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I

(Legislative acts)

DIRECTIVES

COUNCIL DIRECTIVE (EU) 2015/2376

of 8 December 2015

amending Directive 2011/16/EU as regards mandatory automatic exchange of information in the field of taxation

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 115 thereof,

Having regard to the proposal from the European Commission,

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

Having regard to the opinion of the European Parliament ⁽¹⁾,

Having regard to the opinion of the European Economic and Social Committee ⁽²⁾,

Having regard to the opinion of the Committee of the Regions ⁽³⁾,

Acting in accordance with a special legislative procedure,

Whereas:

- (1) The challenge posed by cross-border tax avoidance, aggressive tax planning and harmful tax competition has increased considerably and has become a major focus of concern within the Union and at global level. Tax base erosion is considerably reducing national tax revenues, which hinders Member States in applying growth-friendly tax policies. The issuance of advance tax rulings, which facilitate the consistent and transparent application of the law, is common practice, including in the Union. By providing certainty for business, clarification of tax law for taxpayers can encourage investment and compliance with the law and can therefore be conducive to the objective of further developing the single market in the Union on the basis of the principles and freedoms underlying the Treaties. However, rulings concerning tax-driven structures have, in certain cases, led to a low level of taxation of artificially high amounts of income in the country issuing, amending or renewing the advance ruling and left artificially low amounts of income to be taxed in any other countries involved. An increase in transparency is therefore urgently required. The tools and mechanisms established by Council Directive 2011/16/EU ⁽⁴⁾ need to be enhanced in order to achieve this.
- (2) The European Council, in its conclusions of 18 December 2014, underlined the urgent need to advance efforts in the fight against tax avoidance and aggressive tax planning, both at global and Union levels. Stressing the importance of transparency, the European Council welcomed the Commission's intention to submit a proposal on the automatic exchange of information on tax rulings in the Union.

⁽¹⁾ Opinion of 27 October 2015 (not yet published in the Official Journal).

⁽²⁾ OJ C 332, 8.10.2015, p. 64.

⁽³⁾ Opinion of 14 October 2015 (not yet published in the Official Journal).

⁽⁴⁾ Council Directive 2011/16/EU of 15 February 2011 on administrative cooperation in the field of taxation and repealing Directive 77/799/EEC (OJ L 64, 11.3.2011, p. 1).

- (3) Directive 2011/16/EU provides for the mandatory spontaneous exchange of information between Member States in five specific cases and within certain deadlines. The spontaneous exchange of information in cases where the competent authority of one Member State has grounds for supposing that there may be a loss of tax in another Member State already applies to tax rulings that a Member State issues, amends or renews to a specific taxpayer regarding the interpretation or application of tax provisions in the future and that have a cross-border dimension.
- (4) However, the efficient spontaneous exchange of information in respect of advance cross-border rulings and advance pricing arrangements is hindered by several important practical difficulties such as the discretion permitted to the issuing Member State to decide which other Member States should be informed. Therefore the information exchanged should, where appropriate, be accessible to all other Member States.
- (5) The scope of the automatic exchange of advance cross-border rulings and advance pricing arrangements, issued, amended or renewed to a particular person or group of persons upon which that person or group of persons is entitled to rely, should cover any material form (irrespective of their binding or non-binding character and the way they are issued).
- (6) For the purposes of legal certainty, Directive 2011/16/EU should be amended by including an appropriate definition of an advance cross-border ruling and advance pricing arrangement. The scope of these definitions should be sufficiently broad to cover a wide range of situations, including but not limited to the following types of advance cross-border rulings and advance pricing arrangements:
 - unilateral advance pricing arrangements and/or decisions;
 - bilateral or multilateral advance pricing arrangements and decisions;
 - arrangements or decisions determining existence or absence of a permanent establishment;
 - arrangements or decisions determining existence or absence of facts with a potential impact on the tax base of a permanent establishment;
 - arrangements or decisions determining tax status of a hybrid entity in one Member State which relates to a resident of another jurisdiction;
 - as well as arrangements or decisions on assessment basis for depreciation of an asset in one Member State that is acquired from a group company in another jurisdiction.
- (7) Taxpayers are entitled to rely on advance cross-border rulings or advance pricing arrangements during, for example, taxation processes or tax audits under the condition that the facts on which the advance cross-border rulings or advance pricing arrangements are based have been accurately presented and that the taxpayers abide by the terms of the advance cross-border rulings or advance pricing arrangements.
- (8) Member States will exchange information irrespective of whether the taxpayer abides by the terms of the advance cross-border ruling or advance pricing arrangement.
- (9) The provision of information should not lead to the disclosure of a commercial, industrial or professional secret or of a commercial process, or disclosure of information which would be contrary to public policy.
- (10) In order to reap the benefits of the mandatory automatic exchange of advance cross-border rulings and advance pricing arrangements, the information should be communicated promptly after they are issued, amended or renewed, and regular intervals for the communication of the information should therefore be established. For the same reasons, it is also appropriate to provide for the mandatory automatic exchange of advance cross-border rulings and advance pricing arrangements that were issued, amended or renewed within a period beginning five years before the date of application of this Directive and which are still valid on 1 January 2014. However, particular persons or groups of persons with a group wide annual net turnover of less than EUR 40 000 000 could be excluded, under certain conditions, from such mandatory automatic exchange.

- (11) For reasons of legal certainty, it is appropriate, under a set of very strict conditions, to exclude from the mandatory automatic exchange bilateral or multilateral advance pricing arrangements with third countries following the framework of existing international treaties with those countries, where the provisions of those treaties do not permit disclosure of the information received under that treaty to a third party country. In these cases however, the information identified in paragraph 6 of Article 8a relating to the requests that lead to issuance of such bilateral or multilateral advance pricing arrangements should be exchanged instead. Therefore, in such cases, the information to be communicated should include the indicator that it is provided on the basis of such a request.
- (12) The mandatory automatic exchange of advance cross-border rulings and advance pricing arrangements should in each case include the communication of a defined set of basic information that would be accessible to all Member States. The Commission should be empowered to adopt practical arrangements necessary to standardise the communication of such information under the procedure laid down in Directive 2011/16/EU (which involves the Committee on Administrative Cooperation for Taxation) for establishing a standard form to be used for the exchange of information. That procedure should also be used in the adoption of further practical arrangements for the implementation of the information exchange, such as the specification of linguistic requirements that would be applicable to the exchange of information using that standard form.
- (13) In developing such a standard form for the mandatory automatic exchange of information, it is appropriate to take account of work performed at the OECD's Forum on Harmful Tax Practices, where a standard form for information exchange is being developed, in the context of the Action Plan on Base Erosion and Profit Shifting. It is also appropriate to work closely with the OECD, in a coordinated manner and not only in the area of the development of such a standard form for mandatory automatic exchange of information. The ultimate aim should be a global level playing field, where the Union should take a leading role by promoting that the scope of information on advance cross-border rulings and advance pricing arrangements to be exchanged automatically should be rather broad.
- (14) Member States should exchange basic information, and a limited set of basic information should also be communicated to the Commission. This should enable the Commission to monitor and evaluate the effective application of the mandatory automatic exchange of information on advance cross-border rulings and advance pricing arrangements at any time. The information received by the Commission should not, however, be used for any other purposes. Such communication would moreover not discharge a Member State from its obligations to notify any State aid to the Commission.
- (15) Feedback by the receiving Member State to the Member State sending the information is a necessary element of the operation of an effective system of automatic information exchange. It is therefore appropriate to underline that Member States' competent authorities should send, once a year, feedback on the automatic exchange of information to the other Member States concerned. In practice, this mandatory feedback should be done by arrangements agreed upon bilaterally.
- (16) Where necessary, following the stage of mandatory automatic exchange of information under this Directive, a Member State should be able to rely on Article 5 of Directive 2011/16/EU as regards the exchange of information on request to obtain additional information, including the full text of advance cross-border rulings or advance pricing arrangements, from the Member State having issued such rulings or arrangements.
- (17) It is appropriate to recall that Article 21(4) of Directive 2011/16/EU regulates the language and translation requirements applicable to requests for cooperation, including requests for notification, and attached documents. That rule should also be applicable in cases where Member States request additional information, following the stage of mandatory automatic exchange of basic information on advance cross-border rulings and advance pricing arrangements.
- (18) Member States should take all reasonable measures necessary to remove any obstacle that might hinder the effective and widest possible mandatory automatic exchange of information on advance cross-border rulings and advance pricing arrangements.

- (19) In order to enhance the efficient use of resources, facilitate the exchange of information and avoid the need for Member States each to make similar developments to their systems to store information, specific provision should be made for the establishment of a central directory, accessible to all Member States and the Commission, to which Member States would upload and store information, instead of exchanging that information by secured email. The practical arrangements necessary for the establishment of such a directory should be adopted by the Commission in accordance with the procedure referred to in Article 26(2) of Directive 2011/16/EU.
- (20) Having regard to the nature and extent of the changes introduced by Council Directive 2014/107/EU ⁽¹⁾ and this Directive, the timeframe for the submission of information, statistics and reports provided for under Directive 2011/16/EU should be extended. Such an extension should ensure that the information to be provided can reflect the experience resulting from those changes. The extension should apply both to the statistics and other information to be submitted by Member States before 1 January 2018 and to the report and, if appropriate, the proposal to be submitted by the Commission before 1 January 2019.
- (21) The existing provisions regarding confidentiality should be amended to reflect the extension of mandatory automatic exchange of information to advance cross-border rulings and advance pricing arrangements.
- (22) This Directive respects the fundamental rights and observes the principles recognised in particular by the Charter of Fundamental Rights of the European Union. In particular, this Directive seeks to ensure full respect for the right to the protection of personal data and the freedom to conduct a business.
- (23) Since the objective of this Directive, namely the efficient administrative cooperation between Member States under conditions compatible with the proper functioning of the internal market, cannot be sufficiently achieved by the Member States but can rather, by reason of the uniformity and effectiveness required, be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary in order to achieve that objective.
- (24) Directive 2011/16/EU should therefore be amended accordingly,

HAS ADOPTED THIS DIRECTIVE:

Article 1

Directive 2011/16/EU is amended as follows:

(1) Article 3 is amended as follows:

(a) Point 9 is replaced by the following:

‘9. “automatic exchange” means,

- (a) for the purposes of Article 8(1) and Article 8a, the systematic communication of predefined information to another Member State, without prior request, at pre-established regular intervals. For the purposes of Article 8(1), reference to available information relates to information in the tax files of the Member State communicating the information, which is retrievable in accordance with the procedures for gathering and processing information in that Member State;
- (b) for the purposes of Article 8(3a), the systematic communication of predefined information on residents in other Member States to the relevant Member State of residence, without prior request, at pre-established regular intervals. In the context of Article 8(3a), Article 8(7a), Article 21(2) and Article 25(2) and (3) any capitalised term shall have the meaning that it has under the corresponding definitions set out in Annex I;
- (c) for the purposes of all provisions of this Directive other than Articles 8(1), 8(3a) and 8a, the systematic communication of predefined information provided in accordance with points (a) and (b) of this point;’.

⁽¹⁾ Council Directive 2014/107/EU of 9 December 2014 amending Directive 2011/16/EU as regards mandatory automatic exchange of information in the field of taxation (OJ L 359, 16.12.2014, p. 1).

(b) The following points are added:

14. “advance cross-border ruling” means any agreement, communication, or any other instrument or action with similar effects, including one issued, amended or renewed in the context of a tax audit, and which meets the following conditions:

- (a) is issued, amended or renewed by, or on behalf of, the government or the tax authority of a Member State, or the Member State’s territorial or administrative subdivisions, including local authorities, irrespective of whether it is effectively used;
- (b) is issued, amended or renewed, to a particular person or a group of persons, and upon which that person or a group of persons is entitled to rely;
- (c) concerns the interpretation or application of a legal or administrative provision concerning the administration or enforcement of national laws relating to taxes of the Member State, or the Member State’s territorial or administrative subdivisions, including local authorities;
- (d) relates to a cross-border transaction or to the question of whether or not activities carried on by a person in another jurisdiction create a permanent establishment; and
- (e) is made in advance of the transactions or of the activities in another jurisdiction potentially creating a permanent establishment or in advance of the filing of a tax return covering the period in which the transaction or series of transactions or activities took place.

The cross-border transaction may involve, but is not restricted to, the making of investments, the provision of goods, services, finance or the use of tangible or intangible assets and does not have to directly involve the person receiving the advance cross-border ruling;

15. “advance pricing arrangement” means any agreement, communication or any other instrument or action with similar effects, including one issued, amended or renewed in the context of a tax audit, and which meets the following conditions:

- (a) is issued, amended or renewed by, or on behalf of, the government or the tax authority of one or more Member States, including any territorial or administrative subdivision thereof, including local authorities, irrespective of whether it is effectively used;
- (b) is issued, amended or renewed, to a particular person or a group of persons and upon which that person or a group of persons is entitled to rely; and
- (c) determines in advance of cross-border transactions between associated enterprises, an appropriate set of criteria for the determination of the transfer pricing for those transactions or determines the attribution of profits to a permanent establishment.

Enterprises are associated enterprises where one enterprise participates directly or indirectly in the management, control or capital of another enterprise or the same persons participate directly or indirectly in the management, control or capital of the enterprises.

Transfer prices are the prices at which an enterprise transfers physical goods and intangible property or provides services to associated enterprises, and “transfer pricing” is to be construed accordingly.

16. For the purpose of point 14 “cross-border transaction” means a transaction or series of transactions where:

- (a) not all of the parties to the transaction or series of transactions are resident for tax purposes in the Member State issuing, amending or renewing the advance cross-border ruling;
- (b) any of the parties to the transaction or series of transactions is simultaneously resident for tax purposes in more than one jurisdiction;
- (c) one of the parties to the transaction or series of transactions carries on business in another jurisdiction through a permanent establishment and the transaction or series of transactions forms part or the whole of the business of the permanent establishment. A cross-border transaction or series of transactions shall also include arrangements made by a person in respect of business activities in another jurisdiction which that person carries on through a permanent establishment; or

(d) such transactions or series of transactions have a cross border impact.

For the purpose of point 15, “cross-border transaction” means a transaction or series of transactions involving associated enterprises which are not all resident for tax purposes in the territory of a single jurisdiction or a transaction or series of transactions which have a cross border impact.

17. For the purpose of point 15 and 16, “enterprise” means any form of conducting business.;

(2) in Article 8, paragraphs 4 and 5 are deleted.

(3) The following Articles are inserted:

Article 8a

Scope and conditions of mandatory automatic exchange of information on advance cross-border rulings and advance pricing arrangements

1. The competent authority of a Member State, where an advance cross-border ruling or an advance pricing arrangement was issued, amended or renewed after 31 December 2016 shall, by automatic exchange, communicate information thereon to the competent authorities of all other Member States as well as to the European Commission, with the limitation of cases set out in paragraph 8 of this Article, in accordance with applicable practical arrangements adopted pursuant to Article 21.

2. The competent authority of a Member State shall, in accordance with applicable practical arrangements adopted pursuant to Article 21, also communicate information to the competent authorities of all other Member States as well as to the European Commission, with the limitation of cases set out in paragraph 8 of this Article, on advance cross-border rulings and advance pricing arrangements issued, amended or renewed within a period beginning five years before 1 January 2017.

If advance cross-border rulings and advance pricing arrangements are issued, amended or renewed between 1 January 2012 and 31 December 2013, such communication shall take place under the condition that they were still valid on 1 January 2014.

If advance cross-border rulings and advance pricing arrangements are issued, amended or renewed between 1 January 2014 and 31 December 2016, such communication shall take place irrespective of whether they are still valid.

Member States may exclude from the communication referred to in this paragraph, information on advance cross-border rulings and advance pricing arrangements issued, amended or renewed before 1 April 2016 to a particular person or a group of persons, excluding those conducting mainly financial or investment activities, with a group-wide annual net turnover, as defined in point (5) of Article 2 of Directive 2013/34/EU of the European Parliament and of the Council (*), of less than EUR 40 000 000 (or the equivalent amount in any other currency) in the fiscal year preceding the date of issuance, amendment or renewal of those cross-border rulings and advance pricing arrangements.

3. Bilateral or multilateral advance pricing arrangements with third countries shall be excluded from the scope of automatic exchange of information under this Article where the international tax agreement under which the advance pricing arrangement was negotiated does not permit its disclosure to third parties. Such bilateral or multilateral advance pricing arrangements will be exchanged under Article 9, where the international tax agreement under which the advance pricing arrangement was negotiated permits its disclosure, and the competent authority of the third country gives permission for the information to be disclosed.

However, where the bilateral or multilateral advance pricing arrangements would be excluded from the automatic exchange of information under the first sentence of the first subparagraph of this paragraph, the information identified in paragraph 6 of this Article referred to in the request that lead to issuance of such a bilateral or multilateral advance pricing arrangement shall instead be exchanged under paragraphs 1 and 2 of this Article.

4. Paragraphs 1 and 2 shall not apply in a case where an advance cross-border ruling exclusively concerns and involves the tax affairs of one or more natural persons.

5. The exchange of information shall take place as follows:

(a) in respect of the information exchanged pursuant to paragraph 1 — within three months following the end of the half of the calendar year during which the advance cross-border rulings or advance pricing arrangements have been issued, amended or renewed;

(b) in respect of the information exchanged pursuant to paragraph 2 — before 1 January 2018.

6. The information to be communicated by a Member State pursuant to paragraphs 1 and 2 of this Article shall include the following:

(a) the identification of the person, other than a natural person, and where appropriate the group of persons to which it belongs;

(b) a summary of the content of the advance cross-border ruling or advance pricing arrangement, including a description of the relevant business activities or transactions or series of transactions provided in abstract terms, without leading to the disclosure of a commercial, industrial or professional secret or of a commercial process, or of information whose disclosure would be contrary to public policy;

(c) the dates of issuance, amendment or renewal of the advance cross-border ruling or advance pricing arrangement;

(d) the start date of the period of validity of the advance cross-border ruling or advance pricing arrangement, if specified;

(e) the end date of the period of validity of the advance cross-border ruling or advance pricing arrangement, if specified;

(f) the type of the advance cross-border ruling or advance pricing arrangement;

(g) the amount of the transaction or series of transactions of the advance cross-border ruling or advance pricing arrangement if such amount is referred to in the advance cross-border ruling or advance pricing arrangement;

(h) the description of the set of criteria used for the determination of the transfer pricing or the transfer price itself in the case of an advance pricing arrangement;

(i) the identification of the method used for determination of the transfer pricing or the transfer price itself in the case of an advance pricing arrangement;

(j) the identification of the other Member States, if any, likely to be concerned by the advance cross-border ruling or advance pricing arrangement;

(k) the identification of any person, other than a natural person, in the other Member States, if any, likely to be affected by the advance cross-border ruling or advance pricing arrangement (indicating to which Member States the affected persons are linked); and

(l) the indication whether the information communicated is based upon the advance cross-border ruling or advance pricing arrangement itself or upon the request referred to in the second subparagraph of paragraph 3 of this Article.

7. To facilitate the exchange of information referred to in paragraph 6 of this Article, the Commission shall adopt the practical arrangements necessary for the implementation of this Article, including measures to standardise the communication of the information set out in paragraph 6 of this Article, as part of the procedure for establishing the standard form provided for in Article 20(5).

8. Information as defined under points (a), (b), (h) and (k) of paragraph 6 of this Article shall not be communicated to the European Commission.

9. The competent authority of the Member States concerned, identified under paragraph 6(j), shall confirm, if possible by electronic means, the receipt of the information to the competent authority which provided the information without delay and in any event no later than seven working days. This measure shall be applicable until the directory referred to in Article 21(5) becomes operational.

10. Member States may, in accordance with Article 5, and having regard to Article 21(4), request additional information, including the full text of an advance cross-border ruling or an advance pricing arrangement.

Article 8b

Statistics on automatic exchanges

1. Before 1 January 2018, Member States shall provide the Commission on an annual basis with statistics on the volume of automatic exchanges under Articles 8 and 8a and, to the extent possible, with information on the administrative and other relevant costs and benefits relating to exchanges that have taken place and any potential changes, for both tax administrations and third parties.

2. Before 1 January 2019, the Commission shall submit a report that provides an overview and an assessment of the statistics and information received under paragraph 1 of this Article, on issues such as the administrative and other relevant costs and benefits of the automatic exchange of information, as well as practical aspects linked thereto. If appropriate, the Commission shall present a proposal to the Council regarding the categories and the conditions laid down in Article 8(1), including the condition that information concerning residents in other Member States has to be available, or the items referred to in Article 8(3a), or both.

When examining a proposal presented by the Commission, the Council shall assess further strengthening of the efficiency and functioning of the automatic exchange of information and raising the standard thereof, with the aim of providing that:

- (a) the competent authority of each Member State shall, by automatic exchange, communicate to the competent authority of any other Member State, information regarding taxable periods as from 1 January 2019 concerning residents in that other Member State, on all categories of income and capital listed in Article 8(1), as they are to be understood under the national legislation of the Member State communicating the information; and
- (b) the lists of categories and items laid down in Articles 8(1) and 8(3a) be extended to include other categories and items, including royalties.

(*) Directive 2013/34/EU of the European Parliament and of the Council of 26 June 2013 on the annual financial statements, consolidated financial statements and related reports of certain types of undertakings, amending Directive 2006/43/EC of the European Parliament and of the Council and repealing Council Directives 78/660/EEC and 83/349/EEC (OJ L 182, 29.6.2013, p. 19).'

(4) In Article 20, the following paragraph is added:

'5. A standard form, including the linguistic arrangements, shall be adopted by the Commission in accordance with the procedure referred to in Article 26(2) before 1 January 2017. The automatic exchange of information on advance cross-border rulings and advance pricing arrangements pursuant to Article 8a shall be carried out using that standard form. This standard form shall not exceed the components for exchange of the information listed in Article 8a(6) and other relating fields linked to these components necessary to achieve the objectives of Article 8a.

The linguistic arrangements referred to in the first subparagraph shall not preclude Member States from communicating the information referred to in Article 8a in any of the official and working languages of the Union. However, those linguistic arrangements may provide that the key elements of such information shall also be sent in another official and working language of the Union.'

(5) Article 21 is amended as follows:

(a) paragraph 3 is replaced by the following:

'3. Persons duly accredited by the Security Accreditation Authority of the Commission may have access to that information only in so far as it is necessary for the care, maintenance and development of the directory referred to in paragraph 5 and of the CCN network.'

(b) the following paragraph is added:

‘5. The Commission shall by 31 December 2017 develop and provide with technical and logistical support a secure Member State central directory on administrative cooperation in the field of taxation where information to be communicated in the framework of paragraphs 1 and 2 of Article 8a shall be recorded in order to satisfy the automatic exchange provided for in those paragraphs. The competent authorities of all Member States shall have access to the information recorded in that directory. The Commission shall also have access to the information recorded to that directory, however within the limitations set out in Article 8a(8). The necessary practical arrangements shall be adopted by the Commission in accordance with the procedure referred to in Article 26(2).

Until that secure central directory is operational, the automatic exchange provided for in paragraphs 1 and 2 of Article 8a shall be carried out in accordance with paragraph 1 of this Article and the applicable practical arrangements.’

(6) Article 23 is amended as follows:

(a) Paragraph 3 is replaced by the following:

‘3. Member States shall communicate to the Commission a yearly assessment of the effectiveness of the automatic exchange of information referred to in Article 8 and Article 8a as well as the practical results achieved. The form and the conditions of communication of that yearly assessment shall be adopted by the Commission in accordance with the procedure referred to in Article 26(2).’

(b) Paragraphs 5 and 6 are deleted.

(7) The following Article is inserted:

‘Article 23a

Confidentiality of information

1. Information communicated to the Commission pursuant to this Directive shall be kept confidential by the Commission in accordance with the provisions applicable to Union authorities and may not be used for any purposes other than those required to determine whether and to what extent Member States comply with this Directive.

2. Information communicated to the Commission by a Member State under Article 23, as well as any report or document produced by the Commission using such information, may be transmitted to other Member States. Such transmitted information shall be covered by the obligation of official secrecy and enjoy the protection extended to similar information under the national law of the Member State which received it.

Reports and documents produced by the Commission, referred to in the first subparagraph, may be used by the Member States only for analytical purposes, and shall not be published or made available to any other person or body without the express agreement of the Commission.’

(8) In Article 25, the following paragraph is inserted:

‘1a. Regulation (EC) No 45/2001 applies to any processing of personal data under this Directive by the Union institutions and bodies. However, for the purpose of the correct application of this Directive, the scope of the obligations and rights provided for in Article 11, Article 12(1), Articles 13 to 17 of Regulation (EC) No 45/2001 is restricted to the extent required in order to safeguard the interests referred to in point (b) of Article 20(1) of that Regulation.’

Article 2

1. Member States shall adopt and publish, by 31 December 2016, the laws, regulations and administrative provisions necessary to comply with this Directive. They shall forthwith communicate to the Commission the text of those measures.

They shall apply those measures from 1 January 2017.

When Member States adopt those measures, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such reference is to be made.

2. Member States shall communicate to the Commission the text of the main provisions of national law which they adopt in the field covered by this Directive.

Article 3

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

Article 4

This Directive is addressed to the Member States.

Done at Brussels, 8 December 2015.

For the Council
The President
P. GRAMEGNA

II

(Non-legislative acts)

INTERNATIONAL AGREEMENTS

COUNCIL DECISION (EU) 2015/2377

of 26 October 2015

on the signing, on behalf of the European Union, and provisional application of the Agreement between the European Union and the Republic of Palau on the short-stay visa waiver

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular point (a) of Article 77(2), in conjunction with Article 218(5), thereof,

Having regard to the proposal from the European Commission,

Whereas:

- (1) Regulation (EU) No 509/2014 of the European Parliament and the Council ⁽¹⁾ transferred the reference to the Republic of Palau from Annex I to Annex II of Council Regulation (EC) No 539/2001 ⁽²⁾.
- (2) That reference to the Republic of Palau is accompanied by a footnote indicating that the exemption from the visa requirement shall apply from the date of entry into force of an agreement on visa exemption to be concluded with the European Union.
- (3) On 9 October 2014, the Council adopted a decision authorising the Commission to open negotiations with the Republic of Palau for the conclusion of an agreement between the European Union and the Republic of Palau on the short-stay visa waiver (the 'Agreement').
- (4) Negotiations on the Agreement were opened on 17 December 2014 and were successfully finalised by the initialling thereof, by exchange of letters, on 27 May 2015 by the Republic of Palau and on 10 June 2015 by the Union.
- (5) The Agreement should be signed, and the declarations attached to the Agreement should be approved, on behalf of the Union. The Agreement should be applied on a provisional basis as from the day following the date of signature thereof, pending the completion of the procedures for its formal conclusion.
- (6) This Decision constitutes a development of the provisions of the Schengen *acquis* in which the United Kingdom does not take part, in accordance with Council Decision 2000/365/EC ⁽³⁾; the United Kingdom is therefore not taking part in the adoption of this Decision and is not bound by it or subject to its application.

⁽¹⁾ Regulation (EU) No 509/2014 of the European Parliament and of the Council of 15 May 2014 amending Council Regulation (EC) No 539/2001 listing the third countries whose nationals must be in possession of visas when crossing the external borders and those whose nationals are exempt from that requirement (OJ L 149, 20.5.2014, p. 67).

⁽²⁾ Council Regulation (EC) No 539/2001 of 15 March 2001 listing the third countries whose nationals must be in possession of visas when crossing the external borders and those whose nationals are exempt from that requirement (OJ L 81, 21.3.2001, p. 1).

⁽³⁾ Council Decision 2000/365/EC of 29 May 2000 concerning the request of the United Kingdom of Great Britain and Northern Ireland to take part in some of the provisions of the Schengen *acquis* (OJ L 131, 1.6.2000, p. 43).

- (7) This Decision constitutes a development of the provisions of the Schengen *acquis* in which Ireland does not take part, in accordance with Council Decision 2002/192/EC ⁽¹⁾; Ireland is therefore not taking part in the adoption of this Decision and is not bound by it or subject to its application,

HAS ADOPTED THIS DECISION:

Article 1

The signing on behalf of the Union of the Agreement between the European Union and the Republic of Palau on the short-stay visa waiver (the 'Agreement') is hereby authorised, subject to the conclusion of the said Agreement.

The text of the Agreement is attached to this Decision.

Article 2

The declarations attached to this Decision shall be approved on behalf of the Union.

Article 3

The President of the Council is hereby authorised to designate the person(s) empowered to sign the Agreement on behalf of the Union.

Article 4

The Agreement shall be applied on a provisional basis as from the day following the date of signature thereof ⁽²⁾, pending the completion of the procedures for its conclusion.

Article 5

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

Done at Luxembourg, 26 October 2015.

For the Council
The President
C. DIESCHBOURG

⁽¹⁾ Council Decision 2002/192/EC of 28 February 2002 concerning Ireland's request to take part in some of the provisions of the Schengen *acquis* (OJ L 64, 7.3.2002, p. 20).

⁽²⁾ The date of signature of the Agreement will be published in the *Official Journal of the European Union* by the General Secretariat of the Council.

AGREEMENT**between the European Union and the Republic of Palau on the short-stay visa waiver**

THE EUROPEAN UNION, hereinafter referred to as 'the Union' or 'the EU', and

THE REPUBLIC OF PALAU, hereinafter referred to as 'Palau',

hereinafter referred to jointly as the 'Contracting Parties',

WITH A VIEW TO further developing friendly relations between the Contracting Parties and desiring to facilitate travel by ensuring visa-free entry and short stay for their citizens,

HAVING REGARD to Regulation (EU) No 509/2014 of the European Parliament and of the Council of 15 May 2014 amending Council Regulation (EC) No 539/2001 listing the third countries whose nationals must be in possession of visas when crossing the external borders and those whose nationals are exempt from that requirement⁽¹⁾ by, *inter alia*, transferring 19 third countries, including Palau, to the list of third countries whose nationals are exempt from the visa requirement for short stays in the Member States,

BEARING IN MIND that Article 1 of Regulation (EU) No 509/2014 states that for those 19 countries, the exemption from the visa requirement shall apply from the date of entry into force of an agreement on visa exemption to be concluded with the Union,

DESIRING to safeguard the principle of equal treatment of all EU citizens,

TAKING INTO ACCOUNT that persons travelling for the purpose of carrying out a paid activity during their short stay are not covered by this Agreement and therefore for that category the relevant rules of Union law and national law of the Member States and the national law of Palau on the visa obligation or exemption and on the access to employment continue to apply,

TAKING INTO ACCOUNT the Protocol on the position of the United Kingdom and Ireland in respect of the area of freedom, security and justice and the Protocol on the Schengen *acquis* integrated into the framework of the European Union, annexed to the Treaty on European Union and the Treaty on the Functioning of the European Union, and confirming that the provisions of this Agreement do not apply to the United Kingdom and Ireland,

HAVE AGREED AS FOLLOWS:

*Article 1***Purpose**

This Agreement provides for visa-free travel for the citizens of the Union and for the citizens of Palau when travelling to the territory of the other Contracting Party for a maximum period of 90 days in any 180-day period.

*Article 2***Definitions**

For the purpose of this Agreement:

- (a) 'Member State' shall mean any Member State of the Union, with the exception of the United Kingdom and Ireland;
- (b) 'a citizen of the Union' shall mean a national of a Member State as defined in point (a);

⁽¹⁾ OJ L 149, 20.5.2014, p. 67.

- (c) 'a citizen of Palau' shall mean any person who holds the citizenship of Palau;
- (d) 'Schengen area' shall mean the area without internal borders comprising the territories of the Member States as defined in point (a) applying the Schengen *acquis* in full.

Article 3

Scope of application

1. Citizens of the Union holding a valid ordinary, diplomatic, service, official or special passport issued by a Member State may enter and stay without a visa in the territory of Palau for the period of stay as defined in Article 4(1).

Citizens of Palau holding a valid ordinary, diplomatic, service, official or special passport issued by Palau may enter and stay without a visa in the territory of the Member States for the period of stay as defined in Article 4(2).

2. Paragraph 1 of this Article does not apply to persons travelling for the purpose of carrying out a paid activity.

For that category of persons, each Member State individually may decide to impose a visa requirement on the citizens of Palau or to withdraw it in accordance with Article 4(3) of Council Regulation (EC) No 539/2001 ⁽¹⁾.

For that category of persons, Palau may decide on the visa requirement or the visa waiver for the citizens of each Member State individually in accordance with its national law.

3. The visa waiver provided for by this Agreement shall apply without prejudice to the laws of the Contracting Parties relating to the conditions of entry and short stay. The Member States and Palau reserve the right to refuse entry into and short stay in their territories if one or more of these conditions is not met.

4. The visa waiver applies regardless of the mode of transport used to cross the borders of the Contracting Parties.

5. Issues not covered by this Agreement shall be governed by Union law, the national law of the Member States and by the national law of Palau.

Article 4

Duration of stay

1. Citizens of the Union may stay in the territory of Palau for a maximum period of 90 days in any 180-day period.

2. Citizens of Palau may stay in the territory of the Member States fully applying the Schengen *acquis* for a maximum period of 90 days in any 180-day period. That period shall be calculated independently of any stay in a Member State which does not yet apply the Schengen *acquis* in full.

Citizens of Palau may stay for a maximum period of 90 days in any 180-day period in the territory of each of the Member States that do not yet apply the Schengen *acquis* in full, independently of the period of stay calculated for the territory of the Member States fully applying the Schengen *acquis*.

3. This Agreement does not affect the possibility for Palau and the Member States to extend the period of stay beyond 90 days in accordance with their respective national laws and Union law.

Article 5

Territorial application

1. As regards the French Republic, this Agreement shall apply only to the European territory of the French Republic.

2. As regards the Kingdom of the Netherlands, this Agreement shall apply only to the European territory of the Kingdom of the Netherlands.

⁽¹⁾ Council Regulation (EC) No 539/2001 of 15 March 2001 listing the third countries whose nationals must be in possession of visas when crossing the external borders and those whose nationals are exempt from that requirement (OJ L 81, 21.3.2001, p. 1).

*Article 6***Joint Committee for the management of the Agreement**

1. The Contracting Parties shall set up a Joint Committee of experts (hereinafter referred to as the 'Committee'), composed of representatives of the Union and representatives of Palau. The Union shall be represented by the European Commission.
2. The Committee shall have, *inter alia*, the following tasks:
 - (a) monitoring the implementation of this Agreement;
 - (b) suggesting amendments or additions to this Agreement;
 - (c) settling disputes arising from the interpretation or application of this Agreement.
3. The Committee shall be convened whenever necessary, at the request of one of the Contracting Parties.
4. The Committee shall establish its rules of procedure.

*Article 7***Relationship of this Agreement to existing bilateral visa waiver agreements between the Member States and Palau**

This Agreement shall take precedence over any bilateral agreements or arrangements concluded between individual Member States and Palau, in so far as they cover issues falling within the scope hereof.

*Article 8***Final provisions**

1. This Agreement shall be ratified or approved by the Contracting Parties in accordance with their respective internal procedures and shall enter into force on the first day of the second month following the date of the later of the two notifications by which the Contracting Parties notify each other that those procedures have been completed.

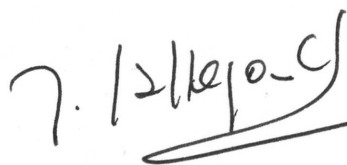
This Agreement shall be applied on a provisional basis as from the day following the date of signature hereof.

2. This Agreement is concluded for an indefinite period, unless terminated in accordance with paragraph 5.
3. This Agreement may be amended by written agreement of the Contracting Parties. Amendments shall enter into force after the Contracting Parties have notified each other of the completion of their internal procedures necessary for this purpose.
4. Each Contracting Party may suspend in whole or in part this Agreement, in particular, for reasons of public policy, the protection of national security or the protection of public health, illegal immigration or upon the reintroduction of the visa requirement by either Contracting Party. The decision on suspension shall be notified to the other Contracting Party not later than two months before its planned entry into force. A Contracting Party that has suspended the application of this Agreement shall immediately inform the other Contracting Party should the reasons for that suspension cease to exist and shall lift that suspension.
5. Each Contracting Party may terminate this Agreement by giving written notice to the other Party. This Agreement shall cease to be in force 90 days thereafter.
6. Palau may suspend or terminate this Agreement only in respect of all the Member States.
7. The Union may suspend or terminate this Agreement only in respect of all of its Member States.

Done in duplicate in the Bulgarian, Croatian, Czech, Danish, Dutch, English, Estonian, Finnish, French, German, Greek, Hungarian, Italian, Latvian, Lithuanian, Maltese, Polish, Portuguese, Romanian, Slovak, Slovenian, Spanish and Swedish languages, each text being equally authentic.

Съставено в Брюксел на седми декември две хиляди и петнадесета година.
 Hecho en Bruselas, el siete de diciembre de dos mil quince.
 V Bruselu dne sedmého prosince dva tisíce patnáct.
 Udfærdiget i Bruxelles den syvende december to tusind og femten.
 Geschehen zu Brüssel am siebten Dezember zweitausendfünfzehn.
 Kahe tuhande viieteistkümnenda aasta detsembrikuu seitsmendal päeval Brüsselis.
 Έγινε στις Βρυξέλλες, στις εφτά Δεκεμβρίου δύο χιλιάδες δεκαπέντε.
 Done at Brussels on the seventh day of December in the year two thousand and fifteen.
 Fait à Bruxelles, le sept décembre deux mille quinze.
 Sastavljeno u Bruxellesu sedmog prosinca dvije tisuće petnaeste.
 Fatto a Bruxelles, addì sette dicembre duemilaquindici.
 Briselē, divi tūkstoši piecpadsmitā gada septītajā decembrī.
 Priimta du tūkstančiai penkioliktą metų gruodžio septintą dieną Briuselyje.
 Kelt Brüsszelben, a kétézer-tizenötödik év december havának hetedik napján.
 Magħmul fi Brussell, fis-seba jum ta' Diċembru fis-sena elfejn u ħmistax.
 Gedaan te Brussel, de zevende december tweeduizend vijftien.
 Sporządzono w Brukseli dnia siódmego grudnia roku dwa tysiące piętnastego.
 Feito em Bruxelas, em sete de dezembro de dois mil e quinze.
 Íntocmit la Bruxelles la șapte decembrie două mii cincisprezece.
 V Bruseli siedmeho decembra dvetisíctridsať.
 V Bruslju, dne sedmega decembra leta dva tisoč petnajst.
 Tehty Brysselissä seitsemäntenä päivänä joulukuuta vuonna kaksituhattaviisitoista.
 Som skedde i Bryssel den sjunde december år tjugohundrafemton.

За Европейския съюз
 Por la Unión Europea
 Za Evropskou unii
 For Den Europæiske Union
 Für die Europäische Union
 Euroopa Liidu nimel
 Για την Ευρωπαϊκή Ένωση
 For the European Union
 Pour l'Union européenne
 Za Europejsku uniju
 Per l'Unione europea
 Eiropas Savienības vārdā –
 Europos Sąjungos vardu
 Az Európai Unió részéről
 Ghall-Unjoni Ewropea
 Voor de Europese Unie
 W imieniu Unii Europejskiej
 Pela União Europeia
 Pentru Uniunea Europeană
 Za Európsku úniu
 Za Evropsko unijo
 Euroopan unionin puolesta
 För Europeiska unionen

Za Република Палау
Por la República de Palaos
Za Republiku Palau
For Republikken Palau
Für die Republik Palau
Belau Vabariigi nimel
Για τη Δημοκρατία του Παλάου
For the Republic of Palau
Pour la République des Palaos
Za Republiku Palau
Per la Repubblica di Palau
Palau Republikas vārdā –
Palau Respublikos vardu
Palaui Köztársaság részéről
Għar-Repubblika ta' Palau
Voor de Republiek Palau
W imieniu Republiki Palau
Pela República de Palau
Pentru Republica Palau
Za Palauskú republiku
Za Republiko Palau
Palaun tasavallan puolesta
För Republiken Palau



JOINT DECLARATION WITH REGARD TO ICELAND, NORWAY, SWITZERLAND AND LIECHTENSTEIN

The Contracting Parties take note of the close relationship between the European Union and Norway, Iceland, Switzerland and Liechtenstein, particularly by virtue of the Agreements of 18 May 1999 and 26 October 2004 concerning the association of those countries with the implementation, application and development of the Schengen *acquis*.

In such circumstances it is desirable that the authorities of Norway, Iceland, Switzerland, and Liechtenstein, on the one hand, and Palau, on the other hand, conclude, without delay, bilateral agreements on the short-stay visa waiver in terms similar to those of this Agreement.

JOINT DECLARATION ON THE INTERPRETATION OF THE CATEGORY OF PERSONS TRAVELLING FOR THE PURPOSE OF CARRYING OUT A PAID ACTIVITY AS PROVIDED FOR IN ARTICLE 3(2) OF THIS AGREEMENT

Desiring to ensure a common interpretation, the Contracting Parties agree that, for the purposes of this Agreement, the category of persons carrying out a paid activity covers persons entering for the purpose of carrying out a gainful occupation or remunerated activity in the territory of the other Contracting Party as an employee or as a service provider.

This category should not cover:

- businesspersons, i.e. persons travelling for the purpose of business deliberations (without being employed in the country of the other Contracting Party),
- sportspersons or artists performing an activity on an ad-hoc basis,
- journalists sent by the media of their country of residence, and,
- intra-corporate trainees.

The implementation of this Declaration shall be monitored by the Joint Committee within its responsibility under Article 6 of this Agreement, which may propose modifications when, on the basis of the experiences of the Contracting Parties, it considers it necessary.

JOINT DECLARATION ON THE INTERPRETATION OF THE PERIOD OF 90 DAYS IN ANY 180-DAY PERIOD AS SET OUT IN ARTICLE 4 OF THIS AGREEMENT

The Contracting Parties understand that the maximum period of 90 days in any 180-day period as provided for by Article 4 of this Agreement means either a continuous visit or several consecutive visits, the total duration of which does not exceed 90 days in any 180-day period.

The notion of 'any' implies the application of a moving 180-day reference period, looking backwards at each day of the stay into the last 180-day period, in order to verify if the 90 days in any 180-day period requirement continues to be fulfilled. *Inter alia*, it means that an absence for an uninterrupted period of 90 days allows for a new stay for up to 90 days.

JOINT DECLARATION ON INFORMING CITIZENS ABOUT THE VISA WAIVER AGREEMENT

Recognising the importance of transparency for the citizens of the European Union and the citizens of Palau, the Contracting Parties agree to ensure full dissemination of information about the content and consequences of the visa waiver agreement and related issues, such as the entry conditions.

REGULATIONS

COMMISSION IMPLEMENTING REGULATION (EU) 2015/2378

of 15 December 2015

laying down detailed rules for implementing certain provisions of Council Directive 2011/16/EU on administrative cooperation in the field of taxation and repealing Implementing Regulation (EU) No 1156/2012

THE EUROPEAN COMMISSION,

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

Having regard to Council Directive 2011/16/EU of 15 February 2011 on administrative cooperation in the field of taxation and repealing Directive 77/799/EEC ⁽¹⁾, and in particular Article 20(1), (3) and (4) and Article 21(1) thereof,

Whereas:

- (1) Directive 2011/16/EU replaced Council Directive 77/799/EEC ⁽²⁾. A number of important adaptations of the rules concerning administrative cooperation in the field of taxation were made, in particular as regards the exchange of information between Member States with a view to enhancing the efficiency and the effectiveness of cross border exchange of information.
- (2) Council Directive 2014/107/EU ⁽³⁾ amended Directive 2011/16/EU to introduce the mandatory automatic exchange of financial account information and the relating set of reporting and due diligence rules.
- (3) In order to ensure the functioning of the new legal framework, Directive 2011/16/EU requires certain rules on the standard forms and computerised formats and the practical arrangements on the exchange of information between Member States to be adopted by means of implementing acts. Commission Implementing Regulation (EU) No 1156/2012 ⁽⁴⁾ provides detailed rules as regards the standard forms and the computerised formats to be used in relation to Directive 2011/16/EU.
- (4) Considering the changes to be made with a view of implementing Directive 2011/16/EU and in order to ease the readability of the implementing act, it is appropriate to repeal Implementing Regulation (EU) No 1156/2012 and to set out new consolidated rules.
- (5) In order to facilitate the exchange of information, Directive 2011/16/EU requires that such exchange of information under that Directive should take place using standard forms except for mandatory automatic exchange of information.
- (6) The standard forms to be used should contain a number of fields that are sufficiently diversified, so as to allow Member States to easily deal with all relevant cases, using the fields appropriate for each case.
- (7) For the purposes of the mandatory automatic exchange of information, Directive 2011/16/EU requires the Commission to adopt both the practical arrangements and the computerised format. With a view to ensuring the appropriateness and usability of the information exchanged and the efficiency of the exchange itself, detailed rules should be laid down in this regard.

⁽¹⁾ OJ L 64, 11.3.2011, p. 1.

⁽²⁾ Council Directive 77/799/EEC of 19 December 1977 concerning mutual assistance by the competent authorities of the Member States in the field of direct taxation (OJ L 336, 27.12.1977, p. 15).

⁽³⁾ Council Directive 2014/107/EU of 9 December 2014 amending Directive 2011/16/EU as regards mandatory automatic exchange of information in the field of taxation (OJ L 359, 16.12.2014, p. 1).

⁽⁴⁾ Commission Implementing Regulation (EU) No 1156/2012 of 6 December 2012 laying down detailed rules for implementing certain provisions of Council Directive 2011/16/EU on administrative cooperation in the field of taxation (OJ L 335, 7.12.2012, p. 42).

- (8) The condition that the mandatory automatic exchange of information on the five categories of income and capital pursuant to Article 8(1) of Directive 2011/16/EU is subject to the availability of the information justifies that the corresponding computerised format is not specified beyond the level of the overall structure and classes of elements composing the computerised format, while the detailed elements exchanged under each of those classes remain subject to its availability in each Member State.
- (9) Taking into account that the information exchanged under Article 8(3a) of Directive 2011/16/EU is to be collected by Reporting Financial Institutions pursuant to the applicable reporting and due diligence rules laid down in Annexes I and II to Directive 2011/16/EU and that the exchange is accordingly not subject to the condition of the availability of the information, the computerised format to be used should, in contrast, be expanded to encompass the lowest level of detail and include each element, together with its relevant attributes, if any.
- (10) According to Directive 2011/16/EU, the information should, as far as possible, be provided by electronic means using the Common Communication Network ('CCN'). Where necessary, the practical arrangements for the communication should be specified. Detailed rules should apply to the communication of reports, statements and other documents not consisting in the information exchanged itself but supporting it and, in the case of communication outside the CCN network and without prejudice to other bilaterally agreed arrangements, to the communication and identification of the information exchanged.
- (11) Laws, regulations and administrative provisions in the Member States necessary to comply with Article 8(3a) of Directive 2011/16/EU regarding the mandatory automatic exchange of financial account information are to apply from 1 January 2016. This Regulation should therefore apply from the same date.
- (12) The measures provided for in this Regulation are in accordance with the opinion of the Committee on Administrative Cooperation for Taxation,

HAS ADOPTED THIS REGULATION:

Article 1

Standard forms for exchanges on request, spontaneous exchanges, notifications and feedback

1. In regard to the forms to be used, 'field' means a location in a form where information to be exchanged pursuant to Directive 2011/16/EU may be recorded.
2. The form to be used for requests for information and for administrative enquiries pursuant to Article 5 of Directive 2011/16/EU and their replies, acknowledgments, requests for additional background information, inability or refusal pursuant to Article 7 of that Directive shall comply with Annex I to this Regulation.
3. The form to be used for spontaneous information and its acknowledgment pursuant to Articles 9 and 10 of Directive 2011/16/EU shall comply with Annex II to this Regulation.
4. The form to be used for requests for administrative notification pursuant to Article 13(1) and 13(2) of Directive 2011/16/EU and their responses pursuant to Article 13(3) of that Directive shall comply with Annex III to this Regulation.
5. The form to be used for feedback information pursuant to Article 14(1) of Directive 2011/16/EU shall comply with Annex IV to this Regulation.

Article 2

Computerised formats for the mandatory automatic exchange of information

1. The computerised format to be used for the mandatory automatic exchange of information pursuant to Article 8(1) of Directive 2011/16/EU shall comply with Annex V to this Regulation.

2. The computerised format to be used for the mandatory automatic exchange of information pursuant to Article 8(3a) of Directive 2011/16/EU shall comply with Annex VI to this Regulation.

Article 3

Practical arrangements regarding the use of the CCN network

1. The reports, statements and other documents referred to in the information communicated pursuant to Directive 2011/16/EU may be sent using means of communication other than the CCN network.
2. Where the information referred to in Directive 2011/16/EU is not exchanged by electronic means using the CCN network, and unless otherwise agreed bilaterally, the information shall be provided under cover of a letter describing the information communicated and duly signed by the competent authority communicating the information.

Article 4

Repeal

Implementing Regulation (EU) No 1156/2012 is repealed with effect from 1 January 2016.

References made to the repealed Implementing Regulation shall be construed as references to this Regulation.

Article 5

Entry into force and application

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

It shall apply from 1 January 2016.

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

Done at Brussels, 15 December 2015.

For the Commission
The President
Jean-Claude JUNCKER

ANNEX I

Form referred to in Article 1(2)

The form for requests for information and for administrative enquiries pursuant to Article 5 of Directive 2011/16/EU and their replies, acknowledgments, requests for additional background information, inability or refusal pursuant to Article 7 of Directive 2011/16/EU contains the following fields ⁽¹⁾:

- Legal basis
- Reference number
- Date
- Identity of the requesting and requested authorities
- Identity of the person under examination or investigation
- General case description and, if appropriate, specific background information likely to allow assessing the foreseeable relevance of the information requested to the administration and enforcement of the domestic laws of the Member States concerning the taxes referred to in Article 2 of Directive 2011/16/EU.
- Tax purpose for which the information is sought
- Period under investigation
- Name and address of any person believed to be in possession of the requested information
- Fulfilment of the legal requirement imposed by Article 16(1) of Directive 2011/16/EU
- Fulfilment of the legal requirement imposed by Article 17(1) of Directive 2011/16/EU
- Reasoned request for a specific administrative enquiry and reasons for refusal to undertake the requested specific administrative enquiry
- Acknowledgement of the request for information
- Request for additional background information
- Reasons for inability or refusal to provide information
- Reasons for a failure to respond by the relevant time limit and date by which the requested authority considers it might be able to respond.

⁽¹⁾ However, only the fields actually filled in a given case need to appear in the form used in that case.

ANNEX II

Form referred to in Article 1(3)

The form for spontaneous information and its acknowledgment pursuant to Articles 9 and 10 respectively of Directive 2011/16/EU contains the following fields ⁽¹⁾:

- Legal basis
 - Reference number
 - Date
 - Identity of the sending and receiving authorities
 - Identity of the person subject to the spontaneous exchange of information
 - Period covered by the spontaneous exchange of information
 - Fulfilment of the legal requirement imposed by Article 16(1) of Directive 2011/16/EU
 - Acknowledgement of the spontaneous information.
-

⁽¹⁾ However, only the fields actually filled in a given case need to appear in the form used in that case.

ANNEX III

Form referred to in Article 1(4)

The form for request for notification pursuant to Article 13(1) and 13(2) of Directive 2011/16/EU and their responses pursuant to Article 13(3) of that Directive contains the following fields ⁽¹⁾:

- Legal basis
- Reference number
- Date
- Identity of the requesting and requested authorities
- Name and address of the addressee of the instrument or decision
- Other information which may facilitate the identification of the addressee
- Subject of the instrument or decision
- Response of the requested authority, in accordance with Article 13(3) of Directive 2011/16/EU, including the date of notification of the instrument or decision to the addressee.

⁽¹⁾ However, only the fields actually filled in a given case need to appear in the form used in that case.

ANNEX IV

Form referred to in Article 1(5)

The form for feedback pursuant to Article 14(1) of Directive 2011/16/EU contains the following fields (1):

- Reference number
- Date
- Identity of the competent authority issuing the feedback
- General feedback on the information provided
- Results directly related to the information provided.

(1) However, only the fields actually filled in a given case need to appear in the form used in that case.

ANNEX V

Computerised format referred to in Article 2(1)

The computerised formats for the mandatory automatic exchange of information pursuant to Article 8(1) of Directive 2011/16/EU comply with the following tree structure and contains the following classes of elements ⁽¹⁾:

(a) As regards the overall message:

```
- A "HEADER" containing:  
-- An "ORIGINATING COUNTRY",  
-- A "DESTINATION COUNTRIES",  
-- A unique "MESSAGE ID",  
-- A "CORRELATION ID",  
-- A "TIMESTAMP" and  
-- A "MESSAGE TYPE INDIC";  
- And a "BODY" following the tree structure and classes of elements of any one  
  of the bodies included in this annex under points (b) to (g) depending on the  
  nature of the information to be exchanged automatically.
```

(b) As regards the body for communicating information on income from employment or director's fees:

```
- An "APPLICATION ID" stating the nature of the information exchanged,  
- A "TAX YEAR" and  
- One or more building blocks containing:  
-- One or more "RECIPIENTS" providing information on each recipient and  
  containing:  
--- One or more "PAYERS" providing information on each payer and containing:  
---- One or more "RELATIONSHIPS" providing information on the nature of each  
  relationship between the recipient and the payer and containing:  
----- One or more "WORKPLACE" where the relationship is carried out and  
----- One or more "INCOMES" providing information on each income or fee under  
  the relationship and containing:  
----- The "QUANTITY" of the days spent or worked by the recipient;  
-- And/or one or more "RECIPIENT INVALIDATIONS" in the case of a correction or  
  cancellation of previously exchanged information.
```

⁽¹⁾ However, only the classes of elements actually available and applicable in a given case need to appear in the computerised format used in that case.

(c) As regards the body for communicating information on pensions:

```
- An "APPLICATION ID" stating the nature of the information exchanged,
- A "TAX YEAR" and
- One or more building blocks containing:
-- One or more "RECIPIENTS" providing information on each recipient and
   containing:
--- One or more "PAYERS" providing information on each payer and containing:
---- One or more "SCHEMES" providing information on each pension and
     containing:
----- One or more "SCHEME REFERENCE INFOS",
----- One or more "CAPITAL VALUES",
----- An "ADMINISTRATOR",
----- One or more "OWNERS",
----- One or more "EVENTS" providing general information on each event under
     the scheme and containing:
----- One or more "EVENT INFO" containing detailed information on the event
     and one or more "FINANCIAL INFO" and/or
----- One or more "TAX INFO" containing detailed information on the taxes and
     one or more "FINANCIAL INFO";
-- And/or one or more "RECIPIENT INVALIDATIONS" in the case of a correction or
   cancellation of previously exchanged information.
```

(d) As regards the body for communicating information on life insurance products:

```
- An "APPLICATION ID" stating the nature of the information exchanged,
- A "TAX YEAR" and
- One or more building blocks containing:
-- One or more "POLICIES" providing information on each product and containing:
--- A "CONTRIBUTION DURATION",
--- A "BENEFIT DURATION",
--- A "POLICY OPTIONS",
--- One or more "POLICY CAPITAL VALUES",
--- An "INSURER/PAYING AGENT",
--- One or more "BENEFICIARIES",
--- One or more "LIFE INSURED",
--- One or more "PAYERS OF PREMIUMS",
--- One or more "POLICY OWNERS",
--- One or more "EVENTS" providing general information on each event under the
   policy and containing:
---- One or more "EVENT INFO" containing detailed information on the event and
     one or more "FINANCIAL INFO" and/or
---- One or more "TAX INFO" containing detailed information on the taxes and
     one or more "FINANCIAL INFO";
-- And/or one or more "POLICY INVALIDATIONS" in the case of a correction or
   cancellation of previously exchanged information.
```

(e) As regards the body for communicating information on ownership of and income from immovable property:

- An "APPLICATION ID" stating the nature of the information exchanged,
- A "TAX YEAR" and
- One or more building blocks containing:
 - One or more "PARTIES" providing information on each recipient and containing:
 - A "PARTNER" providing information on the spouse and
 - Option 1 when the information relates to an income which cannot be linked (even indirectly) to one or more identified property: one or more "INCOMES" or
 - Option 2 when the information relates either to another information than an income or to an income which can be linked (even indirectly) to one or more identified property: one or more "PROPERTIES" providing information on each property and containing:
 - One or more "OWNERSHIPS" and its associated "RIGHT" providing information on each ownership and associated right in the property and containing:
 - One or more "TRANSACTIONS" providing information on each transaction relating to the property,
 - One or more "INCOMES" providing information on each income relating to the ;
 - And/or one or more "PARTY INVALIDATIONS" in the case of a correction or of previously exchanged information.

(f) As regards the body in case no information is to be communicated in relation to a specific category:

- An "APPLICATION ID" stating the nature of the information exchanged,
- A "DETAIL" stating the reason for the absence of data and
- A "YEAR".

(g) As regards the body for an acknowledgement of receipt of the information for a specific category:

- An "APPLICATION ID" stating the nature of the information exchanged,
- A "STATUS" providing information on the acceptance or rejection of a message and
- One or more "ERROR" providing information on the errors identified in a message received."

ANNEX VI

Computerised format referred to in Article 2(2)

The computerised format for the mandatory automatic exchange of information pursuant to Article 8(3a) of Directive 2011/16/EU complies with the following tree structure and contains the following elements and attributes (1):

(a) As regards the overall message:

```

<?xml version="1.0" encoding="UTF-8"?>
<!-- edited with XMLSpy v2012 rel. 2 sp1 (http://www.altova.com) by OECD OECD
(OECD) -->
<xsd:schema xmlns:crs="urn:oe.cd:t.ies:crs:v1"
xmlns:xsd="http://www.w3.org/2001/XMLSchema" xmlns:ftc="urn:oe.cd:t.ies:fatca:v1"
xmlns:cfc="urn:oe.cd:t.ies:commontypesfatcacrs:v1"
xmlns:stf="urn:oe.cd:t.ies:stf:v4" xmlns:iso="urn:oe.cd:t.ies:isocrstypes:v1"
targetNamespace="urn:oe.cd:t.ies:crs:v1" elementFormDefault="qualified"
attributeFormDefault="unqualified" version="1.0">
  <xsd:import namespace="urn:oe.cd:t.ies:isocrstypes:v1"
schemaLocation="isocrstypes_v1.0.xsd"/>
  <xsd:import namespace="urn:oe.cd:t.ies:stf:v4"
schemaLocation="oecdtypes_v4.1.xsd"/>
  <xsd:import namespace="urn:oe.cd:t.ies:commontypesfatcacrs:v1"
schemaLocation="CommonTypesFatcaCrs_v1.1.xsd"/>
  <xsd:import namespace="urn:oe.cd:t.ies:fatca:v1"
schemaLocation="FatcaTypes_v1.1.xsd"/>

  <!--+++++++ Reusable Simple types ++++++ -->

  <!-- Message type definitions -->

  <xsd:simpleType name="MessageType_EnumType">
    <xsd:annotation>
      <xsd:documentation xml:lang="en">Message type defines the type of
reporting </xsd:documentation>
    </xsd:annotation>
    <xsd:restriction base="xsd:string">
      <xsd:enumeration value="CRS"/>
    </xsd:restriction>
  </xsd:simpleType>
  <!-- -->

  <!-- Account Holder Type - 1 -->
  <xsd:simpleType name="CrsAcctHolderType_EnumType">
    <xsd:annotation>
      <xsd:documentation xml:lang="en">Account Holder Type</xsd:documentation>
    </xsd:annotation>
    <xsd:restriction base="xsd:string">
      <xsd:enumeration value="CRS101">
        <xsd:annotation>
          <xsd:documentation>Passive Non-Financial Entity with one or more
controlling person that is a Reportable Person</xsd:documentation>
        </xsd:annotation>
      </xsd:enumeration>
      <xsd:enumeration value="CRS102">
        <xsd:annotation>
          <xsd:documentation>CRS Reportable Person</xsd:documentation>
        </xsd:annotation>
      </xsd:enumeration>
    </xsd:restriction>
  </xsd:simpleType>

```

(1) However, only the elements and attributes actually applicable in a given case further to the performance of the reporting and due diligence rules included in Annexes I and II to Directive 2011/16/EU need to appear in the computerised format used in that case.

```
<xsd:enumeration value="CRS103">
  <xsd:annotation>
    <xsd:documentation>Passive NFE that is a CRS Reportable
Person</xsd:documentation>
  </xsd:annotation>
</xsd:enumeration>
</xsd:restriction>
</xsd:simpleType>
<!-- -->

<!-- CRS Payment Type - 5 -->
<xsd:simpleType name="CrsPaymentType_EnumType">
  <xsd:annotation>
    <xsd:documentation xml:lang="en">The code describing the nature of the
payments used in CRS
  </xsd:documentation>
  </xsd:annotation>
  <xsd:restriction base="xsd:string">
    <xsd:enumeration value="CRS501">
      <xsd:annotation>
        <xsd:documentation>Dividends</xsd:documentation>
      </xsd:annotation>
    </xsd:enumeration>
    <xsd:enumeration value="CRS502">
      <xsd:annotation>
        <xsd:documentation>Interest</xsd:documentation>
      </xsd:annotation>
    </xsd:enumeration>
    <xsd:enumeration value="CRS503">
      <xsd:annotation>
        <xsd:documentation>Gross Proceeds/Redemptions</xsd:documentation>
      </xsd:annotation>
    </xsd:enumeration>
    <xsd:enumeration value="CRS504">
      <xsd:annotation>
        <xsd:documentation>Other - CRS</xsd:documentation>
      </xsd:annotation>
    </xsd:enumeration>
  </xsd:restriction>
</xsd:simpleType>
<!-- -->

<!-- MessageTypeIndic - 7 -->
<xsd:simpleType name="CrsMessageTypeIndic_EnumType">
  <xsd:annotation>
    <xsd:documentation xml:lang="en">The MessageTypeIndic defines the type of
message sent</xsd:documentation>
  </xsd:annotation>
  <xsd:restriction base="xsd:string">
    <xsd:enumeration value="CRS701">
      <xsd:annotation>
        <xsd:documentation>The message contains new
information</xsd:documentation>
      </xsd:annotation>
    </xsd:enumeration>
    <xsd:enumeration value="CRS702">
      <xsd:annotation>
        <xsd:documentation>The message contains corrections for previously
sent information</xsd:documentation>
      </xsd:annotation>
    </xsd:enumeration>
  </xsd:restriction>
</xsd:simpleType>
```

```

    <xsd:enumeration value="CRS703">
      <xsd:annotation>
        <xsd:documentation>The message advises there is no data to
report</xsd:documentation>
      </xsd:annotation>
    </xsd:enumeration>
  </xsd:restriction>
</xsd:simpleType>
<!-- -->

<!-- Controlling Person Type - 8 -->
<xsd:simpleType name="CrsCtrlgPersonType_EnumType">
  <xsd:annotation>
    <xsd:documentation xml:lang="en">Controlling Person
Type</xsd:documentation>
  </xsd:annotation>
  <xsd:restriction base="xsd:string">
    <xsd:enumeration value="CRS801">
      <xsd:annotation>
        <xsd:documentation>CP of legal person - ownership</xsd:documentation>
      </xsd:annotation>
    </xsd:enumeration>
    <xsd:enumeration value="CRS802">
      <xsd:annotation>
        <xsd:documentation>CP of legal person - other
means</xsd:documentation>
      </xsd:annotation>
    </xsd:enumeration>
    <xsd:enumeration value="CRS803">
      <xsd:annotation>
        <xsd:documentation>CP of legal person - senior managing
official</xsd:documentation>
      </xsd:annotation>
    </xsd:enumeration>
    <xsd:enumeration value="CRS804">
      <xsd:annotation>
        <xsd:documentation>CP of legal arrangement - trust -
settlor</xsd:documentation>
      </xsd:annotation>
    </xsd:enumeration>
    <xsd:enumeration value="CRS805">
      <xsd:annotation>
        <xsd:documentation>CP of legal arrangement - trust -
trustee</xsd:documentation>
      </xsd:annotation>
    </xsd:enumeration>
    <xsd:enumeration value="CRS806">
      <xsd:annotation>
        <xsd:documentation>CP of legal arrangement - trust -
protector</xsd:documentation>
      </xsd:annotation>
    </xsd:enumeration>
    <xsd:enumeration value="CRS807">
      <xsd:annotation>
        <xsd:documentation>CP of legal arrangement - trust -
beneficiary</xsd:documentation>
      </xsd:annotation>
    </xsd:enumeration>
    <xsd:enumeration value="CRS808">
      <xsd:annotation>
        <xsd:documentation>CP of legal arrangement - trust -
other</xsd:documentation>
      </xsd:annotation>
    </xsd:enumeration>
  </xsd:restriction>

```

```

    <xsd:enumeration value="CRS809">
      <xsd:annotation>
        <xsd:documentation>CP of legal arrangement - other - settlor-
equivalent</xsd:documentation>
      </xsd:annotation>
    </xsd:enumeration>
    <xsd:enumeration value="CRS810">
      <xsd:annotation>
        <xsd:documentation>CP of legal arrangement - other - trustee-
equivalent</xsd:documentation>
      </xsd:annotation>
    </xsd:enumeration>
    <xsd:enumeration value="CRS811">
      <xsd:annotation>
        <xsd:documentation>CP of legal arrangement - other - protector-
equivalent</xsd:documentation>
      </xsd:annotation>
    </xsd:enumeration>
    <xsd:enumeration value="CRS812">
      <xsd:annotation>
        <xsd:documentation>CP of legal arrangement - other - beneficiary-
equivalent</xsd:documentation>
      </xsd:annotation>
    </xsd:enumeration>
    <xsd:enumeration value="CRS813">
      <xsd:annotation>
        <xsd:documentation>CP of legal arrangement - other - other-
equivalent</xsd:documentation>
      </xsd:annotation>
    </xsd:enumeration>
  </xsd:restriction>
</xsd:simpleType>
<!-- -->

<!--+++++++ Reusable Complex types ++++++ -->

  <!-- Message specification: Data identifying and describing the message
as a whole -->
  <xsd:complexType name="MessageSpec_Type">
    <xsd:annotation>
      <xsd:documentation xml:lang="en">Information in the message header
identifies the Tax Administration that is sending the message. It specifies
when the message was created, what period (normally a year) the report is for,
and the nature of the report (original, corrected, supplemental,
etc).</xsd:documentation>
    </xsd:annotation>
    <xsd:sequence>
      <xsd:element name="SendingCompanyIN" type="xsd:string"
minOccurs="0"/>
      <xsd:element name="TransmittingCountry" type="iso:CountryCode_Type"/>
      <xsd:element name="ReceivingCountry" type="iso:CountryCode_Type"/>
      <!-- modified for CRS -->

      <xsd:element name="MessageType" type="crs:MessageType_EnumType"/>
      <xsd:element name="Warning" type="xsd:string" minOccurs="0">
        <xsd:annotation>
          <xsd:documentation xml:lang="en">Free text expressing the
restrictions for use of the information this
message contains and the legal framework under which it is
given</xsd:documentation>
        </xsd:annotation>
      </xsd:element>
      <xsd:element name="Contact" type="xsd:string" minOccurs="0">
        <xsd:annotation>
          <xsd:documentation xml:lang="en">All necessary contact information
about persons responsible for and

```

```

involved in the processing of the data transmitted in this message, both
legally and technically. Free text as this is not
intended for automatic processing. </xsd:documentation>
  </xsd:annotation>
</xsd:element>
<xsd:element name="MessageRefId" type="xsd:string">
  <xsd:annotation>
    <xsd:documentation xml:lang="en">Sender's unique identifier for this
message</xsd:documentation>
  </xsd:annotation>
</xsd:element>
<xsd:element name="MessageTypeIndic"
type="crs:CrsMessageTypeIndic_EnumType" minOccurs="0"/>
  <xsd:element name="CorrMessageRefId" type="xsd:string" minOccurs="0"
maxOccurs="unbounded">
    <xsd:annotation>
      <xsd:documentation xml:lang="en">Sender's unique identifier that has
to be corrected. Must point to 1 or more previous message</xsd:documentation>
    </xsd:annotation>
  </xsd:element>
  <xsd:element name="ReportingPeriod" type="xsd:date">
    <xsd:annotation>
      <xsd:documentation xml:lang="en">The reporting year for which
information is transmitted in documents of
the current message.</xsd:documentation>
    </xsd:annotation>
  </xsd:element>
  <xsd:element name="Timestamp" type="xsd:dateTime"/>
</xsd:sequence>
</xsd:complexType>
<!-- -->

<!-- Account Holder Type -->
<xsd:complexType name="AccountHolder_Type">
  <xsd:sequence>
    <xsd:choice>
      <xsd:element name="Individual" type="crs:PersonParty_Type"/>
      <xsd:sequence>
        <xsd:element name="Organisation" type="crs:OrganisationParty_Type"/>
        <xsd:element name="AcctHolderType"
type="crs:CrsAcctHolderType_EnumType"/>
      </xsd:sequence>
    </xsd:choice>
  </xsd:sequence>
</xsd:complexType>
<!-- -->

<!-- Controlling Person Type -->
<xsd:complexType name="ControllingPerson_Type">
  <xsd:sequence>
    <xsd:element name="Individual" type="crs:PersonParty_Type"/>
    <xsd:element name="CtrlgPersonType"
type="crs:CrsCtrlgPersonType_EnumType" minOccurs="0"/>
  </xsd:sequence>
</xsd:complexType>
<!-- -->

<!-- Account number -->
<xsd:complexType name="FIAccountNumber_Type">
  <xsd:annotation>
    <xsd:documentation xml:lang="en">Account number definition
</xsd:documentation>
  </xsd:annotation>

```

```

<xsd:simpleContent>
  <xsd:extension base="xsd:string">
    <xsd:attribute name="AcctNumberType"
type="cfc:AcctNumberType_EnumType">
      <xsd:annotation>
        <xsd:documentation xml:lang="en">Account Number
Type</xsd:documentation>
      </xsd:annotation>
    </xsd:attribute>
    <xsd:attribute name="UndocumentedAccount" type="xsd:boolean">
      <xsd:annotation>
        <xsd:documentation xml:lang="en">Undocumented
Account</xsd:documentation>
      </xsd:annotation>
    </xsd:attribute>
    <xsd:attribute name="ClosedAccount" type="xsd:boolean">
      <xsd:annotation>
        <xsd:documentation xml:lang="en">Closed Account</xsd:documentation>
      </xsd:annotation>
    </xsd:attribute>
    <xsd:attribute name="DormantAccount" type="xsd:boolean">
      <xsd:annotation>
        <xsd:documentation xml:lang="en">Dormant
Account</xsd:documentation>
      </xsd:annotation>
    </xsd:attribute>
  </xsd:extension>
</xsd:simpleContent>
</xsd:complexType>
<!-- -->

<!-- Correctable Account Report -->
<xsd:complexType name="CorrectableAccountReport_Type">
  <xsd:sequence>
    <xsd:element name="DocSpec" type="stf:DocSpec_Type"/>
    <xsd:element name="AccountNumber" type="crs:FIAccountNumber_Type"/>
    <xsd:element name="AccountHolder" type="crs:AccountHolder_Type"/>
    <xsd:element name="ControllingPerson" type="crs:ControllingPerson_Type"
minOccurs="0" maxOccurs="unbounded"/>
    <xsd:element name="AccountBalance" type="cfc:MonAmnt_Type"/>
    <xsd:element name="Payment" type="crs:Payment_Type" minOccurs="0"
maxOccurs="unbounded"/>
  </xsd:sequence>
</xsd:complexType>
<!-- -->

<!-- The Name of a Party, given in fixed Form-->
<xsd:complexType name="NamePerson_Type">
  <xsd:annotation>
    <xsd:documentation xml:lang="en">The user must spread the data about the
name of a party over up to six elements. The container element for this will be
'NameFix'. </xsd:documentation>
  </xsd:annotation>
  <xsd:sequence>
    <xsd:element name="PrecedingTitle" type="xsd:string" minOccurs="0">
      <xsd:annotation>
        <xsd:documentation xml:lang="en">His Excellency, Estate of the Late
...</xsd:documentation>
      </xsd:annotation>
    </xsd:element>

```

```

    <xsd:element name="Title" type="xsd:string" minOccurs="0"
maxOccurs="unbounded">
      <xsd:annotation>
        <xsd:documentation xml:lang="en">Greeting title. Example: Mr, Dr, Ms,
Herr, etc. Can have multiple titles.</xsd:documentation>
      </xsd:annotation>
    </xsd:element>
    <xsd:element name="FirstName">
      <xsd:annotation>
        <xsd:documentation xml:lang="en">FirstName of the
person</xsd:documentation>
      </xsd:annotation>
      <xsd:complexType>
        <xsd:simpleContent>
          <xsd:extension base="xsd:string">
            <xsd:attribute name="xnlNameType">
              <xsd:annotation>
                <xsd:documentation xml:lang="en">Defines the name type of
FirstName. Example: Given Name, Forename, Christian Name, Father's Name, etc.
In some countries, FirstName could be a Family Name or a SurName. Use this
attribute to define the type for this name.
              </xsd:documentation>
            </xsd:annotation>
          </xsd:attribute>
        </xsd:extension>
      </xsd:simpleContent>
    </xsd:complexType>
  </xsd:element>
  <xsd:element name="MiddleName" minOccurs="0" maxOccurs="unbounded">
    <xsd:annotation>
      <xsd:documentation xml:lang="en">Middle name (essential part of the
name for many nationalities). Example: Sakthi in "Nivetha Sakthi Shantha". Can
have multiple middle names.</xsd:documentation>
    </xsd:annotation>
    <xsd:complexType>
      <xsd:simpleContent>
        <xsd:extension base="xsd:string">
          <xsd:attribute name="xnlNameType">
            <xsd:annotation>
              <xsd:documentation xml:lang="en">Defines the name type of
Middle Name. Example: First name, middle name, maiden name, father's name,
given name, etc.
            </xsd:documentation>
          </xsd:annotation>
        </xsd:attribute>
      </xsd:extension>
    </xsd:simpleContent>
  </xsd:complexType>
</xsd:element>
<xsd:element name="NamePrefix" minOccurs="0">
  <xsd:annotation>
    <xsd:documentation xml:lang="en">de, van, van de, von, etc. Example:
Derick de Clarke</xsd:documentation>
  </xsd:annotation>
  <xsd:complexType>
    <xsd:simpleContent>
      <xsd:extension base="xsd:string">
        <xsd:attribute name="xnlNameType">
          <xsd:annotation>

```

```

        <xsd:documentation xml:lang="en">Defines the type of name
associated with the NamePrefix. For example the type of name is LastName and
this prefix is the prefix for this last name.
        </xsd:documentation>
        </xsd:annotation>
        </xsd:attribute>
        </xsd:extension>
        </xsd:simpleContent>
        </xsd:complexType>
</xsd:element>
<xsd:element name="LastName">
  <xsd:annotation>
    <xsd:documentation xml:lang="en">Represents the position of the name
in a name string. Can be Given Name, Forename, Christian Name, Surname, Family
Name, etc. Use the attribute "NameType" to define what type this name is.
In case of a company, this field can be used for the company
name.</xsd:documentation>
    </xsd:annotation>
    <xsd:complexType>
      <xsd:simpleContent>
        <xsd:extension base="xsd:string">
          <xsd:attribute name="xnlNameType">
            <xsd:annotation>
              <xsd:documentation xml:lang="en">Defines the name type of
LastName. Example: Father's name, Family name, Sur Name, Mother's Name, etc. In
some countries, LastName could be the given name or first name.
              </xsd:documentation>
            </xsd:annotation>
          </xsd:attribute>
        </xsd:extension>
      </xsd:simpleContent>
    </xsd:complexType>
  </xsd:element>
  <xsd:element name="GenerationIdentifier" type="xsd:string" minOccurs="0"
maxOccurs="unbounded">
    <xsd:annotation>
      <xsd:documentation xml:lang="en">Jnr, Thr Third,
III</xsd:documentation>
    </xsd:annotation>
  </xsd:element>
  <xsd:element name="Suffix" type="xsd:string" minOccurs="0"
maxOccurs="unbounded">
    <xsd:annotation>
      <xsd:documentation xml:lang="en">Could be compressed initials - PhD,
VC, QC</xsd:documentation>
    </xsd:annotation>
  </xsd:element>
  <xsd:element name="GeneralSuffix" type="xsd:string" minOccurs="0">
    <xsd:annotation>
      <xsd:documentation xml:lang="en">Deceased, Retired
...</xsd:documentation>
    </xsd:annotation>
  </xsd:element>
</xsd:sequence>
  <xsd:attribute name="nameType" type="stf:OECDNameType_EnumType"
use="optional"/>
</xsd:complexType>
<!-- -->

```



```

<!-- Collection of all Data describing a person as a Party -->
<xsd:complexType name="PersonParty_Type">
  <xsd:annotation>
    <xsd:documentation xml:lang="en">
      This container brings together all data about a person as a party. Name and
      address are required components and each can
      be present more than once to enable as complete a description as possible.
      Whenever possible one or more identifiers (TIN
      etc) should be added as well as a residence country code. Additional data that
      describes and identifies the party can be
      given. The code for the legal type according to the OECD codelist must be
      added. The structures of
      all of the subelements are defined elsewhere in this
      schema.</xsd:documentation>
    </xsd:annotation>
    <xsd:sequence>
      <xsd:element name="ResCountryCode" type="iso:CountryCode_Type"
maxOccurs="unbounded"/>
      <xsd:element name="TIN" type="cfc:TIN_Type" minOccurs="0"
maxOccurs="unbounded"/>
      <xsd:element name="Name" type="crs:NamePerson_Type"
maxOccurs="unbounded"/>
      <xsd:element name="Address" type="cfc:Address_Type"
maxOccurs="unbounded"/>
      <xsd:element name="Nationality" type="iso:CountryCode_Type" minOccurs="0"
maxOccurs="unbounded"/>
      <xsd:element name="BirthInfo" minOccurs="0">
        <xsd:complexType>
          <xsd:sequence>
            <xsd:element name="BirthDate" type="xsd:date" minOccurs="0"/>
            <xsd:element name="City" type="xsd:string" minOccurs="0"/>
            <xsd:element name="CitySubentity" type="xsd:string" minOccurs="0"/>
            <xsd:element name="CountryInfo" minOccurs="0">
              <xsd:complexType>
                <xsd:choice>
                  <xsd:element name="CountryCode" type="iso:CountryCode_Type"/>
                  <xsd:element name="FormerCountryName" type="xsd:string"/>
                </xsd:choice>
              </xsd:complexType>
            </xsd:element>
          </xsd:sequence>
        </xsd:complexType>
      </xsd:element>
    </xsd:sequence>
  </xsd:complexType>
<!-- -->

  <!-- Organisation Identification Number -->
  <xsd:complexType name="OrganisationIN_Type">
    <xsd:annotation>
      <xsd:documentation xml:lang="en">This is the identification
number/identification code for the Entity in question. As the identifier may be
not strictly numeric, it is just defined as a string of characters. Attribute
'issuedBy' is required to designate the issuer of the identifier. Attribute
'INType' defines the type of identification number. </xsd:documentation>
    </xsd:annotation>
    <xsd:simpleContent>
      <xsd:extension base="cfc:String1MinLength_Type">
        <xsd:attribute name="issuedBy" type="iso:CountryCode_Type"
use="optional">
          <xsd:annotation>
            <xsd:documentation xml:lang="en">Country code of issuing country,
indicating country of Residence (to taxes and other)</xsd:documentation>
          </xsd:annotation>
        </xsd:attribute>
      </xsd:extension>
    </xsd:simpleContent>
  </xsd:complexType>

```

```

        <xsd:attribute name="INType" type="xsd:string" use="optional">
          <xsd:annotation>
            <xsd:documentation xml:lang="en">Identification Number
Type</xsd:documentation>
          </xsd:annotation>
        </xsd:attribute>
      </xsd:extension>
    </xsd:simpleContent>
  </xsd:complexType>
<!-- -->

<!-- Collection of all Data describing an organisationy as party-->
<xsd:complexType name="OrganisationParty_Type">
  <xsd:annotation>
    <xsd:documentation xml:lang="en">
This container brings together all data about an organisation as a party. Name
and address are required components and each can
be present more than once to enable as complete a description as possible.
Whenever possible one or more identifiers (TIN
etc) should be added as well as a residence country code. Additional data that
describes and identifies the party can be
given . The code for the legal type according to the OECD codelist must be
added. The structures of
all of the subelements are defined elsewhere in this
schema.</xsd:documentation>
    </xsd:annotation>
    <xsd:sequence>
      <xsd:element name="ResCountryCode" type="iso:CountryCode_Type"
minOccurs="0" maxOccurs="unbounded"/>
      <xsd:element name="IN" type="crs:OrganisationIN_Type" minOccurs="0"
maxOccurs="unbounded">
        <xsd:annotation>
          <xsd:documentation xml:lang="en">Entity Identification
Number</xsd:documentation>
        </xsd:annotation>
      </xsd:element>
      <xsd:element name="Name" type="cfc:NameOrganisation_Type"
maxOccurs="unbounded"/>
      <xsd:element name="Address" type="cfc:Address_Type"
maxOccurs="unbounded"/>
    </xsd:sequence>
  </xsd:complexType>
<!-- -->

<!-- Correctable Organisation-->
<xsd:complexType name="CorrectableOrganisationParty_Type">
  <xsd:complexContent>
    <xsd:extension base="crs:OrganisationParty_Type">
      <xsd:sequence>
        <xsd:element name="DocSpec" type="stf:DocSpec_Type"/>
      </xsd:sequence>
    </xsd:extension>
  </xsd:complexContent>
</xsd:complexType>
<!-- -->

<!-- Payment -->
<xsd:complexType name="Payment_Type">
  <xsd:sequence>
    <xsd:element name="Type" type="crs:CrsPaymentType_EnumType">
      <xsd:annotation>
        <xsd:documentation xml:lang="en">Type of payment (interest,
dividend,...)</xsd:documentation>
      </xsd:annotation>
    </xsd:element>
  </xsd:sequence>

```

```

    <xsd:element name="PaymentAmnt" type="cfc:MonAmnt_Type">
      <xsd:annotation>
        <xsd:documentation xml:lang="en">The amount of
payment</xsd:documentation>
      </xsd:annotation>
    </xsd:element>
  </xsd:sequence>
</xsd:complexType>
<!-- -->

<!-- -->
<!-- CRS Body Type - CRS Report -->
<xsd:complexType name="CrsBody_Type">
  <xsd:sequence>
    <xsd:element name="ReportingFI"
type="crs:CorrectableOrganisationParty_Type">
      <xsd:annotation>
        <xsd:documentation xml:lang="en">Reporting financial
institution</xsd:documentation>
      </xsd:annotation>
    </xsd:element>

    <xsd:element name="ReportingGroup" maxOccurs="unbounded">
      <xsd:annotation>
        <xsd:documentation xml:lang="en">For CRS, only one ReportingGroup for
each CrsBody is to be provided</xsd:documentation>
      </xsd:annotation>
      <xsd:complexType>
        <xsd:sequence>
          <xsd:element name="Sponsor"
type="crs:CorrectableOrganisationParty_Type" minOccurs="0"/>
          <xsd:element name="Intermediary"
type="crs:CorrectableOrganisationParty_Type" minOccurs="0"/>
          <xsd:element name="AccountReport"
type="crs:CorrectableAccountReport_Type" minOccurs="0" maxOccurs="unbounded"/>
          <xsd:element name="PoolReport"
type="ftc:CorrectablePoolReport_Type" minOccurs="0" maxOccurs="unbounded"/>
        </xsd:sequence>
      </xsd:complexType>
    </xsd:element>
  </xsd:sequence>
</xsd:complexType>

  <!--+++++++ Schema element ++++++++ -->
<!-- CrsOECD File Message structure -->
<!-- -->
<!-- CRS Message structure -->
<xsd:element name="CRS_OECD">
  <xsd:complexType>
    <xsd:sequence>
      <xsd:element name="MessageSpec" type="crs:MessageSpec_Type"/>
      <xsd:element name="CrsBody" type="crs:CrsBody_Type"
maxOccurs="unbounded"/>
    </xsd:sequence>
    <xsd:attribute name="version" type="xsd:string">
      <xsd:annotation>
        <xsd:documentation xml:lang="en">CRS Version </xsd:documentation>
      </xsd:annotation>
    </xsd:attribute>
  </xsd:complexType>
</xsd:element>
<!-- -->
</xsd:schema>

```

(b) As regards the types common to FATCA and CRS used in the message under point (a) above:

```

<?xml version="1.0" encoding="UTF-8"?>
<!-- edited with XMLSpy v2011 rel. 3 (http://www.altova.com) by IRS (Internal
Revenue Service) -->
<xsd:schema xmlns:cfc="urn:oe.cd:t.ies:commontypesfatcacrs:v1"
xmlns:xsd="http://www.w3.org/2001/XMLSchema" xmlns:stf="urn:oe.cd:t.ies:stf:v4"
xmlns:iso="urn:oe.cd:t.ies:isocrstypes:v1"
targetNamespace="urn:oe.cd:t.ies:commontypesfatcacrs:v1"
elementFormDefault="qualified" attributeFormDefault="unqualified"
version="1.0">
  <xsd:import namespace="urn:oe.cd:t.ies:isocrstypes:v1"
schemaLocation="isocrstypes_v1.0.xsd"/>
  <xsd:import namespace="urn:oe.cd:t.ies:stf:v4"
schemaLocation="oecdtypes_v4.1.xsd"/>
  <!--+++++++ Reusable Simple types ++++++++ -->
  <!-- -->
  <!-- String with minimum length 1 - data type for TIN_Type -->
  <xsd:simpleType name="StringMinLength_Type">
    <xsd:annotation>
      <xsd:documentation xml:lang="en">Introduce a min
length</xsd:documentation>
    </xsd:annotation>
    <xsd:restriction base="xsd:string">
      <xsd:minLength value="1"/>
    </xsd:restriction>
  </xsd:simpleType>
  <!-- -->
  <!-- Data type for any kind of numeric data with two decimal fraction digits,
especially monetary amounts -->
  <xsd:simpleType name="TwoDigFract_Type">
    <xsd:annotation>
      <xsd:documentation xml:lang="en">
        Data type for any kind of numeric data with two decimal fraction
digits, especially monetary amounts.
      </xsd:documentation>
    </xsd:annotation>
    <xsd:restriction base="xsd:decimal">
      <xsd:fractionDigits value="2"/>
    </xsd:restriction>
  </xsd:simpleType>
  <!-- -->
  <!-- Account Number Type - 6 -->
  <xsd:simpleType name="AcctNumberType_EnumType">
    <xsd:annotation>
      <xsd:documentation xml:lang="en">Account Number Type</xsd:documentation>
    </xsd:annotation>
    <xsd:restriction base="xsd:string">
      <xsd:enumeration value="OECD601">
        <xsd:annotation>
          <xsd:documentation>IBAN</xsd:documentation>
        </xsd:annotation>
      </xsd:enumeration>
      <xsd:enumeration value="OECD602">
        <xsd:annotation>
          <xsd:documentation>OBAN</xsd:documentation>
        </xsd:annotation>
      </xsd:enumeration>
    </xsd:restriction>
  </xsd:simpleType>

```

```

<xsd:enumeration value="OECD603">
  <xsd:annotation>
    <xsd:documentation>ISIN</xsd:documentation>
  </xsd:annotation>
</xsd:enumeration>
<xsd:enumeration value="OECD604">
  <xsd:annotation>
    <xsd:documentation>OSIN</xsd:documentation>
  </xsd:annotation>
</xsd:enumeration>
<xsd:enumeration value="OECD605">
  <xsd:annotation>
    <xsd:documentation>Other</xsd:documentation>
  </xsd:annotation>
</xsd:enumeration>
</xsd:restriction>
</xsd:simpleType>
<!-- -->
<!--+++++++ Reusable Complex types ++++++++ -->
<!-- -->
<!-- Address Fix -->
<xsd:complexType name="AddressFix_Type">
  <xsd:annotation>
    <xsd:documentation xml:lang="en">
      Structure of the address for a party broken down into its logical parts,
      recommended for easy matching. The 'City' element is the only required
      subelement. All of the subelements are simple text - data type 'string'.
    </xsd:documentation>
  </xsd:annotation>
  <xsd:sequence>
    <xsd:element name="Street" type="xsd:string" minOccurs="0"/>
    <xsd:element name="BuildingIdentifier" type="xsd:string" minOccurs="0"/>
    <xsd:element name="SuiteIdentifier" type="xsd:string" minOccurs="0"/>
    <xsd:element name="FloorIdentifier" type="xsd:string" minOccurs="0"/>
    <xsd:element name="DistrictName" type="xsd:string" minOccurs="0"/>
    <xsd:element name="POB" type="xsd:string" minOccurs="0"/>
    <xsd:element name="PostCode" type="xsd:string" minOccurs="0"/>
    <xsd:element name="City" type="xsd:string"/>
    <xsd:element name="CountrySubentity" type="xsd:string" minOccurs="0"/>
  </xsd:sequence>
</xsd:complexType>
<!-- -->
<!-- The Address of a Party, given in fixed or free Form, possibly in both
Forms -->
<xsd:complexType name="Address_Type">
  <xsd:annotation>
    <xsd:documentation xml:lang="en">
      The user has the option to enter the data about the address of a party
      either as one long field or to spread the data over up to eight elements or
      even to use both formats. If the user chooses the option to enter the data
      required in separate elements, the container element for this will be
      'AddressFix'. If the user chooses the option to enter the data required in a
      less structured way in 'AddressFree' all available address details shall be
      presented as one string of bytes, blank or "/" (slash) or carriage return-
      line feed used as a delimiter between parts of the address. PLEASE NOTE that the
      address country code is outside both of these elements. The use of the fixed
      form is recommended as a rule to allow easy matching. However, the use of the
      free form is recommended if the sending state cannot reliably identify and
      distinguish the different parts of the address. The user may want to use both
      formats e.g. if besides separating the logical parts of the address he also
      wants to indicate a suitable breakdown into print-lines by delimiters in the
      free text form. In this case 'AddressFix' has to precede 'AddressFree'.
    </xsd:documentation>
  </xsd:annotation>

```

```

<xsd:sequence>
  <xsd:element name="CountryCode" type="iso:CountryCode_Type"/>
  <xsd:choice>
    <xsd:element name="AddressFree" type="xsd:string"/>
    <xsd:sequence>
      <xsd:element name="AddressFix" type="cfc:AddressFix_Type"/>
      <xsd:element name="AddressFree" type="xsd:string" minOccurs="0"/>
    </xsd:sequence>
  </xsd:choice>
</xsd:sequence>
  <xsd:attribute name="legalAddressType"
type="stf:OECDLegalAddressType_EnumType" use="optional"/>
</xsd:complexType>
<!-- -->
<!-- General Type for Monetary Amounts -->
<xsd:complexType name="MonAmnt_Type">
  <xsd:annotation>
    <xsd:documentation xml:lang="en">
This data type is to be used whenever monetary amounts are to be communicated.
Such amounts shall be given
including two fractional digits of the main currency unit. The code for the
currency in which the value is expressed has to be
taken from the ISO codelist 4217 and added in attribute currCode.
</xsd:documentation>
  </xsd:annotation>
  <xsd:simpleContent>
    <xsd:extension base="cfc:TwoDigFract_Type">
      <xsd:attribute name="currCode" type="iso:currCode_Type"
use="required"/>
    </xsd:extension>
  </xsd:simpleContent>
</xsd:complexType>
<!-- -->
<!-- Organisation name -->
<xsd:complexType name="NameOrganisation_Type">
  <xsd:annotation>
    <xsd:documentation xml:lang="en">Name of organisation</xsd:documentation>
  </xsd:annotation>
  <xsd:simpleContent>
    <xsd:extension base="xsd:string">
      <xsd:attribute name="nameType" type="stf:OECDNameType_EnumType"
use="optional"/>
    </xsd:extension>
  </xsd:simpleContent>
</xsd:complexType>
<!-- -->
<!-- TIN -->
<xsd:complexType name="TIN_Type">
  <xsd:annotation>
    <xsd:documentation xml:lang="en">This is the identification
number/identification code for the party in question. As the identifier may be
not strictly numeric, it is just defined as a string of characters. Attribute
'issuedBy' is required to designate the issuer of the identifier.
</xsd:documentation>
  </xsd:annotation>
  <xsd:simpleContent>
    <xsd:extension base="cfc:String1MinLength_Type">

```

```

        <xsd:attribute name="issuedBy" type="iso:CountryCode_Type"
use="optional">
        <xsd:annotation>
            <xsd:documentation xml:lang="en">Country code of issuing country,
indicating country of Residence (to taxes and other)</xsd:documentation>
        </xsd:annotation>
        </xsd:attribute>
    </xsd:extension>
</xsd:simpleContent>
</xsd:complexType>
<!-- -->
</xsd:schema>

```

(c) As regards the common OECD types used in the message under point (a) above:

```

<?xml version="1.0" encoding="UTF-8"?>
<!-- edited with XMLSpy v2005 sp1 U (http://www.xmlspy.com) by Steria Benelux
sa/nv (Steria Benelux sa/nv) -->
<xsd:schema xmlns:stf="urn:oe.cd:t.ies:stf:v4"
xmlns:xsd="http://www.w3.org/2001/XMLSchema"
targetNamespace="urn:oe.cd:t.ies:stf:v4" elementFormDefault="qualified"
attributeFormDefault="unqualified" version="4.0">
    <!--+++++ Reusable Simple types +++++ -->
    <!-- Document type indicators types -->
    <xsd:simpleType name="OECDDocTypeIndic_EnumType">
        <xsd:annotation>
            <xsd:documentation xml:lang="en">This element specifies the type of data
being submitted.</xsd:documentation>
        </xsd:annotation>
        <xsd:restriction base="xsd:string">
            <xsd:enumeration value="OECD0">
                <xsd:annotation>
                    <xsd:documentation>Resend Data</xsd:documentation>
                </xsd:annotation>
            </xsd:enumeration>
            <xsd:enumeration value="OECD1">
                <xsd:annotation>
                    <xsd:documentation>New Data</xsd:documentation>
                </xsd:annotation>
            </xsd:enumeration>
            <xsd:enumeration value="OECD2">
                <xsd:annotation>
                    <xsd:documentation>Corrected Data</xsd:documentation>
                </xsd:annotation>
            </xsd:enumeration>
            <xsd:enumeration value="OECD3">
                <xsd:annotation>
                    <xsd:documentation>Deletion of Data</xsd:documentation>
                </xsd:annotation>
            </xsd:enumeration>
            <xsd:enumeration value="OECD10">
                <xsd:annotation>
                    <xsd:documentation>Resend Test Data</xsd:documentation>
                </xsd:annotation>
            </xsd:enumeration>
            <xsd:enumeration value="OECD11">
                <xsd:annotation>
                    <xsd:documentation>New Test Data</xsd:documentation>
                </xsd:annotation>
            </xsd:enumeration>
            <xsd:enumeration value="OECD12">
                <xsd:annotation>
                    <xsd:documentation>Corrected Test Data</xsd:documentation>
                </xsd:annotation>
            </xsd:enumeration>

```

```

    <xsd:enumeration value="OECD13">
      <xsd:annotation>
        <xsd:documentation>Deletion of Test Data</xsd:documentation>
      </xsd:annotation>
    </xsd:enumeration>
  </xsd:restriction>
</xsd:simpleType>
<!-- -->
<!-- Kind of Name -->
<xsd:simpleType name="OECDNameType_EnumType">
  <xsd:annotation>
    <xsd:documentation xml:lang="en">
      It is possible for stf documents to contain several names for the same
      party. This is a qualifier to indicate the type of a particular name. Such
      types include nicknames ('nick'), names under which a party does business
      ('dba' a short name for the entity, or a name that is used for public
      acquaintance instead of the official business name) etc.
    </xsd:documentation>
  </xsd:annotation>
  <xsd:restriction base="xsd:string">
    <xsd:enumeration value="OECD201">
      <xsd:annotation>
        <xsd:documentation>SMFAliasOrOther</xsd:documentation>
      </xsd:annotation>
    </xsd:enumeration>
    <xsd:enumeration value="OECD202">
      <xsd:annotation>
        <xsd:documentation>indiv (individual)</xsd:documentation>
      </xsd:annotation>
    </xsd:enumeration>
    <xsd:enumeration value="OECD203">
      <xsd:annotation>
        <xsd:documentation>alias (alias)</xsd:documentation>
      </xsd:annotation>
    </xsd:enumeration>
    <xsd:enumeration value="OECD204">
      <xsd:annotation>
        <xsd:documentation>nick (nickname)</xsd:documentation>
      </xsd:annotation>
    </xsd:enumeration>
    <xsd:enumeration value="OECD205">
      <xsd:annotation>
        <xsd:documentation>aka (also known as)</xsd:documentation>
      </xsd:annotation>
    </xsd:enumeration>
    <xsd:enumeration value="OECD206">
      <xsd:annotation>
        <xsd:documentation>dba (doing business as)</xsd:documentation>
      </xsd:annotation>
    </xsd:enumeration>
    <xsd:enumeration value="OECD207">
      <xsd:annotation>
        <xsd:documentation>legal (legal name)</xsd:documentation>
      </xsd:annotation>
    </xsd:enumeration>
    <xsd:enumeration value="OECD208">
      <xsd:annotation>
        <xsd:documentation>atbirth (name at birth)</xsd:documentation>
      </xsd:annotation>
    </xsd:enumeration>
  </xsd:restriction>
</xsd:simpleType>
<!-- -->
<!-- Type of the address considered from a legal point of view -->
<xsd:simpleType name="OECDLegalAddressType_EnumType">
  <xsd:annotation>

```



```

    <xsd:documentation xml:lang="en">This is a datatype for an attribute to
    an address. It serves to indicate the legal character of that address
    (residential, business etc.)</xsd:documentation>
  </xsd:annotation>
  <xsd:restriction base="xsd:token">
    <xsd:enumeration value="OECD301">
      <xsd:annotation>
        <xsd:documentation>residentialOrBusiness</xsd:documentation>
      </xsd:annotation>
    </xsd:enumeration>
    <xsd:enumeration value="OECD302">
      <xsd:annotation>
        <xsd:documentation>residential</xsd:documentation>
      </xsd:annotation>
    </xsd:enumeration>
    <xsd:enumeration value="OECD303">
      <xsd:annotation>
        <xsd:documentation>business</xsd:documentation>
      </xsd:annotation>
    </xsd:enumeration>
    <xsd:enumeration value="OECD304">
      <xsd:annotation>
        <xsd:documentation>registeredOffice</xsd:documentation>
      </xsd:annotation>
    </xsd:enumeration>
    <xsd:enumeration value="OECD305">
      <xsd:annotation>
        <xsd:documentation>unspecified</xsd:documentation>
      </xsd:annotation>
    </xsd:enumeration>
  </xsd:restriction>
</xsd:simpleType>
<!-- -->
<!--+++++++ Reusable Complex types ++++++ -->
<!-- -->
<!-- Document specification: Data identifying and describing the document -->
<xsd:complexType name="DocSpec_Type">
  <xsd:annotation>
    <xsd:documentation xml:lang="en">Document specification: Data identifying
    and describing the document, where
    'document' here means the part of a message that is to transmit the data about
    a single block of CRS information. </xsd:documentation>
  </xsd:annotation>
  <xsd:sequence>

    <xsd:element name="DocTypeIndic" type="stf:OECDDocTypeIndic_EnumType"/>
    <xsd:element name="DocRefId" type="xsd:string">
      <xsd:annotation>
        <xsd:documentation xml:lang="en">Sender's unique identifier of this
        document </xsd:documentation>
      </xsd:annotation>
    </xsd:element>
    <xsd:element name="CorrMessageRefId" type="xsd:string" minOccurs="0">
      <xsd:annotation>
        <xsd:documentation xml:lang="en">Reference id of the message of the
        document referred to if this is a correction</xsd:documentation>
      </xsd:annotation>
    </xsd:element>
    <xsd:element name="CorrDocRefId" type="xsd:string" minOccurs="0">
      <xsd:annotation>
        <xsd:documentation xml:lang="en">Reference id of the document
        referred to if this is correction</xsd:documentation>
      </xsd:annotation>
    </xsd:element>
  </xsd:sequence>
</xsd:complexType>
<!-- -->
</xsd:schema>

```

COMMISSION IMPLEMENTING REGULATION (EU) 2015/2379**of 16 December 2015**

derogating from Regulations (EC) Nos 2305/2003, 969/2006 and 1067/2008 and from Implementing Regulation (EU) 2015/2081, Regulation (EC) No 1964/2006 and Implementing Regulation (EU) No 480/2012 and Regulation (EC) No 1918/2006 as regards the dates for lodging import licence applications and issuing import licences in 2016 under tariff quotas for cereals, rice and olive oil, and derogating from Regulation (EC) No 951/2006 as regards the dates for issuing export licences in 2016 in the out-of-quota sugar and isoglucose sectors

THE EUROPEAN COMMISSION,

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

Having regard to Council Regulation (EC) No 1095/96 of 18 June 1996 on the implementation of the concessions set out in Schedule CXL drawn up in the wake of the conclusion of the GATT XXIV.6 negotiations ⁽¹⁾, and in particular Article 1 thereof,

Having regard to Regulation (EU) No 1308/2013 of the European Parliament and of the Council of 17 December 2013 establishing a common organisation of the markets in agricultural products and repealing Council Regulations (EEC) No 922/72, (EEC) No 234/79, (EC) No 1037/2001 and (EC) No 1234/2007 ⁽²⁾, and in particular Articles 20(n), 144(g) and 187(e) thereof,

Whereas:

- (1) Commission Regulations (EC) Nos 2305/2003 ⁽³⁾, 969/2006 ⁽⁴⁾, 1067/2008 ⁽⁵⁾ and Commission Implementing Regulation (EU) 2015/2081 ⁽⁶⁾ lay down specific provisions on the lodging of import licence applications and the issuing of import licences for barley under quota 09.4126, maize under quota 09.4131 and common wheat of a quality other than high quality under quotas 09.4123, 09.4124, 09.4125 and 09.4133 and for certain cereals originating in Ukraine under quotas 09.4306, 09.4307 and 09.4308.
- (2) Commission Regulation (EC) No 1964/2006 ⁽⁷⁾ and Commission Implementing Regulation (EU) No 480/2012 ⁽⁸⁾ lay down specific provisions on the lodging of import licence applications and the issuing of import licences for rice originating in Bangladesh under quota 09.4517 and broken rice under quota 09.4079.
- (3) Commission Regulation (EC) No 1918/2006 ⁽⁹⁾ lays down specific provisions on the lodging of import licence applications and the issuing of import licences for olive oil originating in Tunisia under the quota available.
- (4) In view of the public holidays in 2016, derogations should be made, at certain times, from Regulations (EC) Nos 2305/2003, 969/2006, 1067/2008, Implementing Regulation (EU) 2015/2081, Regulation (EC) Nos 1964/2006, Implementing Regulation (EU) No 480/2012 and Regulation (EC) No 1918/2006 as regards the dates for lodging import licence applications and issuing import licences in order to ensure compliance with the quota volumes in question.

⁽¹⁾ OJ L 146, 20.6.1996, p. 1.

⁽²⁾ OJ L 347, 20.12.2013, p. 671.

⁽³⁾ Commission Regulation (EC) No 2305/2003 of 29 December 2003 opening and providing for the administration of a Community tariff quota for imports of barley from third countries (OJ L 342, 30.12.2003, p. 7).

⁽⁴⁾ Commission Regulation (EC) No 969/2006 of 29 June 2006 opening and providing for the administration of a Community tariff quota for imports of maize from third countries (OJ L 176, 30.6.2006, p. 44).

⁽⁵⁾ Commission Regulation (EC) No 1067/2008 of 30 October 2008 opening and providing for the administration of Community tariff quotas for common wheat of a quality other than high quality from third countries and derogating from Council Regulation (EC) No 1234/2007 (consolidated version) (OJ L 290, 31.10.2008, p. 3).

⁽⁶⁾ Commission Implementing Regulation (EU) 2015/2081 of 18 November 2015 opening and providing for the administration of import tariff quotas for certain cereals originating in Ukraine (OJ L 302, 19.11.2015, p. 81).

⁽⁷⁾ Commission Regulation (EC) No 1964/2006 of 22 December 2006 laying down detailed rules for the opening and administration of an import quota for rice originating in Bangladesh, pursuant to Council Regulation (EEC) No 3491/90 (OJ L 408, 30.12.2006, p. 19).

⁽⁸⁾ Commission Implementing Regulation (EU) No 480/2012 of 7 June 2012 opening and providing for the management of a tariff quota for broken rice falling within CN code 1006 40 00 for the production of food preparations falling within CN code 1901 10 00 (OJ L 148, 8.6.2012, p. 1).

⁽⁹⁾ Commission Regulation (EC) No 1918/2006 of 20 December 2006 opening and providing for the administration of tariff quotas for olive oil originating in Tunisia (OJ L 365, 21.12.2006, p. 84).

- (5) Under Article 7d(1) of Commission Regulation (EC) No 951/2006 ⁽¹⁾, export licences for out-of-quota sugar and isoglucose are issued from the Friday following the week during which the licence applications were lodged, provided that no particular measures have since been taken by the Commission.
- (6) In view of the public holidays in 2016 and the resulting impact on the publication of the *Official Journal of the European Union*, the period between the lodging of applications and the day on which the licences are to be issued will be too short to ensure proper management of the market. That period should therefore be extended.
- (7) The measures provided for in this Regulation are in accordance with the opinion of the Committee for the Common Organisation of Agricultural Markets,

HAS ADOPTED THIS REGULATION:

Article 1

Cereals

1. By way of derogation from the second subparagraph of Article 3(1) of Regulation (EC) No 2305/2003, for 2016, import licence applications for barley under quota 09.4126 may not be lodged before Monday 4 January 2016 or after 13.00 (Brussels time) on Friday 16 December 2016.
2. By way of derogation from the first subparagraph of Article 3(4) of Regulation (EC) No 2305/2003, for 2016, import licences for barley issued under quota 09.4126 and applied for during the periods referred to in Annex I to this Regulation shall be issued on the corresponding dates specified therein, subject to measures adopted pursuant to Article 7(2) of Commission Regulation (EC) No 1301/2006 ⁽²⁾.
3. By way of derogation from the second subparagraph of Article 4(1) of Regulation (EC) No 969/2006, for 2016, import licence applications for maize under quota 09.4131 may not be lodged before Monday 4 January 2016 or after 13.00 (Brussels time) on Friday 16 December 2016.
4. By way of derogation from the first subparagraph of Article 4(4) of Regulation (EC) No 969/2006, for 2016, import licences for maize issued under quota 09.4131 and applied for during the periods referred to in Annex I to this Regulation shall be issued on the corresponding dates specified therein, subject to measures adopted pursuant to Article 7(2) of Regulation (EC) No 1301/2006.
5. By way of derogation from the second subparagraph of Article 4(1) of Regulation (EC) No 1067/2008, for 2016, import licence applications for common wheat of a quality other than high quality under quotas 09.4123, 09.4124, 09.4125 and 09.4133 may not be lodged before Monday 4 January 2016 or after 13.00 (Brussels time) on Friday 16 December 2016.
6. By way of derogation from the first subparagraph of Article 4(4) of Regulation (EC) No 1067/2008, for 2016, import licences for common wheat issued under quotas 09.4123, 09.4124, 09.4125 and 09.4133 and applied for during the periods referred to in Annex I to this Regulation shall be issued on the corresponding dates specified therein, subject to measures adopted pursuant to Article 7(2) of Regulation (EC) No 1301/2006.
7. By way of derogation from the second subparagraph of Article 2(1) of Implementing Regulation (EU) 2015/2081, for 2016, import licence applications for cereals originating in Ukraine under quotas 09.4306, 09.4307 and 09.4308 may not be lodged before Monday 4 January 2016 or after 13.00 (Brussels time) on Friday 16 December 2016.
8. By way of derogation from Article 2(3) of Implementing Regulation (EU) 2015/2081, for 2016, import licences for cereals originating in Ukraine issued under quotas 09.4306, 09.4307 and 09.4308 and applied for during the periods referred to in Annex I to this Regulation shall be issued on the corresponding dates specified therein, subject to measures adopted pursuant to Article 7(2) of Regulation (EC) No 1301/2006.

⁽¹⁾ Commission Regulation (EC) No 951/2006 of 30 June 2006 laying down detailed rules for the implementation of Council Regulation (EC) No 318/2006 as regards trade with third countries in the sugar sector (OJ L 178, 1.7.2006, p. 24).

⁽²⁾ Commission Regulation (EC) No 1301/2006 of 31 August 2006 laying down common rules for the administration of import tariff quotas for agricultural products managed by a system of import licences (OJ L 238, 1.9.2006, p. 13).

*Article 2***Rice**

1. By way of derogation from the first subparagraph of Article 4(3) of Regulation (EC) No 1964/2006, for 2016, import licence applications for rice originating in Bangladesh under quota 09.4517 may not be lodged before Monday 4 January 2016 or after 13.00 (Brussels time) on Friday 9 December 2016.
2. By way of derogation from the third subparagraph of Article 2(1) of Implementing Regulation (EU) No 480/2012, for 2016, import licence applications for broken rice under quota 09.4079 may not be lodged before Monday 4 January 2016 or after 13.00 (Brussels time) on Friday 9 December 2016.

*Article 3***Olive oil**

1. By way of derogation from Article 3(1) of Regulation (EC) No 1918/2006, import licence applications for olive oil originating in Tunisia may not be lodged after Tuesday 13 December 2016.
2. By way of derogation from Article 3(3) of Regulation (EC) No 1918/2006, import licences for olive oil originating in Tunisia applied for during the periods referred to in Annex II to this Regulation shall be issued on the corresponding dates specified therein, subject to measures adopted pursuant to Article 7(2) of Regulation (EC) No 1301/2006.

*Article 4***Out-of-quota sugar and isoglucose**

By way of derogation from Article 7d(1) of Regulation (EC) No 951/2006, export licences for out-of-quota sugar and isoglucose for which applications are lodged during the periods referred to in Annex III to this Regulation shall be issued on the corresponding dates specified therein, taking account where applicable of the specific measures referred to in Article 9(1) and (2) of Regulation (EC) No 951/2006.

*Article 5***Entry into force**

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

It shall expire on 10 January 2017.

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

Done at Brussels, 16 December 2015.

*For the Commission,
On behalf of the President,
Jerzy PLEWA*

Director-General for Agriculture and Rural Development

ANNEX I

Periods for lodging cereal import licence applications	Dates of issue
Friday 18 March from 13.00 until Friday 25 March 2016 at 13.00, Brussels time	The first working day from Monday 4 April 2016
Friday 21 October from 13.00 until Friday 28 October 2016 at 13.00, Brussels time	The first working day from Monday 7 November 2016

ANNEX II

Periods for lodging olive oil import licence applications	Dates of issue
Monday 21 or Tuesday 22 March 2016	The first working day from Friday 1 April 2016
Monday 2 or Tuesday 3 May 2016	The first working day from Friday 13 May 2016
Monday 9 or Tuesday 10 May 2016	The first working day from Wednesday 18 May 2016
Monday 18 or Tuesday 19 July 2016	The first working day from Wednesday 27 July 2016
Monday 8 or Tuesday 9 August 2016	The first working day from Wednesday 17 August 2016
Monday 24 or Tuesday 25 October 2016	The first working day from Thursday 3 November 2016

ANNEX III

Periods for lodging export licence applications for out-of-quota sugar and isoglucose	Dates of issue
Monday 24 to Friday 28 October 2016	The first working day from Tuesday 8 November 2016
Monday 19 to Friday 23 December 2016	The first working day from Friday 6 January 2017

COMMISSION IMPLEMENTING REGULATION (EU) 2015/2380**of 16 December 2015****amending Regulation (EC) No 1484/95 as regards fixing representative prices in the poultrymeat and egg sectors and for egg albumin**

THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EU) No 1308/2013 of the European Parliament and of the Council of 17 December 2013 establishing a common organisation of the markets in agricultural products and repealing Council Regulations (EEC) No 922/72, (EEC) No 234/79, (EC) No 1037/2001 and (EC) No 1234/2007 ⁽¹⁾, and in particular Article 183(b) thereof,Having regard to Regulation (EU) No 510/2014 of the European Parliament and of the Council of 16 April 2014 laying down the trade arrangements applicable to certain goods resulting from the processing of agricultural products and repealing Council Regulations (EC) No 1216/2009 and (EC) No 614/2009 ⁽²⁾, and in particular Article 5(6)(a) thereof,

Whereas:

- (1) Commission Regulation (EC) No 1484/95 ⁽³⁾ lays down detailed rules for implementing the system of additional import duties and fixes representative prices in the poultrymeat and egg sectors and for egg albumin.
- (2) Regular monitoring of the data used to determine representative prices for poultrymeat and egg products and for egg albumin shows that the representative import prices for certain products should be amended to take account of variations in price according to origin.
- (3) Regulation (EC) No 1484/95 should be amended accordingly.
- (4) Given the need to ensure that this measure applies as soon as possible after the updated data have been made available, this Regulation should enter into force on the day of its publication,

HAS ADOPTED THIS REGULATION:

Article 1

Annex I to Regulation (EC) No 1484/95 is replaced by the text set out in the Annex to this Regulation.

*Article 2*This Regulation shall enter into force on the day of its publication in the *Official Journal of the European Union*.⁽¹⁾ OJ L 347, 20.12.2013, p. 671.⁽²⁾ OJ L 150, 20.5.2014, p. 1.⁽³⁾ Commission Regulation (EC) No 1484/95 of 28 June 1995 laying down detailed rules for implementing the system of additional import duties and fixing representative prices in the poultrymeat and egg sectors and for egg albumin, and repealing Regulation (EEC) No 163/67 (OJ L 145, 29.6.1995, p. 47).

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

Done at Brussels, 16 December 2015.

*For the Commission,
On behalf of the President,
Jerzy PLEWA
Director-General for Agriculture and Rural Development*

ANNEX

ANNEX I

CN code	Description of goods	Representative price (EUR/100 kg)	Security under Article 3 (EUR/100 kg)	Origin ⁽¹⁾
0207 12 10	Fowls of the species <i>Gallus domesticus</i> , not cut in pieces, presented as "70 % chickens", frozen	130,1	0	AR
0207 12 90	Fowls of the species <i>Gallus domesticus</i> , not cut in pieces, presented as "65 % chickens", frozen	154,5	0	AR
		145,7	0	BR
0207 14 10	Fowls of the species <i>Gallus domesticus</i> , boneless cuts, frozen	286,0	4	AR
		197,1	32	BR
		343,8	0	CL
		219,0	24	TH
0207 27 10	Turkeys, boneless cuts, frozen	329,9	0	BR
		244,7	16	CL
0408 91 80	Eggs, not in shell, dried	431,0	0	AR
1602 32 11	Preparations of fowls of the species <i>Gallus domesticus</i> , uncooked	225,1	19	BR

⁽¹⁾ Nomenclature of countries laid down by Commission Regulation (EU) No 1106/2012 of 27 November 2012 implementing Regulation (EC) No 471/2009 of the European Parliament and of the Council on Community statistics relating to external trade with non-member countries, as regards the update of the nomenclature of countries and territories (OJ L 328, 28.11.2012, p. 7). The code "ZZ" represents "other origins".

COMMISSION REGULATION (EU) 2015/2381**of 17 December 2015****implementing Regulation (EC) No 1059/2003 of the European Parliament and the Council on the establishment of a common classification of territorial units for statistics (NUTS), as regards the transmission of the time series for the new regional breakdown**

THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EC) No 1059/2003 of the European Parliament and of the Council of 26 May 2003 on the establishment of a common classification of territorial units for statistics (NUTS) ⁽¹⁾, and in particular Article 5(5) thereof,

Whereas:

- (1) Regulation (EC) No 1059/2003 constitutes the legal framework for the regional classification in order to enable the collection, compilation and dissemination of harmonised regional statistics in the Union.
- (2) According to Article 5(5) of Regulation (EC) No 1059/2003, when an amendment is made to the NUTS classification, the Member State concerned should transmit to the Commission the time series for the new regional breakdown to replace data already transmitted. The list of the time series and their length should be specified by the Commission taking into account the feasibility of providing them. These time series are to be supplied within 2 years of the amendment to the NUTS classification.
- (3) The NUTS classification has been amended by Commission Regulation (EU) No 1319/2013 ⁽²⁾ with effect from 1 January 2015 and Commission Regulation (EU) No 868/2014 ⁽³⁾ with effect from 1 January 2016.
- (4) The measures provided for in this Regulation are in accordance with the opinion of the European Statistical System Committee,

HAS ADOPTED THIS REGULATION:

Article 1

Member States shall transmit to the Commission the time series for the new regional breakdown in accordance with the list specified in the Annex.

*Article 2*This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.⁽¹⁾ OJ L 154, 21.6.2003, p. 1.⁽²⁾ Commission Regulation (EU) No 1319/2013 of 9 December 2013 amending annexes to Regulation (EC) No 1059/2003 of the European Parliament and of the Council on the establishment of a common classification of territorial units for statistics (NUTS) (OJ L 342, 18.12.2013, p. 1).⁽³⁾ Commission Regulation (EU) No 868/2014 of 8 August 2014 amending the annexes to Regulation (EC) No 1059/2003 of the European Parliament and of the Council on the establishment of a common classification of territorial units for statistics (NUTS) (OJ L 241, 13.8.2014, p. 1).

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

Done at Brussels, 17 December 2015.

For the Commission
The President
 Jean-Claude JUNCKER

ANNEX

Required starting year by statistical domain

Domain	NUTS level 2	NUTS level 3
Agriculture — agricultural accounts	2007 ⁽¹⁾	
Agriculture — animal populations	2010	
Agriculture — crop production	2007	
Agriculture — milk production	2010	
Agriculture — structure of agricultural holdings	2010	2010 ⁽¹⁾
Demography — population, live births, deaths	1990 ⁽²⁾	1990 ⁽²⁾
Labour market — employment, unemployment	2010	2010 ⁽¹⁾
Environment — waste treatment facilities	2010	
Health — causes of death	1994 ⁽³⁾	
Health — infrastructure	1993 ⁽¹⁾	
Health — patients	2000 ⁽¹⁾	
Information society	2010 ⁽¹⁾	
Regional economic accounts — Household accounts	2000	
Regional economic accounts — Regional accounts	2000	2000
Science and technology — R & D expenditure and staff	2011	
Tourism	2012	

⁽¹⁾ The transmission is not mandatory.

⁽²⁾ The transmission is not mandatory for reference years 1990 to 2012.

⁽³⁾ The transmission is not mandatory for reference years 1994 to 2010.

COMMISSION IMPLEMENTING REGULATION (EU) 2015/2382**of 17 December 2015****concerning the authorisation of the preparation of alpha-galactosidase (EC 3.2.1.22) produced by *Saccharomyces cerevisiae* (CBS 615.94) and endo-1,4-beta-glucanase (EC 3.2.1.4) produced by *Aspergillus niger* (CBS 120604) as a feed additive for laying hens and minor poultry species for laying (holder of the authorisation Kerry Ingredients and Flavours)****(Text with EEA relevance)**

THE EUROPEAN COMMISSION,

Having regard to Regulation (EC) No 1831/2003 of the European Parliament and of the Council of 22 September 2003 on additives for use in animal nutrition ⁽¹⁾, and in particular Article 9(2) thereof,

Whereas:

- (1) Regulation (EC) No 1831/2003 provides for the authorisation of additives for use in animal nutrition and for the grounds and procedures for granting such authorisation.
- (2) In accordance with Article 7 of Regulation (EC) No 1831/2003 an application was submitted for the authorisation of the preparation of alpha-galactosidase (EC 3.2.1.22) produced by *Saccharomyces cerevisiae* (CBS 615.94) and endo-1,4-beta-glucanase (EC 3.2.1.4) produced by *Aspergillus niger* (CBS 120604). That application was accompanied by the particulars and documents required under Article 7(3) of Regulation (EC) No 1831/2003.
- (3) That application concerns the authorisation of the preparation of alpha-galactosidase (EC 3.2.1.22) produced by *Saccharomyces cerevisiae* (CBS 615.94) and endo-1,4-beta-glucanase (EC 3.2.1.4) produced by *Aspergillus niger* (CBS 120604) as a feed additive for laying hens and minor poultry species for laying, to be classified in the additive category 'zootechnical additives'.
- (4) The use of preparation of alpha-galactosidase (EC 3.2.1.22) produced by *Saccharomyces cerevisiae* (CBS 615.94) and endo-1,4-beta-glucanase (EC 3.2.1.4) produced by *Aspergillus niger* (CBS 120604) was authorised for 10 years for chickens for fattening by Commission Implementing Regulation (EU) No 237/2012 ⁽²⁾ and for chickens reared for laying and minor poultry species for fattening Commission Implementing Regulation (EU) No 1365/2013 ⁽³⁾.
- (5) The European Food Safety Authority ('the Authority') concluded in its opinion of 28 April 2015 ⁽⁴⁾ that, under the proposed conditions of use, the preparation of alpha-galactosidase (EC 3.2.1.22) produced by *Saccharomyces cerevisiae* (CBS 615.94) and endo-1,4-beta-glucanase (EC 3.2.1.4) produced by *Aspergillus niger* (CBS 120604) does not have an adverse effect on animal health, human health or the environment, and that it has a potential to improve the egg weight in laying hens. Since the mode of action can be considered to be the same, this conclusion can be extrapolated to minor poultry species for laying. The Authority does not consider that there is a need for specific requirements of post-market monitoring. It also verified the report on the method of analysis of the feed additive in feed submitted by the Reference Laboratory set up by Regulation (EC) No 1831/2003.
- (6) The assessment of the preparation of alpha-galactosidase (EC 3.2.1.22) produced by *Saccharomyces cerevisiae* (CBS 615.94) and endo-1,4-beta-glucanase (EC 3.2.1.4) produced by *Aspergillus niger* (CBS 120604) shows that the conditions for authorisation, as provided for in Article 5 of Regulation (EC) No 1831/2003, are satisfied. Accordingly, the use of that preparation should be authorised as specified in the Annex to this Regulation.
- (7) The measures provided for in this Regulation are in accordance with the opinion of the Standing Committee on Plants, Animals, Food and Feed,

⁽¹⁾ OJ L 268, 18.10.2003, p. 29.

⁽²⁾ Commission Implementing Regulation (EU) No 237/2012 of 19 March 2012 concerning the authorisation of alpha-galactosidase (EC 3.2.1.22) produced by *Saccharomyces cerevisiae* (CBS 615.94) and endo-1,4-beta-glucanase (EC 3.2.1.4) produced by *Aspergillus niger* (CBS 120604) as a feed additive for chickens for fattening (holder of authorisation Kerry Ingredients and Flavours) (OJ L 80, 20.3.2012, p. 1).

⁽³⁾ Commission Implementing Regulation (EU) No 1365/2013 of 18 December 2013 concerning the authorisation of a preparation of alpha-galactosidase produced by *Saccharomyces cerevisiae* (CBS 615.94) and endo-1,4-beta-glucanase produced by *Aspergillus niger* (CBS 120604) as a feed additive for minor poultry species for fattening and for chickens reared for laying (holder of authorisation Kerry Ingredients and Flavours) (OJ L 343, 19.12.2013, p. 31).

⁽⁴⁾ EFSA Journal 2015; 13(5):4107.

HAS ADOPTED THIS REGULATION:

Article 1

The preparation specified in the Annex, belonging to the additive category 'zootechnical additives' and to the functional group 'digestibility enhancers', is authorised as an additive in animal nutrition, subject to the conditions laid down in that Annex.

Article 2

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

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

Done at Brussels, 17 December 2015.

For the Commission
The President
Jean-Claude JUNCKER

ANNEX

Identification number of the additive	Name of the holder of authorisation	Additive	Composition, chemical formula, description, analytical method	Species or category of animal	Maximum age	Minimum content	Maximum content	Other provisions	End of period of authorisation
						Units of activity/kg of complete feedingstuff with a moisture content of 12 %			

Category of zootechnical additives. Functional group: digestibility enhancers

4a17	Kerry Ingredients and Flavours	Alpha-galactosidase (EC 3.2.1.22) Endo-1,4-beta-glucanase (EC 3.2.1.4)	<p><i>Additive composition</i></p> <p>Preparation of alpha-galactosidase (EC 3.2.1.22) produced by <i>Saccharomyces cerevisiae</i> (CBS 615.94) and endo-1,4-beta-glucanase (EC 3.2.1.4) produced by <i>Aspergillus niger</i> (CBS 120604), solid form, with a minimum activity of:</p> <ul style="list-style-type: none"> — 1 000 U ⁽¹⁾ alpha-galactosidase/g: — 5 700 U ⁽²⁾ endo-1,4-beta-glucanase/g. <p><i>Characterisation of the active substance</i></p> <p>Alpha-galactosidase produced by <i>Saccharomyces cerevisiae</i> (CBS 615.94) Endo-1,4-beta-glucanase produced by <i>Aspergillus niger</i> (CBS 120604)</p> <p><i>Method of Analysis</i> ⁽³⁾</p> <p>Determination:</p> <ul style="list-style-type: none"> — colorimetric method measuring p-nitrophenol released by action of alpha-galactosidase from p-nitrophenyl-alpha-galactopyranoside substrate, — colorimetric method measuring water soluble dye released by action of endo-1,4-beta-glucanase from azurine-crosslinked barley glucan substrate. 	Laying hens Minor poultry species for laying	—	100 U alpha-galactosidase 570 U endo-1,4-beta-glucanase	—	<ol style="list-style-type: none"> 1. In the directions for use of the additive and premixture, indicate the storage temperature, storage life, and stability to pelleting. 2. Maximum recommended dose: <ul style="list-style-type: none"> — 100 U alpha-galactosidase/kg — 570 U endo-1,4-beta-glucanase/kg. 3. For safety: breathing protection, glasses and gloves shall be used during handling. 	7 January 2026
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⁽¹⁾ 1 U is the amount of the enzyme which liberates 1 µmol of p-nitrophenol per minute from p-nitrophenyl-alpha-galactopyranoside (pNPG) at pH 5,0 and 37 °C.

⁽²⁾ 1 U is the amount of the enzyme which liberates 1 mg of reducing sugar (glucose equivalent) per minute from beta-glucan at pH 5,0 and 50 °C.

⁽³⁾ Details of the analytical methods are available at the following address of the Reference Laboratory: <https://ec.europa.eu/jrc/en/eurl/feed-additives/evaluation-reports>.

COMMISSION IMPLEMENTING REGULATION (EU) 2015/2383**of 17 December 2015****amending Annex I to Regulation (EC) No 669/2009 as regards the list of feed and food of non-animal origin subject to an increased level of official controls on imports****(Text with EEA relevance)**

THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EC) No 882/2004 of the European Parliament and of the Council of 29 April 2004 on official controls performed to ensure the verification of compliance with feed and food law, animal health and animal welfare rules ⁽¹⁾, and in particular Article 15(5) thereof,

Whereas:

- (1) Commission Regulation (EC) No 669/2009 ⁽²⁾ lays down rules concerning the increased level of official controls to be carried out on imports of feed and food of non-animal origin listed in Annex I thereto ('the list'), at the points of entry into the territories referred to in Annex I to Regulation (EC) No 882/2004.
- (2) Article 2 of Regulation (EC) No 669/2009 provides that the list is to be reviewed on a regular basis, and at least quarterly, taking into account at least the sources of information referred to in that Article.
- (3) The occurrence and relevance of recent food incidents notified through the Rapid Alert System for Food and Feed, the findings of audits to third countries carried out by the Food and Veterinary Office, as well as the quarterly reports on consignments of feed and food of non-animal origin submitted by Member States to the Commission in accordance with Article 15 of Regulation (EC) No 669/2009 indicate that the list should be amended.
- (4) In particular, the list should be amended by deleting the entries for commodities for which the available information indicates an overall satisfactory degree of compliance with the relevant safety requirements provided for in Union legislation and for which an increased level of official controls is therefore no longer justified. The entry in the list concerning table grapes from Peru should therefore be deleted.
- (5) In order to ensure consistency and clarity, it is appropriate to replace Annex I to Regulation (EC) No 669/2009 by the text set out in the Annex to this Regulation.
- (6) Regulation (EC) No 669/2009 should therefore be amended accordingly.
- (7) The measures provided for in this Regulation are in accordance with the opinion of the Standing Committee on Plants, Animals, Food and Feed,

HAS ADOPTED THIS REGULATION:

Article 1

Annex I to Regulation (EC) No 669/2009 is amended in accordance with the Annex to this Regulation.

⁽¹⁾ OJ L 165, 30.4.2004, p. 1.⁽²⁾ Commission Regulation (EC) No 669/2009 of 24 July 2009 implementing Regulation (EC) No 882/2004 of the European Parliament and of the Council as regards the increased level of official controls on imports of certain feed and food of non-animal origin and amending Decision 2006/504/EC (OJ L 194, 25.7.2009, p. 11).

Article 2

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

It shall apply from 1 January 2016.

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

Done at Brussels, 17 December 2015.

For the Commission
The President
Jean-Claude JUNCKER

ANNEX

ANNEX I

Feed and food of non-animal origin subject to an increased level of official controls at the designated point of entry

Feed and food (intended use)	CN code (1)	TARIC sub-division	Country of origin	Hazard	Frequency of physical and identity checks (%)
Dried grapes (vine fruit) (Food)	0806 20		Afghanistan (AF)	Ochratoxin A	50
— Almonds, in shell — Almonds, shelled (Food)	— 0802 11 — 0802 12		Australia (AU)	Aflatoxins	20
— Groundnuts (peanuts), in shell — Groundnuts (peanuts), shelled — Peanut butter — Groundnuts (peanuts), otherwise prepared or preserved (Feed and food)	— 1202 41 00 — 1202 42 00 — 2008 11 10 — 2008 11 91; 2008 11 96; 2008 11 98		Brazil (BR)	Aflatoxins	10
— Yardlong beans (<i>Vigna unguiculata</i> spp. <i>sesquipedalis</i>) — Aubergines (Food — fresh, chilled or frozen vegetables)	— ex 0708 20 00; ex 0710 22 00 — 0709 30 00; ex 0710 80 95	10 10 72	Cambodia (KH)	Pesticide residues (2) (3)	50
Chinese celery (<i>Apium graveolens</i>) (Food — fresh or chilled herb)	ex 0709 40 00	20	Cambodia (KH)	Pesticide residues (2) (4)	50
<i>Brassica oleracea</i> (other edible Brassica, “Chinese Broccoli”) (5) (Food — fresh or chilled)	ex 0704 90 90	40	China (CN)	Pesticide residues (2)	50
Tea, whether or not flavoured (Food)	0902		China (CN)	Pesticide residues (2) (6)	10
— Aubergines — Bitter melon (<i>Momordica charantia</i>) (Food — fresh, chilled or frozen vegetables)	— 0709 30 00; ex 0710 80 95 — ex 0709 99 90; ex 0710 80 95	72 70 70	Dominican Republic (DO)	Pesticide residues (2) (7)	10

Feed and food (intended use)	CN code (1)	TARIC sub-division	Country of origin	Hazard	Frequency of physical and identity checks (%)
— Yardlong beans (<i>Vigna unguiculata</i> spp. <i>sesquipedalis</i>) — Peppers (sweet and other than sweet) (<i>Capsicum</i> spp.) (Food — fresh, chilled or frozen vegetables)	— ex 0708 20 00; ex 0710 22 00 — 0709 60 10; 0710 80 51 — ex 0709 60 99; ex 0710 80 59	10 10 20 20	Dominican Republic (DO)	Pesticide residues (2) (7)	20
Strawberries (fresh) (Food)	0810 10 00		Egypt (EG)	Pesticide residues (2) (8)	10
Peppers (sweet and other than sweet) (<i>Capsicum</i> spp.) (Food — fresh, chilled or frozen)	— 0709 60 10; 0710 80 51 — ex 0709 60 99; ex 0710 80 59	20 20	Egypt (EG)	Pesticide residues (2) (9)	10
— Groundnuts (peanuts), in shell — Groundnuts (peanuts), shelled — Peanut butter — Groundnuts (peanuts), otherwise prepared or preserved (Feed and food)	— 1202 41 00 — 1202 42 00 — 2008 11 10 — 2008 11 91; 2008 11 96; 2008 11 98		Gambia (GM)	Aflatoxins	50
Betel leaves (<i>Piper betle</i> L.) (Food)	ex 1404 90 00	10	India (IN)	Salmonella (10)	50
Sesamum seeds (Food — fresh or chilled)	1207 40 90		India (IN)	Salmonella (10)	20
— <i>Capsicum annuum</i> , whole — <i>Capsicum annuum</i> , crushed or ground — Dried fruit of the genus <i>Capsicum</i> , whole, other than sweet peppers (<i>Capsicum annuum</i>) — Nutmeg (<i>Myristica fragrans</i>) (Food — dried spices)	— 0904 21 10 — ex 0904 22 00 — 0904 21 90 — 0908 11 00; 0908 12 00	10	India (IN)	Aflatoxins	20
Enzymes; prepared enzymes (Feed and food)	3507		India (IN)	Chloramphenicol	50
— Nutmeg (<i>Myristica fragrans</i>) (Food — dried spices)	— 0908 11 00; 0908 12 00		Indonesia (ID)	Aflatoxins	20

Feed and food (intended use)	CN code (1)	TARIC sub-division	Country of origin	Hazard	Frequency of physical and identity checks (%)
Peas with pods (unshelled) (Food — fresh or chilled)	ex 0708 10 00	40	Kenya (KE)	Pesticide residues (2) (11)	10
Raspberries (Food — frozen)	0811 20 31; ex 0811 20 11; ex 0811 20 19	10 10	Serbia (RS)	Norovirus	10
Watermelon (<i>Egusi, Citrullus lanatus</i>) seeds and derived products (Food)	ex 1207 70 00; ex 1106 30 90; ex 2008 99 99	10 30 50	Sierra Leone (SL)	Aflatoxins	50
— Groundnuts (peanuts), in shell — Groundnuts (peanuts), shelled — Peanut butter — Groundnuts (peanuts), otherwise prepared or preserved (Feed and food)	— 1202 41 00 — 1202 42 00 — 2008 11 10 — 2008 11 91; 2008 11 96; 2008 11 98		Sudan (SD)	Aflatoxins	50
Peppers (other than sweet) (<i>Capsicum</i> spp.) (Food — fresh or chilled)	ex 0709 60 99	20	Thailand (TH)	Pesticide residues (2) (12)	10
— Yardlong beans (<i>Vigna unguiculata</i> spp. <i>sesquipedalis</i>) — Aubergines (Food — fresh, chilled or frozen vegetables)	— ex 0708 20 00; ex 0710 22 00 — 0709 30 00; ex 0710 80 95	10 10 72	Thailand (TH)	Pesticide residues (2) (13)	20
— Dried apricots — Apricots, otherwise prepared or preserved (Food)	— 0813 10 00 — 2008 50 61		Turkey (TR)	Sulphites (14)	10
— Sweet Peppers (<i>Capsicum annuum</i>) (Food — fresh, chilled or frozen vegetables)	— 0709 60 10; 0710 80 51		Turkey (TR)	Pesticide residues (2) (15)	10
Vine leaves (Food)	ex 2008 99 99	11; 19	Turkey (TR)	Pesticide residues (2) (16)	50

Feed and food (intended use)	CN code ⁽¹⁾	TARIC sub-division	Country of origin	Hazard	Frequency of physical and identity checks (%)
— Pistachios, in shell — Pistachios, shelled (Food)	— 0802 51 00 — 0802 52 00		United States (US)	Aflatoxins	20
— Dried apricots — Apricots, otherwise prepared or preserved (Food)	— 0813 10 00 — 2008 50 61		Uzbekistan (UZ)	Sulphites ⁽¹⁴⁾	50
— Coriander leaves — Basil (holy, sweet) — Mint — Parsley (Food — fresh or chilled herbs)	— ex 0709 99 90 — ex 1211 90 86; ex 2008 99 99 — ex 1211 90 86; ex 2008 99 99 — ex 0709 99 90	72 20 75 30 70 40	Viet Nam (VN)	Pesticide residues ⁽²⁾ ⁽¹⁷⁾	50
— Okra — Peppers (other than sweet) (<i>Capsicum</i> spp.) (Food — fresh or chilled)	— ex 0709 99 90 — ex 0709 60 99	20 20	Viet Nam (VN)	Pesticide residues ⁽²⁾ ⁽¹⁷⁾	50
— Pitahaya (dragon fruit) (Food — fresh or chilled)	— ex 0810 90 20	10	Viet Nam (VN)	Pesticide residues ⁽²⁾ ⁽¹⁷⁾	20

⁽¹⁾ Where only certain products under any CN code are required to be examined and no specific subdivision under that code exists, the CN code is marked "ex".

⁽²⁾ Residues of at least those pesticides listed in the control programme adopted in accordance with Article 29(2) of Regulation (EC) No 396/2005 of the European Parliament and of the Council of 23 February 2005 on maximum residue levels of pesticides in or on food and feed of plant and animal origin and amending Council Directive 91/414/EEC (OJ L 70, 16.3.2005, p. 1) that can be analysed with multi-residue methods based on GC-MS and LC-MS (pesticides to be monitored in/on products of plant origin only).

⁽³⁾ Residues of Chlorbufam.

⁽⁴⁾ Residues of Phenthoate.

⁽⁵⁾ Species of *Brassica oleracea* L. convar. *Botrytis* (L) Alef var. *Italica* Plenck, cultivar *albuglabra*. Also known as "Kai Lan", "Gai Lan", "Gailan", "Kailan", "Chinese bare Jielan".

⁽⁶⁾ Residues of Trifluralin.

⁽⁷⁾ Residues of Acephate, Aldicarb (sum of aldicarb, its sulfoxide and its sulfone, expressed as aldicarb), Amitraz (amitraz including the metabolites containing the 2,4-dimethylaniline moiety expressed as amitraz), Diafenthiuron, Dicofol (sum of p, p' and o,p' isomers), Dithiocarbamates (dithiocarbamates expressed as CS₂, including maneb, mancozeb, metiram, propineb, thiram and ziram) and Methiocarb (sum of methiocarb and methiocarb sulfoxide and sulfone, expressed as methiocarb).

⁽⁸⁾ Residues of Hexaflumuron, Methiocarb (sum of methiocarb and methiocarb sulfoxide and sulfone, expressed as methiocarb), Phenthoate and Thiophanate-methyl.

⁽⁹⁾ Residues of Dicofol (sum of p, p' and o,p' isomers), Dinotefuran, Folpet, Prochloraz (sum of prochloraz and its metabolites containing the 2,4,6-Trichlorophenol moiety expressed as prochloraz), Thiophanate-methyl and Triforine.

⁽¹⁰⁾ Reference method EN/ISO 6579 or a method validated against it as referred to in Article 5 of Commission Regulation (EC) No 2073/2005 of 15 November 2005 on microbiological criteria for foodstuffs (OJ L 338, 22.12.2005, p. 1).

⁽¹¹⁾ Residues of Acephate and Diafenthiuron.

⁽¹²⁾ Residues of Formetanate: Sum of formetanate and its salts expressed as formetanate (hydrochloride), Prothiofos and Triforine.

⁽¹³⁾ Residues of Acephate, Dicrotophos, Prothiofos, Quinalphos and Triforine.

⁽¹⁴⁾ Reference methods: EN 1988-1:1998, EN 1988-2:1998 or ISO 5522:1981.

⁽¹⁵⁾ Residues of Diafenthiuron, Formetanate: Sum of formetanate and its salts expressed as formetanate (hydrochloride) and Thiophanate-methyl.

⁽¹⁶⁾ Residues of Dithiocarbamates (dithiocarbamates expressed as CS₂, including maneb, mancozeb, metiram, propineb, thiram and ziram) and Metrafenone.

⁽¹⁷⁾ Residues of Dithiocarbamates (dithiocarbamates expressed as CS₂, including maneb, mancozeb, metiram, propineb, thiram and ziram), Phenthoate and Quinalphos.

COMMISSION IMPLEMENTING REGULATION (EU) 2015/2384**of 17 December 2015****imposing a definitive anti-dumping duty on imports of certain aluminium foils originating in the People's Republic of China and terminating the proceeding for imports of certain aluminium foils originating in Brazil following an expiry review pursuant to Article 11(2) of Council Regulation (EC) No 1225/2009**

THE EUROPEAN COMMISSION,

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

Having regard to Council Regulation (EC) No 1225/2009 of 30 November 2009 on protection against dumped imports from countries not members of the European Community ⁽¹⁾ ('the basic Regulation'), and in particular Article 11(2) thereof,

Whereas:

A. PROCEDURE**1. Measures in force**

- (1) Following an anti-dumping investigation ('the original investigation'), the Council imposed, by means of Regulation (EC) No 925/2009 ⁽²⁾, a definitive anti-dumping duty on imports of certain aluminium foil originating in Armenia, Brazil and the People's Republic of China ('the PRC' or 'China').
- (2) The measures took the form of an *ad valorem* duty established at 13,4 % on imports from Armenia, at 17,6 % on imports from Brazil and at 30 % on imports from the PRC, with the exception of Alcoa (Shanghai) Aluminium Products Co., Ltd (6,4 %), Alcoa (Bohai) Aluminium Industries Co., Ltd (6,4 %), Shandong Loften Aluminium Foil Co., Ltd (20,3 %) and Zhenjiang Dingsheng Aluminium Co., Ltd (24,2 %).
- (3) An undertaking offered by one Brazilian exporting producer was accepted by the Commission by means of Commission Decision 2009/736/EC ⁽³⁾.

2. Request for an expiry review

- (4) Following the publication of a notice of impending expiry ⁽⁴⁾ of the anti-dumping measures in force, the Commission received a request for the initiation of an expiry review of the measures against Brazil and the PRC pursuant to Article 11(2) of the basic Regulation.
- (5) The request was lodged by AFM Aluminiumfolie Merseburg GmbH, Alcomet AD, Eurofoil Luxembourg SA, Hydro Aluminium Rolled Products GmbH, Impol d.o.o. and Symetal SA, ('the applicants') on behalf of producers representing more than 25 % of the total Union production of certain aluminium foils.

⁽¹⁾ OJ L 343, 22.12.2009, p. 51.

⁽²⁾ Council Regulation (EC) No 925/2009 of 24 September 2009 imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of certain aluminium foil originating in Armenia, Brazil and the People's Republic of China (OJ L 262, 6.10.2009, p. 1).

⁽³⁾ Commission Decision 2009/736/EC of 5 October 2009 accepting an undertaking offered in connection with the anti-dumping proceeding concerning imports of certain aluminium foil originating, inter alia, in Brazil (OJ L 262, 6.10.2009, p. 50).

⁽⁴⁾ Notice of the impending expiry of certain anti-dumping measures (OJ C 49, 21.2.2014, p. 7).

- (6) The request was based on the grounds that the expiry of the measures would be likely to result in a continuation or recurrence of dumping and injury to the Union industry.
- (7) The applicants did not request the initiation of an expiry review investigation of the anti-dumping measures against imports originating in Armenia. These measures therefore lapsed on 7 October 2014 ⁽¹⁾.

3. Initiation of an expiry review

- (8) Having determined, after consulting the Advisory Committee, that sufficient evidence existed for the initiation of an expiry review, the Commission announced on 4 October 2014, by a notice published in the *Official Journal of the European Union* ⁽²⁾ ('Notice of Initiation'), the initiation of an expiry review pursuant to Article 11(2) of the basic Regulation.

4. Parallel anti-dumping investigation

- (9) In parallel, on 8 October 2014, the Commission announced the initiation of an anti-dumping investigation pursuant Article 5 of the basic Regulation with regard to imports into the Union of certain aluminium foils originating in Russia ⁽³⁾ (the 'parallel investigation').
- (10) In that investigation, the Commission imposed in July 2015, by means of Regulation (EU) 2015/1081 ⁽⁴⁾, a provisional anti-dumping duty on imports of certain aluminium foils originating in Russia. The provisional measures were imposed for a period of six months.
- (11) On 17 December 2015, the Commission imposed, by means of Regulation (EU) No 2015/2385 ⁽⁵⁾, a definitive anti-dumping duty on imports of certain aluminium foils originating in Russia.
- (12) The two parallel investigations covered the same review investigation period and the same period considered as defined in recital 13.

5. Investigation

5.1. Review investigation period and period considered

- (13) The investigation of the likelihood of continuation or recurrence of dumping and injury covered the period from 1 October 2013 to 30 September 2014 (the 'review investigation period'). The examination of the trends relevant for the assessment of the likelihood of a continuation or recurrence of injury covered the period from 1 January 2011 to the end of the review investigation period (the 'period considered').

5.2. Parties concerned by the investigation and sampling

- (14) The Commission officially advised the applicants, the other known Union producers, the exporting producers in Brazil and the PRC, the known importers, the users and traders known to be concerned, and the representatives of the exporting countries, of the initiation of the expiry review.

⁽¹⁾ Notice of the expiry of certain anti-dumping measures (OJ C 350, 4.10.2014, p. 22).

⁽²⁾ Notice of initiation of an expiry review of the anti-dumping measures applicable to imports of certain aluminium foils originating in Brazil and the People's Republic of China (OJ C 350, 4.10.2014, p. 11).

⁽³⁾ Notice of initiation of an anti-dumping proceeding concerning imports of certain aluminium foils originating in Russia (OJ C 354, 8.10.2014, p. 14).

⁽⁴⁾ Commission Implementing Regulation (EU) 2015/1081 of 3 July 2015 imposing a provisional anti-dumping duty on imports of certain aluminium foils originating in Russia (OJ L 175, 4.7.2015, p. 14).

⁽⁵⁾ Commission Implementing Regulation (EU) 2015/2385 of 17 December 2015 imposing a definitive anti-dumping duty on imports of certain aluminium foils originating in Russia (see page 91 of this Official Journal).

- (15) Interested parties were given the opportunity to make their views known in writing and to request a hearing within the time limit set out in the Notice of Initiation. All interested parties, who so requested and showed that there were particular reasons why they should be heard, were granted a hearing.
- (16) In its Notice of Initiation, the Commission announced that it might sample the exporting producers in the PRC, Union producers and unrelated importers in accordance with Article 17 of the basic Regulation. No sampling was foreseen for exporting producers in Brazil.

Sampling of exporting producers in the PRC

- (17) Out of 12 known Chinese producers, two submitted a reply to the sampling questionnaire. In view of the limited number of cooperating companies, no sampling was required.

Sampling of Union producers

- (18) In its Notice of Initiation, the Commission stated that it had provisionally selected a sample of Union producers. In accordance with Article 17(1) of the basic Regulation, the Commission selected the sample on the basis of the largest representative volume of sales and production. The sample consisted of six Union producers and their related companies, as the internal structure of the groups was unclear at the beginning of the investigation as far as it concerns the functions of producing and reselling the product in question. The sampled Union producers accounted for over 70 % of total Union production. The Commission invited interested parties to comment on the provisional sample. No comments were received within the deadline and the provisional sample was thus confirmed. The sample is considered representative of the Union industry.
- (19) In March 2015, one of the sampled Union producers sold all its activity including equipment, rights permits, obligations concerning employees and its existing contracts to a new company. As this change took place after the investigation period, it is not relevant for the investigation under Article 6(1) of the basic Regulation.

Sampling of unrelated importers

- (20) To decide whether sampling is necessary and, if so, to select a sample, the Commission asked all unrelated importers to provide the information specified in the Notice of Initiation.
- (21) Fourteen known importers/users were contacted at the initiation stage and were invited to explain their activity and to fill in the sampling form attached to the Notice of Initiation, if applicable.
- (22) Five companies replied to the sampling form. Four of them were rewinders, i.e. industrial users which were importing the product concerned for further processing before re-selling it and one was a trader that did not, however, import the product concerned during the period considered. Due to the limited number of companies having responded to the sampling form, sampling was not warranted.
- (23) Two other users came forward. A user's questionnaire was sent to them.

Questionnaires and cooperation

- (24) The Commission sought and verified all the information deemed necessary for the purpose of a determination of dumping, resulting injury and Union interest.

- (25) The Commission sent questionnaires to the six sampled Union producers and their related companies, two Brazilian exporting producers and two Chinese exporting producers, one trader and the above six users identified in the Union.
- (26) Questionnaire replies were received from all sampled Union producers and from three users.
- (27) Two Chinese exporting producers and one Brazilian producer replied to the questionnaire. A second Brazilian producer had initially indicated its interest to cooperate with the investigation, but did not reply to the questionnaire. Consequently, a letter was sent to this company informing it of the Commission's intention to apply Article 18 of the basic Regulation. The company responded that it would not fill in the questionnaire but that its views would be represented by the Brazilian Aluminium Association (Associação Brasileira do Alumínio, 'ABAL'). In addition, written submissions were received from ABAL.

Verification visits

- (28) Verification visits pursuant to Article 16 of the basic Regulation were carried out at the premises of the following companies:

Union producers:

- Aluminiumfolie Merseburg GmbH, Merseburg, Germany
- Alcomet AD, Schumen, Bulgaria
- Eurofoil Luxembourg SA, Dudelange, Luxembourg and its related company Eurofoil France SAS, Rugles, France
- Hydro Aluminium Slim SpA, Cisterna di Latina, Italy
- Impol d.o.o., Maribor, Slovenia
- Symetal SA, Athens, Greece

Users:

- Cofresco Frischhalteprodukte GmbH & Co KG, Minden, Germany
- Sphere Group, Paris, France

Exporting producer in Brazil:

- Companhia Brasileira de Alumínio (CBA), São Paulo, Brazil

Exporting producers in the PRC:

- Zhenjiang Dingsheng Aluminium Industries Joint-Stock Limited Company, Zhenjiang, PRC, and its related companies Hangzhou Five Star Aluminium Company, Hangzhou, PRC; Hangzhou Dinsheng Import & Export, Hangzhou, PRC; and Dingsheng Aluminium Industries (Hong Kong) Trading Co, Hong Kong.
- Nanshan Light Alloy co. Ltd, Yantai, PRC

Producers in the market economy country:

- Assan Alüminyum San. ve Tic. A.S, Istanbul, Turkey
- Panda Aluminium Inc. Co., Ankara, Turkey

B. PRODUCT CONCERNED AND LIKE PRODUCT**1. Product concerned**

- (29) The product concerned is aluminium foil of a thickness of not less than 0,008 mm and not more than 0,018 mm, not backed, not further worked than rolled, in rolls of a width not exceeding 650 mm and of a weight exceeding 10 kg ('jumbo rolls') originating in Brazil and the PRC, currently falling within CN code ex 7607 11 19 (TARIC code 7607 11 19 10) ('the product concerned'). The product concerned is commonly known as aluminium household foil ('AHF').
- (30) AHF is manufactured on the basis of pure aluminium, which is firstly cast into thick strips (of a thickness of several mm, i.e. up to 1 000 times thicker than the product concerned) and subsequently rolled in different stages into the desired thickness. Once rolled, the foil is annealed by a thermal process and is finally presented on reels (rolls).
- (31) These reels of AHF are further rewound into smaller rolls by downstream processors so-called rewinders. The obtained product (i.e. consumer rolls which is not product concerned) is used in multi-purpose short-life wrapping, mostly in households, catering, food and floristry retail business.

2. Like product

- (32) The investigation showed that the product concerned, the product produced and sold on the Brazilian and Chinese domestic markets, the product produced and sold on the domestic market in Turkey, which served as an analogue country, and the product produced and sold in the Union by the Union industry have the same basic physical, chemical and technical characteristics as well as the same basic uses.
- (33) The Commission therefore concluded that these products are alike within the meaning of Article 1(4) of the basic Regulation.

C. LIKELIHOOD OF A CONTINUATION OR RECURRENCE OF DUMPING

- (34) In accordance with Article 11(2) of the basic Regulation, the Commission examined whether the expiry of the existing measures would be likely to lead to a continuation or recurrence of dumping from Brazil and the PRC.

1. Brazil

- (35) One producer from Brazil cooperated with the investigation. Before the imposition of the original measures, the producer had represented 100 % of the exports of AHF from Brazil to the Union.

1.1. Absence of exports during the review investigation period

- (36) There were no exports of AHF from Brazil to the Union during the review investigation period. Therefore, there is no likelihood of continuation of dumping from Brazil. The assessment was thus limited to the likelihood of recurrence of dumping using export prices to other third countries.

1.2. Likelihood of recurrence of dumping

- (37) The Commission analysed whether there was a likelihood of recurrence of dumping should the measures lapse. When doing so, the following elements were analysed: the production capacity and spare capacity in Brazil, the absence of dumping from Brazil to other markets, and the attractiveness of the Union market.

1.2.1. Production capacity and spare capacity in Brazil

- (38) The capacity utilisation of the cooperating Brazilian producer was found to be above 90 % and its unused spare capacity to be 3 000 tonnes per year. This is equivalent to 6 % of the production of the Union industry and 3 % of the Union consumption. It was therefore concluded that there was no significant spare capacity that could be directed to the Union market should the measures against Brazil be allowed to lapse.
- (39) The other two known Brazilian producers did not cooperate with the investigation, and therefore their spare capacity could not be verified. A study submitted by the applicants estimated the combined capacity for aluminium foils of the two other producers to be 58 000 tonnes for all types of aluminium foil combined, equivalent to the total capacity of the cooperating Brazilian producer. It is considered unlikely that these two producers would have a significant spare capacity that would be directed to the Union market, should the measures against Brazil be allowed to lapse: they were not exporting to the Union, neither during the review investigation period, nor before the imposition of the original measures.

1.2.2. Absence of dumping from Brazil to other markets

- (40) The exports of the cooperating Brazilian producer during the review investigation period were to a single customer in the USA. These exports represented 68 % of total Brazilian AHF exports to the USA in 2013, making the cooperating producer the biggest Brazilian exporter of aluminium foils. These exports represented 33 % of all Brazilian AHF exports in 2013. No dumping was found in these exports when the export price was compared with the normal value in Brazil. The absence of dumping was determined using the methodology as set out below.

1.2.2.1. Normal value

- (41) In accordance with Article 2(2) of the basic Regulation the Commission first examined whether the total volume of domestic sales of the like product to independent customers made by the cooperating producer in Brazil was representative in comparison with the total export volume, namely whether the total volume of such domestic sales represented at least 5 % of the total volume of export sales of the product concerned from Brazil. On that basis, it was found that the domestic sales in Brazil were representative.
- (42) The Commission then examined whether the domestic sales of the like product could be regarded as being made in the ordinary course of trade pursuant to Article 2(4) of the basic Regulation. This was done by establishing the proportion of domestic sales to independent customers on the domestic market which were profitable during the review investigation period. The domestic sales were found to be made in the ordinary course of trade.
- (43) Normal value was thus based on the actual domestic price, which was calculated as a weighted average price of the profitable domestic sales made during the review investigation period.

1.2.2.2. Determination of the export price

- (44) The export price was established in accordance with Article 2(8) of the basic Regulation on the basis of export prices actually paid or payable to the first independent customer.

1.2.2.3. Comparison

- (45) The normal value and export price of the cooperating exporting producer were compared on an ex-works basis. For the purpose of ensuring a fair comparison between the normal value and the export price, due allowance in the form of adjustments was made for differences affecting prices and price comparability in accordance with Article 2(10) of the basic Regulation.
- (46) On this basis, adjustments were made for differences in physical characteristics, transport, ocean freight and insurance costs, handling loading and ancillary costs, packing costs, credit costs, discounts and commissions where demonstrated to affect price comparability.

1.2.2.4. Dumping margin

- (47) On this basis, the Commission found that there was no dumping occurring in the exports to the USA.
- (48) Therefore, the Commission considers that it is unlikely that, if the current measures were to be repealed, the exporting producers from Brazil would sell the product concerned to the Union market at dumped prices.

1.2.3. Attractiveness of the Union market

- (49) The prices in the Brazilian domestic market are attractive, as demonstrated by the fact that the vast majority of the production is sold on the domestic market. These domestic sales are profitable. The price levels in Brazil are similar to the prices in the Union market.
- (50) It is therefore not expected that, should the measures lapse, the Brazilian exports to the Union market would increase significantly by undercutting the Union prices.

1.2.4. Claims by the interested parties concerning likelihood of recurrence of dumping from Brazil

- (51) Two interested parties, ABAL and CBA, claimed that there is no likelihood of recurrence of dumping from Brazil for the following reasons:
- (i) absence of Brazilian exports of the product concerned to the Union market;
 - (ii) Brazil recently becoming a net importer of aluminium instead of being a net exporter due to the increasing domestic demand in Brazil;
 - (iii) increase of production costs because of increased raw material and electricity costs, resulting in loss of competitiveness of the Brazilian products;
 - (iv) absence of massive exports from Brazil to the Union of aluminium converter foils, a similar product but not subject to anti-dumping measures;
 - (v) presence of related companies already established within the Union, that are responsible for serving the Union market, instead of resorting to exports from Brazil;
 - (vi) absence of spare capacity and the decreasing production in Brazil, and the resulting unlikelihood of capacity diversion or expansion;
 - (vii) difference in physical characteristics of the products sold on domestic market and the products exported.

- (52) As regards the first claim, the absence of Brazilian exports to the Union was confirmed by the investigation. However, the Commission considers that the absence of exports may have been due to the anti-dumping measures in place. The absence of exports is therefore not in itself a sufficient evidence to conclude that there is no risk of recurrence of dumping.
- (53) As regards the second claim, Brazil's status of net importer of primary aluminium since 2014 was confirmed by the investigation. The increase in domestic demand in Brazil was also confirmed: from 2009 to 2013 the domestic consumption of all aluminium products increased by 48 % and the consumption of aluminium foils increased by 24 %. However, the interested parties did not provide evidence that this fact would necessarily remove the risk of recurrence of dumping. Nevertheless, the increased domestic demand in Brazil was considered as a factor increasing the attractiveness of the domestic market when analysing the attractiveness of the Union market, as explained above.
- (54) As regards the third claim, the investigation confirmed the higher prices on the domestic market, but it was not sufficient to conclude that dumping could not recur in the presence of high domestic prices.
- (55) As regards the fourth claim, the interested parties failed to provide evidence that the behaviour in respect of one product could be used to predict the behaviour in respect of another. This claim was therefore rejected.
- (56) As regards the fifth claim, the investigation confirmed that there were related companies of the non-cooperating Brazilian producers established in the Union. However since none of these companies cooperated with the investigation, it was not possible to determine whether they indeed were producing the like product to supply the Union market. Therefore this claim could not be verified.
- (57) As regard the sixth claim, the investigation confirmed the absence of significant spare capacity. This was considered when assessing the production capacity and spare capacity in Brazil, as explained above.
- (58) As regards the seventh claim, the differences in physical characteristics were duly taken into account when comparing the normal value and the export prices, as explained above.

1.2.5. Conclusion on the likelihood of recurrence of dumping from Brazil

- (59) The investigation showed that there is only limited spare capacity in Brazil that could be directed to the Union market should the measures against Brazil be allowed to lapse. No dumping practices to other markets were found. The attractiveness of the Union market for Brazilian producers is considered limited in the light of the high attractiveness of their domestic market and the similarity of the price levels.
- (60) Given the above, it is considered unlikely that dumping from Brazil would recur, if measures were to lapse.
- (61) Consequently, the proceeding should be terminated for imports of the product concerned originating in Brazil.

2. The PRC

- (62) Two producers from the PRC cooperated with the investigation. They had initially reported 4 264 tonnes of exports to the Union, which according to Eurostat would have corresponded to 250 %-350 % of total Chinese imports to Union in the review investigation period. In the course of the investigation the export volume was established to be within a range of 900-1 100 tonnes for the first producer, corresponding to 53 % 90 % of the total exports from the PRC to the Union. Most of these exports were made under the inward processing regime and hence were neither subject to anti-dumping nor customs duty. The second producer was found to not have exported the product concerned to the Union during the review investigation period.

2.1. Selection of the analogue country and calculation of the Normal Value

- (63) In the Notice of Initiation, the Commission had invited all interested parties to comment on its proposal to use Turkey as a market economy third country for the purpose of establishing normal value in respect of the PRC. Turkey had been used as an analogue country in the original investigation.
- (64) One interested party expressed reservations on the proposal of Turkey and suggested South Africa as an alternative analogue country, claiming that South Africa would be more suitable because the cost structure of Turkish producers would be different from the Chinese cost structure and that Turkey had imposed anti-dumping duties of 22 % against Chinese imports of all types of aluminium foil in July 2014.
- (65) In addition to the suggestions made by the interested parties, the Commission itself sought to identify an appropriate analogue country. It identified India, Japan, South Korea, United Arab Emirates, USA, and Taiwan as an additional potential analogue country due to their large production volume of aluminium foils. However it was found that Japan, USA and Taiwan produced thinner aluminium foils but not the product concerned.
- (66) Requests to cooperate were sent to the known producers in India, South Africa, South Korea, United Arab Emirates and Turkey. Cooperation was only received from two exporting producers in Turkey. There was no reply from the producers in the other potential analogue countries.
- (67) Turkey was found to be a significant producer of aluminium foil with an open market and free from distortions as regards the prices of raw material or energy. The production processes in Turkey and in the PRC were found to be similar. Turkey was selected as an analogue country to establish the normal value for the PRC in accordance with Article 2(7)(a) of the basic Regulation and verification visits were carried out at the premises of the two cooperating companies.
- (68) In accordance with Article 2(2) of the basic Regulation it was first examined whether the total volume of domestic sales of the like product to independent customers made by the cooperating producers in Turkey was representative in comparison with the total export volume to the Union, namely whether the total volume of such domestic sales represented at least 5 % of the total volume of export sales of the product concerned to the Union. On that basis, it was found that the domestic sales in the analogue country were representative.
- (69) It was also examined whether the domestic sales of the like product could be regarded as being made in the ordinary course of trade pursuant to Article 2(4) of the basic Regulation. This was done by establishing the proportion of domestic sales to independent customers on the domestic market which were profitable during the review investigation period. The domestic sales of one of the producers were found to be made in the ordinary course of trade, whereas the profitability of sales of the second producer could not be established due to lack of detailed cost accounting data.
- (70) The normal value of the second producer could not be constructed in line with Article 2(3) of the basic Regulation due to lack of detailed cost accounting data.
- (71) Normal value was thus based on the actual domestic price of the first producer, which was calculated as a weighted average price of the profitable domestic sales made during the review investigation period.
- (72) One Chinese producer claimed that the normal value cannot be validly calculated on the basis of the domestic sales of only one Turkish producer. Moreover, the Chinese producer underlined that the confidential nature of the business data of the Turkish producer made it impossible to evaluate or substantiate the resulting dumping margin.

- (73) The use of the data of a single producer in the analogue country is in line with the jurisprudence of the Court of Justice of the European Union, according to which such prices can be used if they are the result of genuine competition in the domestic market. As indicated in recitals 68 and 69 above, there are several Turkish domestic producers and Turkey is also an importer of aluminium foils. The Commission therefore considers that the prices in the Turkish market are the result of genuine competition and there is no element indicating that the prices of a single producer cannot be used to determine normal value. As regards the business data, the Commission must protect the confidentiality of the data submitted by the parties and therefore cannot disclose to the Chinese producer commercially sensitive information concerning the Turkish producer. The claims of the said Chinese exporter must therefore be rejected.

2.2. Determination of the export price

- (74) The export price was established in accordance with Article 2(8) of the basic Regulation on the basis of export prices actually paid or payable to the first independent customers.
- (75) One Chinese producer pointed out that its VAT refund rate had been incorrectly calculated. The calculation was modified accordingly and the Commission re-disclosed the revised findings to the concerned producer.

2.3. Comparison

- (76) The normal value and export price of the cooperating exporting producer were compared on an ex-works basis. For the purpose of ensuring a fair comparison between the normal value and the export price, due allowance in the form of adjustments was made for differences affecting prices and price comparability in accordance with Article 2(10) of the basic Regulation.
- (77) On this basis, adjustments were made for transport, ocean freight and insurance costs, handling loading and ancillary costs, packing costs, credit costs, discounts and commissions where demonstrated to affect price comparability.
- (78) One Chinese producer claimed that the normal import duty of 7,5 % in Turkey pushes the domestic prices up by the same amount and that this should be adjusted for fair comparison. The Chinese producer also claimed that an adjustment for packing costs was not justified because packing costs apply to all producers wherever they are located.
- (79) The Commission notes that China also has in place an import duty for aluminium foils. Therefore, there seems to be no distortion of comparison due to the existence of a similar import duty in Turkey. In addition, even if an adjustment for import duty would be granted it would not change the fact that there is significant dumping from Chinese exporters to the Union market. As regards packing costs, an adjustment has been made to both Chinese export prices and the Turkish domestic prices in order to neutralise any differences in packaging. Consequently, the packing cost adjustment cannot cause a distortion in the comparison. These claims must therefore be rejected.

2.4. Dumping margin

- (80) As provided by Article 2(11) and (12) of the basic Regulation, the weighted average normal value of each type of the like product in the analogue country was compared with the weighted average export price of the corresponding type of the product concerned.
- (81) On this basis, the weighted average dumping margin, expressed as a percentage of the CIF (cost, insurance, freight) Union frontier price, duty unpaid, is as follows:

Company	Dumping margin
Zhenjiang Dingsheng Aluminium Industries Joint-Stock Limited Company, Zhenjiang, PRC	28,1 %

2.5. Likelihood of continuation of dumping from the PRC

- (82) Further to the finding of the existence of dumping during the review investigation period, the Commission investigated the likelihood of continuation of dumping should measures be repealed. The following additional elements were analysed: the production capacity and spare capacity in the PRC, dumping from the PRC to other markets and the attractiveness of the Union market.

2.5.1. Production capacity and spare capacity in the PRC

- (83) The capacity utilisation of the two cooperating Chinese producers was found to be 85 % and 90 %. The spare capacity was found to be 50 000 tonnes for these two producers. This is equivalent to the total production of the Union industry and more than 50 % of the Union consumption. Furthermore, one of the cooperating companies was in the process of constructing additional foil-rolling capacity of 40 000 tonnes. It was therefore concluded that there was significant spare capacity that could be directed to the Union market at least in part, should the measures against the PRC be allowed to lapse.
- (84) The other known Chinese producers did not cooperate with the investigation, and therefore their spare capacity could not be verified. A study submitted by the applicants estimated the combined capacity for aluminium foils of the other, non-cooperating Chinese producers to be approximately ten times the combined capacity of the two cooperating producers. The study estimates the total Chinese production capacity for all types of aluminium foil to be 450 000 tonnes larger than the total domestic Chinese consumption. The study also forecasts that the Chinese production capacity will continue to increase from 2,5 million tonnes in 2014 to 2,8 million tonnes in 2018 and that the growth of the Chinese domestic consumption from 2,1 million tonnes to 2,4 million tonnes in the same period is unlikely to be sufficient to fully absorb the increasing capacity. It is therefore considered likely that there would be additional spare capacity among the non-cooperating producers that could be directed to the Union market at least in part, should the measures against the PRC be allowed to lapse.
- (85) One Chinese producer, while not disputing the findings concerning spare capacity volumes, claimed that it was unrealistic to assume that the entire spare capacity would be directed to the Union market.
- (86) The Commission considers, in line with its assessment in recitals 84 and 97, that the spare capacity could be directed to the Union market at least in part. The recital 83 has been modified accordingly.

2.5.2. Dumping from the PRC to other markets

- (87) The export prices to other markets during the review investigation period of one the cooperating Chinese producers (the main export destinations being United Arab Emirates, Saudi Arabia, USA, Egypt and India) were found to be below the Normal Value as established in the recitals 63 to 71 above and therefore dumped. The export prices to other markets of the second Chinese producer could not be collected.
- (88) In view of the existence of dumping to other markets the Commission concludes that the exporting producer from the PRC sells the product concerned to third countries at dumped prices. Therefore, the Commission considers that it is likely that, if the current measures were to be repealed, the exporting producers from the PRC would also sell the product concerned to the Union market at dumped prices.
- (89) One Chinese producer claimed that the finding of dumping in exports to other markets is irrelevant since the scope of the review is limited to the Union market and not the world market. According to the Chinese producer, price comparisons across markets are inappropriate since price structures in other parts of the world can be different. Furthermore, the presence of Union exports to these same markets should also be compared and could result in a finding that the Union domestic prices are too high.

- (90) As explained in recital 82, the Commission has taken into account several indicators to assess the likelihood of dumping to the Union market. The Commission considers that exporters who are found to be dumping in other markets are more likely to engage in dumping into the Union too, when compared with exporters that are found not to be dumping in other markets. For this reason it is a relevant indicator for establishing the likelihood of continuation of dumping. The claim must therefore be rejected.
- (91) The claim concerning export behaviour of the Union producers is addressed in recital 171.

2.5.3. Attractiveness of the Union market

- (92) As mentioned in recital 114 below, the investigation showed that the Chinese imports made under the normal import regime during the review investigation period would have undercut the Union industry prices on average by 12,2 % in the absence of anti-dumping duties. Moreover, Chinese imports made under the inward processing regime and hence not subject to anti-dumping or customs duty, which made about 75 % of the Chinese imports, were found to undercut the Union industry's sales prices by 18 %. The Chinese prices are also lower than export prices from any other country to the Union. These price differentials certainly show the attractiveness of the Union market and the ability of the Chinese exporters to compete by price should measures be repealed.
- (93) Thus, it can be reasonably expected that, should the measures be repealed, a substantial part of the current Chinese exports would be re-directed to the Union.
- (94) It is worth recalling that before the original measures were imposed, the original investigation had established that the Chinese market share in the Union market amounted to 30,72 %. It is therefore expected that, should the measures lapse, the Chinese exports currently having 2 % of the Union market will increase significantly to regain lost market share in the Union.
- (95) One Chinese producer claimed that small undercutting was part of a normal pricing mechanism whenever non-domestic producers are competing with domestic producers. A 12,2 % price undercutting would not be unreasonable and would not cause difficulties to Union producers.
- (96) A finding of undercutting does not in itself lead to a conclusion of unfair behaviour from the exporter. In this case however, the undercutting margin found indicated the likely price levels of Chinese imports should measures be allowed to lapse and their capacity to take over market share in the Union at the expense of the Union industry. In addition, it was found that these imports are likely to be dumped. Therefore, the argument that the level of the price undercutting of 12,2 % would not be unreasonable was irrelevant in this context and was therefore rejected.

2.5.4. Conclusion on the likelihood of continuation of dumping from the PRC

- (97) The investigation showed that Chinese imports continued to enter the Union market at dumped prices with significant dumping margins. It also demonstrated that the spare capacity for production of the product concerned in the PRC is significant in comparison with the Union consumption during the review investigation period. This spare capacity is likely to be directed at least in part to the Union market should the measures against the PRC be allowed to lapse.
- (98) In addition, exports from the PRC to third countries were made at dumped prices. This pricing behaviour of the Chinese exports in third markets shows a likelihood of continuation of dumping to the Union market, should the measures be allowed to lapse.
- (99) Furthermore, the attractiveness of the Union market in terms of prices indicates that there is a risk that Chinese exports would be redirected toward the Union market, should the measures be allowed to lapse.

- (100) Given the above, there is a likelihood that, if measures were to lapse, Chinese dumped imports of the product concerned will significantly increase should the measures in force be allowed to lapse.

D. DEFINITION OF THE UNION INDUSTRY

- (101) The like product was manufactured by 12 known Union producers during the review investigation period. They constitute the 'Union industry' within the meaning of Article 4(1) of the basic Regulation.
- (102) The total Union production during the review investigation period was estimated at 47 349 tonnes. The Commission established the figure on the basis of Eurostat statistics, the verified questionnaire replies of the sampled Union producers and the estimated data related to the non-sampled producers and provided by the applicants. As indicated in recital 18, the Union producers selected in the sample represented over 70 % of the total Union production of the like product.

E. SITUATION ON THE UNION MARKET

1. Preliminary remarks

- (103) Data on production, production capacity, sales volume, employment and export volume relating to the whole Union industry for the period considered was provided by the applicants. The data was estimated and provided on a maximum and minimum range basis, broken down in two categories: sampled Union producers and non-sampled Union producers. For the sampled Union producers, the Commission used the actual verified data provided by these companies in their questionnaire replies. For the non-sampled Union producers, the figures provided by the applicants were used. These estimates were made available for comments to the interested parties. No comments were, however, received.

2. Union consumption

- (104) The Union consumption figures established and published in the parallel investigation have been used in the present investigation. They were determined on the basis of total estimated sales volume of the Union industry on the Union market and the total import volume based on Eurostat and corrected, where necessary, by the verified data provided by the exporting producer of the parallel investigation concerning imports from Russia and the questionnaire replies submitted by the sampled Union producers.
- (105) As there is only one exporting producer in Russia, all figures related to this exporter had to be given in ranges for reasons of confidentiality. Moreover, in order to avoid the Russian import volume to be calculated by deduction, it was also necessary to use ranges for the consumption and import volumes from other third countries.
- (106) On this basis, Union consumption developed as follows:

Table 1

Union consumption for AHF (tonnes)

	2011	2012	2013	Review investigation period
Union consumption	[71 300-82 625]	[74 152-92 540]	[84 847-108 239]	[83 421-105 760]
Index (2011 = 100)	100	[104-112]	[119-131]	[117-128]

Source: Figures published in the parallel investigation based on Eurostat, questionnaire replies and information provided by the applicants.

- (107) Union consumption increased between 2011 and 2013 but decreased between 2013 and the review investigation period. Overall, consumption increased between 17 % and 28 % during the period considered. The increase in consumption between 2011 and the review investigation period mainly reflects the increase of imports from Russia and other third countries, while the sales of the Union industry on the Union market only slightly increased (see recital 134).

3. Volume, prices and market share of imports from the PRC

- (108) Since the investigation established that there is no likelihood of continuation or recurrence of dumping from Brazil (see recital 60) the analysis of the volume, prices and market share of imports is limited to the imports from the PRC. The Commission established the volume and prices of imports from the PRC on the basis of Eurostat.

(a) Volume and market share of the imports from the PRC

- (109) Imports into the Union from the PRC developed as follows:

Table 2

Volume and market shares of imports from the PRC

	2011	2012	2013	Review investigation period
PRC				
Volume of imports under the normal import regime (tonnes)	[2 000-2 300]	[200-400]	[150-350]	[300-400]
Volume of imports under the inward processing import regime (tonnes)	[800-1 000]	[700-1 000]	[950-1 300]	[900-1 300]
Total volume of imports (all regimes) (tonnes)	[2 843-3 205]	[967-1 378]	[1 137-1 603]	[1 222-1 699]
Index (2011 = 100)	100	[34-43]	[40-50]	[43-53]
Market share	4 %	1 %	1 %	2 %

Source: Eurostat.

- (110) Import volumes from the PRC decreased by between 47 % and 57 %, with a corresponding decrease in market share from 4 % to 2 %, namely a decrease of 2 percentage points, during the period considered. Both import volumes and market share from the PRC remained at low levels during the whole period considered.

(b) *Price of imports and price undercutting*

(111) The table below shows the average price of the dumped imports.

Table 3

Average price of dumped imports

	2011	2012	2013	Review investigation period
PRC				
Average price (EUR/tonne)	2 251	2 417	2 306	2 131
Index (2011 = 100)	100	107	102	95

Source: Eurostat.

- (112) The average prices of imports from the PRC decreased during the period considered from EUR 2 251 EUR/tonne to 2 131 EUR/tonne, i.e. a decrease of around 5 %. The prices of Chinese imports were on average lower than Union industry sales prices on the Union market and prices of imports from other third countries during the entire period considered.
- (113) During the review investigation period, about 75 % of the Chinese imports, representing a market share of more than 1 %, were made under the inward processing regime and hence were not subject to anti-dumping nor customs duty. They were found to undercut the Union industry's sales prices by 18 %. In respect of the cooperating exporting producer who represented about 53 %-90 % of the Chinese imports during the review investigation period and made 98 % of its imports under the inward processing regime, an undercutting margin ranging between 15 % and 18 % was established.
- (114) The remaining 25 % of the Chinese imports were made under the normal import regime. When adding the customs duty and the anti-dumping duty to the Chinese CIF prices, Chinese prices calculated for these imports were on average higher than the Union industry's sales prices on the Union market and there was thus a negative undercutting (- 12,5 %). However, when import prices are considered without anti-dumping duties there would be undercutting of 12,2 %.
- (115) When considering all Chinese imports irrespective of the import regime and adding the applicable customs and anti-dumping duties to the CIF prices of imports made under the normal regime, Chinese prices were found to undercut the Union industry's sales prices by 10,2 % on average during the review investigation period.
- (116) One Chinese producer claimed that the undercutting margin of 18 % established for Chinese imports made under the inward processing regime was incorrect since the prices of Union producers included an 'inbuilt 7,5 % normal tariff' which the domestic users could not obtain relief from should they incorporate AHF manufactured in the Union in exports to third countries. However the interested party did not substantiate the claim and in particular failed to explain the notion of 'inbuilt normal tariff'. In any event it is recalled that, as explained in recital 113, imports made under the inward processing regime are not subject to customs duty. Therefore it would not be justified to make adjustments for customs duties that are not borne. It must be noted also that the Commission duly applied the adjustment for customs duty when establishing the undercutting margin for imports made under the normal regime in recital 114 and for all Chinese imports irrespective of the import regime in recital 115. Therefore the claim was rejected.
- (117) The same Chinese producer claimed that it was necessary to deduct the customs duty rate from the undercutting margins of 12,2 % and 10,2 % established respectively in recitals 114 and 115. It is however clarified that in order to establish these margins the Commission already took into account the customs duty applicable to imports made under the normal regime. Therefore the claim was rejected.

4. Import from other third countries

Table 4

Imports from other third countries (all imports regimes)

Country		2011	2012	2013	Review investigation period
Brazil	Volume (tonnes)	0	0	0	0
Russia	Volume (tonnes)	[19 532-26 078]	[23 243-34 422]	[27 345-39 116]	[26 368-37 812]
	<i>Index (2011 = 100)</i>	100	[119-132]	[140-150]	[135-145]
	Market share	29 %	34 %	34 %	34 %
	Average price (EUR/tonne)	[2 145-2 650]	[2 038-2 624]	[1 952-2 571]	[1 973-2 597]
	<i>Index (2011 = 100)</i>	100	[95-99]	[91-97]	[92-98]
Turkey	Volume (tonnes)	[5 120-6 100]	[8 090-10 553]	[11 213-14 213]	[11 520-14 579]
	<i>Index (2011 = 100)</i>	100	[158-173]	[219-233]	[225-239]
	Market share	7 %	11 %	13 %	13 %
	Average price (EUR/tonne)	2 950	2 743	2 710	2 571
	<i>Index (2011 = 100)</i>	100	93	92	87
Other third countries (China not included)	Volume (tonnes)	[3 100-3 750]	[279-750]	[1 891-3 000]	[3 162-4 313]
	<i>Index (2011 = 100)</i>	100	[9-20]	[61-80]	[102-115]
	Market share	4 %	1 %	2 %	4 %
	Average price (EUR/tonne)	2 878	2 830	2 687	2 406
	<i>Index (2011 = 100)</i>	100	98	93	84
Total	Volume (tonnes)	[29 000-35 000]	[33 000-43 000]	[41 000-54 000]	[42 000-56 000]
	<i>Index (2011 = 100)</i>	100	[113-125]	[142-155]	[145-160]
	Market share	41 %	46 %	50 %	51 %
	Average price (EUR/tonne)	2 538	2 453	2 401	2 367
	<i>Index (2011 = 100)</i>	100	97	95	93

Source: Eurostat, data regarding Russia established and published in the parallel investigation.

- (118) During the period considered, imports from other third countries into the Union increased by between 45 % and 60 % which is faster than the progression of the Union consumption. The market share of the other third countries therefore increased from 41 % to 51 % over this period.
- (119) There were no imports from Brazil during the period considered. Import volumes from Russia increased between 40 % and 50 % from 2011 until 2013 with a slight decrease in the review investigation period. The corresponding market share increased from 29 % in 2011 to 34 % in 2012 and then remained constant until the end of the review investigation period. During the period considered import volumes from Turkey increased between 125 % and 139 % and their market share increased from around 7 % to 13 %. Turkish import prices decreased by 13 % over the period considered but remained above the price level of imports from other third countries, including Russia and China, and were at similar levels as the Union's industry prices during the review investigation period.
- (120) Overall, imports from other third countries excluding PRC, Russia and Turkey increased between 2 % and 15 %. However, as the Union consumption increased, their total market share decreased from 4 % in 2011 to around 2 % in 2013 and then increased to 4 % by the end of the review investigation period; their prices were at lower levels than the Union industry's prices, with the exception of 2012.
- (121) The prices of imports from the other third countries were higher than the prices of imports from the PRC during the entire period considered.
- (122) One Chinese producer claimed that the Commission's analysis of the imports from other third countries in recitals 118-121 should have encompassed the entire foil market instead of focusing on the product concerned since decisions made by Union producers in respect of other types of foil allegedly influence their production of the product concerned. The claim was not substantiated. In any event the investigation established, as mentioned in recital 185, that the largest sampled Union producer of AHF was producing solely AHF and that Union producers found to produce both AHF and another type of foil named aluminium converter foil ('ACF') could not switch easily from producing one product to the other, as the production of both products in certain quantities was needed in order to maximise efficiency. As mentioned in recital 185 the investigation further showed that the sampled Union producers had a stable ratio of production between these types of foil during the period considered. Therefore the claim was rejected.
- (123) One Chinese producer noted that since the production capacity of the Union producers represented less than 50 % of the Union consumption it was necessary for users to import AHF from exporting producers in third countries. On that basis the Chinese producer claimed that exporting producers were competing between themselves and not with the Union producers when supplying users not served by the Union producers. The claim was however not substantiated. First, the allegation that the production capacity of the Union producers represented less than 50 % of the Union consumption is incorrect. As shown in recitals 106 and 129 the Union industry's production capacity represented between 58 % and 74 % of the Union consumption during the review investigation period and was above 55 % during the entire period considered. In addition, as shown in Table 5, the investigation established that the Union industry had spare capacity during the entire period considered that could have been used to serve the Union market if indeed, there had been no competing dumped imports. Furthermore, imports from third countries were also in competition with the like product produced by the Union industry since existing customers of the Union producers were able to switch to suppliers from third countries. Therefore the claim was rejected.

5. Economic situation of the Union industry

5.1. General remarks

- (124) In accordance with Article 3(5) of the basic Regulation, the Commission examined all economic factors and indices having a bearing on the state of the Union industry.
- (125) As mentioned in recital 18, sampling was used for the determination of possible injury suffered by the Union industry.
- (126) For the injury determination the Commission distinguished between macroeconomic and microeconomic injury indicators. As explained in recital 103, the Commission evaluated macroeconomic indicators relating to the

whole Union industry on the basis of information provided by the applicants which was duly verified for the sampled companies. The Commission evaluated microeconomic indicators relating only to the sampled companies on the basis of data contained in the questionnaire replies of the sampled Union producers. Both sets of data were found representative of the economic situation of the Union industry.

- (127) The macroeconomic indicators are: production, production capacity, capacity utilisation, sales volume, market share, growth, employment, productivity and magnitude of the dumping margin.
- (128) The microeconomic indicators are: average unit prices, unit cost, labour costs, inventories, profitability, cash flow, investments, return on investments, and ability to raise capital.

5.2. Macroeconomic indicators

5.2.1. Production, production capacity and capacity utilisation

- (129) The total Union production, production capacity and capacity utilisation developed over the period considered as follows:

Table 5

Union industry's total production, production capacity and capacity utilisation

	2011	2012	2013	Review investigation period
Production volume (tonnes)	44 316	46 165	48 796	47 349
<i>Index (2011 = 100)</i>	100	104	110	107
Production capacity (tonnes)	54 777	54 485	59 186	61 496
<i>Index (2011 = 100)</i>	100	99	108	112
Capacity utilisation	81 %	85 %	82 %	77 %
<i>Index (2011 = 100)</i>	100	105	102	95

Source: questionnaire replies, information provided by the applicants.

- (130) Production fluctuated during the period considered. While it increased between 2011 and 2013, it decreased between 2013 and the review investigation period. Overall, the production volume increased by 7 % during the period considered.
- (131) The production capacity increased by 12 % during the period considered.
- (132) As a result of the higher increase in production capacity than in production volume, the capacity utilisation decreased by 5 % over the period considered.
- (133) One Chinese producer claimed that the capacity of an aluminium foil plant should not be expressed in tonnes since the same machinery produces different masses of foil in a given period of time depending on the thickness

and width of the foil. In reply to this claim, it is not contested that the capacity of a plant expressed in tonnes can be influenced by the thickness or width of the manufactured foils. However, the imports of the product concerned and certain injury factors such as consumption, sales volume and production were established using tonnes as the unit of measurement. It is a matter of consistency in the injury analysis to use the same measurement unit for comparison purposes. Moreover, the investigation did not point to changes in the product mix of the Union industry production such as to invalidate the use of tonnes as the unit of measurement. It is also noted that the interested party concerned failed to provide any quantitative information showing that a different measurement unit would have changed the analysis of this injury factor. Therefore the claim was rejected.

5.2.2. Sales volume and market share

(134) The Union industry's sales volume and market share developed over the period considered as follows:

Table 6

Union industry's sales volume and market share

	2011	2012	2013	Review investigation period
Sales volume (tonnes)	[41 007-45 870]	[41 007-49 081]	[42 647-52 292]	[41 827-50 457]
Index (2011 = 100)	100	[100-107]	[104-114]	[102-110]
Market share	55 %	53 %	49 %	47 %

Source: questionnaire replies, Eurostat, information provided by the applicants.

(135) Sales volume of AHF slightly increased over the period considered. Sales volume increased mostly from 2011 to 2013, i.e. between 4 % and 14 %. During the review investigation period the sales volume decreased; overall, sales volume increased between 2 % and 10 % during the period considered. The increase in sales volumes, taking into account the parallel increase in consumption and the increase in imports led, however, to a decrease in market share of the Union industry from 55 % in 2011 to 47 % in the review investigation period, i.e. a decrease of 8 percentage points during the period considered.

5.2.3. Growth

(136) While Union consumption increased by between 17 % and 28 % during the period considered, the sales volume of the Union industry increased between 2 % and 10 %, which translated in a loss of market share of 8 percentage points.

5.2.4. Employment and productivity

(137) Employment and productivity developed over the period considered as follows:

Table 7

Employment and productivity

	2011	2012	2013	Review investigation period
Number of employees	769	787	758	781
Index (2011 = 100)	100	102	99	102

	2011	2012	2013	Review investigation period
Productivity (tonnes/employee)	58	59	64	61
<i>Index (2011 = 100)</i>	100	102	112	105

Source: questionnaire replies, information provided by the applicants.

- (138) Employment of the Union industry fluctuated during the period considered and overall slightly increased by 2 %.
- (139) Between 2011 and 2013 productivity increased due to the higher increase in production than the increase in employment. From 2013 to the review investigation period, productivity decreased by 7 % but remained higher than at the beginning of the period considered in 2011.

5.2.5. Magnitude of the dumping margin and recovery from past dumping

- (140) The dumping margin of imports from the PRC amounted to 28,1 % during the review investigation period (see recital 81) but its impact on the situation of the Union industry was limited due to the anti-dumping measures in force which successfully curbed the volume of dumped imports.
- (141) However, as established in the parallel investigation, the volume of dumped imports from Russia increased significantly during the period considered. These imports caused material injury to the Union industry. Therefore the recovery of the Union industry was not possible despite the existence of the anti-dumping measures.

5.3. Microeconomic indicators

5.3.1. Prices and factors affecting prices

- (142) The average sales prices of the Union industry to unrelated customers in the Union developed over the period considered as follows:

Table 8

Selling prices and costs

	2011	2012	2013	Review investigation period
Average unit selling price in the Union (EUR/tonne)	2 932	2 714	2 705	2 597
<i>Index (2011 = 100)</i>	100	93	92	89
Unit cost of production (EUR/tonne)	2 995	2 794	2 699	2 651
<i>Index (2011 = 100)</i>	100	93	90	89

Source: questionnaire replies.

- (143) The Union industry's average unit selling price to unrelated customers in the Union decreased continuously and overall by 11 % over the period considered.
- (144) Despite this decrease, unit cost of production remained above the average selling price of the Union industry and the Union industry could not cover its production cost by the selling price with the exception of 2013. The parallel investigation established that the Union industry was not able to raise its selling price due to the price pressure exerted by the dumped imports from Russia.

5.3.2. Labour costs

- (145) The average labour costs of the Union industry developed over the period considered as follows:

Table 9

Labour costs

	2011	2012	2013	Review investigation period
Average labour costs per employee (EUR)	21 692	22 207	20 603	20 594
<i>Index (2011 = 100)</i>	100	102	95	95

Source: questionnaire replies.

- (146) Between 2011 and the review investigation period, the average labour costs per employee of the sampled Union producers decreased by 5 %. Labour cost first increased by 2 % between 2011 and 2012, then decreased between 2012 and 2013 and then remained stable during the review investigation period.

5.3.3. Inventories

- (147) Stock levels of the Union industry developed over the period considered as follows:

Table 10

Inventories

	2011	2012	2013	Review investigation period
Closing stocks	1 931	1 999	2 133	2 085
<i>Index (2011 = 100)</i>	100	104	110	108
Closing stocks as percentage of production	5 %	5 %	5 %	5 %
<i>Index (2011 = 100)</i>	100	100	100	100

Source: questionnaire replies.

- (148) Inventories cannot be considered as a relevant injury indicator in this sector, as production and sales are mainly based on orders and, accordingly, producers tend to hold limited stocks. Therefore, the trends on inventories are given for information only.
- (149) Overall closing stocks increased by 8 % over the period considered. While stocks increased from 2011 to 2013 by 10 %, from 2013 to the end of the review investigation period they slightly decreased. Closing stocks as a percentage of production remained stable during the entire period considered.

5.3.4. Profitability, cash flow, investments, return on investments and ability to raise capital

- (150) Profitability, cash flow, investments and return on investments of the Union producers developed over the period considered as follows:

Table 11

Profitability, cash flow, investments and return on investment

	2011	2012	2013	Review investigation period
Profitability of sales in the Union to unrelated customers (% of sales turnover)	- 2,2 %	- 2,9 %	0,2 %	- 2,1 %
<i>Index (2011 = 100)</i>	100	65	209	104
Cash flow (EUR)	1 505 960	2 909 820	3 365 140	1 962 349
<i>Index (2011 = 100)</i>	100	193	223	130
Investments (EUR)	3 271 904	5 404 990	4 288 862	4 816 442
<i>Index (2011 = 100)</i>	100	165	131	147
Return on investments	- 4 %	- 5 %	0 %	- 3 %
<i>Index (2011 = 100)</i>	100	60	209	108

Source: questionnaire replies.

- (151) The Commission established the profitability of the sampled Union producers by expressing the pre-tax net profit of the sales of the like product to unrelated customers in the Union as a percentage of the turnover of those sales. During the period considered, the Union industry was loss-making with the exception of 2013, where it realised a profit margin slightly above break-even. Profitability decreased between 2011 and 2012, increased in 2013 but then decreased again in the review investigation period where it reached a similar level as in 2011. Overall, profitability increased by 4 % during the period considered, which corresponds to an increase of 0,1 percentage points and which did not allow the Union industry to realise profits during the review investigation period. As established in the parallel investigation, this situation was mainly due to the price pressure exerted by Russian imports which entered into the Union at dumped prices undercutting those of the Union industry and did not allow the Union industry to increase its selling prices as to cover its cost of production.

- (152) The net cash flow is the Union industry's ability to self-finance their activities. The cash flow fluctuated during the period considered with an increasing trend. Overall net cash flow increased by 30 % over the period considered. However, it should be noted that in absolute values the cash flow remained at low levels when compared to the total turnover of the product in question.
- (153) The investments increased by 47 % over the period considered. The investments increased by 65 % from 2011 to 2012, decreased during 2013 and increased again during the review investigation period. They mainly represented investments necessary for new machinery and remained at rather low levels during the review investigation period when compared to total turnover.
- (154) The return on investments is the profit in percentage of the net book value of investments. As the other financial indicators, the return on investment from the production and sale of the like product was negative as from 2011, with the exception of 2013 where it was 0 %, reflecting the trend in profitability. Overall, return on investments slightly increased by 8 % over the period considered.
- (155) As far as the ability to raise capital is concerned, the deterioration of the ability to generate cash for the like product of the sampled Union producers was weakening their financial situation by reducing the internally generated funds. The investigation found that, overall, the ability to raise capital deteriorated over the period considered.

6. Conclusion on injury

- (156) Several main injury indicators showed a negative trend. Regarding profitability, the industry was loss-making almost during the whole period considered, with the exception of 2013 where it reached a level only slightly above break-even; during the review investigation period, the Union industry realised a negative profit of - 2,1 %. Sales prices decreased by 11 % during the period considered. The unit cost that also decreased by 11 % remained higher than the average sales price during the whole period considered, with the exception of 2013. The Union industry market share decreased by 8 percentage points, i.e. from 55 % in 2011 to 47 % in the review investigation period.
- (157) Some injury indicators developed positively during the period considered. Production volume increased by 7 % and production capacity by 12 %. These increases did however not match the increase in consumption, which was much higher, namely between 17 % and 28 %. Sales volume increased between 2 % and 10 %. However, in a market with increasing consumption, this did not translate in an increase of market share, but to the contrary to a loss of market share by 8 percentage points. Investments increased by 47 %. They concerned new machinery and remained at rather low levels during the review investigation period. Likewise cash flow increased by 30 % during the period considered but remained at low levels. These positive trends do not, therefore, preclude the existence of injury.
- (158) The cooperating Brazilian producer and the Brazilian Aluminium Association claimed that according to the analysis of publicly available financial documents of some applicants there would be no material injury. This is contradicted by the results of the investigation which is based on actual verified data of the Union industry relating to AHF. Indeed, some of the Union producers did not produce exclusively AHF and therefore the publicly available financial documents cannot reveal the actual situation of the Union industry for AHF. Therefore, conclusions on the economic situation of the Union industry within the meaning of Article 3(5) of the basic Regulation should not be based on publicly available financial documents but on the more detailed and verified information available in the investigation. This claim was therefore rejected.
- (159) The same interested parties claimed that statistics and statements published by the European Aluminium Foil Association ('EAFA') indicated that the Union industry did not suffer any injury during the period considered including the review investigation period. However, it was found that the used statistics and statements referred either to the entire aluminium foil sector or to a 'thinner gauges' category covering AHF but also other types of foils such as converter foils and foils used for flexible packaging. On this basis, no meaningful conclusion in respect of the product concerned can be drawn and the claim was thus rejected.
- (160) One Chinese producer claimed that the evolution of the unit cost described in recital 156 could not be reconciled with the evolution of the aluminium price quoted on the London Metal Exchange (the 'LME price'). In reply to this claim it must be noted that the price paid by Union producers to aluminium smelters or traders is

the sum of the LME price and a surcharge known as the 'metal premium'. Therefore any assessment of the Union producer's unit cost based solely on the LME price must be considered incomplete. The claim was therefore rejected.

- (161) The same interested party claimed that the reconciliation of the evolution of the unit cost with the evolution of the aluminium price would still be impossible even if the metal premium was taken into account. That claim was however not substantiated. In addition the investigation showed that the LME price decreased during the period considered by more than 20 % while the metal premium more than doubled during the period considered. Taking into account the LME price and metal premium together, the cost of aluminium paid by the Union producers decreased during the period considered by around 11 %. This decrease is in line, and actually even identical, to the decrease of the unit cost reported over the same period in recital 156. Therefore the claim was rejected.
- (162) One Chinese producer referred to recital 156 and claimed that possible causes of injury were lower priced imports, allegedly higher production costs, a lack of interest in AHF as prices of other categories of foil in the Union would be higher and a lack of interest in the Union market as AHF prices would be higher on the export markets. In respect of higher production costs, the Chinese producer mentioned the high metal premium and the fact that the Union industry was using a mix of two manufacturing methods, hot rolling and continuous casting while exclusive reliance on continuous casting would be more cost-effective.
- (163) In reply to these claims, it is recalled that from recitals 156 and 157 it can be concluded that the Union industry suffered material injury. Regarding the claims on the costs of production, it is first noted that in respect of the role of the metal premium as a potential injury factor, the parallel investigation established that both the Union industry and the Russian exporting producer bore comparable costs when sourcing the raw material to manufacture AHF, as the market prices of this raw material in both Russia and the Union market are directly linked to the London Metal Exchange. Therefore it can be concluded that the level of metal premium was not an injury factor during the review investigation period. In respect of the potential role of manufacturing methods, the investigation showed that continuous casting was used to produce close to two thirds of the AHF produced by the Union industry during the review investigation period. Any difference in cost-effectiveness would thus be mitigated by the preponderance of continuous casting as production method in the Union. It is also explained in recital 185 that there was no indication that the Union industry had lost interest in AHF. The investigation has shown no indication either that the Union producers neglected the Union market in favour of export markets of AHF. The investigation indeed showed that Union producers only exported 1 182 tonnes of AHF to third countries during the review investigation period which represents less than 3 % of the domestic sales of the Union producers during the same period. Therefore these claims were rejected.
- (164) On the basis of the above, the Commission concluded that the Union industry suffered material injury within the meaning of Article 3(5) of the basic Regulation.

F. LIKELIHOOD OF RECURRENCE OR CONTINUATION OF INJURY

1. Preliminary remarks

- (165) Since it was concluded that there is no likelihood of recurrence of dumping for imports from Brazil, the analysis of the likelihood of recurrence or continuation of injury was limited to the imports from the PRC.
- (166) To assess the likelihood of recurrence or continuation of injury if the measures against the PRC were allowed to lapse, the potential impact of Chinese imports on the Union market and the Union industry was analysed in accordance with Article 11(2) of the basic Regulation.
- (167) As shown in recitals 124-164, the Union industry suffered material injury during the review investigation period. During the whole period considered, Chinese imports were only present on the Union market in limited quantities, while import volume and market share from Russia increased during the same period. In the parallel investigation, it was concluded that imports from Russia were dumped and caused material injury to the Union industry, while imports from China, given their low volume and price levels, contributed only in part to the

injury suffered by the Union industry without however breaking the causal link between imports from Russia and the material injury suffered by the Union industry. At the same time, as outlined in recitals 80-100, the investigation has shown that the Chinese imports were made at dumped price levels during the review investigation period and there was a likelihood of continuation of dumping should the measures be allowed to lapse.

2. Spare capacity, trade flows and attractiveness of the Union market and pricing behaviour of the PRC

- (168) The significant spare capacities in the PRC that cannot be fully absorbed by the Chinese domestic demand and export markets other than the Union market, the continuation of dumping during the review investigation period with significant dumping margins and the dumping practice of Chinese exporters to third country markets, described in detail in recitals 82-100 clearly indicate that there is a strong likelihood that volumes of Chinese dumped imports would increase significantly in case the measures in force were allowed to lapse.
- (169) Should the measures in force be repealed, Chinese import prices will in all likelihood undercut the Union industry's sales prices on the Union market. Indeed the investigation has shown that, in the absence of anti-dumping duties, the Chinese imports made under the normal import regime during the review investigation period would have undercut the Union industry prices on average by 12,2 % ⁽¹⁾.
- (170) As mentioned in recitals 92-94, the Union market is attractive for Chinese imports given that prices in the Union market were broadly in line with the prices in other export markets. In addition, in July 2014 Turkey imposed anti-dumping measures against China for a range of aluminium foils including the product concerned. It is therefore likely that part of the production previously exported to Turkey would be reoriented to the Union market should the measures against China be repealed. Therefore, it can be concluded that the repeal of measures would in all likelihood result in a significant increase of Chinese imports at dumped prices significantly undercutting the Union industry prices, thus causing further injury to the Union industry.
- (171) The cooperating Brazilian producer and the Brazilian Aluminium Association claimed that, on the basis of statistics published by the EAFA, it could be established that the Union producers of aluminium foil increased their exports to third country markets which would demonstrate that these third country markets were more attractive than the Union market. In respect of this claim, it was found that the statistics used by these parties referred either to the entire aluminium foil sector or to a 'thinner gauges' category including AHF but also other types of foils such as converter foils and foils used for flexible packaging. On this basis, no meaningful conclusions can be drawn in respect of the product concerned alone. In addition, the investigation established that volumes of the product concerned exported by the Union industry to third country markets during the review investigation period amounted to only 1 182 tonnes, representing less than 3 % of their domestic sales during the review investigation period. The claims made in this regard were therefore rejected.

3. Conclusion

- (172) In view of the findings of the investigation, it is concluded that the repeal of measures against the PRC would in all likelihood result in a significant increase of Chinese imports at dumped prices undercutting significantly the Union industry prices, thus causing further injury to the Union industry.

G. UNION INTEREST

1. Preliminary remark

- (173) In accordance with Article 21 of the basic Regulation, the Commission examined whether maintaining the existing measures against the PRC would be against the interest of the Union as a whole. The determination of the Union interest was based on an appreciation of all the various interests involved, including those of the Union industry, traders, importers and users.

⁽¹⁾ For the determination of the undercutting rate of 12,2 % it was taken into account that the customs duty rate amounted to 4 % during the first three months of the review investigation period and increased to 7,5 % afterwards. Applying the currently applicable customs duty rate of 7,5 % to the entire period would have a negligible impact as it would decrease the undercutting rate by only 0,5 %.

2. Interest of the Union industry

- (174) The investigation established that the Union industry suffered material injury during the review investigation period. As mentioned in recital 167 the material injury mainly stems from the dumped imports of Russia while imports from China only partly contributed to the injury suffered by the Union industry. It was also established that there was a likelihood of continuation of injury should measures against China be allowed to lapse.
- (175) In case the measures against China are lifted it is likely that Chinese imports will resume in important volumes on the Union market at dumped prices that would also significantly undercut the Union industry's sales prices and exert a higher price pressure than that exerted by the dumped Russian imports during the review investigation period. The Union industry would be forced to match the lower price levels and thereby increase its losses.

3. Interest of users

- (176) The users in the Union are rewinders whose activities consist in trading wrapping material (aluminium foil, but also paper and plastic) after rewinding AHF into small rolls ('consumer rolls') and repacking it for industrial and retail sales business. Six companies came forward and received a questionnaire. Three companies cooperated in the proceedings by submitting questionnaire replies. Two of the cooperating companies were verified on-the-spot.
- (177) The investigation showed that AHF is the main raw material of the rewinders, representing around 80 % of their total cost of manufacturing.
- (178) During the review investigation period, none of the three cooperating users imported from the PRC. Their main sources of supply were the Union industry, Russia and Turkey.
- (179) As rewinders are suppliers of a wide range of packaging products, for the three cooperating companies, the activity incorporating AHF represented from less than one sixth to maximum one third of their total activity.
- (180) During the review investigation period all cooperating users reported to be overall profitable. In respect to the activity incorporating the product concerned, two of the cooperating users were found to be profitable while no conclusion could be drawn for the third one due to a lack of clarity in the allocation of their selling, general and administrative (SG&A) costs.
- (181) In view of the findings above, it is considered that the maintenance of the measures against China will not have a significant negative impact on the situation of the users.

4. Interest of importers/traders

- (182) No company involved in the trading of AHF and having imported or resold AHF originating in the PRC during the period considered came forward following the publication of the Notice of Initiation. The investigation also showed that the Union industry and the exporting producers were selling AHF mostly directly to users. On these grounds, there are no indications that the imposition of measures would have an adverse effect on the situation of importers/traders.

5. Sources of supply

- (183) Some interested parties claimed that the Union industry has insufficient capacity to cover the entire demand in the Union. Therefore, these parties claimed that, should measures be maintained against Brazil and China and, at the same time, should definitive measures be imposed against Russia, the Union would face a shortage of supply which would increase the price of AHF. As a consequence rewinders would also have to increase their prices of consumer rolls to the detriment of consumers.
- (184) In reply to this claim, the investigation showed that the Union industry has excess capacity and is able to increase production and sales of AHF in the Union. Moreover alternative sources of supply are available such as Turkey, Armenia and South Africa. Finally it should also be reminded that anti-dumping measures aim to establish a level playing field in the Union and not to bar Chinese and Russian imports to the Union market which should enter the market at fair prices levels.

6. Other arguments

- (185) An interested party claimed that the Union industry had lost interest in AHF and that for this reason it had no other option than using imported AHF. However, the investigation showed that the largest sampled Union producer was producing solely AHF. Other sampled EU producers were found to use their manufacturing facility to produce a mix of AHF and aluminium converter foil ('ACF') which is a different product used in different application than AHF. These other Union producers had a relatively stable ratio of production and sales between AHF and ACF during the period considered. The investigation thus did not confirm the allegations that the Union industry was losing interest in AHF and the claim was rejected.

7. Conclusion on Union interest

- (186) On the basis of the above, the Commission concluded that there were no compelling reasons that it was not in the Union interest to maintain measures on imports of AHF originating in the PRC.

H. ANTI-DUMPING MEASURES

- (187) All parties were informed of the essential facts and considerations on the basis of which it was intended to recommend that the existing measures against the PRC be maintained and the existing measures against Brazil be repealed. They were also granted a period to submit comments subsequent to that disclosure. The submissions and comments were duly taken into consideration where warranted.
- (188) It follows from the above that, as provided for by Article 11(2) of the basic Regulation, the anti-dumping measures applicable to imports of certain aluminium foils originating in the PRC, imposed by Regulation (EC) No 925/2009 should be maintained. Conversely, the measures applicable to imports from Brazil should be allowed to lapse.
- (189) A company may request the application of these individual anti-dumping duty rates if it changes subsequently the name of its entity. The request must be addressed to the Commission ⁽¹⁾. The request must contain all the relevant information enabling to demonstrate that the change does not affect the right of the company to benefit from the duty rate which applies to it. If the change of name of the company does not affect its right to benefit from the duty rate which applies to it, a notice informing about the change of name will be published in the *Official Journal of the European Union*.
- (190) The Regulation is in accordance with the opinion of the Committee established by Article 15(1) of the basic Regulation,

HAS ADOPTED THIS REGULATION:

Article 1

1. A definitive anti-dumping duty is hereby imposed on imports of aluminium foil of a thickness of not less than 0,008 mm and not more than 0,018 mm, not backed, not further worked than rolled, in rolls of a width not exceeding 650 mm and of a weight exceeding 10 kg, currently falling within CN code ex 7607 11 19 (TARIC code 7607 11 19 10), and originating in the People's Republic of China.

⁽¹⁾ European Commission, Directorate-General for Trade, Directorate H, Rue de la Loi/Wetstraat 170, 1040 Bruxelles/Brussel, BELGIQUE/BELGIË.

2. The rate of the definitive anti-dumping duty applicable to the net, free-at-Union-frontier price, before duty, of the product described in paragraph 1 and produced by the companies listed below shall be as follows:

Country	Company	Anti-dumping duty	TARIC additional code
PRC	Alcoa (Shanghai) Aluminium Products Co., Ltd and Alcoa (Bohai) Aluminium Industries Co., Ltd	6,4 %	A944
	Shandong Loften Aluminium Foil Co., Ltd	20,3 %	A945
	Zhenjiang Dingsheng Aluminium Co., Ltd	24,2 %	A946
	All other companies	30,0 %	A999

3. Unless otherwise specified, the provisions in force concerning customs duties shall apply.

4. The application of the individual duty rates specified for the companies mentioned in paragraph 2 shall be conditional upon presentation to the customs authorities of the Member States of a valid commercial invoice, on which shall appear a declaration dated and signed by an official of the entity issuing such invoice, identified by his/her name and function, drafted as follows: 'I, the undersigned, certify that the (volume) of aluminium foil sold for export to the European Union covered by this invoice was manufactured by (company name and address) (TARIC additional code) in the People's Republic of China. I declare that the information provided in this invoice is complete and correct.' If no such invoice is presented, the duty rate applicable to 'all other companies' shall apply.

5. The anti-dumping proceeding concerning imports of the product mentioned in Article 1(1) originating in Brazil is hereby terminated.

Article 2

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

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

Done at Brussels, 17 December 2015.

For the Commission
The President
Jean-Claude JUNCKER

COMMISSION IMPLEMENTING REGULATION (EU) 2015/2385**of 17 December 2015****imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of certain aluminium foils originating in the Russian Federation**

THE EUROPEAN COMMISSION,

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

Having regard to Council Regulation (EC) No 1225/2009 of 30 November 2009 on protection against dumped imports from countries not members of the European Community ⁽¹⁾ (the basic Regulation), and in particular Article 9(4) thereof,

Whereas:

A. PROCEDURE**1. Provisional Measures**

- (1) The European Commission (the Commission) imposed on 4 July 2015 a provisional anti-dumping duty on imports of certain aluminium foils originating in the Russian Federation (Russia) by Implementing Regulation (EU) 2015/1081 ⁽²⁾ (the provisional Regulation).
- (2) The proceeding was initiated on 8 October 2014 following a complaint lodged on 25 August 2014 by AFM Aluminiumfolie Merseburg GmbH, Alcomet AD, Eurofoil Luxembourg SA, Hydro Aluminium Rolled Products GmbH and Impol d.o.o. (the complainants) on behalf of producers representing more than 25 % of the total Union production of aluminium foils. The complaint contained prima facie evidence of dumping of the said product and of resulting material injury that was considered sufficient to justify the initiation of the investigation.

2. Subsequent procedure

- (3) Subsequent to the disclosure of the essential facts and considerations on the basis of which a provisional anti-dumping duty was imposed (the provisional disclosure), several interested parties made written submissions making known their views on the provisional findings. The parties who so requested were granted an opportunity to be heard.
- (4) The intervention of the Hearing Officer in trade proceedings was requested by the sole exporter, Rusal group, and five users. The hearing with the exporter took place in the presence of a representative of Russia on 14 October 2015. The main points discussed were the application of Article 2(9) of the basic Regulation for the calculation of export price and the impact of imports of aluminium converter foils (ACF) from the People's Republic of China (PRC) on the situation of the Union industry. The hearing with the users took place on 23 October 2015, after the deadline for submitting comments to the final disclosure. The main points discussed were the alleged circumvention of the anti-dumping measures on imports of AHF from the PRC, the impact of the imports from third countries on the injury suffered by the Union industry, the impact of the imposition of anti-dumping measures on imports of aluminium household foil (AHF) from Russia on users, and the possibility to use the minimum import price as type of measures.
- (5) In addition, on 27 October 2015 five rewinders requested a confrontational hearing with the complainants. However, the complainants have not shown interest in participating in such hearing.
- (6) The Commission considered the oral and written comments submitted by the interested parties and, where appropriate, modified the provisional findings accordingly.

⁽¹⁾ OJ L 343, 22.12.2009, p. 51.

⁽²⁾ Commission Implementing Regulation (EU) 2015/1081 of 3 July 2015 imposing a provisional anti-dumping duty on imports of certain aluminium foils originating in Russia (OJ L 175, 4.7.2015, p. 14).

- (7) The Commission informed all parties of the essential facts and considerations on the basis of which it intended to impose a definitive anti-dumping duty on imports of certain aluminium foils originating in Russia and definitively collect the amounts secured by way of provisional duty (the definitive disclosure). All parties were granted a period within which they could make comments on the definitive disclosure.
- (8) The comments submitted by the interested parties were considered and taken into account where appropriate.

3. Sampling

- (9) Following provisional disclosure, one of the sampled Union producers sold all its activity including equipment, rights permits, obligations concerning employees and its existing contracts to a new company. As this change took place after the investigation period, it is not relevant for the injury assessment under Article 6(1) of the basic Regulation.
- (10) In the absence of comments concerning the method of sampling, the provisional findings set out in recitals 7 to 13 of the provisional Regulation are confirmed.

4. Investigation period and period considered

- (11) As set out in recital 19 of the provisional Regulation the investigation of dumping and injury covered the period from 1 October 2013 to 30 September 2014 (the investigation period). The examination of trends relevant for the assessment of injury covered the period from 1 January 2011 to the end of the investigation period (the period considered).
- (12) After provisional disclosure, the Russian authorities argued that as the investigation period also included data for the last quarter of 2013, the determination of trends in the injury analysis did not meet the requirement of the objectiveness laid down in Article 3(2) of the basic Regulation.
- (13) The investigation period was set in accordance with Article 6(1) of the basic Regulation. In addition, the Commission relied on a sufficiently representative period of time for the examination of trends of all relevant economic factors and indices having a bearing on the state of the industry i.e. the investigation period and 3 complete financial years prior to the investigation period. The fact that there is some overlapping between the investigation period and one of the years included in the period considered does not affect the objective determination of the injury carried out by the Commission. This claim was therefore rejected.

B. PRODUCT CONCERNED AND LIKE PRODUCT

- (14) As set out in recital 20 of the provisional Regulation, the product concerned is aluminium foil of a thickness of not less than 0,008 mm and not more than 0,018 mm, not backed, not further worked than rolled, in rolls of a width not exceeding 650 mm and of a weight exceeding 10 kg (jumbo rolls) originating in Russia, currently falling within CN code ex 7607 11 19 (TARIC code 7607 11 19 10) (the product concerned). The product concerned is commonly known as aluminium household foil (AHF).
- (15) Following the provisional disclosure, several interested party claimed that the Russian imports did not compete with the AHF manufactured by the Union industry, however without further explaining this claim or substantiating it. Therefore, this claim was rejected.
- (16) In the absence of any other comments regarding the product concerned and the like product, the conclusions reached in recitals 21 to 28 of the provisional Regulation are confirmed.

C. DUMPING

- (17) The details of the dumping calculation are set out in recitals 29 to 52 of the provisional Regulation.
- (18) Following the provisional disclosure, Rusal group contested the adjustments made to the export price as described in recitals 40 to 42 of the provisional Regulation. Rusal group claimed that deduction of sales, general and administrative (SG&A) expenses and profit of the related trader are only warranted in case of delivery duty paid (DDP) transactions and not in case of delivery at place of destination (DAP) and cost, insurance and freight (CIF) transactions.

- (19) In reply to this claim, it is noted that the Commission constructed the export price in accordance with Article 2(9) of the basic Regulation due to the existing association between the producers and their related trader. The investigation showed that this association applies to all types of transactions regardless of their commercial terms. Moreover, Rusal group did not provide any evidence on why the profit margin used would not be reasonable. The claims made in this regard are therefore considered unsubstantiated and should be rejected. With regard to SG&A expenses, it is the party claiming the excessiveness of the adjustment who shall provide specific evidence and calculations justifying its claim and, in particular, to give the alternative rate of adjustment that it suggests where applicable. Rusal group however failed to provide any of this in its submission following the provisional disclosure.
- (20) On the basis of above, the claim of the exporting producer was rejected.
- (21) Following the final disclosure Rusal group reiterated its disagreement concerning the adjustments made for SG&A and profit under Article 2(9) of the basic Regulation for DAP and CIF transactions. Rusal group is not contesting the application of Article 2(9) given the involvement of the related trader in all types of transactions (i.e. DDP, DAP and CIF). However, with regards to the transactions performed under CIF and DAP terms, Rusal group contests the applicability of the adjustments under the second and third subparagraph of Article 2(9), in particular SG&A and profit. In its view, under CIF and DAP terms the delivery of the goods to the buyer is made prior to importation, and therefore these adjustments are not applicable. In its submission Rusal group listed a number of cases where apparently the Commission did not make adjustments under Article 2(9). Finally, the Rusal group claims that, in the alternative, should the Commission maintain that the application of Article 2(9) requires an automatic adjustment for reasonable SG&A costs and profit, then the Commission services should recognise that the trader was an integrated department of the exporting producer in CIF and DAP transactions, and consequently apply Article 2(8) of the basic Regulation to those transactions.
- (22) In reply to this, the Commission confirms that, in the case of Rusal an adjustment for a reasonable margin for SG&A and profits under the second and third subparagraph of Article 2(9) should be applied for all types of transactions. Although the delivery of the goods for the CIF transactions is made prior to the release into free circulation of the goods and even if the responsibility for the customs clearance is on the buyer (as opposed to transactions under DDP terms), this does not change the fact that the sales are performed by the related trader which is bearing SG&A costs and which is normally seeking to make a profit for its services. In light of the fact that the trader is related to the exporting producer, Article 2(9) of the basic Regulation implies that the data of such trader is by definition unreliable and that its SG&A costs and profits should be established by the investigating authority on a reasonable basis. Besides, Article 2(9) of the basic Regulation does not preclude adjustments being made for costs incurred before importation, inasmuch as those costs are normally borne by the importer. Therefore, the complete exclusion of adjustments for SG&A and profit for what concerns sales performed under CIF terms is not justifiable. Indeed, the fact that the related company performs only certain functions does not prevent the Commission from making the adjustments under Article 2(9) of the basic Regulation but could be reflected in a lower amount of SG&A to be deducted from the price at which the product concerned is first resold to an independent buyer. In any event, the interested party who intends to dispute the extent of the adjustments made on the basis of Article 2(9) of the Basic Regulation has a burden of proof. Hence, if this party deems the adjustments to be excessive it must supply specific evidence and calculations justifying those claims. As regards DAP transactions, it should be mentioned that the places of delivery are well inside the EU customs territory and therefore the difference with respect to the degree of involvement of the trader as compared to sales under DDP terms is even smaller. As for the past cases mentioned by the Rusal group it is important to note first that the Commission's position is in line with the case-law of the Union Courts. Second, the Commission enjoys a wide discretion in the sphere of measures to protect trade and, when exercising that discretion, is not bound by its past assessments. In any event, the factual situation in each of the cases referred to by the Rusal group differed. As regards finally the alternative claim to apply Article 2(8) of the basic Regulation, the Commission refers to the reasoning in this recital and in recital 19 and reiterates that the mere fact of association between the exporter and the related company is enough to enable the Commission to treat the actual export prices as unreliable because the existence of association between the exporter and related company is one of a number of reasons for which the actual export prices may be regarded as unreliable.
- (23) Concerning the quantification of the adjustment for SG&A, following the receipt of comments to the provisional disclosure, the Commission invited Rusal group to identify the part of SG&A that they considered not-applicable or unreasonable for CIF and DAP transactions and to provide evidence thereof as required by case-law. However, no evidence was provided in this respect because Rusal group conditioned the submission of any information

upon the Commission's acceptance of its legal interpretation of Article 2(9) of the basic Regulation. In the absence of any element provided by the Rusal group in this respect, the claim should be rejected.

- (24) In the absence of any further comment, the provisional findings as set out in recitals 29 to 52 of the provisional Regulation are confirmed and the definitive dumping margins, expressed as a percentage of the CIF Union frontier price, duty unpaid, remain unchanged:

Company	Definitive dumping margin
Rusal group	34,0 %
All other companies	34,0 %

D. INJURY

1. Definition of the Union industry and Union production

- (25) The change mentioned in recital 9 above did not affect the definition of the Union industry.
- (26) In the absence of any comments with respect to the definition of the Union industry and Union production, the conclusions set out in recitals 53 to 55 of the provisional Regulation are confirmed.

2. Union consumption

- (27) In the absence of any comments with regard to Union consumption, the conclusions set out in recitals 56 to 60 of the provisional Regulation are confirmed.

3. Imports from the country concerned

- (28) In the absence of any comments concerning the imports from the country concerned, the conclusions set out in recitals 61 to 70 of the provisional Regulation are confirmed.

4. Economic situation of the Union industry

- (29) Following provisional disclosure, one interested party claimed that the analysis of the economic situation of the Union industry would be affected by the interdependence of the AHF and the ACF markets. The party claimed that the interdependence of these markets was due to three main assumptions: (i) all sampled Union producers were able to produce both AHF and ACF on the same manufacturing facilities and equipment, (ii) the relative ease to switch between the production of ACF and AHF, and (iii) the high price elasticity of demand of both products. The party finally claimed that the Union producers were not able to distinguish the economic factors relating to each of these products separately and that therefore, the Commission should have applied Article 3(8) of the basic Regulation and based its injury assessment on a broader basis.
- (30) It has to be noted that ACF is, however, a different product than AHF and it is used in different applications. As explained in recital 131 of the provisional Regulation, the largest sampled Union producer of AHF was producing solely AHF. As also mentioned in this recital, the investigation has shown that those Union producers producing both AHF and ACF could not switch easily from one product to the other as the production of both products in certain quantities is needed in order to maximise efficiency. In addition, the investigation has shown that the sampled Union producers had a stable ratio of production between the two types of foils. Furthermore, the Union producers that were manufacturing both AHF and ACF were able to separate the economic and financial data for the production and sales of AHF from those for the production and sales of ACF. Therefore, the injury analysis in recitals 71 to 108 of the provisional Regulation only refers to the production and sales of AHF in the Union and the claim that the Commission should have applied Article 3(8) of the basic Regulation was therefore rejected.

- (31) Following final disclosure, this interested party disagreed with the Commission's conclusion that the application of Article 3(8) of the basic Regulation was not applicable in this case. The interested party reiterated its arguments showed in recitals 29 and 30 above without bringing any new elements. It also insisted that the Commission could not establish that most Union producers were able to separate the economic and financial data for the production of AHF and ACF, however without substantiating its claim. Therefore, the Commission confirms that it did not need to have recourse to Article 3(8) of the basic Regulation in this case because the verified data of the sampled Union producers permitted the separate identification of the production of the like product. Because the claims made by this interested party are mere allegations that are factually incorrect, they are rejected.
- (32) Following provisional disclosure, the Russian authorities asked the Commission to provide the non-confidential versions of the responses of the sampled Union producers and all other evidence showing material injury. They further requested access to the methodology used by the Commission to assess the material injury suffered by the Union producers.
- (33) The Commission recalls that the Russian authorities were informed, together with all interested parties, on 25 August 2015 (following their submission to the provisional disclosure) on the exact procedure to follow in order to obtain access to the non-confidential file of the investigation. The non-confidential versions of those responses were in sufficient detail to permit a reasonable understanding of the substance of the information provided in confidence. As concerns the other evidence that supports the finding of material injury suffered by the Union industry, this was presented in recitals 71 to 108 of the provisional Regulation.

5. Conclusion on injury

- (34) Following provisional disclosure, two interested parties claimed that not all injury indicators showed a negative trend and that the existence of a positive trend of some of the injury indicators would demonstrate that the Union industry did not suffer material injury. It was also claimed that the insufficient increase in the Union industry's sales volume does not point to material injury as this was the result of insufficient production capacity when demand in the Union grew.
- (35) Under Article 3(5) of the basic Regulation, a finding of material injury is based on an overall assessment of all the relevant injury indicators. Drawing conclusions solely based on certain selected injury indicators would distort the analysis in this case. Thus, as concluded in recital 106 of the provisional Regulation, although production capacity, production and sales of the Union industry increased in the period considered such increase was below the increase in consumption. Despite the difficult financial situation of the Union industry, Union producers made efforts to invest to increase capacity to benefit from the increase in the Union consumption. However, as they were not able to increase prices to cost-covering levels, their ability to invest in capacity increases was limited. The producers were to a certain extent able to finance the losses incurred from the production and sales of AHF with the profits obtained from the sale of other products. However, on long term, such strategy is not sustainable for the Union industry to produce a product that is loss making. Therefore, the claim that not all injury indicators showed a negative trend and that there was, therefore, no material injury, was rejected.
- (36) Following final disclosure, the Russian authorities reiterated their claim before provisional stage that according to publicly available financial documents of the complainants there would be no material injury.
- (37) As explained in recital 107 of the provisional Regulation, some of the Union producers did not produce exclusively AHF and therefore the publicly available financial documents cannot reveal the actual situation of the Union industry for AHF. Moreover, the results of the investigation are based on actual verified data of the Union industry related to AHF. This claim was, therefore, rejected.
- (38) Following final disclosure, one interested party reiterated its claim that the majority of the relevant factors and indices having a bearing on the state of the Union industry of AHF had a positive development during the period considered. It furthermore claimed that the Commission's analysis of the situation of the Union industry is based only on a few indicators.
- (39) However, the Commission's analysis of the situation of the Union industry is based on the totality of the factors presented in Section D of the provisional Regulation. The fact that some of the injury indicators like production, production capacity and sales volume showed a positive trend during the period considered does not undermine the overall conclusion that the Union industry suffered material injury within the meaning of Article 3(5) of the

basic Regulation. The indicators cannot be seen in isolation from each other, the correlation between the indicators needs to be taken into account as well. As explained in recital 106 of the provisional Regulation, production volume increased by 7 % and production capacity by 12 % during the period considered. However these increases fell behind the increase in consumption which was much higher, namely by [17 %-28 %] over the period considered. As a consequence, even though the sales volume of the Union industry increased by [2 %-10 %] during the period considered, in a market with an even higher increase in consumption, the increase in sales volume did not lead to an increase of market share, but to the contrary, to a loss of market share by 8 percentage points. This demonstrates that the Union industry could not benefit from the increase in consumption. Furthermore, even though the investments increased by 47 % during the period considered, this still fell behind the investments needed to keep up with the increase in consumption. Finally, the cash flow showed a positive trend, but in absolute terms it remained at low levels. Consequently, the positive trend of some indicators, when analysed in correlation with other factors, confirms in fact an injurious situation of the Union industry. Therefore, the claims in recital 38 above were rejected.

- (40) Following final disclosure, five rewinders alleged, in the context of requesting the measures to be imposed in the form of a minimum import price, that the selling price of the Union producer manufacturing solely AHF increased after the investigation period, while the aluminium premium decreased. The parties also claimed that these elements translated into higher profits for this Union producer.
- (41) In accordance with Article 6(1) of the basic Regulation, the conclusion on injury above was reached on the basis of verified data for the period considered, not taking into account post investigation period data and on basis of data representative for the totality of the sampled companies and not on one Union producer in isolation. Therefore, the claim in recital 40 was rejected.
- (42) On the basis of the above and in the absence of any other comments, the conclusions set out in recitals 71 to 108 of the provisional Regulation that the Union industry suffered material injury within the meaning of Article 3(5) of the basic Regulation were confirmed. The Union industry suffered material injury, which was reflected most notably in the negative profitability almost during the entire period considered.

E. CAUSATION

1. Effect of the dumped imports

- (43) Following provisional disclosure, some interested parties reiterated their claims submitted prior to the imposition of provisional duties, i.e. that the injury suffered by the Union industry was not caused by the Russian imports but by other factors such as the inability of the Union industry to increase its production capacity in line with the increasing demand, imports from other third countries like Turkey and the PRC and the increase in production of ACF by the Union industry to the detriment of AHF.
- (44) The claimed impact of other factors on the material injury suffered by the Union industry is addressed in recitals 49 to 97 below.
- (45) In addition, one party claimed that the profitability of the Union industry increased in 2013 when the Russian imports were at their highest absolute volume which allegedly would demonstrate that the Russian imports did not have an impact on the profitability of the Union industry and did therefore not cause the material injury suffered by the Union industry.
- (46) As shown in recital 99 of the provisional Regulation, the profitability of the Union industry was slightly fluctuating, between - 2,9 % and 0,2 % during the period considered. In 2013, the profitability of the Union industry barely exceeded the breakeven point, i.e. amounted to 0,2 %. While the volume of the Russian imports was the highest in the same year, its market share remained constant at 34 %. Therefore, this minor temporary improvement of the Union industry's profitability did not affect the conclusion that the overall profitability of the Union industry was negative (with the exception of 2013) and remained under the target profit of 5 % over the entire period considered. It did also not affect the conclusion drawn in recital 116 of the provisional Regulation that there was a causal link between the deterioration of the Union industry's situation and the dumped Russian imports which held a constant and significant market share. Therefore, this claim was rejected.

- (47) In the light of the above, the causal link was established between dumped imports and the material injury found on the basis of the combined existence of substantial import volumes from Russia (34 % market share held by one producer) and the high price pressure exerted by these imports on the Union market (price underselling of around 12 %).
- (48) In the absence of any other comments as regard the effects of the dumped imports, the conclusions set out in recitals 110 to 116 of the provisional Regulation were confirmed.

2. Effect of other factors

2.1. Effect of imports from other countries

- (49) After provisional disclosure, it came to the attention of the Commission that in table 11 of the provisional Regulation, total imports included erroneously also the imports from Russia. The below table replaces table 11 of the provisional Regulation:

Table 1

Imports from other third countries

Country		2011	2012	2013	Investigation period
PRC	Volume (tonnes)	[2 843-3 205]	[967-1 378]	[1 137-1 603]	[1 222-1 699]
	Index (2011=100)	100	[34-43]	[40-50]	[43-53]
	Market share (%)	4	1	1	2
	Average price (EUR/tonne)	2 251	2 417	2 306	2 131
	Index (2011=100)	100	107	102	95
Turkey	Volume (tonnes)	[5 120-6 100]	[8 090-10 553]	[11 213-14 213]	[11 520-14 579]
	Index (2011=100)	100	[158-173]	[219-233]	[225-239]
	Market share (%)	7	11	13	13
	Average price (EUR/tonne)	2 950	2 743	2 710	2 571
	Index (2011=100)	100	93	92	87
Other third countries	Volume (tonnes)	[3 100-3 750]	[279-750]	[1 891-3 000]	[3 162-4 313]
	Index (2011=100)	100	[9-20]	[61-80]	[102-115]
	Market share (%)	4	1	2	4
	Average price (EUR/tonne)	2 878	2 830	2 687	2 406
	Index (2011=100)	100	98	93	84

Country		2011	2012	2013	Investigation period
Total imports (without Russia)	Volume (tonnes)	[10 677-10 761]	[9 037-9 902]	[14 855-16 831]	[15 226 -17 491]
	Index (2011=100)	100	[85-92]	[138-158]	[141-164]
	Market share (%)	16	13	17	19
	Average price (EUR/tonne)	2 750	2 712	2 669	2 505
	Index (2011=100)	100	99	97	91

Source: Eurostat and questionnaire reply.

- (50) One interested party claimed that the Commission failed to separate and distinguish the injurious effects of the imports from the PRC and Turkey, while other interested party claimed that the Commission underestimated the impact of imports from third countries on the situation of the Union industry.
- (51) As regard the imports from the PRC, after provisional disclosure it was found that small corrections had to be made to the level of the undercutting of the Chinese imports as stated in recital 118 of the provisional Regulation due to a clerical error. After correction, it was found that the average price of total volume of imports from the PRC to the Union in the investigation period was undercutting the Union industry prices by 10,2 % instead of 13 % as stated in recital 118 of the provisional Regulation.
- (52) In addition, as explained in recital 118 of the provisional Regulation, the import volume from the PRC decreased by [47 %-57 %] with a corresponding decrease in market share from 4 % to 2 %, during the period considered while the prices of these imports undercut the prices of Union industry by 10,2 %. On this basis, the Commission concluded in recital 121 of the provisional Regulation that Chinese imports contributed in part to the injury suffered by the Union industry, while they did not break the causal link between the dumped imports from Russia and the material injury suffered by the Union industry. Since the market share of the Chinese imports was low and showed a decreasing trend during the period considered, these imports could not have exerted a significant price pressure on the Union producers to prevent them from increasing prices to profitable levels. The conclusion that the Chinese imports did not break the causal link between the dumped Russian imports and the material injury suffered by the Union industry as per recital 121 of the provisional Regulation is thus confirmed.
- (53) Regarding imports from Turkey, as explained in recital 119 of the provisional Regulation, they showed an increasing trend during the period considered and reached a market share of 13 % in the investigation period due to a higher demand on the Union market, which Union producers were not able to satisfy as explained in recital 35. However, Turkish import prices even though they decreased by 13 % over the period considered, were at similar levels as the Union industry's prices and significantly above the price level of the Russian imports. Even if the market share of the Turkish imports had an increasing trend, given their similar levels to the Union industry's prices (sometimes even higher), they could not have exerted a significant price pressure on the Union producers to prevent them from increasing their prices to profitable levels. Consequently, the conclusion that Turkish imports did not break the link between the dumped Russian imports and the material injury suffered by the Union industry is hereby confirmed.
- (54) Following final disclosure, one interested party reiterated its claim from the provisional stage that the Commission did not separate and distinguish the injurious effects of the imports from Turkey. It also claimed that the increasing volume of Turkish imports injured the Union industry in terms of market share and capacity utilisation and therefore allegedly broke the causal link between the imports from Russia and the material injury suffered by the Union industry.

- (55) It is correct that the market share of the Turkish imports increased during the period considered while the market share of the Union industry decreased. However, the Turkish imports represented a market share of 13 % in the investigation period while the market share of the Russian imports was 34 %. In addition, the Turkish prices were at the same level as the prices of the Union industry while the Russian imports were undercutting the Union industry prices by [3 %-7 %]. In addition, it is highlighted that it is not sustainable for a loss making industry, such as the AHF industry, to continuously increase its volume of sales while incurring losses in the same time. The industry needs first to increase its prices above cost-covering levels before increasing even more its volume of sales. However, this was not possible due to the price pressure exerted by the dumped imports from Russia in significant volumes. Therefore, the claim that the Turkish imports broke the causal link between the imports from Russia and the material injury suffered by the Union industry was rejected.
- (56) It was further claimed that the Turkish import prices are higher than the Russian import prices as the Turkish producers specialise and focus their exports to the Union market on thinner foil between 0,008-0,009 mm which the Russian producer does not export to the Union market. This claim was not supported by any evidence and therefore it was rejected.
- (57) As concerns the imports from the remaining third countries, their volume decreased between 2011 and 2013 by [20 %-39 %] and then increased by [2 %-15 %] at the end of the investigation period. As explained in recital 120 of the provisional Regulation, their market share decreased from 4 % in 2011 to 2 % in 2013 and then increased to 4 % at the end of the investigation period. As also outlined in the same recital of the provisional Regulation their prices were at lower levels than the Union industry's sales prices, with the exception of 2012, but higher than the Russian import prices throughout the period considered. Therefore, imports from other third countries could not have exerted such a significant price pressure on the Union producers as to prevent them from increasing the prices to profitable levels. Consequently, the conclusion that the imports from other third countries did not break the causal link between the dumped Russian imports and the material injury suffered by the Union industry is hereby confirmed.
- (58) In the absence of any other comments the conclusions reached in recitals 117 to 122 of the provisional Regulation were therefore confirmed.

2.2. Development of Union consumption

- (59) Following provisional disclosure, two interested parties claimed that the Union industry failed to meet the growing consumption in spite of the investments made to increase production capacity, which allegedly caused the material injury suffered.
- (60) Firstly, the party did not explain how an increase in consumption in the Union as such could have had a negative impact on the Union industry and thus break the causal link between the dumped imports from Russia and the material injury suffered by the Union industry. To the contrary, under normal conditions of competition, i.e. in the absence of dumped imports, the Union industry could reasonably be expected to benefit from the increase in consumption.
- (61) Secondly, the Russian imports were able to increase their market share by 5 percentage points, while the Union producers lost 8 percentage points of their market share, i.e. it decreased from 55 % to 47 % in the period considered.
- (62) In addition, as explained in recital 78 of the provisional Regulation, the Union producers made efforts to increase production capacity but this was limited by their difficult financial situation. The relatively low level of investments was due to the difficult financial situation of the Union industry, which in itself was caused by the dumped imports. Furthermore, even though the production capacity of the Union industry slightly increased during the period considered, the capacity utilisation decreased because of the low priced dumped Russian imports. In addition, the Union industry's production volume slightly increased and its market share decreased continuously throughout the period considered. Therefore, this cannot be considered as a cause of the material injury suffered by the Union industry. These claims were therefore rejected.
- (63) In the absence of any other comment in this regard, the conclusions reached in recitals 123 to 125 of the provisional Regulation were confirmed.

2.3. Export performance of the Union industry

- (64) In the absence of any comments regarding the effect of the Union industry's export performance, the conclusions reached in recitals 126 to 128 were confirmed.

2.4. *The activity of the Union industry in the aluminium converters foils (ACF) market*

- (65) After provisional disclosure, one party claimed that the Commission failed to give consideration to ACF as other factor. It reiterated its claim that some Union producers chose to increase the production and sale of the more lucrative ACF product at the expense of AHF production. It also argued that the Commission failed to consider the impact of the production and sales of ACF and its economic situation on the overall economic situation of the Union industry for AHF. This claim was reiterated following final disclosure without any new information.
- (66) As explained in recital 81 of the provisional Regulation, several Union producers manufactured both AHF and ACF, while the largest sampled producer of AHF did not produce ACF during the investigation period. In addition, the investigation has shown that the sampled Union producers had a stable ratio of production between the two types of foils and therefore it was concluded that there was no switch of the Union industry to the production of ACF to the detriment of AHF. In any event, in case such a switch had happened, it would have been rather an effect of the dumped imports from Russia which continuously put a significant price pressure on AHF that prevented the Union producers from increasing prices to profitable levels. Moreover, the investigation showed that the trend in profitability of the product concerned is comparable across the sampled companies, irrespective of the share of AHF and ACF production in their total production. The claim described in recital 65 is therefore rejected.
- (67) In the absence of any other comment in this regard, the conclusions set out in recitals 129 to 132 of the provisional Regulation are hereby confirmed.

2.5. *Cost of raw materials*

- (68) After provisional disclosure, the Russian authorities disagreed with the Commission's conclusion that the price development of aluminium quoted at the London Metal Exchange (LME) did not have a bearing on the fact that Russian import prices were undercutting the Union industry's selling price and were exerting a price pressure on the Union market, which did not allow the Union industry to increase their selling price to a level that would have covered the cost of production.
- (69) As it was explained in recital 136 of the provisional Regulation, the investigation has showed that both, the Union industry and the Russian exporting producers bore comparable costs when sourcing aluminium to manufacture AHF, as the market prices of aluminium in both, Russia and the Union, were directly linked to the LME. In addition, while sales prices of the Union industry as well as import prices from Russia of AHF were decreasing following the price development of aluminium quoted at LME, the investigation established that Russian import prices of AHF were constantly lower than the Union industry's prices during the period considered and undercut them by [3 %-7 %] during the investigation period. Moreover, the Union industry sales prices of AHF did not cover the unit cost of production even though unit cost of production decreased. This was due to the price pressure exerted by the dumped imports in significant volumes undercutting the Union industry's sales prices which did not allow the Union industry to increase its sales prices and did therefore not allow them to benefit from the decrease in the raw material costs.
- (70) Following final disclosure, the Russian authorities reiterated their claim that the price pressure on the Union market was exercised by the LME aluminium prices instead of the Russian AHF imports, without bringing new evidence in this regard. Therefore, this claim was rejected.
- (71) In the absence of any other comment in this regard, the conclusions set out in recitals 133 to 136 of the provisional Regulation are hereby confirmed.

2.6. *Cumulated effects of other factors*

- (72) After provisional disclosure, one interested party claimed that the Commission failed to provide an assessment of the cumulated effects of all other factors without, however, specifying the legal basis for its claim or explaining how, under the facts of this case, this could have resulted in the attribution of injury resulting from other factors to the Russian dumped imports.
- (73) Firstly, the basic Regulation does not require the Commission to conduct an assessment of the cumulated effects of other factors when analysing the impact of these factors. Secondly, in the present case, the Commission was

able to properly distinguish and separate the effects of all other known factors individually on the situation of the Union industry from the injurious effects of the Russian dumped imports. Therefore, the Commission was able to conclude that the injury it ascribed to Russian dumped imports is actually caused by those imports, rather than by the other factors. The Commission therefore fulfilled its obligation not to attribute to Russian dumped imports the injury caused by other causal factors. Therefore, no collective analysis of all the known factors is necessary. In any event, this interested party did not adduce any evidence on why the Commission in this case has improperly attributed to Russian dumped imports the injury caused by other factors. Therefore, this claim was rejected.

2.7. Alleged circumvention of the anti-dumping measures on imports of AHF from the PRC

- (74) Following final disclosure, the Russian exporting producer and several rewinders claimed for the first time that the anti-dumping measures in force on imports of AHF from the PRC are being circumvented via a slightly modified form which allows them to be registered in Eurostat as ACF using the CN code 7607 11 19. In addition, the parties claimed that the aluminium foil with a thickness from 0,007 mm to 0,2 mm showed in the Chinese statistics database are circumvented AHF under the two codes 7607 11 90 and 7607 11 20. The volume of the alleged circumvented imports was therefore estimated to around 30 000 tonnes per year and it was claimed that it was causing injury to the Union industry.
- (75) It is recalled that in 2012 the Commission initiated an investigation concerning the possible circumvention of anti-dumping measures imposed on imports of certain aluminium foil originating in the PRC by imports of certain aluminium foil in rolls which are not annealed and of a width exceeding 650 mm originating in the PRC ⁽¹⁾ by Council Regulation (EC) No 925/2009 ⁽²⁾. However, on 2 July 2013 the Commission terminated the investigation ⁽³⁾ without extending the anti-dumping measures on imports of certain aluminium foil originating in the PRC to imports of certain aluminium foil in rolls which are not annealed and of a width exceeding 650 mm originating in the PRC following a withdrawal of the request from the applicants.
- (76) The current proceeding did not cover alleged circumvention practises. In any event, the Commission made an analysis of the imports of AHF and ACF from the PRC based on the Chinese database statistics supplied by Goodwill China Business Information Ltd and the Eurostat statistics.
- (77) The Chinese exports of aluminium foil via the two codes mentioned by the interested parties in the Chinese statistics are showed in the table below:

Table 2

Exports of AHF and ACF from the PRC to the Union

tonnes	CN code	2011	2012	2013	Investigation period
Volume	7607 11 90	18 786	17 177	22 444	24 760
Volume	7607 11 20	4 730	3 915	6 826	8 172
Volume	Total	23 515	21 091	29 270	32 932

Source: Goodwill China Business Information Ltd.

⁽¹⁾ Commission Regulation (EU) No 973/2012 of 22 October 2012 initiating an investigation concerning the possible circumvention of anti-dumping measures imposed by Council Regulation (EC) No 925/2009 on imports of certain aluminium foil originating in the People's Republic of China by imports of certain aluminium foil in rolls which are not annealed and of a width exceeding 650 mm originating in the People's Republic of China, and making such imports subject to registration (OJ L 293, 23.10.2012, p. 28).

⁽²⁾ Council Regulation (EC) No 925/2009 of 24 September 2009 imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of certain aluminium foil originating in Armenia, Brazil and the People's Republic of China (OJ L 262, 6.10.2009, p. 1).

⁽³⁾ Commission Regulation (EU) No 638/2013 of 2 July 2013 terminating the investigation concerning possible circumvention of anti-dumping measures imposed by Council Regulation (EC) No 925/2009 on imports of certain aluminium foil originating in the People's Republic of China by imports of certain aluminium foil in rolls which are not annealed and of a width exceeding 650 mm originating in the People's Republic of China (OJ L 184, 3.7.2013, p. 1).

- (78) It should be noted that the Chinese codes in the table above are not specifically for the AHF and ACF is also covered by these codes. The interested parties simply assumed that the total volume exported via these two codes is circumvented AHF, ignoring the fact that the export of genuine ACF is also reported in these codes.
- (79) Moreover it is noted that the CN code 7607 11 19 in Eurostat is further broke down into two different codes, one for AHF (7607 11 19 10) and one for ACF (7607 11 19 90). The total imports of ACF from the PRC during the period considered are showed in the table below:

Table 3

Imports of ACF from the PRC

tonnes	2011	2012	2013	Investigation period
Volume	25 506	20 996	28 135	36 464

Source: Eurostat.

- (80) On the basis of the above, while it is not excluded that some of the imported volumes declared as ACF are indeed circumvented AHF, the interested parties were clearly overstating the volume of the alleged circumvented AHF, as, during the period considered, the total volume of imports of ACF from the PRC was below the alleged circumvented volume of AHF (i.e. 30 000 tonnes), with the exception of the investigation period. Neither the information submitted by the parties nor the information collected by the Commission permit a separation of the allegedly circumvented AHF from the genuine ACF in these codes and, therefore, the Commission is not in a position to assess the volume of circumvented AHF, if any.
- (81) Since the parties did not submit any other evidence in support of their claim, it was concluded that the alleged circumventing volumes, if any, were not as such as to break the causal link between the dumped Russian imports and the material injury suffered by the Union industry.

2.8. Other arguments

- (82) The Russian authorities claimed that the Commission has not taken into account the general trend of the declining world market prices of AHF.
- (83) As explained in recitals 67, 91, 118 to 120 of the provisional Regulation, the Union prices as well as the import prices from Russia, Turkey, the PRC and other third countries decreased during the period considered. However, the prices of the Russian imports were continuously lower than the Union industry sales prices and undercutting them by [3 %-7 %] at significant volumes. Therefore, the claim was rejected.
- (84) Another interested party claimed that the profitability of the Union industry did not increase because of their expansion of production capacities and the increase in investments.
- (85) The production of AHF is machinery intensive. Therefore, in order for the Union industry to increase production capacity, investment in machinery is needed. However, from accounting point of view the impact of the depreciation of the machinery in the total manufacturing cost is limited, between 3 % and 5 %, and, consequently it cannot have a significant impact on the profitability of the Union industry. Therefore, the claim was rejected.
- (86) Following final disclosure, the Russian authorities claimed without supporting evidence that the statistical data from Russia reflect only the average quality of AHF which is a lower-priced product, while the statistics of the Union and the other major third countries reflect a mix of AHF with more expensive foils.

- (87) The investigation has not revealed any such difference in quality between the AHF manufactured by the Union producers and the one imported from Russia. The rewinders that are buying AHF from Union producers, from Russia and other third countries producers, especially Turkey, have not raised any claims about a quality difference between the different sourced AHF during the investigation. Therefore, this claim was rejected.
- (88) Following final disclosure, one interested party also claimed that, in the framework of the current proceeding, the Commission disregarded the fact that four out of the six sampled Union producers alleged injurious dumping on ACF from the PRC.
- (89) It is correct that on 12 December 2014 the Commission initiated an anti-dumping proceeding concerning imports of certain aluminium foil originating in the People's Republic of China ⁽¹⁾ which is ACF. As explained in recital 30 above, AHF and ACF are two different products, sold in two different markets. The injury suffered by the Union industry from the production and sales of ACF, if any, is not reflected in the situation of the AHF industry. In addition, the investigation on imports of ACF from the PRC was terminated by the Commission without imposition of measures ⁽²⁾. Specifically, the closed investigation did not lead to any findings by the Commission on whether or not the Union industry is injured by imports of ACF from the PRC. Therefore, this claim was rejected.
- (90) Following final disclosure, five rewinders claimed that the Russian AHF competes only marginally with the AHF manufactured by the sampled Union producers. It was further claimed that the Russian AHF competes with the AHF imported from Turkey and the PRC.
- (91) This claim was not substantiated by evidence and was therefore rejected.
- (92) The rewinders also argued that, in general, the majority of the sampled Union producers do not sell the AHF to rewinders because it is not AHF for the production of consumer rolls, but ACF sold at a premium with prices close to EUR 3 000 per tonne.
- (93) This claim is factually incorrect. First, it should be noted that as stated in table 7 of the provisional Regulation the average selling price of the Union industry was EUR 2 597 per tonne during the investigation period and not EUR 3 000 as claimed. Moreover, the investigation confirmed that all sampled Union producers were selling AHF to rewinders. The four rewinders that cooperated in the investigation and submitted a questionnaire reply were buying AHF from the Union producers. Therefore, this claim was rejected.
- (94) The five rewinders also argued that the sampled Union producer that only produced AHF has in fact caused material injury to the other sampled Union producers as its selling prices undercut those of the other sampled Union producers. In addition, it was also claimed that as the profitability of the Union industry is calculated based on the sampled Union producers, i.e. not covering the whole Union industry, the Commission should also limit the market share analysis to the sampled companies only instead of the whole Union industry.
- (95) During the period considered the selling prices of the sampled Union producer which produces only AHF were in line with the average prices of the Union industry and were, in certain years, even higher. Therefore, it is factually wrong to claim that prices of this Union producer undercut those of the other sampled Union producers.
- (96) Regarding the second part of the claim, the Commission recalls that the injury analysis is carried out at the level of the Union industry within the meaning of Article 4(1) of the basic Regulation as defined in recital 53 of the provisional Regulation. Moreover, as explained in recital 9 of the provisional Regulation, due to a large number of Union producers, sampling was applied in accordance with Article 17 of the basic Regulation. Six companies were sampled representing more than 70 % of total Union production. No comments concerning the selection of the sample were received within the deadline and, therefore, the sample was considered representative of the Union industry. In addition, due to the application of sampling, as explained in recital 73 of the provisional Regulation, the Commission distinguished between macroindicators and microindicators. The list of these

⁽¹⁾ Notice of initiation of an anti-dumping proceeding concerning imports of certain aluminium foil originating in the People's Republic of China (OJ C 444, 12.12.2014, p. 13).

⁽²⁾ Commission Implementing Decision (EU) 2015/1928 of 23 October 2015 terminating the anti-dumping proceeding concerning imports of certain aluminium foil originating in the People's Republic of China (OJ L 281, 27.10.2015, p. 16).

indicators is showed in recitals 74 and 75 of the provisional Regulation. It follows that profitability is a microindicator and therefore is calculated based on the data of the sampled Union producers, while market share is a macroindicator and it should be calculated relating to the whole Union industry. Both methodologies entitle the Commission to make findings that are as such valid for the whole Union industry.

(97) Therefore, the claims in recitals 94 above were rejected.

3. Conclusion on causation

(98) None of the arguments submitted by the interested parties demonstrates that the impact of factors other than the dumped import from Russia is such as to break the causal link between the dumped imports and the material injury established. In the light of the foregoing it is concluded that the dumped imports from Russia caused material injury to the Union industry within the meaning of Article 3(6) of the basic Regulation.

(99) Therefore, the conclusions set out in in recitals 137 to 141 of the provisional Regulation are hereby confirmed.

F. UNION INTEREST

1. Interest of the Union industry

(100) After provisional disclosure, the Russian authorities claimed that the introduction of measures on imports from Russia would lead to an increase of imports of AHF from other third countries, especially from Turkey and the PRC, and therefore the imposition of the anti-dumping measures with regard to the imports from Russia is not in the interest of the Union industry.

(101) As laid out in recital 147 of the provisional Regulation, anti-dumping measures should restore the level playing field in the Union to enable the Union industry to compete at fair prices on the Union market with imports from other third countries, including Russia, the PRC and Turkey. The fact that other third countries increase their imports is as such not an indication that the Union industry will not be able to benefit from the anti-dumping measures imposed. Indeed, the Union industry is expected to increase sales volume and market share and to raise its selling prices to profitable levels.

(102) The anti-dumping measures in place against the PRC should ensure that Chinese imports enter the Union market at fair price levels, while Turkish price levels were already during the period considered at the same level as the Union industry's sales prices and did not exert price pressure on the market.

(103) The Commission considers that this argument does not rebut the presumption established by Article 21 of the basic Regulation in favour of the imposition of measures and the need to eliminate the trade distorting effects of the Russian dumped imports and to restore the level playing field.

(104) Therefore, these claims were rejected.

(105) In the absence of any other comments regarding the interest of the Union industry, the conclusion in recital 149 of the provisional Regulation is confirmed.

2. Interest of importers/traders

(106) In the absence of any comments regarding the interest of unrelated importers and traders, the conclusion reached in recital 150 of the provisional Regulation is confirmed.

3. Interest of users

(107) Following provisional disclosure and final disclosure several users (rewinders producing so called 'consumer rolls') reiterated their claims submitted prior to the imposition of provisional measures, however, without providing any new evidence.

- (108) One rewinder claimed in particular that anti-dumping duties will have a significant impact on its profitability as it will not be able to pass the duty on to its customers.
- (109) This claim was not substantiated. In addition, based on the figures provided by this rewinder, the investigation showed that even if the rewinder is not able to pass on the duty to its customer, it would still remain profitable.
- (110) Furthermore, the investigation showed that the 'mark-up' added by the rewinders on top of the purchase price of AHF can significantly vary, that is between 5 % and 70 %, depending on the rewinders' selling strategy. As outlined in recital 154 of the provisional Regulation, the activity of those rewinders importing AHF from Russia only represented less than one sixth to a maximum of one fourth of their total activity. Furthermore, as outlined in recital 155 of the provisional Regulation, all cooperating companies were overall profitable.
- (111) After final disclosure one party claimed that the rewinders do not add any 'mark-up' to the purchase price and that the 5 % to 70 % 'mark-up' on the purchase price as established by the Commission in recital 110 above does not reflect the rewinders' operation and their profitability.
- (112) It is recalled that the activity of the rewinders consists in rewinding the aluminium foils from a jumbo roll into a smaller roll for consumers. The rewinders do not alter the chemical properties of the aluminium foil. The 'mark-up' referred to in recital 110 was calculated by comparing the purchase price of aluminium foil in jumbo rolls with the selling price of aluminium foils in the consumer rolls for the cooperating rewinders. The rewinders incur costs during the repackaging operation, however, these costs are low as the main cost driver is the cost of aluminium foil which represents around 80 % of the total manufacturing costs. The SG&A expenses vary significantly from one rewinder to the other depending on the rewinders' selling strategy. Therefore, it is correct that the 'mark-up' does not indicate the operation and the profitability of the company, but shows that the level of SG&A expenses has a significant impact on the profitability of the rewinders.
- (113) It was also claimed that in the analysis of the situation of the rewinders industry, the Commission did not take into consideration the imports of the downstream product, i.e. consumer rolls from other third countries such as Turkey, Norway, Switzerland, India and Malaysia which substituted the decrease in imports of AHF from the RPC. However, the party did not provide any evidence of the impact of these imports on the situation of the rewinders industry.
- (114) As explained in recital 162 of the provisional Regulation, anti-dumping measures on imports of consumer rolls from the PRC were imposed in 2013 which has given the downstream industry a relieve from dumped imports causing material injury. The table below shows the evolution of imports of consumer rolls following the imposition of anti-dumping measures on imports of consumer rolls from the PRC for the countries mentioned by the party:

Table 4

Volumes of import of consumer rolls (tonnes)

	2013	Investigation period
the PRC	4 317,60	3 776,10
India	672,70	847,10
Malaysia	605,30	752,10
Norway	2 866,20	324,60
Switzerland	22,00	30,50
Turkey	2 059,80	2 498,80
Total	6 226,0	4 453,10

Source: Eurostat.

- (115) The volume of imports from the PRC was 12 994 tonnes during the investigation period of the original anti-dumping investigation on imports of consumer rolls from the PRC (see table 2 of Commission Regulation (EU) No 833/2012⁽¹⁾). After the imposition of measures, the volume of imports of consumer rolls from the PRC decreased by 8 676 tonnes in 2013 (that is to 4 317,60 tonnes) and by 9 218 tonnes in the investigation period of the current investigation (that is to 3 776,10 tonnes). The volume of this decrease is higher than the total volume of imports of consumer rolls from the five countries mentioned by the rewinder and set out in table 4 above (by 28 % in 2013 and by 52 % in the investigation period). Therefore the claim that the imports from the above mentioned countries substituted the decrease of imports from the PRC is unfounded and was rejected.
- (116) Following final disclosure, several rewinders claimed that on average the rewinders' activity incorporating AHF represents a higher part in their total activity than what the Commission stated in recital 154 of the provisional Regulation. This claim was based on data provided by two users which did not cooperate in the investigation. It was therefore argued that the Commission should not downplay the importance of the AHF in the rewinders' cost of production.
- (117) In this regard it should be noted that the Commission's findings in recital 154 of the provisional Regulation are based on the verified data of the cooperating rewinders and thus reflecting their actual situation. The above mentioned additional information was provided only after the final disclosure and thus, at such late stage in the proceeding, it could not be verified anymore. Therefore, it was rejected.
- (118) Following final disclosure, two rewinders claimed that the imposition of anti-dumping measures on imports of AHF from Russia will have a negative effect on their profitability.
- (119) These two rewinders have not come forward during the investigation until after final disclosure and only one of them submitted a questionnaire reply at this very late stage of the proceeding. Therefore, the Commission could not verify this new information. On this basis, the Commission is not in the position to assess the level of their profitability and the impact of the imposition of anti-dumping measures on imports of AHF from Russia on their profitability. Therefore, their claim was rejected.
- (120) Following final disclosure, five rewinders claimed that they will not be able to pass on the cost of the anti-dumping duty to the consumers due to the following reasons: (1) they sell based on contractual arrangements and the prices are based on the formula linked to the LME aluminium price; (2) due to the price pressure and competition resulting from consumer rolls made with AHF allegedly being circumvented from the PRC, they cannot negotiate a price increase for consumer rolls on the Union market and (3) even if at present the imports into the Union of consumer rolls from third countries is low, it is likely that they will increase in the future.
- (121) The investigation has shown that even though the rewinders are not able to pass on the anti-dumping duty to the consumers, the effect on the imposition of the anti-dumping measures on imports of AHF from Russia on rewinders will be limited. The investigation has also shown that there are two types of rewinders on the market: one category of rewinders that sell branded consumer rolls and have significant SG&A expenses, and one category of rewinders that sell non-branded consumer rolls with low SG&A expenses. The investigation further revealed that the cooperating rewinders with low SG&A expenses will likely remain profitable after the imposition of the anti-dumping measures on imports of AHF from Russia assuming that also the prices of the Union industry will increase by 5 % in order for the Union industry to reach the target profit. The cooperating rewinders that sell branded consumer rolls have high 'mark-ups' and high SG&A expenses. Therefore, it was considered that they have the ability to absorb the duty.
- (122) In the absence of any other comments regarding the interest of users, recitals 151 to 163 of the provisional Regulation are confirmed.

4. Sources of supply

- (123) Following provisional disclosure, several rewinders reiterated their claims submitted prior to the imposition of provisional measures concerning the shortage of supply without, however, providing any new evidence in this respect.

⁽¹⁾ Commission Regulation (EU) No 833/2012 of 17 September 2012 imposing a provisional anti-dumping duty on imports of certain aluminium foils in rolls originating in the People's Republic of China (OJ L 251, 18.9.2012, p. 29).

- (124) Firstly, the purpose of the anti-dumping measures is not to exclude imports from Russia from the Union market, but to establish a level playing field on the Union market. Therefore, the rewinders will still be able to import AHF from Russia after the imposition of the anti-dumping measures, however at fair price levels. In addition, it is recalled that the anti-dumping measure is set at the level of the injury margin, which is below the dumping margin, and therefore, the imports from Russia will still be possible to arrive on the Union market at a dumped, albeit non-injurious price.
- (125) It was claimed that the South Africa and India cannot be considered as an alternative source of supply capable of substituting the imports from Russia as import volumes from these countries were very low.
- (126) It is correct that the imports from South Africa and India were low throughout the period considered as compared to the imports from Russia, however, this does not exclude the possibility that these countries will increase their exports to the Union market once the level playing field is restored.
- (127) It was also claimed that the Union producers of AHF would increase their production to ACF in light of the allegedly higher margins obtained on the ACF market as compared to AHF, rather than increase capacity and production of AHF.
- (128) As explained in recitals 30 and 62 above, the investigation showed that the Union industry is interested to continue to produce AHF, and that in any event only has limited flexibility in switching from the production of AHF to ACF and vice versa. Finally, it is also recalled that the largest Union producer of AHF did not produce ACF. Therefore this claim was rejected.
- (129) Following final disclosure, several rewinders claimed on the basis of the information submitted only in confidence that no available production capacity exists in the Union and Turkey. It was also claimed that following the imposition of anti-dumping measures on imports of AHF from Armenia, the Armenian producer, with a production capacity of 25 000 tonnes per year, reoriented its exports to the US market. In addition, the party claimed that considering that the prices of AHF on the Union market will remain low due to the circumvention of the anti-dumping measures on imports of AHF from the PRC, it is unlikely that the Armenian producer will divert its exports to the Union market. Furthermore, as concerns Brazil, the rewinders referred to the parallel anti-dumping investigation on imports of AHF from Brazil and the PRC, where the Commission concluded that it was not expected that the Brazilian exports to the Union market would increase significantly in the future. In addition, it was claimed that India and South Africa cannot constitute a reliable and significant source of alternative supply, as the spare capacity for foil production is limited in these countries.
- (130) The evidence submitted in confidence was not considered sufficient to conclude that there was not sufficient production capacity available in the Union and Turkey. In fact, the investigation has shown that the Union industry has spare capacity as stated in recital 79 of the provisional Regulation. As concerns the Turkish producers, the investigation also shown that the Turkish producers are interested in the Union market as they increased their volume of sales during the period considered. As the prices on the Union market are likely to reach cost-covering levels after the imposition of anti-dumping measures on imports of AHF from Russia, it is expected that the Turkish producers will continue to find the Union market attractive and possibly redirect part of their production to the Union market.
- (131) The anti-dumping measures on imports of AHF from Armenia expired on 7 October 2014 ⁽¹⁾ and therefore the imports of AHF from Armenia can freely enter the Union market. The claims on the alleged circumvention are addressed in detail in recitals 74 to 81 above. After the imposition of anti-dumping measures on imports of AHF from Russia, it is expected that the prices of the AHF on the Union market will reach cost-covering levels. Therefore, it is not excluded that as a consequence, the Armenian producer will redirect their exports to the Union market.
- (132) As concerns Brazil, the measures were terminated and imports of AHF from Brazil can freely enter the Union market. However, once the prices will reach cost-covering levels on the Union market, it is not excluded that the Brazilian producers will consider the Union market as being more attractive than their domestic and third countries markets and, thus, redirect part of their production to the Union.

⁽¹⁾ Notice of the impending expiry of certain anti-dumping measures, OJ C 49, 21.2.2014, p. 7.

(133) As concerns India and South Africa as being considered as an alternative source of supply as stated in recital 165 of the provisional Regulation, firstly it should be noted that the information used in support of the party's claim did not separate between AHF and ACF. Nevertheless, even if in these countries the spare capacity is low, once the prices on the Union market will reach cost-covering levels it is not excluded that the Union market will become attractive for the Indian and South African producers and they will redirect part of their production to the Union market.

(134) Therefore, the claims stated in recital 129 above were rejected.

(135) In the absence of any other comments recitals 164 to 168 of the provisional Regulation are confirmed.

5. Other arguments

(136) Following provisional disclosure, one interested party claimed that the definitive measures should be imposed in a least-trade distorting and trade limiting manner without, however further expanding on this claim.

(137) Following final disclosure, this interested party reiterated its claim stated in recital 136 above, however without providing any additional information for its claim.

(138) In this regard, it is highlighted that when deciding on the level of the anti-dumping measures, the Commission is applying the lesser-duty rule in accordance with Article 9(4) of the basic Regulation and as also outlined in recital 143 below.

(139) In the absence of any other comments recitals 169 to 172 of the provisional Regulation are confirmed.

6. Conclusion on Union interest

(140) In the absence of any other comments concerning the Union interest, the conclusions reached in recital 173 of the provisional Regulation are confirmed.

G. DEFINITIVE ANTI-DUMPING MEASURES

1. Injury elimination level (Injury margin)

(141) Following provisional disclosure, two interested parties contested the target profit used in order to determine the injury elimination level as set out in recitals 175 to 177 of the provisional Regulation. The parties argued that a profit margin of 2 % would be a market-tested profit level and should therefore be used instead in order to establish the injury elimination level. However, the claim was not substantiated and therefore it was rejected.

(142) In the absence of any other comments regarding the injury elimination level, the conclusions reached in recitals 175 to 177 of the provisional Regulation are confirmed.

2. Definitive measures

(143) In view of the conclusions reached with regard to dumping, injury, causation and Union interest, and in accordance with Article 9(4) of the basic Regulation, definitive anti-dumping measures should be imposed on the imports of the product concerned at the level of the injury margin, in accordance with the lesser duty rule.

(144) After final disclosure, several rewinders claimed that the definitive measures should be imposed in a form of a minimum import price (MIP). The parties suggested that the MIP should be set at the level of a slightly increased profitable price of the producer manufacturing solely AHF. Following the hearing with the Hearing Officer, the parties submitted additional information claiming that the aluminium premium decreased after the investigation period.

- (145) In the context of determining whether there is a Union interest as contemplated in Article 21(1) of the basic Regulation, information relating to a period subsequent to the investigation period may be taken into account for those purposes. ⁽¹⁾ However, the requirement of such data to be verified and representative for the whole Union industry still applies. As the request for a MIP was made at such a late stage in the proceeding, the Commission did not have the time to send questionnaires to interested parties and organise verification visits. The information submitted by the parties asking for a MIP could not be verified and also was not representative for the whole Union industry. The information submitted indeed indicates an increase of sales prices while the aluminium premium is decreasing, however the Commission cannot draw meaningful conclusions on unverified and non-representative data.
- (146) In addition, the level of the MIP should be calculated on the basis of the data representative for the whole Union industry and not just on the basis of one single Union producer as was proposed by the users. In addition, the data used for the calculation of a MIP needs to be verified and, as the request for a MIP was made at such a late stage of the proceeding, the Commission was not in the position to collect and verify the necessary data. Therefore, the proposed MIP was considered inappropriate.
- (147) In any event, a change of the type of measure would require full disclosure to all interested parties, otherwise it would significantly breach the procedural rights of the Union industry. As this claim was made at such a late stage of the investigation, the Commission did not have the necessary time to make such a disclosure to the interested parties.
- (148) In addition, the fact that the exporter sells in the Union via a related trader makes the export prices unreliable.
- (149) Therefore, in light of the above it was considered that in this particular case the circumstances are not such as to warrant the imposition of a MIP.
- (150) Nevertheless, it should be noted that the rewinders have still the possibility of asking for an interim review in accordance with Article 11(3) of the basic Regulation if the conditions are met.
- (151) On the basis of the above, the rate at which such duties will be imposed are set as follows:

Country	Company	Dumping margin (%)	Injury margin (%)	Definitive anti-dumping duty (%)
Russia	Ural Foil OJSC, Sverdlovsk region; OJSC Rusal Sayanal, Khakassia region — Rusal Group	34,0	12,2	12,2
	All other companies			12,2

3. Definitive collection of the provisional duties

- (152) In view of the dumping margins found and given the level of the injury caused to the Union industry, the amounts secured by way of the provisional anti-dumping duty, imposed by the provisional Regulation, should be definitively collected.

4. Undertakings

- (153) Following the final disclosure Rusal group offered a price undertaking under Article 8(1) of the basic Regulation.
- (154) The offer was thoroughly examined by the Commission. It is important to note that Rusal is a complex company group with over 40 plants in 13 countries. In particular, the group includes a related producer in Armenia (Armenal) producing and selling the product concerned to the Union. In view of the relationship between the Russian exporting producers and Armenal, it is likely that these companies will sell the product concerned to the same customers or customers related to one of these customers in the Union. This poses high risk of cross-compensation. In addition, Rusal group operates through very complex sales channels with the involvement of

⁽¹⁾ Judgment of the General Court of 25 October 2011 in case No. T-192/08. Transnational Company 'Kazchrome' AO, paragraph 221.

related traders and related agents located both inside and outside Russia. The related trader and the related agent also sell other products to the Union, and these other products represent in fact the majority of the related trader's turnover. Under these circumstances it cannot be excluded that both product concerned and other products are sold to the same customers. Such transactions would entail a high risk of cross-compensation and in any event would make the monitoring of the undertaking particularly complex.

- (155) Based on above it is concluded that the acceptance of the undertaking would be impractical and consequently the undertaking offer has to be rejected.
- (156) The Committee established by Article 15(1) of Regulation (EC) No 1225/2009 did not deliver an opinion,

HAS ADOPTED THIS REGULATION:

Article 1

1. A definitive anti-dumping duty is hereby imposed on imports of aluminium foil of a thickness of not less than 0,008 mm and not more than 0,018 mm, not backed, not further worked than rolled, in rolls of a width not exceeding 650 mm and of a weight exceeding 10 kg, currently falling within CN code ex 7607 11 19 (TARIC code 7607 11 19 10), and originating in Russia.
2. The rates of the definitive anti-dumping duty applicable to the net, free-at-Union-frontier price, before duty, of the product described in paragraph 1 shall be 12,2 %.
3. Unless otherwise specified, the provisions in force concerning customs duties shall apply.

Article 2

The amounts secured by way of the provisional anti-dumping duties pursuant to Implementing Regulation (EU) 2015/1081 shall be definitively collected.

Article 3

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

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

Done at Brussels, 17 December 2015.

For the Commission
The President
Jean-Claude JUNCKER

COMMISSION REGULATION (EU) 2015/2386**of 17 December 2015****making imports of high fatigue performance steel concrete reinforcement bars originating in the People's Republic of China subject to registration**

THE EUROPEAN COMMISSION,

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

Having regard to Council Regulation (EC) No 1225/2009 of 30 November 2009 on protection against dumped imports from countries not members of the European Community ⁽¹⁾ ('the basic Regulation'), and in particular Article 14(5) thereof,

After informing the Member States,

Whereas:

- (1) On 30 April 2015, the European Commission ('the Commission') announced, by a notice published in the *Official Journal of the European Union* ⁽²⁾ ('the notice of initiation'), the initiation of an anti-dumping proceeding ('the anti-dumping proceeding') with regard to imports into the Union of high fatigue performance steel concrete reinforcement bars ('HFP rebars') originating in the People's Republic of China ('PRC' or 'the country concerned') following a complaint lodged on 17 March 2015 by the European Steel Association ('Eurofer' or 'the complainant') on behalf of producers representing more than 25 % of the total Union production of HFP rebars.

1. PRODUCT CONCERNED AND LIKE PRODUCT

- (2) The product subject to registration ('the product concerned') are high fatigue performance iron or steel concrete reinforcing bars and rods made of iron, non-alloy steel or alloy steel (but excluding of stainless steel, high-speed steel and silico-manganese steel), not further worked than hot-rolled, but including those twisted after rolling; these bars and rods contain indentations, ribs, grooves or other deformations produced during the rolling process or are twisted after rolling; the key characteristic of high fatigue performance is the ability to endure repeated stress without breaking and, specifically, the ability to resist in excess of 4,5 million fatigue cycles using a stress ratio (min/max) of 0,2 and a stress range exceeding 150 MPa, originating in the PRC, and currently falling within CN codes ex 7214 20 00, ex 7228 30 20, ex 7228 30 41, ex 7228 30 49, ex 7228 30 61, ex 7228 30 69, ex 7228 30 70 and ex 7228 30 89. These CN codes are given for information only and have no binding effect on the classification of the product.

2. REQUEST

- (3) The registration request pursuant to Article 14(5) of the basic Regulation was made by the complainant on 19 November 2015. The complainant requested that imports of the product concerned are made subject to registration so that measures may subsequently be applied against those imports from the date of such registration.

3. GROUNDS FOR REGISTRATION

- (4) According to Article 14(5) of the basic Regulation, the Commission may direct the customs authorities to take the appropriate steps to register imports, so that measures may subsequently be applied against those imports. Imports may be made subject to registration following a request from the Union industry, which contains sufficient evidence to justify such action.
- (5) The complainant claims that registration is justified as the product concerned continues to be dumped and that importers were well or should have been aware of dumping practices which stretched over an extended period of time and were causing injury to the Union industry. The complainant further claims that Chinese imports are

⁽¹⁾ OJ L 343, 22.12.2009, p. 51.

⁽²⁾ OJ C 143, 30.4.2015, p. 12.

causing injury to the Union industry and that there was a substantial increase in the level of these imports, even following the investigation period, which would seriously undermine the remedial effect of the anti-dumping duty, if such a duty is to be applied.

- (6) The Commission considers that the importers were aware, or should have been aware of the exporters' dumping practices. Sufficient *prima facie* evidence in this regard was contained in the complaint and this was spelled out in the notice of initiation for this proceeding ⁽¹⁾. The non-confidential version of the complaint estimated dumping margins of 20-30 % for Chinese imports. Given the extent of the dumping that may be occurring, it is reasonable to assume that the importers would be aware, or should have been aware, of the situation.
- (7) The complainant provided in the complaint evidence on the normal value based on the pricing information of producers in Qatar and the United Arab Emirates. The evidence of dumping is based on a comparison of the normal values thus established with the export price (at ex-works level) of the product concerned when sold for export to the Union. The Chinese export price was determined on the basis of price quotes of Chinese export sales to the Union.
- (8) In addition, the complainant provided in both the complaint and the request for registration sufficient evidence in form of recent investigations by other authorities (e.g. Canada, Egypt and Malaysia) in which the dumping practices by Chinese exporters are described and which *prima facie* could and should not have been ignored by importers.
- (9) Since the initiation of the proceeding in April 2015, the Commission identified a further increase of approximately 38 % when comparing the import volumes during the period April 2014 to March 2015 (i.e. Investigation Period) with the period April — September 2015 (i.e. the period following the initiation). This shows that there was a substantial rise in Chinese imports of the product concerned following the initiation of the present investigation.
- (10) The complainant also included *prima facie* evidence in the complaint and in the request for registration on the decreasing trend of the import sales prices. It follows from publicly available Eurostat statistics that unit values of imports from PRC dropped from EUR 431 per tonne in the IP to EUR 401 per tonne in the post IP period. This is also another indication that importers of Chinese materials were or should have been aware of dumping.
- (11) Furthermore, in the complaint there is sufficient *prima facie* evidence that injury is being caused. In the submissions made in the framework of the investigation, including the registration request, there is evidence that additional injury would be caused by a continued rise in these imports. In light of the timing, the increase in volume of the dumped imports and the pricing behaviour of the Chinese exporting producers would likely seriously undermine the remedial effect of any definitive duties, unless such duties would be applied retroactively. In addition, in view of the initiation of the current proceeding and taking into account the developments of Chinese imports in terms of prices and volumes hitherto, it is reasonable to assume that the level of imports of the product concerned may further increase prior to the adoption of provisional measures, if any, and inventories may be rapidly built up by the importers.

4. PROCEDURE

- (12) In view of the above, the Commission has concluded that the complainant provided sufficient *prima facie* evidence to justify making imports of the product concerned subject to registration in accordance with Article 14(5) of the basic Regulation.
- (13) All interested parties are invited to make their views known in writing and to provide supporting evidence. Furthermore, the Commission may hear interested parties, provided that they make a request in writing and show that there are particular reasons why they should be heard.

5. REGISTRATION

- (14) Pursuant to Article 14(5) of the basic Regulation imports of the product concerned should be made subject to registration for the purpose of ensuring that, should the investigation result in findings leading to the imposition of anti-dumping duties, those duties can, if the necessary conditions are fulfilled, be levied retroactively on the registered imports in accordance with Article 10(4) of the basic Regulation.

⁽¹⁾ OJ C 143, 30.4.2015, p. 12. (section 3 of the notice of initiation)

- (15) The complainant estimates in the complaint an average dumping margin of 20-30 % and an average underselling margin of 15 %-30 % for the product concerned. The estimated amount of possible future liability is set at the level of underselling estimated on the basis of the complaint, i.e. 15 %-30 % ad valorem on the CIF import value of the product concerned.

6. PROCESSING OF PERSONAL DATA

- (16) Any personal data collected in the context of this registration will be treated in accordance with Regulation (EC) No 45/2001 of the European Parliament and of the Council ⁽¹⁾,

HAS ADOPTED THIS REGULATION:

Article 1

1. The Customs authorities are hereby directed, pursuant to Article 14(5) of Regulation (EC) No 1225/2009 to take the appropriate steps to register the imports into the Union of high fatigue performance iron or steel concrete reinforcing bars and rods made of iron, non-alloy steel or alloy steel (but excluding of stainless steel, high-speed steel and silico-manganese steel), not further worked than hot-rolled, but including those twisted after rolling; these bars and rods contain indentations, ribs, grooves or other deformations produced during the rolling process or are twisted after rolling; the key characteristic of high fatigue performance is the ability to endure repeated stress without breaking and, specifically, the ability to resist in excess of 4,5 million fatigue cycles using a stress ratio (min/max) of 0,2 and a stress range exceeding 150 MPa, currently falling within CN codes ex 7214 20 00, ex 7228 30 20, ex 7228 30 41, ex 7228 30 49, ex 7228 30 61, ex 7228 30 69, ex 7228 30 70 and ex 7228 30 89 (TARIC codes 7214 20 00 10, 7228 30 20 10, 7228 30 41 10, 7228 30 49 10, 7228 30 61 10, 7228 30 69 10, 7228 30 70 10, 7228 30 89 10) and originating in the People's Republic of China.

Registration shall expire nine months following the date of entry into force of this Regulation.

2. All interested parties are invited to make their views known in writing, to provide supporting evidence or to request to be heard within 20 days from the date of publication of this Regulation.

Article 2

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

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

Done at Brussels, 17 December 2015.

For the Commission
The President
Jean-Claude JUNCKER

⁽¹⁾ 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 (OJ L 8, 12.1.2001, p. 1).

COMMISSION IMPLEMENTING REGULATION (EU) 2015/2387**of 17 December 2015****establishing the standard import values for determining the entry price of certain fruit and vegetables**

THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EU) No 1308/2013 of the European Parliament and of the Council of 17 December 2013 establishing a common organisation of the markets in agricultural products and repealing Council Regulations (EEC) No 922/72, (EEC) No 234/79, (EC) No 1037/2001 and (EC) No 1234/2007 ⁽¹⁾,

Having regard to Commission Implementing Regulation (EU) No 543/2011 of 7 June 2011 laying down detailed rules for the application of Council Regulation (EC) No 1234/2007 in respect of the fruit and vegetables and processed fruit and vegetables sectors ⁽²⁾, and in particular Article 136(1) thereof,

Whereas:

- (1) Implementing Regulation (EU) No 543/2011 lays down, pursuant to the outcome of the Uruguay Round multilateral trade negotiations, the criteria whereby the Commission fixes the standard values for imports from third countries, in respect of the products and periods stipulated in Annex XVI, Part A thereto.
- (2) The standard import value is calculated each working day, in accordance with Article 136(1) of Implementing Regulation (EU) No 543/2011, taking into account variable daily data. Therefore this Regulation should enter into force on the day of its publication in the *Official Journal of the European Union*,

HAS ADOPTED THIS REGULATION:

Article 1

The standard import values referred to in Article 136 of Implementing Regulation (EU) No 543/2011 are fixed in the Annex to this Regulation.

Article 2

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

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

Done at Brussels, 17 December 2015.

For the Commission,
On behalf of the President,
Jerzy PLEWA

Director-General for Agriculture and Rural Development

⁽¹⁾ OJ L 347, 20.12.2013, p. 671.

⁽²⁾ OJ L 157, 15.6.2011, p. 1.

ANNEX

Standard import values for determining the entry price of certain fruit and vegetables

(EUR/100 kg)		
CN code	Third country code ⁽¹⁾	Standard import value
0702 00 00	IL	236,2
	MA	90,9
	TR	117,9
	ZZ	148,3
0707 00 05	EG	174,9
	MA	82,9
	TR	150,0
0709 93 10	ZZ	135,9
	MA	55,7
	TR	155,4
0805 10 20	ZZ	105,6
	EG	57,7
	MA	64,7
	TR	58,4
0805 20 10	ZA	48,6
	ZZ	57,4
	MA	74,3
	ZZ	74,3
0805 20 30, 0805 20 50, 0805 20 70, 0805 20 90	IL	110,0
	TR	68,9
	ZZ	89,5
0805 50 10	TR	89,2
	ZZ	89,2
0808 10 80	CA	151,7
	CL	82,8
	US	157,8
	ZA	141,1
	ZZ	133,4
0808 30 90	CN	63,2
	TR	128,4
	ZZ	95,8

⁽¹⁾ Nomenclature of countries laid down by Commission Regulation (EU) No 1106/2012 of 27 November 2012 implementing Regulation (EC) No 471/2009 of the European Parliament and of the Council on Community statistics relating to external trade with non-member countries, as regards the update of the nomenclature of countries and territories (OJ L 328, 28.11.2012, p. 7). Code 'ZZ' stands for 'of other origin'.

COMMISSION IMPLEMENTING REGULATION (EU) 2015/2388**of 17 December 2015****establishing the allocation coefficient to be applied to the quantities covered by the applications for import licences lodged from 1 to 7 December 2015 and determining the quantities to be added to the quantity fixed for the subperiod from 1 April to 30 June 2016 under the tariff quotas opened by Regulation (EC) No 533/2007 in the poultrymeat sector**

THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EU) No 1308/2013 of the European Parliament and of the Council of 17 December 2013 establishing a common organisation of the markets in agricultural products and repealing Council Regulations (EEC) No 922/72, (EEC) No 234/79, (EC) No 1037/2001 and (EC) No 1234/2007 ⁽¹⁾, and in particular Article 188 thereof,

Whereas:

- (1) Commission Regulation (EC) No 533/2007 ⁽²⁾ opened annual tariff quotas for imports of poultrymeat products.
- (2) For some quotas, the quantities covered by the applications for import licences lodged from 1 to 7 December 2015 for the subperiod from 1 January to 31 March 2016 exceed those available. The extent to which import licences may be issued should therefore be determined by establishing the allocation coefficient to be applied to the quantities requested, calculated in accordance with Article 7(2) of Commission Regulation (EC) No 1301/2006 ⁽³⁾.
- (3) The quantities covered by the applications for import licences lodged from 1 to 7 December 2015 for the subperiod from 1 January to 31 March 2016 are, for some quotas, less than those available. The quantities for which applications have not been lodged should therefore be determined and these should be added to the quantity fixed for the following quota subperiod.
- (4) In order to ensure the efficient management of the measure, this Regulation should enter into force on the day of its publication in the *Official Journal of the European Union*,

HAS ADOPTED THIS REGULATION:

Article 1

1. The quantities covered by the applications for import licences lodged under Regulation (EC) No 533/2007 for the subperiod from 1 January to 31 March 2016 shall be multiplied by the allocation coefficient set out in the Annex to this Regulation.
2. The quantities for which import licence applications have not been lodged pursuant to Regulation (EC) No 533/2007, to be added to the subperiod from 1 April to 30 June 2016, are set out in the Annex to this Regulation.

*Article 2*This Regulation shall enter into force on the day of its publication in the *Official Journal of the European Union*.⁽¹⁾ OJ L 347, 20.12.2013, p. 671.⁽²⁾ Commission Regulation (EC) No 533/2007 of 14 May 2007 opening and providing for the administration of tariff quotas in the poultrymeat sector (OJ L 125, 15.5.2007, p. 9).⁽³⁾ Commission Regulation (EC) No 1301/2006 of 31 August 2006 laying down common rules for the administration of import tariff quotas for agricultural products managed by a system of import licences (OJ L 238, 1.9.2006, p. 13).

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

Done at Brussels, 17 December 2015.

*For the Commission,
On behalf of the President,
Jerzy PLEWA
Director-General for Agriculture and Rural Development*

ANNEX

Order No	Allocation coefficient — applications lodged for the subperiod from 1 January to 31 March 2016 (%)	Quantities not applied for, to be added to the quantities available for the subperiod from 1 April to 30 June 2016 (kg)
09.4067	1,620748	—
09.4068	0,36049	—
09.4069	0,18172	—
09.4070	—	1 335 750

COMMISSION IMPLEMENTING REGULATION (EU) 2015/2389**of 17 December 2015****establishing the allocation coefficient to be applied to the quantities covered by the applications for import licences lodged from 1 to 7 December 2015 and determining the quantities to be added to the quantity fixed for the subperiod from 1 April to 30 June 2016 under the tariff quotas opened by Regulation (EC) No 1385/2007 in the poultrymeat sector**

THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EU) No 1308/2013 of the European Parliament and of the Council of 17 December 2013 establishing a common organisation of the markets in agricultural products and repealing Council Regulations (EEC) No 922/72, (EEC) No 234/79, (EC) No 1037/2001 and (EC) No 1234/2007 ⁽¹⁾, and in particular Article 188 thereof,

Whereas:

- (1) Commission Regulation (EC) No 1385/2007 ⁽²⁾ opened annual tariff quotas for imports of poultrymeat products.
- (2) For some quotas, the quantities covered by the applications for import licences lodged from 1 to 7 December 2015 for the subperiod from 1 January to 31 March 2016 exceed those available. The extent to which import licences may be issued should therefore be determined by establishing the allocation coefficient to be applied to the quantities requested, calculated in accordance with Article 7(2) of Commission Regulation (EC) No 1301/2006 ⁽³⁾.
- (3) The quantities covered by the applications for import licences lodged from 1 to 7 December 2015 for the subperiod from 1 January to 31 March 2016 are, for some quotas, less than those available. The quantities for which applications have not been lodged should therefore be determined and these should be added to the quantity fixed for the following quota subperiod.
- (4) In order to ensure the efficient management of the measure, this Regulation should enter into force on the day of its publication in the *Official Journal of the European Union*,

HAS ADOPTED THIS REGULATION:

Article 1

1. The quantities covered by the applications for import licences lodged under Regulation (EC) No 1385/2007 for the subperiod from 1 January to 31 March 2016 shall be multiplied by the allocation coefficient set out in the Annex to this Regulation.
2. The quantities for which import licence applications have not been lodged pursuant to Regulation (EC) No 1385/2007, to be added to the subperiod from 1 April to 30 June 2016, are set out in the Annex to this Regulation.

*Article 2*This Regulation shall enter into force on the day of its publication in the *Official Journal of the European Union*.⁽¹⁾ OJ L 347, 20.12.2013, p. 671.⁽²⁾ Commission Regulation (EC) No 1385/2007 of 26 November 2007 laying down detailed rules for the application of Council Regulation (EC) No 774/94 as regards opening and providing for the administration of certain Community tariff quotas for poultrymeat (OJ L 309, 27.11.2007, p. 47).⁽³⁾ Commission Regulation (EC) No 1301/2006 of 31 August 2006 laying down common rules for the administration of import tariff quotas for agricultural products managed by a system of import licences (OJ L 238, 1.9.2006, p. 13).

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

Done at Brussels, 17 December 2015.

*For the Commission,
On behalf of the President,
Jerzy PLEWA
Director-General for Agriculture and Rural Development*

ANNEX

Order No	Allocation coefficient — applications lodged for the subperiod from 1 January to 31 March 2016 (%)	Quantities not applied for, to be added to the quantities available for the subperiod from 1 April to 30 June 2016 (kg)
09.4410	0,16909	—
09.4411	0,171057	—
09.4412	0,177304	—
09.4420	0,192789	—
09.4421	—	175 000
09.4422	0,192789	—

COMMISSION IMPLEMENTING REGULATION (EU) 2015/2390**of 17 December 2015****establishing the allocation coefficient to be applied to the quantities covered by the applications for import rights lodged from 1 to 7 December 2015 under the tariff quotas opened by Implementing Regulation (EU) 2015/2078 for poultrymeat originating in Ukraine**

THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EU) No 1308/2013 of the European Parliament and of the Council of 17 December 2013 establishing a common organisation of the markets in agricultural products and repealing Council Regulations (EEC) No 922/72, (EEC) No 234/79, (EC) No 1037/2001 and (EC) No 1234/2007 ⁽¹⁾, and in particular Article 188(1) and (3) thereof,

Whereas:

- (1) Commission Implementing Regulation (EU) 2015/2078 ⁽²⁾ opened annual tariff quotas for imports of poultrymeat products originating in Ukraine.
- (2) For the quota with order number 09.4273, the quantities covered by the applications for import licences lodged from 1 to 7 December 2015 for the subperiod from 1 January to 31 March 2016 exceed those available. The extent to which import rights may be allocated should therefore be determined and an allocation coefficient laid down to be applied to the quantities applied for, calculated in accordance with Article 6(3) in conjunction with Article 7(2) of Commission Regulation (EC) No 1301/2006 ⁽³⁾.
- (3) In order to ensure efficient management of the measure, this Regulation should enter into force on the day of its publication in the *Official Journal of the European Union*,

HAS ADOPTED THIS REGULATION:

Article 1

The quantities covered by the applications for import rights lodged under Implementing Regulation (EU) 2015/2078 for the subperiod from 1 January to 31 March 2016 shall be multiplied by the allocation coefficient set out in the Annex to this Regulation.

*Article 2*This Regulation shall enter into force on the day of its publication in the *Official Journal of the European Union*.

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

Done at Brussels, 17 December 2015.

For the Commission,
On behalf of the President,
Jerzy PLEWA
Director-General for Agriculture and Rural Development

⁽¹⁾ OJ L 347, 20.12.2013, p. 671.

⁽²⁾ Commission Implementing Regulation (EU) 2015/2078 of 18 November 2015 opening and providing for the administration of Union import tariff quotas for poultrymeat originating in Ukraine (OJ L 302, 19.11.2015, p. 63).

⁽³⁾ Commission Regulation (EC) No 1301/2006 of 31 August 2006 laying down common rules for the administration of import tariff quotas for agricultural products managed by a system of import licences (OJ L 238, 1.9.2006, p. 13).

ANNEX

Order No	Allocation coefficient — applications lodged for the subperiod from 1 January to 31 March 2016 (%)
09.4273	2,579121
09.4274	—

COMMISSION IMPLEMENTING REGULATION (EU) 2015/2391**of 17 December 2015****determining the quantities to be added to the quantity fixed for the subperiod from 1 April to 30 June 2016 under the tariff quotas opened by Regulation (EC) No 539/2007 in the egg sector and for egg albumin**

THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EU) No 1308/2013 of the European Parliament and of the Council of 17 December 2013 establishing a common organisation of the markets in agricultural products and repealing Council Regulations (EEC) No 922/72, (EEC) No 234/79, (EC) No 1037/2001 and (EC) No 1234/2007 ⁽¹⁾, and in particular Article 188(2) and (3) thereof,

Whereas:

- (1) Commission Regulation (EC) No 539/2007 ⁽²⁾ opened annual tariff quotas for imports of egg products and egg albumin.
- (2) The quantities covered by the applications for import licences lodged from 1 to 7 December 2015 for the subperiod from 1 January to 31 March 2016 are less than those available. The quantities for which applications have not been lodged should therefore be determined and these should be added to the quantity fixed for the following quota subperiod.
- (3) In order to ensure the efficient management of the measure, this Regulation should enter into force on the day of its publication in the *Official Journal of the European Union*,

HAS ADOPTED THIS REGULATION:

Article 1

The quantities for which import licence applications have not been lodged pursuant to Regulation (EC) No 539/2007, to be added to the subperiod from 1 April to 30 June 2016, are set out in the Annex to this Regulation.

*Article 2*This Regulation shall enter into force on the day of its publication in the *Official Journal of the European Union*.

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

Done at Brussels, 17 December 2015.

*For the Commission,
On behalf of the President,
Jerzy PLEWA*

Director-General for Agriculture and Rural Development

⁽¹⁾ OJ L 347, 20.12.2013, p. 671.

⁽²⁾ Commission Regulation (EC) No 539/2007 of 15 May 2007 opening and providing for the administration of tariff quotas in the egg sector and for egg albumin (OJ L 128, 16.5.2007, p. 19).

ANNEX

Order No	Quantities not applied for, to be added to the quantities available for the subperiod from 1 April to 30 June 2016 (in kg, shell egg equivalent)
09.4015	108 000 000
09.4401	2 690 000
09.4402	9 666 000

DIRECTIVES

COMMISSION IMPLEMENTING DIRECTIVE (EU) 2015/2392

of 17 December 2015

on Regulation (EU) No 596/2014 of the European Parliament and of the Council as regards reporting to competent authorities of actual or potential infringements of that Regulation

THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EU) No 596/2014 of the European Parliament and of the Council of 16 April 2014 on market abuse (market abuse regulation) and repealing Directive 2003/6/EC of the European Parliament and of the Council and Commission Directives 2003/124/EC, 2003/125/EC and 2004/72/EC⁽¹⁾, and in particular Article 32(5) thereof,

Whereas:

- (1) Persons reporting actual or potential infringements of Regulation (EU) No 596/2014 (whistle-blowers) to competent authorities may bring new information to the attention of competent authorities and assist the latter in detecting and imposing sanctions for market abuse offences. However, whistleblowing of infringements may be deterred by fear of retaliation, discrimination or disclosure of personal data. Adequate arrangements regarding whistleblowing are hence necessary to ensure the overall protection and the respect of the fundamental rights of the whistle-blowers and the accused persons. Persons who knowingly report wrong or misleading information to competent authorities should not be considered as whistle-blowers and thus should not enjoy the protection mechanisms.
- (2) Anonymous reporting should be allowed by competent authorities and the protection mechanisms of this Directive should also apply where an anonymous whistle-blower decides to reveal its identity to the competent authority at a later stage. Whistle-blowers should be free to report either through internal procedures, where such procedures exist, or directly to the competent authority.
- (3) Dedicated staff members of the competent authorities, who are professionally trained, including on applicable data protection rules, would be necessary in order to handle reports of infringements of Regulation (EU) No 596/2014 and to ensure communication with the reporting person, as well as following up on the report in a suitable manner.
- (4) Persons intending to report actual or potential infringements of Regulation (EU) No 596/2014 should be able to make an informed decision on whether, how and when to report. Competent authorities should therefore publicly disclose and make easily accessible information about the available communication channels with competent authorities, about the applicable procedures and about the dedicated staff members within the authority dealing with reports of infringements. All information regarding reports of infringements should be transparent, easily understandable and reliable in order to promote and not deter reporting of infringements.
- (5) In order to allow for effective communication with its dedicated staff it is necessary that the competent authorities have in place and use different communication channels that should be user-friendly and allow for written and oral, as well as electronic and non-electronic communication.
- (6) It is important that the procedures for the protection of persons working under a contract of employment, irrespective of the nature of their working relationship and whether they are paid or not, who report infringements or are accused of infringements of Regulation (EU) No 596/2014 protect such persons against retaliation, discrimination or other types of direct or indirect unfair treatment. Unfair treatment can take very different forms depending on the circumstances. Thus individual cases need to be assessed through dispute resolution rules or judiciary procedures available under national law.

⁽¹⁾ OJ L 173, 12.6.2014, p. 1.

- (7) Member States should ensure that competent authorities have in place adequate protection procedures for the processing of reports of infringements and reported persons' personal data. Such procedures should ensure that the identity of every reporting and reported person is protected at all stages of the procedure. This obligation should be without prejudice to the necessity and proportionality of the obligation to disclose information when this is required by Union or national law and subject to appropriate safeguards under such laws, including in the context of investigations or judicial proceedings or to safeguard the freedoms of others, including the rights of defence of the reported person.
- (8) It is highly important and necessary that dedicated staff of the competent authority and staff members of the competent authority who receive access to the information provided by a reporting person to the competent authority comply with the duty of professional secrecy and the confidentiality when transmitting the data both inside and outside of the competent authority, including where a competent authority opens an investigation or an inquiry or subsequent enforcement activities in connection with the report of infringements.
- (9) Member States should ensure the adequate record-keeping of all reports of infringement and that every report is retrievable within the competent authority and that information received through reports could be used as evidence in enforcement actions where appropriate. Member States should ensure the compliance with Directive 95/46/EC of the European Parliament and of the Council ⁽¹⁾ and national legislation transposing Directive 95/46/EC.
- (10) Protection of personal data of the reporting and reported person is crucial in order to avoid unfair treatment or reputational damages due to disclosure of personal data, in particular data revealing the identity of a person concerned. Hence, in addition to the national data protection legislation which transposes Directive 95/46/EC, competent authorities should establish adequate data protection procedures specifically geared to the protection of the reporting and reported person that should include a secure system within the competent authority with restricted access rights for authorised staff only.
- (11) Transmission of personal data connected to reports of infringements by the competent authority could be necessary to evaluate a report of infringements and to undertake the necessary investigation and enforcement actions. When transmitting data within the competent authority or to third parties, competent authorities should preserve the confidentiality to the maximum extent possible in accordance with national law.
- (12) The rights of the reported person accused of an infringement of Regulation (EU) No 596/2014 should be protected in order to avoid reputational damages or other negative consequences. Furthermore, the rights of defence and access to remedies of the reported person should be fully respected at every stage of the procedure following the report. Member States should ensure the right of defence of the reported person, including the right to access to the file, the right to be heard and the right to seek effective remedy against a decision concerning the reported person under the applicable procedures set out in national law in the context of investigations or subsequent judicial proceedings.
- (13) The regular and at least biannual (once every two years) review of the procedures of competent authorities should guarantee that these procedures are adequate and state of the art, and thus serving their purpose. For this purpose, it is important that competent authorities evaluate their own experiences and exchange experiences and good practices with other competent authorities.
- (14) Given that detailed rules on the protection of whistle-blowers would make it more difficult for Member States to ensure compatibility and operational fit with their national systems, including administrative, procedural and institutional aspects, some flexibility is needed for the implementing act. Such flexibility would best be achieved through a directive, rather than a regulation and hence a directive appears to be the most appropriate instrument in order to allow Member States to adapt the reporting of infringements regime efficiently into their national systems including the institutional framework.
- (15) Given the fact that Regulation (EU) No 596/2014 enters into application on 3 July 2016, it is appropriate that the Member States transpose and apply provisions pertaining to this Directive from 3 July 2016.
- (16) The measures provided for in this Directive are in accordance with the opinion of the European Securities Committee,

⁽¹⁾ OJ L 281, 23.11.1995, p. 31.

HAS ADOPTED THIS DIRECTIVE:

CHAPTER I

SUBJECT MATTER AND DEFINITIONS

Article 1

Subject-matter

This Directive lays down rules specifying the procedures set out in Article 32(1) of Regulation (EU) No 596/2014, including the arrangements for reporting and for following-up reports, and measures for the protection of persons working under a contract of employment and measures for the protection of personal data.

Article 2

Definitions

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

- (1) 'reporting person' means a person reporting an actual or potential infringement of Regulation (EU) No 596/2014 to the competent authority;
- (2) 'reported person' means a person who is accused of having committed, or intending to commit, an infringement of Regulation (EU) No 596/2014 by the reporting person;
- (3) 'report of infringement' means a report submitted by the reporting person to the competent authority regarding an actual or potential infringement of Regulation (EU) No 596/2014.

CHAPTER II

PROCEDURES FOR THE RECEIPT OF REPORTS OF INFRINGEMENTS AND THEIR FOLLOW-UP

Article 3

Dedicated staff members

1. Member States shall ensure that competent authorities have staff members dedicated to handling reports of infringements ('dedicated staff members'). Dedicated staff members shall be trained for the purposes of handling reports of infringements.
2. Dedicated staff members shall exercise the following functions:
 - (a) providing any interested person with information on the procedures for reporting infringements;
 - (b) receiving and following-up reports of infringements;
 - (c) maintaining contact with the reporting person where the latter has identified itself.

Article 4

Information regarding the receipt of reports of infringements and their follow-up

1. Member States shall ensure that competent authorities publish on their websites in a separate, easily identifiable and accessible section the information regarding the receipt of reports of infringements set out in paragraph 2.

2. The information referred to in paragraph 1 shall include all of the following:
 - (a) the communication channels for receiving and following-up the reporting of infringements and for contacting the dedicated staff members in accordance with Article 6(1), including:
 - (1) the phone numbers, indicating whether conversations are recorded or unrecorded when using those phone lines;
 - (2) dedicated electronic and postal addresses, which are secure and ensure confidentiality, to contact the dedicated staff members;
 - (b) the procedures applicable to reports of infringements referred to in Article 5;
 - (c) the confidentiality regime applicable to reports of infringements in accordance with the procedures applicable to reports of infringements referred to in Article 5;
 - (d) the procedures for the protection of persons working under a contract of employment;
 - (e) a statement clearly explaining that persons making information available to the competent authority in accordance with Regulation (EU) No 596/2014 are not considered to be infringing any restriction on disclosure of information imposed by contract or by any legislative, regulatory or administrative provision, and are not to be involved in liability of any kind related to such disclosure.
3. Competent authorities may publish on their websites more detailed information regarding the receipt and follow-up of infringements set out in paragraphs 2.

Article 5

Procedures applicable to reports of infringements

1. The procedures applicable to reports of infringements referred to in Article 4(2)(b) shall clearly indicate all of the following information:
 - (a) that reports of infringements can also be submitted anonymously;
 - (b) the manner in which the competent authority may require the reporting person to clarify the information reported or to provide additional information that is available to the reporting person;
 - (c) the type, content and timeframe of the feed-back about the outcome of the report of infringement that the reporting person can expect after the reporting;
 - (d) the confidentiality regime applicable to reports of infringements, including a detailed description of the circumstances under which the confidential data of a reporting person may be disclosed in accordance with Articles 27, 28 and 29 of Regulation (EU) No 596/2014.
2. The detailed description referred to in point (d) of paragraph 1 shall ensure awareness of the reporting person concerning the exceptional cases in which confidentiality of data may not be ensured, including where the disclosure of data is a necessary and proportionate obligation required under Union or national law in the context of investigations or subsequent judicial proceedings or to safeguard the freedoms of others including the right of defence of the reported person, and in each case subject to appropriate safeguards under such laws.

Article 6

Dedicated communication channels

1. Member States shall ensure that competent authorities establish independent and autonomous communication channels, which are both secure and ensure confidentiality, for receiving and following-up the reporting of infringements ('dedicated communication channels').

2. Dedicated communication channels shall be considered independent and autonomous, provided that they meet all of the following criteria:
 - (a) they are separated from general communication channels of the competent authority, including those through which the competent authority communicates internally and with third parties in its ordinary course of business;
 - (b) they are designed, set up and operated in a manner that ensures the completeness, integrity and confidentiality of the information and prevents access to non-authorised staff members of the competent authority;
 - (c) they enable the storage of durable information in accordance with Article 7 to allow for further investigations.
3. The dedicated communication channels shall allow for reporting of actual or potential infringements in at least all of the following ways:
 - (a) written report of infringements in electronic or paper format;
 - (b) oral report of infringements through telephone lines, whether recorded or unrecorded;
 - (c) physical meeting with dedicated staff members of the competent authority.
4. The competent authority shall provide the information referred to in paragraph 2 of Article 4 to the reporting person before receiving the report of infringement, or at the moment of receiving it at the latest.
5. Competent authorities shall ensure that a report of infringement received by means other than dedicated communication channels referred to in this Article is promptly forwarded without modification to the dedicated staff members of the competent authority by using dedicated communication channels.

Article 7

Record-keeping of reports received

1. Member States shall ensure that competent authorities keep records of every report of infringement received.
2. Competent authorities shall promptly acknowledge the receipt of written reports of infringements to the postal or electronic address indicated by the reporting person, unless the reporting person explicitly requested otherwise or the competent authority reasonably believes that acknowledging receipt of a written report would jeopardise the protection of the reporting person's identity.
3. Where a recorded telephone line is used for reporting of infringements, the competent authority shall have the right to document the oral reporting in the form of:
 - (a) an audio recording of the conversation in a durable and retrievable form; or
 - (b) a complete and accurate transcript of the conversation prepared by the dedicated staff members of the competent authority. In cases where the reporting person has disclosed its identity, the competent authority shall offer the possibility to the reporting person to check, rectify and agree with the transcript of the call by signing it.
4. Where an unrecorded telephone line is used for reporting of infringements, the competent authority shall have the right to document the oral reporting in the form of accurate minutes of the conversation prepared by the dedicated staff members of the competent authority. In cases where the reporting person has disclosed its identity, the competent authority shall offer the possibility to the reporting person to check, rectify and agree with the minutes of the call by signing them.
5. Where a person requests a physical meeting with the dedicated staff members of the competent authority for reporting an infringement according to Article 6(3)(c), competent authorities shall ensure that complete and accurate records of the meeting are kept in a durable and retrievable form. A competent authority shall have the right to document the records of the physical meeting in the form of:
 - (a) an audio recording of the conversation in a durable and retrievable form; or
 - (b) accurate minutes of the meeting prepared by the dedicated staff members of the competent authority. In cases where the reporting person has disclosed its identity, the competent authority shall offer the possibility to the reporting person to check, rectify and agree with the minutes of the meeting by signing them.

*Article 8***Protection of persons working under a contract of employment**

1. Member States shall put in place procedures ensuring effective exchange of information and cooperation between competent authorities and any other relevant authority involved in the protection of persons working under a contract of employment who report infringements of Regulation (EU) No 596/2014 to the competent authority or are accused of such infringements, against retaliation, discrimination or other types of unfair treatment, arising due to or in connection with reporting of infringements of Regulation (EU) No 596/2014.
2. The procedures set out in paragraph 1 shall ensure at least the following:
 - (a) reporting persons have access to comprehensive information and advice on the remedies and procedures available under national law to protect them against unfair treatment, including on the procedures for claiming pecuniary compensation;
 - (b) reporting persons have access to effective assistance from competent authorities before any relevant authority involved in their protection against unfair treatment, including by certifying the condition of whistle-blower of the reporting person in employment disputes.

*Article 9***Protection procedures for personal data**

1. Member States shall ensure that competent authorities store the records referred to in Article 7 in a confidential and secure system.
2. Access to the system referred to in paragraph 1 shall be subject to restrictions ensuring that the data stored therein is only available to staff members of the competent authority for whom access to that data is necessary to perform their professional duties.

*Article 10***Transmission of data inside and outside of the competent authority**

1. Member States shall ensure that competent authorities have in place adequate procedures for the transmission of personal data of the reporting person and reported person inside and outside of the competent authority.
2. Member States shall ensure that the transmission of data related to a report of infringement within or outside the competent authority does not reveal, directly or indirectly, the identity of the reporting person or reported person or any other references to circumstances that would allow the identity of the reporting person or reported person to be deduced, unless such transmission is in accordance with the confidentiality regime referred to in Article 5(1)(d).

*Article 11***Procedures for the protection of the reported persons**

1. Where the identity of reported persons is not known to the public, the Member State concerned shall ensure that their identity is protected at least in the same manner as for persons that are under investigation by the competent authority.
2. The procedures set out Article 9 shall also apply for the protection of the identity of the reported persons.

*Article 12***Review of the procedures by competent authorities**

Member States shall ensure that their competent authorities review their procedures for receiving reports of infringements and their follow-up regularly, and at least once every two years. In reviewing such procedures competent authorities shall take account of their experience and that of other competent authorities and adapt their procedures accordingly and in line with market and technological developments.

CHAPTER III

FINAL PROVISIONS*Article 13***Transposition**

Member States shall adopt and publish, by 3 July 2016 at the latest, the laws, regulations and administrative provisions necessary to comply with this Directive. They shall forthwith communicate to the Commission the text of those provisions.

They shall apply those provisions from 3 July 2016.

When Member States adopt those provisions, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such reference is to be made.

*Article 14***Entry into force**

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

*Article 15***Addressees**

This Directive is addressed to the Member States.

Done at Brussels, 17 December 2015.

For the Commission
The President
Jean-Claude JUNCKER

DECISIONS

COUNCIL DECISION (EU, Euratom) 2015/2393
of 8 December 2015
amending the Council's Rules of Procedure

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on European Union,

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

Having regard to Article 11(6) of the Council's Rules of Procedure ⁽¹⁾,

Whereas:

- (1) From 1 November 2014, when an act is to be adopted by the Council acting by qualified majority, it must be verified that the Member States constituting the qualified majority represent at least 65 % of the population of the Union.
- (2) Until 31 March 2017, when an act is to be adopted by the Council acting by qualified majority, a member of the Council may request that it be adopted in accordance with the qualified majority as defined in Article 3(3) of Protocol No 36 on transitional provisions, annexed to the Treaty on European Union, to the Treaty on the Functioning of the European Union and to the Treaty establishing the European Atomic Energy Community. In that case, a member of the Council may request that a check be made to ensure that the Member States constituting the qualified majority represent at least 62 % of the total population of the Union.
- (3) Those percentages are calculated according to the population figures set out in Annex III to the Council's Rules of Procedure ('the Rules of Procedure').
- (4) Article 11(6) of the Rules of Procedure provides that, with effect from 1 January each year, the Council is to amend the figures set out in that Annex, in accordance with the data available to the Statistical Office of the European Union on 30 September of the preceding year.
- (5) The Rules of Procedure should therefore be amended accordingly for the year 2016,

HAS ADOPTED THIS DECISION:

Article 1

Annex III to the Rules of Procedure is replaced by the following:

'ANNEX III

Figures concerning the population of the Union and the population of each Member State for implementing the provisions concerning qualified majority voting in the Council

For the purposes of implementing Article 16(4) TEU, Article 238(2) and (3) TFEU and Article 3(2) of Protocol No 36, the population of the Union and the population of each Member State, as well as the percentage of each Member State's population in relation to the population of the Union, for the period from 1 January 2016 to 31 December 2016 shall be as follows:

Member State	Population	Percentage of the population of the Union
Germany	81 089 331	15,93
France	66 352 469	13,04

⁽¹⁾ Council Decision 2009/937/EU of 1 December 2009 adopting the Council's Rules of Procedure (OJ L 325, 11.12.2009, p. 35).

Member State	Population	Percentage of the population of the Union
United Kingdom	64 767 115	12,73
Italy	61 438 480	12,07
Spain	46 439 864	9,12
Poland	38 005 614	7,47
Romania	19 861 408	3,90
Netherlands	17 155 169	3,37
Belgium	11 258 434	2,21
Greece	10 846 979	2,13
Czech Republic	10 419 743	2,05
Portugal	10 374 822	2,04
Hungary	9 855 571	1,94
Sweden	9 790 000	1,92
Austria	8 581 500	1,69
Bulgaria	7 202 198	1,42
Denmark	5 653 357	1,11
Finland	5 471 753	1,08
Slovakia	5 403 134	1,06
Ireland	4 625 885	0,91
Croatia	4 225 316	0,83
Lithuania	2 921 262	0,57
Slovenia	2 062 874	0,41
Latvia	1 986 096	0,39
Estonia	1 313 271	0,26
Cyprus	847 008	0,17
Luxembourg	562 958	0,11
Malta	429 344	0,08
Total	508 940 955	
Threshold (62 %)	315 543 392	
Threshold (65 %)	330 811 621'	

Article 2

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

It shall apply from 1 January 2016.

Done at Brussels, 8 December 2015.

For the Council

The President

P. GRAMEGNA

COUNCIL DECISION (EU) 2015/2394**of 8 December 2015****on the position to be taken by the Member States on behalf of the European Union, concerning the decisions to be adopted by the Permanent Commission of Eurocontrol, with regard to the roles and tasks of Eurocontrol and on centralised services**

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 100(2) and Article 218(9) thereof,

Having regard to the proposal from the European Commission,

Whereas:

- (1) The Permanent Commission of Eurocontrol ('the Permanent Commission'), by its Decision No 123 of 4 December 2013, established a Study Group to investigate in what manner the Eurocontrol International Convention relating to Cooperation for the Safety of Air Navigation of 13 December 1960 ('the Eurocontrol Convention') may require amendment in order to reflect the evolving air traffic management landscape in Europe.
- (2) On 19 October 2015 the Study Group tasked the Eurocontrol Agency with preparing a draft Permanent Commission Act defining the future roles and tasks of Eurocontrol.
- (3) A draft decision of the Permanent Commission regarding the roles and tasks of Eurocontrol will be on its agenda for approval at its meeting on 8 and 9 December 2015.
- (4) Once adopted, that decision will have legal effects. According to the applicable institutional framework, set out in the Eurocontrol Convention, as amended by the Protocol signed at Brussels on 12 February 1981 ('the Amended Convention'), the Permanent Commission is in charge of formulating Eurocontrol's general policy. The definition of the roles and tasks will govern Eurocontrol's future action and will necessarily reflect what Eurocontrol considers as legitimate activity. It will be binding on all Eurocontrol Members, including Member States of the Union.
- (5) The definition of the roles and tasks of Eurocontrol may have consequences with regard to the application of Union law and, in particular, the integrity of Union competences, given that Union legislation covers important areas in which Eurocontrol is active. In some cases, Eurocontrol's role and activity depend on decisions taken at Union level.
- (6) It is therefore important to ensure that the definition of Eurocontrol's roles and tasks does not conflict with Union law, in particular Union competences, and that it does not prejudice future Union action.
- (7) At its meeting on 8 and 9 December 2015, the Permanent Commission may also adopt a decision on centralised services. The Union is not currently in possession of sufficient information to evaluate the substance of such a decision, which may prejudice future activity conducted by Eurocontrol and in a manner that may be detrimental to the Union's activity in this field, in particular as regards Single European Sky Air Traffic Management Research (SESAR). A decision on this matter should thus be postponed.
- (8) The position to be taken on the Union's behalf within the Permanent Commission should therefore be established,

HAS ADOPTED THIS DECISION:

Article 1

The position to be taken by the Member States on behalf of the European Union in the Permanent Commission of Eurocontrol concerning the roles and tasks of Eurocontrol and centralised services shall be in accordance with the Annex.

The Member States shall act jointly in the interest of the Union.

Article 2

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

Done at Brussels, 8 December 2015.

For the Council
The President
P. GRAMEGNA

ANNEX

I. Eurocontrol's roles and tasks

The Union requests that the proposed text regarding the services, roles and tasks of Eurocontrol in no way affect the Union competences and that it not prejudice future Union action. Where specific tasks are currently performed by Eurocontrol under the Union legal framework on a temporary basis, those tasks shall not be presented as tasks independent of Union decisions.

The Union requests the following changes to the list of Eurocontrol roles and tasks set out in the annex to the Eurocontrol action paper CN-SG-6-2015 on the roles and tasks of the organisation of 16 November 2015:

(1) As regards Article 2(1) on 'Functions and Services':

- (a) ~~air traffic~~ central flow management;
- (b) ATM network functions if conferred by ~~on behalf of~~ the European Union;
- (c) ATM ~~functions~~ tasks on behalf of ICAO for the EUR/NAT region;
- (d) establishment, billing and collection of air navigation charges;
- (e) provision of air traffic services at MUAC, subject to the results of the discussions between the Member States and ~~EUROCONTROL~~ **the Agency**;
- (f) central functions and services, such as EAD, ARTAS/CAMOS, and other central services which might be entrusted to it by the Permanent Commission, in agreement **close cooperation** with the Union.

(2) As regards Article 2(2) on 'Roles':

- (a) With respect to 'Support', the changes shall be as follows:
 - (i) support to its Member States, NSAs, ANSPs and other relevant stakeholders;
 - (ii) support to the EU bodies including the provision of expertise to support regulatory activities in compliance ~~accordance with the High-Level Agreement between the EU and Eurocontrol of 29 October 2012 at the request of these bodies;~~
 - (iii) **facilitation and promotion of** European interests in non-ECAC states in ATM matters in close cooperation with its Member States, their ANSPs and industry ~~and the EU~~, except for areas covered by EU rules and subject to respecting EU competences;
 - (iv) contribution to SESAR (R & D, ATM master plan maintenance and deployment) — building upon its **expertise in** ATM ~~expertise~~, pan-European coverage, civil-military aspect and ~~central flow network~~ **network** management ~~role~~, in compliance with relevant EU legislation;
 - (v) providing research and related simulation facilities, e.g. for SESAR, research activities in addition to SESAR and airspace changes in compliance with relevant EU legislation, where applicable;
 - (vi) offer training/education to Member State organisations.
- (b) With respect to the 'Mechanisms for cooperation', the changes shall be as follows:
 - (i) facilitate and promote civil-military coordination on ATM/ANS developments;
 - (ii) support Member States in ICAO work, subject to respecting EU competences;
 - (iii) cooperate with other world regions subject to agreement with Member States ensuring coordination with the EU;

- (iv) international cooperation/coordination (ICAO, FAA, NATO, etc.) on behalf of its Member States, ~~other than EU Member States~~ **subject to respecting EU competences;**
 - (v) advising ~~non-EU~~ at their request those member states that are not EU Member States and have not concluded agreements with the Union, on ATM safety and performance matters, making use of in compliance with ICAO rules, in coordination with the EU and subject to respecting its competences EU and EASA rules in this area to inform enhancing harmonization, safety, operational efficiency and economies of scale.
- (c) With respect to 'pan-European ATM data and information' the changes shall be as follows:
- (i) collection and analysis of data, which could include performance data, safety data, etc. (in order to 'maintain' the systems and data in support of regulatory work) for states that are not EU Member States and, if this task is conferred to it by the EU, for EU Member States;
 - (ii) analysis and provision of reports (information) on the data collected (e.g. ACE, PRR) for states that are not EU Member States and, if this task is conferred to it by the EU, for EU Member States;
 - (iii) run the ESSIP/LSSIP process, if conferred by the European Union;
 - (iv) ~~including~~ reporting to ICAO on the implementation of the global air navigation plan (GANP) and aviation system block upgrades (ASBUs) ~~and ensuring coordination with the EU reporting mechanisms~~ in agreement with the European Union;
 - (v) collection of traffic data and provision of Statfor forecast.

II. Centralised services

The Union's position is that a decision on centralised services should be postponed at this stage.

The Union is not currently in possession of sufficient information to evaluate the substance of a decision on centralised services. Such a decision may prejudice future activity conducted by Eurocontrol and in a manner that may be detrimental to the Union's activity in this field, in particular as regards Single European Sky Air Traffic Management Research (SESAR).

COUNCIL IMPLEMENTING DECISION (EU) 2015/2395**of 10 December 2015****amending Implementing Decision 2010/99/EU authorising the Republic of Lithuania to extend the application of a measure derogating from Article 193 of Directive 2006/112/EC on the common system of value added tax**

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 291(2) thereof,

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

Having regard to the proposal from the European Commission,

Whereas:

- (1) By letter registered with the Commission on 1 April 2015, the Republic of Lithuania requested authorisation to continue to apply a measure derogating from Article 193 of Directive 2006/112/EC which governs the person liable for the payment of the value added tax (VAT) to tax authorities.
- (2) In accordance with Article 395(2) of Directive 2006/112/EC, the Commission informed the other Member States, by letter dated 18 May 2015, of the request made by Lithuania. By letter dated 20 May 2015, the Commission notified Lithuania that it had all the information necessary to consider the request.
- (3) Council Decision 2006/388/EC ⁽²⁾ authorised Lithuania, inter alia, to make the recipient liable for the VAT due on the supply of goods and services in the case of insolvency procedures or restructuring procedures subject to judicial oversight, and on the supply of timber.
- (4) The period for the application of the derogating measure was extended twice, by Council Implementing Decisions 2010/99/EU ⁽³⁾ and 2012/704/EU ⁽⁴⁾.
- (5) The investigations and the analysis of the application of the mechanism carried out by the Lithuanian tax authorities have revealed the effectiveness of the derogating measure.
- (6) The Commission understands that the legal and factual situation which has justified the application of the derogating measure has not changed and continues to exist. Lithuania should therefore be authorised to apply the measure for a further limited period.
- (7) Where Lithuania considers that a further extension of the derogating measure beyond 2018 is necessary, it should submit to the Commission an evaluation report, together with the extension request, by not later than 31 March 2018 in order to allow sufficient time for the Commission to examine the request.
- (8) The derogating measure will have no adverse impact on the Union's own resources accruing from VAT.
- (9) Implementing Decision 2010/99/EU should therefore be amended accordingly,

⁽¹⁾ OJ L 347, 11.12.2006, p. 1.

⁽²⁾ Council Decision 2006/388/EC of 15 May 2006 authorising the Republic of Lithuania to apply a measure derogating from Article 21 of the Sixth Directive 77/388/EEC on the harmonisation of the laws of the Member States relating to turnover taxes (OJ L 150, 3.6.2006, p. 13).

⁽³⁾ Council Implementing Decision 2010/99/EU of 16 February 2010 authorising the Republic of Lithuania to extend the application of a measure derogating from Article 193 of Directive 2006/112/EC on the common system of value added tax (OJ L 45, 20.2.2010, p. 10).

⁽⁴⁾ Council Implementing Decision 2012/704/EU of 13 November 2012 amending Implementing Decision 2010/99/EU authorising the Republic of Lithuania to extend the application of a measure derogating from Article 193 of Directive 2006/112/EC on the common system of value added tax (OJ L 319, 16.11.2012, p. 7).

HAS ADOPTED THIS DECISION:

Article 1

In Article 2 of Implementing Decision 2010/99/EU, the second paragraph is replaced by the following:

‘It shall apply until 31 December 2018.

Any request for the extension of the measure provided for in this Decision shall be submitted to the Commission by 31 March 2018 and shall be accompanied by a report on the application of that measure.’

Article 2

This Decision is addressed to the Republic of Lithuania.

Done at Brussels, 10 December 2015.

For the Council

The President

F. BAUSCH

COUNCIL IMPLEMENTING DECISION (EU) 2015/2396**of 10 December 2015****amending Implementing Decision 2009/1008/EU authorising the Republic of Latvia to extend the application of a measure derogating from Article 193 of Directive 2006/112/EC on the common system of value added tax**

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 291(2) thereof,

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

Having regard to the proposal from the European Commission,

Whereas:

- (1) By letter registered with the Commission on 30 March 2015, the Republic of Latvia requested authorisation to continue to apply a measure derogating from Article 193 of Directive 2006/112/EC which governs the person liable for the payment of the value added tax (VAT) to tax authorities.
- (2) In accordance with Article 395(2) of Directive 2006/112/EC, the Commission informed the other Member States, by letter dated 18 May 2015, of the request made by Latvia. By letter dated 20 May 2015, the Commission notified Latvia that it had all the information necessary to consider the request.
- (3) Council Decision 2006/42/EC ⁽²⁾ authorised Latvia to make the recipient liable for the VAT due on the supply of timber.
- (4) The period for the application of the derogating measure was extended twice, by Council Implementing Decisions 2009/1008/EU ⁽³⁾ and 2013/55/EU ⁽⁴⁾.
- (5) The investigations and the analysis of the application of the mechanism carried out by the Latvian tax authorities have revealed the effectiveness of the derogating measure.
- (6) The Commission understands that the legal and factual situation which has justified the application of the derogating measure has not changed and continues to exist. Latvia should therefore be authorised to apply the measure for a further limited period.
- (7) Where Latvia considers that a further extension of the derogating measure beyond 2018 is necessary, it should submit to the Commission an evaluation report, together with the extension request, by no later than 31 March 2018 in order to allow sufficient time for the Commission to examine the request.
- (8) The derogating measure will have no adverse impact on the Union's own resources accruing from VAT.
- (9) Implementing Decision 2009/1008/EU should therefore be amended accordingly,

⁽¹⁾ OJ L 347, 11.12.2006, p. 1.

⁽²⁾ Council Decision 2006/42/EC of 24 January 2006 authorising Latvia to extend the application of a measure derogating from Article 21 of the Sixth Council Directive 77/388/EEC on the harmonisation of the laws of the Member States relating to turnover taxes (OJ L 25, 28.1.2006, p. 31).

⁽³⁾ Council Implementing Decision 2009/1008/EU of 7 December 2009 authorising the Republic of Latvia to extend the application of a measure derogating from Article 193 of Directive 2006/112/EC on the common system of value added tax (OJ L 347, 24.12.2009, p. 30).

⁽⁴⁾ Council Implementing Decision 2013/55/EU of 22 January 2013 amending Implementing Decision 2009/1008/EU authorising the Republic of Latvia to extend the application of a measure derogating from Article 193 of Directive 2006/112/EC on the common system of value added tax (OJ L 22, 25.1.2013, p. 16).

HAS ADOPTED THIS DECISION:

Article 1

Articles 2 and 2a of Implementing Decision 2009/1008/EU are replaced by the following:

'Article 2

This Decision shall apply until 31 December 2018.

Any request for the extension of the measure provided for in this Decision shall be submitted to the Commission by 31 March 2018 and shall be accompanied by a report on the application of that measure.'

Article 2

This Decision is addressed to the Republic of Latvia.

Done at Brussels, 10 December 2015.

For the Council
The President
E. BAUSCH

COUNCIL DECISION (EU) 2015/2397
of 16 December 2015
appointing a Spanish member and a Spanish alternate member of the Committee of the Regions

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 305 thereof,

Having regard to the proposal of the Spanish Government,

Whereas:

- (1) On 26 January, on 5 February and on 23 June 2015, the Council adopted Decisions (EU) 2015/116 ⁽¹⁾, (EU) 2015/190 ⁽²⁾ and (EU) 2015/994 ⁽³⁾ appointing the members and alternate members of the Committee of the Regions for the period from 26 January 2015 to 25 January 2020.
- (2) A member's seat on the Committee of the Regions has become vacant following the end of the term of office of Mr Paulino RIVERO BAUTE.
- (3) An alternate member's seat on the Committee of the Regions has become vacant following the end of the term of office of Mr Javier GONZALEZ ORTIZ,

HAS ADOPTED THIS DECISION:

Article 1

The following are hereby appointed to the Committee of the Regions for the remainder of the current term of office, which runs until 25 January 2020:

(a) as member:

— D. Fernando CLAVIJO BATLLE, *Presidente del Gobierno de Canarias*,

and

(b) as alternate member:

— D^a Maria Luisa de MIGUEL ANASAGASTI, *Directora General de Asuntos Económicos con la Unión Europea del Gobierno de Canarias*.

Article 2

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

Done at Brussels, 16 December 2015.

For the Council
The President
C. DIESCHBOURG

⁽¹⁾ OJ L 20, 27.1.2015, p. 42.
⁽²⁾ OJ L 31, 7.2.2015, p. 25.
⁽³⁾ OJ L 159, 25.6.2015, p. 70.

COMMISSION IMPLEMENTING DECISION (EU) 2015/2398**of 17 December 2015****on information and documentation related to an application for a facility located in a third country for inclusion in the European List of ship recycling facilities****(Text with EEA relevance)**

THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EU) No 1257/2013 of the European Parliament and of the Council of 20 November 2013 on ship recycling and amending Regulation (EC) No 1013/2006 and Directive 2009/16/EC ⁽¹⁾, and in particular Article 15(3) thereof,

Whereas:

- (1) Regulation (EU) No 1257/2013, in particular in its Title III, lays down requirements for ship recycling facilities wishing to recycle ships flying the flag of a Member State of the European Union and thereby applying for inclusion in the European List of ship recycling facilities.
- (2) Article 15(2) of Regulation (EU) No 1257/2013 lists information and documentation to be provided by ship recycling companies as part of their application files for ship recycling facilities located in a third country for inclusion on the European List. Furthermore, Article 16(2) lists information to be published in the Official Journal about the ship recycling facility to be included in the European List.
- (3) Contrary to other Implementing Acts to be adopted under the Ship Recycling Regulation, there is no directly equivalent template available from the Hong Kong Convention for the safe and environmentally sound recycling of ship of 2009. The format given in Annex therefore comprises relevant extracts from Hong Kong Convention Appendix 5 ('Document of Authorization of Ship Recycling' — DASR) and from the relevant IMO guidelines related to ship recycling facilities and adds information and documentation requirements added in the Ship Recycling Regulation (as listed in Articles 15(2) and 16(2) of the Regulation).
- (4) Stakeholders were consulted in writing on the contents of the Decision. The Annex takes comments made into account.
- (5) The measures provided for in this Decision are in accordance with the opinion of the Ship Recycling Regulation Committee established under Article 25 of Regulation (EU) No 1257/2013,

HAS ADOPTED THIS DECISION:

Article 1

The information and documentation required to identify a ship-recycling facility located in a third country applying for inclusion in the European List of ship recycling facilities shall be submitted in the format provided in the Annex.

*Article 2*This Decision shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

Done at Brussels, 17 December 2015.

*For the Commission**The President*

Jean-Claude JUNCKER

⁽¹⁾ OJ L 330, 10.12.2013, p. 1.

ANNEX

PART 1

Identification of the ship recycling facility

Name of ship recycling facility	
Distinctive Recycling Company identity No.	
Full address of ship recycling facility	
Primary contact person	
Phone number	
Email address	
Name, address, and contact information of ownership company	
Working language(s)	

PART 2

Additional information

Method(s) of recycling ⁽¹⁾	
Type(s) of ships that can be recycled	
Procedure for approval of the ship recycling plan ⁽²⁾	
Number of employees ⁽³⁾	
Maximum ship recycling output achieved on a given year in the past 10 years (in LDT) ⁽⁴⁾	

Description of the ship recycling facility (layout, water-depth, accessibility, etc.)	
<p>(¹) See e.g. paragraph 3 in Section 3.4.1 of IMO guidelines, Resolution MEPC.210(63), page 24.</p> <p>(²) This concerns the procedure referred to in Article 7(3) and Article 15(2)(b) of the Ship Recycling Regulation.</p> <p>(³) At the time of application.</p> <p>(⁴) The figure should be documented, e.g. via official confirmations of completion of recycling of ships recycled that year, indicating LDT of the ships. As per Article 32 of the EU SRR, the figure is calculated as 'the sum of the weight of ships expressed in LDT that have been recycled in a given year in that facility. The maximum annual ship recycling output is determined by selecting the highest value occurring in the preceding 10-year period for each ship recycling facility, or, in the case of a newly authorised ship recycling facility, the highest annual value achieved at that facility'.</p>	
Heavy equipment	
Heavy-lifting machines	<p>e.g. Jib crane: 60 tonnes</p> <hr/> <p>e.g. Mobile crane: 35 tonnes × 1, 27 tonnes × 1</p> <hr/> <p>e.g. Hydraulic backhoe: SH400, ZX330, SK220, ZX200 with Shear, Magnet</p> <hr/> <p>e.g. Hydraulic shear: 600 tonnes × 1</p> <hr/> <p>e.g. Weight bridge: 50 tonnes</p> <hr/> <hr/> <hr/> <hr/>
Boat	e.g. Gross tonnage: 5 tonnes, Power: 240 HP
Shear	e.g. Capacity: 600 tonnes

Other equipment	
O ₂ supply	e.g. Liquid O ₂ supply system: 10 m ³
Gas supply	e.g. LPG bottles
Compressed air	
Fire extinguishers	e.g. Portable fire extinguisher capacity
Waste oil treatment	e.g. Oil water separation tank Tank capacity: abt. 20 tonnes
Wastes storage	e.g. Container for asbestos: 2
Incinerator(s)	e.g. none
Electric power supply	e.g. Substation
Location of the facility (!)	
Division and classification of the location	e.g. urbanisation control area
Area of the facility (in sqm)	
Area of pavement	

Location of the facility ⁽¹⁾	
Peripheral environment	e.g. factories: former quarry, two marinas in the vicinity, vulnerable environmental zones
	e.g. Housing: private houses at the entrance and 200 m from entrance

⁽¹⁾ A map of the boundary of the ship recycling facility and the location of Ship Recycling operations within it is attached as per Article 15(2)(e) of the Regulation.

Workers' certificates/licences ⁽¹⁾	
Certificate/licence	Number of personnel/qualifications ⁽²⁾
1) Manager of asbestos handling	
2) Manager of PCB handling	
3) Designated chemicals handling	
4) Asbestos handling class	
5) Gas cutting	
6) Welding	
7) Zinc handling	
8) Lifting	

Workers' certificates/licences ⁽¹⁾	
Certificate/licence	Number of personnel/qualifications ⁽²⁾
9) Heavy lift machines	
10) Seafarer	
11) Diver	
12) Removal of Hazardous Materials (Material A)	
(Material B)	
(Material C)	
(Material D)	
(Material E)	
(Material F)	
(Material G)	
(Material H)	
(Material I)	
(Material J)	
(Material K)	

⁽¹⁾ Please note that it is only necessary to fill in corresponding lines in the table with regard to those hazardous materials the ship recycling facility is authorised to remove.

⁽²⁾ Please note that the ship recycling company must at all times be in a position to provide evidence of the competence of each member of personnel authorised to carry out the removal of hazardous materials to the European Commission or agents acting on its behalf.

PART 3

Identification of the permit, license and authorisation granted by the competent authority/-ies to conduct ship recycling

As per Article 15(2)(a) of Regulation (EU) No 1257/2013 of the European Parliament and of the Council of 20 November 2013 on ship recycling, the ship recycling company shall provide a copy of the document(s) issued by its competent authorities to conduct the ship recycling ⁽¹⁾ and, where relevant, the permit, license or authorisation granted by the competent authorities to all its contractors and sub-contractors directly involved in the process of ship recycling.

⁽¹⁾ If the respective competent authority/-ies does/do not issue a specific permit, license or authorisation to conduct ship recycling, the applicant shall clearly state this in his application and submit other relevant permits, licenses or authorisations relating to the activities of the company.

Permit, license or authorisation document(s) attached to the application file ⁽¹⁾:

Name of the document	Country of issuance	Issuing Competent Authority	Issued on <i>(date)</i>	Valid until <i>(date or indefinite)</i>	Beneficiary entity ⁽¹⁾

⁽¹⁾ Name of the ship recycling company and/or its contractor/sub-contractor concerned by the document.

PART 4

Capability and limitations of the ship recycling facility

4.1. Ship recycling capacity

The ship recycling facility is authorised to accept a ship for recycling subject to the following size limitations:

Maximum capacity of ship to be recycled	Other limitations
DWT	
GT	
LDT	
Length	
Breadth	
Width	
Depth	

⁽¹⁾ Please list in the table and attach a copy of all permits, license or authorisations granted by the competent authorities.

4.2. *Safe and environmentally sound management of hazardous materials*

The ship recycling facility is authorised to accept a ship for recycling that contains hazardous materials as specified in the following table subject to the conditions noted below:

Management of hazardous materials ⁽¹⁾	Descriptions of the management steps ⁽²⁾
1) Asbestos	Removal Storage Waste treatment
Management of hazardous materials	Descriptions of the management steps
2) Ozone-depleting substances	Removal Storage Waste treatment
Heavy metals: 3) Tinorganic anti-fouling compounds and system 4) Cadmium and Cadmium Compounds 5) Hexavalent Chromium and Hexavalent Chromium Compounds 6) Lead and Lead Compounds 7) Mercury and Mercury Compounds	Removal Storage Waste treatment
Flame retardants: 8) Polybrominated Diphenyl Ethers (PBDEs) 9) Hexabromocyclododecane (HBCDD) 10) Polybrominated Biphenyl (PBBs)	Removal Storage Waste treatment
11) Radioactive substances	Removal Storage Waste treatment

Management of hazardous materials	Descriptions of the management steps
Other Persistent Organic Pollutants (POPs) 12) Polychlorinated biphenyls (PCB) 13) Perfluorooctane sulfonic acid (PFOS) 14) Polychlorinated Naphthalenes (more than 3 chlorine atoms) 15) Certain Short-Chain Chlorinated Paraffins (SCCP) (Alkanes, C10-C13, chloro)	Removal Storage Waste treatment
16) Hazardous liquids, residues and sediments	Removal Storage Waste treatment
17) Paints and coatings that are highly flammable and/or lead to toxic release	Removal Storage Waste treatment
18) Other Hazardous Materials not listed above and that are not part of the ship structure (specify)	Removal Storage Waste treatment

(¹) For the management of each item, the national and/or international requirements should be identified for reference. Any limitations imposed under the authorisation granted by the competent authority/-ies of the country where the facility is located should be mentioned. The hazardous materials may be present in parts of the ship or equipment (e.g. in paint or as plastic additives) or in chemical mixtures (e.g. cooling fluids).

(²) As per Article 15(2)(f)(ii) of the Regulation, please 1) indicate which management process will be applied, 2) indicate the location where the activity takes place (either within the facility or at a downstream waste management facility — in the latter case, information should also be provided, including the facility name and contact information) and 3) provide evidence that the applied process will be carried out without endangering human health and in an environmentally sound manner.

PART 5

Statement concerning the recycling of EU Member States flag ships

RECYCLING OF SHIPS FLYING THE FLAG OF A MEMBER STATE OF THE EUROPEAN UNION

Hereby, (*name*), on behalf of,
(*company*) (hereafter 'the company') (¹) confirms that the company will accept ships

(¹) Name of the ship recycling company.

flying the flag of EU Member States for recycling only in accordance with the requirements laid out in Regulation (EU) No 1257/2013 of the European Parliament and of the Council of 20 November 2013 on ship recycling. Furthermore, the company will:

- (a) prior to any recycling of the ship:
- send the ship recycling plan, approved by the competent authority according to the procedure applicable ⁽¹⁾, to the ship owner and the administration or a recognised organisation authorised by it;
 - report to the administration that the ship recycling facility is ready in every respect to start the recycling of the ship;
- (b) when the total or partial recycling of a ship is completed in accordance with this Regulation, within 14 days of the date of the total or partial recycling in accordance with the ship recycling plan, send a statement of completion to the administration which issued the ready for recycling certificate for the ship. The statement of completion will include a report on incidents and accidents damaging human health and/or the environment, if any.

.....

Place Date

Signature:

NB: The statement does not imply that the facility may not accept ships flying the flag of a third country.

PART 6

Statement concerning waste recovery and disposal operations

WASTE RECOVERY AND DISPOSAL OPERATIONS

Further to the 2009 Hong Kong International Convention for the Safe and Environmentally Sound Recycling of Ships, Regulation (EU) No 1257/2013 of the European Parliament and of the Council on ship recycling aims to prevent, reduce, minimise and, to the extent practicable, eliminate accidents, injuries and other adverse effects on human health and the environment caused by ship recycling. Article 15(5) of the Regulation requires that the ship recycling company must be able to demonstrate that the waste management facility which receives the waste will be operated in accordance with human health and environmental protection standards that are broadly equivalent to relevant international and European Union standards.

Hereby, *(name)*, on behalf of
(company) (hereafter 'the company') ⁽²⁾ confirms to the best of its knowledge that the waste management facility or facilities receiving the waste from the ship recycling facility is (are):

- (a) authorised by its competent national authorities to deal with the waste it receives;
- (b) operated in accordance with human health and environmental protection standards that are broadly equivalent to relevant international and European Union standards;

Along with this statement, the company provides a copy of all relevant documents obtained by the waste management facility or facilities (see Part 2).

Place Date

Signature:

⁽¹⁾ The procedure is described in Article 7(3) of the Ship Recycling Regulation.

⁽²⁾ Name of the ship recycling company.

PART 7**Ship Recycling Facility Plan**

SHIP RECYCLING FACILITY PLAN

In accordance with Article 15(2)(g) of Regulation (EU) No 1257/2013 of the European Parliament and of the Council on ship recycling of 20 November 2013, the ship recycling company is required to confirm that it has adopted a ship recycling facility plan, taking into account the relevant IMO guidelines.

I (*name*), declare that a Ship Recycling Facility Plan was adopted by (*company*) ⁽¹⁾. A copy of the Ship Recycling Facility Plan is attached to the application file.

Place Date

Signature:

PART 8**Safe-for-hot work and Safe-for-entry criteria**

As per Article 15(2)(d), the ship recycling company provides evidence that the ship recycling facility is capable of establishing, maintaining and monitoring of the safe-for-hot work and safe-for-entry criteria throughout the ship recycling process.

	Evidence attached to the application file ⁽¹⁾
Safe-for-hot work	
Safe-for-entry conditions	

⁽¹⁾ Refer to the relevant extracts of the Ship Recycling Facility Plan attached to this application.

⁽¹⁾ Name of the ship recycling company.

CORRIGENDA

Corrigendum to Council Decision (CFSP) 2015/1835 of 12 October 2015 defining the statute, seat and operational rules of the European Defence Agency*(Official Journal of the European Union L 266 of 13 October 2015)*

On pages 73 and 74; Annex II is replaced by the following:

ANNEX II

CORRELATION TABLE

Decision 2011/411/CFSP	This Decision
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Corrigendum to Guideline (EU) 2015/1938 of the European Central Bank of 27 August 2015 amending Guideline (EU) 2015/510 of the European Central Bank on the implementation of the Eurosystem monetary policy framework (ECB/2015/27)

(Official Journal of the European Union L 282 of 28 October 2015)

On page 45, point 12, Article 107a, paragraph 4:

for: '4. The DECC issuer shall be an SPV established in a Member State whose currency is the euro. Parties to the transaction, other than the issuer, the debtors of the underlying credit claims, and the originator, shall be established in the EEA.'

read: '4. The DECC issuer shall be a special purpose entity established in a Member State whose currency is the euro. Parties to the transaction, other than the issuer, the debtors of the underlying credit claims, and the originator, shall be established in the EEA.'

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