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Contents

[1] Text with EEA relevance.

EN

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

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

DECISIONS

RECOMMENDATIONS

II

(Non-legislative acts)

INTERNATIONAL AGREEMENTS

Information on the entry into force of the Agreement between the European Union and the Republic of the Seychelles on access for fishing vessels flying the flag of the Seychelles to waters and marine biological resources of Mayotte, under the jurisdiction of the European Union

The European Union and the Republic of Seychelles signed, on 20 May 2014, in Brussels, an Agreement on access for fishing vessels flying the flag of the Seychelles to waters and marine biological resources of Mayotte, under the jurisdiction of the European Union.

The European Union notified on 10 February 2015 that it had completed the internal procedures necessary for the entry into force of the Agreement. The Republic of Seychelles notified on 18 May 2017.

The Agreement consequently entered into force on 18 May 2017 pursuant to Article 19 thereof.

COUNCIL DECISION (EU) 2017/938

of 23 September 2013

on the signing, on behalf of the European Union, of the Minamata Convention on Mercury

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 192(1) in conjunction with Article 218(5) thereof,

Having regard to the proposal from the European Commission,

Whereas:

(1) Mercury and its compounds are highly toxic for human health and the health of animals and plants. Within the Union, mercury and its compounds are subject to regulation designed to protect human health and the environment.

(2) In 2009, the Governing Council of the United Nations Environmental Programme (UNEP) requested the Executive Director of UNEP to convene an intergovernmental negotiating committee with the mandate to prepare a global legally binding instrument on mercury, with the goal of completing its work prior to the 27th regular session of the Governing Council in 2013.

(3) In December 2010, the Council authorised the Commission to participate, on behalf of the Union, as regards matters falling within the Union's competence and in respect of which the Union has adopted rules, in the negotiations on a globally legally binding instrument on mercury, in accordance with the negotiating directives set out in the Addendum to that authorisation.

(4) The negotiation process was successfully completed, at the fifth session of the intergovernmental negotiating committee that took place in Geneva from 13 to 18 January 2013.

(5) The Union was a key player in the negotiations and took an active part in the outcome which is within the limits of the negotiating directives addressed to the Commission.

(6) The Council, in its 3233rd session on 21 March 2013, welcomed the outcome of the negotiation process.

(7) The global legally binding instrument on mercury will be opened for signature at a Diplomatic Conference taking place in Kumamoto (Japan) from 7 to 11 October 2013, as the Minamata Convention on Mercury.

(8) Therefore, the Minamata Convention on Mercury should be signed,

HAS ADOPTED THIS DECISION:

Article 1

The signing, on behalf of the Union of the Minamata Convention on Mercury is hereby authorised, subject to the conclusion of the said Convention ([1]).

Article 2

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

([1]) The text of the Convention will be published together with the Decision on its conclusion.

Article 3

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

Done at Brussels, 23 September 2013.

For the Council
The President
V. JUKNA

COUNCIL DECISION (EU) 2017/939

of 11 May 2017

on the conclusion on behalf of the European Union of the Minamata Convention on Mercury

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 192(1), in conjunction with point (a) of the second subparagraph of Article 218(6) thereof,

Having regard to the proposal from the European Commission,

Having regard to the consent of the European Parliament ([1]),

Whereas:

(1) In accordance with Council Decision (EU) 2017/938 of 23 September 2013 ([2]), the Minamata Convention on Mercury ('the Convention') was signed on 10 October 2013 on behalf of the European Union, subject to its conclusion at a later date.

(2) The Convention was adopted in Kumamoto on 10 October 2013. The Convention provides for a framework for the control and limitation of the use, and of anthropogenic emissions and releases, of mercury and mercury compounds to air, water and land, with a view to protecting human health and the environment.

(3) Mercury is a substance characterised by its transboundary nature. Global action is therefore necessary to ensure the protection of individuals and of the environment within the Union as a complement to domestic measures.

(4) The Seventh Environmental Action programme ([3]) establishes the long-term objective of a non-toxic environment and states that, for that purpose, action is needed to ensure the minimisation of significant adverse effects of chemicals on human health and the environment by 2020.

(5) The 2005 Community Strategy Concerning Mercury, as reviewed in 2010, seeks to reduce mercury emissions, cut the supply and demand of mercury, protect against exposure to mercury, and promote international action on mercury.

(6) The Council reaffirms its commitment, as expressed in its Conclusions of 14 March 2011, to the overall objective of protecting human health and the environment from releases of mercury and its compounds by minimising and, where feasible, ultimately eliminating global anthropogenic mercury releases to air, water and land. The Convention contributes to the achievement of those objectives.

(7) In accordance with Article 30(3) of the Convention, the Union should, in its instrument of approval, declare the extent of its competence in respect of the matters governed by the Convention.

(8) The Convention should be approved,

HAS ADOPTED THIS DECISION:

Article 1

The Minamata Convention on Mercury is hereby approved on behalf of the European Union.

([1]) Consent given on 27 April 2017 (not yet published in the Official Journal).
([2]) Council Decision (EU) 2017/938 of 23 September 2013 on the signing, on behalf of the European Union, of the Minamata Convention on Mercury (see page 2 of this Official Journal).
([3]) Decision No 1386/2013/EU of the European Parliament and of the Council of 20 November 2013 on a General Union Environment Action Programme to 2020 'Living well, within the limits of our planet' (OJ L 354, 28.12.2013, p. 171).

The Declaration of Competence required by Article 30(3) of the Convention is hereby also approved.

The text of the Convention and the Declaration of Competence are attached to this Decision.

Article 2

The President of the Council shall designate the person(s) empowered to deposit, on behalf of the Union, the instrument of approval provided for in Article 30(1) of the Convention, together with the Declaration of Competence.

Article 3

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

Done at Brussels, 11 May 2017.

For the Council
The President
R. GALDES

ANNEX

MINAMATA CONVENTION ON MERCURY

The Parties to this Convention,

Recognising that mercury is a chemical of global concern owing to its long-range atmospheric transport, its persistence in the environment once anthropogenically introduced, its ability to bioaccumulate in ecosystems and its significant negative effects on human health and the environment,

Recalling decision 25/5 of 20 February 2009 of the Governing Council of the United Nations Environment Programme to initiate international action to manage mercury in an efficient, effective and coherent manner,

Recalling paragraph 221 of the outcome document of the United Nations Conference on Sustainable Development 'The future we want', which called for a successful outcome of the negotiations on a global legally binding instrument on mercury to address the risks to human health and the environment,

Recalling the United Nations Conference on Sustainable Development's reaffirmation of the principles of the Rio Declaration on Environment and Development, including, inter alia, common but differentiated responsibilities, and acknowledging States' respective circumstances and capabilities and the need for global action,

Aware of the health concerns, especially in developing countries, resulting from exposure to mercury of vulnerable populations, especially women, children, and, through them, future generations,

Noting the particular vulnerabilities of Arctic ecosystems and indigenous communities because of the biomagnification of mercury and contamination of traditional foods, and concerned about indigenous communities more generally with respect to the effects of mercury,

Recognising the substantial lessons of Minamata Disease, in particular the serious health and environmental effects resulting from the mercury pollution, and the need to ensure proper management of mercury and the prevention of such events in the future,

Stressing the importance of financial, technical, technological, and capacity-building support, particularly for developing countries, and countries with economies in transition, in order to strengthen national capabilities for the management of mercury and to promote the effective implementation of the Convention,

Recognising also the activities of the World Health Organization in the protection of human health related to mercury and the roles of relevant multilateral environmental agreements, especially the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal and the Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade,

Recognising that this Convention and other international agreements in the field of the environment and trade are mutually supportive,

Emphasising that nothing in this Convention is intended to affect the rights and obligations of any Party deriving from any existing international agreement,

Understanding that the above recital is not intended to create a hierarchy between this Convention and other international instruments,

Noting that nothing in this Convention prevents a Party from taking additional domestic measures consistent with the provisions of this Convention in an effort to protect human health and the environment from exposure to mercury in accordance with that Party's other obligations under applicable international law,

Have agreed as follows:

Article 1

Objective

The objective of this Convention is to protect the human health and the environment from anthropogenic emissions and releases of mercury and mercury compounds.

Article 2

Definitions

For the purposes of this Convention:

(a) 'Artisanal and small-scale gold mining' means gold mining conducted by individual miners or small enterprises with limited capital investment and production;

(b) 'Best available techniques' means those techniques that are the most effective to prevent and, where that is not practicable, to reduce emissions and releases of mercury to air, water and land and the impact of such emissions and releases on the environment as a whole, taking into account economic and technical considerations for a given Party or a given facility within the territory of that Party. In this context:

'Best' means most effective in achieving a high general level of protection of the environment as a whole;

'Available' techniques means, in respect of a given Party and a given facility within the territory of that Party, those techniques developed on a scale that allows implementation in a relevant industrial sector under economically and technically viable conditions, taking into consideration the costs and benefits, whether or not those techniques are used or developed within the territory of that Party, provided that they are accessible to the operator of the facility as determined by that Party; and

'Techniques' means technologies used, operational practices and the ways in which installations are designed, built, maintained, operated and decommissioned;

(c) 'Best environmental practices' means the application of the most appropriate combination of environmental control measures and strategies;

(d) 'Mercury' means elemental mercury (Hg(0), CAS No 7439-97-6);

(e) 'Mercury compound' means any substance consisting of atoms of mercury and one or more atoms of other chemical elements that can be separated into different components only by chemical reactions;

(f) 'Mercury-added product' means a product or product component that contains mercury or a mercury compound that was intentionally added;

(g) 'Party' means a State or regional economic integration organisation that has consented to be bound by this Convention and for which the Convention is in force;

(h) 'Parties present and voting' means Parties present and casting an affirmative or negative vote at a meeting of the Parties;

(i) 'Primary mercury mining' means mining in which the principal material sought is mercury;

(j) 'Regional economic integration organisation' means an organisation constituted by sovereign States of a given region to which its member States have transferred competence in respect of matters governed by this Convention and which has been duly authorised, in accordance with its internal procedures, to sign, ratify, accept, approve or accede to this Convention; and

(k) 'Use allowed' means any use by a Party of mercury or mercury compounds consistent with this Convention, including, but not limited to, uses consistent with Articles 3, 4, 5, 6 and 7.

Article 3

Mercury supply sources and trade

1. For the purposes of this Article:

(a) References to 'mercury' include mixtures of mercury with other substances, including alloys of mercury, with a mercury concentration of at least 95 per cent by weight; and

(b) 'Mercury compounds' means mercury (I) chloride (known also as calomel), mercury (II) oxide, mercury (II) sulphate, mercury (II) nitrate, cinnabar and mercury sulphide.

2. The provisions of this Article shall not apply to:

(a) Quantities of mercury or mercury compounds to be used for laboratory-scale research or as a reference standard; or

(b) Naturally occurring trace quantities of mercury or mercury compounds present in such products as non-mercury metals, ores, or mineral products, including coal, or products derived from these materials, and unintentional trace quantities in chemical products; or

(c) Mercury-added products.

3. Each Party shall not allow primary mercury mining that was not being conducted within its territory at the date of entry into force of the Convention for it.

4. Each Party shall only allow primary mercury mining that was being conducted within its territory at the date of entry into force of the Convention for it for a period of up to 15 years after that date. During this period, mercury from such mining shall only be used in manufacturing of mercury-added products in accordance with Article 4, in manufacturing processes in accordance with Article 5, or be disposed in accordance with Article 11, using operations which do not lead to recovery, recycling, reclamation, direct re-use or alternative uses.

5. Each Party shall:

(a) Endeavour to identify individual stocks of mercury or mercury compounds exceeding 50 metric tons, as well as sources of mercury supply generating stocks exceeding 10 metric tons per year, that are located within its territory;

(b) Take measures to ensure that, where the Party determines that excess mercury from the decommissioning of chlor-alkali facilities is available, such mercury is disposed of in accordance with the guidelines for environmentally sound management referred to in paragraph 3 (a) of Article 11, using operations that do not lead to recovery, recycling, reclamation, direct re-use or alternative uses.

6. Each Party shall not allow the export of mercury except:

(a) To a Party that has provided the exporting Party with its written consent, and only for the purpose of:

  (i) A use allowed to the importing Party under this Convention; or

  (ii) Environmentally sound interim storage as set out in Article 10; or

(b) To a non-Party that has provided the exporting Party with its written consent, including certification demonstrating that:

  (i) The non-Party has measures in place to ensure the protection of human health and the environment and to ensure its compliance with the provisions of Articles 10 and 11; and

  (ii) Such mercury will be used only for a use allowed to a Party under this Convention or for environmentally sound interim storage as set out in Article 10.

7. An exporting Party may rely on a general notification to the Secretariat by the importing Party or non-Party as the written consent required by paragraph 6. Such general notification shall set out any terms and conditions under which the importing Party or non-Party provides its consent. The notification may be revoked at any time by that Party or non-Party. The Secretariat shall keep a public register of all such notifications.

8. Each Party shall not allow the import of mercury from a non-Party to whom it will provide its written consent unless the non-Party has provided certification that the mercury is not from sources identified as not allowed under paragraph 3 or paragraph 5 (b).

9. A Party that submits a general notification of consent under paragraph 7 may decide not to apply paragraph 8, provided that it maintains comprehensive restrictions on the export of mercury and has domestic measures in place to ensure that imported mercury is managed in an environmentally sound manner. The Party shall provide a notification of such decision to the Secretariat, including information describing its export restrictions and domestic regulatory measures, as well as information on the quantities and countries of origin of mercury imported from non-Parties. The Secretariat shall maintain a public register of all such notifications. The Implementation and Compliance Committee shall review and evaluate any such notifications and supporting information in accordance with Article 15 and may make recommendations, as appropriate, to the Conference of the Parties.

10. The procedure set out in paragraph 9 shall be available until the conclusion of the second meeting of the Conference of the Parties. After that time, it shall cease to be available, unless the Conference of the Parties decides otherwise by simple majority of the Parties present and voting, except with respect to a Party that has provided a notification under paragraph 9 before the end of the second meeting of the Conference of the Parties.

11. Each Party shall include in its reports submitted pursuant to Article 21 information showing that the requirements of this Article have been met.

12. The Conference of the Parties shall at its first meeting provide further guidance in regard to this Article, particularly in regard to paragraphs 5 (a), 6 and 8, and shall develop and adopt the required content of the certification referred to in paragraphs 6 (b) and 8.

13. The Conference of the Parties shall evaluate whether the trade in specific mercury compounds compromises the objective of this Convention and consider whether specific mercury compounds should, by their listing in an additional annex adopted in accordance with Article 27, be made subject to paragraphs 6 and 8.

Article 4

Mercury-added products

1. Each Party shall not allow, by taking appropriate measures, the manufacture, import or export of mercury-added products listed in Part I of Annex A after the phase-out date specified for those products, except where an exclusion is specified in Annex A or the Party has a registered exemption pursuant to Article 6.

2. A Party may, as an alternative to paragraph 1, indicate at the time of ratification or upon entry into force of an amendment to Annex A for it, that it will implement different measures or strategies to address products listed in Part I of Annex A. A Party may only choose this alternative if it can demonstrate that it has already reduced to a de minimis level the manufacture, import, and export of the large majority of the products listed in Part I of Annex A and that it has implemented measures or strategies to reduce the use of mercury in additional products not listed in Part I of Annex A at the time it notifies the Secretariat of its decision to use this alternative. In addition, a Party choosing this alternative shall:

(a) Report at the first opportunity to the Conference of the Parties a description of the measures or strategies implemented, including a quantification of the reductions achieved;

(b) Implement measures or strategies to reduce the use of mercury in any products listed in Part I of Annex A for which a de minimis value has not yet been obtained;

(c) Consider additional measures to achieve further reductions; and

(d) Not be eligible to claim exemptions pursuant to Article 6 for any product category for which this alternative is chosen.

No later than five years after the date of entry into force of the Convention, the Conference of the Parties shall, as part of the review process under paragraph 8, review the progress and the effectiveness of the measures taken under this paragraph.

3. Each Party shall take measures for the mercury-added products listed in Part II of Annex A in accordance with the provisions set out therein.

4. The Secretariat shall, on the basis of information provided by Parties, collect and maintain information on mercury-added products and their alternatives, and shall make such information publicly available. The Secretariat shall also make publicly available any other relevant information submitted by Parties.

5. Each Party shall take measures to prevent the incorporation into assembled products of mercury-added products the manufacture, import and export of which are not allowed for it under this Article.

6. Each Party shall discourage the manufacture and the distribution in commerce of mercury-added products not covered by any known use of mercury-added products prior to the date of entry into force of the Convention for it, unless an assessment of the risks and benefits of the product demonstrates environmental or human health benefits. A Party shall provide to the Secretariat, as appropriate, information on any such product, including any information on the environmental and human health risks and benefits of the product. The Secretariat shall make such information publicly available.

7. Any Party may submit a proposal to the Secretariat for listing a mercury-added product in Annex A, which shall include information related to the availability, technical and economic feasibility and environmental and health risks and benefits of the non-mercury alternatives to the product, taking into account information pursuant to paragraph 4.

8. No later than five years after the date of entry into force of the Convention, the Conference of the Parties shall review Annex A and may consider amendments to that Annex in accordance with Article 27.

9. In reviewing Annex A pursuant to paragraph 8, the Conference of the Parties shall take into account at least:

(a) Any proposal submitted under paragraph 7;

(b) The information made available pursuant to paragraph 4; and

(c) The availability to the Parties of mercury-free alternatives that are technically and economically feasible, taking into account the environmental and human health risks and benefits.

Article 5

Manufacturing processes in which mercury or mercury compounds are used

1. For the purposes of this Article and Annex B, manufacturing processes in which mercury or mercury compounds are used shall not include processes using mercury-added products, processes for manufacturing mercury-added products or processes that process mercury-containing waste.

2. Each Party shall not allow, by taking appropriate measures, the use of mercury or mercury compounds in the manufacturing processes listed in Part I of Annex B after the phase-out date specified in that Annex for the individual processes, except where the Party has a registered exemption pursuant to Article 6.

3. Each Party shall take measures to restrict the use of mercury or mercury compounds in the processes listed in Part II of Annex B in accordance with the provisions set out therein.

4. The Secretariat shall, on the basis of information provided by Parties, collect and maintain information on processes that use mercury or mercury compounds and their alternatives, and shall make such information publicly available. Other relevant information may also be submitted by Parties and shall be made publicly available by the Secretariat.

5. Each Party with one or more facilities that use mercury or mercury compounds in the manufacturing processes listed in Annex B shall:

(a) Take measures to address emissions and releases of mercury or mercury compounds from those facilities;

(b) Include in its reports submitted pursuant to Article 21 information on the measures taken pursuant to this paragraph; and

(c) Endeavour to identify facilities within its territory that use mercury or mercury compounds for processes listed in Annex B and submit to the Secretariat, no later than three years after the date of entry into force of the Convention for it, information on the number and types of such facilities and the estimated annual amount of mercury or mercury compounds used in those facilities. The Secretariat shall make such information publicly available.

6. Each Party shall not allow the use of mercury or mercury compounds in a facility that did not exist prior to the date of entry into force of the Convention for it using the manufacturing processes listed in Annex B. No exemptions shall apply to such facilities.

7. Each Party shall discourage the development of any facility using any other manufacturing process in which mercury or mercury compounds are intentionally used that did not exist prior to the date of entry into force of the Convention, except where the Party can demonstrate to the satisfaction of the Conference of the Parties that the manufacturing process provides significant environmental and health benefits and that there are no technically and economically feasible mercury-free alternatives available providing such benefits.

8. Parties are encouraged to exchange information on relevant new technological developments, economically and technically feasible mercury-free alternatives, and possible measures and techniques to reduce and where feasible to eliminate the use of mercury and mercury compounds in, and emissions and releases of mercury and mercury compounds from, the manufacturing processes listed in Annex B.

9. Any Party may submit a proposal to amend Annex B in order to list a manufacturing process in which mercury or mercury compounds are used. It shall include information related to the availability, technical and economic feasibility and environmental and health risks and benefits of the non-mercury alternatives to the process.

10. No later than five years after the date of entry into force of the Convention, the Conference of the Parties shall review Annex B and may consider amendments to that Annex in accordance with Article 27.

11. In any review of Annex B pursuant to paragraph 10, the Conference of the Parties shall take into account at least:

(a) Any proposal submitted under paragraph 9;

(b) The information made available under paragraph 4; and

(c) The availability for the Parties of mercury-free alternatives which are technically and economically feasible taking into account the environmental and health risks and benefits.

Article 6

Exemptions available to a Party upon request

1. Any State or regional economic integration organisation may register for one or more exemptions from the phase-out dates listed in Annex A and Annex B, hereafter referred to as an 'exemption', by notifying the Secretariat in writing:

(a) On becoming a Party to this Convention; or

(b) In the case of any mercury-added product that is added by an amendment to Annex A or any manufacturing process in which mercury is used that is added by an amendment to Annex B, no later than the date upon which the applicable amendment enters into force for the Party.

Any such registration shall be accompanied by a statement explaining the Party's need for the exemption.

2. An exemption can be registered either for a category listed in Annex A or B or for a sub-category identified by any State or regional economic integration organisation.

3. Each Party that has one or more exemptions shall be identified in a register. The Secretariat shall establish and maintain the register and make it available to the public.

4. The register shall include:

(a) A list of the Parties that have one or more exemptions;

(b) The exemption or exemptions registered for each Party; and

(c) The expiration date of each exemption.

5. Unless a shorter period is indicated in the register by a Party, all exemptions pursuant to paragraph 1 shall expire five years after the relevant phase-out date listed in Annex A or B.

6. The Conference of the Parties may, at the request of a Party, decide to extend an exemption for five years unless the Party requests a shorter period. In making its decision, the Conference of the Parties shall take due account of:

(a) A report from the Party justifying the need to extend the exemption and outlining activities undertaken and planned to eliminate the need for the exemption as soon as feasible;

(b) Available information, including in respect of the availability of alternative products and processes that are free of mercury or that involve the consumption of less mercury than the exempt use; and

(c) Activities planned or under way to provide environmentally sound storage of mercury and disposal of mercury wastes.

An exemption may only be extended once per product per phase-out date.

7. A Party may at any time withdraw an exemption upon written notification to the Secretariat. The withdrawal of an exemption shall take effect on the date specified in the notification.

8. Notwithstanding paragraph 1, no State or regional economic integration organisation may register for an exemption after five years after the phase-out date for the relevant product or process listed in Annex A or B, unless one or more Parties remain registered for an exemption for that product or process, having received an extension pursuant to paragraph 6. In that case, a State or regional economic integration organisation may, at the times set out in paragraphs 1 (a) and (b), register for an exemption for that product or process, which shall expire 10 years after the relevant phase-out date.

9. No Party may have an exemption in effect at any time after 10 years after the phase-out date for a product or process listed in Annex A or B.

Article 7

Artisanal and small-scale gold mining

1. The measures in this Article and in Annex C shall apply to artisanal and small-scale gold mining and processing in which mercury amalgamation is used to extract gold from ore.

2. Each Party that has artisanal and small-scale gold mining and processing subject to this Article within its territory shall take steps to reduce, and where feasible eliminate, the use of mercury and mercury compounds in, and the emissions and releases to the environment of mercury from, such mining and processing.

3. Each Party shall notify the Secretariat if at any time the Party determines that artisanal and small-scale gold mining and processing in its territory is more than insignificant. If it so determines the Party shall:

(a) Develop and implement a national action plan in accordance with Annex C;

(b) Submit its national action plan to the Secretariat no later than three years after entry into force of the Convention for it or three years after the notification to the Secretariat, whichever is later; and

(c) Thereafter, provide a review every three years of the progress made in meeting its obligations under this Article and include such reviews in its reports submitted pursuant to Article 21.

4. Parties may cooperate with each other and with relevant intergovernmental organisations and other entities, as appropriate, to achieve the objectives of this Article. Such cooperation may include:

(a) Development of strategies to prevent the diversion of mercury or mercury compounds for use in artisanal and small-scale gold mining and processing;

(b) Education, outreach and capacity-building initiatives;

(c) Promotion of research into sustainable non-mercury alternative practices;

(d) Provision of technical and financial assistance;

(e) Partnerships to assist in the implementation of their commitments under this Article; and

(f) Use of existing information exchange mechanisms to promote knowledge, best environmental practices and alternative technologies that are environmentally, technically, socially and economically viable.

Article 8

Emissions

1. This Article concerns controlling and, where feasible, reducing emissions of mercury and mercury compounds, often expressed as 'total mercury', to the atmosphere through measures to control emissions from the point sources falling within the source categories listed in Annex D.

2. For the purposes of this Article:

(a) 'Emissions' means emissions of mercury or mercury compounds to the atmosphere;

(b) 'Relevant source' means a source falling within one of the source categories listed in Annex D. A Party may, if it chooses, establish criteria to identify the sources covered within a source category listed in Annex D so long as those criteria for any category include at least 75 per cent of the emissions from that category;

(c) 'New source' means any relevant source within a category listed in Annex D, the construction or substantial modification of which is commenced at least one year after the date of:

(i) Entry into force of this Convention for the Party concerned; or

(ii) Entry into force for the Party concerned of an amendment to Annex D where the source becomes subject to the provisions of this Convention only by virtue of that amendment;

(d) 'Substantial modification' means modification of a relevant source that results in a significant increase in emissions, excluding any change in emissions resulting from by-product recovery. It shall be a matter for the Party to decide whether a modification is substantial or not;

(e) 'Existing source' means any relevant source that is not a new source;

(f) 'Emission limit value' means a limit on the concentration, mass or emission rate of mercury or mercury compounds, often expressed as 'total mercury', emitted from a point source.

3. A Party with relevant sources shall take measures to control emissions and may prepare a national plan setting out the measures to be taken to control emissions and its expected targets, goals and outcomes. Any plan shall be submitted to the Conference of the Parties within four years of the date of entry into force of the Convention for that Party. If a Party develops an implementation plan in accordance with Article 20, the Party may include in it the plan prepared pursuant to this paragraph.

4. For its new sources, each Party shall require the use of best available techniques and best environmental practices to control and, where feasible, reduce emissions, as soon as practicable but no later than five years after the date of entry into force of the Convention for that Party. A Party may use emission limit values that are consistent with the application of best available techniques.

5. For its existing sources, each Party shall include in any national plan, and shall implement, one or more of the following measures, taking into account its national circumstances, and the economic and technical feasibility and affordability of the measures, as soon as practicable but no more than 10 years after the date of entry into force of the Convention for it:

(a) A quantified goal for controlling and, where feasible, reducing emissions from relevant sources;

(b) Emission limit values for controlling and, where feasible, reducing emissions from relevant sources;

(c) The use of best available techniques and best environmental practices to control emissions from relevant sources;

(d) A multi-pollutant control strategy that would deliver co-benefits for control of mercury emissions;

(e) Alternative measures to reduce emissions from relevant sources.

6. Parties may apply the same measures to all relevant existing sources or may adopt different measures in respect of different source categories. The objective shall be for those measures applied by a Party to achieve reasonable progress in reducing emissions over time.

7. Each Party shall establish, as soon as practicable and no later than five years after the date of entry into force of the Convention for it, and maintain thereafter, an inventory of emissions from relevant sources.

8. The Conference of the Parties shall, at its first meeting, adopt guidance on:

(a) Best available techniques and on best environmental practices, taking into account any difference between new and existing sources and the need to minimise cross-media effects; and

(b) Support for Parties in implementing the measures set out in paragraph 5, in particular in determining goals and in setting emission limit values.

9. The Conference of the Parties shall, as soon as practicable, adopt guidance on:

(a) Criteria that Parties may develop pursuant to paragraph 2 (b);

(b) The methodology for preparing inventories of emissions.

10. The Conference of the Parties shall keep under review, and update as appropriate, the guidance developed pursuant to paragraphs 8 and 9. Parties shall take the guidance into account in implementing the relevant provisions of this Article.

11. Each Party shall include information on its implementation of this Article in its reports submitted pursuant to Article 21, in particular information concerning the measures it has taken in accordance with paragraphs 4 to 7 and the effectiveness of the measures.

Article 9

Releases

1. This Article concerns controlling and, where feasible, reducing releases of mercury and mercury compounds, often expressed as 'total mercury', to land and water from the relevant point sources not addressed in other provisions of this Convention.

2. For the purposes of this Article:

(a) 'Releases' means releases of mercury or mercury compounds to land or water;

(b) 'Relevant source' means any significant anthropogenic point source of release as identified by a Party that is not addressed in other provisions of this Convention;

(c) 'New source' means any relevant source, the construction or substantial modification of which is commenced at least one year after the date of entry into force of this Convention for the Party concerned;

(d) 'Substantial modification' means modification of a relevant source that results in a significant increase in releases, excluding any change in releases resulting from by-product recovery. It shall be a matter for the Party to decide whether a modification is substantial or not;

(e) 'Existing source' means any relevant source that is not a new source;

(f) 'Release limit value' means a limit on the concentration or mass of mercury or mercury compounds, often expressed as 'total mercury', released from a point source.

3. Each Party shall, no later than three years after the date of entry into force of the Convention for it and on a regular basis thereafter, identify the relevant point source categories.

4. A Party with relevant sources shall take measures to control releases and may prepare a national plan setting out the measures to be taken to control releases and its expected targets, goals and outcomes. Any plan shall be submitted to the Conference of the Parties within four years of the date of entry into force of the Convention for that Party. If a Party develops an implementation plan in accordance with Article 20, the Party may include in it the plan prepared pursuant to this paragraph.

5. The measures shall include one or more of the following, as appropriate:

(a) Release limit values to control and, where feasible, reduce releases from relevant sources;

(b) The use of best available techniques and best environmental practices to control releases from relevant sources;

(c) A multi-pollutant control strategy that would deliver co-benefits for control of mercury releases;

(d) Alternative measures to reduce releases from relevant sources.

6. Each Party shall establish, as soon as practicable and no later than five years after the date of entry into force of the Convention for it, and maintain thereafter, an inventory of releases from relevant sources.

7. The Conference of the Parties shall, as soon as practicable, adopt guidance on:

(a) Best available techniques and on best environmental practices, taking into account any difference between new and existing sources and the need to minimise cross-media effects;

(b) The methodology for preparing inventories of releases.

8. Each Party shall include information on its implementation of this Article in its reports submitted pursuant to Article 21, in particular information concerning the measures it has taken in accordance with paragraphs 3 to 6 and the effectiveness of the measures.

Article 10

Environmentally sound interim storage of mercury, other than waste mercury

1. This Article shall apply to the interim storage of mercury and mercury compounds as defined in Article 3 that do not fall within the meaning of the definition of mercury wastes set out in Article 11.

2. Each Party shall take measures to ensure that the interim storage of such mercury and mercury compounds intended for a use allowed to a Party under this Convention is undertaken in an environmentally sound manner, taking into account any guidelines, and in accordance with any requirements, adopted pursuant to paragraph 3.

3. The Conference of the Parties shall adopt guidelines on the environmentally sound interim storage of such mercury and mercury compounds, taking into account any relevant guidelines developed under the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal and other relevant guidance. The Conference of the Parties may adopt requirements for interim storage in an additional annex to this Convention in accordance with Article 27.

4. Parties shall cooperate, as appropriate, with each other and with relevant intergovernmental organisations and other entities, to enhance capacity-building for the environmentally sound interim storage of such mercury and mercury compounds.

Article 11

Mercury wastes

1. The relevant definitions of the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal shall apply to wastes covered under this Convention for Parties to the Basel Convention. Parties to this Convention that are not Parties to the Basel Convention shall use those definitions as guidance as applied to wastes covered under this Convention.

2. For the purposes of this Convention, mercury wastes means substances or objects:

(a) Consisting of mercury or mercury compounds;

(b) Containing mercury or mercury compounds; or

(c) Contaminated with mercury or mercury compounds,

in a quantity above the relevant thresholds defined by the Conference of the Parties, in collaboration with the relevant bodies of the Basel Convention in a harmonised manner, that are disposed of or are intended to be disposed of or are required to be disposed of by the provisions of national law or this Convention. This definition excludes overburden, waste rock and tailings from mining, except from primary mercury mining, unless they contain mercury or mercury compounds above thresholds defined by the Conference of the Parties.

3. Each Party shall take appropriate measures so that mercury waste is:

(a) Managed in an environmentally sound manner, taking into account the guidelines developed under the Basel Convention and in accordance with requirements that the Conference of the Parties shall adopt in an additional annex in accordance with Article 27. In developing requirements, the Conference of the Parties shall take into account Parties' waste management regulations and programmes;

(b) Only recovered, recycled, reclaimed or directly re-used for a use allowed to a Party under this Convention or for environmentally sound disposal pursuant to paragraph 3 (a);

(c) For Parties to the Basel Convention, not transported across international boundaries except for the purpose of environmentally sound disposal in conformity with this Article and with that Convention. In circumstances where the Basel Convention does not apply to transport across international boundaries, a Party shall allow such transport only after taking into account relevant international rules, standards, and guidelines.

4. The Conference of the Parties shall seek to cooperate closely with the relevant bodies of the Basel Convention in the review and update, as appropriate, of the guidelines referred to in paragraph 3 (a).

5. Parties are encouraged to cooperate with each other and with relevant intergovernmental organisations and other entities, as appropriate, to develop and maintain global, regional and national capacity for the management of mercury wastes in an environmentally sound manner.

Article 12

Contaminated sites

1. Each Party shall endeavour to develop appropriate strategies for identifying and assessing sites contaminated by mercury or mercury compounds.

2. Any actions to reduce the risks posed by such sites shall be performed in an environmentally sound manner incorporating, where appropriate, an assessment of the risks to human health and the environment from the mercury or mercury compounds they contain.

3. The Conference of the Parties shall adopt guidance on managing contaminated sites that may include methods and approaches for:

(a) Site identification and characterisation;

(b) Engaging the public;

(c) Human health and environmental risk assessments;

(d) Options for managing the risks posed by contaminated sites;

(e) Evaluation of benefits and costs; and

(f) Validation of outcomes.

4. Parties are encouraged to cooperate in developing strategies and implementing activities for identifying, assessing, prioritising, managing and, as appropriate, remediating contaminated sites.

Article 13

Financial resources and mechanism

1. Each Party undertakes to provide, within its capabilities, resources in respect of those national activities that are intended to implement this Convention, in accordance with its national policies, priorities, plans and programmes. Such resources may include domestic funding through relevant policies, development strategies and national budgets, and bilateral and multilateral funding, as well as private sector involvement.

2. The overall effectiveness of implementation of this Convention by developing country Parties will be related to the effective implementation of this Article.

3. Multilateral, regional and bilateral sources of financial and technical assistance, as well as capacity-building and technology transfer, are encouraged, on an urgent basis, to enhance and increase their activities on mercury in support of developing country Parties in the implementation of this Convention relating to financial resources, technical assistance and technology transfer.

4. The Parties, in their actions with regard to funding, shall take full account of the specific needs and special circumstances of Parties that are small island developing States or least developed countries.

5. A Mechanism for the provision of adequate, predictable, and timely financial resources is hereby defined. The Mechanism is to support developing country Parties and Parties with economies in transition in implementing their obligations under this Convention.

6. The Mechanism shall include:

(a) The Global Environment Facility Trust Fund; and

(b) A specific international Programme to support capacity-building and technical assistance.

7. The Global Environment Facility Trust Fund shall provide new, predictable, adequate and timely financial resources to meet costs in support of implementation of this Convention as agreed by the Conference of the Parties. For the purposes of this Convention, the Global Environment Facility Trust Fund shall be operated under the guidance of and be accountable to the Conference of the Parties. The Conference of the Parties shall provide guidance on overall strategies, policies, programme priorities and eligibility for access to and utilisation of financial resources. In addition, the Conference of the Parties shall provide guidance on an indicative list of categories of activities that could receive support from the Global Environment Facility Trust Fund. The Global Environment Facility Trust Fund shall provide resources to meet the agreed incremental costs of global environmental benefits and the agreed full costs of some enabling activities.

8. In providing resources for an activity, the Global Environment Facility Trust Fund should take into account the potential mercury reductions of a proposed activity relative to its costs.

9. For the purposes of this Convention, the Programme referred to in paragraph 6 (b) will be operated under the guidance of and be accountable to the Conference of the Parties. The Conference of the Parties shall, at its first meeting, decide on the hosting institution for the Programme, which shall be an existing entity, and provide guidance to it, including on its duration. All Parties and other relevant stakeholders are invited to provide financial resources to the Programme, on a voluntary basis.

10. The Conference of the Parties and the entities comprising the Mechanism shall agree upon, at the first meeting of the Conference of the Parties, arrangements to give effect to the above paragraphs.

11. The Conference of the Parties shall review, no later than at its third meeting, and thereafter on a regular basis, the level of funding, the guidance provided by the Conference of the Parties to the entities entrusted to operationalise the Mechanism established under this Article and their effectiveness, and their ability to address the changing needs of developing country Parties and Parties with economies in transition. It shall, based on such review, take appropriate action to improve the effectiveness of the Mechanism.

12. All Parties, within their capabilities, are invited to contribute to the Mechanism. The Mechanism shall encourage the provision of resources from other sources, including the private sector, and shall seek to leverage such resources for the activities it supports.

Article 14

Capacity-building, technical assistance and technology transfer

1. Parties shall cooperate to provide, within their respective capabilities, timely and appropriate capacity-building and technical assistance to developing country Parties, in particular Parties that are least developed countries or small island developing States, and Parties with economies in transition, to assist them in implementing their obligations under this Convention.

2. Capacity-building and technical assistance pursuant to paragraph 1 and Article 13 may be delivered through regional, subregional and national arrangements, including existing regional and subregional centres, through other multilateral and bilateral means, and through partnerships, including partnerships involving the private sector. Cooperation and coordination with other multilateral environmental agreements in the field of chemicals and wastes should be sought to increase the effectiveness of technical assistance and its delivery.

3. Developed country Parties and other Parties within their capabilities shall promote and facilitate, supported by the private sector and other relevant stakeholders as appropriate, development, transfer and diffusion of, and access to, up-to-date environmentally sound alternative technologies to developing country Parties, in particular the least developed countries and small island developing States, and Parties with economies in transition, to strengthen their capacity to effectively implement this Convention.

4. The Conference of the Parties shall, by its second meeting and thereafter on a regular basis, and taking into account submissions and reports from Parties including those as provided for in Article 21 and information provided by other stakeholders:

(a) Consider information on existing initiatives and progress made in relation to alternative technologies;

(b) Consider the needs of Parties, particularly developing country Parties, for alternative technologies; and

(c) Identify challenges experienced by Parties, particularly developing country Parties, in technology transfer.

5. The Conference of the Parties shall make recommendations on how capacity-building, technical assistance and technology transfer could be further enhanced under this Article.

Article 15

Implementation and Compliance Committee

1. A mechanism, including a Committee as a subsidiary body of the Conference of the Parties, is hereby established to promote implementation of, and review compliance with, all provisions of this Convention. The mechanism, including the Committee, shall be facilitative in nature and shall pay particular attention to the respective national capabilities and circumstances of Parties.

2. The Committee shall promote implementation of, and review compliance with, all provisions of this Convention. The Committee shall examine both individual and systemic issues of implementation and compliance and make recommendations, as appropriate, to the Conference of the Parties.

3. The Committee shall consist of 15 members, nominated by Parties and elected by the Conference of the Parties, with due consideration to equitable geographical representation based on the five regions of the United Nations; the first members shall be elected at the first meeting of the Conference of the Parties and thereafter in accordance with the rules of procedure approved by the Conference of the Parties pursuant to paragraph 5; the members of the Committee shall have competence in a field relevant to this Convention and reflect an appropriate balance of expertise.

4. The Committee may consider issues on the basis of:

(a) Written submissions from any Party with respect to its own compliance;

(b) National reports in accordance with Article 21; and

(c) Requests from the Conference of the Parties.

5. The Committee shall elaborate its rules of procedure, which shall be subject to approval by the second meeting of the Conference of the Parties; the Conference of the Parties may adopt further terms of reference for the Committee.

6. The Committee shall make every effort to adopt its recommendations by consensus. If all efforts at consensus have been exhausted and no consensus is reached, such recommendations shall as a last resort be adopted by a three-fourths majority vote of the members present and voting, based on a quorum of two-thirds of the members.

Article 16

Health aspects

1. Parties are encouraged to:

(a) Promote the development and implementation of strategies and programmes to identify and protect populations at risk, particularly vulnerable populations, and which may include adopting science-based health guidelines relating to the exposure to mercury and mercury compounds, setting targets for mercury exposure reduction, where appropriate, and public education, with the participation of public health and other involved sectors;

(b) Promote the development and implementation of science-based educational and preventive programmes on occupational exposure to mercury and mercury compounds;

(c) Promote appropriate health-care services for prevention, treatment and care for populations affected by the exposure to mercury or mercury compounds; and

(d) Establish and strengthen, as appropriate, the institutional and health professional capacities for the prevention, diagnosis, treatment and monitoring of health risks related to the exposure to mercury and mercury compounds.

2. The Conference of the Parties, in considering health-related issues or activities, should:

(a) Consult and collaborate with the World Health Organization, the International Labour Organization and other relevant intergovernmental organisations, as appropriate; and

(b) Promote cooperation and exchange of information with the World Health Organization, the International Labour Organization and other relevant intergovernmental organisations, as appropriate.

Article 17

Information exchange

1. Each Party shall facilitate the exchange of:

(a) Scientific, technical, economic and legal information concerning mercury and mercury compounds, including toxicological, ecotoxicological and safety information;

(b) Information on the reduction or elimination of the production, use, trade, emissions and releases of mercury and mercury compounds;

(c) Information on technically and economically viable alternatives to:

(i) Mercury-added products;

(ii) Manufacturing processes in which mercury or mercury compounds are used; and

(iii) Activities and processes that emit or release mercury or mercury compounds;

including information on the health and environmental risks and economic and social costs and benefits of such alternatives; and

(d) Epidemiological information concerning health impacts associated with exposure to mercury and mercury compounds, in close cooperation with the World Health Organization and other relevant organisations, as appropriate.

2. Parties may exchange the information referred to in paragraph 1 directly, through the Secretariat, or in cooperation with other relevant organisations, including the secretariats of chemicals and wastes conventions, as appropriate.

3. The Secretariat shall facilitate cooperation in the exchange of information referred to in this Article, as well as with relevant organisations, including the secretariats of multilateral environmental agreements and other international initiatives. In addition to information from Parties, this information shall include information from intergovernmental and non-governmental organisations with expertise in the area of mercury, and from national and international institutions with such expertise.

4. Each Party shall designate a national focal point for the exchange of information under this Convention, including with regard to the consent of importing Parties under Article 3.

5. For the purposes of this Convention, information on the health and safety of humans and the environment shall not be regarded as confidential. Parties that exchange other information pursuant to this Convention shall protect any confidential information as mutually agreed.

Article 18

Public information, awareness and education

1. Each Party shall, within its capabilities, promote and facilitate:

(a) Provision to the public of available information on:

(i) The health and environmental effects of mercury and mercury compounds;

(ii) Alternatives to mercury and mercury compounds;

(iii) The topics identified in paragraph 1 of Article 17;

(iv) The results of its research, development and monitoring activities under Article 19; and

(v) Activities to meet its obligations under this Convention;

(b) Education, training and public awareness related to the effects of exposure to mercury and mercury compounds on human health and the environment in collaboration with relevant intergovernmental and non-governmental organisations and vulnerable populations, as appropriate.

2. Each Party shall use existing mechanisms or give consideration to the development of mechanisms, such as pollutant release and transfer registers where applicable, for the collection and dissemination of information on estimates of its annual quantities of mercury and mercury compounds that are emitted, released or disposed of through human activities.

Article 19

Research, development and monitoring

1. Parties shall endeavour to cooperate to develop and improve, taking into account their respective circumstances and capabilities:

(a) Inventories of use, consumption, and anthropogenic emissions to air and releases to water and land of mercury and mercury compounds;

(b) Modelling and geographically representative monitoring of levels of mercury and mercury compounds in vulnerable populations and in environmental media, including biotic media such as fish, marine mammals, sea turtles and birds, as well as collaboration in the collection and exchange of relevant and appropriate samples;

(c) Assessments of the impact of mercury and mercury compounds on human health and the environment, in addition to social, economic and cultural impacts, particularly in respect of vulnerable populations;

(d) Harmonised methodologies for the activities undertaken under subparagraphs (a), (b) and (c);

(e) Information on the environmental cycle, transport (including long-range transport and deposition), transformation and fate of mercury and mercury compounds in a range of ecosystems, taking appropriate account of the distinction between anthropogenic and natural emissions and releases of mercury and of remobilisation of mercury from historic deposition;

(f) Information on commerce and trade in mercury and mercury compounds and mercury-added products; and

(g) Information and research on the technical and economic availability of mercury-free products and processes and on best available techniques and best environmental practices to reduce and monitor emissions and releases of mercury and mercury compounds.

2. Parties should, where appropriate, build on existing monitoring networks and research programmes in undertaking the activities identified in paragraph 1.

Article 20

Implementation plans

1. Each Party may, following an initial assessment, develop and execute an implementation plan, taking into account its domestic circumstances, for meeting the obligations under this Convention. Any such plan should be transmitted to the Secretariat as soon as it has been developed.

2. Each Party may review and update its implementation plan, taking into account its domestic circumstances and referring to guidance from the Conference of the Parties and other relevant guidance.

3. Parties should, in undertaking work in paragraphs 1 and 2, consult national stakeholders to facilitate the development, implementation, review and updating of their implementation plans.

4. Parties may also coordinate on regional plans to facilitate implementation of this Convention.

Article 21

Reporting

1. Each Party shall report to the Conference of the Parties, through the Secretariat, on the measures it has taken to implement the provisions of this Convention and on the effectiveness of such measures and the possible challenges in meeting the objectives of the Convention.

2. Each Party shall include in its reporting the information as called for in Articles 3, 5, 7, 8 and 9 of this Convention.

3. The Conference of the Parties shall, at its first meeting, decide upon the timing and format of the reporting to be followed by the Parties, taking into account the desirability of coordinating reporting with other relevant chemicals and wastes conventions.

Article 22

Effectiveness evaluation

1. The Conference of the Parties shall evaluate the effectiveness of this Convention, beginning no later than six years after the date of entry into force of the Convention and periodically thereafter at intervals to be decided by it.

2. To facilitate the evaluation, the Conference of the Parties shall, at its first meeting, initiate the establishment of arrangements for providing itself with comparable monitoring data on the presence and movement of mercury and mercury compounds in the environment as well as trends in levels of mercury and mercury compounds observed in biotic media and vulnerable populations.

3. The evaluation shall be conducted on the basis of available scientific, environmental, technical, financial and economic information, including:

(a) Reports and other monitoring information provided to the Conference of the Parties pursuant to paragraph 2;

(b) Reports submitted pursuant to Article 21;

(c) Information and recommendations provided pursuant to Article 15; and

(d) Reports and other relevant information on the operation of the financial assistance, technology transfer and capacity-building arrangements put in place under this Convention.

Article 23

Conference of the Parties

1. A Conference of the Parties is hereby established.

2. The first meeting of the Conference of the Parties shall be convened by the Executive Director of the United Nations Environment Programme no later than one year after the date of entry into force of this Convention. Thereafter, ordinary meetings of the Conference of the Parties shall be held at regular intervals to be decided by the Conference.

3. Extraordinary meetings of the Conference of the Parties shall be held at such other times as may be deemed necessary by the Conference, or at the written request of any Party, provided that, within six months of the request being communicated to the Parties by the Secretariat, it is supported by at least one third of the Parties.

4. The Conference of the Parties shall by consensus agree upon and adopt at its first meeting rules of procedure and financial rules for itself and any of its subsidiary bodies, as well as financial provisions governing the functioning of the Secretariat.

5. The Conference of the Parties shall keep under continuous review and evaluation the implementation of this Convention. It shall perform the functions assigned to it by this Convention and, to that end, shall:

(a) Establish such subsidiary bodies as it considers necessary for the implementation of this Convention;

(b) Cooperate, where appropriate, with competent international organisations and intergovernmental and non-governmental bodies;

(c) Regularly review all information made available to it and to the Secretariat pursuant to Article 21;

(d) Consider any recommendations submitted to it by the Implementation and Compliance Committee;

(e) Consider and undertake any additional action that may be required for the achievement of the objectives of this Convention; and

(f) Review Annexes A and B pursuant to Article 4 and Article 5.

6. The United Nations, its specialised agencies and the International Atomic Energy Agency, as well as any State not a Party to this Convention, may be represented at meetings of the Conference of the Parties as observers. Any body or agency, whether national or international, governmental or non-governmental, that is qualified in matters covered by this Convention and has informed the Secretariat of its wish to be represented at a meeting of the Conference of the Parties as an observer may be admitted unless at least one third of the Parties present object. The admission and participation of observers shall be subject to the rules of procedure adopted by the Conference of the Parties.

Article 24

Secretariat

1. A Secretariat is hereby established.

2. The functions of the Secretariat shall be:

(a) To make arrangements for meetings of the Conference of the Parties and its subsidiary bodies and to provide them with services as required;

(b) To facilitate assistance to Parties, particularly developing country Parties and Parties with economies in transition, on request, in the implementation of this Convention;

(c) To coordinate, as appropriate, with the secretariats of relevant international bodies, particularly other chemicals and waste conventions;

(d) To assist Parties in the exchange of information related to the implementation of this Convention;

(e) To prepare and make available to the Parties periodic reports based on information received pursuant to Articles 15 and 21 and other available information;

(f) To enter, under the overall guidance of the Conference of the Parties, into such administrative and contractual arrangements as may be required for the effective discharge of its functions; and

(g) To perform the other secretariat functions specified in this Convention and such other functions as may be determined by the Conference of the Parties.

3. The secretariat functions for this Convention shall be performed by the Executive Director of the United Nations Environment Programme, unless the Conference of the Parties decides, by a three-fourths majority of the Parties present and voting, to entrust the secretariat functions to one or more other international organisations.

4. The Conference of the Parties, in consultation with appropriate international bodies, may provide for enhanced cooperation and coordination between the Secretariat and the secretariats of other chemicals and wastes conventions. The Conference of the Parties, in consultation with appropriate international bodies, may provide further guidance on this matter.

Article 25

Settlement of disputes

1. Parties shall seek to settle any dispute between them concerning the interpretation or application of this Convention through negotiation or other peaceful means of their own choice.

2. When ratifying, accepting, approving or acceding to this Convention, or at any time thereafter, a Party that is not a regional economic integration organisation may declare in a written instrument submitted to the Depositary that, with regard to any dispute concerning the interpretation or application of this Convention, it recognises one or both of the following means of dispute settlement as compulsory in relation to any Party accepting the same obligation:

(a) Arbitration in accordance with the procedure set out in Part I of Annex E;

(b) Submission of the dispute to the International Court of Justice.

3. A Party that is a regional economic integration organisation may make a declaration with like effect in relation to arbitration in accordance with paragraph 2.

4. A declaration made pursuant to paragraph 2 or 3 shall remain in force until it expires in accordance with its terms or until three months after written notice of its revocation has been deposited with the Depositary.

5. The expiry of a declaration, a notice of revocation or a new declaration shall in no way affect proceedings pending before an arbitral tribunal or the International Court of Justice, unless the parties to the dispute otherwise agree.

6. If the parties to a dispute have not accepted the same means of dispute settlement pursuant to paragraph 2 or 3, and if they have not been able to settle their dispute through the means mentioned in paragraph 1 within 12 months following notification by one Party to another that a dispute exists between them, the dispute shall be submitted to a conciliation commission at the request of any party to the dispute. The procedure set out in Part II of Annex E shall apply to conciliation under this Article.

Article 26

Amendments to the Convention

1. Amendments to this Convention may be proposed by any Party.

2. Amendments to this Convention shall be adopted at a meeting of the Conference of the Parties. The text of any proposed amendment shall be communicated to the Parties by the Secretariat at least six months before the meeting at which it is proposed for adoption. The Secretariat shall also communicate the proposed amendment to the signatories to this Convention and, for information, to the Depositary.

3. The Parties shall make every effort to reach agreement on any proposed amendment to this Convention by consensus. If all efforts at consensus have been exhausted, and no agreement reached, the amendment shall as a last resort be adopted by a three-fourths majority vote of the Parties present and voting at the meeting.

4. An adopted amendment shall be communicated by the Depositary to all Parties for ratification, acceptance or approval.

5. Ratification, acceptance or approval of an amendment shall be notified to the Depositary in writing. An amendment adopted in accordance with paragraph 3 shall enter into force for the Parties having consented to be bound by it on the ninetieth day after the date of deposit of instruments of ratification, acceptance or approval by at least three-fourths of the Parties that were Parties at the time at which the amendment was adopted. Thereafter, the amendment shall enter into force for any other Party on the ninetieth day after the date on which that Party deposits its instrument of ratification, acceptance or approval of the amendment.

Article 27

Adoption and amendment of annexes

1. Annexes to this Convention shall form an integral part thereof and, unless expressly provided otherwise, a reference to this Convention constitutes at the same time a reference to any annexes thereto.

2. Any additional annexes adopted after the entry into force of this Convention shall be restricted to procedural, scientific, technical or administrative matters.

3. The following procedure shall apply to the proposal, adoption and entry into force of additional annexes to this Convention:

(a) Additional annexes shall be proposed and adopted according to the procedure laid down in paragraphs 1-3 of Article 26;

(b) Any Party that is unable to accept an additional annex shall so notify the Depositary, in writing, within one year from the date of communication by the Depositary of the adoption of such annex. The Depositary shall without delay notify all Parties of any such notification received. A Party may at any time notify the Depositary, in writing, that it withdraws a previous notification of non-acceptance in respect of an additional annex, and the annex shall thereupon enter into force for that Party subject to subparagraph (c); and

(c) On the expiry of one year from the date of the communication by the Depositary of the adoption of an additional annex, the annex shall enter into force for all Parties that have not submitted a notification of non-acceptance in accordance with the provisions of subparagraph (b).

4. The proposal, adoption and entry into force of amendments to annexes to this Convention shall be subject to the same procedures as for the proposal, adoption and entry into force of additional annexes to the Convention, except that an amendment to an annex shall not enter into force with regard to any Party that has made a declaration with regard to amendment of annexes in accordance with paragraph 5 of Article 30, in which case any such amendment shall enter into force for such a Party on the ninetieth day after the date it has deposited with the Depositary its instrument of ratification, acceptance, approval or accession with respect to such amendment.

5. If an additional annex or an amendment to an annex is related to an amendment to this Convention, the additional annex or amendment shall not enter into force until such time as the amendment to the Convention enters into force.

Article 28

Right to vote

1. Each Party to this Convention shall have one vote, except as provided for in paragraph 2.

2. A regional economic integration organisation, on matters within its competence, shall exercise its right to vote with a number of votes equal to the number of its member States that are Parties to this Convention. Such an organisation shall not exercise its right to vote if any of its member States exercises its right to vote, and vice versa.

Article 29

Signature

This Convention shall be opened for signature at Kumamoto, Japan, by all States and regional economic integration organisations on 10 and 11 October 2013, and thereafter at the United Nations Headquarters in New York until 9 October 2014.

Article 30

Ratification, acceptance, approval or accession

1. This Convention shall be subject to ratification, acceptance or approval by States and by regional economic integration organisations. It shall be open for accession by States and by regional economic integration organisations from the day after the date on which the Convention is closed for signature. Instruments of ratification, acceptance, approval or accession shall be deposited with the Depositary.

2. Any regional economic integration organisation that becomes a Party to this Convention without any of its member States being a Party shall be bound by all the obligations under the Convention. In the case of such organisations, one or more of whose member States is a Party to this Convention, the organisation and its member States shall decide on their respective responsibilities for the performance of their obligations under the Convention. In such cases, the organisation and the member States shall not be entitled to exercise rights under the Convention concurrently.

3. In its instrument of ratification, acceptance, approval or accession, a regional economic integration organisation shall declare the extent of its competence in respect of the matters governed by this Convention. Any such organisation shall also inform the Depositary, who shall in turn inform the Parties, of any relevant modification of the extent of its competence.

4. Each State or regional economic integration organisation is encouraged to transmit to the Secretariat at the time of its ratification, acceptance, approval or accession of the Convention information on its measures to implement the Convention.

5. In its instrument of ratification, acceptance, approval or accession, any Party may declare that, with regard to it, any amendment to an annex shall enter into force only upon the deposit of its instrument of ratification, acceptance, approval or accession with respect thereto.

Article 31

Entry into force

1. This Convention shall enter into force on the ninetieth day after the date of deposit of the fiftieth instrument of ratification, acceptance, approval or accession.

2. For each State or regional economic integration organisation that ratifies, accepts or approves this Convention or accedes thereto after the deposit of the fiftieth instrument of ratification, acceptance, approval or accession, the Convention shall enter into force on the ninetieth day after the date of deposit by such State or regional economic integration organisation of its instrument of ratification, acceptance, approval or accession.

3. For the purposes of paragraphs 1 and 2, any instrument deposited by a regional economic integration organisation shall not be counted as additional to those deposited by member States of that organisation.

Article 32

Reservations

No reservations may be made to this Convention.

Article 33

Withdrawal

1. At any time after three years from the date on which this Convention has entered into force for a Party, that Party may withdraw from the Convention by giving written notification to the Depositary.

2. Any such withdrawal shall take effect upon expiry of one year from the date of receipt by the Depositary of the notification of withdrawal, or on such later date as may be specified in the notification of withdrawal.

Article 34

Depositary

The Secretary-General of the United Nations shall be the Depositary of this Convention.

Article 35

Authentic texts

The original of this Convention, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Depositary.

IN WITNESS WHEREOF the undersigned, being duly authorised to that effect, have signed this Convention.

Done at Kumamoto, Japan, on this tenth day of October, two thousand and thirteen.

ANNEX A

MERCURY-ADDED PRODUCTS

The following products are excluded from this Annex:

(a) Products essential for civil protection and military uses;

(b) Products for research, calibration of instrumentation, for use as reference standard;

(c) Where no feasible mercury-free alternative for replacement is available, switches and relays, cold cathode fluorescent lamps and external electrode fluorescent lamps (CCFL and EEFL) for electronic displays, and measuring devices;

(d) Products used in traditional or religious practices; and

(e) Vaccines containing thiomersal as preservatives.

Part I: Products subject to Article 4, paragraph 1

Mercury-added products	Date after which the manufacture, import or export of the product shall not be allowed (phase-out date)
Batteries, except for button zinc silver oxide batteries with a mercury content < 2 % and button zinc air batteries with a mercury content < 2 %	2020
Switches and relays, except very high accuracy capacitance and loss measurement bridges and high frequency radio frequency switches and relays in monitoring and control instruments with a maximum mercury content of 20 mg per bridge, switch or relay	2020
Compact fluorescent lamps (CFLs) for general lighting purposes that are ≤ 30 watts with a mercury content exceeding 5 mg per lamp burner	2020
Linear fluorescent lamps (LFLs) for general lighting purposes: (a) Triband phosphor < 60 watts with a mercury content exceeding 5 mg per lamp; (b) Halophosphate phosphor ≤ 40 watts with a mercury content exceeding 10 mg per lamp	2020
High pressure mercury vapour lamps (HPMV) for general lighting purposes	2020
Mercury in cold cathode fluorescent lamps and external electrode fluorescent lamps (CCFL and EEFL) for electronic displays: (a) short length (≤ 500 mm) with mercury content exceeding 3,5 mg per lamp (b) medium length (> 500 mm and ≤ 1 500 mm) with mercury content exceeding 5 mg per lamp (c) long length (> 1 500 mm) with mercury content exceeding 13 mg per lamp	2020
Cosmetics (with mercury content above 1 ppm), including skin lightening soaps and creams, and not including eye area cosmetics where mercury is used as a preservative and no effective and safe substitute preservatives are available ([1])	2020

Mercury-added products	Date after which the manufacture, import or export of the product shall not be allowed (phase-out date)
Pesticides, biocides and topical antiseptics	2020
The following non-electronic measuring devices except non-electronic measuring devices installed in large-scale equipment or those used for high precision measurement, where no suitable mercury-free alternative is available: (a) barometers; (b) hygrometers; (c) manometers; (d) thermometers; (e) sphygmomanometers.	2020

([1]) The intention is not to cover cosmetics, soaps or creams with trace contaminants of mercury.

Part II: Products subject to Article 4, paragraph 3

Mercury-added products	Provisions
Dental amalgam	Measures to be taken by a Party to phase down the use of dental amalgam shall take into account the Party's domestic circumstances and relevant international guidance and shall include two or more of the measures from the following list: (i) Setting national objectives aiming at dental caries prevention and health promotion, thereby minimising the need for dental restoration; (ii) Setting national objectives aiming at minimising its use; (iii) Promoting the use of cost-effective and clinically effective mercury-free alternatives for dental restoration; (iv) Promoting research and development of quality mercury-free materials for dental restoration; (v) Encouraging representative professional organisations and dental schools to educate and train dental professionals and students on the use of mercury-free dental restoration alternatives and on promoting best management practices; (vi) Discouraging insurance policies and programmes that favour dental amalgam use over mercury-free dental restoration; (vii) Encouraging insurance policies and programmes that favour the use of quality alternatives to dental amalgam for dental restoration; (viii) Restricting the use of dental amalgam to its encapsulated form; (ix) Promoting the use of best environmental practices in dental facilities to reduce releases of mercury and mercury compounds to water and land.

ANNEX B

MANUFACTURING PROCESSES IN WHICH MERCURY OR MERCURY COMPOUNDS ARE USED

Part I: Processes subject to Article 5, paragraph 2

Manufacturing processes using mercury or mercury compounds	Phase-out date
Chlor-alkali production	2025
Acetaldehyde production in which mercury or mercury compounds are used as a catalyst	2018

Part II: Processes subject to Article 5, paragraph 3

Mercury using process	Provisions
Vinyl chloride monomer production	Measures to be taken by the Parties shall include but not be limited to: (i) Reduce the use of mercury in terms of per unit production by 50 per cent by the year 2020 against 2010 use; (ii) Promoting measures to reduce the reliance on mercury from primary mining; (iii) Taking measures to reduce emissions and releases of mercury to the environment; (iv) Supporting research and development in respect of mercury-free catalysts and processes; (v) Not allowing the use of mercury five years after the Conference of the Parties has established that mercury-free catalysts based on existing processes have become technically and economically feasible; (vi) Reporting to the Conference of the Parties on its efforts to develop and/or identify alternatives and phase out mercury use in accordance with Article 21.
Sodium or Potassium Methylate or Ethylate	Measures to be taken by the Parties shall include but not be limited to: (i) Measures to reduce the use of mercury aiming at the phase out of this use as fast as possible and within 10 years of the entry into force of the Convention; (ii) Reduce emissions and releases in terms of per unit production by 50 per cent by 2020 compared to 2010; (iii) Prohibiting the use of fresh mercury from primary mining; (iv) Supporting research and development in respect of mercury-free processes; (v) Not allowing the use of mercury five years after the Conference of the Parties has established that mercury-free processes have become technically and economically feasible; (vi) Reporting to the Conference of the Parties on its efforts to develop and/or identify alternatives and phase out mercury use in accordance with Article 21.
Production of polyurethane using mercury containing catalysts	Measures to be taken by the Parties shall include but not be limited to: (i) Taking measures to reduce the use of mercury, aiming at the phase out of this use as fast as possible, within 10 years of the entry into force of the Convention; (ii) Taking measures to reduce the reliance on mercury from primary mercury mining;

Mercury using process	Provisions
	(iii) Taking measures to reduce emissions and releases of mercury to the environment; (iv) Encouraging research and development in respect of mercury-free catalysts and processes; (v) Reporting to the Conference of the Parties on its efforts to develop and/or identify alternatives and phase out mercury use in accordance with Article 21. Paragraph 6 of Article 5 shall not apply to this manufacturing process.

ANNEX C

ARTISANAL AND SMALL-SCALE GOLD MINING

National action plans

1. Each Party that is subject to the provisions of paragraph 3 of Article 7 shall include in its national action plan:

   (a) National objectives and reduction targets;

   (b) Actions to eliminate:

      (i) Whole ore amalgamation;

      (ii) Open burning of amalgam or processed amalgam;

      (iii) Burning of amalgam in residential areas; and

      (iv) Cyanide leaching in sediment, ore or tailings to which mercury has been added without first removing the mercury;

   (c) Steps to facilitate the formalisation or regulation of the artisanal and small-scale gold mining sector;

   (d) Baseline estimates of the quantities of mercury used and the practices employed in artisanal and small-scale gold mining and processing within its territory;

   (e) Strategies for promoting the reduction of emissions and releases of, and exposure to, mercury in artisanal and small-scale gold mining and processing, including mercury-free methods;

   (f) Strategies for managing trade and preventing the diversion of mercury and mercury compounds from both foreign and domestic sources to use in artisanal and small scale gold mining and processing;

   (g) Strategies for involving stakeholders in the implementation and continuing development of the national action plan;

   (h) A public health strategy on the exposure of artisanal and small-scale gold miners and their communities to mercury. Such a strategy should include, inter alia, the gathering of health data, training for health-care workers and awareness-raising through health facilities;

   (i) Strategies to prevent the exposure of vulnerable populations, particularly children and women of child-bearing age, especially pregnant women, to mercury used in artisanal and small-scale gold mining;

   (j) Strategies for providing information to artisanal and small-scale gold miners and affected communities; and

   (k) A schedule for the implementation of the national action plan.

2. Each Party may include in its national action plan additional strategies to achieve its objectives, including the use or introduction of standards for mercury-free artisanal and small-scale gold mining and market-based mechanisms or marketing tools.

ANNEX D

LIST OF POINT SOURCES OF EMISSIONS OF MERCURY AND MERCURY COMPOUNDS TO THE ATMOSPHERE

Point source category:

Coal-fired power plants;

Coal-fired industrial boilers;

Smelting and roasting processes used in the production of non-ferrous metals ([1]);

Waste incineration facilities;

Cement clinker production facilities.

([1]) For the purpose of this Annex, 'non-ferrous metals' refers to lead, zinc, copper and industrial gold.

ANNEX E

ARBITRATION AND CONCILIATION PROCEDURES

Part I: Arbitration procedure

The arbitration procedure for purposes of paragraph 2 (a) of Article 25 of this Convention shall be as follows:

Article 1

1. A Party may initiate recourse to arbitration in accordance with Article 25 of this Convention by written notification addressed to the other party or parties to the dispute. The notification shall be accompanied by a statement of claim, together with any supporting documents. Such notification shall state the subject matter of arbitration and include, in particular, the Articles of this Convention the interpretation or application of which are at issue.

2. The claimant party shall notify the Secretariat that it is referring a dispute to arbitration pursuant to Article 25 of this Convention. The notification shall be accompanied by the written notification of the claimant party, the statement of claim, and the supporting documents referred to in paragraph 1 above. The Secretariat shall forward the information thus received to all Parties.

Article 2

1. If a dispute is referred to arbitration in accordance with Article 1 above, an arbitral tribunal shall be established. It shall consist of three members.

2. Each party to the dispute shall appoint an arbitrator, and the two arbitrators so appointed shall designate by agreement the third arbitrator, who shall be the President of the tribunal. In disputes between more than two parties, parties in the same interest shall appoint one arbitrator jointly by agreement. The President of the tribunal shall not be a national of any of the parties to the dispute, nor have his or her usual place of residence in the territory of any of these parties, nor be employed by any of them, nor have dealt with the case in any other capacity.

3. Any vacancy shall be filled in the manner prescribed for the initial appointment.

Article 3

1. If one of the parties to the dispute does not appoint an arbitrator within two months of the date on which the respondent party receives the notification of the arbitration, the other party may inform the Secretary-General of the United Nations, who shall make the designation within a further two-month period.

2. If the President of the arbitral tribunal has not been designated within two months of the date of the appointment of the second arbitrator, the Secretary-General of the United Nations shall, at the request of a party, designate the President within a further two-month period.

Article 4

The arbitral tribunal shall render its decisions in accordance with the provisions of this Convention and international law.

Article 5

Unless the parties to the dispute otherwise agree, the arbitral tribunal shall determine its own rules of procedure.

Article 6

The arbitral tribunal may, at the request of one of the parties to the dispute, recommend essential interim measures of protection.

Article 7

The parties to the dispute shall facilitate the work of the arbitral tribunal and, in particular, using all means at their disposal, shall:

(a) Provide it with all relevant documents, information and facilities; and

(b) Enable it, when necessary, to call witnesses or experts and receive their evidence.

Article 8

The parties to the dispute and the arbitrators are under an obligation to protect the confidentiality of any information or documents that they receive in confidence during the proceedings of the arbitral tribunal.

Article 9

Unless the arbitral tribunal determines otherwise because of the particular circumstances of the case, the costs of the tribunal shall be borne by the parties to the dispute in equal shares. The tribunal shall keep a record of all its costs and shall furnish a final statement thereof to the parties.

Article 10

A Party that has an interest of a legal nature in the subject matter of the dispute that may be affected by the decision may intervene in the proceedings with the consent of the arbitral tribunal.

Article 11

The arbitral tribunal may hear and determine counterclaims arising directly out of the subject matter of the dispute.

Article 12

Decisions of the arbitral tribunal on both procedure and substance shall be taken by a majority vote of its members.

Article 13

1. If one of the parties to the dispute does not appear before the arbitral tribunal or fails to defend its case, the other party may request the tribunal to continue the proceedings and to make its decision. Absence of a party or a failure of a party to defend its case shall not constitute a bar to the proceedings.

2. Before rendering its final decision, the arbitral tribunal must satisfy itself that the claim is well founded in fact and law.

Article 14

The arbitral tribunal shall render its final decision within five months of the date on which it is fully constituted, unless it finds it necessary to extend the time limit for a period that should not exceed five more months.

Article 15

The final decision of the arbitral tribunal shall be confined to the subject matter of the dispute and shall state the reasons on which it is based. It shall contain the names of the members who have participated and the date of the final decision. Any member of the tribunal may attach a separate or dissenting opinion to the final decision.

Article 16

The final decision shall be binding on the parties to the dispute. The interpretation of this Convention given by the final decision shall also be binding upon a Party intervening under Article 10 above insofar as it relates to matters in respect of which that Party intervened. The final decision shall be without appeal unless the parties to the dispute have agreed in advance to an appellate procedure.

Article 17

Any disagreement that may arise between those bound by the final decision in accordance with Article 16 above, as regards the interpretation or manner of implementation of that final decision, may be submitted by any of them for decision to the arbitral tribunal that rendered it.

Part II: Conciliation procedure

The conciliation procedure for purposes of paragraph 6 of Article 25 of this Convention shall be as follows:

Article 1

A request by a party to a dispute to establish a conciliation commission pursuant to paragraph 6 of Article 25 of this Convention shall be addressed in writing to the Secretariat, with a copy to the other party or parties to the dispute. The Secretariat shall forthwith inform all Parties accordingly.

Article 2

1. The conciliation commission shall, unless the parties to the dispute otherwise agree, comprise three members, one appointed by each party concerned and a President chosen jointly by those members.

2. In disputes between more than two parties, parties in the same interest shall appoint their member of the commission jointly by agreement.

Article 3

If any appointment by the parties to the dispute is not made within two months of the date of receipt by the Secretariat of the written request referred to in Article 1 above, the Secretary-General of the United Nations shall, upon request by any party, make such appointment within a further two-month period.

Article 4

If the President of the conciliation commission has not been chosen within two months of the appointment of the second member of the commission, the Secretary-General of the United Nations shall, upon request by any party to the dispute, designate the President within a further two-month period.

Article 5

The conciliation commission shall assist the parties to the dispute in an independent and impartial manner in their attempt to reach an amicable resolution.

Article 6

1. The conciliation commission may conduct the conciliation proceedings in such a manner as it considers appropriate, taking fully into account the circumstances of the case and the views the parties to the dispute may express, including any request for a swift resolution. It may adopt its own rules of procedure as necessary, unless the parties otherwise agree.

2. The conciliation commission may, at any time during the proceedings, make proposals or recommendations for a resolution of the dispute.

Article 7

The parties to the dispute shall cooperate with the conciliation commission. In particular, they shall endeavour to comply with requests by the commission to submit written materials, provide evidence and attend meetings. The parties and the members of the conciliation commission are under an obligation to protect the confidentiality of any information or documents they receive in confidence during the proceedings of the commission.

Article 8

The conciliation commission shall take its decisions by a majority vote of its members.

Article 9

Unless the dispute has already been resolved, the conciliation commission shall render a report with recommendations for resolution of the dispute no later than 12 months of being fully constituted, which the parties to the dispute shall consider in good faith.

Article 10

Any disagreement as to whether the conciliation commission has competence to consider a matter referred to it shall be decided by the commission.

Article 11

The costs of the conciliation commission shall be borne by the parties to the dispute in equal shares, unless they agree otherwise. The commission shall keep a record of all its costs and shall furnish a final statement thereof to the parties.

ANNEX

DECLARATION OF COMPETENCE BY THE EUROPEAN UNION IN ACCORDANCE WITH ARTICLE 30(3) OF THE MINAMATA CONVENTION ON MERCURY

The following States are at present Members of the European Union: the Kingdom of Belgium, the Republic of Bulgaria, the Czech Republic, the Kingdom of Denmark, the Federal Republic of Germany, the Republic of Estonia, Ireland, the Hellenic Republic, the Kingdom of Spain, the French Republic, the Republic of Croatia, the Italian Republic, the Republic of Cyprus, the Republic of Latvia, the Republic of Lithuania, the Grand Duchy of Luxembourg, Hungary, the Republic of Malta, the Kingdom of the Netherlands, the Republic of Austria, the Republic of Poland, the Portuguese Republic, Romania, the Republic of Slovenia, the Slovak Republic, the Republic of Finland, the Kingdom of Sweden, the United Kingdom of Great Britain and Northern Ireland.

Article 30(3) of the Minamata Convention provides: '*3. In its instrument of ratification, acceptance, approval or accession, a regional economic integration organisation shall declare the extent of its competence in respect of the matters governed by this Convention. Any such organisation shall also inform the Depositary, who shall in turn inform the Parties, of any relevant modification of the extent of its competence.*'

The European Union declares that, in accordance with the Treaty on the Functioning of the European Union, and in particular Article 192(1) thereof, it is competent for entering into international agreements, and for implementing the obligations resulting therefrom, which contribute to the pursuit of the following objectives:

— preserving, protecting and improving the quality of the environment;

— protecting human health;

— prudent and rational utilisation of natural resources;

— promoting measures at international level to deal with regional or worldwide environmental problems, including climate change.

The following list of legal instruments of the Union illustrates the extent to which the Union has exercised its internal competence, in accordance with the Treaty on the Functioning of the European Union, regarding matters governed by the Minamata Convention. The Union is competent for the performance of those obligations from the Minamata Convention on Mercury regarding which the provisions of Union legal instruments, in particular those listed below, establish common rules and insofar as these common rules are affected or altered in scope by the provisions of the Minamata Convention or an act adopted in implementation thereof.

— Regulation (EU) 2017/852 of the European Parliament and the Council of 17 May 2017 on mercury, and repealing Regulation (EC) No 1102/2008 ([1]),

— Directive 2011/65/EU of the European Parliament and the Council of 8 June 2011 on the restriction of the use of certain hazardous substances in electrical and electronic equipment (OJ L 174, 1.7.2011, p. 88),

— Directive 2006/66/EC of the European Parliament and the Council of 6 September 2006 on batteries and accumulators and waste batteries and accumulators and repealing Directive 91/157/EEC (OJ L 266, 26.9.2006, p. 1),

— Directive 2000/53/EC of the European Parliament and the Council of 18 September 2000 on end-of-life vehicles (OJ L 269, 21.10.2000, p. 34),

— Regulation (EC) No 1223/2009 of the European Parliament and of the Council of 30 November 2009 on cosmetic products (OJ L 342, 22.12.2009, p. 59),

— Regulation (EC) No 1907/2006 of the European Parliament and of the Council of 18 December 2006 concerning the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH), establishing a European Chemicals Agency, amending Directive 1999/45/EC and repealing Council Regulation (EEC) No 793/93 and Commission Regulation (EC) No 1488/94 as well as Council Directive 76/769/EEC and Commission Directives 91/155/EEC, 93/67/EEC, 93/105/EC and 2000/21/EC (OJ L 396, 30.12.2006, p. 1),

([1]) OJ L 137, 24.5.2017, p. 1.

— Regulation (EU) No 528/2012 of the European Parliament and of the Council of 22 May 2012 concerning the making available on the market and use of biocidal products (OJ L 167, 27.6.2012, p. 1),

— Regulation (EC) No 1107/2009 of 21 October 2009 concerning the placing of plant protection products on the market and repealing Council Directives 79/117/EEC and 91/414/EEC (OJ L 309, 24.11.2009, p. 1),

— Council Directive 93/42/EEC of 14 June 1993 concerning medical devices (OJ L 169, 12.7.1993, p. 1),

— Directive 2010/75/EU of the European Parliament and of the Council of 24 November 2010 on industrial emissions (integrated pollution prevention and control) (OJ L 334, 17.12.2010, p. 17),

— Directive 2012/18/EU of the European Parliament and of the Council of 4 July 2012 on the control of major-accident hazards involving dangerous substances, amending and subsequently repealing Council Directive 96/82/EC (OJ L 197, 24.7.2012, p. 1),

— Regulation (EC) No 166/2006 of the European Parliament and of the Council of 18 January 2006 concerning the establishment of a European Pollutant Release and Transfer Register and amending Council Directives 91/689/EEC and 96/61/EC (OJ L 33, 4.2.2006, p. 1),

— Directive 2004/107/EC of the European Parliament and of the Council of 15 December 2004 relating to arsenic, cadmium, mercury, nickel and polycyclic aromatic hydrocarbons in ambient air (OJ L 23, 26.1.2005, p. 3),

— Directive 2000/60/EC of the European Parliament and of the Council of 23 October 2000 establishing a framework for Community action in the field of water policy (OJ L 327, 22.12.2000, p. 1),

— Directive 2008/98/EC of the European Parliament and of the Council of 19 November 2008 on waste and repealing certain Directives (OJ L 312, 22.11.2008, p. 3),

— Council Directive 1999/31/EC of 26 April 1999 on the landfill of waste (OJ L 182, 16.7.1999, p. 1),

— Regulation (EC) No 1013/2006 of the European Parliament and of the Council of 14 June 2006 on shipments of waste (OJ L 190, 12.7.2006, p. 1).

The exercise of competences which Member States of the European Union have transferred to the European Union pursuant to the Treaties is, by its nature, subject to continuous development. The Union therefore reserves the right to adjust this Declaration.

REGULATIONS

COMMISSION IMPLEMENTING REGULATION (EU) 2017/940

of 1 June 2017

concerning the authorisation of formic acid as a feed additive for all animal species

(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 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 formic acid. 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 formic acid as a feed additive for all animal species to be classified in the category 'technological additives'.

(4) The European Food Safety Authority ('the Authority') concluded in its opinion of 30 April 2015 ([2]) that, under the proposed conditions of use, the preparation of formic acid does not have an adverse effect on animal health, human health or the environment. The Authority also concluded that the preparation is effective in inhibiting or reducing the number of bacterial pathogens in feed material and compound feed. The Authority does not consider that there is a need for specific requirements of post-market monitoring. It also verified the report on the methods of analysis of the feed additive in feed submitted by the Reference Laboratory set up by Regulation (EC) No 1831/2003.

(5) The assessment of the preparation of formic acid 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.

(6) 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

Authorisation

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

([1]) OJ L 268, 18.10.2003, p. 29.
([2]) *EFSA Journal* 2015; 13(5):4113.

Article 2

Entry into force

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, 1 June 2017.

For the Commission
The President
Jean-Claude JUNCKER

ANNEX

Identification number of the additive	Additive	Chemical formula, description, methods of analysis	Species or category of animal	Maximum age	Minimum content	Maximum content	Other provisions	End of period of authorisation
					mg of formic acid/kg of complete feedingstuff with a moisture content of 12 %			
Technological additives: hygiene condition enhancers								
1k236	Formic acid	*Additive composition* Formic acid (≥ 84,5 %) Liquid form *Characterisation of the active substance* Formic acid ≥ 84,5 % H_2CO_2 CAS No: 64-18-6 *Analytical method* (1) For the determination of formic acid: ion chromatography method equipped with electrical conductivity detection (IC-ECD).	All animal species	—	—	10 000	1. In the directions for use of the additive and premixture, the storage conditions shall be indicated. 2. The mixture of different sources of formic acid shall not exceed the permitted maximum content in complete feedingstuffs. 3. For users of the additive and premixtures, feed business operators shall establish operational procedures and organisational measures to address potential risks resulting from its use. Where those risks cannot be eliminated or reduced to a minimum by such procedures and measures, the additive and premixtures shall be used with personal protective equipment, including breathing protection, safety glasses and gloves.	21.6.2027

(1) 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) 2017/941

of 1 June 2017

withdrawing the acceptance of the undertaking for two exporting producers under Implementing Decision 2013/707/EU confirming the acceptance of an undertaking offered in connection with the anti-dumping and anti-subsidy proceedings concerning imports of crystalline silicon photovoltaic modules and key components (i.e. cells) originating in or consigned from the People's Republic of China for the period of application of definitive measures

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union ('the Treaty'),

Having regard to Regulation (EU) 2016/1036 of the European Parliament and of the Council of 8 June 2016 on protection against dumped imports from countries not members of the European Union [1] ('the basic anti-dumping Regulation'), and in particular Article 8 thereof,

Having regard to Regulation (EU) 2016/1037 of the European Parliament and of the Council of 8 June 2016 on protection against subsidised imports from countries not members of the European Union [2] ('the basic anti-subsidy Regulation'), and in particular Article 13 thereof,

Informing the Member States,

Whereas:

A. UNDERTAKING AND OTHER EXISTING MEASURES

(1) By Regulation (EU) No 513/2013 [3], the European Commission ('the Commission') imposed a provisional anti-dumping duty on imports into the European Union ('the Union') of crystalline silicon photovoltaic modules ('modules') and key components (i.e. cells and wafers) originating in or consigned from the People's Republic of China ('the PRC').

(2) A group of exporting producers gave a mandate to the China Chamber of Commerce for Import and Export of Machinery and Electronic Products ('CCCME') to submit a price undertaking on their behalf to the Commission, which they did. It is clear from the terms of that price undertaking that it constitutes a bundle of individual price undertakings for each exporting producer, which is, for reasons of practicality of administration, coordinated by the CCCME.

(3) By Decision 2013/423/EU [4], the Commission accepted that price undertaking with regard to the provisional anti-dumping duty. By Regulation (EU) No 748/2013 [5], the Commission amended Regulation (EU) No 513/2013 to introduce the technical changes necessary due to the acceptance of the undertaking with regard to the provisional anti-dumping duty.

(4) By Implementing Regulation (EU) No 1238/2013 [6], the Council imposed a definitive anti-dumping duty on imports into the Union of modules and cells originating in or consigned from the PRC ('the products concerned'). By Implementing Regulation (EU) No 1239/2013 [7], the Council also imposed a definitive countervailing duty on imports into the Union of the products concerned.

[1] OJ L 176, 30.6.2016, p. 21.
[2] OJ L 176, 30.6.2016, p. 55.
[3] OJ L 152, 5.6.2013, p. 5.
[4] OJ L 209, 3.8.2013, p. 26.
[5] OJ L 209, 3.8.2013, p. 1.
[6] OJ L 325, 5.12.2013, p. 1.
[7] OJ L 325, 5.12.2013, p. 66.

(5) Following the notification of an amended version of the price undertaking by a group of exporting producers ('the exporting producers') together with the CCCME, the Commission confirmed by Implementing Decision 2013/707/EU ([1]) the acceptance of the price undertaking as amended ('the undertaking') for the period of application of definitive measures. The Annex to this Decision lists the exporting producers for whom the undertaking was accepted, inter alia:

(a) BYD (Shangluo) Industrial Co. Ltd, together with its related company in the PRC and in the Union, jointly covered by the TARIC additional code: B871 ('BYD');

(b) Yingli Energy (China) Co. Ltd, together with its related companies in the PRC and in the Union, jointly covered by the TARIC additional code: B797 ('Yingli').

(6) By Implementing Decision 2014/657/EU ([2]) the Commission accepted a proposal by the exporting producers together with the CCCME for clarifications concerning the implementation of the undertaking for the products concerned covered by the undertaking, that is modules and cells originating in or consigned from the PRC, currently falling within CN codes ex 8541 40 90 (TARIC codes 8541 40 90 21, 8541 40 90 29, 8541 40 90 31 and 8541 40 90 39) produced by the exporting producers ('product covered'). The anti-dumping and countervailing duties referred to in recital (4) above, together with the undertaking, are jointly referred to thereafter as 'measures'.

(7) By Implementing Regulation (EU) 2015/866 ([3]) the Commission withdrew the acceptance of the undertaking for three exporting producers.

(8) By Implementing Regulation (EU) 2015/1403 ([4]) the Commission withdrew the acceptance of the undertaking for another exporting producer.

(9) By Implementing Regulation (EU) 2015/2018 ([5]) the Commission withdrew the acceptance of the undertaking for two exporting producers.

(10) The Commission initiated an expiry review investigation of the anti-dumping measures by a Notice of Initiation published in the *Official Journal of the European Union* ([6]) on 5 December 2015.

(11) The Commission initiated an expiry review investigation of the countervailing measures by a Notice of Initiation published in the *Official Journal of the European Union* ([7]) on 5 December 2015.

(12) The Commission also initiated a partial interim review of the anti-dumping and countervailing measures by a Notice of Initiation published in the *Official Journal of the European Union* ([8]) on 5 December 2015.

(13) By Implementing Regulation (EU) 2016/115 ([9]) the Commission withdrew the acceptance of the undertaking for another exporting producer.

(14) By Implementing Regulation (EU) 2016/185 ([10]), the Commission extended the definitive anti-dumping duty imposed by Implementing Regulation (EU) No 1238/2013 on imports of the products concerned originating in or consigned from the People's Republic of China to imports of the product concerned consigned from Malaysia and Taiwan, whether declared as originating in Malaysia and in Taiwan or not.

(15) By Implementing Regulation (EU) 2016/184 ([11]), the Commission extended the definitive countervailing duty imposed by Implementing Regulation (EU) No 1239/2013 on imports of the products concerned originating in or consigned from the People's Republic of China to imports of the product concerned consigned from Malaysia and Taiwan, whether declared as originating in Malaysia and in Taiwan or not.

([1]) OJ L 325, 5.12.2013, p. 214.
([2]) OJ L 270, 11.9.2014, p. 6.
([3]) OJ L 139, 5.6.2015, p. 30.
([4]) OJ L 218, 19.8.2015, p. 1.
([5]) OJ L 295, 12.11.2015, p. 23.
([6]) OJ C 405, 5.12.2015, p. 8.
([7]) OJ C 405, 5.12.2015, p. 20.
([8]) OJ C 405, 5.12.2015, p. 33.
([9]) OJ L 23, 29.1.2016, p. 47.
([10]) OJ L 37, 12.2.2016, p. 76.
([11]) OJ L 37, 12.2.2016, p. 56.

(16) By Implementing Regulation (EU) 2016/1045 ([1]) the Commission withdrew the acceptance of the undertaking for another exporting producer.

(17) By Implementing Regulation (EU) 2016/1382 ([2]) the Commission withdrew the acceptance of the undertaking for another five exporting producers.

(18) By Implementing Regulation (EU) 2016/1402 ([3]) the Commission withdrew the acceptance of the undertaking for another three exporting producers.

(19) By Implementing Regulation (EU) 2016/1998 ([4]) the Commission withdrew the acceptance of the undertaking for another five exporting producers.

(20) By Implementing Regulation (EU) 2016/2146 ([5]) the Commission withdrew the acceptance of the undertaking for another two exporting producers.

(21) Following the expiry and interim reviews referred to in recitals (10)-(12), the Commission maintained the measures in force by Implementing Regulations (EU) 2017/366 ([6]) and (EU) 2017/367 ([7]).

(22) The Commission also initiated a partial interim review on the form of measures by a Notice of Initiation published in the *Official Journal of the European Union* ([8]) on 3 March 2017.

(23) By Implementing Regulation (EU) 2017/454 ([9]) the Commission withdrew the acceptance of the undertaking for four exporting producers.

(24) By Implementing Decision (EU) 2017/615 ([10]), the Commission accepted a proposal by a group of exporting producers together with the CCCME concerning the implementation of the undertaking.

B. TERMS OF THE UNDERTAKING AND VOLUNTARY WITHDRAWAL BY YINGLI AND BYD

(25) As per the undertaking, any exporting producer may voluntarily withdraw its undertaking at any time during its application.

(26) BYD notified the Commission in March 2017 that it wished to withdraw its undertaking.

(27) Yingli notified the Commission in April 2017 that it wished to withdraw its undertaking.

C. WITHDRAWAL OF THE ACCEPTANCE OF THE UNDERTAKING AND IMPOSITIONS OF DEFINITIVE DUTIES

(28) Therefore, in accordance with Article 8(9) of the basic anti-dumping Regulation, Article 13(9) of the basic anti-subsidy Regulation and also in accordance with the terms of the undertaking, the Commission has concluded that the acceptance of the undertaking for BYD and Yingli shall be withdrawn.

(29) Accordingly, pursuant to Article 8(9) of the basic anti-dumping Regulation and Article 13(9) of the basic anti-subsidy Regulation, the definitive anti-dumping duty imposed by Article 1 of Implementing Regulation (EU) 2017/367 and the definitive countervailing duty imposed by Article 1 of Implementing Regulation (EU) 2017/366 automatically apply to imports originating in or consigned from the PRC of the product concerned and produced by BYD (TARIC additional code: B871) and Yingli (TARIC additional code: B797) as of the day of entry into force of this Regulation.

([1]) OJ L 170, 29.6.2016, p. 5.
([2]) OJ L 222, 17.8.2016, p. 10.
([3]) OJ L 228, 23.8.2016, p. 16.
([4]) OJ L 308, 16.11.2016, p. 8.
([5]) OJ L 333, 8.12.2016, p. 4.
([6]) OJ L 56, 3.3.2017, p. 1.
([7]) OJ L 56, 3.3.2017, p. 131.
([8]) OJ C 67, 3.3.2017, p. 16.
([9]) OJ L 71, 16.3.2017, p. 5.
([10]) OJ L 86, 31.3.2017, p. 14.

(30) The Commission also recalls that where the customs authorities of the Member States have indications that the price presented on an undertaking invoice does not correspond to the price actually paid, they should investigate whether the requirement to include any rebates in the undertaking invoices has been violated or the MIP has not been respected. Where customs authorities of the Member States conclude that there has been such a violation or whether the MIP has not been respected, they should collect the duties as a consequence thereof. In order to facilitate, on the basis of Article 4(3) of the Treaty, the work of the customs authorities of the Member States, the Commission should share in such situations the confidential text and other information of the undertaking for the sole purpose of national proceedings.

(31) Finally, the Commission observes that the acceptance of the voluntary withdrawal is without prejudice to the power conferred upon the Commission by Article 3(2)(b) of Implementing Regulation (EU) No 1238/2013, Article 2(2)(b) of Implementing Regulation (EU) 2017/367, Article 2(2)(b) of Implementing Regulation (EU) No 1239/2013 and Article 2(2)(b) of Implementing Regulation (EU) 2017/366 to cancel undertaking invoices that have been issued prior to the acceptance of the voluntary withdrawal, where the Commission becomes aware of facts justifying such a cancellation.

(32) For information purposes the table in Annex to this Regulation lists the exporting producers for whom the acceptance of the undertaking by Implementing Decision 2013/707/EU is not affected,

HAS ADOPTED THIS REGULATION:

Article 1

Acceptance of the undertaking in relation to the following companies is hereby withdrawn:

Name of the company	TARIC additional code
Shanghai BYD Co. Ltd BYD (Shangluo) Industrial Co. Ltd	B871
Yingli Energy (China) Co. Ltd Baoding Tianwei Yingli New Energy Resources Co. Ltd Hainan Yingli New Energy Resources Co. Ltd Hengshui Yingli New Energy Resources Co. Ltd Tianjin Yingli New Energy Resources Co. Ltd Lixian Yingli New Energy Resources Co. Ltd Baoding Jiasheng Photovoltaic Technology Co. Ltd Beijing Tianneng Yingli New Energy Resources Co. Ltd Yingli Energy (Beijing) Co. Ltd	B797

Article 2

1. Where customs authorities have indications that the price presented on an undertaking invoice pursuant to Article 3(1)(b) of Implementing Regulation (EU) No 1238/2013, Article 2(1)(b) of Implementing Regulation (EU) 2017/367, Article 2(1)(b) of Implementing Regulation (EU) No 1239/2013 and Article 2(1)(b) of Implementing Regulation (EU) 2017/366 issued by one of the companies from which the undertaking was initially accepted by Implementing Decision 2013/707/EU does not correspond to the price paid and that therefore those companies may have violated the undertaking, the customs authorities may, if necessary for the purpose of conducting national proceedings, request the Commission to disclose to them a copy of the undertaking and other information in order to verify the applicable minimum import price ('MIP') on the day when the undertaking invoice was issued.

2. Where that verification reveals that the price paid is lower than the MIP, the duties due as a consequence under Article 8(9) of Regulation (EU) 2016/1036 and Article 13(9) of Regulation (EU) 2016/1037 shall be collected.

Where that verification reveals that discounts and rebates have not been included in the commercial invoice, the duties due as a consequence under Article 3(2)(a) of Implementing Regulation (EU) No 1238/2013, Article 2(2)(a) of Implementing Regulation (EU) 2017/367, Article 2(2)(a) of Implementing Regulation (EU) No 1239/2013 and Article 2(2)(a) of Implementing Regulation (EU) 2017/366 shall be collected.

3. The information in accordance with paragraph 1 may only be used for the purpose of enforcement of duties due under Article 3(2)(a) of Implementing Regulation (EU) No 1238/2013, Article 2(2)(a) of Implementing Regulation (EU) 2017/367, Article 2(2)(a) of Implementing Regulation (EU) No 1239/2013 and Article 2(2)(a) of Implementing Regulation (EU) 2017/366. In this context, customs authorities of the Member States may provide the debtor of those duties with this information for the sole purpose of safeguarding their rights of defence. Such information may under no circumstances be disclosed to third parties.

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, 1 June 2017.

For the Commission
The President
Jean-Claude JUNCKER

ANNEX

List of companies

Name of the company	TARIC additional code
Jiangsu Aide Solar Energy Technology Co. Ltd	B798
Alternative Energy (AE) Solar Co. Ltd	B799
Anhui Chaoqun Power Co. Ltd	B800
Anji DaSol Solar Energy Science & Technology Co. Ltd	B802
Anhui Schutten Solar Energy Co. Ltd Quanjiao Jingkun Trade Co. Ltd	B801
Anhui Titan PV Co. Ltd	B803
Xi'an SunOasis (Prime) Company Limited TBEA SOLAR CO. LTD XINJIANG SANG'O SOLAR EQUIPMENT	B804
Changzhou NESL Solartech Co. Ltd	B806
Changzhou Shangyou Lianyi Electronic Co. Ltd	B807
CHINALAND SOLAR ENERGY CO. LTD	B808
ChangZhou EGing Photovoltaic Technology Co. Ltd	B811
CIXI CITY RIXING ELECTRONICS CO. LTD ANHUI RINENG ZHONGTIAN SEMICONDUCTOR DEVELOPMENT CO. LTD HUOSHAN KEBO ENERGY & TECHNOLOGY CO. LTD	B812
CSG PVtech Co. Ltd	B814
China Sunergy (Nanjing) Co. Ltd CEEG Nanjing Renewable Energy Co. Ltd CEEG (Shanghai) Solar Science Technology Co. Ltd China Sunergy (Yangzhou) Co. Ltd China Sunergy (Shanghai) Co. Ltd	B809
Dongfang Electric (Yixing) MAGI Solar Power Technology Co. Ltd	B816
EOPLLY New Energy Technology Co. Ltd SHANGHAI EBEST SOLAR ENERGY TECHNOLOGY CO. LTD JIANGSU EOPLLY IMPORT & EXPORT CO. LTD	B817

Name of the company	TARIC additional code
Zheijiang Era Solar Co. Ltd	B818
GD Solar Co. Ltd	B820
Greenway Solar-Tech (Shanghai) Co. Ltd Greenway Solar-Tech (Huaian) Co. Ltd	B821
Guodian Jintech Solar Energy Co. Ltd	B822
Hangzhou Bluesun New Material Co. Ltd	B824
Hanwha SolarOne (Qidong) Co. Ltd	B826
Hengdian Group DMEGC Magnetics Co. Ltd	B827
HENGJI PV-TECH ENERGY CO. LTD	B828
Himin Clean Energy Holdings Co. Ltd	B829
Jiangsu Green Power PV Co. Ltd	B831
Jiangsu Hosun Solar Power Co. Ltd	B832
Jiangsu Jiasheng Photovoltaic Technology Co. Ltd	B833
Jiangsu Runda PV Co. Ltd	B834
Jiangsu Sainty Photovoltaic Systems Co. Ltd Jiangsu Sainty Machinery Imp. And Exp. Corp. Ltd	B835
Jiangsu Shunfeng Photovoltaic Technology Co. Ltd Changzhou Shunfeng Photovoltaic Materials Co. Ltd Jiangsu Shunfeng Photovoltaic Electronic Power Co. Ltd	B837
Jiangsu Sinski PV Co. Ltd	B838
Jiangsu Sunlink PV Technology Co. Ltd	B839
Jiangsu Zhongchao Solar Technology Co. Ltd	B840
Jiangxi Risun Solar Energy Co. Ltd	B841
Jiangxi LDK Solar Hi-Tech Co. Ltd LDK Solar Hi-Tech (Nanchang) Co. Ltd LDK Solar Hi-Tech (Suzhou) Co. Ltd	B793
Jiangyin Shine Science and Technology Co. Ltd	B843

Name of the company	TARIC additional code
Jinzhou Yangguang Energy Co. Ltd Jinzhou Huachang Photovoltaic Technology Co. Ltd Jinzhou Jinmao Photovoltaic Technology Co. Ltd Jinzhou Rixin Silicon Materials Co. Ltd Jinzhou Youhua Silicon Materials Co. Ltd	B795
Juli New Energy Co. Ltd	B846
Jumao Photonic (Xiamen) Co. Ltd	B847
King-PV Technology Co. Ltd	B848
Kinve Solar Power Co. Ltd (Maanshan)	B849
Lightway Green New Energy Co. Ltd Lightway Green New Energy(Zhuozhou) Co. Ltd	B851
Nanjing Daqo New Energy Co. Ltd	B853
NICE SUN PV CO. LTD LEVO SOLAR TECHNOLOGY CO. LTD	B854
Ningbo Jinshi Solar Electrical Science & Technology Co. Ltd	B857
Ningbo Komaes Solar Technology Co. Ltd	B858
Ningbo South New Energy Technology Co. Ltd	B861
Ningbo Sunbe Electric Ind Co. Ltd	B862
Ningbo Ulica Solar Science & Technology Co. Ltd	B863
Perfectenergy (Shanghai) Co. Ltd	B864
Perlight Solar Co. Ltd	B865
SHANGHAI ALEX SOLAR ENERGY SCIENCE & TECHNOLOGY CO. LTD SHANGHAI ALEX NEW ENERGY CO. LTD	B870
Shanghai Chaori Solar Energy Science & Technology Co. Ltd	B872
Propsolar (Zhejiang) New Energy Technology Co. Ltd Shanghai Propsolar New Energy Co. Ltd	B873
SHANGHAI SHANGHONG ENERGY TECHNOLOGY CO. LTD	B874
SHANGHAI SOLAR ENERGY S&T CO. LTD Shanghai Shenzhou New Energy Development Co. Ltd Lianyungang Shenzhou New Energy Co. Ltd	B875

Name of the company	TARIC additional code
Shanghai ST Solar Co. Ltd Jiangsu ST Solar Co. Ltd	B876
Shenzhen Sacred Industry Co. Ltd	B878
Shenzhen Topray Solar Co. Ltd Shanxi Topray Solar Co. Ltd Leshan Topray Cell Co. Ltd	B880
Sopray Energy Co. Ltd Shanghai Sopray New Energy Co. Ltd	B881
SUN EARTH SOLAR POWER CO. LTD NINGBO SUN EARTH SOLAR POWER CO. LTD Ningbo Sun Earth Solar Energy Co. Ltd	B882
SUZHOU SHENGLONG PV-TECH CO. LTD	B883
TDG Holding Co. Ltd	B884
Tianwei New Energy Holdings Co. Ltd Tianwei New Energy (Chengdu) PV Module Co. Ltd Tianwei New Energy (Yangzhou) Co. Ltd	B885
Wenzhou Jingri Electrical and Mechanical Co. Ltd	B886
Shanghai Topsolar Green Energy Co. Ltd	B877
Shenzhen Sungold Solar Co. Ltd	B879
Wuhu Zhongfu PV Co. Ltd	B889
Wuxi Saijing Solar Co. Ltd	B890
Wuxi Shangpin Solar Energy Science and Technology Co. Ltd	B891
Wuxi Solar Innova PV Co. Ltd	B892
Wuxi Taichang Electronic Co. Ltd China Machinery Engineering Wuxi Co. Ltd Wuxi Taichen Machinery & Equipment Co. Ltd	B893
Xi'an Huanghe Photovoltaic Technology Co. Ltd State-run Huanghe Machine-Building Factory Import and Export Corporation Shanghai Huanghe Fengjia Photovoltaic Technology Co. Ltd	B896

Name of the company	TARIC additional code
Yuhuan BLD Solar Technology Co. Ltd Zhejiang BLD Solar Technology Co. Ltd	B899
Yuhuan Sinosola Science & Technology Co. Ltd	B900
Zhangjiagang City SEG PV Co. Ltd	B902
Zhejiang Fengsheng Electrical Co. Ltd	B903
Zhejiang Global Photovoltaic Technology Co. Ltd	B904
Zhejiang Heda Solar Technology Co. Ltd	B905
Zhejiang Jiutai New Energy Co. Ltd Zhejiang Topoint Photovoltaic Co. Ltd	B906
Zhejiang Kingdom Solar Energy Technic Co. Ltd	B907
Zhejiang Koly Energy Co. Ltd	B908
Zhejiang Mega Solar Energy Co. Ltd Zhejiang Fortune Photovoltaic Co. Ltd	B910
Zhejiang Shuqimeng Photovoltaic Technology Co. Ltd	B911
Zhejiang Shinew Photoelectronic Technology Co. Ltd	B912
Zhejiang Sunflower Light Energy Science & Technology Limited Liability Company Zhejiang Yauchong Light Energy Science & Technology Co. Ltd	B914
Zhejiang Sunrupu New Energy Co. Ltd	B915
Zhejiang Tianming Solar Technology Co. Ltd	B916
Zhejiang Trunsun Solar Co. Ltd Zhejiang Beyondsun PV Co. Ltd	B917
Zhejiang Wanxiang Solar Co. Ltd WANXIANG IMPORT & EXPORT CO. LTD	B918
ZHEJIANG YUANZHONG SOLAR CO. LTD	B920

COMMISSION IMPLEMENTING REGULATION (EU) 2017/942

of 1 June 2017

imposing a definitive anti-dumping duty on imports of tungsten carbide, fused tungsten carbide and tungsten carbide simply mixed with metallic powder originating in the People's Republic of China following an expiry review pursuant to Article 11(2) of Regulation (EU) 2016/1036 of the European Parliament and of the Council

THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EU) 2016/1036 of the European Parliament and of the Council of 8 June 2016 on protection against dumped imports from countries not members of the European Union ([1]) ('basic Regulation'), and in particular Article 11(2) thereof,

Whereas:

1. PROCEDURE

1.1. Measures in force

(1) By Council Regulation (EEC) No 2737/90 ([2]), the Council imposed a definitive anti-dumping duty of 33 % on imports of tungsten carbide and fused tungsten carbide originating in the People's Republic of China ('PRC', 'China' or 'country concerned') ('original investigation'). By Decision 90/480/EEC ([3]) the Commission accepted undertakings given by two major exporters concerning the product subject to measures.

(2) Following the withdrawal of the undertakings by the two Chinese exporters concerned, the Council, by Council Regulation (EC) No 610/95 ([4]), amended Regulation (EEC) No 2737/90 and imposed a definitive duty of 33 % on imports of tungsten carbide and fused tungsten carbide.

(3) By Council Regulation (EC) No 771/98 ([5]), following an expiry review, these measures were extended for another five-year period.

(4) By Council Regulation (EC) No 2268/2004 ([6]), following an expiry review, the Council imposed an anti-dumping duty of 33 % on imports of tungsten carbide and fused tungsten carbide originating in the PRC.

(5) By Council Regulation (EC) No 1275/2005 ([7]), the Council amended the definition of the product scope to also cover tungsten carbide simply mixed with metallic powder.

([1]) OJ L 176, 30.6.2016, p. 21.
([2]) Council Regulation (EEC) No 2737/90 of 24 September 1990 imposing a definitive anti-dumping duty on imports of tungsten carbide and fused tungsten carbide originating in the People's Republic of China and definitively collecting the provisional duty (OJ L 264, 27.9.1990, p. 7).
([3]) Commission Decision 90/480/EEC of 24 September 1990 accepting undertakings given by certain exporters in connection with the anti-dumping proceeding concerning imports of tungsten carbide and fused tungsten carbide originating in the People's Republic of China and terminating the investigation with regard to the exporters in question (OJ L 264, 27.9.1990, p. 59).
([4]) Council Regulation (EC) No 610/95 of 20 March 1995 amending Regulations (EEC) No 2735/90, (EEC) No 2736/90 and (EEC) No 2737/90 imposing a definitive anti-dumping duty on imports of tungsten ores and concentrates, tungstic oxide, tungstic acid, tungsten carbide and fused tungsten carbide originating in the People's Republic of China, and definitively collecting the amounts secured by way of the provisional anti-dumping duty imposed by Commission Regulation (EC) No 2286/94 (OJ L 64, 22.3.1995, p. 1).
([5]) Council Regulation (EC) No 771/98 of 7 April 1998 imposing a definitive anti-dumping duty on imports of tungsten carbide and fused tungsten carbide originating in the People's Republic of China (OJ L 111, 9.4.1998, p. 1).
([6]) Council Regulation (EC) No 2268/2004 of 22 December 2004 imposing a definitive anti-dumping duty on imports of tungsten carbide and fused tungsten carbide originating in the People's Republic of China (OJ L 395, 31.12.2004, p. 56).
([7]) Council Regulation (EC) No 1275/2005 of 26 July 2005 amending Regulation (EC) No 2268/2004 imposing a definitive anti-dumping duty on imports of tungsten carbide and fused tungsten carbide originating in the People's Republic of China (OJ L 202, 3.8.2005, p. 1).

(6) Following a review pursuant to Article 11(2) of Council Regulation (EC) No 1225/2009 ([1]), the Council extended the measures for another five-year period by Council Implementing Regulation (EU) No 287/2011 ([2]) ('previous expiry review').

1.2. **Request for an expiry review**

(7) Following the publication of a notice of impending expiry ([3]) of the existing measures, the Commission received on 7 December 2015 a request for the initiation of an expiry review of these measures pursuant to Article 11(2) of Regulation (EC) No 1225/2009 ('the request for review').

(8) The request was lodged on behalf of six Union producers ('the applicant') representing more than 25 % of the total Union production of tungsten carbide, fused tungsten carbide and tungsten carbide simply mixed with metallic powder ('tungsten carbide').

(9) The request was based on the grounds that the expiry of the measures would likely result in a continuation of dumping and recurrence of injury to the Union industry.

1.3. **Initiation**

(10) Having determined, after consulting the Committee established by Article 15(1) of the basic Regulation, that sufficient evidence existed for the initiation of an expiry review, the Commission announced on 23 March 2016, by a notice published in the *Official Journal of the European Union* ([4]) ('the Notice of Initiation'), the initiation of an expiry review on the basis of Article 11(2) of Regulation (EC) No 1225/2009.

(11) Several users claimed that they had requested the Commission prior to the initiation of the current expiry review investigation that, if an expiry review investigation was opened, an interim review pursuant to Article 11(3) of the basic Regulation should be initiated in parallel. This claim was also reiterated after the disclosure.

(12) In contrast to what was claimed, no such request was submitted to the Commission. The parties in question simply raised the question to the Commission whether the previous dumping and injury findings were still valid today. These questions were neither coupled with a request to initiate an interim review nor did these parties provide any evidence showing a lasting change in circumstances. Only a request substantiated with sufficient evidence, showing such change in circumstances of a lasting nature, can be considered as a valid request.

1.4. **Interested parties**

(13) In the Notice of Initiation, the Commission invited interested parties to contact it in order to participate in the investigation. In addition, the Commission specifically informed known Union producers, known exporting producers, the Chinese authorities, known importers and users about the initiation of the investigation and invited them to participate.

(14) Interested parties were given the opportunity to make their views known in writing and request a hearing within the time limits set out in the Notice of Initiation. All interested parties, who requested so and showed that there were particular reasons why they should be heard, were granted a hearing. Interested parties were also granted an opportunity to comment on the initiation of the investigation and to request a hearing with the Commission and/or the Hearing Officer in trade proceedings.

(15) Four hearings were held during the investigation: two with several users, one with the Union producers and one in the presence of the Hearing Officer in trade proceedings for one importer/user.

([1]) Council Regulation (EC) No 1225/2009 of 30 November 2009 on protection against dumped imports from countries not members of the European Community (OJ L 343, 22.12.2009, p. 51). This Regulation has been codified by the basic Regulation.
([2]) Council Implementing Regulation (EU) No 287/2011 of 21 March 2011 imposing a definitive anti-dumping duty on imports of tungsten carbide, tungsten carbide simply mixed with metallic powder and fused tungsten carbide originating in the People's Republic of China following an expiry review pursuant to Article 11(2) of Regulation (EC) No 1225/2009 (OJ L 78, 24.3.2011, p. 1).
([3]) Notice of the impending expiry of certain anti-dumping measures (OJ C 212, 27.6.2015, p. 8).
([4]) Notice of initiation of an expiry review of the anti-dumping measures applicable to imports of tungsten carbide, fused tungsten carbide and tungsten carbide simply mixed with metallic powder originating in the People's Republic of China (OJ C 108, 23.3.2016, p. 6).

(a) Sampling

(16) In its Notice of Initiation, the Commission stated that it might sample the interested parties in accordance with Article 17 of the basic Regulation.

Sampling of exporting producers in the PRC

(17) In view of the apparent large number of exporting producers in the PRC, sampling was envisaged in the Notice of Initiation.

(18) To decide whether sampling was necessary and, if so, to select a sample, the Commission asked all known exporting producers in the PRC to provide the information specified in the Notice of Initiation. In addition, the Commission requested the Mission of the People's Republic of China to the European Union to identify and/or contact other exporting producers, if any, that could be interested in participating in the investigation.

(19) The sampling information was received from eight exporting producers/groups of exporting producers located in the PRC.

(20) In accordance with Article 17(1) of the basic Regulation, the Commission initially selected a sample of three exporting producers/groups of exporting producers on the basis of the largest representative volume of exports to the Union which could reasonably be investigated within the time available. In accordance with Article 17(2) of the basic Regulation, all known exporting producers/groups of exporting producers concerned and the authorities in the PRC were consulted on the selection of the sample. No comments were received.

(21) Questionnaires were sent to the three sampled exporting producers/groups of exporting producers, but none of them provided the Commission with the information requested. Therefore, in order to collect the necessary information for the determination of the likelihood of continuation or recurrence of dumping and injury the Commission's services deemed necessary to seek cooperation from the remaining exporting producers/groups of exporting producers that submitted sampling information. All known exporting producers/groups of exporting producers concerned and the authorities in the PRC were consulted on the new sample. No comments were received. Questionnaires were therefore sent to the remaining exporting producers/groups of exporting producers. Nonetheless, none of the Chinese exporting producers/groups of exporting producers provided the Commission with the information requested.

Sampling of Union producers

(22) In the Notice of Initiation, the Commission stated that it had provisionally selected a sample of Union producers. According to the request for review, there are nine producers of tungsten carbide in the Union, six out of which produce for the free market and three mainly for the captive use. All six Union producers/groups of Union producers that manufacture for the free market came forward during the standing exercise, representing 65 % of the total Union production. The Commission decided to sample all six producers. 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 was considered representative for the Union industry.

(23) The three producers mainly producing for the captive market, although not cooperating, did not oppose to the investigation.

Sampling of importers/users

(24) To decide whether sampling was necessary and, if so, to select a sample, the Commission contacted ten known importers/users and asked them to provide the information specified in the Notice of Initiation.

(25) Seven companies came forward within the time limits and questionnaires were sent to all of them. All of them were users.

(b) Replies to the questionnaire

(26) The Commission sent questionnaires to the six sampled Union producers, seven known users, eight exporting producers/groups of exporting producers in the PRC, and 20 known producers in potential analogue countries (Canada, Japan and the United States of America).

(27) Questionnaire replies were received from six Union producers, eight users (two of them related), one potential analogue country producer in the United States of America and one potential analogue country producer in Japan. None of the Chinese exporting producers/groups of exporting producers replied to the questionnaire.

(28) One German association of non-ferrous metals came forward supporting the continuation of the measures.

(c) Verification visits

(29) The Commission sought and verified all the information deemed necessary for the determination of likelihood of continuation or recurrence of dumping and injury and Union interest. Verification visits pursuant to Article 16 of the basic Regulation were carried out at the premises of the following companies:

Union producers

— Eurotungstène Poudres SA, Grenoble, France

— Global Tungsten & Powders spol. s.r.o, Bruntál, Czech Republic

— H. C. Starck GmbH & Co. KG, Goslar, Germany

— Tikomet Oy, Jyväskylä, Finland

— Treibacher Industrie AG, Althofen, Austria

— Wolfram Bergbau und Hütten-GmbH Nfg.KG., St Peter, Austria

Users

— Atlas Copco Secoroc AB, Fagersta, Sweden

— Betek GmbH & Co. KG, Aichhalden, Germany

— Gühring KG, Albstadt, Germany

— Konrad Friedrichs GmbH & Co. KG, Kulmbach, Germany

— Technogenia SAS, Sait-Jorioz, France

Producer in the analogue country

— Global Tungsten & Powders Corp., Towanda, United States of America.

1.5. **Investigation period and period considered**

(30) The investigation of the likelihood of continuation or recurrence of dumping and injury covered the period from 1 January 2015 to 31 December 2015 ('the review investigation period' or 'RIP'). The examination of trends relevant for the assessment of the likelihood of continuation or recurrence of injury covered the period from 1 January 2012 to the end of the review investigation period ('the period considered').

2. **PRODUCT UNDER REVIEW AND LIKE PRODUCT**

2.1. **Product under review**

(31) The product subject to this review is tungsten carbide, fused tungsten carbide and tungsten carbide simply mixed with metallic powder ('the product under review'), currently falling within CN codes 2849 90 30 and ex 3824 30 00 (TARIC code 3824 30 00 10).

(32) Tungsten carbide, fused tungsten carbide and tungsten carbide simply mixed with metallic powder are compounds of carbon and tungsten produced by heat treatment. These products are intermediate products, used as input materials in the manufacture of hard metal components such as cemented carbide cutting tools and high-wear components, in abrasion-resistant coatings, in bits for oil drilling and mining tools as well as in dies and tips for the drawing and forging of metals.

(33) During the period considered the product under review was manufactured in the Union from 'virgin' raw materials (ore, concentrate, Ammonium Paratungstate — APT and oxide) under a process called 'virgin production' and from scrap under a process called 'recycling production'. The hard metal scrap is generated in the production process of hard metal companies, in the production process of tools and at end users of hard metal products. In the tungsten industry, the scrap can be recycled by using chemical recycling or the zinc reclamation process.

(34) Virgin tungsten carbide and chemically recycled tungsten carbide have identical physical and chemical characteristics and the same usage. In addition, in the manufacturing process there is no separation between tungsten carbide manufactured from virgin raw materials or from scrap.

(35) The zinc reclamation process generates tungsten carbide mixed with metallic powders, like for example cobalt. This manufacturing process is a physical-mechanical recycling process and the quality of the input (the scrap used) determines the quality of the tungsten carbide.

(36) Several interested parties claimed that zinc reclaimed powders should not be covered by this investigation due to different manufacturing costs, different level of demand, different customers and different applications as compared to the tungsten carbide obtained from virgin raw materials.

(37) Zinc reclaimed powders fall under the description of tungsten carbide mixed with metallic powders, one of the three product types covered by this investigation. The current investigation revealed that zinc-reclaimed powder has a lower chemical purity and a wider grain size distribution than tungsten carbide manufactured from virgin raw materials or from tungsten scrap through the chemical recycling process. The quality of the obtained powder depends on the quality of the input scrap. Although the zinc-reclaimed powders cannot be used in all the applications as tungsten carbide, it is used to produce certain hard metal tools as tungsten carbide. Therefore, it was concluded that this type of tungsten carbide has similar physical and chemical characteristics and similar applications as tungsten carbide manufactured from virgin raw materials or from scrap through the chemical recycling process. Moreover, the other elements mentioned in recital (36), like manufacturing cost and demand, are not relevant as such for the definition of the product under review. As concerns the alleged different customers for zinc reclaimed powders, the investigation revealed that three of the interested parties making this claim were in fact consumers of this type of product as well as of tungsten carbide. Therefore, the claim was rejected.

(38) Several interested parties argued that the current investigation should not cover tungsten carbide manufactured from scrap. It was claimed that the product under review imported from the PRC is almost exclusively manufactured from virgin raw materials while the Union industry produced tungsten carbide also from recycled material. These parties argued that the cost of production of tungsten carbide varies depending on the raw material used and that the collection, transport and processing of scrap results in a different cost structure.

(39) The cost of production depending on the input used (virgin raw materials or scrap) is not as such relevant for the product definition, but rather the product's technical, physical and chemical characteristics and basic applications. Furthermore, as confirmed during the assessment of the production process of the Union industry, there is no separation between tungsten carbide manufactured from virgin raw materials and tungsten carbide manufactured from scrap. Certain Union producers use only virgin raw materials in their manufacturing process, while others use scrap as well. As mentioned in recital (34), the tungsten carbide produced from virgin raw materials and the one produced from scrap have identical physical and chemical characteristics and the same usage. In any event, as stated in recital (21), none of the Chinese exporting producers replied to the questionnaire. The Commission was therefore not able to assess their manufacturing process and the product types exported to the Union. Therefore, the claim that the present investigation should not cover tungsten carbide manufactured from scrap was rejected.

(40) One user claimed that the investigation should take into account different commercial qualities of tungsten carbide as the different grades of tungsten carbide (such as ultrafine, standard grades and high temperature carburized grades) have an impact on prices and price comparability. Furthermore, it was claimed that the Chinese exporting producers are specialised in producing standard grades while the Union industry is producing all grades.

(41) This claim was not substantiated and could not be confirmed during the investigation. The user in question did not provide any evidence indicating a significant price difference between various product types/qualities. Also, this claim could not be confirmed by the information collected during the investigation. Furthermore, as stated in recital (21) none of the Chinese exporting producers submitted a reply to the questionnaire. The Commission was therefore not able to assess, among other elements, the type of products they manufacture, their cost structure and their sales prices. Therefore, this claim was rejected.

2.2. **Like product**

(42) The investigation concluded that the product under review manufactured and sold by the exporting producers to the Union is identical in terms of physical and chemical characteristics and uses to the product produced by the Union producers and sold on the Union market or to the one produced and sold in the analogue country.

(43) The Commission therefore concluded that these products are like products within the meaning of Article 1(4) of the basic Regulation.

3. **LIKELIHOOD OF A CONTINUATION OR RECURRENCE OF DUMPING**

3.1. **Dumping**

Analogue country

(44) None of the Chinese exporting producers was granted market economy treatment in the original investigation. According to Article 2(7)(a) of the basic Regulation, normal value for all exporting producers shall be determined on the basis of the price or constructed value in a market economy third country. For this purpose, a market economy third country had to be selected ('the analogue country').

(45) The United States of America ('USA') was selected as an analogue country in the previous expiry reviews. In the Notice of Initiation of the present review, the Commission proposed to use again the USA as an analogue country and invited interested parties to comment.

(46) The Commission sought cooperation in other potential analogue countries, contacted known producers of tungsten carbide in Japan and Canada and invited them to provide the necessary information. The Commission contacted the authorities of Israel, Japan, the USA, Canada, Republic of Korea, India and the Russian Federation and asked them to provide information regarding production of tungsten carbide in their respective countries. The Commission received information from Canada, Japan and USA on about 20 known producers of the like product in these countries, which were contacted and invited to reply to a questionnaire. Only one producer in the USA and one in Japan came forward and provided the information requested.

(47) Both markets, in the USA and Japan, were similar in terms of the number of domestic producers, the absence of anti-dumping measures in force and the significant quantities of imports from China. This indicated that both markets were competitive.

(48) However, while the Japanese producer sold only negligible quantities of the like product on its domestic market, the USA producer sold significant quantities on its domestic market during the RIP.

(49) Although several parties noted that the producer in the USA was related to the Union industry, this fact in itself is not an impediment for the selection of the USA as the analogue country. Indeed, no party submitted evidence that in this case this relationship had an impact on domestic prices in the USA and that, as a consequence, the USA would not be an appropriate analogue country.

(50) Several interested parties also claimed that no consideration was given to the production methods used in the USA in particular whether tungsten carbide was produced from virgin raw material or from scrap (as explained in recital (33)). These parties claimed that there was an impact of these different production methods on the demand and prices in the USA market, which should be taken into consideration. Furthermore, they claimed that the prices in the USA were at a particularly high level given that the USA producers had contracts with the USA army at high prices.

(51) As already mentioned in recital (34), tungsten carbide manufactured from virgin raw materials and tungsten carbide manufactures from scrap have identical physical and chemical characteristics and the same usage. Therefore, also in the USA, there was no separation between tungsten carbide manufactured from virgin raw materials and tungsten carbide manufactures from scrap in the manufacturing process. In addition, the investigation revealed that the production process had no impact on the demand and the prices.

(52) Furthermore, while tungsten carbide is indeed used for military applications, based on the information collected during the investigation, there was no evidence that any cooperation with the government had an impact on the domestic price of the analogue market producer.

(53) Finally, these interested parties did not propose any alternative analogue country.

(54) The arguments challenging the appropriateness of the USA as an analogue market were therefore rejected.

(55) On the basis of the above, taking into account the quantities sold on the domestic markets of producers in potential analogue countries at the time of the selection, given that the USA was also used as an analogue country in the original investigation and the fact that the Commission did not receive any comments from interested parties which were able to put into question the appropriateness of the USA as the analogue country, the USA was considered to be a suitable analogue country.

(56) Interested parties were informed on this selection. No comments were received.

Normal value

(57) In accordance with Article 2(2) of the basic Regulation, the Commission first examined whether the total volume of sales of the analogue country producer of the like product in the domestic market was representative during the review investigation period. These sales were considered representative if the total sales volume to independent customers represented at least 5 % of the total Chinese export sales volume of the product under review to the Union as established in recital (111) below during the review investigation period. On this basis the sales of the like product of the analogue country producer in the domestic market were representative.

(58) The Commission subsequently examined for the analogue country producer whether the like product sold domestically was profitable during the review investigation period and thus could be regarded as having been made in the ordinary course of trade pursuant to Article 2(4) of the basic Regulation.

(59) The volume of profitable sales of the like product represented less than 80 % of the total sales volume of the like product, thus the normal value was based on the actual domestic price calculated as a weighted average of profitable sales only.

Export price

(60) As mentioned above in recital (21), due to the non-cooperation of the Chinese exporting producers, the export price was based on facts available, in accordance with Article 18 of the basic Regulation, i.e. on the information from Eurostat revised with the data received from users that imported tungsten carbide from China.

(61) Exports from China were made under both, the inward processing procedure ([1]) ('IPP') and the normal regime. As shown in recital (111), since the exports made under the normal regime represented only 0,1 % of the Union market share during the RIP, they were considered negligible and calculations were performed on the export price under the IPP only.

([1]) The tungsten carbide that is imported under IPP is not subject to the payment of customs and anti-dumping duties, and is used in the manufacturing process of tools which are exported outside EU.

Comparison

(62) The Commission compared the normal value and the export price thus established on an ex-works basis. Where justified for the purpose of a fair comparison, the export price and normal value were adjusted for differences affecting prices and price comparability in accordance with Article 2(10) of the basic Regulation. Adjustments were made for transport costs (domestic and ocean freight) and export tax of 5 % (repealed in May 2015) based on the facts available, in accordance with Article 18 of the basic Regulation, i.e. the request for review.

(63) Several interested parties claimed that the Chinese producers have a comparative advantage regarding the price of the raw material, namely APT and therefore lower production costs. This claim was also reiterated after the disclosure. They also claimed that Chinese exporting producers had a more efficient production and economies of scale. These elements should be taken into consideration when calculating the dumping margin.

(64) As noted in the recital (21) above, none of the Chinese exporting producers/groups of exporting producers provided the Commission with a questionnaire reply. In addition, none of those interested parties provided evidence which supported their claim. Therefore, it was not possible to evaluate any alleged comparative advantage *vis-à-vis* the analogue country producer in the production process of the Chinese producers. The argument was therefore rejected.

(65) After disclosure, several users claimed that differences in quality for uses, costs of production and sales must be taken into account when calculating dumping and injury margins.

(66) In this regard, as explained above in recitals (34) and (37), the three product types have similar physical and chemical characteristics and similar applications. Moreover, as stated in recital (21) none of the Chinese exporting producers submitted a reply to the questionnaire. The Commission was therefore not able to assess, among other elements, the type of products they manufacture, the differences in their quality and in their end uses, the cost structure and their sales prices. Therefore, this claim was rejected

(67) Furthermore, several users claimed after disclosure that by not using product control numbers in this investigation, the Commission departed from its normal practice.

(68) The original investigation established that there was no need to use different product control numbers in order to differentiate within the product types for the calculation of, inter alia, dumping margins.

(69) The current investigation confirmed that no change in factual circumstances that would have justified a deviation from the original methodology took place. In addition, due to the non-cooperation of the Chinese exporting producers as explained in recital (21), no comparison per product type was possible between the product produced and sold in the analogue market and the product exported from China into the Union. Therefore, the claim was rejected.

Dumping margin

(70) The Commission compared the weighted average normal value to the weighted average export price as established above in accordance with Article 2(11) and (12) of the basic Regulation.

(71) On this basis, the weighted average dumping margin expressed as a percentage of the cost, insurance, freight ('CIF') Union frontier price, duty unpaid, was above 40 %.

(72) Several interested parties claimed that, given the shift by Chinese exporting producers to manufacture downstream products, it was highly unlikely that Chinese exporting producers would sell at dumped prices.

(73) It should be noted that the dumping margin established above in recital (71) was in accordance with the methodology defined in the Article 2 of the basic Regulation. None of the Chinese exporting producers cooperated and provided the relevant information to calculate dumping margins. The parties in question did also not provide any evidence in support of their claim. The claim was rejected.

(74) Several interested parties claimed that the data requested from the Chinese exporting producers and the analogue country producer was incomplete and did not allow a proper comparison by product type. They claimed data should have been collected on a product type basis.

(75) This claim was not substantiated. The investigation established, as in previous investigations concerning the same product, that the differences in types/qualities of tungsten carbide did not have a significant an impact on cost and prices. The interested parties in question did also not provide any evidence indicating such significant price difference between various product types/qualities. Furthermore, as stated in recital (21) none of the Chinese exporting producers submitted a reply to the questionnaire and the Commission was therefore not able to ascertain the type of products manufactured by the Chinese exporting producers and any impact on cost and prices. The claim was rejected.

3.2. **Development of imports should measures be repealed**

(76) In order to establish the likelihood of recurrence of dumping should measures be repealed, the following elements were analysed: (i) production, production capacity and spare capacity in China, (ii) stockpiling of raw materials and export tax on tungsten concentrate and (iii) Chinese exports and attractiveness of the Union market, (iv) development of consumption in China and its other main export markets.

3.2.1. *Production, production capacity and spare capacity in the PRC*

(77) In the absence of cooperation from the Chinese exporting producers, production, production capacity and spare capacity in China were established on basis of facts available in accordance with Article 18 of the basic Regulation and on the basis of the following sources: (i) information collected during the sampling exercise of the exporting producers, (ii) information provided in the request for review (based on the market intelligence of the applicant), and (iii) publicly available information, i.e. the Metal Bulletin, specialised on market information concerning global steel, non-ferrous and scrap metals markets.

(78) During the RIP production of tungsten carbide in China was estimated at around 30 000 tonnes, production capacity from 42 000 to 50 000 tonnes and spare capacity therefore from 12 000 to 20 000 tonnes. The estimated spare capacity represented thus between 94 % and 156 % of the Union consumption (as established in recital (107)) during the RIP.

3.2.2. *Stockpiling of raw materials and export tax on tungsten concentrate*

(79) On the basis of publicly available information ([1]), the Commission found that during and after the RIP, China held a stockpile of raw materials (i.e. APT and tungsten concentrates), from which more than 25 000 tons of tungsten carbide could be produced and therefore create a substantial volume available in short term. The investigation did not reveal any indication of an increase of the worldwide demand to produce tungsten carbide from these raw materials.

(80) In addition, the PRC controls 60 % of the world's tungsten ore reserves and, at the same time, levies an export tax of 20 % on tungsten concentrate ([2]).

3.2.3. *Chinese exports and attractiveness of the Union market*

(81) Chinese export volumes and attractiveness of the Union market were established on basis of facts available in accordance with Article 18 of the basic Regulation, on the basis of the following sources: (i) the Chinese Export Statistics Database, (ii) the information from Eurostat revised with the data received from users that imported tungsten carbide from China as described in recital (106), (iii) the information collected during the sampling exercise of the exporting producers, (iv) the information on Chinese spot market prices collected during the investigation and (v) a Chinese price offer to Japan collected during the investigation.

([1]) Metal Bulletin: (1) https://www.metalbulletin.com/Article/3646910/2017-PREVIEW-Chinese-tungsten-prices-will-continue-journey-of-recovery-as-market-reaches-consensus-on.html and (2) https://www.metalbulletin.com/Article/3596231/Chinas-SRB-tungsten-concentrate-stockpiling-boosts-domestic-export-prices.html

([2]) https://minerals.usgs.gov/minerals/pubs/commodity/tungsten/mcs-2015-tungs.pdf

(82) The main known Chinese exporting producers exported around 20 % of their production of the product under review and the ratio of exports to the Union and to the other third countries (Japan, the Republic of Korea, the USA, etc.) was around 1:3.

(83) Furthermore, Chinese exports of the product under review to the other third countries increased by 10 % during the period considered.

(84) Despite the anti-dumping measures in force, China continued to be the largest tungsten carbide exporting country to the Union. Indeed, imports of the product under review from China in the RIP were more than five times the imports in 2012 (or 406 %), representing an increase of 6,9 percentage points in terms of Union's market share (as established in recital (109), from 2,0 % in 2012 to 8,9 % in RIP). This shows the continued Chinese interest in the Union market. The Union is the second largest tungsten carbide export market for China after Japan.

(85) To assess the attractiveness of the Union market in terms of prices, Chinese export prices to the Union were compared to Chinese domestic prices and Chinese export prices to other third countries.

(86) The average Chinese domestic prices in the RIP were up to 19 % lower than Chinese export prices to the Union.

(87) The Chinese export prices charged to other third markets in the RIP were up to 25 % lower than Chinese export prices to the Union.

(88) The fact that during the RIP the Chinese export prices of the product under review to the Union market have been higher than the Chinese domestic prices and their export prices to other third markets is a strong indication that the Union market is attractive for Chinese exporting producers.

(89) In addition it should be noted that even in the absence of anti-dumping duties in other third countries the Union is still the second largest tungsten carbide export market for China after Japan, as stated above in recital (84). Moreover, in their post-disclosure submission several users agreed that the Chinese product will always be demanded on the Union market.

(90) Several interested parties claimed that the level of attractiveness of the Union market for Chinese producers is rather low. These parties claimed that this is corroborated by the fact that for the last 10 years Chinese exporting producers did not resort to any circumvention or absorption methods, that Chinese exporting producers did not significantly increase their exports or market shares in the Union market or did not decrease their export prices to the Union.

(91) Although circumvention or absorption practices are valid indicators showing whether certain exporting producers may have an interest in a specific market despite measures in force, they are as such not indispensable when establishing the attractiveness of such market to third country imports. The other allegations made by these parties could not be confirmed by the findings of this investigation which, as explained in the recital (109) and (114) below, established an increase in the market share of Chinese exporting producers and the decrease of their export prices to the Union during the period considered. The argument was therefore rejected.

(92) Several interested parties claimed that there are no anti-dumping duties on tungsten carbide in any other markets, hence should the measures lapse it is unlikely that a part of this spare capacity will be used to increase exports to the Union.

(93) First, Chinese exporting producers could already export to these other third countries without anti-dumping duties. Second, as noted below in the recital (107) the consumption in the Union market increased by 15 % during the period considered. Third, as explained below in the recitals (111)-(112), the majority of imports from the PRC are made under IPP (without the duties), which increased by 477 % during the period considered. Therefore, should the antidumping duties be lifted, the Chinese exports to the EU would likely increase. The argument was rejected.

3.2.4. *Development of consumption in China and its other main export markets*

(94) Regarding the likely evolution of domestic consumption in China, the investigation did not bring into light any elements that could indicate any significant increase of domestic demand in China in the near future. Following the increase of Chinese exports of tungsten carbide to the Union (406 %) and other third countries (10 %) (as explained above in recitals (83) and (84)), the Commission concluded that domestic demand in China could not absorb the available spare capacity.

(95) Regarding the likely evolution of consumption in other main Chinese export markets (Japan, Republic of Korea and the USA), the investigation did not bring into light any elements that could indicate any significant increase of domestic demand in these markets. The increase of Chinese export volume to these countries was 8 % during the period considered, however, Chinese export volumes to the USA decreased by 35 % during the same period. Taking into account the fact that China is the main producer of tungsten in the world (as explained below in recital (192)) and even if the domestic production and import data from these countries is not known, the Commission concluded that these markets could not absorb significant level of the available spare capacity existing in China.

3.2.5. *Conclusion*

(96) In conclusion, the dumping margin established in the RIP, the significant spare capacity available in China, and the established attractiveness of the Union market, indicate that a repeal of the measures would likely result in a continuation of dumping, and that dumped exports will enter the Union market in significant quantities. It is therefore considered that there is a likelihood of continuation of dumping should the current anti-dumping measures be allowed to lapse.

4. LIKELIHOOD OF A CONTINUATION OR RECURRENCE OF INJURY

4.1. **Definition of the Union industry and Union production**

(97) Within the Union, the like product is manufactured by nine companies or groups of companies, out of which six companies are producing and selling on the free market and the remaining three companies are producing tungsten carbide mainly as an input for downstream products ('captive use'). They are deemed to constitute the 'Union industry' within the meaning of Article 4(1) of the basic Regulation.

(98) One user highlighted the fact that one of the Union producers is using a different CN code (8101 10 00) which is not covered by the current investigation, when selling its products in the Union. It, therefore, implied that this Union producer should not be part of the Union industry as defined under recital (97).

(99) CN codes used when selling products within the Union are irrelevant for the definition of the product under review and for defining the Union industry. What matters is whether the product manufactured by the Union producers falls under the definition of the product under review stated in recital (31). The investigation revealed that the product manufactured by this Union producer falls indeed under the said definition. Consequently, this Union producer is part of the Union industry as defined in recital (97).

4.2. **Union consumption**

(100) As mentioned in recital (97) some of the Union producers are mainly producing the product under review for the captive use as primary raw material for the production of various downstream products and therefore captive and free market consumption were analysed separately.

(101) The distinction between captive and free market is relevant for the injury analysis because products destined for captive use are not exposed to direct competition from imports, and transfer prices are set within the groups according to various price policies and are, therefore, not reliable. By contrast, production destined for the free market is in direct competition with imports of the product under review and prices are free market prices.

(102) On the basis of the data obtained from the cooperating Union producers and the applicant for the entire activity of the Union industry (captive and free) the Commission determined that around 31 % of the total Union production was destined for captive use.

(103) Furthermore, in the free market the Union industry is producing under normal agreements (the Union industry owns the raw material) and under tolling agreements (the customer of tungsten carbide is the owner of the raw material which pays a processing fee to the Union producers for the conversion of the raw material into tungsten carbide). The tolling agreements are used for recycling activities as the customers are supplying the scrap to the Union industry for processing. During the review investigation period, 23 % of the total production volume was manufactured under a tolling agreement, out of which around 89 % was destined for the Union market. It follows that the normal production for the free market is around 46 % of total production.

4.2.1. *Captive consumption*

(104) The Commission established the Union captive consumption on the basis of the captive use and captive sales on the Union market of all known producers in the Union. On this basis, the Union captive consumption developed as follows:

Table 1

Captive consumption

	2012	2013	2014	RIP
Captive consumption (tonnes)	2 249	2 461	2 599	2 653
Index (2012 = 100)	*100*	*109*	*116*	*118*

Source: Questionnaire replies, the information provided by the applicant and Eurostat.

(105) During the period considered, the Union captive consumption increased by 18 % reaching 2 653 tonnes in the review investigation period.

4.2.2. *Free market consumption*

(106) The Commission established the Union free market consumption on the basis of: (a) the free sales volume of all known Union producers in the Union and (b) total import volumes into the Union as reported by Eurostat. Concerning the PRC, import volumes from Eurostat were revised taking into account the verified questionnaire replies of the cooperating users, as these reported higher import volumes compared to Eurostat.

(107) On this basis, the Union free market consumption developed as follows:

Table 2

Free market consumption

	2012	2013	2014	RIP
Free market consumption (tonne)	11 151	11 778	13 815	12 814
Index (2012 = 100)	*100*	*106*	*124*	*115*

Source: Questionnaire replies and Eurostat.

(108) The Union consumption on the free market increased between 2012 and 2014 by 24 % and then decreased in the RIP by 7 % as compared to 2014 reaching 12 814 tonnes. Overall, the consumption on the free market increased by 15 % over the period considered.

4.3. **Imports from the country concerned**

4.3.1. *Volume and market share of the imports from the country concerned*

(109) The Commission established the volume of imports on the basis of revised Eurostat data by taking into account the verified questionnaire replies of the cooperating users, as these reported in total higher import volumes compared to Eurostat as also mentioned in recital (106). Imports into the Union from the country concerned developed as follows:

Table 3

Import volume and market share

	2012	2013	2014	RIP
Chinese imports (tonnes)	225	303	905	1 140
Index (2012 = 100)	*100*	*135*	*402*	*506*
Chinese market share (%)	2,0	2,6	6,6	8,9
Index (2012 = 100)	*100*	*127*	*325*	*441*

Source: Eurostat and questionnaire replies.

(110) Imports from the PRC increased significantly in the period considered. In the review investigation period 1 140 tonnes were imported from the PRC, more than five times than the volume of imports from the PRC at the beginning of the period considered (225 tonnes). The increase of the volume of imports exceeded the increase in consumption and, therefore, the Chinese market share increased by 6,9 percentage points during the period considered, from 2,0 % in 2012 to 8,9 % during the review investigation period.

4.3.1.1. Imports regimes

(111) The volume from the PRC were imported via normal regime and IPP, as shown below:

Table 4

Import volume and market share per import regime

	2012	2013	2014	RIP
Normal import regime				
Chinese imports (tonnes)	29	8	10	10
Index (2012 = 100)	*100*	*27*	*34*	*33*
Chinese market share (%)	0,3	0,1	0,1	0,1
Index (2012 = 100)	*100*	*25*	*28*	*29*

	2012	2013	2014	RIP
Inward processing process				
Chinese imports (tonnes)	196	295	895	1 131
Index (2012 = 100)	*100*	*151*	*457*	*577*
Chinese market share (%)	1,8	2,5	6,5	8,8
Index (2012 = 100)	*100*	*143*	*369*	*502*

Source: Eurostat and questionnaire replies.

(112) The quasi totality of imports from the PRC is made under IPP, which increased almost five times in volume terms during the period considered. The imports under the normal regime were negligible throughout the period considered (below 0,1 % market share), and even showed a decreasing trend.

4.3.2. *Prices of the imports from the country concerned and price undercutting*

(113) The Commission established the trend of the prices of Chinese imports on the basis of Eurostat taking also into account the verified questionnaire replies of the cooperating users. As import volumes from the PRC under normal import regime were negligible they were disregarded in the determination of the average import price and in the price undercutting calculation.

(114) The average price of imports into the Union from the PRC developed as follows:

Table 5

Import prices (EUR/tonne) for IPP

	2012	2013	2014	RIP
Chinese import prices (EUR/tonne)	39 418	35 465	34 414	33 327
Index (2012 = 100)	*100*	*90*	*87*	*85*

Source: Eurostat and questionnaire replies.

(115) The average price of the product imported under IPP, overall, decreased by 15 % over the period considered. This decrease in prices followed the decrease in the price of raw materials.

(116) On the basis of the information provided by the cooperating users and the import regimes used for imports from the PRC, all imports from the PRC of the product under review are made under normal agreements. Therefore, and for the purpose of a fair comparison, in the calculation of the price undercutting sales of the Union industry made under tolling agreements were disregarded. Furthermore, as mentioned in recital (113), the imports under normal regime were negligible throughout the period considered and were, consequently, disregarded. Therefore, the calculation of undercutting was based on the IPP import prices only.

(117) The Commission determined the price undercutting during the review investigation period by comparing:

— the weighted average sales prices of tungsten carbide sold by the Union producers charged to unrelated customers on the Union market under normal agreements, adjusted to an ex-works level; and

— the corresponding weighted average prices of the imports from Eurostat taking also into account the verified questionnaire replies of the cooperating users, with appropriate adjustments for post-importation costs.

(118) The result of the comparison was expressed as a percentage of the Union industry average weighted price during the review investigation period and was on average 13,2 %. This calculation takes into consideration the fact that zinc-reclamation powders were not imported from the PRC during the review investigation period and were, thus, excluded.

4.4. **Imports from other third countries**

(119) The volume of imports into the Union from third countries other than the country concerned is shown in the table below. The quantity and the price trend are based on Eurostat and cover all import regimes (normal regime, inward processing process and outward processing process). The majority of the import volume from third countries is imported under the normal regime.

Table 6

Imports from other third countries

	2012	2013	2014	RIP
Imports (tonnes)	1 896	1 402	1 724	1 359
Index (2012 = 100)	*100*	*74*	*91*	*72*
Market share (%)	17,0	11,9	12,5	10,6
USA market share (%)	4,2	2,8	4,7	4,8
Average price (EUR/tonne)	54 525	52 342	40 543	39 878
Index (2012 = 100)	*100*	*96*	*74*	*73*
South Korea market share (%)	1,4	2,3	2,0	2,4
Average price (EUR/tonne)	49 249	38 022	39 256	41 316
Index (2012 = 100)	*100*	*77*	*80*	*84*
Vietnam market share (%)	1,3	1,0	1,1	0,9
Average price (EUR/tonne)	44 633	35 110	36 869	37 352
Index (2012 = 100)	*100*	*79*	*83*	*84*

Source: Eurostat.

(120) Total imports from third countries decreased by 28 % over the period considered. Their trend did not follow the general market trend triggered by the increasing consumption as described in recital (108). Only in 2014 the volume of imports increased as compared to 2013 by 23 % but then it decreased by 21 % in the review investigation period as compared to 2014. Thereby, the market share of these imports decreased from 17,0 % to 10,6 % during the period considered.

(121) The USA and South Korea did not follow this overall trend and slightly increased during the period considered, however reaching a lower level in the review investigation period as compared to the Chinese imports. In addition, the average import price from the USA and South Korea decreased during the period considered, however remaining consistently above the average selling price of Chinese exports imported under IPP.

4.5. **Economic situation of the Union industry**

4.5.1. *General remarks*

(122) In accordance with Article 3(5) of the basic Regulation, the examination of the impact of the dumped imports on the Union industry included an evaluation of all economic indicators having a bearing on the state of the Union industry during the period considered.

(123) As stated in recital (97), the Union industry is made of nine companies or group of companies out of which six companies are producing and selling on the free market and the remaining three companies are producing mainly for the captive use. Three of the Union producers active on the free market and the three producers on the captive market are downstream integrated. In addition, as stated in recital (22), the Commission decided to investigate all six Union producers operating in the free market for the determination of possible injury suffered by the Union industry.

(124) For the injury determination, the Commission distinguished between macroeconomic and microeconomic injury indicators. The Commission evaluated macroeconomic indicators relating to the whole Union industry on the basis of information provided by the applicant. 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 which was verified. Both sets of data were found representative of the economic situation of the Union industry.

(125) The macroeconomic indicators are: production, production capacity, capacity utilisation, sales volume, market share, growth, employment, productivity and magnitude of the dumping margin.

(126) The microeconomic indicators are: average unit prices, average unit cost, labour costs, inventories, profitability, cash flow, investments, return on investments, and ability to raise capital.

(127) For some macroeconomic indicators relating to the Union industry, the Commission analysed separately data related to the free and the captive market and made a comparative analysis. These factors are: sales and market share. However, other economic indicators could meaningfully be examined only by referring to the whole activity, including the captive use of the Union industry because they depend on the whole activity, whether the production is captive or sold on the free market. These factors are: production, capacity, capacity utilisation, cash flow, investments, return on investments, employment, productivity, and labour costs. For these factors, analysis of the whole Union industry is warranted in order to establish a complete injury picture of the Union industry, as the data in question cannot be separated between captive and free sales.

(128) For some microeconomic indicators (average unit price, average unit cost and profitability), the analysis distinguished between normal and tolling agreements. This was due to the fact that the tolling agreements do not include the cost of raw materials and prices are in fact conversion fees.

(129) Several interested parties claimed that the tolling activity should not be covered by the investigation arguing that as the customer is the owner of the raw materials, it is questionable who the real producer is. Furthermore, it was claimed that the cost of manufacturing for tolling is lower than the cost of manufacturing for normal production where the Union industry remains the owner of the raw material (as the cost of the raw material is not included under the tolling agreements) and the two business models should not be mixed in the injury analysis.

(130) The investigation revealed that in the manufacturing process of the Union producers, it is not possible to separate the tungsten carbide produced under normal agreements from tungsten carbide produced under tolling agreements. The customers will not know if the tungsten carbide it received is obtained from scrap or from virgin raw materials. Only the zinc reclaimed process works with batches and, in this case, the customer receives the tungsten carbide produced from its own scrap. However, the volumes produced under the zinc reclaimed process under tolling were very low (less than 3 %) as compared to the total production of the Union industry during the period considered. Therefore, the quantities produced under this process under tolling do not distort the general assessment of the Union production. Furthermore, the share of the tolling production in the total Union production differs from one year to another depending on the availability of the raw materials on the market.

(131) Concerning the difference between the cost of manufacturing for tolling and the cost of manufacturing for normal production, this is not a reason to exclude the tolling activity from the injury analysis. In any event this difference is reflected in the analysis. Therefore, the claim that tolling should not be covered by the investigation is rejected.

4.5.2. *Macroeconomic indicators*

4.5.2.1. Production, production capacity and capacity utilisation

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

Table 7

Production, production capacity and capacity utilisation

	2012	2013	2014	RIP
Production (tonnes)	12 667	13 903	15 068	14 668
Index (2012 = 100)	*100*	*110*	*119*	*116*
Production capacity (tonnes)	19 225	20 100	21 245	21 565
Index (2012 = 100)	*100*	*105*	*111*	*112*
Capacity utilisation (%)	66	69	71	68
Index (2012 = 100)	*100*	*105*	*108*	*103*

Source: Questionnaire replies and the information provided by the applicant.

(133) The data in the above table includes both the normal and tolling production, for virgin and recycling products.

(134) The total production volume increased between 2012 and 2014 by 16 %, and then slightly decreased by 3 % from 2014 to the review investigation period reaching 14 668 tonnes. Overall, production volume increased by 16 % during the period considered.

(135) The production capacity increased as well during the period considered by 12 % reaching 21 565 tonnes in the review investigation period. Several Union producers also have plans to continue to increase their production capacity in the following 3-4 years.

(136) Moreover, the capacity utilisation rate increased by 8 % between 2012 and 2014 and then slightly decreased in the review investigation period as compared to 2012. Overall, the capacity utilisation rate increased by 3 % during the period considered to 68 % in the review investigation period.

4.5.2.2. Sales volume and market share

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

Table 8

Free market sales volume and market share

	2012	2013	2014	RIP
Sales volume on the Union free market (tonnes)	9 030	10 073	11 186	10 314
Index (2012 = 100)	*100*	*112*	*124*	*114*
Market share (%)	81,0	85,5	81,0	80,5
Index (2012 = 100)	*100*	*106*	*100*	*99*

Source: Questionnaire replies, the information provided by the applicant and Eurostat.

(138) Sales volume on the free market between 2012 and 2014 increased by 24 % and then decreased by 8 % between 2014 and review investigation period. Overall, the sales volume increased by 14 % during the period considered reaching 10 314 tonnes in the review investigation period. This development followed the increase in the Union consumption during the same period.

(139) The market share of the Union industry on the free market increased by 4,5 percentage points between 2012 and 2013 and then decreased by 5 percentage points by the end of the review investigation period reaching 80,5 %. Overall, the market share of the Union industry on the free market slightly decreased by 0,5 percentage points during the period considered.

(140) As far as the captive market is concerned, the volume and market share developed over the period considered as follows:

Table 9

Captive volume and market share

	2012	2013	2014	RIP
Captive consumption (tonnes)	2 249	2 461	2 599	2 653
Index (2012 = 100)	*100*	*109*	*116*	*118*
Market share (out of total captive and free markets) (%)	17	17	16	17
Index (2012 = 100)	*100*	*103*	*94*	*102*

Source: Questionnaire replies, the information provided by the applicant and Eurostat.

(141) The Union industry sales volume on the captive market (composed of captive use and captive sales of the Union industry) increased by 18 % during the period considered, slightly above the increase in total consumption for both captive and free market. As a consequence, the Union industry's captive market share expressed as a percentage of total consumption (both captive and free market) remained almost constant during the period considered at 17 %.

4.5.2.3. Growth

(142) The sales volume of the Union industry on the free market followed closely the evolution of the Union consumption and increased by 14 % over the period considered. As a consequence, the Union industry maintained a rather stable level of market share throughout the period considered, except in 2013 when it increased by 4,5 percentage points as compared to 2012.

4.5.2.4. Employment and productivity

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

Table 10

Employment and productivity

	2012	2013	2014	RIP
Number of employees	681	687	700	704
Index (2012 = 100)	*100*	*101*	*103*	*103*
Productivity (tonnes/employee)	19	20	22	21
Index (2012 = 100)	*100*	*109*	*116*	*112*

Source: Questionnaire replies and the information provided by the applicant.

(144) The number of employees in the Union industry slightly increased during the period considered by 3 % to 704 employees in the review investigation period. As a result of a higher increase in production, the productivity increased over the period considered by 12 %.

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

(145) The investigation established in recital (71) that imports of the product under review from the PRC continued to enter the Union market at significant dumped prices.

(146) The Union industry recovered to a large extent from the effects of past dumping and the anti-dumping measures in force proved to be effective. Thus, the Union industry increased its sale volume by 14 %. Its market share slightly decreased by 0,5 percentage points on the free market over the period considered.

4.5.3. *Microeconomic indicators*

4.5.3.1. Prices and factors affecting prices

(147) The weighted average unit sales prices of the Union producers to unrelated customers for normal agreements in the Union free market developed over the period considered as follows:

Table 11

Weighted average unit sales price

	2012	2013	2014	RIP
Weighted average unit sales price in the Union (EUR/tonne)	47 296	41 686	41 118	36 160
Index (2012 = 100)	*100*	*88*	*87*	*76*

Source: Questionnaire replies.

(148) The weighted average unit sales prices of the Union industry for normal volumes decreased by 24 % during the period considered. The decrease in prices followed the decrease in the price of raw materials.

(149) The weighted average unit conversion fee of the Union producers to unrelated customers for tolling agreements in the Union free market developed over the period considered as follows:

Table 12

Weighted average unit conversion fee

	2012	2013	2014	RIP
Weighted average unit conversion fee in the Union (EUR/tonne)	12 792	13 497	13 669	13 452
Index (2012 = 100)	*100*	*106*	*107*	*105*

Source: Questionnaire replies.

(150) The weighted average unit conversion fee of the Union industry for tolling volumes increased by 5 % during the period considered.

(151) As concerns the cost of production and the conversion cost of the Union industry, the Commission had to provide this data in indexes as this constitutes business confidential information.

(152) The weighted average unit cost of production of the Union industry for normal agreements developed over the period considered as follows:

Table 13

Weighted average unit cost of production for normal agreements

	2012	2013	2014	RIP
Index (2012 = 100)	*100*	*82*	*85*	*78*

Source: Questionnaire replies.

(153) Over the period considered the weighted average unit cost of production for normal production decreased by 22 %. The cost of production followed the decrease in the price of raw materials as well.

(154) The weighted average unit conversion cost of the Union industry for tolling agreements developed over the period considered as follows:

Table 14

Weighted average unit conversion costs for tolling agreements

	2012	2013	2014	RIP
Index (2012 = 100)	*100*	*105*	*97*	*99*

Source: Questionnaire replies.

(155) Over the period considered the weighted average unit conversion fee for tolling production decreased by 1 %.

4.5.3.2. Labour costs

(156) The average labour costs of the Union producers developed over the period considered as follows:

Table 15

Average labour costs per employee

	2012	2013	2014	RIP
Average labour costs per employee	65 626	70 243	73 736	71 898
Index (2012 = 100)	*100*	*107*	*112*	*110*

Source: Questionnaire replies.

(157) Average labour costs increased by 12 % between 2012 and 2014 and then decreased by 2 % in the review investigation period as compared to 2014. Overall, the average labour costs increased by 10 % during the period considered.

4.5.3.3. Inventories

(158) Stock levels of the Union producers developed over the period considered as follows:

Table 16

Inventories

	2012	2013	2014	RIP
Closing stocks (tonnes)	1 201	1 095	923	1 069
Index (2012 = 100)	*100*	*91*	*77*	*89*
Closing stocks as a percentage of production (%)	9	9	7	8
Index (2012 = 100)	*100*	*91*	*77*	*89*

Source: Questionnaire replies.

(159) The level of inventories decreased by 11 % over the period considered. The inventories represented 8 % of the volume of production in the review investigation period and it was found to be at a normal level.

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

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

Table 17

Profitability, cash flow, investments and return on investments

	2012	2013	2014	RIP
Profitability of total sales in the Union to unrelated customers — normal and tolling (% of sales turnover)	11,9	16,8	13,6	11,6
Index (2012 = 100)	*100*	*140*	*114*	*97*
Cash flow (EUR)	63 654 025	57 060 905	54 583 859	40 680 386
Index (2012 = 100)	*100*	*90*	*86*	*64*
Investments (EUR)	19 902 447	21 890 061	25 810 548	15 752 867
Index (2012 = 100)	*100*	*110*	*130*	*79*
Return on investments (%)	37,1	46,0	35,9	20,1
Index (2012 = 100)	*100*	*124*	*97*	*54*

Source: Questionnaire replies.

(161) The Commission established the profitability of the 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 for the total activity of the Union industry (normal and tolling production). The profitability of the normal activity which represented 77 % in the total production in the RIP was lower than the profitability of the tolling activity. In addition, it should be noted that the profitability of the normal activity was lower than the target profit of 10 %.

(162) The Union industry was profitable during the period considered having a fluctuating profitability rate. Thus, profitability increased in 2013 as compared to 2012 by 4,8 percentage points reaching 16,8 % and then it decreased in the review investigation period by 5,1 percentage points to 11,6 %. Overall, the profitability decreased by 0,3 percentage points during the period considered.

(163) The cash flow, which is the ability of the Union producers to self-finance their activities, remained positive during the period considered. However, it decreased significantly during the period considered by 36 %

(164) The investments increased by 30 % between 2012 and 2014 and then it decreased by 39 % by the end of the review investigation period as compared to 2014. Overall, the investment decreased by 21 % over the period considered. During the period considered the Union industry's investments exceeded EUR 80 million. Investments were made to obtain a better utilisation of the raw materials and thus to obtain a decrease in the cost of manufacturing, like improvements in the sorting operations, improvements in the recycling facility for the vacuuming activity and improvements in the crushing activity. In addition, the Union industry made investments to be compliant with the environmental rules applicable in the Union. Investments were also made to improve efficiency by replacing old technology with a more efficient one from an energy consumption point of view. Moreover, investments were made in replacing several furnaces to be more flexible in mixing the hard with the soft scrap and to process a wider range of scrap.

(165) The return on investments is the profit in percentage of the net book value of investments. It was positive during the period considered. It increased by 24 % in 2013 as compared to 2012 and then it decreased by the end of the review investigation period by 25,9 percentage points. Overall, the return on investments decreased by 17 percentage points during the period considered.

4.5.4. *Conclusion on injury*

(166) Due to the anti-dumping duties in place, the Union industry continued to recover from the effect of past injurious dumping.

(167) Sales volume and market share displayed a positive development during the period considered as the Union industry managed to follow the increase in consumption. Also production and capacity utilisation increased over the period considered.

(168) The injury indicators related to the financial performance of the Union industry (profitability, cash flow and return on investment) were positive during the period considered. Nevertheless, the cash flow had a decreasing trend.

(169) In view of the above, the Commission concluded that the Union industry recovered from past dumping and that it did not suffer material injury during the period considered within the meaning of Article 3(5) of the basic Regulation.

4.6. **Likelihood of recurrence of injury**

4.6.1. *Preliminary remarks*

(170) The investigation has shown that the Chinese imports were made at dumped price levels during the review investigation period and that there was a likelihood of continuation of dumping should measures be allowed to lapse.

(171) Since the Union industry did not suffer material injury, it was assessed whether there would be a likelihood of recurrence of injury should measures against the PRC be allowed to lapse in accordance with Article 11(2) of the basic Regulation.

(172) To establish the likelihood of recurrence of injury the following elements were analysed: (i) the spare capacity and stockpiling of raw materials in the PRC (ii) the possible price levels of Chinese imports to the Union market of the product under review and (iii) their impact on the Union industry

4.6.2. *Spare capacity and stockpiling of raw materials in the PRC*

(173) As explained in recital (78), the PRC has a significant spare capacity for the production of tungsten carbide that can be estimated between 12 000 to 20 000 tonnes, representing between 94 % and 156 % of the Union consumption during the review investigation period.

(174) In addition, as stated in recital (79), the PRC has a stockpile of raw material of tungsten carbide (i.e. APT and tungsten concentrates), from which more than 25 000 tons of tungsten carbide could be produced in a short period of time.

(175) In the absence of anti-dumping measures, the spare capacity coupled with the stockpile of raw materials would likely to be used to produce for export to the Union, since it is an attractive market for Chinese exporting producers as described in recitals (85) and following. There are also no indications that there would be an increased demand for tungsten carbide in other third country markets, while the consumption in the Union showed an increasing trend and as also mentioned in recital (84) the Union market was the PRC's largest export market after Japan during the review investigation period. Imports from the PRC are, therefore, likely to re-enter the Union market in significant quantities.

(176) After disclosure, several users claimed that the Chinese producers will prefer supplying Chinese downstream producers than exporting the raw material to the Union market. However, as this claim was not substantiated with any evidence, it was therefore rejected.

4.6.3. *Possible price levels of Chinese imports to the Union market*

(177) As an indication of the price level at which it is likely that Chinese tungsten carbide will be imported in the Union market should the measures be repealed, the Chinese import prices to the Union during the review investigation period were taken into account. Under the IPP regime, these were undercutting the Union industry's prices by around 13,2 % on average. Moreover, when considering possible prices under the normal import regime, without anti-dumping duties and with customs duties included, the undercutting would also be significant, amounting to 8,6 % on average.

(178) Furthermore, the price levels of Chinese imports to other third countries and the Chinese prices on the domestic market were analysed. In both cases, the Chinese prices were found to be lower than the Union industry's prices by up to 33 % compared to other third countries, and by up to 28 % compared to Chinese domestic prices.

4.6.4. *Impact on the Union industry*

(179) The significant spare capacity and the stockpiling of raw materials in the PRC explained in recitals (173) and (174) coupled with the price differential described in recitals (85) to (87) and (177), will incentivize the Chinese exporting producers to export significant volumes at low prices at dumped levels in a short period of time on the Union market in the absence of anti-dumping measures.

(180) These high volumes of cheap tungsten carbide will exert a significant price pressure on the Union industry that will have to decrease its prices to still be able to sell in the Union. At the same time, however, the Union industry will also lose volumes as it will not be able to decrease its prices to the same low level as the Chinese export prices. It is recalled that, as stated in recital (80), the Chinese exporting producers have access to cheaper raw materials than the Union industry as the PRC controls 60 % of the world's tungsten ore reserves and, at the same time, levies an export tax of 20 % on tungsten concentrate which increases the price of this raw material for parties outside the PRC.

(181) If the Chinese imports prices under IPP plus custom duties are considered as a possible benchmark for future sale price of the Union industry after the repeal of the measures, the Union industry will no longer make profits but be in a breakeven situation, which is not sustainable. This scenario is in fact a conservative one, since the Chinese exporting producers are likely to sell on the Union market at prices even lower than this benchmark, taking into account the Chinese price levels observed in other third countries. They would have an incentive to do so in an attempt to reduce their stockpiling of raw materials as explained in recital (79). In this case, the Union industry will have to continue decreasing its sale prices, which will result in the normal activity turning into a loss making business within a short period of time (1-2 years). In addition, it should be noted that the product under review is characterised by high volatility in the profit margin. As shown in Table 17, the profitability of the Union industry decreased by 5,2 percentage points in only two years (between 2013 and the review investigation period).

(182) In addition, the Union industry will likely be pushed to also decrease its production volume because it will not be able to align to the Chinese low prices without incurring losses. The loss in volume has a direct effect also on the tolling activity. Indeed, the tungsten industry is a capital intensive industry which needs to maintain a certain volume of production to keep the fixed costs at reasonable levels. The increase in fixed costs following a decrease in production will increase not only the cost of production of the normal activity but also the conversion costs and therefore negatively affect the profitability of the tolling agreements as well.

(183) For example, under the scenario of a decrease in production volume of 25 % (3 700 tonnes or 23 % of Chinese spare capacity), the conversion costs will increase by 82 % and the tolling activity will turn from being profitable to more than 30 % loss making. This was also observed in the previous investigation when a decrease in production volume of around 50 % (6 400 tonnes) caused a drop in profitability from 7,6 % to — 19,5 % in one year only.

(184) The tolling activities only make economic sense for the customers of the Union industry (users) as long as the conversion fees (conversion cost + margin) plus the cost of scrap (for the user) is below the import price of tungsten carbide from the PRC. When this limit is reached, the users will not have an incentive to engage in tolling agreements with the Union industry, but supply tungsten carbide from the PRC. The possibility to renegotiate the conversion fees with the Union industry does not seem to be an option as the conversion costs of the Union industry will increase as explained above.

(185) Moreover, even if the tolling activity is more profitable than the normal activity, the Union industry cannot work exclusively under tolling agreements. Tolling is only for recycling activities and the capacity of the Union industry to process the scrap into tungsten concentrate is too low as compared to the total needs of tungsten concentrate in the production process. Therefore, the Union industry needs to supplement the needs of tungsten concentrate with virgin concentrates under normal agreements. In addition, there is not enough scrap on the market for the Union industry to increase its recycling capacity.

(186) In view of the above, a decrease in the selling price to at least the level of the IPP import price during the RIP, including custom duties, coupled with a decrease in volume will transform the Union industry in a loss making industry.

(187) Based on the facts described above, the Commission concluded that if measures are repealed it is likely that material injury will recur very fast. In particular, on short term (1-2 years) it is likely that the non-downstream integrated Union producers will be forced to liquidate their business as they will be directly exposed on the free market to the downward price pressure of the low priced dumped imports from China. Two of these companies are not involved in recycling activities and therefore cannot rely on the higher margins of the tolling agreements. In addition, the downstream integrated Union producers will continue to sell tungsten carbide to related users at lower prices, however the conversion costs in the tolling agreements will increase due to the decrease in volume of production. On longer term (4-5 years), it is likely that also the downstream integrated Union producers will stop their activity as they will not be able to compete with this pressure in the long run, as their related users will opt to purchase tungsten carbide from China as well. Should this scenario materialise, it follows that there will be no more production of this strategic raw material in the Union.

5. **UNION INTEREST**

(188) In accordance with Article 21 of the basic Regulation, the Commission examined whether the maintenance of the existing anti-dumping measures on imports of the product under review originating in the PRC following the findings of the present expiry review would be against the interest of the Union as a whole. The determination of the Union interest was based on an appreciation of all interests involved, including those of the Union industry, importers, users and suppliers. All interested parties were given the opportunity to make their views known under Article 21(2) of the basic Regulation.

(189) It should be recalled that, in the previous investigations, the adoption of measures was considered not to be against the interest of the Union. Furthermore, the fact that the present investigation is an expiry review, thus analysing a situation in which anti-dumping measures have already been in place, allows the assessment of any undue negative impact on the parties concerned by the current anti-dumping measures.

(190) On this basis it was examined whether, despite the conclusions on the likelihood of a continuation of dumping and recurrence of injury, compelling reasons existed which would lead to the conclusion that it is not in the Union interest to maintain measures in this particular case.

5.1. **Interest of the Union industry**

(191) In view of the conclusions on the situation of the Union industry set out in recitals (166) to (169), and pursuant to the arguments relating to the analysis on the likelihood of recurrence of injury as explained in recitals (170) to (186), the Commission concluded that the Union industry would be likely to experience a serious deterioration of its financial situation in case the anti-dumping duties were allowed to expire. The measures are proven to be essential for keeping tungsten carbide production in the Union as the Union industry would not have been able to withstand the pressure of large volumes of dumped imports of tungsten carbide from the PRC sold in the Union market below the prices levels of the Union industry.

(192) It is considered that the continuation of measures would benefit the Union industry which should then be able to continue to invest in new technology for its production facilities, especially in its recycling activities in order to be more independent from the PRC and thus be in a better situation to face the shortages of virgin raw materials on the market.

(193) By contrast, should the measures be repealed, this will likely have a negative effect on the Union industry. It will seriously threaten the viability of the Union industry that, as a consequence, may have to close their operations, thus reducing the available sources of supply on the Union market and competition. Should the Union producers stop their production, the Union will be mainly dependent on imports from other third countries, and primarily from the PRC, which is not only the world leading producer of tungsten but also owns the majority of the world's raw materials' reserve.

5.2. **Interest of users**

(194) At initiation ten known importers/users were contacted. Seven users came forward within the time limits and questionnaires were sent to all of them. They purchased tungsten carbide from the PRC, other third countries (South Korea, Vietnam, Japan, Israel and India), and the Union industry. These users used tungsten carbide to manufacture cemented carbide to produce hard metal tools for different industries like oil and mining industries.

(195) Questionnaire replies were received from eight users (two of them related). They reported higher imports from the PRC than the recorded in Eurostat. All of them except one imported the product under review under IPP only. The cooperating users represented 32 % of free market consumption in the Union in the review investigation period. Another five users came forward supporting the measures in force, but did not reply to the questionnaire. These users covered around 8 % of the total free market consumption.

(196) One of the cooperating users argued that it needed a specific type of product in its production process that was not produced by the Union industry in the required quality and requested to be exempted from the anti-dumping duty for this specific product type. However, the product type imported by this user fell under the product scope described in recitals (31) and (32). There were no grounds to exclude certain product types from the scope of the investigation in the framework of the current expiry review. Therefore, this claim was rejected.

(197) The other seven cooperating users claimed that the anti-dumping measures in place had a significant negative effect on their profitability.

(198) The investigation revealed that the activity incorporating tungsten carbide for these users represent between 55 % and 100 % of their total turnover during the review investigation period. Some of the users were part of groups of companies and also sold their products produced from tungsten carbide inside their group, while others were standalone entities. These companies sold cemented carbide tools to independent customers on the Union market as well as outside the Union. For the sales outside the Union market, the users were mainly purchasing the product under review from the PRC under IPP, thus no import duties were paid on these imports.

(199) All cooperating users were manufacturing a large variety of products incorporating the product under review. The cost of tungsten carbide in the total manufacturing costs varied significantly from one user to the other, i.e. between 6 % and 50 %, depending on the type of finished products. Some of the products manufactured by the cooperating users incorporate significant value added and knowhow and, therefore, these users are able to charge significant margins, while other products which incorporate less value added are less profitable. In addition, most of the cooperating users were found to be profitable during the review investigation period of up to more than 15 %. Furthermore, the investigation revealed that the profitability of these users was impacted also by factors other than the anti-dumping measures in force, such as low demand on the markets they operate (oil drilling and mining).

(200) The additional five users mentioned in recital (194) that came forward supporting the continuation of the anti-dumping measures in force were customers of the Union industry. These users argued that while a decrease in prices of tungsten would benefit users in the short term, in the medium and long term the Chinese prices will likely increase again in the absence of competition with the Union industry. In addition, they argued that the repeal of the anti-dumping measures would also have a negative impact on the recycling activities in the Union as imports of large volumes of low priced tungsten carbide from China would make the recycling activity in the Union unprofitable. Finally, these users highlighted their interest in having multiple sources of supply, including the Union industry.

(201) The findings of the investigation show that users were able to continue to purchase tungsten carbide from several sources. This included imports of tungsten carbide from the PRC, in significant quantities, without paying duties as made under the IPP regime. Most of them were profitable. While it is reasonable to expect that certain users will benefit, at least in the short term, from the availability of cheaper imports from the PRC, the measures have not had a serious negative effect on them and this confirms that the maintenance of the anti-dumping measurers in force does not have a serious impact on the users. Moreover, several users even supported the continuation of the measures.

(202) Several interested parties argued that the assessment of the impact of the measures on the users should be done over the whole period that the measures have been in force in line with the Ferro-silicon case [1] arguing that the users are experiencing long term cumulative negative effects which are disproportionate to any potential or actual benefit for the Union producers.

(203) In this regard, it should be noted that although the measures have been in place since 1990, the users have managed to absorb their increase in cost and still be profitable. In addition, in the framework of the original investigation and each expiry review conducted in relation to it, the Commission assessed the impact of the anti-dumping measures on the users. Each time the Commission concluded that the maintenance of the anti-dumping measures was not likely to have a serious effect on users in the Union. Moreover, the current assessment confirmed this conclusion on the basis of the actual impact of measures. Therefore, the claim was rejected.

(204) After disclosure, four more users of the product under review came forward, three of them being related to one of the cooperating users that submitted a questionnaire reply. One of them, however, is located in Brazil and thus it is not considered to be an interested party in this investigation. These companies were against the maintenance of the anti-dumping measures in force.

(205) In addition, after disclosure, several users claimed that their ability to absorb the cost of the measures and remain profitable has reached its maximum. It's was, furthermore, claimed that these users have demonstrated and proved that there are no further potential technological improvements of the product and that it becomes unfeasible to continue to bear the additional costs.

(206) As explained in recital (198) the cooperating users were manufacturing a large variety of products incorporating the product under review and the cost of tungsten carbide in the total manufacturing costs varied significantly from one user to the other, i.e. between 6 % and 50 %, depending on the type of finished products. While it is not excluded that the profitability per product varies, most of the cooperating users were found to be profitable during the review investigation period of up to more than 15 %. Therefore, the claim is rejected.

(207) On this basis, the Commission concluded that concerning the impact on users, there are no indications that the maintenance of the measures will have a significant negative effect on their activity.

5.3. **Interest of suppliers**

(208) Ten companies in the upstream market came forward expressing their support for the continuation of the measures. Four of them were mining companies and producers of tungsten concentrate, supplying the Union industry.

(209) The other six companies were suppliers of recycling materials to Union industry. They argued that the closure of the Union industry will significantly have a negative impact on their activity because they will lose their customers. They also highlighted the importance of the recycling of scrap in the Union, arguing that the scrap materials have higher tungsten content than the ore concentrate, thus making the tungsten scrap a valuable raw material, which can lower the raw material costs for users.

(210) On this basis, the Commission concluded that it is in the interest of the suppliers to maintain the anti-dumping measures in force.

[1] Commission Decision 2001/230/EC of 21 February 2001 terminating the anti-dumping proceeding concerning imports of ferro-silicon originating in Brazil, the People's Republic of China, Kazakhstan, Russia, Ukraine and Venezuela (OJ L 84, 23.3.2001, p. 36).

5.4. **Tungsten as a critical raw material**

(211) Since 2011 tungsten has been classified as a critical raw material ([1]) in the European Union.

(212) It is, therefore, in the interest of the Union to keep production of tungsten in the Union, to promote recycling in order to reduce the consumption of primary raw materials and to decrease the relative import dependence.

5.5. **Competition in the Union**

(213) Several interested parties claimed that the anti-dumping measures had deteriorated the competition level in the Union as it reduced the choice of suppliers. They argued that all Union producers had similar price levels which were not competitive.

(214) There are six Union producers on the market, using different manufacturing processes and different raw materials. As stated in recital (33), some of the Union producers use only virgin raw materials and some are using both virgin raw materials and scrap. For the virgin production process, the manufacturing process can start either from the concentrate, APT or tungsten oxide. These elements influence the cost of production. Therefore, the fee that the Union industry is charging its clients on top of the APT price is influenced by its manufacturing costs. The six Union producers are independent from each other and competing with each other in the Union market. Moreover, the investigation has shown that there are other sources of supply on the Union market like USA, Vietnam, South Korea, and Israel. Therefore, the claim is rejected.

5.6. **Competitive disadvantage of downstream producers**

(215) Several interested parties claimed that due to the measures in force users in the Union are at competitive disadvantage vis-à-vis their competitors located in other third countries as the measures favour users outside the Union at the expense of Union users. In addition, they claimed that as third country downstream users benefit from a lower cost base they are more profitable compared to their competitors in the Union. It was, furthermore, claimed that the fact that the PRC eliminated the export duty of 5 % on tungsten carbide and restrictions on the upstream products (export quotas on APT) in May 2015 had a negative impact on them. They also claimed that in case measures are prolonged, in order to avoid losing their customers, the users will have to relocate the production plants outside the Union.

(216) As stated in recital (198), the investigation has shown that most of the cooperating users in the Union were profitable during the review investigation period and that other factors than the anti-dumping measures in force, like low demand on the markets they operate (oil drilling and mining), affected their profitability. The argument that users in other third countries are allegedly generating more profits than the users in the Union is irrelevant for the assessment of the Union interest. In addition, these parties were not able to explain how the fact that the PRC eliminated the export duty and restrictions on the upstream products had a negative effect on users and, in addition, was not supported by any evidence. The claim regarding the relocation of some users was unfounded as the profitability of these users depends on the type of products manufactured, but at the same time, also on other factors like the decrease in the demand for these products. In any event, there is no evidence showing that even the repeal of the measures would prevent the relocation of the users. Therefore, the claims in recital (214) are rejected.

5.7. **Downstream integration**

(217) Several interested parties claimed that the majority of the Union producers of tungsten carbide are integrated downstream and, therefore, their related producers of tools can source raw materials at lower prices than the not integrated users, which lead to unequal disadvantage amongst users.

(218) The investigation has shown that out of the six Union producers of tungsten carbide for the free market, three were downstream integrated. These Union producers sold the product under review to its related companies at market prices which did, therefore, not have any price advantage in sourcing raw materials as compares to the non-integrated users. Therefore, the claim is rejected.

([1]) COM(2011) 25 final of 2 February 2011 and COM(2014) 297 final of 26 May 2014.

(219) After disclosure, several users claimed that the vertically integrated suppliers are also competitors of the users and hinder the fair competition as they can stop the supply of the product under review to the users.

(220) The investigation did not reveal any indications that the Union industry will stop selling the product under review to unrelated users. To the contrary, during the period considered the sales of the downstream integrated Union producers to the unrelated users increased by 16 %. Therefore, the claim was rejected.

5.8. **Lack of investments and outdated technologies**

(221) Several interested parties claimed that as a consequence of anti-dumping measures in force the Union industry did not have any incentive to invest in new technologies. These parties claimed that the Union industry is operating with old and outdated technologies.

(222) However, the investigation revealed that as stated in recital (164) during the period considered the Union industry has made significant investments in order to obtain a better utilisation of the raw materials and, therefore, to decrease the cost of manufacturing, to improve efficiency, to increase flexibility in mixing the hard with the soft scrap and in order to improve compliance with environmental rules. Therefore, the claim is rejected.

5.9. **Raw materials**

(223) Several users claimed that the Union industry's situation depended on their access to the raw material, their availability and pricing. Anti-dumping measures should not compensate for any disadvantage in sourcing raw materials.

(224) Anti-dumping measures were imposed on the basis of a finding of dumping by the Chinese exporting producers thus causing material injury to the Union industry. Therefore, the claim that the anti-dumping measures compensate for the disadvantages in sourcing raw materials was rejected.

(225) **The new Union Custom Code**

(226) Several users claimed that Article 169(2) of Commission Delegated Regulation (EU) 2015/2446 ([1]) introduced changes in the Union customs rules according to which the IPP will not be allowed anymore for goods subject to anti-dumping measures or at least it will not be economically viable anymore. Therefore, its manufacturing cost will increase.

(227) This claim was factually incorrect because Article 169(2) of Delegated Regulation (EU) 2015/2446 does not forbid the use of the IPP in case of anti-dumping duties but refers to the use of equivalent goods. Thus, goods imported under the IPP will only be subject to an anti-dumping duty if the further processed goods are later released for free circulation in the Union. In case the processed goods are re-exported, as it is currently the rule, they will not be subject to any anti-dumping duties. In addition, the interested parties have not provided any evidence showing that the IPP will not be economically viable anymore. This argument was therefore rejected.

(228) After disclosure, several users claimed that the changes in Union Customs Code will limit the use of IPP due to an increase in documentation and the high risk of non-compliance, which will increase the cost of raw materials by up to 15 %.

(229) In this regard it should be noted that the changes in the Union Customs Code are meant to improve the traceability of the goods subject to anti-dumping measures which are imported under IPP. Therefore, it is not excluded that this will lead to an increase in the administrative costs of the companies. However, the users didn't provide any supporting evidence or explanations about how the 15 % increase was calculated. Therefore, in view of its hypothetical nature, the claim was rejected.

([1]) Commission Delegated Regulation (EU) 2015/2446 of 28 July 2015 supplementing Regulation (EU) No 952/2013 of the European Parliament and of the Council as regards detailed rules concerning certain provisions of the Union Customs Code (OJ L 343, 29.12.2015, p. 1).

5.10. **Duration of measures**

(230) Interested parties argued that the anti-dumping measures on the product under review are in force since 1990 and should therefore not be prolonged anymore.

(231) Under the conditions set by Article 11(2) of the basic Regulation, in case continuation or recurrence of injurious dumping is established and measures are not against the Union interest as a whole, such measures must be maintained. All conditions were met in the present investigation. Likewise, the parties concerned did not demonstrate any specific reason in terms of the overall Union interest that would speak against the measures. The Commission has therefore no other option than to impose anti-dumping measures. This argument is therefore rejected.

5.11. **Conclusion on Union interest**

(232) On the basis of the above, the Commission concluded that there were no compelling reasons in terms of Union interest that would speak against the maintenance of the definitive anti-dumping measures on imports of tungsten carbide, fused tungsten carbide and tungsten carbide simply mixed with metallic powder originating in the PRC.

6. **ANTI-DUMPING MEASURES**

6.1. **Measures**

(233) All interested parties were informed of the essential facts and considerations on the basis of which it was intended to maintain the anti-dumping measures in force. They were also granted a period within which they could submit comments subsequent to this disclosure. The submissions and comments were duly taken into consideration where warranted.

(234) As stated in recital (65) after disclosure, several users claimed that the differences in quality for uses, costs of production and sales must be taken into account when calculating, inter alia, the injury margin.

(235) This claim is unfounded. It is recalled that the current investigation is an expiry review pursuant to Article 11(2) of the basic Regulation with the purpose to assess whether the anti-dumping measures in force should be maintained or repealed. No new injury margin is calculated in the framework of this investigation.

(236) In addition, after disclosure, several users requested that the measures should be allowed to lapse when the inward processing permits are phased out, that is in two years.

(237) In this regard it should be noted that the investigation did not reveal any exceptional circumstances that could justify the extension of the measures for a period of less than five years, in accordance with the applicable rules of the basic Regulation.

(238) 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 tungsten carbide, fused tungsten and tungsten carbide simply mixed with metallic powder originating in the PRC should be maintained. It is recalled that these measures consist of *ad valorem* duties.

(239) The Committee established by Article 15(1) of Regulation (EU) 2016/1036 did not deliver an opinion,

HAS ADOPTED THIS REGULATION:

Article 1

1. A definitive anti-dumping duty is hereby imposed on imports of tungsten carbide, fused tungsten carbide and tungsten carbide simply mixed with metallic powder currently falling within CN codes 2849 90 30 and ex 3824 30 00 ([1]) (TARIC code 3824 30 00 10) and originating in the People's Republic of China.

([1]) The particles are irregular and not free flowing in contrast to 'ready to press powder' particles, which are spherical or granular shaped, homogeneous and free flowing. The lack of flowability can be measured and established by using a calibrated funnel e.g. a HALL flow meter according to ISO standard 4490.

2. The rate of duty applicable to the net free-at-Union-frontier price, before duty, for the products described in paragraph 1, shall be 33 %.

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

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, 1 June 2017.

For the Commission
The President
Jean-Claude JUNCKER

DECISIONS

COUNCIL IMPLEMENTING DECISION (EU) 2017/943

of 18 May 2017

on the automated data exchange with regard to vehicle registration data in Malta, Cyprus and Estonia, and replacing Decisions 2014/731/EU, 2014/743/EU and 2014/744/EU

THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to Council Decision 2008/615/JHA of 23 June 2008 on the stepping up of cross-border cooperation, particularly in combating terrorism and cross-border crime ([1]), and in particular Article 33 thereof,

Having regard to the opinion of the European Parliament ([2]),

Whereas:

(1) In accordance with Article 25(2) of Decision 2008/615/JHA, the supply of personal data provided for under that Decision may not take place until the general provisions on data protection set out in Chapter 6 of that Decision have been implemented in the national law of the territories of the Member States involved in such supply.

(2) Article 20 of Council Decision 2008/616/JHA ([3]) provides that the verification that the condition referred to in recital 1 has been met with respect to automated data exchange in accordance with Chapter 2 of Decision 2008/615/JHA is to be done on the basis of an evaluation report based on a questionnaire, an evaluation visit and a pilot run.

(3) The overall evaluation reports, summarising the results of the questionnaire, the evaluation visit and the pilot run concerning vehicle registration data in Malta, Cyprus and Estonia, have been presented to the Council.

(4) By adopting Council Decision 2014/731/EU ([4]), the Council concluded that Malta has fully implemented the general provisions on data protection under Chapter 6 of Decision 2008/615/JHA and is entitled to receive and supply personal data pursuant to Article 12 of that Decision as from 9 October 2014, and it also concluded that the evaluation report was approved in accordance with Article 25(2) of Decision 2008/615/JHA.

(5) By adopting Council Decision 2014/743/EU ([5]), the Council concluded that Cyprus has fully implemented the general provisions on data protection under Chapter 6 of Decision 2008/615/JHA and is entitled to receive and supply personal data pursuant to Article 12 of that Decision as from 21 October 2014, and it also concluded that the evaluation report was approved in accordance with Article 25(2) of Decision 2008/615/JHA.

(6) By adopting Council Decision 2014/744/EU ([6]), the Council concluded that Estonia has fully implemented the general provisions on data protection under Chapter 6 of Decision 2008/615/JHA and is entitled to receive and supply personal data pursuant to Article 12 of that Decision as from 21 October 2014, and it also concluded that the evaluation report was approved in accordance with Article 25(2) of Decision 2008/615/JHA.

([1]) OJ L 210, 6.8.2008, p. 1.
([2]) Opinion of 5 April 2017 (not yet published in the Official Journal).
([3]) Council Decision 2008/616/JHA of 23 June 2008 on the implementation of Decision 2008/615/JHA on the stepping up of cross-border cooperation, particularly in combating terrorism and cross-border crime (OJ L 210, 6.8.2008, p. 12).
([4]) Council Decision 2014/731/EU of 9 October 2014 on the launch of automated data exchange with regard to Vehicle Registration Data (VRD) in Malta (OJ L 302, 22.10.2014, p. 56).
([5]) Council Decision 2014/743/EU of 21 October 2014 on the launch of automated data exchange with regard to vehicle registration data (VRD) in Cyprus (OJ L 308, 29.10.2014, p. 100).
([6]) Council Decision 2014/744/EU of 21 October 2014 on the launch of automated data exchange with regard to Vehicle Registration Data (VRD) in Estonia (OJ L 308, 29.10.2014, p. 102).

(7) This Decision replaces Decisions 2014/731/EU, 2014/743/EU and 2014/744/EU which were annulled by the Court of Justice of the European Union ('the Court') by its judgement of 22 September 2016 in Joined Cases C-14/15 and C-116/15. In that judgement, the Court maintained the effects of Decisions 2014/731/EU, 2014/743/EU and 2014/744/EU until the entry into force of new acts intended to replace them. Therefore, as from the date of entry into force of this Decision, Decisions 2014/731/EU, 2014/743/EU and 2014/744/EU cease to produce effects.

(8) With a view to ensuring continued receipt and supply of personal data pursuant to Article 12 of Decision 2008/615/JHA, the entry into force of this Decision should be without prejudice to the validity of automated data exchange carried out by the Member States pursuant to Decisions 2014/731/EU, 2014/743/EU and 2014/744/EU. The Member States which obtained personal data pursuant to Decisions 2014/731/EU, 2014/743/EU and 2014/744/EU should continue to be entitled to further process those data at national level or between Member States for the purposes laid down in Article 26 of Decision 2008/615/JHA.

(9) Article 33 of Decision 2008/615/JHA confers upon the Council implementing powers with a view to adopting measures necessary to implement that Decision, in particular as regards the receipt and supply of personal data provided for under that Decision. As the conditions for triggering the exercise of such implementing powers have been met and the procedure in that regard has been followed, an implementing decision on the automated data exchange with regard to vehicle registration data should be adopted with regard to Malta, Cyprus and Estonia in order to replace the annulled Decisions 2014/731/EU, 2014/743/EU and 2014/744/EU and allow those Member States to continue receiving and supplying personal data pursuant to Article 12 of Decision 2008/615/JHA.

(10) Denmark is bound by Decision 2008/615/JHA and is therefore taking part in the adoption and application of this Decision which implements Decision 2008/615/JHA.

(11) The United Kingdom and Ireland are bound by Decision 2008/615/JHA and are therefore taking part in the adoption and application of this Decision which implements Decision 2008/615/JHA,

HAS ADOPTED THIS DECISION:

Article 1

For the purpose of automated searching of vehicle registration data (VRD), Malta, Cyprus and Estonia shall continue to be entitled to receive and supply personal data pursuant to Article 12 of Decision 2008/615/JHA.

Article 2

1. Decisions 2014/731/EU, 2014/743/EU and 2014/744/EU cease to produce effects as from the date of entry into force of this Decision, without prejudice to the validity of automated data exchange carried out pursuant to those Decisions by the Member States.

2. Member States which obtained personal data pursuant to the Decisions referred to in paragraph 1 shall continue to be entitled to further process those data at national level or between Member States for the purposes laid down in Article 26 of Decision 2008/615/JHA.

Article 3

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

This Decision shall apply in accordance with the Treaties.

Done at Brussels, 18 May 2017.

For the Council
The President
C. ABELA

COUNCIL IMPLEMENTING DECISION (EU) 2017/944

of 18 May 2017

on the automated data exchange with regard to dactyloscopic data in Latvia, and replacing Decision 2014/911/EU

THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to Council Decision 2008/615/JHA of 23 June 2008 on the stepping up of cross-border cooperation, particularly in combating terrorism and cross-border crime ([1]), and in particular Article 33 thereof,

Having regard to the opinion of the European Parliament ([2]),

Whereas:

(1) In accordance with Article 25(2) of Decision 2008/615/JHA, the supply of personal data provided for under that Decision may not take place until the general provisions on data protection set out in Chapter 6 of that Decision have been implemented in the national law of the territories of the Member States involved in such supply.

(2) Article 20 of Council Decision 2008/616/JHA ([3]) provides that the verification that the condition referred to in recital 1 has been met with respect to automated data exchange in accordance with Chapter 2 of Decision 2008/615/JHA is to be done on the basis of an evaluation report based on a questionnaire, an evaluation visit and a pilot run.

(3) An overall evaluation report, summarising the results of the questionnaire, the evaluation visit and the pilot run concerning dactyloscopic data exchange in Latvia has been presented to the Council.

(4) By adopting Council Decision 2014/911/EU ([4]), the Council concluded that Latvia has fully implemented the general provisions on data protection under Chapter 6 of Decision 2008/615/JHA and is entitled to receive and supply personal data pursuant to Article 9 of that Decision as from 4 December 2014, and it also concluded that the evaluation report was approved in accordance with Article 25(2) of Decision 2008/615/JHA.

(5) This Decision replaces Decision 2014/911/EU which was annulled by the Court of Justice of the European Union ('the Court') by its judgement of 22 September 2016 in Joined Cases C-14/15 and C-116/15. In that judgement, the Court maintained the effects of Decision 2014/911/EU until the entry into force of a new act intended to replace that Decision. Therefore, as from the date of entry into force of this Decision, Decision 2014/911/EU ceases to produce effects.

(6) With a view to ensuring continued receipt and supply of personal data pursuant to Article 9 of Decision 2008/615/JHA, the entry into force of this Decision should be without prejudice to the validity of automated data exchange carried out by the Member States pursuant to Decision 2014/911/EU. The Member States which obtained personal data pursuant to Decision 2014/911/EU should continue to be entitled to further process those data at national level or between Member States for the purposes laid down in Article 26 of Decision 2008/615/JHA.

([1]) OJ L 210, 6.8.2008, p. 1.
([2]) Opinion of 5 April 2017 (not yet published in the Official Journal).
([3]) Council Decision 2008/616/JHA of 23 June 2008 on the implementation of Decision 2008/615/JHA on the stepping up of cross-border cooperation, particularly in combating terrorism and cross-border crime (OJ L 210, 6.8.2008, p. 12).
([4]) Council Decision 2014/911/EU of 4 December 2014 on the launch of automated data exchange with regard to dactyloscopic data in Latvia (OJ L 360, 17.12.2014, p. 28).

(7) Article 33 of Decision 2008/615/JHA confers upon the Council implementing powers with a view to adopting measures necessary to implement that Decision, in particular as regards the receipt and supply of personal data provided for under that Decision. As the conditions for triggering the exercise of such implementing powers have been met and the procedure in that regard has been followed, an implementing decision on the automated data exchange with regard to dactyloscopic data should be adopted with regard to Latvia in order to replace the annulled Decision 2014/911/EU and allow that Member State to continue receiving and supplying personal data pursuant to Article 9 of Decision 2008/615/JHA.

(8) Denmark is bound by Decision 2008/615/JHA and is therefore taking part in the adoption and application of this Decision which implements Decision 2008/615/JHA.

(9) The United Kingdom and Ireland are bound by Decision 2008/615/JHA and are therefore taking part in the adoption and application of this Decision which implements Decision 2008/615/JHA,

HAS ADOPTED THIS DECISION:

Article 1

For the purpose of automated searching of dactyloscopic data, Latvia shall continue to be entitled to receive and supply personal data pursuant to Article 9 of Decision 2008/615/JHA.

Article 2

1. Decision 2014/911/EU ceases to produce effects as from the date of entry into force of this Decision, without prejudice to the validity of automated data exchange carried out pursuant to that Decision by Member States.

2. Member States which obtained personal data pursuant to Decision 2014/911/EU shall continue to be entitled to further process those data at national level or between Member States for the purposes laid down in Article 26 of Decision 2008/615/JHA.

Article 3

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

This Decision shall apply in accordance with the Treaties.

Done at Brussels, 18 May 2017.

For the Council
The President
C. ABELA

COUNCIL IMPLEMENTING DECISION (EU) 2017/945

of 18 May 2017

on the automated data exchange with regard to DNA data in Slovakia, Portugal, Latvia, Lithuania, Czech Republic, Estonia, Hungary, Cyprus, Poland, Sweden, Malta and Belgium and replacing Decisions 2010/689/EU, 2011/472/EU, 2011/715/EU, 2011/887/EU, 2012/58/EU, 2012/299/EU, 2012/445/EU, 2012/673/EU, 2013/3/EU, 2013/148/EU, 2013/152/EU and 2014/410/EU

THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to Council Decision 2008/615/JHA of 23 June 2008 on the stepping up of cross-border cooperation, particularly in combating terrorism and cross-border crime ([1]), and in particular Article 33 thereof,

Having regard to the opinion of the European Parliament ([2]),

Whereas:

(1) In accordance with Article 25(2) of Decision 2008/615/JHA, the supply of personal data provided for under that Decision may not take place until the general provisions on data protection set out in Chapter 6 of that Decision have been implemented in the national law of the territories of the Member States involved in such supply.

(2) Article 20 of Council Decision 2008/616/JHA ([3]) provides that the verification that the condition referred to in recital 1 has been met with respect to automated data exchange in accordance with Chapter 2 of Decision 2008/615/JHA is to be done on the basis of an evaluation report based on a questionnaire, an evaluation visit and a pilot run.

(3) The overall evaluation reports, summarising the results of the questionnaire, the evaluation visit and the pilot run concerning DNA data in Slovakia, Portugal, Latvia, Lithuania, Czech Republic, Estonia, Hungary, Cyprus, Poland, Sweden, Malta and Belgium have been presented to the Council.

(4) By adopting Council Decision 2010/689/EU ([4]), the Council concluded that Slovakia has fully implemented the general provisions on data protection under Chapter 6 of Decision 2008/615/JHA and is entitled to receive and supply personal data pursuant to Articles 3 and 4 of that Decision as from 8 November 2010, and it also concluded that the evaluation report was approved in accordance with Article 25(2) of Decision 2008/615/JHA.

(5) By adopting Council Decision 2011/472/EU ([5]), the Council concluded that Portugal has fully implemented the general provisions on data protection under Chapter 6 of Decision 2008/615/JHA and is entitled to receive and supply personal data pursuant to Articles 3 and 4 of that Decision as from 19 July 2011, and it also concluded that the evaluation report was approved in accordance with Article 25(2) of Decision 2008/615/JHA.

(6) By adopting Council Decision 2011/715/EU ([6]), the Council concluded that Latvia has fully implemented the general provisions on data protection under Chapter 6 of Decision 2008/615/JHA and is entitled to receive and supply personal data pursuant to Articles 3 and 4 of that Decision as from 27 October 2011, and it also concluded that the evaluation report was approved in accordance with Article 25(2) of Decision 2008/615/JHA.

([1]) OJ L 210, 6.8.2008, p. 1.
([2]) Opinion of 5 April 2017 (not yet published in the Official Journal).
([3]) Council Decision 2008/616/JHA of 23 June 2008 on the implementation of Decision 2008/615/JHA on the stepping up of cross-border cooperation, particularly in combating terrorism and cross-border crime (OJ L 210, 6.8.2008, p. 12).
([4]) Council Decision 2010/689/EU of 8 November 2010 on the launch of automated data exchange with regard to DNA data in Slovakia (OJ L 294, 12.11.2010, p. 14).
([5]) Council Decision 2011/472/EU of 19 July 2011 on the launch of automated data exchange with regard to DNA data in Portugal (OJ L 195, 27.7.2011, p. 71).
([6]) Council Decision 2011/715/EU of 27 October 2011 on the launch of automated data exchange with regard to DNA data in Latvia (OJ L 285, 1.11.2011, p. 24).

(7) By adopting Council Decision 2011/887/EU ([1]), the Council concluded that Lithuania has fully implemented the general provisions on data protection under Chapter 6 of Decision 2008/615/JHA and is entitled to receive and supply personal data pursuant to Articles 3 and 4 of that Decision as from 13 December 2011, and it also concluded that the evaluation report was approved in accordance with Article 25(2) of Decision 2008/615/JHA.

(8) By adopting Council Decision 2012/58/EU ([2]), the Council concluded that the Czech Republic has fully implemented the general provisions on data protection under Chapter 6 of Decision 2008/615/JHA and is entitled to receive and supply personal data pursuant to Articles 3 and 4 of that Decision as from 23 January 2012, and it also concluded that the evaluation report was approved in accordance with Article 25(2) of Decision 2008/615/JHA.

(9) By adopting Council Decision 2012/299/EU ([3]), the Council concluded that Estonia has fully implemented the general provisions on data protection under Chapter 6 of Decision 2008/615/JHA and is entitled to receive and supply personal data pursuant to Articles 3 and 4 of that Decision as from 7 June 2012, and it also concluded that the evaluation report was approved in accordance with Article 25(2) of Decision 2008/615/JHA.

(10) By adopting Council Decision 2012/445/EU ([4]), the Council concluded that Hungary has fully implemented the general provisions on data protection under Chapter 6 of Decision 2008/615/JHA and is entitled to receive and supply personal data pursuant to Articles 3 and 4 of that Decision as from 24 July 2012, and it also concluded that the evaluation report was approved in accordance with Article 25(2) of Decision 2008/615/JHA.

(11) By adopting Council Decision 2012/673/EU ([5]), the Council concluded that Cyprus has fully implemented the general provisions on data protection under Chapter 6 of Decision 2008/615/JHA and is entitled to receive and supply personal data pursuant to Articles 3 and 4 of that Decision as from 25 October 2012, and it also concluded that the evaluation report was approved in accordance with Article 25(2) of Decision 2008/615/JHA.

(12) By adopting Council Decision 2013/3/EU ([6]), the Council concluded that Poland has fully implemented the general provisions on data protection under Chapter 6 of Decision 2008/615/JHA and is entitled to receive and supply personal data pursuant to Articles 3 and 4 of that Decision as from 20 December 2012, and it also concluded that the evaluation report was approved in accordance with Article 25(2) of Decision 2008/615/JHA.

(13) By adopting Council Decision 2013/148/EU ([7]), the Council concluded that Sweden has fully implemented the general provisions on data protection under Chapter 6 of Decision 2008/615/JHA and is entitled to receive and supply personal data pursuant to Articles 3 and 4 of that Decision as from 21 March 2013, and it also concluded that the evaluation report was approved in accordance with Article 25(2) of Decision 2008/615/JHA.

(14) By adopting Council Decision 2013/152/EU ([8]), the Council concluded that Malta has fully implemented the general provisions on data protection under Chapter 6 of Decision 2008/615/JHA and is entitled to receive and supply personal data pursuant to Articles 3 and 4 of that Decision as from 21 March 2013, and it also concluded that the evaluation report was approved in accordance with Article 25(2) of Decision 2008/615/JHA.

(15) By adopting Council Decision 2014/410/EU ([9]), the Council concluded that Belgium has fully implemented the general provisions on data protection under Chapter 6 of Decision 2008/615/JHA and is entitled to receive and supply personal data pursuant to Articles 3 and 4 of that Decision as from 24 June 2014, and it also concluded that the evaluation report was approved in accordance with Article 25(2) of Decision 2008/615/JHA.

([1]) Council Decision 2011/887/EU of 13 December 2011 on the launch of automated data exchange with regard to DNA data in Lithuania (OJ L 344, 28.12.2011, p. 36).
([2]) Council Decision 2012/58/EU of 23 January 2012 on the launch of automated data exchange with regard to DNA data in the Czech Republic (OJ L 30, 2.2.2012, p. 15).
([3]) Council Decision 2012/299/EU of 7 June 2012 on the launch of automated data exchange with regard to DNA data in Estonia (OJ L 151, 12.6.2012, p. 31).
([4]) Council Decision 2012/445/EU of 24 July 2012 on the launch of automated data exchange with regard to DNA data in Hungary (OJ L 202, 28.7.2012, p. 22).
([5]) Council Decision 2012/673/EU of 25 October 2012 on the launch of automated data exchange with regard to DNA data in Cyprus (OJ L 302, 31.10.2012, p. 12).
([6]) Council Decision 2013/3/EU of 20 December 2012 on the launch of automated data exchange with regard to DNA data in Poland (OJ L 3, 8.1.2013, p. 5).
([7]) Council Decision 2013/148/EU of 21 March 2013 on the launch of automated data exchange with regard to DNA data in Sweden (OJ L 84, 23.3.2013, p. 26).
([8]) Council Decision 2013/152/EU of 21 March 2013 on the launch of automated data exchange with regard to DNA data in Malta (OJ L 86, 26.3.2013, p. 20).
([9]) Council Decision 2014/410/EU of 24 June 2014 on the launch of automated data exchange with regard to DNA data in Belgium (OJ L 190, 28.6.2014, p. 80).

(16) In its judgment of 22 September 2016 in Joined Cases C-14/15 and C-116/15, the Court of Justice of the European Union held that Article 25(2) of Decision 2008/615/JHA unlawfully lays down a requirement of unanimity for the adoption of measures necessary to implement that Decision. Decisions 2010/689/EU, 2011/472/EU, 2011/715/EU, 2011/887/EU, 2012/58/EU, 2012/299/EU, 2012/445/EU, 2012/673/EU, 2013/3/EU, 2013/148/EU, 2013/152/EU and 2014/410/EU were adopted on the basis of Article 25(2) of Decision 2008/615/JHA and consequently are vitiated by a procedural defect.

(17) With a view to ensuring the legal certainty of the receipt and supply of personal data pursuant to Decision 2008/615/JHA with regard to the Member States concerned by Decisions 2010/689/EU, 2011/472/EU, 2011/715/EU, 2011/887/EU, 2012/58/EU, 2012/299/EU, 2012/445/EU, 2012/673/EU, 2013/3/EU, 2013/148/EU, 2013/152/EU and 2014/410/EU, those Decisions should be replaced by this Decision.

(18) With a view to ensuring continued receipt and supply of personal data pursuant to Articles 3 and 4 of Decision 2008/615/JHA, Decisions 2010/689/EU, 2011/472/EU, 2011/715/EU, 2011/887/EU, 2012/58/EU, 2012/299/EU, 2012/445/EU, 2012/673/EU, 2013/3/EU, 2013/148/EU, 2013/152/EU and 2014/410/EU cease to produce effects as from the date of entry into force of this Decision.

(19) For the same reason, the entry into force of this Decision should be without prejudice to the validity of automated data exchange carried out by the Member States pursuant to Decisions 2010/689/EU, 2011/472/EU, 2011/715/EU, 2011/887/EU, 2012/58/EU, 2012/299/EU, 2012/445/EU, 2012/673/EU, 2013/3/EU, 2013/148/EU, 2013/152/EU and 2014/410/EU.

(20) Moreover, the Member States which obtained personal data pursuant to Decisions 2010/689/EU, 2011/472/EU, 2011/715/EU, 2011/887/EU, 2012/58/EU, 2012/299/EU, 2012/445/EU, 2012/673/EU, 2013/3/EU, 2013/148/EU, 2013/152/EU and 2014/410/EU should continue to be entitled to further process those data at national level or between Member States for the purposes laid down in Article 26 of Decision 2008/615/JHA.

(21) Article 33 of Decision 2008/615/JHA confers upon the Council implementing powers with a view to adopting measures necessary to implement that Decision, in particular as regards the receipt and supply of personal data provided for under that Decision. As the conditions for triggering the exercise of such implementing powers have been met and the procedure in that regard has been followed, an implementing decision on the automated data exchange with regard to DNA data with regard to Slovakia, Portugal, Latvia, Lithuania, Czech Republic, Estonia, Hungary, Cyprus, Poland, Sweden, Malta and Belgium should be adopted in order to allow those Member States to continue receiving and supplying personal data pursuant to Articles 3 and 4 of Decision 2008/615/JHA.

(22) Denmark is bound by Decision 2008/615/JHA and is therefore taking part in the adoption and application of this Decision which implements Decision 2008/615/JHA.

(23) The United Kingdom and Ireland are bound by Decision 2008/615/JHA and are therefore taking part in the adoption and application of this Decision which implements Decision 2008/615/JHA,

HAS ADOPTED THIS DECISION:

Article 1

For the purpose of automated searching and comparison of DNA data, Slovakia, Portugal, Latvia, Lithuania, Czech Republic, Estonia, Hungary, Cyprus, Poland, Sweden, Malta and Belgium shall continue to be entitled to receive and supply personal data pursuant to Articles 3 and 4 of Decision 2008/615/JHA.

Article 2

1. Decisions 2010/689/EU, 2011/472/EU, 2011/715/EU, 2011/887/EU, 2012/58/EU, 2012/299/EU, 2012/445/EU, 2012/673/EU, 2013/3/EU, 2013/148/EU, 2013/152/EU and 2014/410/EU cease to produce effects as from the date of entry into force of this Decision, without prejudice to the validity of automated data exchange carried out pursuant to those Decisions by the Member States.

2. Member States which obtained personal data pursuant to the Decisions referred to in paragraph 1 shall continue to be entitled to further process those data at national level or between Member States for the purposes laid down in Article 26 of Decision 2008/615/JHA.

Article 3

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

This Decision shall apply in accordance with the Treaties.

Done at Brussels, 18 May 2017.

For the Council
The President
C. ABELA

COUNCIL IMPLEMENTING DECISION (EU) 2017/946

of 18 May 2017

on the automated data exchange with regard to dactyloscopic data in Slovakia, Bulgaria, France, Czech Republic, Lithuania, the Netherlands, Hungary, Cyprus, Estonia, Malta, Romania and Finland and replacing Decisions 2010/682/EU, 2010/758/EU, 2011/355/EU, 2011/434/EU, 2011/888/EU, 2012/46/EU, 2012/446/EU, 2012/672/EU, 2012/710/EU, 2013/153/EU, 2013/229/EU and 2013/792/EU

THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to Council Decision 2008/615/JHA of 23 June 2008 on the stepping up of cross-border cooperation, particularly in combating terrorism and cross-border crime ([1]), and in particular Article 33 thereof,

Having regard to the opinion of the European Parliament ([2]),

Whereas:

(1) In accordance with Article 25(2) of Decision 2008/615/JHA, the supply of personal data provided for under that Decision may not take place until the general provisions on data protection set out in Chapter 6 of that Decision have been implemented in the national law of the territories of the Member States involved in such supply.

(2) Article 20 of Council Decision 2008/616/JHA ([3]) provides that the verification that the condition referred to in recital 1 has been met with respect to automated data exchange in accordance with Chapter 2 of Decision 2008/615/JHA is to be done on the basis of an evaluation report based on a questionnaire, an evaluation visit and a pilot run.

(3) The overall evaluation reports, summarising the results of the questionnaire, the evaluation visit and the pilot run concerning dactyloscopic data in Slovakia, Bulgaria, France, Czech Republic, Lithuania, the Netherlands, Hungary, Cyprus, Estonia, Malta, Romania and Finland have been presented to the Council.

(4) By adopting Council Decision 2010/682/EU ([4]), the Council concluded that Slovakia has fully implemented the general provisions on data protection under Chapter 6 of Decision 2008/615/JHA and is entitled to receive and supply personal data pursuant to Article 9 of that Decision as from 8 November 2010, and it also concluded that the evaluation report was approved in accordance with Article 25(2) of Decision 2008/615/JHA.

(5) By adopting Council Decision 2010/758/EU ([5]), the Council concluded that Bulgaria has fully implemented the general provisions on data protection under Chapter 6 of Decision 2008/615/JHA and is entitled to receive and supply personal data pursuant to Article 9 of that Decision as from 2 December 2010, and it also concluded that the evaluation report was approved in accordance with Article 25(2) of Decision 2008/615/JHA.

(6) By adopting Council Decision 2011/355/EU ([6]), the Council concluded that France has fully implemented the general provisions on data protection under Chapter 6 of Decision 2008/615/JHA and is entitled to receive and supply personal data pursuant to Article 9 of that Decision as from 9 June 2011, and it also concluded that the evaluation report was approved in accordance with Article 25(2) of Decision 2008/615/JHA.

([1]) OJ L 210, 6.8.2008, p. 1.
([2]) Opinion of 5 April 2017 (not yet published in the Official Journal).
([3]) Council Decision 2008/616/JHA of 23 June 2008 on the implementation of Decision 2008/615/JHA on the stepping up of cross-border cooperation, particularly in combating terrorism and cross-border crime (OJ L 210, 6.8.2008, p. 12).
([4]) Council Decision 2010/682/EU of 8 November 2010 on the launch of automated data exchange with regard to dactyloscopic data in Slovakia (OJ L 293, 11.11.2010, p. 58).
([5]) Council Decision 2010/758/EU of 2 December 2010 on the launch of automated data exchange with regard to dactyloscopic data in Bulgaria (OJ L 322, 8.12.2010, p. 43).
([6]) Council Decision 2011/355/EU of 9 June 2011 on the launch of automated data exchange with regard to dactyloscopic data in France (OJ L 161, 21.6.2011, p. 23).

(7) By adopting Council Decision 2011/434/EU ([1]), the Council concluded that the Czech Republic has fully implemented the general provisions on data protection under Chapter 6 of Decision 2008/615/JHA and is entitled to receive and supply personal data pursuant to Article 9 of that Decision as from 19 July 2011, and it also concluded that the evaluation report was approved in accordance with Article 25(2) of Decision 2008/615/JHA.

(8) By adopting Council Decision 2011/888/EU ([2]), the Council concluded that Lithuania has fully implemented the general provisions on data protection under Chapter 6 of Decision 2008/615/JHA and is entitled to receive and supply personal data pursuant to Article 9 of that Decision as from 13 December 2011, and it also concluded that the evaluation report was approved in accordance with Article 25(2) of Decision 2008/615/JHA.

(9) By adopting Council Decision 2012/46/EU ([3]), the Council concluded that the Netherlands has fully implemented the general provisions on data protection under Chapter 6 of Decision 2008/615/JHA and is entitled to receive and supply personal data pursuant to Article 9 of that Decision as from 23 January 2012, and it also concluded that the evaluation report was approved in accordance with Article 25(2) of Decision 2008/615/JHA.

(10) By adopting Council Decision 2012/446/EU ([4]), the Council concluded that Hungary has fully implemented the general provisions on data protection under Chapter 6 of Decision 2008/615/JHA and is entitled to receive and supply personal data pursuant to Article 9 of that Decision as from 24 July 2012, and it also concluded that the evaluation report was approved in accordance with Article 25(2) of Decision 2008/615/JHA.

(11) By adopting Council Decision 2012/672/EU ([5]), the Council concluded that Cyprus has fully implemented the general provisions on data protection under Chapter 6 of Decision 2008/615/JHA and is entitled to receive and supply personal data pursuant to Article 9 of that Decision as from 25 October 2012, and it also concluded that the evaluation report was approved in accordance with Article 25(2) of Decision 2008/615/JHA.

(12) By adopting Council Decision 2012/710/EU ([6]), the Council concluded that Estonia has fully implemented the general provisions on data protection under Chapter 6 of Decision 2008/615/JHA and is entitled to receive and supply personal data pursuant to Article 9 of that Decision as from 13 November 2012, and it also concluded that the evaluation report was approved in accordance with Article 25(2) of Decision 2008/615/JHA.

(13) By adopting Council Decision 2013/153/EU ([7]), the Council concluded that Malta has fully implemented the general provisions on data protection under Chapter 6 of Decision 2008/615/JHA and is entitled to receive and supply personal data pursuant to Article 9 of that Decision as from 21 March 2013, and it also concluded that the evaluation report was approved in accordance with Article 25(2) of Decision 2008/615/JHA.

(14) By adopting Council Decision 2013/229/EU ([8]), the Council concluded that Romania has fully implemented the general provisions on data protection under Chapter 6 of Decision 2008/615/JHA and is entitled to receive and supply personal data pursuant to Article 9 of that Decision as from 14 May 2013, and it also concluded that the evaluation report was approved in accordance with Article 25(2) of Decision 2008/615/JHA.

(15) By adopting Council Decision 2013/792/EU ([9]), the Council concluded that Finland has fully implemented the general provisions on data protection under Chapter 6 of Decision 2008/615/JHA and is entitled to receive and supply personal data pursuant to Article 9 of that Decision as from 16 December 2013, and it also concluded that the evaluation report was approved in accordance with Article 25(2) of Decision 2008/615/JHA.

([1]) Council Decision 2011/434/EU of 19 July 2011 on the launch of automated data exchange with regard to dactyloscopic data in the Czech Republic (OJ L 190, 21.7.2011, p. 72).
([2]) Council Decision 2011/888/EU of 13 December 2011 on the launch of automated data exchange with regard to dactyloscopic data in Lithuania (OJ L 344, 28.12.2011, p. 38).
([3]) Council Decision 2012/46/EU of 23 January 2012 on the launch of automated data exchange with regard to dactyloscopic data in the Netherlands (OJ L 26, 28.1.2012, p. 32).
([4]) Council Decision 2012/446/EU of 24 July 2012 on the launch of automated data exchange with regard to dactyloscopic data in Hungary (OJ L 202, 28.7.2012, p. 23).
([5]) Council Decision 2012/672/EU of 25 October 2012 on the launch of automated data exchange with regard to dactyloscopic data in Cyprus (OJ L 302, 31.10.2012, p. 11).
([6]) Council Decision 2012/710/EU of 13 November 2012 on the launch of automated data exchange with regard to dactyloscopic data in Estonia (OJ L 321, 20.11.2012, p. 61).
([7]) Council Decision 2013/153/EU of 21 March 2013 on the launch of automated data exchange with regard to dactyloscopic data in Malta (OJ L 86, 26.3.2013, p. 21).
([8]) Council Decision 2013/229/EU of 14 May 2013 on the launch of automated data exchange with regard to dactyloscopic data in Romania (OJ L 138, 24.5.2013, p. 11).
([9]) Council Decision 2013/792/EU of 16 December 2013 on the launch of automated data exchange with regard to dactyloscopic data in Finland (OJ L 349, 21.12.2013, p. 103).

(16) In its judgment of 22 September 2016 in Joined Cases C-14/15 and C-116/15, the Court of Justice of the European Union held that Article 25(2) of Decision 2008/615/JHA unlawfully lays down a requirement of unanimity for the adoption of measures necessary to implement that Decision. Decisions 2010/682/EU, 2010/758/EU, 2011/355/EU, 2011/434/EU, 2011/888/EU, 2012/46/EU, 2012/446/EU, 2012/672/EU, 2012/710/EU, 2013/153/EU, 2013/229/EU and 2013/792/EU were adopted on the basis of Article 25(2) of Decision 2008/615/JHA and consequently are vitiated by a procedural defect.

(17) With a view to ensuring the legal certainty of the receipt and supply of personal data pursuant to Decision 2008/615/JHA with regard to the Member States concerned by Decisions 2010/682/EU, 2010/758/EU, 2011/355/EU, 2011/434/EU, 2011/888/EU, 2012/46/EU, 2012/446/EU, 2012/672/EU, 2012/710/EU, 2013/153/EU, 2013/229/EU and 2013/792/EU, those Decisions should be replaced by this Decision.

(18) With a view to ensuring continued receipt and supply of personal data pursuant to Article 9 of Decision 2008/615/JHA, Decisions 2010/682/EU, 2010/758/EU, 2011/355/EU, 2011/434/EU, 2011/888/EU, 2012/46/EU, 2012/446/EU, 2012/672/EU, 2012/710/EU, 2013/153/EU, 2013/229/EU and 2013/792/EU cease to produce effects as from the date of entry into force of this Decision.

(19) For the same reason, the entry into force of this Decision should be without prejudice to the validity of automated data exchange carried out by the Member States pursuant to Decisions 2010/682/EU, 2010/758/EU, 2011/355/EU, 2011/434/EU, 2011/888/EU, 2012/46/EU, 2012/446/EU, 2012/672/EU, 2012/710/EU, 2013/153/EU, 2013/229/EU and 2013/792/EU.

(20) Moreover, the Member States which obtained personal data pursuant to Decisions 2010/682/EU, 2010/758/EU, 2011/355/EU, 2011/434/EU, 2011/888/EU, 2012/46/EU, 2012/446/EU, 2012/672/EU, 2012/710/EU, 2013/153/EU, 2013/229/EU and 2013/792/EU should continue to be entitled to further process those data at national level or between Member States for the purposes laid down in Article 26 of Decision 2008/615/JHA.

(21) Article 33 of Decision 2008/615/JHA confers upon the Council implementing powers with a view to adopting measures necessary to implement that Decision, in particular as regards the receipt and supply of personal data provided for under that Decision. As the conditions for triggering the exercise of such implementing powers have been met and the procedure in that regard has been followed, an implementing decision on the automated data exchange with regard to dactyloscopic data with regard to Slovakia, Bulgaria, France, Czech Republic, Lithuania, the Netherlands, Hungary, Cyprus, Estonia, Malta, Romania and Finland should be adopted in order to allow those Member States to continue receiving and supplying personal data pursuant Article 9 of Decision 2008/615/JHA.

(22) Denmark is bound by Decision 2008/615/JHA and is therefore taking part in the adoption and application of this Decision which implements Decision 2008/615/JHA.

(23) The United Kingdom and Ireland are bound by Decision 2008/615/JHA and are therefore taking part in the adoption and application of this Decision which implements Decision 2008/615/JHA,

HAS ADOPTED THIS DECISION:

Article 1

For the purpose of automated searching of dactyloscopic data, Slovakia, Bulgaria, France, Czech Republic, Lithuania, the Netherlands, Hungary, Cyprus, Estonia, Malta, Romania and Finland shall continue to be entitled to receive and supply personal data pursuant to Article 9 of Decision 2008/615/JHA.

Article 2

1. Decisions 2010/682/EU, 2010/758/EU, 2011/355/EU, 2011/434/EU, 2011/888/EU, 2012/46/EU, 2012/446/EU, 2012/672/EU, 2012/710/EU, 2013/153/EU, 2013/229/EU and 2013/792/EU cease to produce effects as from the date of entry into force of this Decision, without prejudice to the validity of automated data exchange carried out pursuant to those Decisions by the Member States.

2. Member States which obtained personal data pursuant to the Decisions referred to in paragraph 1 shall continue to be entitled to further process those data at national level or between Member States for the purposes laid down in Article 26 of Decision 2008/615/JHA.

Article 3

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

This Decision shall apply in accordance with the Treaties.

Done at Brussels, 18 May 2017.

For the Council
The President
C. ABELA

COUNCIL IMPLEMENTING DECISION (EU) 2017/947

of 18 May 2017

on the automated data exchange with regard to vehicle registration data in Finland, Slovenia, Romania, Poland, Sweden, Lithuania, Bulgaria, Slovakia and Hungary and replacing Decisions 2010/559/EU, 2011/387/EU, 2011/547/EU, 2012/236/EU, 2012/664/EU, 2012/713/EU, 2013/230/EU, 2013/692/EU and 2014/264/EU

THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to Council Decision 2008/615/JHA of 23 June 2008 on the stepping up of cross-border cooperation, particularly in combating terrorism and cross-border crime ([1]), and in particular Article 33 thereof,

Having regard to the opinion of the European Parliament ([2]),

Whereas:

(1) In accordance with Article 25(2) of Decision 2008/615/JHA, the supply of personal data provided for under that Decision may not take place until the general provisions on data protection set out in Chapter 6 of that Decision have been implemented in the national law of the territories of the Member States involved in such supply.

(2) Article 20 of Council Decision 2008/616/JHA ([3]) provides that the verification that the condition referred to in recital 1 has been met with respect to automated data exchange in accordance with Chapter 2 of Decision 2008/615/JHA is to be done on the basis of an evaluation report based on a questionnaire, an evaluation visit and a pilot run.

(3) The overall evaluation reports, summarising the results of the questionnaire, the evaluation visit and the pilot run concerning vehicle registration data in Finland, Slovenia, Romania, Poland, Sweden, Lithuania, Bulgaria, Slovakia and Hungary have been presented to the Council.

(4) By adopting Council Decision 2010/559/EU ([4]), the Council concluded that Finland has fully implemented the general provisions on data protection under Chapter 6 of Decision 2008/615/JHA and is entitled to receive and supply personal data pursuant to Article 12 of that Decision as from 13 September 2010, and it also concluded that the evaluation report was approved in accordance with Article 25(2) of Decision 2008/615/JHA.

(5) By adopting Council Decision 2011/387/EU ([5]), the Council concluded that Slovenia has fully implemented the general provisions on data protection under Chapter 6 of Decision 2008/615/JHA and is entitled to receive and supply personal data pursuant to Article 12 of that Decision as from 28 June 2011, and it also concluded that the evaluation report was approved in accordance with Article 25(2) of Decision 2008/615/JHA.

(6) By adopting Council Decision 2011/547/EU ([6]), the Council concluded that Romania has fully implemented the general provisions on data protection under Chapter 6 of Decision 2008/615/JHA and is entitled to receive and supply personal data pursuant to Article 12 of that Decision as from 12 September 2011, and it also concluded that the evaluation report was approved in accordance with Article 25(2) of Decision 2008/615/JHA.

([1]) OJ L 210, 6.8.2008, p. 1.
([2]) Opinion of 5 April 2017 (not yet published in the Official Journal).
([3]) Council Decision 2008/616/JHA of 23 June 2008 on the implementation of Decision 2008/615/JHA on the stepping up of cross-border cooperation, particularly in combating terrorism and cross-border crime (OJ L 210, 6.8.2008, p. 12).
([4]) Council Decision 2010/559/EU of 13 September 2010 on the launch of automated data exchange with regard to Vehicle Registration Data (VRD) in Finland (OJ L 245, 17.9.2010, p. 34).
([5]) Council Decision 2011/387/EU of 28 June 2011 on the launch of automated data exchange with regard to Vehicle Registration Data (VRD) in Slovenia (OJ L 173, 1.7.2011, p. 9).
([6]) Council Decision 2011/547/EU of 12 September 2011 on the launch of automated data exchange with regard to Vehicle Registration Data (VRD) in Romania (OJ L 242, 20.9.2011, p. 8).

(7) By adopting Council Decision 2012/236/EU ([1]), the Council concluded that Poland has fully implemented the general provisions on data protection under Chapter 6 of Decision 2008/615/JHA and is entitled to receive and supply personal data pursuant to Article 12 of that Decision as from 26 April 2012, and it also concluded that the evaluation report was approved in accordance with Article 25(2) of Decision 2008/615/JHA.

(8) By adopting Council Decision 2012/664/EU ([2]), the Council concluded that Sweden has fully implemented the general provisions on data protection under Chapter 6 of Decision 2008/615/JHA and is entitled to receive and supply personal data pursuant to Article 12 of that Decision as from 25 October 2012, and it also concluded that the evaluation report was approved in accordance with Article 25(2) of Decision 2008/615/JHA.

(9) By adopting Council Decision 2012/713/EU ([3]), the Council concluded that Lithuania has fully implemented the general provisions on data protection under Chapter 6 of Decision 2008/615/JHA and is entitled to receive and supply personal data pursuant to Article 12 of that Decision as from 13 November 2012, and it also concluded that the evaluation report was approved in accordance with Article 25(2) of Decision 2008/615/JHA.

(10) By adopting Council Decision 2013/230/EU ([4]), the Council concluded that Bulgaria has fully implemented the general provisions on data protection under Chapter 6 of Decision 2008/615/JHA and is entitled to receive and supply personal data pursuant to Article 12 of that Decision as from 14 May 2013, and it also concluded that the evaluation report was approved in accordance with Article 25(2) of Decision 2008/615/JHA.

(11) By adopting Council Decision 2013/692/EU ([5]), the Council concluded that Slovakia has fully implemented the general provisions on data protection under Chapter 6 of Decision 2008/615/JHA and is entitled to receive and supply personal data pursuant to Article 12 of that Decision as from 19 November 2013, and it also concluded that the evaluation report was approved in accordance with Article 25(2) of Decision 2008/615/JHA.

(12) By adopting Council Decision 2014/264/EU ([6]), the Council concluded that Hungary has fully implemented the general provisions on data protection under Chapter 6 of Decision 2008/615/JHA and is entitled to receive and supply personal data pursuant to Article 12 of that Decision as from 6 May 2014, and it also concluded that the evaluation report was approved in accordance with Article 25(2) of Decision 2008/615/JHA.

(13) In its judgment of 22 September 2016 in Joined Cases C-14/15 and C-116/15, the Court of Justice of the European Union held that Article 25(2) of Decision 2008/615/JHA unlawfully lays down a requirement of unanimity for the adoption of measures necessary to implement that Decision. Decisions 2010/559/EU, 2011/387/EU, 2011/547/EU, 2012/236/EU, 2012/664/EU, 2012/713/EU, 2013/230/EU, 2013/692/EU and 2014/264/EU were adopted on the basis of Article 25(2) of Decision 2008/615/JHA and consequently are vitiated by a procedural defect.

(14) With a view to ensuring the legal certainty of the receipt and supply of personal data pursuant to Decision 2008/615/JHA with regard to the Member States concerned by Decisions 2010/559/EU, 2011/387/EU, 2011/547/EU, 2012/236/EU, 2012/664/EU, 2012/713/EU, 2013/230/EU, 2013/692/EU and 2014/264/EU, those Decisions should be replaced by this Decision.

(15) With a view to ensuring continued receipt and supply of personal data pursuant to Article 12 of Decision 2008/615/JHA, Decisions 2010/559/EU, 2011/387/EU, 2011/547/EU, 2012/236/EU, 2012/664/EU, 2012/713/EU, 2013/230/EU, 2013/692/EU and 2014/264/EU cease to produce effects as from the date of entry into force of this Decision.

([1]) Council Decision 2012/236/EU of 26 April 2012 on the launch of automated data exchange with regard to Vehicle Registration Data (VRD) in Poland (OJ L 118, 3.5.2012, p. 8).

([2]) Council Decision 2012/664/EU of 25 October 2012 on the launch of automated data exchange with regard to Vehicle Registration Data (VRD) in Sweden (OJ L 299, 27.10.2012, p. 44).

([3]) Council Decision 2012/713/EU of 13 November 2012 on the launch of automated data exchange with regard to Vehicle Registration Data (VRD) in Lithuania (OJ L 323, 22.11.2012, p. 17).

([4]) Council Decision 2013/230/EU of 14 May 2013 on the launch of automated data exchange with regard to Vehicle Registration Data (VRD) in Bulgaria (OJ L 138, 24.5.2013, p. 12).

([5]) Council Decision 2013/692/EU of 19 November 2013 on the launch of automated data exchange with regard to Vehicle Registration Data (VRD) in Slovakia (OJ L 319, 29.11.2013, p. 7).

([6]) Council Decision 2014/264/EU of 6 May 2014 on the launch of automated data exchange with regard to Vehicle Registration Data (VRD) in Hungary (OJ L 137, 12.5.2014, p. 7).

(16) For the same reason, the entry into force of this Decision should be without prejudice to the validity of automated data exchange carried out by the Member States pursuant to Decisions 2010/559/EU, 2011/387/EU, 2011/547/EU, 2012/236/EU, 2012/664/EU, 2012/713/EU, 2013/230/EU, 2013/692/EU and 2014/264/EU.

(17) Moreover, the Member States which obtained personal data pursuant to Decisions 2010/559/EU, 2011/387/EU, 2011/547/EU, 2012/236/EU, 2012/664/EU, 2012/713/EU, 2013/230/EU, 2013/692/EU and 2014/264/EU should continue to be entitled to further process those data at national level or between Member States for the purposes laid down in Article 26 of Decision 2008/615/JHA.

(18) Article 33 of Decision 2008/615/JHA confers upon the Council implementing powers with a view to adopting measures necessary to implement that Decision, in particular as regards the receipt and supply of personal data provided for under that Decision. As the conditions for triggering the exercise of such implementing powers have been met and the procedure in that regard has been followed, an implementing decision on the automated data exchange with regard to vehicle registration data with regard to Finland, Slovenia, Romania, Poland, Sweden, Lithuania, Bulgaria, Slovakia and Hungary should be adopted in order to allow those Member States to continue receiving and supplying personal data pursuant to Article 12 of Decision 2008/615/JHA.

(19) Denmark is bound by Decision 2008/615/JHA and is therefore taking part in the adoption and application of this Decision which implements Decision 2008/615/JHA.

(20) The United Kingdom and Ireland are bound by Decision 2008/615/JHA and are therefore taking part in the adoption and application of this Decision which implements Decision 2008/615/JHA,

HAS ADOPTED THIS DECISION:

Article 1

For the purpose of automated searching of vehicle registration data (VRD), Finland, Slovenia, Romania, Poland, Sweden, Lithuania, Bulgaria, Slovakia and Hungary shall continue to be to entitled to receive and supply personal data pursuant to Article 12 of Decision 2008/615/JHA.

Article 2

1. Decisions 2010/559/EU, 2011/387/EU, 2011/547/EU, 2012/236/EU, 2012/664/EU, 2012/713/EU, 2013/230/EU, 2013/692/EU and 2014/264/EU cease to produce effects as from the date of entry into force of this Decision, without prejudice to the validity of automated data exchange carried out pursuant to those Decisions by the Member States.

2. Member States which obtained personal data pursuant to the Decisions referred to in paragraph 1 shall continue to be entitled to further process those data at national level or between Member States for the purposes laid down in Article 26 of Decision 2008/615/JHA.

Article 3

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

This Decision shall apply in accordance with the Treaties.

Done at Brussels, 18 May 2017.

For the Council
The President
C. ABELA

RECOMMENDATIONS

COMMISSION RECOMMENDATION (EU) 2017/948

of 31 May 2017

on the use of fuel consumption and CO_2 emission values type-approved and measured in accordance with the World Harmonised Light Vehicles Test Procedure when making information available for consumers pursuant to Directive 1999/94/EC of the European Parliament and of the Council

(notified under document C(2017) 3525)

THE EUROPEAN COMMISSION,

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

Having regard to Directive 1999/94/EC of the European Parliament and of the Council of 13 December 1999 relating to the availability of consumer information on fuel economy and CO_2 emissions in respect of the marketing of new passenger cars ([1]) and, in particular, Article 9(2)(c) thereof,

Whereas:

(1) A new regulatory test procedure for measuring CO_2 emissions and fuel consumption from light duty vehicles, the World Harmonised Light Vehicles Test Procedure (WLTP) set out in Commission Regulation (EU) C(2017) 3521 ([2]), will replace the New European Test Cycle (NEDC), which is currently used pursuant to Commission Regulation (EC) No 692/2008 ([3]) but no longer corresponds to present-day's driving conditions or vehicle technologies. The WLTP will provide stricter test conditions and more realistic fuel consumption and CO_2 emission values to the benefit of consumers. Requirements regarding consumer information should include the manner in which access to this improved information will be ensured in order to provide for the necessary comparability of that information.

(2) Directive 1999/94/EC aims to ensure that information relating to fuel consumption and CO_2 emissions of new passenger cars offered for sale or lease in the Union is made available to consumers in order to enable them to make an informed choice when purchasing a new car. That Directive requires, with regard to new passenger cars, that both official fuel consumption and official specific emissions of CO_2 of new passenger cars, as defined in points (5) and (6) of Article 2 of that Directive, are made available to consumers. The values to be used are those type-approved and measured by the type-approval authority in accordance with the provisions of Regulation (EC) No 715/2007 of the European Parliament and of the Council ([4]) and of Regulation (EC) No 692/2008, in particular Annex XII thereof, and included in Annex VIII to Directive 2007/46/EC of the European Parliament and of the Council ([5]). Those values are to be attached to the EC vehicle type-approval certificate and are to be included in the certificate of conformity.

([1]) OJ L 12, 18.1.2000, p. 16.

([2]) Commission Regulation C(2017) 3521 of 1 June 2017 supplementing Regulation (EC) No 715/2007 of the European Parliament and of the Council on type-approval of motor vehicles with respect to emissions from light passenger and commercial vehicles (Euro 5 and Euro 6) and on access to vehicle repair and maintenance information, amending Directive 2007/46/EC of the European Parliament and of the Council, Commission Regulation (EC) No 692/2008 and Commission Regulation (EU) No 1230/2012 and repealing Regulation (EC) No 692/2008 (not yet published in the Official Journal).

([3]) Commission Regulation (EC) No 692/2008 of 18 July 2008 implementing and amending Regulation (EC) No 715/2007 of the European Parliament and of the Council on type-approval of motor vehicles with respect to emissions from light passenger and commercial vehicles (Euro 5 and Euro 6) and on access to vehicle repair and maintenance information (OJ L 199, 28.7.2008, p. 1).

([4]) Regulation (EC) No 715/2007 of the European Parliament and of the Council of 20 June 2007 on type approval of motor vehicles with respect to emissions from light passenger and commercial vehicles (Euro 5 and Euro 6) and on access to vehicle repair and maintenance information (OJ L 171, 29.6.2007, p. 1).

([5]) Directive 2007/46/EC of the European Parliament and of the Council of 5 September 2007 establishing a framework for the approval of motor vehicles and their trailers, and of systems, components and separate technical units intended for such vehicles (Framework Directive) (OJ L 263, 9.10.2007, p. 1).

(3) The WLTP is to be phased-in, starting with new passenger car types, as described in Part B of Annex II to Directive 2007/46/EC, from 1 September 2017, followed by new passenger cars from 1 September 2018. End-of-series vehicles, as defined in point (22) of Article 3 of Directive 2007/46/EC, which are type-approved and measured in accordance with the NEDC, may be placed on the market for a period of 12 months from the date on which validity of the EC type-approval expired, i.e. until 31 August 2019. As a consequence, from 1 September 2019 all new passenger cars placed on the Union market are to be tested in accordance with the WLTP.

(4) During the phasing-in of the WLTP, the EC vehicle type-approval certificate and the certificate of conformity are to mention fuel consumption and CO_2 emission values type-approved and measured in accordance with the NEDC and/or the WLTP. For passenger cars type-approved in accordance with the WLTP, both WLTP and NEDC fuel consumption and CO_2 emission values will be recorded in the certificate of conformity.

(5) For that transitional period of phasing-in of the WLTP, it is therefore important to clarify which values are to be used for consumer information purposes pursuant to Directive 1999/94/EC to ensure that consumer information remains comparable across all new passenger cars and all Member States.

(6) It is very likely that the fuel consumption and CO_2 emissions values measured in accordance with the WLTP will be different from the ones measured in accordance with the NEDC. WLTP values will in many cases be higher compared to NEDC values for the same car. Furthermore, in contrast to the NEDC, the WLTP will provide for specific fuel consumption and CO_2 emission values for each individual vehicle reflecting the vehicle specifications and optional equipment that affect those values. That should be able to provide consumers with more precise and realistic information on each new passenger car or, in the case of a given car model, on the range of possible fuel consumption and CO_2 emission values.

(7) Test results on fuel consumption and CO_2 emission values are recorded for different test phases. For vehicles type-approved in accordance with the NEDC, values are provided for 'urban' and 'extra-urban' conditions as well as 'combined' and 'weighted, combined' values. For vehicles type-approved in accordance with the WLTP, values are provided for 'low', 'medium', 'high', and 'extra high' as well as 'combined' and 'weighted, combined' values. In order to ensure comparability at least the 'combined' values of the applicable test method should be made available to consumers.

(8) Where separate from the labels, guides, posters or promotional literature and material required under Directive 1999/94/EC information relating to fuel consumption or CO_2 emissions is made available to consumers based on non-harmonised test protocols within the scope of voluntary schemes by manufacturers, consumers should be made fully aware that such values are based on non-harmonised test protocols. Consumers should be advised that, in order to compare new passenger cars' fuel consumption or CO_2 emissions, values measured and type-approved in accordance with a harmonised EU test protocol should be used.

(9) When transposing Directive 1999/94/EC, some Member States have chosen to include also information about air pollutants on the car labels in addition to the information on fuel consumption and specific CO_2 emissions. With the introduction of the WLTP and the real driving emission (RDE) test procedure and with the new requirements for declaring a maximum value of real-driving emissions on the certificate of conformity of new cars ([1]), information on air pollutants will be available as of 1 September 2017 for all new vehicle types and as of 1 September 2019 for all new vehicles. In line with the recommendation by the European Parliament following the inquiry into emission measurements in the automotive sector ([2]), Member States should consider whether to make such information available to consumers with a view to raising awareness and enabling consumers to make an informed choice when purchasing a car.

(10) In order to ensure that consumers fully understand the implications of the change to the WLTP, all concerned parties should run or contribute to information campaigns to explain the effects of the new test procedure on fuel consumption and CO_2 emission values. Those information campaigns should involve public authorities, consumer organisations, environmental and non-governmental organisations, driver associations, and the car industry.

([1]) Commission Regulation (EU) 2016/646 of 20 April 2016 amending Regulation (EC) No 692/2008 as regards emissions from light passenger and commercial vehicles (Euro 6) (OJ L 109, 26.4.2016, p. 1).

([2]) P8_TA(2017)0100.

(11) After having conducted consultations with the Expert Group for policy development and implementation of CO_2 from road vehicles, with experts from industry, consumer organisations and other non-governmental organisations and Member States, the Commission considers it appropriate to provide recommendations as to how the official fuel consumption and official specific emissions of CO_2 of new passenger cars should be expressed for consumer information purposes.

(12) A recommendation should be adopted to enable consumers to make an informed choice and to encourage a harmonised application of Directive 1999/94/EC throughout the Union.

(13) The measures provided for in this Recommendation are in accordance with the opinion of the Committee established under Article 10 of Directive 1999/94/EC,

HAS ADOPTED THIS RECOMMENDATION:

1. Member States should ensure that the NEDC values recorded in the certificates of conformity of new registered cars are used for the purpose of communicating the official fuel consumption and official specific emissions of CO_2, as defined in points (5) and (6) of Article 2 of Directive 1999/94/EC, to consumers until 31 December 2018, after which date all new vehicles placed on the Union market are to be tested and type-approved in accordance with WLTP.

2. From 1 January 2019, Member States should ensure that only WLTP fuel consumption and CO_2 emission values are used for consumer information purposes.

3. Member States should ensure that after 1 January 2019, when end-of-series vehicles may still have NEDC values only, those values are accompanied by a disclaimer that the vehicle is an end-of-series vehicle and that the values are not comparable to values based on the WLTP.

4. Member States should ensure that the label which is attached to or displayed near each new passenger car at the point of sale includes information on the official fuel consumption and official specific CO_2 emission values of the vehicle to which it refers.

5. Member States should ensure that the guide on fuel economy and CO_2 emissions as well as the poster or display to be displayed at the point of sale includes information on the official fuel consumption and official specific CO_2 emission values of the vehicle to which it refers. Where several variants and/or versions are grouped under one model, the values to be given should be those of the individual vehicle with the highest values within that group.

6. Member States should ensure that promotional material containing a reference to any particular new passenger car model, version or variant includes information on the official fuel consumption and official specific CO_2 emission values of the vehicle to which it refers. Where more than one model is specified, Member States should ensure that the information includes the official fuel consumption and official specific CO_2 emission values of all the vehicles to which it refers or the range between the worst and best values of all the vehicles to which it refers. For vehicles type-approved in accordance with the WLTP, the worst and best values should reflect the values of the new passenger cars available on the market, as recorded in the certificates of conformity.

7. Member States should ensure that promotional material distributed by electronic means which allow consumers to configure a specific vehicle, such as online car configurators, clearly demonstrate to consumers how different specific equipment and optional extras affect the fuel consumption and CO_2 emission values type-approved and measured in accordance with the WLTP.

8. In case Member States allow that WLTP fuel consumption and CO_2 emission values are provided as additional information prior to 1 January 2019 in order to provide consumers as early as possible with access to CO_2 emission and fuel consumption values that are more representative of real driving conditions, Member States should ensure that the additional information is presented clearly and separate from the labels, guides, posters or promotional literature and material required under Directive 1999/94/EC and that it contains the following information:

> 'From 1 September 2017, certain new vehicles will be type-approved using the World Harmonised Light Vehicle Test Procedure (WLTP), which is a new, more realistic test procedure for measuring fuel consumption and CO_2 emissions. From 1 September 2018 the WLTP will fully replace the New European Drive Cycle (NEDC), which is the current test procedure. Due to more realistic test conditions, the fuel consumption and CO_2 emissions measured under the WLTP are in many cases higher compared to those measured under the NEDC.'.

9. Member States should ensure that consumers, before taking a decision on the purchase of a car, are informed about the changes in fuel consumption and CO_2 emission values resulting from the introduction of the WLTP and about the implications that those changes may have at the time of registration.

10. Member States should ensure that the official fuel consumption and official specific CO_2 emission values include at least the 'combined' values measured in accordance with the relevant test procedure.

11. Where information relating to fuel consumption or CO_2 emissions based on non-harmonised test protocols within the scope of voluntary schemes by manufacturers is provided to consumers separate from the labels, guides, posters or promotional literature and material required under Directive 1999/94/EC, Member States should ensure that such information includes the following information:

    'The fuel consumption or CO_2 emission values provided are based on non-harmonised test protocols. They are provided for information purposes only. In order to compare new passenger car's fuel consumption or CO_2 emission values, based on a harmonised EU test protocol, official fuel consumption or CO_2 emission values should be used [*insert hyperlink to where these values are available*].'.

12. Member States should consider the possibility of also including the information regarding the maximum value for real-driving air pollutants declared on each vehicle's certificate of conformity on the label which is attached to or displayed near each new passenger car at the point of sale.

13. Member States should ensure that appropriate information campaigns are launched to explain to consumers the introduction of the WLTP and its implications for fuel consumption and CO_2 emission values, in particular the increase in those values compared to the values derived under the NEDC, and the meaning of the values resulting from different test phases.

14. This Recommendation is addressed to the Member States.

Done at Brussels, 31 May 2017.

For the Commission
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