date of the accident;
- (6) 'flight recorder' means any type of recorder installed in the aircraft for the purpose of facilitating accident/incident safety investigations;
- (7) 'incident' means an occurrence, other than an accident, associated with the operation of an aircraft which affects or could affect the safety of operation;
- (8) 'international standards and recommended practices' means international standards and recommended practices for aircraft accident and incident investigation adopted in accordance with Article 37 of the Chicago Convention;
- (9) 'investigator-in-charge' means a person charged, on the basis of his or her qualifications, with responsibility for the organisation, conduct and control of a safety investigation;
- (10) 'operator' means any natural or legal person, operating or proposing to operate one or more aircraft;
- (11) 'person involved' means the owner, a member of the crew, the operator of the aircraft involved in an accident or serious incident; any person involved in the maintenance, design, manufacture of that aircraft or in the training of its crew; any person involved in the provision of air traffic control, flight information or aerodrome services, who have provided services for the aircraft; staff of the national civil aviation authority; or staff of EASA;
- (12) 'preliminary report' means the communication used for the prompt dissemination of data obtained during the early stages of the investigation;
- (13) 'relatives' means the immediate family and/or next of kin and/or other person closely connected with the victim of an accident, as defined under the national law of the victim;
- (14) 'safety investigation' means a process conducted by a safety investigation authority for the purpose of accident and incident prevention which includes the gathering and analysis of information, the drawing of conclusions, including the determination of cause(s) and/or contributing factors and, when appropriate, the making of safety recommendations;
- (15) 'safety recommendation' means a proposal of a safety investigation authority, based on information derived from a safety investigation or other sources such as safety studies, made with the intention of preventing accidents and incidents;
- (16) 'serious incident' means an incident involving circumstances indicating that there was a high probability of an accident and is associated with the operation of an aircraft, which in the case of a manned aircraft, takes place between the time any person boards the aircraft with the intention of flight until such time as all such persons have disembarked, or in the case of an unmanned aircraft, takes place between the time the aircraft is ready to move with the purpose of flight until such time it comes to rest at the end of the flight and the primary propulsion system is shut down. A list of examples of serious incidents is set out in the Annex;
- (17) 'serious injury' means an injury which is sustained by a person in an accident and which involves one of the following:
- (a) hospitalisation for more than 48 hours, commencing within 7 days from the date the injury was received;
 - (b) a fracture of any bone (except simple fractures of fingers, toes, or nose);
 - (c) lacerations which cause severe haemorrhage, nerve, muscle or tendon damage;
 - (d) injury to any internal organ;
 - (e) second or third degree burns, or any burns affecting more than 5 % of the body surface;

- (f) verified exposure to infectious substances or harmful radiation.

conducting a full safety investigation, either on its own or through agreements with other safety investigation authorities.

Article 3

Scope

1. This Regulation shall apply to safety investigations into accidents and serious incidents:

- (a) which have occurred in the territories of the Member States to which the Treaties apply, in accordance with the international obligations of the Member States;
- (b) involving aircraft registered in a Member State or operated by an undertaking established in a Member State, which have occurred outside the territories of the Member States to which the Treaties apply, when such investigations are not conducted by another State;
- (c) in which a Member State is entitled, according to international standards and recommended practices, to appoint an accredited representative to participate as a State of Registry, State of the Operator, State of Design, State of Manufacture or State providing information, facilities or experts at the request of the State conducting the investigation;
- (d) in which a Member State having a special interest by virtue of fatalities or serious injuries to its citizens is permitted by the State conducting the investigation to appoint an expert.

2. This Regulation shall also apply to issues pertaining to the timely availability of information relating to all persons and dangerous goods on board an aircraft involved in an accident and assistance to the victims of air accidents and their relatives.

3. This Regulation shall not apply to safety investigations into accidents and serious incidents which involve aircraft engaged in military, customs, police or similar services, except when the Member State concerned so determines, in accordance with Article 5(4) and national legislation.

Article 4

Civil Aviation Safety Investigation Authority

1. Each Member State shall ensure that safety investigations are conducted or supervised, without external interference, by a permanent national civil aviation safety investigation authority (safety investigation authority) capable of independently

2. The safety investigation authority shall be functionally independent in particular of aviation authorities responsible for airworthiness, certification, flight operation, maintenance, licensing, air traffic control or aerodrome operation and, in general, of any other party or entity the interests or missions of which could conflict with the task entrusted to the safety investigation authority or influence its objectivity.

3. The safety investigation authority shall, in the conduct of the safety investigation, neither seek nor take instructions from anybody and shall have unrestricted authority over the conduct of the safety investigations.

4. The activities entrusted to the safety investigation authority may be extended to the gathering and analysis of aviation safety related information, in particular for accident prevention purposes, in so far as these activities do not affect its independence and entail no responsibility in regulatory, administrative or standards matters.

5. In order to inform the public of the general aviation safety level, a safety review shall be published annually at national level. In this analysis, the sources of confidential information shall not be revealed.

6. The safety investigation authority shall be given by the respective Member State the means required to carry out its responsibilities independently and shall be able to obtain sufficient resources to do so. In particular:

- (a) the head of the safety investigation authority and/or, in the case of a multimodal authority, the head of its aviation branch shall have the experience and competence in civil aviation safety to fulfil his or her tasks in accordance with this Regulation and national law;
- (b) the investigators shall be afforded status giving them the necessary guarantees of independence;
- (c) the safety investigation authority shall comprise at least one available investigator able to perform the function of the investigator-in-charge in the event of a major air accident;
- (d) the safety investigation authority shall be allocated a budget that enables it to carry out its functions;

(e) the safety investigation authority shall have at its disposal, either directly or by means of the cooperation referred to in Article 6, or through arrangements with other national authorities or entities, qualified personnel and adequate facilities, including offices and hangars to enable the storage and examination of the aircraft, its contents and its wreckage.

Article 5

Obligation to investigate

1. Every accident or serious incident involving aircraft other than specified in Annex II to Regulation (EC) No 216/2008 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⁽¹⁾ shall be the subject of a safety investigation in the Member State in the territory of which the accident or serious incident occurred.

2. When an aircraft, other than specified in Annex II to Regulation (EC) No 216/2008, registered in a Member State is involved in an accident or serious incident the location of which cannot be definitely established as being in the territory of any State, a safety investigation shall be conducted by the safety investigation authority of the Member State of registration.

3. The extent of safety investigations referred to in paragraphs 1, 2 and 4 and the procedure to be followed in conducting such safety investigations shall be determined by the safety investigation authority, taking into account the lessons it expects to draw from such investigations for the improvement of aviation safety, including for those aircraft with a maximum take-off mass less than or equal to 2 250 kg.

4. Safety investigation authorities may decide to investigate incidents other than those referred to in paragraphs 1 and 2, as well as accidents or serious incidents to other types of aircraft, in accordance with the national legislation of the Member States, when they expect to draw safety lessons from them.

5. Safety investigations referred to in paragraphs 1, 2 and 4 shall in no case be concerned with apportioning blame or liability. They shall be independent of, separate from and without prejudice to any judicial or administrative proceedings to apportion blame or liability.

Article 6

Cooperation between safety investigation authorities

1. A safety investigation authority from one Member State may request the assistance of safety investigation authorities

from other Member States. When, following a request, a safety investigation authority agrees to provide assistance, such assistance shall, as far as possible, be provided free of charge.

2. A safety investigation authority may delegate the task of conducting an investigation into an accident or serious incident to another safety investigation authority subject to mutual agreement and shall facilitate the investigation process by that other authority.

Article 7

European Network of Civil Aviation Safety Investigation Authorities

1. Member States shall ensure that their safety investigation authorities establish between them a European Network of Civil Aviation Safety Investigation Authorities (the Network), composed of the heads of the safety investigation authorities in each of the Member States and/or, in the case of a multimodal authority, the head of its aviation branch, or their representatives, including a chairman chosen among these for a period of 3 years.

In close consultation with the members of the Network, the chairman shall draw up the annual work programme of the Network, which shall comply with the objectives and meet the responsibilities set out in paragraphs 2 and 3 respectively. The Commission shall transmit the work programme to the European Parliament and the Council. The chairman shall also draw up the agenda for the meetings of the Network.

2. The Network shall seek to further improve the quality of investigations conducted by safety investigation authorities and to strengthen their independence. In particular, it shall encourage high standards in investigation methods and investigator training.

3. In order to achieve the objectives set out in paragraph 2, the Network shall be responsible, in particular, for:

(a) preparing suggestions to and advising Union institutions on all aspects of development and implementation of Union policies and rules relating to safety investigations and the prevention of accidents and incidents;

(b) promoting the sharing of information useful for the improvement of aviation safety and actively promoting structured cooperation between safety investigation authorities, the Commission, EASA and national civil aviation authorities;

⁽¹⁾ OJ L 79, 19.3.2008, p. 1.

- (c) coordinating and organising, where appropriate, 'peer reviews', relevant training activities and skills development programmes for investigators;
- (d) promoting best safety investigation practices with a view to developing a common Union safety investigation methodology and drawing up an inventory of such practices;
- (e) strengthening the investigating capacities of the safety investigation authorities, in particular by developing and managing a framework for sharing resources;
- (f) providing, at the request of the safety investigation authorities for the purpose of the application of Article 6, appropriate assistance, including, but not limited to, a list of investigators, equipment and capabilities available in other Member States for potential use by the authority conducting an investigation;
- (g) having access to information contained in the database referred to in Article 18, and analyse the safety recommendations therein with a view to identifying important safety recommendations of Union-wide relevance.

4. The Commission shall inform the European Parliament and the Council of the activities of the Network on a regular basis. The European Parliament shall also be informed whenever the Council or the Commission submits requests to the Network.

5. The members of the Network shall neither seek nor accept instructions from any body which could affect the independent status of safety investigations.

6. EASA shall, as appropriate, be invited as an observer to the meetings of the Network. The Network may also invite observers from safety investigation authorities of third countries and other relevant experts to attend its meetings.

7. The Commission shall be closely associated with the work of the Network and shall receive the necessary support from the Network on relevant aspects related to the development of the Union civil aviation accident investigation and prevention policy and regulation. The Commission shall provide the Network with the necessary support, including but not limited to assistance for the preparation and organisation of its meetings, as well as for the publication of an annual report covering the activities of the Network. The Commission shall transmit the annual report to the European Parliament and the Council.

Article 8

Participation of EASA and national civil aviation authorities in safety investigations

1. Safety investigation authorities shall, provided that the requirement of no conflict of interest is satisfied, invite EASA and national civil aviation authorities of the Member States concerned, within the scope of their respective competence, to appoint a representative to participate:

- (a) as an adviser to the investigator-in-charge in any safety investigation under Article 5(1) and (2), conducted in the territory of a Member State or in the location referred to in Article 5(2) under the control and at the discretion of the investigator-in-charge;
- (b) as an adviser appointed under this Regulation to assist accredited representative(s) of the Member States in any safety investigation conducted in a third country to which a safety investigation authority is invited to designate an accredited representative in accordance with international standards and recommended practices for aircraft accident and incident investigation, under the supervision of the accredited representative.

2. The participants referred to in paragraph 1 shall be entitled, in particular to:

- (a) visit the scene of the accident and examine the wreckage;
- (b) suggest areas of questioning and obtain witness information;
- (c) receive copies of all pertinent documents and obtain relevant factual information;
- (d) participate in the read-outs of recorded media, except cockpit voice or image recorders;
- (e) participate in off-scene investigative activities such as component examinations, tests and simulations, technical briefings and investigation progress meetings, except when related to the determination of the causes or the formulation of safety recommendations.

3. EASA and the national civil aviation authorities shall support the investigation in which they participate by supplying the requested information, advisers and equipment to the safety investigation authority in charge.

*Article 9***Obligation to notify accidents and serious incidents**

1. Any person involved who has knowledge of the occurrence of an accident or serious incident shall notify without delay the competent safety investigation authority of the State of Occurrence thereof.

2. The safety investigation authority shall notify without delay the Commission, EASA, the International Civil Aviation Organisation (ICAO), the Member States and third countries concerned in accordance with the international standards and recommended practices of the occurrence of all accidents and serious incidents of which it has been notified.

*Article 10***Participation of the Member States in safety investigations**

1. Upon receipt of the notification of the occurrence of an accident or serious incident from another Member State or third country, the Member States which are the State of Registry, the State of the Operator, the State of Design and the State of Manufacture shall, as soon as possible, inform the Member State or third country in the territory of which the accident or serious incident occurred whether they intend to appoint an accredited representative in accordance with the international standards and recommended practices. Where such an accredited representative is appointed, his or her name and contact details shall also be provided, as well as the expected date of arrival if the accredited representative intends to travel to the country which sent the notification.

2. Accredited representatives for the State of Design shall be appointed by the safety investigation authority of the Member State in the territory of which the principal place of business of the certificate holder for the type design of the aircraft or power plant is located.

*Article 11***Status of the safety investigators**

1. Upon his or her appointment by a safety investigation authority and notwithstanding any judicial investigation, the investigator-in-charge shall have the authority to take the necessary measures to satisfy the requirements of the safety investigation.

2. Notwithstanding any confidentiality obligations under the legal acts of the Union or national law, the investigator-in-charge shall in particular be entitled to:

(a) have immediate unrestricted and unhampered access to the site of the accident or incident as well as to the aircraft, its contents or its wreckage;

(b) ensure an immediate listing of evidence and controlled removal of debris, or components for examination or analysis purposes;

(c) have immediate access to and control over the flight recorders, their contents and any other relevant recordings;

(d) request, and contribute to, a complete autopsy examination of the bodies of the fatally injured persons and to have immediate access to the results of such examinations or of tests made on samples taken;

(e) request the medical examination of the people involved in the operation of the aircraft or request tests to be carried out on samples taken from such people and to have immediate access to the results of such examinations or tests;

(f) to call and examine witnesses and to require them to furnish or produce information or evidence relevant to the safety investigation;

(g) have free access to any relevant information or records held by the owner, the certificate holder of the type design, the responsible maintenance organisation, the training organisation, the operator or the manufacturer of the aircraft, the authorities responsible for civil aviation, EASA and air navigation service providers or aerodrome operators.

3. The investigator-in-charge shall extend to his or her experts and advisers, as well as to the accredited representatives, their experts and advisers, the entitlements listed in paragraph 2, to the extent necessary to enable them to participate effectively in the safety investigation. Those entitlements are without prejudice to the rights of the investigators and experts designated by the authority in charge of the judicial investigation.

4. Any person participating in safety investigations shall perform his or her duties independently and shall neither seek, nor accept instructions from anybody, other than the investigator-in-charge or the accredited representative.

*Article 12***Coordination of investigations**

1. When a judicial investigation is also instituted, the investigator-in-charge shall be notified thereof. In such a case, the investigator-in-charge shall ensure traceability and retain custody of flight recorders and any physical evidence. The judicial authority may appoint an official from that authority to accompany the flight recorders or physical evidence to the place of the read-out or treatment. Where examination or analysis of such physical evidence may modify, alter or destroy it, prior agreement from the judicial authorities will be required, without prejudice to national law. Where such agreement is not obtained according to the advance arrangements referred to in paragraph 3 within a reasonable time and not later than 2 weeks following the request, it shall not prevent the investigator-in-charge from conducting the examination or analysis. Where the judicial authority is entitled to seize any evidence, the investigator-in-charge shall have immediate and unlimited access to and use of such evidence.

2. Where, in the course of the safety investigation, it becomes known or it is suspected that an act of unlawful interference as provided for under national law, such as national law on accident investigations, was involved in the accident or serious incident, the investigator-in-charge shall immediately inform the competent authorities thereof. Subject to Article 14, the relevant information collected in the safety investigation shall be shared with those authorities immediately and upon request, relevant material may also be transferred to those authorities. The sharing of that information and that material shall be without prejudice to the right of the safety investigation authority to continue the safety investigation, in coordination with the authorities to which the control of the site may have been transferred.

3. Member States shall ensure that safety investigation authorities, on the one hand, and other authorities likely to be involved in the activities related to the safety investigation, such as the judicial, civil aviation, search and rescue authorities, on the other hand, cooperate with each other through advance arrangements.

Those arrangements shall respect the independence of the safety investigation authority and allow the technical investigation to be conducted diligently and efficiently. Among others, the advance arrangements shall cover the following subjects:

- (a) access to the site of the accident;
- (b) preservation of and access to evidence;
- (c) initial and ongoing debriefings of the status of each process;

(d) exchange of information;

(e) appropriate use of safety information;

(f) resolution of conflicts.

Member States shall communicate to the Commission those arrangements, which shall transmit them to the chairman of the Network, the European Parliament and the Council for information.

*Article 13***Preservation of evidence**

1. The Member State in the territory of which the accident or serious incident occurred shall be responsible for ensuring safe treatment of all evidence and for taking all reasonable measures to protect such evidence and for maintaining safe custody of the aircraft, its contents and its wreckage for such period as may be necessary for the purpose of a safety investigation. Protection of evidence shall include the preservation, by photographic or other means, of any evidence which might be removed, effaced, lost or destroyed. Safe custody shall include protection against further damage, access by unauthorised persons, pilfering and deterioration.

2. Pending the arrival of safety investigators, no person shall modify the state of the site of the accident, take any samples therefrom, undertake any movement of or sampling from the aircraft, its contents or its wreckage, move or remove it, except where such action may be required for safety reasons or to bring assistance to injured persons, or under the express permission of the authorities in control of the site and, when possible, in consultation with the safety investigation authority.

3. Any person involved shall take all necessary steps to preserve documents, material and recordings in relation to the event, in particular so as to prevent erasure of recordings of conversations and alarms after the flight.

*Article 14***Protection of sensitive safety information**

1. The following records shall not be made available or used for purposes other than safety investigation:

- (a) all statements taken from persons by the safety investigation authority in the course of the safety investigation;
- (b) records revealing the identity of persons who have given evidence in the context of the safety investigation;

- (c) information collected by the safety investigation authority which is of a particularly sensitive and personal nature, including information concerning the health of individuals;
- (d) material subsequently produced during the course of the investigation such as notes, drafts, opinions written by the investigators, opinions expressed in the analysis of information, including flight recorder information;
- (e) information and evidence provided by investigators from other Member States or third countries in accordance with the international standards and recommended practices, where so requested by their safety investigation authority;
- (f) drafts of preliminary or final reports or interim statements;
- (g) cockpit voice and image recordings and their transcripts, as well as voice recordings inside air traffic control units, ensuring also that information not relevant to the safety investigation, particularly information with a bearing on personal privacy, shall be appropriately protected, without prejudice to paragraph 3.

2. The following records shall not be made available or used for purposes other than safety investigation, or other purposes aiming at the improvement of aviation safety:

- (a) all communications between persons having been involved in the operation of the aircraft;
- (b) written or electronic recordings and transcriptions of recordings from air traffic control units, including reports and results made for internal purposes;
- (c) covering letters for the transmission of safety recommendations from the safety investigation authority to the addressee, where so requested by the safety investigation authority issuing the recommendation;
- (d) occurrence reports filed under Directive 2003/42/EC.

Flight data recorder recordings shall not be made available or used for purposes other than those of the safety investigation, airworthiness or maintenance purposes, except when such records are de-identified or disclosed under secure procedures.

3. Notwithstanding paragraphs 1 and 2, the administration of justice or the authority competent to decide on the disclosure of records according to national law may decide that the benefits of the disclosure of the records referred to in paragraphs 1 and 2 for any other purposes permitted by law outweigh the adverse domestic and international impact that such action may have on that or any future safety investigation. Member States may decide to limit the cases in which such a decision of disclosure may be taken, while respecting the legal acts of the Union.

The communication of records referred to in paragraphs 1 and 2 to another Member State for purposes other than safety investigation and, in addition as regards paragraph 2, for purposes other than those aiming at the improvement of aviation safety may be granted insofar as the national law of the communicating Member State permits. Processing or disclosure of records received through such communication by the authorities of the receiving Member State shall be permitted solely after prior consultation of the communicating Member State and subject to the national law of the receiving Member State.

4. Only the data strictly necessary for the purposes referred to in paragraph 3 may be disclosed.

Article 15

Communication of information

1. The staff of the safety investigation authority in charge, or any other person called upon to participate in or contribute to the safety investigation shall be bound by applicable rules of professional secrecy, including as regards the anonymity of those involved in an accident or incident, under the applicable legislation.

2. Without prejudice to the obligations set out in Articles 16 and 17, the safety investigation authority in charge shall communicate the information which it deems relevant to the prevention of an accident or serious incident, to persons responsible for aircraft or aircraft equipment manufacture or maintenance, and to individuals or legal entities responsible for operating aircraft or for the training of personnel.

3. Without prejudice to the obligations set out in Articles 16 and 17, the safety investigation authority in charge and the accredited representative(s) referred to in Article 8 shall release to EASA and national civil aviation authorities relevant factual information obtained during the safety investigation, except information referred to in Article 14(1) or causing a conflict of interest. The information received by EASA and the national civil aviation authorities shall be protected in accordance with Article 14 and applicable legal acts of the Union and national legislation.

4. The safety investigation authority in charge shall be authorised to inform victims and their relatives or their associations or make public any information on the factual observations, the proceedings of the safety investigation, possibly preliminary reports or conclusions and/or safety recommendations, provided that it does not compromise the objectives of the safety investigation and fully complies with applicable legislation on the protection of personal data.

5. Before making public the information referred to in paragraph 4, the safety investigation authority in charge shall forward that information to the victims and their relatives or their associations in a way which does not compromise the objectives of the safety investigation.

Article 16

Investigation report

1. Each safety investigation shall be concluded with a report in a form appropriate to the type and seriousness of the accident or serious incident. The report shall state that the sole objective of the safety investigation is the prevention of future accidents and incidents without apportioning blame or liability. The report shall contain, where appropriate, safety recommendations.

2. The report shall protect the anonymity of any individual involved in the accident or serious incident.

3. Where safety investigations give rise to reports before the completion of the investigation, prior to their publication the safety investigation authority may solicit comments from the authorities concerned, including EASA, and through them the certificate holder for the design, the manufacturer and the operator concerned. They shall be bound by applicable rules of professional secrecy with regard to the contents of the consultation.

4. Before publication of the final report, the safety investigation authority shall solicit comments from the authorities concerned, including EASA, and, through them the certificate holder for the design, the manufacturer and the operator concerned, who shall be bound by applicable rules of professional secrecy with regard to the contents of the consultation. In soliciting such comments, the safety investigation authority shall follow the international standards and recommended practices.

5. The information covered by Article 14 shall be included in a report only when relevant to the analysis of the accident or serious incident. Information or parts of the information not relevant to the analysis shall not be disclosed.

6. The safety investigation authority shall make public the final report in the shortest possible time and if possible within 12 months of the date of the accident or serious incident.

7. If the final report cannot be made public within 12 months, the safety investigation authority shall release an interim statement at least at each anniversary of the accident or serious incident, detailing the progress of the investigation and any safety issues raised.

8. The safety investigation authority shall forward a copy of the final report and the safety recommendations as soon as possible to the:

- (a) safety investigation authorities and civil aviation authorities of the States concerned, and the ICAO, according to the international standards and recommended practices;
- (b) addressees of safety recommendations contained in the report;
- (c) Commission and EASA, except where the report is publicly available through electronic means, in which case the safety investigation authority shall only notify them accordingly.

Article 17

Safety recommendations

1. At any stage of the safety investigation, the safety investigation authority shall recommend in a dated transmittal letter, after appropriate consultation with relevant parties, to the authorities concerned, including those in other Member States or third countries, any preventive action that it considers necessary to be taken promptly to enhance aviation safety.

2. A safety investigation authority may also issue safety recommendations on the basis of studies or analysis of a series of investigations or any other activities conducted in accordance with Article 4(4).

3. A safety recommendation shall in no case create a presumption of blame or liability for an accident, serious incident or incident.

*Article 18***Follow-up to safety recommendations and safety recommendations database**

1. The addressee of a safety recommendation shall acknowledge receipt of the transmittal letter and inform the safety investigation authority which issued the recommendation within 90 days of the receipt of that letter, of the actions taken or under consideration, and where appropriate, of the time necessary for their completion and where no action is taken, the reasons therefor.

2. Within 60 days of the receipt of the reply, the safety investigation authority shall inform the addressee whether or not it considers the reply adequate and give justification when it disagrees with the decision to take no action.

3. Each safety investigation authority shall implement procedures to record the responses to the safety recommendations it issued.

4. Each entity receiving a safety recommendation, including the authorities responsible for civil aviation safety at the Member State and Union level, shall implement procedures to monitor the progress of the action taken in response to the safety recommendations received.

5. Safety investigation authorities shall record in the central repository established under Commission Regulation (EC) No 1321/2007 of 12 November 2007 laying down implementing rules for the integration into a central repository of information on civil aviation occurrences exchanged in accordance with Directive 2003/42/EC⁽¹⁾ all safety recommendations issued in accordance with Article 17(1) and (2) as well as the responses thereto. Safety investigation authorities shall similarly record in the central repository all safety recommendations received from third countries.

*Article 19***Occurrence reporting**

1. EASA and the competent authorities of the Member States shall in collaboration participate regularly in the exchange and analysis of information covered by Directive 2003/42/EC. This shall cover online access by designated persons to information contained in the central repository established under Regulation (EC) No 1321/2007, including to information which directly identifies the aircraft subject to an occurrence report such as, where available, its serial and registration numbers. Such access shall not cover information that identifies the operator subject to that occurrence report.

2. EASA and the authorities of the Member States referred to in paragraph 1 shall ensure the confidentiality of such information in accordance with applicable legislation, and shall limit its use to what is strictly necessary to discharge their safety related obligations. In this respect, that information shall be used only for analysis of safety trends which can form the basis for anonymous safety recommendations or airworthiness directives without apportioning blame or liability.

*Article 20***Information on persons and dangerous goods on board**

1. Union airlines operating flights arriving to or departing from, and third country airlines operating flights departing from an airport located in the territories of the Member States to which the Treaties apply, shall implement procedures which allow for the production:

- (a) as soon as possible, and at the latest within two hours of the notification of the occurrence of an accident to the aircraft, of a validated list, based on the best available information, of all the persons on board; and
- (b) immediately after the notification of the occurrence of an accident to the aircraft, of the list of the dangerous goods on board.

2. The lists referred to in paragraph 1 shall be made available to the safety investigation authority in charge, the authority designated by each Member State to liaise with the relatives of the persons on board and, where necessary, to medical units which may need the information for the treatment of victims.

3. In order to allow passengers' relatives to obtain information quickly concerning the presence of their relatives on board an aircraft involved in an accident, airlines shall offer travellers the opportunity to give the name and contact details of a person to be contacted in the event of an accident. This information may be used by the airlines only in the event of an accident and shall not be communicated to third parties or used for commercial purposes.

4. The name of a person on board shall not be made publicly available before the relatives of that person have been informed by the relevant authorities. The list referred to in paragraph 1(a) shall be kept confidential in accordance with the legal acts of the Union and national law and the name of each person appearing in that list shall, subject thereto, only be made publicly available in so far as the relatives of the respective persons on board have not objected.

⁽¹⁾ OJ L 294, 13.11.2007, p. 3.

*Article 21***Assistance to the victims of air accidents and their relatives**

1. In order to ensure a more comprehensive and harmonised response to accidents at EU level, each Member State shall establish a civil aviation accident emergency plan at national level. Such an emergency plan shall also cover assistance to the victims of civil aviation accidents and their relatives.

2. Member States shall ensure that all airlines established in their territory have a plan for the assistance to the victims of civil aviation accidents and their relatives. Those plans must take particular account of psychological support for victims of civil aviation accidents and their relatives and allow the airline to react to a major accident. The Member States shall audit the assistance plans of the airlines established in their territory. Member States shall also encourage third-country airlines which operate in the Union to similarly adopt a plan for the assistance of victims of civil aviation accidents and their relatives.

3. When an accident occurs, the Member State in charge of the investigation, the Member State in which the airline, the aircraft of which was involved in the accident is established, or the Member State which had a large number of its nationals on board the aircraft involved in the accident, shall provide for the appointment of a reference person as a point of contact and information for the victims and their relatives.

4. A Member State or a third country, which, by virtue of fatalities or serious injuries to its citizens, has a special interest in an accident which has occurred in the territories of the Member States to which the Treaties apply, shall be entitled to appoint an expert who shall have the right to:

- (a) visit the scene of the accident;
- (b) have access to the relevant factual information, which is approved for public release by the safety investigation authority in charge, and information on the progress of the investigation;
- (c) receive a copy of the final report.

5. An expert appointed in accordance with paragraph 4 may assist, subject to applicable legislation in force, in the identification of the victims and attend meetings with the survivors of its State.

6. In accordance with Article 2(1) of Regulation (EC) No 785/2004 of the European Parliament and of the Council of 21 April 2004 on insurance requirements for air carriers and aircraft operators⁽¹⁾, also third country air carriers shall fulfil the insurance obligations set out in that Regulation.

⁽¹⁾ OJ L 138, 30.4.2004, p. 1.

*Article 22***Access to documents and protection of personal data**

1. This Regulation shall apply without prejudice to Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents⁽²⁾.

2. This Regulation shall apply in accordance with Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data⁽³⁾ and Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data⁽⁴⁾.

*Article 23***Penalties**

Member States shall lay down the rules on penalties applicable to infringements of this Regulation. The penalties provided for shall be effective, proportionate and dissuasive.

*Article 24***Amendment of the Regulation**

This Regulation shall be subject to a review no later than 3 December 2014. Where the Commission considers that this Regulation should be amended, it shall request the Network to issue a preliminary opinion, which shall also be forwarded to the European Parliament, the Council, the Member States and EASA.

*Article 25***Repeals**

Directive 94/56/EC is hereby repealed.

*Article 26***Entry into force**

This Regulation shall enter into force on the 20th day following its publication in the *Official Journal of the European Union*.

⁽²⁾ OJ L 145, 31.5.2001, p. 43.

⁽³⁾ OJ L 281, 23.11.1995, p. 31.

⁽⁴⁾ OJ L 8, 12.1.2001, p. 1.

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

Done at Strasbourg, 20 October 2010.

For the European Parliament

The President

J. BUZEK

For the Council

The President

O. CHASTEL

ANNEX

List of examples of serious incidents

The incidents listed are typical examples of incidents that are likely to be serious incidents. The list is not exhaustive and only serves as guidance with respect to the definition of 'serious incident':

- a near collision requiring an avoidance manoeuvre to avoid a collision or an unsafe situation or when an avoidance action would have been appropriate,
 - controlled flight into terrain only marginally avoided,
 - aborted take-offs on a closed or engaged runway, on a taxiway, excluding authorised operations by helicopters, or from an unassigned runway,
 - take-offs from a closed or engaged runway, from a taxiway, excluding authorised operations by helicopters, or from an unassigned runway,
 - landings or attempted landings on a closed or engaged runway, on a taxiway, excluding authorised operations by helicopters, or from an unassigned runway,
 - gross failures to achieve predicted performance during take-off or initial climb,
 - fires and smoke in the passenger compartment, in cargo compartments or engine fires, even though such fires were extinguished by the use of extinguishing agents,
 - events requiring the emergency use of oxygen by the flight crew,
 - aircraft structural failure or engine disintegration, including uncontained turbine engine failures, not classified as an accident,
 - multiple malfunctions of one or more aircraft systems seriously affecting the operation of the aircraft,
 - flight crew incapacitation in flight,
 - fuel quantity requiring the declaration of an emergency by the pilot,
 - runway incursions classified with severity A according to the Manual on the Prevention of Runway Incursions (ICAO Doc 9870) which contains information on the severity classifications,
 - take-off or landing incidents. Incidents such as undershooting, overrunning or running off the side of runways,
 - system failures, weather phenomena, operation outside the approved flight envelope or other occurrences which could have caused difficulties controlling the aircraft,
 - failure of more than one system in a redundancy system mandatory for flight guidance and navigation.
-

II

(Non-legislative acts)

INTERNATIONAL AGREEMENTS

COUNCIL DECISION

of 27 September 2010

on the position to be taken by the European Union in the Joint CARIFORUM-EU Council established by the Economic Partnership Agreement between the CARIFORUM States, of the one part, and the European Community and its Member States, of the other part, with regard to the amendment of Annex IV to the Agreement by incorporating the commitments of the Commonwealth of The Bahamas

(2010/669/EU)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular the first subparagraph of Article 207(4), in conjunction with Article 218(9) thereof,

Having regard to the proposal from the European Commission,

Whereas:

- (1) The Economic Partnership Agreement between the CARIFORUM States, of the one part, and the European Community and its Member States, of the other part ⁽¹⁾ (the Agreement), was signed on 15 October 2008, and has been provisionally applied since 29 December 2008.
- (2) Article 63 of the Agreement provides that the negotiation of the schedule of commitments in services and investment for the Commonwealth of The Bahamas be finalised no later than six months after the signature of the Agreement.

- (3) Such negotiations were successfully concluded on 25 January 2010.

- (4) The results of such negotiations should be set out in a Decision of the Joint CARIFORUM-EU Council established by the Agreement.

- (5) The Union should therefore take the position in the Joint CARIFORUM-EU Council as set out in the draft decision attached to this Decision,

HAS ADOPTED THIS DECISION:

Sole Article

The position to be taken by the European Union in the Joint CARIFORUM-EU Council established by the Economic Partnership Agreement between the CARIFORUM States, of the one part, and the European Community and its Member States, of the other part, with regard to the amendment of Annex IV to the Agreement shall be based on the draft decision of the Joint CARIFORUM-EU Council attached to this Decision. However, formal changes to that draft decision not affecting its substance may be agreed without requiring this Decision to be amended.

Done at Brussels, 27 September 2010.

*For the Council**The President*

K. PEETERS

⁽¹⁾ OJ L 289, 30.10.2008, p. 3.

ANNEX

DRAFT

DECISION No .../2010 OF THE JOINT CARIFORUM-EU COUNCIL

of

amending Annex IV to the Economic Partnership Agreement between the CARIFORUM States, of the one part, and the European Community and its Member States, of the other part by incorporating the commitments of the Commonwealth of The Bahamas

THE JOINT CARIFORUM-EU COUNCIL,

Having regard to the Economic Partnership Agreement between the CARIFORUM States, of the one part, and the European Community and its Member States, of the other part (hereinafter referred to as the Agreement), signed in Bridgetown, Barbados on 15 October 2008, and in particular Article 229(1) and the second sentence of Article 229(4) thereof,

Whereas:

- (1) The Agreement was signed on 15 October 2008, and has been provisionally applied since 29 December 2008.
- (2) Article 63 of the Agreement provides that the negotiation of the schedule of commitments in services and investment for the Commonwealth of The Bahamas be finalised no later than six months after the signature of the Agreement.
- (3) Such negotiations were successfully concluded on 25 January 2010, and it has been agreed that the schedule of commitments of The Bahamas should be incorporated into the Agreement by means of a Decision of the Joint CARIFORUM-EU Council.
- (4) It is therefore appropriate to amend Annexes IV E and IV F of the Agreement in order to introduce the commitments in services and investment for the Commonwealth of The Bahamas, to delete the exclusion of The Bahamas in point 3 of Annex IV E and in point 6 of Annex IV F, and to provide for the provisional application of those amendments until the entry into force of the Agreement,

HAS ADOPTED THIS DECISION:

Article 1

1. Annex IV of the Agreement is hereby amended as follows:
 - (a) Annex IV E is amended as follows:
 - (i) point 3 is replaced by the following:

‘3. This Schedule includes all CARIFORUM States, except Haiti, unless otherwise stated. Subject to

reservations, limitations or exclusions applying to all sectors, sub-sectors of A, B, C and D that are not listed are open in all Signatory CARIFORUM States without limitations on market access or national treatment. CARIFORUM States that are not listed in sub-sectors included in this list are, subject to reservations, limitations or exclusions otherwise applying to all sectors, open without limitations on market access or national treatment in these sub-sectors. All reservations, limitations or exclusions included in this Annex applicable to the CARIFORUM States and indicated as “CAF” therein are not applicable to The Bahamas.’;

- (ii) after the Schedule, the Appendix to Annex IV E — The Bahamas, as set out in Annex I to this Decision, is hereby added;

- (b) Annex IV F is amended as follows:

- (i) point 6 is replaced by the following:

‘6. This Schedule includes all CARIFORUM States, except Haiti, unless otherwise stated.’;

- (ii) after the Schedule, the Appendix to Annex IV F — The Bahamas, as set out in Annex II to this Decision, is hereby added.

2. All other provisions contained in points 1 to 9 of Annex IV E, and in points 1 to 11 of Annex IV F are applicable to The Bahamas.

Article 2

1. This Decision shall enter into force on the day of its adoption.
2. From the entry into force of this Decision and until the entry into force of the Agreement, the amendments to Annex IV E and IV F shall be provisionally applicable.

Done by written procedure pursuant to Article 11(3) of the Annex I to the Decision of 17 May 2010, No 1/2010 of the Joint CARIFORUM-EU Council.

ANNEX I

'Appendix to Annex IV E — The Bahamas

| Sector or sub-sector | Description of reservations, limitations or exclusions |
|---|--|
| ALL SECTORS | <p>Exchange control</p> <ol style="list-style-type: none"> Residents need to obtain approval by the Central Bank to operate foreign currency or Bahamian dollar accounts and to acquire foreign currency assets, pursuant the Exchange Control Regulations Act and Finance Regulations. Non-residents have a right to operate foreign currency accounts. Resident juridical persons may receive approval to operate foreign currency accounts to cover expenses directly incurred in foreign currency. Both non-resident juridical persons and foreign nationals may be approved to operate Bahamian dollar accounts to satisfy recurring expenses in Bahamian dollars. All applications for the above-mentioned exchange control approvals must satisfy the requirements of The Bahamas' National Investment Policy in terms of the sectors and activities in which foreign investments are permitted. For the purposes of exchange controls, a "resident" is either a citizen of The Bahamas, or a licensed juridical person, either foreign or domestic-owned, that is permitted to engage in transactions with other residents. A non-resident is either a foreign national or an juridical person that is not permitted to do business with residents, irrespective of whether a physical presence in The Bahamas is maintained. <p>Land holding</p> <p>Foreign persons and juridical persons wishing to acquire real estate for commercial purposes must apply for a permit from the Investments Board. Foreign persons or juridical persons intending to acquire more than two contiguous acres of land for any purpose must obtain a permit from the Investments Board.</p> <p>Investment</p> <p>The Bahamas prohibits the exploration, exploitation and processing of radioactive materials, the recycling of nuclear fuel, the generation of nuclear energy, the transportation and storage of nuclear waste, the use and processing of nuclear fuel and regulation of its application for other purposes, as well as the production of heavy water.</p> <p>Investments by foreign persons, with a minimum capitalization of USD 250 000, are approved by the National Economic Council (NEC) under terms of the National Investment Policy (NIP) on the basis of an economic needs and benefits test. Major criteria under the NIP include employment generation, skills development, regional development, local needs and environmental impacts. Joint ventures between Bahamian and foreign investors are also subject to NEC approval under the NIP on the basis of the economic needs and benefits tests outlined above.</p> |
| A. AGRICULTURE, HUNTING, FORESTRY | |
| Agriculture and hunting (ISIC rev 3.1: 01) | None |
| Forestry and logging (ISIC rev 3.1: 02) | None |
| B. FISHING (ISIC rev.3.1: 05) | All vessels engaged in fishing within the Exclusive Economic Zone must be solely owned by Bahamian natural or juridical persons as indicated in the Fisheries Resource (Jurisdiction and Conservation) Act. |
| C. MINING AND QUARRYING | <p>Certain activities in small scale mining may be reserved to Bahamian nationals.</p> <p>The Bahamas reserves the right to grant approval for private or public exploration, mining, processing, importation and exportation of minerals.</p> <p>The Bahamas reserves the rights in the exclusive economic zone, continental plateau and the seabed for prospecting and exploration.</p> |

| Sector or sub-sector | Description of reservations, limitations or exclusions |
|--|---|
| Mining of coal and lignite; extraction of peat (ISIC rev 3.1: 10) | None |
| Extraction of crude petroleum and natural gas (ISIC rev 3.1: 11) | None |
| Mining of metal ores (ISIC rev 3.1: 13) | None |
| Other mining and quarrying (ISIC rev 3.1: 14) | None |
| D. MANUFACTURING | |
| Manufacture of food products and beverages (ISIC rev 3.1: 15) | None |
| Manufacture of wood and of products of wood and cork, except furniture; manufacture of articles of straw and plaiting materials (ISIC rev 3.1: 20) | The Bahamas reserves the right to adopt or maintain restrictions on small scale investment in this sector. |
| Manufacture of refined petroleum products (ISIC rev 3.1: 232) | None |
| Manufacture of chemicals and chemical products other than explosives (ISIC rev 3.1: 24 excluding manufacture of explosives) | None |
| Manufacture of machinery and equipment (ISIC rev 3.1:29) | The Bahamas reserves the right to adopt or maintain measures on investment in the production of weapons and ammunition. |
| Manufacture of furniture; manufacturing n.e.c. (ISIC rev 3.1: 36) | The Bahamas reserves the right to adopt or maintain restrictions on small scale investments in this schedule. |
| E. PRODUCTION, TRANSMISSION AND DISTRIBUTION ON OWN ACCOUNT OF ELECTRICITY, GAS, STEAM AND HOT WATER (excluding Nuclear Based Electricity Generation) | |
| Production of electricity; transmission and distribution of electricity on own account (part of ISIC rev 3.1: 4010) ⁽¹⁾ | Unbound |
| Manufacture of gas; distribution of gaseous fuels through mains on own account (part of ISIC rev 3.1: 4020) ⁽²⁾ | Unbound |

| Sector or sub-sector | Description of reservations, limitations or exclusions |
|--|--|
| Production of steam and hot water; distribution of steam and hot water on own account (part of ISIC rev 3.1: 4030) ⁽³⁾ | Unbound |

⁽¹⁾ Does not include operation of electricity transmission and distribution systems on a fee or contract basis, which are to be found in ENERGY SERVICES.

⁽²⁾ Does not include transportation of natural gas and gaseous fuels via pipelines, transmission and distribution of gas on a fee or contract basis and sales of natural gas and gaseous fuels, which are to be found in ENERGY SERVICES.

⁽³⁾ Does not include transmission and distribution of steam and hot water on a fee or contract basis and sales of steam and hot water, which are to be found in ENERGY SERVICES.'

ANNEX II

'Appendix to Annex IV F — The Bahamas

| Sector or sub-sector | Limitations on market access | Limitations on national treatment |
|----------------------------------|---|---|
| A. HORIZONTAL COMMITMENTS | | |
| | <p>All modes: Exchange control</p> <ol style="list-style-type: none"> 1. Residents need to obtain approval by the Central Bank to operate foreign currency or Bahamian dollar accounts and to acquire foreign currency assets, pursuant the Exchange Control Regulations Act and Finance Regulations. Non-residents have a right to operate foreign currency accounts. 2. Resident juridical persons may receive approval to operate foreign currency accounts to cover expenses directly incurred in foreign currency. Both non-resident juridical persons and foreign nationals may be approved to operate Bahamian dollar accounts to satisfy recurring expenses in Bahamian dollars. 3. All applications for the above-mentioned exchange control approvals must satisfy the requirements of The Bahamas' National Investment Policy in terms of the sectors and activities in which foreign investments are permitted. 4. For the purposes of exchange controls, a "resident" is either a citizen of The Bahamas, or a licensed juridical person, either foreign or domestic-owned, that is permitted to engage in transactions with other residents. A non-resident is either a foreign national or a juridical person that is not permitted to do business with residents, irrespective of whether a physical presence in The Bahamas is maintained. | <p>All modes: Subsidies, fiscal incentives, scholarships, grants and other forms of domestic financial support may be restricted to Bahamian Nationals or Bahamian-owned enterprises.</p> |
| | <p>Mode 3: Investments by foreign persons of a value greater than USD 250 000, are subject to approval by the National Economic Council (NEC) under terms of the National Investment Policy (NIP) on the basis of an economic needs and benefits test. Major criteria under the NIP include employment generation, skills development, regional development, local needs and environmental impacts. Joint ventures between Bahamian and foreign investors are also subject to NEC approval under the NIP on the basis of the economic needs and benefits tests outlined above.</p> | <p>Mode 3: Bahamian nationals and companies wholly owned by Bahamian nationals are exempt from real estate taxes on real estate in the Family Islands</p> |

| Sector or sub-sector | Limitations on market access | Limitations on national treatment |
|----------------------|---|--|
| | Mode 3: Foreign persons and juridical persons wishing to acquire real estate for commercial purposes must apply for a permit from the Investments Board. Foreign persons or juridical persons intending to acquire more than five contiguous acres of land for any purpose must obtain a permit from the Investments Board. | Mode 3: Service suppliers that establish a commercial presence to provide a service on a one time basis only, after which the commercial presence will be dissolved are required to pay a licence fee of 1 % of the contract value at the beginning of the contract. |
| | Mode 4: Unbound except for key personnel (business visitors, managers and specialists and graduate trainees) not available locally. Under the Immigration Act and Regulations, a work permit must be obtained prior to entry into The Bahamas by foreign nationals intending to take up employment. Labour market tests are applied in determining whether such foreign workers are to be admitted. | |

B. SECTOR-SPECIFIC COMMITMENTS

1. BUSINESS SERVICES

A. PROFESSIONAL SERVICES

| | | |
|--|---|---|
| (a) Legal services | | |
| Legal documentation and certification (CPC 86130) | | |
| | 1. None except that legal services in respect of domestic law are subject to a nationality condition. | 1. None |
| | 2. None except that legal services in respect of domestic law are subject to a nationality condition. | 2. None |
| | 3. Unbound | 3. Unbound |
| | 4. Unbound except as indicated in horizontal commitments. | 4. Unbound except as indicated in horizontal commitments. |
| Consulting in Home Law of the Service Provider (CPC 86119) | | |
| | 1. None except that legal services in respect of domestic law are subject to a nationality condition. | 1. None |
| | 2. None except that legal services in respect of domestic law are subject to a nationality condition. | 2. None |
| | 3. Unbound | 3. Unbound |
| | 4. Unbound except as indicated in horizontal commitments. | 4. Unbound except as indicated in horizontal commitments. |

| Sector or sub-sector | Limitations on market access | Limitations on national treatment |
|--|---|---|
| (b) Accounting, auditing and book-keeping services | | |
| Accounting and auditing services (CPC 8621) | | |
| | 1. Unbound | 1. None |
| | 2. None | 2. Unbound |
| | 3. None except that Bahamian licensed accountants must be used in respect of accounting and auditing services provided to Bahamian juridical persons. | 3. None |
| | 4. Unbound except as indicated in horizontal commitments. | 4. Unbound except as indicated in horizontal commitments. |
| (c) Taxation (CPC 863) | | |
| | 1. None | 1. None |
| | 2. None | 2. None |
| | 3. None except that Bahamian licensed specialists must be used in respect of tax services provided to Bahamian juridical persons. | 3. None |
| | 4. Unbound except as indicated in horizontal commitments. | 4. Unbound except as indicated in horizontal commitments. |
| (d) Architectural services (CPC 8671) | | |
| | 1. None | 1. None |
| | 2. None | 2. None |
| | 3. Unbound | 3. None |
| | 4. Unbound except as indicated in horizontal commitments. | 4. Unbound except as indicated in horizontal commitments. |
| (e) Engineering services (CPC 86724, 86725) | | |
| | 1. None | 1. None |
| | 2. None | 2. None |
| | 3. Unbound | 3. None |
| | 4. Unbound except as indicated in horizontal commitments. | 4. Unbound except as indicated in horizontal commitments. |

| Sector or sub-sector | Limitations on market access | Limitations on national treatment |
|---|---|---|
| (f) Integrated engineering services (CPC 8673) | | |
| | 1. None | 1. None |
| | 2. None | 2. None |
| | 3. Unbound | 3. None |
| | 4. Unbound except as indicated in horizontal commitments. | 4. Unbound except as indicated in horizontal commitments. |
| (g) Urban planning and landscape architectural services | | |
| Landscape architectural services (CPC 86742) | | |
| | 1. None | 1. None |
| | 2. None | 2. None |
| | 3. Unbound | 3. None |
| | 4. Unbound except as indicated in horizontal commitments. | 4. Unbound except as indicated in horizontal commitments. |
| (h) Medical and dental services (CPC 9312) | | |
| | 1. None | 1. None |
| | 2. None | 2. None |
| | 3. Unbound | 3. Unbound |
| | 4. Unbound except as indicated in horizontal commitments. | 4. Unbound except as indicated in the horizontal commitments. |
| Neurosurgery | | |
| | 1. Unbound | 1. None |
| | 2. None | 2. None |
| | 3. Unbound | 3. Unbound |
| | 4. Unbound except as indicated in horizontal commitments. | 4. Unbound except as indicated in the horizontal commitments. |
| Epidemiological services (CPC 931**) | | |
| | 1. Unbound | 1. None |
| | 2. None | 2. None |
| | 3. Unbound | 3. Unbound |
| | 4. Unbound except as indicated in horizontal commitments. | 4. Unbound except as indicated in the horizontal commitments. |

| Sector or sub-sector | Limitations on market access | Limitations on national treatment |
|---|---|---|
| CATSCAN Services (CPC 931**) | | |
| | 1. Unbound | 1. None |
| | 2. None | 2. None |
| | 3. Unbound | 3. Unbound |
| | 4. Unbound except as indicated in horizontal commitments. | 4. Unbound except as indicated in the horizontal commitments. |
| (i) Veterinary services (CPC 932) | | |
| | 1. None | 1. None |
| | 2. None | 2. None |
| | 3. Unbound | 3. Unbound |
| | 4. Unbound except as indicated in the horizontal commitments. | 4. Unbound except as indicated in the horizontal commitments. |
| (j) Services provided by midwives, nurses, physiotherapists and paramedical personnel (CPC 93191) | | |
| | 1. None | 1. None |
| | 2. None | 2. None |
| | 3. Unbound | 3. Unbound |
| | 4. Unbound except as indicated in horizontal commitments. | 4. Unbound except as indicated in horizontal commitments. |

B. COMPUTER AND RELATED SERVICES

| | | |
|---|---|---|
| (a) Consultancy services related to the installation of computer hardware (CPC 841) | | |
| | 1. None | 1. None |
| | 2. None | 2. None |
| | 3. Unbound for services related to residential computer installations. None for commercial businesses. | 3. Unbound for services related to residential computer installations. None for commercial businesses. |
| | 4. Unbound except as indicated in the horizontal commitments. Subject to economic needs test for CSS. | 4. Unbound except as indicated in the horizontal commitments. |

| Sector or sub-sector | Limitations on market access | Limitations on national treatment |
|---|---|--|
| (b) Software implementation services (CPC 842) | | |
| | 1. None | 1. None |
| | 2. None | 2. None |
| | 3. Unbound for services related to residential computer installations. For computer installations in business establishments, joint ventures with Bahamian firms are permitted. None after 2013. | 3. Unbound for services related to residential computer installations. |
| | 4. None | 4. None |
| (c) Data processing services (CPC 843) | | |
| | 1. None | 1. None |
| | 2. None | 2. None |
| | 3. None | 3. None |
| | 4. Unbound except as indicated in horizontal commitments. Subject to economic needs test for CSS. | 4. Unbound except as indicated in horizontal commitments. |
| (d) Database services (CPC 844) | | |
| | 1. None | 1. None |
| | 2. None | 2. None |
| | 3. None | 3. None |
| | 4. Unbound except as indicated in the horizontal commitments. Subject to economic needs test for CSS. | 4. Unbound except as indicated in the horizontal commitments. |
| (e) Other (CPC 849) (Data preparation services and other computer services n.e.c.) | | |
| | 1. None | 1. None |
| | 2. None | 2. None |
| | 3. Unbound for home office equipment. For commercial equipment, subject to an economic needs test based on type of service. | 3. Unbound for home office equipment. |
| | 4. Unbound except as indicated in the horizontal commitments. Subject to economic needs test for CSS. | 4. Unbound except as indicated in the horizontal commitments. |

| Sector or sub-sector | Limitations on market access | Limitations on national treatment |
|---|--|---|
| C. RESEARCH AND DEVELOPMENT SERVICES | | |
| (a) Research and development services in natural sciences and engineering (CPC 851) | | |
| | 1. None | 1. None |
| | 2. None | 2. None |
| | 3. None | 3. None |
| | 4. Unbound except as indicated in the horizontal commitments. Subject to economic needs test for CSS and IP. | 4. Unbound except as indicated in the horizontal commitments. |
| (b) Research and development in social sciences and humanities (CPC 852) | | |
| | 1. None | 1. None |
| | 2. None | 2. None |
| | 3. None | 3. None |
| | 4. Unbound except as indicated in the horizontal commitments. | 4. Unbound except as indicated in the horizontal commitments. |
| (c) Interdisciplinary research and development services (CPC 853) | | |
| | 1. None | 1. None |
| | 2. None | 2. None |
| | 3. None | 3. None |
| | 4. Unbound except as indicated in the horizontal commitments. | 4. Unbound except as indicated in the horizontal commitments. |
| E. RENTAL/LEASING SERVICES WITHOUT OPERATORS | | |
| (b) Relating to aircraft (CPC 83104) | | |
| | 1. None | 1. None |
| | 2. None | 2. None |
| | 3. None | 3. None |
| | 4. Unbound except as indicated in the horizontal commitments. | 4. Unbound except as indicated in the horizontal commitments. |

| Sector or sub-sector | Limitations on market access | Limitations on national treatment |
|--|---|---|
| (c) Relating to other transport equipment (CPC 83102) | | |
| | 1. None | 1. None |
| | 2. None | 2. None |
| | 3. Unbound | 3. Unbound |
| | 4. Unbound except as indicated in the horizontal commitments. | 4. Unbound except as indicated in the horizontal commitments. |
| (d) Relating to other machinery and equipment (CPC 83106, 83107, 83108, 83109) | | |
| | 1. None | 1. None |
| | 2. None | 2. None |
| | 3. None | 3. None |
| | 4. Unbound except as indicated in the horizontal commitments. | 4. Unbound except as indicated in the horizontal commitments. |

F. OTHER BUSINESS SERVICES

| | | |
|---|---|---|
| (a) Advertising services (CPC 871) | | |
| | 1. None | 1. None |
| | 2. None | 2. None |
| | 3. Unbound | 3. None |
| | 4. Unbound except as indicated in the horizontal commitments. | 4. Unbound except as indicated in the horizontal commitments. |
| (b) Market research and public opinion polling services (CPC 864) | | |
| | 1. None | 1. None |
| | 2. None | 2. None |
| | 3. Unbound | 3. None |
| | 4. Unbound except as indicated in the horizontal commitments. | 4. Unbound except as indicated in the horizontal commitments. |
| (c) Management consulting services (CPC 865) | | |
| | 1. None | 1. None |
| | 2. None | 2. None |
| | 3. None | 3. None |
| | 4. Unbound except as indicated in the horizontal commitments. | 4. Unbound except as indicated in the horizontal commitments. |

| Sector or sub-sector | Limitations on market access | Limitations on national treatment |
|--|---|---|
| (d) Services related to management consulting (CPC 866) | | |
| | 1. None | 1. None |
| | 2. None | 2. None |
| | 3. None | 3. None |
| | 4. Unbound except as indicated in the horizontal commitments. | 4. Unbound except as indicated in the horizontal commitments. |
| (e) Technical testing and analysis services (CPC 8676) | | |
| | 1. None | 1. None |
| | 2. None | 2. None |
| | 3. None | 3. None |
| | 4. Unbound except as indicated in the horizontal commitments. | 4. Unbound except as indicated in the horizontal commitments. |
| (f) Services incidental to agriculture, hunting and forestry (CPC 881) | | |
| | 1. None | 1. None |
| | 2. None | 2. None |
| | 3. None | 3. None |
| | 4. Unbound except as indicated in the horizontal commitments. | 4. Unbound except as indicated in the horizontal commitments. |
| (g) Services incidental to fishing (CPC 882) | | |
| | 1. None | 1. None |
| | 2. None | 2. None |
| | 3. Unbound | 3. Unbound |
| | 4. Unbound except as indicated in the horizontal commitments. | 4. Unbound except as indicated in the horizontal commitments. |
| (h) Services incidental to mining (CPC 883, 5115) | | |
| | 1. None | 1. None |
| | 2. None | 2. None |
| | 3. None | 3. None |
| | 4. Unbound | 4. Unbound |

| Sector or sub-sector | Limitations on market access | Limitations on national treatment |
|---|---|---|
| (i) Services incidental to manufacturing (CPC 8841, 8842, 8843, 8844 and 8846) | | |
| | 1. None | 1. None |
| | 2. None | 2. None |
| | 3. None | 3. None |
| | 4. Unbound except as indicated in the horizontal commitments. | 4. Unbound except as indicated in the horizontal commitments. |
| (k) Placement and supply services of personnel (CPC 872) | | |
| | 1. None | 1. None |
| | 2. None | 2. None |
| | 3. Unbound | 3. Unbound |
| | 4. Unbound except as indicated in the horizontal commitments. | 4. Unbound except as indicated in the horizontal commitments. |
| (l) Investigation and security (CPC 873) | | |
| | 1. None | 1. None |
| | 2. None | 2. None |
| | 3. Unbound | 3. Unbound |
| | 4. Unbound except as indicated in the horizontal commitments. | 4. Unbound except as indicated in the horizontal commitments. |
| (m) Related scientific and technical consulting services (CPC 86753) | | |
| | 1. None | 1. None |
| | 2. None | 2. None |
| | 3. None | 3. None |
| | 4. Unbound except as indicated in the horizontal commitments. | 4. Unbound except as indicated in the horizontal commitments. |

| Sector or sub-sector | Limitations on market access | Limitations on national treatment |
|---|---|---|
| (n) Maintenance and repair of equipment (not including maritime vessels, aircraft or other transport equipment) (CPC 633 except for CPC 63302, 8861-8866) | | |
| | 1. None | 1. None |
| | 2. None | 2. None |
| | 3. Unbound except for joint ventures. | 3. Unbound except for joint ventures. |
| | 4. Unbound except as indicated in the horizontal commitments. | 4. Unbound except as indicated in the horizontal commitments. |
| (o) Building cleaning services (CPC 874) | | |
| | 1. None | 1. None |
| | 2. None | 2. None |
| | 3. Unbound | 3. None |
| | 4. Unbound except as indicated in horizontal commitments. | 4. Unbound except as indicated in horizontal commitments. |
| (p) Photographic services (CPC 87501-87507) | | |
| | 1. None | 1. None |
| | 2. None | 2. None |
| | 3. Unbound | 3. Unbound |
| | 4. Unbound except as indicated in the horizontal commitments. | 4. Unbound except as indicated in the horizontal commitments. |
| (q) Packaging services (CPC 876) | | |
| | 1. None | 1. None |
| | 2. None | 2. None |
| | 3. None | 3. None |
| | 4. Unbound except as indicated in the horizontal commitments. | 4. Unbound except as indicated in the horizontal commitments. |
| (r) Publishing and printing on a fee or contract basis (CPC 88442) | | |
| | 1. None | 1. None |
| | 2. None | 2. None |
| | 3. Unbound | 3. Unbound |
| | 4. Unbound except as indicated in the horizontal commitments. | 4. Unbound except as indicated in the horizontal commitments. |

| Sector or sub-sector | Limitations on market access | Limitations on national treatment |
|---------------------------------------|---|---|
| (s) Convention services (CPC 87909**) | | |
| | 1. None | 1. None |
| | 2. None | 2. None |
| | 3. None | 3. None |
| | 4. Unbound except as indicated in the horizontal commitments. | 4. Unbound except as indicated in the horizontal commitments. |
| (t) Other (CPC 87905) | | |
| | 1. None | 1. None |
| | 2. None | 2. None |
| | 3. None | 3. None |
| | 4. Unbound except as indicated in the horizontal commitments. | 4. Unbound except as indicated in the horizontal commitments. |

2. COMMUNICATION SERVICES

B. COURIER SERVICES (CPC 7512)

| | | |
|--|---|---------|
| | 1. None | 1. None |
| | 2. None | 2. None |
| | 3. None | 3. None |
| | 4. Unbound except as indicated in the horizontal commitments. Subject to economic needs test for CSS. | 4. None |

C. TELECOMMUNICATIONS SERVICES (public and non-public use)

| | | |
|--|---|---|
| (a) Voice telephone services (CPC 7521) | 1. None | 1. None |
| (b) Packet-switched data transmission services (CPC 7523) | 2. None | 2. None |
| (c) Circuit-switched data transmission services (CPC 7523**) | 3. Unbound. None after 2013. | 3. Unbound. None after 2013. |
| (d) Telex services (CPC 7523**) | 4. Unbound except as indicated in the horizontal commitments. | 4. Unbound except as indicated in the horizontal commitments. |
| (e) Telegraph services (CPC 7522) | | |
| (f) Facsimile services (CPC 7521, 7529) | | |
| (g) Private leased circuits (CPC 7522, 7523) | | |
| (h) Electronic mail (CPC 7523) | | |
| (i) Voice mail (CPC 7523) | | |

| Sector or sub-sector | Limitations on market access | Limitations on national treatment |
|---|------------------------------|-----------------------------------|
| (j) Online information and data base retrieval (CPC 7523) (k) Electronic data interchange (EDI) (CPC 7523) (l) Enhanced/value added facsimile services including store and forward, store and retrieve (m) Code and protocol conversion (n) Online information and/or data processing (including transaction processing) (CPC 843) | | |
| (o) Other: Internet and Internet access (except voice) (CPC 75260) Personal communication services (except mobile data services, paging services and trunked radio systems) Telecommunication equipment sales, rental, maintenance, connection, repair and consulting services (CPC 75410, 75450) Trunked radio system services Paging (CPC 75291) Teleconferencing services (CPC 75292) International voice, data and video transmission services supplied to firm involved in information processing within free zones Video transmission services (satellite based) (CPC 75241**) Connection and interconnection services (CPC 7543 and 7525) | | |

3. CONSTRUCTION AND RELATED ENGINEERING SERVICES

A. GENERAL CONSTRUCTION WORK FOR BUILDINGS

(CPC 5126**) Hotels and resorts in excess of 100 rooms, restaurants and similar buildings

| | | |
|--|---|---|
| | 1. None | 1. None |
| | 2. None | 2. None |
| | 3. Unbound except for specialty construction. | 3. None |
| | 4. Unbound except as indicated in the horizontal commitments. | 4. Unbound except as indicated in the horizontal commitments. |

| Sector or sub-sector | Limitations on market access | Limitations on national treatment |
|---|---|---|
| B. GENERAL CONSTRUCTION WORK FOR CIVIL ENGINEERING (CPC 5131, 5132, 5133, 51340, 51350, 51360, 51371, 51372, 51390) | | |
| | 1. None | 1. None |
| | 2. None | 2. None |
| | 3. Unbound except for specialty construction. | 3. None |
| | 4. Unbound except as indicated in the horizontal commitments. | 4. Unbound except as indicated in the horizontal commitments. |
| C. INSTALLATION AND ASSEMBLY WORK (CPC 514, 516) | | |
| | 1. None | 1. None |
| | 2. None | 2. None |
| | 3. Unbound | 3. None |
| | 4. Unbound except as indicated in the horizontal commitments. | 4. Unbound except as indicated in the horizontal commitments. |
| D. BUILDING COMPLETION AND FINISHING WORK (CPC 517) | | |
| | 1. None | 1. None |
| | 2. None | 2. None |
| | 3. Unbound | 3. None |
| | 4. Unbound except as indicated in the horizontal commitments. | 4. Unbound except as indicated in the horizontal commitments. |
| E. OTHER (CPC 511, 515, 518) | | |
| | 1. None | 1. None |
| | 2. None | 2. None |
| | 3. Unbound | 3. None |
| | 4. Unbound except as indicated in the horizontal commitments. | 4. Unbound except as indicated in the horizontal commitments. |
| 4. DISTRIBUTION SERVICES | | |
| A. COMMISSION AGENTS' SERVICES (CPC 621) | | |

| Sector or sub-sector | Limitations on market access | Limitations on national treatment |
|--|---|--|
| | 1. None | 1. None |
| | 2. None | 2. None |
| | 3. Unbound | 3. None |
| | 4. Unbound except as indicated in the horizontal commitments. | 4. Unbound except as indicated in the horizontal commitments. Licence required for CSS and IP. |
| B. WHOLESALE TRADE SERVICES (CPC 622) | | |
| | 1. None | 1. None |
| | 2. None | 2. None |
| | 3. Unbound | 3. None |
| | 4. Unbound except as indicated in the horizontal commitments. | 4. Unbound except as indicated in the horizontal commitments. |
| C. RETAILING SERVICES (CPC 631, 632, 6111, 6113) | | |
| | 1. None | 1. None |
| | 2. None | 2. None |
| | 3. Unbound | 3. None |
| | 4. Unbound except as indicated in the horizontal commitments. | 4. Unbound except as indicated in the horizontal commitments. |
| Sale, maintenance and repair services of motor cycles and snowmobiles; sales of related parts and accessories (CPC 612) (excluding maintenance and repair services of motorcycles CPC 61220) | | |
| | 1. None | 1. None |
| | 2. None | 2. None |
| | 3. Unbound | 3. None |
| | 4. Unbound except as indicated in the horizontal commitments. | 4. Unbound except as indicated in the horizontal commitments. |
| Retail sales of motor fuel (CPC 61300) | | |
| | 1. None | 1. None |
| | 2. None | 2. None |
| | 3. Unbound | 3. None |
| | 4. Unbound except as indicated in the horizontal commitments. | 4. Unbound except as indicated in the horizontal commitments. |

| Sector or sub-sector | Limitations on market access | Limitations on national treatment |
|---|---|---|
| D. FRANCHISING (CPC 8929) | | |
| | 1. None | 1. None |
| | 2. None | 2. None |
| | 3. None | 3. None |
| | 4. Unbound except as indicated in the horizontal commitments. | 4. Unbound except as indicated in the horizontal commitments. |
| 5. EDUCATIONAL SERVICES | | |
| (a) Primary education services (CPC 921) (except non-profit, public and publicly funded juridical persons) | | |
| | 1. None | 1. None |
| | 2. None | 2. None |
| | 3. Unbound | 3. Unbound |
| | 4. Unbound except as indicated in the horizontal commitments. | 4. Unbound except as indicated in the horizontal commitments. |
| (b) Secondary education services (CPC 922) (except non-profit, public and publicly funded juridical persons) | | |
| | 1. None | 1. None |
| | 2. None | 2. None |
| | 3. Unbound | 3. Unbound |
| | 4. Unbound except as indicated in the horizontal commitments. | 4. Unbound except as indicated in the horizontal commitments. |
| (c) Higher education services (CPC 923) (except non-profit, public and publicly funded juridical persons) | | |
| | 1. None | 1. None |
| | 2. None | 2. None |
| | 3. None | 3. None |
| | 4. Unbound except as indicated in the horizontal commitments. | 4. Unbound except as indicated in the horizontal commitments. |

| Sector or sub-sector | Limitations on market access | Limitations on national treatment |
|--|--|--|
| (d) Adult education (CPC 924) (except non-profit, public and publicly funded juridical persons) | | |
| | 1. None | 1. None |
| | 2. None | 2. None |
| | 3. None | 3. None |
| | 4. Unbound except as indicated in the horizontal commitments. | 4. Unbound except as indicated in the horizontal commitments. |
| (e) Other education services (CPC 929) | | |
| | 1. None | 1. None |
| | 2. None | 2. None |
| | 3. None | 3. None |
| | 4. Unbound except as indicated in the horizontal commitments. | 4. Unbound except as indicated in the horizontal commitments. |

6. ENVIRONMENTAL SERVICES

A. SEWAGE SERVICES (CPC 9401)

| | | |
|--|--|--|
| | 1. None | 1. None |
| | 2. None | 2. None |
| | 3. None | 3. None |
| | 4. Unbound except as indicated in the horizontal commitments. | 4. Unbound except as indicated in the horizontal commitments. |
| Waste and waste water management (CPC 9401**) | | |
| | 1. Unbound | 1. Unbound |
| | 2. None | 2. Unbound |
| | 3. None | 3. None |
| | 4. Unbound except as indicated in the horizontal commitments. | 4. Unbound except as indicated in the horizontal commitments. |

| Sector or sub-sector | Limitations on market access | Limitations on national treatment |
|--|--|---|
| B. REFUSE DISPOSAL SERVICES (CPC 9402) | | |
| | 1. None | 1. None |
| | 2. None | 2. None |
| | 3. None | 3. None |
| | 4. Unbound except as indicated in the horizontal commitments. | 4. Unbound except as indicated in the horizontal commitments. |
| Non-hazardous waste collection services (CPC 9402**) | | |
| | 1. None | 1. None |
| | 2. None | 2. None |
| | 3. None | 3. None |
| | 4. Unbound except as indicated in the horizontal commitments. | 4. Unbound except as indicated in the horizontal commitments. |
| Hazardous waste treatment and disposal services (CPC 9402**) | | |
| | 1. None | 1. None |
| | 2. None | 2. None |
| | 3. None | 3. None |
| | 4. Unbound except as indicated in the horizontal commitments. | 4. Unbound except as indicated in the horizontal commitments. |
| D. OTHER | | |
| Cleaning service of exhaust gas (CPC 94040) | | |
| | 1. None | 1. None |
| | 2. None | 2. None |
| | 3. None | 3. None |
| | 4. Unbound except as indicated in the horizontal commitments. Subject to an economic needs test for CSS. | 4. Unbound except as indicated in the horizontal commitments. |

| Sector or sub-sector | Limitations on market access | Limitations on national treatment |
|---|---|---|
| Noise abatement services (CPC 94050) | | |
| | 1. Unbound | 1. Unbound |
| | 2. None | 2. None |
| | 3. None | 3. None |
| | 4. Unbound except as indicated in the horizontal commitments. | 4. Unbound except as indicated in the horizontal commitments. |
| Remediation and clean-up of soil and waters (CPC 94060**) | | |
| | 1. None | 1. None |
| | 2. None | 2. None |
| | 3. None | 3. None |
| | 4. Unbound except as indicated in the horizontal commitments. | 4. Unbound except as indicated in the horizontal commitments. |
| Closed loop pollution control systems for factories (CPC 94090**) | | |
| | 1. Unbound | 1. Unbound |
| | 2. None | 2. Unbound |
| | 3. None | 3. None |
| | 4. Unbound except as indicated in the horizontal commitments. | 4. Unbound except as indicated in the horizontal commitments. |
| Recycling services (CPC 94090**) | | |
| | 1. Unbound | 1. Unbound |
| | 2. None | 2. Unbound |
| | 3. None | 3. None |
| | 4. Unbound except as indicated in the horizontal commitments. | 4. Unbound except as indicated in the horizontal commitments. |

7. FINANCIAL SERVICES

A. ALL INSURANCE AND INSURANCE RELATED SERVICES

| | | |
|---|--|--|
| (a) Life, accident and health insurance services (CPC 8121) | | |
|---|--|--|

| Sector or sub-sector | Limitations on market access | Limitations on national treatment |
|--|--|---|
| | 1. Unbound | 1. None |
| | 2. None | 2. None |
| | 3. None | 3. Unbound |
| | 4. Unbound except as indicated in the horizontal commitments. | 4. Unbound except as indicated in the horizontal commitments. |
| (b) Non-life insurance services (CPC 8129) | | |
| | 1. Unbound, except the insurance of risks relating to: (i) maritime shipping and commercial aviation and space launching and freight (including satellites), with such insurance to cover any or all of the following: the goods being transported, the vehicle transporting the goods and any liability arising therefrom; and (ii) goods in international transit. | 1. None |
| | 2. None | 2. None |
| | 3. None | 3. Unbound |
| | 4. Unbound except as indicated in the horizontal commitments. | 4. Unbound except as indicated in the horizontal commitments. |
| (c) Reinsurance and retrocession (CPC 81299**) | | |
| | 1. None | 1. None |
| | 2. None | 2. None |
| | 3. None | 3. None |
| | 4. Unbound except as indicated in the horizontal commitments. | 4. Unbound except as indicated in the horizontal commitments. |
| (d) Services auxiliary to insurance (brokering and agency services) (CPC 8140 except actuarial services) | | |
| | 1. Unbound | 1. Unbound |
| | 2. None | 2. None |
| | 3. Unbound | 3. Unbound |
| | 4. Unbound except as indicated in the horizontal commitments. | 4. Unbound except as indicated in the horizontal commitments. |

| Sector or sub-sector | Limitations on market access | Limitations on national treatment |
|---|---|---|
| Actuarial services (CPC 81404) | | |
| | 1. None | 1. None |
| | 2. None | 2. None |
| | 3. None | 3. None |
| | 4. Unbound except as indicated in the horizontal commitments. | 4. Unbound except as indicated in the horizontal commitments. |
| Consultancy, actuarial, risk assessment and claim settlement services (CPC 814**) | | |
| | 1. None | 1. None |
| | 2. None | 2. None |
| | 3. None | 3. None |
| | 4. Unbound except as indicated in the horizontal commitments. | 4. Unbound except as indicated in the horizontal commitments. |

B. BANKING AND OTHER FINANCIAL SERVICES (excluding insurance)

| | | |
|---|---|---|
| (a) Acceptance of deposits and other repayable funds from the public (CPC 81115-81119) | | |
| | 1. Unbound | 1. Unbound |
| | 2. Unbound | 2. None |
| | 3. None. | 3. None |
| | 4. Unbound except as indicated in the horizontal commitments. | 4. Unbound except as indicated in the horizontal commitments. |
| (b) Lending of all types including, inter alia, consumer credit, mortgage credit, factoring and financing of commercial transactions (CPC 8113) | | |
| | 1. Unbound | 1. Unbound |
| | 2. Unbound | 2. None |
| | 3. None. | 3. None |
| | 4. Unbound except as indicated in the horizontal commitments. | 4. Unbound except as indicated in the horizontal commitments. |

| Sector or sub-sector | Limitations on market access | Limitations on national treatment |
|---|--|---|
| (c) Financial leasing (CPC 8112) | | |
| | 1. Unbound | 1. Unbound |
| | 2. Unbound | 2. Unbound |
| | 3. None | 3. None |
| | 4. Unbound except as indicated in the horizontal commitments. | 4. Unbound except as indicated in the horizontal commitments. |
| (d) All payment and money transmission services (money transmission services only) (CPC 81139**) | | |
| | 1. Unbound | 1. Unbound |
| | 2. None | 2. None |
| | 3. Unbound except subsidiaries of authorized foreign exchange dealers. | 3. None |
| | 4. Unbound except as indicated in the horizontal commitments. | 4. Unbound except as indicated in the horizontal commitments. |
| (e) Guarantees and commitments (CPC 81199**) | | |
| | 1. Unbound | 1. Unbound |
| | 2. None | 2. None |
| | 3. Unbound except joint ventures with Bahamian firms. | 3. Unbound except joint ventures with Bahamian firms. |
| | 4. Unbound except as indicated in the horizontal commitments. | 4. Unbound except as indicated in the horizontal commitments. |
| (f) Trading for own account or for account of customers, whether on an exchange, in an over-the-counter market or otherwise (CPC 81339**, 81333, 81321**) | | |
| | 1. Unbound | 1. Unbound |
| | 2. None | 2. None |
| | 3. Unbound for Bahamian dollars. None for foreign currency. | 3. None |
| | 4. Unbound except as indicated in the horizontal commitments. | 4. Unbound except as indicated in the horizontal commitments. |

| Sector or sub-sector | Limitations on market access | Limitations on national treatment |
|--|--|---|
| (h) Money broking (CPC 81339**) | | |
| | 1. None | 1. None |
| | 2. None | 2. None |
| | 3. None | 3. None |
| | 4. Unbound except as indicated in horizontal commitments. | 4. Unbound except as indicated in horizontal commitments. |
| (i) Asset management, such as cash or portfolio management, all forms of collective investment management (CPC 81323) | | |
| | 1. None | 1. None |
| | 2. None | 2. None |
| | 3. Unbound on Bahamian dollar assets. None for foreign currency. | 3. None |
| | 4. Unbound except as indicated in horizontal commitments. | 4. Unbound except as indicated in horizontal commitments. |
| (k) Advisory and other auxiliary financial services on all the activities listed in Article 103(2)(a)(B), including credit reference and analysis, investment and portfolio research and advice, advice on acquisitions and on corporate restructuring | | |
| | 1. None | 1. None |
| | 2. None | 2. None |
| | 3. Unbound except joint ventures with Bahamian firms. | 3. None |
| | 4. Unbound except as indicated in the horizontal commitments. | 4. Unbound except as indicated in the horizontal commitments. |
| (l) Provision and transfer of financial information and financial data processing and related software by providers of other financial services (CPC 8131) | | |
| | 1. None | 1. None |
| | 2. None | 2. None |
| | 3. Unbound | 3. None |
| | 4. Unbound except as indicated in the horizontal commitments. | 4. Unbound except as indicated in the horizontal commitments. |

| Sector or sub-sector | Limitations on market access | Limitations on national treatment |
|---|---|---|
| C. OTHER | | |
| Registration of offshore companies and trust (not including insurance companies and banks) to do offshore business. | | |
| | 1. Unbound | 1. Unbound |
| | 2. None | 2. None |
| | 3. Unbound except joint ventures with Bahamian firms. | 3. Unbound except joint ventures with Bahamian firms. |
| | 4. Unbound except as indicated in the horizontal commitments. | 4. Unbound except as indicated in the horizontal commitments. |
| 8. HEALTH RELATED AND SOCIAL SERVICES (other than those listed under 1(A) h-j) | | |
| A. HOSPITAL SERVICES (CPC 93110) | | |
| | 1. None | 1. None |
| | 2. None | 2. None |
| | 3. Unbound except joint ventures with Bahamian firms. | 3. None |
| | 4. Unbound except as indicated in the horizontal commitments. | 4. Unbound except as indicated in the horizontal commitments. |
| B. OTHER HUMAN HEALTH SERVICES (CPC 9319 other than 93191 and 93193) | | |
| | 1. None | 1. None |
| | 2. None | 2. None |
| | 3. Unbound | 3. None |
| | 4. Unbound except as indicated in the horizontal commitments. | 4. Unbound except as indicated in the horizontal commitments. |
| Residential health facilities services other than hospital services (CPC 93193) | | |
| | 1. None | 1. None |
| | 2. None | 2. None |
| | 3. Unbound except joint ventures with Bahamian firms | 3. None |
| | 4. Unbound except as indicated in the horizontal commitments. | 4. Unbound except as indicated in the horizontal commitments. |

| Sector or sub-sector | Limitations on market access | Limitations on national treatment |
|--|---|---|
| C. SOCIAL SERVICES (CPC 93311) | | |
| | 1. None | 1. None |
| | 2. None | 2. None |
| | 3. Unbound | 3. Unbound |
| | 4. Unbound except as indicated in the horizontal commitments. | 4. Unbound except as indicated in the horizontal commitments. |
| 9. TOURISM AND TRAVEL-RELATED SERVICES | | |
| A. HOTELS AND RESTAURANTS (including catering) | | |
| Hotels (CPC 641) | | |
| | 1. None | 1. None |
| | 2. None | 2. None |
| | 3. None for hotels in excess of 100 rooms. Unbound for hotels of less than 100 rooms. | 3. None |
| | 4. Unbound except as indicated in horizontal commitments. | 4. Unbound except as indicated in the horizontal commitments. |
| Letting services of furnished accommodation (CPC 6419) | | |
| | 1. None | 1. None |
| | 2. None | 2. None |
| | 3. None | 3. None |
| | 4. Unbound except as indicated in the horizontal commitments. | 4. Unbound except as indicated in the horizontal commitments. |
| Meal serving with full restaurant service or in self-service facilities; catering services (CPC 64210, 64220, 64230) | | |
| | 1. None | 1. None |
| | 2. None | 2. None |
| | 3. Unbound except for specialty, gourmet and ethnic restaurants and restaurants located in hotels, resort complexes or tourist attractions. | 3. Unbound |
| | 4. Unbound except as indicated in the horizontal commitments. | 4. Unbound except as indicated in the horizontal commitments. |

| Sector or sub-sector | Limitations on market access | Limitations on national treatment |
|---|---|---|
| Beverage serving services with entertainment (CPC 64310 and 64320) | | |
| | 1. None | 1. None |
| | 2. None | 2. None |
| | 3. Unbound except joint ventures with Bahamian firms. | 3. None |
| | 4. Unbound except as indicated in the horizontal commitments. | 4. Unbound except as indicated in the horizontal commitments. |

B. TRAVEL AGENCIES AND TOUR OPERATORS SERVICES (CPC 7471)

| | | |
|--|---|---|
| | 1. None | 1. None |
| | 2. None | 2. None |
| | 3. None | 3. None |
| | 4. Unbound except as indicated in the horizontal commitments. | 4. Unbound except as indicated in the horizontal commitments. |

C. TOURIST GUIDE SERVICES (CPC 7472)

| | | |
|--|---|---|
| | 1. None | 1. None |
| | 2. None | 2. None |
| | 3. Unbound | 3. None |
| | 4. Unbound except as indicated in the horizontal commitments. | 4. Unbound except as indicated in the horizontal commitments. |

D. OTHER

| | | |
|-------------------|---|---|
| Hotel development | | |
| | 1. None | 1. None |
| | 2. None | 2. None |
| | 3. None | 3. None |
| | 4. Unbound except as indicated in the horizontal commitments. | 4. Unbound except as indicated in the horizontal commitments. |

| Sector or sub-sector | Limitations on market access | Limitations on national treatment |
|----------------------|---|---|
| Hotel management | | |
| | 1. None | 1. None |
| | 2. None | 2. None |
| | 3. None | 3. None |
| | 4. Unbound except as indicated in the horizontal commitments. | 4. Unbound except as indicated in the horizontal commitments. |
| Marina services | | |
| | 1. None | 1. None |
| | 2. None | 2. None |
| | 3. Unbound except joint ventures with Bahamian firms. | 3. None |
| | 4. Unbound except as indicated in the horizontal commitments. | 4. Unbound except as indicated in the horizontal commitments. |
| Spa services | | |
| | 1. None | 1. None |
| | 2. None | 2. None |
| | 3. Unbound except joint ventures with Bahamian firms. | 3. None |
| | 4. Unbound except as indicated in the horizontal commitments. | 4. Unbound except as indicated in the horizontal commitments. |

10. RECREATIONAL, CULTURAL AND SPORTING SERVICES (*other than audiovisual services*)

A. ENTERTAINMENT SERVICES (including theatre, live bands and circus services) (CPC 9619)

| | | |
|--|---|---|
| | 1. None | 1. None |
| | 2. None | 2. None |
| | 3. None | 3. None |
| | 4. Unbound except as indicated in the horizontal commitments. | 4. Unbound except as indicated in the horizontal commitments. |

| Sector or sub-sector | Limitations on market access | Limitations on national treatment |
|--|---|---|
| B. NEWS AGENCY SERVICES (CPC 9621) | | |
| | 1. None | 1. None |
| | 2. None | 2. None |
| | 3. Unbound | 3. None |
| | 4. Unbound except as indicated in the horizontal commitments. | 4. Unbound except as indicated in the horizontal commitments. |
| C. LIBRARIES, ARCHIVES, MUSEUMS AND OTHER CULTURAL SERVICES (CPC 963) | | |
| | 1. None | 1. None |
| | 2. None | 2. None |
| | 3. Unbound except joint ventures with Bahamian firms. | 3. None |
| | 4. Unbound except as indicated in the horizontal commitments. | 4. Unbound except as indicated in the horizontal commitments. |
| D. SPORTING AND OTHER RECREATIONAL SERVICES (CPC 96411-3) (except gambling) | | |
| | 1. Unbound | 1. None |
| | 2. None | 2. None |
| | 3. Unbound except joint ventures with Bahamian firms. | 3. None |
| | 4. Unbound except as indicated in the horizontal commitments. | 4. Unbound except as indicated in the horizontal commitments. |
| E. OTHER | | |
| Rental and leasing of yachts (CPC 96499**) | | |
| | 1. None | 1. None |
| | 2. None | 2. None |
| | 3. None | 3. None |
| | 4. Unbound except as indicated in the horizontal commitments. | 4. Unbound except as indicated in the horizontal commitments. |

| Sector or sub-sector | Limitations on market access | Limitations on national treatment |
|--|---|---|
| 11. TRANSPORT SERVICES | | |
| A. MARITIME TRANSPORT SERVICES | | |
| (a) Passenger transportation (less cabotage) (CPC 7211) | | |
| | 1. None | 1. None |
| | 2. None | 2. None |
| | 3. None | 3. None |
| | 4. Unbound except as indicated in the horizontal commitments. | 4. Unbound except as indicated in the horizontal commitments. |
| (b) Freight transportation (less cabotage) (CPC 7212) | | |
| | 1. None | 1. None |
| | 2. None | 2. None |
| | 3. None | 3. None |
| | 4. Unbound except as indicated in the horizontal commitments. | 4. Unbound except as indicated in the horizontal commitments. |
| (c) Rental of vessels with crew (less cabotage) (CPC 7213) | | |
| | 1. None | 1. None |
| | 2. None | 2. None |
| | 3. Unbound except joint ventures with Bahamian firms. | 3. Unbound except joint ventures with Bahamian firms. |
| | 4. Unbound except as indicated in the horizontal commitments. | 4. Unbound except as indicated in the horizontal commitments. |
| (d) Maintenance and repair of vessels (CPC 8868**) | | |
| | 1. None | 1. None |
| | 2. None | 2. None |
| | 3. Unbound below 100 tonnes. None above 100 tonnes. | 3. None |
| | 4. Unbound except as indicated in the horizontal commitments. | 4. Unbound except as indicated in the horizontal commitments. |

| Sector or sub-sector | Limitations on market access | Limitations on national treatment |
|--|---|---|
| (e) Pushing and towing services (CPC 7214) | | |
| | 1. None | 1. None |
| | 2. None | 2. None |
| | 3. Unbound except joint ventures with Bahamian firms. | 3. Unbound |
| | 4. Unbound except as indicated in the horizontal commitments. | 4. Unbound except as indicated in the horizontal commitments. |
| (f) Supporting services for maritime transport | | |
| Vessel salvaging and refloating services (CPC 74540) | | |
| | 1. None | 1. None |
| | 2. None | 2. None |
| | 3. None | 3. None |
| | 4. Unbound except as indicated in the horizontal commitments. | 4. Unbound except as indicated in the horizontal commitments. |
| Ship registration for the control, regulation and orderly development of merchant shipping | | |
| | 1. None | 1. None |
| | 2. None | 2. None |
| | 3. Unbound | 3. Unbound |
| | 4. Unbound except as indicated in the horizontal commitments. | 4. Unbound except as indicated in the horizontal commitments. |

B. INTERNAL WATERWAYS TRANSPORT

| | | |
|---------------------------------------|---|---|
| (b) Freight transportation (CPC 7222) | | |
| | 1. None | 1. None |
| | 2. None | 2. None |
| | 3. Unbound | 3. Unbound |
| | 4. Unbound except as indicated in the horizontal commitments. | 4. Unbound except as indicated in the horizontal commitments. |

| Sector or sub-sector | Limitations on market access | Limitations on national treatment |
|--|---|---|
| (d) Maintenance and repair of vessels (CPC 8868) | | |
| | 1. None | 1. None |
| | 2. None | 2. None |
| | 3. None | 3. None |
| | 4. Unbound except as indicated in the horizontal commitments. | 4. Unbound except as indicated in the horizontal commitments. |

C. AIR TRANSPORT SERVICES

| | | |
|---|---|---|
| (b) Freight transportation (CPC 732) | | |
| | 1. None | 1. None |
| | 2. None | 2. None |
| | 3. None | 3. None |
| | 4. Unbound except as indicated in the horizontal commitments. | 4. Unbound except as indicated in the horizontal commitments. |
| (c) Rental of aircraft with crew (CPC 734) | | |
| | 1. None | 1. None |
| | 2. None | 2. None |
| | 3. Unbound | 3. Unbound |
| | 4. Unbound except as indicated in the horizontal commitments. | 4. Unbound except as indicated in the horizontal commitments. |
| (d) Maintenance and repair of aircraft (CPC 8868**) | | |
| | 1. None | 1. None |
| | 2. None | 2. None |
| | 3. None | 3. None |
| | 4. Unbound except as indicated in the horizontal commitments. | 4. Unbound except as indicated in the horizontal commitments. |
| (e) Supporting services for air transport (CPC 746**) | | |
| Computer reservation system (CRS) services | | |

| Sector or sub-sector | Limitations on market access | Limitations on national treatment |
|--|---|---|
| | 1. None | 1. None |
| | 2. None | 2. None |
| | 3. None | 3. None |
| | 4. Unbound except as indicated in the horizontal commitments. | 4. Unbound except as indicated in the horizontal commitments. |
| Airport management | | |
| | 1. Unbound | 1. Unbound |
| | 2. None | 2. None |
| | 3. None | 3. None |
| | 4. Unbound except as indicated in the horizontal commitments. | 4. Unbound except as indicated in the horizontal commitments. |
| E. RAIL TRANSPORT SERVICES | | |
| (a) Passenger transportation (CPC 7111) | | |
| | 1. None | 1. None |
| | 2. None | 2. None |
| | 3. None | 3. None |
| | 4. Unbound except as indicated in the horizontal commitments. | 4. Unbound except as indicated in the horizontal commitments. |
| (b) Freight transport (CPC 7112) | | |
| | 1. None | 1. None |
| | 2. None | 2. None |
| | 3. None | 3. None |
| | 4. Unbound except as indicated in the horizontal commitments. | 4. Unbound except as indicated in the horizontal commitments. |
| (c) Pushing and towing services (CPC 7113) | | |
| | 1. None | 1. None |
| | 2. None | 2. None |
| | 3. None | 3. None |
| | 4. Unbound except as indicated in the horizontal commitments. | 4. Unbound except as indicated in the horizontal commitments. |

| Sector or sub-sector | Limitations on market access | Limitations on national treatment |
|---|---|---|
| (d) Maintenance and repair of rail transport equipment (CPC 8868) | | |
| | 1. None | 1. None |
| | 2. None | 2. None |
| | 3. None | 3. None |
| | 4. Unbound except as indicated in the horizontal commitments. | 4. Unbound except as indicated in the horizontal commitments. |
| (e) Supporting services for rail transport services (CPC 743) | | |
| | 1. None | 1. None |
| | 2. None | 2. None |
| | 3. None | 3. None |
| | 4. Unbound except as indicated in the horizontal commitments. | 4. Unbound except as indicated in the horizontal commitments. |

F. ROAD TRANSPORT SERVICES

| | | |
|---|--|---|
| (a) Passenger transportation (CPC 7121, 7122) | | |
| | 1. None | 1. None |
| | 2. None | 2. None |
| | 3. Unbound | 3. Unbound |
| | 4. Unbound except as indicated in the horizontal commitments. | 4. Unbound except as indicated in the horizontal commitments. |
| (b) Freight transportation (CPC 7123) | | |
| | 1. None | 1. None |
| | 2. None | 2. None |
| | 3. Unbound | 3. Unbound |
| | 4. Unbound except as indicated in the horizontal commitments. Subject to economic needs test for CSS and IP. | 4. Unbound except as indicated in the horizontal commitments. |

| Sector or sub-sector | Limitations on market access | Limitations on national treatment |
|--|---|---|
| (c) Rental of commercial vehicles with operator (CPC 7124) | | |
| | 1. None | 1. None |
| | 2. None | 2. None |
| | 3. Unbound | 3. Unbound |
| | 4. Unbound except as indicated in the horizontal commitments. | 4. Unbound except as indicated in the horizontal commitments. |
| (e) Supporting services for road transport services (CPC 7442) | | |
| | 1. None | 1. None |
| | 2. None | 2. None |
| | 3. Unbound | 3. Unbound |
| | 4. Unbound except as indicated in the horizontal commitments. | 4. Unbound except as indicated in the horizontal commitments. |

H. SERVICES AUXILIARY TO ALL MODES OF TRANSPORT

| | | |
|--|---|---|
| (b) Storage and warehouse services (CPC 742) | | |
| | 1. None | 1. None |
| | 2. None | 2. None |
| | 3. Unbound | 3. None |
| | 4. Unbound except as indicated in the horizontal commitments. | 4. Unbound except as indicated in the horizontal commitments. |
| (d) Other supporting and auxiliary transportation services (CPC 74900) | | |
| Free zone operation | | |
| | 1. None | 1. None |
| | 2. None | 2. None |
| | 3. None | 3. None |
| | 4. Unbound except as indicated in the horizontal commitments. | 4. Unbound except as indicated in the horizontal commitments. |

| Sector or sub-sector | Limitations on market access | Limitations on national treatment |
|-----------------------------------|---|--|
| Trans-shipment services (CPC 749) | | |
| | 1. None | 1. None |
| | 2. None | 2. None |
| | 3. None | 3. None |
| | 4. Unbound except as indicated in the horizontal commitments. | 4. Unbound except as indicated in the horizontal commitments.' |

2010 SUBSCRIPTION PRICES (excluding VAT, including normal transport charges)

| | | |
|---|---|--------------------|
| EU Official Journal, L + C series, paper edition only | 22 official EU languages | EUR 1 100 per year |
| EU Official Journal, L + C series, paper + annual CD-ROM | 22 official EU languages | EUR 1 200 per year |
| EU Official Journal, L series, paper edition only | 22 official EU languages | EUR 770 per year |
| EU Official Journal, L + C series, monthly CD-ROM (cumulative) | 22 official EU languages | EUR 400 per year |
| Supplement to the Official Journal (S series), tendering procedures for public contracts, CD-ROM, two editions per week | multilingual: 23 official EU languages | EUR 300 per year |
| EU Official Journal, C series — recruitment competitions | Language(s) according to competition(s) | EUR 50 per year |

Subscriptions to the *Official Journal of the European Union*, which is published in the official languages of the European Union, are available for 22 language versions. The Official Journal comprises two series, L (Legislation) and C (Information and Notices).

A separate subscription must be taken out for each language version.

In accordance with Council Regulation (EC) No 920/2005, published in Official Journal L 156 of 18 June 2005, the institutions of the European Union are temporarily not bound by the obligation to draft all acts in Irish and publish them in that language. Irish editions of the Official Journal are therefore sold separately.

Subscriptions to the Supplement to the Official Journal (S Series — tendering procedures for public contracts) cover all 23 official language versions on a single multilingual CD-ROM.

On request, subscribers to the *Official Journal of the European Union* can receive the various Annexes to the Official Journal. Subscribers are informed of the publication of Annexes by notices inserted in the *Official Journal of the European Union*.

CD-Rom formats will be replaced by DVD formats during 2010.

Sales and subscriptions

Subscriptions to various priced periodicals, such as the subscription to the *Official Journal of the European Union*, are available from our commercial distributors. The list of commercial distributors is available at:

http://publications.europa.eu/others/agents/index_en.htm

EUR-Lex (<http://eur-lex.europa.eu>) offers direct access to European Union legislation free of charge. The *Official Journal of the European Union* can be consulted on this website, as can the Treaties, legislation, case-law and preparatory acts.

For further information on the European Union, see: <http://europa.eu>



Publications Office of the European Union
2985 Luxembourg
LUXEMBOURG

EN