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Non-opposition to a notified concentration
(Case M.8703 — Porsche Digital/Axel Springer/JV)
(Text with EEA relevance)
(2017/C 438/02)

On 12 December 2017, the Commission decided not to oppose the above notified concentration and to declare it compatible with the internal market. This decision is based on Article 6(1)(b) of Council Regulation (EC) No 139/2004 (1). The full text of the decision is available only in English and will be made public after it is cleared of any business secrets it may contain. It will be available:

— in the merger section of the Competition website of the Commission (http://ec.europa.eu/competition/mergers/cases/), This website provides various facilities to help locate individual merger decisions, including company, case number, date and sectoral indexes,


Non-opposition to a notified concentration
(Case M.8729 — EQT Fund Management/G+E Getec Holding)
(Text with EEA relevance)
(2017/C 438/03)

On 13 December 2017, the Commission decided not to oppose the above notified concentration and to declare it compatible with the internal market. This decision is based on Article 6(1)(b) of Council Regulation (EC) No 139/2004 (1). The full text of the decision is available only in English and will be made public after it is cleared of any business secrets it may contain. It will be available:

— in the merger section of the Competition website of the Commission (http://ec.europa.eu/competition/mergers/cases/). This website provides various facilities to help locate individual merger decisions, including company, case number, date and sectoral indexes,


IV

(Notices)

NOTICES FROM EUROPEAN UNION INSTITUTIONS, BODIES, OFFICES AND AGENCIES

COUNCIL

COUNCIL CONCLUSIONS
on the EU list of non-cooperative jurisdictions for tax purposes (*)
(2017/C 438/04)

THE COUNCIL OF THE EUROPEAN UNION

1. RECALLS the Council Conclusions on an external taxation strategy and measures against tax treaty abuse of 25 May 2016, in particular points 6 to 10 thereof, and the Council Conclusions of 8 November 2016 on the criteria for and process leading to the establishment of the EU list of non-cooperative jurisdictions for tax purposes;

2. EMPHASISES the importance of promoting globally the criteria on tax transparency, fair taxation and implementation of anti-BEPS standards, which were endorsed by the Council Conclusions of 8 November 2016 (the Criteria), as set out in Annex V hereto, and as further specified in Annexes VI and VII;

3. TAKES STOCK of the work achieved by the Global Forum on Transparency and Exchange of Information for Tax Purposes, the OECD Inclusive Framework for Tackling Base Erosion and Profit Shifting (BEPS), and the Forum on Harmful Tax Practices;

4. WELCOMES the work that the Code of Conduct Group on Business Taxation (Code of Conduct Group) has carried out, in coordination with the High-Level Working Party on Tax Questions (the HLWP), in selecting the relevant jurisdictions and analysing and assessing the facts pertaining to their tax legislation and policies in the context of the Criteria;

5. WELCOMES the fact that most of these jurisdictions have chosen to participate in this process and dialogue, and have taken or undertaken to take active steps towards resolving the issues that the Code of Conduct Group has identified in the areas of tax transparency, fair taxation and implementation of anti-BEPS standards;

6. NOTES, nonetheless, that a number of jurisdictions have taken no meaningful action to effectively address the deficiencies and do not engage in a meaningful dialogue on the basis of the Criteria that could lead to such commitments;

7. IS CONVINCED that, in such a case, the tax legislation, policies and administrative practices of these jurisdictions result or may result in a loss of tax revenues for Member States and that such jurisdictions should therefore be strongly encouraged to make the changes needed to remedy this situation;

8. REITERATES that it is of crucial importance to provide efficient protection mechanisms to fight against the erosion of Member States’ tax bases through tax fraud, evasion and avoidance;

9. ENDORSES, accordingly, the EU list of non-cooperative jurisdictions for tax purposes, as set out in Annex I, and CONFIRMS that jurisdictions will remain on this list until they meet the Criteria, for example, by fulfilling the recommendations on the steps to take in order to be de-listed;

(*) The Council agreed to publish these conclusions for information purposes in the Official Journal.
10. **DEEMS IT APPROPRIATE** for the Code of Conduct Group to engage in discussions with the listed jurisdictions, with a view to agreeing and monitoring the steps that jurisdictions are expected to take in order to be removed from the list and **ENCOURAGES** these jurisdictions to swiftly take the action needed to meet the Criteria;

11. **NOTES WITH SATISFACTION** that while the tax legislation, policies and administrative practices of some jurisdictions present concerns in the areas of tax transparency, fair taxation and implementation of anti-BEPS standards, a number of these jurisdictions have nevertheless made meaningful commitments at high political level to take the necessary steps to solve the outstanding issues by the agreed deadlines and so should not, at this stage, be placed on the list of non-cooperative jurisdictions. The Code of Conduct Group should continue dialogue and monitoring the actual implementation of the commitments made by these jurisdictions and should recommend at any time to update the list of non-cooperative jurisdictions for tax purposes based on any new commitment taken and on the implementation of these commitments. The state of play of the cooperation with the EU with respect to commitments taken to implement tax good governance principles is set out in Annex II;

12. **EXPRESSES** its sympathy and support to the jurisdictions in the Caribbean region that were severely struck by devastating storms in September 2017, causing casualties and major damage to key infrastructure, and **HOLDS THE VIEW** that the screening process should be put on hold for these jurisdictions (Anguilla, Antigua and Barbuda, Bahamas, British Virgin Islands, Dominica, Saint Kitts and Nevis, Turks and Caicos Islands, US Virgin Islands). Nevertheless, the Code of Conduct Group should, by February 2018, pursue further contacts with these jurisdictions, with the view to resolving these concerns by the end of 2018;

13. **ASKS**, in particular, that the Code of Conduct Group continues the dialogue and starts the monitoring process of the commitments made by jurisdictions without delay, as of the beginning of 2018, to ensure their effective implementation according to the agreed timeline.

14. **CALLS UPON** the Code of Conduct Group to agree on procedures to carry out the monitoring process and to prepare a progress report on this matter before summer 2018.

15. **INSTRUCTS** the Code of Conduct Group accordingly to engage in or continue discussions with relevant jurisdictions, to seek the necessary commitments to monitor whether these commitments are being met, and regularly to report back to the Council, as appropriate, with suggestions concerning modifications to the list of non-cooperative jurisdictions;

16. **TAKES THE VIEW**, as set out in Annex III, that effective and proportionate defensive measures, in both non-tax and tax areas could be applied by the EU and Member States vis-à-vis the non-cooperative jurisdictions, as long as they are part of such list;

17. **RECOMMENDS** that Member States take certain coordinated defensive measures in the tax area as set out in Annex III hereto, in accordance with their national law and in accordance with the obligations under EU and international law;

18. **CALLS UPON** the Code of Conduct Group to continue exploring further coordinated measures in tax area and **INVITES** the Member States to inform the Code of Conduct Group on whether and how they apply defensive measures vis-à-vis the non-cooperative jurisdictions, as long as they are part of such list;

19. **INVITES** the EU institutions and Member States, as appropriate, to take the EU list of non-cooperative jurisdictions for tax purposes into account in foreign policy, economic relations and development cooperation with the relevant third countries, to strive for a comprehensive approach as regards to the issue of compliance with the Criteria, without prejudice to the respective spheres of competence of the Member States and of the Union as resulting from the Treaties;

20. **BELIEVES** that the list of non-cooperative jurisdictions and the defensive measures, when applicable, will have the effect of sending a strong signal to the jurisdictions concerned, thus encouraging a positive change leading to the removal of jurisdictions from the list;

21. **CONFIRMS** that these actions collectively taken by the EU Member States are in line with the agenda promoted by the G20, the OECD and other international fora;

22. **RECALLS** the agreement of the Council on the approach to the absence of a corporate tax system or applying a nominal corporate tax rate equal to zero or almost zero in the context of the criterion that requires a jurisdiction not to facilitate offshore structures or arrangements aimed at attracting profits which do not reflect real economic activity in the jurisdiction, as set out in Annex VII;
23. RECALLS that, in line with the Council Conclusions of 8 November 2016, these actions are without prejudice to the respective spheres of competence of the Member States, such as the competence to negotiate and agree bilateral tax treaties, apply additional measures or maintain lists of non-cooperative jurisdictions at national level with a broader scope;

24. CONFIRMS that a decision on modification of the list will be taken by the Council, on the basis of the relevant factual information made available to the Council by the Code of Conduct Group;

25. NOTES that the list of non-cooperative jurisdictions should be updated at least once per calendar year, and the situation should be continuously monitored in the listed jurisdictions, as well as in other jurisdictions covered by the 2017 screening exercise. On the basis of criteria agreed by the Council, monitoring could be extended, by the Code of Conduct Group, to other jurisdictions;

26. INVITES the Code of Conduct Group to continue dialogue with relevant jurisdictions to promote tax transparency, fair taxation and implementation of anti-BEPS standards; and to continue the work on analysis of defensive measures that could be further defined and applied to non-cooperative jurisdictions in a coordinated manner, without prejudice to Member States' obligations under EU and international law;

27. REITERATES that the Code of Conduct Group, supported by the General Secretariat of the Council, should continue to conduct and oversee this process, in coordination with the HLWP. The Commission will assist the Code of Conduct Group by carrying out the necessary preparatory work for the screening process in accordance with the roles as currently defined under the Code of Conduct for Business Taxation, with particular reference to previous and ongoing dialogues with third countries;

28. DEEMS IT APPROPRIATE, in this context, to determine the Guidelines for further work in this area, as set out in Annex IV;

29. CONFIRMS that the Criteria will be regularly updated, by the Council, as necessary, taking into account international developments and having regard to the evolution of international standards and TAKES THE VIEW that future assessment and dialogue with the jurisdictions concerned should be based on those standards bearing in mind the importance of continued and rapid progress by all relevant jurisdictions in these areas.
ANNEX I

The EU list of non-cooperative jurisdictions for tax purposes (1)

1. THE EU LIST OF NON-COOPERATIVE JURISDICTIONS FOR TAX PURPOSES

1. American Samoa
American Samoa does not apply any automatic exchange of financial information, has not signed and ratified, including through the jurisdiction they are dependent on, the OECD Multilateral Convention on Mutual Administrative Assistance as amended, does not apply the BEPS minimum standards and did not commit to addressing these issues by 31 December 2018.

2. Bahrain
Bahrain does not cover all EU Member States for the purpose of automatic exchange of information, has not signed and ratified the OECD Multilateral Convention on Mutual Administrative Assistance as amended, facilitates offshore structures and arrangements aimed at attracting profits without real economic substance, does not apply the BEPS minimum standards and did not commit to addressing these issues by 31 December 2018.

3. Barbados
Barbados has a harmful preferential tax regime and did not clearly commit to amending or abolishing it as requested by 31 December 2018.

Barbados’ commitment to amend or abolish other harmful tax regimes in line with criterion 2.1 will be monitored.

4. Grenada
Grenada has not signed and ratified the OECD Multilateral Convention on Mutual Administrative Assistance as amended and did not clearly commit to addressing these issues by 31 December 2018.

Grenada’s commitment to comply with criteria 1.1, 2.1 and 3 will be monitored.

5. Guam
Guam does not apply any automatic exchange of financial information, has not signed and ratified, including through the jurisdiction they are dependent on, the OECD Multilateral Convention on Mutual Administrative Assistance as amended, does not apply the BEPS minimum standards and did not commit to addressing these issues by 31 December 2018.

6. Korea (Republic of)
Korea has harmful preferential tax regimes and did not commit to amending or abolishing them by 31 December 2018.

7. Macao SAR
Macao SAR has not signed and ratified, including through the jurisdiction they are dependent on, the OECD Multilateral Convention on Mutual Administrative Assistance as amended and did not commit to addressing these issues by 31 December 2018.

Macao SAR’s commitment to comply with criteria 1.1 and 2.1 will be monitored.

8. Marshall Islands
Marshall Islands facilitates offshore structures and arrangements aimed at attracting profits without real economic substance, does not apply the BEPS minimum standards and did not commit to addressing these issues by 31 December 2018.

(1) On the basis of the responses received by 4 December 2017; 17:00 (UTC +01:00).
Marshall Islands’ commitment to comply with criteria 1.1 and 1.2 will be monitored.

9. **Mongolia**
Mongolia is not a member of the Global Forum on Transparency and Exchange of Information for Tax Purposes, has not signed and ratified the OECD Multilateral Convention on Mutual Administrative Assistance as amended, does not apply the BEPS minimum standards and did not commit to addressing these issues by 31 December 2019.

10. **Namibia**
Namibia is not a Member of the Global Forum on Transparency and Exchange of Information for Tax Purposes, has not signed and ratified the OECD Multilateral Convention on Mutual Administrative Assistance as amended, does not apply the BEPS minimum standards and did not commit to addressing these issues by 31 December 2019. Furthermore, Namibia has harmful preferential tax regimes and did not commit to amending or abolishing them by 31 December 2018.

11. **Palau**
Palau facilitates offshore structures and arrangements aimed at attracting profits without real economic substance and refused to engage in a meaningful dialogue to ascertain its compliance of with criterion 2.2.

Palau's commitment to comply with criteria 1.1, 1.2, 1.3 and 3 will be monitored.

12. **Panama**
Panama has a harmful preferential tax regime and did not clearly commit to amending or abolishing it as requested by 31 December 2018.

Panama's commitment to amend or abolish other harmful tax regimes in line with criterion 2.1 will be monitored.

13. **Saint Lucia**
Saint Lucia has harmful preferential tax regimes, does not apply the BEPS minimum standards and did not clearly commit to addressing these issues by 31 December 2018.

14. **Samoa**
Samoa has harmful preferential tax regimes, does not apply the BEPS minimum standards and did not commit to addressing these issues by 31 December 2018.

15. **Trinidad and Tobago**
Trinidad and Tobago has been attributed a rating of ‘Non-Compliant’ by the Global Forum on Transparency and Exchange of Information for Tax Purposes, has not signed and ratified the OECD Multilateral Convention on Mutual Administrative Assistance in Tax Matters as amended, has a harmful preferential tax regime and did not commit to addressing these issues by 31 December 2018.

Trinidad and Tobago's commitment to comply with criteria 1.1 and 3 will be monitored.

16. **Tunisia**
Tunisia has harmful preferential tax regimes and did not commit to amending or abolishing them by 31 December 2018.

Tunisia's commitment to comply with criterion 3 will be monitored.

17. **United Arab Emirates**
The United Arab Emirates does not apply the BEPS minimum standards and did not commit to addressing these issues by 31 December 2018.

United Arab Emirates' commitment to comply with criteria 1.1 and 1.3 will be monitored.
II. RECOMMENDATIONS TO JURISDICTIONS ON STEPS TO TAKE IN ORDER TO GET DE-LISTED

All listed jurisdictions are invited to effectively address the deficiencies set out in this Annex.
ANNEX II

State of play of the cooperation with the EU with respect to commitments taken to implement tax good governance principles (1)

In the context of the screening process, the Code of Conduct Group invited each jurisdiction where concerns were identified to commit to address such concerns. The large majority of jurisdictions have decided to introduce the relevant changes in their tax legislation in order to comply with the EU screening criteria.

The outcome of this process demonstrates the extent to which all these jurisdictions are engaged in a constructive dialogue with the EU, how they are committed to complying with EU and international tax standards and finally highlight the positive relationship that the EU has built with all these jurisdictions. These jurisdictions have therefore been determined as cooperative, subject to the successful delivery of their commitments.

The Code of Conduct Group will monitor that these commitments are implemented in practice and will therefore continue the constructive dialogue established with these jurisdictions.

The implementation of the commitments is expected to be completed by the end of 2018 for most jurisdictions; developing countries however have until the end of 2019 to fulfil their commitments as regards the transparency criteria and the anti-BEPS measures.

The following ‘State of play of the cooperation with the EU with respect to commitments taken to implement tax good governance principles’ records the commitments taken by the screened jurisdiction to address issues identified with respect to the criteria agreed by the November 2016 Ecofin Council, grouped under the headings of transparency, fair taxation and anti-BEPS measures.

1. Transparency

1.1. Commitment to implement the automatic exchange of information, either by signing the Multilateral Competent Authority Agreement or through bilateral agreements

The following jurisdictions are committed to implement automatic exchange of information by 2018:

Curaçao, Hong Kong SAR, New Caledonia, Oman, Qatar and Taiwan

The following jurisdictions are committed to implement automatic exchange of information by 2019:

Turkey

1.2. Membership of the Global Forum on transparency and exchange of information for tax purposes and satisfactory rating

The following jurisdictions are committed to become member of the Global Forum and/or have a satisfactory rating by 2018:

Curaçao, New Caledonia and Oman

The following jurisdictions are committed to become member of the Global Forum and/or have a sufficient rating by 2019:

Bosnia and Herzegovina, Cabo Verde, Fiji, Jordan, Montenegro, Serbia, Swaziland, Turkey and Vietnam

1.3. Signatory and ratification of the OECD Multilateral Convention on Mutual Administrative Assistance or network of agreements covering all EU Member States

The following jurisdictions are committed to sign and ratify the MAC or to have in place a network of agreements covering all EU Member States by 2018:

Hong Kong SAR, New Caledonia, Oman, Qatar and Taiwan

(1) On the basis of the responses received by 4 December 2017; 17:00 (UTC + 01:00).
The following jurisdictions are committed to sign and ratify the MAC or to have in place a network of agreements covering all EU Member States by 2019:

Armenia, Bosnia and Herzegovina, Botswana, Cabo Verde, Fiji, former Yugoslav Republic of Macedonia, Jamaica, Jordan, Maldives, Montenegro, Morocco, Peru, Serbia, Swaziland, Thailand, Turkey and Vietnam

2. Fair Taxation

2.1. Existence of harmful tax regimes

The following jurisdictions are committed to amend or abolish the identified regimes by 2018:

Andorra, Armenia, Aruba, Belize, Botswana, Cabo Verde, Cook Islands, Curacao, Fiji, Hong Kong SAR, Jordan, Liechtenstein, Maldives, Mauritius, Morocco, Saint Vincent and the Grenadines, San Marino, Seychelles, Switzerland, Taiwan, Thailand, Turkey, Uruguay and Vietnam

The following jurisdictions have not explicitly reiterated the commitment taken at the FHTP to amend or abolish the identified regimes by 2018:

Malaysia and Labuan Island

2.2. Existence of tax regimes that facilitate offshore structures which attract profits without real economic activity

The following jurisdictions are committed to addressing the concerns relating to economic substance by 2018:

Bermuda, Cayman Islands, Guernsey, Isle of Man, Jersey and Vanuatu

3. Anti-BEPS Measures

3.1. Membership of the Inclusive Framework on BEPS or implementation of BEPS minimum standards

The following jurisdictions are committed to become member of the Inclusive Framework or implement BEPS minimum standard by 2018:

Aruba, Cook Islands, Faroe Islands, Greenland, New Caledonia, Saint Vincent and the Grenadines, Taiwan and Vanuatu

The following jurisdictions are committed to become member of the Inclusive Framework or implement BEPS minimum standard by 2019:

Albania, Armenia, Bosnia and Herzegovina, Cabo Verde, Fiji, former Yugoslav Republic of Macedonia, Jordan, Maldives, Montenegro, Morocco, Serbia and Swaziland

The following jurisdictions are committed to become member of the Inclusive Framework or implement BEPS minimum standard if and when such commitment will become relevant:

Nauru, Niue
ANNEX III

Defensive measures

1. Placement of a jurisdiction on the list of non-cooperative jurisdictions for the tax purposes is expected to have a dissuasive effect that encourages jurisdictions to comply with the Criteria, as set out in Annex IV here to, and as further specified in Annexes V and VI, as well as other relevant international standards.

2. It is important to provide efficient protection mechanisms to fight against the erosion of Member States’ tax bases through tax fraud, evasion and avoidance, and consequently, to apply effective and proportionate defensive measures, at the EU and national level, to the jurisdictions in the EU list of non-cooperative jurisdictions for tax purposes.

3. A number of defensive measures in non-tax area at EU level are linked to the EU list of non-cooperative jurisdictions for tax purposes and set out in Part A of this Annex.

4. Moreover, certain defensive measures in tax area could be taken by the Member States, in accordance with their national law, in addition to the non-tax measures taken by the EU, to effectively discourage non-cooperative practices in the jurisdictions placed on the list.

5. A list of such measures in tax area is set out in Part B of this Annex. As these measures should be compatible with the national tax systems of the EU Member States, the implementation of these measures is left to the competence of the Member States.

6. It is to be noted that any defensive measures should be without prejudice to the respective spheres of competence of the Member States to apply additional measures or maintain lists of non-cooperative jurisdictions at national level with a broader scope.

A. DEFENSIVE MEASURES IN NON-TAX AREA

Article 22 of Regulation (EU) 2017/1601 of the European Parliament and of the Council of 26 September 2017 establishing the European Fund for Sustainable Development (EFSD), the EFSD Guarantee and the EFSD Guarantee Fund contains a link to the EU list of non-cooperative jurisdictions.

Furthermore, should a link with the EU list of non-cooperative jurisdictions for tax purposes be designed in other EU legislative acts in non-tax area in the future, it would be considered as a part of the defensive measures in the context of these Council conclusions.

Overall effects on the compliance by the jurisdictions with the Criteria as a result of such measures should be monitored by the Code of Conduct Group, as well as by the HLWP in the context of implementation of the EU external strategy on taxation.

B. DEFENSIVE MEASURES IN TAX AREA

B.1. To ensure coordinated action, Member States should apply at least one of the following administrative measures in tax area:

(a) Reinforced monitoring of certain transactions;
(b) Increased audit risks for taxpayers benefiting from the regimes at stake;
(c) Increased audit risks for taxpayers using structures or arrangements involving these jurisdictions.

B.2. Without prejudice to the respective spheres of competence of the Member States to apply additional measures, defensive measures of legislative nature in tax area that could be applied by the Member States are:

(a) Non-deductibility of costs;
(b) Controlled Foreign Company (CFC) rules;
(c) Withholding tax measures;
(d) Limitation of participation exemption;
(e) Switch-over rule;
(f) Reversal of the burden of proof;
(g) Special documentation requirements;

(h) Mandatory disclosure by tax intermediaries of specific tax schemes with respect to cross-border arrangements;

B.3. Member States could consider using the EU list of non-cooperative jurisdictions for tax purposes as a tool to facilitate the operation of relevant anti-abuse provisions, when implementing Council Directive (EU) 2016/1164 of 12 July 2016 laying down rules against tax avoidance practices that directly affect the functioning of the internal market. For example, where, in accordance with that Directive, Member States, in transposing CFC rules into their national law, use ‘black’ lists of third countries, such lists could cover at least the jurisdictions listed in the EU list of non-cooperative jurisdictions for tax purposes.
ANNEX IV

Guidelines for further process concerning the EU list of non-cooperative jurisdictions for tax purposes

1. REVISION OF THE LIST AND DE-LISTING PROCESS

1.1. The list of non-cooperative jurisdictions for tax purposes set out in Annex I shall be revised by the Council at least once a year and endorsed on the basis of the report from the Code of Conduct Group on Business Taxation to the Council, indicating the starting date of application of that modification.

1.2. This list may be amended or its duration may be modified under the same procedural rules as it has been endorsed. In this process, European Commission should provide the necessary technical assistance.

1.3. The decision of the Council will be based on a report of the Code of Conduct Group, in coordination with the HLWP, and prepared by the Committee of Permanent Representatives.

1.4. As soon as a jurisdiction is placed on the list, it will be informed by a letter signed by the Chair of the Code of Conduct Group, clearly stating:

(a) the reasons for its inclusion in the list; and

(b) which steps from a jurisdiction concerned are expected in order to be de-listed.

1.5. As soon as a jurisdiction is removed from the list, it will be swiftly informed of its removal by the letter signed by the Chair of the Code of Conduct Group, with the indication of the starting date of the application of such modification.

1.6. Decisions on listing or de-listing a jurisdiction should clearly specify the dates when the defensive measures in tax area should start or cease to apply depending on the nature of the measure, without prejudice to the respective spheres of competence of the Member States, such as adjustment of national legislation on application of defensive measures taken at national level.

2. COMMITMENTS BY JURISDICTIONS, MONITORING, DIALOGUE AND WAY FORWARD

2.1. Commitments officially taken by jurisdictions to implement recommendations requested by the Council in order to address the issues identified should be carefully monitored by the Code of Conduct Group, supported by the General Secretariat of the Council, with technical assistance of the European Commission, in order to evaluate their effective implementation.

2.2. Should these jurisdictions fail to address commitments by the established timeframe, the Council will revisit the issue of potential inclusion of the jurisdictions concerned into a list set out in Annex I.

2.3. For jurisdictions that present concerns by not fulfilling the requirements of the Criteria, the Code of Conduct Group should continue to seek their high level political commitment, with a concrete time frame, and effectively address the concerns identified in screening process.

2.4. In particular, bilateral discussions should aim at:

(a) exploring and determining solutions to identified concerns with the tax systems and policies of these jurisdictions; as well as

(b) obtaining the appropriate and necessary commitments to remedy the situation.

2.5. In monitoring commitments, stock should continue to be taken of the work achieved by the Global Forum on Transparency and Exchange of Information for Tax Purposes, the OECD Inclusive Framework for Tackling Base Erosion and Profit Shifting, and of the Forum on Harmful Tax Practices.

2.7. Where relevant, if decided by the Code of Conduct Group on the basis of criteria agreed by the Council, monitoring could extend to jurisdictions that were outside the scope of the 2017 screening exercise.

2.8. The Code of Conduct Group, supported by the General Secretariat of the Council will continue to conduct and oversee this process, in coordination with the HLWP. The Commission services will assist the Code of Conduct Group by carrying out the necessary preparatory work for the screening process in accordance with the roles as currently defined under the Code of Conduct for Business Taxation, with particular reference to previous and ongoing dialogues with third countries.

2.9. The Code of Conduct Group should continue developing appropriate practical arrangements on implementing of these Guidelines.

2.10. The EU list of non-cooperative jurisdictions shall be updated by the Council, along these Guidelines, on the basis of information that will be made available to the Code of Conduct Group. The Code of Conduct group will work on the basis of information provided to it, inter alia, by the jurisdiction concerned, the Commission or the Member State(s).

2.11. Following a balanced review of all collected information, the Code of Conduct Group shall report to the Council at least once a year, on the list of non-cooperative jurisdictions to enable the Council to decide, as appropriate, to include jurisdictions in the list of non-cooperative jurisdictions if they do not comply with the screening criteria, or swiftly remove them from such list, if they fulfil the conditions.

2.12. General Secretariat of the Council will continue to serve as a focal point in order to facilitate the process described in this document.
ANNEX V

Criteria on tax transparency, fair taxation and implementation of anti-BEPS measures that EU Member States undertake to promote

The following tax good governance criteria should be used to screen jurisdictions, with a view to establishing the EU list of non-cooperative jurisdictions for tax purposes, in line with the guidelines for the screening. The compliance of jurisdictions on tax transparency, fair taxation and the implementation of BEPS measures will be assessed cumulatively in the screening process.

1. Tax transparency

Criteria that a jurisdiction should fulfil in order to be considered compliant on tax transparency:

1.1. Initial criterion with respect to the OECD Automatic Exchange of Information (AEOI) standard (the Common Reporting Standard — CRS): the jurisdiction, should have committed to and started the legislative process to implement effectively the CRS, with first exchanges in 2018 (with respect to the year 2017) at the latest and have arrangements in place to be able to exchange information with all Member States, by the end of 2017, either by signing the Multilateral Competent Authority Agreement (MCAA) or through bilateral agreements;

Future criterion with respect to the CRS as from 2018: the jurisdiction, should possess at least a 'Largely Compliant' rating by the Global Forum with respect to the AEOI CRS; and

1.2. the jurisdiction should possess at least a 'Largely Compliant' rating by the Global Forum with respect to the OECD Exchange of Information on Request (EOIR) standard, with due regard to the fast track procedure; and

1.3. (for sovereign states) the jurisdiction should have either:

(i) ratified, agreed to ratify, be in the process of ratifying, or committed to the entry into force, within a reasonable time frame, of the OECD Multilateral Convention on Mutual Administrative Assistance (MCMMAA) in Tax Matters, as amended; or

(ii) a network of exchange arrangements in force by 31 December 2018 which is sufficiently broad to cover all Member States, effectively allowing both EOIR and AEOI;

(for non-sovereign jurisdictions) the jurisdiction should either:

(i) participate in the MCMMAA, as amended, which is either already in force or expected to enter into force for them within a reasonable time frame; or

(ii) have a network of exchange arrangements in force, or have taken the necessary steps to bring such exchange agreements into force within a reasonable time frame, which is sufficiently broad to cover all Member States, allowing both EOIR and AEOI.

1.4. Future criterion: in view of the initiative for future global exchange of beneficial ownership information, the aspect of beneficial ownership will be incorporated at a later stage as a fourth transparency criterion for screening.

Until 30 June 2019, the following exception should apply:

— A jurisdiction could be regarded as compliant on tax transparency, if it fulfils at least two of the criteria 1.1, 1.2 or 1.3.

This exception does not apply to the jurisdictions which are rated ‘Non-Compliant’ on criterion 1.2 or which have not obtained at least ‘Largely Compliant’ rating on that criterion by 30 June 2018.
Countries and jurisdictions which will feature in the list of non-cooperative jurisdictions currently being prepared by the OECD and G20 members will be considered for inclusion in the EU list, regardless of whether they have been selected for the screening exercise.

2. **Fair taxation**

Criteria that a jurisdiction should fulfil in order to be considered compliant on fair taxation:

2.1. the jurisdiction should have no preferential tax measures that could be regarded as harmful according to the criteria set out in the Resolution of the Council and the Representatives of the Governments of the Member States, meeting within the Council of 1 December 1997 on a code of conduct for business taxation (1); and

2.2. the jurisdiction should not facilitate offshore structures or arrangements aimed at attracting profits which do not reflect real economic activity in the jurisdiction.

3. **Implementation of anti-BEPS measures**

3.1. Initial criterion that a jurisdiction should fulfil in order to be considered compliant as regards the implementation of anti-BEPS measures:

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3.2. Future criterion that a jurisdiction should fulfil in order to be considered compliant as regards the implementation of anti-BEPS measures (to be applied once the reviews by the Inclusive Framework of the agreed minimum standards are completed):

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(2) Once the methodology is agreed, the wording of the criterion will be revised by the Council accordingly.
ANNEX VI

Criterion 1.3 (the duration of the reasonable time frame)

1. In line with point 13 of the Guidelines for the process of screening of jurisdictions annexed to the Council Conclusions, the Code of Conduct Group should define, based on objective criteria the duration of the reasonable time frame, referred to in criterion 1.3.

2. For the purposes of application of criterion 1.3, the duration of the reasonable time frame, referred to in criterion 1.3, will be construed as follows:

3. With respect to criterion 1.3(i) (sub-point relating to sovereign states), 'within a reasonable time frame' refers to the entry into force of the OECD Multilateral Convention on Mutual Administrative Assistance (MCMAA), as amended, for a given jurisdiction and not to the commitment.

4. With respect to criteria 1.3(i) and 1.3(ii) (sub-points relating to non-sovereign jurisdictions), 'within a reasonable time frame' refers, respectively, to the entry into force of the MCMAA, as amended, for the jurisdiction, and to the entry into force for the jurisdiction of a network of exchange agreements sufficiently broad to cover all Member States.

5. The duration of the reasonable time frame, for these three points will be identical to the deadline applied in criterion 1.3(ii) in relation to sovereign states: 31 December 2018 (i.e. the same deadline which applies to the entry into force for a sovereign third jurisdiction of a network of exchange arrangements, which is sufficiently broad to cover all Member States).

6. Without prejudice to the deadline of 31 December 2018, the reasonable time frame should not extend beyond the time required for:
   (a) the completion of the procedural steps according to national law;
   (b) adoption and entry into force of any required amendments to national law; and
   (c) any other objective deadlines that formal commitment could entail (for example: for a jurisdiction which expresses its consent to be bound by the MCMAA, it enters into force on the first day of the month following the expiration of a period of three months after the date of the deposit of the instrument of ratification, acceptance or approval).

7. The duration of the reasonable time frame can only be extended by a consensus of a Code of Conduct Group for a specific non-sovereign jurisdiction, only in duly justified cases.
ANNEX VII

Scope of criterion 2.2

1. For the purposes of application of criterion 2.2, the absence of a corporate tax or applying a nominal corporate tax rate equal to zero or almost zero by a jurisdiction should be regarded as within the scope of Paragraph A of the Code of Conduct for Business Taxation of 1 December 1997 (Code of Conduct) (1).

2. In this respect, where criterion 2.1 is inapplicable solely due to the fact that the jurisdiction concerned does not meet the gateway criterion under Paragraph B of the Code of Conduct (2), because of the ‘absence of a corporate tax system or applying a nominal corporate tax rate equal to zero or almost zero’ (3), then the five factors identified in paragraph B of the Code of Conduct should be applied by analogy to assess whether the criterion 2.2 (4) has been met.

3. In the context of criterion 2.2 the fact of absence of a corporate tax or applying a nominal corporate tax rate equal to zero or almost zero cannot alone be a reason for concluding that a jurisdiction does not meet the requirements of criterion 2.2.

4. A jurisdiction should be deemed as non-compliant with criterion 2.2 if it refuses to engage in a meaningful dialogue or does not provide the information or explanations that the Code of Conduct Group may reasonably require or otherwise does not cooperate with the Code of Conduct Group where it needs to ascertain compliance of that jurisdiction with criterion 2.2 in the conduct of the screening process.

Terms of reference for the application of the Code test by analogy

A. GENERAL FRAMEWORK

1. **Criterion from Ecofin Council Conclusion on 8 November 2016**

The jurisdiction should not facilitate offshore structures or arrangements aimed at attracting profits which do not reflect real economic activity in the jurisdiction.

2. **Scope of Criterion 2.2 (Ecofin February 2017)**

1. For the purposes of application of criterion 2.2, the absence of a corporate tax or applying a nominal corporate tax rate equal to zero or almost zero by a jurisdiction should be regarded as within the scope of Paragraph A of the Code of Conduct for Business Taxation of 1 December 1997 (Code of Conduct) (1).

2. In this respect, where criterion 2.1 is inapplicable solely due to the fact that the jurisdiction concerned does not meet the gateway criterion under Paragraph B of the Code of Conduct (2), because of the ‘absence of a corporate tax system or applying a nominal corporate tax rate equal to zero or almost zero’ (3), then the five factors identified in paragraph B of the Code of Conduct should be applied by analogy to assess whether the criterion 2.2 (4) has been met.

3. In the context of criterion 2.2 the fact of absence of a corporate tax or applying a nominal corporate tax rate equal to zero or almost zero cannot alone be a reason for concluding that a jurisdiction does not meet the requirements of criterion 2.2.

4. A jurisdiction should be deemed as non-compliant with criterion 2.2 if it refuses to engage in a meaningful dialogue or does not provide the information or explanations that the Code of Conduct Group may reasonably require or otherwise does not cooperate with the Code of Conduct Group where it needs to ascertain compliance of that jurisdiction with criterion 2.2 in the conduct of the screening process.

(1) ‘Without prejudice to the respective spheres of competence of the Member States and the Community, this code of conduct, which covers business taxation, concerns those measures which affect, or may affect, in a significant way the location of business activity in the Community.’ (OJ C 2, 6.1.1998, p. 3).

(2) ‘Within the scope specified in paragraph A, tax measures which provide for a significantly lower effective level of taxation, including zero taxation, than those levels which generally apply in the Member State in question are to be regarded as potentially harmful and therefore covered by this code. Such a level of taxation may operate by virtue of the nominal tax rate, the tax base or any other relevant factor.’ (OJ C 2, 6.1.1998, p. 3).

(3) This may operate by virtue of the nominal tax rate, the tax base or any other relevant factor.

(4) Criterion 2.2 reads as follows: ‘The jurisdiction should not facilitate offshore structures or arrangements aimed at attracting profits which do not reflect real economic activity in the jurisdiction.’
3. **General remarks**

— Scope of Criterion 2.2 as defined by Ecofin considers the absence of a corporate tax rate or a nominal tax rate equal to zero or almost zero in a jurisdiction as a ‘measure’ significantly affecting the location of business activities (Paragraph A of the Code of Conduct).

— To this extent, Criterion 2.2 is aimed at verifying whether this ‘measure’ facilitates offshore structures or arrangements aimed at attracting profits which do not reflect real economic activity in the jurisdiction.

— Criterion 2.2 applies only when the standard code assessment (i.e. criterion 2.1) cannot be applied because of the absence in a third country jurisdiction of a corporate tax system or because the jurisdiction applies a nominal corporate tax rate equal to zero or almost zero.

— Criterion 2.2 assesses the legal framework and certain economic evidences of a jurisdiction with regard to the five criteria established under paragraph B of the Code of Conduct to be interpreted by analogy.

— Advantages granted by a third country jurisdictions influencing in a significant way the location of business activities have to be seen in connection with a nominal corporate tax rate equal to zero or almost zero as well as in connection with the absence of corporate taxation, to the extent in both cases the standard Code of Conduct test could not be applied. These latter features have in fact to be considered per se as advantages to be assessed under this Code test.

— In general terms, any guidance developed by the COCG over the years for assessing tax measures within the scope of the 1998 Code of Conduct should be applied consistently and by analogy for the purpose of this test (1).

— A jurisdiction can only be deemed to have failed the assessment under this criterion when ‘offshore structures and arrangements attracting profits which do not reflect real economic activity in the jurisdiction’ are due to rules or practices, including outside the taxation area, which a jurisdiction can reasonably be asked to amend, or are due to a lack of those rules and requirements needed to be compliant with this test that a jurisdiction can reasonably be asked to introduce.

— The introduction of a CIT system or a positive CIT rate is not amongst the actions that a third country jurisdiction can be asked to take in order to be in line with the requirements under this test, since the absence of a corporate tax base or a zero or almost zero level tax rate cannot by itself be deemed as criterion for evaluating a jurisdiction as non-compliant.

— Nonetheless, criterion 2.2 implies automatic non-compliance for those jurisdictions that refuse to cooperate with the EU for the assessment of their legal framework.

B. **GATEWAY TEST**

1. **Gateway criterion as it reads now in the Code of Conduct**

‘Within the scope specified in paragraph A, tax measures which provide for a significantly lower effective level of taxation, including zero taxation, than those levels which generally apply in the Member State in question are to be regarded as potentially harmful and therefore covered by this Code.’

2. **Guidelines for application by analogy**

— The functioning of the Gateway test seems rather clear from the definition of scope of Criterion 2.2 as agreed by Ecofin in February this year.

— In particular, this test is satisfied when ‘criterion 2.1 is inapplicable solely due to the fact that the jurisdiction concerned does not meet the gateway criterion under Paragraph B of the Code of Conduct, because of the absence of a corporate tax system or applying a nominal corporate tax rate equal to zero or almost zero’

C. CRITERIA 1 AND 2

1. **Criterion 1 of the current Code Criteria as it is now**

‘Whether advantages are accorded only to non-residents or in respect of transactions carried out with non-residents’

2. **Criterion 2 of the current Code Criteria as it is now**

‘Whether advantages are ring-fenced from domestic market, so they do not affect the national tax base’

3. **Guidelines for application by analogy**

   — For the purpose of applying criterion 2.2, ‘advantages’ should be understood as the existence of zero or almost zero taxation or the absence of CIT.

   — Factor 1 as well as factor 2 of the current code criteria contain two main elements: (a) legal ring-fencing; and (b) de facto ring-fencing.

   — *De jure* ring-fencing occurs when advantages are only granted to non-residents by the laws and regulations governing the establishment and operations of businesses in a given jurisdiction.

   — Where there is no an effective CIT-system in place, it should be then assessed whether aspects of the legal framework, including non-CIT aspects, effectively provide for a ring-fenced scenario.

   — An example of that would be non-tax requirements for companies to allow for the residence or for the access to the domestic market of the tested jurisdiction.

   — For this purpose, any measure leading to a different treatment between domestic companies and companies held by non-residents or whose activities are disconnected from the domestic market shall be assessed.

   — If for instance a jurisdiction grants ‘advantages’ to a company only if it abstains from activities in the local economy (criterion 2) or only to the extent such activities are dependent on a specific business license (criterion 1 and 2) or only to the extent the activities are undertaken by non-residents (criterion 1), this could be assessed as a possible feature of a ring-fencing system in place. By analogy this could also be relevant for other taxes (i.e. other than CIT).

   — *De facto* ring-fencing usually refers to a situation whereby the advantage is not explicitly granted by a country only to non-residents although, in fact, it is enjoyed only or almost only by non-residents.

   — As to the de facto ring-fencing, it is usually considered how many of the taxpayers benefitting from the advantage are in fact non-residents. If, for instance all or nearly all of the subjects benefitting from zero taxation are non-residents (including domestic companies with foreign shareholding), sub-criteria 1(b) as well as 2(b) would be considered as met (i.e. the jurisdiction would be deemed to be non-compliant under this step of the Code test).

D. CRITERION 3

1. **Criterion 3 of the current Code Criteria as it is now**

‘Whether advantages are granted even without any real economic activity and substantial economic presence with the Member State offering such tax advantages’

2. **Guidelines for application by analogy**

In order to evaluate whether advantages are granted even without any real economic activity and substantial economic presence, it has to be ascertained:

   — whether a jurisdiction does require a company or any other undertaking (e.g. for its incorporation and/or its operations) the carrying out of real economic activities and a substantial economic presence:

   — ‘Real economic activity’ relates to the nature of the activity that benefits from the non-taxation at issue,
— ‘Substantial economic presence’ relates to the factual manifestations of the activity that benefits from the non-taxation at issue,

— By way of example and under the assumption that, in general, elements considered in the past by the COCG are relevant also for this analysis, the current assessment should consider the following elements taking into account the features of the industry/sector in question: adequate level of employees, adequate level of annual expenditure to be incurred; physical offices and premises, investments or relevant types of activities to be undertaken,

— whether there is an adequate de jure and de facto link between real economic activity carried on in the jurisdiction and the profits which are not subject to taxation,

— whether governmental authorities, including tax authorities of a jurisdiction, are capable of (and are actually doing) investigations on the carrying out of real economic activities and a substantial economic presence on its territory, and exchanges of relevant information with other tax authorities,

— whether there are any sanctions for failing to meet substantial activities requirements.

E. CRITERION 4

1. **Criterion 4 of the current Code Criteria as it is now**

   ‘Whether the rules for profit determination in respect of activities within a multinational group of companies depart from internationally accepted principles, notably the rules agreed upon within the OECD’

2. **Guidelines for application by analogy**

   — In assessing the adherence of profit determination rules to internationally agreed standards (e.g. OECD TP Guidelines or other similar accounting standards) first of all it should be verified if and to what extent this analysis is relevant for jurisdictions not applying a CIT system.

   — To this aim it seems relevant to consider that a jurisdiction not applying a CIT system should not negatively affect a proper allocation of profits departing from internationally agreed standards. Jurisdictions should take appropriate steps in ensuring taxing countries are able to exercise their taxing rights, i.e. via CBCR, transparency and other modes of information sharing.

   — Where relevant, it should be ascertained if OECD’s agreed principles or similar accounting standards for the determination of profits have been endorsed in a given jurisdiction.

   — To this regard, it is critical to ascertain how these rules are implemented and consolidated in the jurisdictions concerned. In the absence of corporate income taxation in a given jurisdiction, also alternative transfer pricing rules can be taken into account, verifying whether they are comparable and compatible with internationally agreed principles (for instance a fair market value approach under international accounting principles).

   — This Criterion shall prevent from allowing multinational companies to use transfer pricing rules departing from the OECD Transfer Pricing Guidelines in order to allocate their profits to zero tax jurisdictions.

   — Answers to questions from 2.9 to 2.12 should give sufficient information on how profits are determined highlighting any important department from internationally agreed standards.

F. CRITERION 5

1. **Criterion 5 of the current Code Criteria as it is now**

   ‘Whether the tax measures lack transparency, including where legal provisions are relaxed at administrative level in a non-transparent way’

2. **Guidelines for application by analogy**

   — Criterion 5 shall evaluate whether certain features of a legal system, including the establishment of a business on its territory, lack sufficient level of transparency.

   — More specifically, it has to be assessed whether any elements of the legal system, including the granting of tax residence or the setting up of companies can be granted on a discretionary basis or whether it is bound by the law, verifying whether any legal provision, including non-tax provisions, can be deemed to be discretionary in matters related to the setting up of a company in that jurisdiction.
— This factor shall prevent a jurisdiction from having an insufficient level of transparency within its regulatory framework, considering that advantages as considered in this Code test stem from the registration of a company in a jurisdiction.

— Answers to questions from 2.13 to 2.16 should give sufficient information on how transparency is ensured in a jurisdiction on certain steps to be undertaken by companies in order to benefit from the advantages provided therein.
Notice for the attention of a person subject to the restrictive measures provided for in Council Decision 2014/119/CFSP and in Council Regulation (EU) No 208/2014 concerning restrictive measures directed against certain persons, entities and bodies in view of the situation in Ukraine

(2017/C 438/05)

The following information is brought to the attention of Mr. Viktor Ivanovych Ratushniak who appears in the Annex to Council Decision 2014/119/CFSP (1) and in Annex I to Council Regulation (EU) No 208/2014 (2) concerning restrictive measures directed against certain persons, entities and bodies in view of the situation in Ukraine.

The Council is considering maintaining the restrictive measures against the abovementioned person. The abovementioned person is hereby informed that he may submit a request to the Council to obtain the elements the Council holds in its file regarding his designation, before 3 January 2018, to the following address:

Council of the European Union
General Secretariat
DG C 1 C
Rue de la Loi/Wetstraat 175
1048 Bruxelles/Brussel
BELGIQUE/BELGIË
E-mail: sanctions@consilium.europa.eu

In this regard, the attention of the person concerned is drawn to the regular review by the Council of the list of designated persons in Decision 2014/119/CFSP and Regulation (EU) No 208/2014.

EUROPEAN COMMISSION

Euro exchange rates (1)
18 December 2017
(2017/C 438/06)

1 euro =

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<tr>
<td>ISK Iceland króna</td>
<td></td>
<td>CNY Chinese yuan renminbi</td>
<td>7,8055</td>
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<td>NOK Norwegian krone</td>
<td>9,8573</td>
<td>HRK Croatian kuna</td>
<td>7,5430</td>
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<td>BGN Bulgarian lev</td>
<td>1,9538</td>
<td>IDR Indonesian rupiah</td>
<td>16 027,64</td>
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<td>CZK Czech koruna</td>
<td>25,685</td>
<td>MYR Malaysian ringgit</td>
<td>4,8141</td>
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<td>HUF Hungarian forint</td>
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<td>PHP Philippine peso</td>
<td>59,551</td>
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<td>PLN Polish zloty</td>
<td>4,2070</td>
<td>RUB Russian rouble</td>
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<td>RON Romanian leu</td>
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<td>THB Thai baht</td>
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(1) Source: reference exchange rate published by the ECB.
Opinion of the Advisory Committee on mergers given at its meeting of 4 July 2016 regarding a draft decision relating to Case M.7724 — ASL/Arianespace

Rapporteur: Lithuania

(2017/C 438/07)

Operation

1. The Advisory Committee agrees with the Commission that the Transaction constitutes a concentration within the meaning of Article 3(1)(b) of the Merger Regulation.

Union dimension

2. The Advisory Committee agrees with the Commission that the Transaction has a Union dimension pursuant to Article 1(2) of the Merger Regulation.

Product and geographic market

3. The Advisory Committee agrees with the Commission’s conclusions as to the following relevant product markets:
   3.1. markets for launch services;
   3.2. markets for satellites;
   3.3. market for launchers exploited by Arianespace;
   3.4. markets for (i) payload adapters; and (ii) payload dispensers;
   3.5. markets for space insurance services; and
   3.6. markets for satellite operation.

4. The Advisory Committee agrees with the Commission’s conclusions as to the following relevant geographic markets:
   4.1. markets for launch services;
   4.2. markets for satellites;
   4.3. market for launchers exploited by Arianespace;
   4.4. markets for (i) payload adapters; and (ii) payload dispensers;
   4.5. markets for space insurance services; and
   4.6. markets for satellite operation.

Competitive assessment

5. The Advisory Committee agrees with the Commission’s assessment that the Transaction would significantly impede effective competition in the markets (i) for launch services; and (ii) for satellites; as regards the flows of sensitive information from (i) Arianespace to Airbus in relation to other satellite manufacturers; and (ii) Airbus to Arianespace in relation to other launch services providers.

6. The Advisory Committee agrees with the Commission that the final commitments offered by the notifying party on 20 May 2016 address the competition concerns identified by the Commission.

7. The Advisory Committee agrees with the Commission’s assessment that the Transaction would not significantly impede effective competition further to the relationship between the Parties’ activities in:
   7.1. the markets for launch services and the markets for satellites;
   7.2. the market for launchers exploited by Arianespace and the markets for launch services;
   7.3. the markets for launch services and the markets for payload dispensers and payload adapters;
   7.4. the markets for space insurance services and the markets for satellite operation and for satellites; and
   7.5. the markets for launch services and the markets for satellite operations.
8. The Advisory Committee agrees with the Commission that, subject to the full compliance with the final commitments offered by the notifying party on 20 May 2016, the Transaction is not likely to significantly impede effective competition in the internal market or in a substantial part of it.

Compatibility with internal market

9. The Advisory Committee agrees with the Commission that the Transaction should therefore be declared compatible with the internal market and the functioning of the EEA Agreement in accordance with Article 2(2) and 8(2) of the Merger Regulation and Article 57 of the EEA Agreement.
Final Report of the Hearing Officer (1)
ASL/Arianespace
(M.7724)
(2017/C 438/08)


2. On 1 February 2016, the Commission informed the Parties of the concerns resulting from the preliminary assessment of the Proposed Transaction during a ‘State of play’ meeting. Subsequently, the Parties proposed commitments on 5 February 2016, and draft revised commitments on 9 February 2016.

3. On 26 February 2016, the Commission adopted a decision initiating proceedings pursuant to Article 6(1)(c) of the Merger Regulation (2). In that decision, the Commission indicated that the proposed commitments did not allow ruling out the competition concerns identified in the first phase investigation.

4. On 11 March 2016, the Parties submitted written comments on the decision initiating proceedings.

5. On 22 March 2016, upon reasoned request, I admitted Avio s.p.a, a competitor of ASL, to be heard as interested third person pursuant to Article 5 of Decision 2011/695/EU. On 24 June 2016, upon their reasoned request, I have also admitted MacDonald, Dettwiler and Associates Ltd (Canada), and its subsidiary Space Systems/Loral (USA), a competitor of Airbus, as interested third persons.

6. On 1 April 2016, pursuant to Article 10(3), second subparagraph, third sentence, of the Merger Regulation, the second phase period for reviewing the Proposed Transaction was extended by 10 working days. On 27 April 2016, the Commission decided to extend that review period by 10 further working days, under the same legal basis.

7. The Parties submitted a new package of proposed commitments on 4 May 2016. On the basis of feedback from the Commission’s targeted market testing of this package, the Parties offered revised commitments on 20 May 2016.

8. The Commission did not issue a statement of objections pursuant to Article 13(2) of the Merger Implementing Regulation (3). Accordingly, there was no formal oral hearing pursuant to Article 14 of that regulation.

9. The draft decision declares the Proposed Transaction, as modified by the commitments offered by the Parties on 20 May 2016, compatible with the internal market and the EEA Agreement, subject to conditions and obligations intended to ensure that the Parties comply with these commitments.

10. Pursuant to Article 16 of Decision 2011/695/EU, I have examined whether the draft decision deals only with objections in respect of which the parties have been afforded the opportunity of making known their views. I conclude that it does.

11. Overall, I consider that the effective exercise of procedural rights has been respected during the present proceedings.

Brussels, 11 July 2016.

Joos STRAGIER
Summary of Commission Decision
of 20 July 2016

declaring a concentration compatible with the internal market and the functioning of the EEA Agreement

(Case M.7724 – ASL/Arianespace)
(notified under document C(2016) 4621)
(Only the English version is authentic)

(2017/C 438/09)

On 20 July 2016 the Commission adopted a Decision in a merger case under Council Regulation (EC) No 139/2004 of 20 January 2004 on the control of concentrations between undertakings (1), and in particular Article 8(1) of that Regulation. A non-confidential version of the full Decision can be found in the authentic language of the case on the website of the Directorate-General for Competition, at the following address: http://ec.europa.eu/comm/competition/index_en.html

I. THE PARTIES AND THE OPERATION

(1) On 8 January 2016, the European Commission received notification of a proposed concentration pursuant to Article 4 of the Merger Regulation by which ASL, a joint venture jointly controlled by Airbus Group S.E. (‘Airbus’, the Netherlands) and Safran S.A. (‘Safran’, France), acquires within the meaning of Article 3(1)(b) of the Merger Regulation sole control over Arianespace Participation S.A. and Arianespace S.A. (together, ‘Arianespace’, France), by way of purchase of the entire shareholding currently held by Centre National d’Etudes Spatiales (‘CNES’) in Arianespace (the ‘Transaction’). Airbus and Safran together, as well as ASL, are designated hereinafter as the ‘Parties’.

(2) Arianespace is a company founded in 1980 by CNES, acting as the main shareholder, and by the satellite industry participating in the Ariane programme, namely Airbus, Safran and eleven other European companies representing the ten European countries financing, through their participation in the European Space Agency (‘ESA’), the development of the Ariane launcher. This initial shareholding structure has up to present remained mostly unchanged. Arianespace performs launches of satellites and other spacecraft for commercial and institutional clients from the Guiana Space Centre (‘CSG’) located in Kourou, France. For that purpose, it has been entrusted by ESA with the exclusive right to commercialise the ESA funded launchers Ariane and Vega. Pursuant to agreements signed between Russia, ESA and France, Arianespace also has the exclusive right to operate launch services from the CSG for commercial missions using the Russian Soyuz launcher.

(3) ASL is a company incorporated under French law and jointly controlled by Airbus and Safran (50/50), which combines the activities of its parent companies in the civil and military launchers sector and in satellites sub-systems and equipment. The creation of the ASL group was notified to the Commission on 8 October 2014 under Case M.7353 and authorized, subject to conditions, on 26 November 2014.

(4) Airbus is a company incorporated under Dutch law active in aeronautics, space and defence. It is currently listed on the stock exchanges of Frankfurt, Madrid and Paris. Airbus comprises three main divisions: (i) Airbus Division focusing on the manufacturing of commercial aircraft (68.4% of the total group’s revenue in 2014), (ii) Airbus Helicopters (9.8% of the total group’s revenue); and (iii) Airbus Defence and Space (‘Airbus DS’) bringing together a wide portfolio of products in the field of defence, security and secure space-based applications (20.9% of the total group revenue), including sub-systems for launchers (through its Spanish subsidiary Airbus Defence and Space SAU, ‘Airbus DS SAU’) and satellites. Airbus DS is also active as a satellite operator for telecommunications and Earth-observation satellites.

(5) Safran is a French-based company listed on the Paris stock exchange focusing on three main areas: (i) aerospace propulsion (53% of the group’s total revenues); (ii) aircraft equipment (29% of the group’s total revenues), and (iii) defence and security (18% of the group’s total revenues).

II. SUMMARY

(6) The transaction was notified to the Commission on 8 January 2016.

(7) By decision dated 26 February 2016, the Commission found that the Transaction raised serious doubts as to its compatibility with the internal market and adopted a decision to initiate proceedings pursuant to Article 6(1)(c) of the Merger Regulation (the ‘Article 6(1)(c) Decision’).

(8) The in-depth investigation confirmed the competition concerns preliminarily identified as regards the exchange of sensitive information between Arianespace and Airbus.

(9) The Notifying Party submitted the final commitments ('Final Commitments') on 20 May 2016 that render the Transaction compatible with the internal market.

(10) Therefore, a clearance decision pursuant to Article 8(2) of the Merger Regulation is proposed for adoption.

III. EXPLANATORY MEMORANDUM

A. THE RELEVANT PRODUCT MARKETS

1. Market for launchers exploited by Arianespace

(11) Arianespace procures launchers from the launcher prime contractors (ASL for Ariane, ELV for Vega and TsSKB for Soyuz). ASL is active as the prime contractor for the Ariane launchers.

(12) In this context, the Commission considers the existence of a market for launchers exploited by Arianespace which would be European in scope.

2. Market for launch services

(13) Arianespace performs launches of satellites and other spacecraft for institutional and commercial customers. It performs launches both to geostationary transfer orbits ('GTO') and non-GTO. ASL is marginally active in the market of launch services through its joint venture Eurockot, which commercialises the Rockot launcher. The launcher is used for non-GTO launches both for commercial and institutional customers.

(14) In this context, the Commission considers that (i) GTO and (ii) non-GTO missions constitute different markets. Each of these can be further segmented into (i) open launches and (ii) captive launches (civil or military). This corresponds to the following distinct relevant markets: (i) open market for GTO launch services, (ii) open market for non-GTO launch services, (iii) captive market for GTO launch services and (iv) captive market for non-GTO launch services. For the purpose of this Decision, the issue whether the markets for non-GTO launch services can be segmented between LEO and MEO launches can be left open.

(15) As regards the geographic scope, the Commission considers (i) the open markets for launch services (both for GTO and non-GTO launches) to be worldwide in scope; and (ii) the captive markets for launch services (both for GTO and non-GTO launches) to be national or regional in scope.

3. Market for satellites

(16) Airbus is active as a satellite manufacturer both in terms of commercial, institutional and military satellites, as well as for constellations.

(17) In this context, the Commission considers the following relevant markets: (i) market for European institutional satellites; (ii) markets for national institutional satellites within the EU; (iii) market for export of institutional satellites; (iv) market for commercial satellites and (v) market for military satellites. For the purpose of this Decision, the issue whether the market for satellites should be further segmented on the basis of the type of orbit (GTO/ non-GTO), and whether constellation satellites form a distinct market can be left open.

(18) The Commission considers that (i) the market for commercial satellites is worldwide in scope; (ii) the market for European institutional satellites is European or national depending on the procuring authority; (iii) the market for export of institutional satellites is worldwide in scope; and (iv) the market for military satellites is national in scope.
4. Market for payload adapters and for payload dispensers

(19) ASL has been active as a supplier of payload dispensers on Ariane 5 (for the Galileo constellation) and on Soyuz (for the Globalstar constellation). Airbus DS SAU is active as a supplier of payload adapters on Ariane 5.

(20) In this context, the Commission considers that (i) the market for payload adapters and (ii) the market for payload dispensers constitute separate product markets. The exact geographic scope of these markets is left open as being EEA-wide or worldwide.

5. Market for space insurance services

(21) Arianespace provides insurance services to its customers through its fully-owned subsidiary ‘S3R’.

(22) The Commission considers that the exact scope of the product market for the space insurance services can be left open. Similarly, the exact geographic scope of this market is left open.

6. Market for satellite operation

(23) Airbus is active as a satellite operator for (i) Earth observation satellites (in its own name and on behalf of European space agencies) through its Airbus DS Geo-Information Services division (formerly Spot Image and Infoterra) and (ii) military telecommunications (primarily on behalf of the United Kingdom MoD) through its UK subsidiary Paradigm.

(24) The Commission considers that the exact scope of the product market for the satellite operation can be left open. As regards the geographic scope, the Commission considers that these markets are worldwide in scope.

B. COMPETITIVE ASSESSMENT

(25) Airbus and ASL are active in markets that are vertically related or otherwise connected to the activities of Arianespace. In particular, there are links between the activities of Arianespace as a launch services provider and those of: (i) ASL, as the supplier of the Ariane launcher family to Arianespace; (ii) Airbus DS SAU, as a supplier of payload adapters; (iii) Airbus DS SAU and ASL, as suppliers of payload dispensers; (iv) Airbus, as a satellite manufacturer; and (v) Airbus as a satellite operator. There is one additional relationship created by the Transaction, namely between Arianespace’s insurance service provider activities and Airbus’ activities as (i) satellite manufacturer and (ii) satellite operator.

1. Competitive assessment: relationship between (i) Arianespace as a launch service provider and (ii) Airbus as satellite manufacturer

Exchange of sensitive information

(26) In the Article 6(1)(c) Decision, serious doubts were raised about the risk that exchanges of sensitive information between Arianespace and Airbus could harm other satellite manufacturers and other launch services providers.

(27) Further to the in-depth investigation, the Commission has concluded that the Transaction leads to a significant impediment to effective competition as regards exchanges of sensitive information from (i) Arianespace to Airbus in relation to other satellite manufacturers and (ii) Airbus to Arianespace in relation to other launch services providers.

(28) According to the findings of the Commission’s investigation, Arianespace has access to sensitive information about satellite manufacturers, namely technical information about mass and schedule, nature of the mission, centre of gravity and orbit requirements, the satellite architectures, etc., as well as commercial information. The current confidentiality clauses (for example non-disclosure provisions) included in contracts between satellite manufacturers and Arianespace are not sufficient to prevent commercially sensitive information from being transmitted from Arianespace to Airbus. Therefore the Commission has concluded that Arianespace would likely have the ability to share sensitive information about other satellite manufacturers with Airbus.

(29) Moreover, the information provided by satellite manufacturers to Arianespace is of such nature that Airbus could gain an advantage over its rivals by having access to that information. The Commission therefore concluded that Arianespace would likely have the incentive to share sensitive information about other satellite manufacturers with Airbus.
(30) In addition, the exchange of sensitive information from Arianespace to Airbus about other satellite manufacturers is likely to have a significant detrimental effect on competition in the markets for satellites. This is because it would result in (i) less competitive tenders, since Airbus would adjust its strategy on the basis of the information about its rivals it has accessed, and (ii) less innovation in the market, since rivals would be less inclined to innovate if Airbus could easily copy their innovations and the gains derived from innovation.

(31) The Commission has further concluded that Airbus has access to sensitive information about launch service providers which includes information about the availability of launch slots and pricing as well as new developments. As in the case of exchange of information from Arianespace to Airbus, the confidentiality clauses do not exclude information to be shared with a parent or affiliate company. Therefore, the Commission has concluded that Airbus would likely have the ability to share sensitive information about other launch services providers with Arianespace.

(32) The Commission also concluded that although Airbus is already present in Arianespace, post-Transaction Airbus will be more likely inclined to pass on information about other launch service providers to Arianespace.

(33) Finally, the Commission concluded that the exchanges of sensitive information from Airbus to Arianespace about other launch service providers is likely to have a significant detrimental effect on competition in the markets for launch services. This is because the access by Arianespace to technical and commercial information regarding other launch service providers may be used to neutralise any technical advantage and could as such result in reduced incentives by competitors to innovate and compete.

Foreclosure of Airbus' rivals in satellite markets

(34) In the Article 6(1)(c) Decision, serious doubts were also raised in relation to the possibility that post-Transaction Arianespace might use its position in the markets for launch services to favour sales of Airbus' satellites and as a result foreclose Airbus' rivals in the markets for satellites by discrimination.

(35) For instance, the Parties could hypothetically offer a discount to customers purchasing Airbus' satellites and Arianespace's launch services together, while increasing the prices for these two components when they are not purchased together. Moreover, Arianespace could hypothetically grant preferential treatment to Airbus when allocating slots (that is to say, if customers commit to buy the satellite from Airbus) and offer less favourable launch slots for non-Airbus' satellites.

(36) Following the in-depth investigation, the Commission concluded that the Transaction does not lead to a significant impediment to effective competition due to the relationship between the Parties' activities in the worldwide open market for GTO launch services and the worldwide market for commercial satellites, as regards foreclosure strategies.

(37) First, the Commission concluded that post-Transaction the Parties would likely not have the ability to successfully foreclose Airbus' rivals in satellites. This is because (i) although Arianespace is the current market leader, credible alternatives exist, such as SpaceX and ILS; (ii) launch service market is a dynamic competitive environment, where entry happens and companies' positions quickly change over time; (iii) satellite operators may be able to partially counteract the Parties' ability to foreclose rival satellite manufacturers; (iv) the characteristics of satellite markets would likely prevent the foreclosure of Airbus' commercial satellites rivals at least in the short term; and (v) effective foreclosure of commercial satellite manufacturers in the long term would be highly speculative.

(38) Second, and as regards the incentive to foreclose satellite rivals, the analysis carried out by the Commission showed that, although there are elements pointing to the existence of some incentives, there are also countervailing factors which may off-set such potential incentives. Therefore, given the likely absence of ability to foreclose, the Commission concluded that the issue whether the Parties would likely have the incentive to foreclose Airbus' rivals in the worldwide market for commercial satellites can be left open.

(39) Third, the Commission analysed the impact on competition of the adoption of a strategy with foreclosure effects in the worst case scenario of a hypothetical foreclosure of one of Airbus' rivals. In this scenario, which is not the most likely one, the Commission concluded anyway that the adoption of such a foreclosure strategy would unlikely have a significant detrimental effect on competition. This is because (i) there are several other players also active in the commercial segment, (ii) in view of the existing spare capacity, satellite manufacturers can easily expand and (iii) satellite operators have some degree of countervailing buyer power.
In addition, the Commission further concluded that the Transaction does not result in a significant impediment to effective competition due to the relationship between the Parties' activities in (i) the worldwide open market for non-GTO launch services and (ii) the market for export of institutional satellites and the hypothetical worldwide market for constellation satellites as regards foreclosure. The Commission also concluded that the Transaction does not result in a significant impediment to effective competition due to the relationship between the Parties' activities in (i) the European and national (within the EU) captive markets for GTO and non-GTO launch services and (ii) the European market for institutional satellites and the national markets for military/institutional satellites as regards foreclosure.

2. **Competitive Assessment: vertical relationship between (i) Arianespace as a launch service provider and (ii) ASL as a supplier of the Ariane launcher family**

In the Article 6(1)(c) Decision, serious doubts were raised about a potential customer foreclosure strategy whereby the Parties would give priority to launches with the Ariane launchers to the detriment of the Vega launchers produced by ELV and commercialised by Arianespace.

Further to the in-depth investigation, the Commission concluded that the Parties would not have the ability and incentive to implement a customer foreclosure strategy against ELV and that, even in the hypothetical case of the adoption of such a strategy, there would not be a significant detrimental effect on competition. In particular, the Commission's findings indicated that the Ariane platform will only rarely be used for the same type of missions as the Vega platform and that even the hypothetical adoption of a customer foreclosure against ELV would not have any effect on the rivals of Arianespace in the markets for launch services. This is because ELV is bound to sell its launcher exclusively to Arianespace and all Arianespace rivals exploit their own launcher.

3. **Competitive assessment: vertical relationship between (i) Arianespace as a launch service provider and (ii) Airbus DS SAU and ASL as suppliers of dispensers and payload adapters**

In the Article 6(1)(c) Decision, serious doubts were raised about a potential customer foreclosure strategy whereby the Parties would choose to source payload dispensers and payload adapters only from ASL or Airbus DS SAU, even if this is not the optimal solution available, to the detriment of Arianespace's existing alternative payload dispenser and payload adapters suppliers.

Following the in-depth investigation, the Commission concluded that the Parties would not likely be in a position to foreclose access to downstream markets as regards payload dispensers. In particular, the Commission has concluded that the Parties would only be able to adopt a customer foreclosure strategy as regards non-ESA funded dispensers, and would have limited ability to foreclose its rivals in the market for payload dispensers. Moreover, even in the hypothetical scenario of the adoption of a customer foreclosure strategy as regards payload dispensers, this would unlikely have a significant detrimental effect on competition in the markets for launch services due to the small relative size of the price of payload dispensers in the overall cost of launch services.

The Commission equally concluded that the Parties would not likely be in a position to foreclose access to downstream markets as regards payload adapters. In particular, the Commission has concluded that the Parties are not likely to have the ability to foreclose access to downstream markets via a customer foreclosure strategy as regards payload adapters given the restrictions posed by ESA procurement rules and the high relatively costs of development of new payload adapters. Moreover, even in the hypothetical scenario of the adoption of a customer foreclosure strategy as regards payload adapters, this would unlikely have a significant detrimental effect on competition in the markets for launch services due to the small relative size of the price of payload adapters in the overall cost of launch services.

4. **Competitive assessment: relationship between (i) Arianespace as an insurance service provider and (ii-a) Airbus as a satellite operator and (ii-b) Airbus as a satellite manufacturer**

The Commission has concluded that the Transaction does not lead to a significant impediment to effective competition due to the vertical relationship between the Parties' activities in the markets for space insurance services and (i) the markets for satellite operation and (ii) the markets for satellites, either as regards customer foreclosure or input foreclosure.
5. **Competitive Assessment: vertical relationship between (i) Arianespace as a launch service provider and (ii) Airbus as a satellite operator**

(47) The Commission has concluded that the Transaction does not lead to a significant impediment to effective competition due to the vertical relationship between the Parties' activities in the markets for launch services and the markets for satellite operations, either as regards customer foreclosure or input foreclosure.

6. **Conclusion**

(48) The Decision, therefore, concludes that the Transaction leads to a significant impediment to effective competition in the markets for satellites and launch services with regard to the exchanges of sensitive information between Airbus and Arianespace.

C. **COMMITMENTS**

(49) In order to address the competition concern linked to the potential exchanges of sensitive information between Arianespace and Airbus, the Parties have submitted on 20 May 2016 the Final Commitments described below.

(50) The Final Commitments include provisions regarding (i) firewalls and (ii) employment restrictions both at the level of Airbus, ASL and Arianespace, as well as arbitration in all non-disclosure agreements as regards the implementation of commitments.

(51) The firewall measures are between ASL/Arianespace on the one hand, and Airbus on the other hand, to prevent exchanges of: (a) competitively sensitive information regarding satellite manufacturers competing with Airbus Group; (b) competitively sensitive information regarding launcher and satellite compatibility; and (c) competitively sensitive information relating to the launch services of suppliers of launch services other than Arianespace.

(52) In order to further reinforce the provisions on firewalls described above, the Parties have also submitted a remedy consisting in a prohibition on Airbus' employees to be appointed as Arianespace CEO or board/committee members. Moreover, (i) ASL/Arianespace personnel who have access to sensitive information regarding satellite manufacturers competing with Airbus Group and competitively sensitive information regarding launcher and satellite compatibility are subject to a waiting period of [1-5] years before they can be transferred to Airbus DS Satellites and (ii) Airbus DS Satellites personnel who have access to commercially sensitive information relating to the launch services of suppliers of launch services other than Arianespace are subject to a waiting period of [1-5] years before they can be transferred to ASL/Arianespace.

(53) In its decision, the Commission concludes that the Final Commitments are adequate and sufficient to eliminate the identified significant impediment to effective competition in the markets for satellites and launch services with regard to the exchange of information between Airbus and Arianespace.

IV. **CONCLUSION**

(54) For the reasons mentioned above, the decision concludes that the proposed concentration as modified by the commitments submitted on 20 May 2016 will not significantly impede effective competition in the Internal Market or in a substantial part of it.

(55) Consequently the concentration should be declared compatible with the Internal Market and the functioning of the EEA Agreement, in accordance with Article 2(2) and Article 8(2) of the Merger Regulation and Article 57 of the EEA Agreement.
New national side of euro coins intended for circulation

(2017/C 438/10)

National side of the new commemorative 2-euro coin intended for circulation and issued by Luxembourg

Euro coins intended for circulation have legal tender status throughout the euro area. For the purpose of informing the public and all parties who handle the coins, the Commission publishes a description of the designs of all new coins (1). In accordance with the Council conclusions of 10 February 2009 (2), euro-area Member States and countries that have concluded a monetary agreement with the European Union providing for the issuing of euro coins are allowed to issue commemorative euro coins intended for circulation, provided that certain conditions are met, particularly that only the 2-euro denomination is used. These coins have the same technical characteristics as other 2-euro coins, but their national face features a commemorative design that is highly symbolic in national or European terms.

Issuing country: Luxembourg

Subject of commemoration: The 150th anniversary of the Luxembourg Constitution

Description of the design: The design shows on the left hand the effigy of His Royal Highness, the Grand-Duke Henri, looking to the right. At the right hand of the design are depicted the year-dates ‘1868-2018’ as well as the text ‘150 ans’. Below the effigy of the Grand-Duke appear the text ‘Constitution du Grand-Duché de Luxembourg’ and a lateral cut view of an open booklet.

The coin’s outer ring depicts the 12 stars of the European flag.

Estimated number of coins to be issued: 500 000

Date of issue: January 2018


EUROPEAN FOOD SAFETY AUTHORITY

Networking of organisations operating in the fields within the European Food Safety Authority’s (EFSA’s) mission

(2017/C 438/11)

Regulation (EC) No 178/2002 (1), Article 36(2), provides that the European Food Safety Authority’s ‘Management Board, acting on a proposal from the Executive Director, shall draw up a list to be made public of competent organisations designated by the Member States which may assist the Authority, either individually or in networks, with its mission.’

The list was first drawn up by EFSA’s Management Board on 19 December 2006, and since then is:

i. updated regularly, on the basis of proposals from EFSA’s Executive Director, taking account of reviews or new designation proposals from the Member States (in accordance with Commission Regulation (EC) No 2230/2004, Article 2(4) (2));

ii. made public on EFSA’s website, where the latest updated list of competent organisations is published; and

iii. made available through the Article 36 Search Tool to the organisations, providing contact details and the organisations’ specific fields of competence.

This respective information is available on the EFSA website, under the following links:

i. the latest amendment to the list of competent organisations by EFSA’s Management Board on 12 December 2017 — http://www.efsa.europa.eu/en/events/event/171212-0;

ii. the updated list of competent organisations — http://www.efsa.europa.eu/sites/default/files/assets/art36listg.pdf; and


EFSA will keep this notification updated, specifically regarding the provided website links.

For more information please contact Cooperation.Article36@efsa.europa.eu.


PROCEDURES RELATING TO THE IMPLEMENTATION OF THE COMMON COMMERCIAL POLICY

EUROPEAN COMMISSION

Notice of initiation of an anti-dumping proceeding concerning imports of silicon originating in Bosnia and Herzegovina and in Brazil

(2017/C 438/12)

The European Commission (‘the Commission’) has received a complaint pursuant to Article 5 of Regulation (EU) 2016/1036 of the European Parliament and of the Council of 8 June 2016 on protection against dumped imports from countries not members of the European Union (1) (‘the basic Regulation’), alleging that imports of silicon, originating in Bosnia and Herzegovina and in Brazil, are being dumped and are thereby causing material injury to the Union industry.

1. Complaint

The complaint was lodged on 8 November 2017 by Ferroatlántica and Ferropem (‘the complainants’), representing more than 85 % of the total Union production of silicon.

2. Product under investigation

The product subject to this investigation is silicon with a silicon content of less than 99,99 % by actual weight (‘the product under investigation’).

Silicon is mainly used in the metallurgical industry as an alloying agent and in the aluminium industry to produce primary (aluminium produced from ore) and secondary (aluminium produced from scrap) aluminium. It is also used in the chemical industry.

3. Allegation of dumping

The product allegedly being dumped is the product under investigation, originating in Bosnia and Herzegovina and in Brazil (‘the countries concerned’), currently falling within CN code 2804 69 00. This CN code is given for information only.

3.1. Bosnia and Herzegovina

In the absence of reliable data on domestic prices for Bosnia and Herzegovina, the allegation of dumping is based on a comparison of a constructed normal value (manufacturing costs, selling, general and administrative costs — SG&A — and profit) with the export price (at ex-works level) of the product under investigation when sold for export to the Union.

On this basis, the dumping margins calculated are significant for Bosnia and Herzegovina.

3.2. Brazil

In the absence of reliable data on domestic prices for Brazil, the allegation of dumping is based on a comparison of a constructed normal value (manufacturing costs, selling, general and administrative costs — SG&A — and profit) with the export price (at ex-works level) of the product under investigation when sold for export to the Union.

On this basis, the dumping margins calculated are significant for Brazil.

4. Allegation of injury and causation

The complainants have provided evidence that imports of the product under investigation from the countries concerned have increased overall in absolute terms and in terms of market share.

The evidence provided by the complainants shows that the volume and the prices of the imported product under investigation have had, among other consequences, a negative impact on the level of prices charged by the Union industry, resulting in substantial adverse effects on the overall performance and on the financial situation of the Union industry since 2014.

5. **Procedure**

Having determined, after informing the Member States, that the complaint has been lodged by or on behalf of the Union industry and that there is sufficient evidence to justify the initiation of a proceeding, the Commission hereby initiates an investigation pursuant to Article 5 of the basic Regulation.

The investigation will determine whether the product under investigation originating in the countries concerned is being dumped and whether the dumped imports have caused injury to the Union industry. If the conclusions are affirmative, the investigation will examine whether the imposition of measures would not be against the Union interest.

5.1. **Investigation period and period considered**

The investigation of dumping and injury will cover the period from 1 October 2016 to 30 September 2017 ('the investigation period'). The examination of trends relevant for the assessment of injury will cover the period from 1 January 2014 to the end of the investigation period ('the period considered').

5.2. **Procedure for the determination of dumping**

Exporting producers (1) of the product under investigation from the countries concerned are invited to participate in the Commission investigation.

5.2.1. **Investigating exporting producers**

(a) **Sampling**

In view of the potentially large number of exporting producers in the countries concerned involved in this proceeding and in order to complete the investigation within the statutory time limits, the Commission may limit the exporting producers to be investigated to a reasonable number by selecting a sample (this process is also referred to as ‘sampling’). The sampling will be carried out in accordance with Article 17 of the basic Regulation.

In order to enable the Commission to decide whether sampling is necessary, and if so, to select a sample, all exporting producers, or representatives acting on their behalf, are hereby requested to make themselves known to the Commission. These parties have to do so within 15 days of the date of publication of this Notice in the **Official Journal of the European Union**, unless otherwise specified, by providing the Commission with information on their companies requested in Annex I to this Notice.

In order to obtain information it deems necessary for the selection of the sample of exporting producers, the Commission will also contact the authorities of the countries concerned and may contact any known associations of exporting producers.

All interested parties wishing to submit any other relevant information regarding the selection of the sample, excluding the information requested above, must do so within 21 days of the publication of this Notice in the **Official Journal of the European Union**, unless otherwise specified.

If a sample is necessary, the exporting producers may be selected based on the largest representative volume of exports to the Union which can reasonably be investigated within the time available. All known exporting producers, the authorities of the countries concerned and associations of exporting producers will be notified by the Commission, via the authorities of the countries concerned if appropriate, of the companies selected to be in the sample.

In order to obtain information it deems necessary for its investigation with regard to exporting producers, the Commission will send questionnaires to the exporting producers selected to be in the sample, to any known association of exporting producers, and to the authorities of the countries concerned.

All exporting producers selected to be in the sample will have to submit a completed questionnaire within 37 days from the date of notification of the sample selection, unless otherwise specified.

(1) An exporting producer is any company in the country concerned which produces and exports the product under investigation to the Union market, either directly or via a third party, including any of its related companies involved in the production, domestic sales or exports of the product under investigation.
Without prejudice to the possible application of Article 18 of the basic Regulation, companies that have agreed to their possible inclusion in the sample but are not selected to be in the sample will be considered to be cooperating (‘non-sampled cooperating exporting producers’). Without prejudice to section (b) below, the anti-dumping duty that may be applied to imports from non-sampled cooperating exporting producers will not exceed the weighted average margin of dumping established for the exporting producers in the sample (1).

(b) Individual dumping margin for companies not included in the sample

Non-sampled cooperating exporting producers may request, pursuant to Article 17(3) of the basic Regulation that the Commission establish their individual dumping margins (‘individual dumping margin’). The exporting producers wishing to claim an individual dumping margin must request a questionnaire and return it duly completed within 37 days of the date of notification of the sample selection, unless otherwise specified. The Commission will examine whether they can be granted an individual duty in accordance with Article 9(5) of the basic Regulation.

However, exporting producers claiming an individual dumping margin should be aware that the Commission may nonetheless decide not to determine their individual dumping margin if, for instance, the number of exporting producers is so large that such determination would be unduly burdensome and would prevent the timely completion of the investigation.

5.2.2. Investigating unrelated importers (2) (3)

Unrelated importers of the product under investigation from the countries concerned to the Union are invited to participate in this investigation.

In view of the potentially large number of unrelated importers involved in this proceeding and in order to complete the investigation within the statutory time limits, the Commission may limit to a reasonable number the unrelated importers that will be investigated by selecting a sample (this process is also referred to as ‘sampling’). The sampling will be carried out in accordance with Article 17 of the basic Regulation.

In order to enable the Commission to decide whether sampling is necessary and, if so, to select a sample, all unrelated importers, or representatives acting on their behalf, are hereby requested to make themselves known to the Commission. These parties must do so within 15 days of the date of publication of this Notice in the Official Journal of the European Union, unless otherwise specified, by providing the Commission with the information on their companies requested in Annex II to this Notice.

In order to obtain information it deems necessary for the selection of the sample of unrelated importers, the Commission may also contact any known associations of importers.

All interested parties wishing to submit any other relevant information regarding the selection of the sample, excluding the information requested above, must do so within 21 days of the publication of this Notice in the Official Journal of the European Union, unless otherwise specified.

If a sample is necessary, the importers may be selected based on the largest representative volume of sales of the product under investigation in the Union which can reasonably be investigated within the time available. All known unrelated importers and associations of importers will be notified by the Commission of the companies selected to be in the sample.

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(1) Pursuant to Article 9(6) of the basic Regulation, any zero and de minimis margins, and margins established in accordance with the circumstances described in Article 18 of the basic Regulation will be disregarded.

(2) Only importers not related to exporting producers can be sampled. Importers that are related to exporting producers have to fill in Annex I to the questionnaire for these exporting producers. In accordance with Article 127 of Commission Implementing Regulation (EU) 2015/2447 of 24 November 2015 laying down detailed rules for implementing certain provisions of Regulation (EU) No 952/2013 of the European Parliament and of the Council laying down the Union Customs Code, two persons shall be deemed to be related if: (a) they are officers or directors of the other person’s business; (b) they are legally recognised partners in business; (c) they are employer and employee; (d) a third party directly or indirectly owns, controls or holds 5% or more of the outstanding voting stock or shares of both of them; (e) one of them directly or indirectly controls the other; (f) both of them are directly or indirectly controlled by a third person; (g) together they control a third person directly or indirectly; or (h) they are members of the same family (OJ L 343, 29.12.2015, p. 358). Persons shall be deemed to be members of the same family only if they stand in any of the following relationships to one another: (i) husband and wife, (ii) parent and child, (iii) brother and sister (whether by whole or half blood), (iv) grandparent and grandchild, (v) uncle or aunt and nephew or niece, (vi) parent-in-law and son-in-law or daughter-in-law, (vii) brother-in-law and sister-in-law. In accordance with Article 5(4) of Regulation (EU) No 952/2013 of the European Parliament and of the Council laying down the Union Customs Code, ‘person’ means a natural person, a legal person, and any association of persons which is not a legal person but which is recognised under Union or national law as having the capacity to perform legal acts (OJ L 269, 10.10.2013, p. 1).

(3) The data provided by unrelated importers may also be used in relation to aspects of this investigation other than the determination of dumping.
In order to obtain information it deems necessary for its investigation, the Commission will send questionnaires to the sampled unrelated importers and to any known association of importers. These parties must submit a completed questionnaire within 37 days from the date of the notification of the sample selection, unless otherwise specified.

5.3. Procedure for the determination of injury and investigating Union producers

A determination of injury is based on positive evidence and involves an objective examination of the volume of the dumped imports, their effect on prices on the Union market and the consequent impact of those imports on the Union industry. In order to establish whether the Union industry is injured, Union producers of the product under investigation are invited to participate in this investigation.

In order to obtain information it deems necessary for its investigation, the Commission will send questionnaires to known Union producers and to any known association of Union producers, namely to: Ferroatlántica, Ferropem, RW Silicium GmbH and Euroalliages.

The aforementioned Union producers and the associations of Union producers must submit the completed questionnaire within 37 days of the date of publication of this Notice in the Official Journal of the European Union, unless otherwise specified.

Any Union producer and association of Union producers not listed above is invited to contact the Commission, preferably by email, immediately but no later than 15 days after the publication of this Notice in the Official Journal of the European Union, unless otherwise specified, in order to make itself known and request a questionnaire.

5.4. Procedure for the assessment of Union interest

Should the existence of dumping and injury caused thereby be established, a decision will be reached, pursuant to Article 21 of the basic Regulation, as to whether the adoption of anti-dumping measures would not be against the Union interest. Union producers, importers and their representative associations, users and their representative associations, and representative consumer organisations are invited to make themselves known within 15 days of the date of publication of this Notice in the Official Journal of the European Union, unless otherwise specified. In order to participate in the investigation, the representative consumer organisations have to demonstrate, within the same deadline, that there is an objective link between their activities and the product under investigation.

Parties that make themselves known within the above deadline may provide the Commission with information on the Union interest within 37 days of the date of publication of this Notice in the Official Journal of the European Union, unless otherwise specified. This information may be provided either in a free format or by completing a questionnaire prepared by the Commission. In any case, information submitted pursuant to Article 21 will only be taken into account if supported by factual evidence at the time of submission.

5.5. Other written submissions

Subject to the provisions of this Notice, all interested parties are hereby invited to make their views known, submit information and provide supporting evidence. Unless otherwise specified, this information and supporting evidence must reach the Commission within 37 days of the date of publication of this Notice in the Official Journal of the European Union.

5.6. Possibility to be heard by the Commission investigation services

All interested parties may request to be heard by the Commission investigation services. Any request to be heard should be made in writing and should specify the reasons for the request. For hearings on issues pertaining to the initial stage of the investigation the request must be submitted within 15 days of the date of publication of this Notice in the Official Journal of the European Union. Thereafter, a request to be heard must be submitted within the specific deadlines set by the Commission in its communication with the parties.

5.7. Instructions for making written submissions and sending completed questionnaires and correspondence

Information submitted to the Commission for the purpose of trade defence investigations shall be free from copyrights. Interested parties, before submitting to the Commission information and/or data which is subject to third party copyrights, must request specific permission to the copyright holder explicitly allowing (a) the Commission to use the information and data for the purpose of this trade defence proceeding; and (b) to provide the information and/or data to interested parties to this investigation in a form that allows them to exercise their rights of defence.
All written submissions, including the information requested in this Notice, completed questionnaires and correspondence provided by interested parties for which confidential treatment is requested shall be labelled 'Limited' (1). Parties submitting information in the course of this investigation are invited to reason their request for confidential treatment.

Parties providing ‘Limited’ information are required to furnish non-confidential summaries of it pursuant to Article 19(2) of the basic Regulation, which will be labelled ‘For inspection by interested parties’. These summaries should be sufficiently detailed to permit a reasonable understanding of the substance of the information submitted in confidence.

If a party providing confidential information fails to show good cause for a confidential treatment request or does not furnish a non-confidential summary of it in the requested format and quality, the Commission may disregard such information unless it can be satisfactorily demonstrated from appropriate sources that the information is correct.

Interested parties are invited to make all submissions and requests by email including scanned powers of attorney and certification sheets, with the exception of voluminous replies which shall be submitted on a CD-ROM or DVD by hand or by registered mail. By using email, interested parties express their agreement with the rules applicable to electronic submissions contained in the document ‘CORRESPONDENCE WITH THE EUROPEAN COMMISSION IN TRADE DEFENCE CASES’ published on the website of the Directorate-General for Trade: http://trade.ec.europa.eu/doclib/docs/2011/june/tradoc_148003.pdf The interested parties must indicate their name, address, telephone and a valid email address and they should ensure that the provided email address is a functioning official business email which is checked on a daily basis. Once contact details are provided, the Commission will communicate with interested parties by email only, unless they explicitly request to receive all documents from the Commission by another means of communication or unless the nature of the document to be sent requires the use of a registered mail. For further rules and information concerning correspondence with the Commission including principles that apply to submissions by email, interested parties should consult the communication instructions with interested parties referred to above.

Commission address for correspondence:

European Commission
Directorate-General for Trade
Directorate H
Office: CHAR 04/039
1049 Bruxelles/Brussel
BELGIQUE/BELGIË

E-mails:
For issues relating to dumping and Annex I: TRADE-SILICONMETAL-DUMPING@ec.europa.eu
For other issues: TRADE-SILICONMETAL-INJURY@ec.europa.eu

6. Non-cooperation

In cases where any interested party refuses access to or does not provide the necessary information within the time limits, or significantly impedes the investigation, provisional or final findings, affirmative or negative, may be made on the basis of facts available, in accordance with Article 18 of the basic Regulation.

Where it is found that any interested party has supplied false or misleading information, the information may be disregarded and use may be made of facts available.

If an interested party does not cooperate or cooperates only partially and findings are therefore based on facts available in accordance with Article 18 of the basic Regulation, the result may be less favourable to that party than if it had cooperated.

Failure to give a computerised response shall not be deemed to constitute non-cooperation, provided that the interested party shows that presenting the response as requested would result in an unreasonable extra burden or unreasonable additional cost. The interested party should immediately contact the Commission.

(1) A ‘Limited’ document is a document which is considered confidential pursuant to Article 19 of the basic Regulation and Article 6 of the WTO Agreement on Implementation of Article VI of the GATT 1994 (Anti-Dumping Agreement). It is also a document protected pursuant to Article 4 of Regulation (EC) No 1049/2001 of the European Parliament and of the Council (OJ L 145, 31.5.2001, p. 43).
7. **Hearing Officer**

Interested parties may request the intervention of the Hearing Officer in trade proceedings. The Hearing Officer acts as an interface between the interested parties and the Commission investigation services. The Hearing Officer reviews requests for access to the file, disputes regarding the confidentiality of documents, requests for extension of time limits and requests by third parties to be heard. The Hearing Officer may organise a hearing with an individual interested party and mediate to ensure that the interested parties' rights of defence are being fully exercised.

A request for a hearing with the Hearing Officer should be made in writing and should specify the reasons for the request. For hearings on issues pertaining to the initial stage of the investigation the request must be submitted within 15 days of the date of publication of this Notice in the *Official Journal of the European Union*. Thereafter, a request to be heard must be submitted within specific deadlines set by the Commission in its communication with the parties.

For further information and contact details interested parties may consult the Hearing Officer's web pages on DG Trade's website: [http://ec.europa.eu/trade/trade-policy-and-you/contacts/hearing-officer/](http://ec.europa.eu/trade/trade-policy-and-you/contacts/hearing-officer/)

8. **Schedule of the investigation**

The investigation will be concluded, pursuant to Article 6(9) of the basic Regulation within 15 months of the date of the publication of this Notice in the *Official Journal of the European Union*. In accordance with Article 7(1) of the basic Regulation, provisional measures may be imposed no later than nine months from the publication of this Notice in the *Official Journal of the European Union*.

9. **Processing of personal data**

Any personal data collected in this investigation will be treated in accordance with 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 (1).

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ANNEX I

- ‘Limited’ version (*)
- Version ‘For inspection by interested parties’
  (tick the appropriate box)

ANTI-DUMPING PROCEEDING CONCERNING IMPORTS OF SILICON ORIGINATING IN BOSNIA AND HERZEGOVINA
AND IN BRAZIL

INFORMATION FOR THE SELECTION OF THE SAMPLES OF EXPORTING PRODUCERS

This form is designed to assist exporting producers in Bosnia and Herzegovina and in Brazil in responding to the request for sampling information made in point 5.2.1(a) of the notice of initiation.

Both the ‘Limited’ version and the version ‘For inspection by interested parties’ should be returned to the Commission as set out in the notice of initiation.

1. IDENTITY AND CONTACT DETAILS

Supply the following details about your company:

<table>
<thead>
<tr>
<th>Company name</th>
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<tbody>
<tr>
<td>Address</td>
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<tr>
<td>Contact person</td>
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<td>Email address</td>
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<tr>
<td>Telephone</td>
<td></td>
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<td>Fax</td>
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2. TURNOVER AND SALES VOLUME

Indicate the turnover in the accounting currency of the company during the investigation period (export sales to the Union for each of the 28 Member States (*) separately and in total and domestic sales) of silicon as defined in the notice of initiation and the corresponding volume in MT. State the currency used.

| Export sales to the Union, for each of the 28 Member States separately and in total, of the product under investigation, manufactured by your company | Volume in metric tonnes (MT) | Value in accounting currency
|---------------------------------------------------------------------------------|-----------------------------|---------------------------------
| Total:                                                                          |                             | Specify the currency used       |
| Name each Member State (*):                                                    |                             |                                |
| Domestic sales of the product under investigation, manufactured by your company |                             |                                |

(*) Add additional rows where necessary.

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(*) The 28 Member States of the European Union are: Austria, Belgium, Bulgaria, Croatia, Cyprus, the Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, the Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden, and the United Kingdom.
3. ACTIVITIES OF YOUR COMPANY AND RELATED COMPANIES (*)

Give details of the precise activities of the company and all related companies (please list them and state the relationship to your company) involved in the production and/or selling (export and/or domestic) of the product under investigation. Such activities could include but are not limited to purchasing the product under investigation or producing it under subcontracting arrangements, or processing or trading the product under investigation.

<table>
<thead>
<tr>
<th>Company name and location</th>
<th>Activities</th>
<th>Relationship</th>
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4. OTHER INFORMATION

Please provide any other relevant information which the company considers useful to assist the Commission in the selection of the sample.

5. INDIVIDUAL DUMPING MARGIN

The company declares that, in the event that it is not selected to be in the sample, it would like to receive a questionnaire and other claim forms in order to fill these in and thus claim an individual dumping margin in accordance with Section 5.2.1(b) of the notice of initiation.

☐ Yes  ☐ No

6. CERTIFICATION

By providing the above information, the company agrees to its possible inclusion in the sample. If the company is selected to be part of the sample, this will involve completing a questionnaire and accepting a visit at its premises in order to verify its response. If the company indicates that it does not agree to its possible inclusion in the sample, it will be deemed not to have cooperated in the investigation. The Commission’s findings for non-cooperating exporting producers are based on facts available and the result may be less favourable to that company than if it had cooperated.

Signature of authorised official:

Name and title of authorised official:

Date:

(*) In accordance with Article 127 of Commission Implementing Regulation (EU) 2015/2447 of 24 November 2015 laying down detailed rules for implementing certain provisions of Regulation (EU) No 952/2013 of the European Parliament and of the Council laying down the Union Customs Code, two persons shall be deemed to be related if: (a) they are officers or directors of the other person’s business; (b) they are legally recognised partners in business; (c) they are employer and employee; (d) a third party directly or indirectly owns, controls or holds 5 % or more of the outstanding voting stock or shares of both of them; (e) one of them directly or indirectly controls the other; (f) both of them are directly or indirectly controlled by a third person; (g) together they control a third person directly or indirectly; or (h) they are members of the same family (OJ L 343, 29.12.2015, p. 558). Persons shall be deemed to be members of the same family only if they stand in any of the following relationships to one another: (i) husband and wife, (ii) parent and child, (iii) brother and sister (whether by whole or half blood), (iv) grandparent and grandchild, (v) uncle or aunt and nephew or niece, (vi) parent-in-law and son-in-law or daughter-in-law, (vii) brother-in-law and sister-in-law. In accordance with Article 5(4) of Regulation (EU) No 952/2013 of the European Parliament and of the Council laying down the Union Customs Code, ‘person’ means a natural person, a legal person, and any association of persons which is not a legal person but which is recognised under Union or national law as having the capacity to perform legal acts (OJ L 269, 10.10.2013, p. 1).
ANTI-DUMPING PROCEEDING CONCERNING IMPORTS OF SILICON ORIGINATING IN BOSNIA AND HERZEGOVINA AND IN BRAZIL

INFORMATION FOR THE SELECTION OF THE SAMPLE OF UNRELATED IMPORTERS

This form is designed to assist unrelated importers in responding to the request for sampling information made in point 5.2.2 of the notice of initiation.

Both the ‘Limited’ version and the version ‘For inspection by interested parties’ should be returned to the Commission as set out in the notice of initiation.

1. IDENTITY AND CONTACT DETAILS

Supply the following details about your company:

<table>
<thead>
<tr>
<th>Company name</th>
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<tbody>
<tr>
<td>Address</td>
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<td>Telephone</td>
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2. TURNOVER AND SALES VOLUME

Indicate the total turnover in euros (EUR) of the company, and the turnover and weight or volume for imports into the Union (1) and resales on the Union market after importation from Bosnia and Herzegovina and from Brazil, during the investigation period, of silicon as defined in the notice of initiation and the corresponding weight or volume. State the unit of weight or volume used.

<table>
<thead>
<tr>
<th></th>
<th>Specify the unit of measurement</th>
<th>Value in euros (EUR)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Total turnover of your company in euros (EUR)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Imports of the product under investigation into the Union</td>
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<td></td>
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<tr>
<td>Resales of the product under investigation on the Union market after importation from Bosnia and Herzegovina</td>
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<td></td>
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<tr>
<td>Resales of the product under investigation on the Union market after importation from Brazil</td>
<td></td>
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</tbody>
</table>


(2) The 28 Member States of the European Union are: Belgium, Bulgaria, the Czech Republic, Denmark, Germany, Estonia, Croatia, Ireland, Greece, Spain, France, Italy, Cyprus, Latvia, Lithuania, Luxembourg, Hungary, Malta, the Netherlands, Austria, Poland, Portugal, Romania, Slovenia, Slovakia, Finland, Sweden, and the United Kingdom.
3. ACTIVITIES OF YOUR COMPANY AND RELATED COMPANIES (*)

Give details of the precise activities of the company and all related companies (please list them and state the relationship to your company) involved in the production and/or selling (export and/or domestic) of the product under investigation. Such activities could include but are not limited to purchasing the product under investigation or producing it under sub-contracting arrangements, or processing or trading the product under investigation.

<table>
<thead>
<tr>
<th>Company name and location</th>
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</tbody>
</table>

4. OTHER INFORMATION

Please provide any other relevant information which the company considers useful to assist the Commission in the selection of the sample.

5. CERTIFICATION

By providing the above information, the company agrees to its possible inclusion in the sample. If the company is selected to be part of the sample, this will involve completing a questionnaire and accepting a visit at its premises in order to verify its response. If the company indicates that it does not agree to its possible inclusion in the sample, it will be deemed not to have cooperated in the investigation. The Commission’s findings for non-cooperating importers are based on the facts available and the result may be less favourable to that company than if it had cooperated.

Signature of authorised official:

Name and title of authorised official:

Date:

(*) In accordance with Article 127 of Commission Implementing Regulation (EU) 2015/2447 of 24 November 2015 laying down detailed rules for implementing certain provisions of Regulation (EU) No 952/2013 of the European Parliament and of the Council laying down the Union Customs Code, two persons shall be deemed to be related if: (a) they are officers or directors of the other person’s business; (b) they are legally recognised partners in business; (c) they are employer and employee; (d) a third party directly or indirectly owns, controls or holds 5 % or more of the outstanding voting stock or shares of both of them; (e) one of them directly or indirectly controls the other; (f) both of them are directly or indirectly controlled by a third person; (g) together they control a third person directly or indirectly; or (h) they are members of the same family (OJ L 343, 29.12.2015, p. 558). Persons shall be deemed to be members of the same family only if they stand in any of the following relationships to one another: (i) husband and wife, (ii) parent and child, (iii) brother and sister (whether by whole or half blood), (iv) grandparent and grandchild, (v) uncle or aunt and nephew or niece, (vi) parent-in-law and son-in-law or daughter-in-law, (vii) brother-in-law and sister-in-law. In accordance with Article 5(4) of Regulation (EU) No 952/2013 of the European Parliament and of the Council laying down the Union Customs Code, ‘person’ means a natural person, a legal person, and any association of persons which is not a legal person but which is recognised under Union or national law as having the capacity to perform legal acts (OJ L 269, 10.10.2013, p. 1).
Prior notification of a concentration  
(Case M.8451 — Tronox/Cristal)  
(Text with EEA relevance)  
(2017/C 438/13)

1. On 15 November 2017, the Commission received notification of a proposed concentration pursuant to Article 4 of Council Regulation (EC) No 139/2004 (1) and following a referral pursuant to Article 4(5) of the Merger Regulation by which Tronox Limited of Australia acquires within the meaning of Article 3(1)(b) of the Merger Regulation control of parts of The National Titanium Dioxide Company Ltd (Cristal) of Saudi Arabia by way of a purchase of shares.

2. The business activities of the undertakings concerned are as follows:
   — Tronox is active worldwide in the mining, production and marketing of inorganic minerals and chemicals;
   — Cristal is active worldwide in the mining and manufacture of titanium-related pigments and chemicals.

3. On preliminary examination, the Commission finds that the notified transaction could fall within the scope of the Merger Regulation. However, the final decision on this point is reserved.

4. The Commission invites interested third parties to submit their possible observations on the proposed operation to the Commission.

Observations must reach the Commission not later than 10 days following the date of this publication. Observations can be sent to the Commission by fax (+32 22964301), by email to COMP-MERGER-REGISTRY@ec.europa.eu or by post, under reference number M.8451 — Tronox/Cristal, to the following address:

European Commission  
Directorate-General for Competition  
Merger Registry  
1049 Bruxelles/Brussel  
BELGIQUE/BELGIË
