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I

(Legislative acts)

DIRECTIVES

COUNCIL DIRECTIVE (EU) 2017/952

of 29 May 2017

amending Directive (EU) 2016/1164 as regards hybrid mismatches with third countries

THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to the proposal from the European Commission,

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

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

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

Acting in accordance with a special legislative procedure,

Whereas:

- (1) It is imperative to restore trust in the fairness of tax systems and allow governments to effectively exercise their tax sovereignty. Therefore, the Organisation for Economic Cooperation and Development (OECD) has issued concrete action recommendations in the context of the initiative against Base Erosion and Profit Shifting (BEPS).
- (2) The final reports on the 15 OECD Action Items against BEPS were released to the public on 5 October 2015. This output was welcomed by the Council in its conclusions of 8 December 2015. The Council conclusions stressed the need to find common, yet flexible, solutions at Union level consistent with OECD BEPS conclusions.
- (3) In response to the need for fairer taxation and, in particular, to follow up on the OECD BEPS conclusions, the Commission presented its Anti-Tax Avoidance Package on 28 January 2016. Council Directive (EU) 2016/1164 ⁽³⁾, concerning rules against tax avoidance, was adopted in the framework of that package.
- (4) Directive (EU) 2016/1164 provides for a framework to tackle hybrid mismatches.
- (5) It is necessary to establish rules that neutralise hybrid mismatches in as comprehensive a manner as possible. Considering that Directive (EU) 2016/1164 only covers hybrid mismatches that arise in the interaction between

⁽¹⁾ Opinion of 27 April 2017 (not yet published in the Official Journal).

⁽²⁾ Opinion of 14 December 2016 (not yet published in the Official Journal).

⁽³⁾ Council Directive (EU) 2016/1164 of 12 July 2016 laying down rules against tax avoidance practices that directly affect the functioning of the internal market (OJ L 193, 19.7.2016, p. 1).

the corporate tax systems of Member States, the ECOFIN Council issued a statement on 12 July 2016 requesting the Commission to put forward by October 2016 a proposal on hybrid mismatches involving third countries in order to provide for rules consistent with and no less effective than the rules recommended by the OECD report on Neutralising the Effects of Hybrid Mismatch Arrangements, Action 2 — 2015 Final Report ('OECD BEPS report on Action 2'), with a view to reaching an agreement by the end of 2016.

- (6) Directive (EU) 2016/1164 recognises, inter alia, that it is critical for further work to be undertaken on other hybrid mismatches such as those involving permanent establishments. In view of that, it is essential that hybrid permanent establishment mismatches be addressed in that Directive as well.
- (7) In order to provide for a framework that is consistent with and no less effective than the OECD BEPS report on Action 2, it is essential that Directive (EU) 2016/1164 also include rules on hybrid transfers, imported mismatches and address the full range of double deduction outcomes, in order to prevent taxpayers from exploiting remaining loopholes.
- (8) Directive (EU) 2016/1164 includes rules on hybrid mismatches between Member States and should thus also include rules on hybrid mismatches with third countries where at least one of the parties involved is a corporate taxpayer or, in the case of reverse hybrids, an entity in a Member State, as well as rules on imported mismatches. Consequently, the rules on hybrid mismatches and tax residency mismatches should apply to all taxpayers that are subject to corporate tax in a Member State including to permanent establishments, or to arrangements treated as permanent establishments, of entities resident in third countries. Rules on reverse hybrid mismatches should apply to all entities that are treated as transparent for tax purposes by a Member State.
- (9) Rules on hybrid mismatches should address mismatch situations which result from double deductions, from conflict in the characterisation of financial instruments, payments and entities, or from the allocation of payments. Since hybrid mismatches could lead to a double deduction or to a deduction without inclusion, it is necessary to lay down rules whereby the Member State concerned either denies the deduction of a payment, expenses or losses or requires the taxpayer to include the payment in its taxable income, as appropriate. However, those rules apply only to deductible payments and should not affect the general features of a tax system, whether it is a classical or an imputation system.
- (10) Hybrid permanent establishment mismatches occur where differences between the rules in the jurisdictions of permanent establishment and of residence for allocating income and expenditure between different parts of the same entity give rise to a mismatch in tax outcomes and include those cases where a mismatch outcome arises due to the fact that a permanent establishment is disregarded under the laws of the branch jurisdiction. Those mismatch outcomes may lead to a double deduction or a deduction without inclusion, and should therefore be eliminated. In the case of disregarded permanent establishments, the Member State in which the taxpayer is a resident should include the income that would otherwise be attributed to the permanent establishment.
- (11) Any adjustments that are required to be made under this Directive should in principle not affect the allocation of taxing rights between jurisdictions laid down under a double taxation treaty.
- (12) In order to ensure proportionality, it is necessary to address only the cases where there is a substantial risk of avoiding taxation through the use of hybrid mismatches. It is therefore appropriate to cover hybrid mismatches that arise between the head office and permanent establishment or between two or more permanent establishments of the same entity, hybrid mismatches that arise between the taxpayer and its associated enterprises or between associated enterprises, and those resulting from a structured arrangement involving a taxpayer.
- (13) Mismatches that, in particular, result from the hybrid nature of entities should be addressed only where one of the associated enterprises has, at a minimum, effective control over the other associated enterprises. Consequently, in those cases, it should be required that an associated enterprise be held by, or hold, the taxpayer or another associated enterprise through a participation in terms of voting rights, capital ownership or entitlement to received profits of 50 per cent or more. The ownership, or rights of persons who are acting together, should be aggregated for the purposes of applying this requirement.

- (14) In order to provide for a sufficiently comprehensive definition of ‘associated enterprise’ for the purposes of the rules on hybrid mismatches, that definition should also comprise an entity that is part of the same consolidated group for accounting purposes, an enterprise in which the taxpayer has a significant influence in the management and, conversely, an enterprise that has a significant influence in the management of the taxpayer.
- (15) It is necessary to address four categories of hybrid mismatches: first, hybrid mismatches that result from payments under a financial instrument; second, hybrid mismatches that are the consequence of differences in the allocation of payments made to a hybrid entity or permanent establishment, including as a result of payments to a disregarded permanent establishment; third, hybrid mismatches that result from payments made by a hybrid entity to its owner, or deemed payments between the head office and permanent establishment or between two or more permanent establishments; lastly, double deduction outcomes resulting from payments made by a hybrid entity or permanent establishment.
- (16) In respect of payments under a financial instrument, a hybrid mismatch could arise where the deduction without inclusion outcome is attributable to the differences in the characterisation of the instrument or the payments made under it. If the character of the payment qualifies it for double tax relief under the laws of the payee jurisdiction, such as an exemption from tax, a reduction in the rate of tax or any credit or refund of tax, the payment should be treated as giving rise to a hybrid mismatch to the extent of the resulting undertaxed amount. A payment under a financial instrument should not, however, be treated as giving rise to a hybrid mismatch where the tax relief granted in the payee jurisdiction is solely due to the tax status of the payee or the fact that the instrument is held subject to the terms of a special regime.
- (17) In order to avoid unintended outcomes in the interaction between the hybrid financial instrument rule and the loss-absorbing capacity requirements imposed on banks, and without prejudice to State aid rules, Member States should be able to exclude from the scope of this Directive intra-group instruments that have been issued with the sole purpose of meeting the issuer’s loss-absorbing capacity requirements and not for the purposes of avoiding tax.
- (18) In respect of payments made to a hybrid entity or permanent establishment, a hybrid mismatch could arise where the deduction without inclusion outcome results from differences in the rules governing the allocation of that payment between the hybrid entity and its owner in the case of a payment that is made to a hybrid entity, between the head office and permanent establishment, or between two or more permanent establishments in the case of a deemed payment to a permanent establishment. The definition of hybrid mismatch should only apply where the mismatch outcome is a result of differences in the rules governing the allocation of payments under the laws of the two jurisdictions and a payment should not give rise to a hybrid mismatch that would have arisen in any event due to the tax exempt status of the payee under the laws of any payee jurisdiction.
- (19) The definition of hybrid mismatch should also capture deduction without inclusion outcomes that are the result of payments made to a disregarded permanent establishment. A disregarded permanent establishment is any arrangement that is treated as giving rise to a permanent establishment under the laws of the head office jurisdiction but which is not treated as a permanent establishment under the laws of the other jurisdiction. The hybrid mismatch rule should not apply, however, where the mismatch would have arisen in any event due to the tax exempt status of the payee under the laws of any payee jurisdiction.
- (20) In respect of payments made by a hybrid entity to its owner, or deemed payments made between the head office and permanent establishment or between two or more permanent establishments, a hybrid mismatch could arise where the deduction without inclusion outcome results from the payment or deemed payment not being recognised in the payee jurisdiction. In that case, where the mismatch outcome is a consequence of the non-allocation of the payment or deemed payment, the payee jurisdiction is the jurisdiction where the payment or deemed payment is treated as being received under the laws of the payer jurisdiction. As with other hybrid entities and branch mismatches that give rise to deduction without inclusion outcomes, no hybrid mismatch should arise where the payee is exempt from tax under the laws of the payee jurisdiction. In respect of this

category of hybrid mismatches, however, a mismatch outcome would only arise to the extent that the payer jurisdiction allows the deduction in respect of the payment or deemed payment to be set off against an amount that is not dual-inclusion income. If the payer jurisdiction allows the deduction to be carried forward to a subsequent tax period, then the requirement to make any adjustment under this Directive could be deferred until such time as the deduction is actually set off against non-dual-inclusion income in the payer jurisdiction.

- (21) The hybrid mismatch definition should also capture double deduction outcomes regardless of whether they arise as a result of payments, expenses that are not treated as payments under domestic law or as a result of amortisation or depreciation losses. As with deemed payments and payments made by a hybrid entity that are disregarded by the payee, a hybrid mismatch should only arise, however, to the extent that the payer jurisdiction allows the deduction to be set off against an amount that is not dual-inclusion income. This means that if the payer jurisdiction allows the deduction to be carried forward to a subsequent tax period, the requirement to make an adjustment under this Directive could be deferred until such time as the deduction is actually set off against non-dual-inclusion income in the payer jurisdiction.
- (22) Differences in tax outcomes that are solely attributable to differences in the value ascribed to a payment, including through the application of transfer pricing, should not fall within the scope of a hybrid mismatch. Furthermore, as jurisdictions use different tax periods and have different rules for recognising when items of income or expenditure have been derived or incurred, those timing differences should not generally be treated as giving rise to mismatches in tax outcomes. However, a deductible payment under a financial instrument that cannot reasonably be expected to be included in income within a reasonable period of time should be treated as giving rise to a hybrid mismatch if that deduction without inclusion outcome is attributable to differences in the characterisation of the financial instrument or payments made under it. It should be understood that a mismatch outcome could arise if a payment made under a financial instrument is not included in income within a reasonable period of time. Such a payment should be treated as included in income within a reasonable period of time, if included by the payee within 12 months of the end of the payer's tax period or as determined under the arm's length principle. Member States could require that a payment be included within a fixed period of time in order to avoid giving rise to a mismatch outcome and secure tax control.
- (23) Hybrid transfers could give rise to a difference in tax treatment if, as a result of an arrangement to transfer a financial instrument, the underlying return on that instrument was treated as derived by more than one of the parties to the arrangement. In those cases, the payment under the hybrid transfer could give rise to a deduction for the payer while being treated as a return on the underlying instrument by the payee. This difference in tax treatment could lead to a deduction without inclusion outcome or to the generation of a surplus tax credit for the tax withheld at source on the underlying instrument. Such mismatches should therefore be eliminated. In the case of a deduction without inclusion, the same rules should apply as for neutralising mismatches from payments under a hybrid financial instrument. In the case of hybrid transfers that have been structured to produce surplus tax credits, the Member State concerned should prevent the payer from using the surplus credit to obtain a tax advantage including through the application of a general anti-abuse rule consistent with Article 6 of Directive (EU) 2016/1164.
- (24) It is necessary to provide for a rule that allows Member States to tackle discrepancies in the transposition and implementation of this Directive resulting in a hybrid mismatch despite the fact that Member States act in compliance with this Directive. Where such a situation arises and the primary rule provided for in this Directive does not apply, a secondary rule should apply. Nevertheless, the application of both the primary and secondary rules only apply to hybrid mismatches as defined by this Directive and should not affect the general features of the tax system of a Member State.
- (25) Imported mismatches shift the effect of a hybrid mismatch between parties in third countries into the jurisdiction of a Member State through the use of a non-hybrid instrument thereby undermining the effectiveness of the rules that neutralise hybrid mismatches. A deductible payment in a Member State can be used to fund expenditure involving a hybrid mismatch. To counter such imported mismatches, it is necessary to include rules that disallow the deduction of a payment if the corresponding income from that payment is set off, directly or indirectly, against a deduction that arises under a hybrid mismatch giving rise to a double deduction or a deduction without inclusion between third countries.

- (26) A dual resident mismatch could lead to a double deduction if a payment made by a dual resident taxpayer is deducted under the laws of both jurisdictions where the taxpayer is resident. As dual resident mismatches could give rise to double deduction outcomes, they should fall within the scope of this Directive. A Member State should deny the duplicate deduction arising in respect of a dual resident company to the extent that this payment is set off against an amount that is not treated as income under the laws of the other jurisdiction.
- (27) The objective of this Directive is to improve the resilience of the internal market as a whole against hybrid mismatches. This cannot be sufficiently achieved by the Member States acting individually, given that national corporate tax systems are disparate and that independent action by Member States would only replicate the existing fragmentation of the internal market in direct taxation. It would thus allow inefficiencies and distortions to persist in the interaction of distinct national measures. This would result in a lack of coordination. That objective can rather, due to the cross-border nature of hybrid mismatches and the need to adopt solutions that function for the internal market as a whole, be better achieved at Union level. The Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary in order to achieve that objective. By setting the required level of protection for the internal market, this Directive only aims to achieve the essential degree of coordination within the Union that is necessary to achieve its objective.
- (28) In implementing this Directive, Member States should use the applicable explanations and examples in the OECD BEPS report on Action 2 as a source of illustration or interpretation to the extent that they are consistent with the provisions of this Directive and with Union law.
- (29) The hybrid mismatch rules in Article 9(1) and (2) only apply to the extent that the situation involving a taxpayer gives rise to a mismatch outcome. No mismatch outcome should arise when an arrangement is subject to adjustment under Article 9(5) or 9a and, accordingly, arrangements that are subject to adjustment under those parts of this Directive should not be subject to any further adjustment under the hybrid mismatch rules.
- (30) Where the provisions of another directive, such as those in Council Directive 2011/96/EU⁽¹⁾, lead to the neutralisation of the mismatch in tax outcomes, there should be no scope for the application of the hybrid mismatch rules provided for in this Directive.
- (31) The Commission should evaluate the implementation of this Directive 5 years after its entry into force and report to the Council thereon. Member States should communicate to the Commission all information necessary for this evaluation.
- (32) Directive (EU) 2016/1164 should therefore be amended accordingly,

HAS ADOPTED THIS DIRECTIVE:

Article 1

Directive (EU) 2016/1164 is amended as follows:

- (1) Article 1 is replaced by the following:

Article 1

Scope

1. This Directive applies to all taxpayers that are subject to corporate tax in one or more Member States, including permanent establishments in one or more Member States of entities resident for tax purposes in a third country.
2. Article 9a also applies to all entities that are treated as transparent for tax purposes by a Member State.;

⁽¹⁾ Council Directive 2011/96/EU of 30 November 2011 on the common system of taxation applicable in the case of parent companies and subsidiaries of different Member States (OJ L 345, 29.12.2011, p. 8).

(2) Article 2 is amended as follows:

(a) in point (4), the last subparagraph is replaced by the following:

For the purposes of Articles 9 and 9a:

- (a) Where the mismatch outcome arises under points (b), (c), (d), (e) or (g) of the first subparagraph of point (9) of this Article or where an adjustment is required under Article 9(3) or Article 9a, the definition of associated enterprise is modified so that the 25 per cent requirement is replaced by a 50 per cent requirement;
- (b) a person who acts together with another person in respect of the voting rights or capital ownership of an entity shall be treated as holding a participation in all of the voting rights or capital ownership of that entity that are held by the other person;
- (c) an associated enterprise also means an entity that is part of the same consolidated group for financial accounting purposes as the taxpayer, an enterprise in which the taxpayer has a significant influence in the management or an enterprise that has a significant influence in the management of the taxpayer.;

(b) point (9) is replaced by the following:

(9) "hybrid mismatch" means a situation involving a taxpayer or, with respect to Article 9(3), an entity where:

(a) a payment under a financial instrument gives rise to a deduction without inclusion outcome and:

- (i) such payment is not included within a reasonable period of time; and
- (ii) the mismatch outcome is attributable to differences in the characterisation of the instrument or the payment made under it.

For the purposes of the first subparagraph, a payment under a financial instrument shall be treated as included in income within a reasonable period of time where:

- (i) the payment is included by the jurisdiction of the payee in a tax period that commences within 12 months of the end of the payer's tax period; or
 - (ii) it is reasonable to expect that the payment will be included by the jurisdiction of the payee in a future tax period and the terms of payment are those that would be expected to be agreed between independent enterprises;
- (b) a payment to a hybrid entity gives rise to a deduction without inclusion and that mismatch outcome is the result of differences in the allocation of payments made to the hybrid entity under the laws of the jurisdiction where the hybrid entity is established or registered and the jurisdiction of any person with a participation in that hybrid entity;
 - (c) a payment to an entity with one or more permanent establishments gives rise to a deduction without inclusion and that mismatch outcome is the result of differences in the allocation of payments between the head office and permanent establishment or between two or more permanent establishments of the same entity under the laws of the jurisdictions where the entity operates;
 - (d) a payment gives rise to a deduction without inclusion as a result of a payment to a disregarded permanent establishment;
 - (e) a payment by a hybrid entity gives rise to a deduction without inclusion and that mismatch is the result of the fact that the payment is disregarded under the laws of the payee jurisdiction;
 - (f) a deemed payment between the head office and permanent establishment or between two or more permanent establishments gives rise to a deduction without inclusion and that mismatch is the result of the fact that the payment is disregarded under the laws of the payee jurisdiction; or
 - (g) a double deduction outcome occurs.

For the purposes of this point (9):

- (a) a payment representing the underlying return on a transferred financial instrument shall not give rise to a hybrid mismatch under point (a) of the first subparagraph where the payment is made by a financial trader under an on-market hybrid transfer provided the payer jurisdiction requires the financial trader to include as income all amounts received in relation to the transferred financial instrument;
- (b) a hybrid mismatch shall only arise under points (e), (f) or (g) of the first subparagraph to the extent that the payer jurisdiction allows the deduction to be set off against an amount that is not dual-inclusion income;
- (c) a mismatch outcome shall not be treated as a hybrid mismatch unless it arises between associated enterprises, between a taxpayer and an associated enterprise, between the head office and permanent establishment, between two or more permanent establishments of the same entity or under a structured arrangement.

For the purposes of this point (9) and Articles 9, 9a and 9b:

- (a) “mismatch outcome” means a double deduction or a deduction without inclusion;
- (b) “double deduction” means a deduction of the same payment, expenses or losses in the jurisdiction in which the payment has its source, the expenses are incurred or the losses are suffered (payer jurisdiction) and in another jurisdiction (investor jurisdiction). In the case of a payment by a hybrid entity or permanent establishment the payer jurisdiction is the jurisdiction where the hybrid entity or permanent establishment is established or situated;
- (c) “deduction without inclusion” means the deduction of a payment or deemed payment between the head office and permanent establishment or between two or more permanent establishments in any jurisdiction in which that payment or deemed payment is treated as made (payer jurisdiction) without a corresponding inclusion for tax purposes of that payment or deemed payment in the payee jurisdiction. The payee jurisdiction is any jurisdiction where that payment or deemed payment is received, or is treated as being received under the laws of any other jurisdiction;
- (d) “deduction” means the amount that is treated as deductible from the taxable income under the laws of the payer or investor jurisdiction. The term “deductible” shall be construed accordingly;
- (e) “inclusion” means the amount that is taken into account in the taxable income under the laws of the payee jurisdiction. A payment under a financial instrument shall not be treated as included to the extent that the payment qualifies for any tax relief solely due to the way that payment is characterised under the laws of the payee jurisdiction. The term “included” shall be construed accordingly;
- (f) “tax relief” means a tax exemption, reduction in the tax rate or any tax credit or refund (other than a credit for taxes withheld at source);
- (g) “dual inclusion income” means any item of income that is included under the laws of both jurisdictions where the mismatch outcome has arisen;
- (h) “person” means an individual or entity;
- (i) “hybrid entity” means any entity or arrangement that is regarded as a taxable entity under the laws of one jurisdiction and whose income or expenditure is treated as income or expenditure of one or more other persons under the laws of another jurisdiction;
- (j) “financial instrument” means any instrument to the extent that it gives rise to a financing or equity return that is taxed under the rules for taxing debt, equity or derivatives under the laws of either the payee or payer jurisdictions and includes a hybrid transfer;
- (k) “financial trader” is a person or entity engaged in the business of regularly buying and selling financial instruments on its own account for the purposes of making a profit;

- (l) “hybrid transfer” means any arrangement to transfer a financial instrument where the underlying return on the transferred financial instrument is treated for tax purposes as derived simultaneously by more than one of the parties to that arrangement;
- (m) “on-market hybrid transfer” means any hybrid transfer that is entered into by a financial trader in the ordinary course of business, and not as part of a structured arrangement;
- (n) “disregarded permanent establishment” means any arrangement that is treated as giving rise to a permanent establishment under the laws of the head office jurisdiction and is not treated as giving rise to a permanent establishment under the laws of the other jurisdiction.;

(c) the following points are added:

‘(10) “consolidated group for financial accounting purposes” means a group consisting of all entities which are fully included in consolidated financial statements drawn up in accordance with the International Financial Reporting Standards or the national financial reporting system of a Member State;

(11) “structured arrangement” means an arrangement involving a hybrid mismatch where the mismatch outcome is priced into the terms of the arrangement or an arrangement that has been designed to produce a hybrid mismatch outcome, unless the taxpayer or an associated enterprise could not reasonably have been expected to be aware of the hybrid mismatch and did not share in the value of the tax benefit resulting from the hybrid mismatch.;

(3) Article 4 is amended as follows:

(a) in point (a) of paragraph 5, point (ii) is replaced by the following:

‘(ii) all assets and liabilities are valued using the same method as in the consolidated financial statements drawn up in accordance with the International Financial Reporting Standards or the national financial reporting system of a Member State.;

(b) paragraph 8 is replaced by the following:

‘8. For the purposes of paragraphs 1 to 7, the taxpayer may be given the right to use consolidated financial statements prepared under accounting standards other than the International Financial Reporting Standards or the national financial reporting system of a Member State.;

(4) Article 9 is replaced by the following:

‘Article 9

Hybrid mismatches

1. To the extent that a hybrid mismatch results in a double deduction:

(a) the deduction shall be denied in the Member State that is the investor jurisdiction; and

(b) where the deduction is not denied in the investor jurisdiction, the deduction shall be denied in the Member State that is the payer jurisdiction.

Nevertheless, any such deduction shall be eligible to be set off against dual inclusion income whether arising in a current or subsequent tax period.

2. To the extent that a hybrid mismatch results in a deduction without inclusion:

(a) the deduction shall be denied in the Member State that is the payer jurisdiction; and

(b) where the deduction is not denied in the payer jurisdiction, the amount of the payment that would otherwise give rise to a mismatch outcome shall be included in income in the Member State that is the payee jurisdiction.

3. A Member State shall deny a deduction for any payment by a taxpayer to the extent that such payment directly or indirectly funds deductible expenditure giving rise to a hybrid mismatch through a transaction or series of transactions between associated enterprises or entered into as part of a structured arrangement except to the extent that one of the jurisdictions involved in the transaction or series of transactions has made an equivalent adjustment in respect of such hybrid mismatch.

4. A Member State may exclude from the scope of:

(a) point (b) of paragraph 2 of this Article hybrid mismatches as defined in points (b), (c), (d) or (f) of the first subparagraph of Article 2(9);

(b) points (a) and (b) of paragraph 2 of this Article hybrid mismatches resulting from a payment of interest under a financial instrument to an associated enterprise where:

(i) the financial instrument has conversion, bail-in or write down features;

(ii) the financial instrument has been issued with the sole purpose of satisfying loss absorbing capacity requirements applicable to the banking sector and the financial instrument is recognised as such in the taxpayer's loss absorbing capacity requirements;

(iii) the financial instrument has been issued

— in connection with financial instruments with conversion, bail-in or write down features at the level of a parent undertaking,

— at a level necessary to satisfy applicable loss absorbing capacity requirements,

— not as part of a structured arrangement; and

(iv) the overall net deduction for the consolidated group under the arrangement does not exceed the amount that it would have been had the taxpayer issued such financial instrument directly to the market.

Point (b) shall apply until 31 December 2022.

5. To the extent that a hybrid mismatch involves disregarded permanent establishment income which is not subject to tax in the Member State in which the taxpayer is resident for tax purposes, that Member State shall require the taxpayer to include the income that would otherwise be attributed to the disregarded permanent establishment. This applies unless the Member State is required to exempt the income under a double taxation treaty entered into by the Member State with a third country.

6. To the extent that a hybrid transfer is designed to produce a relief for tax withheld at source on a payment derived from a transferred financial instrument to more than one of the parties involved, the Member State of the taxpayer shall limit the benefit of such relief in proportion to the net taxable income regarding such payment.;

(5) the following Articles are inserted:

'Article 9a

Reverse hybrid mismatches

1. Where one or more associated non-resident entities holding in aggregate a direct or indirect interest in 50 per cent or more of the voting rights, capital interests or rights to a share of profit in a hybrid entity that is incorporated or established in a Member State are located in a jurisdiction or jurisdictions that regard the hybrid entity as a taxable person, the hybrid entity shall be regarded as a resident of that Member State and taxed on its income to the extent that that income is not otherwise taxed under the laws of the Member State or any other jurisdiction.

2. Paragraph 1 shall not apply to a collective investment vehicle. For the purposes of this Article, "collective investment vehicle" means an investment fund or vehicle that is widely held, holds a diversified portfolio of securities and is subject to investor-protection regulation in the country in which it is established.

*Article 9b***Tax residency mismatches**

To the extent that a deduction for payment, expenses or losses of a taxpayer who is resident for tax purposes in two or more jurisdictions is deductible from the tax base in both jurisdictions, the Member State of the taxpayer shall deny the deduction to the extent that the other jurisdiction allows the duplicate deduction to be set off against income that is not dual-inclusion income. If both jurisdictions are Member States, the Member State where the taxpayer is not deemed to be a resident according to the double taxation treaty between the two Member States concerned shall deny the deduction.;

(6) in Article 10(1), the following subparagraph is added:

‘By derogation from the first subparagraph, the Commission shall evaluate the implementation of Articles 9 and 9b, and in particular the consequences of the exemption set in point (b) of Article 9(4), by 1 January 2022 and report to the Council thereon.’;

(7) in Article 11, the following paragraph is inserted:

‘5a. By way of derogation from paragraph 1, Member States shall, by 31 December 2019, adopt and publish the laws, regulations and administrative provisions necessary to comply with Article 9. They shall communicate to the Commission the text of those provisions without delay.

They shall apply those provisions from 1 January 2020.

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

Article 2

1. Member States shall adopt and publish, by 31 December 2019, the laws, regulations and administrative provisions necessary to comply with this Directive. They shall forthwith communicate to the Commission the text of those provisions.

They shall apply those provisions from 1 January 2020.

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

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

3. By way of derogation from paragraph 1, Member States shall, by 31 December 2021, adopt and publish the laws, regulations and administrative provisions necessary to comply with Article 9a of Directive (EU) 2016/1164. They shall communicate to the Commission the text of those provisions without delay.

They shall apply those provisions from 1 January 2022.

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

Article 3

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

Article 4

This Directive is addressed to the Member States.

Done at Brussels, 29 May 2017.

For the Council
The President
C. CARDONA

II

(Non-legislative acts)

REGULATIONS

COMMISSION IMPLEMENTING REGULATION (EU) 2017/953

of 6 June 2017

laying down implementing technical standards with regard to the format and the timing of position reports by investment firms and market operators of trading venues pursuant to Directive 2014/65/EU of the European Parliament and of the Council on markets in financial instruments

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

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

Having regard to Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU ⁽¹⁾, and in particular Article 58(7) thereof,

Whereas:

- (1) In order to bring greater transparency to markets in commodity derivatives, emission allowances and derivatives thereof, market operators and investment firms operating a trading venue on which these financial instruments are traded should make public a weekly report showing the aggregate number of persons holding the contract and the total open position for each commodity derivative, emission allowance or derivative thereof which exceeds the thresholds specified in Commission Delegated Regulation (EU) 2017/591 ⁽²⁾ with regard to regulatory technical standards for the application of position limits to commodity derivatives and communicate that report to the European Securities and Markets Authority (ESMA).
- (2) Timely submission of reports previously published by the respective trading venues within a clear and common deadline facilitates the weekly centralised publication by ESMA of those reports from across the Union.
- (3) For reasons of consistency and in order to ensure the smooth functioning of the financial markets, it is necessary that the provisions laid down in this Regulation and the provisions laid down in Directive 2014/65/EU apply from the same date.
- (4) This Regulation is based on the draft implementing technical standards submitted by the ESMA to the Commission.
- (5) ESMA has conducted open public consultations on the draft implementing technical standards on which this Regulation is based, analysed the potential related costs and benefits and requested the opinion of the Securities and Markets Stakeholder Group established by Article 37 of Regulation (EU) No 1095/2010 of the European Parliament and of the Council ⁽³⁾,

⁽¹⁾ OJ L 173, 12.6.2014, p. 349.

⁽²⁾ Commission Delegated Regulation (EU) 2017/591 of 1 December 2016 supplementing Directive 2014/65/EU of the European Parliament and of the Council with regard to regulatory technical standards for the application of position limits to commodity derivatives (OJ L 87, 31.3.2017, p. 479).

⁽³⁾ Regulation (EU) No 1095/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Securities and Markets Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/77/EC (OJ L 331, 15.12.2010, p. 84).

HAS ADOPTED THIS REGULATION:

Article 1

Reporting deadlines

Market operators and investment firms referred to in Article 58(1) of Directive 2014/65/EU shall send ESMA the weekly report referred to in point (a) of that Article regarding the aggregate positions held at the close of business of each week no later than Wednesday 17.30 CET of the following week.

Where either Monday, Tuesday or Wednesday of the week in which that report is to be submitted is not a working day for the market operator or investment firm referred to in the first paragraph, that market operator or investment firm shall submit the report as soon as possible and no later than Thursday 17.30 CET of that week.

Article 2

Entry into force and application

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

It shall apply from 3 January 2018.

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

Done at Brussels, 6 June 2017.

For the Commission
The President
Jean-Claude JUNCKER

COMMISSION IMPLEMENTING REGULATION (EU) 2017/954**of 6 June 2017****on the extension of the transitional periods related to own funds requirements for exposures to central counterparties set out in Regulations (EU) No 575/2013 and (EU) No 648/2012 of the European Parliament and of the Council****(Text with EEA relevance)**

THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012 ⁽¹⁾, and in particular Article 497(3) thereof,

Whereas:

- (1) In order to avoid disruption to international financial markets and to prevent penalising institutions by subjecting them to higher own funds requirements during the processes of recognition of existing third-country central counterparties (CCPs), Article 497(2) of Regulation (EU) No 575/2013 established a transitional period during which third-country CCPs with which institutions established in the Union clear transactions may be considered qualifying CCPs by those institutions.
- (2) Regulation (EU) No 575/2013 amended Regulation (EU) No 648/2012 ⁽²⁾ in respect of certain inputs to the calculation of institutions' own funds requirements for exposures to third-country CCPs. Accordingly, Article 89(5a) of Regulation (EU) No 648/2012 requires certain third-country CCPs to report, for a limited period of time, the total amount of initial margin they have received from their clearing members. That transitional period mirrors the one laid down in Article 497(2) of Regulation (EU) No 575/2013.
- (3) Both transitional periods were set to expire on 15 June 2014.
- (4) Article 497(3) of Regulation (EU) No 575/2013 empowers the Commission to adopt an implementing act in order to extend the transitional period for own funds requirements by six months in exceptional circumstances. That extension should also apply in respect of the time limits laid down in Article 89(5a) of Regulation (EU) No 648/2012. Those transitional periods have been extended until 15 June 2017 by Commission Implementing Regulations (EU) No 591/2014 ⁽³⁾, (EU) No 1317/2014 ⁽⁴⁾, (EU) 2015/880 ⁽⁵⁾, (EU) 2015/2326 ⁽⁶⁾, (EU) 2016/892 ⁽⁷⁾ and (EU) 2016/2227 ⁽⁸⁾.
- (5) Of the CCPs established in third countries that have applied for recognition so far, 28 CCPs have already been recognised by the European Securities and Markets Authority. Of those, two CCPs from the United States of America have been recognised after the adoption of Implementing Regulation (EU) 2016/2227 on the basis of Commission Implementing Decision (EU) 2016/377 ⁽⁹⁾. In addition, following the adoption of Commission Implementing Decisions (EU) 2016/2269 ⁽¹⁰⁾, (EU) 2016/2275 ⁽¹¹⁾, (EU) 2016/2276 ⁽¹²⁾, (EU) 2016/2277 ⁽¹³⁾ and (EU) 2016/2278 ⁽¹⁴⁾ five CCPs respectively from India, Japan, Brazil, Dubai International Financial Centre and United Arab Emirates have also been recognised. Finally, additional CCPs from India and from New Zealand may be recognised on the basis of Commission Implementing Decisions (EU) 2016/2269 and (EU) 2016/2274 ⁽¹⁵⁾, respectively. In spite of these developments, the remaining third-country CCPs are still awaiting recognition and the recognition process will not be completed by 15 June 2017. If the transitional period is not extended, institutions established in the Union (or their subsidiaries established outside the Union) having exposures to the remaining third-country CCPs would be required to increase significantly their own funds for those exposures. Even if such increases may only be temporary, they could potentially lead to the withdrawal of those institutions as direct participants in those CCPs or, at least temporary, to the cessation of the provision of clearing services to those institutions' clients and thus cause severe disruption in the markets in which those CCPs operate.

- (6) The need to avoid disruption to markets outside of the Union that led previously to the extension of the transitional period laid down in Article 497(2) of Regulation (EU) No 575/2013 would therefore remain after the expiry of the extension of the transitional period set out in Implementing Regulation (EU) 2016/2227. A further extension of the transitional period should enable institutions established in the Union (or their subsidiaries established outside the Union) to avoid significant increase in the own funds requirements due to the lack of completion of the recognition process for CCPs which provide, in a viable and accessible way, the specific type of clearing services that institutions established in the Union (or their subsidiaries established outside the Union) require. An additional six-month extension of the transitional periods is therefore appropriate.
- (7) The measures provided for in this Regulation are in accordance with the opinion of the European Banking Committee,

HAS ADOPTED THIS REGULATION:

Article 1

The 15-month periods referred to in Article 497(2) of Regulation (EU) No 575/2013 and in the second subparagraph of Article 89(5a) of Regulation (EU) No 648/2012, respectively, as last extended in accordance with Article 1 of Implementing Regulation (EU) 2016/2227, are extended by an additional 6 months until 15 December 2017.

Article 2

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

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

Done at Brussels, 6 June 2017.

For the Commission
The President
Jean-Claude JUNCKER

⁽¹⁾ OJ L 176, 27.6.2013, p. 1.

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

⁽³⁾ Commission Implementing Regulation (EU) No 591/2014 of 3 June 2014 on the extension of the transitional periods related to own funds requirements for exposures to central counterparties in Regulation (EU) No 575/2013 and Regulation (EU) No 648/2012 of the European Parliament and of the Council (OJ L 165, 4.6.2014, p. 31).

⁽⁴⁾ Commission Implementing Regulation (EU) No 1317/2014 of 11 December 2014 on the extension of the transitional periods related to own funds requirements for exposures to central counterparties in Regulations (EU) No 575/2013 and (EU) No 648/2012 of the European Parliament and of the Council (OJ L 355, 12.12.2014, p. 6).

⁽⁵⁾ Commission Implementing Regulation (EU) 2015/880 of 4 June 2015 on the extension of the transitional periods related to own funds requirements for exposures to central counterparties set out in Regulations (EU) No 575/2013 and (EU) No 648/2012 of the European Parliament and of the Council (OJ L 143, 9.6.2015, p. 7).

- (⁶) Commission Implementing Regulation (EU) 2015/2326 of 11 December 2015 on the extension of the transitional periods related to own funds requirements for exposures to central counterparties set out in Regulation (EU) No 575/2013 and Regulation (EU) No 648/2012 of the European Parliament and of the Council (OJ L 328, 12.12.2015, p. 108).
- (⁷) Commission Implementing Regulation (EU) 2016/892 of 7 June 2016 on the extension of the transitional periods related to own funds requirements for exposures to central counterparties set out in Regulation (EU) No 575/2013 and Regulation (EU) No 648/2012 of the European Parliament and of the Council (OJ L 151, 8.6.2016, p. 4).
- (⁸) Commission Implementing Regulation (EU) 2016/2227 of 9 December 2016 on the extension of the transitional periods related to own funds requirements for exposures to central counterparties set out in Regulation (EU) No 575/2013 and Regulation (EU) No 648/2012 of the European Parliament and of the Council (OJ L 336, 10.12.2016, p. 36).
- (⁹) Commission Implementing Decision (EU) 2016/377 of 15 March 2016 on the equivalence of the regulatory framework of the United States of America for central counterparties that are authorised and supervised by the Commodity Futures Trading Commission to the requirements of Regulation (EU) No 648/2012 of the European Parliament and of the Council (OJ L 70, 16.3.2016, p. 32).
- (¹⁰) Commission Implementing Decision (EU) 2016/2269 of 15 December 2016 on the equivalence of the regulatory framework for central counterparties in India in accordance with Regulation (EU) No 648/2012 of the European Parliament and of the Council (OJ L 342, 16.12.2016, p. 38).
- (¹¹) Commission Implementing Decision (EU) 2016/2275 of 15 December 2016 on the equivalence of the regulatory framework for central counterparties in Japan in accordance with Regulation (EU) No 648/2012 of the European Parliament and of the Council (OJ L 342, 16.12.2016, p. 57).
- (¹²) Commission Implementing Decision (EU) 2016/2276 of 15 December 2016 on the equivalence of the regulatory framework for central counterparties in Brazil in accordance with Regulation (EU) No 648/2012 of the European Parliament and of the Council (OJ L 342, 16.12.2016, p. 61).
- (¹³) Commission Implementing Decision (EU) 2016/2277 of 15 December 2016 on the equivalence of the regulatory framework for central counterparties in the Dubai International Financial Centre in accordance with Regulation (EU) No 648/2012 of the European Parliament and of the Council (OJ L 342, 16.12.2016, p. 65).
- (¹⁴) Commission Implementing Decision (EU) 2016/2278 of 15 December 2016 on the equivalence of the regulatory framework for central counterparties in the United Arab Emirates in accordance with Regulation (EU) No 648/2012 of the European Parliament and of the Council (OJ L 342, 16.12.2016, p. 68).
- (¹⁵) Commission Implementing Decision (EU) 2016/2274 of 15 December 2016 on the equivalence of the regulatory framework for central counterparties in New Zealand in accordance with Regulation (EU) No 648/2012 of the European Parliament and of the Council (OJ L 342, 16.12.2016, p. 54).
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DECISIONS

COUNCIL DECISION (EU) 2017/955

of 29 May 2017

amending Decision 2008/376/EC on the adoption of the Research Programme of the Research Fund for Coal and Steel and on the multiannual technical guidelines for this programme

THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to the Protocol No 37 on the financial consequences of the expiry of the ECSC Treaty and on the Research Fund for Coal and Steel, annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union, and in particular the second paragraph of Article 2 thereof,

Having regard to the proposal from the European Commission,

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

Whereas:

- (1) Horizon 2020 — the Framework Programme for Research and Innovation (2014-2020) set out in Regulation (EU) No 1291/2013 of European Parliament and of the Council ⁽²⁾ ('Horizon 2020 Framework Programme') provides an incentive to review Council Decision 2008/376/EC ⁽³⁾, in order to ensure that the Research Programme of the Research Fund for Coal and Steel ('RFCS Programme') complements the Horizon 2020 Framework Programme in the sectors related to the coal and steel industry.
- (2) In order to ensure a coherent framework for participation in both the RFCS Programme and Horizon 2020 Framework Programme, it is necessary to align certain rules for participation under the RFCS Programme with those applicable under the Horizon 2020 Framework Programme.
- (3) It is necessary to revise the rules on the competencies and on the composition of the Advisory Groups and of the Technical Groups, notably as regards the nature of the experts appointed by the Commission to ensure increased transparency as well as compliance and coherence with the framework for Commission expert groups, and contribute, as far as possible, to a balanced representation of relevant areas of expertise and areas of interest as well as to an optimal gender balance.
- (4) It is appropriate to consider simpler funding rules to ease the participation of small and medium-sized enterprises (SME) in the RFCS Programme and to permit the use of 'unit costs' to calculate eligible staff costs for owners of SMEs and other natural persons not receiving a salary.
- (5) The measures necessary for the implementation of Decision 2008/376/EC should be adopted in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council ⁽⁴⁾.
- (6) Decision 2008/376/EC should therefore be amended accordingly,

⁽¹⁾ Opinion of 14 December 2016 (not yet published in the Official Journal).

⁽²⁾ Regulation (EU) No 1291/2013 of the European Parliament and of the Council of 11 December 2013 establishing Horizon 2020 — the Framework Programme for Research and Innovation (2014-2020) and repealing Decision No 1982/2006/EC (OJ L 347, 20.12.2013, p. 104).

⁽³⁾ Council Decision 2008/376/EC of 29 April 2008 on the adoption of the Research Programme of the Research Fund for Coal and Steel and on the multiannual technical guidelines for this programme (OJ L 130, 20.5.2008, p. 7).

⁽⁴⁾ Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by Member States of the Commission's exercise of implementing powers (OJ L 55, 28.2.2011, p. 13).

HAS ADOPTED THIS DECISION:

Article 1

Decision 2008/376/EC is amended as follows:

(1) Article 21 is replaced by the following:

'Article 21

Tasks of the Advisory Groups

For the coal- and steel-related RTD aspects respectively, each Advisory Group shall advise the Commission on the following:

- (a) the overall development of the Research Programme, the information package, as referred to in Article 25(3), and future guidelines;
- (b) the consistency and the possible duplication with other RTD programmes at Union and national level;
- (c) the setting-out of the guiding principles for monitoring RTD projects;
- (d) the relevance of the work being undertaken on specific projects;
- (e) the research objectives of the Research Programme listed in Sections 3 and 4 of Chapter II;
- (f) the annual priority objectives listed in the information package and, where appropriate, the priority objectives for dedicated calls for proposals, as referred to in Article 25(2);
- (g) the preparation of a manual for evaluating and selecting RTD actions, as referred to in Articles 27 and 28;
- (h) the rules, procedures and effectiveness concerning the evaluation of proposals for RTD actions;
- (i) the number, competence and organisation of the Technical Groups, as referred to in Article 24;
- (j) the drawing-up of dedicated calls for proposals, as referred to in Article 25(2);
- (k) other measures when requested to do so by the Commission.'

(2) Article 22 is replaced by the following:

'Article 22

Composition of the Advisory Groups

1. Each Advisory Group shall be composed in accordance with the tables set out in the Annex. Members of the Advisory Groups shall be individuals appointed by the Commission to represent a common interest shared by stakeholders. They shall not represent an individual stakeholder, but shall express an opinion common to the different stakeholder organisations.

Appointments are made for a period of 42 months. Members who are no longer capable of contributing effectively to the group's deliberations, who resign or who, even after their duties have ceased, disclose information of the kind covered by the obligation of professional secrecy, in particular information about undertakings, their business relations or their cost components, shall no longer be invited to participate in any meetings of the Advisory Groups and may be replaced for the remainder of their term of office.

2. Members of the Advisory Groups shall be selected from experts with competence in the areas referred to in Sections 3 and 4 of Chapter II and who have responded to public calls for applications. Those experts may also be appointed on the basis of proposals put forward by the entities referred to in the tables of the Annex or by Member States.

They shall be active in the field concerned and be aware of the industrial priorities.

3. Within each Advisory Group, the Commission shall aim at ensuring a high level of expertise, as well as a balanced representation of relevant areas of expertise and areas of interest and, as far as possible, a balanced representation of gender and geographical origin, taking into account the specific tasks of the Advisory Groups, the type of expertise required and the outcome of the experts' selection procedure.;

(3) Article 24 is replaced by the following:

Article 24

Establishment and tasks of the Coal and Steel Technical Groups

1. The Coal and Steel Technical Groups ("the Technical Groups") shall support the Commission on the monitoring of research and pilot or demonstration projects.

Members of the Technical Groups shall be appointed in their personal capacity by the Commission.

Members who are no longer capable of contributing effectively to the group's deliberations, who resign or who, even after their duties have ceased, disclose information of the kind covered by the obligation of professional secrecy, in particular information about undertakings, their business relations or their cost components, shall no longer be invited to participate in any meetings of the Technical Groups.

2. Members of the Technical Groups shall be selected from experts with competence in research strategy, management or production in the areas referred to in Sections 3 and 4 of Chapter II and who have responded to public call for applications.

They shall be active in the field concerned and have responsibility for research strategy, management or production in the related sectors.

3. Within each Technical Group, the Commission shall aim at ensuring a high level of professional expertise, a balanced representation of relevant areas of expertise and, as far as possible, a balanced representation of gender and geographical origin, taking into account the specific tasks of the Technical Groups, the type of expertise required and the outcome of the experts' selection procedure. Membership of a Technical Group shall not exclude eligibility as an evaluation expert.

The Commission shall ensure that rules and procedures are in place in order to properly avoid and manage conflicts of interests of members of the Technical Groups entrusted with the assessment of a specific project. Those procedures shall also ensure equal treatment and fairness throughout the whole monitoring process of projects.

Meetings of the Technical Groups shall, whenever possible, be held at venues chosen in such a way that project monitoring and results assessment are best ensured.;

(4) Article 25 is replaced by the following:

Article 25

Call for proposals

1. An annual call for proposals shall be published every year. The opening date for submission of proposals shall be published in the information package referred to in paragraph 3. Unless otherwise specified, 15 September of each year shall be the deadline for the submission of proposals for evaluation. Where the 15 September falls on a weekend or on a Friday or a Monday, the deadline shall be automatically shifted to the first working day following 15 September. The deadline shall be published in the information package referred to in paragraph 3.

2. Where the Commission, in accordance with points (d) and (e) of Article 41, decides to modify the deadline referred to in paragraph 1 of this Article for the submission of proposals, or to launch dedicated calls for proposals, it shall publish that information in the *Official Journal of the European Union*.

Dedicated calls for proposals shall indicate the dates and modalities for the submission, including whether it shall take place in one or two steps, and for the evaluation of the proposals, the priorities, the type of eligible projects as referred to in Articles 14 to 18, where necessary, and the envisaged funding.

3. The Commission shall ensure that sufficient guidance and information is made available to all potential participants at the time of publication of the call for proposals, in particular through an information package accessible on the Commission's website. A paper copy of that information package can also be obtained from the Commission on request.

The information package shall provide information on the detailed rules for participation, the methods of managing proposals and projects, application forms, rules for the submission of proposals, model grant agreements, eligible costs, the maximum financial contribution allowable, methods of payment and the annual priority objectives of the Research Programme.

Applications shall be submitted to the Commission in accordance with the rules laid down in the information package.;

(5) in Article 27, the second paragraph is replaced by the following:

'The Commission shall ensure that a manual for the evaluation and selection of RTD actions is made available to all potential participants.;

(6) in Article 28, paragraph 3 is replaced by the following:

'3. The Commission shall draw up a list of the proposals adopted in order of merit.;

(7) the following Article is inserted:

Article 29a

Implementation of actions

1. Participants shall implement actions in compliance with all the conditions and obligations set out in this Decision, Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council (*) and Commission Delegated Regulation (EU) No 1268/2012 (**), as well as in the call for proposals and the grant agreement.

2. Participants shall make no commitments which are incompatible with this Decision or the grant agreement. Where a participant fails to comply with its obligations regarding the technical implementation of the action, the other participants shall comply with the obligations without any additional Union funding unless the Commission expressly relieves them of any of those obligations. Participants shall ensure that the Commission is informed in due time of any event which might significantly affect the implementation of the action or the interests of the Union.

3. Participants shall implement the action and shall take all necessary and reasonable measures to that end. They shall have the appropriate resources, as and when needed for carrying out the action. Where it is necessary for the implementation of the action, they may call upon third parties, including subcontractors, to carry out work under the action. Participants shall retain responsibility towards the Commission and towards the other participants for the work carried out.

4. The award of subcontracts for carrying out certain elements of the action shall be limited to the cases provided for in the grant agreement and to duly justified cases that could not be clearly foreseen at the time of entry into force of the grant agreement.

5. Third parties other than subcontractors may carry out work under the action under the conditions laid down in the grant agreement. The third party and the work to be carried out by it shall be identified in the grant agreement.

Costs incurred by those third parties may be deemed eligible if the third party meets all the following conditions:

(a) it would be eligible for funding if it were a participant;

(b) it is an affiliated entity or has a legal link to a participant implying a collaboration not limited to the action;

- (c) it is identified in the grant agreement; and
- (d) it abides by the rules applicable to the participant under the grant agreement with regard to eligibility of costs and control of expenditure.

6. Participants shall comply with national legislation, regulations and ethical rules in the countries where the action is carried out. Where appropriate, participants shall seek the approval of the relevant national or local ethics committees prior to the start of the action.

(*) Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council of 25 October 2012 on the financial rules applicable to the general budget of the Union and repealing Council Regulation (EC, Euratom) No 1605/2002 (OJ L 298, 26.10.2012, p. 1);

(**) Commission Delegated Regulation (EU) No 1268/2012 of 29 October 2012 on the rules of application of Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council on the financial rules applicable to the general budget of the Union (OJ L 362, 31.12.2012, p. 1).;

- (8) Article 33 is replaced by the following:

Article 33

Staff costs

Eligible staff costs shall cover only the actual hours worked by the persons directly carrying out the work under the action.

Staff costs of owners of small and medium-sized enterprises and other natural persons not receiving a salary may be reimbursed on the basis of unit costs.;

- (9) Article 39 is replaced by the following:

Article 39

Appointment of independent and highly qualified experts

For the appointment of independent and highly qualified experts referred to in Article 18, Article 28(2) and Article 38, the provisions set out in Article 40 of Regulation (EU) No 1290/2013 of the European Parliament and of the Council (*) shall apply *mutatis mutandis*.

(*) Regulation (EU) No 1290/2013 of the European Parliament and of the Council of 11 December 2013 laying down the rules for participation and dissemination in “Horizon 2020 — the Framework Programme for Research and Innovation (2014-2020)” and repealing Regulation (EC) No 1906/2006 (OJ L 347, 20.12.2013, p. 81).;

- (10) in Article 41, point (d) is replaced by the following:

‘(d) changes to the deadline referred to in Article 25’;

- (11) in Article 42, paragraph 2 is replaced by the following:

‘2. Where reference is made to this paragraph, Article 5 of Regulation (EU) No 182/2011 of the European Parliament and of the Council (*) shall apply.

(*) Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by Member States of the Commission’s exercise of implementing powers (OJ L 55, 28.2.2011, p. 13).’.

Article 2

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

Done at Brussels, 29 May 2017.

For the Council
The President
C. CARDONA

COUNCIL DECISION (Euratom) 2017/956**of 29 May 2017****on the adoption of the 2016-2019 high flux reactor supplementary research programme to be implemented by the Joint Research Centre for the European Atomic Energy Community**

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Atomic Energy Community, and in particular Article 7 thereof,

Having regard to the proposal from the European Commission,

After consultation of the Scientific and Technical Committee,

Whereas:

- (1) Within the framework of the European Research Area, the high flux reactor ('HFR') at Petten has been, and will for some time continue to be, an important resource for Community research on materials science, the testing of materials, nuclear medicine and nuclear reactor safety.
- (2) The operation of the HFR has been supported by a series of supplementary research programmes, the last of which ⁽¹⁾ expired on 31 December 2015.
- (3) The operation of the HFR continued throughout 2016 without a supplementary research programme, pending negotiations between the entities mandated by the financing Member States. Since those efforts have resulted in the agreement between two national entities, a new supplementary research programme is necessary to provide continued financial support to the HFR.
- (4) In order to ensure continuity between supplementary research programmes, this Decision should apply from 1 January 2016. Part of the contributions under the 2016-2019 HFR supplementary research programme should be permitted to cover expenditure made during the year 2016.
- (5) Given that the HFR is irreplaceable infrastructure for Community research on nuclear reactor safety, health (including the development of medical isotopes for medical research), nuclear fusion, basic science, training and waste management (including the safety behaviour of nuclear fuels that are used in specific Union reactor systems of interest to Europe), its operation should continue under the 2016-2019 HFR supplementary research programme until the end of 2019.
- (6) Due to their special interest in the irradiation capabilities of the HFR, the *Commissariat à l'énergie atomique et aux énergies alternatives* ('CEA') and the *NRG: Nuclear Research and consultancy Group V.O.F.* ('NRG'), as implementing agents for France and the Netherlands, respectively, have agreed to finance the entire 2016-2019 HFR supplementary research programme through contributions that they will make to the general budget of the European Union by way of assigned revenue.
- (7) Those contributions are to finance the operation of the HFR in order to support a research programme that presupposes the normal operation and regular maintenance of the HFR. An official notification of definitive shutdown by the operator NRG to the Dutch national regulatory authority prior to the declaration of safe conservation state should suspend the payments that remain to be effected and the calls for funds by the Commission,

HAS ADOPTED THIS DECISION:

Article 1

The supplementary research programme on the operation of the HFR, the objectives of which are set out in Annex I, shall be adopted for a period of 4 years, starting on 1 January 2016.

⁽¹⁾ Council Decision 2012/709/Euratom of 13 November 2012 on the adoption of the 2012-2015 High Flux Reactor supplementary research programme to be implemented by the Joint Research Centre for the European Atomic Energy Community (OJ L 321, 20.11.2012, p. 59).

Article 2

The costs for the execution of the programme, estimated at EUR 30,2 million, shall be financed entirely out of contributions from France and the Netherlands, through the CEA and NRG, respectively. The breakdown of this amount is set out in Annex II. This contribution shall be considered as assigned revenue in accordance with Article 21(2) of Council Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council ⁽¹⁾.

Article 3

1. The Commission shall be in charge of the management of the programme. To that end, it shall call upon the services of the Joint Research Centre.
2. The Commission shall keep the Board of Governors of the Joint Research Centre informed of the implementation of the programme.

Article 4

In the event that NRG officially notifies the definitive shutdown of the HFR to the Dutch national regulatory authority (prior to the declaration of safe conservation state), the obligations on the part of France and the Netherlands, through the CEA and NRG, respectively, to make further payments shall be suspended, as shall any calls for funds by the Commission under this Decision.

Article 5

The Commission shall submit a final report on the implementation of this Decision to the European Parliament and to the Council after the end of the 2016-2019 HFR supplementary research programme.

Article 6

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

It shall apply from 1 January 2016.

Article 7

This Decision is addressed to the Member States.

Done at Brussels, 29 May 2017.

For the Council
The President
C. CORDONA

⁽¹⁾ Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council of 25 October 2012 on the financial rules applicable to the general budget of the Union and repealing Council Regulation (EC, Euratom) No 1605/2002 (OJ L 298, 26.10.2012, p. 1).

ANNEX I

SCIENTIFIC AND TECHNICAL OBJECTIVES

The main objectives of the supplementary research programme are the following:

1. To ensure the safe and reliable operation of the HFR, in order to guarantee the availability of the neutron flux for experimental purposes.
2. To allow the efficient use of the HFR by research institutes in a broad range of research areas: improvement of safety of nuclear reactors; health (including the development of medical isotopes); nuclear fusion; basic science; training; and waste management (including the safety behaviour of nuclear fuels for reactor systems of interest to Europe).

ANNEX II

BREAKDOWN OF THE CONTRIBUTIONS

The contributions to the supplementary research programme come from The Netherlands and France.

The breakdown of those contributions is as follows:

France: EUR 1,2 million

The Netherlands: EUR 29 million

Total: EUR 30,2 million.

Those contributions shall be made to the general budget of the European Union and shall be assigned to this programme. Part of the contributions under this supplementary programme may also cover expenditure made to the operation of the HFR during the year 2016 in accordance with the work programme to be agreed among the contributing Member States and the Commission.

Those contributions are firm and not revisable as regards variations related to operational, maintenance and decommissioning costs.

COMMISSION IMPLEMENTING DECISION (EU) 2017/957**of 6 June 2017****terminating the anti-dumping proceeding concerning imports of purified terephthalic acid and its salts originating in the Republic of Korea**

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⁾, and in particular Article 9 thereof,

Whereas:

1. PROCEDURE**1.1. Initiation**

- (1) On 3 August 2016, the European Commission ('the Commission') initiated an anti-dumping investigation with regard to imports into the Union of purified terephthalic acid ('PTA') and its salts originating in the Republic of Korea ('the country concerned') on the basis of Article 5 of Regulation (EU) 2016/1036 ('the basic Regulation'). It published a Notice of Initiation in the *Official Journal of the European Union* ⁽²⁾ ('the Notice of Initiation').
- (2) The Commission initiated the investigation following a complaint lodged on 20 June 2016 by BP Aromatics Limited NV, Artland PTA SA and Indorama Ventures Quimica S.L.U. ('the complainants'), representing more than 25 % of the total Union production of purified terephthalic acid and its salts. The complaint contained evidence of dumping and of resulting material injury that was sufficient to justify the initiation of the investigation.

1.2. Interested parties

- (3) 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 the complainants, other known Union producers, the known exporting producers, the South Korean authorities, known importers and users about the initiation of the investigation and invited them to participate.
- (4) Interested parties had 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.

1.3. Sampling

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

(a) *Sampling of exporting producers in the Republic of Korea*

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

⁽¹⁾ OJ L 176, 30.6.2016, p. 21.

⁽²⁾ Notice of initiation of an anti-dumping proceeding concerning imports of purified terephthalic acid and its salts originating in the Republic of Korea (OJ C 281, 3.8.2016, p. 18).

- (7) Five exporting producers in the country concerned provided the requested information and agreed to be included in the sample. In accordance with Article 17(1) of the basic Regulation, the Commission selected a sample of three 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 concerned, and the authorities of the country concerned, were consulted on the selection of the sample. No objections to the proposed sample were made.

(b) Sampling of Union producers

- (8) In its Notice of Initiation, the Commission stated that it would send the questionnaire to all the six known producers of the product concerned. In view of the low number, the Commission decided that sampling was not necessary.

(c) Sampling of importers

- (9) To decide whether sampling was necessary and, if so, to select a sample, the Commission asked unrelated importers to provide the information specified in the Notice of Initiation.
- (10) Two unrelated importers provided the requested information and agreed to be included in the sample. In view of the low number, the Commission decided that sampling was not necessary.

(d) Replies to the questionnaire

- (11) The Commission sent questionnaires to the three sampled exporting producers, all six Union producers, nine known users and two known importers.
- (12) Questionnaire replies were received from the three sampled exporting producers, all six Union producers, twelve users and two importers.

(e) Verification visits

- (13) The Commission sought and verified all the information deemed necessary for a provisional determination of dumping, resulting injury and Union interest. Verification visits pursuant to Article 16 of the basic Regulation were carried out at the premises of the following companies:

Exporting producers in the Republic of Korea

- Hanwha General Chemical Co. Ltd, Seoul, Republic of Korea,
- Samnam Petrochemical Co. Ltd, Seoul, Republic of Korea,
- Taekwang Industrial Co. Ltd, Seoul, Republic of Korea,

Union producers

- Artlant PTA SA, Sines, Portugal,
- BP Aromatics Limited NV, Geel, Belgium,
- Indorama Ventures Europe B.V., Rotterdam, Netherlands,
- Indorama Ventures Quimica S.L.U., San Roque, Spain,
- PKN Orlen SA, Płock, Poland,

Users

- UAB Neo Group, Klaipeda, Lithuania,
- UAB Orion Global PET, Klaipeda, Lithuania.

1.4. Investigation period and period considered

- (14) The investigation of dumping and injury covered the period from 1 July 2015 to 30 June 2016 (‘the investigation period’). The examination of trends relevant for the assessment of injury covered the period from 1 January 2013 to the end of the investigation period (‘the period considered’).

2. PRODUCT CONCERNED AND LIKE PRODUCT

2.1. Product concerned

- (15) The product concerned is terephthalic acid of a purity by weight of 99,5 % or more and its salts originating in the Republic of Korea currently falling within CN code ex 2917 36 00 (TARIC code 2917 36 00 10) (‘the product concerned’).
- (16) PTA is obtained by the purification of crude terephthalic acid, which is a result of making paraxylene (PX) react with a solvent and a catalyst solution.
- (17) The product concerned is mainly used as a raw material to synthesise polymers used, for instance, in the production of polyester textile fibres and poly (ethylene terephthalate) (PET) bottles.

2.2. Like product

- (18) The investigation showed that the following products have the same basic physical and chemical characteristics as well as the same basic uses:
- the product concerned,
 - the product produced and sold on the domestic market of country concerned, and
 - the product produced and sold in the Union by the Union industry.
- (19) The Commission decided that those products are therefore like products within the meaning of Article 1(4) of the basic Regulation.

2.3. Claims regarding the product scope

- (20) The product scope defined in recital 15 above includes variants of PTA which in addition to the purest variation of PTA (‘purest PTA’) include also the so called qualified terephthalic acid (‘QTA’) and medium quality terephthalic acid (‘MTA’). The variants can be distinguished essentially by the levels of purity. MTA and QTA have higher levels of impurities than the purest PTA. In any event, the level of impurities in each of these variants does not exceed 0,5 % and therefore they are all included in the product definition set out in recital 15.
- (21) Several interested parties claimed that QTA should be excluded from the scope of the product under investigation. According to these parties the physical and chemical characteristics of QTA are different from those of the purest PTA and these differences lead to different uses. They also claimed that the processes for the production and the use of QTA are different from those of the purest PTA and that the production cost and selling price of QTA are lower than those of the purest PTA.
- (22) While the purest PTA contains up to 0,01 % of impurities, QTA may contain up to 0,2 % impurities and there is also some difference in the kind of impurities contained. However, regardless of this difference in impurities, the chemical formula of all the variants of PTA is the same. Therefore, the Commission considered that the relatively small difference in impurities does not alter the fact that the basic chemical and physical characteristics of all the variants of PTA are the same and consequently it would not as such justify excluding QTA from the scope of the product under investigation.
- (23) The same interested parties also claimed that QTA and the purest PTA have different uses. The Commission found that the differences were not significant in order to exclude QTA from the scope of the product under investigation.

- (24) The same interested parties also claimed that the QTA and purest PTA are produced by different production processes, namely that production techniques to produce the purest PTA primarily focus on oxidation reaction, refining and reduction reaction, which belongs to a two-step production technique whereas QTA's production technique mainly focuses on precise oxidation reaction and refining, which belongs to a one-step production technique. The Commission found that both production processes use the same raw materials and processes and are for most of their parts similar.
- (25) The same interested parties finally claimed that due to the difference between the abovementioned one-step and two-step techniques, the production cost of QTA is between 18 and 36 EUR/MT cheaper than that of the purest PTA. The investigation found that the difference in the production cost was not significant. In any event, differences in the cost of production as such are not relevant in order to define the product scope but rather similar technical, chemical and physical characteristics and basic uses. Therefore, this claim was rejected.
- (26) After the disclosure one interested party reiterated its claims that QTA should be excluded from the scope of the product under investigation due to the differences in composition and content of impurities, differences in production process and production cost and uses. The Commission however considered that these differences are relatively small and do not alter the conclusion that the technical, chemical and physical characteristics and basic uses of both QTA and the purest PTA are essentially the same. Therefore, this claim was rejected.
- (27) For the reasons above, the claims to exclude QTA from the scope of the product scope were rejected.

3. DUMPING

3.1. Normal value

- (28) The Commission first examined whether the total volume of domestic sales for each sampled exporting producer was representative, in accordance with Article 2(2) of the basic Regulation. The domestic sales are representative if the total domestic sales volume of the like product to independent customers on the domestic market per exporting producer represented at least 5 % of its total export sales volume of the product concerned to the Union during the investigation period. On this basis, the total sales by each sampled exporting producer of the like product on the domestic market were representative.
- (29) The Commission then examined whether the domestic sales by each sampled exporting producer on its domestic market were representative, in accordance with Article 2(2) of the basic Regulation. The domestic sales of a product type are representative if the total volume of domestic sales to independent customers during the investigation period represents at least 5 % of the total volume of export sales to the Union. The Commission established that for each sampled exporting producer the total volume of domestic sales represented at least 5 % of the total volume of export sales to the Union.
- (30) The Commission next defined the proportion of profitable sales to independent customers on the domestic market during the investigation period in order to decide whether to use actual domestic sales for the calculation of the normal value, in accordance with Article 2(4) of the basic Regulation.
- (31) The normal value is based on the actual domestic price, irrespective of whether those sales are profitable or not, if:
- (a) the sales volume, sold at a net sales price equal to or above the calculated cost of production, represented more than 80 % of the total sales volume; and
 - (b) the weighted average sales price is equal to or higher than the unit cost of production.
- (32) In this case, the normal value was the weighted average of the prices of all domestic sales during the IP.
- (33) For one of the exporting producers the conditions mentioned in recital 31 were met and the volume of profitable sales of the like product represented more than 80 % of the total domestic sales volume of the like product. For this exporting producer the normal value was based on the actual domestic price, calculated as a weighted average of all domestic sales.

- (34) The normal value was the actual domestic price of only the profitable domestic sales of the product types during the IP, if:
- (a) the volume of profitable sales represents 80 % or less of the total sales volume; or
 - (b) the weighted average price of this product type is below the unit cost of production.
- (35) For two exporting producers the analysis of domestic sales showed that less than 80 % of all domestic sales were profitable. Accordingly, for these two exporting producers the normal value was calculated as a weighted average of the profitable sales only.
- (36) One party argued that its entity producing PTA forms a single economic entity with its related main raw material supplier. The related supplier also pays dividends to the sampled PTA producer. The Commission should therefore deduct the profit realised by the related supplier on the raw material sold to the sampled PTA producer for the production of PTA for the purpose of the dumping calculation. The company had calculated the profit to be deducted as the difference between the purchase price and the total cost of production of the raw material.
- (37) The Commission rejected the claim that the sampled PTA producer and the related raw material supplier form a single economic entity for the following reasons. First, the investigation confirmed that the sampled PTA producer does not hold a majority stake in the related supplier which means that it does not have sole decision-making power over the related supplier. Second, since the sales of the raw material represented only a minor part of the total sales of the related raw material supplier during the investigation period, there is no direct link between the profit margin for the raw material and the dividends received.
- (38) Third, the related supplier does not sell the raw material exclusively to the sampled PTA producer, but also to other clients. In addition, it also sells a number of other products to other clients. Thus, there is no direct link between the sales of the raw material by the related supplier to the sampled PTA producer and the dividends it pays to the sampled PTA producer.
- (39) Fourth, the sampled PTA producer buys the raw material from the related supplier at prices including profit. These prices are in line with prices at which it purchases the same raw material from other unrelated suppliers.
- (40) Fifth, the annual financial statements of the sampled PTA producer are not consolidated with the financial statements of the related supplier.
- (41) On the basis of the above, the claim that the sampled PTA producer forms a single economic entity with the related raw material supplier was rejected. Consequently the percentage of the profit charged by the related supplier to the sampled PTA producer was not deducted from the purchase price.
- (42) After disclosure two interested parties questioned why the Commission did not apply a target profit in order to define the proportion of profitable sales on domestic market in determining normal value. In accordance with Article 2(4) of the basic Regulation, the relevant benchmark for transactions being profitable is the unit production costs (fixed and variable) plus selling, general and administrative costs. The concept of target profit is not relevant in this context and therefore this claim was rejected.
- (43) The same parties also questioned why the Commission did not perform the analysis of the proportion of profitable sales on a monthly basis. The investigation did not establish any grounds why the analysis of the profitable sales or determination of the normal value should deviate from the standard methodology, which is using the weighted average of the normal value based on the transactions which took place during the entire investigation period. Therefore, this claim was rejected.

3.2. Export price

- (44) The sampled exporting producers exported to the Union either directly to independent customers or through unrelated and related trading companies located outside the Union.

- (45) In case the exporting producers exported the product concerned directly to independent customers in the Union, the export price was the price actually paid or payable for the product concerned when sold for export to the Union, in accordance with Article 2(8) of the basic Regulation.
- (46) In case the exporting producers exported the product concerned to the Union through related companies, the export price was established on the basis of the price at which the imported product was first resold to independent customers in the Union, in accordance with Article 2(9) of the basic Regulation.
- (47) In case the exporting producers exported the product concerned through unrelated trading companies located outside of the Union it was first established that sales to the unrelated trading companies were indeed sales for export to the Union. In this case the export price was, as well, the price actually paid or payable for the product concerned when sold for export to the Union, in accordance with Article 2(8) of the basic Regulation.

3.3. Comparison

- (48) The Commission compared the normal value and the export price of the sampled exporting producers on an ex-works basis.
- (49) Where justified by the need to ensure a fair comparison, the Commission adjusted the normal value and/or the export price for differences affecting prices and price comparability, in accordance with Article 2(10) of the basic Regulation. Adjustments were made for transport, insurance, handling and loading, packing, bank charges, credit costs and commissions.

3.4. Dumping margins

- (50) For the sampled exporting producers, the Commission compared the weighted average normal value of each type of the like product with the weighted average export price of the corresponding type of the product concerned, in accordance with Article 2(11) and (12) of the basic Regulation.
- (51) On this basis, the weighted average dumping margins expressed as a percentage of the CIF Union frontier price, duty unpaid, are as follows:

Company	Dumping margin (%)
Hanwha General Chemical Co. Ltd	3,5
Samnam Petrochemical Co. Ltd	0,3
Taekwang Industrial Co. Ltd	0,0

- (52) The five cooperating exporting producers referred to in recital 7 represented all exports originating in the Republic of Korea to the Union during the investigation period based on Eurostat data, and the three sampled exporting producers represented more than 75 % of the total exports to the Union during the investigation period.
- (53) The Commission took into consideration the high level of cooperation, the high level of representativeness of the sample referred to in recital 52 above and also the fact that only one of the sampled exporters had a dumping margin above *de minimis* as referred to in Article 9(3) of the basic Regulation. Therefore, in order to assess whether the dumping margin for the exporting producers outside the sample was below *de minimis*, a weighted average countrywide dumping margin was established. It was found that this margin was below *de minimis* level, namely 0,8 %.

- (54) After disclosure two interested parties questioned why the dumping margin established for Hanwha (3,5 %) was not applied to the two cooperating but non-sampled exporting producers. As explained in recital 53 above, the Commission took into consideration the high level of cooperation, the high level of representativeness of the sample and also the fact that only one of the sampled exporters had a dumping margin above *de minimis*. In the light of this, the Commission considered that the most reasonable estimate for the dumping margin for the cooperating but non-sampled exporting producers and for the countrywide dumping margin should be established on the basis of a comparison of a weighted average normal value with a weighted average export price for the sampled exporting producers as described above. It is also recalled that the same methodology was applied in a similar case previously ⁽¹⁾. Therefore this claim was rejected.
- (55) After disclosure one interested party claimed that there were differences between the South Korean export statistics and the Eurostat import statistics. Further, in the light of this, this party questioned the reliability of the data provided by the exporting producers and used by the Commission in order to determine the dumping margin. The Commission confirmed that following the established practise and as explained in recital 52 above, the exports originating in the Republic of Korea to the Union during the investigation period were based on Eurostat data. It is also recalled that as explained in recital 13 above, the Commission sought and verified all the information deemed necessary for a determination of dumping, and that the data provided by the exporting producers was duly verified in accordance with the established practise. Therefore this claim was rejected.
- (56) After disclosure one interested party presented different hypotheses and alternative scenarios concerning the relationship between the normal value and the export price and questioned whether applying constructed export price and normal values on the basis of these scenarios would have resulted in different dumping margins. The Commission recalled that the dumping calculations were based on actual verified transaction data and that they must be established using the methodology laid down in Article 2 of the basic Regulation. The alternative scenarios presented by this interested party were not in accordance with the basic Regulation and therefore they were rejected.
- (57) In view of the countrywide *de minimis* dumping margin, measures on imports of PTA originating in the Republic of Korea should not be imposed.

4. INJURY, CAUSATION AND UNION INTEREST

- (58) In view of the above findings with respect to dumping it is not considered necessary to present any analysis on injury, causation and Union interest.
- (59) After the disclosure, one interested party questioned the reasons for increase of the exports originating in the Republic of Korea to the Union from 2012. As explained above, in the view of the findings with respect to dumping it was not considered necessary to present any analysis on injury. Therefore this request was rejected.

5. TERMINATION OF THE PROCEEDING

- (60) In accordance with Article 9(3) of the basic Regulation, the proceeding should therefore be terminated as the dumping margin determined for the Republic of Korea is less than 2 %. Interested parties were informed accordingly and were given the opportunity to comment.
- (61) In light of all the above, the Commission therefore concluded that the anti-dumping proceeding concerning imports into the Union of purified terephthalic acid and its salts originating in the Republic of Korea should be terminated without the imposition of anti-dumping measures.
- (62) The measures provided for in this Decision are in accordance with the opinion of the Committee established by Article 15(1) of Regulation (EU) 2016/1036,

⁽¹⁾ See recitals 27 to 30 of Commission Decision 2011/32/EU of 19 January 2011 terminating the anti-dumping proceeding concerning imports of purified terephthalic acid and its salts originating in Thailand (OJ L 15, 20.1.2011, p. 22).

HAS ADOPTED THIS DECISION:

Article 1

The anti-dumping proceeding concerning imports of terephthalic acid of a purity by weight of 99,5 % or more and its salts currently falling within CN code ex 2917 36 00 (TARIC code 2917 36 00 10) and originating in the Republic of Korea is hereby terminated.

Article 2

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

Done at Brussels, 6 June 2017.

For the Commission
The President
Jean-Claude JUNCKER

**DECISION No 2/2015 OF THE EU-CHILE ASSOCIATION COMMITTEE
of 30 November 2015**

replacing Article 12 of Title III of Annex III to the Agreement establishing an association between the European Community and its Member States, of the one part, and the Republic of Chile, of the other part concerning direct transport [2017/958]

THE EU-CHILE ASSOCIATION COMMITTEE,

Having regard to the Agreement establishing an association between the European Community and its Member States, of the one part, and the Republic of Chile, of the other part ⁽¹⁾, and in particular Article 38 of Annex III thereto,

Whereas:

- (1) Article 12 of Title III of Annex III to the Agreement establishing an association between the European Community and its Member States, of the one part, and the Republic of Chile, of the other part ('the Agreement') establishes that preferential treatment applies only to goods satisfying the requirements of Annex III which are transported directly between the Republic of Chile ('Chile') and the European Union.
- (2) Chile and the European Union have concluded numerous agreements with trade content since the entry into force of the Agreement, which gave economic operators the possibility to adapt their export strategy in order to save costs and better respond to market demand.
- (3) Chile and the European Union have agreed to amend Article 12 of Title III of Annex III to the Agreement, in order to allow for more flexibility for economic operators,

HAS ADOPTED THIS DECISION:

Article 1

Article 12 of Title III of Annex III to the Agreement, concerning direct transport, is replaced with the text set out in the Annex to this Decision.

Article 2

This Decision shall enter into force 90 days after the day on which the last notification by which the Parties communicate the completion of the necessary domestic legal procedures has been carried out.

Done at Brussels, 30 November 2015.

For the EU-Chile Association Committee

Edgardo RIVEROS

Vice Minister for Foreign Affairs, Republic of Chile

Roland SCHAEFER

Deputy Managing Director to the Americas, EEAS

⁽¹⁾ OJ L 352, 30.12.2002, p. 3.

ANNEX

*Article 12***Direct transport**

1. The preferential treatment provided for under this Agreement applies only to products satisfying the requirements of this Annex, which are transported directly between the European Union and Chile. However, products may be transported through other territories with transshipment or temporary warehousing in such territories, provided that they remain under the surveillance of the customs authorities in the country of transit or warehousing and do not undergo operations other than adding or affixing marks, labels, or seals; unloading; reloading; splitting of consignments; or any operation designed to preserve them in good condition.

2. Compliance with paragraph 1 shall be considered as satisfied unless the customs authorities have reason to believe the contrary. In such cases, the customs authorities may require the importer to provide evidence of compliance, which shall be given by any appropriate means, such as contractual transport documents, for example bills of lading, or factual or concrete evidence based on marking or numbering of packages, or any evidence related to the goods themselves.'

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