Official Journal of the European Union

L 238

Volume 64

English edition

Legislation

6 July 2021

Contents

[1] Text with EEA relevance.

EN

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

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

[1] Text with EEA relevance.

II

(Non-legislative acts)

REGULATIONS

COMMISSION DELEGATED REGULATION (EU) 2021/1096

of 21 April 2021

amending Regulation (EU) 2019/787 of the European Parliament and of the Council as regards labelling provisions for blends

THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EU) 2019/787 of the European Parliament and of the Council of 17 April 2019 on the definition, description, presentation and labelling of spirit drinks, the use of the names of spirit drinks in the presentation and labelling of other foodstuffs, the protection of geographical indications for spirit drinks, the use of ethyl alcohol and distillates of agricultural origin in alcoholic beverages, and repealing Regulation (EC) No 110/2008 ([1]), and in particular Article 50(3) thereof,

Whereas:

(1) Regulation (EU) 2019/787 has substantially reworded certain production and labelling provisions concerning spirit drinks and foodstuffs produced by using spirit drinks as ingredients.

(2) In particular, Article 13(3) of Regulation (EU) 2019/787 extends the labelling provisions for mixtures resulting in spirit drinks not complying with the requirements of any spirit drink category to blends resulting from the combination of spirit drinks belonging to different geographical indications or from the combination of spirit drinks belonging to geographical indications with spirit drinks not belonging to any geographical indication.

(3) Consequently, according to Article 13(3) of Regulation (EU) 2019/787, the legal names provided for in the categories of spirit drinks set out in Annex I to that Regulation or geographical indications for spirit drinks may be indicated only in a list of the alcoholic ingredients appearing in the same visual field as the legal name of the spirit drink. This implies that the spirit drink category to which belongs a blend covered by that provision may not be used as its legal name. The only exception provided for in that Article concerns blends made of spirit drinks belonging to the same geographical indication or blends of which none of the spirit drinks belongs to a geographical indication. For those blends, this implies that they may use the respective spirit drink category as legal name in their description, presentation and labelling.

(4) However, according to the definitions provided for in Article 3(11) and (12) of Regulation (EU) 2019/787, blends are the combination of two or more spirit drinks of the same category that are distinguishable only by minor differences in composition. Therefore, the spirit drinks so produced belong necessarily to the same category of spirit drinks as the original spirit drinks before blending. Article 10(2) of that Regulation provides that spirit drinks complying with the requirements of a category of spirit drinks set out in Annex I to that Regulation are to use the name of that category as their legal name. In line with that requirement, all blends and not only the ones exempted by the fourth subparagraph of Article 13(3) of that Regulation are to be allowed to use as legal name the name of the category to which they belong.

([1]) OJ L 130, 17.5.2019, p. 1.

(5) Therefore, in order to correct the inconsistency between the labelling obligations for blends resulting from Articles 10(2) and 13(3) of Regulation (EU) 2019/787 and ensure legal certainty for spirit drinks producers and legitimate information to consumers, it is appropriate to clarify the specific labelling provisions applicable to blends including blends resulting from the combination of spirit drinks belonging to different geographical indications or from the combination of spirit drinks belonging to geographical indications with spirit drinks not belonging to any geographical indication. It is also necessary to amend Articles 3(3) and 10(7) of that Regulation, which refer to those specific labelling provisions.

(6) Regulation (EU) 2019/787 should therefore be amended accordingly.

(7) In accordance with Article 51(3) of Regulation (EU) 2019/787 and to avoid any sort of regulatory vacuum, this Regulation should apply retroactively from 25 May 2021,

HAS ADOPTED THIS REGULATION:

Article 1

Regulation (EU) 2019/787 is amended as follows:

(1) in Article 3, point 3 is replaced by the following:

'(3) "allusion" means the direct or indirect reference to one or more legal names provided for in the categories of spirit drinks set out in Annex I or to one or more geographical indications for spirit drinks, other than a reference in a compound term or in a list of ingredients as referred to in Article 13(2) to (4), in the description, presentation or labelling of:

(a) a foodstuff other than a spirit drink, or

(b) a spirit drink that complies with the requirements of categories 33 to 40 of Annex I;';

(2) in Article 10(7), the first subparagraph is replaced by the following:

'7. Without prejudice to Articles 11 and 12 and Article 13(2) to (4), the use of the legal names referred to in paragraph 2 of this Article or geographical indications in the description, presentation or labelling of any beverage not complying with the requirements of the relevant category set out in Annex I or of the relevant geographical indication shall be prohibited. That prohibition shall also apply where such legal names or geographical indications are used in conjunction with words or phrases such as "like", "type", "style", "made", "flavour" or any other similar terms.';

(3) Article 13 is amended as follows:

(a) paragraph 3 is replaced by the following:

'3. In the case of a mixture, the legal names provided for in the categories of spirit drinks set out in Annex I or geographical indications for spirit drinks may be indicated only in a list of the alcoholic ingredients appearing in the same visual field as the legal name of the spirit drink.

In the case referred to in the first subparagraph, the list of alcoholic ingredients shall be accompanied by at least one of the terms referred to in point (e) of Article 10(6). Both the list of alcoholic ingredients and the accompanying term shall appear in the same visual field as the legal name of the mixture, in uniform characters of the same font and colour and in a font size which is no larger than half the font size used for the legal name.

In addition, the proportion of each alcoholic ingredient in the list of alcoholic ingredients shall be expressed at least once as a percentage, in descending order of quantities used. That proportion shall be equal to the percentage by volume of pure alcohol it represents in the total pure alcohol content by volume of the mixture.';

(b) the following paragraph is inserted:

'3a. In the case of a blend, the spirit drink shall bear the legal name provided for in the relevant category of spirit drinks set out in Annex I.

In case of blends resulting from the combination of spirit drinks belonging to different geographical indications or from the combination of spirit drinks belonging to geographical indications with spirit drinks not belonging to any geographical indication, the following conditions shall apply:

(a) the description, presentation or labelling of the blend may show the legal names set out in Annex I or geographical indications corresponding to the spirits drinks that were blended, provided that those names appear:

  (i) exclusively in a list of all the alcoholic ingredients contained in the blend which shall appear in uniform characters of the same font and colour and in a font size which is no larger than half the font size used for the legal name; and

  (ii) in the same visual field as the legal name of the blend at least once;

(b) the list of alcoholic ingredients shall be accompanied by at least one of the terms referred to in point (d) of Article 10(6);

(c) the proportion of each alcoholic ingredient in the list of alcoholic ingredients shall be expressed at least once as a percentage, in descending order of quantities used. That proportion shall be equal to the percentage by volume of pure alcohol it represents in the total pure alcohol content by volume of the blend.'.

Article 2

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

It shall apply from 25 May 2021.

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

Done at Brussels, 21 April 2021.

For the Commission
The President
Ursula VON DER LEYEN

COMMISSION IMPLEMENTING REGULATION (EU) 2021/1097

of 1 July 2021

approving non-minor amendments to the specification for a name entered in the register of protected designations of origin and protected geographical indications ('Garbanzo de Fuentesaúco' (PGI))

THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EU) No 1151/2012 of the European Parliament and of the Council of 21 November 2012 on quality schemes for agricultural products and foodstuffs ([1]), and in particular Article 52(2) thereof,

Whereas:

(1) Pursuant to the first subparagraph of Article 53(1) of Regulation (EU) No 1151/2012, the Commission has examined Spain's application for the approval of amendments to the specification for the protected geographical indication 'Garbanzo de Fuentesaúco', registered under Commission Regulation (EC) No 1485/2007 ([2]).

(2) Since the amendments in question are not minor within the meaning of Article 53(2) of Regulation (EU) No 1151/2012, the Commission published the amendment application in the *Official Journal of the European Union* ([3]) as required by Article 50(2)(a) of that Regulation.

(3) As no statement of opposition under Article 51 of Regulation (EU) No 1151/2012 has been received by the Commission, the amendments to the specification should be approved,

HAS ADOPTED THIS REGULATION:

Article 1

The amendments to the specification published in the *Official Journal of the European Union* regarding the name 'Garbanzo de Fuentesaúco' (PGI) are hereby approved.

Article 2

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

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

Done at Brussels, 1 July 2021.

For the Commission,
On behalf of the President,
Janusz WOJCIECHOWSKI
Member of the Commission

([1]) OJ L 343, 14.12.2012, p. 1.
([2]) Commission Regulation (EC) No 1485/2007 of 14 December 2007 registering certain names in the Register of protected designations of origin and protected geographical indications (Carne de Bísaro Transmontano or Carne de Porco Transmontano (PDO), Szegedi szalámi or Szegedi téliszalámi (PDO), Pecorino di Filiano (PDO), Cereza del Jerte (PDO), Garbanzo de Fuentesaúco (PGI), Lenteja Pardina de Tierra de Campos (PGI), Λουκούμι Γεροσκήπου (Loukoumi Geroskipou) (PGI), Skalický trdelník (PGI)) (OJ L 330, 15.12.2007, p. 13).
([3]) OJ C 82, 11.3.2021, p. 14.

COMMISSION REGULATION (EU) 2021/1098

of 2 July 2021

amending Annexes II, III and IV to Regulation (EC) No 396/2005 of the European Parliament and of the Council as regards maximum residue levels for 24-epibrassinolide, *Allium cepa* L. bulb extract, cyflumetofen, fludioxonil, fluroxypyr, sodium 5-nitroguaiacolate, sodium o-nitrophenolate and sodium p-nitrophenolate in or on certain products

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EC) No 396/2005 of the European Parliament and of the Council of 23 February 2005 on maximum residue levels of pesticides in or on food and feed of plant and animal origin and amending Council Directive 91/414/EEC ([1]), and in particular Article 5(1) and Article 14(1)(a) thereof,

Whereas:

(1) For fludioxonil, fluroxypyr, sodium 5-nitroguaiacolate, sodium o-nitrophenolate and sodium p-nitrophenolate, maximum residue levels ('MRLs') were set in Annex II to Regulation (EC) No 396/2005. For cyflumetofen, MRLs were set in Part A of Annex III to that Regulation. For 24-epibrassinolide and *Allium cepa* L. bulb extract, no specific MRLs were set in Regulation (EC) No 396/2005 nor were those substances included in Annex IV to that Regulation, so the default value of 0,01 mg/kg laid down in Article 18(1)(b) thereof applies.

(2) In the context of a procedure for the authorisation of the use of a plant protection product containing the active substance cyflumetofen on citrus fruits, apricots, peaches, tomatoes, aubergines/eggplants, cucumbers and hops, an application was submitted in accordance with Article 6(1) of Regulation (EC) No 396/2005 for modification of the existing MRLs.

(3) As regards fludioxonil, such an application was submitted for elderberries. As regards fluroxypyr, such an application was submitted for chives, celery leaves, parsley, thyme, basil and edible flowers. As regards sodium 5-nitroguaiacolate, sodium o-nitrophenolate and sodium p-nitrophenolate, such an application was submitted for table olives and olives for oil production.

(4) In accordance with Article 8 of Regulation (EC) No 396/2005, those applications were evaluated by the Member States concerned and the evaluation reports were forwarded to the Commission.

(5) The European Food Safety Authority ('the Authority') assessed the applications and the evaluation reports, examining in particular the risks to the consumer and, where relevant, to animals, and gave reasoned opinions on the proposed MRLs ([2]). It forwarded those opinions to the applicants, the Commission and the Member States and made them available to the public.

([1]) OJ L 70, 16.3.2005, p. 1.

([2]) EFSA scientific reports available online: http://www.efsa.europa.eu:
Reasoned opinion on the modification of the existing maximum residue levels for cyflumetofen in various crops. EFSA Journal 2021;19(2):6373.
Reasoned opinion on the modification of the existing maximum residue levels for fludioxonil in elderberries. EFSA Journal 2020;18(7):6175.
Reasoned opinion on the modification of the existing maximum residue levels for fluroxypyr in chives, celery leaves, parsley, thyme and basil and edible flowers. EFSA Journal 2020;18(10):6273.
Reasoned opinion on the modification of the existing maximum residue levels for sodium 5-nitroguaiacolate, sodium o-nitrophenolate and sodium p-nitrophenolate (sodium nitrocompounds) in table olives and olives for oil production. EFSA Journal 2020;18(11):6313.

(6) As regards all applications, the Authority concluded that all requirements with respect to data were met and that the modifications to the MRLs requested by the applicants were acceptable with regard to consumer safety on the basis of a consumer exposure assessment for 27 specific European consumer groups. It took into account the most recent information on the toxicological properties of the substances. Neither the lifetime exposure to these substances via consumption of all food products that may contain them, nor the short-term exposure due to high consumption of the relevant products showed that there is a risk that the acceptable daily intake or the acute reference dose is exceeded.

(7) In the context of the approval of the active substance 24-epibrassinolide, an MRL application was included in the summary dossier in accordance with Article 8(1)(g) of Regulation (EC) No 1107/2009 of the European Parliament and of the Council ([3]). That application was evaluated by the Member State concerned in accordance with Article 11(2) of that Regulation. The Authority assessed the application and delivered a conclusion on the peer review of the pesticide risk assessment of the active substance, where it recommended the inclusion of 24-epibrassinolide in Annex IV to Regulation (EC) No 396/2005 ([4]).

(8) *Allium cepa* L. bulb extract has been approved as a basic substance by Commission Implementing Regulation (EU) 2021/81 ([5]). The conditions of use of the substance are not expected to lead to the presence of residues in food or feed commodities that may pose a risk to the consumer. It is therefore appropriate to include *Allium cepa* L. bulb extract in Annex IV to Regulation (EC) No 396/2005.

(9) Based on the reasoned opinions and the conclusions of the Authority and taking into account the factors relevant to the matter under consideration, the respective modifications to the MRLs fulfil the requirements of Article 14(2) of Regulation (EC) No 396/2005.

(10) Regulation (EC) No 396/2005 should therefore be amended accordingly.

(11) The measures provided for in this Regulation are in accordance with the opinion of the Standing Committee on Plants, Animals, Food and Feed,

HAS ADOPTED THIS REGULATION:

Article 1

Annexes II, III and IV to Regulation (EC) No 396/2005 are amended in accordance with the Annex to this Regulation.

Article 2

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

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

Done at Brussels, 2 July 2021.

For the Commission
The President
Ursula VON DER LEYEN

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

([4]) Conclusion on the peer review of the pesticide risk assessment of the active substance 24-epibrassinolide. EFSA Journal 2020;18 (6):6132.

([5]) Commission Implementing Regulation (EU) 2021/81 of 27 January 2021 approving the basic substance *Allium cepa* L. bulb extract in accordance with Regulation (EC) No 1107/2009 of the European Parliament and of the Council concerning the placing of plant protection products on the market, and amending the Annex to Commission Implementing Regulation (EU) No 540/2011 (OJ L 29, 28.1.2021, p. 12).

ANNEX

Annexes II, III and IV to Regulation (EC) No 396/2005 are amended as follows:

(1) in Annex II, the columns for fludioxonil, fluroxypyr, sodium 5-nitroguaiacolate, sodium o-nitrophenolate and sodium p-nitrophenolate are replaced by the following:

'**Pesticide residues and maximum residue levels (mg/kg)**

Code number	Groups and examples of individual products to which the MRLs apply (a)	Fludioxonil (R) (F)	Fluroxypyr (sum of fluroxypyr, its salts, its esters, and its conjugates, expressed as fluroxypyr) (R) (A)	Sodium 5-nitroguaiacolate, sodium o-nitrophenolate and sodium p-nitrophenolate (Sum of sodium 5-nitroguaiacolate, sodium o-nitrophenolate and sodium p-nitrophenolate, expressed as sodium 5-nitroguaiacolate)
(1)	(2)	(3)	(4)	(5)
0100000	**FRUITS, FRESH or FROZEN; TREE NUTS**			
0110000	**Citrus fruits**	10	0,01 (*)	0,03 (*)
0110010	Grapefruits			
0110020	Oranges			
0110030	Lemons			
0110040	Limes			
0110050	Mandarins			
0110990	Others (2)			
0120000	**Tree nuts**		0,01 (*)	0,03 (*)
0120010	Almonds	0,01 (*)		
0120020	Brazil nuts	0,01 (*)		
0120030	Cashew nuts	0,01 (*)		
0120040	Chestnuts	0,01 (*)		
0120050	Coconuts	0,01 (*)		
0120060	Hazelnuts/cobnuts	0,01 (*)		
0120070	Macadamias	0,01 (*)		
0120080	Pecans	0,01 (*)		
0120090	Pine nut kernels	0,01 (*)		
0120100	Pistachios	0,2		
0120110	Walnuts	0,01 (*)		
0120990	Others (2)	0,01 (*)		
0130000	**Pome fruits**	5		0,03 (*)
0130010	Apples		0,05 (*)(+)	
0130020	Pears		0,01 (*)	
0130030	Quinces		0,01 (*)	
0130040	Medlars		0,01 (*)	
0130050	Loquats/Japanese medlars		0,01 (*)	
0130990	Others (2)		0,01 (*)	

(1)	(2)	(3)	(4)	(5)
0140000	**Stone fruits**		0,01 (*)	0,03 (*)
0140010	Apricots	5		
0140020	Cherries (sweet)	5		
0140030	Peaches	10		
0140040	Plums	5		
0140990	Others (2)	0,01 (*)		
0150000	**Berries and small fruits**		0,01 (*)	0,03 (*)
0151000	**(a) grapes**			
0151010	Table grapes	5		
0151020	Wine grapes	4		
0152000	**(b) strawberries**	4		
0153000	**(c) cane fruits**	5		
0153010	Blackberries			
0153020	Dewberries			
0153030	Raspberries (red and yellow)			
0153990	Others (2)			
0154000	**(d) other small fruits and berries**			
0154010	Blueberries	2		
0154020	Cranberries	2		
0154030	Currants (black, red and white)	3		
0154040	Gooseberries (green, red and yellow)	2		
0154050	Rose hips	0,01 (*)		
0154060	Mulberries (black and white)	0,01 (*)		
0154070	Azaroles/Mediterranean medlars	0,01 (*)		
0154080	Elderberries	**4**		
0154990	Others (2)	0,01 (*)		
0160000	**Miscellaneous fruitswith**		0,01 (*)	
0161000	**(a) edible peel**	0,01 (*)		
0161010	Dates			0,03 (*)
0161020	Figs			0,03 (*)
0161030	Table olives			**0,12**
0161040	Kumquats			0,03 (*)
0161050	Carambolas			0,03 (*)
0161060	Kaki/Japanese persimmons			0,03 (*)
0161070	Jambuls/jambolans			0,03 (*)
0161990	Others (2)			0,03 (*)
0162000	**(b) inedible peel, small**			0,03 (*)
0162010	Kiwi fruits (green, red, yellow)	15		
0162020	Litchis/lychees	0,01 (*)		
0162030	Passionfruits/maracujas	0,01 (*)		
0162040	Prickly pears/cactus fruits	0,01 (*)		

(1)	(2)	(3)	(4)	(5)
0162050	Star apples/cainitos	0,01 (*)		
0162060	American persimmons/Virginia kaki	0,01 (*)		
0162990	Others (2)	0,01 (*)		
0163000	**(c) inedible peel, large**			0,03 (*)
0163010	Avocados	1,5		
0163020	Bananas	0,01 (*)		
0163030	Mangoes	2		
0163040	Papayas	0,01 (*)		
0163050	Granate apples/pomegranates	3		
0163060	Cherimoyas	0,01 (*)		
0163070	Guavas	0,5		
0163080	Pineapples	7		
0163090	Breadfruits	0,01 (*)		
0163100	Durians	0,01 (*)		
0163110	Soursops/guanabanas	0,01 (*)		
0163990	Others (2)	0,01 (*)		
0200000	**VEGETABLES, FRESH or FROZEN**			
0210000	**Root and tuber vegetables**		0,01 (*)	0,03 (*)
0211000	**(a) potatoes**	5		
0212000	**(b) tropical root and tuber vegetables**			
0212010	Cassava roots/manioc	0,01 (*)		
0212020	Sweet potatoes	10		
0212030	Yams	10		
0212040	Arrowroots	0,01 (*)		
0212990	Others (2)	0,01 (*)		
0213000	**(c) other root and tuber vegetables except sugar beets**			
0213010	Beetroots	1		
0213020	Carrots	1		
0213030	Celeriacs/turnip rooted celeries	0,2		
0213040	Horseradishes	1		
0213050	Jerusalem artichokes	0,01 (*)		
0213060	Parsnips	1		
0213070	Parsley roots/Hamburg roots parsley	1		
0213080	Radishes	0,3		
0213090	Salsifies	1		
0213100	Swedes/rutabagas	0,01 (*)		
0213110	Turnips	0,01 (*)		
0213990	Others (2)	0,01 (*)		
0220000	**Bulb vegetables**			0,03 (*)
0220010	Garlic	0,5	0,05 (*)(+)	
0220020	Onions	0,5	0,05 (*)(+)	

(1)	(2)	(3)	(4)	(5)
0220030	Shallots	0,5	0,05 (*)(+)	
0220040	Spring onions/green onions and Welsh onions	5	0,01 (*)	
0220990	Others (2)	0,5	0,01 (*)	
0230000	**Fruiting vegetables**		0,01 (*)	0,03 (*)
0231000	**(a) Solanaceae and Malvaceae**			
0231010	Tomatoes	3		
0231020	Sweet peppers/bell peppers	1		
0231030	Aubergines/eggplants	0,4		
0231040	Okra/lady's fingers	0,01 (*)		
0231990	Others (2)	0,01 (*)		
0232000	**(b) cucurbits with edible peel**	0,4		
0232010	Cucumbers			
0232020	Gherkins			
0232030	Courgettes			
0232990	Others (2)			
0233000	**(c) cucurbits with inedible peel**	0,3		
0233010	Melons			
0233020	Pumpkins			
0233030	Watermelons			
0233990	Others (2)			
0234000	**(c) sweet corn**	0,01 (*)		
0239000	**(e) other fruiting vegetables**	0,01 (*)		
0240000	**Brassica vegetables(excluding brassica roots and brassica baby leaf crops)**		0,01 (*)	0,03 (*)
0241000	**(a) flowering brassica**			
0241010	Broccoli	0,7		
0241020	Cauliflowers	0,01 (*)		
0241990	Others (2)	0,01 (*)		
0242000	**(b) head brassica**			
0242010	Brussels sprouts	0,01 (*)		
0242020	Head cabbages	2		
0242990	Others (2)	0,01 (*)		
0243000	**(c) leafy brassica**			
0243010	Chinese cabbages/pe-tsai	10		
0243020	Kales	0,01 (*)		
0243990	Others (2)	0,01 (*)		
0244000	**(c) kohlrabies**	0,01 (*)		
0250000	**Leaf vegetables, herbs and edible flowers**			
0251000	**(a) lettuces and salad plants**		0,01 (*)	0,03 (*)
0251010	Lamb's lettuces/corn salads	20		
0251020	Lettuces	40		

(1)	(2)	(3)	(4)	(5)
0251030	Escaroles/broad-leaved endives	20		
0251040	Cresses and other sprouts and shoots	20		
0251050	Land cresses	20		
0251060	Roman rocket/rucola	20		
0251070	Red mustards	20		
0251080	Baby leaf crops (including brassica species)	20		
0251990	Others (2)	20		
0252000	**(b) spinaches and similar leaves**		0,01 (*)	0,03 (*)
0252010	Spinaches	30		
0252020	Purslanes	20		
0252030	Chards/beet leaves	20		
0252990	Others (2)	20		
0253000	**(c) grape leaves and similar species**	0,01 (*)	0,01 (*)	0,03 (*)
0254000	**(c) watercresses**	10	0,01 (*)	0,03 (*)
0255000	**(e) witloofs/Belgian endives**	0,02	0,01 (*)	0,03 (*)
0256000	**(f) herbs and edible flowers**	20		0,06 (*)
0256010	Chervil		0,02 (*)	
0256020	Chives		**0,5**	
0256030	Celery leaves		**0,3**	
0256040	Parsley		**0,3**	
0256050	Sage		0,02 (*)	
0256060	Rosemary		0,02 (*)	
0256070	Thyme		**2(+)**	
0256080	Basil and edible flowers		**0,3**	
0256090	Laurel/bay leaves		0,02 (*)	
0256100	Tarragon		0,02 (*)	
0256990	Others (2)		0,02 (*)	
0260000	**Legume vegetables**		0,01 (*)	0,03 (*)
0260010	Beans (with pods)	1		
0260020	Beans (without pods)	0,4		
0260030	Peas (with pods)	1		
0260040	Peas (without pods)	0,3		
0260050	Lentils	0,05		
0260990	Others (2)	0,01 (*)		
0270000	**Stem vegetables**			0,03 (*)
0270010	Asparagus	0,01 (*)	0,01 (*)	
0270020	Cardoons	0,01 (*)	0,01 (*)	
0270030	Celeries	1,5	0,01 (*)	
0270040	Florence fennels	1,5	0,01 (*)	
0270050	Globe artichokes	0,01 (*)	0,01 (*)	
0270060	Leeks	0,01 (*)	0,3(+)	

(1)	(2)	(3)	(4)	(5)
0270070	Rhubarbs	0,7	0,01 (*)	
0270080	Bamboo shoots	0,01 (*)	0,01 (*)	
0270090	Palm hearts	0,01 (*)	0,01 (*)	
0270990	Others (2)	0,01 (*)	0,01 (*)	
0280000	**Fungi, mosses and lichens**	0,01 (*)	0,01 (*)	0,03 (*)
0280010	Cultivated fungi			
0280020	Wild fungi			
0280990	Mosses and lichens			
0290000	**Algae and prokaryotes organisms**	0,01 (*)	0,01 (*)	0,03 (*)
0300000	**PULSES**		0,01 (*)	0,03 (*)
0300010	Beans	0,5		
0300020	Lentils	0,4		
0300030	Peas	0,4		
0300040	Lupins/lupini beans	0,4		
0300990	Others (2)	0,4		
0400000	**OILSEEDS AND OIL FRUITS**		0,01 (*)	
0401000	**Oilseeds**			0,03 (*)
0401010	Linseeds	0,3		
0401020	Peanuts/groundnuts	0,01 (*)		
0401030	Poppy seeds	0,01 (*)		
0401040	Sesame seeds	0,3		
0401050	Sunflower seeds	0,01 (*)		
0401060	Rapeseeds/canola seeds	0,3		
0401070	Soyabeans	0,2		
0401080	Mustard seeds	0,3		
0401090	Cotton seeds	0,01 (*)		
0401100	Pumpkin seeds	0,01 (*)		
0401110	Safflower seeds	0,01 (*)		
0401120	Borage seeds	0,3		
0401130	Gold of pleasure seeds	0,3		
0401140	Hemp seeds	0,3		
0401150	Castor beans	0,01 (*)		
0401990	Others (2)	0,01 (*)		
0402000	**Oil fruits**	0,01 (*)		
0402010	Olives for oil production			**0,12**
0402020	Oil palms kernels			0,03 (*)
0402030	Oil palms fruits			0,03 (*)
0402040	Kapok			0,03 (*)
0402990	Others (2)			0,03 (*)
0500000	**CEREALS**	0,01 (*)		0,03 (*)
0500010	Barley		0,1(+)	

(1)	(2)	(3)	(4)	(5)
0500020	Buckwheat and other pseudocereals		0,01 (*)	
0500030	Maize/corn		0,05 (*)(+)	
0500040	Common millet/proso millet		0,01 (*)	
0500050	Oat		0,1(+)	
0500060	Rice		0,01 (*)	
0500070	Rye		0,1(+)	
0500080	Sorghum		0,05 (*)(+)	
0500090	Wheat		0,1(+)	
0500990	Others (2)		0,01 (*)	
0600000	**TEAS, COFFEE, HERBAL INFUSIONS, COCOA AND CAROBS**			0,15 (*)
0610000	**Teas**	0,05 (*)	0,05 (*)	
0620000	**Coffee beans**	0,05 (*)	0,05 (*)	
0630000	**Herbal infusions from**			
0631000	**(a) flowers**	0,05 (*)	2(+)	
0631010	Chamomile		(+)	
0631020	Hibiscus/roselle		(+)	
0631030	Rose		(+)	
0631040	Jasmine		(+)	
0631050	Lime/linden		(+)	
0631990	Others (2)		(+)	
0632000	**(b) leaves and herbs**	0,05 (*)	0,05 (*)	
0632010	Strawberry			
0632020	Rooibos			
0632030	Mate/maté			
0632990	Others (2)			
0633000	**(c) roots**		0,05 (*)	
0633010	Valerian	1		
0633020	Ginseng	4		
0633990	Others (2)	1		
0639000	**(c) any other parts of the plant**	0,05 (*)	0,05 (*)	
0640000	**Cocoa beans**	0,05 (*)	0,05 (*)	
0650000	**Carobs/Saint John's breads**	0,05 (*)	0,05 (*)	
0700000	**HOPS**	0,05 (*)	0,05 (*)	0,3 (*)
0800000	**SPICES**			
0810000	**Seed spices**	0,05 (*)	0,05 (*)	0,15 (*)
0810010	Anise/aniseed			
0810020	Black caraway/black cumin			
0810030	Celery			
0810040	Coriander			
0810050	Cumin			
0810060	Dill			

(1)	(2)	(3)	(4)	(5)
0810070	Fennel			
0810080	Fenugreek			
0810090	Nutmeg			
0810990	Others (2)			
0820000	**Fruit spices**	0,05 (*)	0,05 (*)	0,15 (*)
0820010	Allspice/pimento			
0820020	Sichuan pepper			
0820030	Caraway			
0820040	Cardamom			
0820050	Juniper berry			
0820060	Peppercorn (black, green and white)			
0820070	Vanilla			
0820080	Tamarind			
0820990	Others (2)			
0830000	**Bark spices**	0,05 (*)	0,05 (*)	0,15 (*)
0830010	Cinnamon			
0830990	Others (2)			
0840000	**Root and rhizome spices**			
0840010	Liquorice	1	0,05 (*)	0,15 (*)
0840020	Ginger (10)			
0840030	Turmeric/curcuma	1	0,05 (*)	0,15 (*)
0840040	Horseradish (11)			
0840990	Others (2)	1	0,05 (*)	0,15 (*)
0850000	**Bud spices**	0,05 (*)	0,05 (*)	0,15 (*)
0850010	Cloves			
0850020	Capers			
0850990	Others (2)			
0860000	**Flower pistil spices**	0,05 (*)	0,05 (*)	0,15 (*)
0860010	Saffron			
0860990	Others (2)			
0870000	**Aril spices**	0,05 (*)	0,05 (*)	0,15 (*)
0870010	Mace			
0870990	Others (2)			
0900000	**SUGAR PLANTS**	0,01 (*)		0,03 (*)
0900010	Sugar beet roots		0,01 (*)	
0900020	Sugar canes		0,05 (*)(+)	
0900030	Chicory roots		0,01 (*)	
0900990	Others (2)		0,01 (*)	
1000000	**PRODUCTS OF ANIMAL ORIGIN -TERRESTRIAL ANIMALS**			
1010000	**Commodities from**			0,03 (*)
1011000	**(a) swine**			
1011010	Muscle	0,02	0,01 (*)(+)	

(1)	(2)	(3)	(4)	(5)
1011020	Fat	0,02	0,04(+)	
1011030	Liver	0,1	0,04(+)	
1011040	Kidney	0,1	0,06(+)	
1011050	Edible offals (other than liver and kidney)	0,1	0,06(+)	
1011990	Others (2)	0,02	0,01 (*)(+)	
1012000	**(b) bovine**			
1012010	Muscle	0,02	0,01 (*)(+)	
1012020	Fat	0,02	0,06(+)	
1012030	Liver	0,1	0,07(+)	
1012040	Kidney	0,1	0,3(+)	
1012050	Edible offals (other than liver and kidney)	0,1	0,3(+)	
1012990	Others (2)	0,02	0,01 (*)(+)	
1013000	**(c) sheep**			
1013010	Muscle	0,02	0,01 (*)(+)	
1013020	Fat	0,02	0,06(+)	
1013030	Liver	0,1	0,07(+)	
1013040	Kidney	0,1	0,3(+)	
1013050	Edible offals (other than liver and kidney)	0,1	0,3(+)	
1013990	Others (2)	0,02	0,01 (*)(+)	
1014000	**(d) goat**			
1014010	Muscle	0,02	0,01 (*)(+)	
1014020	Fat	0,02	0,06(+)	
1014030	Liver	0,1	0,07(+)	
1014040	Kidney	0,1	0,3(+)	
1014050	Edible offals (other than liver and kidney)	0,1	0,3(+)	
1014990	Others (2)	0,02	0,01 (*)(+)	
1015000	**(b) equine**			
1015010	Muscle	0,02	0,01 (*)	
1015020	Fat	0,02	0,06	
1015030	Liver	0,1	0,07	
1015040	Kidney	0,1	0,3	
1015050	Edible offals (other than liver and kidney)	0,1	0,3	
1015990	Others (2)	0,02	0,01 (*)	
1016000	**(f) poultry**		0,01 (*)	
1016010	Muscle	0,01 (*)		
1016020	Fat	0,01 (*)		
1016030	Liver	0,1		
1016040	Kidney	0,1		
1016050	Edible offals (other than liver and kidney)	0,1		
1016990	Others (2)	0,01 (*)		

(1)	(2)	(3)	(4)	(5)
1017000	**(g) other farmed terrestrial animals**			
1017010	Muscle	0,02	0,01 (*)	
1017020	Fat	0,02	0,06	
1017030	Liver	0,1	0,07	
1017040	Kidney	0,1	0,3	
1017050	Edible offals (other than liver and kidney)	0,1	0,3	
1017990	Others (2)	0,02	0,01 (*)	
1020000	**Milk**	0,04	0,06(+)	0,03 (*)
1020010	Cattle		(+)	
1020020	Sheep		(+)	
1020030	Goat		(+)	
1020040	Horse		(+)	
1020990	Others (2)		(+)	
1030000	**Birds eggs**	0,02	0,01 (*)	0,03 (*)
1030010	Chicken			
1030020	Duck			
1030030	Geese			
1030040	Quail			
1030990	Others (2)			
1040000	**Honey and other apiculture products (7)**	0,05 (*)	0,05 (*)	0,15 (*)
1050000	**Amphibians and Reptiles**	0,01 (*)	0,01 (*)	0,03 (*)
1060000	**Terrestrial invertebrate animals**	0,01 (*)	0,01 (*)	0,03 (*)
1070000	**Wild terrestrial vertebrate animals**	0,02	0,01 (*)	0,03 (*)
1100000	**PRODUCTS OF ANIMAL ORIGIN - FISH, FISHPRODUCTS AND ANY OTHER MARINE AND FRESHWATER FOOD PRODUCTS (8)**			
1200000	**PRODUCTS OR PART OF PRODUCTS EXCLUSIVELY USED FOR ANIMAL FEED PRODUCTION (8)**			
1300000	**PROCESSED FOOD PRODUCTS (9)**			

(*) Indicates lower limit of analytical determination

([a]) For the complete list of products of plant and animal origin to which MRL's apply, reference should be made to Annex I

Fludioxonil (R) (F)

(R) The residue definition differs for the following combinations pesticide-code number: Fludioxonil - code 1000000 except 1040000 : sum of fludioxonil and its metabolites oxidized to metabolite 2,2-difluoro-benzo[1,3]dioxole-4 carboxylic acid, expressed as fludioxonil

(F) Fat soluble

Fluroxypyr (sum of fluroxypyr, its salts, its esters, and its conjugates, expressed as fluroxypyr) (R) (A)

(R) The residue definition differs for the following combinations pesticide-code number: Fluroxypyr — code 1000000 except 1040000: Fluroxypyr (sum of fluroxypyr and its salts, expressed as fluroxypyr)

(A) The EU reference labs identified the reference standard for fluroxypyr conjugates as commercially not available. When re-viewing the MRL, the Commission will take into account the commercial availability of the reference standard referred to in the first sentence by 1 July 2016, or, if that reference standard is not commercially available by that date, the unavailability of it.

The European Food Safety Authority identified some information on analytical methods and the analytical method used in the residue trials as unavailable. When re-viewing the MRL, the Commission will take into account the information referred to in the first sentence, if it is submitted by 1 July 2017, or, if that information is not submitted by that date, the lack of it.

0500010 Barley

0500030 Maize/corn

0500050 Oat

0500070 Rye

0500080 Sorghum

0500090 Wheat

0900020 Sugar canes

The European Food Safety Authority identified some information on analytical methods, metabolism and the analytical method used in the residue trials as unavailable. When re-viewing the MRL, the Commission will take into account the information referred to in the first sentence, if it is submitted by 1 July 2017, or, if that information is not submitted by that date, the lack of it.

0270060 Leeks

The European Food Safety Authority identified some information on analytical methods, metabolism, PHI and residue trials as unavailable. When re-viewing the MRL, the Commission will take into account the information referred to in the first sentence, if it is submitted by 1 July 2017, or, if that information is not submitted by that date, the lack of it.

0220010 Garlic

0220030 Shallots

The European Food Safety Authority identified some information on analytical methods, metabolism, storage stability and residue trials as unavailable. When re-viewing the MRL, the Commission will take into account the information referred to in the first sentence, if it is submitted by 1 July 2017, or, if that information is not submitted by that date, the lack of it.

0220020 Onions

The European Food Safety Authority identified some information on analytical methods, storage stability, PHI and residue trials as unavailable. When re-viewing the MRL, the Commission will take into account the information referred to in the first sentence, if it is submitted by 1 July 2017, or, if that information is not submitted by that date, the lack of it.

0130010 Apples

The European Food Safety Authority identified some information on storage stability and metabolism as unavailable. When re-viewing the MRL, the Commission will take into account the information referred to in the first sentence, if it is submitted by 1 July 2017, or, if that information is not submitted by that date, the lack of it.

1011000 (a) swine

1011010 Muscle

1011020 Fat

1011030 Liver

1011040 Kidney

1011050 Edible offals (other than liver and kidney)

1011990 Others (2)

1012000 (b) bovine

1012010 Muscle

1012020 Fat

1012030 Liver

1012040 Kidney

1012050 Edible offals (other than liver and kidney)

1012990 Others (2)

1013000 (c) sheep

1013010 Muscle

1013020 Fat

1013030 Liver

1013040 Kidney

1013050 Edible offals (other than liver and kidney)

1013990 Others (2)

1014000 d) goat

1014010 Muscle

1014020 Fat

1014030 Liver

1014040 Kidney

1014050 Edible offals (other than liver and kidney)

1014990 Others (2)

1020000 Milk

1020010 Cattle

1020020 Sheep

1020030 Goat

1020040 Horse

1020990 Others (2)

The European Food Safety Authority identified some information on the analytical method used in the residue trials as unavailable. When re-viewing the MRL, the Commission will take into account the information referred to in the first sentence, if it is submitted by 1 July 2017, or, if that information is not submitted by that date, the lack of it.

0256070 Thyme

0631000 (a) flowers

0631010 Chamomile

0631020 Hibiscus/roselle

0631030 Rose

0631040 Jasmine

0631050 Lime/linden

0631990 Others (2)'

(2) in Part A of Annex III, the column for cyflumetofen is replaced by the following:

'**Pesticide residues and maximum residue levels (mg/kg)**

Code number	Groups and examples of individual products to which the MRLs apply [a]	Cyflumetofen
(1)	(2)	(3)
0100000	**FRUITS, FRESH or FROZEN; TREE NUTS**	
0110000	**Citrus fruits**	**0,5**
0110010	Grapefruits	
0110020	Oranges	
0110030	Lemons	
0110040	Limes	
0110050	Mandarins	
0110990	Others (2)	
0120000	**Tree nuts**	0,01 (*)
0120010	Almonds	
0120020	Brazil nuts	
0120030	Cashew nuts	
0120040	Chestnuts	
0120050	Coconuts	
0120060	Hazelnuts/cobnuts	
0120070	Macadamias	
0120080	Pecans	
0120090	Pine nut kernels	
0120100	Pistachios	
0120110	Walnuts	
0120990	Others (2)	
0130000	**Pome fruits**	0,4
0130010	Apples	
0130020	Pears	
0130030	Quinces	
0130040	Medlars	
0130050	Loquats/Japanese medlars	
0130990	Others (2)	
0140000	**Stone fruits**	
0140010	Apricots	**0,3**
0140020	Cherries (sweet)	
0140030	Peaches	**0,3**

(1)	(2)	(3)
0140040	Plums	
0140990	Others (2)	
0150000	**Berries and small fruits**	
0151000	**(a) grapes**	0,6
0151010	Table grapes	
0151020	Wine grapes	
0152000	**(b) strawberries**	0,6
0153000	**(c) cane fruits**	
0153010	Blackberries	
0153020	Dewberries	
0153030	Raspberries (red and yellow)	
0153990	Others (2)	
0154000	**(c) other small fruits and berries**	
0154010	Blueberries	
0154020	Cranberries	
0154030	Currants (black, red and white)	
0154040	Gooseberries (green, red and yellow)	
0154050	Rose hips	
0154060	Mulberries (black and white)	
0154070	Azaroles/Mediterranean medlars	0,4
0154080	Elderberries	
0154990	Others (2)	
0160000	**Miscellaneous fruitswith**	
0161000	**(a) edible peel**	
0161010	Dates	
0161020	Figs	
0161030	Table olives	
0161040	Kumquats	
0161050	Carambolas	
0161060	Kaki/Japanese persimmons	0,4
0161070	Jambuls/jambolans	
0161990	Others (2)	
0162000	**(b) inedible peel, small**	
0162010	Kiwi fruits (green, red, yellow)	
0162020	Litchis/lychees	
0162030	Passionfruits/maracujas	
0162040	Prickly pears/cactus fruits	
0162050	Star apples/cainitos	

(1)	(2)	(3)
0162060	American persimmons/Virginia kaki	
0162990	Others (2)	
0163000	**(c) inedible peel, large**	
0163010	Avocados	
0163020	Bananas	
0163030	Mangoes	
0163040	Papayas	
0163050	Granate apples/pomegranates	
0163060	Cherimoyas	
0163070	Guavas	
0163080	Pineapples	
0163090	Breadfruits	
0163100	Durians	
0163110	Soursops/guanabanas	
0163990	Others (2)	
0200000	**VEGETABLES, FRESH or FROZEN**	
0210000	**Root and tuber vegetables**	
0211000	**(a) potatoes**	
0212000	**(b) tropical root and tuber vegetables**	
0212010	Cassava roots/manioc	
0212020	Sweet potatoes	
0212030	Yams	
0212040	Arrowroots	
0212990	Others (2)	
0213000	**(c) other root and tuber vegetables except sugar beets**	
0213010	Beetroots	
0213020	Carrots	
0213030	Celeriacs/turnip rooted celeries	
0213040	Horseradishes	
0213050	Jerusalem artichokes	
0213060	Parsnips	
0213070	Parsley roots/Hamburg roots parsley	
0213080	Radishes	
0213090	Salsifies	
0213100	Swedes/rutabagas	
0213110	Turnips	
0213990	Others (2)	
0220000	**Bulb vegetables**	

(1)	(2)	(3)
0220010	Garlic	
0220020	Onions	
0220030	Shallots	
0220040	Spring onions/green onions and Welsh onions	
0220990	Others (2)	
0230000	**Fruiting vegetables**	
0231000	**(a) Solanaceae and Malvaceae**	
0231010	Tomatoes	**0,4**
0231020	Sweet peppers/bell peppers	
0231030	Aubergines/eggplants	**0,4**
0231040	Okra/lady's fingers	
0231990	Others (2)	
0232000	**(b) cucurbits with edible peel**	
0232010	Cucumbers	**0,4**
0232020	Gherkins	
0232030	Courgettes	
0232990	Others (2)	
0233000	**(c) cucurbits with inedible peel**	
0233010	Melons	
0233020	Pumpkins	
0233030	Watermelons	
0233990	Others (2)	
0234000	**(d) sweet corn**	
0239000	**(e) other fruiting vegetables**	
0240000	**Brassica vegetables(excluding brassica roots and brassica baby leaf crops)**	
0241000	**(a) flowering brassica**	
0241010	Broccoli	
0241020	Cauliflowers	
0241990	Others (2)	
0242000	**(b) head brassica**	
0242010	Brussels sprouts	
0242020	Head cabbages	
0242990	Others (2)	
0243000	**(c) leafy brassica**	
0243010	Chinese cabbages/pe-tsai	
0243020	Kales	
0243990	Others (2)	

(1)	(2)	(3)
0244000	**(d) kohlrabies**	
0250000	**Leaf vegetables, herbs and edible flowers**	
0251000	**(a) lettuces and salad plants**	
0251010	Lamb's lettuces/corn salads	
0251020	Lettuces	
0251030	Escaroles/broad-leaved endives	
0251040	Cresses and other sprouts and shoots	
0251050	Land cresses	
0251060	Roman rocket/rucola	
0251070	Red mustards	
0251080	Baby leaf crops (including brassica species)	
0251990	Others (2)	
0252000	**(b) spinaches and similar leaves**	
0252010	Spinaches	
0252020	Purslanes	
0252030	Chards/beet leaves	
0252990	Others (2)	
0253000	**(c) grape leaves and similar species**	
0254000	**(d) watercresses**	
0255000	**(e) witloofs/Belgian endives**	
0256000	**(f) herbs and edible flowers**	
0256010	Chervil	
0256020	Chives	
0256030	Celery leaves	
0256040	Parsley	
0256050	Sage	
0256060	Rosemary	
0256070	Thyme	
0256080	Basil and edible flowers	
0256090	Laurel/bay leaves	
0256100	Tarragon	
0256990	Others (2)	
0260000	**Legume vegetables**	
0260010	Beans (with pods)	
0260020	Beans (without pods)	
0260030	Peas (with pods)	
0260040	Peas (without pods)	

(1)	(2)	(3)
0260050	Lentils	
0260990	Others (2)	
0270000	**Stem vegetables**	
0270010	Asparagus	
0270020	Cardoons	
0270030	Celeries	
0270040	Florence fennels	
0270050	Globe artichokes	
0270060	Leeks	
0270070	Rhubarbs	
0270080	Bamboo shoots	
0270090	Palm hearts	
0270990	Others (2)	
0280000	**Fungi, mosses and lichens**	
0280010	Cultivated fungi	
0280020	Wild fungi	
0280990	Mosses and lichens	
0290000	**Algae and prokaryotes organisms**	
0300000	**PULSES**	
0300010	Beans	
0300020	Lentils	
0300030	Peas	
0300040	Lupins/lupini beans	
0300990	Others (2)	
0400000	**OILSEEDS AND OIL FRUITS**	
0401000	**Oilseeds**	
0401010	Linseeds	
0401020	Peanuts/groundnuts	
0401030	Poppy seeds	
0401040	Sesame seeds	
0401050	Sunflower seeds	
0401060	Rapeseeds/canola seeds	
0401070	Soyabeans	
0401080	Mustard seeds	
0401090	Cotton seeds	
0401100	Pumpkin seeds	
0401110	Safflower seeds	
0401120	Borage seeds	

(1)	(2)	(3)
0401130	Gold of pleasure seeds	
0401140	Hemp seeds	
0401150	Castor beans	
0401990	Others (2)	
0402000	**Oil fruits**	
0402010	Olives for oil production	
0402020	Oil palms kernels	
0402030	Oil palms fruits	
0402040	Kapok	
0402990	Others (2)	
0500000	**CEREALS**	
0500010	Barley	
0500020	Buckwheat and other pseudocereals	
0500030	Maize/corn	
0500040	Common millet/proso millet	
0500050	Oat	
0500060	Rice	
0500070	Rye	
0500080	Sorghum	
0500090	Wheat	
0500990	Others (2)	
0600000	**TEAS, COFFEE, HERBAL INFUSIONS, COCOA AND CAROBS**	
0610000	**Teas**	
0620000	**Coffee beans**	
0630000	**Herbal infusions from**	
0631000	**(a) flowers**	
0631010	Chamomile	
0631020	Hibiscus/roselle	
0631030	Rose	
0631040	Jasmine	
0631050	Lime/linden	
0631990	Others (2)	
0632000	**(b) leaves and herbs**	
0632010	Strawberry	
0632020	Rooibos	
0632030	Mate/maté	
0632990	Others (2)	
0633000	**(c) roots**	

(1)	(2)	(3)
0633010	Valerian	
0633020	Ginseng	
0633990	Others (2)	
0639000	**(c) any other parts of the plant**	
0640000	**Cocoa beans**	
0650000	**Carobs/Saint John's breads**	
0700000	**HOPS**	**30**
0800000	**SPICES**	
0810000	**Seed spices**	
0810010	Anise/aniseed	
0810020	Black caraway/black cumin	
0810030	Celery	
0810040	Coriander	
0810050	Cumin	
0810060	Dill	
0810070	Fennel	
0810080	Fenugreek	
0810090	Nutmeg	
0810990	Others (2)	
0820000	**Fruit spices**	
0820010	Allspice/pimento	
0820020	Sichuan pepper	
0820030	Caraway	
0820040	Cardamom	
0820050	Juniper berry	
0820060	Peppercorn (black, green and white)	
0820070	Vanilla	
0820080	Tamarind	
0820990	Others (2)	
0830000	**Bark spices**	
0830010	Cinnamon	
0830990	Others (2)	
0840000	**Root and rhizome spices**	
0840010	Liquorice	
0840020	Ginger (10)	
0840030	Turmeric/curcuma	
0840040	Horseradish (11)	
0840990	Others (2)	

(1)	(2)	(3)
0850000	**Bud spices**	
0850010	Cloves	
0850020	Capers	
0850990	Others (2)	
0860000	**Flower pistil spices**	
0860010	Saffron	
0860990	Others (2)	
0870000	**Aril spices**	
0870010	Mace	
0870990	Others (2)	
0900000	**SUGAR PLANTS**	
0900010	Sugar beet roots	
0900020	Sugar canes	
0900030	Chicory roots	
0900990	Others (2)	
1000000	**PRODUCTS OF ANIMAL ORIGIN -TERRESTRIAL ANIMALS**	
1010000	**Commodities from**	
1011000	**(a) swine**	
1011010	Muscle	0,01 (*)
1011020	Fat	0,01 (*)
1011030	Liver	0,02
1011040	Kidney	0,02
1011050	Edible offals (other than liver and kidney)	0,02
1011990	Others (2)	0,01 (*)
1012000	**(b) bovine**	
1012010	Muscle	0,01 (*)
1012020	Fat	0,01 (*)
1012030	Liver	0,02
1012040	Kidney	0,02
1012050	Edible offals (other than liver and kidney)	0,02
1012990	Others (2)	0,01 (*)
1013000	**(c) sheep**	
1013010	Muscle	0,01 (*)
1013020	Fat	0,01 (*)
1013030	Liver	0,02
1013040	Kidney	0,02
1013050	Edible offals (other than liver and kidney)	0,02
1013990	Others (2)	0,01 (*)

(1)	(2)	(3)
1014000	**(d) goat**	
1014010	Muscle	0,01 (*)
1014020	Fat	0,01 (*)
1014030	Liver	0,02
1014040	Kidney	0,02
1014050	Edible offals (other than liver and kidney)	0,02
1014990	Others (2)	0,01 (*)
1015000	**(e) equine**	
1015010	Muscle	0,01 (*)
1015020	Fat	0,01 (*)
1015030	Liver	0,02
1015040	Kidney	0,02
1015050	Edible offals (other than liver and kidney)	0,02
1015990	Others (2)	0,01 (*)
1016000	**(f) poultry**	
1016010	Muscle	
1016020	Fat	
1016030	Liver	
1016040	Kidney	
1016050	Edible offals (other than liver and kidney)	
1016990	Others (2)	
1017000	**(g) other farmed terrestrial animals**	
1017010	Muscle	0,01 (*)
1017020	Fat	0,01 (*)
1017030	Liver	0,02
1017040	Kidney	0,02
1017050	Edible offals (other than liver and kidney)	0,02
1017990	Others (2)	0,01 (*)
1020000	**Milk**	0,01 (*)
1020010	Cattle	
1020020	Sheep	
1020030	Goat	
1020040	Horse	
1020990	Others (2)	
1030000	**Birds eggs**	
1030010	Chicken	
1030020	Duck	
1030030	Geese	

(1)	(2)	(3)
1030040	Quail	
1030990	Others (2)	
1040000	**Honey and other apiculture products (7)**	
1050000	**Amphibians and Reptiles**	
1060000	**Terrestrial invertebrate animals**	
1070000	**Wild terrestrial vertebrate animals**	
1100000	**PRODUCTS OF ANIMAL ORIGIN - FISH, FISHPRODUCTS AND ANY OTHER MARINE AND FRESHWATER FOOD PRODUCTS (8)**	
1200000	**PRODUCTS OR PART OF PRODUCTS EXCLUSIVELY USED FOR ANIMAL FEED PRODUCTION (8)**	
1300000	**PROCESSED FOOD PRODUCTS (9)**	

(*) Indicates lower limit of analytical determination
([a]) For the complete list of products of plant and animal origin to which MRL's apply, reference should be made to Annex I'

(3) in Annex IV, the following entries are inserted in alphabetical order: '24-epibrassinolide' and '*Allium cepa* L. bulb extract'.

COMMISSION REGULATION (EU) 2021/1099

of 5 July 2021

amending Annexes II and III to Regulation (EC) No 1223/2009 of the European Parliament and of the Council on cosmetic products

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EC) No 1223/2009 of the European Parliament and of the Council of 30 November 2009 on cosmetic products ([1]), and in particular Article 31(1) thereof,

Whereas:

(1) The substance 4-[(tetrahydro-2H-pyran-2-yl)oxy]phenol (common name: deoxyarbutin, INCI name: Tetrahydropyranyloxy Phenol), currently not regulated in Regulation (EC) No 1223/2009, results in the release of 1,4-Dihydroxybenzene (INCI name: Hydroquinone). Hydroquinone is included among the substances prohibited for use in cosmetic products, listed under entry 1339 of Annex II to Regulation (EC) No 1223/2009, with the exception of entry 14 of Annex III to that Regulation.

(2) The use of deoxyarbutin in cosmetic products was assessed by the Scientific Committee on Consumer Safety (SCCS). In its opinion adopted on 25 June 2015 ([2]), the SCCS concluded that due to safety concerns raised with regard to the life-cycle of products containing that substance, the use of deoxyarbutin up to 3 % in face creams cannot be considered as safe ([3]).

(3) Based on that opinion, deoxyarbutin should be prohibited for use in cosmetic products and added to the list of prohibited substances in Annex II to Regulation (EC) No 1223/2009.

(4) The substance 1,3-Dihydroxy-2-propanone (INCI name: Dihydroxyacetone) is a cosmetic ingredient with the reported functions of skin conditioning and tanning. Dihydroxyacetone is currently not regulated under Regulation (EC) No 1223/2009.

(5) In its opinion adopted on 3-4 March 2020 ([4]),the SCCS considered Dihydroxyacetone safe when used as a hair colouring ingredient in leave-on applications (non-oxidative) up to a maximum concentration of 6,25 %. Furthermore, the SCCS concluded in that opinion that the use of Dihydroxyacetone as a hair colouring ingredient in leave-on applications (non-oxidative) up to a maximum concentration of 6,25 % together with the use of self-tanning lotion and face cream containing up to a maximum concentration of 10 % Dihydroxyacetone is also considered safe.

(6) Based on those conclusions, it is necessary to add a new entry in Annex III to Regulation (EC) No 1223/2009 that will allow for a restricted use of Dihydroxyacetone in non-oxidative hair dye products and in self-tanning products only, in a maximum concentration of up to 6,25 % and 10 % respectively.

(7) Regulation (EC) No 1223/2009 should therefore be amended accordingly.

(8) It is appropriate to provide for reasonable periods of time in order for the industry to adapt to the new requirements on the use of Dihydroxyacetone in cosmetic products and to phase out the placing and making available on the market of cosmetic products which do not comply with those requirements.

(9) The measures provided for in this Regulation are in accordance with the opinion of the Standing Committee on Cosmetic Products,

([1]) OJ L 342, 22.12.2009, p. 59.
([2]) SCCS (Scientific Committee on Consumer Safety), Opinion on deoxyarbutin – Tetrahydropyranyloxy Phenol, 25 June 2015, SCCS/1554/15.
([3]) See point 4 of the opinion.
([4]) SCCS (Scientific Committee on Consumer Safety), Opinion on Dihydroxyacetone – DHA, 3-4 March 2020, SCCS/1612/19.

HAS ADOPTED THIS REGULATION:

Article 1

Regulation (EC) No 1223/2009 is amended in accordance with the Annex to this Regulation.

Article 2

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

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

Done at Brussels, 5 July 2021.

For the Commission
The President
Ursula VON DER LEYEN

ANNEX

Regulation (EC) No 1223/2009 is amended as follows:

(1) in Annex II, the following entry is added:

Reference number	Substance identification		
	Chemical name/INN	CAS number	EC number
a	b	c	d
‘*1657*	4-[(tetrahydro-2H-pyran-2-yl)oxy]phenol (Deoxyarbutin, Tetrahydropyranyloxy Phenol)	53936-56-4’	

(2) in Annex III, the following entry is added:

Reference number	Substance identification				Restrictions			Wording of conditions of use and warnings
	Chemical name/INN	Name of Common Ingredients Glossary	CAS number	EC number	Product type, body parts	Maximum concentration in ready use preparation	Other	
a	b	C	d	e	f	g	d	h
‘*321*	1,3-Dihydroxy-2-propanone	Dihydroxyacetone	96-26-4	202-494-5	(a) Hair dye substance in non-oxidative hair dye products (*) (b) Self-tanning products (*)	(a) 6,25 % (b) 10 %		

(*) From 26 January 2022 hair dye and self-tanning products containing that substance and not complying with the restrictions shall not be placed on the Union market. From 22 April 2022 hair dye and self-tanning products containing that substance and not complying with the restrictions shall not be made available on the Union market.’

COMMISSION IMPLEMENTING REGULATION (EU) 2021/1100

of 5 July 2021

imposing a definitive anti-dumping duty and definitively collecting the provisional duty imposed on imports of certain hot-rolled flat products of iron, non-alloy or other alloy steel originating in Turkey

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(4) thereof,

Whereas:

1. PROCEDURE

1.1. Initiation

(1) On 14 May 2020, the European Commission ('the Commission') initiated an anti-dumping investigation with regard to imports of certain hot-rolled flat products of iron, non-alloy or other alloy steel ('HRFS' or 'the product under investigation') originating in Turkey ('the country concerned') on the basis of Article 5 of the basic Regulation ([2]).

(2) On 12 June 2020, the Commission initiated an anti-subsidy investigation with regard to imports of the same product originating in Turkey ([3]).

1.2. Registration

(3) Following a request by the complainant supported by the required evidence, the Commission made imports of the product concerned subject to registration by Commission Implementing Regulation (EU) 2020/1686 ([4]) ('the registration Regulation') under Article 14(5) of the basic Regulation.

1.3. Provisional measures

(4) In accordance with Article 19a of the basic Regulation, on 17 December 2020 the Commission provided parties with a summary of the proposed provisional duties and details about the calculation of the dumping margins and the margins adequate to remove the injury to the Union industry. As explained in recitals (215) and (216) of the provisional Regulation, the comments submitted by parties did not result in a change in the margins as these were not considered to be of a clerical nature.

(5) On 7 January 2021, the Commission imposed a provisional anti-dumping duty by Commission Implementing Regulation (EU) 2021/9 ([5]) ('the provisional Regulation').

1.4. Subsequent procedure

(6) Following the disclosure of the essential facts and considerations on the basis of which a provisional anti-dumping duty was imposed ('provisional disclosure'), the complainants, a Consortium representing the interests of some users, a user that imported long steel products, the sampled exporting producers, an importer related to one of the sampled exporting producers, the Turkish Steel Exporters association ('ÇİB') and the Government of Turkey ('GOT') made written submissions making their views known on the provisional findings. Two exporting producers requested and received further details on the calculation of their injury margins.

([1]) OJ L 176, 30.6.2016, p. 21.
([2]) OJ C 166, 14.5.2020, p. 9.
([3]) OJ C 197, 12.6.2020, p. 4.
([4]) Commission Implementing Regulation (EU) 2020/1686 of 12 November 2020 making imports of certain hot-rolled flat products of iron, non-alloy or other alloy steel originating in Turkey subject to registration (OJ L 379, 13.11.2020, p. 47).
([5]) Commission Implementing Regulation (EU) 2021/9 of 6 January 2021 imposing a provisional duty on imports of certain hot-rolled flat products of iron, non-alloy or other alloy steel originating in Turkey (OJ L 3, 7.1.2021, p. 4).

(7) The parties who so requested were granted an opportunity to be heard. Hearings took place with the three sampled exporting producers and the GOT.

(8) The Commission continued to seek and verify all the information it deemed necessary for its final findings. When reaching its definitive findings, the Commission considered the comments submitted by interested parties and revised its provisional conclusions when appropriate.

(9) The Commission informed all interested parties of the essential facts and considerations on the basis of which it intended to impose a definitive anti-dumping duty on imports of certain hot-rolled flat products of iron, non-alloy or other alloy steel originating in Turkey ('final disclosure'). All parties were granted a period within which they could make comments on the final disclosure.

(10) Parties who so requested were also granted an opportunity to be heard. Hearings took place with the three sampled exporting producers. In addition, one sampled exporting producer requested the intervention of the Hearing Officer with regard to the application of Article 18 of the basic Regulation.

(11) Following final disclosure, the Commission found a clerical error in the calculation of the definitive dumping margin of one of the exporting producers. Therefore, an additional final disclosure was sent to the exporting producer in question, which made further comments on the additional disclosure received.

(12) The comments submitted by the interested parties were considered and taken into account where appropriate in this regulation.

1.5. **Sampling**

(13) In the absence of comments concerning sampling, recitals (7) to (18) of the provisional Regulation were confirmed.

1.6. **Individual examination**

(14) In the absence of comments concerning this section, recital (19) of the provisional Regulation was confirmed.

1.7. **Investigation period and period considered**

(15) In the absence of comments concerning the investigation period ('IP') and the period considered, recital (27) of the provisional Regulation was confirmed.

1.8. **Change of geographical scope and procedural claims**

(16) Since 1 January 2021, the United Kingdom of Great Britain and Northern Ireland ('UK') is no longer part of the European Union. Therefore, this regulation is based on data for the European Union without the UK ('EU27'). The Commission therefore asked the complainant and the sampled Union producers to submit certain parts of their original questionnaire responses with data for EU27 only. The complainant and the sampled Union producers submitted the requested data. As the difference between the macroeconomic indicators published in the provisional Regulation and the macroeconomic data for EU27 is due to the exclusion of the data from one single UK producer, certain tables in this Regulation are provided in ranges in order not to disclose confidential information related to that interested party.

(17) In relation to dumping, only the export sales of the sampled exporting producers to EU27 were considered to calculate the definitive dumping margins.

(18) Finally, for the Union interest assessment, the Commission also enquired about the impact of the UK withdrawal on the questionnaire responses submitted by users and importers, namely Marcegaglia Carbon Steel SpA, San Polo Lamiere and those represented by the Network Steel group. San Polo Lamiere did not react to the Commission's request. The other parties stated that the UK withdrawal had no impact on the information that they had already provided.

(19) On 12 January 2021, by means of a note to the file ([6]), the Commission informed companies and associations from the UK that they would no longer qualify as interested parties in trade defence proceedings. Only the International Steel Trade Association, a UK-based party representing the interests of importers and users which was registered as an interested party, reacted to the note by submitting a substantiated request for remaining an interested party in this proceeding. Seen as the party has a hub in Germany representing relevant EU businesses in EU27, the Commission agreed to its request.

(20) The GOT deemed that the UK withdrawal made the provisional measures imposed on 7 January 2021 unsubstantiated and unlawful because they were based on EU28 data. On 29 January 2021 the GOT asked the Commission to terminate the provisional measures and carry out an analysis based on data excluding the UK. The Commission found the GOT's request unfounded as the provisional measures derived from findings pre-disclosed to interested parties in 2020, at a time when the Union still had 28 Member States.

(21) Furthermore, the GOT and two of the sampled exporting producers claimed that any provisional measures should not remain in force more than three months in light of Article 11(2) of Agreement between the European Coal and Steel Community and the Republic of Turkey on trade in products covered by the Treaty establishing the European Coal and Steel Community ('the Turkey/ECSC Agreement') ([7]). The Commission was, however, of the view that the provisions in Article 11 of the Turkey/ECSC Agreement are relevant only if this Article is specifically invoked by the injured Party. In this investigation the Commission did not invoke the provisions of Articles 10 or 11 of the Turkey/ECSC Agreement and, thus, the Commission was not required to impose provisional measures for a shorter duration than six months, as provided in the basic Regulation.

2. PRODUCT CONCERNED AND LIKE PRODUCT

2.1. Claims regarding the product scope

(22) At provisional stage, a manufacturer of forklifts and components for forklift-trucks and construction machines requested the exclusion of hot-rolled long bar steel products from the product scope of the investigation. In the provisional Regulation, the Commission had provisionally established that hot-rolled long bar steel products fall outside the scope of this investigation because a 6-12 m long hot-rolled bar is a long product and not a flat steel product.

(23) Following provisional disclosure, the party reiterated its request. It noted that the products in question were still covered by the product definition and, thus, subject to measures. It therefore requested the exclusion of "products which are longer than 6,000 mm" with a view to excluding the same products, i.e. certain hot-rolled long bar products which fall under CN code 7226 91 91, one of the CN codes subject to measures. The Commission found that the exclusion as proposed by the party was inapplicable as it would include certain HRFS products aimed to be covered by the measures. In this respect, the complainant noted that a length of 10,000 mm can apply to HRFS coils and even to certain cut-to-length HRFS products and was therefore not exclusively a characteristic of the products in the exclusion request. However, the complainant agreed that the hot-rolled long bar steel products in question were not intended to be covered by the scope of the investigation.

(24) The Commission found the products in the forklifts manufacturer's request have different basic characteristics than HRFS not because of their length, but rather with regard to their thickness and width, which make them different products, having a different use. Therefore, an exclusion was granted to "products whose (a) width is up to and including 350 mm, and (b) whose thickness is 50 mm or greater, regardless of the length of the product".

(25) Following provisional disclosure, Erdemir Romania S.R.L. requested the exclusion of so-called 'magnetic' hot-rolled non-grain oriented silicon products falling under CN code 7225 19 10 because it purchases such products only from its mother company Erdemir in Turkey, due to the alleged practices of Union producers (i.e. high prices and limited supply) and the alleged absence of competition with Union producers. Erdemir Romania S.R.L claimed that, if the products in question are not excluded, there would be a negative impact on the company itself and on the overall Romanian economy.

([6]) t21.000389.
([7]) OJ L 227, 7.9.1996, p. 3.

(26) The above exclusion request concerns the supply of input HRFS to an electrical steel manufacturer in Romania from its mother company Erdemir in Turkey. The Commission found that such input materials are not distinct but share the same features as other types of HRFS subject to measures in terms of their basic physical, technical and chemical characteristics, their end-uses and interchangeability. The Commission thus rejected the exclusion request of 'magnetic' hot-rolled non-grain oriented silicon products falling under CN code 7225 19 10. Furthermore, several Union producers produce 'magnetic' hot-rolled non-grain oriented silicon products, which are in direct competition with imported products. As to the impact on the requesting party, the Commission failed to see why the non-exclusion would be "catastrophic", as claimed by the party, given the level of the applicable anti-dumping duty to the mother company.

2.2. **Conclusion**

(27) In the absence of any other comments with respect to the product scope, the Commission confirmed the conclusions set out in recitals (28) to (33) of the provisional Regulation, as revised in recital (24) above.

3. **DUMPING**

(28) Following provisional and final disclosures, the Commission received written comments from the three sampled exporting producers and from the complainant on the provisional and the definitive dumping findings.

3.1. **Application of Article 18 of the basic Regulation**

(29) The details of the application of Article 18 of the basic Regulation to information provided by two related exporting producers, concerning transport costs reported with regard to sales on the domestic market, were set out in recitals (26) and (56) to (59) of the provisional Regulation.

(30) Following provisional disclosure, the two related exporting producers opposed the provisional application of Article 18 of the basic Regulation with regard to their domestic transport costs and claimed that the conditions for applying this Article were not met in the present case. They also argued that if the Commission concluded otherwise, it could only make an adjustment to the domestic transport costs of those delivery routes for which the companies' information was considered incorrect.

(31) In its comments submitted after provisional disclosure, the complainant opposed the exporting producers' claim and supported the Commission's provisional application of Article 18 of the basic Regulation in respect to transportation costs incurred by the exporting producers in question.

(32) Following final disclosure, the exporting producers in question reiterated their claims. First, they argued that the identification of costs incurred for transport of HRFS between a producer and another company in the group was no longer necessary since the Commission decided to perform separate dumping margin calculations for both exporting producers in the group. Second, they submitted that the Commission should have used the information provided in reply to the Article 18 letter and should have only adapted the transport cost for delivery routes that involved a warehouse/port of a related company within the group as an intermediary sales or delivery point. In this regard, the company also requested the intervention of the Hearing Officer, and a hearing took place on 6 May 2021.

(33) The Commission analysed the claim and concluded that the application of Article 18 of the basic Regulation with regard to the domestic transport costs incurred by the exporting producers was justified. First, although separate calculations for the two companies were done after their comments on the provisional disclosure, the companies did remain related parties so internal transport costs were still relevant. Second, the documents submitted by the companies in support of their claim did not present any new information, and did not provide a clear and complete breakdown of all delivery routes involved in the domestic sales of the product under investigation that would allow the Commission to clearly identify – and therefore to cross-check – all transactions where a warehouse/port of a related company was involved as an intermediary sales or distribution point. From the information on file, it could not be excluded with sufficient certainty that there were no other delivery routes where some internal transportation costs would also need to be excluded.

(34) Further to the Hearing Officer's recommendations, the Commission reassessed the proportionality of the adjustment made to the domestic transport costs of the exporting producers. The Commission noted that the application of Article 18 of the basic Regulation concerned only a limited number of sales transactions on the domestic market (around 10 % for one exporting producer, around 20 % for the other exporting producer within the group) and the Commission corrected only sales transactions delivered to the customer. Thus, the allowances for the majority of domestic sales transactions remained unaffected. Moreover, although the Commission applied facts available, it did not reject the transport cost allowance completely. Instead, it used the actual data provided by the companies to estimate the transport costs for routes where the involvement of a related intermediary point was unclear. Consequently, the Commission considered that, given the facts and the need for the exporting producers to substantiate the allowances claimed, the approach taken with regard to the determination of the transport cost allowance for domestic sales transactions was proportionate and not unreasonable.

(35) Therefore, the claim was rejected, and the Commission confirmed the conclusions set out in recitals (56) to (59) of the provisional Regulation.

3.2. **Normal value**

(36) The details of the calculation of the normal value were set out in recitals (38) to (49) of the provisional Regulation.

(37) One exporting producer claimed that in establishing its cost of production, the Commission should reconcile the recalculated cost of a purchased input with its accounting records.

(38) The Commission assessed the claim and found it justified. The methodology the Commission applied at the provisional stage to reallocate the cost of the purchased input in order to reflect the difference in cost resulting from differences in its technical characteristics led to a higher total cost of that input which did not match with the accounting records of the exporting producer. Therefore, the claim was accepted and the Commission revised the cost of the purchased input accordingly in the definitive calculation.

(39) One exporting producer claimed that in establishing its cost of production, the Commission should have accepted the electricity offset it had reported. It argued that in its provisional conclusions, the Commission misunderstood the role of the company in the Turkish electricity market and the overall functioning of the YEKDEM system, a support mechanism for renewable energy in Turkey. The exporting producer explained that electricity generated from renewable sources is sold to market participants by the market operator (EPIAS) at a certain price. However, if the market price at which EPIAS had purchased this electricity subsequently turned out to be lower, the difference was reimbursed to the purchasers of electricity. Therefore, the company claimed that an electricity offset is necessary to reflect its net cost of electricity, taking into account the reimbursement.

(40) The Commission analysed the new explanations provided and concluded that the claim was justified. Therefore, the claim was accepted and the electricity offset was included in the cost of production in the definitive dumping calculation of the company.

(41) One exporting producer claimed that, for the calculation of cost of production for HRFS, the Commission should only have considered the cost of HRFS sold domestically, which it had provided separately from the cost of HRFS exported to the Union, rather than establishing a single HRFS production cost by merging the two sets of cost data provided. The company claimed that such an approach ignored the fact that the product mix within one product type defined in the Product Control Number ('PCN') can be different depending on the market destination.

(42) In its comments submitted after provisional disclosure, the complainant opposed the exporting producer's claim stating that if two or more products fall within the same PCN, they should have the same cost of production, even if the producer considers them different in its own cost accounting system. Therefore they should be reported in the same cost of production table.

(43) Following final disclosure, the exporting producer reiterated the claim that only the cost of production for domestic sales, which was reported separately from the cost of production for sales to the Union, should have been considered in the calculation of the normal value.

(44) The Commission considered that the exporting producer did not show any factual differences in the production cost per market destination that would justify a separate cost calculation. The alleged cost differences arose because the company provided production costs on the basis of its internal coding instead of on the basis of PCNs. The Commission considered that there is no reason to differentiate between the production cost for products sold domestically and exported if there are no factual differences in the production process. As the exporting producer did not provide any evidence that the production process for export and for domestic sales within the same PCN was different, the Commission concluded that it could not accept two sets of costs. Therefore, the claim was rejected.

(45) The three exporting producers made comments on the calculation of their domestic SGA, in particular concerning the exclusion or the provisional reallocation of some financial items such as financial incomes, foreign exchange gains and losses and extraordinary revenues and losses for the purpose of calculating SGA.

(46) In its comments submitted after provisional disclosure, the complainant opposed the exporting producers' claims stating that the excluded amounts were not linked to the production or sales of the product under investigation but the result of other activities performed by the companies like bank deposits and revaluation operations.

(47) Following final disclosure, the three exporting producers reiterated their claims regarding the calculation of SGA.

(48) Two related exporting producers questioned the fact that the Commission reclassified some expenses from costs of goods sold to SGA or to the cost of production (such as idle capacity expenses, provision for inactive material) while it did not do the same with certain other expenses reported under costs of goods sold. The companies further argued that the Commission should have taken into account the realised foreign exchange gains/losses as well as those stemming from valuation differences. Finally, the companies claimed that the partial reclassification of transport related SGA expenses to overall SGA expenses should not have been done for the related trader in the group since it did not incur internal transport costs. The latter claim was reiterated after the additional final disclosure. In particular, the exporting producers claimed that the issue could not concern the related trader since it was the last leg in the transportation flow.

(49) With regard to the reclassification of the expenses reported under costs of goods sold, the company had reported certain expenses, which were included neither in the cost of production nor in SGA. The Commission thus found that those expenses would be incorrectly excluded from the determination of the normal value if not reclassified under either of those categories. At the same time, the Commission considered that those expenses, which were not reclassified, either were not related to production and/or sales of the product under investigation (e.g. derivative transactions) or the connection to the production and/or sales of the product under investigation was unclear (e.g. raw material price differences).

(50) With regard to the foreign exchange gains/losses, the Commission considered that the valuation gains/losses were a result of closing operations and, therefore, were not linked to the production and/or sales of the product under investigation. Moreover, the companies explained that the foreign exchange gains/losses resulted from operations in EUR or TRY since their accounting currency was USD. As the domestic sales were carried out in USD, the Commission considered that the realised foreign exchange gains/losses could not be attributed to domestic sales and thus should have been taken into account when determining the SGA used in the ordinary course of trade test.

(51) Finally, with regard to the reclassification of internal transport costs, to which the provisions of Article 18 of the basic Regulation were applied as explained in recitals (29) to (35) above, as far as it concerns the related trader, the Commission considered the issue to be at the level of the company group, including the related trader's operations. With regard to the related trader, the Commission noted that the company had its premises in four locations. Therefore, it could not be excluded that the goods were first transported to one of the other locations before being shipped to or picked up by the customer.

(52) Consequently, the Commission confirmed its approach at provisional stage and rejected the claims submitted by the two related exporting producers.

(53) One exporting producer disagreed with the Commission's rejection of foreign exchange gains/losses, extraordinary income, and financial income that the company reported in its SGA. In addition, it claimed that the Commission removed financial income but not financial expenses from SGA.

(54) Following its accounting practices, the company in question was not able to separately report realised foreign exchange gains/losses, which are directly linked to the production and/or sales of the product under investigation. Therefore, the Commission was not able to determine the actual amount of the reported foreign exchange gains/losses that could be taken into account in the calculation of SGA.

(55) With regard to the extraordinary income, the Commission noted that in its comments on the provisional disclosure, the company claimed that the extraordinary income concerned sales and production activities of the product under investigation. Yet the company did not provide any evidence substantiating this claim. In addition, the Commission clarified that it only rejected the one item reported under the extraordinary income, whose character could not be established based on the information provided by the company.

(56) Finally, the Commission also carefully considered the information reported under financial income and financial expense. The Commission rejected the company's claim under financial income since it was not related to the day-to-day production and sales activities of the company, but rather to financial operations unrelated to the production and/or sales of the product under investigation. Contrary to this, based on the information provided by the company, the Commission considered that the financial expenses incurred by the company concerned its production and sales activities of HRFS.

(57) Consequently, the Commission confirmed its approach at provisional stage and rejected the claims submitted by the exporting producer.

(58) One exporting producer claimed that the Commission should not have disregarded the information it submitted at the provisional stage, since there is no temporal exception which would permit the Commission to do so, as long as the information is submitted within the time limits of the investigation and the interested party who submitted such information is cooperating with the Commission.

(59) At provisional stage, the exporting producer in question contested the Commission's provisional corrections made to its cross-checked SGA, and submitted further details in this regard. The Commission had reallocated certain SGA expenses the company had initially allocated to other products, including inputs in the production of HRFS manufactured by the company itself. The Commission carefully examined the additional information provided and concluded that this information did not prove that the method used by the Commission to reallocate SGA was unreasonable or inappropriate, especially in view of the fact that the producer had failed to disclose and properly allocate these SGA expenses during the remote cross-check ('RCC'), and that it had agreed, in its comments on provisional disclosure, that the SGA related to the inputs used in the production of the product under investigation could be allocated to the product under investigation. Therefore, the Commission rejected the claim.

(60) One exporting producers group opposed the provisional decision to merge the cost and sales data of the two producing entities in the group for the calculation of the group's dumping margin. It claimed that the Commission should have instead first calculated individual dumping margins for the two related producers based on their own normal values and export prices, and then should have calculated one weighted average dumping margin for the whole group on that basis.

(61) In its comments submitted after provisional disclosure, the complainant opposed the exporting producer's claim stating that the Commission was correct in treating the companies as a single entity given the nature of the economic activities of the group.

(62) The Commission concluded that, since each of the two exporting producers in the group provided its own cost and sales data in a way that made it possible to distinguish and follow the costs and sales flow of the products produced by each of the two exporting producers individually, it was possible and more accurate to calculate two separate dumping margins and only then merge them into one weighted average dumping margin for the whole group. Therefore, the claim of the group was accepted and its dumping margin calculated accordingly.

(63) One exporting producer claimed that the Commission was wrong in provisionally including some idle capacity expenses in its cost of production, and claimed that such expenses only concerned products other than the product under investigation.

(64) The Commission analysed the information provided by the exporting producer and found the claim justified. In fact, the provisional inclusion of these idle capacity expenses in the cost of the product under investigation was the result of a misunderstanding regarding the category of products to which these expenses were related. Therefore, the claim was accepted and the related idle capacity expenses were removed from the exporting producer's cost of production.

(65) One exporting producer reiterated the claim to consider the actual cost of production of the slabs (input material for HRFS) as incurred by its related supplier, rather than the purchase price charged by the related supplier. In addition, the company noted that such an approach was appropriate since at the provisional stage the Commission merged the data provided by the two related producers and carried out a single dumping margin calculation.

(66) In its comments submitted after provisional disclosure, the complainant opposed the exporting producer's claim stating that the cost of slabs should be reported as incurred by the exporting producer. Given that slabs were not transferred at cost level but above, considering the cost of slabs of the related supplier would be distortive.

(67) The Commission noted that pursuant to Article 2(5) of the basic Regulation, the costs used in the normal value calculation shall reasonably reflect the costs associated with the production and sale of the product under investigation as recorded in the accounting records of the company. In the accounting records of the exporting producer making the claim, the cost of slabs was booked at the level of the purchase price paid to the related supplier. The sales price of slabs to the exporting producer was comparable to the sales price to unrelated parties and thus the Commission considered them to reasonably reflect the costs associated with the production and sale of the product under investigation. Moreover, the Commission considered the two producers as separate entities and performed two separate dumping calculations, thus the additional argument concerning the merged calculation at provisional stage became irrelevant. Therefore, the Commission confirmed the findings made at provisional stage.

(68) One exporting producer claimed that the Commission was wrong in provisionally adjusting the cost of iron ore pellets when establishing its cost of production for HRFS – an adjustment which was done because the cost of those pellets was based on the purchase prices from related parties, i.e. not reflecting the actual market price. The exporting producer also claimed that, if an adjustment was to be made, only a part of the resulting additional costs could be allocated to the production of the product under investigation as iron ore pellets are also used in the production of other products.

(69) In its comments submitted after provisional disclosure, the complainant opposed the exporting producer's claim and supported the Commission's adjustment to the cost of iron ore pellets given that the purchase prices paid to related entities were not at arm's length.

(70) The Commission confirmed its provisional conclusion that, pursuant to Article 2(5) of the basic Regulation, an adjustment to the exporting producer's cost of iron ore pellets was necessary because these were purchased almost exclusively from related parties at prices which were found not to be at arm's length. These were therefore replaced with the unrelated purchase price, as provided by the company. The claim that only part of the resulting additional costs should be allocated to the production of the product under investigation was not reflected in the company's questionnaire reply and the accuracy of such information could not be cross-checked at such a late stage of the investigation. Therefore, the claim was rejected.

(71) Following final disclosure, the exporting producer repeated the argument that the purchase price of iron ore pellets from related parties was at arm's length, and contested the way the Commission calculated this adjustment by allocating all additional costs to the product under investigation, while claiming that iron ore pellets are also used in the production of other products. On this last point, the company also contested the Commission's conclusion that the information provided for the expense allocation was new and could not be cross-checked.

(72) The Commission carefully reassessed the arguments and information provided by the company in its comments on final disclosure. The Commission observed that the related supplier of the iron ore pellets indeed sold the raw material to the exporting producer with a mark-up. Nevertheless, the mark-up was far below the level claimed by the exporting producer and far below the mark-up applied to sales between the group companies in line with the group's transfer pricing policy and therefore it did not appear to reflect the mark-up of an arms-length transaction. Furthermore, the company did not provide any further evidence to show that such mark-up reflected a reasonable level requested by an independent trading company. With regard to the share of purchased iron ore pellets used in the production of HRFS, the Commission noted that the company separately reported the purchase of iron ore in several forms. Yet, the cost of iron ore used in the production of HRFS was reported by the company without further breakdown and thus it was not possible to confirm the more granular consumption of iron ore pellets in the production of HRFS. In addition, the data in the Capacity report submitted by the exporting producer as an annex to its initial questionnaire reply suggested that all purchased iron ore pellets were fully used to produce HRFS in the quantity reported by the company. Therefore, the Commission definitely rejected the claim.

(73) Following final disclosure, one exporting producer claimed that the Commission should not add additional SGA expenses to its domestic sales made via a related producer in the group, to reflect the involvement of a related trader. In particular, this exporting producer claimed that the related company involved in those domestic sales invoiced the incurred sales and general expenses including a mark-up, in line with the group's transfer pricing policy. Therefore, according to the exporting producer, the costs incurred by the related trader were already reflected in its SGA. To this end, the exporting producer referred to a group service cost charged by the related company.

(74) The Commission, first, noted that to reflect the SGA of a trader involved in domestic sales, it took a conservative approach by not using the actual SGA of the related exporting producer but the SGA of another related company in the group, which acted as a pure trader for certain domestic sales transactions. In this respect, the Commission considered that the SGA of the related exporting producer would be disproportionately high, while the SGA of the related trader could be considered to be at a reasonable level for the functions that were carried out by the related producer on the domestic sales. In addition, the Commission found that the related exporting producer indeed charged the exporting producer in question for group services. On the basis of the information provided by the companies, the Commission was not able to conclude whether the services invoiced to the exporting producer indeed concerned costs incurred in resales of the product under investigation on the domestic market, as the transactions booked in the accounts and/or the invoices issued were all marked as group services only. Moreover, the expenses for group services booked in the accounts of the exporting producer and allocated to the product under investigation represented a negligible fraction of net sales. In view of the uncertainty concerning the nature of the group services booked in the accounts of the exporting producer in question and the conservative approach taken by the Commission from the beginning, the Commission rejected the claim.

3.3. **Export price**

(75) The details of the calculation of the export price were set out in recitals (50) and (51) of the provisional Regulation. In the absence of any comments with respect to this section, the Commission confirmed its provisional conclusions.

3.4. **Comparison**

(76) The details concerning the comparison of the normal value and the export price were set out in recitals (52) to (68) of the provisional Regulation.

(77) One exporting producer reiterated its claim that it constitutes a single economic entity with its related trader located in Turkey, which sold the product under investigation to the Union during the IP, and therefore contested the adjustments provisionally made to its export price under Article 2(10)(i) of the basic Regulation. The company made reference to previous Court cases, in particular with regard to the presence of some limited direct exports by the producer, claiming that these were insufficient to reject the single economic entity claim. The company also claimed that the presence of direct domestic sales by the producer is irrelevant in the determination whether a single economic entity exists on the export side, and that the fact that the producer controls the related trader is an essential aspect to be considered when assessing the claim.

(78) In its comments submitted after provisional disclosure, the complainant opposed the exporting producer's claim stating that the existence of direct sales by the producing entity showed that the trader acts as a related reseller, and supported the Commission's adjustments to the export price.

(79) The Commission analysed the comments and the evidence on file, in particular the framework contract between the producer and its related trader. The Commission noted that this framework contract establishes a commission to be paid on goods sold and noted that duties normally associated with a sales department were retained by the manufacturer, whereas the duties of the related trader corresponded to those of an agent performing a service concerning the manufacturer's exports. This was also consistent with the relatively higher sales expenses incurred by the exporting producer. No further information about the contractual relationship between the producer and the related trader was provided. The Commission thus concluded that the framework contract contained clauses inconsistent with the claim that the economic reality of the relationship between the related trader and the manufacturer reflected the relationship between a manufacturer and an internal sales department. Rather, the manufacturer was dealing with the sales directly, whereas the related trader performed activities concerning exports on behalf of the manufacturer and in exchange for a commission fee. Taken together with the findings at the provisional stage that the manufacturer also made direct sales, the Commission concluded that the single economic entity claim had to be rejected. The Commission therefore confirmed its provisional findings as set out in recitals (54) to (55) of the provisional Regulation.

(80) In relation to the relevance of direct export sales, following definitive disclosure the exporting producer basically reiterated the arguments made in its comments on the provisional disclosure, which were addressed in recital (54) of the provisional Regulation and in recital (79) above.

(81) The exporting producer also indicated that those export sales would, for most of them, not constitute real export sales but would be made to domestic purchasers under special legal or customs regimes. The Commission noted that the legal regime attached to export sales is not determinative for the assessment of whether the sales constitute export sales, and that the fact that such direct sales were made, in addition to the those made on the domestic market, were evidence that the producer retained sales functions.

(82) Furthermore, the exporting producer claimed that the fact that the totality of domestic sales were made directly by the producer without involvement of the related trader, was irrelevant to determine the existence of a single economic entity on the export sales. The Commission noted that this fact showed that the producer has a full-fledged internal sales department, which is a relevant factor and was recognised as such by the General Court. ([8])

(83) The exporting producer raised several arguments in relation to the framework agreement it concluded with its related trader. It argued that the reason why such a contract between the exporting producer and the related trader exists is "to have documentary evidence in case of government/tax audits and transfer pricing rules". In this respect, the Commission noted that, while the agreement between the exporting producer and its related trader might also be of relevance for tax reasons, this does not detract from the fact that the agreement clearly stipulates that the related trader performed export services against the payment of a commission on the basis of sales made. The exporting producer also confirmed that the agreement clearly stipulates that it is the responsibility of the exporting producer

([8]) *PT Perindustrian dan Perdagangan Musim Semi Mas (PT Musim Mas) v Council of the European Union*, Case T-26/12, Judgment of the General Court of 25 June 2015, paragraph 50.

(the manufacturer) to procure customers and to make the necessary contracts and arrangements with these customers. In the Commission's view, this demonstrated that the exporting producer has its own fully functioning sales department for export sales and that, the related trader was thus not operating as the internal sales department of the exporting producer. Furthermore, the exporting producer's argument seem to imply that an adjustment under Article 2(10)(i) of the basic Regulation could only be performed in situations where the related trader is tasked with the set of full activities normally performed by a sales department. This is not correct. Article 2(10)(i) of the basic Regulation deals with "commissions paid in respect of sales under consideration" (in this case export sales) without any further qualification as to the type of services performed. The purpose of an adjustment under Article 2(10)(i) of the basic Regulation is to ensure that any commission paid to an agent for export sales to remunerate the services performed by that agent in relation to those sales activities, whatever those services consist of, is duly adjusted in order to ensure comparability with domestic sales. The claim was therefore rejected.

(84) The exporting producer also claimed that the provision in the contract that any profit or loss from the operations related to the export of products cannot remain within the related trader could not be reconciled with the notion that the related trader would have functions similar to those of an agent working on a commission basis, as an agent would not accept that its (full) profits would be transferred back to the production company and that it would only be compensated for expenses linked to checking letters of credit, arranging documents for customs clearance, preparing the necessary export documentation, and ensuring collection of payment. The Commission noted that the financial arrangements between the exporting producer and the related trader reflect the activities and functions that the related trader, as per the agreement, has committed to undertake against remuneration. The adjustment performed by the Commission, applying Article 2(9) of the basic Regulation by analogy, was calibrated to cater for these functions and reflect the proper remuneration for the service rendered on an arm's length basis. Therefore, whether the related trader gets remunerated on the basis of a commission fee which covers the export services rendered to the exporting producer shows that the related trader carries out the agreed services on behalf of the exporting producer but without an adequate remuneration including a reasonable profit. The claim was therefore rejected.

(85) The exporting producer also claimed that the fact that it retained some duties normally associated with a sales department does not prevent a finding of the existence of a single economic entity. According to the exporting producer, it would be the long-standing case law that a manufacturer and a trading company can still constitute a single economic entity even when the manufacturer performs certain sales functions itself. The Commission noted that, as per the terms of the agreement, the exporting producer actually retained most, if not all, of the duties normally associated with a sales department. As already mentioned in recital (83) above, this contradicts the exporting producer's claim that the related trader is to be treated as its internal sales department. Rather, the related trader, as recalled by the exporting producer itself, performs additional functions concerning export sales against remuneration or commission. It was for these commissions that the adjustment under Article 2(10)(i) of the basic Regulation was performed.

(86) The Commission noted that the exporting producer made repeated references to the factual circumstances prevailing in the *Musim Mas* investigation and judgment ([9]). In essence, the exporting producer seemed to imply that, because its own factual situation is not similar to that of *Musim Mas*, the adjustment under Article 2(10)(i) of the basic Regulation is not warranted. The Commission disagreed. The merits of an adjustment under Article 2(10)(i) of the basic Regulation need to be examined on the basis of the facts prevailing in each and every case, and on the basis of the totality of the evidence available to the Commission. The *Musim Mas* judgment did not set a minimum standard that would need to be met in each case. Rather, in *Musim Mas* the Court agreed with the assessment performed by the Council based on the facts observed in that case. In any event, as recalled above, several relevant facts present in *Musim Mas* are also present in the situation of the exporting producer and most pertinently the existence of an agreement that is incompatible with the view that the related trader would *de facto* be the internal sales department of the group.

([9]) *PT Perindustrian dan Perdagangan Musim Semi Mas (PT Musim Mas) v Council of the European Union*, Case C-468/15P, Judgment of the Court of 26 October 2016.

(87) The exporting producer also claimed that the existence of control by the exporting producer over the related trader, the fact that the related trader does not purchase from unrelated suppliers, and that the exporting producer and the related trader are located at the same address, constitute relevant factors in the determination of the existence of a single economic entity.

(88) In this regard, the Commission noted that not all the factors taken individually need to show the absence of a single economic entity between the exporting producer and the related trader. Rather, it is the totality of conditions governing the relationship between the exporting producer and the related trader that must be considered by the Commission. The existence of control is not dispositive for a finding that the related trader is not an internal sales department but rather provides different types of services within the group, in this case export related services. That the related trader provide export services in exchange of a commission fee exclusively for the exporting producer as well as its location only shows that the related trader does not perform the same services for other customers at this stage. This does not mean that the related trader is the internal sales department of the exporting producer.

(89) On the basis of the above, in this case, the Commission therefore considered that the related trader was performing the functions of an agent dealing with export activities of the exporting producer, in particular checking the letters of credit received, arranging and following up documents related to customs clearance and loading, preparing the necessary export documents after loading and carrying out export related procedures such as ensuring the collection of the cost of the goods. The related trader was paid by means of a commission on the basis of the sales made. Since such remuneration was affected by the intra-group relationship, and applying Article 2(9) of the basic Regulation by analogy, it was considered appropriate to use a reasonable profit margin in order to avoid any distorting effects that may arise from internal arrangements between the exporting producer and the related trader. ([10])

(90) In conclusion, for all the reasons set out in recital (54) of the provisional Regulation and in recitals (79) to (88) above, the claim was rejected.

(91) Two exporting producers reiterated the claim that the Commission should calculate dumping on a quarterly basis.

(92) In its comments submitted after provisional disclosure, the complainant opposed the exporting producers' claims by stating that a quarterly dumping calculation was not merited in this case as the existence of minor cost fluctuations, as well as the inflation and depreciation of the Turkish lira did not justify using a quarterly approach.

(93) The Commission concluded that, since the two companies did not provide any new evidence substantiating their claim that would change the Commission's assessment, the provisional findings set out in recitals (64) to (68) of the provisional Regulation were confirmed and the claim was rejected.

(94) Following final disclosure, the claim for a quarterly calculation of dumping was repeated by one exporting producer. In addition, the company compared the cost fluctuations, and the average rates of inflation and devaluation of the Turkish lira to the undercutting margins found, to show the alleged significance of the former. Finally, the company noted that while the Commission provides for an indexation mechanism of raw material prices in any undertaking procedure, such price fluctuations were not considered in this case for the dumping margin calculation.

(95) The company did not provide any new information to substantiate its claim. As was set out in recital (68) of the provisional Regulation, the Commission considered that, contrary to the claim of the exporting producer, the fluctuation in the quarterly cost of production affected mainly one quarter of the IP, while the sales of the product under investigation took place throughout the whole IP, and that the overall costs fluctuation, the inflation rate and the devaluation of the Turkish lira were not of such magnitude to deviate from the Commission's consistent practice to calculate dumping margin on an annual basis. The comparison made by the exporting producer between the level of the undercutting margins and the cost differences, the inflation and the devaluation during the IP did not hold, as

([10]) See in this respect, WTO Panel Report, *European Union – Anti-Dumping Measures on Imports of Certain Fatty Alcohols from Indonesia* (WT/DS442/R), 16 December 2016, para. 7.129.

it concerned two totally different assessments that were not directly related to each other. As concerns the price indexation mechanisms in undertakings, the Commission notes that these are necessary in order to maintain an appropriate minimum import price so as to avoid abuse and circumvention, and thereby to adequately eliminate the established dumping and injury. The establishment of dumping and injury concerns an examination of a past period and the two situations are thus not comparable.

(96) One exporting producer and two related exporting producers contested the provisional rejection of a currency conversion adjustment, which they claimed on account of hedging contracts related to their sales to the Union. The claim concerns the foreign exchange rate to be used when converting the sales value in foreign currencies (euro in this case) into the currency of the exporting country (Turkish lira or TRY). The companies invoked the provisions of Article 2(10)(j) of the basic Regulation that "(…) when a sale of foreign currency on forward markets is directly linked to the export sale involved, the rate of exchange in the forward sale shall be used".

(97) In its comments submitted after provisional disclosure, the complainant opposed the exporting producers' claims stating that hedging is an internal process, and the companies cannot argue that without hedging the sales price would have been higher because it is not evident that the customers would have paid a higher price.

(98) The Commission noted that Article 2(10)(j) of the basic Regulation is applicable in situations where a currency conversion is necessary for the purpose of comparison between the normal value and the export price. It is the standing practice to perform such comparison in the currency of the country concerned. Therefore, in the present case the Commission used the Turkish lira as the currency of comparison. Both companies claiming the currency conversion adjustment hedged those export sales transactions which were denominated in euro. The currency conversion risk stemming from those transactions was in all cases hedged against the US dollar. Since the comparison was done in Turkish lira and all transactions in euro were converted to Turkish lira directly without an intermediate conversion to US dollar, just like all domestic sales were taken in Turkish lira, the Commission considered that the conversion rate between euro and US dollar agreed in the hedging contracts was irrelevant for the purpose of comparison. Consequently, the Commission rejected the claim of the three exporting producers.

(99) Following final disclosure, the three exporting producers repeated their claims for a currency conversion adjustment on sales to the Union, to account for hedging operations of the currency risk stemming from transactions in euro. They repeated the argument that, regardless of the currency used for price comparison, the gain or loss resulting from the conversion rate at the moment of hedging does have a significant impact on the price comparison. In particular, they provided a theoretical example of a domestic sales order with a unit price in USD agreed on a particular day and an export sales order with the same unit price in EUR equivalent agreed on the same day. The companies' calculation showed that when those sales orders are delivered on the same day and the invoiced value is converted directly from the currency of the invoice to TRY, the comparison would result in dumping although the price agreed in the two sales orders was the same on the date of the sales orders. They then claimed that an adjustment for hedging should be done either on the basis of Article 2(10)(j) or Article 2(10)(k) of the basic Regulation.

(100) The Commission analysed the claim, in particular the theoretical example, which allegedly proved that the exchange rate in the hedging contracts should be taken into account for the purpose of price comparison. First, the Commission noted that although the example was mathematically correct, it did not reflect the reality of either the companies' business activities or the dumping margin calculations. In particular, the example implied that the dumping margin is calculated by comparison of two individual transactions carried out at the same time, which is not the case as the Commission compares the average normal value and the average export price as determined during the IP for each product type. Second, the example assumed that all sales orders concluded on a certain day are fulfilled at a similar time, which was shown to be incorrect. In fact, one of the exporting producers made a

separate claim that the lead time between finalising the production and the pick-up of the goods by the customer was much longer on the domestic market as compared to the export sales. Therefore, the example given by the companies was found to be inaccurate for the situation at hand. Furthermore, none of the companies provided evidence that their export sales transactions denominated in EUR were originally negotiated on their USD price. On the contrary, sales contracts and/or sales orders of those export sales transactions were directly denominated in EUR without any reference to USD. A conversion from EUR to TRY via USD was therefore considered to be irrelevant. Consequently, the Commission rejected the claimed adjustment on the basis of Article 2(10)(j) of the basic Regulation.

(101) In addition, although the companies claimed to be able to link the export transactions to individual hedging operations, these could, and in many cases were, adjusted after the sale depending on how the financial outlook developed and in order to maximise the companies' return. The Commission therefore did not consider that the hedge could be directly linked to the export sale involved, and that taking into account the forward sales price would have risked distorting the actual export price.

(102) The Commission also rejected the claim on the basis of Article 2(10)(k), since the companies did not provide any evidence that its hedging activities resulted in customers consistently paying different prices on the domestic market.

(103) Two exporting producers opposed the provisional rejection of some adjustments they had claimed on domestic sales, one related to the existence of a duty drawback scheme, and another concerning an inventory carrying cost adjustment. One of them also contested the payment terms used by the Commission to calculate its domestic credit costs.

(104) In its comments submitted after provisional disclosure, the complainant opposed the exporting producers' claims. With regard to duty drawback, it stated that purely theoretical costs cannot be used as an adjustment since it is not possible to establish a clear link between the exported products and the duties not paid on imported inputs. With regard to inventory carrying cost, the complainant supported the Commission's rejection of such adjustment as the concerned company failed to establish that domestic prices are higher for products that spend more time in the warehouse.

(105) Since the companies did not provide any new evidence on the duty drawback adjustment changing the Commission's provisional assessment, the findings set out in recitals (60) to (63) of the provisional Regulation were confirmed and the claim was rejected. The inventory carrying cost adjustment claimed by one exporting producer under Article 2(10)(k) of the basic Regulation, relates to the fact that, for some of its domestic sales, the customers were late in picking up the goods, which therefore remained longer in the company's warehouse. With regard to this claim, the Commission concluded that since the company was not able to link this alleged cost to individual sales transactions or to specific customers, neither could it demonstrate that domestic prices were affected by the inventory carrying cost, the claim had to be rejected. With regard to the payment terms used in the calculation of domestic credit costs, the affected company did not provide any new evidence that would change the Commission's provisional approach, i.e. to replace the reported payment terms, which during the RCC were found to be inconsistent with the terms agreed on the related sales contracts, with a more accurate set of payment terms provided by the company and cross-checked during the RCC. Therefore the claim was rejected.

(106) Following final disclosure, one exporting producer repeated the claim that adjustments for duty drawback and inventory carrying costs should be taken into account with regard to its domestic sales, and contested again the payment terms used by the Commission to calculate its domestic credit costs.

(107) On the duty drawback adjustment, it repeated the argument that regardless whether an import duty has actually been paid or not, the existence of an import duty on an input material has an effect on the price charged by domestic suppliers of that input material.

(108) On the adjustment for inventory carrying costs, the company repeated the argument that an adjustment for such costs is similar to an adjustment for credit costs as both are linked to a delay in payment. It further argued that the rejection of such domestic allowance was inconsistent with the acceptance of an export allowance for demurrage costs on its sales to the Union, arguing that in both cases there is a delay in the arrival of the goods that results in additional costs.

(109) On the payment terms used to calculate domestic credit costs, the company repeated that the Commission should have calculated credit costs based on the agreed payment terms and not on the basis of when payments actually occur, because only agreed payment terms can have an impact on the determination of the price.

(110) In response to these comments, on the alleged adjustment for duty drawback, further to the Commission's provisional considerations that a theoretical cost cannot be taken into account in the calculation, it appeared that, contrary to the company's allegations, the domestic sales prices charged by the exporting producer did not take into account the amount of the claimed duty drawback, which would otherwise render the sales lossmaking. Therefore, the claim was rejected.

(111) With regard to the adjustment for inventory carrying costs, the Commission noted that, while additional warehouse expenses for goods that are picked-up late by customers are already included in the overall cost of sales, the adjustment claimed to cover the resulting deferred payment, which the company compared to an adjustment for credit costs, cannot be granted because the company did not take into account the possible late pick-up when it concluded the sales contract nor was it able to link it to any customer or to any specific transaction, thus confirming that the claimed adjustment was not reflected in the sale price. Contrary to the demurrage costs, which were allocated by the company only to those export transactions where demurrage fees were actually paid, the company was not able to show any correspondence between the claimed inventory carrying costs and which actual transactions were allegedly impacted. Therefore, the claim was rejected.

(112) On the payment terms used for calculating domestic credit costs, the Commission considered that the actual payment terms provided by the company were more accurate, since the payment terms which were reported as those agreed in the sales orders were found to be inconsistent with the payment terms actually agreed in the related sales orders for a sample of transactions. Therefore, the claim was rejected.

(113) One exporting producers group opposed the provisional rejection of the claim for a billing adjustment on domestic sales made under Article 2(10)(c) of the basic Regulation, in order to reflect rebates allegedly granted after the issuance of the invoices.

(114) In the course of the investigation, including when requested during the RCC, the company explained that it was unable to link the billing adjustment recorded in its accounts to individual transactions. For instance, it could not identify credit or debit notes related to the specific invoices whose value the billing adjustments were supposed to correct. The Commission therefore concluded that the requested adjustment was not sufficiently substantiated and confirmed the rejection of the claim.

(115) Two related exporting producers questioned the provisional calculation of credit costs on sales to the Union. In particular, the companies claimed that the Commission was wrong to apply the same interest rates for EUR and USD from the Turkish Central Bank to all the sampled exporting producers, on the grounds that it did not reflect the fact that interest rates for loans depended on the companies' specific characteristics and financial situation. They claimed that the actual interest rates applicable to the loans of the companies should have been used instead.

(116) In its comments submitted after provisional disclosure, the complainant opposed the exporting producers' claim and stated that the Commission's provisional decision to apply evenly interest rates from the Turkish Central Bank was transparent and objective and should be maintained.

(117) The Commission examined this claim, and concluded that for the loans obtained by one of the related exporting producers at market price from independent banks, it was indeed justified to use the contractual USD interest rate actually paid by the producer for short-term loans in order to calculate its credit costs. Therefore, the change was implemented in the definitive calculation. However, for the loan obtained from a bank related to the producer, the

Commission concluded that the use of the average EUR interest rate provided by the Turkish Central Bank was justified since the contractual rate did not reflect market conditions. The other exporting producer in the group did not have any outstanding loans in the IP and thus no company specific interest rate was available to be used as proxy for the calculation of credit costs allowance. It was therefore justified to use the average interest rates provided by the Turkish Central Bank.

(118) Following final disclosure, the two related exporting producers argued that the Commission should have applied the same USD interest rate for both producers in the group as their financing conditions were the same. In particular, one exporting producer provided additional information showing that one of the loans reported by the related exporting producer was actually used by the exporting producer in question.

(119) The Commission assessed the claim and observed that the financing conditions for the exporting producer in question were not the same as for the other company in the group, shown by the fact that the interest rate applicable to the loan of the exporting producer in question was higher than the average interest rate of the other loans, and this rate did not yet include the mark-up charged for headquarter services, as explained by the companies during the RCC and reiterated in their comments on final disclosure. In view of those facts, the Commission rejected the claim.

(120) In addition, one exporting producer argued that the Commission should have used the interest rates of the company's loans, since the Commission accepted such an approach for another sampled exporting producer.

(121) The Commission considered the two cases to be different. The other exporting producer provided information on its own loans in its initial questionnaire reply while the company in question failed to disclose the existence of any short-term loans. Instead, the company proposed to use inter-bank interest rates for the determination of credit costs. The Commission considered that the company would not be able to get a loan at inter-bank interest rates and therefore replaced those interest rates with an average interest rate of commercial short-term loans as published by the Turkish Central Bank.

(122) In addition, the Commission assessed the new information provided by the exporting producer in question in its comments on provisional disclosure and supplemented in its comments on final disclosure. The Commission considered that in view of the conflicting information provided in the initial questionnaire reply and at a later stage of the investigation, the Commission's provisional decision to use the interest rates published by the Turkish Central Bank for the determination of credit costs could not be considered unreasonable. Therefore, the Commission rejected the claim.

(123) Two related exporting producers claimed an inconsistency in the currency conversion rates between the costs and sales data. With regard to their sales data, an average monthly currency conversion was used, while an average yearly currency conversion was applied to their costs data.

(124) In its comments submitted after provisional disclosure, the complainant opposed the exporting producers' claim and supported the Commission's provisional approach on the conversion rates used. In its view, costs (that are set in companies' accounts for longer period of time) should be calculated on a yearly basis and converted using an average exchange rate for the IP, whereas income related to sales should be converted at the moment the income is generated using monthly or even daily exchange rates.

(125) The Commission analysed the claim and found it justified. Therefore, the claim was accepted and in the definitive calculation average monthly exchange rates were used to convert both costs and sales data of the companies.

(126) Following final disclosure, the exporting producers argued that, since they reported all data relevant for the dumping calculation in USD, there was no need under Article 2(10)(j) of the basic Regulation to convert them from USD to TRY for the purpose of price comparison. The companies then referred to Article 2(5) of the basic Regulation that "costs shall normally be calculated on the basis of records kept by the party under investigation", while, by converting from USD to TRY, the amounts for cost of production used by the Commission in the calculation of their normal values were different from the amounts reported in their accounting records.

(127) First, the Commission noted that the exporting producers carried out transactions in USD, EUR and TRY. Therefore, currency conversions were necessary to express the values in one currency that would enable comparison. Second, the Commission did not dispute the fact that the companies converted all values to USD themselves as USD was the accounting currency of the companies. Nevertheless, the Commission considered it appropriate to use the currency of the country concerned for the purpose of comparison between the normal value and the export price. Finally, since the companies reported the cost of production in USD, the Commission found it justified, also following the comments by the companies on provisional disclosure, to convert the data to TRY using monthly conversion rates. Since the companies did not provide a full set of information on cost of production in TRY, any differences to the values in TRY as supplementary currency used in their accounting records could not be taken into account. Consequently, the Commission rejected the claim.

(128) Following final disclosure, one exporting producer claimed that the Commission should not have deducted certain allowances, i.e. export association fee and export lump sum deduction, when calculating the price of its sales to the Union.

(129) The Commission noted that the exporting producer made this claim also in its comments on provisional disclosure, and the allowances were discussed in the hearing organised following provisional disclosure.

(130) In the hearing, the company confirmed that the export association fee was paid for its membership in ÇİB. The company further explained that the fee was paid as a percentage of the value of each export transaction. Therefore, the Commission considered that the export association fee was a cost that the company incurred solely with regard to its export transactions, and its level was dependent on the company's level of exports. Moreover, the value of the allowance could be determined for each export transaction individually, based on its value.

(131) With regard to the export lump sum deduction, the company claimed that it was not appropriate to deduct its value from the export price since it merely concerned a tax benefit rather than an actual expense of the company. In its comments on final disclosure, the company referred to Turkish legislation ([11]), which enables any exporter to deduct 0,5 % of its export sales revenue to reflect expenses that were incurred but could not be booked otherwise due to the lack of proper documentation. Therefore, the Commission considered that the export lump sum deduction represented an expense actually incurred with regard to the company's export sales transactions, for which the company did not have proper documentation and which could not be booked under any other expense account. Moreover, the Commission was able to determine the value of the deduction for each transaction individually.

(132) Consequently, the Commission rejected the claim concerning the deduction of the export association fee and export lump sum deduction.

3.5. **Dumping margins**

(133) As detailed in recitals (28) to (132) above, the Commission took into account interested parties' comments submitted after provisional disclosure and recalculated the dumping margins accordingly.

(134) The definitive dumping margins expressed as a percentage of the cost, insurance and freight (CIF) Union frontier price, duty unpaid, are as follows:

Company	Definitive dumping margin
Çolakoğlu Metalurji A.Ş.	7,3 %
Erdemir group: — Ereğli Demir ve Çelik Fabrikalari T.A.S. — İskenderun Demir ve Çelik A.Ş.	5,0 %

([11]) Article 40 of Income Tax Law 193 of January 6, 1961, as amended by Law 4108 of June 1995.

Habaş Sinai Ve Tibbi Gazlar İstihsal Endüstrisi A.Ş.	4,7 %
Ağir Haddecilik	5,7 %
Borçelik Çelik Sanayii Ticaret A.Ş.	5,7 %
All other companies	7,3 %

(135) The calculations of the individual dumping margins, including corrections and adjustments made following comments by the interested parties submitted after provisional and final disclosures, were disclosed to the sampled exporting producers.

4. INJURY

4.1. Definition of the Union industry and Union production

(136) During the investigation period, in the EU27 the like product was manufactured by 21 known producers belonging to 14 groups. These producers constitute the "Union industry" within the meaning of Article 4(1) of the basic Regulation.

(137) For EU27, the total Union production during the investigation period was established within the range of 71 to 74,5 million tonnes, including production for the captive market.

(138) The three Union producers selected in the sample represented 34 % to 38 % of the total Union production of the like product in the EU27. They accounted for 40 % to 44 % of the Union sales volumes of the producers that came forward in the context of the pre-initiation standing assessment analysis.

4.2. Determination of the relevant Union market

(139) The GOT considered that the Commission did not satisfactorily explain why it was necessary to examine free market and captive figures separately. In the GOT's view, the explanations put forward by the Commission were contrary to the Panel in Morocco – Hot-rolled-steel (Turkey) and the Appellate Body in US – Hot-rolled steel, according to which investigating authorities should in principle examine in like manner all parts of an industry, as well as the industry as a whole, or provide a satisfactory explanation why not.

(140) To provide a picture of the Union industry that is as complete as possible, the Commission obtained data for the entire production of the product concerned and determined whether the production was destined for captive use or for the free market. For the injury indicators mentioned in recital (82) of the provisional Regulation, the Commission analysed separately data related to the free and the captive market and made a comparative analysis where possible and where justified. As to the economic indicators mentioned in recital (83) of the provisional Regulation, the Commission could only conduct a meaningful assessment by referring to the whole activity of the Union industry. Therefore, the Commission considered its analysis to be in line with case law of the Union courts and the WTO ([12]).

(141) Following final disclosure, the GOT insisted that the Commission had acted inconsistently with WTO jurisprudence because i) it did not analyse separately data for sales prices, cost of production, growth, export volume and prices, profitability, return on investment and cash flow, ii) nor provided any explanation why it only examined free market data instead of making a separate and comparable examination. The Commission disagreed as, further to what is explained in the recital above, the questionnaire responses submitted by sampled Union producers allowed for an analysis of sales prices, sales volumes and profitability in the free market versus other markets. The fact that table 10 shows sales prices in the free market does not mean that sales prices in the captive market were not examined.

([12]) ECJ, Case C-315/90 Gimelec v Commission, EU:C:1991:447, paragraphs 21 to 29; Report of the WTO Appellate Bodn24.7.2001, United States – Anti-Dumping Measures on Certain Hot-Rolled Steel Products from Japan, WT/DS184/AB/R, paragraphs 181 to 215.

(142) In the absence of any other comments with respect to this section, the Commission confirmed its conclusions set out in recitals (78) to (83) of the provisional Regulation.

4.3. **Union consumption**

4.3.1. *Free market consumption in the Union*

(143) In EU27 the Union consumption on the free market during the period considered developed as follows:

Table 1

Free market consumption on the Union market (tonnes)

	2016	2017	2018	IP
Union consumption on the free market	33 – 34 million	32 – 33 million	34 – 35 million	33 – 34 million
Index	*100*	96	102	99

Source: Eurofer, sampled Union producers and Eurostat

(144) Between 2016 and 2018, the free market consumption went up by 2 % but it consequently went down. Overall, consumption in the free market dropped by 1 % over the period considered.

4.3.2. *Captive consumption on the Union market*

(145) In EU27 the Union captive consumption over the period considered developed as follows:

Table 2

Captive consumption on the Union market (tonnes)

	2016	2017	2018	IP
Captive Union consumption	42,5 – 45,5 million	44 – 47 million	43,5 – 46,5 million	39,5 – 42,5 million
Index	*100*	103	102	93

Source: Eurofer and sampled Union producers

(146) Captive market consumption went up slightly in the first part of the investigation period, after which it decreased. Overall captive consumption dropped by 7 percentage points during the period considered.

4.3.3. *Overall consumption*

(147) IN EU27, overall consumption – the sum of captive and free market consumption – evolved as follows during the period considered:

Table 3

Overall consumption (free and captive market) (tonnes)

	2016	2017	2018	IP
Overall Union consumption	78 – 81 million	78 – 81 million	80 – 83 million	74 – 77 million
Index	*100*	100	102	95

Source: Eurofer, sampled Union producers and Eurostat

(148) The above table shows that overall consumption went up slightly in 2018 but dropped by 5 % overall as compared to 2016. Captive consumption represented 59 % of overall consumption in the investigation period.

4.4. **Imports from Turkey**

4.4.1. *Volume and market share of the imports from Turkey*

(149) Imports from Turkey into EU27 developed as follows:

Table 4

Import volume and market share

	2016	2017	2018	IP
Volume of imports from Turkey (tonnes)	934 651	1 738 017	2 779 174	2 767 658
Index	*100*	186	297	296
Market share on free market (%)	2,8 – 3,1	5,3 – 5,6	7,8 – 8,1	8,2 – 8,5
Index	*100*	190 – 220	270 -300	270 – 300

Source: Eurofer, sampled Union producers and Eurostat

(150) Imports from Turkey increased by 196 % over the period considered, almost tripling their share on the free market.

(151) Following provisional disclosure, the GOT stated that imports from Turkey did not take the market share of the Union industry but only took certain share from the third countries, which could not have any effect on Union producers.

(152) Following final disclosure, the GOT added that the Commission analysis on import volume from Turkey was end-point to end-point and invited the Commission to analyse rather the evolution on the basis of quarterly data from 2019 and 2020 and drops in imports after the investigation period. The Commission noted that the GOT's approach cannot put in question the fact that imports from Turkey increased year-on-year between 2016 and 2018, by 196 % over the period considered and that they almost tripled their share on the free market.

(153) Given the nature of these comments, they are addressed in section 5 below.

4.4.2. *Prices of the imports from Turkey and price undercutting*

(154) The Commission established the prices of imports on the basis of Eurostat data. The weighted average price of imports from Turkey into EU27 developed as follows:

Table 5

Import prices (EUR/tonne)

	2016	2017	2018	IP
Turkey	363	490	538	492
Index	*100*	135	148	136

Source: Eurostat

(155) The average prices of the imports from Turkey increased from 363 EUR/tonne in 2016 to 492 EUR/tonne during the investigation period, an increase by 36 %. The difference between the average prices of the dumped imports and the Union industry's average Union sales prices during the investigation period, as reflected in Table 10, was significant (7,8 %).

(156) Following provisional disclosure, the GOT considered that prices of Turkish imports could have not caused injury to Union producers. Given the nature of these comments, they are addressed in section 5 below.

(157) The undercutting margin calculations have been revised to reflect the situation on an EU27 basis, and the Commission established that the dumped imports of the sampled exporting producers showed weighted average undercutting margins between 1,2 % and 2 %. Since the market for HRFS is very price-sensitive and competition is largely based on price, the Commission considered such undercutting margins to be significant.

(158) Following final disclosure, Eurofer underlined that, given the nature of the market, and the existence of significant price competition, even a comparatively low level of undercutting can be significant. The GOT however stated that to qualify the undercutting margins found as significant was a mere allegation as it lacked a proper evaluation or criteria establishing what margin should be considered significant. The Commission rejected the claim as unfounded. The evolution in the market and the change in import sources observed in Table 14 confirm the importance of price in the HRFS market. Moreover, as the GOT itself had admitted, a small price difference entailed the increase in the market share of Turkish imports ([13]).

(159) Following final disclosure, Erdemir and Colakoglu groups claimed that by establishing undercutting for 66,1 % (Colakoglu group) or 69,5 % (Erdemir group) of the sampled Union producer's sales, the Commission did not establish undercutting for the product as a whole and thereby violated Article 3(3) basic Regulation. In their view, it could not be excluded that the undercutting margins found would have been different if the Commission had examined the price effect on the basis of all of the sampled Union producers' sales. The Commission rejected this claim as unfounded, as the basic Regulation does not require that a finding of undercutting is based on all of the sampled Union producer's sales. Rather, a price analysis is based on a comparison between the models exported to the Union and the like product and it is in the nature of comparing export sales of exporting producers with sales of the Union industry that not all models sold by the (three) sampled Union producers are also exported to the Union by each individual exporting producer. In any event, the Commission recalled that the difference between the average prices of the dumped imports and the Union industry's average Union sales prices during the investigation period, as reflected in Table 10, was significant (7,8 %).

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

4.5.1. *General remarks*

(160) The Commission recalls that at the initial stage the complainant had requested the Commission to start the analysis of injury trends as of 2017 on the grounds that 2016 (the first year of the period considered in this investigation) was an "unrepresentative year" since the Union industry was found to be injured by dumped and subsidised imports from several sources. The Commission acknowledged that the evolution of the injury indicators starting in 2016 was tainted by the fact that the Union industry's situation was still affected by dumped and subsidised imports in 2016 whilst in 2017 the Union industry clearly showed signs of recovery following the imposition in that year of definitive anti-dumping and countervailing measures against those imports. However, the Commission decided to present the data pursuant to its normal practice, which is to consider in addition to the investigation period the three calendar years prior to the investigation period. Therefore the Commission also included 2016 in the period considered.

([13]) Last paragraph of page 14 of document reference t21.000916 of the non-confidential file (submission made by the Government of Turkey).

(161) After provisional disclosure, ÇİB argued that the certain aspects of the injury analysis appeared to exclude 2016 data and that this had misled the Commission's injury assessment. After final disclosure, the party clarified that it contested the lack of assessment of indicators from 2016, in particular the ones showing a positive trend after 2016 (e.g. Union industry free market sales volume and market share), which are to be seen a demonstration of lack of material injury to the Union industry. After provisional disclosure, the GOT claimed, in the same vein, that the examination of the alleged injury on the domestic industry should be based on the period 2016-2019, which it claimed was not case for all injury indicators. In particular, the GOT considered that in the recent past it was impossible to link any improvement or deterioration of the industry to an existence or non-existence of trade defence measures. The GOT criticised recital (104) *in fine* of the provisional Regulation because, in its view, the fact that definitive anti-dumping measures and countervailing duties against China were published in April and June 2017 ([14]) and that definitive anti-dumping measures against Brazil, Iran, Russia and Ukraine were imposed in October 2017 ([15]) entailed that all injurious effects of dumped imports from these countries were still present in 2017. In support of this claim the GOT underlined that in 2017, imports from these five countries still represented 26 % of HRFS imports.

(162) As to claims relating to the inclusion or not of the year 2016 as concerns some of the injury indicators, the Commission clarified that the relevant tables, section 1.8 and the other findings in the provisional Regulation, covered the period 2016-2019, as stated in the Regulation. The comments under the tables relating to the period considered take stock of trends starting in 2016, no matter whether they are positive or negative. This remains the case even where, as in the present case, the Commission took stock of and considered events occurring in a specific timeframe within the period considered, including trade defence measures.

(163) As regards the anti-dumping measures against Brazil, Iran, Russia and Ukraine, the investigation covered the period from 1 July 2015 to 30 June 2016. As to the anti-dumping and countervailing measures against China, the investigation of dumping, subsidisation and injury covered the period from 1 January 2015 to 31 December 2015. The comments by the GOT that the five countries still accounted for 26 % of imports of the product concerned in 2017 and that therefore they still injured the Union industry is misleading. As Table 14 in the provisional Regulation demonstrates, the volume of imports from the five countries concerned dropped by 68 % (i.e. from 5 724 303 tonnes to 1 810 518 tonnes) between 2016 and 2017 and their combined market share from 16,1 % to 5,2 %. These trends are confirmed on an EU27 basis. Table 14 in this Regulation demonstrates that the volume of imports from the five countries concerned dropped significantly (i.e. from 5 611 020 tonnes to 1 565 303 tonnes) between 2016 and 2019, similar to their combined market share (i.e. from 16 – 17 % to 4 – 5 %). The Commission thus considered as unfounded the claim that previous investigations had revealed that all injurious effects of dumped imports from China, Brazil, Iran, Russia and Ukraine were still present in 2017.

(164) Following final disclosure the GOT recalled its comments regarding the timing of the definitive anti-dumping measures and countervailing duties against China and the definitive anti-dumping measures against Brazil, Iran, Russia and Ukraine. It alleged that the decrease in imports from these countries does not change the fact that these imports still constituted a significant part of the EU27 imports and were injurious in 2017. In the GOT's views the Commission tried to avoid the examination of such injurious effects by relying on figures showing an absolute decrease. The Commission considered the claim unfounded. The investigation periods of the previous investigations did not establish injurious dumping in 2017, at which point, as already recalled, the market shares of the subject countries had already dramatically decreased. In addition, the section 5.2.1 of the present regulation includes an analysis of the evolution in the market and of the market shares of the different import sources.

([14]) Commission Implementing Regulation (EU) 2017/649 of 5 April 2017 imposing a definitive anti-dumping duty on imports of certain hot-rolled flat products of iron, non-alloy or other alloy steel originating in the People's Republic of China (OJ L 92, 6.4.2017, p. 68); Commission Implementing Regulation (EU) 2017/969 of 8 June 2017 imposing definitive countervailing duties on imports of certain hot-rolled flat products of iron, non-alloy or other alloy steel originating in the People's Republic of China and amending Commission Implementing Regulation (EU) 2017/649 imposing a definitive anti-dumping duty on imports of certain hot-rolled flat products of iron, non-alloy or other alloy steel originating in the People's Republic of China (OJ L 146, 9.6.2017, p. 17).

([15]) Commission Implementing Regulation (EU) 2017/1795 of 5 October 2017 imposing a definitive anti-dumping duty on imports of certain hot rolled flat products of iron, non-alloy or other alloy steel originating in Brazil, Iran, Russia and Ukraine and terminating the investigation on imports of certain hot-rolled flat product of iron, non-alloy or other alloy steel originating in Serbia (OJ L 258, 6.10.2017, p. 24).

4.5.2. *Macroeconomic indicators*

4.5.2.1. Production, production capacity and capacity utilisation

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

Table 6

Production, production capacity and capacity utilisation

	2016	2017	2018	IP
Production volume (tonnes)	74 – 77,5 million	77 – 80,5 million	76 – 79,5 million	71 – 74,5 million
Index	*100*	104	102	96
Production capacity (tonnes)	88 – 93 million	89 – 94,5 million	90 – 95,5 million	91 – 96 million
Index	*100*	102	103	104
Capacity utilisation (%)	84	86	84	78
Index	*100*	102	99	93

Source: Eurofer, sampled Union producers and Eurostat

(166) During the period considered, the Union industry's production volume decreased by 4 %, while the production capacity increased by 4 %. Consequently, the capacity utilisation decreased by 7 %, from 84 % in 2016 to 78 % in the investigation period.

(167) Following provisional disclosure, the GOT considered that the fact that the Union industry increased its capacity every year since 2016 showed that it was in in good condition. The Commission disagreed, noting, as stated in recital (107) of the provisional Regulation, that the increase in capacity between 2016 and 2017 reflects the improvement of the Union market conditions following the imposition of definitive anti-dumping and countervailing measures against imports from five countries and that the capacity increases since 2017 were rather the result of increased efficiencies and debottlenecking.

(168) The GOT criticised the absence of a separate analysis between captive and free market under this paragraph, an absence that would not allow the identification of the origin of the overall decrease in production. The Commission considered that a split of table 6 between captive and free market would be meaningless. Indeed Union producers use the same production equipment and lines for the production of the product under investigation, no matter whether it is for captive use or not. However, more details with regard to the captive market volume are provided in Table 8 below.

4.5.2.2. Sales volume and market share

(169) The Union industry's sales volume and market share on the free market in EU27 developed over the period considered as follows:

Table 7

Free market sales volume and market share

	2016	2017	2018	IP
Union industry EU sales (tonnes)	24 – 27 million	24 – 27,5 million	25 – 28,4 million	24,5 – 27,5 million
Index	*100*	*101*	*103*	*103*

Market share (%)	75 – 76	79 – 80	76 – 77	78 – 79
Index	*100*	*105*	*102*	*104*

Source: Eurofer, sampled Union producers and Eurostat

(170) The Union industry's sales volume on the free market increased by 3 % over the period considered and its market share by 4 %.

(171) In EU27, the Union industry's captive volume and market share on the Union market developed over the period considered as follows:

Table 8

Captive volume and market share

	2016	2017	2018	IP
Captive Union market volume (tonnes)	42,5 – 45,5 million	44 – 47 million	43,5 – 46,5 million	39,5 – 42,5 million
Index	*100*	*103*	*102*	*93*
Total production of Union industry (tonnes)	73 – 76 million	76 – 79 million	75 – 78 million	70 – 73 million
Index	*100*	*104*	*102*	*96*
Share of captive market over the total Union production (%)	61	61	61	59
Index	*100*	*99*	*99*	*96*

Source: Eurofer, sampled Union producers and Eurostat

(172) The captive market of the Union industry (composed of HRFS kept by the Union industry for downstream use) in the Union decreased by 7 %, or about 3 million tonnes, over the period considered. The Union industry's captive market share (expressed as a percentage of total Union production) decreased from 61 % in 2016 to 59 % in the investigation period.

(173) Following provisional disclosure, the GOT criticized the fact that the Commission, in recital (109) of the provisional Regulation, explained the increase of free market share by the Union industry between 2018 and 2019 by the fact that significant sales volumes shifted from the captive market to the free market due to divestment. It considered that this explanation demonstrated a biased approach by the Commission in distinguishing between these markets "as it sees fit". The GOT reiterated its claim after final disclosure and questioned the objectivity of the way the evolution of the Union industry's market share was established. The Commission rejected the allegation of a biased approach. The Commission deems legitimate, and indeed, necessary, to re-characterise captive production as free market in the event of a divestment. Even if, as stated by the GOT, the free market share of Union producers increased over the period considered, the Commission noted that such increase was of a significantly lower magnitude than the increase of the market share of Turkish imports during the same period. In a context of a rather stable consumption in the Union, Turkish imports filled the gap left by some other third countries subject to trade anti-dumping and/or countervailing duties since 2017.

(174) Following provisional disclosure, the GOT stated that there was no analysis regarding the production volume of the production lines that were sold as explained in recital (111) of the provisional Regulation. ÇİB submitted that this sale was due to strategic and commercial reasons. The Commission noted that the sale concerned a change of ownership between Union producers which has no impact on table 6. The Commission found no link between the sale in question and Turkish imports.

(175) Following provisional disclosure, ÇİB stated that key injury indicators like sales volume and market share in the free market showed that the Union industry was not performing poorly. The Commission found the statement unfounded because recitals (109) and (150) of the provisional Regulation already explained that the Union industry's market share increased due to a divestment which resulted in an important number of transactions that would previously have been considered as captive became transactions in the free market. Also, the determination of injury is based on an evaluation of all relevant economic factors and indices having a bearing on the state of the industry considered together, as provided for in Article 3(5) of the basic Regulation.

(176) Following final disclosure, ÇİB said that the Commission's comments under this section did not explain why the Union industry grew nor why an increase in market sales volume and share lack importance in this particular case. Given their nature, these comments are addressed in recital (217) below.

4.5.2.3. Growth

(177) Following provisional disclosure, the GOT stated that recital (112) of the provisional Regulation consisted of unsupported allegations and criticised some of the wording. The Commission found the claims unfounded as the recital in question makes explicit reference to data and findings in the provisional Regulation.

(178) Figures for the EU27 in respect of production show a strongly decreasing trend as from 2017, while sales and market share were stable against a slight increase in free market consumption over the same period. The Union industry in the EU27 only grew, and very modestly, if 2016, a year in which it had been found injured by dumped imports from other countries, is taken as a starting point.

(179) Following final disclosure, the GOT wondered whether certain conclusions on growth were objective as the Commission had previously qualified the decrease in production as "strong" but the increase in free market sales as "slight". The Commission noted first, that the percentages cited in by the GOT in its claim were not those for EU27, and hence outdated; and second, that in any event, a comparative discussion of how to qualify a percentage change must factor in the relative size of the underlying value subject to that change.

4.5.2.4. Employment and productivity

(180) For EU27, employment and productivity developed over the period considered as follows:

Table 9

Employment and productivity

	2016	2017	2018	IP
Number of employees	38 – 40 thousand	42 – 44 thousand	38 – 40 thousand	37 – 39 thousand
Index	*100*	*112*	*103*	*100*
Productivity (tonnes per staff)	1 900 – 2 000	1 700 – 1 800	1 900 – 2 000	1 800 – 1 900
Index	*100*	*92*	*99*	*96*

Source: Eurofer and sampled Union producers

(181) The level of Union industry employment related to the production of HRFS fluctuated over the period considered but remained stable overall. In view of the decrease in production, productivity of the Union industry's workforce, measured as tonnes per employee produced per year, decreased by 4 % over the period considered.

(182) Following provisional and final disclosure, ÇİB stated that key injury indicators like employment showed that the Union industry was not performing poorly. The Commission noted however, that, despite the stability in the number of employees over the period considered, the number of employees decreased strongly between 2017 and 2019. The material injury suffered by the Union industry was in any case patent, as demonstrated in section 4.5.4 of the provisional Regulation and section 4.6 below.

(183) Following provisional disclosure, ÇİB stated that a finding on material injury attributed to the sole fact of a decrease in the number of employees is inconsistent with WTO case law and that the decrease in the number of employees from 2017 could not be attributed to dumped imports from Turkey. The Commission rejected the claims. Nowhere did the Commission attribute a finding on material injury to the sole fact of a decrease in the number of employees. As to the evolution in the number of employees, it closely followed production.

(184) Following provisional disclosure, the GOT stated that productivity should not be examined single-handedly as productivity dropped in 2017 due to the significant increase in employment between 2016 and 2017. Productivity being one of the factors accounted for in the injury analysis, the Commission confirmed that no factor was considered single-handedly.

(185) Following final disclosure, the GOT considered that the last sentence in the recital above was tantamount to confirming that the decrease in productivity is caused by the increase in employment in 2017. The Commission disagreed with the GOT, although it acknowledged that the increase in employment between 2016 and 2017 played a role in the decrease in productivity between 2016 and 2017. It is nevertheless notable that productivity again decreased between 2018 and the investigation period at a time when employment was also decreasing, leading to an overall 4 % loss in productivity over the period considered as pointed out in recital (181).

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

(186) For the EU27, all dumping margins were significantly above the *de minimis* level. The impact of the magnitude of the actual margins of dumping on the Union industry was substantial, given the volume and prices of imports from Turkey.

(187) Following provisional disclosure, the GOT contested the Commission's comments regarding the recovery of the Union industry in 2017 as a result of trade remedies. As this section covers "recovery from past dumping", the Commission found it justified to recall that, given the findings of previous investigations on the same product, the Union industry's situation was affected by dumping practices in 2016, showed signs of recovery as of 2017 and that the healthier profitability levels achieved disappeared in the investigation period.

(188) In the absence of any other comments with respect to this section, the Commission confirmed its conclusions set out in recitals (115) to (117) of the provisional Regulation.

4.5.3. *Microeconomic indicators*

4.5.3.1. Prices and factors affecting prices

(189) The weighted average unit sales prices of the sampled Union producers to unrelated customers in the Union developed over the period considered as follows:

Table 10

Sales prices and cost of production in the Union

	2016	2017	2018	IP
Average unit sales price on free market (EUR/tonne)	393	532	574	534
Index	*100*	*135*	*146*	*136*
Unit cost of production (EUR/tonne)	413	497	540	560
Index	*100*	*121*	*131*	*136*

Source: Sampled Union producers

(190) Average unit sales prices increased significantly in 2017 as compared to 2016, and then again in 2018. However, the average unit sales price of the Union industry fell from 574 EUR/tonne in 2018 to 534 EUR/tonne in the investigation period, while its cost of production increased from 540 EUR/tonne in 2018 to 560 EUR/tonne in the investigation period. Therefore, whereas in 2017 and 2018 the Union industry had been able to pass on the cost increases which it incurred to its customers and remain profitable, it could no longer do so in the investigation period. The information about cost of production in this table and in table 10 of the provisional Regulation is identical.

(191) Following provisional disclosure, the GOT noted that both the unit cost of production and the unit average sales prices of the Union industry on the free market had increased to the same extent (+36 %) over the period considered, so that the Union industry could reflect raw material price increases in its prices. The Commission notes that the GOT's assessment is a mere end-point to end-point analysis without considering the yearly evolutions, and does not account for the fact that the anti-dumping investigation that led to measures against Brazil, Iran, Russia and Ukraine in 2017 found injury during the period running from 1 July 2015 to 30 June 2016. Indeed, whereas sales prices in the Union were depressed still in 2016 ([16]) by dumped imports from Brazil, Iran, Russia and Ukraine, the Union industry could only restore its sales prices to normal levels in 2017 ([17]). The Commission also notes that the sales prices of the Union industry fell from 574 EUR/tonne in 2018 to 534 EUR/tonne in the investigation period, while unit costs increased by from 540 EUR/tonne to 560 EUR/tonne in the same period. Therefore, whereas in 2017 and 2018 the Union industry had been able to pass on cost increases incurred to its customers and remain profitable, it could no longer do so in the investigation period.

(192) Following final disclosure, the GOT stated that the Commission failed to demonstrate how the Union industry was able to reflect the cost increases incurred in 2017 in its sales prices. The Commission disagreed. The remote cross-checks of the questionnaire responses of the sampled Union producers and Table 10 above confirmed that the cost increases between 2016 and 2017 translated into higher selling prices on the free market in EU27 between 2016 and 2017.

4.5.3.2. Labour costs

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

([16]) See, inter alia, tables 3 and 7 and recital (339) of the Implementing Regulation (EU) 2017/1795 imposing a definitive anti-dumping duty on imports of certain hot rolled flat products of iron, non-alloy or other alloy steel originating in Brazil, Iran, Russia and Ukraine and terminating the investigation on imports of certain hot-rolled flat product of iron, non-alloy or other alloy steel originating in Serbia.

([17]) Implementing Regulation (EU) 2017/1795 (see footnote 10 above). Since October 2016, Union producers could benefit from protection via the Commission Implementing Regulation (EU) 2016/1778 of 6 October 2016 imposing a provisional anti-dumping duty on imports of certain hot-rolled flat products of iron, non-alloy or other alloy steel originating in the People's Republic of China (OJ L 272, 7.10.2016, p. 33).

Table 11

Average labour costs per employee

	2016	2017	2018	IP
(EUR)	74 295	78 101	79 241	83 187
Index	*100*	*105*	*107*	*112*

Source: Sampled Union producers

(194) During the period considered, the average labour costs per employee went up by 12 %. This table is identical to table 11 in the provisional Regulation.

(195) Following provisional disclosure, the GOT stated that the increase of labour costs could not be single-handedly linked to imports from Turkey. The party complained that the provisional Regulation lacked an examination of the reasons behind the evolution of labour costs. The Commission reassured the GOT that, labour costs being one of the factors accounted for in the injury analysis, the Commission did not consider any factor in isolation. The reasons for the increase in labour costs were manifold, including commitments incurred with trade unions representing labour. However, the Commission recalled that the important issue in this analysis is to what extent the Union industry could pass on costs increases, as examined in the section before.

4.5.3.3. Inventories

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

Table 12

Inventories

	2016	2017	2018	IP
Closing stocks (tonnes)	1 033 364	1 207 363	843 448	862 918
Index	*100*	*117*	*82*	*84*
Closing stocks as a percentage of production (%)	4,5 – 5,5	5 – 6	4 – 5	4 – 5
Index	*100*	*110*	*81*	*85*

Source: Sampled Union producers

(197) During the period considered the level of closing stocks decreased by 16 %. As to the evolution of the closing stocks as a percentage of production, this indicator remained relatively stable over the period considered at around 5 % of the production volume. This table is identical to table 12 of the provisional Regulation.

(198) Following provisional disclosure, the GOT considered the Commission's duly elaborated findings in recital (125) of the provisional Regulation that stocks were not considered to be an important injury indicator biased. The Commission disagreed. As explained in the provisional Regulation, most types of the like products are produced based on specific orders, and are therefore supplied after production and not held in stock. The Commission came to a similar conclusion on stocks in previous investigations concerning the same product [18]. In addition, the present investigation confirmed that most types of the like product are indeed produced based on specific orders of users.

[18] See, inter alia, recital (292) of Implementing Regulation (EU) 2017/1795 (see footnote 10 above).

(199) Following final disclosure, the GOT questioned the Commission's comments on the decrease in closing stocks as a percentage of production. The Commission recalled that closing stocks as a percentage of production volume remained relatively stable at around 5 % over the period considered and that this factor is not deemed an important indicator. For the Commission, as most types of the like product are produced based on specific orders of users, it would be unjustified to consider stable stocks (as a percentage of production volume) tantamount to a lack of injury on the Union industry's side.

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

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

Table 13

Profitability, cash flow, investments and return on investments

	2016	2017	2018	IP
Profitability of sales in the Union to unrelated customers (% of sales turnover)	-3,4	6,8	6,7	-6,1
Index	*-100*	197	197	-178
Cash flow (EUR)	- 140 233 454	441 132 791	621 327 297	- 308 067 291
Index	*-100*	315	443	-220
Investments (EUR)	144 626 230	234 309 366	210 822 274	156 161 956
Index	*100*	*162*	*146*	*108*
Return on investments (%)	-3,1	9,7	10,2	-13,0
Index	*-100*	*317*	*331*	*-424*

Source: Sampled Union producers

(201) Profitability developed negatively over the period considered, despite the initial increase of profits in 2017 and 2018. Profitability went down from 6,8 % in 2017 to -6,1 % in the investigation period.

(202) The net cash flow was positive from 2017 to 2018, with a peak in 2018, and turned negative in the investigation period, when profitability was at the lowest point in the period considered. The ability to raise capital was hindered by the drop in profits.

(203) The level of yearly investments increased over the period considered by 8 %, but shrank in the investigation period to levels barely above those in 2016. The return on investments followed the same trend as the profitability. This part of table 13 is identical in respect of investments and return of investments to table 13 of the provisional Regulation.

(204) Following provisional disclosure, the GOT claimed that the investment levels in table 13 of the provisional Regulation were huge and a clear proof of lack on injury. The Commission disagreed with the GOT's conclusion as investments occurred mostly in 2017 and 2018, that is to say, once the Union industry started recovering from past dumping practices. As explained in recital (167) of the provisional Regulation, Union producers could not invest as much as they wished during the period considered. The Union industry being a very capital-intensive business, investments were not huge in relative terms. The ability to raise capital was hindered by the drop in profits.

(205) Following final disclosure, the GOT asked for an explanation of the 62 % increase in investments between 2016 and 2017 as measures on HRFS against five third countries came into force in October 2017. At the outset, the Commission noted that, as a matter of principle, the fact that there are dumped imports on the market that injure the Union industry cannot be used to disqualify investment decisions by the Union industry as that would implicitly reward the unfair trade practice in question. On substance, the Commission recalled that the provisional anti-dumping measures against one of the main sources of HRFS imports at the time, China, were published on 7 October 2016 ([19]), while the definitive measures followed early April 2017 ([20]). In addition, table 14 of this Regulation shows a clear decrease of dumped imports from China, Russia, Brazil, Ukraine and Iran between 2016 and 2017, which favoured the implementation of delayed investments in 2017.

(206) Following provisional disclosure, the GOT stated that certain investments linked to health, safety and environmental matters do not result in profit or return on investment. The Commission considered that the Union industry should have been able to make profit even when complying with its health, safety and environmental commitments. Investments linked to health, safety and environmental matters do not prevent businesses from making healthy profits in normal market circumstances. While agreeing with this conclusion, following final disclosure the GOT deemed that the Commission had failed to make an objective examination on profitability and return on investments as investments linked to health, safety and environmental matters cost dearly in the year when the investments take place and no company expects a return on these investments. The Commission disagreed as a healthy Union industry should show solid levels of profitability and return on investments that allow for expenses absent of a pecuniary return on investment but completely necessary for health, safety and environmental reasons.

(207) In the absence of any other comments with respect to this section, the Commission confirmed its conclusions set out in recitals (126) to (131) of the provisional Regulation.

4.6. **Conclusion on injury**

(208) Although consumption in the free market slightly decreased during the period considered (-1 %), the Union industry's sales volumes in the free market increased with its market share going from [75 – 76 %] to [78 – 79 %]. However, these small improvements in terms of sales volumes and market share can only be observed when compared with 2016, when the Union industry was suffering injury from dumping caused by imports from other countries. Yet, the Union industry's production output and capacity utilisation decreased respectively by 4 % and 7 % over the period considered. Between 2018 and the investigation period there were more pronounced drops in production and capacity utilisation, and sales in the free market also decreased. The Union industry grew as of 2017, recovering from the unfair imports subject to anti-dumping and anti-subsidy measures, but its situation deteriorated during the investigation period.

(209) The cost of production of the Union industry went up significantly during the period considered (+36 %), mainly because of a strong increase in the raw material prices.

(210) The Union industry's sales prices increased more than costs in 2017 and 2018, which allowed Union producers to recover from previous injurious dumping practices and reach a profitability of 6,7 %. However, between 2018 and the investigation period, to preserve its market share when faced with dumped Turkish imports, the Union industry had to decrease its sales prices in spite of increasing costs (+4 %). This had a devastating effect on the Union industry's profitability, which dropped from +6,7 % in 2018 to -6,1 % in the investigation period.

(211) Other financial indicators (cash flow, return on investments) followed a similar trend, especially during the investigation period, and consequently the level of investments decreased strongly in the investigation period as compared to the previous years.

([19]) Implementing Regulation (EU) 2016/1778.
([20]) Implementing Regulation (EU) 2017/649.

(212) As explained in recital (16) above, the UK withdrawal entailed a revision of macroeconomic indicators and a few other data. The differences between tables 1-13 of the provisional Regulation and tables 1-13 this Regulation are however insignificant, both in terms of units and trends. The undercutting levels remained significant. Consequently, the Commission concluded that the UK withdrawal does not alter the conclusion on injury reached in the provisional Regulation.

(213) On the basis of the above, the Commission definitely concluded that the Union industry suffered material injury within the meaning of Article 3(5) of the basic Regulation.

5. **CAUSATION**

5.1. **Effects of the dumped imports**

(214) Following provisional disclosure, ÇİB and the GOT disagreed with the conclusions in section 5.1 of the provisional Regulation. The GOT submitted that the explanations therein could not justify a causal link between the dumped imports and the alleged injury between 2018 and 2019 on the grounds that Turkish import volumes were stable and that both the prices of Turkish imports and the Union industry cost of production dropped in that period. The Commission noted the inaccuracy of the GOT's statements. On the one hand, the Union industry's cost of production did not go down in that period. Rather, it increased from 540 EUR/tonne in 2018 to 560 EUR/tonne in 2019, as shown in table 10 of the provisional Regulation and Table 10 of this Regulation. On the other hand, between 2018 and 2019 Turkish import volumes remained rather stable (although at higher levels compared to 2016 and 2017), while their prices dropped by 8,5 % as shown in tables 4 and 5 of this Regulation. The Commission noted that the GOT deemed the undercutting levels found in the provisional Regulation insignificant but did not dispute, however, that HRFS is a very price-sensitive product. Indeed, the GOT itself admitted that a small price difference explained the increase in the market share of Turkish imports ([21]). The claims are thus rejected. In any event, regardless of the existence of undercutting, during the investigation period the Union industry had to keep its prices well below its costs of production in order to preserve its market share due to the price depression exerted by the volumes of Turkish imports at lower prices.

(215) The GOT also stated that imports from Turkey did not take the market share of the Union industry but only took certain share from the third countries, which could not have any effect on Union producers. In the same vein, ÇİB claimed that the Commission had overlooked that imports from Turkey filled the gap left by other supplying countries. The party alleged as well a lack of correlation in time between the Union industry's performance and the evolution of Turkish imports, because, when the Union producers' situation deteriorated between the second and third quarters of 2019, as claimed by the complainant, Turkish imports dropped and their prices did not change. Following final disclosure, the GOT stated that a quarterly analysis showed that imports from Turkey started to decrease significantly since the beginning of 2019. In the same vein, following provisional and final disclosure ÇİB stated that the Commission had not explained why some key economic indicators of the Union industry improved or remained stable in the period of 2016-2019 while imports from Turkey were gradually increasing. Following final disclosure, ÇİB stated that material injury was to be attributed to factors other than imports from Turkey as between 2016 and 2018 Turkish import volumes grew but also their prices.

(216) The Commission agreed that Turkish imports filling in a gap would have been unproblematic; however, such imports arrived into the Union at unfair dumped prices. As to the lack of correlation in time, the Commission disagreed. Indeed, ÇİB ignored in its analysis the effects of the price pressure exerted by Turkish imports. The fact that injury is patent rather in price-related indicators does not undermine an overall conclusion on injurious dumping. As stated in recital (139) of the provisional Regulation, it was in 2019 that the Union industry was driven to set its prices well below costs in order to keep its market share due to the price pressure exerted by the Turkish imports at lower prices. There is thus a clear correlation between the dumped imports and the injury suffered by the Union industry.

([21]) Last paragraph of page 14 of t21.000916.

(217) Following final disclosure, the GOT noted that it is essentially in the free market that the Union industry competes with imports. The GOT alleged that the increase in the market share of the Union industry in the free market proves the absence of injury derived from imports from Turkey. ÇİB said that the increase in sales of the Union industry on the free market and the increase of their market share despite the presence of Turkish imports does not support the conclusion that the Union industry suffered material injury over the period considered. In the Commission' view, the claims made by both parties neglect the effects of the price pressure exerted by Turkish imports and that the price-related indicators show clear and demonstrable injury. In the investigation period the Union industry gained some of the market shares left by certain import sources. However, this was done with selling prices well below costs as a result of the price pressure exerted by the Turkish imports and their lower prices.

(218) In the absence of any other comments with respect to this section, the Commission confirmed its conclusions set out in recitals (138) to (139) of the provisional Regulation.

5.2. **Effects of other factors**

5.2.1. *Imports from third countries*

(219) The volume of imports from other third countries developed over the period considered as follows:

Table 14

Imports from third countries

Country		2016	2017	2018	IP
Russian Federation	Volume (tonnes)	*1 935 269*	*720 339*	*1 587 740*	*1 340 462*
	Index	*100*	*37*	*82*	*69*
	Market share (%)	5 – 6	2 – 3	4 – 5	3- 4
	Index	*100*	*39*	*81*	*70*
	Average price (EUR/tonne)	335	468	496	443
	Index	*100*	*140*	*148*	*132*
Serbia	Volume (tonnes)	348 619	465 158	733 711	860 953
	Index	*100*	*133*	*210*	*247*
	Market share (%)	0 – 1	1 – 2	2- 3	2- 3
	Index	*100*	*139*	*207*	*249*
	Average price (EUR/tonne)	386	498	547	479
	Index	*100*	*129*	*142*	*124*
India	Volume (tonnes)	430 713	1 098 632	884 455	847 584
	Index	*100*	*255*	*205*	*197*
	Market share (%)	1 – 2	3- 4	2- 3	2 – 3
	Index	*100*	*266*	*202*	*199*
	Average price (EUR/tonne)	403	494	531	464
	Index	*100*	*122*	*132*	*115*

Brazil	Volume (tonnes)	654 633	369 251	266 555	114 142
	Index	*100*	*56*	*41*	*17*
	Market share (%)	1- 2	1- 2	0 – 1	0- 1
	Index	*100*	*59*	*40*	*18*
	Average price (EUR/tonne)	362	494	531	485
	Index	*100*	*136*	*147*	*134*
Ukraine	Volume (tonnes)	1 078 716	606 830	131 928	106 797
	Index	*100*	*56*	*12*	*10*
	Market share (%)	3 – 4	1- 2	0 – 1	0 – 1
	Index	*100*	*59*	*12*	*10*
	Average price (EUR/tonne)	331	466	472	424
	Index	*100*	*141*	*142*	*128*
Iran	Volume (tonnes)	917 783	76 707	56 026	3 377
	Index	*100*	*8*	*6*	*0*
	Market share (%)	2- 3	0 – 1	0 – 1	0 – 1
	Index	*100*	*9*	*6*	*0*
	Average price (EUR/tonne)	305	428	489	504
	Index	*100*	*140*	*160*	*165*
China	Volume (tonnes)	1 024 619	8 456	579	525
	Index	*100*	*0,83*	*0,06*	*0,05*
	Market share (%)	2 – 3	0 – 1	0 – 1	0 – 1
	Index	*100*	*1*	*0*	*0*
	Average price (EUR/tonne)	325	667	3 760	3 177
	Index	*100*	*205*	*1 158*	*978*
Other third countries	Volume (tonnes)	935 804	1 560 157	1 507 414	1 242 177
	Index	*100*	*167*	*161*	*133*
	Market share (%)	2 – 3	4 – 5	4 – 5	3 – 4
	Index	*100*	*174*	*159*	*134*
	Average price (EUR/tonne)	384	493	562	523
	Index	*100*	*128*	*146*	*136*
Total of all third countries except Turkey	Volume (tonnes)	7 326 155	4 905 531	5 168 408	4 516 016
	Index	*100*	*67*	*71*	*62*
	Market share (%)	21 – 22	15 – 16	15 – 16	12,5 – 13,5
	Index	*100*	*70*	*69*	*62*
	Average price (EUR/tonne)	344	480	530	477
	Index	*100*	*141*	*154*	*139*

Source: Eurostat

(220) During the period considered, imports from countries other than Turkey decreased by 38 %; their market share decreased from 21 – 22 % to 12,5 – 13,5 %.

(221) Following provisional disclosure, the GOT considered that the provisional Regulation overlooked the (low) price of imports from certain third countries and that prices of Turkish imports could not have caused injury to Union producers. The GOT based this conclusion on the fact that, first, in view of the data presented in Table 14 of the provisional Regulation, overall import prices decreased more than prices of imports from Turkey alone from 2018 to the investigation period and, second, that there was strong volatility in the prices of HRFS. The GOT stated that the cumulated volume of imports of all third countries except Turkey was almost twofold the volume of Turkish imports. As their prices were lower than the prices of Turkish imports, the GOT submitted that their effect could not be ignored. In this respect, ÇİB stated that the rapid drop in price of Indian imports coincided with the decrease of profitability of Union producers.

(222) The Commission analysed the volumes, values and trends of imports from other third countries, but found that their impact did not attenuate the causal link between dumped Turkish imports and material injury suffered by Union producers. As to the price comparison made by the GOT between import prices from Turkey and import prices from other sources, the Commission notes that the latter are understated as the GOT disregarded the fact that Eurostat data on prices do not include anti-dumping and countervailing duties paid. As far as Indian imports are concerned, as noted in recital (144) of the provisional Regulation, the exact product mix of these imports and hence whether they in fact undercut the Union industry prices cannot be established based on Eurostat average prices only. No party provided evidence per product type suggesting significant undercutting from Indian imports. More importantly, no party contested that the volumes of Indian imports amounted to one quarter of that of the Turkish imports and, thus, were not capable of attenuating the causal link between the dumped imports and the injury found in this case. Following provisional disclosure, the complainant claimed to be unaware of any information that would suggest the imports from India were sold at dumped prices in the Union or causing any injury to Union producers. Thus, bearing in mind the relatively modest market share of Indian imports, these imports could not exert pressure on Union producers to the same extent as dumped imports from Turkey.

(223) Following final disclosure, the ÇİB contested the analysis and the conclusions made under this section and the GOT stated that the Commission "chose not to examine the effects" of imports from other third countries and failed to show that these imports did not cause any injury to Union producers. The Commission disagreed with the parties as it did examine all the relevant information on the matter on file. For instance, no party, not even the GOT or the ÇİB, provided at any stage of the investigation evidence per product type suggesting significant undercutting by Indian imports (or by Serbian imports, as claimed by ÇİB). The Commission concluded that the evidence on file did not support the claim concerning the alleged effects of imports from other third countries. That conclusion does not undermine the finding about the extent of the pressure of such imports on Union producers in parallel with dumped imports from Turkey. The finding that imports from third countries could not attenuate the causal between dumped imports from Turkey and the injury suffered by the Union industry was confirmed. Based on these considerations, the overall conclusion on causation was also confirmed.

(224) In the absence of any other comments with respect to this section, the Commission confirmed its conclusions set out in recitals (140) to (146) of the provisional Regulation.

5.2.2. *Export performance of the Union industry*

(225) The volume and prices of exports of the Union industry to unrelated parties developed over the period considered as follows:

Table 15

Export sales

	2016	2017	2018	IP
Export volume (tonnes)	1 – 2 million	1 – 2 million	1 – 2 million	1 – 2 million
Index	*100*	*102*	*102*	*121*

Average price (Euro/tonne)	376	502	554	468
Index	*100*	*133*	*147*	*124*

Source: Eurofer (volumes) and sampled Union producers (average prices)

(226) Union producers increased export volumes by 21 % over the period considered to remain below 2 million tonnes in 2019. Overall, the volumes exported by the Union industry represented less than 6 % of its sales volume on the Union free market.

(227) In the absence of any comments with respect to this section, the Commission confirmed its conclusions set out in recitals (147) to (149) of the provisional Regulation.

5.2.3. *Captive consumption*

(228) Following provisional disclosure, the GOT asked the Commission to collect more data and further examine demand in the captive market. The GOT noted certain breakdowns in the complainant's publication "European Steel in Figures 2020" and the bad results published by the European Automobile Manufacturers Association in its 2019 report.

(229) There are two main uses of the hot-rolled flat steel products. First, they are the primary material for the production of various value-added downstream steel products, starting with cold-rolled flat and coated steel products. Second, they are used as an industrial input purchased by end-users for a variety of applications, including in construction (production of steel tubes), shipbuilding, gas containers, cars, pressure vessels and energy pipelines. Data put forward by the GOT did not allow for an assessment of demand in the wide range of consuming sectors concerned. The Commission found that total production activity in the steel-using sectors in the Union fell by 0,2 % in 2019 – further to an increase of 2,9 % in 2018 – which was the first drop in output since 2013. The 2019 negative growth was the result of an increase in construction output and a drop in all other steel-using sectors (the most pronounced being recorded by the automotive sector) ([22]). The Commission conceded that the negative growth in numerous steel-using sectors in 2019 entailed a challenge for HRFS producers. However, this situation was not found to attenuate the causal link between dumped imports from Turkey and the injurious situation of the Union industry in the investigation period, in view of the increase in volumes of those imports, their effect on the Union Industry's prices and other injurious factors identified above.

(230) Following final disclosure, the GOT alleged a WTO-incompatible lack of examination of the effects of captive consumption. The GOT stated that the Commission 'chose not to examine' the 'extraordinary deterioration in steel user industries in the EU'. The Commission disagreed. The GOT provided no evidence to substantiate its claim. The publications in footnote 16 of the provisional Regulation do not show the alleged 'extraordinary deterioration in steel user industries in the EU'. In the course of the investigation, no users made similar claims. As highlighted in recital (195) of the provisional Regulation, users in major downstream markets, such as the automotive industry, industrial appliances or the construction sector did not come forward.

(231) In the absence of any other comments with respect to this section, the Commission confirmed its conclusions set out in recitals (150) to (151) of the provisional Regulation.

([22]) Economic Report, Economic and Steel Market Outlook 2020-2021, Second quarter report – Data up to, and including, full year 2019, 12 May 2020, Eurofer, downloadable via https://www.eurofer.eu/assets/Uploads/REPORT-Economic-and-Steel-Market-Outlook-Quarter-2-2020.pdf, and Worldsteel Short Range Outlook October 2019, 14 October 2019, World Steel Association, available at https://www.worldsteel.org/media-centre/press-releases/2019/worldsteel-short-range-outlook-2019.html

5.2.4. *Evolution of demand*

(232) Following final disclosure, ÇİB attributed injury to an overall decline in Union consumption, while the GOT stated that the decrease in consumption caused a decrease in the Union industry's production volumes. The Commission noted that, as shown in table 1, free market consumption, i.e. the market where competition with imports essentially takes place, fell by 1 % over the period considered. The Commission does not consider that the magnitude of the drop in Union consumption attenuated the causal link between dumped imports from Turkey and the injurious situation of the Union industry in the investigation period.

(233) In light of the considerations in the section above and in the absence of any other comments with respect to this section, the Commission confirmed its conclusions set out in recitals (152) to (153) of the provisional Regulation. The evolution of demand on the basis of EU27 data does not change these conclusions.

5.2.5. *Raw material prices*

(234) In the absence of any comments with respect to this section, the Commission confirmed its conclusions set out in recitals (154) to (155) of the provisional Regulation.

5.2.6. *Other factors*

(235) Following final disclosure, ÇİB argued that material injury was to be attributed to changes in the Union market, restructuring and rationalisation efforts made by Union producers, a certain purchase policy and low-priced imports from other third countries. The claims were unsupported and thus dismissed.

(236) In the absence of any other comments with respect to this section, the Commission confirmed its conclusions set out in recitals (147) to (149) of the provisional Regulation.

5.3. **Conclusion on causation**

(237) On the basis of the above and in the absence of any other comments, the Commission concluded that none of the factors, analysed either individually or collectively, attenuated the causal link between the dumped imports and the injury suffered by the Union industry to the effect that such link would no longer be genuine and substantial, confirming the conclusion in recitals (159) to (161) of the provisional Regulation.

6. **LEVEL OF MEASURES**

6.1. **Underselling margin**

(238) Following provisional disclosure, the complainant opposed the Commission's use of the average profit achieved over the year 2017, namely 6,8 %, as a basis for the target profit used for calculating the underselling margin. The complainant argued that in 2017 the Union industry was still suffering from dumped imports from other origins, that the Commission had failed to follow its standard practice and that even ÇİB had proposed a higher profit margin. The complainant insisted that the target profit should be in the range 10-15 %, like the 12,9 % used in an earlier investigation concerning imports of the same product ([23]), although conceded that the minimum basis for the target profit could also be 7,9 %, which was the target profit used in the latest investigation on this product.

(239) The Commission assessed the claim. As explained in recitals (164) and (166) of the provisional Regulation, the Commission based the determination of the target profit on the provisions of Article 7(2c) of the basic Regulation, although a year with "normal conditions of competition" prior to the increase of imports from Turkey could not be identified within a reasonable time-span. In addition, as already pointed out in section 4.5.1 above, the Commission

([23]) Commission Decision No 284/2000/ECSC of 4 February 2000 imposing a definitive countervailing duty on imports of certain flat rolled products of iron or non-alloy steel, of a width of 600 mm or more, not clad, plated or coated, in coils, not further worked than hot-rolled, originating in India and Taiwan and accepting undertakings offered by certain exporting producers and terminating the proceeding concerning imports originating in South Africa (OJ L 31, 5.2.2000, p. 44).

was unable to conclude that in 2017 the Union industry was still suffering from dumped imports as claimed by the complainant. In the anti-dumping investigation against Brazil, Iran, Russia and Ukraine, the investigation of dumping and injury covered the period from 1 July 2015 to 30 June 2016. The fact that definitive protective measures against imports from those origins were imposed in October 2017 does not mean that injurious dumping practices continued to exist in 2017. This is corroborated by the sharp fall of imports from those five countries in 2017, as already mentioned in recital (163) above. Consequently, the Commission confirmed that the year 2017 was the best basis to establish the target profit in the context of the current investigation. In any event, in view of the dumping margins found in this case, even accepting the claim to use a higher target profit would not have any impact on the level of the measures.

(240) At the provisional stage, the Commission used data from Bloomberg New Energy Finance to establish projected EU's emission trading system ('ETS') allowance prices to calculate future environmental costs. These prices have been updated at the definitive stage with data extracted on 15 February 2020.

(241) Recital (216) of the provisional Regulation refers to comments regarding the injury calculations received from one sampled Union producer in the context of Article 19a of the basic Regulation. The party claimed that the average of future quantity of HRFS to be produced should be used instead of the average of future upstream products used in HRFS production to assess the future compliance costs of the Union Industry to adhere to the environmental and social costs of production resulting from multilateral environmental agreements or social obligations. In this proceeding, considering the information available provided by the three sampled Union producers and verified by the Commission, the Commission found that it was the upstream products that directly generated the emission of pollutants and therefore that was the proper level to assess the future compliance costs. These costs were subsequently applied to the production of the product under investigation based on the consumption ratio of the downstream product generating the emissions in the production of the product under investigation.

(242) As explained in section 1.8 above, the composition of the Union changed in 2021, a fact that also entailed a change in the dataset used to establish the underselling margin. The injury elimination level for EU27 is shown in the table below:

Country	Company	Dumping margin	Underselling margin
Turkey	Çolakoğlu Metalurji A.Ş.	7,3 %	19,5 %
	Erdemir group: — Ereğli Demir ve Çelik Fabrikalari T.A.S. — İskenderun Demir ve Çelik A.Ş.	5,0 %	21 %
	Habaş Sinai Ve Tibbi Gazlar İstihsal Endüstrisi A.Ş.	4,7 %	20,5 %
	Ağir Haddecilik A.Ş.	5,7 %	20,3 %
	Borçelik Çelik Sanayii Ticaret A.Ş.	5,7 %	20,3 %
	All other companies	7,3 %	21 %

(243) In the absence of any other comments with respect to this section, the Commission confirmed its conclusions set out in recitals (163) to (170) of the provisional Regulation as modified in the table above.

6.2. **Examination of the margin adequate to remove the injury to the Union industry**

(244) In the absence of any comments with respect to this section, the Commission confirmed its conclusions set out in recitals (171) to (172) of the provisional Regulation.

6.3. **Conclusion**

(245) Following the above assessment, the Commission concluded that it is appropriate to determine the amount of definitive duties in accordance with the lesser duty rule in Article 7(2) and Article 9(4), second paragraph, of the basic Regulation. As a consequence, definitive anti-dumping duties should be set as below:

Country	Company	Definitive anti-dumping duty
Turkey	Çolakoğlu Metalurji A.Ş.	7,3 %
	Erdemir group: — Ereğli Demir ve Çelik Fabrikalari T.A.S. — İskenderun Demir ve Çelik A.Ş.	5,0 %
	Habaş Sinai Ve Tibbi Gazlar İstihsal Endüstrisi A.Ş.	4,7 %
	Ağir Haddecilik A.Ş.	5,7 %
	Borçelik Çelik Sanayii Ticaret A.Ş.	5,7 %
	All other companies	7,3 %

7. **UNION INTEREST**

7.1. **Interest of the Union industry**

(246) Following provisional disclosure, the complainant stated that the recently announced expansion plans of Turkish exporters were an additional reason why anti-dumping measures were in the Union interest. No party contested that the measures would be in the interest of the Union industry. The conclusions set out in recitals (175) to (179) of the provisional Regulation were thus confirmed.

7.2. **Interest of unrelated importers**

(247) Following provisional disclosure, the GOT and ÇİB stated that Union producers were already protected from imports. ÇİB argued that Turkish imports had dropped significantly in the last quarter of 2019 as compared to the first quarter of that year. In this respect, the GOT pointed at the definitive safeguard measures with quantitative ceilings ('quotas' or 'Tariff Rate Quotas/TRQ's') and the additional duties of 25 % to be paid once the quota is exhausted. The GOT recalled that importers and users had stated before provisional measures that trade remedies heavily affected security of supply and made the importers' activities more challenging. The GOT added that, due to the provisional anti-dumping measures and the country-specific quotas within the context of safeguard measures in force until the end of June 2021, importers and users would not be able to find a new import source to meet demand in the Union.

(248) The Commission considered that recitals (188) to (193) of the provisional Regulation abundantly rebut claims related to any alleged shortages of supply, including the ones above made by the GOT following provisional disclosure. The Commission also noted that safeguard and anti-dumping measures address different situations. In this case, safeguard measures have indeed been imposed under the form of a TRQ, but that does not prevent the imposition measures to remove unfair trade practises, in particular within the limits of the TRQ, i.e. before any safeguard duty would apply.

(249) Also, as explained in recital (192) of the provisional Regulation, the imposition of anti-dumping measures does not mean that imports from Turkey will cease, or even that they will decrease in a meaningful way. The findings of the investigation support this conclusion. Following provisional disclosure no importer submitted quantitative data that would show that the anti-dumping measures stemming for the current proceeding would have a disproportionate impact on their activities. The level of the measures should not prevent Turkish steelmakers from selling their HRFS in the Union and to the Union importers. Indeed, a 2021 press report by Steel Business Briefing highlighted that in 2020 the Union remains Turkey's main hot rolled coil export market ([24]). The same source reports on additional HRFS capacity in Turkey ([25]).

(250) In the absence of any other comments regarding the interest of unrelated importers, the conclusions set out in recitals (180) to (182) of the provisional Regulation were confirmed.

7.3. **Interest of users**

(251) The GOT's comments following provisional disclosure relating to users were common to comments relating to unrelated importers and they have been already addressed in section 7.2.

(252) Following provisional disclosure, ÇİB expressed concern about a drop of quality and innovation in the Union market as a result of the measures. The Commission deemed the claim, which was very general and unsupported by any evidence, unfounded. The Commission found that, despite the difficult market circumstances, Union producers had kept offering high quality products during the whole period considered. The Commission expects anti-dumping measures to create a level playing field that allows the Union industry to offer more high quality and innovative products to the benefit of all actors.

(253) The Consortium of users and importers of HRFS ('the Consortium') submitted comments on the provisional regulation ([26]). First, the Consortium argued that following the investigation period, Union producers allegedly reduced the production volume that they make available in the Union free market. The Consortium pointed that this alleged practice, together with the trade defence measures currently in place against other origins, led to an 'unprecedented' price increase in the Union market. The Consortium claimed that independent users in the Union were thus not in a position to source an essential raw material (HRFS) from Union producers. In turn, the price increase would have allowed the Union producers to improve their margins of profit to a point where they would have recovered from any alleged injury suffered in the investigation period. The Consortium considered that EU Courts' jurisprudence allowed the Commission to assess post-IP developments in the framework of the Union interest analysis, and that in this case, such developments would call for the termination of the measure. In connection to this argument, the Consortium further argued that, as a result of the alleged scarcity of supply from Union producers and the ensuing increased prices, independent users in the Union had no choice but to rely on imports in relevant amounts. In this respect, the Consortium stated that trade defence measures in place against certain origins, and the provisional measure against Turkish imports, threaten the ability to obtain HRFS from third countries. The Consortium pointed that other third countries could not replace Turkey as the most reliable supplying country. The Consortium also contested the Commission's finding regarding the ability of users to adjust to regulatory changes and to switch suppliers. The Consortium claimed that, in practice, this is rarely possible and that purchasing limited volumes from other third country producers cannot be seen as a sign that users can swiftly change suppliers. The Consortium cast doubts on the ability, and even willingness, of the Union industry to supply any additional relevant volumes to independent downstream users in the Union and the ability of countries, other than Turkey, to supply meaningful amounts of HRFS into the Union. All these elements, the Consortium argued, would lead to an unsustainable increase in costs of a key raw material for users, affecting them disproportionally.

(254) Following provisional disclosure, ÇİB expressed concern about an increase in HRFS prices in the Union market as a result of the measures and contested recital (191) of the provisional Regulation, according to which Union producers could use their spare capacity to satisfy the demand of unrelated users.

([24]) t21.000701, Annex 2.
([25]) t21.000701, Annex 1 and Annex 3.
([26]) t21.000721.

(255) The complainant contested these claims ([27]). In particular, it referred to sources pointing to increased production capacity in 2021, including by restarting certain furnaces and to the existence of sufficient sources of supply, both within the Union and from third countries. The complainant acknowledged that any supply chain imbalance in the market would have been only of temporary nature and caused by the disruptive effect of the COVID-19 pandemic, including the shutdown of some furnaces. The complainant further submitted that there are plenty of alternative sources in the Union and elsewhere to satisfy any increases in Union demand, including the existence of abundant spare capacity in the Union and worldwide. It also argued that Turkey is likely to continue its supplies to the Union market given the moderate anti-dumping duties imposed. Lastly, the complainant reiterated that the anti-dumping duty would not have any significant impact on users' costs, referring to simulations it had provided at an earlier stage of the proceeding.

(256) Following final disclosure, the GOT claimed that if the Commission imposed a definitive safeguard measure, on top of the existing safeguard measure and other anti-dumping and countervailing duties in place against other origins for imports of the product concerned, there was a possibility of shortage in supply. The GOT further claimed that its imports started decreasing in 2019 as a result of the safeguard measure in place and that 'it believed that any further measure will cause the imports from Turkey to cease' and asked how the Commission would be certain that imports from Turkey would not cease.

(257) The Commission first addressed the claims on scarcity of supply, availability of other sources and ability to adjust to regulatory changes and switch suppliers. Subsequently, it addressed the claim on the use of post-IP data.

(258) The Commission found that the Consortium's and the GOT's argument of scarcity of supply is at odds with the figures and trends that the investigation established. This is the case both at general level and at the level of the data shown by cooperating users. On a general level, the Commission first noted that under the steel safeguard measure ([28]) there have been very large amounts of free-of-duty TRQ consistently, and increasingly, available during the investigation period ([29]). Therefore, had demand for larger volumes of imports existed in the Union, it could have been met free-of-duty. Second, the investigation confirmed that the Union industry has sufficient spare capacity ([30]) that would allow it to increase further its output in the Union. There is no economic justification for Union producers not to use their (spare) capacities to satisfy demand in the Union, whether the users are related or not, notably when it finds itself in a less than optimal economic situation. Third, the Commission reiterated its findings at provisional stage ([31]) regarding the ability of third countries to supply HRFS in relevant amounts and recalled that they could increase their presence in the Union market further, as some of them had already, if demand exists. Lastly, the Commission referred to its finding in recital (192) of the provisional Regulation concerning the unfounded assumption that Turkey's imports would disappear from the Union market if the Commission imposed a defensive duty. The Commission recalled in this regard that some of the countries subject to measures continued exporting to the Union, and in certain cases, in substantial amounts ([32]).

(259) Moreover, the Consortium's claim is also at odds with the data supplied by independent users themselves in the framework of the investigation. First, the share of Turkish imports in these users' portfolio is rather limited (below 15 % overall). Turkish purchases account for less than half the share of imports from other origins, and they are nearly five times smaller than their purchases from Union producers, the users' main supplier by far. Furthermore, the Commission confirmed that the figures available in the questionnaire replies from unrelated users clearly show, not only that they can (and in fact have), from one year to another, significantly changed the configuration of their sources of supply, but also that they can do that in substantial volumes. In this regard, the Commission noted that the cooperating users doubled and even tripled the imports from certain origins in the investigation period

([27]) t21.000931.

([28]) In July 2018, the Commission imposed a provisional safeguard measure, which became definitive in February 2019 and which was in place throughout the whole investigation period. Under this measure, HRFS largely corresponds in scope to product category 1. Therefore, the evolution of TRQ use under the safeguard measure is relevant for the purpose of this investigation.

([29]) Recitals (45) to (50) of Commission Implementing Regulation (EU) 2020/894 of 29 June 2020 amending Implementing Regulation (EU) 2019/159 imposing definitive safeguard measures against imports of certain steel product (OJ L 206, 30.6.2020, p. 27).

([30]) Table 6 of the Regulation imposing provisional anti-dumping measures.

([31]) Recitals (188) and (189) of the Regulation imposing provisional anti-dumping measures.

([32]) Recitals (21) to (23) of Commission Implementing Regulation (EU) 2019/1590 of 26 September 2019 amending Implementing Regulation (EU) 2019/159 imposing definitive safeguard measures against imports of certain steel products (OJ L 248, 27.9.2019, p. 28).

(increasing overall, by 40 % the imports from these third countries). Users also started purchasing in the investigation period from origins they did not purchase from in the year prior to the investigation period, while they stopped purchasing from certain origins that they used to in 2018. The data available in the file thus contradicts the Consortium's statement that users are only able to purchase limited volumes of HRFS from other third countries, and that in practice switching to other suppliers is rarely possible.

(260) With regard to the other claims brought forward by the GOT, the Commission noted that regarding the decline in imports in 2019, Turkey was unable to fulfil the global TRQ that was available until 1 July 2020 ([33]). Furthermore, the Commission did not see any link between, and the GOT has not supplied any evidence in support of, a reduction in imports in a given year and the claim that these imports will cease as a result of the imposition of a definitive anti-dumping duty. In addition, the Commission noted that Turkey's level of imports since the imposition of a provisional anti-dumping duty show that these imports did not cease. Rather, Turkey made a very large use (92 %) of its country-specific TRQ in the period January-March 2021, and it continued exporting relevant volumes in the quarter April-June 2021. These data show that despite a provisional anti-dumping duty in place, Turkey continued supplying volumes commensurate with the in quota volumes allocated to it under the safeguard measure.

(261) In reaction to the claim of the ÇİB, the Commission again noted, in connection to the alleged reduction in imports that the Association referred to (first quarter in 2019 versus fourth quarter in 2019), that Turkey could have supplied additional volumes under the free-of-duty in quota regime ([34]) in the last quarter of 2019. The Commission nevertheless failed to see how a reduction of imports from Turkey would, on its own, amount to a shortage of supply in the market. The Commission recalled that the Union market has shown its capability of adjusting to different sources of supply depending on the regulatory changes, such as the imposition of trade defence measures.

(262) Therefore, in view of the above facts, the Commission rejected the Consortium's, the GOT's and the ÇİBs claims.

(263) With regard to the request that the Commission extends its findings to take into account post-IP developments, in its submission the Consortium pointed to an unprecedented increase in prices that would have taken place between the end of 2020 and during the first quarter of 2021. The Consortium added that such an increase in prices threatened their operations in the Union and that at these prices, Union producers would have increased their profits and hence, they would have recovered from any injury suffered in the investigation period.

(264) Following final disclosure, the ÇİB and the GOT criticised the Commission's finding in this respect. For its part, the complainant argued that the Commission should not assess post-IP developments, as the circumstances present in this case are not of exceptional nature and in any event, they would be only of a short-term and not of structural nature.

(265) The Commission considered that an allegation that a price increase may have taken place at a certain point in time after the investigation period, cannot by itself put into question the findings established by the investigation at the provisional and definitive stage. The Commission noted that the claim made by the Consortium lacks any meaningful context and supporting evidence that would clearly demonstrate that the findings on the investigation based on IP data are invalidated by such a development alone. Furthermore, the allegation that the Union industry would have recovered from its injurious situation is unfounded and not supported by any evidence whatsoever. The Commission recalled that Article 6(1) of the basic Regulation notes that information relating to a period subsequent to the investigation period shall, normally, not be taken into account.

([33]) This statement is valid for both periods, i.e. when Turkey was subject to a global TRQ (2 February to 30 September 2019, and when Turkey was subject to a 30 % cap under a global TRQ as of 1 October 2019.

([34]) In the last quarter of 2019, Turkey had used 73 % of the overall TRQ volume it was entitled to supply free-of-duty, leaving around 170,000 tonnes unused in that quarter.

(266) Regarding the comments received following final disclosure, the Commission notes that neither party provided any additional evidence regarding how the price increase that took place after the investigation period would, in itself, render the imposition of definitive anti-dumping duties unwarranted under the Union interest test.

(267) The Commission thus confirmed its conclusions set out in recitals (183) to (198) of the provisional Regulation.

7.4. **Other factors**

(268) Following provisional disclosure, the GOT stated that Union steelmakers were consistently trying to keep their oligopoly in the Union market and remove international competition. The GOT noted that Union producers served already 79 % of the sales in free market and that such a percentage did not include captive volumes, which were significant. ÇİB referred as well to the high market share of Union producers and feared a monopoly.

(269) The Commission found the oligopoly claim unjustified, as already explained in recital (200) of the provisional Regulation. Following provisional disclosure, no party disputed that, as stated in recitals (75) and (200) of the provisional Regulation, there are over 20 known producers belonging to 14 different groups that show healthy competition amongst them and with imports from third countries. In the absence of evidence of uncompetitive practices, the market share they currently hold is irrelevant to support these claims of oligopoly, let alone a monopoly.

(270) Following final disclosure, ÇİB submitted that the above did not assess in a detailed, sufficient and transparent manner the claim of enhanced oligopoly by the Union industry in the Union market nor that the claim of such enhanced oligopoly was unjustified. For ÇİB, the claim should have been assessed taking into account other factors such as existing measures, shortage of supply, reduction of quality and innovations, etc. According to the party, the General Court requires that, for the purpose of Article 21(1) of the basic Regulation, special consideration is given to restore effective competition. The party repeated, without adding any new evidence, its claim that the Union industry holds an 'enhanced oligopoly' in the Union market.

(271) The Commission refers to its recent Staff Working Document ([35]), where it noted that '[i]n the recent consolidation wave, merger control enforcement contributed to keeping vibrant competition in the European steel markets to the benefit of the many downstream industries that use steel, rely on affordable materials to compete globally and employ millions of Europeans. By prohibiting anti-competitive mergers (e.g. Tata Steel/ThyssenKrupp) or approving mergers subject to conditions, such as structural divestitures (e.g. ArcelorMittal/Ilva), merger enforcement ensured that European steel customers are not left with less choice, higher prices, or less innovation.' The Commission found ÇİB 's claims unfounded, including as regards shortages in HRFS supply, as explained in section 7.3. Therefore the Commission confirmed its findings at provisional stage.

(272) In the absence of any other comments with respect to this section, the Commission confirmed its conclusions set out in recitals (199) to (200) of the provisional Regulation.

7.5. **Conclusion on Union interest**

(273) Following provisional disclosure, the GOT stated that in its view anti-dumping duties were both unnecessary and detrimental for the Union market and that they would play a negative role against the Union interest as a whole. Following final disclosure, ÇİB submitted that the Commission had not balanced the different interests at stake in a transparent manner nor justified its findings. The Commission found those statements to be unfounded in light of the findings of the investigation, namely the existence of dumping, of resulting material injury to the Union industry and the result of balancing the different interests at stake.

(274) On the basis of the above and in the absence of any other comments, the conclusions set out in recital (201) of the provisional Regulation were confirmed.

([35]) Commission's Staff Working Document "Towards Competitive and Clean European Steel", SWD(2021) 353 final, 5.5.2021, p. 4-5.

8. DEFINITIVE ANTI-DUMPING MEASURES

8.1. Definitive measures

(275) In view of the conclusions reached with regard to dumping, injury, causation and Union interest, and in accordance with Article 9(4) of the basic Regulation, definitive anti-dumping measures should be imposed in order to prevent further injury being caused to the Union industry by the dumped imports of the product concerned. For the reasons set out in section 6, and in particular sub-section 6.3, of this Regulation, anti-dumping duties should be set in accordance with the lesser duty rule.

(276) On the basis of the above, the rates at which such duties will be imposed are set as follows:

Country	Company	Definitive anti-dumping duty
Turkey	Çolakoğlu Metalurji A.Ş.	7,3 %
	Erdemir group: — Ereğli Demir ve Çelik Fabrikalari T.A.S. — İskenderun Demir ve Çelik A.Ş.	5,0 %
	Habaş Sinai Ve Tibbi Gazlar İstihsal Endüstrisi A.Ş.	4,7 %
	Ağir Haddecilik A.Ş.	5,7 %
	Borçelik Çelik Sanayii Ticaret A.Ş.	5,7 %
	All other companies	7,3 %

(277) The individual company anti-dumping duty rates specified in this Regulation were established on the basis of the findings of this investigation. Therefore, they reflect the situation found during this investigation with respect to these companies. These duty rates are exclusively applicable to imports of the product concerned originating in the country concerned and produced by the named legal entities. Imports of the product concerned produced by any other company not specifically mentioned in the operative part of this Regulation, including entities related to those specifically mentioned, should be subject to the duty rate applicable to 'all other companies'. They should not be subject to any of the individual anti-dumping duty rates.

(278) A company may request the application of these individual anti-dumping duty rates if it changes subsequently the name of its entity. The request must be addressed to the Commission ([36]). The request must contain all the relevant information enabling to demonstrate that the change does not affect the right of the company to benefit from the duty rate which applies to it. If the change of name of the company does not affect its right to benefit from the duty rate which applies to it, a regulation about the change of name will be published in the *Official Journal of the European Union*.

(279) To minimise the risks of circumvention due to the difference in duty rates, special measures are needed to ensure the application of the individual anti-dumping duties. The companies with individual anti-dumping duties must present a valid commercial invoice to the customs authorities of the Member States. The invoice must conform to the requirements set out in Article 1(3) of this regulation. Imports not accompanied by that invoice should be subject to the anti-dumping duty applicable to 'all other companies'.

(280) While presentation of this invoice is necessary for the customs authorities of the Member States to apply the individual rates of anti-dumping duty to imports, it is not the only element to be taken into account by the customs authorities. Indeed, even if presented with an invoice meeting all the requirements set out in Article 1(3) of this

([36]) European Commission, Directorate-General for Trade, Directorate H, Wetstraat 170 Rue de la Loi, 1040 Brussels, Belgium.

regulation, the customs authorities of Member States must carry out their usual checks and may, like in all other cases, require additional documents (shipping documents, etc.) for the purpose of verifying the accuracy of the particulars contained in the declaration and ensure that the subsequent application of the lower rate of duty is justified, in compliance with customs law.

(281) Should the exports by one of the companies benefiting from lower individual duty rates increase significantly in volume after the imposition of the measures concerned, such an increase in volume could be considered as constituting in itself a change in the pattern of trade due to the imposition of measures within the meaning of Article 13(1) of the basic Regulation. In such circumstances and provided the conditions are met an anti-circumvention investigation may be initiated. This investigation may, inter alia, examine the need for the removal of individual duty rate(s) and the consequent imposition of a country-wide duty.

(282) To ensure a proper enforcement of the anti-dumping duties, the anti-dumping duty for "all other companies" should apply not only to the non-cooperating exporting producers in this investigation, but to the producers which did not have exports to the Union during the investigation period.

8.2. **Definitive collection of the provisional duties**

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

(284) The definitive duty rates being lower than the provisional duty rates, the amounts secured in excess of the definitive anti-dumping duty rates should be released.

8.3. **Retroactivity**

(285) As mentioned in section 1.2, following a request by the complainant, the Commission made imports of the product under investigation subject to registration pursuant to Article 14(5) of the basic Regulation.

(286) During the definitive stage of the investigation, the data collected in the context of the registration was assessed. The Commission analysed whether the criteria under Article 10(4) of the basic Regulation were met for the retroactive collection of definitive duties.

(287) The Commission's analysis showed no further substantial rise in imports in addition to the level of imports which caused injury during the investigation period, as prescribed by Article 10(4d) of the basic Regulation. For this analysis, the Commission compared the monthly average import volumes of the product concerned during the investigation period with the monthly average import volumes during the period from the month following the initiation of this investigation until the last full month preceding the imposition of provisional measures. Also when comparing the monthly average import volumes of the product concerned during the investigation period with the monthly average import volumes during the period from the month following the initiation of this investigation up to and including the month in which provisional measures were imposed, no further substantial increase could be observed:

	IP		June 2020 to December 2020		June 2020 to January 2021	
	tonnes	tonnes/ month	tonnes	tonnes/ month	tonnes	tonnes/month
HRFS imports from Turkey	2 767 658	230 638	1 031 186	147 312	1 194 329	149 291

Source: Eurostat (EU 27)

(288) The Commission therefore concluded that the retroactive collection of the definitive duties for the period during which imports were registered was not justified in this case.

9. **UNDERTAKING OFFER**

(289) Following final disclosure, one of the exporting producers submitted a price undertaking offer in accordance with Article 8 of the basic Regulation.

(290) The Commission evaluated this offer and concluded that the acceptance of such undertaking would be impractical within the meaning of Article 8 of the basic Regulation. This is mainly because of the multitude of indistinguishable product types covered by the offer, the fact that some product types falling into the same CN/TARIC code have different minimum import prices, the fact that the minimum import prices offered would not be sufficient to remove the injurious effects of dumping for the majority of product types, and the inappropriateness of the offered indexation to incorporate fluctuations in the price of raw materials.

(291) In its comments on the price undertaking proposed by the exporting producer, the complainant gave arguments in favour of its rejection, which supported the Commission's own analysis.

(292) The Commission sent the exporting producer a letter setting out the reasons to reject the undertaking offer and giving the company the opportunity to comment.

(293) The Commission did not receive any comments from the exporting producer concerning its conclusion that the proposed undertaking would be inadequate and impracticable.

(294) Therefore, for the reasons set out in recitals (290) to (293) above, the price undertaking offer was rejected.

10. **FINAL PROVISIONS**

(295) In view of Article 109 of Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council ([37]), when an amount is to be reimbursed following a judgment of the Court of Justice of the European Union, the interest to be paid should be the rate applied by the European Central Bank to its principal refinancing operations, as published in the C series of the *Official Journal of the European Union* on the first calendar day of each month.

(296) The measures provided for in this Regulation are in accordance with the opinion of the Committee established by Article 15(1) of Regulation (EU) 2016/1036,

HAS ADOPTED THIS REGULATION:

Article 1

1. A definitive anti-dumping duty is imposed on imports of flat-rolled products of iron, non-alloy steel or other alloy steel, whether or not in coils (including 'cut-to-length' and 'narrow strip' products), not further worked than hot-rolled, not clad, plated or coated, originating in Turkey, currently falling under CN codes 7208 10 00, 7208 25 00, 7208 26 00, 7208 27 00, 7208 36 00, 7208 37 00, 7208 38 00, 7208 39 00, 7208 40 00, 7208 52 10, 7208 52 99, 7208 53 00, 7208 54 00, ex 7211 13 00 (TARIC code 7211 13 00 19), ex 7211 14 00 (TARIC code 7211 14 00 95), ex 7211 19 00 (TARIC code 7211 19 00 95), ex 7225 19 10 (TARIC code 7225 19 10 90), 7225 30 90, ex 7225 40 60 (TARIC code 7225 40 60 90), 7225 40 90, ex 7226 19 10 (TARIC code 7226 19 10 95), ex 7226 91 91 (TARIC code 7226 91 91 19) and 7226 91 99.

The following products are excluded:

(i) products of stainless steel and grain-oriented silicon electrical steel;

(ii) products of tool steel and high-speed steel;

([37]) Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council of 18 July 2018 on the financial rules applicable to the general budget of the Union, amending Regulations (EU) No 1296/2013, (EU) No 1301/2013, (EU) No 1303/2013, (EU) No 1304/2013, (EU) No 1309/2013, (EU) No 1316/2013, (EU) No 223/2014, (EU) No 283/2014, and Decision No 541/2014/EU and repealing Regulation (EU, Euratom) No 966/2012 (OJ L 193, 30.7.2018, p. 1).

(iii) products, not in coils, without patterns in relief, of a thickness exceeding 10 mm and of a width of 600 mm or more; and

(iv) products, not in coils, without patterns in relief, of a thickness of 4,75 mm or more but not exceeding 10 mm and of a width of 2 050 mm or more;

(v) products whose (a) width is 350 mm or less, and (b) whose thickness is 50 mm or more, regardless of the length of the product.

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

Country	Company	Definitive anti-dumping duty rate	TARIC additional code
Turkey	Çolakoğlu Metalurji A.Ş.	7,3 %	C602
	Erdemir group: — Ereğli Demir ve Çelik Fabrikalari T.A.S. — İskenderun Demir ve Çelik A.Ş.	5,0 %	C603
	Habaş Sinai ve Tibbi Gazlar İstihsal Endüstrisi A.Ş.	4,7 %	C604
	Ağir Haddecilik A.Ş.	5,7 %	C605
	Borçelik Çelik Sanayii Ticaret A.Ş.	5,7 %	C606
	All other companies	7,3 %	C999

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

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

Article 2

The amounts secured by way of the provisional anti-dumping duty under Implementing Regulation (EU) 2021/9 shall be definitively collected. The amounts secured in excess of the definitive rates of the anti-dumping duty shall be released.

Article 3

No definitive anti-dumping duty will be levied retroactively for registered imports. Data collected in accordance with Article 1 of Implementing Regulation (EU) 2020/1686 shall no longer be kept.

Article 4

Article 1(2) may be amended to add new exporting producers from Turkey and make them subject to the appropriate weighted average anti-dumping duty rate for cooperating companies not included in the sample. A new exporting producer shall provide evidence that:

(a) it did not export the goods described in Article 1(1) originating in Turkey during the period of investigation (1 January 2019 to 31 December 2019);

(b) it is not related to an exporter or producer subject to the measures imposed by this Regulation; and

(c) it has either actually exported the product concerned or has entered into an irrevocable contractual obligation to export a significant quantity to the Union after the end of the period of investigation.

Article 5

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

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

Done at Brussels, 5 July 2021.

For the Commission
The President
Ursula VON DER LEYEN

DECISIONS

COUNCIL DECISION (EU) 2021/1101

of 20 May 2021

on the position to be taken on behalf of the European Union in the seventy-fourth session of the World Health Assembly

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 168(5), in conjunction with Article 218(9) thereof,

Having regard to the proposal from the European Commission,

Whereas:

(1) Article 21(1), second subparagraph, of the Treaty on European Union states that the Union is to seek to develop relations and build partnerships with third countries, and international, regional or global organisations which share the principles referred to in Article 21(1), first subparagraph. That second subparagraph also provides that the Union is to promote multilateral solutions to common problems, in particular in the framework of the United Nations.

(2) Pursuant to Article 168(3) of the Treaty on the Functioning of the European Union (TFEU), the Union and the Member States are to foster cooperation with third countries and the competent international organisations in the sphere of public health.

(3) The Constitution of the World Health Organization ('the Agreement') entered into force on 7 April 1948.

(4) Pursuant to Article 60 of the Agreement, the World Health Assembly may adopt decisions by a majority of the World Health Organization (WHO) Members present and voting.

(5) The World Health Assembly, during its seventy-fourth session starting on 24 May 2021, is to adopt a decision on the establishment of an Intergovernmental Meeting to draft and negotiate a WHO Framework Convention on Pandemic Preparedness and Response.

(6) It is appropriate to establish the position to be taken on the Union's behalf in the World Health Assembly, as the decision of the World Health Assembly will determine the ability of the Union, alongside its Member States, to participate in the drafting and negotiation of a WHO Framework Convention on Pandemic Preparedness and Response and to potentially become a party to it as a Regional Economic Integration Organisation.

(7) The Union's participation in the drafting and negotiation of a WHO Framework Convention on Pandemic Preparedness and Response and its possible accession to the Convention in addition to the Member States of the Union will contribute to increasing international cooperation in response to pandemics within the United Nations system.

(8) In accordance with Article 168(7) TFEU, the responsibilities of the Member States, for the definition of their health policy and for the organisation and delivery of health services and medical care, should be respected throughout the negotiating process.

(9) The Union's position is to be expressed by the Member States of the Union that are members of the World Health Assembly,

HAS ADOPTED THIS DECISION:

Article 1

The position to be taken on the Union's behalf in the seventy-fourth session of the World Health Assembly shall be the following:

The European Union supports the establishment of a World Health Organization process for a new Framework Convention on Pandemic Preparedness and Response and must, within Union competence, be allowed to participate as contracting party to such a treaty.

The decision of the World Health Assembly setting out the procedural aspects of the negotiations must allow for the participation of the Union in the negotiating process addressing matters falling within Union competence, in view of the Union's possible accession to the Convention as a Regional Economic Integration Organisation.

Such participation should be achieved through the inclusion of specific references in the body of the text of the decision clarifying that any intergovernmental body set up to draft and negotiate the Convention shall be open to the participation of Regional Economic Integration Organisations.

Article 2

The position referred to in Article 1 shall be expressed by the Member States of the Union that are members of the World Health Organization, acting jointly on behalf of the Union.

Article 3

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

Done at Brussels, 20 May 2021.

For the Council
The President
A. SANTOS SILVA

COUNCIL DECISION (EU) 2021/1102

of 28 June 2021

requesting the Commission to submit a study on the Union's situation and options regarding the introduction, evaluation, production, marketing and use of invertebrate biological control agents within the territory of the Union and a proposal, if appropriate in view of the outcomes of the study

THE COUNCIL OF THE EUROPEAN UNION

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 241 thereof,

Whereas:

(1) Biological control agents are natural enemies, antagonists or competitors, or other organisms which are used to control, either directly or indirectly, plant pests, including quarantine pests, by controlling their vectors, weeds and invasive alien plants.

(2) For the purpose of this Decision, only invertebrate Biological Control Agents such as insects, including male sterile insects, mite and nematode species (BCAs) are covered.

(3) There is a wide diversity between Member States in their approaches and the types of regulations that they apply to the release, evaluation and movement of BCAs. However, BCAs know no borders and can spread beyond the territories where they have been deliberately released in order to control plant pests, weeds and invasive alien plants.

(4) Often used in greenhouse production, BCAs have a growing importance in sustainable agriculture and forestry, namely in the implementation of integrated pest management (IPM) and organic farming. Sustainable farming systems provide a vital contribution to the Union's transition to sustainable food systems, as set out in the Commission's Communication 'A Farm to Fork strategy for a fair, healthy and environmentally-friendly food system' and the Commission's Communication on a 'European Green Deal', and supported by the future Common Agricultural Policy. The use of BCAs in this context helps to reduce dependence on chemical plant protection products.

(5) Regulation (EU) 2016/2031 of the European Parliament of the Council ([1]) aims to protect the Union against the introduction of new pests, whilst tackling existing pests more effectively. The plant health policy contained in that Regulation focuses in particular on screening for new plant pests worldwide, preventing the entry of such plant pests into the Union territory and, in the event of their introduction, early detection and eradication.

(6) The entry, establishment and spread of plant pests can endanger the sustainability of agriculture, forests, natural environments, biodiversity and ecosystems. Global trade, movement of people, climate change and extreme weather phenomena increase the prevalence of pests and phytosanitary risks. New exotic pest species are also a threat to existing Union agriculture and forestry production systems as well as to native flora and fauna. The introduction of a natural enemy from the region from which the pest originates may contribute to a suitable control strategy but may bear risks for native flora and fauna. Thus, a scientific assessment of the possible impacts on plant health and biodiversity, using standard methodology, including on potential undesirable impacts on non-targeted species, ecosystems and biodiversity in general, needs to be made before the introduction of any BCA.

(7) It is recognised that the use of BCAs has been growing, given the greater demand from farmers, green space managers and gardeners, who are seeking to reduce their dependence on chemical plant protection products.

([1]) Regulation (EU) 2016/2031 of the European Parliament of the Council of 26 October 2016 on protective measures against pests of plants, amending Regulations (EU) No 228/2013, (EU) No 652/2014 and (EU) No 1143/2014 of the European Parliament and of the Council and repealing Council Directives 69/464/EEC, 74/647/EEC, 93/85/EEC, 98/57/EC, 2000/29/EC, 2006/91/EC and 2007/33/EC (OJ L 317 23.11.2016, p. 4).

(8) International organisations, in particular the Food and Agriculture Organization of the United Nations through the International Plant Protection Convention (IPPC) and the European and Mediterranean Plant Protection Organisation (EPPO), have developed international phytosanitary standards and guidance on the safe use of BCAs, and play an important role in developing standards for risk analysis and research.

(9) Producers of BCAs, including small and medium-sized enterprises (SMEs), provide innovative and specific solutions for crop protection. Quality control of BCAs is an essential requirement for ensuring their safety and performance.

(10) A more consistent approach between Member States could facilitate the development of and market access to safe BCAs. This would help create opportunities for agriculture and forestry production systems and for control of plant pests, while ensuring protection of health and of the environment.

(11) The Council considers that a study on the Union's situation and options regarding the introduction, evaluation, production, marketing and use of BCAs within the territory of the Union is necessary for improving their availability and accessibility for users while ensuring the safety of humans, animals, plants, the environment and food security, in accordance with the Interinstitutional Agreement of 13 April 2016 on Better Law-Making ([2]), and in particular paragraph 10 thereof on the application of Articles 225 and 241 of the Treaty on the Functioning of the European Union.

(12) Such options may include assessing the potential for harmonisation of criteria, procedures and decision-making in the Union; for Union research, innovation and knowledge dissemination programmes and for reinforced cooperation with relevant international organisations in order to speed up market access and increase the accessibility of BCAs; and for supporting investment, innovation and the safe use of BCAs in plant pest control, as a first step towards a harmonised definition of a broader concept of biocontrol,

HAS ADOPTED THIS DECISION:

Article 1

The Council hereby requests the Commission to submit, by 31 December 2022, a study on the situation regarding the introduction, production, evaluation, marketing and use of invertebrate Biological Control Agents (BCAs) within the territory of the Union. The possibilities for the harmonisation of procedures throughout the territory of the Union should also be evaluated, so as to facilitate the promotion of the deployment of, and market access to, BCAs, to support investment and innovation in, and to contribute to the safe use of, BCAs, including where they are needed for quarantine pest control as imposed by plant health authorities.

Article 2

The Council requests the Commission to submit a proposal, if appropriate in view of the outcomes of the study, or otherwise to inform the Council about any possible measures as a follow-up to the study.

Article 3

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

([2]) Interinstitutional Agreement between the European Parliament, the Council of the European Union and the European Commission on Better Law-Making (OJ L 123, 12.5.2016, p. 1).

Done at Luxembourg, 28 June 2021.

For the Council
The President
M. do C. ANTUNES

COMMISSION IMPLEMENTING DECISION (EU) 2021/1103

of 5 July 2021

on the recognition of the legal, supervisory and enforcement arrangements of Brazil for derivatives transactions entered into by Brazilian institutions under the regulation of the Central Bank of Brazil as equivalent to certain requirements of Article 11 of Regulation (EU) No 648/2012 of the European Parliament and Council on OTC derivatives, central counterparties and trade repositories

(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 648/2012 of the European Parliament and of the Council of 4 July 2012 on OTC derivatives, central counterparties and trade repositories ([1]), and in particular Article 13(2) thereof,

Whereas:

(1) Article 13 of Regulation (EU) No 648/2012 provides for a mechanism under which the Commission is empowered to adopt equivalence decisions whereby the legal, supervisory and enforcement arrangements of a third country are declared equivalent to the requirements laid down in Article 11 of Regulation (EU) No 648/2012 so that counterparties which enter into a transaction within the scope of that Regulation, where at least one of the counterparties is established in that third country, are deemed to have fulfilled those requirements by complying with the requirements set out in that third country's legal regime. The declaration of equivalence contributes to the achievement of the overarching aim of Regulation (EU) No 648/2012 namely to reduce systemic risk and increase the transparency of derivatives markets by ensuring an internationally consistent application of the principles agreed with third countries and laid down in that Regulation.

(2) Article 11(1), (2) and (3) of Regulation (EU) No 648/2012 which is supplemented by Commission Delegated Regulation (EU) No 149/2013 ([2]) and Commission Delegated Regulation (EU) 2016/2251 ([3]), establish the Union's legal requirements concerning the timely confirmation of the terms of an OTC derivative contract, the conduct of a portfolio compression exercise and the arrangements under which portfolios are reconciled in relation to OTC derivative contracts not cleared by a central counterparty ('CCP'). In addition, those provisions lay down the valuation and dispute resolution obligations applicable to those contracts ('operational risk mitigation techniques') as well as the obligations on the exchange of collateral ('margins') between counterparties.

(3) In order for a third country's legal, supervisory and enforcement regime to be considered equivalent to the regime of the Union in respect of operational risk mitigation techniques and margins requirements, the substantive outcome of the applicable legal, supervisory and enforcement arrangements should be equivalent to Union requirements under Article 11 of Regulation (EU) No 648/2012, ensure protection of professional secrecy that is equivalent to the protection provided for in Article 83 of that Regulation. Furthermore, equivalent legal, supervisory and enforcement arrangements must be effectively applied in an equitable and non-distortive manner in that third

([1]) OJ L 201, 27.7.2012, p. 1.

([2]) Commission Delegated Regulation (EU) No 149/2013 of 19 December 2012 supplementing Regulation (EU) No 648/2012 of the European Parliament and of the Council with regard to regulatory technical standards on indirect clearing arrangements, the clearing obligation, the public register, access to a trading venue, non-financial counterparties, and risk mitigation techniques for OTC derivatives contracts not cleared by a CCP (OJ L 52, 23.2.2013, p. 11).

([3]) Commission Delegated Regulation (EU) 2016/2251 of 4 October 2016 supplementing Regulation (EU) No 648/2012 of the European Parliament and of the Council on OTC derivatives, central counterparties and trade repositories with regard to regulatory technical standards for risk-mitigation techniques for OTC derivative contracts not cleared by a central counterparty (OJ L 340, 15.12.2016, p. 9).

country. The assessment of equivalence therefore encompasses a verification whether the legal, supervisory and enforcement arrangements of a third country ensure that OTC derivative contracts not cleared by a CCP and entered into by at least one counterparty established in that third country do not expose financial markets in the Union to a higher level of risk and consequently do not pose unacceptable levels of systemic risk in the Union.

(4) This Decision is not only based on a comparative analysis of the legal, supervisory and enforcement requirements applicable in Brazil, but also on an assessment of the outcome of those requirements and their adequacy in order to mitigate the risks arising from OTC derivative contracts not cleared by a CCP in a manner considered equivalent to the outcome of the requirements laid down in Regulation (EU) No 648/2012.

(5) The legal, supervisory and enforcement arrangements applicable in Brazil for OTC derivative contracts are laid out in laws as well as circulars, resolutions and instructions issued by Banco Central do Brasil ('BCB'), Comissão de Valores Mobiliários ('CVM') and Conselho Monetário Nacional ('CMN'). In particular, Law 6.385/76 regulates the securities market of Brazil; Instruction CVM 461/07 governs regulated securities markets, which comprise organized stock exchanges, organized OTC market and non-organized OTC market; Circular BCB 3.082/02sets out the criteria for accounting treatment of derivatives owned by financial institutions and other institutions supervised by the BCB; Resolução CMN 3.505/07 regulates OTC derivatives contracts made in Brazil by Brazilian financial institutions and other institutions supervised by the BCB; Resolução CMN 4.277/13 establishes mark-to-market and mark-to-model requirements of derivatives contracts entered into by financial institutions and other institutions supervised by the BCB; Instrução CVM 438/06 establishes mark-to-market requirements for certain types of mutual funds; Resoluçao 4.662/18 frames bilateral margin requirements; Resolução BCB 3.263/05 covers portfolio compression; Resolução CMN 4.373/14 lays down requirements for non-resident investors that enter into OTC derivatives transactions in Brazil and, finally, Laws 4.595/64, 6.385/76, 10.214/01, 12.810/13 govern professional secrecy, supervision and enforcement.

(6) Resolução BCB 3.263/05 does not set any obligations to perform portfolio compression nor does it frame any recommendation to do so. It does however make it possible for financial institutions and other institutions supervised by the BCB to enter into an agreement allowing it. There is no specific legislation regarding dispute resolution processes. Dispute resolution rules are determined by the trade repositories. Therefore, Brazilian arrangements may not be deemed equivalent to Union requirements in respect to portfolio compression and dispute resolution.

(7) OTC derivatives transactions have to be reported to a trade repository established and regulated in Brazil by any Brazilian entity entering one. According to Law 6.385/76, the validity of a transaction is conditional on its reporting to a trade repository. In accordance with Resolução CMN 4.373/14, non-resident investors that enter into OTC derivatives transactions in Brazil must be registered with CVM and must abide by legally binding confirmations of their transactions. As the transaction needs to be reported by both parties, there is no legal requirement other than the rules of the trade repository for the confirmation of the transactions, the reconciliation of bilateral portfolios or the resolution of disputes. Confirmation is simultaneous and contingent to reporting. Reporting must take place as soon as possible and usually happens on the same day that the transaction is entered into. Similarly, as the transactions are reported by both parties and confirmed concurrently by the trade repositories, there is no requirement to conduct portfolio reconciliation as, by construction, there cannot be any discrepancy between the counterparties' portfolios. The Brazilian arrangements for timely confirmation and portfolio reconciliation should therefore be deemed equivalent to the corresponding Union requirements.

(8) Under Resolução CMN 3.505/07 and Resolução CMN 4.277/13, valuation, either through mark-to-market or mark-to-model, is mandated daily for dealer banks, local branches of foreign banks, local subsidiaries of foreign banks as well as funds and asset managers, all regulated by the BCB. The obligation does not apply to cooperatives, insurers, reinsurers, pension funds and other non-financial corporate counterparties which are only obliged to conduct a

daily valuation when they belong to a financial conglomerate that also includes a multiple, commercial, investment, exchange or savings bank. The Brazilian arrangements may accordingly be deemed equivalent for to the corresponding Union requirements to the extent this decision is limited to transactions entered into with counterparties regulated by the BCB.

(9) Taking into account the obligation to report OTC derivatives transactions to trade repositories regulated in Brazil and the legal consequences of such obligation, a two-tier approach can therefore be considered in the case of Brazil and allow to conclude that with regard to timely confirmation and portfolio reconciliation, the requirements applicable in Brazil can be considered equivalent in outcome to those set out in Delegated Regulation (EU) No 149/2013. Moreover, the rules applicable in Brazil to daily valuation are equivalent to those set out in Delegated Regulation (EU) No 149/2013 to the extent the transactions are conducted with dealer banks, local branches of foreign branches, local subsidiaries of foreign banks, funds and asset managers as well as cooperatives, insurers and reinsurers, pension funds and other non-financial corporate counterparties which belong to a financial conglomerate that also includes a multiple, commercial, investment, exchange or savings bank. Taking into account the fact that the majority of cross-border OTC derivatives transactions are conducted by counterparties regulated by the BCB, this decision should therefore be limited to transactions conducted between counterparties regulated by the BCB and counterparties established in the Union and subject to the corresponding requirement under Delegated Regulation (EU) No 149/2013.

(10) Concerning the margins for OTC derivative contracts not cleared by a CCP, the legally binding requirements of Brazil consist of Resoluçao CMN 4.662/18 and Circular BCB 3.902/18 (the margin rules of Brazil).

(11) As laid down in the margin rules of Brazil, in-scope counterparties are all financial institutions or other institutions under the regulation of the BCB which have an operational group average aggregate notional of in-scope transactions above BRL 25 billion. In-scope transactions cover a set of OTC derivatives transactions equivalent to that of Regulation (EU) No 648/2012, with the exception of physically settled commodity derivatives, but including gold derivatives which are considered in-scope transactions, which are covered by the margin rules of the Union but not by the margin rules of Brazil; and equity options, which are covered by the margin rules of Brazil but benefit from a temporary exemption under Delegated Regulation (EU) 2016/2251. Additionally, and similarly to the applicable framework in the Union, intragroup transactions, physically settled FX forwards and swaps and transactions with instruments which definition is similar to that of covered bonds in the Union, are excluded from the set of in-scope transactions. They should however be counted when determining the operational group average aggregate notional amount. This decision should therefore not apply to physically settled commodity derivatives, with the exception of gold derivatives.

(12) In-scope counterparties must post and collect variation margin from 1 September 2019. In-scope counterparties with an operational group average aggregate notional of in-scope transactions above BRL 2,250 billion must post and collect initial margin from 1 September 2019 while in-scope counterparties below that threshold must post and collect initial margin from 1 September 2020. This decision shall therefore be limited to transactions between counterparties subject to Article 11(3) of Regulation (EU) No 648/2012 and in-scope counterparties subject to the requirement to post and collect variation and initial margin under the margin rules of Brazil.

(13) The margin rules of Brazil allow for a combined minimum transfer amount of initial and variation margins of BRL 1,5 million, whereas the threshold in Article 25 of Delegated Regulation (EU) 2016/2251 is EUR 500 000. The margin rules of Brazil also allow that initial margin is reduced by an amount of up to BRL 150 million. In-scope counterparties with a combined amount of initial margin below that threshold are not required to exchange initial margin. Article 29 of Delegated Regulation (EU) 2016/2251 provides for a similar relief, setting the threshold at EUR 50 million. Taking into account the marginal difference in the value of those currencies, those amounts should be considered equivalent.

(14) In a similar manner to the standardised method for the calculation of the initial margin set out in Annex IV to Delegated Regulation (EU) 2016/2251, the margin rules of Brazil allow for the use of a standardised model equivalent to the one laid out in the aforementioned annex. However, the margin rules of Brazil do not allow for the use of internal or third party models to calculate the initial margin. Even though the requirements in the margin rules of Brazil for the calculation of initial margin are therefore more restrictive than the requirements set out in Regulation (EU) No 648/2012 and Delegated Regulation (EU) 2016/2251 they should however be considered equivalent for the purpose of this decision.

(15) The requirements in the margin rules of Brazil on eligible collateral, its valuation, and on how collateral is held and segregated, are equivalent to those set out in Delegated Regulation (EU) 2016/2251. The margin rules of Brazil contain an equivalent list of eligible collateral but does not require counterparties to reasonably diversify the collateral collected, including by limiting securities with low liquidity in order to avoid concentration of collateral, in a way similar to Article 8 of Delegated Regulation (EU) 2016/2251. However, since these concentration requirements under Article 8 apply to Union counterparties it can be concluded that the collateral requirements under the application of margin rules of Brazil result in an equivalent outcome to that of Delegated Regulation (EU) 2016/2251. The margin rules of Brazil for OTC derivative contracts not cleared by a CCP should therefore be considered equivalent to those provided for under Article 11(3) of Regulation (EU) No 648/2012.

(16) With regard to the equivalent level of protection of professional secrecy in Brazil, Laws 4.595, of 1964, 6.385, of 1976, 10.214, of 2001, and 12.810, of 2013, empower BCB and CVM to request any data concerning derivatives transactions from trade repositories. Also, Complementary Law 105 of 2001 (LC 105) specifies that all data must be handled as confidential. In this context, if any other domestic or foreign authority needs data from Brazilian trade repositories, it should formally submit its request to BCB and/or CVM, which will conduct their analysis, considering, among other things, the restrictions imposed by LC 105, and the necessity for a formal agreement would be analysed on a case by case basis. Therefore together, these laws should be considered as providing an equivalent level of protection as regards professional secrecy as that provided in Regulation (EU) No 648/2012.

(17) CMN is the highest authority within the national financial system in Brazil, and responsible for formulating monetary and credit policies in general. The BCB is subordinate to CMN and is responsible for monetary policy, managing international reserves, banking supervision and overseeing foreign capital and credit. The BCB enforces prudential regulations and also acts as a monetary authority, and as such is responsible for ensuring systemic stability. In order to curb irregular practices, implement educative measures and confront situations that may jeopardize the national financial system, the BCB may issue administrative penalties, adopt precautionary or provisional measures, issue commitment letter and impose suspensions or restrictions. The CVM is subordinate to CMN and is responsible for regulating and overseeing the capital markets, including securities issuers, exchanges and OTC markets, and the institutions that are part of the system for distributing securities. The CVM aims to keep the market efficient and foster development, and also strives to protect investors and maintain equitable practices in the securities market, enforcing the rules regarding information disclosure and transparency. The measures available to the BCB and the CVM should be considered as providing for the effective application of the relevant legal, regulatory and enforcement arrangements under the OTC derivatives rules of Brazil in an equitable and non-distortive manner to ensure effective supervision and enforcement.

(18) This Decision recognises equivalence of binding requirements set out in Brazilian law relating to OTC derivative contracts applicable at the time of adoption of this Decision. The Commission, in cooperation with ESMA, will monitor on a regular basis the evolution of the legal, supervisory and enforcement arrangements for these OTC derivative contracts and their consistent and effective implementation, regarding the timely confirmation, portfolio compression and reconciliation, valuation, dispute resolution and margin requirements applicable to OTC derivative contracts, not cleared by a CCP with respect to which this Decision has been taken. As part of its monitoring efforts the Commission may request the BCB and the CVM to provide information on regulatory and supervisory developments. The Commission may undertake a specific review at any time, where relevant developments make it necessary for the Commission to re-assess the declaration of equivalence granted by this Decision. Such re-assessment may lead to the repeal of this Decision, which would as a consequence make counterparties automatically subject again to all requirements laid down in Regulation (EU) No 648/2012.

(19) The measures provided for in this Decision are in accordance with the opinion of the European Securities Committee,

HAS ADOPTED THIS DECISION:

Article 1

For the purposes of Article 13(3) of Regulation (EU) No 648/2012, the legal, supervisory and enforcement arrangements of Brazil for timely confirmation, daily valuation and portfolio reconciliation that are applied to transactions regulated as OTC derivatives by the Banco Central do Brasil ('BCB') and the Comissão de Valores Mobiliários ('CVM') and that are not centrally cleared by a CCP shall be considered as equivalent to the corresponding requirements set out in paragraphs 1 and 2 of Article 11 of Regulation (EU) No 648/2012, where at least one of the counterparties to those transactions is an in-scope counterparty for the purpose of the margin rules of Brazil.

Article 2

For the purposes of Article 13(3) of Regulation (EU) No 648/2012, the legal, supervisory and enforcement arrangements of Brazil for the exchange of collateral that are applied to transactions regulated as OTC derivatives by the BCB and the CVM, to the exception of physically settled commodity derivatives but not including gold derivatives, and that are not cleared by a CCP shall be considered as equivalent to the requirements of paragraph 3 of Article 11 of Regulation (EU) No 648/2012, where at least one of the counterparties to those transactions is an in-scope counterparty for the purpose of the margin rules of Brazil.

Article 3

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, 5 July 2021.

For the Commission
The President
Ursula VON DER LEYEN

COMMISSION IMPLEMENTING DECISION (EU) 2021/1104

of 5 July 2021

on the recognition of the legal, supervisory and enforcement arrangements of Canada for derivatives transactions supervised by the Office of the Superintendent of Financial Institutions as equivalent to certain requirements of Article 11 of Regulation (EU) No 648/2012 of the European Parliament and of the Council on OTC derivatives, central counterparties and trade repositories

(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 648/2012 of the European Parliament and of the Council of 4 July 2012 on OTC derivatives, central counterparties and trade repositories ([1]), and in particular Article 13(2) thereof,

Whereas:

(1) Article 13 of Regulation (EU) No 648/2012 provides for a mechanism under which the Commission is empowered to adopt equivalence decisions whereby the legal, supervisory and enforcement arrangements of a third country are declared equivalent to the requirements laid down in Articles 4, 9, 10 and 11 of Regulation (EU) No 648/2012 so that counterparties which enter into a transaction within the scope of that Regulation, where at least one of the counterparties is established in that third country, are deemed to have fulfilled those requirements by complying with the requirements set out in that third country's legal regime. The declaration of equivalence contributes to the achievement of the overarching aim of Regulation (EU) No 648/2012 namely to reduce systemic risk and increase the transparency of derivatives markets by ensuring an internationally consistent application of the principles agreed with third countries and laid down in that Regulation.

(2) Article 11(1), (2) and (3) of Regulation (EU) No 648/2012 which is supplemented by Commission Delegated Regulation (EU) No 149/2013 ([2]) and Commission Delegated Regulation (EU) 2016/2251 ([3]), establish the Union's legal requirements concerning the timely confirmation of the terms of an OTC derivative contract, the conduct of a portfolio compression exercise and the arrangements under which portfolios are reconciled in relation to OTC derivative contracts not cleared by a central counterparty ('CCP'); in addition, those provisions lay down the valuation and dispute resolution obligations applicable to those contracts ('operational risk mitigation techniques') as well as the obligations on the exchange of collateral ('margins') between counterparties.

(3) In order for a third country's legal, supervisory and enforcement regime to be considered equivalent to the regime of the Union in respect of operational risk mitigation techniques and margins requirements, the substantive outcome of the applicable legal, supervisory and enforcement arrangements should be equivalent to Union requirements under Article 11 of Regulation (EU) No 648/2012, ensure protection of professional secrecy that is equivalent to the protection provided for in Article 83 of that Regulation. Furthermore, equivalent legal, supervisory and enforcement arrangements must be effectively applied in an equitable and non-distortive manner in that third country. The assessment of equivalence therefore encompasses a verification whether the legal, supervisory and enforcement arrangements of a third country ensure that OTC derivative contracts not cleared by a CCP and entered into by at least one counterparty established in that third country do not expose financial markets in the Union to a higher level of risk and consequently do not pose unacceptable levels of systemic risk in the Union.

([1]) OJ L 201, 27.7.2012, p. 1.

([2]) Commission Delegated Regulation (EU) No 149/2013 of 19 December 2012 supplementing Regulation (EU) No 648/2012 of the European Parliament and of the Council with regard to regulatory technical standards on indirect clearing arrangements, the clearing obligation, the public register, access to a trading venue, non-financial counterparties, and risk mitigation techniques for OTC derivatives contracts not cleared by a CCP (OJ L 52, 23.2.2013, p. 11).

([3]) Commission Delegated Regulation (EU) 2016/2251 of 4 October 2016 supplementing Regulation (EU) No 648/2012 of the European Parliament and of the Council on OTC derivatives, central counterparties and trade repositories with regard to regulatory technical standards for risk-mitigation techniques for OTC derivative contracts not cleared by a central counterparty (OJ L 340, 15.12.2016, p. 9).

(4) On 1 October 2013, the Commission received the technical advice of the European Securities and Markets Authority ('ESMA') on the legal, supervisory and enforcement arrangements in Canada ([4]) including, inter alia, the operational risk mitigation techniques applicable to OTC derivative contracts not cleared by a CCP. In its technical advice, ESMA concluded that given that Canada was still in the process of finalising its regulatory regime for the clearing obligation, non-financial counterparties and risk mitigation techniques for uncleared trades, it was not in a position to perform a conclusive analysis and deliver a technical advice on this topic.

(5) The Commission has taken note of ESMA's technical advice and has taken into account the regulatory developments that have taken place since then. This Decision is not only based on a comparative analysis of the legal, supervisory and enforcement requirements applicable in Canada, but also on an assessment of the outcome of those requirements and their adequacy in order to mitigate the risks arising from OTC derivative contracts not cleared by a CCP in a manner considered equivalent to the outcome of the requirements laid down in Regulation (EU) No 648/2012.

(6) The legal, supervisory and enforcement arrangements applicable in Canada for OTC derivative contracts are laid down in Guideline E-22 on Margin Requirements for Non-Centrally Cleared Derivatives and in Guideline B-7 on Derivatives Sound Practices (together 'the Guidelines') of the Office of the Superintendent of Financial Institutions ('OSFI'). Non-compliance with the Guidelines may trigger a review of the authorisation under which entities subject to the Guidelines operate. OSFI exercises prudential regulation and supervision of Federally-Regulated Financial Institutions (FRFIs) in Canada and is responsible for monitoring and enforcement of compliance with all OSFI guidelines. FRFIs refer to banks, foreign bank branches, bank holding companies, trust and loans companies, cooperative credit associations, cooperative retail associations, life insurance companies, property and casualty insurance companies and insurance holding companies. The Guidelines establish minimum standards for margin and other risk mitigation techniques requirements for non-centrally cleared derivatives transactions undertaken by FRFIs. Guideline B-7 entered into force in November 2014 while Guideline E-22 entered into force in June 2017 and some of its requirements are subject to a phase-in in accordance with the international framework and aligned with the existing phase-in in Delegated Regulation (EU) 2016/2251.

(7) The operational risk mitigation techniques for OTC derivative contracts not cleared by a CCP, as laid down in Guideline B-7, are still insufficient when compared to the obligations provided for in Article 11(1) and 11(2) of Regulation (EU) No 648/2012 and Delegated Regulation (EU) No 149/2013 with regard to timely confirmation, portfolio compression and reconciliation, and transaction valuation. This Decision should therefore only cover the legal, supervisory and enforcement arrangements concerning dispute resolution obligations as provided for in Article 11(1) of Regulation (EU) No 648/2012 and Delegated Regulation (EU) No 149/2013 as well as those concerning margin requirements as provided for in Article 11(3) of Regulation (EU) No 648/2012 and Delegated Regulation (EU) 2016/2251.

(8) With regard to the requirements for the resolution of disputes applicable to OTC derivatives not cleared by a CCP, the OTC derivatives provisions of Canada included in Guideline B-7 applicable to Covered FRFIs contain similar obligations to those provided for in Article 11(1) of Regulation (EU) No 648/2012. In particular, Guideline B-7 contains specific provisions regarding dispute resolution applicable to OTC derivative contracts not cleared by a CCP.

(9) Concerning the margins for OTC derivative contracts not cleared by a CCP, the provisions laid out in Guideline E-22 apply to OTC derivative contracts defined as in point (7) of Article 2 of Regulation (EU) No 648/2012, with the exception of physically settled FX forwards and FX swaps, which are not subject to the margin requirements provided for under Guideline E-22, and the fixed physically settled FX transactions associated with the exchange of principal of cross-currency swaps, which are exempted from initial margin requirements under Guideline E-22, as well as of physically settled commodity transactions which are not included in the definition of a derivative under Guideline E-22. In accordance with Articles 27, 30, 30a, 31 and 38 of Delegated Regulation (EU) 2016/2251, FX swaps and FX

([4]) ESMA/2013/1375, Technical advice on third country regulatory equivalence under EMIR – Canada, Final report, European Securities and Markets Authority, 1 October 2013.

forwards, as well as the exchange of principal of currency swaps, are exempted from the initial margin requirements, whereas derivatives associated with covered bonds for hedging purposes, some derivatives connected with securitisation, derivatives with counterparties in third countries where legal enforceability of netting agreements or collateral protection cannot be ensured as well as single-stock equity options and index options benefit from exemptions from initial and variation margin requirements. This Decision should therefore not apply to physically settled commodity derivatives.

(10) Under Guideline E-22 all FRFIs belonging to a consolidated group whose aggregate month-end average notional amount of non-centrally cleared derivatives for March, April, and May of 2016 and any year thereafter exceeds CAD 12 billion ('Covered Entities') must exchange initial and variation margin. Under Guideline E-22 Canada has adopted the internationally agreed schedule for the phase-in of initial margin requirements. Sovereigns, central banks, public sector entities, eligible multilateral development banks, the Bank for International Settlements and central counterparties are excluded from the definition of a Covered Entity. Treasury subsidiaries that undertake risk management activities on behalf of subsidiaries within a corporate group and some special purpose entities (SPEs) are excluded from the definition of Covered Entities. This Decision should therefore cover the legal, supervisory and enforcement arrangements regarding dispute resolution and exchange of collateral obligations applicable to FRFIs that are Covered Entities ('Covered FRFIs'). Article 11 of Regulation (EU) No 648/2012 require all counterparties to an OTC derivative transaction not cleared by a CCP to exchange variation margins on a daily basis. This Decision should therefore be conditional on the exchange of variation margin for transactions conducted with Covered FRFIs.

(11) According to Guideline E-22, initial and variation margin must be calculated and called within two business days of the execution of a transaction on a non-centrally cleared derivative between a Covered FRFI and a Covered Entity. Thereafter, margins must be calculated and called on a daily basis. Margins must be posted or received at the latest on the second business day following each call for margins. Article 12 of Delegated Regulation (EU) 2016/2251 requires all counterparties to an OTC derivative contract not cleared by a CCP to exchange variation margin on daily basis, or adjust the margin period of risk used to calculate the initial margin accordingly. Therefore, conditions should be laid down with regard to variation margin.

(12) Guideline E-22 also provides for a combined minimum transfer amount of initial and variation margins of CAD 750 000. This amount is set at EUR 500 000 in Article 25 of Delegated Regulation (EU) 2016/2251. Taking into account the marginal difference in the value of those currencies and the common objective, those amounts should be considered equivalent.

(13) As for the calculation of initial margin, in a similar manner to the standardised method for the calculation of the initial margin set out in Annex IV to Delegated Regulation (EU) 2016/2251, Guideline E-22 allows for the use of a standardised model equivalent to the one laid out in the aforementioned Annex. Alternatively, internal or third-party models may be used to calculate the initial margin where those models meet certain requirements which are equivalent to those set in Delegated Regulation (EU) 2016/2251. Internal and third-party models are subject to review by OSFI against the criteria established for compliance.

(14) The requirements in Guideline E-22 on eligible collateral and on how that collateral is held and segregated are similar to those set out in Delegated Regulation (EU) 2016/2251. Guideline E-22 contains an equivalent list of eligible collateral and, similarly to Delegated Regulation (EU) 2016/2251, it establishes that collateral must be valued daily. Furthermore, it establishes that initial margin exchanged must be held in such a way as to ensure that it is immediately available to the collecting party in the event of the counterparty's default and is subject to arrangements which protect the posting party to the extent possible in case of bankruptcy of the collecting counterparty.

(15) With regard to the protection of professional secrecy, information held by OSFI is subject to the provisions set out in section 22 of the Office of the Superintendent of Financial Institutions Act ('OSFI Act'), which ensures that any information regarding the business or affairs of a financial institution, or regarding persons dealing with them, that is obtained by OSFI or by any person acting under the direction of OSFI is confidential and shall be treated accordingly. OSFI and persons acting under its directions are also subject to the Privacy Act, which protects personal information that is under the control of a federal government institution, as well as the Access to Information Act which provides a right to access to information in records under the control of federal government institutions. Therefore section 22 of OSFI Act, together with the Privacy Act and the Access to Information Act, provide guarantees of professional secrecy, including the protection of business secrets, equivalent to those set out in Title VIII of Regulation (EU) No 648/2012.

(16) Finally, as regards effective federal supervision and enforcement of the legal arrangements in Canada, OSFI has primary responsibility for monitoring and enforcement of compliance with the Guidelines. OSFI can take a wide range of supervisory measures to address any breach of the applicable requirements. Those measures should therefore be considered to provide for the effective application of the relevant legal, regulatory and enforcement arrangements under the Guidelines in an equitable and non-distortive manner so as to ensure effective supervision and enforcement equivalent to the supervisory and enforcement arrangements available under the Union legal framework.

(17) This Decision recognises equivalence of binding requirements set out in Canadian law relating to OTC derivative contracts applicable at the time of adoption of this Decision. The Commission, in cooperation with ESMA, will monitor on a regular basis the evolution of the legal, supervisory and enforcement arrangements for these OTC derivative contracts and their consistent and effective implementation, regarding the timely confirmation, portfolio compression and reconciliation, valuation, dispute resolution and margin requirements applicable to OTC derivative contracts, not cleared by a CCP with respect to which this Decision has been taken. As part of its monitoring efforts the Commission may request OSFI to provide information on regulatory and supervisory developments. The Commission may undertake a specific review at any time, where relevant developments make it necessary for the Commission to reassess the declaration of equivalence granted by this Decision. Such reassessment may lead to the repeal of this Decision, which would as a consequence make counterparties automatically subject again to all requirements laid down in Regulation (EU) No 648/2012.

(18) The measures provided for in this Decision are in accordance with the opinion of the European Securities Committee,

HAS ADOPTED THIS DECISION:

Article 1

For the purposes of Article 13(3) of Regulation (EU) No 648/2012, the legal, supervisory and enforcement arrangements of Canada for dispute resolution obligations set out in Guideline B-7 that are applied to non-centrally cleared derivative transactions regulated by the Office of the Superintendent of Financial Institutions ('OSFI') shall be considered as equivalent to the requirements set out in Article 11(1) of Regulation (EU) No 648/2012, where at least one of the counterparties to those transactions is established in Canada and is a Covered Federally Regulated Financial Institution ('Covered FRFIs') as defined under Guideline E-22.

Article 2

For the purposes of Article 13(3) of Regulation (EU) No 648/2012, the legal, supervisory and enforcement arrangements of Canadafor the exchange of collateral that are applied to non-centrally cleared derivative transactions regulated by OSFI, with the exeption of phisically settled commodity derivatives, shall be considered as equivalent to the requirements set out in Article 11(3) of Regulation (EU) No 648/2012 as further specified in Delegated Regulation (EU) 2016/2251, where the following conditions are satisfied:

(a) at least one of the counterparties to those transactions is established in Canada and is subject to the margin requirements of Canada;

(b) transactions are marked-to-market and, where variation margin is required to be provided under Regulation (EU) No 648/2012, variation margin is exchanged on the same day on which it is calculated;

By way of derogation from point (b), where it is established between the counterparties that variation margin cannot consistently be provided on the same day in which it is calculated, the legal, supervisory and enforcement arrangements of Canada shall also be considered as equivalent to the requirements of Article 11(3) of Regulation (EU) No 648/2012 where variation margin is provided within two business days of its calculation and the margin period of risk used to calculate initial margin is adjusted accordingly.

Article 3

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, 5 July 2021.

For the Commission
The President
Ursula VON DER LEYEN

COMMISSION IMPLEMENTING DECISION (EU) 2021/1105

of 5 July 2021

on the recognition of the legal, supervisory and enforcement arrangements of Singapore for derivatives transactions supervised by the Monetary Authority of Singapore as equivalent to certain requirements of Article 11 of Regulation (EU) No 648/2012 of the European Parliament and Council on OTC derivatives, central counterparties and trade repositories

(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 648/2012 of the European Parliament and of the Council of 4 July 2012 on OTC derivatives, central counterparties and trade repositories ([1]), and in particular Article 13(2) thereof,

Whereas:

(1) Article 13 of Regulation (EU) No 648/2012 provides for a mechanism under which the Commission is empowered to adopt equivalence decisions whereby the legal, supervisory and enforcement arrangements of a third country are declared equivalent to the requirements laid down in Articles 4, 9, 10 and 11 of Regulation (EU) No 648/2012 so that counterparties which enter into a transaction within the scope of that Regulation, where at least one of the counterparties is established in that third country, are deemed to have fulfilled those requirements by complying with the requirements set out in that third country's legal regime. The declaration of equivalence contributes to the achievement of the overarching aim of Regulation (EU) No 648/2012 namely to reduce systemic risk and increase the transparency of derivatives markets by ensuring an internationally consistent application of the principles agreed with third countries and laid down in that Regulation.

(2) Article 11(1), (2) and (3) of Regulation (EU) No 648/2012 which is supplemented by Commission Delegated Regulation (EU) No 149/2013 ([2]) and Commission Delegated Regulation (EU) 2016/2251 ([3]), establish the Union's legal requirements concerning the timely confirmation of the terms of an OTC derivative contract, the conduct of a portfolio compression exercise and the arrangements under which portfolios are reconciled in relation to OTC derivative contracts not cleared by a central counterparty ('CCP'); in addition, those provisions lay down the valuation and dispute resolution obligations applicable to those contracts ('operational risk mitigation techniques') as well as the obligations on the exchange of collateral ('margins') between counterparties.

(3) In order for a third country's legal, supervisory and enforcement regime to be considered equivalent to the regime of the Union in respect of operational risk mitigation techniques and margins requirements, the substantive outcome of the applicable legal, supervisory and enforcement arrangements is to be equivalent to Union requirements under Article 11 of Regulation (EU) No 648/2012, ensure protection of professional secrecy that is equivalent to the protection provided for in Article 83 of that Regulation. Furthermore, equivalent legal, supervisory and enforcement arrangements must be effectively applied in an equitable and non-distortive manner in that third country. The assessment of equivalence therefore encompasses a verification whether the legal, supervisory and enforcement arrangements of a third country ensure that OTC derivative contracts not cleared by a CCP and entered into by at least one counterparty established in that third country do not expose financial markets in the Union to a higher level of risk and consequently do not pose unacceptable levels of systemic risk in the Union.

([1]) OJ L 201, 27.7.2012, p. 1.

([2]) Commission Delegated Regulation (EU) No 149/2013 of 19 December 2012 supplementing Regulation (EU) No 648/2012 of the European Parliament and of the Council with regard to regulatory technical standards on indirect clearing arrangements, the clearing obligation, the public register, access to a trading venue, non-financial counterparties, and risk mitigation techniques for OTC derivatives contracts not cleared by a CCP (OJ L 52, 23.2.2013, p. 11).

([3]) Commission Delegated Regulation (EU) 2016/2251 of 4 October 2016 supplementing Regulation (EU) No 648/2012 of the European Parliament and of the Council on OTC derivatives, central counterparties and trade repositories with regard to regulatory technical standards for risk-mitigation techniques for OTC derivative contracts not cleared by a central counterparty (OJ L 340, 15.12.2016, p. 9).

(4) This Decision is not only based on a comparative analysis of the legal, supervisory and enforcement requirements applicable in Singapore, but also on an assessment of the outcome of those requirements and their adequacy in order to mitigate the risks arising from OTC derivative contracts not cleared by a CCP in a manner considered equivalent to the outcome of the requirements laid down in Regulation (EU) No 648/2012.

(5) The legal, supervisory and enforcement arrangements applicable in Singapore for non-centrally cleared derivative contracts are laid out in the Securities and Futures (licensing and conduct of business) Regulations, as well as in the Guidelines on risk mitigation requirements for non-centrally cleared over-the-counter derivative contracts ('Guidelines on risk mitigation requirements') and in the Guidelines on margin requirements for non-centrally cleared derivative contracts ('Guidelines on margins') of the Monetary Authority of Singapore ('MAS'). The Guidelines on margins entered into force on 1 March 2017 while those on risk mitigation requirements were published in April 2019. The MAS is Singapore's central bank and financial regulator and exercises prudential supervision over all financial institutions in Singapore, which include banks, merchant banks, insurance companies, capital market intermediaries, financial advisors and financial market infrastructures. It has jurisdiction over OTC derivatives within the meaning of Article 2(7) of Regulation (EU) No 648/2012.

(6) The operational risk mitigation techniques for OTC derivative contracts not cleared by a CCP, as laid down in Article 54B of the Securities and Futures (Licensing and conduct of business) Regulations, in the Guidelines on risk mitigation requirements and in the Guidelines on Margin Requirements of MAS are similar to those provided for in paragraphs 1 and 2 of Article 11 of Regulation (EU) No 648/2012 and Delegated Regulation (EU) No 149/2013 with regard to timely confirmation, valuation of contracts, portfolio compression, portfolio reconciliation and dispute resolution.

(7) With regard to the requirements for timely confirmation, portfolio compression and reconciliation, valuation and the resolution of disputes applicable to OTC derivatives not cleared by a CCP, the OTC derivatives rules contained in the Guidelines of MAS could be considered equivalent to the requirements set out in paragraphs 1 and 2 of Article 11 of Regulation (EU) No 648/2012. Non-compliance with the Guidelines may trigger a review of the authorisation under which entities subject to the Guidelines operate.

(8) The margin rules of Singapore apply to OTC derivatives contracts as defined in point (7) of Article 2 of Regulation (EU) No 648/2012, with the exception of physically settled FX forwards and swaps, fixed physically settled FX transactions associated with the exchange of principal by means of cross-currency swaps, physically-settled commodity derivatives entered into for commercial purposes, uncleared derivatives without a legally enforceable netting agreement, uncleared derivatives without a legally enforceable collateral arrangement, equity options and equity index options. In addition, the margin rules of Singapore do not contain any specific treatment for structured products, including covered bonds and securitisations. Under the terms of Regulation (EU) No 648/2012 and Delegated Regulation (EU) 2016/2251, FX swaps and FX forwards and the exchange of principal of currency swaps are exempted from the initial margin requirements and only derivatives associated with covered bonds for hedging purposes, derivatives associated with certain securitisations, and derivatives with counterparties in third countries where legal enforceability of netting agreements or collateral protection cannot be ensured, as well as single-stock equity options and index options, benefit from exemptions from margin requirements. This Decision should therefore not apply to physically-settled commodity derivatives entered into for commercial purposes.

(9) The margin requirements set out in the Guidelines on margins apply to 'persons who are exempt from holding a capital markets services license under section 99(1)(a) or (b) of the SFA' ('MAS Covered Entity'), which refers to banks licensed under the Banking Act of Singapore and merchant banks. Sovereigns, central banks, public sector entities, eligible multilateral agencies, organisation or entities, the Bank for International Settlements, the International Monetary Fund, the World Bank, the European Bank for Reconstruction and Development are exempted from exchange of margins under the Guidelines. The definition of an 'MAS Covered Entity' is therefore a subset of the definition of 'financial counterparty' in Regulation (EU) No 648/2012. This decision should therefore cover the legal, supervisory and enforcement arrangements regarding operational risk mitigation and exchange of collateral obligations applicable to MAS Covered Entities.

(10) An MAS Covered Entity must exchange variation margin if its aggregate month-end average notional amount of uncleared derivative contracts for March, April and May of the year exceeds S$ 5 billion or in case of a transaction with an MAS Covered Entity whose aggregate month-end average notional amount of uncleared derivatives contracts for March, April and May of the year exceeds that threshold. Regulation (EU) No 648/2012 requires all counterparties to an OTC derivative transaction not cleared by a CCP to exchange variation margin on a daily basis. This Decision should therefore be conditional on the exchange of variation margin for transactions conducted with MAS Covered Entities which are subject to the margin rules of Singapore.

(11) According to the Guidelines on margins, the exchange of initial and variation margins (together 'margins') should take place within the standard settlement cycle for the relevant collateral type but no later than three business days from the transaction date or from the date when margins have to be re-calculated. Regulation (EU) No 648/2012 requires all counterparties to an OTC derivative contract not cleared by a CCP to exchange variation margin on a daily basis or adjust the margin period of risk used to calculate the initial margin accordingly. Therefore, conditions should be laid down with regard to variation margin.

(12) Similar to the requirements laid down in Delegated Regulation (EU) 2016/2251, under the Guidelines on margins MAS Covered Entities with an aggregate notional amount of uncleared OTC derivatives, calculated at the level of the consolidated group and excluding intragroup transactions, for the months of March, April and May of the year before the year in which the calculation exceeds S$13 billion must exchange initial margin. Singapore has adopted the internationally agreed phase-in schedule for initial margin requirements. The Guidelines on margins also provide for a combined minimum transfer amount of initial and variation margins of S$ 800 000. The threshold in Article 25 of Delegated Regulation (EU) 2016/2251 is EUR 500 000. Taking into account the marginal difference in the value of these currencies, those amounts should be considered equivalent.

(13) In a similar manner to the standardised method for the calculation of the initial margin set out in Annex IV to Delegated Regulation (EU) 2016/2251, the margin rules of Singapore allow for the use of a standardised model equivalent to the one laid out in the aforementioned Annex. Alternatively, internal or third-party models may be used to calculate the initial margin where those models contain certain specific parameters, including minimum confidence intervals and margin periods of risk and certain historical data, including stressed periods. Before using an internal or third-party model, and before making any changes thereto, counterparties must notify the MAS and provide all relevant documentation including model methodology, specifications and validation reports to demonstrate that the model complies with the Guidelines on margins.

(14) The requirements in the margin rules of Singapore on eligible collateral, and on how that collateral is held and segregated, can be considered as equivalent to those set out in Delegated Regulation (EU) 2016/2251. The margin rules of Singapore also contain a similar list of eligible collateral and require MAS Covered Entities to reasonably diversify the collateral they collect, including by limiting securities with low liquidity in order to avoid concentration of collateral. The requirements in the margin rules of Singapore applicable to the valuation of collateral are comparable to the requirements laid out in Article 19 of Delegated Regulation (EU) 2016/2251.

(15) With regard to the equivalent level of protection of professional secrecy in Singapore, the employees of the MAS are subject to the provisions on professional secrecy included in the Monetary Authority of Singapore Act ('MAS Act'), which prohibits directors, officers, employees, consultants and agents of the MAS to divulge information which has come to their knowledge in the course of their duties. Therefore, the 'MAS Act' guarantees professional secrecy, including the protection of business secrets exchanged by competent authorities with third parties, equivalent to those set out in Title VIII of Regulation (EU) No 648/2012. Therefore, the 'MAS Act' should be considered as providing an equivalent level of protection as regards professional secrecy as that provided in Regulation (EU) No 648/2012.

(16) Finally, as regards the effective supervision and enforcement of the legal arrangements in Singapore, the MAS has primary responsibility for monitoring and enforcing compliance with the Guidelines. MAS has the power to take a broad range of supervisory measures to stop any breach of the applicable requirements, such as warning letters, removal of directors, denial of supervisory approvals or limits placed on the MAS Covered Entities' activities. Those measures should therefore be considered as providing for the effective application of the relevant legal, regulatory and enforcement arrangements under the OTC derivatives rules of Singapore in an equitable and non-distortive manner to ensure effective supervision and enforcement.

(17) This Decision recognises equivalence of binding requirements set by the MAS relating to OTC derivative contracts applicable at the time of adoption of this Decision. The Commission, in cooperation with ESMA, will monitor on a regular basis the evolution of the legal, supervisory and enforcement arrangements for these OTC derivative contracts and their consistent and effective implementation, regarding the timely confirmation, portfolio compression and reconciliation, valuation, dispute resolution and margin requirements applicable to OTC derivative contracts, not cleared by a CCP with respect to which this Decision has been taken. As part of its monitoring efforts the Commission may request MAS to provide information on regulatory and supervisory developments. The Commission may undertake a specific review at any time, where relevant developments make it necessary for the Commission to re-assess the declaration of equivalence granted by this Decision. Such re-assessment may lead to the repeal of this Decision, which would as a consequence make counterparties automatically subject again to all requirements laid down in Regulation (EU) No 648/2012.

(18) The measures provided for in this Decision are in accordance with the opinion of the European Securities Committee,

HAS ADOPTED THIS DECISION:

Article 1

For the purposes of Article 13(3) of Regulation (EU) No 648/2012, the legal, supervisory and enforcement arrangements of Singapore for trade confirmation, portfolio compression and reconciliation, valuation and dispute resolution that are applied to transactions regulated as OTC derivatives by the Monetary Authority of Singapore ('MAS') and that are not cleared by a CCP shall be considered as equivalent to the corresponding requirements set out in paragraphs 1 and 2 of Article 11 of Regulation (EU) No 648/2012, where at least one of the counterparties to those transactions is established in Singapore and is a 'MAS Covered Entity' as defined under the Guidelines on margin requirements for non-centrally cleared OTC derivative contracts.

Article 2

For the purposes of Article 13(3) of Regulation (EU) No 648/2012, the legal, supervisory and enforcement arrangements of Singapore for the exchange of collateral that are applied to transactions regulated as OTC derivatives by the MAS and that are not cleared by a CCP, with the exception of physically-settled commodity derivatives for commercial purposes, shall be considered as equivalent to the requirements of paragraph 3 of Article 11 of Regulation (EU) No 648/2012, where the following conditions are satisfied:

(a) at least one of the counterparties to those transactions is established in Singapore and is a MAS Covered Entity as defined under the Guidelines on margin requirements for non-centrally cleared OTC derivative contracts of Singapore;

(b) where variation margin is required to be provided under Regulation (EU) No 648/2012, variation margin is exchanged on the same day in which it is calculated.

By way of derogation from point (b), where it is established between the counterparties that variation margin cannot consistently be provided on the same day in which it is calculated, the legal, supervisory and enforcement arrangements of Singapore shall also be considered as equivalent to the requirements of Art. 11(3) of Regulation (EU) No 648/2012 where variation margin is exchanged within two business days of its calculation and the margin period of risk used to calculate initial margin is adjusted accordingly.

Article 3

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, 5 July 2021.

For the Commission
The President
Ursula VON DER LEYEN

COMMISSION IMPLEMENTING DECISION (EU) 2021/1106

of 5 July 2021

on the recognition of the legal, supervisory and enforcement arrangements of Australia for derivatives transactions supervised by the Australian Prudential Regulation Authority as equivalent to certain requirements of Article 11 of Regulation (EU) No 648/2012 of the European Parliament and of the Council on OTC derivatives, central counterparties and trade repositories

(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 648/2012 of the European Parliament and of the Council of 4 July 2012 on OTC derivatives, central counterparties and trade repositories ([1]), and in particular Article 13(2) thereof,

Whereas:

(1) Article 13 of Regulation (EU) No 648/2012 provides for a mechanism under which the Commission is empowered to adopt equivalence decisions whereby the legal, supervisory and enforcement arrangements of a third country are declared equivalent to the requirements laid down in Articles 4, 9, 10 and 11 of Regulation (EU) No 648/2012 so that counterparties which enter into a transaction within the scope of that Regulation, where at least one of the counterparties is established in that third country, are deemed to have fulfilled those requirements by complying with the requirements set out in that third country's legal regime. The declaration of equivalence contributes to the achievement of the overarching aim of Regulation (EU) No 648/2012 namely to reduce systemic risk and increase the transparency of derivatives markets by ensuring an internationally consistent application of the principles agreed with third countries and laid down in that Regulation.

(2) Article 11(1), (2) and (3) of Regulation (EU) No 648/2012 which is supplemented by Commission Delegated Regulation (EU) No 149/2013 ([2]) and Commission Delegated Regulation (EU) 2016/2251 ([3]), establish the Union's legal requirements concerning the timely confirmation of the terms of an OTC derivative contract, the conduct of a portfolio compression exercise and the arrangements under which portfolios are reconciled in relation to OTC derivative contracts not cleared by a central counterparty ('CCP'). In addition, those provisions lay down the valuation and dispute resolution obligations applicable to those contracts ('operational risk mitigation techniques') as well as the obligations on the exchange of collateral ('margins') between counterparties.

(3) In order for a third country's legal, supervisory and enforcement regime to be considered equivalent to the regime of the Union in respect of operational risk mitigation techniques and margins requirements, the substantive outcome of the applicable legal, supervisory and enforcement arrangements is to be equivalent to Union requirements under Article 11 of Regulation (EU) No 648/2012, ensure protection of professional secrecy that is equivalent to the protection provided for in Article 83 of that Regulation. Furthermore, equivalent legal, supervisory and enforcement arrangements must be effectively applied in an equitable and non-distortive manner in that third country. The assessment of equivalence therefore encompasses a verification whether the legal, supervisory and enforcement arrangements of a third country ensure that OTC derivative contracts not cleared by a CCP and entered into by at least one counterparty established in that third country do not expose financial markets in the Union to a higher level of risk and consequently do not pose unacceptable levels of systemic risk in the Union.

([1]) OJ L 201, 27.7.2012, p. 1.

([2]) Commission Delegated Regulation (EU) No 149/2013 of 19 December 2012 supplementing Regulation (EU) No 648/2012 of the European Parliament and of the Council with regard to regulatory technical standards on indirect clearing arrangements, the clearing obligation, the public register, access to a trading venue, non-financial counterparties, and risk mitigation techniques for OTC derivatives contracts not cleared by a CCP (OJ L 52, 23.2.2013, p. 11).

([3]) Commission Delegated Regulation (EU) 2016/2251 of 4 October 2016 supplementing Regulation (EU) No 648/2012 of the European Parliament and of the Council on OTC derivatives, central counterparties and trade repositories with regard to regulatory technical standards for risk-mitigation techniques for OTC derivative contracts not cleared by a central counterparty (OJ L 340, 15.12.2016, p. 9).

(4) On 1 October 2013, the Commission received the technical advice of the European Securities and Markets Authority ('ESMA') on the legal, supervisory and enforcement arrangements in Australia ([4]) including the operational risk mitigation techniques applicable to OTC derivative contracts not cleared by a CCP. In its technical advice, ESMA concluded that there were no legally binding requirements on timely confirmation of the terms of an OTC derivative contract, the arrangements for carrying out portfolio reconciliation, the conduct of a portfolio compression, the valuation of a portfolio and the obligation for dispute resolution or for the exchange of collateral between counterparties to OTC derivative contracts in Australia. ESMA also observed that the equivalence between regimes for bilateral margins could not be assessed at the time, as the technical standards specifying the rules on bilateral margins in the Union had not yet been developed.

(5) The Commission has considered ESMA's technical advice in carrying out its assessment, and has taken into account the regulatory developments that have taken place since then. The Commission has made a comparative analysis of the legal, supervisory and enforcement requirements applicable in Australia. It also assessed the outcome of those requirements and their adequacy to mitigate the risks arising from OTC derivative contracts not cleared by a CCP in a manner considered equivalent to the outcome of the requirements laid down in Regulation (EU) No 648/2012.

(6) The legal, supervisory and enforcement arrangements applicable in Australia for transactions on non-centrally cleared derivative contracts are set out in Prudential Standard CPS 226 of the Australian Prudential Regulation Authority ('APRA') adopted under section 11AF of the Banking Act 1959 (Banking Act), section 32 of the Insurance Act 1973 (Insurance Act), section 230A of the Life Insurance Act 1995 (Life Insurance Act) and section 34C of the Superannuation Industry (Supervision) Act 1993 (SIS Act). APRA's mandate is to ensure the safety and soundness of prudentially regulated financial institutions so that they meet their financial commitments to depositors, policyholders and fund members within a stable, efficient and competitive financial system. Prudential Standard CPS 226 requires an entity covered by those rules to have appropriate margining and risk mitigation practices in relation to non-centrally cleared derivatives. That Prudential Standard applies to institutions in the banking, general insurance, life insurance and superannuation industries, subject to certain thresholds. Prudential Standard CPS 226 entered into force on 1 March 2017. Some of its requirements are subject to a phase-in in accordance with the international framework and aligned with the existing phase-in in Delegated Regulation (EU) 2016/2251.

(7) Prudential Standard CPS 226 applies to non-centrally cleared derivatives, with the exception of foreign-exchange contracts with a maturity of less than three days. The definition of non-centrally cleared derivatives in Prudential Standard CPS 226 is broader than that of OTC derivatives provided for in Article 2 of Regulation (EU) No 648/2012. Paragraph 9(g) of Prudential Standard CPS 226 defines 'derivative' as either a derivative within the meaning of Chapter 7 of the Corporations Act 2001, or an arrangement that is a forward, swap or option, or any combination of those things, in relation to one or more commodities. Equivalence should therefore be recognised with respect to OTC derivatives that are subject to margins under paragraph 9(g) of Prudential Standard CPS 226.

(8) Prudential Standard CPS 226 generally applies to transactions in non-centrally cleared derivatives conducted between 'APRA covered entities' and 'covered counterparties'. 'APRA covered entities' are authorised deposit-taking institutions (ADIs), including foreign ADIs, and non-operating holding companies authorised under the Banking Act, general insurers, including Category C insurers, non-operating holding companies authorised under the Insurance Act, and parent entities of Level 2 insurance groups, life companies including friendly societies and eligible foreign life insurance companies (EFLICs), and non-operating holding companies registered under the Life Insurance Act and registrable superannuation entity under the SIS Act in respect of their business operations. The definition of 'covered counterparties' broadly corresponds to the definition of 'financial counterparty' in Article 2(8) of Regulation (EU) No 648/2012 while excluding in a similar manner special purpose vehicles where the transaction is conducted for the sole purpose of hedging. The definition of 'covered counterparties' does not take into consideration the jurisdictional location of the counterparty as long as there is no doubt as to the enforceability of the netting agreement upon insolvency or bankruptcy of the counterparty or where collateral arrangements are not questionable and are legally enforceable upon default of the counterparty.

([4]) ESMA/2013/1373, Technical advice on third country regulatory equivalence under EMIR – Australia, European Securities and Markets Authority, 1 October 2013.

(9) In accordance with paragraph 11 of Prudential Standard CPS 226, obligations to exchange variation margin are only applicable to counterparties to a transaction where the amount of non-centrally cleared derivatives of both counterparties exceeds, on an aggregated and consolidated basis, a *de minimis* threshold of AUD 3 billion. No such threshold exists under Regulation (EU) No 648/2012. Recognition of equivalence should therefore be conditional on the exchange of variation margin between counterparties subject to Article 11 of Regulation (EU) No 648/2012 and APRA covered entities.

(10) Prudential Standard CPS 226 contains similar obligations to those provided for in Article 11(1) and (2) of Regulation (EU) No 648/2012 and in Chapter VIII of Delegated Regulation (EU) No 149/2013. In particular, paragraphs 77 to 94 of that Prudential Standard contain specific requirements regarding timely confirmation, portfolio compression, portfolio reconciliation, transaction valuation and dispute resolution applicable to OTC derivative contracts not cleared by a CCP. With regard to timely confirmation, the requirements set out in Prudential Standard CPS 226 cannot be considered equivalent as they require transactions to be confirmed only 'as soon as practicable' while Delegated Regulation (EU) No 149/2013 sets a maximum period for the transaction to be confirmed. With regard to portfolio reconciliation, the requirements set out in Prudential Standard CPS 226 cannot be considered equivalent as the frequency at which a portfolio is to be reconciled is not specified in Prudential Standard CPS 226 while it is precisely determined in Delegated Regulation (EU) No 149/2013. With regard to dispute resolution, the requirements set out in Prudential Standard CPS 226 cannot be considered equivalent as, contrary to Delegated Regulation (EU) No 149/2013, that Prudential Standard does not provide for a specific process for disputes that are not resolved within five working days. With regard to portfolio compression and transaction valuation, the requirements set out in Prudential Standard CPS 226 could be considered equivalent in outcome to those set out in Articles 13 and 14 of Commission Delegated Regulation (EU) No 149/2013.

(11) In relation to non-centrally cleared derivative contracts covered under Prudential Standard CPS 226, the legal, supervisory and enforcement arrangements applicable to APRA covered entities should therefore be considered equivalent to the requirements set out in Article 11(1) and (2) of Regulation (EU) No 648/2012 in respect of portfolio compression and transaction valuation applicable to OTC derivative contracts not cleared by a CCP.

(12) Pursuant to Prudential Standard CPS 226, variation margin must be exchanged, subject to the *de minimis* threshold referred to in paragraph 11 of that Prudential Standard, and initial margin must be posted and collected for all new non-centrally cleared derivative transactions, with the exception of physically settled foreign exchange forwards and swaps, between an APRA covered entity and a covered counterparty. APRA has adopted the internationally agreed phase-in for the entry into application of the initial margin requirements, the thresholds used for the phase-in expressed in AUD should be considered equivalent to the thresholds referred to in Article 35 of Delegated Regulation (EU) 2016/2251. Similar exemptions for physically settled foreign exchange forwards and swaps and for single-stock equity options or index options are provided for in Delegated Regulation (EU) 2016/2251. This Decision should therefore only apply to OTC derivatives contracts that are subject to margin requirements under Regulation (EU) No 648/2012 and Prudential Standard CPS 226.

(13) In accordance with Prudential Standard CPS 226, variation margin is to be calculated and called on a daily basis and settlement of variation margin amounts is to be conducted 'promptly'. APRA has publicly stated its expectation that, in practice, settlement of variation margin should occur on a T+1 basis (where T is the date of the margin call). However, such a settlement timeframe might not be feasible in all circumstances due to, for example, time zone and cross-border considerations. Therefore, APRA has adopted a principles-based requirement for the prompt settlement of variation margin to achieve an outcome consistent with other global regulatory requirements for settlement timing for variation margin. Article 12 of Delegated Regulation (EU) 2016/2251 requires all counterparties to an OTC derivative transaction not cleared by a CCP to exchange variation margin on a daily basis or adjust the margin period of risk used to calculate the initial margin accordingly. The arrangements provided for in Prudential Standard CPS 226 with respect to variation margin should be considered equivalent only where those arrangements achieve an outcome equivalent to that achieved by applying the requirements of Regulation (EU) No 648/2012. Therefore, conditions to that effect should be laid down.

(14) Prudential Standard CPS 226 provides for a combined minimum transfer amount of initial and variation margins of AUD 750 000, whereas Article 25 of Delegated Regulation (EU) 2016/2251 provides for an amount of EUR 500 000. Taking into account the marginal difference between those amounts and the common objective of Prudential Standard CPS 226 and Delegated Regulation (EU) 2016/2251, those amounts should be considered equivalent.

(15) The requirements in Prudential Standard CPS 226 for the calculation of initial margin should be considered equivalent to the requirements set out in Delegated Regulation (EU) 2016/2251. In a manner similar to the standardised method for the calculation of the initial margin set out in Annex IV to Delegated Regulation (EU) 2016/2251, Prudential Standard CPS 226 allows for the use of a standardised model equivalent to the one laid down in that Annex IV. Alternatively, internal or third party models can be used under Prudential Standard CPS 226 to calculate the initial margin where those models contain certain specific parameters equivalent to those set out in Delegated Regulation (EU) 2016/2251, including minimum confidence intervals and margin periods of risk and certain historical data, including stressed periods. APRA covered entities must apply to APRA for approval to use an internal or third party model and ensure that an independent review of this model is carried out before the approval is sought.

(16) The requirements in Prudential Standard CPS 226 on eligible collateral and on how that collateral is held and segregated should be considered equivalent to those set out in Article 4 of Delegated Regulation (EU) 2016/2251. Prudential Standard CPS 226 contains an equivalent list of eligible collateral, and an APRA covered entity is to have appropriate controls in place to ensure that the collateral collected does not exhibit significant wrong-way risk or significant concentration risk. Concentration should be assessed in terms of an individual issuer, issuer type and asset type. Margin rules for OTC derivative contracts not cleared by a CCP contained in Prudential Standard CPS 226 should therefore be considered equivalent to those provided for under Article 11(3) of Regulation (EU) No 648/2012.

(17) With regard to the level of protection of professional secrecy in Australia, information held by APRA, as well as all Commonwealth agencies, is subject to the Privacy Act 1988 ('Privacy Act'). Moreover, the Australian Prudential Regulation Authority Act 1998 ('APRA Act') sets out detailed secrecy provisions that apply to APRA and its employees. In particular, pursuant to section 56(2) of the APRA Act, officers or former officers of APRA are guilty of an offence if they disclose 'protected information' or a 'protected document' to any person or 'to a court' (otherwise than in accordance with the APRA Act). Additionally, Section 70 of the Crimes Act 1914 ('Crimes Act') is a secrecy provision of general application to Commonwealth officers (that is to say public sector employees, including APRA staff and contractors). That provision makes it an offence for Commonwealth officers to disclose any fact or document which comes to their knowledge or into their possession as a result of being a Commonwealth officer, and which they have a duty not to disclose. Taken together, the Privacy Act, the Crimes Act and the APRA Act provide guarantees of professional secrecy, including the protection of business secrets shared by the authorities with third parties, that should be considered equivalent to those set out in Title VIII of Regulation (EU) No 648/2012.

(18) Finally, with regard to the effective supervision and enforcement of the legal arrangements in Australia, APRA has primary responsibility for the monitoring and enforcement of compliance with Prudential Standard CPS 226. APRA can take a wide range of supervisory measures including undertaking a formal investigation into the affairs of an institution, imposing conditions on an institution's licence or issuing directions related to particular matters, appointing a statutory manager, judicial manager or replacement trustee to manage an institution's affairs, initiating criminal action against persons or institutions or seeking restraining orders. Those measures should therefore be considered to provide for the effective application of the relevant legal, regulatory and enforcement arrangements under Prudential Standard CPS 226 in an equitable and non-distortive manner and to ensure effective supervision and enforcement equivalent to the supervisory and enforcement arrangements available under the Union legal framework.

(19) This Decision recognises equivalence of binding requirements set out in Australian law relating to OTC derivative contracts applicable at the time of adoption of this Decision. The Commission, in cooperation with ESMA, will monitor on a regular basis the evolution of the legal, supervisory and enforcement arrangements for these OTC derivative contracts and their consistent and effective implementation, regarding the timely confirmation, portfolio compression and reconciliation, valuation, dispute resolution and margin requirements applicable to OTC derivative contracts, not cleared by a CCP with respect to which this Decision has been taken. As part of its

monitoring efforts the Commission may request APRA to provide information on regulatory and supervisory developments. The Commission may undertake a specific review at any time, where relevant developments make it necessary for the Commission to re-assess the declaration of equivalence granted by this Decision. Such re-assessment may lead to the repeal of this Decision, which would as a consequence make counterparties automatically subject again to all requirements laid down in Regulation (EU) No 648/2012.

(20) The measures provided for in this Decision are in accordance with the opinion of the European Securities Committee,

HAS ADOPTED THIS DECISION:

Article 1

For the purposes of Article 13(3) of Regulation (EU) No 648/2012, the legal, supervisory and enforcement arrangements of Australia for portfolio compression and transaction valuation that are applied to non-centrally cleared derivative transactions regulated by the Australian Prudential Regulation Authority ('APRA') shall be considered equivalent to the requirements set out in Article 11(1) and (2) of Regulation (EU) No 648/2012 where at least one of the counterparties to those transactions is an APRA covered entity as defined under Prudential Standard CPS 226.

Article 2

For the purposes of Article 13(3) of Regulation (EU) No 648/2012, the legal, supervisory and enforcement arrangements of Australia for the exchange of collateral that are applied to non-centrally cleared derivative transactions regulated by APRA shall be considered equivalent to the requirements of Article 11(3) of Regulation (EU) No 648/2012, where the following conditions are satisfied:

(a) at least one of the counterparties to those transactions is an APRA covered entity as defined under Prudential Standard CPS 226;

(b) where variation margin is required to be provided under Regulation (EU) No 648/2012, variation margin is provided on the same day on which it is calculated.

By way of derogation from point (b), where it is established between the counterparties that variation margin cannot consistently be provided on the same day on which it its calculated, the legal, supervisory and enforcement arrangements of Australia shall also be considered as equivalent to the requirements of Article 11(3) of Regulation (EU) No 648/2012 where variation margin is provided within 2 working days of its calculation and the margin period of risk used to calculate the initial margin is adjusted accordingly.

Article 3

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, 5 July 2021.

For the Commission
The President
Ursula VON DER LEYEN

COMMISSION IMPLEMENTING DECISION (EU) 2021/1107

of 5 July 2021

on the recognition of the legal, supervisory and enforcement arrangements of Hong Kong for derivatives transactions supervised by the Hong Kong Monetary Authority as equivalent to certain requirements of Article 11 of Regulation (EU) No 648/2012 of the European Parliament and of the Council on OTC derivatives, central counterparties and trade repositories

(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 648/2012 of the European Parliament and of the Council of 4 July 2012 on OTC derivatives, central counterparties and trade repositories ([1]), and in particular Article 13(2) thereof,

Whereas:

(1) Article 13 of Regulation (EU) No 648/2012 provides for a mechanism under which the Commission is empowered to adopt equivalence decisions whereby the legal, supervisory and enforcement arrangements of a third country are declared equivalent to the requirements laid down in Articles 4, 9, 10 and 11 of Regulation (EU) No 648/2012 so that counterparties which enter into a transaction within the scope of that Regulation, where at least one of the counterparties is established in that third country, are deemed to have fulfilled those requirements by complying with the requirements set out in that third country's legal regime. The declaration of equivalence contributes to the achievement of the overarching aim of Regulation (EU) No 648/2012 namely to reduce systemic risk and increase the transparency of derivatives markets by ensuring an internationally consistent application of the principles agreed with third countries and laid down in that Regulation.

(2) Article 11(1), (2) and (3) of Regulation (EU) No 648/2012 which is supplemented by Commission Delegated Regulation (EU) No 149/2013 ([2]) and Commission Delegated Regulation (EU) 2016/2251 ([3]), establish the Union's legal requirements concerning the timely confirmation of the terms of an OTC derivative contract, the conduct of a portfolio compression exercise and the arrangements under which portfolios are reconciled in relation to OTC derivative contracts not cleared by a central counterparty ('CCP'). In addition, those provisions lay down the valuation and dispute resolution obligations applicable to those contracts ('operational risk mitigation techniques') as well as the obligations on the exchange of collateral ('margins') between counterparties.

(3) In order for a third country's legal, supervisory and enforcement regime to be considered equivalent to the regime of the Union in respect of operational risk mitigation techniques and margins requirements, the substantive outcome of the applicable legal, supervisory and enforcement arrangements is to be equivalent to Union requirements set out in Article 11 of Regulation (EU) No 648/2012, ensure protection of professional secrecy that is equivalent to the protection provided for in Article 83 of that Regulation. Furthermore, equivalent legal, supervisory and enforcement arrangements must to be effectively applied in an equitable and non-distortive manner in that third country. The assessment of equivalence therefore encompasses a verification whether the legal, supervisory and enforcement arrangements of a third country ensures that OTC derivative contracts not cleared by a CCP and entered into by at least one counterparty established in that third country do not expose financial markets in the Union to a higher level of risk and consequently do not pose unacceptable levels of systemic risk in the Union.

([1]) OJ L 201, 27.7.2012, p. 1.

([2]) Commission Delegated Regulation (EU) No 149/2013 of 19 December 2012 supplementing Regulation (EU) No 648/2012 of the European Parliament and of the Council with regard to regulatory technical standards on indirect clearing arrangements, the clearing obligation, the public register, access to a trading venue, non-financial counterparties, and risk mitigation techniques for OTC derivatives contracts not cleared by a CCP (OJ L 52, 23.2.2013, p. 11).

([3]) Commission Delegated Regulation (EU) 2016/2251 of 4 October 2016 supplementing Regulation (EU) No 648/2012 of the European Parliament and of the Council on OTC derivatives, central counterparties and trade repositories with regard to regulatory technical standards for risk-mitigation techniques for OTC derivative contracts not cleared by a central counterparty (OJ L 340, 15.12.2016, p. 9).

(4) On 1 October 2013, the Commission received the technical advice of the European Securities and Markets Authority ('ESMA') on the legal, supervisory and enforcement arrangements in Hong Kong ([4]), including on the operational risk mitigation techniques applicable to OTC derivative contracts not cleared by a CCP. In its technical advice, ESMA concluded that, given that Hong Kong was still in the process of finalising its regulatory regime for the clearing obligation, non-financial counterparties and risk mitigation techniques for uncleared contracts, it was not in a position to perform a conclusive and complete analysis and deliver a technical advice on those matters.

(5) The Commission has taken into account the regulatory developments that have occurred in Hong Kong since 2013 and made a comparative analysis of the legal, supervisory and enforcement requirements applicable in Hong Kong. It also assessed that the outcome of those requirements and their adequacy to mitigate the risks arising from OTC derivative contracts not cleared by a CCP could be considered equivalent to the outcome of the relevant requirements laid down in Regulation (EU) No 648/2012.

(6) The legal, supervisory and enforcement arrangements applicable to 'authorised institutions' ('AIs') (as defined in section 2(1) of the Banking Ordinance ('BO'), consisting of licensed banks, restricted licence banks and deposit-taking companies) in Hong Kong for transactions on non-centrally cleared derivative contracts are set out in Supervisory Policy Manual module CR-G-14 entitled 'Non-centrally Cleared OTC Derivatives Transactions – Margin and Other Risk Mitigation Standards' ('the Policy Manual') of the Hong Kong Monetary Authority ('HKMA'), a statutory guideline issued under section 7(3) of the BO. Under the BO, the principal function of the HKMA is to promote the general stability and effective working of the banking system through the regulation of banking business and the business of taking deposits, and the supervision of AIs and their business activities. The purpose of the Policy Manual is to set out minimum standards that the HKMA expects AIs to adopt in relation to margin and other risk mitigation techniques for non-centrally cleared OTC derivatives transactions. The Policy Manual was first published on 27 January 2017 and then updated on 11 September 2020. Some of its requirements are subject to a phase-in in accordance with the international framework and aligned with the existing phase-in in Delegated Regulation (EU) 2016/2251. Non-compliance with the statutory guideline may trigger the review of the authorisation criteria set out in the Seventh Schedule of the BO and as such with regard to its outcome, the statutory guideline may be considered equivalent to a legal requirement in the context of this decision.

(7) The Policy Manual applies to non-centrally cleared derivatives, with the exception of physically settled foreign exchange ('FX') forwards and swaps, FX transactions embedded in cross-currency swaps associated with the exchange of principal, physically settled commodity forwards and, until further notice, non-centrally cleared single-stock options, equity basket options and equity index options. For the purposes of the Policy Manual, 'non-centrally cleared derivative' refers to an OTC derivative product (as defined in section 1B, Part 1 of Schedule 1 of the Securities and Futures Ordinance ('SFO')) that is not cleared through a central counterparty (as defined in section 2(1) of the Banking (Capital) Rules). That definition of 'non-centrally cleared derivative' should be considered equivalent to that of OTC derivatives in Regulation (EU) No 648/2012. This decision should therefore be taken with respect to arrangements applying to OTC derivatives that are subject to margins under the Policy Manual.

(8) The Policy Manual generally applies to transactions in non-centrally cleared derivatives conducted between AIs and 'covered entities'. For the purposes of the Policy Manual, 'covered entities' mean financial counterparties, significant non-financial counterparties, or other entities designated by the HKMA, but exclude sovereigns, central banks, public sector entities, multilateral development banks, and the Bank for International Settlements. Under the Policy Manual, 'financial counterparty' refers to any entity for a one-year period from 1 September each year to 31 August of the following year, if the entity itself or the group to which it belongs has an average aggregate notional amount of non-centrally cleared derivatives exceeding HKD 15 billion, and that is predominantly engaged in any of the following activities: banking, securities business, management of retirement fund schemes, insurance business, operation of a remittance or money changing service, lending, securitisation (except where and to the extent that the related special purpose entity enters into non-centrally cleared derivatives transactions for the sole purpose of hedging), portfolio management (including asset management and funds management) and activities that are ancillary to the conduct of those activities. Under the Policy Manual, 'significant non-financial counterparty' refers to any entity other than a financial counterparty for a one-year period from 1 September each year to 31 August of the following

([4]) ESMA/2013/1369, Technical advice on third country regulatory equivalence under EMIR – Hong Kong, Final report, European Securities and Markets Authority, 1 October 2013.

year, that has itself, or the group to which it belongs, an average aggregate notional amount of non-centrally cleared derivatives exceeding HKD 60 billion. The definition of 'covered entities' therefore broadly corresponds to the definition of 'financial counterparty' in Article 2(8) of Regulation (EU) No 648/2012, while excluding in a similar manner special purpose vehicles where the transaction is conducted for the sole purpose of hedging.

(9) The Policy Manual contains similar obligations to those provided for in Article 11(1) and (2) of Regulation (EU) No 648/2012 and in Delegated Regulation (EU) No 149/2013. In particular, Chapter 4 of the Policy Manual ('Risk mitigation standards') contains specific requirements regarding timely confirmation, portfolio compression, portfolio reconciliation, transaction valuation and dispute resolution applicable to OTC derivative contracts not cleared by a CCP, which could be considered equivalent to those set out in Union law.

(10) In relation to non-centrally cleared derivatives covered by the Policy Manual, the legal, supervisory and enforcement arrangements applicable should therefore be considered equivalent to the requirements set out in Article 11(1) and (2) of Regulation (EU) No 648/2012 in respect of timely confirmation, portfolio compression and reconciliation, valuation and dispute resolution applicable to OTC derivative contracts not cleared by a CCP.

(11) Pursuant to the Policy Manual, variation margin must be exchanged and initial margin must be posted and collected for all new non-centrally cleared derivative transactions, with the exception of physically settled FX forwards and swaps, FX transactions embedded in cross-currency swaps associated with the exchange of principal, physically settled commodity forwards, and until further notice, non-centrally cleared single-stock options, equity basket options and equity index options, between an AI and a covered entity according to the internationally agreed phase-in which thresholds expressed in HKD should be considered equivalent to the thresholds used in Delegated Regulation (EU) 2016/2251. Similar exemptions for physically settled FX forwards and swaps and for single-stock equity options or index options are provided for in Articles 37 and 38 of Delegated Regulation (EU) 2016/2251. This Decision should therefore only apply to OTC derivatives contracts that are subject to margin requirements under Regulation (EU) No 648/2012 and the Policy Manual.

(12) In accordance with the Policy Manual, variation margin is to be called no later than at the end of the following business day and be collected no later than two business days after it has been called. Footnote 64 to the Policy Manual states that if variation margin is exchanged at less than a daily frequency, the number of days in between the collection of variation margin should be added to the 10-day horizon used for the calculation of initial margin under the internal model approach. In case variation margin is exchanged at a varying frequency between the calculations of initial margin amounts, the number of days to be added to the 10-day horizon should be the maximum number of days in between variation margin collections within this period.

(13) The Policy Manual provides for a combined minimum transfer amount of initial and variation margin of HKD 3,75 million, whereas Article 25 of Delegated Regulation (EU) 2016/2251 provides for an amount of EUR 500 000. Taking into account the marginal difference in the value of those amounts and the common objective of the Policy Manual and Delegated Regulation (EU) 2016/2251, those amounts should be considered equivalent.

(14) The requirements in the Policy Manual for the calculation of initial margin should be considered equivalent to the requirements set out in Delegated Regulation (EU) 2016/2251. In a manner similar to the standardised method for the calculation of the initial margin set out in Annex IV to Delegated Regulation (EU) 2016/2251, the Policy Manual allows for the use of a standardised approach equivalent to the one laid down in that Annex IV. Alternatively, internal or third party models can be used under the Policy Manual to calculate the initial margin where those models contain certain specific parameters equivalent to those set out in Delegated Regulation (EU) 2016/2251, including minimum confidence intervals and margin periods of risk and certain historical data, including stressed periods. AIs must seek formal approval from the HKMA before using an internal or third-party model (except for an industry-wide standard initial margin model which AIs may use after notifying the HKMA of the intent of doing so and the HKMA would conduct post-implementation review of).

(15) The requirements in the Policy Manual on eligible collateral and on how that collateral is held and segregated should be considered equivalent to those set out in Article 4 of Delegated Regulation (EU) 2016/2251. The Policy Manual contains an equivalent list of eligible collateral, and AIs are to have appropriate controls in place to ensure that the collateral collected does not exhibit significant wrong-way risk or significant concentration risk. Concentration should be assessed in terms of an individual issuer, issuer type and asset type. Margin rules for OTC derivative contracts not cleared by a CCP contained in the Policy Manual should therefore be considered equivalent to those provided for under Article 11(3) of Regulation (EU) No 648/2012.

(16) With regard to the level of protection of official secrecy, the Chief Executive of the HKMA and the employees of the HKMA must abide by section 120(1) of the BO to preserve, and aid in preserving, secrecy with regard to all matters relating to the affairs of any person that may come to their knowledge in the exercise of any function under the BO. Subject to permitted exceptions, they must not communicate any such matter to another person (other than the person to whom such matter relates) and must not suffer or permit another person to have access to any records in their possession, custody or control. A person who contravenes any of those requirements is liable to a fine and imprisonment. Section 120(1) of the BO thus provides for official secrecy, including the protection of confidential information shared by the HKMA (under applicable legal disclosure gateways) with third parties, that should be considered equivalent to those set out in Title VIII of Regulation (EU) No 648/2012.

(17) With regard to the effective supervision and enforcement of the legal arrangements for transactions on non-centrally cleared derivative contracts in Hong Kong, the HKMA has primary responsibility for the monitoring and enforcement of compliance with the Policy Manual through its ongoing risk-based supervisory approach for AIs. The supervisory measures that the HKMA may take include requiring the AI concerned to submit a report under section 59(2) of the BO to identify the root causes of any deficiency in margining or risk mitigation practices for future rectification, and issuing directions under section 52 of the BO to an AI requiring it to strengthen its internal control systems. Moreover, adherence to the Policy Manual will be reflected in an AI's CAMEL rating and/or supervisory review process assessment. Significant non-compliance with the Policy Manual may cause the HKMA to undertake a review of whether the AI remains in compliance with the authorisation criteria in the Seventh Schedule to the BO and whether its management remains fit and proper for its role. Further, though not commonly exercised, the HKMA has the power to revoke or suspend the authorisation of an AI. Those powers are provided for in sections 22(1), 24(1) and 25(1) of the BO. Those provisions should be considered to provide for the effective application of the relevant legal, regulatory and enforcement arrangements under the Policy Manual in an equitable and non-distortive manner and to ensure effective supervision and enforcement equivalent to the supervisory and enforcement arrangements available under the Union legal framework..

(18) This Decision recognises equivalence of the regulatory requirements set out in the Policy Manual applicable to OTC derivative contracts at the time of adoption of this Decision. The Commission, in cooperation with ESMA, will monitor on a regular basis the evolution of the legal, supervisory and enforcement arrangements for these OTC derivative contracts and their consistent and effective implementation, regarding the timely confirmation, portfolio compression and reconciliation, valuation, dispute resolution and margin requirements applicable to OTC derivative contracts, not cleared by a CCP with respect to which this Decision has been taken. As part of its monitoring efforts the Commission may request the HKMA to provide information on regulatory and supervisory developments. The Commission may undertake a specific review at any time, where relevant developments make it necessary for the Commission to re-assess the declaration of equivalence granted by this Decision. Such re-assessment may lead to the repeal of this Decision, which would as a consequence make counterparties automatically subject again to all requirements laid down in Regulation (EU) No 648/2012.

(19) The measures provided for in this Decision are in accordance with the opinion of the European Securities Committee,

HAS ADOPTED THIS DECISION:

Article 1

For the purposes of Article 13(3) of Regulation (EU) No 648/2012, the legal, supervisory and enforcement arrangements of Hong Kong for timely confirmation, portfolio compression and reconciliation, valuation and dispute resolution that are applicable to non-centrally cleared derivative transactions regulated by the Hong Kong Monetary Authority ('HKMA') shall be considered equivalent to the requirements set out in paragraphs 1 and 2 of Article 11 of that Regulation where at least one of the counterparties to such a transaction is an authorised institution as defined in section 2(1) of the Banking Ordinance and subject to the risk mitigation requirements set out in the HKMA's Supervisory Policy Manual module CR-G-14 entitled 'Non-centrally Cleared OTC Derivatives Transactions – Margin and Other Risk Mitigation Standards'.

Article 2

For the purposes of Article 13(3) of Regulation (EU) No 648/2012, the legal, supervisory and enforcement arrangements of Hong Kong for the exchange of collateral that are applicable to non-centrally cleared derivative transactions regulated by the HKMA shall be considered equivalent to the requirements set out in Article 11(3) of that Regulation.

Article 3

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, 5 July 2021.

For the Commission
The President
Ursula VON DER LEYEN

COMMISSION IMPLEMENTING DECISION (EU) 2021/1108

of 5 July 2021

on the recognition of the legal, supervisory and enforcement arrangements of the United States of America for derivatives transactions supervised by the Board of Governors of the Federal Reserve System, the Office of the Comptroller of the Currency, the Federal Deposit Insurance Corporation, the Farm Credit Administration and the Federal Housing Finance Agency as equivalent to certain requirements of Article 11 of Regulation (EU) No 648/2012 of the European Parliament and Council on OTC derivatives, central counterparties and trade repositories

(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 648/2012 of the European Parliament and of the Council of 4 July 2012 on OTC derivatives, central counterparties and trade repositories ([1]), and in particular Article 13(2) thereof,

Whereas:

(1) Article 13 of Regulation (EU) No 648/2012 provides for a mechanism under which the Commission is empowered to adopt equivalence decisions whereby the legal, supervisory and enforcement arrangements of a third country are declared equivalent to the requirements laid down in Articles 4, 9, 10 and 11 of Regulation (EU) No 648/2012 so that counterparties which enter into a transaction within the scope of that Regulation, where at least one of the counterparties is established in that third country, are deemed to have fulfilled those requirements by complying with the requirements set out in that third country's legal regime. The declaration of equivalence contributes to the achievement of the overarching aim of Regulation (EU) No 648/2012 namely to reduce systemic risk and increase the transparency of derivatives markets by ensuring an internationally consistent application of the principles agreed with third countries and laid down in that Regulation.

(2) Article 11(1), (2) and (3) of Regulation (EU) No 648/2012 which is supplemented by Commission Delegated Regulation (EU) No 149/2013 ([2]) and Commission Delegated Regulation (EU) 2016/2251 ([3]), establish the Union's legal requirements concerning the timely confirmation of the terms of an OTC derivative contract, the conduct of a portfolio compression exercise and the arrangements under which portfolios are reconciled in relation to OTC derivative contracts not cleared by a central counterparty ('CCP'). In addition, those provisions lay down the valuation and dispute resolution obligations applicable to those contracts ('operational risk mitigation techniques') as well as the obligations on the exchange of collateral ('margins') between.

(3) In order for a third country's legal, supervisory and enforcement regime to be considered equivalent to the regime of the Union in respect of operational risk mitigation techniques and margins requirements, the substantive outcome of the applicable legal, supervisory and enforcement arrangements is to be equivalent to Union requirements under Article 11 of Regulation (EU) No 648/2012, ensure protection of professional secrecy that is equivalent to the protection provided for in Article 83 of that Regulation. Furthermore, equivalent legal, supervisory and enforcement arrangements must be effectively applied in an equitable and non-distortive manner in that third country. The assessment of equivalence therefore encompasses a verification whether the legal, supervisory and

([1]) OJ L 201, 27.7.2012, p. 1.

([2]) Commission Delegated Regulation (EU) No 149/2013 of 19 December 2012 supplementing Regulation (EU) No 648/2012 of the European Parliament and of the Council with regard to regulatory technical standards on indirect clearing arrangements, the clearing obligation, the public register, access to a trading venue, non-financial counterparties, and risk mitigation techniques for OTC derivatives contracts not cleared by a CCP (OJ L 52, 23.2.2013, p. 11).

([3]) Commission Delegated Regulation (EU) 2016/2251 of 4 October 2016 supplementing Regulation (EU) No 648/2012 of the European Parliament and of the Council on OTC derivatives, central counterparties and trade repositories with regard to regulatory technical standards for risk-mitigation techniques for OTC derivative contracts not cleared by a central counterparty (OJ L 340, 15.12.2016, p. 9).

enforcement arrangements of a third country ensure that OTC derivative contracts not cleared by a CCP and entered into by at least one counterparty established in that third country do not expose financial markets in the Union to a higher level of risk and consequently do not pose unacceptable levels of systemic risk in the Union.

(4) On 1 September 2013, the Commission received the technical advice of the European Markets Supervisory Authority (ESMA) on the legal, supervisory and enforcement arrangements in the USA ([4]) regarding, among others, the operational risk mitigation techniques and margins applicable to OTC derivative contracts not cleared by a CCP. However, in its technical advice, ESMA focused on the rules issued by the Commodity Futures Trading Commission ('the CFTC') and the Securities and Exchange Commission ('the SEC') and did not cover the rules applicable to counterparties regulated by the Board of Governors of the Federal Reserve System ('the FRS'), the Office of the Comptroller of the Currency ('the OCC'), the Federal Deposit Insurance Corporation ('the FDIC'), the Farm Credit Administration ('the FCA') and the Federal Housing Finance Agency ('the FHFA') (together 'the US prudential regulators').

(5) The Commission has considered the regulatory developments that have taken place since it received ESMA's technical advice. This Decision is not only based on a comparative analysis of the legal, supervisory and enforcement requirements applicable in the USA, but also on an assessment of the outcome of those requirements, and their adequacy to mitigate the risks arising from those contracts in a manner considered equivalent to the outcome of the requirements laid down in Regulation (EU) No 648/2012.

(6) The legal, supervisory and enforcement arrangements applicable in the USA for OTC derivative contracts are laid down in title VII of the Dodd Frank Wall Street Reform and Consumer Protection Act ('Dodd-Frank Act') and in the specific implementing rules adopted by the US prudential regulators.

(7) There are no equivalent rules to the operational risk mitigation techniques applicable to OTC derivatives not cleared by a CCP under the Dodd-Frank Act and the US prudential regulators have not issued rules or regulations imposing equivalent requirements. This decision shall therefore not cover the legal, supervisory and enforcement arrangements applicable to OTC derivatives transactions entered into between a counterparty regulated by the US prudential regulators and a counterparty established in the Union and subject to the requirements laid out in paragraphs 1 and 2 of Article 11 of Regulation (EU) No 648/2012 and regarding timely confirmation, portfolio compression and reconciliation, valuation and dispute resolution obligations.

(8) In the Union, pursuant to Article 11(3), OTC derivative contracts not cleared by a CCP are subject to the obligation to exchange collateral ('margin requirement'). Pursuant to that rule, all counterparties have to exchange variation margins and counterparties above a certain threshold have to exchange initial margins. In this respect, each counterparty regulated by a US prudential regulator, has to comply with the rule adopted by this US prudential regulators as laid down in Title 12 of the Code of Federal Regulation, respectively in Part 45 (for the OCC), 237 (for the FRS), 349 (for the FDIC), 624 (for the FCA) and 1221 (for the FHFA) (together 'the Swap Margin Rule').

(9) The Swap Margin Rule applies to swaps and security-based swaps entered into between Covered Swap Entities ('CSEs') and other swap entities, financial end users with material swaps exposure as well as, to a certain extent, financial end users without material swaps exposure and other counterparties such as sovereigns, multilateral development banks or the Bank for International Settlements. For an entity to have a material swaps exposure, this entity must have an average daily aggregate notional amount of non-cleared OTC derivatives for June, July and August of the previous calendar year that exceeds USD 8 billion, whereas the analogous threshold set out in Article 28 of Delegated Regulation (EU) 2016/2251 is EUR 8 billion. In the Union, the requirement to exchange variation margin does not have a materiality threshold, and applies to all counterparties subject to Article 11(3) of Regulation (EU) No 648/2012. The rules for combined minimum transfer amount of initial and variation margin in the Swap Margin Rule is USD 500 000, whereas the related requirement set out in Article 25 of Delegated Regulation (EU) 2016/2251 is EUR 500 000. Taking into account the limited impact due to the difference in currencies, these amounts should be considered equivalent.

([4]) ESMA/2013/BS/1157, Technical advice on third country regulatory equivalence under EMIR – US, Final report, European Securities and Markets Authority, 1 September 2013.

(10) The requirements of the Swap Margin Rule apply to 'swaps' as defined in section 721 of the Dodd-Frank Act and 'security-based swaps' as defined in section 761 of the Dodd-Frank Act, thus encompassing almost all contracts defined as OTC derivatives in Regulation (EU) No 648/2012 with the exception of foreign exchange forwards and foreign exchange swaps, for which the Swap Margin Rule sets no requirements. In addition, the Swap Margin Rule does not contain any specific treatment for structured products including covered bonds and securitisations. In the Union, foreign exchange swaps and foreign exchange forwards are exempted from the initial margins requirements, and derivatives associated with covered bonds for hedging purposes may also be exempted from initial margin requirements. This Decision should therefore only apply to OTC derivatives transactions that are subject to margins under both the Union law and the Swap Margin Rule.

(11) The requirements in the Swap Margin Rule for the calculation of initial margin are equivalent to the requirements set out in Regulation (EU) No 648/2012. Like Annex IV to Delegated Regulation (EU) 2016/2251, the Swap Margin Rule allows the use of a standardised approach. Alternatively, internal or third party models may be used for that calculation where those models contain certain specific parameters, including minimum confidence intervals and margin periods of risk, and certain historical data, including stressed periods. Those models must be approved by the relevant US prudential regulator.

(12) The requirements in the Swap Margin Rule on eligible collateral and on how that collateral is held and segregated are equivalent to those set out in Article 4 of Delegated Regulation (EU) 2016/2251. The Swap Margin Rule contains an equivalent list of eligible collateral. The Swap Margin Rule should therefore be considered equivalent to those provided for under Article 11(3) of Regulation (EU) No 648/2012.

(13) With regard to the equivalent level of protection of professional secrecy, in the USA, information held by federal regulators is subject to the Privacy Act and the Freedom of Information Act (FOIA). Under the FOIA, in many cases, steps must be taken by an individual or an organization to secure confidential treatment of submitted information. Therefore, the Privacy Act and the FOIA provide guarantees of professional secrecy, including the protection of business secrets shared by the authorities with third parties, equivalent to those set out in Title VIII of Regulation (EU) No 648/2012. The USA requirements should be considered to provide an equivalent level of protection of professional secrecy as guaranteed in Regulation (EU) No 648/2012.

(14) Finally, with regard to the effective supervision and enforcement of the legal arrangements in the USA, the US prudential regulators have broad investigative and surveillance powers to assess compliance of Covered Swap Entities with the Swap Margin Rule. The US prudential regulators can take a wide range of supervisory measures to stop any breach of the applicable requirements. Moreover, the USA legal framework provides for civil penalties, including temporary or permanent restraining orders or injunctions, and fines, as well as criminal penalties, for breaches of the applicable requirements. Those measures should therefore be considered to provide for the effective application of the relevant legal, regulatory and enforcement arrangements under the Dodd-Frank Act, the Commodity Exchange Act, the Securities Exchange Act, the Swap Margin Rule as well as CFTC and SEC Regulations where applicable in an equitable and non-distortive manner so as to ensure effective supervision and enforcement.

(15) This Decision recognises equivalence of binding requirements set by the US prudential regulators relating to OTC derivative contracts applicable at the time of adoption of this Decision. The Commission, in cooperation with ESMA, will monitor on a regular basis the evolution of the legal, supervisory and enforcement arrangements for these OTC derivative contracts and their consistent and effective implementation, regarding the timely confirmation, portfolio compression and reconciliation, valuation, dispute resolution and margin requirements applicable to OTC derivative contracts, not cleared by a CCP with respect to which this Decision has been taken. As part of its monitoring efforts the Commission may request the US prudential regulators to provide information on regulatory and supervisory developments. The Commission may undertake a specific review at any time, where relevant developments make it necessary for the Commission to re-assess the declaration of equivalence granted by this Decision. Such re-assessment may lead to the repeal of this Decision, which would as a consequence make counterparties automatically subject again to all requirements laid down in Regulation (EU) No 648/2012.

(16) The measures provided for in this Decision are in accordance with the opinion of the European Securities Committee,

HAS ADOPTED THIS DECISION:

Article 1

For the purposes of Article 13(3) of Regulation (EU) No 648/2012, the legal, supervisory and enforcement arrangements of the United States of America for the exchange of collateral that apply to transactions regulated as 'swaps' as defined in section 721 of the Dodd-Frank Act or 'security-based swaps' as defined in section 761 of the Dodd-Frank Act and that are not cleared by a central counterparty shall be considered as equivalent to the requirements of Article 11(3) of Regulation (EU) No 648/2012, where at least one of the counterparties to those transactions is established in the USA and considered a Covered Swap Entity by the Board of Governors of the Federal Reserve System ('the FRS'), the Office of the Comptroller of the Currency ('the OCC'), the Federal Deposit Insurance Corporation ('the FDIC'), the Farm Credit Administration ('the FCA') or the Federal Housing Finance Agency ('the FHFA'), and that the counterparty is subject to the Swap Margin Rule laid down in Title 12 of the Code of Federal Regulations, respectively in Part 45 (for the OCC), 237 (for the FRS), 349 (for the FDIC), 624 (for the FCA) and 1221 (for the FHFA) (together 'the Swap Margin Rule').

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, 5 July 2021.

For the Commission
The President
Ursula VON DER LEYEN

ISSN 1977-0677 (electronic edition)
ISSN 1725-2555 (paper edition)

Publications Office
of the European Union
L-2985 Luxembourg
LUXEMBOURG

EN