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I

(Resolutions, recommendations and opinions)

OPINIONS

EUROPEAN COMMISSION

COMMISSION OPINION

of 26 January 2018

relating to the plan for the disposal of radioactive waste arising from the dismantling of the AMI facility that is part of the Chinon nuclear power plant site, located in France

(Only the French text is authentic)

(2018/C 34/01)

The assessment below is carried out under the provisions of the Euratom Treaty, without prejudice to any additional assessments to be carried out under the Treaty on the Functioning of the European Union and the obligations stemming from it and from secondary legislation ([1]).

On 23 June 2017, the European Commission received from the Government of France, in accordance with Article 37 of the Euratom Treaty, General Data relating to the plan for the disposal of radioactive waste ([2]) arising from the dismantling of the AMI facility that is part of the Chinon nuclear power plant site.

On the basis of these data and following consultation with the Group of Experts, the Commission has drawn up the following opinion:

1. The distance between the site and the nearest border with another Member State, in this case the United Kingdom, is 384 km. Belgium is the next nearest Member State at a distance of 426 km. The distance between the site and the nearest border of a neighbouring country, in this case the Channel Islands (British Crown Dependencies) is some 300 km.

2. During normal dismantling operations, the discharges of gaseous radioactive effluents are not liable to cause an exposure of the population of another Member State or of a neighbouring country that would be significant from the point of view of health, in respect of the dose limits laid down in the Basic Safety Standards Directives ([3]).

3. During normal dismantling operations the discharge of liquid radioactive effluent is not foreseen; the French authorities will thus not deliver a discharge authorisation for this type of radioactive waste stream.

4. Solid radioactive waste, both dismantling and operational waste, will temporarily be stored on site before shipment to licensed treatment or disposal facilities located in France.

([1]) For instance, under the Treaty on the Functioning of the European Union, environmental aspects should be further assessed. Indicatively, the Commission would like to draw attention to the provisions of Directive 2011/92/EU on the assessment of the effects of certain public and private projects on the environment, as amended by Directive 2014/52/EU; to Directive 2001/42/EC on the assessment of the effects of certain plans and programmes on the environment, as well as to Directive 92/43/EEC on the conservation of natural habitats and of wild fauna and flora and to Directive 2000/60/EC establishing a framework for Community action in the field of water policy.

([2]) The disposal of radioactive waste in the meaning of point 1 of Commission Recommendation 2010/635/Euratom of 11 October 2010 on the application of Article 37 of the Euratom Treaty (OJ L 279, 23.10.2010, p. 36).

([3]) Council Directive 96/29/Euratom of 13 May 1996 laying down basic safety standards for the protection of the health of workers and the general public against the dangers arising from ionising radiation (OJ L 159, 29.6.1996, p. 1) and Council Directive 2013/59/Euratom of 5 December 2013 laying down basic safety standards for protection against the dangers arising from exposure to ionising radiation, and repealing Directives 89/618/Euratom, 90/641/Euratom, 96/29/Euratom, 97/43/Euratom and 2003/122/Euratom (OJ L 13, 17.1.2014, p. 1) with effect from 6 February 2018.

The Commission recommends that the residual activity concentration checks, carried out to confirm the conventional nature of the solid waste after decontamination, be such that compliance with the clearance criteria laid down in the Basic Safety Standards Directives is ensured.

5. In the event of unplanned releases of radioactive effluents that may follow the accident of the type and magnitude considered in the General Data, the doses likely to be received by the population of another Member State or a neighbouring country would not be significant from the point of view of health, in respect of the reference levels laid down in the Basic Safety Standards Directives.

In conclusion, the Commission is of the opinion that the implementation of the plan for the disposal of radioactive waste in whatever form, arising from the dismantling of the AMI facility that is part of the Chinon nuclear power plant site in France, both in normal operation and in the event of the accident of the type and magnitude considered in the General Data, is not liable to result in a radioactive contamination, significant from the point of view of health, of the water, soil or airspace of another Member State or of neighbouring country, in respect of the provisions laid down in the Basic Safety Standards Directives.

Done at Brussels, 26 January 2018.

For the Commission

Miguel ARIAS CAÑETE

Member of the Commission

II

(Information)

INFORMATION FROM EUROPEAN UNION INSTITUTIONS, BODIES, OFFICES AND AGENCIES

EUROPEAN COMMISSION

Non-opposition to a notified concentration

(Case M.8348 — RAG Stiftung/Evonik Industries/Huber Silica)

(Text with EEA relevance)

(2018/C 34/02)

On 22 June 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) in conjunction with Article 6(2) 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,

— in electronic form on the EUR-Lex website (http://eur-lex.europa.eu/homepage.html?locale=en) under document number 32017M8348. EUR-Lex is the online access to European law.

([1]) OJ L 24, 29.1.2004, p. 1.

Non-opposition to a notified concentration

(Case M.8692 — SAICA/Emin Leydier)

(Text with EEA relevance)

(2018/C 34/03)

On 23 January 2018, 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,

— in electronic form on the EUR-Lex website (http://eur-lex.europa.eu/homepage.html?locale=en) under document number 32018M8692. EUR-Lex is the online access to European law.

([1]) OJ L 24, 29.1.2004, p. 1.

Non-opposition to a notified concentration

(Case M.8745 — CD&R/D'Ieteren/Belron)

(Text with EEA relevance)

(2018/C 34/04)

On 19 January 2018, 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,

— in electronic form on the EUR-Lex website (http://eur-lex.europa.eu/homepage.html?locale=en) under document number 32018M8745. EUR-Lex is the online access to European law.

[1] OJ L 24, 29.1.2004, p. 1.

III

(Preparatory acts)

EUROPEAN CENTRAL BANK

OPINION OF THE EUROPEAN CENTRAL BANK

of 8 November 2017

on amendments to the Union framework for capital requirements of credit institutions and investment firms

(CON/2017/46)

(2018/C 34/05)

Introduction and legal basis

On 2 and 20 February 2017 the European Central Bank (ECB) received requests from the Council of the European Union and the European Parliament, respectively, for an opinion on a proposal for a Regulation of the European Parliament and of the Council amending Regulation (EU) No 575/2013 as regards the leverage ratio, the net stable funding ratio, requirements for own funds and eligible liabilities, counterparty credit risk, market risk, exposures to central counterparties, exposures to collective investment undertakings, large exposures, reporting and disclosure requirements and amending Regulation (EU) No 648/2012 ([1]) (hereinafter the 'proposed amendments to the CRR').

On 17 and 20 February 2017 the ECB received requests from the European Parliament and the Council of the European Union, respectively, for an opinion on a proposal for a Directive of the European Parliament and of the Council amending Directive 2013/36/EU as regards exempted entities, financial holding companies, mixed financial holding companies, remuneration, supervisory measures and powers and capital conservation measures ([2]) (hereinafter the 'proposed amendments to the CRD').

The ECB's competence to deliver an opinion is based on Articles 127(4) and 282(5) of the Treaty on the Functioning of the European Union since the proposed amendments to the CRR and the CRD contain provisions affecting the ECB's tasks concerning policies relating to the prudential supervision of credit institutions in accordance with Article 127(6) of the Treaty and the European System of Central Banks' contribution to the smooth conduct of policies pursued by the competent authorities relating to the stability of the financial system, as referred to in Article 127(5) of the Treaty. In accordance with the first sentence of Article 17.5 of the Rules of Procedure of the European Central Bank, the Governing Council has adopted this opinion.

General observations

The ECB supports the Commission's banking reform package, which will implement important elements of the global regulatory reform agenda in Union legislation. The Commission's proposal is expected to substantially strengthen the regulatory architecture, thereby contributing to the reduction of risks in the banking sector. Such progress on risk reduction will pave the way for concurrent and commensurate progress on risk sharing.

This opinion addresses issues of particular importance to the ECB, which have been divided into two sections: (1) changes to the existing Union regulatory and supervisory framework; and (2) implementation of internationally agreed supervisory standards.

([1]) COM(2016) 850 final.
([2]) COM(2016) 854 final.

1. **Changes to the existing Union regulatory and supervisory framework**

1.1. *Pillar 2 refinements*

1.1.1. The proposed amendments to the implementation of the Pillar 2 requirements of the Basel III framework ([1]) in the Capital Requirements Directive ([2]) (CRD) seek to achieve greater supervisory convergence in the Union by more clearly defining the elements of the capital stack and introducing Pillar 2 guidance on additional own funds, as well as by significantly tightening the conditions under which competent authorities may exercise their supervisory powers in this context.

1.1.2. While in general the ECB supports supervisory convergence, the proposal to develop regulatory technical standards on additional own funds requirements is not the appropriate tool for achieving this objective.

First, Pillar 2 requirements are institution-specific, which requires competent authorities to use supervisory judgement. Solely relying on the regulatory technical standards of the European Banking Authority (EBA) or using them for parts of the risk elements would not result in an institution-specific, risk-based approach that takes into account the diversity of institutions' risk profiles, and would in fact prevent the competent authorities from keeping pace with risks and industry developments.

Second, the EBA Guidelines on common procedures and methodologies for the supervisory review and evaluation process (SREP) ([3]) already provide a common basis for consistent implementation of the SREP in the Union, which enables an adequate degree of supervisory judgement and may be supplemented by using EBA peer reviews. Over recent years, convergence has improved considerably with the implementation of these Guidelines ([4]) and the implementation of the ECB's SREP methodology, which is consistently applied across the Single Supervisory Mechanism (SSM) ([5]).

Considering these positive developments, the ECB is of the view that the current framework is adequate and that the single market will continue to benefit in terms of convergence from the existing tools, possibly supplemented by making further use of EBA peer reviews.

1.1.3. Additionally, the proposed amendments to the CRD grant credit institutions, and not supervisory authorities, the power to decide, within certain limits, on the composition of the own funds held to meet Pillar 2 requirements and exclude the possibility of setting Pillar 2 requirements so that they are met in full with Common Equity Tier 1 capital. The ECB is of the view that supervisory authorities should retain the power to set a composition requirement for additional own funds and to require that additional own funds requirements must be met solely with Common Equity Tier 1 capital. From a prudential perspective, the banking crisis and more recent market events have shown that there may be significant challenges in dealing with, e.g., additional Tier 1 instruments, whose loss-absorbing capacities are not as efficient as Common Equity Tier 1 capital and whose costs would jeopardise credit institutions' profitability even further. In addition, the ECB's practice since it assumed its prudential supervisory tasks has been to set Pillar 2 requirements to be met with Common Equity Tier 1 capital. By requiring the buffers to be met using only Common Equity Tier 1 capital, the Union legislative bodies established their preference for the highest quality capital. A change in practice would result in less predictability for credit institutions and an unlevel playing field.

([1]) Available on the website of the Bank for International Settlements (BIS) at www.bis.org

([2]) Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC (OJ L 176, 27.6.2013, p. 338).

([3]) See Guidelines EBA/GL/2014/13 of the European Banking Authority of 19 December 2014 on common procedures and methodologies for the supervisory review and evaluation process (SREP).

([4]) See the EBA Report on the convergence of supervisory practices (EBA-Op-2016-11), 14 July 2016, available on the EBA's website at www.eba.europa.eu

([5]) On the basis of Article 4(1)(f) of Council Regulation (EU) No 1024/2013 of 15 October 2013 conferring specific tasks on the European Central Bank concerning policies relating to the prudential supervision of credit institutions (OJ L 287, 29.10.2013, p. 63) (SSMR), the ECB carries out supervisory reviews and for that purpose has defined a common SREP methodology, see in particular the ECB Guide to banking supervision of November 2014, available on the ECB's website at www.ecb.europa.eu. As a result, consistency in the additional requirements imposed on significant credit institutions has increased markedly. In particular, with regard to significant credit institutions within the SSM, the correlation between the overall SREP scores and capital requirements has increased from 26 % prior to 2014 to 76 % in 2016 (see page 44 of the 2016 SSM SREP methodology booklet, available on the ECB's Banking Supervision website at www.bankingsupervision.europa.eu).

1.1.4. Whilst the introduction of a common basis for imposing capital guidance will assist in the consistent implementation of such guidance throughout the Union, the ECB considers that the proposed amendments to the CRD should reflect more clearly the need for flexibility in the determination of Pillar 2 guidance. In particular, the relationship between the stress test threshold and the determination of the Pillar 2 guidance should be taken into account. Since supervisory stress tests serve as a starting point for setting Pillar 2 guidance, the proposed amendments to the CRD should, in line with current international best practice, also allow competent authorities to apply a fixed threshold in stress tests across all credit institutions, which may be lower than the total SREP capital requirements (TSCR). The flexibility to use a fixed threshold should be available as a permanent option. Moreover, the use of the TSCR should be tailored to the methodology used in the stress test. For example, the use of the TSCR threshold in the adverse scenario requires the application of a dynamic balance sheet approach. In addition, a provision regarding a three-year review should be included in the proposed amendments to the CRD.

1.1.5. Furthermore, the way in which the Pillar 2 guidance interacts with the combined buffer requirements should be further clarified. In particular, potential conflicts with the policy objective of the countercyclical capital buffer should be avoided. This includes removing the reference to addressing 'cyclical economic fluctuations' as a policy objective of Pillar 2 guidance. In addition, although any overlap between Pillar 2 guidance and Pillar 2 requirements should be avoided, the proposed amendments to the CRD need to clarify that, where a stress test identifies additional types of credit risk in a hypothetical situation and these are part of the Pillar 2 requirements, competent authorities retain the ability to apply measures addressing such risks in the Pillar 2 guidance.

1.1.6. The proposed amendments to the CRD limit competent authorities' powers to require credit institutions to provide them with supplementary or more frequent information. Although the ECB fully supports the underlying objective of avoiding duplication of reporting and reducing reporting costs, the possibility to require ad hoc granular data is essential to properly assess credit institutions' risk profiles for, inter alia, the purpose of the SREP. These risks are difficult to fully capture *ex ante* through harmonised reporting, particularly due to the manner in which credit institutions' activities and risks develop. Moreover, competent authorities will always need to collect additional granular information in order to adequately assess credit institutions' strengths and weaknesses regarding specific risks or asset classes, e.g. in respect of non-performing loans. Therefore, the ECB is of the view that these limitations should be removed from the proposed amendments to the CRD.

1.1.7. Competent authorities should be allowed to impose own funds requirements whenever interest rate risk is a material source of concern and not only when risks exceed a certain predefined threshold. Furthermore the mandate proposed for the EBA to specify certain concepts for the purpose of the review of credit institutions' exposure to interest rate risk arising from non-trading book activities suggests an exhaustive list of circumstances in which supervisory measures are required as a result of potential changes in interest rates ([1]). The ECB takes the view that competent authorities should be given more flexibility in imposing supervisory measures.

1.1.8. The proposed amendments to the CRD require competent authorities to consult resolution authorities prior to the adoption of any additional capital requirement ([2]). While the ECB supports the objective of achieving effective coordination with resolution authorities, the proposal for formal consultation of resolution authorities prior to determining additional own fund requirements or providing guidance as specified in the CRD would prove unnecessarily burdensome and unduly formalistic in practice, without improving the substance of the current arrangements. Moreover, the existing Memorandum of Understanding between the ECB and the Single Resolution Board ([3]), which was implemented for the first time in the context of the development of the 2016 SREP decisions, already ensures efficient cooperation. Taking into account the non-binding nature of capital guidance, the decision to impose such guidance should remain outside the framework of joint decisions and should be subject only to an exchange of information between college members.

([1]) See the proposed new Article 98(5a) of the CRD.
([2]) See the proposed new Article 104c of the CRD.
([3]) Memorandum of understanding between the Single Resolution Board and the European Central Bank of 22 December 2015 in respect of cooperation and information exchange, available on the ECB's website at www.ecb.europa.eu

1.2. *Interaction of micro and macroprudential powers*

The ECB is generally supportive with regard to removing Pillar 2 as an instrument from the macroprudential toolkit, but reiterates its view that removing Pillar 2 requirements should not result in authorities having insufficient tools to carry out their mandate and achieve their policy objectives ([1]). Hence, the ECB's support for the proposed elimination of Pillar 2 requirements from the macroprudential toolkit is subject to the proviso that the toolkit is broadened and rendered operational. An operational and effective macroprudential framework is especially important in a monetary union where macroprudential policies are needed to address country-specific or sector-specific imbalances, thereby playing a key complementary role in addressing the heterogeneity in financial and business cycles across Member States and, in this manner, helping to maintain the integrity of the Single Market and safeguard financial stability. At the same time, the revised framework should avoid facilitating ring-fencing decisions that could increase the risk of market fragmentation and create impediments to banking system consolidation.

More generally, the ECB reiterates the importance of a thorough macroprudential review, as highlighted in the ECB contribution to the European Commission's consultation on the review of the Union's macroprudential policy framework. In the meantime, with regard to improving the operational effectiveness of the macroprudential framework, as a minimum the following adjustments to the current framework are required as a matter of priority. First, the present hierarchy for the sequencing of the activation mechanism (the so-called 'pecking order') should be withdrawn. The present pecking order provides adverse incentives regarding the selection of instruments and results in a bias towards inaction. Second, the wide variety of notification and activation procedures for macroprudential measures should be streamlined, simplified and harmonised. This would entail, inter alia, establishing a unified and simplified activation procedure for the use of the macroprudential tools provided for in Article 458 of the Capital Requirements Regulation ([2]) (CRR) and harmonising the activation procedures for different capital buffers in such a way as to allow the macroprudential authorities to act in an efficient, effective and timely manner. In this regard, changes to the rules relating to the other systemically important institutions buffer and the systemic risk buffer should also be considered in order to clarify the policy purpose of these buffers, thereby eliminating overlaps and enhancing the effectiveness of their use by authorities. Third, the process set out in Article 136(3) of the CRD should be streamlined in such a way that each designated authority assesses the appropriate countercyclical capital buffer rate on a quarterly basis but sets or resets the rate only if there is a change in the intensity of cyclical systemic risks. In this context, the procedures for notifying the countercyclical buffer rate should also be amended to require designated authorities of Member States participating in the SSM to also notify the information specified in points (a) to (g) of Article 136(7) of the CRD to the ECB. Finally, the ECB considers it of paramount importance that the macroprudential policy framework is revised at regular intervals, taking account of developments in the analytical framework as well as practical experience with policy implementation. In this regard, a provision for comprehensive review of the macroprudential framework within the next three years, including the scope and appropriateness of the toolkit, should also be introduced.

1.3. *Cross-border waiver for prudential requirements*

1.3.1. The ECB generally supports the introduction of the possibility for a competent authority to waive the application of prudential requirements on an individual basis to a subsidiary whose head office is located in a Member State different to that of its parent undertaking, which is consistent with the establishment of the SSM and the banking union.

1.3.2. Additional prudential safeguards and technical modifications could address any potential financial stability concerns resulting from the application of this waiver mechanism to the banking union, which is still moving towards completion. In particular, the following two additional preconditions could be introduced in order for subsidiaries to benefit from the waiver: (a) the subsidiaries eligible for the waiver must not by themselves exceed a certain threshold, e.g. the thresholds for significance set out in the SSMR; and (b) the waiver should be subject to a floor of 75 %, e.g. the minimum own funds requirement could be reduced at most from 8 % to 6 % of the total risk exposure amount. In this regard, the guarantee would only be needed in relation to the amount of own funds requirements actually waived. Furthermore, the ECB recommends that these conditions should be reviewed three years after their entry into force and that consideration should, in particular, be given to whether the floor should be lowered further in the light of the evolution of the banking union.

([1]) See the ECB contribution to the European Commission's consultation on the review of the EU macroprudential policy framework (12 December 2016), available on the ECB's website at www.ecb.europa.eu

([2]) Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012 (OJ L 176, 27.6.2013, p. 1).

1.3.3. The proposed amendments to the CRR should additionally clarify that a parent undertaking's guarantee of a subsidiary must be appropriately reflected in the prudential requirements for credit risk applicable to that parent undertaking. In particular, the parent undertaking should have 100 % of the subsidiary's voting rights.

1.3.4. Finally, appropriate transitional arrangements for implementing the cross-border capital waiver should be put in place, taking into account the planned further progress on the banking union outlined in the Commission Communication to the European Parliament, the Council, the European Central Bank, the European Economic and Social Committee and the Committee of the Regions on completing the Banking Union ([1]) (hereinafter the 'Communication on completing the banking union').

1.4. *Implementation of International Financial Reporting Standard 9 (IFRS 9)*

The proposed amendments to the CRR provide for a phase-in period for expected credit loss provisions under IFRS 9 ([2]) to mitigate the impact of IFRS 9 on credit institutions' regulatory Common Equity Tier 1 capital ([3]). The ECB recommends that the period for transitional measures for IFRS 9 should start on 1 January 2018 with a linear phasing-in ([4]). In this context, the presidency of the Council is encouraged to fast track the legislation implementing the transitional arrangement for IFRS 9.

Moreover, it would be preferable to only apply the phase-in to the initial Common Equity Tier 1 reduction on 1 January 2018 (static approach) and not the expected loss amounts calculated under IFRS 9 at the relevant reporting date in the transition period (dynamic approach), since the latter approach would effectively delay the full application of IFRS 9 ([3]).

To avoid double counting of amounts added back to Common Equity Tier 1 capital, the ECB recommends making corrections during the transition period to all parts of the CRR that assume that Common Equity Tier 1 capital is reduced, i.e. for the add-back to Tier 2 capital, for non-deducted deferred tax asset amounts, and for reductions in exposure values for the standardised approach to credit risk, the leverage ratio and the large exposure framework.

The transitional measures should be mandatory for all institutions; otherwise institutions opting out could compel other institutions to frontload as well, which would counteract the very purpose of allowing more time to adapt to the initial Common Equity Tier 1 reduction when moving to IFRS 9.

1.5. *Additional deductions and adjustments to Common Equity Tier 1 capital*

The ECB welcomes the Commission's clarification on the scope of Article 104(1)(d) of the CRD and Article 16(2)(d) of the SSMR as set out in the Report from the Commission to the European Parliament and the Council on the Single Supervisory Mechanism established pursuant to Regulation (EU) No 1024/2013 (hereinafter the 'Report on the SSM') ([5]) and, in particular, the confirmation that competent authorities are allowed to require a credit institution to apply specific adjustments (deductions, filters or similar measures) to own funds calculations where the accounting treatment applied by the credit institution is considered not to be prudent from a supervisory perspective. The ECB is of the view that such a clarification should be included directly in the text of the CRD to ensure legal certainty.

1.6. *Intermediate EU parent undertaking*

The ECB welcomes the requirement to establish intermediate EU parent undertakings for third-country banking groups with two or more institutions established in the Union, provided that certain criteria are met or thresholds are exceeded ([6]), since this will allow the consolidating supervisor to evaluate the risks and financial soundness of the entire banking group in the Union and to apply prudential requirements on a consolidated basis.

([1]) COM(2017) 592 final.
([2]) See International Accounting Standards Board, IFRS 9 Financial Instruments (2014), available at www.ifrs.org
([3]) See the proposed new Article 473a of the CRR.
([4]) In line with the proposed new paragraph 96A of the Basel III document, see BCBS Standards: Regulatory treatment of accounting provisions – interim approach and transitional arrangements, March 2017, available on the website of BIS at www.bis.org. On the basis of this paragraph, the percentages for each year are determined on a straight line basis.
([5]) COM(2017) 591 final.
([6]) See the proposed new Article 21b of the CRD.

However, certain aspects of the proposed amendments to the CRD require further clarification in order to avoid regulatory arbitrage. First, the requirement should apply to both third-country credit institutions and branches (i.e. also in cases where the Union operations of the third-country group carried out, partially or exclusively, via branches). Second, once an intermediate EU parent undertaking is established, it should be a requirement that the existing branches of the same third-country banking group exceeding a certain threshold are re-established as branches of a credit institution authorised in the Union to prevent regulatory arbitrage opportunities, since supervision of third country branches is not harmonised. It is also important, in the longer term, to harmonise the regulatory and supervisory framework of third-country branches in the Union. Third, whether the intermediate EU parent undertaking is established as a financial holding company, a mixed financial holding company or a credit institution, it should be ensured that the framework for determining supervision on a consolidated basis does not result in an outcome that is not appropriate and could compromise the exercise of efficient and effective supervision by competent authorities supervising entities belonging to the third country group on an individual basis. Consequently, where the intermediate EU parent undertaking is established as a credit institution, and in order to level the playing field, the introduction of a criterion similar to that set out in Article 111(5) of the CRD, which currently applies to financial holding companies and mixed financial holding companies, should be explored. Moreover, the scope of application and the process linked to the implementation of Article 111(5) of the CRD should be clarified. Fourth, in the event of conflict between third-country laws and the requirement for a single intermediate EU parent undertaking, which could prevent or unduly complicate compliance with the intermediate EU parent undertaking requirement, a derogation should be explored to give competent authorities, in exceptional circumstances, discretion to allow the establishment of two separate intermediate EU parent undertakings (or to allow the carving out of specific entities from the single intermediate EU parent undertaking). In this case, the threshold for the intermediate EU parent undertaking requirement should be applied at the level of the whole third-country group, before the discretion is exercised, so that the exercise of this discretion does not result in a circumvention of the applicable thresholds for establishing an intermediate EU parent undertaking, as provided for in the proposed amendments to the CRD.

1.7. *Proportionality in reporting*

As regards the reporting obligations of smaller institutions the ECB generally supports a proportionate approach. In some instances, smaller institutions should be subject to simplified reporting requirements in accordance with their size, complexity and riskiness.

The proposed reduction in the frequency of regulatory reporting ([1]) by small credit institutions prevents competent authorities from adequately supervising these credit institutions ([2]). Regulatory reports are highly relevant, since they are among the most important sources of information for the ongoing supervision of smaller institutions. The availability of adequate information allows competent authorities to adjust the intensity of their supervisory actions with respect to such institutions. Moreover, although a reduction in the frequency of reporting would reduce compliance costs for smaller credit institutions from a human resources perspective, it would be unlikely to be less burdensome from an IT perspective since smaller institutions would still need to put appropriate IT systems in place, and the majority of these costs have already been incurred.

Instead of reducing the frequency of regulatory reporting the ECB suggests that the scope of reporting for smaller institutions could be amended, once the EBA has assessed the financial impact on credit institutions of Commission Implementing Regulation (EU) No 680/2014 ([3]) in terms of compliance costs and supervisory benefits ([4]).

Consistent application of the principle of proportionality should be recognised more systematically throughout the CRR. Specific cases should be identified where a more proportionate treatment could reduce compliance costs without compromising the prudential supervisory regime. A more proportionate approach could also be provided for, in particular in the areas of internal governance and the fit and proper regime, remuneration, and disclosures.

([1]) See the proposed new Articles 99(4), 101(5), 394(3), and 430(1) of the CRR.
([2]) This proposal would affect around 80 % of all less significant institutions.
([3]) Commission Implementing Regulation (EU) No 680/2014 of 16 April 2014 laying down implementing technical standards with regard to supervisory reporting of institutions according to Regulation (EU) No 575/2013 of the European Parliament and of the Council (OJ L 191, 28.6.2014, p. 1).
([4]) See the proposed new Article 99(7) of the CRR.

1.8. *Automatic restrictions on distributions*

As regards the proposed amendments to the CRD on the maximum distributable amount (MDA), the ECB welcomes the clarification regarding the capital stack. In addition, the ECB proposes that all interim/year-end profits not already included in Common Equity Tier 1 capital (net of distributions already paid out) should be included in the MDA and not only those profits generated after the last distribution. The focus on the most recent distribution or payment limits the profits that may be used for calculating the MDA. Credit institutions often have multiple decision dates for paying out coupons, dividends and bonuses. The more frequently a credit institution makes decisions regarding or pays distributions, the shorter the period over which profits are generated and thus the lower the amount of profits eligible to be used in the MDA calculation. This restriction is not justified if the interim/year-end profits generated, but not yet included in Common Equity Tier 1 capital, are higher than the distributions made.

1.9. *Credit and counterparty credit risk*

1.9.1. While Level 2 legislation has comprehensively clarified modelling in terms of credit, market and operational risk, such specificities are still lacking as regards counterparty credit risk. The ECB recommends that the CRR should be amended to request the EBA to develop regulatory technical standards with specific assessment criteria for the Internal Model Method (IMM) and for the advanced credit valuation adjustment (A-CVA) method. These regulatory technical standards should set out in more detail the materiality assessment for model changes and extensions for both IMM and A-CVA. Finally, a provision should be added requiring credit institutions to obtain approval from competent authorities in order to apply the A-CVA approach.

1.9.2. Credit institutions that have already implemented the IMM do not use it exclusively, and use other (non-internal) methods to calculate some of their exposures. This raises concerns that a great number of credit institutions might not be able to comply with the requirement that the IMM must not be applied in combination with other methods. To this end, the CRR should be amended to allow credit institutions to obtain permission to use the IMM for counterparty credit risk on a permanent partial basis, as they may for other risk types.

1.9.3. Furthermore, the current CRR rules for determining the maturity parameter should be extended to cover derivative and securities financing transaction exposures and open-term transactions.

1.9.4. The definition of the supervisory delta proposed by the Commission for the new standardised approach to measuring counterparty credit risk exposures should be aligned with the mathematically correct Basel Committee on Banking Supervision (BCBS) standards.

1.10. *Treatment of financial holding companies and mixed financial holding companies*

1.10.1. The ECB supports the harmonisation and enhancement of supervision over financial holding companies and mixed financial holding companies. It is important that actions for consolidated supervision can be directly targeted towards a banking group's parent undertaking, regardless of whether it is an institution or a holding company. In this respect, the fundamental supervisory objective is to ensure that the parent undertaking carries out its steering and coordination over its subsidiaries in a way that effectively advances the consolidated supervision. In general, the new regime should allow for the particular characteristics of a financial holding company or a mixed financial holding company and its role within a group to be sufficiently taken into account, in order to avoid excessive impediments to the group's functioning.

1.10.2. Some aspects of the proposed amendments to the CRD and the CRR would benefit from improvement or clarification. For example, clarification is needed on how the proposed amendments regarding the authorisation of financial holding companies and mixed financial holding companies relate to the existing rules on the supervision of qualifying holdings. Additionally, the proposed amendments to the CRD and the CRR do not indicate with sufficient clarity which of the current provisions referring to a 'credit institution' should be understood as including a financial holding company and a mixed financial holding company for the purposes of consolidated supervision. Further specification is also needed in relation to the ongoing supervisory measures that the consolidating supervisor may apply to a financial holding company and a mixed financial holding company.

1.10.3. In addition, the effect of the proposed amendments on Article 111 of the CRD needs to be considered. It is of particular concern that the consolidating supervisor might be located in a different jurisdiction from the financial holding company or the mixed financial holding company. The consolidating supervisor would then need to ensure compliance with consolidated requirements by a financial holding company or a mixed financial holding company established in a different Member State. The proposed amendments to the CRD should include provisions that set out in greater detail how to carry out efficient cross-border cooperation in such a case.

1.10.4. Finally, the proposed amendments to the CRD should include provisions that clarify the treatment of existing financial holding companies and mixed financial holding companies falling under these provisions.

1.11. *Supervision of large cross-border investment firms*

Large and complex bank-like investment firms providing investment services that impact upon their balance sheet, particularly those with cross-border operations, can pose increased financial stability risks as well as an increased risk of spill-over effects on other banks. The ECB takes the view that the consolidated and solo supervision of large cross-border, bank-like investment firms in the Union warrants further consideration, to ensure prudent and consistent supervisory standards commensurate with the risks these firms can pose. One of the possible options would be to amend the CRD/CRR in order to ensure that large cross-border investment firms are considered as credit institutions ([1]). This would be relevant for investment firms that frequently carry out bank-like activities of a type that are also carried out by banks. For investment firms that are not in that category, the current differentiation of treatment reflected in national arrangements should be preserved.

1.12. *National powers*

1.12.1. The SSMR confers on the ECB specific tasks relating to the prudential supervision of credit institutions, with a view to contributing to the safety and soundness of credit institutions and the stability of the financial system. These tasks are carried out with full regard for the unity and integrity of the internal market and the equal treatment of credit institutions, and with a view to preventing regulatory arbitrage ([2]). For this purpose, the ECB is required to apply all relevant Union law and where this law is composed of directives, the national legislation transposing those directives ([3]), in particular the CRD and the Bank Recovery and Resolution Directive ([4]) (BRRD). However, some supervisory powers are not specifically mentioned in Union law and differences in national legislation result in asymmetries in the ECB's supervisory powers across participating Member States.

1.12.2. In this regard, the ECB has already examined the scope and extent of existing supervisory powers and has developed an approach for ensuring a consistent interpretation of the ECB's powers. Despite this clarification of the ECB's competences, providing these existing supervisory powers with a common legal basis in Union law would trigger a requirement for their transposition and help clarify the interpretation of whether a specific power granted under national law is within the remit of a specific task conferred on the ECB. Furthermore, it would foster a level playing field in Union banking supervision through the harmonisation of competent authorities' supervisory powers. To achieve this, Union law should include a clear reference to additional supervisory powers in a number of areas, to avoid legal uncertainty with regard to the ECB's direct supervisory powers and to ensure a level playing field with regard to supervisory powers across the banking union. These areas mainly relate to acquisitions in third countries, mergers, asset transfers and other strategic decisions, the amendment of credit institutions' statutes and their shareholders' agreements on the exercise of voting rights, the provision of credit to related parties, the outsourcing of activities by credit institutions, supervisory powers regarding external auditors and additional powers related to the authorisation of credit institutions.

1.13. *Fit and proper assessment and key function holders*

1.13.1. Currently, the CRD does not establish requirements for the procedure to be used by competent authorities when carrying out assessments on members of the management bodies. As a consequence, national practices differ considerably in relation to the timing of the assessment, deadlines, and on whether the assessment takes place before or immediately after appointment. The ECB recommends amending Union law to further harmonise the processes for 'fit and proper' assessments.

([1]) See Communication on completing the banking union, p. 19 and Report on the SSM, p. 8.
([2]) See the first paragraph of Article 1 of the SSMR.
([3]) See Article 4(3) of the SSMR.
([4]) Directive 2014/59/EU of the European Parliament and of the Council of 15 May 2014 establishing a framework for the recovery and resolution of credit institutions and investment firms and amending Council Directive 82/891/EEC, and Directives 2001/24/EC, 2002/47/EC, 2004/25/EC, 2005/56/EC, 2007/36/EC, 2011/35/EU, 2012/30/EU and 2013/36/EU, and Regulations (EU) No 1093/2010 and (EU) No 648/2012, of the European Parliament and of the Council (OJ L 173, 12.6.2014, p. 190).

1.13.2. Key function holders have an important impact on the day-to-day management of credit institutions and in their overall governance structure. The ECB recommends that Union law should be amended to include a definition of key function holders and to clarify the definition of senior management. Moreover, to harmonise national approaches, a provision should be introduced on the powers of competent authorities when assessing key function holders in significant institutions.

1.14. *Exchange of information*

The current Union framework makes few specific references to the need for cooperation between the competent authorities responsible for prudential supervision and anti-money laundering authorities ([1]). There are also no explicit provisions governing cooperation between the competent authorities responsible for prudential supervision and the authorities responsible for applying rules on structural separation. The ECB proposes that the CRD's provisions on exchange of confidential information should be amended to explicitly provide for cooperation with these other authorities.

1.15. *Enforcement and sanctions regime*

The list of infringements subject to sanctions under the CRD does not include a number of important breaches, i.e. in respect of Pillar 1 capital requirements, supervisory regulations and decisions issued by a competent authority, the requirement to apply for prior permission and obligations to notify the competent authority. Member States therefore have discretion as to whether to provide the competent authorities with the power to impose administrative penalties in such cases. This approach may lead to inconsistencies between the Member States and undermine the effective enforcement of prudential requirements. To counter this, the ECB proposes to expand the list of infringements subject to sanctions.

1.16. *Options and discretions*

1.16.1. The existence of national options and discretions in prudential regulation prevents a single rulebook from being realised at Union level and adds an extra layer of complexity and costs, while allowing opportunities for regulatory arbitrage. In particular, options for Member States create obstacles to the efficient operation of the SSM, which must take into account different regulations and practices in the participating Member States. The concurrent and divergent exercise of such options results in a regulatory patchwork that can hamper the smooth functioning of ECB supervision within the participating Member States and as regards exposures related to third countries.

1.16.2. In some cases, these divergences also affect supervisory powers. Thus, those unwarranted options and discretions, which are not justified from a prudential perspective, should be harmonised directly in Level 1 legislation. Similarly, the introduction of new options and discretions should be discouraged, as is the case, for example, in the proposed amendments to the CRR in the area of equity investments in funds.

1.17. *Own funds requirements for exposures to central counterparties (CCPs)*

The ECB supports the introduction of a predefined exemption period into the proposed amendments to the CRR as regards own funds requirements for exposures to CCPs. This predefined exemption period would allow institutions to consider a third country CCP, which has applied, in accordance with Article 25 of Regulation (EU) No 648/2012 of the European Parliament and of the Council ([2]), to be a qualifying CCP. Such an exemption period is important in order to provide institutions with legal certainty regarding the treatment of their exposures over a relevant time horizon. Nonetheless, the ECB believes that providing a maximum exemption period of five years after the date of submission of an application for recognition (where the Commission has not yet adopted an implementing act) could be considered excessive in the light of the potential financial stability implications stemming from exposures to non-recognised third country CCPs. The ECB therefore suggests establishing a shorter maximum exemption period for exposures to third country CCPs that have not yet been recognised under Article 25 of Regulation (EU) No 648/2012.

([1]) Neither the CRD nor Directive (EU) 2015/849 of the European Parliament and of the Council of 20 May 2015 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, amending Regulation (EU) No 648/2012 of the European Parliament and of the Council, and repealing Directive 2005/60/EC of the European Parliament and of the Council and Commission Directive 2006/70/EC (OJ L 141, 5.6.2015, p. 73) provide specifically for cooperation of this kind.

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

2. **Implementation of internationally agreed supervisory standards**

The ECB welcomes the implementation of internationally agreed supervisory standards in Union law. Given the interconnectedness of the global financial system, global standards are necessary to ensure comparability and a level playing field.

2.1. *Leverage ratio*

2.1.1. The ECB supports the introduction of a leverage ratio requirement in Union law and its calibration at 3 %, which is in line with the BCBS standards and the recommendations of the EBA ([1]). The ECB recommends that the detailed implementation of the leverage ratio standards in the Union duly takes into account the outcome of ongoing international discussions, notably within the BCBS, as well as any further developments at international level.

2.1.2. The proposed amendment to the CRR eliminates the existing discretion for competent authorities to exempt from the leverage ratio exposure measure any intragroup exposures already exempted from risk weights and exposures arising from the pass-through of regulated savings ([2]), and instead introduces automatic exemptions for these exposures ([3]). The ECB is of the view that credit institutions should be permitted to exclude these exposures from the leverage ratio only if *ex ante* approval is given by the competent authority, following an assessment of the underlying leverage related risks as is the case in currently applicable Union law. In respect of significant institutions in the SSM the assessment is based on the ECB Guide on options and discretions available in Union law ([4]).

2.1.3. If the exemption of exposures arising from officially supported export credits ([5]) is to be maintained it should be limited to the extent necessary, insofar as warranted by Union-wide necessity rather than national preferences, as it constitutes a deviation from the BCBS standards. The automatic exemption of exposures arising from promotional loans from the exposure measure ([6]) also deviates from the BCBS standards and conflicts with the rationale of the leverage ratio as a non-risk-based measure. Further, this automatic exemption is not in line with the EBA recommendations and impedes an efficient comparison of leverage ratios across the market. Finally, the wording of several exemptions, which are often unclear in terms of the conditions to be satisfied, may allow institutions to interpret the exemptions in different ways, possibly resulting in the exemptions having a wider application and not being targeted towards very specific cases.

2.1.4. The ECB supports the introduction of a leverage ratio surcharge specifically for global systemically important institutions (G-SIIs), which should be based on the international standards regarding the design and the calibration of such requirements once finalised. Additional requirements for G-SIIs should reflect their systemic relevance and provide the additional loss-absorbing capacity necessary to ensure supplementary protection against their potential failure.

2.1.5. The proposed amendments to the CRR also provide for the offsetting of the initial margin in the case of derivative exposures related to client clearing, which is another element that deviates from the BCBS standards. The treatment of the initial margin for these transactions is a sensitive issue that is currently under review at international level. Implementation in the Union should reflect the conclusions of this review once it is finalised ([7]).

2.1.6. The proposed amendments to the CRR retain the current approach for calculating the leverage ratio on the basis of the balance sheet at the end of the quarter ([8]). The ECB recommends reviewing this provision, taking into account the ongoing international discussions regarding the reference period for calculating the leverage ratio.

2.1.7. The question of how to treat central bank reserves for the purposes of calculating the leverage ratio exposure is another sensitive issue that is currently under review at international level. The implementation of the leverage ratio under Union law should take into account the conclusions of this review once it is finalised.

([1]) EBA Report on the leverage ratio requirements under Article 511 of the CRR (No. EBA-Op-2016-13), 3 August 2016, available on the EBA's website at www.eba.europa.eu

([2]) See the proposed new Article 429a(1)(j) of the CRR.

([3]) See the proposed new Article 429a of the CRR.

([4]) See the ECB Guide on options and discretions available in Union law (consolidated version), November 2016, available on the ECB's Banking Supervision website at www.bankingsupervision.europa.eu

([5]) See the proposed new Article 429a(1)(f) of the CRR.

([6]) See the proposed new Article 429a(1)(e) of the CRR.

([7]) See the BCBS Consultative Document: Revisions to the Basel III leverage ratio framework, 25 April 2016, available on the website of BIS at www.bis.org

([8]) See the proposed new Article 429(2) of the CRR read in conjunction with Article 14(2) of Implementing Regulation (EU) No 680/2014.

2.1.8. The ECB concurs with the recommendations of the EBA that CCPs should not be subject to a leverage ratio requirement even if these entities hold a banking licence in some Member States. The exemption of these CCPs from the leverage ratio is justified by the specific safeguards imposed on CCPs by Regulation (EU) No 648/2012 and by the fact that liabilities of CCPs, such as margins held in the form of deposits, are mainly accumulated for risk management purposes rather than for funding investment activities.

2.2. *Net stable funding ratio (NSFR)*

2.2.1. The proposed amendments to the CRR deviate from the BCBS standards regarding the treatment of Level 1 high quality liquid assets by applying a 0 % required stable funding (RSF) factor and not a 5 % factor ([1]). The ECB proposes that a stable funding requirement should be maintained for Level 1 high quality liquid assets (excluding cash and central bank reserves, which should be subject to a 0 % RSF factor), since these assets are subject to some price risk over a time horizon of one year, even in the absence of a stress scenario. Introducing the same treatment as in the liquidity coverage ratio is not appropriate, considering the different timeframes of the two standards.

2.2.2. The proposed amendments to the CRR also deviate from the BCBS standards with regard to the treatment of future funding risk in derivative contracts ([2]). The ECB welcomes the mandate given to the EBA to report to the Commission on the opportunity to adopt a more risk-sensitive measure ([3]), given that the BCBS standards are not sufficiently risk sensitive ([4]). However, the proposed transitional arrangements contain certain conceptual shortcomings that introduce regulatory arbitrage opportunities, and their impact on credit institutions has not yet been assessed. Therefore, until a more appropriate methodology has been identified, the ECB proposes that the transitional regime should be aligned with the BCBS standards.

2.2.3. As regards the treatment of secured lending transactions, the proposed amendments to the CRR apply a lower RSF factor to secured and unsecured transactions with financial counterparties with a remaining maturity of less than six months than provided for under the BCBS standards ([5]). A holistic review of factors applied to all secured transactions included in the NSFR should be carried out, based on in-depth analysis, to determine whether the factors for specific collateral and maturities are calibrated properly. Until such a review is undertaken, the ECB proposes that the RSF factors provided for under the BCBS standards should be applied.

2.2.4. The proposed amendments to the CRR include an exemption from the NSFR requirement for assets and liabilities directly linked to general covered bonds complying with Directive 2009/65/EC of the European Parliament and the Council ([6]) and for soft bullet and conditional pass-through bonds meeting certain maturity trigger criteria ([7]). The ECB supports the EBA's recommendation that only fully matched funding pass-through covered bond structures should be exempted, given that they pose no funding risk to the issuing bank ([8]). In contrast, the ECB proposes that other covered bonds should not be exempted from the NSFR since these bonds, similarly to other longer-term liabilities, have significant funding risks not mitigated by their structural features. Considering the importance of covered bonds in bank funding, a de facto exemption of most outstanding covered bonds results in a significant dilution of prudential standards.

([1]) See the proposed new Article 428r(1)(a) of the CRR, and paragraph 37 of the BCBS document Basel III: the net stable funding ratio, October 2014 (hereinafter the 'BCBS NSFR framework'), available on the website of BIS at www.bis.org

([2]) See the proposed new Article 428u(2) and Article 428x(2), (3) and (4) of the CRR.

([3]) See the proposed new Article 510(4) and (5) of the CRR.

([4]) See Eurosystem contribution to the European Commission's DG FISMA consultation paper on further considerations for the implementation of the net stable funding ratio in the European Union, 14 September 2016.

([5]) See the proposed new Article 428s(b) and Article 428u(1)(a) and (b) of the CRR, and paragraphs 38 and 39(b) of the BCBS NSFR framework.

([6]) Directive 2009/65/EC of the European Parliament and of the Council of 13 July 2009 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS) (OJ L 302, 17.11.2009, p. 32).

([7]) See the proposed new Article 428f(2)(c) and (d) of the CRR.

([8]) See Recommendation 6 of the EBA Report on Net Stable Funding Requirements under Article 510 of the CRR (EBA Op/2015/22) of 15 December 2015, available on the EBA's website at www.eba.europa.eu

2.3. *Fundamental review of the trading book*

2.3.1. The ECB welcomes the proposal for the implementation in Union law of the new BCBS standard on market risk resulting from the fundamental review of the trading book (FRTB) ([1]). The ECB recommends that the detailed implementation of the FRTB standard in the Union, in particular the appropriate transitional arrangements, duly takes into account the outcome of ongoing international discussions, notably at the BCBS, as well as any further developments at international level. In addition the currently envisaged two-year implementation period may not be sufficient for institutions to demonstrate their compliance with the model requirements and for supervisors to properly assess and approve market risk models. This is due to the fact that the technical specification of a number of important aspects of the internal models approach will be provided in regulatory technical standards, which will only be available well after the entry into force of the proposed amendments to the CRR. For this reason, it would be advisable to lengthen the implementation phase.

2.3.2. The proposed transitional regime which introduces a significant downwards recalibration (by 35 %) of the FRTB capital requirements over a period of three years, is a cause for concern because it could result in market risk capital requirements significantly below current levels for specific institutions. While a transitional period may help to mitigate the impact on credit institutions' capital requirements, the ECB proposes that the transitional calibration should be phased out gradually, according to a predefined schedule, and combined with a floor to prevent market risk capital requirements falling below current levels.

With regard to the additional changes to the market risk framework with a view to achieving greater proportionality, the ECB considers the proposed amendments to the CRR that allow institutions with small trading books to use simplified approaches to be an adequate addition, as long as the thresholds for application are kept at the levels set in the proposal. However, the proposed simplified standardised approach should be sufficiently risk-sensitive and lead to capital requirements that are adequate when compared to the new approaches applicable to larger credit institutions. To this end, future revisions of the CRR should take account of relevant developments at BCBS level.

2.3.3. The proposed amendments to the CRR do not incorporate some key elements of the BCBS standards, such as the specification of the profit and loss attribution test, directly in the Level 1 legislation, leaving them to future delegated legislation. The ECB proposes that these elements should be included directly in the CRR, with only technical specifications being implemented in technical standards.

2.3.4. The proposed amendments to the CRR grant a significant amount of modelling freedom to credit institutions, which could lead to serious divergences in supervisory practices and risk modelling. To counter this, the ECB proposes that restrictions to modelling developed as part of the FRTB on the basis of comparative studies should be incorporated in the CRR.

2.3.5. Unlike the BCBS standards, the proposed amendments to the CRR allow credit institutions to choose, without any restrictions, the trading desks for which they apply for internal model approval and those for which they will maintain the standardised approach. In order to prevent regulatory arbitrage, competent authorities should be able, based on the approach chosen by the credit institutions for comparable trading desks, to determine the inclusion of trading desks that they consider should be within the scope of the internal models approach.

Specific ECB staff drafting proposals in respect of the proposed amendments to the CRR and the CRD are set out in a separate technical working document accompanied by an explanatory text to this effect. The technical working document has not been adopted by the Governing Council. The technical working document is available in English on the ECB's website.

Done at Frankfurt am Main, 8 November 2017.

The President of the ECB

Mario DRAGHI

([1]) BCBS Standards: Minimum capital requirements for market risk, January 2016, available on the website of BIS at www.bis.org

OPINION OF THE EUROPEAN CENTRAL BANK

of 8 November 2017

on revisions to the Union crisis management framework

(CON/2017/47)

(2018/C 34/06)

Introduction and legal basis

On 2 and 20 February 2017 the European Central Bank (ECB) received requests from the Council of the European Union and the European Parliament, respectively, for an opinion on a proposal for a Regulation of the European Parliament and of the Council amending Regulation (EU) No 575/2013 as regards the leverage ratio, the net stable funding ratio, requirements for own funds and eligible liabilities, counterparty credit risk, market risk, exposures to central counterparties, exposures to collective investment undertakings, large exposures, reporting and disclosure requirements and amending Regulation (EU) No 648/2012 ([1]) (hereinafter the 'proposed amendments to the Capital Requirements Regulation') ([2]).

On 17 and 20 February 2017 the ECB received requests from the European Parliament and the Council of the European Union, respectively, for an opinion on a proposal for a Directive of the European Parliament and of the Council amending Directive 2013/36/EU as regards exempted entities, financial holding companies, mixed financial holding companies, remuneration, supervisory measures and powers and capital conservation measures ([3]) (hereinafter the 'proposed amendments to the Capital Requirements Directive').

On 2 and 20 February 2017 the ECB received requests from the Council of the European Union and the European Parliament, respectively, for an opinion on a proposal for a Regulation of the European Parliament and of the Council amending Regulation (EU) No 806/2014 as regards loss-absorbing and Recapitalisation Capacity for credit institutions and investment firms ([4]) (hereinafter the 'proposed amendments to the Single Resolution Mechanism Regulation').

On 20 February 2017 the ECB received requests from the Council of the European Union and the European Parliament for an opinion on a proposal for a Directive of the European Parliament and of the Council amending Directive 2014/59/EU on loss-absorbing and recapitalisation capacity of credit institutions and investment firms and amending Directive 98/26/EC, Directive 2002/47/EC, Directive 2012/30/EU, Directive 2011/35/EU, Directive 2005/56/EC, Directive 2004/25/EC and Directive 2007/36/EC ([5]) (hereinafter the 'proposed amendments to the Bank Recovery and Resolution Directive') (hereinafter collectively referred to as the 'proposed amending regulations and directives').

The ECB's competence to deliver an opinion is based on Articles 127(4) and 282(5) of the Treaty on the Functioning of the European Union since the proposed amending regulations and directives contain provisions affecting the ECB's tasks concerning policies relating to the prudential supervision of credit institutions in accordance with Article 127(6) of the Treaty and the European System of Central Banks' contribution to the smooth conduct of policies pursued by the competent authorities relating to the stability of the financial system, as referred to in Article 127(5) of the Treaty. In accordance with the first sentence of Article 17.5 of the Rules of Procedure of the European Central Bank, the Governing Council has adopted this opinion.

1. Implementation of the total loss-absorbing capacity (TLAC) standard in the Union

The ECB welcomes the proposed amending regulations and directive, which aim to implement the TLAC standard of the Financial Stability Board (FSB) ([6]) for global systemically important institutions (G-SIIs) established in the Union. Extending the scope of the TLAC requirements to another set of credit institutions, e.g. to other systemically important institutions (O-SIIs), would raise calibration issues, since they have very heterogeneous profiles. However, if an

([1]) COM(2016) 850 final.
([2]) The ECB has adopted a separate opinion on some of the proposed amendments to the Capital Requirements Regulation and the Capital Requirements Directive, see Opinion CON/2017/46. All ECB opinions are published on the ECB's website at www.ecb.europa.eu
([3]) COM(2016) 854 final.
([4]) COM(2016) 851 final.
([5]) COM(2016) 852 final.
([6]) See the FSB's Principles on Loss-absorbing and Recapitalisation Capacity of G-SIBs in Resolution Total Loss-absorbing Capacity (TLAC) Term Sheet of 9 November 2015 (hereinafter the 'FSB TLAC Term Sheet'), available on the FSB's website at www.fsb.org.

extension of the scope is considered, an alternative could be to cover a subset of O-SIIs, which resemble the G-SIIs in terms of size, complexity, business model, interconnectedness and systemic importance, possibly with a lower minimum calibration floor. This would allow the differences compared to G-SIIs to be more precisely reflected.

2. **Amendments to the minimum requirement for own funds and eligible liabilities (MREL)**

2.1. The MREL consists of two parts: a loss absorption amount and a recapitalisation amount. The proposed amendments to the Bank Recovery and Resolution Directive ([1]) (BRRD) and to the Single Resolution Mechanism Regulation ([2]) (SRMR) provide the possibility for the resolution authority to adjust the MREL recapitalisation amount in order to adequately reflect risks resulting from the business model, funding model and overall risk ([3]). This allows the resolution authority to take account of a probable asset reduction and the different risk profile of the institution after the application of resolution tools and to adjust the recapitalisation amount to the new smaller balance sheet size.

In addition, the ECB considers that the resolution authority should be allowed, after consultation with the competent authority, to adjust the MREL recapitalisation amount upwards to provide for a 'safety margin'. This small buffer will ensure that the group and entities resulting from resolution have sufficient resources to cover additional unexpected losses and unforeseen costs that may arise in the period after resolution, which may, e.g., arise from the final outcome of the valuation or be related to costs arising from the implementation of a business reorganisation plan. The amount of such a safety margin should be established on a case-by-case basis, dependent on the resolution plan for the credit institution.

2.2. The proposed amendments to the BRRD and the SRMR allow a resolution authority to give guidance to an entity on having own funds and eligible liabilities in excess of the MREL, in order to cover the entity's potential additional losses and to ensure market confidence in resolution ([4]). The ECB recommends that the proposed MREL guidance is eliminated as it adds complexity to the framework without providing clear benefits. First, the MREL guidance may increase the overall MREL calibration, as the guidance may be perceived by the market as a requirement that must always be respected. The resolution authority's power to convert the MREL guidance, if consistently breached, into a hard MREL requirement ([5]) may reinforce the market's perception that the MREL guidance essentially contributes to an increased MREL requirement. Second, the MREL guidance is not needed in order to underpin compliance with the MREL requirement since the combined buffer requirement is already stacked on top of the MREL requirement in the Commission's proposal. Third, the MREL guidance cannot be justified by the objective of avoiding automatic maximum distributable amount (MDA) restrictions since a breach of the combined buffer requirement stacked on top of the MREL requirement should, in any case, not lead to immediate automatic restrictions on distributions ([6]). Fourth, the MREL guidance does not appear to be necessary to enhance the flexibility of the resolution authority since the MREL requirement can also be adjusted if needed, for example by taking into account the proposed safety margin.

2.3. Under the proposed amendments to the Capital Requirements Directive ([7]) (CRD) ([8]), credit institutions will fail to meet the combined buffer requirement if they do not have enough own funds and eligible liabilities to meet the combined buffer requirement, the capital requirements and the MREL at the same time. As the combined buffer requirement is stacked on top of both the MREL requirement ([9]) (first scenario) and the capital requirements ([10])

([1]) Directive 2014/59/EU of the European Parliament and of the Council of 15 May 2014 establishing a framework for the recovery and resolution of credit institutions and investment firms and amending Council Directive 82/891/EEC, and Directives 2001/24/EC, 2002/47/EC, 2004/25/EC, 2005/56/EC, 2007/36/EC, 2011/35/EU, 2012/30/EU and 2013/36/EU, and Regulations (EU) No 1093/2010 and (EU) No 648/2012, of the European Parliament and of the Council (OJ L 173, 12.6.2014, p. 190).

([2]) Regulation (EU) No 806/2014 of the European Parliament and of the Council of 15 July 2014 establishing uniform rules and a uniform procedure for the resolution of credit institutions and certain investment firms in the framework of a Single Resolution Mechanism and a Single Resolution Fund and amending Regulation (EU) No 1093/2010 (OJ L 225, 30.7.2014, p. 1).

([3]) Proposed new Article 45c(3) of the BRRD and proposed new Article 12d(3) of the SRMR.

([4]) See the proposed new Article 45e(1) of the BRRD and the proposed new Article 12f(1) of the SRMR.

([5]) See the proposed new Article 45e(3) of the BRRD.

([6]) See paragraphs 2.9 and 2.10.

([7]) Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC (OJ L 176, 27.6.2013, p. 338).

([8]) See the proposed new Article 141a of the CRD.

([9]) See the proposed new Article 141a(1)(d) of the CRD.

([10]) See the proposed new Article 141a(1)(a), (b) and (c) of the CRD.

(second scenario) the powers to address a breach of the buffers must be tailored depending on the underlying situation. Although the resolution authority is well placed to require an MREL restoration plan in the first scenario, the competent authority should act in line with the CRD in the second scenario.

2.4. The process to address or remove impediments to resolvability due to a breach of buffers stacked on top of the MREL ([1]) should be modified to include consultation of the competent authority, as is already provided for in relation to other impediments. Furthermore, the resolution authorities should have more flexibility regarding deadlines in order to ensure that the credit institution has sufficient time, if necessary, to develop the most appropriate strategy to address the breach of buffers. Additionally, the ECB welcomes the Commission's proposal, which allows the resolution authority to require an institution to change the maturity profile of MREL instruments as part of the measures to address impediments to resolvability ([2]).

2.5. The ECB recommends that the proposed amendments to the BRRD and SRMR clarify that resolution authorities have the task of monitoring the levels of available MREL eligible instruments and the MREL ratio itself, taking account of all the calculations on deductions. Likewise, it should be clarified that resolution authorities also have the task of monitoring compliance with MREL and informing the competent authority of any breaches and other relevant events that may affect the credit institution's ability to fulfil the MREL or the MREL guidance.

2.6. In the event of a breach of the MREL that coincides with a breach of capital requirements, the competent authority should first address the capital requirements breach by adopting the relevant measures, i.e. supervisory measures or use of early intervention powers in consultation with the resolution authority. This consultation should be short in order to ensure a prompt reaction to the breach of capital requirements. In addition, in exercising its power to address the MREL breach, the resolution authority must take account of the measures adopted by the competent authority.

2.7. Under the proposed amendments to the Capital Requirements Regulation ([3]) (CRR), early redemption of eligible liabilities requires prior permission to avoid an erosion of bail-in-able liabilities. The resolution authority should be responsible for granting such permission, since it is also responsible for determining the MREL and specifying the amount and quality of the instruments that will be needed for the preferred resolution strategy ([4]).

The resolution authority should be required to consult the competent authority in those cases where a credit institution is converting MREL eligible liabilities into own funds instruments in order to ensure compliance with capital requirements, as the approval of such a measure may be necessary to preserve the going concern capital position of the institution. Finally, the amendments should clarify that eligible liabilities instruments with a residual maturity below one year are also subject to this requirement for prior permission where the entity or resolution group is in breach of its MREL.

2.8. The ECB sees merit in the proposed amendments to the CRD, which provide that automatic MDA restrictions do not apply where the breach of the combined buffer requirement is due to the inability of the institution to replace liabilities that no longer meet the MREL eligibility or maturity criteria ([5]). This exemption should be extended to include the situation where the institution breaches its combined buffer requirement stacked on top of the MREL requirement ([6]) because it suffers a reduction of own funds but does not breach its combined buffer requirement stacked on top of capital requirements. In such a situation, the credit institution may still have a relatively high level of own funds, which, considered in isolation without the MREL, would suffice to meet its own fund requirements and its combined buffer requirement.

([1]) See the proposed new Article 17(5)(h1) of the BRRD.
([2]) See the proposed new Article 17(5)(j1) of the BRRD.
([3]) Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012 (OJ L 176, 27.6.2013, p. 1).
([4]) This is in line with the view expressed in paragraph 2.6.
([5]) See the proposed new Article 141a(2) of the CRD.
([6]) See the proposed new Article 141a(1)(d) of the CRD.

2.9. The ECB recommends that the proposed exemption from the application of MDA restrictions where the credit institution lacks MREL instruments should not be limited to a six-month period, since this may not be a sufficient delay of automatic application of MDA restrictions and thus may still further exacerbate stress in funding markets when there is the need to issue new capital or debt instruments ([1]). Instead, the exemption should apply for a twelve-month period, which will allow for additional time for the institution to issue MREL eligible instruments. This is particularly relevant since MREL instruments generally have shorter maturities than own funds instruments and thus bring greater refinancing risks, which might coincide with future stress in funding markets.

2.10. From a financial stability perspective, cross-holdings of MREL liabilities between credit institutions are not desirable. In order to prevent double counting and limit contagion effects, deduction rules should apply to all holdings of external MREL liabilities, i.e. issued to entities outside the resolution group, irrespective of the type of credit institution, i.e. not limited to GSIIs. The same method as is currently proposed for G-SIIs should apply in respect of all credit institutions, i.e. deductions are made from MREL eligible liabilities and from own funds on the basis of a corresponding deduction approach. In general, other aspects of the deduction rules should be consistent with what has been agreed internationally for TLAC, i.e. in the FSB TLAC Term Sheet and the Basel III framework ([2]), including for banking groups with more than one resolution entity and resolution group.

2.11. From a financial stability perspective, resolvability may be reduced if new 'non-preferred' senior debt instruments as well as subordinated debt instruments were to be held by retail investors. Therefore, consideration could be given to clear and easily understandable disclosure requirements and other safeguards to raise investor awareness of the risks associated with such instruments. In the same vein, it may be advisable to consider requiring a minimum denomination of at least EUR 100 000 per unit in respect of each instrument. This would increase the investment threshold and thus also raise investor awareness, thereby limiting direct retail investment. A common framework at Union level should be pursued on these issues in order to avoid divergent approaches being taken across Member States, which would lead to fragmentation within the Union market for these instruments ([3]).

2.12. The treatment of groups to be resolved under a multiple point of entry approach should be clarified. First, the definition of a 'resolution group' should exclude third-country subsidiaries that are points of entry themselves since these will be treated separately from the rest of the group in the event of resolution ([4]). Second, the amendments should clarify that compliance with MREL at resolution entity level must be achieved on a consolidated basis at the level of the resolution group ([5]). Third, the proposed rules on deductions from eligible liabilities applicable to groups to be resolved under the multiple point of entry approach ([6]) should fully reflect the TLAC term sheet with regard to the adjustments permitted and the components of the formula.

3. **Transitional arrangements for MREL**

3.1. One key factor in the implementation of an entity-specific MREL is the determination of an adequate transition period. The potentially high level of MREL shortfalls that may occur at the onset of the introduction of the new harmonised levels could pose significant challenges for certain credit institutions as regards meeting these requirements in a timely manner in the current macroeconomic environment. Therefore, the ECB proposes that an adequate minimum transition period across credit institutions should be introduced, which should be no shorter than the period applicable to G-SIIs set out in the TLAC term sheet. In addition, the resolution authority should be given the flexibility to determine, on a case-by-case basis, a final period for compliance that is longer than this

([1]) Note that a combined buffer requirement breach may also occur at high levels of regulatory capital where a credit institution actually meets a significant part of its MREL through own funds and not other MREL eligible liabilities.
([2]) Available on the website of the Bank for International Settlements (BIS) at www.bis.org
([3]) See also paragraph 3.5 of Opinion CON/2017/23.
([4]) Such clarification concerning the treatment of third-country subsidiaries may have a sizeable effect on the MREL for these group types.
([5]) See the proposed new Article 11(3) of the CRR.
([6]) See the proposed new Article 72e(4) of the CRR.

harmonised minimum. The ECB recommends clarifying that any extension, beyond the minimum transition period for a given institution, should be based on an assessment of the challenges in meeting the MREL requirement that such an institution would face due to limited market access or market capacity, or similar constraints in the relevant macroeconomic environment.

3.2. Moreover, the ECB sees merit in the introduction of new eligibility criteria for MREL eligible instruments that align the MREL eligibility criteria with the TLAC eligibility criteria ([1]) and introduce additional features that improve the permanence of MREL eligible instruments ([2]). These will assist in ensuring the loss-absorption capacity of MREL at the point of resolution. However, the additional features that go beyond the TLAC eligibility criteria may lead to further shortfalls, e.g. by making liabilities with acceleration clauses ineligible, which should be taken into account when setting the final transition period for compliance with MREL on a case-by-case basis. Alternatively, the proposed amendments to the CRR could be reworded to specify that liabilities that were previously MREL eligible but are not compliant with new additional features will be subject to 'grandfathering', meaning that they will continue to be eligible as they are under the current regime. Such grandfathering should be phased out over a reasonable time horizon.

3.3. Regarding the requirement that liabilities arising from debt instruments with embedded derivatives must be excluded from eligible liabilities, further clarification of the definition of 'embedded derivatives' is necessary. This could possibly be achieved by developing appropriate regulatory technical standards ([3]).

4. **Early intervention measures**

4.1. There is a significant overlap between supervisory measures under the CRD ([4]), the SSM Regulation ([5]) (SSMR) and early intervention measures provided for in the BRRD, both in terms of content as well as the conditions for their application. This overlap creates significant challenges for the practical implementation of the early intervention framework, especially in view of the lack of clarity regarding the conditions for early intervention.

4.2. Moreover, the ECB's early intervention powers must be exercised on the basis of individual national transpositions of the BRRD ([6]). This results in uncertainty regarding the available measures and the conditions for their exercise in each Member State.

4.3. Consequently, the ECB recommends removing from the BRRD those early intervention measures that are already available in the CRD and the SSMR and amending the SRMR to provide a legal basis in a regulation for the ECB's early intervention powers in order to facilitate their consistent application.

5. **Pre-resolution moratorium tool**

5.1. The proposed amendments to the BRRD confer new powers to suspend payment and delivery obligations on both the competent authorities and the resolution authorities. While the ECB generally welcomes the harmonisation of such powers at Union level, the ECB expects these far-reaching powers to be exercised only in extreme circumstances, if at all. Due to its exceptional nature and its disruptive impact on contracts, the moratorium tool should be decided in close coordination between all relevant authorities. The ECB suggests introducing a procedure for the allocation of responsibility for a moratorium to either the competent or the resolution authority, depending on whether the moratorium is imposed before or after the 'failing or likely to fail' determination. Such a procedure should as a rule avoid the imposition of successive moratoria. Only exceptionally, where motivated by the specific circumstances and in compliance with the principle of proportionality, should the resolution authority be able to impose an additional moratorium in order to bridge the gap from the 'failing or likely to fail' determination until resolution action is taken.

([1]) The main difference that remains is that subordination is not required for all institutions and that structured notes, under certain conditions, are eligible for MREL.

([2]) See the proposed new Article 72b(2) of the CRR, point (h) on incentives to redeem, point (j) on call options exercisable on sole discretion of the issuer, point (k) on the need to comply with Articles 77 and 78 of the CRR, point (l) on no mentioning of early repayment, point (m) on no acceleration rights for holder, and point (n) on the level of payments not being dependent on the credit standing of the institution.

([3]) See also paragraph 2.1.2 of Opinion CON/2017/6.

([4]) See, in particular, Article 104 of the CRD.

([5]) Council Regulation (EU) No 1024/2013 of 15 October 2013 conferring specific tasks on the European Central Bank concerning policies relating to the prudential supervision of credit institutions (OJ L 287, 29.10.2013, p. 63), in particular Article 16.

([6]) In line with Article 4(3) of the SSMR.

5.2. In general, a pre-resolution moratorium tool should be separate and independent from the early intervention measures. The primary objective of a pre-resolution moratorium should be to prevent severe deterioration of a credit institution's balance sheet. In particular, the pre-resolution moratorium tool would give the competent authority sufficient time, if necessary, to finalise the 'failing or likely to fail' assessment, also taking into consideration the time required to take such a formal decision, which also requires consultation of the resolution authority. Moreover, a moratorium allows additional time for the resolution authority to start preparing for its resolution tasks in parallel. The maximum period for a moratorium should be five working days in total, a limitation which is also necessary considering the severe impact of a moratorium on creditors' rights. The ECB cautions that prolonged periods during which depositors have no access to their deposits undermine confidence in the banking system and might ultimately create risks to financial stability.

5.3. An effective pre-resolution moratorium needs to have the broadest possible scope in order to allow for a timely reaction to liquidity outflows. The general exception for covered deposits and claims under investor compensation schemes should be replaced by limited discretionary exemptions to be granted by the competent authority in order to retain a degree of flexibility. Under that approach, the competent authority could, for example, allow depositors to withdraw a limited amount of deposits on a daily basis consistent with the level of protection established under the Deposit Guarantee Schemes Directive (DGSD) ([1]), while taking into account potential liquidity and technical constraints. Certain safeguards to protect the rights of depositors should be put in place, such as a clear communication on when access to deposits would be restored. Finally, possible implications under the DGSD should be assessed, as the pre-resolution moratorium tool would not be useful if it were to be deemed to trigger the unavailability of deposits under the DGSD.

5.4. The ECB recommends extending the existing exemptions from the moratorium related to financial market infrastructures (FMIs), including central counterparties, also to (a) third-country central securities depositories (CSDs) recognised by the European Securities and Markets Authority pursuant to the Central Securities Depositories Regulation ([2]), and (b) third-country payment systems subject to a cooperative oversight arrangement involving at least one central bank in the European System of Central Banks. A suspension prohibiting a participant (credit institution) from making any payments to an FMI will de facto cause that participant to no longer be able to meet its obligations as they fall due. For payment obligations to FMIs, this would place the participant in default. Without an exemption for this type of payment, the moratorium would actually have the potential to create and spread systemic risk before the FMI safeguards kick in ([3]).

5.5. The proposed harmonisation of pre-resolution moratorium powers should also be without prejudice to any other moratorium powers, e.g. supervisory or judicial powers, introduced at national level to safeguard the *par condicio creditorum* (equal treatment of creditors) principle upon the opening of insolvency proceedings. If a credit institution does not enter into resolution once a moratorium has been imposed, e.g. because the resolution authority determines that resolution would not be in the public interest, such national tools may become relevant again. A similar situation could occur if the failing entity goes into insolvency following the application of resolution tools.

5.6. The exceptions in the BRRD applicable to central banks, including with respect to the pre-resolution moratorium tool, should be extended to include the Bank for International Settlements (BIS). The BIS has been entrusted with the tasks of promoting cooperation between central banks, providing additional facilities for international financial operations and acting as trustee or agent for international financial settlements. It is therefore appropriate that it is treated similarly to a central bank under the BRRD.

([1]) Directive 2014/49/EU of the European Parliament and of the Council of 16 April 2014 on deposit guarantee schemes (OJ L 173, 12.6.2014, p. 149). As an example, Article 8(4) of this Directive provides that, during a transitional period, depositors should have access to an appropriate amount of their covered deposits to cover the cost of living within five working days of a request.

([2]) See Article 25 of Regulation (EU) No 909/2014 of the European Parliament and of the Council of 23 July 2014 on improving securities settlement in the European Union and on central securities depositories and amending Directives 98/26/EC and 2014/65/EU and Regulation (EU) No 236/2012 (OJ L 257, 28.8.2014, p. 1).

([3]) For this reason, there is a common understanding, both at Union and international level (settlement finality laws and FSB Key Attributes), of the need to protect financial obligations linked to FMIs from a moratorium.

5.7. Further assessments should also be undertaken with respect to recognising the moratorium tool under third-country laws, specifically in those cases where a recognition mechanism has not yet been established. In particular, careful consideration should be given to the potential implications of the moratorium tool for the purposes of the International Swaps and Derivatives Association 2015 Universal Resolution Stay Protocol, which only recognises a shorter period for a stay, with an opt-out in relation to jurisdictions that subsequently amend the length of the statutory stay.

5.8. Finally, the possible implications of prudential regulatory requirements should be carefully assessed given the proposed duration of the moratorium tools and the envisaged suspension of termination or netting/set-off rights.

6. **'Failing or likely to fail' assessment regarding less significant credit institutions under the direct responsibility of the Single Resolution Board (SRB)**

Although the Commission's proposed amendments to the SRMR do not address this, the resolution procedure established in the SRMR requires urgent attention. In particular, the misalignment between the institution-specific responsibilities of the ECB and of the SRB combined with the current wording of the SRMR leads to legal uncertainty as to which authority is responsible for assessing that a less significant credit institution, under the direct responsibility of the SRB, is failing or likely to fail. While a literal reading of Article 18 of the SRMR suggests that the ECB is responsible for making the 'failing or likely to fail' assessments in relation to some less significant credit institutions, this reading does not take account of the limitations of Union primary law. In fact, a systematic interpretation of the Union legal framework suggests that the 'failing or likely to fail' assessment for both less significant cross-border groups and other less significant credit institutions under the direct responsibility of the SRB should be outside the ECB's direct competence and should rather be a competence of the national competent authorities, as the competent supervisory authorities for less significant credit institutions on the basis of the SSMR ([1]). The ECB recommends that the proposed amendments to the SRMR are extended to provide explicitly that the respective national competent authority is responsible for the 'failing or likely to fail' assessment for a less significant credit institution under the remit of the SRB ([2]).

Specific ECB staff drafting proposals to amend the proposed amending regulations and directives are set out in a separate technical working document accompanied by an explanatory text to this effect. The technical working document has not been adopted by the Governing Council. The technical working document is available in English on the ECB's website.

Done at Frankfurt am Main, 8 November 2017.

The President of the ECB

Mario DRAGHI

([1]) See Article 6(4) of the SSMR.

([2]) The same considerations apply *mutatis mutandis* to the provisions of Article 21 of the SRMR.

IV

(Notices)

NOTICES FROM EUROPEAN UNION INSTITUTIONS, BODIES, OFFICES AND AGENCIES

COUNCIL

COUNCIL DECISION

of 29 January 2018

renewing the term of office of the President of the Boards of Appeal of the European Union Intellectual Property Office

(2018/C 34/07)

THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to Regulation (EU) 2017/1001 of the European Parliament and of the Council of 14 June 2017 on the European Union trade mark [1], and in particular Article 166(2) thereof,

Whereas,

on 21 November 2017, the Management Board of the European Union Intellectual Property Office decided to propose to the Council the extension of the term of office of Mr Théophilos MARGELLOS as President of the Boards of Appeal of the European Union Intellectual Property Office for a period of five years or until retirement age if retirement age is reached during the new term of office,

HAS ADOPTED THIS DECISION:

Article 1

The term of office of Mr Théophilos MARGELLOS as President of the Boards of Appeal of the European Union Intellectual Property Office is hereby renewed for the period from 1 October 2018 to 30 September 2023 or until retirement age if retirement age is reached during the new term of office.

Article 2

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

Done at Brussels, 29 January 2018.

For the Council

The President

R. PORODZANOV

[1] OJ L 154, 16.6.2017, p. 1.

EUROPEAN COMMISSION

Euro exchange rates [1]

30 January 2018

(2018/C 34/08)

1 euro =

	Currency	Exchange rate		Currency	Exchange rate
USD	US dollar	1,2421	CAD	Canadian dollar	1,5304
JPY	Japanese yen	134,98	HKD	Hong Kong dollar	9,7117
DKK	Danish krone	7,4415	NZD	New Zealand dollar	1,6937
GBP	Pound sterling	0,87930	SGD	Singapore dollar	1,6280
SEK	Swedish krona	9,7825	KRW	South Korean won	1 329,25
CHF	Swiss franc	1,1589	ZAR	South African rand	14,7979
ISK	Iceland króna		CNY	Chinese yuan renminbi	7,8566
NOK	Norwegian krone	9,5628	HRK	Croatian kuna	7,4188
BGN	Bulgarian lev	1,9558	IDR	Indonesian rupiah	16 630,48
CZK	Czech koruna	25,330	MYR	Malaysian ringgit	4,8448
HUF	Hungarian forint	310,38	PHP	Philippine peso	63,753
PLN	Polish zloty	4,1449	RUB	Russian rouble	69,5888
RON	Romanian leu	4,6513	THB	Thai baht	39,014
TRY	Turkish lira	4,6833	BRL	Brazilian real	3,9280
AUD	Australian dollar	1,5345	MXN	Mexican peso	23,1289
			INR	Indian rupee	79,0570

[1] *Source*: reference exchange rate published by the ECB.

Explanatory Notes to the Combined Nomenclature of the European Union

(2018/C 34/09)

By notice published in the Official Journal C 180 of 8 June 2017 the explanatory note to heading '***2309 Preparations of a kind used in animal feeding***' was replaced by a new text. That text was not wholly accurate and must itself be replaced; it should not be relied on.

Pursuant to Article 9(1)(a) of Council Regulation (EEC) No 2658/87 [1], the Explanatory Notes to the Combined Nomenclature of the European Union [2] are hereby amended as follows:

*On page 106, the explanatory note to heading '**2309 Preparations of a kind used in animal feeding**', as amended [3], is replaced by the following text:*

'**2309 Preparations of a kind used in animal feeding**

See note 1 to this chapter.

As regards milk products, see additional note 4 to this chapter.

The content of milk products, the content of starch and the content of glucose, glucose syrup, maltodextrin and maltodextrin syrup are regardless of their source calculated on the product as received.

As regards starch, the following applies:

— Where it is not evident whether any starch is present, a qualitative microscopic method or a qualitative colouration test with iodine solution may be used to verify the presence of starch.

— For the determination of starch content, the polarimetric method (also called the modified Ewers method) laid down in Annex III, part L, to Commission Regulation (EC) No 152/2009 (OJ L 54, 26.2.2009, p. 1) is to be applied.

Where the polarimetric method is not applicable, e. g. due to presence in significant amounts of materials such as those listed hereafter, the enzymatic analytical method for the determination of the starch content laid down in the Annex to Commission Regulation (EC) No 121/2008 (OJ L 37, 12.2.2008, p. 3) is to be applied.

The following specific materials are known to give rise to interferences by applying the polarimetric method:

(a) (sugar) beet products such as (sugar) beet pulp, (sugar) beet molasses, (sugar) beet pulp-molassed, (sugar) beet vinasse, (beet) sugar;

(b) citrus pulp;

(c) linseed; linseed expeller; linseed extracted;

(d) rape seed; rape seed expeller; rape seed extracted; rape-seed hulls;

(e) sunflower seed; sunflower seed extracted; sunflower seed, partially decorticated, extracted;

(f) copra expeller; copra extracted;

(g) potato pulp;

(h) dehydrated yeast;

(i) products rich in inulin (for example, chips and meal of Jerusalem artichokes);

(j) greaves;

(k) soya products.

— Products with a content lower than 0,5 % by weight of starch should not be considered as containing starch.

As regards glucose, High-Performance Liquid Chromatography (HPLC) may be used for the determination of glucose (Commission Regulation (EC) No 904/2008 (OJ L 249, 18.9.2008, p. 9)).'

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

[2] OJ C 76, 4.3.2015, p. 1.

[3] OJ C 180, 8.6.2017, p. 35.

AUTHORITY FOR EUROPEAN POLITICAL PARTIES AND EUROPEAN POLITICAL FOUNDATIONS

Decision of the Authority for European political parties and European political foundations

of 31 August 2017

to register the European Christian Political Movement

(Only the English text is authentic)

(2018/C 34/10)

THE AUTHORITY FOR EUROPEAN POLITICAL PARTIES AND EUROPEAN POLITICAL FOUNDATIONS,

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

Having regard to Regulation (EU, Euratom) No 1141/2014 of the European Parliament and of the Council of 22 October 2014 on the statute and funding of European political parties and European political foundations ([1]), in particular Article 9 thereof,

Having regard to the application received from the European Christian Political Movement,

Whereas:

(1) The Authority for European political parties and European political foundations ('Authority') received an application for registration as a European political party under Article 8(1) of Regulation (EU, Euratom) No 1141/2014 from the European Christian Political Movement (the 'applicant') on 11 July 2017.

(2) Pursuant to Article 9(2), third subparagraph, of Regulation (EU, Euratom) No 1141/2014, on 8 August 2017 the Authority asked the applicant to submit additional information to complete the application.

(3) The applicant submitted revised versions of parts of the application on 15 August 2017, 22 August 2017, 24 August 2017 and 29 August 2017.

(4) The applicant submitted documents proving that it satisfies the conditions laid down in Article 3 of Regulation (EU, Euratom) No 1141/2014 and, in particular, demonstrating its representation in at least one quarter of the Member States by at least the following members of the European Parliament, of national parliaments, of regional parliaments or of regional assemblies: Mr Hrvoje Zekanović (Hrvatski rast, Croatia), Mr Franck Margain (Parti chrétien-démocrate, France), Mr Ivars Brīvers (Kristīgi demokrātiskā savienība, Latvia), Mr Bastiaan Belder (Staatkundig Gereformeerde Partij, Netherlands), Mr Marek Jurek (Prawica Rzeczypospolitej, Poland), and Ms Petronela-Mihaela Csokany (Uniunea Bulgară din Banat, Romania), who are members to the applicant's member parties, and Mr Branislav Škripek (Slovakia), who is member to the applicant directly.

(5) The applicant submitted the declaration in the form set out in the Annex to Regulation (EU, Euratom) No 1141/2014, and its statutes, containing the provisions required by Article 4 of that Regulation.

(6) The applicant submitted additional documents in accordance with Articles 1 and 2 of Commission Delegated Regulation (EU, Euratom) 2015/2401 ([2]).

(7) Pursuant to Article 9 of Regulation (EU, Euratom) No 1141/2014, the Authority has examined the application and supporting documentation submitted and considers that the applicant satisfies the conditions for registration laid down in Article 3 of that Regulation and that the statutes contain the provisions required by Article 4 of that Regulation,

([1]) OJ L 317, 4.11.2014, p. 1.

([2]) Commission Delegated Regulation (EU, Euratom) 2015/2401 of 2 October 2015 on the content and functioning of the Register of European political parties and foundations (OJ L 333, 19.12.2015, p. 50).

HAS ADOPTED THIS DECISION:

Article 1

The European Christian Political Movement is hereby registered as a European political party.

It shall acquire European legal personality on the date of the publication of this Decision in the *Official Journal of the European Union*.

Article 2

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

Article 3

This Decision is addressed to

European Christian Political Movement
Bergstraat 33
3811 NG Amersfoort
The Netherlands

Done at Brussels, 31 August 2017.

For the Authority for European political parties and European political foundations

The Director

M. ADAM

ANNEX

Article 1

Name and logo

1. The name of the association is European Christian Political Movement (EPCM).

2. The logo exists out of the letters E, C, P, M, in blue and green.

Article 2

Registered office

The registered office of the Association is located at The Hague, The Netherlands (Chamber of Commerce, Koninginnegracht 13, 2514 AA Den Haag). The ECPM head office is at the Bergstraat 33, 3811 NG, Amersfoort, The Netherlands.

Article 3

Objects

1. The objects of the association are to reinforce Christian politics on a European, national, regional and local level, as expressed in the basic programme of the association.

2. The association may pursue its objects with all legal means, including in particular by:

a. promoting mutual contacts among political parties endorsing the association's objects;

b. promoting and exchanging knowledge and experience that may contribute to achieving the association's objects;

c. organizing trainings in order to increase the knowledge and skills of the members and their officers;

d. promoting the further shaping of Christian politics in Europe;

e. promoting concrete legislation to conform to the basic programme of the association;

f. participating in European elections.

3. The organisation does not pursue profit goals.

Article 4

Members

Members may be:

a. Political parties in Europe endorsing the basic programme, as mentioned in article 3;

b. politicians who qualify for Article 3(1)(b) of Regulation (EC) No 2004/2003 (including amendments from Regulation (EC) No 1524/2007) of the European Parliament and of the Council of the fourth day of November two thousand and three on the regulations governing political parties at European level and the rules regarding their funding and who are also endorsing the basic programme, as mentioned in article 3 and members of national parliaments from nations which have full membership in the Council of Europe.

c. The association with limited legal competence: European Christian Political Youth (ECPYouth) with its registered office in the Hague, the Netherlands.

Article 5

Associated Bodies

1. Associated bodies are organizations or individual members of the European Parliament that (can) support the association's work, either financially or by contributing expertise or otherwise.

2. Associated bodies do not have any rights and obligations other than those conferred and imposed on them by or pursuant to this charter.

Article 6

Admission

1. The board shall decide on the admission of members and associated bodies.

2. In the event of non-admission as a member, the general assembly may still decide to admit the relevant party or individual.

Article 7

Termination of membership

1. The membership shall end:

a. by the member's notice of termination;

b. by notice of termination by or on behalf of the association, which may be given if a member has ceased to meet the requirements for membership as set in this charter, if the member fails to perform its obligations vis-à-vis the association, as well as if the association cannot reasonably be required to continue the membership;

c. by disqualification, which may be pronounced only if a member acts contrary to the association's charter, the regulations or the resolutions, or prejudices the association.

2. Notice of termination on behalf of the association shall be given by the board.

3. Notice of termination of the membership by the member may be given only with effect from the end of the association year and with due observance of a four-week notice period. The membership may, however, be terminated with immediate effect if the association or the member cannot reasonably be required to continue the membership.

4. Notice of termination contrary to the provisions of the foregoing paragraph shall result in termination as per the earliest possible time following the effective date of termination stated in the notice.

5. A member shall not be authorized by means of notice of termination of its membership to exclude vis-à-vis itself a resolution imposing more stringent financial obligations on the members.

6. Disqualification from the membership shall be effectuated by then board.

7. The person involved may lodge an appeal against a resolution of the association to terminate the membership based on the argument that the association cannot reasonably be required to continue the membership, and against a resolution to disqualify a member from membership within one month of receipt of the notice of the resolution at the general assembly. The person involved shall be notified of the resolution in writing, stating the reasons, as soon as possible. During the appeal period and pending the appeal, the member will be suspended.

8. In the event of termination of the membership in the course of any association year, the annual contribution shall, nevertheless, remain due in full.

Article 8

Termination of the rights and obligations of associated bodies

An associated body's rights and obligations may at all times mutually be terminated by giving notice, provided that a financial contribution for the current association year promised shall remain due in full.

Article 9

Notice of termination on behalf of the association shall be given by the board.

Article 10

Annual contributions

1. The members shall pay an annual contribution to be determined by the general assembly.

2. Under special circumstances the board may grant a full or partial exemption from the obligation to pay a contribution.

Article 11

Board

1. The board shall consist of at least four private individuals who are either a:

a. member;

b. member of a member-party or;

c. member or staff member of an associate or an individual member, and who are to be elected by the general assembly.

2. The number of board members shall be determined by the general assembly based on a motion of the board.

3. Board members will be appointed by the general assembly.

4. The standing orders may give further regulations on the appointment of board members.

Article 12

Termination of board membership - Periodic membership - Suspension

1. Every board member shall retire ultimately four years after appointment. The retiring board member shall be eligible for reappointment once

2. Every board member, even if appointed for a limited period of time, may at all times be dismissed or suspended by the general assembly. Any suspension not followed by a dismissal resolution within three months shall end by expiry of such term. The retiring board member shall be eligible for reappointment. A person appointed to fill a temporary vacancy shall take the place of his predecessor in the rotation schedule.

3. Furthermore, a board membership shall end:

a. by termination of a member's membership of the association;

b. by resignation.

Article 13

Board offices - Board decision - Making process

1. The chairman shall be appointed to office by the general assembly. The other offices shall be divided among the board members in mutual consultation, provided that the board may also assign the duties of the secretary and the treasurer to non-board members.

2. Standing orders may set additional regulations in respect of the meetings and decision-making process of the board.

Article 14

Board duties - Representation

1. Save as restricted in this charter, the board shall be responsible for the management of the association.

2. In the event of vacancies on the board, the board shall retain its powers. It shall, however, convene a general assembly as soon as possible to discuss the filling of the vacancy or vacancies.

3. The board shall be authorized to have committees to be appointed by the board perform certain parts of the board's duties under the responsibility of the board.

4. The board shall be authorized to enter into agreements to purchase, alienate or encumber property subject to public registration, to enter into agreements in which the association binds itself as a guarantor or as joint and several debtor, warrants performance by third parties, or binds itself as security for a third-party debt.

5. The association shall be represented both in and out of court either by the board or by the chairman acting jointly together with another board member.

6. With regard to daily management, the association is validly represented by the General Director.

Article 15

Financial management, annual report and reporting

1. The General Director is responsible for the daily financial management, including expenditure and fundraising and is fully authorized with regard to bank matters and loans below €25.000. In consultation with the Board, the General Director appoints an independent administrator to conduct the administration. The administrator can transfer funds only with written approval of the General Director. The General Director will inform the Board of the financial developments and reports on all transfers over €1.000. The independent administrator prepares the accounts after which they are adopted by the General Director and verified by the Board. The Board will be fully transparent to its members and the European Parliament regarding donations and the financial accounts while maintaining the protection of personal data and privacy as long as this does not conflict with any ruling in this charter.

2. The General Director will sign off spending which will be recorded by the administrator. All expenditure will be conducted in accordance with the rules and guidelines for expenditure concerning European political parties. Other staff members can only do expenditure within an established limit and with the sole purpose of arranging travel and stay and meeting rooms.

3. The board remains the final administrative and financial representation of the association and shall keep records of the association's financial position, so as to show its rights and obligations at all times.

4. The board shall issue its annual report at a congress within six months of the end of the association year - save an extension of such term by the general assembly -, reporting on its management as conducted over the past financial year, under simultaneous submission of a balance sheet and a statement of income and expenditure. After expiry of the said term any member may demand in court that the board report in accordance with the foregoing sentence.

5. The European Parliament appoints the auditor. The General Director and administrator will cooperate with the auditor to establish the annual accounts. These accounts will be submitted to the Board and General Assembly for approval.

6. The association year shall run from the first day of January until the thirty-first day of December. (change of order, was article 15.1)

Article 16

The General Assembly

1. The general assembly is the general meeting by law. All powers in the association not conferred on the board by law or in this charter shall vest in the General Assembly.

2. Ultimately six months after the end of each association year, a congress – the annual meeting - shall be held to discuss, inter alia:

a. the annual report and the report as referred to in article 15, as well as the report of the committee referred to in such article;

b. the appointment of the committee referred to in article 15 for the following association year;

c. the filling of vacancies, if any;

d. motions submitted by the board or by the members, if any, as announced in the notice convening the meeting.

3. Any other assemblies shall be held as often as the board deems appropriate.

4. Furthermore, on the written request of at least such number of members as are entitled to cast one tenth of the votes, the board shall convene a congress within a maximum term of four weeks. If the request is not complied with within fourteen days, the requesting members may convene the meeting themselves by giving notice in accordance with article 20 or by placing an advertisement in a daily newspaper at least widely read in the place where the association has its registered office.

Article 17

Access and voting right

1. In compliance with article 20, the general assembly shall be open to members of the association, board members, representatives of the associated bodies and invited guests. Suspended members and suspended board members shall not have access to the congress.

2. Other than those referred to in paragraph 1 have admission to the general assembly, unless casu quo the general assembly decides to meet in camera.

3. Every member of the association who is not suspended shall have the right to cast a vote.

4. Every associated body has a right to cast a vote on subjects concerning: political content.

5. In the general assembly each member party has three votes and every individual member has one vote. Every associate body has one vote. The number of votes by individual members and associates can only make up for forty-nine percent (49 %) of the total votes. If the votes of individual members exceed forty-nine percent (49 %) of the total votes then the chairman of the association (or his substitute) is allowed to determine an alternative division of the votes that ensures that the individual members will receive forty-nine percent (49 %) of the total votes.

6. A memberparty may cast his vote only through a representative having power of attorney to the satisfaction of the chairman of the meeting.

Article 18

Chair - Minutes

1. The general assembly shall be chaired by the chairman of the association or his deputy. In the absence of the chairman and his deputy, one of the other board members to be designated by the board shall act as chairman. If the chair is not filled according to this procedure either, the meeting shall appoint its own chairman.

2. The secretary or another person designated for such purpose by the chairman shall keep minutes of the proceedings at each meeting, to be adopted and signed by the chairman and the person keeping the minutes.

Article 19

Congress decision - Making process

1. The decision pronounced at the general assembly by the chairman to the effect that a resolution has been adopted shall be decisive. The same shall be true for the substance of a resolution adopted to the extent that a vote was taken on a motion not set forth in writing.

2. If, however, immediately after the decision referred to in paragraph 1 is pronounced, the correctness thereof is challenged, a new vote shall be taken if the majority of the meeting or, if the original vote was not taken by roll-call or by ballot, a person entitled to vote so requires. Such new vote shall supersede the legal consequences of the original vote.

3. To the extent not provided otherwise by law or in this charter, all resolutions of the general assembly shall be adopted by an absolute majority of the votes cast.

4. Blank votes shall be deemed not to have been cast.

5. If, in an election of persons, none of the candidates has obtained an absolute majority of the votes, a second vote or, in the event of a binding nomination, a second vote between the nominated candidates, shall be held. If in such second vote none of the candidates has obtained an absolute majority either, revotes shall be taken until either one person has obtained an absolute majority of the votes or a vote held between two persons ends in a tie. Such revotes (not including the second vote) shall at all times be held between the persons between whom the preceding vote had been held, with the exception of the person who had obtained the least votes during such preceding vote. If during the preceding vote the least votes had been obtained by more than one person, a drawing of lots shall decide who of such persons can no longer be voted for in the new vote. In the event that a vote between two persons ends in a tie, a drawing of lots shall decide who of such two persons is elected.

6. In the event that a vote on a motion other than on an election of persons ends in a tie, the motion shall be deemed to have been rejected.

7. All votes shall be taken orally, unless the chairman deems a vote by ballot appropriate or if any of the persons entitled to vote so requires prior to the vote. Written votes shall be taken by secret, unsigned ballot. Resolutions may be adopted by acclamation, unless any of the persons entitled to vote requires a vote by roll-call.

8. A unanimous resolution of all members, even outside a meeting, shall have the same force as a resolution of the congress of the general assembly, provided adopted with the prior knowledge of the board.

9. As long as all members are present or represented at a general assembly, valid resolutions may be adopted, provided unanimously, with respect to all items to be discussed - thus, including a motion to amend this charter or to dissolve the association - even if no notice convening a congress has been sent or has been sent in accordance with the requirements in that respect or any other requirements with respect to convening and holding meetings, or any related formalities, have not been observed.

10. Decisions are only valid if at least one quarter of the members are present during the meeting.

Article 20

Convening the General Assembly

1. The general assembly shall be convened by the board. The notice convening the general assembly shall be sent to the addresses of the members according to the membership register as referred to in article 4. The term for convening a congress shall be at least seven days.

2. The notice convening the general assembly shall state the items to be discussed, without prejudice to the provisions of article 21. In the notice convening the general assembly, the board can indicate some items that shall exclusively be discussed by the members. Items mentioned in article 17.4 can never be indicated by the board as to be discussed exclusively.

Article 21

Amendment of the Charter

1. This charter of the association may be amended only by a resolution of the general assembly, the notice convening such meeting stating that a motion to amend the charter shall be discussed at such meeting.

2. Those who had convened the congress of the general assembly to discuss a motion to amend the charter shall deposit a copy of such motion in which the proposed amendment is quoted verbatim, at a suitable location, for inspection by the members, at least five days prior to the meeting until the end of the day of the meeting. Furthermore, a copy as referred to above shall be sent to all members.

3. A resolution to amend the charter shall require at least two thirds of the votes cast in a meeting at which at least two thirds of the members are present or represented. If two thirds of the members are not present or represented, a second meeting shall be convened and held within four weeks thereafter, in which a resolution may be passed on the motion as discussed in the previous meeting, irrespective of the number of members present or represented, provided by a majority of at least two thirds of the votes cast.

4. An amendment of the charter shall not take effect until after having been set forth in an instrument executed before a civil-law notary. Every board member shall be authorized to have the instrument executed, in accordance with the of the general assembly.

Article 22

Dissolution

1. The association may be dissolved by a resolution of the general assembly. The provisions of paragraphs 1, 2 and 3 of the foregoing article shall apply mutatis mutandis.

2. The appropriation of any credit balance after liquidation shall be determined by the general assembly in the resolution to dissolve the association.

Article 23

Standing orders

1. The general assembly may adopt standing orders.

2. The standing orders may not be contrary to the law, even where nonmandatory, or with this charter.

Article 24

Affiliated foundation

Sallux is the foundation affiliated to ECPM and will function as its sole European political foundation in accordance with the Regulation (EC) No 1141/2014 of the European Parliament and of the Council on the regulations governing political foundations and the rules regarding their funding.

Annex I

List of Members of the European Christian Political Movement on June 1, 2017

Full name	English translation	Acronym	Type of membership	Member state
Hayastani Qristonea-Demokratakan Miowt'yown	Christian Democratic Union of Armenia	HQDM	Full membership	Armenia
Hrvatski rast	Croatian Growth	HRAST	Full membership	Croatia
Eesti Kristlikud Demokraadid	Estionian Christian Democrats	EKD	Full membership	Estonia
Parti Chrétien-Démocrate	Christian Democratic Party	PCD	Full membership	France
Christian Democratic People's party		CDPP	Full membership	Georgia
Bündnis C – Christen für Deutschland	Alliance C – Christians for Germanny	Bundnis-C	Full membership	Germany
Kristigi Demokratiska Savieniba	Christian Democratic Union	KDS	Full membership	Latvia
Partidul Popular Crestin Democrat	Christian Democratic People's party	PPCD	Full membership	Moldova
ChristenUnie	Christian Union	CU	Full membership	The Netherlands
Staatkundig Gereformeerde Partij	Politically Reformed Party	SGP	Full membership	The Netherlands
Prawica Rzeczypospolitej	Right Wing of the Republic	PR	Full membership	Poland
Uniunea Bulgara din Banat	Bulgarian Union in Banat	UBB	Full membership	Romania
Evangelische Volkspartei	Evangelical People's Party	EVP	Full membership	Switzerland
Khrystiyansko Demokratichnyj Soyuz	Christian-Democratic Union	KDS	Full membership	Ukraine
Christian Peoples Alliance		CPA	Full membership	United Kingdom

V

(Announcements)

PROCEDURES RELATING TO THE IMPLEMENTATION OF THE COMMON COMMERCIAL POLICY

EUROPEAN COMMISSION

Notice of initiation of an anti-subsidy proceeding concerning imports of biodiesel originating in Argentina

(2018/C 34/11)

The European Commission ('the Commission') has received a complaint under Article 10 of Regulation (EU) 2016/1037 of the European Parliament and of the Council of 8 June 2016 on protection against subsidised imports from countries not members of the European Union [1] ('the basic Regulation'), alleging that imports of biodiesel, originating in Argentina, are being subsidised and are thereby causing injury [2] to the Union industry.

1. Complaint

The complaint was lodged on 18 December 2017 by the European Biodiesel Board ('the complainant') on behalf of producers representing more than 25 % of the total Union production of biodiesel.

2. Product under investigation

The product subject to this investigation is fatty-acid mono-alkyl esters and/or paraffinic gasoils obtained from synthesis and/or hydro-treatment, of non-fossil origin, commonly known as 'biodiesel', in pure form or as included in a blend ('the product under investigation').

3. Allegation of subsidisation

The product allegedly being subsidised is the product under investigation, originating in Argentina ('the country concerned'), currently falling within CN codes ex 1516 20 98 (TARIC codes 1516 20 98 21, 1516 20 98 29 and 1516 20 98 30), ex 1518 00 91 (TARIC codes 1518 00 91 21, 1518 00 91 29 and 1518 00 91 30), ex 1518 00 95 (TARIC code 1518 00 95 10), ex 1518 00 99 (TARIC codes 1518 00 99 21, 1518 00 99 29 and 1518 00 99 30), ex 2710 19 43 (TARIC codes 2710 19 43 21, 2710 19 43 29 and 2710 19 43 30), ex 2710 19 46 (TARIC codes 2710 19 46 21, 2710 19 46 29 and 2710 19 46 30), ex 2710 19 47 (TARIC codes 2710 19 47 21, 2710 19 47 29 and 2710 19 47 30), 2710 20 11, 2710 20 15, 2710 20 17, ex 3824 99 92 (TARIC codes 3824 99 92 10, 3824 99 92 12 and 3824 99 92 20), 3826 00 10 and ex 3826 00 90 (TARIC codes 3826 00 90 11, 3826 00 90 19 and 3826 00 90 30). These CN and TARIC codes are given for information only.

The complaint includes sufficient evidence that the producers of the product under investigation from Argentina have benefitted from a number of subsidies granted by the Government of Argentina.

The subsidies practices consist, *inter alia*, of:

(i) government provision of goods or services for less than adequate remuneration, such as the provision of soybeans;

(ii) government purchase of goods for more than adequate remuneration and/or income or price support, such as the government mandated purchase of biodiesel (Biodiesel Supply Agreement);

[1] OJ L 176, 30.6.2016, p. 55.

[2] The general term 'injury' refers to material injury as well as to threat of material injury or material retardation of the establishment of an industry as set out in Article 2(d) of the basic Regulation.

(iii) direct transfer of funds, such as provision of loans and export financing on preferential terms, including the preferential lending by the National Bank of Argentina (Banco de la Nación Argentina, 'BNA'); and

(iv) government revenue forgone or not collected, such as accelerated depreciation for biodiesel producers under the Biofuels Law of 2006, exemption and deferral of the minimum presumed income tax for biodiesel producers under the Biofuels Law of 2006, and several provincial tax exemptions.

The complainant further alleges that the above measures amount to subsidies because they involve a financial contribution from the Government of Argentina or other regional governments (including public bodies) and confer a benefit to the exporting producers of the product under investigation. They are alleged to be limited to certain enterprises or industry or group of enterprises and are therefore specific and countervailable. On this basis, the alleged subsidy amounts appear to be significant for the country concerned.

In view of Articles 10(2) and 10(3) of the basic Regulation, the Commission prepared a memorandum on sufficiency of evidence containing the Commission's assessment on all the evidence at the disposal of the Commission and on the basis of which the Commission initiates the investigation. This memorandum can be found in the file for inspection by interested parties.

The Commission reserves the right to investigate other relevant subsidies which may be revealed during the course of the investigation.

4. Allegation of threat of injury and causation

The complainant has provided evidence that imports of the product under investigation from the country concerned have increased overall in absolute terms and in terms of market share at a significant rate indicating the likelihood of substantially increased imports. Moreover, it is alleged that imports are entering the Union at prices that have already had, among other consequences, negative impact on the level of the sales prices, quantities sold, market share and profits of the Union industry.

Furthermore, the complainant provides evidence that there is sufficient freely disposable capacity in Argentina indicating the likelihood of substantially increased imports.

In addition, the nature of the alleged subsidies in question is such as to likely cause negative trade effects.

It is also alleged that the flow of subsidised imports is likely to substantially increase due to the recent reduction of the anti-dumping measures in place against imports of the product under investigation to the EU [1] and the recent imposition of countervailing measures in the United States of America ('the USA') against the product under investigation. This indicates a likelihood of a redirection of exports to the Union leading to a substantial increase of subsidised imports. The complainant alleges that those changes in circumstances are clearly expected and imminent. Material injury would occur due to the imminent further subsidised imports.

The complainant also alleges that the perspective of a flood of unfair imports is the main cause of the imminent threat of injury and there are no other factors that appear to break the causal link.

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 under Article 10 of the basic Regulation.

The investigation will determine whether the product under investigation originating in the country concerned is being subsidised and whether these subsidised imports have caused or threaten to cause 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.

The Government of Argentina has been invited for consultations.

5.1. *Investigation period and period considered*

The investigation of subsidisation and injury will cover the period from 1 January 2017 to 31 December 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').

[1] OJ L 239, 19.9.2017, p. 9.

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

Exporting producers ([1]) of the product under investigation from the country concerned and the authorities of the country concerned are invited to participate in the Commission investigation. Other parties from which the Commission will seek relevant information to determine the existence and amount of countervailable subsidies conferred upon the product under investigation are also invited to cooperate with the Commission to the fullest extent possible.

5.2.1. *Investigating exporting producers*

Procedure for selecting exporting producers to be investigated in the country concerned

(a) Sampling

In view of the potentially large number of exporting producers in the country 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 27 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 company(ies) 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 country 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 country concerned and associations of exporting producers will be notified by the Commission 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 country concerned.

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

Without prejudice to the application of Article 28 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 countervailing duty that may be applied to imports from non-sampled cooperating exporting producers will not exceed the weighted average amounts of subsidisation established for the exporting producers in the sample ([2]).

(b) Individual amount of countervailable subsidisation for companies not included in the sample

Non-sampled cooperating exporting producers may request, under Article 27(3) of the basic Regulation, that the Commission establish their individual subsidy amount. The exporting producers wishing to claim an individual amount of subsidisation must request a questionnaire and return it duly completed within 37 days of 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.

([2]) Under Article 15(3) of the basic Regulation, any zero and *de minimis* amounts of countervailable subsidies and amounts of countervailable subsidies established in the circumstances referred to in Article 28 of the basic Regulation shall be disregarded.

However, exporting producers claiming an individual subsidy amount should be aware that the Commission may nonetheless decide not to determine their individual subsidy amount 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* [1] [2]

Unrelated importers of the product under investigation from the country 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 27 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 company(ies) 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 in the Union of the product under investigation originating in the country concerned 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.

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 subsidised 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 materially injured, Union producers of the product under investigation are invited to participate in the Commission investigation.

Investigating Union producers

In view of the large number of Union producers involved in this proceeding and in order to complete the investigation within the statutory time limits, the Commission has decided to limit to a reasonable number the Union producers that will be investigated by selecting a sample (this process is also referred to as 'sampling'). The sampling is carried out in accordance with Article 27 of the basic Regulation.

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[1] 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. 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).

[2] The data provided by unrelated importers may also be used in relation to aspects of this investigation other than the determination of subsidisation.

The Commission has provisionally selected a sample of Union producers. Details can be found in the file for inspection by interested parties. Interested parties are hereby invited to consult the file (for this they should contact the Commission using the contact details provided in Section 5.7 below). Other Union producers, or representatives acting on their behalf, that consider that there are reasons why they should be included in the sample must contact the Commission within 15 days of the date of publication of this Notice in the *Official Journal of the European Union*. All interested parties wishing to submit any other relevant information regarding the selection of the sample must do so within 21 days of the publication of this Notice in the *Official Journal of the European Union*, unless otherwise specified.

All known Union producers and/or associations of Union producers will be notified by the Commission of the companies finally selected to be in the sample.

In order to obtain information it deems necessary for its investigation, the Commission will send questionnaires to the sampled Union producers and to any known association of Union producers. These parties must submit a completed questionnaire within 37 days from the date of the notification of the sample selection, unless otherwise specified.

5.4. *Procedure for the assessment of Union interest*

Should the existence of subsidisation and injury caused thereby be established, a decision will be reached, under Article 31 of the basic Regulation, as to whether the adoption of anti-subsidy 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 under Article 31 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 under Article 29(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.

([1]) A 'Limited' document is a document which is considered confidential under Article 19 of the basic Regulation and Article 12 of the WTO Agreement on Subsidies and Countervailing Measures. It is also a document protected under Article 4 of Regulation (EC) No 1049/2001 of the European Parliament and of the Council (OJ L 145, 31.5.2001, p. 43).

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 large 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

Email:

Subsidy: TRADE-AS644-BIODIESEL-SUBSIDY@ec.europa.eu
Injury: TRADE-AS644-BIODIESEL-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 28 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 28 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.

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/

8. **Schedule of the investigation**

The investigation will be concluded, under Article 11(9) of the basic Regulation within 13 months of the date of the publication of this Notice in the *Official Journal of the European Union*. In accordance with Article 12(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]).

([1]) OJ L 8, 12.1.2001, p. 1.

ANNEX I

☐	'Limited' version ([1])
☐	Version 'For inspection by interested parties'
	(tick the appropriate box)

ANTI-SUBSIDY PROCEEDING CONCERNING IMPORTS OF BIODIESEL ORIGINATING IN ARGENTINA

INFORMATION FOR THE SELECTION OF THE SAMPLE OF EXPORTING PRODUCERS IN ARGENTINA

This form is designed to assist exporting producers in Argentina in responding to the request for sampling information made in point 5.2.1 of the notice of initiation.

Both the 'Limited' version and the version 'For inspection by interested parties' should be returned to the Commission by email to TRADE-AS644-BIODIESEL-SUBSIDY@ec.europa.eu

1. IDENTITY AND CONTACT DETAILS

Supply the following details about your company:

Company name	
Address	
Contact person	
Email address	
Telephone	
Website	

2. TURNOVER AND SALES VOLUME

Indicate the turnover in the accounting currency of the company during the investigation period (1 January 2017 to 31 December 2017) for sales (export sales to the Union for each of the 28 Member States ([2]) separately and in total, and domestic sales) of biodiesel manufactured by your company as defined in the notice of initiation and the corresponding weight or volume. State the currency used.

	Tonnes		Value in accounting currency Specify the currency used
Export sales to the Union, for each of the 28 Member States separately and in total, of the product under investigation	Total:		
	Name each Member State ([1]):		
Export sales to other destinations than the EU	Total:		
	Name each country:		
Domestic sales of the product under investigation			

([1]) Add additional rows where necessary.

([1]) This document is for internal use only. It is protected under Article 4 of Regulation (EC) No 1049/2001 of the European Parliament and of the Council (OJ L 145, 31.5.2001, p. 43). It is a confidential document under Article 29 of Regulation (EU) 2016/1037 of the European Parliament and of the Council of 8 June 2016 on protection against subsidised imports from countries not members of the European Union (OJ L 176, 30.6.2016, p. 55) and Article 12 of the WTO Agreement on Subsidies and Countervailing Measures.

([2]) The 28 Member States of the European Union are: Belgium, Bulgaria, Croatia, the Czech Republic, Denmark, Germany, Estonia, 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 (1)

Give details of the precise activities of your 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.

Company name and location	Activities	Relationship

4. OTHER INFORMATION

Please provide the Commission with the company's annual report and/or annual accounts for 2016 (in Spanish and if available in English).

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

5. INDIVIDUAL SUBSIDY 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 in order to fill these in and thus claim an individual subsidy margin.

☐ 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:

(1) 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).

ANNEX II

☐	'Limited' version ([1])
☐	Version 'For inspection by interested parties'
	(tick the appropriate box)

ANTI-SUBSIDY PROCEEDING CONCERNING IMPORTS OF BIODIESEL ORIGINATING IN ARGENTINA

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 by email to TRADE-AS644-BIODIESEL-INJURY@ec.europa.eu

1. IDENTITY AND CONTACT DETAILS

Supply the following details about your company:

Company name	
Address	
Contact person	
Email address	
Telephone	
Website	

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 ([2]) and resales on the Union market after importation from Argentina, during the investigation period (1 January to 31 December 2017), of biodiesel as defined in the notice of initiation and the corresponding weight or volume.

	tonnes	Value in euros (EUR)
Total turnover of your company in euros (EUR)		
Imports of the product under investigation from Argentina into the Union		
Resales on the Union market after importation from Argentina of the product under investigation		

([1]) This document is for internal use only. It is protected under Article 4 of Regulation (EC) No 1049/2001 of the European Parliament and of the Council (OJ L 145, 31.5.2001, p. 43). It is a confidential document under Article 29 of Regulation (EU) 2016/1037 of the European Parliament and of the Council of 8 June 2016 on protection against subsidised imports from countries not members of the European Union (OJ L 176, 30.6.2016, p. 55) and Article 12 of the WTO Agreement on Subsidies and Countervailing Measures.

([2]) The 28 Member States of the European Union are: Belgium, Bulgaria, Croatia, the Czech Republic, Denmark, Germany, Estonia, 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 (1)

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.

Company name and location	Activities	Relationship

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.

Signature of authorised official:

Name and title of authorised official:

Date:

(1) 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).

PROCEDURES RELATING TO THE IMPLEMENTATION OF COMPETITION POLICY

EUROPEAN COMMISSION

Prior notification of a concentration

(Case M.8804 — Bain Capital/Fedrigoni)

Candidate case for simplified procedure

(Text with EEA relevance)

(2018/C 34/12)

1. On 24 January 2018, the Commission received notification of a proposed concentration pursuant to Article 4 of Council Regulation (EC) No 139/2004 ([1]).

This notification concerns the following undertakings:

— Bain Capital Investors LLC (Bain Capital) (United States)

— Fedrigoni SpA (Fedrigoni) (Italy)

Bain Capital acquire within the meaning of Article 3(1)(b) of the Merger Regulation sole control over Fedrigoni.

The concentration is accomplished by way of purchase of shares.

2. The business activities of the undertakings concerned are:

— for Bain Capital: it is a private equity investment firm that invests in companies across a number of industries, including information technology, healthcare, retail and consumer products, communications, financial services and industrial/manufacturing,

— for Fedrigoni: it is an Italian company active in the production and sale of various types of paper, including graphic or fine paper, security paper and solutions (such as paper for banknotes and traded securities and security elements), self-adhesive labelstock and stationery.

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.

Pursuant to the Commission Notice on a simplified procedure for treatment of certain concentrations under the Council Regulation (EC) No 139/2004 ([2]) it should be noted that this case is a candidate for treatment under the procedure set out in the Notice.

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. The following reference should always be specified:

M.8804 — Bain Capital/Fedrigoni

([1]) OJ L 24, 29.1.2004, p. 1 (the 'Merger Regulation').
([2]) OJ C 366, 14.12.2013, p. 5.

Observations can be sent to the Commission by email, by fax, or by post. Please use the contact details below:

Email: COMP-MERGER-REGISTRY@ec.europa.eu

Fax +32 22964301

Postal address:

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

Prior notification of a concentration

(Case M.8775 — Shell/Impello)

Candidate case for simplified procedure

(Text with EEA relevance)

(2018/C 34/13)

1. On 22 January 2018, the Commission received notification of a proposed concentration pursuant to Article 4 of Council Regulation (EC) No 139/2004 ([1]).

This notification concerns the following undertakings:

— The Shell Petroleum Company Limited ('Shell Petroleum', United Kingdom), belonging to the Shell Group of companies, controlled by Royal Dutch Shell plc. ('Shell', United Kingdom),

— Impello Limited ('Impello', United Kingdom).

Shell acquires within the meaning of Article 3(1)(b) of the Merger Regulation control of the whole of Impello.

The concentration is accomplished by way of purchase of shares.

2. The business activities of the undertakings concerned are:

— for Shell: global group of energy and petrochemical companies with activities in oil and gas exploration, production, manufacturing, marketing and shipping of oil products and chemicals, and renewable energy products. Shell is also active in the trading and wholesale supply of electricity and gas, including in the United Kingdom and Germany.

— for Impello: independent energy supplier to household customers in the United Kingdom and Germany (known as First Utility).

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.

Pursuant to the Commission Notice on a simplified procedure for treatment of certain concentrations under Council Regulation (EC) No 139/2004 ([2]), it should be noted that this case is a candidate for treatment under the procedure set out in the Notice.

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. The following reference should always be specified:

M.8775 — Shell/Impello

Observations can be sent to the Commission by email, by fax, or by post. Please use the contact details below:

Email: COMP-MERGER-REGISTRY@ec.europa.eu

Fax +32 22964301

Postal address:

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

([1]) OJ L 24, 29.1.2004, p. 1 (the 'Merger Regulation').
([2]) OJ C 366, 14.12.2013, p. 5.

Prior notification of a concentration

(Case M.8783 — Repsol/Kia/JV)

Candidate case for simplified procedure

(Text with EEA relevance)

(2018/C 34/14)

1. On 24 January 2018, the Commission received notification of a proposed concentration pursuant to Article 4 of Council Regulation (EC) No 139/2004 ([1]).

This notification concerns the following undertakings:

— Repsol Comercial de Productos Petrolíferos, SA ('Repsol', Spain),

— Kia Motors Iberia, SLU ('Kia', Spain).

Repsol and Kia acquire within the meaning of Article 3(1)(b) and Article 3(4) of the Merger Regulation joint control of a newly created company constituting a joint venture ('the JV').

The concentration is accomplished by way of purchase of shares.

2. The business activities of the undertakings concerned are:

— for Repsol: publicly listed integrated energy company.

— for Kia: cars distribution in Spain. Kia is a wholly-owned subsidiary of Kia Motors Company, which is the holding for the Kia Group, and is ultimately controlled by Hyundai Motor Company.

— for the JV: car-sharing in Madrid.

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.

Pursuant to the Commission Notice on a simplified procedure for treatment of certain concentrations under Council Regulation (EC) No 139/2004 ([2]) it should be noted that this case is a candidate for treatment under the procedure set out in the Notice.

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. The following reference should always be specified:

M.8783 — Repsol/Kia/JV

Observations can be sent to the Commission by email, by fax, or by post. Please use the contact details below:

Email: COMP-MERGER-REGISTRY@ec.europa.eu

Fax +32 22964301

Postal address:

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

([1]) OJ L 24, 29.1.2004, p. 1 (the 'Merger Regulation').
([2]) OJ C 366, 14.12.2013, p. 5.

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