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⁽¹⁾ Text with EEA relevance

II

(Non-legislative acts)

REGULATIONS

COMMISSION REGULATION (EU) 2016/1379

of 16 August 2016

refusing to authorise certain health claims made on foods, other than those referring to the reduction of disease risk and to children's development and health

(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 1924/2006 of the European Parliament and of the Council of 20 December 2006 on nutrition and health claims made on foods ⁽¹⁾, and in particular Article 18(5) thereof,

Whereas:

- (1) Pursuant to Regulation (EC) No 1924/2006 health claims made on foods are prohibited unless they are authorised by the Commission in accordance with that Regulation and included in a list of permitted claims.
- (2) Regulation (EC) No 1924/2006 also provides that applications for authorisations of health claims may be submitted by food business operators to the national competent authority of a Member State. The national competent authority is to forward valid applications to the European Food Safety Authority (EFSA), hereinafter referred to as 'the Authority', for a scientific assessment, as well as to the Commission and the Member States for information.
- (3) The Authority is to deliver an opinion on the health claim concerned.
- (4) The Commission is to decide on the authorisation of health claims taking into account the opinion delivered by the Authority.
- (5) Following an application from E-piim production Ltd, submitted pursuant to Article 13(5) of Regulation (EC) No 1924/2006, the Authority was required to deliver an opinion on a health claim related to *Lactobacillus plantarum* TENSIA® in the semi-hard Edam-type 'heart cheese' of Harmony™ and maintenance of normal blood pressure (BP) (Question No EFSA-Q-2014-00097 ⁽²⁾). The claim proposed by the applicant was worded as follows: 'Regular, at least for eight week consumption of 50 g/day *Lactobacillus plantarum* TENSIA® comprising Sūdamejuust (English translation: Heart cheese) of the Harmony™ brand helps to maintain the cardio-vascular system/heart health through reduction of blood pressure/Symbol of heart'.
- (6) On 1 October 2014, the Commission and the Member States received the scientific opinion from the Authority, which concluded that on the basis of the data presented a cause and effect relationship had not been established between the consumption of *Lactobacillus plantarum* TENSIA® in the semi-hard Edam-type 'heart cheese' of Harmony™ and maintenance of normal blood pressure. Accordingly, as the claim does not comply with the requirements of Regulation (EC) No 1924/2006, it should not be authorised.

⁽¹⁾ OJ L 404, 30.12.2006, p. 9.

⁽²⁾ EFSA Journal 2014;12(10):3842.

- (7) Following an application from British Specialist Nutrition Association Ltd, submitted pursuant to Article 13(5) of Regulation (EC) No 1924/2006, the Authority was required to deliver an opinion on a health claim related to carbohydrate solutions and maintenance of physical performance during endurance exercise (Question No EFSA-Q-2014-00058 ⁽¹⁾). The claim proposed by the applicant was worded as follows: 'carbohydrate solutions contribute to the maintenance of endurance performance during prolonged endurance exercise'. Upon request of the Authority, the applicant specified that the food that is the subject of this claim relates to carbohydrate solutions that do not include electrolytes and that, as regards the claimed effect, carbohydrate solutions should be compared to water or water-electrolyte solutions.
- (8) On 1 October 2014, the Commission and the Member States received the scientific opinion from the Authority, which concluded that on the basis of the data presented a cause and effect relationship had not been established between the consumption of carbohydrate solutions and maintenance of physical performance during endurance exercise as compared to water or water-electrolyte solutions. Accordingly, as the claim does not comply with the requirements of Regulation (EC) No 1924/2006, it should not be authorised.
- (9) The comments from the applicants received by the Commission pursuant to Article 16(6) of Regulation (EC) No 1924/2006 have been considered when setting the measures provided for in this Regulation.
- (10) 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

The health claims listed in the Annex to this Regulation shall not be included in the Union list of permitted claims as provided for in Article 13(3) of Regulation (EC) No 1924/2006.

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, 16 August 2016.

For the Commission
The President
Jean-Claude JUNCKER

⁽¹⁾ EFSA Journal 2014;12(10):3836.

ANNEX

Rejected health claims

Application — Relevant provisions of Regulation (EC) No 1924/2006	Nutrient, substance, food or food category	Claim	EFSA opinion reference
Article 13(5) health claim based on newly developed scientific evidence and/or including a request for the protection of proprietary data	<i>Lactobacillus plantarum</i> TENSIA® in the semi-hard Edam-type 'heart cheese' of Harmony™	Regular, at least for eight week consumption of 50 g/day <i>Lactobacillus plantarum</i> TENSIA® comprising Südamajuust (English translation: Heart cheese) of the Harmony™ brand helps to maintain the cardio-vascular system/heart health through reduction of blood pressure/Symbol of heart/.	Q-2014-00097
Article 13(5) health claim based on newly developed scientific evidence and/or including a request for the protection of proprietary data	Carbohydrate solutions	Carbohydrate solutions contribute to the maintenance of endurance performance during prolonged endurance exercise.	Q-2014-00058

COMMISSION IMPLEMENTING REGULATION (EU) 2016/1380**of 16 August 2016****on a derogation from Article 55(2)(a) of Delegated Regulation (EU) 2015/2446 as regards the rules of origin applicable to regional cumulation for tuna originating in Ecuador**

THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EU) No 952/2013 of the European Parliament and of the Council of 9 October 2013 laying down the Union Customs Code ⁽¹⁾, and in particular Article 64(6) and 66(b) thereof,

Whereas:

- (1) By Regulation (EU) No 1384/2014 of the European Parliament and of the Council ⁽²⁾, the Union granted tariff preferences to Ecuador from 1 January 2015 to 31 December 2016, as an interim reciprocal arrangement to avoid unnecessary trade disruption between the Union and Ecuador following the initialling of the Protocol of Accession of Ecuador to the Trade Agreement between the European Union and its Member States, of the one part, and Colombia and Peru, of the other part ⁽³⁾, on 12 December 2014.
- (2) For the purpose of the preferences granted by Regulation (EU) No 1384/2014, the rules of origin laid down in Part I, Title IV, Chapter 2, Section 1 of Commission Regulation (EEC) No 2454/93 ⁽⁴⁾ including the rules concerning regional cumulation of origin within a group of countries including Bolivia, Colombia, Costa Rica, Ecuador, El Salvador, Guatemala, Honduras, Nicaragua, Panama, Peru and Venezuela shall apply. Since 1 January 2014, regional cumulation could only apply in the same regional group to countries which, at the time of exportation to the Union, are beneficiaries of the Generalised System of Preferences (GSP) under Regulation (EU) No 978/2012 of the European Parliament and of the Council ⁽⁵⁾.
- (3) With effect on 1 May 2016, Regulation (EEC) No 2454/93 was repealed and the rules of origin applicable for the purpose of the tariff preferences granted to goods originating in Ecuador are since that date laid down in Title II, Chapter 2, Section 2, Subsections 2 and 3 of Commission Delegated Regulation (EU) 2015/2446 ⁽⁶⁾ and Title II, Chapter 2, Section 2, Subsections 2 to 9 of Commission Implementing Regulation (EU) 2015/2447 ⁽⁷⁾. Delegated Regulation (EU) 2015/2446 provides for the same rules concerning cumulation as Regulation (EEC) No 2454/93.
- (4) As of 1 January 2016, Colombia, Peru, Costa Rica, El Salvador, Guatemala, Honduras, Nicaragua and Panama, included in the same regional group as Ecuador, are no longer GSP beneficiary countries. As a consequence, from 1 January 2016, prepared or preserved tuna and skipjack classified in subheading 1604 14 of the Harmonized Commodity Description and Coding System (HS) and prepared or preserved tuna, skipjack or other fish of the genus *Euthynnus* of subheading 1604 20 70 of the Combined Nomenclature (CN) cannot be considered to be originating in Ecuador under regional cumulation with those countries for the purposes of the tariff preferences granted by Regulation (EU) No 1384/2014.

⁽¹⁾ OJ L 269, 10.10.2013, p. 1.

⁽²⁾ Regulation (EU) No 1384/2014 of the European Parliament and of the Council of 18 December 2014 on the tariff treatment for goods originating in Ecuador (OJ L 372, 30.12.2014, p. 5).

⁽³⁾ OJ L 354, 21.12.2012, p. 3.

⁽⁴⁾ Commission Regulation (EEC) No 2454/93 of 2 July 1993 laying down provisions for the implementation of Council Regulation (EEC) No 2913/92 establishing the Community Customs Code (OJ L 253, 11.10.1993, p. 1).

⁽⁵⁾ Regulation (EU) No 978/2012 of the European Parliament and of the Council of 25 October 2012 applying a scheme of generalised tariff preferences and repealing Council Regulation (EC) No 732/2008 (OJ L 303, 31.10.2012, p. 1).

⁽⁶⁾ Commission Delegated Regulation (EU) 2015/2446 of 28 July 2015 supplementing Regulation (EU) No 952/2013 of the European Parliament and of the Council as regards detailed rules concerning certain provisions of the Union Customs Code (OJ L 343, 29.12.2015, p. 1).

⁽⁷⁾ Commission Implementing Regulation (EU) 2015/2447 of 24 November 2015 laying down detailed rules for implementing certain provisions of Regulation (EU) No 952/2013 of the European Parliament and of the Council laying down the Union Customs Code (OJ L 343, 29.12.2015, p. 558).

- (5) On 4 April 2016, Ecuador submitted a request for a derogation from the rules on preferential origin so that the Ecuadorian fish processing industry might, for the purposes of determining the origin of prepared or preserved tuna and skipjack classified in HS subheading 1604 14 and prepared or preserved tuna, skipjack or other fish of the genus *Euthynnus* of CN subheading 1604 20 70, consider materials originating in Colombia, Peru, Costa Rica, El Salvador, Guatemala, Honduras, Nicaragua and Panama to be materials originating in Ecuador by virtue of regional cumulation. The derogation was requested to apply from 1 January 2016. A complement of information on this initial request was submitted on 30 June 2016.
- (6) In its request for derogation Ecuador explained that for the production of prepared and preserved tuna exported by Ecuador to the Union important quantities of raw tuna are sourced in the countries of Central America and in the Andean countries. Without the possibility to cumulate with those countries in the same regional group, Ecuadorian exports to the Union of originating prepared and preserved tuna would be reduced by 30 %.
- (7) In the meantime, on 16 April 2016, an earthquake with a magnitude of 7,8 struck coastal Ecuador. The Manabí province and the areas of Manta, where most of the Ecuadorian fishery sector operates, were highly affected. Massive material damage has also been reported, including on key infrastructures, which aggravates the situation of the fish processing industry in Ecuador.
- (8) Considering the circumstances, the reasons provided in Ecuador's request and the further adverse impact of the earthquake on its fish processing industry, Ecuador should benefit from a temporary derogation from the requirement laid down in Article 55(2)(a) of Delegated Regulation (EU) 2015/2446, in accordance with point (a) of the second subparagraph of Article 64(6) of Regulation (EU) No 952/2013. Consequently, the materials originating in Colombia, Peru, Costa Rica, El Salvador, Guatemala, Honduras, Nicaragua and Panama used for the manufacture of prepared and preserved tuna and skipjack classified in HS subheading 1604 14 and in prepared or preserved tuna skipjack or other fish of the genus *Euthynnus* of CN subheading 1604 20 70 should be considered to be originating in Ecuador, provided that certain conditions are fulfilled.
- (9) To avoid trade disruption, and to facilitate the achievement of the objectives of the tariff preferences granted to Ecuador under Regulation (EU) No 1384/2014, the temporary derogation should cover the period from 1 January 2016 to 31 December 2016.
- (10) Considering the proof of origin that may be used for the materials originating in Colombia, Peru, Costa Rica, El Salvador, Guatemala, Honduras, Nicaragua and Panama, cumulation may also apply on the basis of the proof of origin provided for by the Trade Agreement between the European Union and its Member States, of the one part, and Colombia and Peru, of the other part, or the Agreement establishing an Association between the European Union and its Member States, on the one hand, and Central America, on the other ⁽¹⁾, respectively.
- (11) In order to guarantee that the measures necessary for the application of cumulation with Colombia, Peru, Costa Rica, El Salvador, Guatemala, Honduras, Nicaragua and Panama operate properly, Ecuador should ensure that the measures in the field of administrative cooperation are in place.
- (12) In order to allow for efficient monitoring of the operation of the derogation, the authorities of Ecuador should communicate to the Commission at the end of the application of the derogation details of the certificates of origin Form A which have been issued within the framework of the derogation.
- (13) In order to avoid further delay in the implementation of the derogation, this Regulation should enter into force as a matter of urgency.
- (14) The measures provided for in this Regulation are in accordance with the opinion of the Customs Code Committee,

⁽¹⁾ OJ L 346, 15.12.2012, p. 3.

HAS ADOPTED THIS REGULATION:

Article 1

1. For the purpose of cumulation referred to in Article 86(1)(b) of Regulation (EEC) No 2454/93 and by way of derogation from Article 86(2)(a) of that Regulation, Ecuador shall, for the period from 1 January 2016 to 30 April 2016, be entitled to use materials originating in Colombia, Peru, Costa Rica, El Salvador, Guatemala, Honduras, Nicaragua or Panama to produce prepared or preserved tuna and skipjack classified in HS subheading 1604 14 and prepared or preserved tuna, skipjack or other fish of the genus *Euthynnus* of CN subheading 1604 20 70.

The proof of origin for the products referred to in the first subparagraph shall be drawn up in accordance with Article 971 of Regulation (EEC) No 2454/93

2. For the purpose of cumulation referred to in Article 55(1)(b) of Delegated Regulation (EU) 2015/2446 and by way of derogation from Article 55(2)(a) of that Regulation, Ecuador shall, for the period from 1 May 2016 to 31 December 2016, be entitled to use materials originating in Colombia, Peru, Costa Rica, El Salvador, Guatemala, Honduras, Nicaragua or Panama to produce prepared or preserved tuna and skipjack classified in HS subheading 1604 14 and prepared or preserved tuna skipjack or other fish of the genus *Euthynnus* of CN subheading 1604 20 70.

The proof of origin for the products referred to in the first subparagraph shall be drawn up in accordance with the provisions of Article 76 of Implementing Regulation (EU) 2015/2447.

3. The competent authorities of Ecuador called on to issue a certificate of origin Form A for the products referred to in paragraphs 1 and 2 may also rely on a movement certificate EUR 1 issued by the competent authorities of Colombia, Peru, Costa Rica, El Salvador, Guatemala, Honduras, Nicaragua or Panama in accordance with the provisions of the Trade Agreement between the European Union and its Member States, of the one part, and Colombia and Peru, of the other part, or the Agreement establishing an Association between the European Union and its Member States, on the one hand, and Central America, on the other, respectively.

4. Ecuador shall ensure that the measures necessary for the application of cumulation with Colombia, Peru, Costa Rica, El Salvador, Guatemala, Honduras, Nicaragua or Panama in the field of administrative cooperation are in place.

5. It shall be considered that the reference to 'special circumstances' of Article 74(2)(a) of Implementing Regulation (EU) 2015/2447 is applicable to the products referred to in paragraphs 1 and 2 for which a certificate of origin Form A was not issued at the time of exportation.

Article 2

By 31 January 2017, the competent authorities of Ecuador shall transmit to the Commission a statement of the quantities and values in respect of which certificates of origin Form A have been issued for the purposes of the derogation referred to in paragraphs 1 and 2 of Article 1 and the serial numbers of those certificates.

Article 3

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

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

Done at Brussels, 16 August 2016.

For the Commission

The President

Jean-Claude JUNKER

COMMISSION REGULATION (EU) 2016/1381**of 16 August 2016****refusing to authorise a health claim made on foods and referring to children's development and health****(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 1924/2006 of the European Parliament and of the Council of 20 December 2006 on nutrition and health claims made on foods ⁽¹⁾, and in particular Article 17(3) thereof,

Whereas:

- (1) Pursuant to Regulation (EC) No 1924/2006 health claims made on foods are prohibited unless they are authorised by the Commission in accordance with that Regulation and included in a list of permitted claims.
- (2) Regulation (EC) No 1924/2006 also provides that applications for authorisations of health claims may be submitted by food business operators to the national competent authority of a Member State. The national competent authority is to forward valid applications to the European Food Safety Authority (EFSA), hereinafter referred to as 'the Authority'.
- (3) Following receipt of an application the Authority is to inform without delay the other Member States and the Commission thereof, and to deliver an opinion on the health claim concerned.
- (4) The Commission is to decide on the authorisation of health claims taking into account the opinion delivered by the Authority.
- (5) Following an application from Cross Vetpharm Group UK Ltd, submitted pursuant to Article 14(1)(b) of Regulation (EC) No 1924/2006, the Authority was required to deliver an opinion on a health claim related to β -galactosidase from *Kluyveromyces lactis* in Colief[®] and a reduction of gastrointestinal discomfort (Question No EFSA-Q-2014-00404 ⁽²⁾). The claim proposed by the applicant was worded as follows: 'Colief[®]/lactase enzyme reduces the lactose load of the infant's feed and improves the consequences of lactose maldigestion in colicky infants unable to effectively digest all the lactose in their feed'.
- (6) On 17 July 2015, the Commission and the Member States received the scientific opinion from the Authority, which concluded that the evidence provided is insufficient to establish a cause and effect relationship between the consumption of β -galactosidase from *Kluyveromyces lactis* in Colief[®] and a reduction of gastrointestinal discomfort. Accordingly, as the claim does not comply with the requirements of Regulation (EC) No 1924/2006, it should not be authorised.
- (7) The measures provided for in this Regulation are in accordance with the opinion of the Standing Committee on Plants, Animals, Food and Feed,

HAS ADOPTED THIS REGULATION:

Article 1

The health claim listed in the Annex to this Regulation shall not be included in the Union list of permitted claims as provided for in Article 14(1) of Regulation (EC) No 1924/2006.

⁽¹⁾ OJ L 404, 30.12.2006, p. 9.

⁽²⁾ EFSA Journal 2015;13(7):4187.

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, 16 August 2016.

For the Commission

The President

Jean-Claude JUNCKER

*ANNEX***Rejected health claim**

Application — Relevant provisions of Regulation (EC) No 1924/2006	Nutrient, substance, food or food category	Claim	EFSA opinion reference
Article 14(1)(b) health claim referring to children's development and health	Colief®	Colief®/lactase enzyme reduces the lactose load of the infant's feed and improves the consequences of lactose maldigestion in colicky infants unable to effectively digest all the lactose in their feed.	Q-2014-00404

COMMISSION IMPLEMENTING REGULATION (EU) 2016/1382**of 16 August 2016**

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

THE EUROPEAN COMMISSION,

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

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

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

Informing the Member States,

Whereas:

A. UNDERTAKING AND OTHER EXISTING MEASURES

- (1) By Regulation (EU) No 513/2013 ⁽³⁾, the European Commission ('the Commission') imposed a provisional anti-dumping duty on imports into the European Union ('the Union') of crystalline silicon photovoltaic modules ('modules') and key components (i.e. cells and wafers) originating in or consigned from the People's Republic of China ('the PRC').
- (2) A group of exporting producers gave a mandate to the China Chamber of Commerce for Import and Export of Machinery and Electronic Products ('CCCME') to submit a price undertaking on their behalf to the Commission, which they did. It is clear from the terms of that price undertaking that it constitutes a bundle of individual price undertakings for each exporting producer, which is, for reasons of practicality of administration, coordinated by the CCCME.
- (3) By Decision 2013/423/EU ⁽⁴⁾, the Commission accepted that price undertaking with regard to the provisional anti-dumping duty. By Regulation (EU) No 748/2013 ⁽⁵⁾, the Commission amended Regulation (EU) No 513/2013 to introduce the technical changes necessary due to the acceptance of the undertaking with regard to the provisional anti-dumping duty.
- (4) By Implementing Regulation (EU) No 1238/2013 ⁽⁶⁾, the Council imposed a definitive anti-dumping duty on imports into the Union of modules and cells originating in or consigned from the PRC ('the products concerned'). By Implementing Regulation (EU) No 1239/2013 ⁽⁷⁾, the Council also imposed a definitive countervailing duty on imports into the Union of the products concerned.

⁽¹⁾ OJ L 176, 30.6.2016, p. 21.

⁽²⁾ OJ L 176, 30.6.2016, p. 55.

⁽³⁾ OJ L 152, 5.6.2013, p. 5.

⁽⁴⁾ OJ L 209, 3.8.2013, p. 26.

⁽⁵⁾ OJ L 209, 3.8.2013, p. 1.

⁽⁶⁾ OJ L 325, 5.12.2013, p. 1.

⁽⁷⁾ OJ L 325, 5.12.2013, p. 66.

- (5) Following the notification of an amended version of the price undertaking by a group of exporting producers ('the exporting producers') together with the CCCME, the Commission confirmed by Implementing Decision 2013/707/EU ⁽¹⁾ the acceptance of the price undertaking as amended ('the undertaking') for the period of application of definitive measures. The Annex to this Decision lists the exporting producers for whom the undertaking was accepted, inter alia:
- (a) Delsolar (Wujiang) Ltd together with its related company in the Union, jointly covered by the TARIC additional code: B792 ('Delsolar');
 - (b) CNPV Dongying Solar Power Co. Ltd covered by the TARIC additional code: B813 ('CNPV');
 - (c) MOTECH (Suzhou) RENEWABLE ENERGY CO. LTD covered by the TARIC additional code: B852 ('MOTECH');
 - (d) Xi'an LONGi Silicon Materials Corp. and Wuxi LONGi Silicon Materials Co. Ltd, jointly covered by the TARIC additional code: B897 ('Xi'an LONGi'); and
 - (e) LERRI Solar Technology (Zhejiang) Co. Ltd together with its related company in the Union, jointly covered by the TARIC additional code: B898 ('LERRI Solar').
- (6) By Implementing Decision 2014/657/EU ⁽²⁾ the Commission accepted a proposal by the exporting producers together with the CCCME for clarifications concerning the implementation of the undertaking for the products concerned covered by the undertaking, that is modules and cells originating in or consigned from the PRC, currently falling within CN codes ex 8541 40 90 (TARIC codes 8541 40 90 21, 8541 40 90 29, 8541 40 90 31 and 8541 40 90 39) produced by the exporting producers ('product covered'). The anti-dumping and countervailing duties referred to in recital 4 above, together with the undertaking, are jointly referred to as 'measures'.
- (7) By Implementing Regulation (EU) 2015/866 ⁽³⁾ the Commission withdrew the acceptance of the undertaking for three exporting producers.
- (8) By Implementing Regulation (EU) 2015/1403 ⁽⁴⁾ the Commission withdrew the acceptance of the undertaking for another exporting producer.
- (9) By Implementing Regulation (EU) 2015/2018 ⁽⁵⁾ the Commission withdrew the acceptance of the undertaking for two exporting producers.
- (10) The Commission initiated an expiry review investigation under Article 11(2) of the basic anti-dumping Regulation by a Notice of Initiation published in the *Official Journal of the European Union* ⁽⁶⁾ on 5 December 2015.
- (11) The Commission initiated an expiry review investigation under Article 18 of the basic anti-subsidy Regulation by a Notice of Initiation published in the *Official Journal of the European Union* ⁽⁷⁾ on 5 December 2015.
- (12) The Commission also initiated a partial interim review under Article 11(3) of the basic anti-dumping Regulation and Article 19 of the basic anti-subsidy Regulation by a Notice of Initiation published in the *Official Journal of the European Union* ⁽⁸⁾ on 5 December 2015.
- (13) By Implementing Regulation (EU) 2016/115 ⁽⁹⁾ the Commission withdrew the acceptance of the undertaking for another exporting producer.

⁽¹⁾ OJ L 325, 5.12.2013, p. 214.

⁽²⁾ OJ L 270, 11.9.2014, p. 6.

⁽³⁾ OJ L 139, 5.6.2015, p. 30.

⁽⁴⁾ OJ L 218, 19.8.2015, p. 1.

⁽⁵⁾ OJ L 295, 12.11.2015, p. 23.

⁽⁶⁾ OJ C 405, 5.12.2015, p. 8.

⁽⁷⁾ OJ C 405, 5.12.2015, p. 20.

⁽⁸⁾ OJ C 405, 5.12.2015, p. 33.

⁽⁹⁾ OJ L 23, 29.1.2016, p. 47.

- (14) By Implementing Regulation (EU) 2016/185 ⁽¹⁾, the Commission extended the definitive anti-dumping duty imposed by Implementing Regulation (EU) No 1238/2013 on imports of the products concerned originating in or consigned from the People's Republic of China to imports of the product concerned consigned from Malaysia and Taiwan, whether declared as originating in Malaysia and in Taiwan or not.
- (15) By Implementing Regulation (EU) 2016/184 ⁽²⁾, the Commission extended the definitive countervailing duty imposed by Implementing Regulation (EU) No 1239/2013 on imports of the products concerned originating in or consigned from the People's Republic of China to imports of the product concerned consigned from Malaysia and Taiwan, whether declared as originating in Malaysia and in Taiwan or not.
- (16) By Implementing Regulation (EU) 2016/1045 ⁽³⁾ the Commission withdrew the acceptance of the undertaking for another exporting producer.

B. TERMS OF THE UNDERTAKING THAT ALLOW FOR WITHDRAWAL IN THE ABSENCE OF A BREACH

- (17) The undertaking stipulates that the Commission may withdraw the acceptance of the undertaking during its period of application, if monitoring and enforcement prove to be impracticable, including any change in circumstances.
- (18) In addition, any exporting producer may also voluntarily withdraw its undertaking at any time during its application.

C. GROUNDS TO WITHDRAW THE ACCEPTANCE OF THE UNDERTAKING FOR DELSOLAR AND MOTECH

- (19) Both Delsolar and MOTECH have a related party in Taiwan that were granted exemption in the anti-circumvention investigations referred to in recitals 14 and 15.
- (20) The Commission analysed the implication of these exemptions on the practicability of the undertaking. The exemptions represent a change in circumstances compared to those at the time of accepting the undertaking. Their objective is to exempt imports into the Union of the products concerned which were manufactured by the related parties of Delsolar and MOTECH in Taiwan. Such imports fall outside the scope of the undertaking.
- (21) The Commission considers that this exemption for imports into the Union creates a high risk of cross-compensation. In fact, the related parties exempted in the anti-circumvention investigation may sell the product concerned to the same Union customers to whom the product covered is sold and the prices for such transactions could be set in a way to compensate for the Minimum Import Price under the undertaking. The Commission is not in a position to monitor the sales to the same Union customers under the undertaking and from Taiwan.
- (22) Therefore, the Commission concluded that the above exemptions render the monitoring of Delsolar's and MOTECH's undertaking impracticable.

D. VOLUNTARY WITHDRAWAL BY LERRI SOLAR, XI'AN LONGi AND CNPV

- (23) LERRI Solar notified the Commission in March 2016 that it wished to withdraw from the undertaking.
- (24) Xi'an LONGi and CNPV notified the Commission in May 2016 that they wished to withdraw from the undertaking as well.

E. WRITTEN SUBMISSIONS AND HEARINGS

- (25) Interested parties were granted the opportunity to be heard and to comment pursuant to Article 8(9) of the basic anti-dumping Regulation and Article 13(9) of the basic anti-subsidy Regulation. Delsolar and MOTECH submitted comments.

⁽¹⁾ OJ L 37, 12.2.2016, p. 76.

⁽²⁾ OJ L 37, 12.2.2016, p. 56.

⁽³⁾ OJ L 170, 29.6.2016, p. 5.

(i) *Delsolar*

- (26) Delsolar contested that the exemption granted to its Taiwanese related party represents a change in circumstances. Delsolar notified the Commission on the merger with the Taiwanese company in the original investigations referred to in recital 4 which the Commission did not object. As the product concerned produced by Delsolar's Taiwanese related party has neither before nor after the anti-circumvention investigations been subject to the measures, the situation does not differ from the one that existed prior to the anti-circumvention investigations.
- (27) The Commission cannot accept this argument.
- (28) First of all, the Commission recalls that the market share of imports from third countries excluding the PRC into the Union was 6,8 % of the Union market during the investigation period. In particular, the market share of imports from Taiwan was 0,8 % (Table 12 of Regulation (EU) No 513/2013). It follows from those figures that the exports from the existing production facilities of companies producing in Taiwan and related to Chinese companies having offered the undertaking were marginal.
- (29) However, as a result of the granting of the exemptions under Article 13(4) of the basic anti-dumping Regulation and Article 23(6) of the basic anti-subsidy Regulation, it can be expected that Delsolar's Taiwanese related party will export significant volumes of modules and cells to the Union.
- (30) The decision to withdraw the acceptance of the undertaking is due to risk of cross-compensation that the Commission cannot monitor. The issue of whether goods produced in third country facilities are subject to measures is not relevant in the assessment of monitoring risks. The exemption concerns the imports of the product concerned manufactured by Delsolar's Taiwanese related party that are specifically destined to the Union market. Therefore, it creates a high risk of cross-compensation. The assessment of monitoring risks is also case specific and might evolve during the lifetime of the undertaking, as certain risks materialize, new risks emerge and the Commission can better assess the practical aspects of case-specific monitoring. Again, in this relation, it is irrelevant whether the imports prior to the anti-circumvention investigation were subject to the measures.
- (31) Delsolar also claimed that the mere exemption of its related Taiwanese party does not warrant the conclusion that the monitoring of Delsolar's undertaking becomes impracticable. In Delsolar's view, the increased risk of cross-compensation is purely hypothetical. As the undertaking prohibits sales to the same customers, any violation could lead to the withdrawal of Delsolar's undertaking. In this regard, Delsolar stated that it does not sell the product covered to the same customer to whom its Taiwanese related party sells the product concerned. The compliance can be verified by on-spot visits at the premises of Delsolar and its Taiwanese related party. In addition, Delsolar claimed that the Commission, in the anti-circumvention investigations referred to in recitals 14 and 15, considered its Taiwanese related party as a genuine producer not circumventing the measures. Hence, any allegation on the potential risk of cross-compensation is purely speculative.
- (32) The Commission rejects this argument. The anti-circumvention investigations referred to in recitals 14 and 15 established that Delsolar's Taiwanese related part did not engage in circumvention practices in the meaning of Article 13 of basic anti-dumping Regulation and Article 23 of the basic anti-subsidy Regulation. However, the scope of those investigations did not include considering the risks related to Delsolar's undertaking. Neither those findings imply that no circumvention of the undertaking in the meaning of price cross-compensation took place. On the contrary, the exemption granted to the Delsolar's Taiwanese related party increases significantly the circumvention risks related to Delsolar's undertaking. Such exemption implies specific intention to sell to the Union. Hence, it would require the Commission to monitor the sales both under the undertaking and from Taiwan. This renders the monitoring of Delsolar's undertaking impractical. The Commission also recalls in this regard that the monitoring of the undertaking has increasingly become more difficult during its implementation, in particular with regard to the circumvention practices found in Malaysia and Taiwan. The Commission is not in position to monitor the sales from Taiwan that fall outside the scope of the undertaking. In addition, the Commission recalls that it offered options to Delsolar to keep its undertaking practicable, which Delsolar refused to consider.
- (33) Finally, Delsolar submitted that its situation is comparable to any other company party to the undertaking that has related companies with production facilities in countries not subject to the measures. Hence, the mere existence of the relationship does not *per se* render the monitoring of the undertaking impracticable.
- (34) The Commission rejects this argument and recalls its reasoning set out in recitals 27 and 29.

(ii) MOTECH

- (35) Similarly to Delsolar, MOTECH argued that the relationship to its Taiwanese related party was known to the Commission during the original investigations referred to in recital 4. By accepting the undertaking from MOTECH, the Commission confirmed that no circumvention existed.
- (36) First of all, the Commission refers in that regard to the rejection of the similar arguments made by Delsolar.
- (37) Furthermore, the Commission also rejects this argument for the following reasons. At the time of the acceptance of the undertaking the Commission indeed conducts an overall analysis of monitoring risks. The acceptance *per se* does not imply that no circumvention exists. The Commission considers that the exemption granted to MOTECH's Taiwanese related party increases the risk of cross-compensation as referred to in recital 21. The Commission recalls in this regard that the monitoring of the undertaking has increasingly become more difficult during its implementation, in particular with regard to the circumvention practices found in Malaysia and Taiwan. The Commission is not in position to monitor the sales to the same Union customers under the undertaking and those from Taiwan.
- (38) MOTECH also submitted that by granting exemption to its Taiwanese related party, the Commission confirmed that no circumvention and cross-compensation exist in relation to MOTECH and its Taiwanese related party. The Commission could monitor the imports from MOTECH and its Taiwanese related party as both companies import into the Union under separate TARIC additional codes.
- (39) The Commission rejects this argument. The exemption granted in the anti-circumvention investigations referred to in recitals 14 and 15 confirms that MOTECH's Taiwanese related party was not found to be engaged in circumvention practices. However, this finding is irrelevant to the assessment on the practicability of the undertaking set out in recitals 21 and 22. The Commission analysed the implication of this exemption and concluded the risk of cross-compensation has increased. The Commission also took into account the experience gained during the monitoring of the undertaking when concluded that it is not in position to monitor the sales to the same Union customers under the undertaking and from Taiwan.

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

- (40) Therefore, in accordance with Article 8(9) of the basic anti-dumping Regulation, Article 13(9) of the basic anti-subsidy Regulation and also in accordance with the terms of the undertaking, the Commission has concluded that the acceptance of the undertaking for Delsolar, CNPV, MOTECH, Xi'an LONGi and LERRI Solar together with their related companies in the Union shall be withdrawn.
- (41) Accordingly, pursuant to Article 8(9) of the basic anti-dumping Regulation and Article 13(9) of the basic anti-subsidy Regulation, the definitive anti-dumping duty imposed by Article 1 of Implementing Regulation (EU) No 1238/2013 and the definitive countervailing duty imposed by Article 1 of Implementing Regulation (EU) No 1239/2013 automatically apply to imports originating in or consigned from the PRC of the product concerned and produced by Delsolar (TARIC additional code: B792), CNPV (TARIC additional code: B813), MOTECH (TARIC additional code: B852), Xi'an LONGi (TARIC additional code: B897) and LERRI Solar (TARIC additional code: B898) as of the day of entry into force of this Regulation.
- (42) For information purposes the table in the Annex to this Regulation lists the exporting producers for whom the acceptance of the undertaking by Implementing Decision 2013/707/EU is not affected,

HAS ADOPTED THIS REGULATION:

Article 1

Acceptance of the undertaking in relation to

- (a) Delsolar (Wujiang) Ltd together with its related company in the Union, jointly covered by the TARIC additional code: B792;

- (b) CNPV Dongying Solar Power Co. Ltd covered by the TARIC additional code: B813;
- (c) MOTECH (Suzhou) RENEWABLE ENERGY CO. LTD covered by the TARIC additional code: B852;
- (d) Xi'an LONGi Silicon Materials Corp. and Wuxi LONGi Silicon Materials Co. Ltd, jointly covered by the TARIC additional code: B897; and
- (e) LERRI Solar Technology (Zhejiang) Co. Ltd together with its related company in the Union, jointly covered by the TARIC additional code: B898

is hereby withdrawn.

Article 2

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

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

Done at Brussels, 16 August 2016.

For the Commission

The President

Jean-Claude JUNKER

ANNEX

List of companies:

Name of the company	TARIC additional code
Jiangsu Aide Solar Energy Technology Co. Ltd	B798
Alternative Energy (AE) Solar Co. Ltd	B799
Anhui Chaoqun Power Co. Ltd	B800
Anji DaSol Solar Energy Science & Technology Co. Ltd	B802
Anhui Schutten Solar Energy Co. Ltd Quanjiao Jingkun Trade Co. Ltd	B801
Anhui Titan PV Co. Ltd	B803
Xi'an SunOasis (Prime) Company Limited TBEA SOLAR CO. LTD XINJIANG SANG'O SOLAR EQUIPMENT	B804
Changzhou NESL Solartech Co. Ltd	B806
Changzhou Shangyou Lianyi Electronic Co. Ltd	B807
CHINALAND SOLAR ENERGY CO. LTD	B808
ChangZhou EGing Photovoltaic Technology Co. Ltd	B811
CIXI CITY RIXING ELECTRONICS CO. LTD ANHUI RINENG ZHONGTIAN SEMICONDUCTOR DEVELOPMENT CO. LTD HUOSHAN KEBO ENERGY & TECHNOLOGY CO. LTD	B812
CSG PVtech Co. Ltd	B814
China Sunergy (Nanjing) Co. Ltd CEEG Nanjing Renewable Energy Co. Ltd CEEG (Shanghai) Solar Science Technology Co. Ltd China Sunergy (Yangzhou) Co. Ltd China Sunergy (Shanghai) Co. Ltd	B809
Dongfang Electric (Yixing) MAGI Solar Power Technology Co. Ltd	B816
EOPLLY New Energy Technology Co. Ltd SHANGHAI EBEST SOLAR ENERGY TECHNOLOGY CO. LTD JIANGSU EOPLLY IMPORT & EXPORT CO. LTD	B817
Era Solar Co. Ltd	B818
GD Solar Co. Ltd	B820
Greenway Solar-Tech (Shanghai) Co. Ltd Greenway Solar-Tech (Huaian) Co. Ltd	B821

Name of the company	TARIC additional code
Konca Solar Cell Co. Ltd Suzhou GCL Photovoltaic Technology Co. Ltd Jiangsu GCL Silicon Material Technology Development Co. Ltd Jiangsu Zhongneng Polysilicon Technology Development Co. Ltd GCL-Poly (Suzhou) Energy Limited GCL-Poly Solar Power System Integration (Taicang) Co. Ltd GCL SOLAR POWER (SUZHOU) LIMITED	B850
Guodian Jintech Solar Energy Co. Ltd	B822
Hangzhou Bluesun New Material Co. Ltd	B824
Hanwha SolarOne (Qidong) Co. Ltd	B826
Hengdian Group DMEGC Magnetics Co. Ltd	B827
HENGJI PV-TECH ENERGY CO. LTD	B828
Himin Clean Energy Holdings Co. Ltd	B829
Jetion Solar (China) Co. Ltd Junfeng Solar (Jiangsu) Co. Ltd Jetion Solar (Jiangyin) Co. Ltd	B830
Jiangsu Green Power PV Co. Ltd	B831
Jiangsu Hosun Solar Power Co. Ltd	B832
Jiangsu Jiasheng Photovoltaic Technology Co. Ltd	B833
Jiangsu Runda PV Co. Ltd	B834
Jiangsu Sainty Photovoltaic Systems Co. Ltd Jiangsu Sainty Machinery Imp. And Exp. Corp. Ltd	B835
Jiangsu Seraphim Solar System Co. Ltd	B836
Jiangsu Shunfeng Photovoltaic Technology Co. Ltd Changzhou Shunfeng Photovoltaic Materials Co. Ltd Jiangsu Shunfeng Photovoltaic Electronic Power Co. Ltd	B837
Jiangsu Sinski PV Co. Ltd	B838
Jiangsu Sunlink PV Technology Co. Ltd	B839
Jiangsu Zhongchao Solar Technology Co. Ltd	B840
Jiangxi Risun Solar Energy Co. Ltd	B841
Jiangxi LDK Solar Hi-Tech Co. Ltd LDK Solar Hi-Tech (Nanchang) Co. Ltd LDK Solar Hi-Tech (Suzhou) Co. Ltd	B793

Name of the company	TARIC additional code
Jiangyin Hareon Power Co. Ltd Hareon Solar Technology Co. Ltd Taicang Hareon Solar Co. Ltd Hefei Hareon Solar Technology Co. Ltd Jiangyin Xinhui Solar Energy Co. Ltd Altusvia Energy (Taicang) Co. Ltd	B842
Jiangyin Shine Science and Technology Co. Ltd	B843
JingAo Solar Co. Ltd Shanghai JA Solar Technology Co. Ltd JA Solar Technology Yangzhou Co. Ltd Hefei JA Solar Technology Co. Ltd Shanghai JA Solar PV Technology Co. Ltd	B794
Jinko Solar Co. Ltd Jinko Solar Import and Export Co. Ltd ZHEJIANG JINKO SOLAR CO. LTD ZHEJIANG JINKO SOLAR TRADING CO. LTD	B845
Jinzhou Yangguang Energy Co. Ltd Jinzhou Huachang Photovoltaic Technology Co. Ltd Jinzhou Jinmao Photovoltaic Technology Co. Ltd Jinzhou Rixin Silicon Materials Co. Ltd Jinzhou Youhua Silicon Materials Co. Ltd	B795
Juli New Energy Co. Ltd	B846
Jumao Photonic (Xiamen) Co. Ltd	B847
King-PV Technology Co. Ltd	B848
Kinve Solar Power Co. Ltd (Maanshan)	B849
Lightway Green New Energy Co. Ltd Lightway Green New Energy(Zhuozhou) Co. Ltd	B851
Nanjing Daqo New Energy Co. Ltd	B853
NICE SUN PV CO. LTD LEVO SOLAR TECHNOLOGY CO. LTD	B854
Ningbo Huashun Solar Energy Technology Co. Ltd	B856
Ningbo Jinshi Solar Electrical Science & Technology Co. Ltd	B857
Ningbo Komaes Solar Technology Co. Ltd	B858
Ningbo Osda Solar Co. Ltd	B859

Name of the company	TARIC additional code
Ningbo Qixin Solar Electrical Appliance Co. Ltd	B860
Ningbo South New Energy Technology Co. Ltd	B861
Ningbo Sunbe Electric Ind Co. Ltd	B862
Ningbo Ulica Solar Science & Technology Co. Ltd	B863
Perfectenergy (Shanghai) Co. Ltd	B864
Perlight Solar Co. Ltd	B865
Phono Solar Technology Co. Ltd Sumec Hardware & Tools Co. Ltd	B866
RISEN ENERGY CO. LTD	B868
SHANDONG LINUO PHOTOVOLTAIC HI-TECH CO. LTD	B869
SHANGHAI ALEX SOLAR ENERGY SCIENCE & TECHNOLOGY CO. LTD SHANGHAI ALEX NEW ENERGY CO. LTD	B870
Shanghai BYD Co. Ltd BYD(Shangluo)Industrial Co. Ltd	B871
Shanghai Chaori Solar Energy Science & Technology Co. Ltd Shanghai Chaori International Trading Co. Ltd	B872
Propsolar (Zhejiang) New Energy Technology Co. Ltd Shanghai Propsolar New Energy Co. Ltd	B873
SHANGHAI SHANGHONG ENERGY TECHNOLOGY CO. LTD	B874
SHANGHAI SOLAR ENERGY S&T CO. LTD Shanghai Shenzhou New Energy Development Co. Ltd Lianyungang Shenzhou New Energy Co. Ltd	B875
Shanghai ST Solar Co. Ltd Jiangsu ST Solar Co. Ltd	B876
Shenzhen Sacred Industry Co.Ltd	B878
Shenzhen Topray Solar Co. Ltd Shanxi Topray Solar Co. Ltd Leshan Topray Cell Co. Ltd	B880
Sopray Energy Co. Ltd Shanghai Sopray New Energy Co. Ltd	B881
SUN EARTH SOLAR POWER CO. LTD NINGBO SUN EARTH SOLAR POWER CO. LTD Ningbo Sun Earth Solar Energy Co. Ltd	B882

Name of the company	TARIC additional code
SUZHOU SHENGLONG PV-TECH CO. LTD	B883
TDG Holding Co. Ltd	B884
Tianwei New Energy Holdings Co. Ltd Tianwei New Energy (Chengdu) PV Module Co. Ltd Tianwei New Energy (Yangzhou) Co. Ltd	B885
Wenzhou Jingri Electrical and Mechanical Co. Ltd	B886
Shanghai Topsolar Green Energy Co. Ltd	B877
Shenzhen Sungold Solar Co. Ltd	B879
Wuhu Zhongfu PV Co. Ltd	B889
Wuxi Saijing Solar Co. Ltd	B890
Wuxi Shangpin Solar Energy Science and Technology Co. Ltd	B891
Wuxi Solar Innova PV Co. Ltd	B892
Wuxi Suntech Power Co. Ltd Suntech Power Co. Ltd Wuxi Sunshine Power Co. Ltd Luoyang Suntech Power Co. Ltd Zhenjiang Rietech New Energy Science Technology Co. Ltd Zhenjiang Ren De New Energy Science Technology Co. Ltd	B796
Wuxi Taichang Electronic Co. Ltd Wuxi Machinery & Equipment Import & Export Co. Ltd Wuxi Taichen Machinery & Equipment Co. Ltd	B893
Xi'an Huanghe Photovoltaic Technology Co. Ltd State-run Huanghe Machine-Building Factory Import and Export Corporation Shanghai Huanghe Fengjia Photovoltaic Technology Co. Ltd	B896
Yingli Energy (China) Co. Ltd Baoding Tianwei Yingli New Energy Resources Co. Ltd Hainan Yingli New Energy Resources Co. Ltd Hengshui Yingli New Energy Resources Co. Ltd Tianjin Yingli New Energy Resources Co. Ltd Lixian Yingli New Energy Resources Co. Ltd Baoding Jiasheng Photovoltaic Technology Co. Ltd Beijing Tianneng Yingli New Energy Resources Co. Ltd Yingli Energy (Beijing) Co. Ltd	B797
Yuhuan BLD Solar Technology Co. Ltd Zhejiang BLD Solar Technology Co. Ltd	B899

Name of the company	TARIC additional code
Yuhuan Sinosola Science & Technology Co.Ltd	B900
Zhangjiagang City SEG PV Co. Ltd	B902
Zhejiang Fengsheng Electrical Co. Ltd	B903
Zhejiang Global Photovoltaic Technology Co. Ltd	B904
Zhejiang Heda Solar Technology Co. Ltd	B905
Zhejiang Jiutai New Energy Co. Ltd	B906
Zhejiang Topoint Photovoltaic Co. Ltd	
Zhejiang Kingdom Solar Energy Technic Co. Ltd	B907
Zhejiang Koly Energy Co. Ltd	B908
Zhejiang Mega Solar Energy Co. Ltd	B910
Zhejiang Fortune Photovoltaic Co. Ltd	
Zhejiang Shuqimeng Photovoltaic Technology Co. Ltd	B911
Zhejiang Shinew Photoelectronic Technology Co. Ltd	B912
Zhejiang Sunflower Light Energy Science & Technology Limited Liability Company	B914
Zhejiang Yauchong Light Energy Science & Technology Co. Ltd	
Zhejiang Sunrupu New Energy Co. Ltd	B915
Zhejiang Tianming Solar Technology Co. Ltd	B916
Zhejiang Trunsun Solar Co. Ltd	B917
Zhejiang Beyondsun PV Co. Ltd	
Zhejiang Wanxiang Solar Co. Ltd	B918
WANXIANG IMPORT & EXPORT CO. LTD	
ZHEJIANG YUANZHONG SOLAR CO. LTD	B920
Zhongli Talesun Solar Co. Ltd	B922

COMMISSION IMPLEMENTING REGULATION (EU) 2016/1383**of 16 August 2016****establishing the standard import values for determining the entry price of certain fruit and vegetables**

THE EUROPEAN COMMISSION,

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

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

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

Whereas:

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

HAS ADOPTED THIS REGULATION:

Article 1

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

Article 2

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

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

Done at Brussels, 16 August 2016.

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

⁽¹⁾ OJ L 347, 20.12.2013, p. 671.

⁽²⁾ OJ L 157, 15.6.2011, p. 1.

ANNEX

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

(EUR/100 kg)		
CN code	Third country code ⁽¹⁾	Standard import value
0702 00 00	MA	155,7
	ZZ	155,7
0707 00 05	TR	116,3
	ZZ	116,3
0709 93 10	TR	137,2
	ZZ	137,2
0805 50 10	AR	198,9
	CL	145,4
	MA	99,8
	TR	156,0
	UY	201,1
	ZA	143,4
	ZZ	157,4
	EG	214,0
	MA	178,5
	TR	144,7
0806 10 10	ZZ	179,1
	AR	116,0
	BR	102,1
	CL	115,8
	CN	125,7
	NZ	141,1
	PE	106,8
	US	139,9
	UY	93,8
	ZA	98,9
0808 10 80	ZZ	115,6
	AR	99,0
	CL	108,0
	TR	144,2
	ZA	128,5
	ZZ	119,9
	AR	99,0
	CL	108,0
	TR	144,2
	ZA	128,5
0808 30 90	ZZ	119,9
	AR	99,0
	CL	108,0
	TR	144,2
	ZA	128,5
	ZZ	119,9
	AR	99,0
	CL	108,0
	TR	144,2
	ZA	128,5
0809 30 10, 0809 30 90	ZZ	119,9
	TR	133,5
0809 30 10, 0809 30 90	ZZ	133,5
	TR	133,5

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

REGULATION (EU) 2016/1384 OF THE EUROPEAN CENTRAL BANK**of 2 August 2016****amending Regulation (EU) No 1011/2012 (ECB/2012/24) concerning statistics on holdings of securities (ECB/2016/22)**

THE GOVERNING COUNCIL OF THE EUROPEAN CENTRAL BANK,

Having regard to the Statute of the European System of Central Banks and of the European Central Bank, and in particular Article 5 thereof,

Having regard to Council Regulation (EC) No 2533/98 of 23 November 1998 concerning the collection of statistical information by the European Central Bank ⁽¹⁾, and in particular Articles 5(1) and 6(4) thereof,

After consulting the European Commission,

Whereas:

- (1) Additional attributes of statistics on holdings of securities, which go beyond those currently required under Regulation (EU) No 1011/2012 of the European Central Bank (ECB/2012/24) ⁽²⁾, are necessary in order to ensure that the European System of Central Banks (ESCB) is provided with adequate information on the holdings of securities of banking groups. These additional attributes will allow a more thorough analysis of risks and exposures within the financial system to be carried out. This, in turn, will allow for a more in-depth analysis of the monetary policy transmission mechanism. Extending the scope of the credit risk and accounting information reported is particularly important in terms of financial stability analysis and such data will also be useful for prudential supervision purposes. It is also needed in order to be able to assess the Eurosystem's risk exposure in relation to counterparties in monetary policy operations. The structure of certain provisions of the Regulation should also be amended in order to clarify reporting agents' statistical reporting requirements for both sectoral and group data.
- (2) Furthermore, the reporting requirements for custodians should be clarified to avoid double reporting of securities that could be reported by several custodians resident in the euro area, for example in the case of sub-custodians.
- (3) Therefore, Regulation (EU) No 1011/2012 (ECB/2012/24) should be amended accordingly,

HAS ADOPTED THIS REGULATION:

*Article 1***Amendments**

Regulation (EU) No 1011/2012 (ECB/2012/24) is amended as follows:

1. Article 1 is amended as follows:

(a) point 3 is replaced by the following:

‘3. “institution” has the same meaning as defined in point (3) of Article 4(1) of Regulation (EU) No 575/2013 of the European Parliament and of the Council (*);

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

⁽¹⁾ OJ L 318, 27.11.1998, p. 8.

⁽²⁾ Regulation (EU) No 1011/2012 of the European Central Bank of 17 October 2012 concerning statistics on holdings of securities (ECB/2012/24) (OJ L 305, 1.11.2012, p. 6).

(b) the following points 3a to 3d are inserted:

‘3a. “parent undertaking” has the same meaning as defined in point (9) of Article 2 of Directive 2013/34/EU of the European Parliament and of the Council (*);

3b. “subsidiary” means:

(a) a subsidiary undertaking as defined in point (10) of Article 2 of Directive 2013/34/EU;

(b) any undertaking over which a parent undertaking effectively exercises a dominant influence.

Subsidiaries of subsidiaries shall also be considered to be subsidiaries of the undertaking that is their original parent undertaking;

3c. “financial institution” has the same meaning as defined in point (26) of Article 4(1) of Regulation (EU) No 575/2013;

3d. “branch of an insurance corporation” means an unincorporated agency or branch, but not the head office, of an insurance or reinsurance corporation;

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

(c) point 4 is replaced by the following:

‘4. “banking group” means the undertakings included in the scope of the consolidation of the head of a banking group pursuant to Articles 18(1), 18(4), 18(8), 19(1), 19(3) and Article 23 of Regulation (EU) No 575/2013;’

(d) point 10 is replaced by the following:

‘10. “head of a banking group” means any of the following:

(a) an EU parent institution, within the meaning of point (29) of Article 4(1) of Regulation (EU) No 575/2013, with any reference to a Member State in that definition being understood as a reference to a participating Member State;

(b) an EU parent financial holding company within the meaning of point (31) of Article 4(1) of Regulation (EU) No 575/2013, with any reference to a Member State in that definition being understood as a reference to a participating Member State;

(c) an EU parent mixed financial holding company within the meaning of point (33) of Article 4(1) of Regulation (EU) No 575/2013, with any reference to a Member State in that definition being understood as a reference to a participating Member State;

(d) a central body, within the meaning of Article 10 of Regulation (EU) No 575/2013, in a participating Member State;’

(e) point 11 is deleted;

(f) point 13 is replaced by the following:

‘13. “securities held in custody” means securities which are held and administered by custodians directly, or indirectly via a client, on behalf of investors;’

(g) the following points 18 to 24 are added:

- ‘18. “legal entity” means any entity, other than a natural person, that has the status of a legal person under the national law of the country in which the entity is resident, allowing the entity to have legal rights and obligations under the national legal system of that country;
- 19. “sectoral data” means data reported pursuant to Article 3;
- 20. “group data” means data reported pursuant to Article 3a;
- 21. “participating Member State” has the same meaning as defined in Article 1(3) of Regulation (EC) No 2533/98;
- 22. “client” means a natural or legal person to whom a custodian provides safekeeping and related services, including another custodian;
- 23. “entity-by-entity basis” means the reported data refers to the holdings of securities of each individual legal entity of a banking group, i.e. the parent undertaking and each of its subsidiaries;
- 24. “group basis” means the reported data includes information on the holdings of securities of the banking group as a whole.’;

2. Article 2 is amended as follows:

(a) paragraph 1 is replaced by the following:

‘1. The actual reporting population shall consist of sectoral data reporting agents and group data reporting agents (hereinafter collectively referred to as “actual reporting agents”).

(a) Sectoral data reporting agents shall be resident MFIs, IFs, FVCs, ICs and custodians.

(b) Group data reporting agents shall be:

(i) heads of banking groups; and

(ii) institutions or financial institutions established in participating Member States and which are not part of a banking group;

where they have been identified by the Governing Council pursuant to paragraph 4 as part of the actual reporting population, and notified of their reporting obligations pursuant to paragraph 5.’;

(b) paragraphs 3 to 8 are replaced by the following:

‘3. The actual reporting agents shall be subject to full reporting requirements unless any derogation granted pursuant to Articles 4, 4a or 4b applies.

4. The Governing Council may decide that a group data reporting agent is part of the actual reporting population if the value of the total balance sheet assets of the banking group referred to under paragraph 1(b)(i) or the institution or financial institution referred to under paragraph 1(b)(ii), is:

(a) greater than 0,5 % of the total consolidated balance sheet assets of the Union banking groups (hereinafter the “0,5 % threshold”), according to the most recent data available to the ECB, i.e.:

(i) data with reference to the end of December of the calendar year preceding notification pursuant to paragraph 5 or, if unavailable

(ii) data with reference to the end of December of the previous year;

or

(b) equal to or below the 0,5 % threshold, provided that the group data reporting agent meets certain quantitative or qualitative criteria that make it important for the stability and functioning of the financial system in the euro area, e.g. by virtue of its interconnectedness with other financial institutions in the euro area, cross-jurisdictional activity, lack of substitutability, complexity of the corporate structure; and/or in a given euro area Member State, e.g. by virtue of the relative importance of the group data reporting agent within a particular segment of the banking services market in one or more euro area Member State.

5. The relevant NCB shall notify the group data reporting agents of the Governing Council's decision pursuant to paragraph 4, and of their obligations under this Regulation.

6. Without prejudice to Article 10, any group data reporting agent that is notified in accordance with paragraph 5 after the first reporting under this Regulation has started, shall begin reporting data no later than 6 months after the date of notification.

7. A group data reporting agent notified in accordance with paragraph 5 shall inform the relevant NCB of changes to its name or legal form, of mergers or restructurings, and of any other event or circumstances affecting its reporting obligations, within 14 days of the occurrence of such event or circumstances.

8. A group data reporting agent notified in accordance with paragraph 5 shall remain subject to the obligations set out in this Regulation until it receives notification to the contrary by the relevant NCB.;

3. Article 3 is amended as follows:

(a) the title is replaced by the following:

‘Statistical reporting requirements for sectoral data reporting agents’;

(b) in paragraph 2, points (a), (b) and (c) are replaced by the following:

‘(a) securities they hold in custody for resident clients that do not report their own holdings pursuant to paragraph 1, in accordance with Part 3 of Chapter 1 of Annex I;

(b) securities they hold in custody for non-financial clients resident in other euro area Member States, in accordance with Part 4 of Chapter 1 of Annex I;

(c) securities issued by euro area entities they hold in custody for clients resident in non-euro area Member States and for clients resident outside the Union, in accordance with Part 5 of Chapter 1 of Annex I.;

(c) paragraphs 3 and 4 are deleted;

(d) paragraphs 5 and 6 are replaced by the following:

‘5. Sectoral data reporting agents shall, in accordance with instructions by the relevant NCB, report either (a) security-by-security data on monthly or quarterly financial transactions and, where requested by the relevant NCB, other changes in volume; or (b) the statistical information needed to derive financial transactions on the basis of one of the approaches specified in Part 1 of Chapter 1 of Annex I. Further requirements and guidelines regarding the compilation of transactions are laid down in Part 3 of Annex II.

6. Sectoral data reporting agents shall, if instructed by the relevant NCB, report on a quarterly or monthly basis data on end-of-quarter or end-of-month positions and, in accordance with paragraph 5, statistical information over the reference quarter or month, on holdings of securities without an ISIN code, in accordance with Part 7 of Chapter 1 of Annex I. This paragraph shall not apply to sectoral data reporting agents that are granted derogations under Articles 4 or 4b.;

- (e) paragraphs 7 and 8 are deleted;
- (f) the following paragraphs 12 and 13 are added:

‘12. The relevant NCB shall request that, when an MFI reports security-by-security data on own holdings of securities with an ISIN in accordance with Article 3(1), it reports the flag “security issued by the holder”, as provided for in Part 2 of Chapter 1 of Annex I.

13. The relevant NCB may request that, when an MFI reports statistical information on own holdings of securities without an ISIN code in accordance with Article 3(6), it reports the flag “security issued by the holder” as provided in Part 7 of Chapter 1 of Annex I.’;

- 4. the following Articles 3a and 3b are inserted:

Article 3a

Statistical reporting requirements for group data reporting agents

1. Group data reporting agents shall, on a quarterly basis, provide the relevant NCB with security-by-security data on end-quarter positions of securities which are held by them or their groups, including non-resident entities. Such data shall be reported on a gross basis, without netting out from the group holdings the securities issued by entities of the same group. Such data shall be reported in accordance with the reporting instructions laid down by the relevant NCBs.

Group data reporting agents shall report data on holdings of securities, as specified in Chapter 2 of Annex I.

2. Group data reporting agents which are required to provide data pursuant to paragraph 1 shall report data on a group basis or on an entity-by-entity basis regarding the instruments held by the parent undertaking and/or its subsidiaries in accordance with the tables in Chapter 2 of Annex I.

3. The relevant NCB shall request that group data reporting agents report on a quarterly basis, the flag “issuer is part of the reporting group (prudential scope)”, on a security-by-security basis, and “issuer is part of the reporting group (accounting scope)”, on a security-by-security basis, for the securities with or without an ISIN code which are held by their group in accordance with Chapter 2 of Annex I.

4. Group data reporting agents pursuant to Article 2(1)(b)(ii), shall comply with this Regulation on the basis of the holdings of that individual institution or financial institution.

Article 3b

General statistical reporting requirements

1. The reporting requirements under this Regulation, including any derogations therefrom, shall be without prejudice to the reporting requirements set out in: (a) Regulation (EU) No 1073/2013 of the European Central Bank (ECB/2013/38) (*); (b) Regulation (EU) No 1075/2013 of the European Central Bank (ECB/2013/40) (**); and (c) Regulation (EU) No 1374/2014 of the European Central Bank (ECB/2014/50).

2. Security-by-security data on end-of-quarter or end-of-month positions and, in accordance with Article 3(5), statistical information over the reference quarter or month, shall be reported in accordance with Parts 1, 2, 4, 5, 6, 7 and 8 of Annex II, and with the accounting rules referred to in Articles 5, 5a and 5b.

(*) Regulation (EU) No 1073/2013 of the European Central Bank of 18 October 2013 concerning statistics on the assets and liabilities of investment funds (ECB/2013/38) (OJ L 297, 7.11.2013, p. 73).

(**) Regulation (EU) No 1075/2013 of the European Central Bank of 18 October 2013 concerning statistics on the assets and liabilities of financial vehicle corporations engaged in securitisation transactions (ECB/2013/40) (OJ L 297, 7.11.2013, p. 107).;

5. Article 4 is amended as follows:

(a) the title is replaced by the following:

‘Derogations for sectoral data reporting agents’;

(b) in paragraph 1, the introductory wording is replaced by the following:

‘At the discretion of each relevant NCB, the following derogations may be granted to the sectoral data reporting agents.’;

(c) in paragraph 5, point (b) is replaced by the following:

‘(b) NCBs may partially or fully exempt from the reporting requirements set out in Article 3(2)(b) and (c) custodians holding, for all non-resident clients, a total amount of securities that is below EUR 10 billion.’;

(d) paragraphs 6, 6a, and 7 are deleted;

(e) paragraph 8 is replaced by the following:

‘8. With regard to sectoral data reporting agents for which a derogation referred to in paragraphs 1, 2, 2a, 3 or 4 applies, NCBs shall continue to collect data on an annual basis on the amount of securities that such reporting agents hold or keep in custody, in accordance with the requirements set out in Article 3(1), either on an aggregated or on a security-by-security basis.’;

(f) paragraph 9 is deleted;

(g) paragraphs 11 and 12 are deleted;

(h) the following paragraph 13 is added:

‘13. NCBs may choose to grant derogations to MFIs from the reporting requirements set out in Article 3(12) provided that the NCBs are able to derive these data from data collected from other sources.’;

6. the following Articles 4a and 4b are inserted:

‘Article 4a

Derogations for group data reporting agents

1. NCBs may grant derogations to group data reporting agents from the reporting requirements set out in Article 3a as follows:

(a) NCBs may allow group data reporting agents to report on a security-by-security basis statistical information covering 95 % of the amount of securities held by them or their group, in accordance with this Regulation, provided that the remaining 5 % of securities held by the group was not issued by a single issuer;

(b) NCBs may request group data reporting agents to provide further information on the types of securities for which a derogation is granted under point (a).

2. NCBs may grant derogations from the reporting requirements to group data reporting agents with respect to the flag “issuer is part of the reporting group (prudential scope)”, on a security-by-security basis, as set out in Article 3a(3), provided that the NCBs are able to derive these data from data collected from other sources.

3. For a period of 2 years from the first reporting in accordance with Article 10b(2), NCBs may grant derogations from the reporting requirements to group data reporting agents with respect to the reporting on entity-by-entity basis set out in Chapter 2 of Annex I for entities resident outside the Union provided that the NCBs are able to derive the information in Chapter 2 of Annex I for the entities resident outside the Union as a whole.

Article 4b

General derogations and framework applicable to all derogations

1. NCBs may grant derogations from the reporting requirements under this Regulation if the actual reporting agents report the same data under: (a) Regulation (EU) No 1071/2013 of the European Central Bank (ECB/2013/33) (*); (b) Regulation (EU) No 1073/2013 (ECB/2013/38); (c) Regulation (EU) No 1075/2013 (ECB/2013/40); or (d) Regulation (EU) No 1374/2014 (ECB/2014/50); or if NCBs are able to derive the same data by other means, in accordance with the minimum statistical standards specified in Annex III.

2. NCBs shall ensure that the conditions set out under this Article, Article 4 and 4a are complied with for the purposes of granting, renewing or withdrawing, as applicable and when necessary, any derogation with effect from the start of each calendar year.

3. NCBs may make actual reporting agents, which have been granted derogations under this Article, Article 4 or Article 4a subject to additional reporting requirements, where further detail is deemed necessary by the NCBs. Actual reporting agents shall report the data requested within 15 working days of a request made by the relevant NCB.

4. Where derogations have been granted by NCBs, actual reporting agents may nonetheless fulfil the full reporting requirements. An actual reporting agent that opts not to avail of derogations granted by the relevant NCB shall obtain that NCB's consent prior to availing of the derogations granted at a later date.

(*) Regulation (EU) No 1071/2013 of the European Central Bank of 24 September 2013 concerning the balance sheet of the monetary financial institutions sector (ECB/2013/33) (OJ L 297, 7.11.2013, p. 1).;

7. Article 5 is amended as follows:

(a) the title is replaced by the following:

‘Accounting rules for the reporting of sectoral data’;

(b) paragraph 1 is deleted;

(c) paragraph 4 is deleted;

8. the following Articles 5a and 5b are inserted:

‘Article 5a

Accounting rules for the reporting of group data

1. Without prejudice to national accounting practices, group data reporting agents shall report holdings of securities at the valuations indicated in Parts 4 and 8 of Annex II.

2. Without prejudice to national accounting practices and netting arrangements, group data reporting agents shall report holdings of securities on a gross basis for statistical purposes. In particular, holdings of securities by the group data reporting agents issued by the reporting agent itself and holdings of securities by the individual legal entities in the reporting group identified under Article 2(4) and issued by the entities themselves shall also be reported.

*Article 5b***General accounting rules**

1. Unless otherwise provided for in this Regulation, the accounting rules followed by the actual reporting agents for the purposes of reporting under this Regulation shall be those laid down in the national transposition of Council Directive 86/635/EEC (*) or, if this is inapplicable, in any other national or international standards that apply to the actual reporting agents.

2. Holdings of securities lent out under securities lending operations, or sold under repurchase agreements, shall be recorded as holdings by the original owner, and not as holdings of the party temporarily acquiring them, where there is a firm commitment to reverse the operation, as opposed to an option to do so. Where the party temporarily acquiring the securities sells them, such a sale shall be recorded as an outright transaction in securities and reported by the party temporarily acquiring them as a negative position in the relevant securities portfolio.

(*) Council Directive 86/635/EEC of 8 December 1986 on the annual accounts and consolidated accounts of banks and other financial institutions (OJ L 372, 31.12.1986, p. 1).;

9. Article 6 is replaced by the following:

*'Article 6***Timeliness of sectoral data**

NCBs shall transmit to the ECB:

- (a) quarterly security-by-security sectoral data in accordance with paragraphs (1), (2), (2a) and (5) of Article 3 by 18.00 CET on the 70th calendar day following the end of the quarter to which the data relate; or
- (b) monthly security-by-security sectoral data in accordance with Article 3(5) and Part 1 of Chapter 1 of Annex I, in accordance with (i) or (ii) below:
 - (i) on a quarterly basis for the 3 months of the reference quarter, by 18.00 CET on the 63rd calendar day following the end of the quarter to which the data relate; or
 - (ii) on a monthly basis for each month of the reference quarter, by 18.00 CET on the 63rd calendar day following the end of the month to which the data relate.;

10. the following Articles 6a and 6b are inserted:

*'Article 6a***Timeliness of group data**

NCBs shall transmit to the ECB quarterly security-by security group data in accordance with Article 3a(1) and Chapter 2 of Annex I by 18.00 CET on the 55th calendar day following the end of the quarter to which the data relate.

*Article 6b***General timeliness**

- 1. NCBs shall decide by when they need to receive data from actual reporting agents to be able to perform the necessary quality control procedures and to meet the deadlines in Articles 6 and 6a.
- 2. Where a deadline referred to in Articles 6 or 6a falls on a TARGET2 closing day, the deadline shall be extended to the following TARGET2 operating day, as published on the ECB's website.;

11. the following Article 10b is inserted:

'Article 10b

First reporting following the entry into force of Regulation (EU) 2016/1384 of the European Central Bank (ECB/2016/22) (*)

1. The first reporting of sectoral data pursuant to Article 3 shall start with data for the reference period September 2018.
2. The first reporting of group data pursuant to Article 3a shall start with data for the reference period September 2018.

(*) Regulation (EU) 2016/1384 of the European Central Bank of 2 August 2016 amending Regulation (EU) No 1011/2012 (ECB/2012/24) concerning statistics on holdings of securities (ECB/2016/22) (OJ L 222, 17.8.2016, p. 24).';

12. Annexes I and II are amended in accordance with the Annex to this Regulation.

Article 2

Final provision

This Regulation shall enter into force on 1 October 2018.

This Regulation shall be binding in its entirety and directly applicable in the Member States in accordance with the Treaties.

Done at Frankfurt am Main, 2 August 2016.

For the Governing Council of the ECB
The President of the ECB
Mario DRAGHI

ANNEX

1. Annex I to Regulation (EU) No 1011/2012 (ECB/2012/24) is amended as follows:

(a) the following new heading is inserted before the heading 'Part 1':

'CHAPTER 1: SECTORAL DATA';

(b) Part 1 is amended as follows:

(i) the first sentence of paragraph 1 is replaced by the following:

'MFIs, IFs and custodians reporting data on own holdings of securities or on securities they hold in custody for resident clients provide the statistical information in accordance with one of the following approaches:';

(ii) paragraph 3 is replaced by the following:

'3. Custodians reporting (i) securities they hold in custody for non-financial clients resident in other euro area Member States, and (ii) securities issued by euro area entities they hold in custody for clients resident in non-euro area Member States and for clients resident outside the Union, provide the statistical information in accordance with one of the approaches set out in paragraph 2.';

(c) Part 2 is amended as follows:

(i) the first sentence of the first paragraph is replaced by the following:

'For each security that has been assigned an ISIN code classified under the security category "debt securities" (F.31 and F.32), "listed shares" (F.511) or "investment fund shares or units" (F.521 and F.522), data for the fields in the table below are reported by financial investors belonging to the MFIs, IFs, FVCs or ICs and by custodians with reference to own holdings of securities.';

(ii) the following sentence is inserted at the end of Part 2 above the table:

'The relevant NCB may also choose to require MFIs to report data for field 8.';

(iii) field 2b in the table is replaced by the following:

'2b	Reporting basis';
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(iv) the following field 8 is added to the table:

'8	Security issued by the holder';
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(d) Part 3 is amended as follows:

(i) the heading is replaced by the following:

'Data on securities with an ISIN code held in custody for resident non-financial clients and other financial clients not required to report their own holdings of securities';

(ii) the first sentence of the first paragraph is replaced by the following:

'Custodians report, for each security that has been assigned an ISIN code classified under the security category "debt securities" (F.31 and F.32), "listed shares" (F.511) or "investment fund shares or units" (F.521 and F.522), which they hold in custody for resident non-financial clients and other financial clients that do not report their own holdings of securities, data for the fields in the table below.';

(iii) fields 2b and 3 in the table are replaced by the following:

'2b	Reporting basis
3	Sector of the client: — Insurance corporations (S.128) — Pension funds (S.129) — Other financial intermediaries, except insurance corporations and pension funds (S.125), financial auxiliaries (S.126) and captive financial institutions and money lenders (S.127), excluding financial vehicle corporations engaged in securitisation transactions — Non-financial corporations (S.11) — General government (S.13) (*) — Households and non-profit institutions serving households (S.14 + S.15) (**)

(*) Where available, "central government" (S.1311) "state government" (S.1312), "local government" (S.1313) and "social security funds" (S.1314) sub-sectors are reported separately identified.

(**) The relevant NCB may require actual reporting agents to separately identify the sub-sectors "households" (S.14) and "non-profit institutions serving households" (S.15).;

(iv) fields 9 and 10 in the table are replaced by the following:

'9	Client institution
10	Client institution is subject to direct reporting;

(e) Part 4 is amended as follows:

(i) the heading is replaced by the following:

'Data on securities with an ISIN code held in custody for clients resident in other euro area Member States';

(ii) the first sentence of the first paragraph is replaced by the following:

'Custodians report for each security that has been assigned an ISIN code classified under the security category "debt securities" (F.31 and F.32), "listed shares" (F.511) or "investment fund shares or units" (F.521 and F.522), which they hold in custody for non-financial clients resident in other euro area Member States, data for the fields in the table below.;

(iii) field 2b, 3 and 4 in the table are replaced by the following:

'2b	Reporting basis
3	Sector of the client: — Households (S.14) — Other non-financial clients excluding households
4	Country of the client;

(f) Part 5 is amended as follows:

(i) the heading is replaced by the following:

‘Data on securities with an ISIN code issued by euro area residents held in custody for clients resident in non-euro area Member States or outside the Union’;

(ii) the first sentence of the first paragraph is replaced by the following:

‘Custodians report for each security issued by euro area residents that has been assigned an ISIN code classified under the security category “debt securities” (F.31 and F.32), “listed shares” (F.511) or “investment fund shares or units” (F.521 and F.522), which they hold in custody for clients resident in non-euro area Member States or outside the Union, data for the fields in the table below.’;

(iii) fields 2b, 3 and 4 in the table are replaced by the following:

2b	Reporting basis
3	Sector of the client (*): — General government and central bank — Other clients excluding general government and central bank
4	Country of the client

(*) The sector classification contained in the System of National Accounts 2008 applies in this case as the ESA 2010 does not apply’;

(g) Part 6 is deleted.

(h) Part 7 is replaced by the following:

PART 7

Data on holdings of securities without an ISIN code

For each security that has not been assigned an ISIN code classified under the security category “debt securities” (F.31 and F.32), “listed shares” (F.511) or “investment fund shares or units” (F.521 and F.522), data for the fields in the table below may be reported by financial investors belonging to the MFIs, IFs and FVCs or ICs and by custodians. They report in accordance with the following rules and in conformity with the definitions in Annex II:

(a) For investors reporting data on their holdings of securities, quarterly or monthly data may be reported as follows:

- (i) data for fields 1 to 4 (data for field 5 instead of fields 2 and 4 may be reported), for fields 6 to 13, and either for field 14 or for fields 15 and 16, over the reference quarter or month, on a security-by-security basis using an identification number such as CUSIP, SEDOL, an NCB identification number, etc.; or
- (ii) aggregated data for fields 2 to 4 (data for field 5 instead of fields 2 and 4 may be reported), for fields 6 to 13, and either data for field 14 or for fields 15 and 16, over the reference quarter or month.

The relevant NCB may request the MFIs to also report data in field 17.

Data to be reported by investors reporting data on their holdings of securities

Field	Description
1	Security identifier code (NCB identification number, CUSIP, SEDOL, other)
2	Number of units or aggregated nominal value ⁽¹⁾
3	Reporting basis
4	Price value
5	Market value
6	Instrument: — Short-term debt securities (F.31) — Long-term debt securities (F.32) — Listed shares (F.511) — Money market funds (MMF) shares or units (F.521) — Non-MMF investment fund shares or units (F.522)
7	Sector or sub-sector of investors reporting data on own holdings of securities: — Central bank (S.121) — Deposit-taking corporations except central bank (S.122) — Money market funds (S.123) — Investment funds except money market funds (S.124) — Financial vehicle corporations engaged in securitisation transactions — Insurance corporations (S.128)
8	Sector or sub-sector of the issuer: — Central bank (S.121) — Deposit-taking corporations except central bank (S.122) — Money market funds (S.123) — Investment funds except money market funds (S.124) — Other financial intermediaries, except insurance corporations and pension funds (S.125) — Financial auxiliaries (S.126) — Captive financial institutions and money lenders (S.127) — Insurance corporations (S.128) — Pension funds (S.129) — Non-financial corporations (S.11) — General government (S.13) ⁽²⁾ — Households (S.14) — Non-profit institutions serving households (S.15)
9	Portfolio investment or direct investment

Field	Description
10	Country breakdown of issuer
11	Security currency of denomination
12	Issue date
13	Maturity date
14	Financial transactions
15	Revaluation adjustments
16	Other changes in volume
17	Security issued by the holder

⁽¹⁾ For aggregated data: number of units or aggregated nominal value having the same price value (see field 4).

⁽²⁾ Where available, “central government” (S.1311), “state government” (S.1312), “local government” (S.1313) and “social security funds” (S.1314) sub-sectors are reported separately identified.

(b) For custodians reporting data on securities that they hold for resident financial clients not required to report their holdings of securities and for non-financial clients, quarterly or monthly data may be reported as follows:

- (i) data for fields 1 to 4 (data for field 5 instead of fields 2 and 4 may be reported), for fields 6 to 14, and either for field 15 or for fields 16 and 17, over the reference quarter or month, on a security-by-security basis using an identification number such as CUSIP, SEDOL, an NCB identification number, etc.; or
- (ii) aggregated data for fields 2 to 4 (data for field 5 instead of fields 2 and 4 may be reported), for fields 6 to 14, and either data for field 15 or for fields 16 and 17, over the reference quarter or month.

Custodians reporting the holdings of ICs in accordance with Article 3(2a) must also report data for fields 18 or 19.

Data to be reported by custodians

Field	Description
1	Security identifier code (NCB identification number, CUSIP, SEDOL, other)
2	Number of units or aggregated nominal value ⁽¹⁾
3	Reporting basis
4	Price value
5	Market value

Field	Description
6	Instrument: — Short-term debt securities (F.31) — Long-term debt securities (F.32) — Listed shares (F.511) — Money market funds (MMF) shares or units (F.521) — Non-MMF investment fund shares or units (F.522)
7	Sector or sub-sector of the clients reported by custodians: — Insurance corporations (S.128) — Pension funds (S.129) — Other financial intermediaries, except insurance corporations and pension funds (S.125), financial auxiliaries (S.126) and captive financial institutions and money lenders (S.127), excluding financial vehicle corporations engaged in securitisation transactions — Non-financial corporations (S.11) — General government (S.13) ⁽²⁾ — Households and non-profit institutions serving households (S.14+S.15) ⁽³⁾
8	Sector or sub-sector of the issuer: — Central bank (S.121) — Deposit-taking corporations except central bank (S.122) — Money market funds (S.123) — Investment funds except money market funds (S.124) — Other financial intermediaries, except insurance corporations and pension funds (S.125) — Financial auxiliaries (S.126) — Captive financial institutions and money lenders (S.127) — Insurance corporations (S.128) — Pension funds (S.129) — Non-financial corporations (S.11) — General government (S.13) — Households (S.14) — Non-profit institutions serving households (S.15)
9	Portfolio investment or direct investment
10	Country breakdown of investor
11	Country breakdown of issuer
12	Security currency of denomination
13	Issue date
14	Maturity date

Field	Description
15	Financial transactions
16	Revaluation adjustments
17	Other changes in volume
18	Client institution
19	Client institution is subject to direct reporting

(¹) For aggregated data: number of units or aggregated nominal value having the same price value (see field 4).

(²) Where available, “central government” (S.1311), “state government” (S.1312), “local government” (S.1313) and “social security funds” (S.1314) sub-sectors are reported separately identified.

(³) Where available, “households” (S.14) and “non-profit institutions serving households” (S.15) sub-sectors are reported separately identified.’;

(i) Part 8 is amended as follows:

(i) the first sentence of the first paragraph is replaced by the following:

‘For each security that has been assigned an ISIN code classified under the security category “debt securities” (F.31 and F.32), “listed shares” (F.511) or “investment fund shares or units” (F.521 and F.522), data for the fields in the table below are reported by ICs with reference to own holdings of securities, on an annual basis.’;

(ii) the table is replaced by the following:

Field	Description
1	ISIN code
2	Number of units or aggregated nominal value
2b	Reporting basis
3	Market value
4	Geographical breakdown of the holder (individual EEA countries, non-EEA countries)
5	Instrument: — Short-term debt securities (F.31) — Long-term debt securities (F.32) — Listed shares (F.511) — Money market funds (MMF) shares or units (F.521) — Non-MMF investment fund shares or units (F.522)

Field	Description
6	Sector or sub-sector of the issuer: — Central bank (S.121) — Deposit-taking corporations except central bank (S.122) — Money market funds (S.123) — Investment funds except money market funds (S.124) — Other financial intermediaries, except insurance corporations and pension funds (S.125) — Financial auxiliaries (S.126) — Captive financial institutions and money lenders (S.127) — Insurance corporations (S.128) — Pension funds (S.129) — Non-financial corporations (S.11) — General government (S.13) — Households (S.14) — Non-profit institutions serving households (S.15)
7	Country breakdown of issuer
8	Security currency of denomination

(iii) the following Chapter 2 is inserted:

‘CHAPTER 2: GROUP DATA

PART 1

Data on holdings of securities with an ISIN code

Group data reporting agents report for each security that has been assigned an ISIN code classified under the security category “debt securities” (F.31 and F.32), “listed shares” (F.511) or “investment fund shares or units” (F.521 and F.522), which is held by the group, data for the fields in the table below. They report in accordance with the following rules and in conformity with the definitions in Annex II:

- (a) data for fields 1 to 8 and 12 to 30 are reported;
- (b) data for fields 31 to 33 and 35 to 37 are reported, if the Internal Ratings Based (IRB) approach for regulatory capital calculation is applied or if the data is available by other means;
- (c) data for fields 34 to 37 are reported, if the IRB approach for regulatory capital calculation is not applied or if the data is available by other means;

The relevant NCB may also choose to require group data reporting agents to report data for fields 9 to 11 and, if not already covered under points (b) or (c), 31 to 37.

Field	Description	Level of reporting ⁽¹⁾ (G = Group/E = Entity)
1. Holder related information		
1	Holder identifier code	E
2	Legal Entity Identifier (LEI) of the holder	E

Field	Description	Level of reporting ⁽¹⁾ (G = Group/E = Entity)
3	Name of the holder	E
4	Country of the holder	E
5	Sector of the holder	E
6	Identifier code of the immediate parent of the holder	E

2. Instrument related information

7	ISIN code	E
8	Number of units or aggregated nominal value	E
9	Reporting basis	E
10	Market value	E
11	Issuer is part of the reporting group (prudential scope)	G
12	Issuer is part of the reporting group (accounting scope)	G

3. Accounting and risk related information

13	Status of forbearance and renegotiation	G
14	Date of the forbearance and renegotiation status	G
15	Performing status of the instrument	G
16	Date of the performing status of the instrument	G
17	Default status of the issuer	G
18	Date of default status of the issuer	G
19	Default status of the instrument	G
20	Date of default status of the instrument	G
21	Accounting standard	G and E
22	Carrying amount	E
23	Type of Impairment	E
24	Impairment assessment method	E

Field	Description	Level of reporting ⁽¹⁾ (G = Group/E = Entity)
25	Accumulated impairment amount	E
26	Sources of encumbrance	E
27	Accounting classification of instruments	E
28	Prudential portfolio	E
29	Accumulated changes in fair value due to credit risk	E
30	Cumulative recoveries since default	E
31	Probability of default (PD) of the issuer	G
32	Loss given default (LGD) in downturns	G
33	LGD in normal economic times	G
34	Risk-weight	G
35	Exposure Value (also referred to as Exposure at default)	E
36	Capital calculation approach for prudential purposes	E
37	Exposure class	E

⁽¹⁾ Where the derogation set out in Article 4a(3) is applied, the data fields referring to the entity-by-entity reporting should be reported in accordance with the respective national rules as established by the NCB which granted the derogation ensuring that the data is homogeneous with respect to the mandatory breakdowns.

PART 2

Data on holdings of securities without an ISIN code

Group data reporting agents report for each security that has not been assigned an ISIN code classified under the security category “debt securities” (F.31 and F.32), “listed shares” (F.511) or “investment fund shares or units” (F.521 and F.522), which is held by the group, data for the fields laid down in the table below. They report in accordance with the following rules and in conformity with the definitions set out in Annex II:

- data for fields 1 to 7, 11 and 13 to 52 are reported on a security-by-security basis using an identification number such as CUSIP, SEDOL, an NCB identification number, etc.;
- data for fields 53 to 55 and 57 to 59 are reported, if the IRB approach for regulatory capital calculation is applied or if the data is available by other means;
- data for fields 56 to 59 are reported, if the IRB approach for regulatory capital calculation is not applied or if the data is available by other means.

The relevant NCB may require group data reporting agents to also report data for fields 8 to 10, 12 and, if not already covered under points (b) or c), 53 to 59.

Field	Description	Level of reporting ⁽¹⁾ (G = Group/E = Entity)
1. Holder related information		
1	Holder identifier code	E
2	LEI of the holder	E
3	Name of the holder	E
4	Country of the holder	E
5	Sector of the holder	E
6	Identifier code of the immediate parent of the holder	E
2. Instrument related information		
7	Security identifier code (NCB identification number, CUSIP, SEDOL, other)	E
8	Number of units or aggregated nominal value	E
9	Reporting basis	E
10	Price value	E
11	Market value ⁽²⁾	E
12	Issuer is part of the reporting group (prudential scope)	G
13	Issuer is part of the reporting group (accounting scope)	G
14	Instrument: — Short-term debt securities (F.31) — Long-term debt securities (F.32) — Listed shares (F.511) — Money market funds (MMF) shares or units (F.521) — Non-MMF investment fund shares or units (F.522)	E
15	Security currency of denomination	E
16	Issue date	E
17	Maturity date	E
18	Primary asset classification	E
19	Asset securitisation type	E

Field	Description	Level of reporting ⁽¹⁾ (G = Group/E = Entity)
20	Security status	E
21	Security status date	E
22	Arrears for the instrument	E
23	Date of arrears for the instrument	E
24	Instrument seniority type	E
25	Collateral geographical location	E
26	Guarantor identifier code	E
27	Issuer identifier code	E
28	LEI of the issuer	E
29	Name of the issuer	E
30	Country breakdown of the issuer	E
31	Sector or sub-sector of the issuer: — Central bank (S.121) — Deposit-taking corporations except central bank (S.122) — Money market funds (S.123) — Investment funds except money market funds (S.124) — Other financial intermediaries, except insurance corporations and pension funds (S.125) — Financial auxiliaries (S.126) — Captive financial institutions and money lenders (S.127) — Insurance corporations (S.128) — Pension funds (S.129) — Non-financial corporations (S.11) — General government (S.13) ⁽³⁾ — Households (S.14) — Non-profit institutions serving households (S.15)	E
32	NACE sector of the issuer	E
33	Entity status	E
34	Entity status date	E

Field	Description	Level of reporting ⁽¹⁾ (G = Group/E = Entity)
3. Accounting and risk related information		
35	Status of forbearance and renegotiation	G
36	Date of the forbearance and renegotiation status	G
37	Performing status of the instrument	G
38	Date of the performing status of the instrument	G
39	Default status of the issuer	G
40	Date of default status of the issuer	G
41	Default status of the instrument	G
42	Date of default status of the instrument	G
43	Accounting standard	G and E
44	Carrying amount	E
45	Type of Impairment	E
46	Impairment assessment method	E
47	Accumulated impairment amount	E
48	Sources of encumbrance	E
49	Accounting classification of instruments	E
50	Prudential portfolio	E
51	Accumulated changes in fair value due to credit risk	E
52	Cumulative recoveries since default	E
53	PD of the issuer	G
54	LGD in downturns	G

Field	Description	Level of reporting ⁽¹⁾ (G = Group/E = Entity)
55	LGD in normal economic times	G
56	Risk-weight	G
57	Exposure Value (also referred to as Exposure at default)	E
58	Capital calculation approach for prudential purposes	E
59	Exposure class	E

(¹) Where the derogation set out in Article 4a(3) is applied, the data fields referring to the entity-by-entity reporting should be reported in accordance with the respective national rules as established by the NCB which granted the derogation ensuring that the data is homogeneous with respect to the mandatory breakdowns.

(²) Alternative approximations (such as carrying amounts) may be used on a “best-efforts” basis if the market value is not available.

(³) Where available, “central government” (S.1311), “state government” (S.1312), “local government” (S.1313) and “social security funds” (S.1314) sub-sectors are reported separately identified.’.

2. Annex II is amended as follows:

- (a) in Part 2, sector and definition 7 of the table are replaced by the following:

‘7. Financial vehicle corporations (S.125A)	Financial vehicle corporations (FVCs) are undertakings carrying out securitisation transactions. FVCs that satisfy the criteria of an institutional unit are classified in S.125, otherwise they are treated as an integral part of the parent.’
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- (b) Part 4 is amended as follows:

- (i) the ninth field of the table is replaced by the following:

‘Reporting basis’

- (ii) the following definitions are added to the table:

‘Issue date	The date on which the securities are delivered to the underwriter by the issuer against payment. This is the date when the securities are available for delivery to investors for the first time. For a strip this column indicates the date on which the coupon/principal is stripped.
Maturity date	Date on which the debt instrument is actually redeemed.
Security issued by the holder	Indicates whether the security was issued by the holder.
Primary asset classification	Classification of the instrument.
Asset securitisation type	Type of asset provided as security.
Security status	Supplementary attribute that indicates the status of the security, it may indicate whether the instrument is alive or not e.g. defaulted, matured or redeemed early.

Security status date	The date on which a security status as reported under “Security status” came into effect.
Arrears for the instrument	Aggregate amount of principal, interest and any fee payment outstanding at the reference date, which is contractually due and has not been paid (past due). This amount is always to be reported. The figure “0” is to be reported if the instrument was not past due on the reference date.
Date of arrears for the instrument	The date on which the instrument became past due in accordance with Part 2.48 of Annex V to Commission Implementing Regulation (EU) No 680/2014 (*). This is the earliest date for which the instrument has an amount unpaid at the reference date, and it is to be reported if the instrument is past due on the reference date.
Instrument seniority type	Instrument seniority type indicates whether the instrument is guaranteed or not, its rank level and whether it is secured or not.
Collateral geographical location	Geographical allocation of the collateral.
Guarantor identifier code	A standard code, agreed with the relevant NCB, that uniquely identifies a guarantor, and information on the identifier type of the code that is used, e.g. legal entity identifier, EU identifier or national identifier.

(*) Commission Implementing Regulation (EU) No 680/2014 of 16 April 2014 laying down implementing technical standards with regard to supervisory reporting of institutions according to Regulation (EU) No 575/2013 of the European Parliament and of the Council (OJ L 191, 28.6.2014, p. 1).;

(c) the following Parts 5, 6, 7 and 8 are inserted:

PART 5

General definitions

Field	Description
Legal entity identifier	A reference code in line with the International Organisation for Standardisation's (ISO) 17442 standard, which is assigned to a legal entity requiring a legal entity identifier (LEI). The LEI code enables the unique identification globally of entities requiring a LEI.
EU identifier	EU identifier means a commonly used identification code, agreed with the relevant NCB, which enables the unambiguous identification of any entity within the EU.
National identifier	National identifier means a commonly used identification code, agreed with the relevant NCB, which enables the unambiguous identification of any entity within its country of residency.
Prudential scope of consolidation	Prudential scope of consolidation refers to the consolidation scope as defined in Chapter 2 of Title II of Part One of Regulation (EU) No 575/2013.
International Financial Reporting Standards	International Financial Reporting Standards (IFRS) as defined in Article 2 of Regulation (EC) No 1606/2002 of the European Parliament and of the Council (¹).

Field	Description
Accounting scope of consolidation	Accounting scope of consolidation refers to the scope of the consolidation for financial reporting according to the IFRS or, if this is inapplicable, to any other national or international standards that apply to the actual reporting agents.
NACE classification	Classification of counterparties according to their economic activities, in accordance with the NACE revision 2 statistical classification as laid down in Regulation (EC) No 1893/2006 of the European Parliament and of the Council ⁽²⁾ . NACE code means a level two, three or four NACE code in accordance with Regulation (EC) No 1893/2006.
IRB approach	Internal Ratings Based (IRB) approach to calculate the risk-weighted exposure amounts in accordance with Regulation (EU) No 575/2013.
Level of reporting	Level of reporting refers to whether data is reported on an entity-by-entity basis or on a group basis as defined in points 23 and 24 of Article 1. Harmonised accounting and consolidation principles should be applied, in agreement with the relevant NCB, to the data reported at entity level, i.e. information on entity level should follow the accounting rules of the group to the extent possible.
Reference date	The last date of the reference period to which the data relates i.e. the end of the quarter in accordance with Article 6a.

⁽¹⁾ Regulation (EC) No 1606/2002 of the European Parliament and of the Council of 19 July 2002 on the application of international accounting standards (OJ L 243, 11.9.2002, p. 1).

⁽²⁾ Regulation (EC) No 1893/2006 of the European Parliament and of the Council of 20 December 2006 establishing the statistical classification of economic activities NACE Revision 2 and amending Regulation (EEC) No 3037/90 as well as certain EC Regulations on specific statistical domains (OJ L 393, 30.12.2006, p. 1).

PART 6

Definition of holder attributes

Field	Description
Holder identifier code	A standard code, agreed with the relevant NCB, that uniquely identifies the holder and information on the identifier type of the code that is used, e.g. EU identifier or national identifier.
Identifier code of the immediate parent of the holder	A standard code, agreed with the relevant NCB, that uniquely identifies the immediate legal entity that the holder is a legally dependant part of and information on the identifier type of the code that is used, e.g. legal entity identifier, EU identifier or national identifier.
Issuer is part of the reporting group (prudential scope)	Indicates that the security was issued by an entity of the same group in line with the prudential scope of consolidation.
Issuer is part of the reporting group (accounting scope)	Indicates that the security was issued by an entity of the same group in line with the accounting scope of consolidation.

PART 7

Definition of issuer attributes

Field	Description
Issuer identifier code	A standard code, agreed with the relevant NCB, that uniquely identifies an issuer and information on the identifier type of the code that is used, e.g. EU identifier or national identifier.
Entity status	Supplementary attribute to cover information on the status of the issuing entity, including the default status and information on the reasons why the entity may be in default in accordance with Article 178 of Regulation (EU) No 575/2013), and any other information on the issuing entity's status, such as whether it has merged, been acquired etc.
Entity status date	The date on which the entity changed status.

PART 8

Definition of accounting and risk related attributes

Field	Description
Status of forbearance and renegotiation	Identification of forborne and renegotiated instruments.
Date of the forbearance and renegotiation status	The date on which a forbearance or renegotiation status as reported under status of forbearance and renegotiation came into effect.
Performing status of the instrument	Identification of non-performing instruments in accordance with Implementing Regulation (EU) No 680/2014.
Date of the performing status of the instrument	The date on which the performing status as reported in performing status of the instrument came into effect or changed.
Default status of the issuer	Identification of the default status of the issuer in accordance with Article 178 of Regulation (EU) No 575/2013.
Date of default status of the issuer	The date on which the default status as reported under the "default status of the issuer" came into effect or changed.
Default status of the instrument	Identification of the default status of the instrument in accordance with Article 178 of Regulation (EU) No 575/2013.
Date of default status of the instrument	The date on which the default status as reported under the "default status of the instrument" came into effect or changed.
Accounting standard	Accounting standard used by the reporting agent.

Field	Description
Carrying amount	The carrying amount in accordance with Annex V to Implementing Regulation (EU) No 680/2014.
Type of impairment	Type of impairment in accordance with the applied accounting standards.
Impairment assessment method	The method by which the impairment is assessed, if the instrument is subject to impairment in accordance with applied accounting standards. A distinction is made between collective and individual methods.
Accumulated impairment amount	The amount of loss allowances that are held against or are allocated to the instrument on the reference date. This data attribute applies to instruments subject to impairment under the applied accounting standard.
Sources of encumbrance	Type of transaction in which the exposure is encumbered in accordance with Implementing Regulation (EU) No 680/2014. An asset will be treated as encumbered if it has been pledged or if it is subject to any form of arrangement to secure, collateralise or credit enhance any instrument from which it cannot be freely withdrawn.
Accounting classification of instruments	Accounting portfolio where the instrument is recorded in accordance with the accounting standard applied by the reporting agent.
Prudential portfolio	Classification of trading book and non-trading book exposures. Instruments in the trading book as defined in point (86) of Article 4(1) of Regulation (EU) No 575/2013.
Accumulated changes in fair value due to credit risk	Accumulated changes in fair value due to credit risk in accordance with Part 2.46 of Annex V to Implementing Regulation (EU) No 680/2014.
Cumulative recoveries since default	The total amount recovered since the date of default.
Probability of default of the issuer	The issuer's probability of default over 1 year determined in accordance with Articles 160, 163, 179 and 180 of Regulation (EU) No 575/2013.
Loss given default in downturns	The ratio of the amount that could be lost on an exposure during economic downturns due to a default over a 1-year period to the amount that would be outstanding at default, in accordance with Article 181 of Regulation (EU) No 575/2013.
Loss given default in normal economic times	The ratio of the amount that could be lost on an exposure in normal economic conditions due to a default over a 1-year period to the amount that would be outstanding at default.
Risk-weight	Risk-weights associated with the exposure, in accordance with Regulation (EU) No 575/2013.
Exposure value (also referred to as Exposure at default)	Exposure value after credit risk mitigation and credit conversion factors in accordance with Implementing Regulation (EU) No 680/2014.

Field	Description
Capital calculation approach for prudential purposes	Identification of the approach used to calculate the risk-weighted exposure amounts for the purposes of points (a) and (f) of Article 92(3) of Regulation (EU) No 575/2013.
Exposure class	Exposure class as defined in accordance with Regulation (EU) No 575/2013.

DECISIONS

COMMISSION DECISION (EU) 2016/1385

of 1 October 2014

on State aid SA.27408 (C 24/10 (ex NN 37/10, ex CP 19/09)) implemented by the authorities of Castilla-La Mancha for the deployment of digital terrestrial television in remote and less urbanised areas

(notified under document C(2014) 6846)

(Only the Spanish text is authentic)

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 108(2) thereof,

Having regard to the Agreement on the European Economic Area, and in particular Article 62(1)(a) thereof,

Having called on interested parties to submit their comments pursuant to the provisions cited above, and having regard to their comments,

Whereas:

1. PROCEDURE

- (1) On 14 January 2009, the Commission received a complaint from Radiodifusión Digital SL (hereinafter referred to as 'Radiodifusión') and on 18 May 2009 a complaint from SES Astra S.A. (hereinafter referred to as 'Astra'). Both complaints regard an aid scheme that the Spanish authorities had adopted in relation to the switching from analogue television to digital television in remote and less urbanised areas of Spain. The contested scheme has its origin in the Law 10/2005, of 14 June 2005, on Urgent Measures for the Promotion of Digital Terrestrial Television, Liberalisation of Cable TV and Support of Pluralism ⁽¹⁾. Further legislation adopted with respect to the digital terrestrial transition process includes, amongst others: Royal Decree 944/2005 of 29 July 2005 on the approval of the National Technical Plan for Digital Terrestrial Television (hereinafter: 'National Technical Plan') ⁽²⁾; Royal Decree 945/2005 of 29 July 2005, approving the General Regulations for the delivery of the digital terrestrial television service; Order ITC/2476/2005 of 29 July 2005, approving the Technical Regulations and regulations relating to the delivery of the digital terrestrial service and Royal Decree 920/2006, of 28 July 2006, approving the General Conditions for the delivery of the radio and cable television broadcasting.
- (2) These measures concern the entire territory of Spain. However, the Commission opened two different procedures, one for all of Spain with the exception of the region of Castilla-La Mancha and one specifically for the region of Castilla-La Mancha. While the State aid measure is the same for both cases and raises the same concerns, Castilla-La Mancha features some particular issues which are of less (or no) importance to the general case. In particular, the complaint from Radiodifusión only concerns the case of Castilla-La Mancha, the regional government of Castilla-La Mancha implemented the aid scheme in a particular way, when compared to the pattern in the other regions, and in the case of Castilla-La Mancha it was necessary to carry out an in-depth assessment of an economic study.

⁽¹⁾ <http://www.boe.es/boe/dias/2005/06/15/pdfs/A20562-20567.pdf>

⁽²⁾ <http://www.boe.es/boe/dias/2005/07/30/pdfs/A27006-27014.pdf>

- (3) In both cases, the Commission opened the formal investigation procedure on 29 September 2010, alleging that the State aid scheme discriminates between platform operators. The decision opening the formal investigation (hereinafter: 'opening decision') was published in the *Official Journal of the European Union* on 11 December 2010 ⁽³⁾. Comments were received from three interested parties: Radiodifusión on 11 January 2011, Abertis and SES Astra S.A. (hereinafter: 'Astra') on 4 February 2011.
- (4) On 19 January and 9 February 2011 the comments were transmitted to Spain, who was given the opportunity to react. On 18 February 2011 and 8 March 2011 the Permanent Representation of the Kingdom of Spain submitted observations of the Authorities of the Castilla-La Mancha Region (Junta de Comunidades de Castilla-La Mancha, hereinafter: 'JCCM') to third parties' comments. On 27 May 2011 and 9 August 2012 the Commission submitted requests for information to Spain, to which Spain (JCCM) replied on 10 June 2011 and 10 September 2012, respectively. On 20 August 2011 the Commission addressed a request for information to Radiodifusión who replied on 29 September 2011. On 14 October 2011, 15 November 2011 and 6 December 2012 JCCM submitted additional information on its own motion. In addition, the Commission held a meeting with Spanish and JCCM authorities on 18 May 2011.
- (5) On 15 May 2013, the JCCM provided information on the organisation of a tender for operation and maintenance aid, on 20 December 2013 it provided information on ongoing sanction procedures in Spain against Radiodifusión and its parent company INGEST and comments on ongoing discussions between the Commission and Spanish authorities regarding SA.28599. On 6 June 2014, the JCCM provided comments to demonstrate that its actions were in line with a 'market economy operator' and that it complied with EU public procurement rules. In addition, there have been several fact finding exchanges between the Commission and the JCCM.
- (6) On 20 June 2013, the Commission adopted a final negative decision on SA.28599 for the deployment of digital terrestrial television in remote and less urbanised areas in Spain (outside Castilla-La Mancha) ⁽⁴⁾.

2. DESCRIPTION OF THE MEASURE

2.1. BACKGROUND

2.1.1. The complainants

- (7) Radiodifusión is a local telecom and terrestrial television platform operator, registered with the Spanish national regulatory authority for telecommunications (*Comisión del Mercado de las Telecomunicaciones*, hereinafter: 'CMT') for the management of a public telecommunications network and for the provision of electronic communications services, in particular the provision of radio and TV broadcasting transmission services.
- (8) Radiodifusión complained that the financing schemes in Castilla-La Mancha targeted platform operators already operating a network with national coverage. In this way all alternative networks (e.g. local network operators) were excluded. According to Radiodifusión, the contested scheme would hinder both actual competition at local level and potential competition at regional and national level.
- (9) Radiodifusión also argued that the bulk of the funds invested by the region of Castilla-La Mancha were not used for upgrading existing analogue emission centres but for building new ones. Radiodifusión supported this allegation by comparing the list of municipalities receiving the funds with the list of those hosting an analogue emission centre. Approximately 80 % of the receiving municipalities were not hosting any analogue emission centre before the scheme was put in place. Radiodifusión also emphasised that the mere digitisation of the terrestrial network would not make a massive construction of additional centres necessary. The amount of funds destined to such upgrade thus would be disproportionately high.

⁽³⁾ OJ C 335, 11.12.2010, p. 8.

⁽⁴⁾ Commission Decision 2014/489/EU of 19 June 2013 on State aid SA.28599 (C 23/10 (ex NN 36/10, ex CP 163/09)) implemented by the Kingdom of Spain for the deployment of digital terrestrial television in remote and less urbanised areas (outside Castilla-La Mancha) (OJ L 217, 23.7.2014, p. 52).

- (10) From the above, Radiodifusión inferred that the actual purpose of the subsidies was not the mere digitisation of the existing network, but rather building a better and extended network allowing the incumbent operators (mainly TelecomCLM and Abertis) to compete more actively on the market for transmitting services of local broadcasters and for mobile television. Under such circumstances, Radiodifusión considered that the failure to adopt open and transparent procedures for the award of the subsidies is unjustified, as any network operator could have built the new centres. Radiodifusión therefore also points to a distortion in the market for network operators.
- (11) The second complainant is the satellite platform operator SES Astra. Set up in 1985, it was the first private satellite operator in Europe. Astra offers a comprehensive portfolio of broadcast and broadband solutions for customers in Europe and beyond. It broadcasts television and radio programmes directly to millions of homes and provides internet access and network services to public and private users.
- (12) Astra argues that the measure infringes the principle of technological neutrality as it supports only terrestrial transmission for digitisation. To demonstrate that the satellite platform would indeed be an alternative, Astra refers in particular to the case of Cantabria. In January 2008, the regional government of Cantabria had launched a tender for extension of coverage of digital television for the whole territory of Cantabria. It then selected Astra to provide free-to-air channels via its platform. However, in November 2008 that contract was terminated by the regional government. According to Astra, the authorities only terminated the contract once they had been informed that the central government would finance the upgrade of the analogue terrestrial network. In fact, a letter of the Cantabrian authorities dated 7 November 2008 explained the termination of the contract with the fact that in the meantime the central government had taken decisions relative to the extension of coverage of digital television to the totality of the Spanish territory ⁽⁵⁾. Thus, the case of Cantabria would demonstrate that, firstly, Astra could compete in that market and secondly, that the decisions of the central government made this competition impossible.

2.1.2. The sector

- (13) The case concerns the broadcasting sector. Many players are active in this sector at different level of the broadcasting services product chain.
- (14) Broadcasters are the editors of television channels who purchase or produce in-house TV contents and bundle them in channels. The channels are then provided to the public through various platforms (i.e. satellite, DTT, cable, IPTv). In Spain, broadcasting services have been qualified as a public service by the legislator and are provided both by State-owned broadcasters (RTVE) and by private broadcasters holding concessions from the State ⁽⁶⁾. These so-called 'free-to-air' (FTA) channels are provided free of charge to the viewers. In order to ensure that the population can effectively benefit from this public service, the law attaches minimum coverage obligations to both the mission entrusted to the public broadcaster and to the concessions held by the private operators. Indeed, the public broadcasters have the obligation to cover at least 98 % of the Spanish population, while private broadcasters shall cover at least 96 % of the population. In Spain, national broadcasters do not own a national broadcasting network. Therefore, they enter into agreements with platform operators to have their content transmitted and to accomplish their coverage obligations.
- (15) Hardware suppliers are manufacturers and/or installers of infrastructures and devices necessary to build the various platforms.
- (16) Platform operators (or network operators) are private or publicly controlled entities operating the infrastructure necessary to transport and broadcast the signal of the broadcasting channels. At the dawn of the television industry, the only platform available was the analogue terrestrial platform. As the technology developed, more platforms have become available on the market, namely: the satellite platform, the cable platform and, most recently, the IPTv ⁽⁷⁾, which exploits broadband connection to transmit the TV signal.

⁽⁵⁾ Astra challenged the termination of the contract before a court of first instance in Santander (procedure nr. 1728/2009), which on 23 December 2011 ordered the Cantabrian authorities to indemnify Astra for the unjustified termination of the contract. The Court did not find any breach of agreement on the side of Astra that would justify the termination of the agreement. According to the Court, the decision of the Spanish central government to develop the national strategy for DTT was one of the reasons for the termination of the agreement. See judgment 000313/2011 of the Court of First Instance in Santander.

⁽⁶⁾ The concession includes the assignment of a frequency for terrestrial broadcasting.

⁽⁷⁾ Internet Protocol Television is a term to refer to distribution systems of TV and video signals through an electronic communications network using internet Protocol.

- (17) In terrestrial broadcasting, the television signal is sent from a TV studio to a transmission centre (head-end), usually belonging to and operated by a network operator. Then the signal is transported and distributed from a transmission centre (head-end) to the broadcasting centres run by a network operator (e.g. a tower). Sometimes this transport is done via satellite. At the end, the signal is broadcasted from the broadcasting centres to homes. To digitise the analogue terrestrial network, it is necessary to replace the transmitters on the ground. However, as the digital signal has a lower range than the analogue and therefore the new technology requires a more capillary network, the extension of coverage requires in some cases also the building of new transmission centres. The viewer has to be equipped with a decoder, which may already be integrated in the TV set.
- (18) In satellite broadcasting, the signal is sent to a transmission centre (head-end) and then transported to a satellite that broadcasts it to homes. As an alternative, the signal could be sent directly from a TV studio to the satellite, if the TV studio has appropriate devices. The viewer has to be equipped with a satellite dish and a decoder. To expand satellite coverage in a region, the latter ground equipment needs to be installed on the customer's premises. In terms of geographic coverage, the satellite platform could reach almost 100 % of the Spanish territory while the terrestrial platform covers about 98 %.

2.1.3. The context

- (19) The investigated measure must be examined in the context of the digitisation of broadcasting that the terrestrial, satellite and cable platforms have undergone or are currently undergoing. In comparison to analogue broadcasting, digitised broadcasting has an increased transmission capacity due to a more efficient use of the radiofrequency spectrum. This is especially relevant for terrestrial broadcasting, where the available frequency spectrum is limited and therefore broadcasting competes with mobile telecommunications for scarce bandwidth. Satellite transmission instead has the advantage of working in a completely different frequency band where there is no scarcity of frequency.
- (20) The switch-over from analogue to digital television releases a significant amount of high quality radio spectrum referred to as 'the digital dividend' which will be free for the deployment of electronic communication services. This digital dividend, and especially the frequency of 790-862 MHz ('800 MHz band'), can boost the electronic communication industry, have a major impact on competitiveness and growth and provide a wide range of social and cultural benefits ⁽⁸⁾.
- (21) The 'digital dividend' could be reaped either by switching from terrestrial to a different platform or by moving from analogue to digital terrestrial broadcasting. Also, a mixed solution combining different platforms could be envisaged ⁽⁹⁾.
- (22) However, in the case of terrestrial broadcasting, the scarcity of frequencies remains an issue even after digitisation. Shortly after the termination of the switch-over from analogue to digital TV in April 2010, the Spanish government had to relocate broadcasters from the 800 MHz band to a lower frequency band ⁽¹⁰⁾. The relocation of DTT multiplexes assigned to broadcasters led to additional costs and additional State aid, which the Commission is currently examining in a formal investigation procedure ⁽¹¹⁾.

⁽⁸⁾ The Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on transforming the digital dividend into social benefits and economic growth (COM(2009) 586) recommended that the Member States should cease using the 800 MHz band for high-power broadcasting services and fully implement the EU technical harmonisation decision by a certain date agreed at the EU level.

⁽⁹⁾ See for instance, for France Aide d'Etat N 666/2009 — Modification du régime d'aides à la TNT 111/2006, for Slovakia State aid N 671/2009 switch-over to digital TV broadcasting in Slovakia. In Spain: State aid SA.28685 (2011/NN) Reception of digital television in Cantabria. It should also be noted that in Spain in remote and less urbanised areas under investigation (so-called Area II) it was not always viable to provide TV signal via DTT platform and therefore satellite transmission was chosen in some cases, both for the transmission between the centres and for transmission to some households (in more detail see chapter 2.2.2.). For the purpose of this decision, all of these installations are still considered to be 'terrestrial'.

⁽¹⁰⁾ See Decision No 243/2012/EU of the European Parliament and of the Council of 14 March 2012 establishing a multiannual radio spectrum policy programme and in particular Article 6(4) therein (OJ L 81, 21.3.2012, p. 7).

⁽¹¹⁾ See Commission Decision SA.32619 — Compensation of damages for the liberation of digital dividend (OJ C 213, 19.7.2012, p. 41). Due to the complexity of the reorganisation of services and spectrum use, Spain asked for derogation to the date of implementation of Article 6(4) of Decision No 243/2012/EU.

- (23) With regard to TV broadcasting, terrestrial digital transmission will remain a major distribution platform for the foreseeable future, but broadband technology, as next generation networks (NGA), is likely to become an important alternative as the leading transmission technology. For the time being, however, in Spain the geographical coverage of such NGA networks is not universal.
- (24) In Spain there exist today four broadcasting platforms: DTT — digital terrestrial technology (DVB-T), satellite (DVB-S), cable (DVB-C) and IPTv. DTT is the main platform for the free-to-air public and private Spanish channels ⁽¹²⁾. The main operator of the terrestrial network is Abertis. Abertis also controls the satellite operator Hispasat. There exist as well a number of local telecommunications operators carrying DTT signals who are usually interconnected with Abertis' national network. In Castilla-La Mancha, the main regional operator is TelecomCLM ⁽¹³⁾. As for the pay TV channels, they are broadcasted mainly via satellite, cable and IPTv. Astra and Hispasat are the main satellite operators.
- (25) In order to switch from analogue to digital television, Spain adopted in the period of 2005-2008 a series of regulatory measures that concerned the terrestrial network, as described in section 2.2. They divide the Spanish territory into three distinct areas:
- (i) Area I — including the vast majority of the Spanish population, where the costs of switchover were borne by the broadcasters — 96 % of the territory for the private broadcasters, and 98 % for the public broadcasters. As the broadcasters bore the costs of the switch-over, no aid was granted for the switch-over in Area I.
 - (ii) Area II — less urbanised and remote areas covering 2,5 % of the population who in the past received public and private channels via analogue terrestrial television. However, as the switch to digital technology requires upgrading of the existing and building of new transmission centres, significant investments in the terrestrial network were necessary. Private broadcasters did not have sufficient commercial interest in providing the service in Area II and refused to bear the costs of digitisation. The Spanish authorities established therefore the investigated State aid scheme for upgrading the existing transmission centres and building of new digital ones. This process was commonly referred to as 'DTT coverage extension' (i.e. extension of coverage of DTT above what was compulsory for the commercial broadcasters).
 - (iii) Area III — where due to topography it is not possible to provide TV service via the terrestrial platform and where it is done by satellite. The transmission of Free-to-air TV signals in Area III is provided by Hispasat. The fact that the TV service is provided through satellite entails costs for the consumers who have to acquire satellite dishes and set-up boxes.

2.2. DESCRIPTION OF THE AID

2.2.1. The general measure

- (26) The investigated scheme is based on a complex system of legal provisions put in place by the Spanish central authorities as from 2005. On the basis of these provisions, State aid for the deployment of the DTT in Area II was granted in the years 2008-2009 by the Autonomous Communities and municipalities. The latter channelled the funds from the central budget and from their respective budgets to the recipients. Moreover, since 2009 ongoing aid has been granted by the Autonomous Communities for maintenance and operation of the networks in Area II.
- (27) The regulation of the transition to the digital television technology started with the adoption of Law 10/2005 of 14 June 2005. It mentions the need to promote a transition from analogue to digital terrestrial technology and required that the government take the appropriate measures to ensure the transition from analogue terrestrial to digital terrestrial television.
- (28) Following this mandate, with Royal Decree 944/2005 the Council of Ministers approved the National Technical Plan that fixed the date of the analogue switch-off in Spain for 3 April 2010 ⁽¹⁴⁾.

⁽¹²⁾ Around 26 national FTA channels and around 30 regional channels.

⁽¹³⁾ [...].

⁽¹⁴⁾ It established the obligation of private broadcasters to reach by that date 96 % of the population in their respective areas of coverage, while public broadcasters should reach 98 % of the population in their respective areas of coverage. In this Area I the broadcasters had the obligation to cover these percentages of population with the terrestrial digital television, and they had to bear the costs of digitisation themselves. Hence, no State aid was necessary.

- (29) As regards Area II and III, the Twelfth Additional Provision of the National Technical Plan already provided for the possibility that the local and regional authorities extend the coverage in the range between 96 % and 100 % of the population. In this regard, the Technical Plan explicitly refers to digital *terrestrial* television (DTT) and establishes six conditions under which the local authorities could carry out such extension. Condition (e) requires that such local installation must be in conformity with the Technical Plan for digital terrestrial television.
- (30) Subsequently, on 7 September 2007, the Council of Ministers approved the National Plan for the Transition to Digital Terrestrial Television (hereinafter: 'Transition Plan') ⁽¹⁵⁾ that implements the National Technical Plan. The Transition Plan divided the Spanish territory in ninety technical transition projects ⁽¹⁶⁾ and established a deadline for the switch-off of analogue broadcasting for each of these projects.
- (31) On 29 February 2008, the Ministry of Industry, Energy and Tourism (hereinafter: 'MIEyT') adopted a decision aimed at improving the telecommunications infrastructures, establishing the criteria and the distribution of the funding of the actions aimed at developing the Information Society under the Plan Avanza for 2008 ⁽¹⁷⁾. The budget approved by this decision amounted to EUR 558 million and was partly allocated to development of broadband, and partly to digitisation of television in remote and less urbanised areas of Spain falling outside the statutory obligations of the commercial broadcasters ⁽¹⁸⁾. The digitisation in those areas was commonly referred to as 'extension of coverage'. It was subsequently implemented through a series of addenda to existing framework agreements ⁽¹⁹⁾ signed by MIEyT and Autonomous Communities between July and November 2008 ('the Addenda to the 2006 Framework Agreements', published in the Spanish Official Gazette separately for each Autonomous Community). The wording of these agreements in the majority of cases points to digital terrestrial technology as to the only technology to be funded. As a result of the agreements, MIEyT transferred funds to the Autonomous Communities who committed to cover the remaining costs of the operation from their budgets. These addenda also included the obligation of the local authorities to comply with the provisions of the Twelfth Additional Provision of the National Technical Plan.
- (32) In parallel, on 17 October 2008, the Council of Ministers agreed to allocate further EUR 8,72 million to extend and complete DTT coverage within the transition projects to be completed during the first half of 2009, Phase I of the Transition Plan. The funding was granted following the signing of new framework agreements between MIEyT and the Autonomous Communities as of December 2008 ('the 2008 Framework Agreements'). These agreements refer to the aforementioned financing of EUR 8,72 million and were entitled 'Framework Collaboration Agreement between the Ministry of Industry, Tourism and Trade and the Autonomous Community of [...] for the Development of the National Transition Plan to DTT'. They foresee a list of activities that will be financed by the central and regional authorities in order to reach the coverage of digital television equal to the existing analogue coverage. These activities are related to the deployment of digital terrestrial television.
- (33) On 29 May 2009, the Council of Ministers approved the criteria to distribute EUR 52 million for the funding of DTT transition actions, aimed at financing the extension of coverage of Phase II and III projects of the Transition Plan ⁽²⁰⁾. The agreement of the Council of Ministers established a direct link with the Transition Plan given that it stated that 'in order to achieve the target set in the National Transition Plan to the DTT, a similar DTT coverage to that of the current terrestrial coverage with analogue technology, the financial support of the public authorities is needed' and then that 'the implementation of this cooperation will be formalized within the framework set by the National Plan for the Transition to the DTT'.
- (34) Last, between October and December 2009, addenda to the 2008 Framework Agreements (mentioned in recital 32) were published in the Spanish Official Gazette, including the funding for the coverage extension of Phases II and III of the Transition Plan. These addenda define what should be understood by 'action to extend the coverage', by making explicit reference only to the terrestrial technology (although not formally excluding other technologies) ⁽²¹⁾.

⁽¹⁵⁾ <http://www.televisiondigital.es/Documents/PlanNacionalTransicionTDT.pdf>

⁽¹⁶⁾ Further classified in Phases I, II and III.

⁽¹⁷⁾ <http://www.boe.es/boe/dias/2008/03/06/pdfs/A13832-13834.pdf>

⁽¹⁸⁾ The decision regarding the distribution of funds to the development of broadband and to digitisation of television in Area II was left to the regional authorities.

⁽¹⁹⁾ The framework agreements were signed between MIEyT and the Autonomous Communities in 2006 within the framework of the Plan Avanza.

⁽²⁰⁾ <http://www.boe.es/boe/dias/2009/07/02/pdfs/BOE-A-2009-10972.pdf>

⁽²¹⁾ See, for example, Andalucía's Addendum <http://www.boe.es/boe/dias/2009/10/28/pdfs/BOE-A-2009-17108.pdf>

- (35) Following the publication of the 2008 Framework agreements and above-described addenda ⁽²²⁾, the governments of the Autonomous Communities started implementing the extension. They either organised public tenders themselves and/or charged a public undertaking with carrying out of the tender. The subsidies were partly agreed upon with MIEyT and therefore funded from the central budget, partly funded by the Autonomous Communities themselves. In certain cases the Autonomous Communities mandated the municipalities to carry out the extension.

2.2.2. Implementation of the aid measure in Castilla-La Mancha

- (36) In contrast to the majority of other Autonomous Communities, the Castilla-La Mancha authorities did not organise regional tenders for the extension of coverage of digital television. This apparently was due to time constraints, as it had to upgrade more than 400 transmission centres ⁽²³⁾. Instead, the JCCM followed a particular procedure to select telecom operators to digitise broadcasting centres, established in the Decree 347/2008 of 2 December 2008 (hereinafter: 'the Decree').
- (37) The Decree mandated the direct attribution of the funds necessary for the digitisation to the owners of the existing (analogue) emission centres. It therefore did not require any open tender procedure. The JCCM had to follow a particular procedure: (i) technical analysis of the centres providing analogue coverage at the time, (ii) analysis of the digital coverage to achieve, (iii) selection of the emission centres to digitise, (iv) identification of the owner of the emission centres, (v) proposal by the regional government to the owner of the emission centres, and (vi) adjudication of the subsidies.
- (38) The Decree was implemented accordingly. The owners of existing emission centres were directly contacted. They were informed about the requirements for benefitting from the public financing. Three different scenarios can be distinguished. First, in most cases the emission centres are owned by the municipalities which are responsible for the operation and maintenance of the centre. After having received the funding from the JCCM, on the basis of a technical and economic offer, the municipalities bought the digital equipment from Abertis or TelecomCLM and subcontracted the installation, operation and maintenance of the equipment to these two companies. Only these two companies were contacted by the authorities and only they submitted technical proposals to apply for the aid. Second, in around a quarter of cases the selected centres belong directly either to TelecomCLM or to Abertis. In these cases the two companies received the aid to upgrade their equipment. Finally, as a third category, some new emission centres had to be built. While they were publicly funded, they are now owned by TelecomCLM.
- (39) The JCCM entered into 147 collaboration agreements ('convenios') with the two operators and into 475 collaboration agreements with municipalities. About 84 % of installations covered by these 'convenios' were for DTT installations and 16 % for satellite household receivers. Satellite receivers have been used to ensure DTT channels coverage for very small villages. For that purpose, the JCCM decided to use the satellite platform of Hispasat ⁽²⁴⁾. At the end of the process, the information about the upgrading of the existing centres was published on the Town Halls' Notice Boards.
- (40) The Commission was informed that in total around EUR 46 million of public money was spent for the upgrading of transmission centres, out of which EUR 32,6 million went directly to the municipalities owning 355 broadcasting centres ⁽²⁵⁾. The collaboration agreements between JCCM and the municipalities provide that the latter are responsible to contract a selected operating company which would carry out the installation and maintenance services ⁽²⁶⁾. Different selection procedures were chosen by the individual municipalities. Some municipalities sent letters directly to TelecomCLM and Abertis and some published the information on the Notice Board of the City Hall inviting operators to present their technical proposals.

⁽²²⁾ In total more than 600 agreements — framework agreements, addenda etc. — were concluded between the authorities concerning the extension of coverage.

⁽²³⁾ The Government of Castilla-La Mancha concluded that it would not have the time necessary to organise a public tendering within the timeframe of the national Plan for the Transition to DTT. Compare: Annexes II — JCCM Internal Study on the implementation of the National plan for the Transition to DTT in Castilla La-Mancha, p. 31.

⁽²⁴⁾ Castilla-La Mancha Authority: The Implementation of the DTT Transition Plan in Castilla-La Mancha, presentation to the European Commission, 27 October 2010.

⁽²⁵⁾ Municipalities are equipment owners and they have to pay for Operation and Maintenance (O&M) cost for the first two years of operation.

⁽²⁶⁾ Collaboration Agreement between the JCCM and the Municipality of Caspueñas, p. 76.

- (41) Under the collaboration agreement the JCCM pays for the acquisition of digital equipment, its installation and the Operation and Maintenance (O&M) for the first 2 years for each of the (digitised) emission centres. As the collaboration agreement did not oblige the operator to pay for O&M thereafter, TelecomCLM transferred the equipment to the JCCM ⁽²⁷⁾. Thereafter the JCCM became responsible to pay for the O&M of DTT equipment.
- (42) Out of the total EUR 46 million of public funds spent, the Commission was informed that at least EUR 13,5 million were transferred to platform operators: EUR 13,2 million to TelecomCLM which owns 138 of the transmission centres and around EUR 250 000 to Abertis who owns 3 of them. TelecomCLM and Abertis digitised their centres with their own equipment. In some cases, the equipment used to digitise TelecomCLM masts still belong to the public authorities. In these cases the operator does not have to pay for the use of such equipment. In addition, the total amount of funds spent in the years 2009-2011 on operation and maintenance of the digitised centres (ongoing aid) was of at least EUR 6,5 million.
- (43) However, the mere upgrading of the existing centres was not sufficient to complete coverage of the extension area. Therefore, 20 new centres were built with public funds. Without carrying out an open tender, TelecomCLM was contacted directly by the authorities and asked to execute this task. According to the information provided to the Commission, a total of EUR 2,26 million were spent for the construction of the new sites, out of which around EUR 751 000 for the construction of six centres which were later transferred to TelecomCLM. The ownership of the remaining 14 centres remained with the municipalities.
- (44) Finally, as pointed out in recital 39, where a DTT centre would be too expensive to deploy, satellite transmission has been used instead. For that purpose, 100 agreements were concluded to install satellite receptors at individual homes. Satellite receptors are part of the satellite transmission network.
- (45) As a result of the procedure, in total 622 agreements were signed by the authorities with the municipalities and operators concerned. Based on the information provided to the Commission, the amounts were distributed as follows:

(Million EUR)

	Upgrade of transmission centres	New transmission centres	Upgrading the infrastructure of municipalities ⁽¹⁾	Operation & Maintenance ⁽²⁾
TelecomCLM	13,2	2,26	32,6	To be determined
Abertis	0,25	—		To be determined
Total	13,45	2,26	32,6	At least 6,5

⁽¹⁾ To upgrade their networks, municipalities paid up to EUR 32,6 million to TelecomCLM and Abertis.

⁽²⁾ Collaboration agreements cover 2 year O&M. In the case of municipalities this amounts to EUR 4,5 million and for operators to EUR 2 million. JCCM Internal Study on the implementation of the National plan for the Transition to DTT in Castilla La-Mancha, p. 53.

2.3. GROUNDS FOR INITIATING THE PROCEDURE

- (46) In the opening decision, the Commission noted that the measure described seems to meet all the criteria of Article 107(1) TFEU and could, therefore, be regarded as State aid. The contested measure seems to entail discrimination in favour of terrestrial platform operators, in breach of the technological neutrality principle ⁽²⁸⁾. Furthermore, the contested measure seems to discriminate against platform operators which provide broadcasting transmission services to regional and local terrestrial broadcasters. This would be to the advantage of national broadcasters and platform operators.

⁽²⁷⁾ On the basis of 'DTT Equipment Transfer Agreements', as signed on 17 May 2013. This was to ensure the provision of O&M of the DTT equipment beyond the 2-year period laid down in the Collaboration Agreements. However, in the case of 3 collaboration agreements Abertis remained the owner of the DTT equipment.

⁽²⁸⁾ See in particular the judgments: *DVB-T Brandenburg*, T-21/06, Germany against Commission, [2009] ECR II-00197, paragraph (69) and *Mediaset SpA v Commission*, T-177/07, [2010] ECR II-02341.

- (47) The Commission reached the preliminary conclusion that the scheme may have created a potential or actual distortion of competition between terrestrial and satellite platforms and between terrestrial platforms themselves. It did not see any grounds on which such measures could be compatible with the internal market, since no derogation seemed to be applicable.
- (48) For additional factual details it should be referred to the opening decision which is to be considered an integral part of this Decision.

3. COMMENTS FROM SPAIN

3.1. GENERAL REMARKS

- (49) In its defence to the opening decision, Spain and the Autonomous Community of Castilla-La Mancha have put forward numerous arguments. Broadly speaking they fall into two categories. First, the Spanish authorities put forward that there would be no advantage granted to the aid recipients. Second, if one considers nevertheless that State aid has been granted, in any event it would be compatible ⁽²⁹⁾. These arguments are summarised in what follows.

3.2. ABSENCE OF AID

3.2.1. No advantage

- (50) According to the authorities of Castilla-La Mancha, the investigated measure does not contain State aid as there is no advantage to undertakings. The direct transfers of funds come from a combination of funds from the Spanish State and the Autonomous Communities to the recipients' acting in their official capacity or as public authority ⁽³⁰⁾. These contested subsidies were exclusively used to digitise 141 pre-existing analogue emission centres, and to build 6 new centres. The digitisation of the emission centres was carried out after a thorough assessment of a technical report submitted by the operators owning those centres. Only on the basis of such technical reports the Collaboration Agreement was signed with the owners of the centres ⁽³¹⁾. This 'negotiated procedure' should be regarded as open, transparent and non-discriminatory, also because of the publication on City Halls' notice boards (see recital 39).
- (51) The national authorities claim that, to the extent that platform operators received public funding, this was only for the operation and maintenance of the electronic transmission equipment owned by the municipalities. They acted as mere suppliers and installers of the technical equipment necessary to upgrade and adapt those centres, but not as platform operators ⁽³²⁾. Where they provide services in Area II after the public funding, it is only for the provision of the terrestrial TV signal as a basic and public service.
- (52) To carry out the digitisation of their networks, the 475 municipalities procured technical reports which often were carried out by platform operators. Also in this case there was no economic advantage granted to the operators.
- (53) According to the national authorities, the digitised transmitting centres owned by either TelecomCLM or Abertis Telecom existed before the granting of the contested subsidies, hence these subsidies were not used to finance the network expansion of any of the two network operators involved in the extension of the DTT coverage in Area II of CLM.

⁽²⁹⁾ In the case of Castilla-La Mancha the authorities have not argued that the measure should be considered as an SGEI. It would also not fulfil the Altmark criteria, as— among other reasons — there is no entrustment act, the beneficiaries were not selected on the basis of an open tender, nor has the authority calculated the compensation on the basis of the cost a well-run undertaking would face for delivering such services.

⁽³⁰⁾ Originally, municipalities had built and owned analogue transmitting centres over the last decades. They received the public funding for digitisation of this infrastructure.

⁽³¹⁾ Junta de Castilla-La Mancha submission to the EC (case C24/2010) — deployment of digital terrestrial television in remote and less-urbanised areas in Castilla-La Mancha, submitted on 6 June 2014.

⁽³²⁾ This, however, is in contradiction with the documents provided by Spain. For instance, article 7 of the DTT Equipment Transfer Agreement between TelecomCLM and the JCCM speaks about the DTT services provided by the operator in Area II. Moreover, as set out in recital 73, JCCM itself has argued that Abertis and TelecomCLM should be considered network operators in Area II. It is also in contradiction to the operators' activities as described in detail in recitals 113 to 120.

- (54) Public funding was granted to TelecomCLM and Abertis to digitise 141 of their own emission centres. The national authorities point out that this only happened in areas where municipalities did not own themselves a transmitting or re-transmitting centre apt for the extension of the DTT coverage. However, the national authorities claim that these investments did not grant TelecomCLM and Abertis a competitive advantage in adjacent markets such as the local television or the Digital Video Broadcasting (DV-BH) markets. The digitisation of TelecomCLM sites did not enable TelecomCLM to provide region-wide service to broadcasters nor did it increase the capillarity of its network to provide new types of services.
- (55) The network operators involved in the digitisation process of the three types of transmission centres in Area II did not have an economic advantage. In all three centres, services, like provisioning, installation and O&M of DTT equipment, have been provided at market price by the operators.

3.2.2. No distortion of competition and trade

- (56) There would be no distortion of competition and trade. Any telecoms operator listed in the CMT's Registry of Operators could act as a subcontractor of the municipalities and, therefore, be eligible for the subsidies under the Decree 347/2008. This would apply also to satellite, cable or TV operators and to all operators irrespective whether they are operating at national, regional or local level.
- (57) According to the national authorities, the selection process under consideration was transparent and was carried out in accordance with both Spanish and EU public procurement legislation. The subsidies have been made public by the regional authorities. All the DTT extension procedures were published on the City Halls' Notice Boards and letters were sent to the major network operators within the region, i.e. TelecomCLM and Abertis Telecom.
- (58) Hence the subsidies granted to municipalities would not reinforce the competitive position of a type of network operator over other competing operators. The main beneficiaries are municipalities, while network operators are simply suppliers of transmission equipment and maintenance services for a maximum period of two years. Radiodifusión was never contacted because, to date, there would be no evidence that it owns a single transmitting centre in the region.
- (59) Moreover, the Castilla-La Mancha authorities claim to have assessed carefully the satellite platform solution as an option to extend the digital coverage before issuing Decree n. 347/2008. In an internal study ⁽³³⁾ two technologies for the extension — DTT and satellite — were compared. The study takes into account the criteria to grant the subsidies for the coverage of the digital signal in Area II. It includes the requirement that the transition has to be carried out without additional costs or inconvenience for citizens and to use existing infrastructure.
- (60) The study concludes that over a period of 10 years, the total costs associated to the terrestrial DTT solution would be approximately between EUR 15,2 and 17,3 million, whereas choosing a satellite technology would cost more than EUR 47 million.
- (61) The Study contains several recommendations on the most adequate methods to undertake the coverage extension of the DTT signal in those population centres of Castilla-La Mancha not covered by the official coverage plans of regional and national broadcasters. It also assessed all the implications of a satellite solution for the digital extension coverage. It concludes that satellite technology would generate investments 3 to 6 times greater than in terrestrial technology. This difference in costs stems directly from costs associated with renting the satellite transmission equipment, independently of the cost of the satellite decoder. As a result, it would be reasonable to conclude that the extension of universal DTT service to the population of Castilla-La Mancha should be realised with terrestrial DTT technology ⁽³⁴⁾.

⁽³³⁾ Dr Julián Seseña 'Extensión de la cobertura de la señal TDT en Castilla-La Mancha: Estudio comparativo socio-económico de opciones tecnológicas', September 2008, study realised for the *Junta de Comunidades de Castilla-La Mancha* (JCCM).

⁽³⁴⁾ Furthermore, the JCCM argues that a later 'ex post' comparative cost breakdown would confirm the conclusion that the terrestrial solution would outweigh the satellite one. This breakdown complements the studies previously submitted by JCCM to the Commission and would show that, even though the initial investment for the terrestrial solution was slightly higher than the satellite one, from the 4th year the terrestrial solution would have been more economically efficient than the platform offered by Astra. For that calculation the JCCM used costs assumptions presented by Astra in a Memorandum of 10 November 2011.

- (62) In addition, the Spanish government provided an in-house study into the feasibility of providing universal DTT service using DTT or satellite, carried out by the MIEyT in July 2007. The authorities consider that the study takes into account the realistic costs of using either DTT or satellite transmission. Both studies are further discussed in section 5.3.2.2.
- (63) When taking its decision to implement the DTT coverage extension in Area II of CLM, the JCCM claims to have taken into consideration only technical and economic efficiency criteria. Any network operator — terrestrial, satellite, cable, etc. — could have submitted a technical proposal, the only requirement being listed in the CMT Operator's Registry ⁽³⁵⁾. For that reason, the decision was in line with the principle of technological neutrality. This would also be confirmed by the fact that in specific cases the JCCM retained the satellite platform previously developed by Abertis, based strictly on cost-analysis criteria ⁽³⁶⁾.
- (64) Concerning the alleged discrimination of local operators, JCCM admits that according to Article 4 of the Decree broadcasters are specifically excluded (independently of their scope, whether national, regional or local) as beneficiary of the subsidies ⁽³⁷⁾. However, the Decree does not exclude any network operators.
- (65) Nevertheless, according to the Spanish authorities, Radiodifusión could have participated on equal terms with all other network operators by digitising one of its transmitting centres already carrying the public national or regional analogue television signal. For that purpose it could have entered into a Collaboration Agreement with the JCCM or it could have submitted offers to a municipality as a telecommunications operator which is registered in the CMT Operators Registry.

3.2.3. Legal Standing of the Complainant Radiodifusión and its non-compliance with Network Operators' Obligations in Castilla-La Mancha

- (66) According to the JCCM, Radiodifusión is registered as a telecommunications Operator in the CMT's Operators Registry, providing the following services: 'Terrestrial network — Supporting radio and television broadcasting services'. However, it emphasises that being listed in that Registry does not suffice to fulfil its obligations as a telecommunications operator in Castilla-La Mancha as foreseen in the relevant local Law n. 8/2001. This holds in particular for the obligation for radio-communications operators to 'submit a Territorial plan for network deployment that includes existing fixed stations as well as estimates of implementation and development of their entire networks (...)'. So far, the JCCM is not aware of any Territorial plan submitted by Radiodifusión. Furthermore, Radiodifusión is not known to share any infrastructure with another operator. As a result, JCCM argues that Radiodifusión's claim of a 60 % coverage in CLM is groundless ⁽³⁸⁾.
- (67) In addition, JCCM points out that there is a company of the group with identical shareholders as Radiodifusión, INGEST, Infraestructuras y Gestión 2002, S.L. (hereinafter 'INGEST'), with a number of pending proceedings. In all those cases, INGEST is charged with illegal occupation of radio spectrum reserved for the national DTT, which the defendant uses to broadcast the signal of local televisions. Moreover, Radiodifusión would not have an authorisation to re-transmit Radio-Televisión de Castilla-La Mancha ('RTV C-LM') DTT signal.

3.2.4. Operation and Maintenance (O&M)

- (68) According to JCCM, both TelecomCLM and Abertis Telecom are not beneficiaries of the contested measures to cover the recurrent costs associated with the O&M of the municipal terrestrial sites. The purpose of the Collaboration Agreements' is 'to finance the infrastructure necessary to complement signal coverage extension and emission from entities and companies licensed to provide essential television services'. Hence only the acquisition

⁽³⁵⁾ Currently around 900 operators are listed in the Registry.

⁽³⁶⁾ JCCM decided to implement satellite in scarcely populated centres in Area II where there was no transmitting centre or the cost of digitising the existing terrestrial infrastructure was too high. 100 Collaboration Agreements were concluded with municipalities and led to the installation of satellite receptors in each household, which was less costly than constructing a new transmitting centre.

⁽³⁷⁾ The rationale behind this exclusion was to avoid the digitisation of a centre which is already covered by the broadcasters' official DTT coverage obligation in Area I.

⁽³⁸⁾ A 60 % population coverage in the region could only be achieved (based on certain transmitting parameters) with 8-12 emission centres located in the outskirts of the main cities of the region. Radiodifusión would not have such centres. All those emission centres would take part, for the last 10 years, in the official coverage plan for broadcasters. However, no public Administration, national, regional or local, would consider the digitisation of such centres as they would have been already included in the official coverage plan for extension of DTT in the region.

and installation of elements such as radio-communications and antennae equipment or construction elements are subject to financing. In Area II, the costs were taken over by the municipalities which own those centres. The estimated costs of O&M for the initial two years for a total of 516 centres are EUR 6,5 million. As a result, for the period 2010-2015 these costs would amount to approximately EUR 15 million for 516 centres over 5 years (average of EUR 29 000 per centre).

3.2.5. Exemption under the 'General Infrastructure' argument

- (69) According to JCCM, both the digitised transmission centres belonging to municipalities and network operators can be considered as 'general infrastructure', i.e. an infrastructure open to all potential users on an equal and non-discriminatory basis. Hence the digitised infrastructure allows DTT reception to all users in Area II of Castilla-La Mancha on an equal basis after the analogue TV switch-off.

3.2.6. Exemption under the MEIP principle

- (70) JCCM puts forward that the transfer of the public funds in question complies with the market economy investor principle (MEIP) on the basis of a market benchmark pricing exercises. The payments to TelecomCLM for certain services were made at market rates.
- (71) A comparison between the actual funding with the payment a private investor would have had to make in normal conditions to get the same types of services, leads JCCM to the conclusion that the Collaboration Agreements were based on objective commercial criteria. As a result, the network operators have not been better off compared to what they would have obtained under normal market conditions. They therefore have not received a selective advantage.

3.2.7. Exemption under Article 107(3)(a) TFEU argument

- (72) JCCM invokes Article 107(3)(a) TFEU. It argues that this provision may be applied in Area II which has not attracted the commercial interest of broadcasters and network operators. The municipalities, by providing DTT services and subcontracting the acquisition, installation and O&M of DTT equipment, have filled a market gap with the subsequent improvement of the living conditions of Area II's inhabitants and the overall economic improvement of this region of Castilla-La Mancha.

3.2.8. Abertis as network operator

- (73) JCCM disagrees with Abertis' submission that it should not be considered to be a network operator in Area II. JCCM points out that Abertis has entered into Collaboration Agreements with the JCCM under Decree n. 347/2008 to carry out the DTT coverage extension in Area II⁽³⁹⁾. Furthermore, Abertis and TelecomCLM should be considered network operators active in Area II because there exist analogue TV official transmitting centres of RTVE and/or Tele5 in the case of Abertis, and analogue TV official transmitting centres of CMT in the case of TelecomCLM.
- (74) In several cases the digitised municipal equipment is located in sites owned by Abertis or TelecomCLM. In these cases, the DTT equipment belongs to the relevant municipalities. Abertis argues that, given the fact it is not a network operator in Area II, it cannot be deemed direct beneficiary of the contested subsidies because: 'the equipments are owned and operated by TelecomCLM and the other local operators'⁽⁴⁰⁾. JCCM considers this statement to be wrong.

⁽³⁹⁾ The JCCM provided two examples of Collaboration Agreements signed by Abertis.

⁽⁴⁰⁾ Paragraph 22 of Abertis Telecom submission of 31 January 2011.

4. COMMENTS FROM INTERESTED PARTIES

4.1. COMMENTS FROM RADIODIFUSIÓN DIGITAL SL

- (75) In its response to the Commission's opening decision, Radiodifusión observes that the Spanish Authorities have not formally entrusted the beneficiaries of the aid with a mission of general economic interest. Furthermore, the amount of the aid per centre would appear excessive if applied only to existing centres, as purported by the Spanish Authorities. In Radiodifusión's view, the aid was mainly used to set up new emission centres throughout the region of Castilla-La Mancha and to conceal an illegal aid.
- (76) Radiodifusión insists that the Authorities of Castilla-La Mancha granted the aid without any tendering procedures and the transfer of resources has been selective because it excluded platforms based on other technologies, such as cable or satellite.
- (77) According to Radiodifusión, TelecomCLM has gained decisive advantages from the contested measures. It was selected directly by the regional authorities without any competitive selection procedure. As a result, it could significantly increase the geographical coverage of its network into areas where nobody would have invested otherwise. TelecomCLM would further benefit from a lack of regulatory oversight because it is not under any regulatory obligation to provide access to the newly built/enhanced network. Radiodifusión points out that Decree n. 347/2008 would specify that the objective of the State aid is to create new emission centres and not to digitise existing ones.
- (78) In Radiodifusión's opinion, the aid strengthens traditional operators in the only market segment where there is some room for competition. In particular, allegedly Abertis has been able to reinforce its monopoly position, and to actually use public funding to develop a new and denser network which will enable it to compete on new markets.
- (79) Radiodifusión is convinced that the investigated State aid is not proportional. To be in line with the proportionality requirement, the aid should apply only to remote rural areas and benefit all operators equally by imposing effective access obligations.
- (80) In its reply of 27 September 2011 to a request for information from the Commission, addressing the issues of legal standing raised by Spain, Radiodifusión declared that its main activity is to provide services to local audiovisual broadcasters. It provided a list of its installations which it operates in 18 municipalities in Castilla-La Mancha. According to Radiodifusión, the same installations could be used to broadcast national and regional broadcasting and therefore could have been used if it had been allowed to compete for the aid

4.2. COMMENTS FROM ASTRA

- (81) By selecting directly the terrestrial platform, Astra considers that the measure, including the ongoing aid for O&M, violates the principle of technological neutrality. It emphasises that satellite transmission would have been cheaper than DTT in Area II ⁽⁴¹⁾. This had been demonstrated clearly by Astra's success in the Cantabria tender. Given its significant economies of scale, the satellite solution would have allowed even more cost savings if several regions had coordinated their selection of a platform in Area II. Even if for constitutional reasons the Spanish government could not have imposed that cross-regional synergies be taken into account as a condition for the granting of the funds, the regions could have done so themselves. Only by doing so the regional governments could have ensured that they would choose the most cost-efficient solution for their taxpayers.
- (82) When comparing the different platforms, apart from direct installation cost, according to Astra one should also take into account further positive effects which the satellite solution would have had. The transition process would have been much easier and less costly. TV audience would have benefited from a 'simulcast' transition

⁽⁴¹⁾ Astra refers to its internal cost study submitted together with the complaint, carried out in November 2008. The study compares the costs of extension of coverage using both technologies — terrestrial and satellite. The assumptions of the study differ from the ones carried out by Spain and Abertis in various respects, amongst others concerning the costs of satellite antenna and necessity of purchase of an external set-up box for the reception of digital terrestrial TV. The study concludes that the extension of coverage via satellite would not be more expensive than using the terrestrial technology.

period of receiving both satellite and terrestrial channels. Given the scarcity of bandwidth in the terrestrial network and the need to free more capacity for telecom services in the future, in the case of the terrestrial network further cost would arise to households and broadcasters. Future changes of bandwidth would require residents in Area II to adapt their antennae. Broadcasters would face more expenses from further simulcast periods. No such cost would arise if the satellite technology had been chosen directly.

- (83) Astra insists that the network operators did receive an advantage as a result of the measure. In particular, the digitisation of the network would favour Abertis' commercial offering to broadcasters since the DTT network will now reach almost 100 % of the population at no additional cost.
- (84) Regarding the distortion of competition, Astra believes that satellite and terrestrial platforms belong to the same markets. There would be no strict distinction between pay-per-view and free television, at least as far as platform competition is concerned. There exist already several pay-per-view channels offering their signal through the DTT platform, which, apart from one, are also available on satellite transmission.
- (85) With regard to possible disadvantages of the satellite platform, Astra in particular addresses the need to ensure conditionality of access/encryption. Protecting IPRs would not pose a problem to satellite broadcasts of free-to-air channels. Such technology would be used already today for many pay-TV channels on the satellite platform. Moreover, the solution proposed in Cantabria for conditional access was accepted by the Cantabrian authorities who could decide which users to activate in order to receive the service.

4.3. COMMENTS FROM ABERTIS

4.3.1. Presence of State aid

- (86) Abertis believes that the contested measure to extend coverage relating to Area II does not constitute State aid under Article 107(1) TFEU.
- (87) First, the transfers under investigation were a pure transfer from the central state aimed to upgrade the transmission centres, which either belong directly to the public administration or where the administration holds rights of use. There would thus be no transfer of State resources to any undertaking; the funds remained within the State administration.
- (88) Second, Abertis underlines that the network operators did not benefit from the contested measures. Abertis cannot be considered as beneficiary since it is not a network operator in Area II and it does not operate the network used to extend DTT in Castilla-La Mancha. It is TelecomCLM which owns and operates, among others, the equipment in question.
- (89) Third, with regard to technological neutrality, Abertis emphasises that the contested measure does not make competition between platforms more difficult because the marginal increase in DTT coverage in Area II does not have any economic impact in Area I. Furthermore, the digitisation of Area II does not affect the price that Abertis is able to charge for its transmission services. Indeed, its prices are regulated and based on its capital and operating expenditures. In respect to TelecomCLM, the installations have become property of the Autonomous Community of CLM. The Community also controls the regional network operator TelecomCLM.
- (90) Fourth, the contested measure would not benefit broadcasters, as they did not increase their income after the digitisation of Area II. The hardware suppliers cannot be considered indirect beneficiaries of the measure either, as the competitive structure of the market for telecommunications equipment has not been affected or distorted by the mere purchase of equipment for the updating of analogue broadcasting centres to digital technology.
- (91) Fifth, Abertis considers that the contested measure did not have any appreciable effect on competition between the network operators. Even if Radiodifusión had benefitted from the measure, it would not be able to compete with Abertis at national level because the centres operated by Radiodifusión do not correspond to the centres needed for Area I, as is the case for any centre in Area II.

- (92) Sixth, if one considers this to be aid, in Abertis' view it would be existing aid. The deployment of broadcasting networks in Area II commenced in a non-liberalised broadcasting sector in 1982. At that time, the Spanish State held a legal monopoly in the market for terrestrial broadcasting. Public funds are now used to finance the installation, maintenance and operation of the local networks in Area II put in place prior to the liberalisation of this sector. Therefore, the investigated measure would be an ongoing, existing aid.
- (93) With regard to compatibility, in relation to Article 106(2), Abertis points out that TelecomCLM and other local network operators are unlikely to ever surpass the thresholds of average annual turnover before tax of EUR 100 million during the two financial years preceding that in which the SGEI was assigned, and annual compensation for the service in question of EUR 30 million.
- (94) Further, any potential aid would be compatible with Article 107(3)(c) TFEU. The measures adopted by the Spanish authorities aim at the acceleration of the digital switchover process in Spain, which has been recognised as an objective of common interest. The aid was an appropriate instrument as DTT is the most suitable technology to provide the coverage extension⁽⁴²⁾. Apart from economic reasons, Abertis also notes that broadcasters are reluctant to use satellite platforms, which is due to the constraints faced by broadcasters when acquiring content rights for their free-to-air programmes. In most cases they only acquire the right to broadcast the contents over a specific platform, namely DTT, as this technology allows targeted transmission and geographical limitations. Moreover, the measures are proportionate since they cover only the costs strictly necessary for the switchover from analogue to digital television services in Area II.

4.4. COMMENTS FROM BROADCASTERS

- (95) The broadcasters submit that the measure cannot be considered State aid because a financial advantage has not been granted to any company, and especially not to broadcasters. The measures have not increased the audience of broadcasters in relation to when they broadcasted in analogue. Moreover, the residents in the extended coverage areas, i.e. rural, remote and sparsely populated areas, have no impact on the advertising market and are not part of the broadcasters' target audience. In these circumstances the private operators did not increase the fees for advertisement due to the extension.
- (96) The broadcasters also expressed the view that they do not have an interest in migrating to satellite platform, where their programmes would face competition from hundreds other channels. The terrestrial platform has its advantage of limited capacity, which for commercial free-to-air broadcasters means less competition. Moreover, they underlined the fact that they usually purchase contents for the specific — terrestrial — platform only. This is because terrestrial broadcasting guarantees the geographical delimitation of broadcasts, which is not the case for satellite.
- (97) Broadcasters also insisted that after assignment of the Cantabrian tender to Astra, they informed the Cantabrian authorities that they would oppose to satellite broadcasting, as they had acquired rights to broadcast the contents only via the terrestrial platform.

5. LEGAL ASSESSMENT

5.1. LEGAL BASIS OF THE AID

- (98) As described in detail above in section 2.2 at recitals 26 to 44 and set out in detail in decision on case SA.28599 — digital terrestrial television in Spain⁽⁴³⁾, the legal framework for the digital switch-over in Spain is a complex net of various acts issued both by the central government and the regional and even local authorities over a period of four years. The National Technical Plan of 2005 and the Transition Plan of 2007 regulate mainly the transition to DTT in Area I but they also set the basis for further extension measures in Area II. These extension measures were implemented by the regional authorities, after conclusion of several framework agreements with the central government (the 2008 Framework Agreements) and addenda in 2008 to previous 2006 Framework Agreements and in 2009 to the 2008 Framework Agreements.

⁽⁴²⁾ Abertis refers to its own cost study conducted in January 2010 to compare the respective costs of using DTT and satellite technology to provide digital television services in Area II. According to this study, the overall cost for using DTT technology would represent about EUR 286 million in a 10-year period, whereas the total costs of using the satellite technology in the same period would amount to approximately EUR 532 million.

⁽⁴³⁾ SA.28599 — C(2013)3204 final of 19 June 2013.

- (99) As a result of the conclusion of these agreements and addenda, the regional and/or local authorities carried out a wide array of measures aiming at extending the coverage of DTT in Area II. The Commission therefore considers that the various acts taken at the central level and the agreements concluded and amended between the MIEyT and the Autonomous Communities constitute the basis of the aid scheme for the extension of coverage in Area II. These acts and agreements guided the Autonomous Communities towards measures, which were not technologically neutral ⁽⁴⁴⁾.
- (100) While the National Technical Plan regulates the switch-over to DTT in Area I, it also provides a mandate to local authorities to establish, in cooperation with the Autonomous Communities, additional transmission centres necessary to ensure reception of the DTT in the Area II. Thus, at that point in time the central government already foresaw the extension of DTT coverage. The mandate contained in the principal legal act regulating the switch-over to digital television only refers to the terrestrial platform. In practice, the Autonomous Communities have therefore executed the central government's guidelines on the extension of DTT ⁽⁴⁵⁾.
- (101) The moment when the State aid for the deployment of the DTT in Area II was effectively disbursed was marked by the transfer of funds from the central and regional authorities to the beneficiaries. This happened over a period of time depending on the Autonomous Community. As for the ongoing aid for operation and maintenance of the networks, this was decided at the level of the Autonomous Communities.
- (102) In the case of Castilla-La Mancha, as described in detail in recitals 36 to 45, a different process was chosen. In contrast to the majority of other Autonomous Communities, no regional tenders for the extension of coverage of digital television were used. Instead, the Decree 347/2008 of 2 December 2008 mandated the direct attribution of the funds necessary for the digitisation to the owners of the existing (analogue) emission centres. The JCCM therefore did not use any open tender procedure but instead selected the telecom operators directly. These companies also carried out operation and maintenance tasks.
- (103) Where the emission centres belong directly to TelecomCLM or to Abertis, these companies received the aid to upgrade their own equipment. Where new emission centres had to be built, they were publicly funded, but TelecomCLM obtained the ownership. Finally, in most cases the analogue emission centres are owned by the municipalities. The latter bought the digital equipment from TelecomCLM or Abertis and subcontracted the installation, operation and maintenance of the equipment to these two companies.

5.2. STATE AID ASSESSMENT PURSUANT TO ARTICLE 107(1) TFEU

5.2.1. Presence of aid within the meaning of Article 107(1) TFEU

- (104) The measure in question, including the ongoing aid for operation and maintenance, can be characterised as State aid within the meaning of Article 107(1) TFEU, which lays down the following conditions for the presence of State aid. First, there must be an intervention by the State or through state resources. Second, it must confer a selective economic advantage on the recipient. Third, it must distort or threaten to distort competition. Fourth, the intervention must be liable to affect trade between Member States.

⁽⁴⁴⁾ Such guidance can be found in the relevant documents of the Central government. In particular, the framework agreements signed in December 2008, entitled *Framework Collaboration Agreement between the Ministry of Industry, Tourism and Trade and the Autonomous Community of [...] for the Development of the National Transition Plan to DTT*, foresee a list of activities that will be financed by the central and regional authorities in order to reach the coverage of digital television equal to the existing analogue coverage. On the one hand they refer to existing transmission centres upgraded by broadcasters (DTT centres deployed in Area I) and, on the other hand, to 'coverage extensions' — additional centres that will need to be deployed in order to ensure the same penetration of digital television. Given that only the DTT technology requires existence of transmission centres, it seems clear that the actions foreseen concern only the DTT technology. Further, the addenda to the 2008 Framework Agreements signed between October and December 2009 refer to funding for the coverage extension. They define what should be understood by 'action to extend the coverage', by making explicit reference only to the terrestrial technology.

⁽⁴⁵⁾ In meetings with the Autonomous Communities, MIEyT expressed its objective to ensure the transition to DTT also in Area II. This is confirmed by a presentation, publicly available on Internet, and signed by MIEyT. <http://www.fenitel.es/asamblea08/PONENCIAS/4SETSI.pdf>. It is also confirmed by statements from Autonomous Communities to the Commission's request for information. In their replies, the Autonomous Communities explicitly refer to the National Transition Plan adopted by Royal Decree 944/2005 and to the Plan Avanza. See, for example, the reply from Extremadura: 'Conforme a lo dispuesto (...) del Real Decreto 944/2005 (...) por el que se aprueba el Plan técnico nacional de la televisión digital terrestre, en la cual se recoge la iniciativa local en la extensión de la cobertura de la TDT....'.

5.2.1.1. *State resources and State imputability*

- (105) The measure in question originates from the system of legal acts described above, issued both at the central as well as at regional or local levels, as well as from agreements concluded between MIEyT and the authorities of Castilla-La Mancha. Castilla La Mancha did not contest the finding of the opening decision that the measure was financed from budgetary resources. It insisted, however, that it was financed both from the central, as well as from the regional and municipal budgets. It also expressed the view that the measure in question was actually a mere transfer of funds between different administrations. As such, Castilla-La Mancha recognised that the funds originate partly in the central budget. Further, the measure was not a mere transfer of funds between administrations, as ultimately the funds were used for the deployment of the DTT network by entities carrying out an economic activity (as explained in section 5.2.1.2).
- (106) In these circumstances it has been established that the investigated measure was funded directly from the budget of the State and from the budgets of the particular region and municipalities. Ongoing aid was not funded from the central State budget, but it comes from the budget of the Autonomous Community.
- (107) As the measure is financed by the State, at the central and the regional or local level, it is imputable to the State and involves the use of state resources.

5.2.1.2. *Economic advantage to entities carrying out an economic activity*

- (108) Abertis, listed on the Spanish Stock Exchange, is an international company active in the management of toll roads and terrestrial and satellite telecommunication infrastructures. It is present in 12 countries in Europe and the Americas, with around two thirds of the Group's revenue being generated outside Spain. Abertis telecom owns and operates a telecommunications infrastructure in Spain. It also has the leading network of sites for the distribution and broadcast of radio and TV signals in Spain. TelecomCLM, S.A. is a regional telecommunication operator providing services in Castilla-La Mancha. Its services include transport, contribution, and diffusion of signals of radio and television; housing of equipment and radiating systems; infrastructure sharing; and integral infrastructure maintenance. The company provides services to the local, autonomic, and national operators. [...].
- (109) The measure in question entails a transfer of State resources to certain undertakings. Although the concept of an undertaking is not defined by the Treaty, it refers to any natural or legal person, regardless of its legal status and its financing, who carries out an economic activity. In the practice of the Commission, as confirmed by the Courts, operation of television transmission networks is considered to be an economic activity ⁽⁴⁶⁾, similarly as in other cases involving management of infrastructure by the regional authorities ⁽⁴⁷⁾. In the case at hand, the public undertakings are registered in the register of the CMT as network operators. This suggests that they provide certain services, which according to the settled case practice constitutes an economic activity. A market exists if other operators would be willing or able to provide the service in question, which is the case. For instance, Astra held several meetings with Autonomous Communities before the implementation of the extension of the coverage in Area II to present them its offer. In addition, in March 2008 Astra participated in and won a technologically neutral tender for providing digital TV in Area II and Area III published in Cantabria. The fact that the public undertakings and municipalities do not receive remuneration for the provided services does not discard the qualification of the activities in question as an economic activity ⁽⁴⁸⁾.
- (110) The Commission does not agree with the argument of Spain that operation of the terrestrial network by the Autonomous Communities, public undertakings and municipalities falls within the exercise of official powers as a public authority and therefore falls outside the scope of Article 107 TFEU. It has been recognised that the

⁽⁴⁶⁾ Commission decisions: N 622/2003 Digitalisierungsfonds Austria, C25/2004 DVB-T Berlin Brandenburg (paragraph (62)), C34/2006 DVB-T North-Rhine Westphalia (paragraph (83)), C52/2005 Mediaset (paragraph (96)).

⁽⁴⁷⁾ Case T-196/04 Ryanair Ltd v European Commission, [2007] ECR II-2379, paragraph (88).

⁽⁴⁸⁾ See Joined Cases T-443/08 and T-455/08: *Freistaat Sachsen and Land Sachsen-Anhalt* (T-443/08) and *Mitteldeutsche Flughafen AG and Flughafen Leipzig-Halle GmbH* (T-455/08) v *European Commission*, [2011] ECR II-01311, paragraph (115), where the Court states: 'The fact that an activity is not engaged in by private operators or that it is unprofitable are irrelevant criteria in regard to the classification of that activity as an economic activity (...).'

activities linked to the exercise of State prerogatives by the State itself or by authorities functioning within the limits of their public authority do not constitute economic activities for the purposes of competition rules ⁽⁴⁹⁾. Such activities are those that form part of the essential functions of the State or are connected with those functions by their nature, their aim and the rules to which they are subject may be regarded as falling within this exception. The Courts' case-law has provided several examples of activities that fall within this category, thus establishing a dividing line between pure State activities and the commercial activities a State entity may engage in. This list includes activities related to the army or the police, the maintenance and improvement of air navigation safety, air traffic control ⁽⁵⁰⁾; the anti-pollution surveillance which is a task in the public interest that forms part of the essential functions of the State as regards the protection of the environment in maritime areas ⁽⁵¹⁾ and standardisation activities as well as related research and development activities ⁽⁵²⁾.

- (111) In this light, the Commission is of the opinion that in the present case the operation of the terrestrial broadcasting network does not fall within the State's obligations or prerogatives nor is it a typical activity that could only be performed by the State. The services under consideration are not typically those of a public authority and are in themselves economic in nature, which is evidenced by the fact that several undertakings are active on the market in the Area I. Second, a private undertaking, not dependent on any public authorities — namely Astra (as evidenced by its presence as a bidder in the 2008 tender in Cantabria) — was interested in providing this service in Area II. Astra's complaint also covers the region of Castilla-La Mancha, where it is interested in providing digital broadcasting services as a platform operator. Third, the deployment of the network in Area II only concerns the transmission of national and regional private channels ⁽⁵³⁾. As a result, it is concluded that the operation of the terrestrial network by the Autonomous Communities, public undertakings and municipalities does not fall within the exercise of official powers as a public authority.
- (112) The Commission disagrees with JCCM that the measure is in line with the Market Economy Investor Principle (MEIP). This test considers whether a market investor would have invested in the project on the same terms and conditions as the public investor at the time when the decision to make the public investment was taken. In the current case, the public investment is the JCCM's funding of the digitisation of terrestrial broadcasting networks of Telecom CLM and Abertis. Where the equipment remains the ownership of the public authorities (municipalities), it is operated by the former companies. The agreement with the operators does not provide for a reimbursement of the funds or for a remuneration of the equipment owned by the public authorities. This contradicts directly the concept of a private investor who would not only require such reimbursement/remuneration but in addition also a return on the investment itself. The public funding of the DTT network was not meant to be a profitable investment by itself. As a result, the JCCM's investment in the digitisation of the terrestrial network in Area II does not fulfil the MEIP.
- (113) An economic advantage therefore exists where the operator receives public funds to digitise its own equipment or build new emission centres. Second, where a public authority directly selects (i.e. without public tender) an operator for the provision of DTT equipment and O&M services, this is not done on market terms. This also grants an economic advantage to the operator.

Direct beneficiaries of the aid

- (114) As set out in recitals 36 and 37, JCCM did not organise any regional tender for the upgrading of analogue networks or for the extension of coverage of digital television. Instead, these funds were attributed directly to the municipalities or to existing terrestrial operators. Municipalities then chose operators to carry out the task without public tender. As a result, other platform operators, whether terrestrial or other, were not properly

⁽⁴⁹⁾ Communication from the Commission on the application of the European Union State aid rules to compensation granted for the provision of services of general economic interest (OJ C 8, 11.1.2012, p. 4).

⁽⁵⁰⁾ Case C-364/92, SAT/Eurocontrol, [1994] paragraphs 19 to 30, ECR I-43, C-113/07 P, Selex, [2009], ECR I-2207.

⁽⁵¹⁾ Case C-343/95, Calì & Figli, [1997], ECR I-1547, paragraph 22.

⁽⁵²⁾ Case T-155/04 Selex, [2006] ECR II-4797, paragraphs 73-82, confirmed by C-113/07, Selex [2009], ECR I-2307.

⁽⁵³⁾ As set out in section 2.1.3 public broadcasters have a 98 % coverage obligation and therefore had to cover Area II by their own means. Moreover, the national public TV channels of RTVE and regional public channels are broadcasted via a different network. While private broadcasters use the Single Frequency Network (SFN) signal, public broadcasters use the Red Global Española (RGE) network. As a result of these differences, the terrestrial facilities require different equipment for each of the two networks.

informed of the measure and therefore could not have made a technical proposal for the upgrading of infrastructure for the extension of coverage of digital television in Area II in the region ⁽⁵⁴⁾.

- (115) Abertis and TelecomCLM either received the funds for the upgrading and extension of their own network, or they were contracted by municipalities to carry out such work on the latter's infrastructure ⁽⁵⁵⁾. In both cases, the two operators were selected without public tender. In most cases, the municipalities own the DTT equipment which is attached to the operators' masts. The latter do not remunerate the municipalities for the use of such equipment.
- (116) TelecomCLM entered directly into 133 Collaboration Agreements with the JCCM aimed at the digitisation of its own emission centres. This was considered necessary to carry out the DTT extension in rural areas where the population density is low and no operator has shown interest to invest. An overview of the costs incurred by TelecomCLM upon the receipt of funds transferred by the JCCM shows that the former used these funds exclusively for the acquisition, installation of DTT equipment and for the subsequent maintenance of equipment for the first 2 year period.
- (117) Thus, TelecomCLM and Abertis upgraded part of their existing broadcasting centres and are now in a position to operate the DTT network in Area II due to the public subsidy. They can also use the new infrastructure to provide other services, for example WiMax (wireless broadband standards which can provide fix or mobile broadband). TelecomCLM used its centres [...] and several digitised centres owned by municipalities for the installation of the JCCM's WiMax equipment [...] ⁽⁵⁶⁾. Due to these economies of scope, the DTT network operators have opportunities to raise income from the publicly financed infrastructure. [...].
- (118) The quantifiable advantage to the direct beneficiaries TelecomCLM and Abertis is the total amount of the funds received for the extension of coverage (including the funds received for the upgrading or building of new transmission centres).
- (119) Where municipalities act themselves as network operators, they received public funds to digitise the transmission centres located in their areas and to build new ones. The authorities argue that these were merely transfers of funds between different levels of administration and that, by extending municipality owned networks, the municipalities simply carried out their administrative obligations towards the inhabitants. However, where municipalities act as network operators they carry out an economic activity. Many of them are registered on the CMT's list of network operators. Nevertheless, as the municipalities bought the digital equipment from Abertis or TelecomCLM and subcontracted the installation, operation and maintenance of the equipment to these two companies without public tender, also in this case the latter are the direct beneficiaries of the aid.
- (120) The funding also includes the operation and maintenance (O&M) of the network. These tasks are performed by TelecomCLM and Abertis. This is considered ongoing aid and the operators, charged with the operation and maintenance of the network, are considered to be the beneficiaries. Finally, in more general terms, Abertis and TelecomCLM also benefit from the exclusion of another platform operator from entering the market of transmitting free to air TV signals in Spain ⁽⁵⁷⁾.

⁽⁵⁴⁾ To the extent that a local operator as Radiodifusión broadcasted the signal of national broadcasters, it might have been eligible for the regional subsidies. However there was no tender foreseen to invite the potentially interested operators to submit their offers. To the contrary — it was up to the regional authorities to take the initiative, locate the emission centres that were broadcasting the signal of national broadcasters and offer them support for the digitisation. In this respect Radiodifusión has put forward that even though it did broadcast the television signal, it had never been approached by the public administration to discuss the possible financing of the digitisation of its network.

⁽⁵⁵⁾ Due to the DTT Equipment Transfer Agreements, in some cases the equipment acquired by TelecomCLM (with funds from the JCCM) was returned to the JCCM after 2 years of operation.

⁽⁵⁶⁾ [...].

⁽⁵⁷⁾ As set out in recital 24, Abertis dominates the market for the transmission of free to air TV signals on the terrestrial platform in Area I and via its subsidiary Hispasat in Area III. By extending the reach of digital terrestrial TV to Area II, the provision of nation-wide free to air TV signals remains under Abertis' control. The entry of Astra in Area II could generate more platform competition also in Area I and III in the future. By way of analogy, there exists ample literature, which demonstrates the benefits in terms of lowering prices and increasing quality of service when satellite entered the TV market in the US. Prior to satellite entry, cable firms had enjoyed monopoly power in local geographic areas. Compare for instance: Chenghuan Sean Chu, the effect of satellite entry on cable television prices and product quality, RAND Journal of Economics Vol. 41, No 4, Winter 2010 pp. 730-764.

Indirect beneficiaries of the aid

- (121) *Hardware suppliers.* TelecomCLM and Abertis provide equipment and hardware in-house. To the extent municipalities purchased equipment without a public tender from the two existing terrestrial operators in Castilla-La Mancha, TelecomCLM and Abertis directly benefited from the aid (see recital 119 above). Where the two operators have bought such equipment from hardware suppliers, such equipment was purchased on a free market. Therefore, as a result, apart from TelecomCLM and Abertis (direct beneficiaries), hardware suppliers are not considered to be beneficiaries as they did not receive a selective advantage. Similar to the case of digital decoders in Italy ⁽⁵⁸⁾, it has not been possible to draw a distinction between different categories of producers of various types of digital infrastructure because producers should be able to produce any type of equipment. The companies supplying such hardware to the network operators are not different from the group of undertakings who would have participated in tenders if the scheme had been technologically neutral with regard to platform operators ⁽⁵⁹⁾. In Spain the companies, which integrate, install and supply the hardware necessary for DTT extension usually also offer other services. Such equipment manufacturers but also telecommunications operators may also offer terrestrial, satellite or a mix of terrestrial and satellite solutions ⁽⁶⁰⁾.
- (122) The measure in question does not seek, through its object or general structure, to create an advantage for manufacturers. Indeed, any public policy in favour of digitisation (even the most technologically neutral) would favour producers of digital equipment. In the case of equipment manufacturers, the fact that they benefitted from an increase in sales due to the measure can therefore be considered to be a mechanical side-effect. As a matter of principle, any State aid has a trickle-down effect on suppliers to the State aid recipient. This, however, does not necessarily create a selective advantage for such suppliers. Hardware suppliers were not targeted by the aid and therefore did not benefit from a targeted indirect effect.
- (123) *Broadcasters.* Spain has sufficiently demonstrated that the terrestrial broadcasters did not receive any advantage following the extension of the coverage. In contrast to Area I, the broadcasters refused to pay for the digitisation in Area II as this would not generate any additional revenue for them. In fact, in the light of the limited population at stake, which does not seem to be the commercial target of the advertisers, following the extension to Area II, broadcasters could not significantly raise advertising fees. Therefore, the terrestrial broadcasters are not indirect beneficiaries of the investigated measure.

5.2.1.3. *Selectivity*

- (124) The advantage provided by the measure to the network operators and broadcasters is selective, as it only concerns the undertakings active in the terrestrial platform market. Moreover, the choice of network operators charged with the task of extension was not done based on a tender, but on a specific procedure established in the Decree 347/2008, which consisted in selecting network operators by the authorities. Therefore, irrespective of whether the legislative framework at the central level excluded technologies other than terrestrial from the scope of the aid, its application by the Castilla-La Mancha region concerned only particular network operators.

5.2.1.4. *Distortion of competition*

Network operators

- (125) By directly granting the funding to the terrestrial network operators TelecomCLM and Abertis, the Spanish authorities have discriminated against any other terrestrial network operator which could have provided such services. Whether existing operators, as Radiodifusión, would qualify to provide broadcasting services to regional and national broadcasters in Area II of Castilla-La Mancha could have been established in a public tender. As they were not informed about the measure and they were not invited to present their proposal, such operators could not argue their case with the JCCM. As a result, the direct selection of the beneficiaries led to the exclusion of any other potential terrestrial competitor.

⁽⁵⁸⁾ C52/05 — Digital decoders Italy (OJ C 118, 19.5.2006, p. 10 and OJ L 147, 8.6.2007, p. 1).

⁽⁵⁹⁾ As a few examples for companies which have won tenders: *Tredess* is a manufacturer of digital transmission equipment belonging to the Televes Group which manufactures also digital satellite TV receivers, antennas, dishes (Compare: <http://www.tredess.com> and <http://www.televes.es>.) Similar: *Mier* (<http://www.mier.es>), *Elecnor* (<http://www.elecnor.es/es/negocios/infraestructuras/telecomunicaciones/>) *Itelsis*, *BTESA*, *Axion*, *Retegal*, *Itelazpi*, *TelecomCLM*.

⁽⁶⁰⁾ The tenders in Area II regarding the extension of coverage often ask for 'turn-key' solutions which require integrating, installing and supplying several components of equipment (dish, antenna, transmitter, satellite receiver). In most cases the solution provided included satellite receiver equipment in order to receive the digital signal already distributed through satellite by the broadcasters.

- (126) Where municipalities upgraded their own network, in some cases they directly contacted TelecomCLM or Abertis. In these cases other telecom operators were excluded from making a proposal. As set out in recitals 39 and 40, other municipalities published a short notice on their Notice Boards. These publications inform that a telecom operator is selected to digitise the emission centre of the municipality, in line with decree 347/2008. The operator should present a 'memoria técnica'. Interested operators could obtain the technical specifications in the secretariat of the municipality. However, the publication of the Notice board does not respect the technological neutrality, as the notices were destined only for the upgrading of the existing terrestrial emission centre. Moreover, while the notices allow any telecom operator registered with the national regulator CMT to make a proposal, these publications cannot be considered equivalent to a public tender. A publication on the Notice Board does not create the same visibility as a public tender published in an official journal. Moreover, in most cases, unlike other companies, TelecomCLM and Abertis were expressly informed in advance about the process and could therefore hand in their proposal ⁽⁶¹⁾. Eventually, in all the municipalities where such notices were published, either TelecomCLM or Abertis were selected.
- (127) Spain and Abertis claim that DTT and satellite are two different markets. DTT is the main platform for free-to-air terrestrial television, where the number of players in the national market is determined by the number of licences granted by the Spanish government. Funding for free-to-air terrestrial television channels comes from advertising. As for satellite television, a large number of channels are available on the only pay-television platform in Spain, for which Astra is the network operator. These channels are funded by subscriptions, generally for a package of channels. Spanish authorities underline in addition that in Spain the cost of satellite distribution for broadcasters is much higher than the cost of terrestrial broadcasting and therefore the free-to-air broadcasters, including regional and local ones, are not interested in switching to this platform.
- (128) For several reasons indicated in the decision it is concluded that terrestrial and satellite platforms operate in the same market.
- (129) First of all, in 2008 Astra competed for the extension of coverage of digital television in Cantabria and won the tender. In 2008 Astra held a series of meetings with the Autonomous Communities to whom it presented its offer to broadcast digital television channels so far broadcasted via terrestrial platform. Even if the contract with Cantabria was later on terminated by the authorities, the interest of the satellite operator in providing services in competition with the terrestrial platform suggests that there exists a possibility for satellite to provide similar services.
- (130) Second, several public and private channels distributed via terrestrial platform are also broadcasted via satellite platforms, including Astra itself ⁽⁶²⁾. Third, concerning the regional channels, some of them are available or were available in the recent past via satellite platform, which contradicts the statement that the regional broadcasters are not interested in satellite.
- (131) Fourth, some broadcasters have declared a preference for terrestrial transmission because they have acquired rights to broadcast content only for the terrestrial platform. This, however, does not imply that there exist different markets for terrestrial and satellite transmission. As they have acquired content rights for the terrestrial platform, if necessary, broadcasters could do the same for the satellite. Further, if a satellite platform is selected on the basis of a public tender, a 'must carry obligation' could be imposed on the broadcasters. Such a 'must carry obligation' was imposed on broadcasters for Area III where the satellite platform was selected.
- (132) Finally, according to data from May 2010 ⁽⁶³⁾, the coverage of DTT in Spain reaches 98,85 % of the population while only 93,5 % of the households watch TV via the terrestrial platform. Thus, 5 % of households have access to DTT but choose not to use it, as most of them are subscribed to pay-TV via satellite.
- (133) In conclusion, as satellite and terrestrial broadcasting platforms compete, the measure, for the deployment and operation and maintenance of DTT in Area II entails a distortion of competition between the two platforms.

⁽⁶¹⁾ CLM authorities could not provide any example of a bid submitted by another telecom operator. Some bids had been provided by 'telecom installers', however, they were excluded on the basis that they are not registered as telecom operators.

⁽⁶²⁾ For example, Antena 3, Cuatro, Telecinco, La Sexta, La Siete, Teleduarte, TVE, La2, Canal 24 horas.

⁽⁶³⁾ Analysis of the television market submitted by Spain in the notification of the measure: Compensation for damages for liberation of the digital dividend in Spain, SA.32619 (2011/N).

- (134) Finally, it should be noted that other platforms, especially IPTV, are also disadvantaged due to the measure. Even if broadband has not yet reached the entirety of Area II, it is very likely that in the future it will extend its coverage significantly. It is possible that a mix of technologies would have been more efficient to achieve coverage of Area II. In this case such other platforms could have contributed to the objective and they could have benefitted from the aid measure.

5.2.1.5. *Effect on trade*

- (135) The measure has an impact on intra-Union trade. In line with the case-law of the European Courts, when 'State financial aid or aid from State resources strengthens the position of an undertaking as compared with undertakings competing in intra-Community trade, the latter must be regarded as affected by that aid' ⁽⁶⁴⁾.
- (136) Network operators are active in a sector in which trade exists between Member States. Abertis forms part of an international group of companies, so does one of the complainants, Astra. Astra, based in another Member State (Luxembourg), would have bid for the provision of a digital network in the region of Castilla-La Mancha, if a technologically neutral tender had been organised. The measure therefore affects trade between Member States.

5.2.2. **Conclusions on the presence of aid**

- (137) In the view of the arguments exposed above, the Commission considers that the measure fulfils the criteria enshrined in Article 107(1) TFEU. Under those circumstances, the measure has to be considered as State aid within the meaning of Article 107(1) TFEU.

5.3. COMPATIBILITY ASSESSMENT

- (138) The Commission actively supports the transition from analogue to digital broadcasting. The advantages of the digital switch-over were underlined in the Action Plan eEurope 2005 and in the two Communications relating to the digital switchover ⁽⁶⁵⁾. The Commission also recognises that the digital switch-over could be delayed if left entirely to market forces.
- (139) Member States may use aid to overcome a specific market failure or to ensure social or regional cohesion ⁽⁶⁶⁾. However, it must be shown in each specific case that the aid is necessary to address the issue, that it is an appropriate instrument, limited to the minimum necessary and does not unduly distort competition. Similarly, the Switchover Communication ⁽⁶⁷⁾ provides that in the specific area of digitisation, public intervention would be justified under two premises: first, the presence of general interests which are at stake; secondly, the existence of a market failure, that is, market forces alone fail to deliver in terms of collective welfare. It also specifies that in any case, public intervention should be supported by a sound market analysis.
- (140) The Switchover Communication also indicates that the transition to digital broadcasting represents a big industrial challenge that must be led by the market. In principle, each network should compete on its own strengths. In order to safeguard this principle, any public intervention shall aim at being technologically neutral. Exceptions from this principle can only be envisaged if the intervention targets a specific market failure or equity issue and is at the same time necessary, appropriate and proportionate to overcome these difficulties.
- (141) If left to the market, in view of their disadvantaged social situation, there is a risk that not all parts of the population can benefit from the advantages of digital television. With respect to this social cohesion problem, Member States may want to make sure that all citizens have access to digital television once analogue TV is switched off. Since the digital switch-over entails costs for consumers and requires a change in habits, Member States may want to assist in particular the disadvantaged groups of society such as elderly people, low-income households or people living in peripheral regions.

⁽⁶⁴⁾ T-55/99 Confederación española de transporte de Mercancías (CETM) v Commission of the European Communities [2000] II-3207.

⁽⁶⁵⁾ COM(2002) 263 final, 'eEurope 2005: An information society for all', COM(2003) 541 final, Communication from the Commission on the transition from analogue to digital broadcasting (from digital 'switchover' to analogue 'switch-off') and COM(2005) 204 final, 'Communication from the Commission on accelerating the transition from analogue to digital broadcasting'.

⁽⁶⁶⁾ See 'Less and better target state aid: a roadmap for state aid reform 2005-2009', COM(2005) 107 final.

⁽⁶⁷⁾ See footnote 68, COM(2003) 541 final.

- (142) In several State aid decisions, based on the Communications related to the digital switch-over, the Commission applied the State aid rules in this sector ⁽⁶⁸⁾. Member States have several possibilities to grant public funding for the switch-over to ensure that all geographical areas continue to have appropriate TV coverage. This includes funding for the roll-out of a transmission network in areas where otherwise there would be insufficient TV coverage ⁽⁶⁹⁾. Such funding may however be granted only if it does not entail an unnecessary distortion between technologies or companies and is limited to the minimum necessary.

5.3.1. Legal bases for assessing the compatibility of the envisaged measure

- (143) The Spanish authorities have invoked Articles 107(3)(c) and 106(2) TFEU to justify the measure if it was found to constitute State aid in accordance with Article 107(1) TFEU. In the following, the Commission assesses the compatibility of the measure in view of these provisions, taking into account the general considerations outlined above.

5.3.2. Article 107(3)(c) TFEU

- (144) In order for the aid to be compatible under article 107(3)(c), the Commission balances positive and negative effects of the aid. In applying the balancing test, the Commission assesses the following questions:

- (1) Is the aid measure aimed at a well-defined objective of common interest?
- (2) Is the aid well designed to deliver the objective of common interest i.e. does the proposed aid address a market failure or other objective? In particular:
 - (a) Is the aid measure an appropriate instrument, i.e. are there other, better place instruments?
 - (b) Is there an incentive effect, i.e. does the aid change the behaviour of firms?
 - (c) Is the aid measure proportional, i.e. could the same change in behaviour be obtained with less aid?
- (3) Are the distortions of competition and the effect on trade limited, so that the overall balance is positive?

5.3.2.1. Objective of common interest

- (145) The national aid scheme, as implemented by JCCM for Castilla-La Mancha, aims at acceleration of the digital switch-over process in Spain and ensuring the continuity of TV reception to residents of certain remote and rural areas. In this respect, the measure is targeted to allow people living in those areas to watch television and to exercise their constitutional right to access information. As already mentioned at recital 138, the Commission has recognised the importance and the benefits of the digital transmission in the Action Plan eEurope 2005 ⁽⁷⁰⁾ as well as in its two Communications on the transition from analogue to digital broadcasting ⁽⁷¹⁾. In its iCommunication — A European Information Society for growth and employment ⁽⁷²⁾, the Commission has pointed out that the planned switching off of analogue terrestrial television by 2012 will improve access to spectrum in Europe. As digital broadcasting uses spectrum more efficiently, it frees up spectrum capacity for other users, such as new broadcasting and mobile telephony services, which will in turn stimulate innovation and growth in the TV and electronic communications industries.

⁽⁶⁸⁾ See, amongst others, N622/03 Digitalisierungsfonds — Austria (OJ C 228, 17.9.2005, p. 12); C25/04 Einführung des digitalen terrestrischen Fernsehens (DVB-T) in Berlin-Brandenburg — Germany (OJ L 200, 22.7.2006, p. 14); C24/04 Digital terrestrial television in Sweden (OJ L 112, 30.4.2007, p. 77); C52/05 Digital decoders Italy (OJ L 147, 8.6.2007, p. 1); N270/06 Subsidies to digital decoders with API — Italy (OJ C 80, 13.4.2007, p. 3); N107/07 Subsidies to IdTV — Italy (OJ C 246, 20.10.2007, p. 2); C34/06 Einführung des digitalen terrestrischen Fernsehens (DVB-T) in Nordrhein-Westfalen (OJ L 236, 3.9.2008, p. 10); SA.28685 Captación de Televisión Digital en Cantabria — Spain (OJ C 119, 24.4.2012, p. 1).

⁽⁶⁹⁾ See recital 132 of the Commission's decision C25/04 Einführung des digitalen terrestrischen Fernsehens (DVB-T) in Berlin-Brandenburg — Germany (OJ L 200, 22.7.2006, p. 14).

⁽⁷⁰⁾ COM(2002) 263 final, 'Europe 2005: An information society for all'.

⁽⁷¹⁾ COM(2003) 541 final, 'Communication on the transition from analogue to digital broadcasting (from digital "switchover" to analogue "switch-off")', and COM(2005) 204 final, 'Communication from the Commission on accelerating the transition from analogue to digital broadcasting'.

⁽⁷²⁾ COM(2005) 541 final, 1 June 2005.

- (146) The Commission is therefore of the opinion that the measure is targeted at a well-defined objective of common interest.

5.3.2.2. *Well-designed aid*

Market failure

- (147) As stated by the Spanish authorities, it is generally recognised that there is a risk that not all the parts of the population can benefit from the advantages of digital television (problem of social and regional cohesion). A market failure might exist where market players do not take sufficiently into account the positive effects of digital switch-over on society as a whole because they do not have the economic incentives to do so (positive externalities). Moreover, with respect to social cohesion, Member States may want to make sure that all citizens have access to digital TV once analogue TV is switched off and may therefore also consider measures to ensure that all geographical areas continue to have appropriate TV coverage.
- (148) As already discussed in the opening decision, the Commission recognises that there exists a market failure in that the broadcasters are unwilling to bear additional costs of the extension of coverage beyond their statutory obligations. Moreover, neither the satellite nor private households have carried out investments ensuring the reception of digital channels via satellite by all the inhabitants of Area II. Therefore, the Commission recognises that people whose usual residence is in a rural area may be totally excluded from the free-to-air digital television signal reception if the digital coverage is left entirely to market forces and that public intervention can be beneficial through financial supports to individuals.

Technological neutrality

- (149) In digital switch-over cases, the principle of technological neutrality is well enshrined in several Commission decisions ⁽⁷³⁾. It has been upheld by the General Court and the Court of Justice ⁽⁷⁴⁾.
- (150) The choice of technology should normally be established by a technologically neutral tender, as happened in other Member States ⁽⁷⁵⁾. Carrying out such a tender may be costly or may delay the implementation of the project. In some cases this may not be justified, if it can be established *ex ante* that only one particular technology or a particular provider can render the requested services. Choosing a particular technology may therefore be acceptable if this choice is justified by findings of an *ex ante* study. Such a study would have to look into pricing and quality criteria. As the decision to pick a certain technology would prevent competition from other suppliers presenting their product and pricing proposals, the results of the study would have to be unequivocal and robust.
- (151) The Commission has recognised in the past that a study could be the basis for selecting a particular technological solution ⁽⁷⁶⁾. However, the burden of proof lies with the Member State that has to demonstrate that the results of the study are sufficiently robust and that it was carried out in the most independent manner ⁽⁷⁷⁾.
- (152) In this regard, several studies have been proposed by the Spanish authorities and by Abertis which are discussed in what follows.

Cost studies

- (153) The Castilla-La Mancha authorities have argued that the investigated measure was targeted at digital terrestrial broadcasting based on the results of an *ex ante* study, carried out before adoption of the Decree. The ‘*Comparative Socio-Economic Study*’ ⁽⁷⁸⁾, as summarised in recitals 59 to 61 concluded that the terrestrial solution would be the most cost efficient solution.

⁽⁷³⁾ See above, footnote 56.

⁽⁷⁴⁾ Cases T-8/06 – FAB Fernsehen aus Berlin GmbH v Commission, Judgment of 6 October 2009, [2009] ECR II-04293; C-544/09P – Germany v Commission, Judgment of 15 September 2011, not yet published; T-177/07, Mediaset SpA v Commission, Judgment of 15 June 2010, [2010] ECR II-02341; and C-403/10 P – Mediaset SpA v Commission, Judgment of 28 July 2011, not yet published.

⁽⁷⁵⁾ See footnote 7.

⁽⁷⁶⁾ For instance, a study served as a justification for a choice of a particular technology in a broadband case, see Commission Decision N222/2006 – Aid to bridge the digital divide in Sardinia (OJ C 68, 24.3.2007, p. 6).

⁽⁷⁷⁾ The UK chose DTT for the provision of local TV on the basis of an *ex ante* study carried out by its regulator OFCOM and on the basis of an *ex ante* consultation of market players. On this basis, the Commission did not insist on carrying out a technologically neutral tender. SA.33980 (2012/N) – Local TV in the UK.

⁽⁷⁸⁾ See footnote 34.

- (154) The starting point of the study is the quantification of the population for which a technological choice could be made. The main part of Castilla-La Mancha belongs to the so-called Area I where the switch-over to DTT had already happened. In certain cases, Area I and Area II overlap. For technical reasons, the study argues that in these areas (which are already partly equipped with DTT) one should only consider the extension of DTT. When comparing the satellite and DTT options, the study therefore only looks at about 9,8 % of the population. Secondly, the author of the study considers that among this subgroup, part of the population receives in addition a regional television service via terrestrial platform. Without further assessment it concludes that for these services, 'it would not be rational to make the population adopt different modes of reception'. Finally, there remain 2,85 % of the population — or 57 510 inhabitants in 689 villages — to be considered for an alternative technology.
- (155) The study first produces an estimation of the total cost of the satellite platform — including the cost of decoders installation, assumptions based on market data about the rental cost of a satellite transponder, and the O&M costs over 10 years — and then compares it to the estimated total cost of the terrestrial platform. In the latter it includes the cost of decoders' installation and terrestrial transmitters, and the O&M costs over 10 years. In the end, the total cost would be between EUR 47 672 550 and EUR 97 646 800 for the satellite solution, and between EUR 15 136 550 and EUR 17 224 350 for the terrestrial solution.

Assessment

- (156) At the time, the authorities had the choice either to carry out a technologically neutral tender or, on the basis of such a cost study, to pre-select one particular technology. Thus, the authorities had to decide whether it would be worthwhile at all to invite potential competitors to tender. If an open tender had been carried out, the agency could have chosen between different bids including possible *discounts* offered by bidders. On the other hand, it may be justified to dispense with such a tender procedure if the study demonstrated that, taking into account all possible discounts which could be envisaged from potential bidders, the satellite technology was clearly more expensive or it would not fulfil essential qualitative requirements. As the study is merely necessary to justify dispensing with the tender, it would be necessary to demonstrate a significant cost difference between the two platforms and the robustness of such a result.
- (157) The study is far from meeting these requirements. First, following a request for information sent by the Commission in 2011, the authorities had to make corrections to the data used in the study. The corrections consisted in the increase of the costs for transmission sites by about 65 %, as well as of the number of transmission sites that were actually needed to guarantee the expected coverage. JCCM argued that even with these new figures, the outcome of the comparison between terrestrial and satellite transmission technologies would not change. In fact, however, when taking these new figures into account the cost advantage of the DTT technology was diminished, or, in some scenarios, even turned around into a cost advantage for the satellite solution. This already shows that the results of the study are not robust. These flaws should have been evident to the authorities at the time if they had exercised sufficient diligence.
- (158) As regards the cost calculation, the study takes the wrong approach when calculating the cost of satellite transmission. It assumes that municipalities would rent satellite transponder capacity from the satellite platform and operate the satellite connection itself. Its calculation is therefore based on published (2008) rental prices for satellite transponder capacity. As these prices are for individual connections they do not take into account any quantity discounts and possible price negotiations. Further, in the case of an open tender, as demonstrated in the case of Cantabria, the satellite operator would enter itself as a competitor. Its bid would be based on a completely different price calculation. In comparison to individual rental prices, if the contract covers the entire Area II in Castilla-La Mancha, it can be expected that such a bid would include significant capacity price discounts.

- (159) Further, the study's approach unduly drives the results against the satellite option ⁽⁷⁹⁾:

— Calculations should be based on net present value (NPV) of recurrent cost instead of using the plain sum ⁽⁸⁰⁾,

⁽⁷⁹⁾ There have been several other flaws of the study. For instance, the study does not provide sufficient justification why only 2,85 % of the population of Castilla-La Mancha are taken into consideration. This assumption has an impact on the cost effectiveness of the two platforms.

⁽⁸⁰⁾ The NPV takes into account whether payments are made today or in the future (future revenues/expenditures are discounted). Already by introducing a rather conservative discount rate of 4 %, the gap between terrestrial and satellite cost shrinks.

- the study neglects the exponential evolution in the need (and related cost) for new DTT transmission sites due to the remoteness of the last villages to be covered and considers rather a linear expansion,
- the study calculates yearly O&M cost of 3 % of equipment cost, while the authorities themselves mention that 'costs for two years of operating and maintenance are estimated at 20 % of the equipment costs' (i.e. yearly 10 %)

(160) As a result the cost calculation for DTT, instead, appears overly optimistic. This conclusion is supported when comparing the study's estimated cost for DTT roll-out with the money actually spent thereafter. The study estimates that the maximum cost of DTT deployment would amount to about EUR 15-17 million. However, Castilla-La Mancha authority later spent EUR 46 million for the DTT upgrading (plus expenses for the installation of satellite receptors where in fact it turned out that DTT was not economically feasible).

Conclusion

(161) The estimates of the study are not robust. By using Castilla-La Mancha's own (even if updated) figures, the initial cost advantage of the DTT network diminished, or, in some scenarios even turned around into an advantage for the satellite platform⁽⁸¹⁾. This does not yet take into account the possibility of discounts offered by a satellite operator in a competitive tender procedure. On the basis of the above considerations, the study therefore does not provide sufficient evidence to justify the *ex ante* choice of the DTT technology and refraining from an open tendering procedure.

Other cost studies

(162) The Spanish government provided an in-house study into the feasibility of providing universal DTT service using DTT or satellite, carried out by the Ministry of Industry, Tourism and Trade (MIET) in July 2007. However, that study was not made available to the Autonomous Communities, as Castilla-La Mancha and it was only used as an internal document. In any case, the Commission considers that the *ex ante* study provided by the Spanish authorities, as referred to in recital 62, does not demonstrate the superiority of the terrestrial platform over satellite. On the contrary, the study considers that a mix of technologies is more realistic and assumes for Area II a combination of 70 % satellite and 30 % terrestrial transmission⁽⁸²⁾. Moreover, the study concludes that the choice of a particular technological solution for the extension of coverage shall be analysed on a region-by-region basis, taking into account the topographic and demographic particularities of every region. Instead of suggesting an *ex ante* choice of a particular technology, this conclusion rather advocates for the need to carry out a technologically neutral tender to determine which platform is more suitable in the particular case of Castilla-La Mancha.

(163) Concerning the two cost studies submitted by Abertis, it has to be noted that they were performed in 2010, long after the investigated measures were put into effect. Irrespective of whether they could be considered independent and sufficiently robust, the fact that they are posterior to the contested measures excludes such studies from justifying the Spanish government's selection of the DTT technology and to dismiss a technologically neutral tender. The Commission received also cost estimations provided by Astra which demonstrate that satellite technology is more cost effective. For same reasons they also were not taken into account.

(164) As concluded for the JCCM study in recital 161, also other studies do not allow to conclude that the terrestrial digital platform is, in terms of quality or price, superior to other technological solutions. They therefore do not justify that JCCM refrained from an open tendering procedure.

⁽⁸¹⁾ If one takes into account updated figures, according to the Commission's own calculations, one obtains a shift in both cost scenarios, with an optimistic estimation of EUR 36 466 648 for the satellite mode and EUR 60 542 411 for the terrestrial mode, and a pessimistic estimation of EUR 56 760 211 for the satellite mode and EUR 65 155 166 for the terrestrial mode. These calculations are based on three elements which have complemented the CLM study: (1) the consideration of the NPV approach to recurrent costs over a 10-year horizon, (2) the number of new transmission sites to guarantee the expected additional coverage and (3) the corrected level of O&M costs. The distinction between 'optimistic' and 'pessimistic' scenarios follows from the original CLM study.

⁽⁸²⁾ It distinguishes 15 % terrestrial transmission including additional equipment to eliminate the echo and 15 % terrestrial with echo (page 34 of the study).

Appropriateness and proportionality of the measure

- (165) For a number of reasons, the measure cannot be considered appropriate.
- (166) By granting the aid directly to the established DTT operators TelecomCLM and Abertis, the measure does not consider alternative solutions which may have been more cost efficient or may have provided a better qualitative solution. As discussed in the previous section, there is no justification for ruling out a satellite platform. The fact that some households in Area II receive free-to-air channels via satellite demonstrates that terrestrial technology is not always the most efficient and appropriate platform. It is also noted that satellite transmission has also been the choice used for digital TV in some other Member States, even in areas where the terrestrial solution was also possible ⁽⁸³⁾. Moreover, the fact that Astra competed and won the technologically neutral tender for extension of coverage of digital television in Cantabria suggests, at least, that satellite platform can provide this service ⁽⁸⁴⁾.
- (167) Further, the various cost studies only compare DTT and satellite platforms. They do not consider alternative technological solutions as cable networks and IPTV. While the latter cannot cover the entire territory, a technology mix which includes such platforms as well as DTT and satellite transmission could have been more efficient.
- (168) The measure is also not appropriate as it discriminates between DTT operators themselves. By selecting directly the established DTT operators TelecomCLM and Abertis, the measure does not investigate whether other DTT operators, as Radiodifusion, could have made a less expensive or qualitatively better offer.
- (169) The appropriateness of pre-selecting the DTT operators is further put into question by capacity constraints on the DTT platform. While the transition from analogue TV to DTT in the 800 MHz band was completed in Spain on 3 April 2010, in 2011 it was decided to auction the 800 MHz band frequencies to telecommunication operators in order to comply with Decision No 243/2012/EU. As a result, it is necessary to transfer broadcasts to other channels located below 790 MHz, no later than by 1 January 2014. As this creates additional costs, on 5 November 2011 Spain notified two measures for households and broadcasters with a budget of EUR 600-800 million in Area I (no measure has yet been notified for Area II) ⁽⁸⁵⁾. Such cost would not have arisen if other platforms (IPTV, cable or satellite) had been chosen. A further frequency shift to free more capacity for the future mobile LTE technology, creating similar cost, is expected for the coming years.
- (170) What is more, it has been raised that 4G mobile frequencies LTE interfere with DTT signals and households need to buy costly filters to protect their DTT signal from the LTE waves ⁽⁸⁶⁾. It cannot be excluded that similar interferences are a more general problem undermining the future appropriateness of terrestrial broadcasting, especially in the context of wider roll-out of NGA networks.
- (171) Spain proposed two other arguments why satellite transmission would be more expensive than DTT. First, in their agreements with content providers, broadcasters have territorial restrictions. To ensure such additional access would be more expensive for satellite technology. Second, satellite technology would not be equipped to broadcast a large number of regional channels. These allegations have not been substantiated and are contradicted by the fact that Astra's Cantabria contract contained a professional system of conditional access. Moreover, according to Astra's cost calculations, the satellite technology would still be cheaper even if it had to enter into separate agreements with each of the Spanish regions. As regards the regional broadcasting, Astra maintains that the Spanish government's number of 1 380 channels is hugely inflated ⁽⁸⁷⁾. Again, according to its own calculations, the satellite option would be cheaper even if regional and local channels were included.
- (172) In conclusion, the Commission considers that the investigated measure did not respect the principle of technological neutrality. As explained above, the measure is not proportional and it is not an appropriate instrument for ensuring the coverage of free-to-air channels to the residents of Area II of Castilla-La Mancha.

⁽⁸³⁾ E.g. France, UK, Italy, Slovakia.

⁽⁸⁴⁾ As further underlined by the judgement of the national court. See above, footnote 5.

⁽⁸⁵⁾ See footnote 11.

⁽⁸⁶⁾ <http://stakeholders.ofcom.org.uk/consultations/second-coexistence-consultation/>

⁽⁸⁷⁾ According to Astra's estimations, the total number of local channels actually broadcasted is limited to 415 channels.

Operation and maintenance of the networks

- (173) Concerning the ongoing financing granted for operation and maintenance of the subsidised digital terrestrial and satellite networks, as this is ancillary to the deployment aid, it cannot be considered technologically neutral. It has been directed to the conservation of the sites broadcasting signal via terrestrial platforms. Such aid is therefore also incompatible.
- (174) Any future aid for operation and maintenance has to be notified and has to respect the principle of technological neutrality.

5.3.2.3. *Avoiding unnecessary distortions*

- (175) While public intervention might be justified in view of the existence of certain market failures and possible cohesion problems, the way the measure is designed gives rise to unnecessary distortions of competition.

Conclusion regarding Article 107(3)(c) TFEU

- (176) It is concluded that the investigated measure, including the ongoing aid, is not an appropriate, necessary and proportionate instrument to remedy the identified market failure.

5.3.3. **Article 106(2) TFEU**

- (177) The Article 106(2) exception applies to State compensation for the costs of providing public service. The national (or regional) authorities have to define the SGEI clearly and entrust it to a particular undertaking.
- (178) In the course of the formal procedure, the Spanish authorities have not put forward arguments or evidence as to why the measure should be declared compatible on the basis of Article 106(2) TFEU.
- (179) For Article 106(2) TFEU to apply, the national (or regional) authorities have to define the SGEI clearly and entrust it to a particular undertaking. There has not been any such entrustment for the deployment of the DTT in the Spanish law or by the authorities. In the first place, Spanish law does not declare the operation of a terrestrial network to be a public service. The Law on Telecommunications of 1998 ⁽⁸⁸⁾ states that telecommunication services, including operation of networks supporting radio and television, are services of general interest but they do not have the status of public services ⁽⁸⁹⁾. The Law on Telecommunications currently in force ⁽⁹⁰⁾ maintains the same qualification. The transmission services for broadcasting of television, i.e. transport of signals through the telecommunications networks, are considered as telecommunication services and as such are services of general interest but not public service ⁽⁹¹⁾.
- (180) Further, the provisions of the Law on Telecommunications are technology neutral. Telecommunications is defined as the transmission of signals through any telecom network, without referring to the terrestrial network in particular ⁽⁹²⁾. Moreover, Article 3 of the Law specifies as one of its objectives to encourage, to the extent possible, technological neutrality in regulation.

⁽⁸⁸⁾ Ley 11/1998, de 24 de abril, General de Telecomunicaciones.

⁽⁸⁹⁾ These include services related to public defence and civil protection and operation of telephony network.

⁽⁹⁰⁾ Ley 32/2003, de 3 de noviembre, General de Telecomunicaciones.

⁽⁹¹⁾ Article 2.1. of this law provides: 'The telecommunications services are services of general interest provided under the rules of free competition'.

⁽⁹²⁾ Annex II to the law 32/2003 contains precise, technologically neutral, definitions of the telecommunications and electronic communications network. 'Telecommunications: any transmission, emission or reception of signs, signals, writing, images and sounds or information of any nature by wire, radio electricity, optical means or other electromagnetic systems'. 'Electronic communications network means transmission systems and, where applicable, switching or routing equipment and other resources, including network elements which are not active, which permit the conveyance of signals by wire, radio, optical or other electromagnetic means, including satellite networks, fixed (circuit- and packet-switched, including internet) and mobile terrestrial networks, electricity cable systems, to the extent that they are used for the purpose of transmitting signals, networks used for radio and television broadcasting, and cable television networks, irrespective of the type of information conveyed'.

- (181) Even if the public broadcasting service is considered a public service, it is not possible to extend this definition to the operation of a particular supporting platform. Moreover, where several transmission platforms exist, one particular platform cannot be considered to be 'essential' for the transmission of broadcasting signals. It would therefore have constituted a manifest error, if Spanish legislation had declared the use of a particular platform for the transmission of broadcasting signals to be a public service.
- (182) It is concluded that under Spanish law the operation of terrestrial networks does not have the status of a public service. Further, the Spanish authorities have not clearly defined the operation of a terrestrial platform as a public service and consequently they also have not entrusted the provision of such a public service to a particular platform operator.
- (183) Moreover, the authorities have not put forward any evidence of any entrustment act for the two beneficiaries, Abertis and TelecomCLM.
- (184) The Article 106(2) exception applying to State compensation for the costs of providing public service therefore cannot be invoked in this case.

5.3.4. Existing aid

- (185) Abertis suggests that the deployment of the terrestrial broadcasting network in Area II was financed almost entirely by the Spanish regions using public funds based on legislation dating back to 1982, i.e. prior to the date of accession of Spain to the European Economic Community in 1986. Therefore, according to Abertis, the scheme could be considered part of the ongoing public financing of the operation of local terrestrial networks and should therefore be considered as existing aid.
- (186) The financing of the extension of the terrestrial network by the regions indeed started in the early 1980s, but at this time there were no private broadcasters on the market. The extended infrastructure served therefore only the needs of the public broadcaster who, in any event, had the obligation to provide its signal to the majority of the population. Moreover, at the time the terrestrial television was the only platform for transmitting the television signal in Spain. As a result, the extension of the only available network did not create distortion of competition with other platforms.
- (187) Since then the law and the technology developed leading to new broadcasting platforms and new market players, in particular private broadcasters. Since the beneficiary and the overall circumstances of the public financing have changed substantially, the investigated measure cannot be regarded as an alteration of purely formal or administrative nature. It is rather an alteration affecting the actual substance of the original scheme and therefore is to be considered as a new aid scheme ⁽⁹³⁾. In any case, the switch from analogue to digital TV has become possible only due to recent technological advance and it is therefore a new phenomenon. The Spanish authorities should therefore have notified this new aid.

5.4. CONCLUSION

- (188) It is considered that the financing granted by Spain, the regional government of Castilla-La Mancha and the municipalities to terrestrial network operators for the upgrade and digitisation of their network to provide free-to-air TV channels in Area II constitutes aid within the meaning of Article 107(1) TFEU. The aid is not compatible with the common market. Furthermore, the aid was not notified to the Commission as required by Article 108(3) TFEU and was unlawfully put into effect without Commission authorisation. It must therefore be recovered from the terrestrial network operators.

⁽⁹³⁾ Cases T-195/01 and T-207/01, *Gibraltar*, [2002] ECR II-2309, paragraphs 109-111.

- (189) In addition, the Commission considers that the ongoing aid for operation and maintenance of the digitised network granted without tenders or following technologically non-neutral tenders is also incompatible. Also this aid was not notified to the Commission as required by Article 108(3) TFEU and it was unlawfully put into effect without Commission authorisation. It must therefore be recovered from the operators.
- (190) Any future State aid for maintenance and operation needs to be notified and has to respect the principle of technological neutrality.

6. RECOVERY

6.1. NEED TO ELIMINATE AID

- (191) According to the TFEU and the Court of Justice's established case-law, the Commission is competent to decide that the State concerned must abolish or alter aid ⁽⁹⁴⁾ when it has found that it is incompatible with the internal market. The Court has also consistently held that the obligation on a State to abolish aid regarded by the Commission as being incompatible with the internal market is designed to re-establish the previously existing situation ⁽⁹⁵⁾. In this context, the Court has established that that objective is attained once the recipient has repaid the amounts granted by way of unlawful aid, thus forfeiting the advantage which it had enjoyed over its competitors on the market, and the situation prior to the payment of the aid is restored ⁽⁹⁶⁾.
- (192) Following that case-law, Article 14 of Council Regulation (EC) No 659/1999 ⁽⁹⁷⁾ lays down that 'where negative decisions are taken in respect of unlawful aid, the Commission shall decide that the Member State concerned shall take all necessary measures to recover the aid from the beneficiary'.
- (193) Thus, given that the financing of upgrade and digitisation of the terrestrial platform and subsequent maintenance and operation granted in Spain since the years 2008-2009 is illegal and incompatible aid, Spain should therefore be required to recover the incompatible aid, in order to re-establish the situation that existed on the market prior to the granting of the aid.

6.2. STATE AID RECIPIENTS AND QUANTIFICATION OF THE AID

- (194) TelecomCLM and Abertis are the direct beneficiaries of the aid. All amounts mentioned in the recitals below are based on the information provided to the Commission. As set out in recital 42, for the upgrading of their own transmission centres, TelecomCLM and Abertis have received EUR 13,2 million and EUR 250 000, respectively. In addition, without public tender, TelecomCLM was selected to build new transmission centres for municipalities and six which have become its own property (EUR 2,26 million).
- (195) Where municipalities remain the owners of the DTT equipment, they have bought it from either TelecomCLM or Abertis. As these companies were selected directly (i.e. without public tender) to supply the digital equipment, and/or to provide O&M services, also in this case they are the direct beneficiaries. In effect, the public funding of about EUR 32,6 million was passed on to these two companies without public tender ⁽⁹⁸⁾.
- (196) The illegal and incompatible aid shall be recovered from TelecomCLM and Abertis.
- (197) The ongoing aid is for the maintenance and operation of DTT networks. Operators of these networks are the beneficiaries of such maintenance and operation aid. TelecomCLM and Abertis have received EUR 6,5 million for the period 2009-2011. The aid, and any further aid paid thereafter, has therefore to be recovered from those network operators.

⁽⁹⁴⁾ Case C-70/72 *Commission v Germany* [1973] ECR 00813, point 13.

⁽⁹⁵⁾ Joined Cases C-278/92, C-279/92 and C-280/92 *Spain v Commission* [1994] ECR I-4103, point 75.

⁽⁹⁶⁾ Case C-75/97 *Belgium v Commission* [1999] ECR I-030671 points 64-65.

⁽⁹⁷⁾ Council Regulation (EC) No 659/1999 of 22 March 1999 laying down detailed rules for the application of Article 108 of the treaty on the functioning of the European Union (OJ L 83, 27.3.1999, p. 1).

⁽⁹⁸⁾ If, in individual cases, Spain can demonstrate that a public tender has taken place for the supply of equipment, such amount would be excluded from recovery.

- (198) In the cases where the individual beneficiaries received funding not exceeding thresholds specified in the Commission Regulation (EC) No 1998/2006 ⁽⁹⁹⁾, such funding is not considered State aid if all the conditions set by this Regulation are fulfilled, and is not subject to recovery.
- (199) Recovery shall be put into effect from the time when the advantage occurred to the beneficiaries, i.e. when the aid was put at the disposal of the beneficiary and shall bear recovery interest until effective recovery.

7. CONCLUSION

- (200) The Commission finds that the Kingdom of Spain has unlawfully implemented the aid for the operators of the terrestrial television platform for the extension of coverage of digital terrestrial television in remote and less urbanised areas of Castilla-La Mancha in breach of Article 108(3) of the Treaty on the Functioning of the European Union. The aid, including the (ongoing) aid for operation and maintenance, shall be recovered from the platform operators which are direct beneficiaries. This includes municipalities where they act as a platform operator,

HAS ADOPTED THIS DECISION:

Article 1

The State aid granted to the operators of the terrestrial television platform TelecomCLM and Abertis, for the upgrading of the transmission centres, for building new transmission centres, for the supply of the digital equipment and/or operation and maintenance in Area II of Castilla-La Mancha unlawfully put into effect by Spain in breach of Article 108(3) TFEU is incompatible with the internal market.

Article 2

Individual aid granted under the scheme referred to in Article 1 does not constitute aid if, at the time it is granted, it fulfils the conditions laid down by the regulation adopted pursuant to Article 2 of Council Regulation (EC) No 994/98 ⁽¹⁰⁰⁾ which is applicable at the time the aid is granted.

Article 3

1. Spain shall recover the incompatible aid granted under the scheme referred to in Article 1 from TelecomCLM and Abertis.
2. The sums to be recovered shall bear interest from the date on which they were put at the disposal of the beneficiaries until their actual recovery.
3. The interest shall be calculated on a compound basis in accordance with Chapter V of Commission Regulation (EC) No 794/2004 ⁽¹⁰¹⁾.
4. Spain shall cancel all outstanding payments of aid under the scheme referred to in Article 1 with effect from the date of notification of this decision.

Article 4

1. Recovery of the aid granted under the scheme referred to in Article 1 shall be immediate and effective.
2. Spain shall ensure that this Decision is implemented within four months following the date of notification of this Decision.

⁽⁹⁹⁾ Commission Regulation (EC) No 1998/2006 of 15 December 2006 on the application of Articles 87 and 88 of the Treaty to de minimis aid (OJ L 379, 28.12.2006, p. 5).

⁽¹⁰⁰⁾ Council Regulation (EC) No 994/98 of 7 May 1998 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to certain categories of horizontal State aid (OJ L 142, 14.5.1998, p. 1).

⁽¹⁰¹⁾ Commission Regulation (EC) No 794/2004 of 21 April 2004 implementing Council Regulation (EU) 2015/1589 laying down detailed rules for the application of Article 108 of the Treaty on the Functioning of the European Union (OJ L 140 30.4.2004, p. 1).

3. Within two months following notification of this Decision, Spain shall submit the following information:

- (a) for the beneficiaries identified in Article 1, the total amount of aid received by each of them;
- (b) the total amount (principal and recovery interests) to be recovered from each beneficiary;
- (c) a detailed description of the measures already taken and planned to comply with this Decision;
- (d) documents demonstrating that the beneficiaries have been ordered to repay the aid.

4. Spain shall keep the Commission informed of the progress of the national measures taken to implement this Decision until recovery of the aid granted under the scheme referred to in Article 1 has been completed. It shall immediately submit, on simple request by the Commission, information on the measures already taken and planned to comply with this Decision. It shall also provide detailed information concerning the amounts of aid and recovery interest already recovered from the beneficiaries.

Article 5

This Decision is addressed to the Kingdom of Spain.

Done at Brussels, 1 October 2014.

For the Commission
Joaquín ALMUNIA
Vice-President

ANNEX

Information about the amounts of aid received, to be recovered and already recovered

Identity of the beneficiary	Total amount of aid received under the scheme (*)	Total amount of aid to be recovered (*) (Principal)	Total amount already reimbursed (*)	
			Principal	Recovery interest

(*) Million of national currency

GUIDELINES

GUIDELINE (EU) 2016/1386 OF THE EUROPEAN CENTRAL BANK

of 2 August 2016

amending Guideline ECB/2013/7 concerning statistics on holdings of securities (ECB/2016/23)

THE GOVERNING COUNCIL OF THE EUROPEAN CENTRAL BANK,

Having regard to the Statute of the European System of Central Banks and of the European Central Bank, and in particular Articles 5.1, 12.1 and 14.3 thereof,

Having regard to Council Regulation (EC) No 2533/98 of 23 November 1998 concerning the collection of statistical information by the European Central Bank ⁽¹⁾,

Having regard to Regulation (EU) No 1011/2012 of the European Central Bank of 17 October 2012 concerning statistics on holdings of securities (ECB/2012/24) ⁽²⁾,

Whereas:

- (1) The overall quality of the data on securities holdings reported by the national central banks (NCBs) of the Member States whose currency is the euro needs to be assessed at the level of input (individual securities) data as well as output (both individual and aggregate) data. To ensure the completeness, accuracy and consistency of securities holdings statistics, it is necessary to define a framework for data quality management (DQM). The DQM framework for securities holdings statistics should lay down the responsibilities of the NCBs of Member States whose currency is the euro for the quality of output data on securities holdings, and, where relevant, those of the operators of the European System of Central Banks (ESCB) Securities Holdings Statistics Database, i.e. the European Central Bank (ECB) and the Deutsche Bundesbank.
- (2) The process that the NCBs use for verification of source data is critical to ensuring the quality of securities holdings data at the input level. The exchange of information on national procedures may also help NCBs improve their own organisation by taking into account best practices applied by their peers.
- (3) The DQM framework for securities holdings statistics should include DQM targets, which represent benchmarks for assessing the quality of output data, and DQM metrics, which measure the extent to which a certain DQM target has been reached. These are necessary in order to identify and prioritise the output data that need to be verified for each DQM target. The DQM framework should also be based on DQM thresholds that define the minimum level of verification that must be conducted in respect of a DQM target. Given methodological and practical differences in the production of benchmark data, DQM targets do not always identify errors in output data, but can only identify cases where further verification of processed output data is needed. Thus, where the operators of the ESCB Securities Holdings Statistics Database raise queries with NCBs, the NCBs should classify these queries and reply in writing, within a timeframe appropriate to this classification.
- (4) In addition, Regulation (EU) No 1011/2012 (ECB/2012/24) has been amended to increase the information available on holdings of securities of banking groups, and to require additional attributes to be reported. Guideline ECB/2013/7 ⁽³⁾ also needs to be amended since it defines the procedures that must be followed by the NCBs when reporting to the ECB.
- (5) Therefore, Guideline ECB/2013/7 should be amended accordingly,

⁽¹⁾ OJ L 318, 27.11.1998, p. 8.

⁽²⁾ OJ L 305, 1.11.2012, p. 6.

⁽³⁾ Guideline ECB/2013/7 of the European Central Bank of 22 March 2013 concerning statistics on holdings of securities (OJ L 125, 7.5.2013, p. 17).

HAS ADOPTED THIS GUIDELINE:

Article 1

Amendments

Guideline ECB/2013/7 is amended as follows:

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

'Article 1

Scope

This Guideline establishes the obligations of the NCBs to report to the ECB statistics on holdings of securities collected pursuant to Regulation (EU) No 1011/2012 (ECB/2012/24), as well as a framework for data quality management of these statistics, which aims to ensure the completeness, accuracy and consistency of output data by consistently applying rules on quality standards for such data.'

- (2) Article 2 is replaced by the following:

'Article 2

Definitions

For the purposes of this Guideline, the definitions contained in Regulation (EU) No 1011/2012 (ECB/2012/24) shall apply, unless otherwise provided for, together with the following definitions:

- (1) "input data" means data reported to the ECB;
 - (2) "output data" means data created by the ECB within the scope of securities holdings statistics;
 - (3) "Data Quality Management" or "DQM" means ensuring, verifying and maintaining the quality of output data through the use and application of DQM targets, DQM metrics and DQM thresholds;
 - (4) "European System of Central Banks Securities Holdings Statistics Database" or "SHSDB" means the technical tool operated by the ECB and the Deutsche Bundesbank to compile the data collected under this Guideline and under Regulation (EU) No 1011/2012 (ECB/2012/24);
 - (5) "DQM target" means a benchmark for assessing the quality of output feed data;
 - (6) "DQM metric" means a statistical indicator measuring the level to which a certain DQM target has been reached;
 - (7) "DQM threshold" means the minimum level of verification work to be conducted in order to satisfy the requirements of the DQM framework for a DQM target.'
- (3) in Article 3, the title is replaced by the following:
- 'NCBs' reporting obligations for holdings of securities with an ISIN code for sectoral data';
- (4) in Article 3, paragraphs 1 and 2 are replaced by the following:

'1. NCBs shall collect and report to the ECB statistical information on holdings of securities with an ISIN code provided by sectoral data reporting agents, on a security-by-security basis, in accordance with the reporting schemes in Annex I, Part 1 (Tables 1 to 3) and Part 2 (Tables 1 to 3), and in compliance with electronic reporting standards which are laid down separately, for the following types of instruments: debt securities (F.31 and F.32); listed shares (F.511) and investment fund shares or units (F.521 and F.522).

NCBs' reporting obligations shall cover end-of-quarter positions and either: (i) end-of-quarter financial transactions over the reference quarter; or (ii) end-of-month or end-of-quarter data that are necessary to derive financial transactions, as laid down in paragraph 2. NCBs shall also report end-of-year positions, as laid down in Article 3(2b) of Regulation (EU) No 1011/2012 (ECB/2012/24) in accordance with the reporting scheme in Annex I, Part 3 (Tables 1 to 2).

Financial transactions or data necessary to derive financial transactions that are reported by actual reporting agents to NCBs in accordance with Part 1 of Chapter 1 of Annex I to Regulation (EU) No 1011/2012 (ECB/2012/24) shall be measured as laid down in Part 3 of Annex II to Regulation (EU) No 1011/2012 (ECB/2012/24).

2. NCBs shall report to the ECB the data mentioned in paragraph 1 for the following reference periods and in accordance with the following deadlines:

- (a) with respect to holdings of securities by resident investors excluding NCBs, securities held in custody by resident custodians for clients resident in other euro area Member States and securities issued by euro area entities held in custody with resident custodians for non-euro area resident clients:
 - (i) NCBs shall report on a quarterly basis data on end-of-quarter security-by-security positions by close of business on the 70th calendar day following the end of the quarter to which the data relate;
 - (ii) NCBs shall report either: (1) on a quarterly basis security-by-security transactions and, where available, other changes in volume over the reference quarter by close of business on the 70th calendar day following the end of the quarter to which the data relate; or (2) security-by-security positions and, where available, other changes in volume, which are necessary for the derivation of transactions. In this latter case, the NCBs shall report in accordance with the approaches described under Part 1 of Chapter 1 of Annex I to Regulation (EU) No 1011/2012 (ECB/2012/24) by close of business on the 70th calendar day following the end of the quarter to which the data relate for quarterly security-by-security data and on the 63rd calendar day following the end of the month to which the data relate for monthly security-by-security data;
- (b) with respect to holdings of securities by insurance corporations (ICs) on an annual basis, NCBs shall report data on end-of-year aggregated positions by close of business on the 70th calendar day following the end of the year to which the data relate.;

(5) in Article 3, paragraphs 3, 4, 5 and 6 are deleted;

(6) the following Article 3a is inserted:

'Article 3a

NCBs' reporting obligations for holdings of securities with an ISIN code for group data

1. NCBs shall collect and report to the ECB statistical information on holdings of securities with an ISIN code provided by group data reporting agents, on a security-by-security basis, in accordance with the reporting schemes in Annex I, Part 2 (Tables 1 to 3), and in compliance with electronic reporting standards which are laid down separately, for the following types of instruments: debt securities (F.31 and F.32); listed shares (F.511) and investment fund shares or units (F.521 and F.522).

NCBs' reporting obligations shall cover end-of-quarter positions as laid down in paragraph 2.

2. NCBs shall report to the ECB the data mentioned in paragraph 1 by close of business on the 55th calendar day following the end of the quarter to which the data relate.

By way of derogation, the ECB may allow an NCB to report data by close of business on the 62nd calendar day following the end of the quarter to which the data relate. In such cases the NCB shall submit a request for a derogation to the ECB in writing, setting out:

- (a) the reasons on which the request is based, demonstrating that it is necessary for the purposes of ensuring the accuracy and consistency of the data reported to the ECB by enabling the NCB to cross-check the data with additional data sources, which otherwise would not be available in time for the required quality checking of input data;
- (b) the period for which such a derogation should be granted.

Following its assessment of the NCB's request, the ECB may grant the derogation for a specified period, and shall review the need for the derogation on an annual basis.';

(7) the following Article 3b is inserted:

'Article 3b

NCBs' general reporting obligations

1. By September of every year, the ECB shall communicate to NCBs the exact transmission dates of data to be reported in the form of a reporting calendar for the following year.

2. The following general rules shall apply to the revision of monthly and quarterly data.

(a) NCBs shall report regular revisions as follows:

(i) revisions to monthly data with reference to the three months prior to the most recent quarter, which are transmitted on a quarterly basis, shall be sent together with the data for the most recent quarter (regular data transmission); revisions to monthly data with reference to the month prior to the most recent month, which are transmitted on a monthly basis, shall be sent together with the data for the most recent month (regular data transmission);

(ii) revisions to quarterly data with reference to the quarter prior to the most recent quarter shall be sent together with the data for the most recent quarter (regular data transmission);

(iii) revisions to the previous three years (12 quarters) shall be sent together with the regular transmission of data referring to the third quarter of the year;

(iv) the reporting of any other regular revisions not falling under points (i) to (iii) shall be agreed with the ECB.

(b) NCBs shall report exceptional revisions that significantly improve the quality of the data as soon as available and outside the regular transmission periods, subject to prior agreement with the ECB.

NCBs shall submit explanatory notes to the ECB setting out the reasons for significant revisions. NCBs may also submit explanatory notes for any other revisions on a voluntary basis.

3. The reporting requirements set out in this Article are subject to the following back data reporting requirements where a Member State adopts the euro after this Guideline takes effect:

(a) NCBs of Member States that joined the Union before December 2012 shall report back data to the ECB, on a best efforts basis, which cover at least: (1) the data reference periods starting from March 2014; or (2) the five years preceding the adoption of the euro by the relevant Member State, whichever period is shorter;

(b) NCBs of Member States that joined the Union after December 2012 shall report back data to the ECB, on a best efforts basis, which cover at least: (1) the data reference periods starting from March 2016; or (2) the five years preceding the adoption of the euro by the relevant Member State, whichever period is shorter.

4. The accounting rules laid down in Articles 5, 5a and 5b of Regulation (EU) No 1011/2012 (ECB/2012/24) shall also apply when the NCBs report data in accordance with this Guideline.';

(8) in Article 4, the title is replaced as follows:

'Reporting approaches for holdings of securities without an ISIN code for sectoral data';

(9) in Article 4, paragraph 1 is replaced by the following:

‘1. NCBs may decide whether to report to the ECB statistical information covering securities without an ISIN code held by monetary financial institutions (MFIs), investment funds (IFs), financial vehicle corporations engaged in securitisation transactions (FVCs) and ICs subject to Regulation (EU) No 1011/2012 (ECB/2012/24) or held by custodians for: (i) resident clients not subject to Regulation (EU) No 1011/2012 (ECB/2012/24); (ii) non-financial clients resident in other euro area Member States’ or (iii) clients resident in non-euro area Member States, as defined in Regulation (EU) No 1011/2012 (ECB/2012/24), that are not granted a derogation from reporting requirements under Regulation (EU) No 1011/2012 (ECB/2012/24).’;

(10) in Article 4, paragraph 3 is replaced by the following:

‘3. Quarterly data shall be revised in accordance with Article 3b(2)(a) and (b).’;

(11) the following Article 4a is inserted:

‘Article 4a

Reporting approaches for holdings by MFIs of securities issued by the holders

1. NCBs shall report to the ECB statistical information covering holdings of securities with an ISIN code issued by the holders and, at the discretion of each relevant NCB, holdings of securities without an ISIN code issued by the holders, held by MFIs subject to Regulation (EU) No 1011/2012 (ECB/2012/24).

NCBs’ reporting obligations shall cover end-of-quarter positions.

2. NCBs that report statistical information pursuant to paragraph 1 shall do so in accordance with the rules set out in Article 3(2)(a), using the reporting schemes of Annex I, Part 1 (Tables 1, 2 and 5) as well as the electronic reporting standards laid down separately.

3. Quarterly data shall be revised in accordance with Article 3b(2)(a) and (b).

4. NCBs shall submit explanatory notes to the ECB setting out the reasons for significant revisions. NCBs may also submit explanatory notes for any other revisions on a voluntary basis. In addition, NCBs shall provide information on significant reclassifications in the holder sectors or in the instrument classification, where available.’;

(12) the following Article 4b is inserted:

‘Article 4b

NCBs’ reporting obligations for holdings of securities without an ISIN code for group data

1. NCBs shall collect and report to the ECB statistical information on holdings of securities without an ISIN code provided by group data reporting agents, on a security-by-security basis, in accordance with the reporting schemes in Annex I, Part 2, Tables 1, 2 and 4, and in compliance with electronic reporting standards which are laid down separately.

NCBs’ reporting obligations shall cover end-of-quarter positions as laid down in paragraph 2.

2. NCBs shall report to the ECB the data mentioned in paragraph 1 by close of business on the 55th calendar day following the end of the quarter to which the data relate.

By way of derogation, the ECB may allow an NCB to report data by close of business on the 62nd calendar day following the end of the quarter to which the data relate. In such cases the NCB shall submit a request for a derogation to the ECB in writing, setting out:

- (a) the reasons on which the request is based, demonstrating that it is necessary for the purposes of ensuring the accuracy and consistency of the data reported to the ECB by enabling the NCB to cross-check the data with additional data sources, which otherwise would not be available in time for the required quality checking of input data;
- (b) the period for which such a derogation should be granted.

Following its assessment of the NCB's request, the ECB may grant the derogation for a specified period, and shall review the need for the derogation on an annual basis.;

(13) in Article 5, point c of paragraph 2 is replaced by the following:

‘(c) if the reported data do not meet the quality standards referred to in subparagraph (b), increase the quality of such data, including the collection of data from custodians as provided for in Articles 4(1) and 4b(3) of Regulation (EU) No 1011/2012 (ECB/2012/24).;’

(14) in Article 6, paragraph 2 is replaced by the following:

‘2. NCBs shall regularly check, at least once a year, the fulfilment of conditions set out in Articles 4, 4a and 4b of Regulation (EU) No 1011/2012 (ECB/2012/24) for granting, renewing or withdrawing any derogation.;

(15) in Article 7, paragraph 1 is replaced by the following:

‘1. The ECB's Governing Council shall identify the group data reporting agents as set out, and according to the criteria laid down in Article 2(4) of Regulation (EU) No 1011/2012 (ECB/2012/24) on the basis of end-of-December data corresponding to the preceding calendar year provided by NCBs to the ECB (hereinafter the “reference data”) for the purpose of deriving European System of Central Bank (ESCB) statistics on consolidated banking data for Member States.;

(16) Article 8 is replaced by the following:

‘Article 8

Notification procedure to group data reporting agents

1. NCBs shall, on behalf of the ECB, use the template letter in Annex II (hereinafter the “notification letter”) to notify the group data reporting agents of the Governing Council's decision pursuant to Article 2(4) of Regulation (EU) No 1011/2012 (ECB/2012/24) of their reporting obligations under the Regulation. The notification letter shall contain the criteria justifying the classification of the notified entity as the group data reporting agent.

2. The relevant NCB shall send the notification letter to the group data reporting agent within 10 ECB working days following the date of the Governing Council's decision, and send a copy of that letter to the ECB Secretariat.

3. The procedure described in paragraph 2 shall not apply to the notification of group data reporting agents, which have been identified by the Governing Council pursuant to Article 2(4) of Regulation (EU) No 1011/2012 (ECB/2012/24) prior to the date on which this Guideline takes effect.;

(17) Article 9 is replaced by the following:

'Article 9

Review procedure by the Governing Council

1. If a group data reporting agent notified in accordance with Article 8 submits, within 15 ECB working days of the receipt of such notification, a reasoned written request with supporting information to the relevant NCB to review its classification as group data reporting agent, the relevant NCB shall transmit such request to the Governing Council within 10 ECB working days.

2. Following receipt of the written request pursuant to paragraph 1, the Governing Council shall review the classification and communicate its reasoned decision in writing, within two months of receipt of the request, to the relevant NCB, which shall notify the group data reporting agent of the Governing Council's decision within 10 ECB working days.';

(18) in Article 10, paragraph 2 is replaced by the following:

'2. NCBs shall ensure the data referred to in paragraph 1 meet the ECB's minimum statistical standards set out in Annex III to Regulation (EU) No 1011/2012 (ECB/2012/24), as well as any other requirements set out in Regulation (EU) No 1011/2012 (ECB/2012/24), before transmitting them to the ECB in accordance with Articles 3, 3a and 3b.';

(19) Article 11 is replaced by the following:

'Article 11

Verification

1. Without prejudice to the ECB's verification rights set out in Regulations (EC) No 2533/98 and (EU) No 1011/2012 (ECB/2012/24), the NCBs shall monitor and ensure the quality and reliability of the statistical information made available to the ECB and cooperate closely with the operators of the SHSDB as part of overall DQM.

2. The ECB shall assess these data in a similar manner, in close cooperation with the operators of the SHSDB. The assessment shall be carried out in a timely manner.

3. Every two years the ECB and the NCBs shall share information with the ESCB Statistics Committee, and if applicable the end-users, about practices, measures and procedures applied in the compilation of securities holdings statistics data.

4. NCBs shall ensure, verify and maintain the quality of security holdings statistics data through the use and application of DQM targets, DQM metrics and DQM thresholds. DQM targets shall include ensuring: (a) the quality of aggregate output data; (b) the consistency of holdings and reference data; and (c) consistency with other statistics.

5. When the operators of the SHSDB raise queries with NCBs, the operators should classify these queries as: (a) high-priority queries; (b) priority queries; or (c) other queries. NCBs shall reply to these queries in writing, within a timeframe appropriate to this classification.

6. Data from the Centralised Securities Database used for securities holdings statistics shall be checked in accordance with Guideline ECB/2012/21 (*).

(*) Guideline ECB/2012/21 of the European Central Bank of 26 September 2012 on the data quality management framework for the Centralised Securities Database (OJ L 307, 7.11.2012, p. 89).';

- (20) Annex I is replaced by Annex I to this Guideline;
- (21) Annex II is replaced by Annex II to this Guideline.

Article 2

Taking effect and implementation

This Guideline shall take effect on the day of its notification to the NCBs. The Eurosystem central banks shall comply with paragraphs 1, 2 and 15 of Article 1 from that date. The Eurosystem central banks shall comply with paragraphs 3 to 14 and 16 and 17 of Article 1 of this Guideline from 1 October 2018.

Article 3

Addressees

This Guideline is addressed to all Eurosystem central banks.

Done at Frankfurt am Main, 2 August 2016.

For the Governing Council of the ECB
The President of the ECB
Mario DRAGHI

ANNEX I

Annex I to Guideline ECB/2013/7 is replaced by the following:

ANNEX I

REPORTING SCHEMES

PART 1

Holdings of securities by sector excluding holdings by national central banks

Table 1

General information and explanatory notes

Reported information ⁽¹⁾	Attribute	Status ⁽²⁾	Description
1. General information	Reporting institution	M	Identification code of the reporting institution
	Submission date	M	Date on which the data are submitted to the Securities Holdings Statistics Database (SHSDB)
	Reference period	M	Period to which the data refer
	Reporting frequency	M	Quarterly data
			Monthly data ⁽³⁾
2. Explanatory notes (meta-data)	M		Treatment of early redemptions
	M		Treatment of accrued interest

⁽¹⁾ The electronic reporting standards are laid down separately.

⁽²⁾ M: mandatory attribute; V: voluntary attribute.

⁽³⁾ Only for positions, if transactions are derived from monthly positions in the SHSDB.

Table 2

Information on holdings of securities

Reported information ⁽¹⁾	Attribute	Status ⁽²⁾	Description
1. Securities related information	Holder sector	M	Sector/sub-sector of the investor.
			Non-financial corporations (S.11) ⁽³⁾
			Deposit-taking corporations except central banks (S.122)
			Money market funds (MMFs) (S.123)
			Non-MMF investment funds (S.124)
			Other financial corporations ⁽⁴⁾ excluding financial vehicle corporations engaged in securitisation transactions

Reported information ⁽¹⁾	Attribute	Status ⁽²⁾	Description
			Financial vehicle corporations engaged in securitisation transactions
			Insurance corporations (S.128)
			Pension funds (S.129)
			Insurance corporations and pension funds (sub-sector not identified) (S.128+S.129) (transitional period)
			Central government (S.1311) (voluntary breakdown)
			State government (S.1312) (voluntary breakdown)
			Local government (S.1313) (voluntary breakdown)
			Social security funds (S.1314) (voluntary breakdown)
			Other general government (sub-sector not identified)
			Households excluding non-profit institutions serving households (S.14) (voluntary breakdown for resident investors, mandatory for third party holdings)
			Non-profit institutions serving households (S.15) (voluntary breakdown)
			Other households and non-profit institutions serving households (S.14+S.15) (sub-sector not identified)
			Non-financial investors excluding households (only for third party holdings) (S.11+S.13+S.15) ⁽⁵⁾
			Central banks and general government to be reported only for holdings by non-euro area countries (S.121+S.13) ⁽⁶⁾
			Investors other than central banks and governments to be reported only for holdings by non-euro area countries ⁽⁶⁾
			Unknown sector ⁽⁷⁾
Holder country	M		Country of residence of the investor
Source	M		Source of the submitted information on securities holdings
			Direct reporting
			Custodian reporting

Reported information ⁽¹⁾	Attribute	Status ⁽²⁾	Description
			Mixed reporting ⁽⁸⁾
			Not available
	Function	M	Function of the investment according to the classification of balance of payments statistics
			Direct investment
			Portfolio investment
			Not specified
	Reporting basis	V	Indicates how the security is quoted, as a percentage or in units
			Percentage
			Units
	Nominal currency	V	Currency in which the security is denominated, reported when the reporting basis equals percentage
	Positions	M	Total amount of securities held
			At nominal value ⁽⁹⁾ . Number of shares or units of a security or aggregated nominal amount (in nominal currency or euro) if the security is traded in amounts rather than in units, excluding the accrued interest.
			At market value. Amount held at the price quoted in the market in euro, including accrued interest ⁽¹⁰⁾ .
	Positions: of which amount	M ⁽¹¹⁾	Amount of securities held by the two largest investors
			At nominal value, according to the same valuation method as positions
			At market value, according to the same valuation method as positions
	Format	M ⁽⁹⁾	Specifies the format used for the positions at nominal value
			Nominal value in euro or other relevant currency
			Number of shares/units ⁽¹²⁾

Reported information ⁽¹⁾	Attribute	Status ⁽²⁾	Description
	Other changes in volume	M	Other changes in the amount of the security held
			At nominal value in the same format as the positions at nominal value
			At market value in euro
	Other changes in volume: of which amount	M ⁽¹¹⁾	Other changes in volume in the amount held by the two largest investors
			At nominal value, according to the same valuation method as positions
			At market value, according to the same valuation method as positions
	Financial transactions	M ⁽¹³⁾	Sum of purchases minus sales of a security, recorded at transaction value in euro including accrued interest ⁽¹⁰⁾
	Financial transactions: of which amount	M ⁽¹⁴⁾	Sum of the two largest transactions in absolute terms by individual holders, according to the same valuation method as the financial transactions
	Confidentiality status	M ⁽¹⁵⁾	Confidentiality status for positions, transactions, other changes in volume
			Not for publication, restricted for internal use only
			Confidential statistical information
			Not applicable ⁽¹⁶⁾

⁽¹⁾ The electronic reporting standards are laid down separately.

⁽²⁾ M: mandatory attribute; V: voluntary attribute.

⁽³⁾ The numbering of categories throughout this Guideline reflects the numbering introduced in Regulation (EU) No 549/2013 of the European Parliament and of the Council of 21 May 2013 on the European system of national and regional accounts in the European Union (OJ L 174, 26.6.2013, p. 1) (hereinafter "ESA 2010").

⁽⁴⁾ Other financial intermediaries (S.125) plus financial auxiliaries (S.126) plus captive financial institutions and money lenders (S.127).

⁽⁵⁾ Only if sectors S.11, S.13 and S.15 are not reported separately.

⁽⁶⁾ For data reported by non-euro area NCBs, only for reporting holdings by non-resident investors.

⁽⁷⁾ Unallocated sector resident in the holder country; i.e. unknown sectors of unknown countries should not be reported. NCBs are to inform SHSDB operators of the reason for the unknown sector, in the event of statistically relevant values.

⁽⁸⁾ Only if direct and custodian reporting cannot be distinguished.

⁽⁹⁾ Not reported if market values (and the respective other changes in volume/transactions) are reported.

⁽¹⁰⁾ The inclusion of accrued interest is recommended, on a best efforts basis.

⁽¹¹⁾ If an NCB reports the confidentiality status, this attribute may not be reported. The amount may refer to the largest single investor, instead of the two largest investors, under the responsibility of the reporting NCB.

⁽¹²⁾ NCBs are encouraged to report nominal value in number of units when securities are quoted in units in the Centralised Securities Database (CSDB).

⁽¹³⁾ To be reported only if transactions are not derived from positions in the SHSDB.

⁽¹⁴⁾ To be reported only for transactions collected from reporting agents, not reported for transactions derived from positions by NCBs.

⁽¹⁵⁾ To be reported if the corresponding amount of the two largest investors for positions, transactions, other changes in volume, respectively, is not available/provided.

⁽¹⁶⁾ To be used only if transactions are derived from positions by NCBs. In such cases the confidentiality status will be derived by the SHSDB, i.e. if the initial and/or final positions are confidential, the derived transaction is flagged as confidential.

Table 3

Holdings of securities with an ISIN code

Reported information ⁽¹⁾	Attribute	Status ⁽²⁾	Description
1. Reference data	ISIN code	M	ISIN code

⁽¹⁾ The electronic reporting standards are laid down separately.

⁽²⁾ M: mandatory attribute; V: voluntary attribute.

Table 4

Holdings of securities without an ISIN code

Reported information ⁽¹⁾	Attribute	Status ⁽²⁾	Description
1. Basic reference data	Aggregation flag	M	Type of data
			Data reported on a security-by-security basis
			Aggregated data (no security-by-security)
	Securities/aggregates identification number	M	Internal securities identification number for securities without an ISIN code and aggregated data on securities holdings
	Securities identification number type	M ⁽³⁾	Specifies the securities identification number for securities reported on a security-by-security basis ⁽⁴⁾
			national central bank (NCB) internal number
			Committee on Uniform Security Identification Procedures (CUSIP)
			Stock Exchange Daily Official List (SEDOL)
			other (to be specified in metadata)
	Instrument classification	M	Classification of the security according to ESA 2010 and Regulation (EU) No 1011/2012 (ECB/2012/24)
			Short-term debt securities (F.31)
			Long-term debt securities (F.32)
			Listed shares (F.511)
			Money market funds (MMF) shares or units (F.521)
			Non-MMF investment fund shares or units (F.522)
			Other security types ⁽⁵⁾

Reported information ⁽¹⁾	Attribute	Status ⁽²⁾	Description
	Issuer sector	M	Institutional sector of the issuer according to ESA 2010 and Regulation (EU) No 1011/2012 (ECB/2012/24)
	Issuer country	M	Country of legal incorporation or domicile of the issuer of the security
	Price value ⁽⁶⁾	V	Price of the security at the end of the reference period
	Price value basis ⁽⁶⁾	V	Basis on which the price value is given
			Euro or other relevant currency
			Percentage
2. Additional reference data	Issuer name	V	Name of the issuer
	Short name	V	Short name of the security given by issuer, defined according to the characteristics of the security and any other available information
	Issue date	V	The date on which the securities are delivered to the underwriter by the issuer against payment. This is the date when the securities are available for delivery to investors for the first time.
	Maturity date	V	Date on which the instrument is redeemed
	Amount outstanding	V	Amount outstanding converted into euro
	Market capitalisation	V	Latest available market capitalisation in euro
	Accrued interest	V	Interest accrued since the last coupon payments or the accrual start date
	Last split factor	V	Stock splits and reverse splits of shares
	Last split date	V	Date on which the stock split becomes effective
	Coupon type	V	Type of coupon (fixed, floating, stepped, etc.)
	Debt type	V	Type of debt instrument
	Dividend amount	V	Amount of last dividend payment per share in dividend amount type before tax (gross dividend)

Reported information ⁽¹⁾	Attribute	Status ⁽²⁾	Description
	Dividend amount type	V	Denomination either in dividend currency or number of shares
	Dividend currency	V	Currency of last dividend payment
	Asset securitisation type	V	Type of securing asset

⁽¹⁾ The electronic reporting standards are laid down separately.

⁽²⁾ M: mandatory attribute; V: voluntary attribute.

⁽³⁾ Not required for securities reported on an aggregated basis.

⁽⁴⁾ NCBs should preferably use the same securities identification number for each security over several years. In addition, each securities identification number should be related to only one security. NCBs must inform the SHSDB operators if they are not in a position to do so. CUSIP and SEDOL codes may be treated as NCB internal numbers.

⁽⁵⁾ These securities will not be included in the production of aggregates.

⁽⁶⁾ To calculate positions at market value from positions at nominal value.

Table 5

Holdings of securities issued by the holder

Reported information ⁽¹⁾	Attribute	Status ⁽²⁾	Description
1. Basic reference data	Aggregates identification number	M ⁽³⁾	Internal securities identification number for aggregated data on securities holdings
	Instrument classification	M	Classification of the security according to ESA 2010 and Regulation (EU) No 1011/2012 (ECB/2012/24)
			Short-term debt securities (F.31)
			Long-term debt securities (F.32)
			Listed shares (F.511)
			MMF shares or units (F.521)
	Positions at market value	M	Total amount of securities held. At market value. Amount held at the price quoted on the market in euro, including accrued interest ⁽⁴⁾ .

⁽¹⁾ The electronic reporting standards are laid down separately.

⁽²⁾ M: mandatory attribute; V: voluntary attribute.

⁽³⁾ NCBs should use the pre-defined identification numbers agreed with the SHSDB operators.

⁽⁴⁾ The inclusion of accrued interest is recommended, on a best efforts basis.

PART 2

Holdings of securities by reporting groups

Table 1

General information and explanatory notes

Reported information ⁽¹⁾	Attribute		Status ⁽²⁾	Description
1. General information	Reporting institution		M	Identification code of the reporting institution
	Submission date		M	Date on which the data are submitted to the SHSDB
	Reference period		M	Period to which the data refer
	Reporting frequency		M	Quarterly data
2. Explanatory notes (meta-data)	M	Treatment of early redemptions		
	M	Treatment of accrued interest		

⁽¹⁾ The electronic reporting standards are laid down separately.

⁽²⁾ M: mandatory attribute; V: voluntary attribute.

Table 2

Information on holdings of securities

Reported information ⁽¹⁾	Attribute	Status ⁽²⁾	Level of reporting ⁽³⁾	Description
1. Holder related information	Reporting group ID	M	G	Standard code that uniquely identifies the reporting group ⁽⁴⁾
	Reporting group ID type	M	G	Specifies the type of code that is used for the reporting group
	Reporting group LEI	M	G	LEI in line with International Organization for Standardization (ISO) 17442 of the reporting group
	Entity ID	M	E	Standard code that uniquely identifies the entity of the group ⁽⁴⁾
	Entity ID type	M	E	Specifies the type of code that is used for the entity of the group
	Entity LEI	M	E	LEI in line with ISO 17442 of the entity of the group

Reported information ⁽¹⁾	Attribute	Status ⁽²⁾	Level of reporting ⁽³⁾	Description
	Country of residency of the entity	M	E	Country of legal incorporation or domicile of the entity
	Reporting group name	M	G	Full legal name of the reporting group
	Entity name	M	E	Full legal name of the entity of the group
	Head of group sector	M	G	Institutional sector of the group data reporting agent according to ESA 2010 and Regulation (EU) No 1011/2012 (ECB/2012/24)
	Entity sector	M	E	Institutional sector of the entity of the group according to ESA 2010 and Regulation (EU) No 1011/2012 (ECB/2012/24)
	Immediate parent ID	M	E	Standard code that uniquely identifies the immediate legal entity of which the entity is a legally dependent part ⁽⁴⁾
	Immediate parent ID type	M	E	Specifies the type of identifier code that is used for the immediate parent
	Group type	M	G	Group type
2. Securities related information	Reporting basis	V	E	Indicates how the security is quoted, as a percentage or in units
				Percentage
				Units
	Nominal currency	V	E	Currency in which the security is denominated, reported when reporting basis equals percentage
	Format	M ⁽⁵⁾	E	Specifies the format used for the positions at nominal value
				Nominal value in euro or other relevant currency
				Number of shares/units ⁽⁶⁾

Reported information ⁽¹⁾	Attribute	Status ⁽²⁾	Level of reporting ⁽³⁾	Description
	Positions	M	E	Total amount of securities held
				At nominal value ⁽⁵⁾ . Number of shares or units of a security or aggregated nominal amount in nominal currency or euro if the security is traded in amounts rather than in units, excluding the accrued interest.
				At market value. Amount held of a security at the price quoted in the market in euro, including accrued interest ⁽⁷⁾ ⁽⁸⁾ .
	Issuer is part of the reporting group (prudential scope)	M	G	Indicates whether the security was issued by an entity of the same reporting group in line with the prudential scope of consolidation
	Issuer is part of the reporting group (accounting scope)	M	G	Indicates whether the security was issued by an entity of the same reporting group in line with the accounting scope of consolidation
3. Accounting and risk related information	Status of forbearance and renegotiation	M	G	Identification of forborne and renegotiated instruments
	Date of the forbearance and renegotiation status	M	G	The date on which a forbearance or renegotiation status as reported under "status of forbearance and renegotiation" is considered to have occurred
	Performing status of the instrument	M	G	Identification of non-performing instruments in accordance with Commission Implementing Regulation (EU) No 680/2014 ⁽⁹⁾
	Date of the performing status of the instrument	M	G	The date on which the performing status as reported in "performing status of the instrument" is considered to have been established or changed
	Default status of the issuer	M	G	Identification of the default status of the issuer in accordance with Article 178 of Regulation (EU) No 575/2013.
	Date of default status of the issuer	M	G	The date on which the default status as reported in the "default status of the issuer" came into effect or changed.
	Default status of the instrument	M	G	Identification of the default status of the instrument in accordance with Article 178 of Regulation (EU) No 575/2013 of the European Parliament and of the Council ⁽¹⁰⁾ .

Reported information ⁽¹⁾	Attribute	Status ⁽²⁾	Level of reporting ⁽³⁾	Description
	Date of default status of the instrument	M	G	The date on which the default status as reported in the “default status of the instrument” came into effect or changed.
	Accounting standard	M	G and E	Accounting standard used by the reporting agent
	Carrying amount	M	E	The carrying amount in accordance with Annex V to Implementing Regulation (EU) No 680/2014 Amount in euro. Foreign currency amounts should be converted into euro at the respective European Central Bank (ECB) euro foreign exchange reference rates, i.e. the mid-rate on the reference date.
	Type of impairment	M	E	Type of impairment
	Impairment assessment method	M	E	The method by which the impairment is assessed, if the instrument is subject to impairment in accordance with applied accounting standards. Collective and individual methods are distinguished.
	Accumulated impairment amount	M	E	The amount of loss allowances that are held against or are allocated to the instrument on the reference date. This data attribute applies to instruments subject to impairment under the applied accounting standard. Amount in euro. Foreign currency amounts should be converted into euro at the respective ECB euro foreign exchange reference rates, i.e. the mid-rate on the reference date.
	Sources of encumbrance	M	E	Type of transaction in which the exposure is encumbered in accordance with Implementing Regulation (EU) No 680/2014. An asset will be treated as encumbered if it has been pledged or if it is subject to any form of arrangement to secure, collateralise or credit enhance any instrument from which it cannot be freely withdrawn.
	Accounting classification of instruments	M	E	Accounting portfolio where the instrument is recorded in accordance with the accounting standard applied by the reporting agent
	Prudential portfolio	M	E	Classification of trading book and non-trading book exposures. Instruments in the trading book as defined in Article 4(1)(86) of Regulation (EU) No 575/2013.

Reported information ⁽¹⁾	Attribute	Status ⁽²⁾	Level of reporting ⁽³⁾	Description
	Accumulated changes in fair value due to credit risk	M	E	Accumulated changes in fair value due to credit risk in accordance with Part 2.46 of Annex V to Implementing Regulation (EU) No 680/2014 Amount in euro. Foreign currency amounts should be converted into euro at the respective ECB euro foreign exchange reference rates, i.e. the mid-rate on the reference date.
	Cumulative recoveries since default	M	E	The total amount recovered since the date of default. Amount in euro. Foreign currency amounts should be converted into euro at the respective ECB euro foreign exchange reference rates, i.e. the mid-rate on the reference date.
	Probability of default of the issuer	M ⁽¹¹⁾	G	The issuer's probability of default over one year determined in accordance with Articles 160, 163, 179 and 180 of Regulation (EU) No 575/2013
	Loss given default in downturns	M ⁽¹¹⁾	G	The ratio of the amount that could be lost on an exposure during economic downturns due to a default over a one year period to the amount that would be outstanding at default, in accordance with Article 181 of Regulation (EU) No 575/2013
	Loss given default in normal economic times	M ⁽¹¹⁾	G	The ratio of the amount that could be lost on an exposure in normal economic conditions due to a default over a one-year period to the amount that would be outstanding at default
	Risk weight	M ⁽¹²⁾	G	Risk-weights associated with the exposure, in accordance with Regulation (EU) No 575/2013
	Exposure value (also referred to as Exposure at default)	M	E	Exposure value after credit risk mitigation and credit conversion factors in accordance with Implementing Regulation (EU) No 680/2014 Amount in euro. Foreign currency amounts should be converted into euro at the respective ECB euro foreign exchange reference rates, i.e. the mid-rate on the reference date.
	Capital calculation approach for prudential purposes	M	E	Identification of the approach used to calculate the risk-weighted exposure amounts for the purposes of points (a) and (f) of Article 92(3) of Regulation (EU) No 575/2013

Reported information ⁽¹⁾	Attribute	Status ⁽²⁾	Level of reporting ⁽³⁾	Description
	Exposure class	M	E	Exposure class as defined in accordance with Regulation (EU) No 575/2013

⁽¹⁾ The electronic reporting standards are laid down separately.

⁽²⁾ M: mandatory attribute; V: voluntary attribute.

⁽³⁾ G: Group level; E: Entity level. Where the derogation set out in Article 4a(3) of Regulation (EU) No 1011/2012 (ECB/2012/24) is applied, the data fields referring to the entity-by-entity reporting should be reported in accordance with the respective national rules as established by the NCB which granted the derogation, ensuring that the data is homogeneous with respect to the mandatory breakdowns.

⁽⁴⁾ Identifier to be defined separately.

⁽⁵⁾ Not reported if market values are reported.

⁽⁶⁾ NCBs are encouraged to report nominal value in number of units when securities are quoted in units in the Centralised Securities Database (CSDB).

⁽⁷⁾ The inclusion of accrued interest is recommended, on a best efforts basis.

⁽⁸⁾ For securities without an ISIN code, total amount of securities held are to be reported at market value, i.e. amount held at the price quoted in the market in euro, including accrued interest. Alternative approximations, e.g. carrying amount could be used on a best efforts basis if the market value is not available.

⁽⁹⁾ Commission Implementing Regulation (EU) No 680/2014 of 16 April 2014 laying down implementing technical standards with regard to supervisory reporting of institutions according to Regulation (EU) No 575/2013 of the European Parliament and of the Council (OJ L 191, 28.6.2014, p. 1).

⁽¹⁰⁾ Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012 (OJ L 176, 27.6.2013, p. 1).

⁽¹¹⁾ To be reported if the Internal Ratings Based (IRB) approach for regulatory capital calculation is applied or if the data is available by other means.

⁽¹²⁾ To be reported if the IRB approach for regulatory capital calculation is not applied or if the data is available by other means.

Table 3

Holdings of securities with an ISIN code

Reported information ⁽¹⁾	Attribute	Status ⁽²⁾	Level of reporting ⁽³⁾	Description
Reference data	ISIN code	M	E	ISIN code

⁽¹⁾ The electronic reporting standards are laid down separately.

⁽²⁾ M: mandatory attribute; V: voluntary attribute.

⁽³⁾ G: Group level; E: Entity level. Where the derogation set out in Article 4a(3) of Regulation (EU) No 1011/2012 (ECB/2012/24) is applied, the data fields referring to the entity-by-entity reporting should be reported in accordance with the respective national rules as established by the NCB which granted the derogation, ensuring that the data is homogeneous with respect to the mandatory breakdowns.

Table 4

Holdings of securities without an ISIN code

Reported information ⁽¹⁾	Attribute	Status ⁽²⁾	Level of reporting ⁽³⁾	Description
1. Basic reference data	Securities identification number	M	E	Internal NCB identification number for holdings of securities without an ISIN code reported on a security-by-security basis

Reported information ⁽¹⁾	Attribute	Status ⁽²⁾	Level of reporting ⁽³⁾	Description
	Securities identification number type	M	E	Specifies the securities identification number for securities reported on a security-by-security basis ⁽⁴⁾
				NCB internal number
				CUSIP
				SEDOL
				other ⁽⁵⁾
	Instrument classification	M	E	Classification of the security according to ESA 2010 and Regulation (EU) No 1011/2012 (ECB/2012/24)
				Short-term debt securities (F.31)
				Long-term debt securities (F.32)
				Listed shares (F.511)
				MMF shares or units (F.521)
				Non-MMF investment fund shares or units (F.522)
				Other security types ⁽⁶⁾
	Issuer sector	M	E	Institutional sector of the issuer according to ESA 2010 and Regulation (EU) No 1011/2012 (ECB/2012/24)
	Issuer country	M	E	Country of legal incorporation or domicile of the issuer of the security
2. Additional reference data	Issuer ID	M	E	Standard code that uniquely identifies the issuer ⁽⁷⁾
	Issuer ID type	M	E	Specifies the type of code that is used for the issuer
	Issuer name	M	E	Name of the issuer
	Issuer LEI	M	E	LEI in line with ISO 17442 of the issuer
	Issuer sector NACE	M	E	Classification of counterparties according to their economic activities, in accordance with the NACE revision 2 statistical classification as laid down in Regulation (EC) No 1893/2006 of the European Parliament and of the Council ⁽⁸⁾

Reported information ⁽¹⁾	Attribute	Status ⁽²⁾	Level of reporting ⁽³⁾	Description
	Entity status	M	E	Supplementary attribute covering the information on the status of the issuers including the default status (as well as the categories describing the circumstances in which the entity can be in default in accordance with Article 178 of Regulation (EU) No 575/2013) and other status types of the party, e.g. merged, acquired etc.
	Entity status date	M	E	The date on which the entity changed status
	Issue date	M	E	The date on which the securities are delivered to the underwriter by the issuer against payment. This is the date when the securities are available for delivery to investors for the first time.
	Maturity date	M	E	Date on which the debt instrument is redeemed
	Nominal currency	M	E	Currency in which the security is denominated
	Primary asset classification	M	E	Classification of the instrument
	Asset securitisation type	M	E	Type of securing asset
	Security status	M	E	Supplementary attribute allowing identification of the status of the security, which can indicate whether the instrument is alive or not, e.g. defaulted, matured or redeemed early
	Security status date	M	E	The date on which a security status as reported in "security status" is considered to have occurred
	Arrears for the instrument	M	E	Aggregate amount of principal, interest and any fee payment outstanding at the reference date, which is contractually due and has not been paid (past due). This amount is always to be reported. 0 is to be reported if the instrument was not past due on the reference date. The amount should be reported in euro. Foreign currency amounts should be converted into euro at the respective ECB euro foreign exchange reference rates, i.e. the mid-rate, on the reference date.
	Date of arrears for the instrument	M	E	The date on which the instrument became past due in accordance with Part 2.48 of Annex V to Implementing Regulation (EU) No 680/2014. This is the earliest date on which the instrument has amount unpaid at the reference date, and it is to be reported if the instrument is past due on the reference date.

Reported information ⁽¹⁾	Attribute	Status ⁽²⁾	Level of reporting ⁽³⁾	Description
	Instrument seniority type	M	E	This indicates whether the instrument is guaranteed or not, its rank level and whether it is secured or not
	Collateral geographical location	M	E	Geographical allocation of the collateral
	Guarantor ID	M	E	Standard code that uniquely identifies the guarantor ⁽⁹⁾
	Guarantor ID type	M	E	Specifies the type of code that is used for the guarantor

⁽¹⁾ The electronic reporting standards are laid down separately.

⁽²⁾ M: mandatory attribute; V: voluntary attribute.

⁽³⁾ G: Group level; E: Entity level. Where the derogation set out in Article 4a(3) of Regulation (EU) No 1011/2012 (ECB/2012/24) is applied, the data fields referring to the entity-by-entity reporting should be reported in accordance with the respective national rules as established by the NCB which granted the derogation, ensuring that the data is homogeneous with respect to the mandatory breakdowns.

⁽⁴⁾ NCBs should preferably use the same securities identification number for each security over several years. In addition, each securities identification number should be related to only one security. NCBs must inform the SHSDB operators if they are not in a position to do so. CUSIP and SEDOL codes may be treated as NCB internal numbers.

⁽⁵⁾ NCBs should specify in the metadata the type of identification number used.

⁽⁶⁾ These securities will not be included in the production of aggregates.

⁽⁷⁾ Identifier to be defined separately.

⁽⁸⁾ Regulation (EC) No 1893/2006 of the European Parliament and of the Council of 20 December 2006 establishing the statistical classification of economic activities NACE Revision 2 and amending Council Regulation (EEC) No 3037/90 as well as certain EC Regulations on specific statistical domains (OJ L 393, 30.12.2006, p. 1).

⁽⁹⁾ Identifier to be defined separately. LEI to be used, if applicable.

PART 3

Annual holdings of securities by ICs

Table 1

General information and explanatory notes

Reported information ⁽¹⁾	Attribute	Status ⁽²⁾	Description
1. General information	Reporting institution	M	Identification code of the reporting institution
	Submission date	M	Date on which the data are submitted to the SHSDB
	Reference period	M	Period to which the data refer
	Reporting frequency	M	Annual data

Reported information ⁽¹⁾	Attribute	Status ⁽²⁾	Description
2. Explanatory notes (meta-data)		M	Treatment of early redemptions
		M	Treatment of accrued interest

⁽¹⁾ The electronic reporting standards are laid down separately.

⁽²⁾ M: mandatory attribute; V: voluntary attribute.

Table 2

Information on holdings of securities

Reported information ⁽¹⁾	Attribute	Status ⁽²⁾	Description
1. Securities related information	Holder sector	M	Sector/sub-sector of the investor.
			Insurance corporations (S.128)
	Source	M	Source of the submitted information on securities holdings
			Direct reporting
			Custodian reporting
			Mixed reporting ⁽³⁾
			Not available
	Residency of the entities of the IC (head office and branches)		Residency of the entities of the IC (head office and branches)
			Resident in the country of the head office
			Not resident in the country of the head office
			If not resident in the country of the head office, resident in other EEA countries, by country
			If not resident in the country of the head office, resident in other non-EEA countries

Reported information ⁽¹⁾	Attribute	Status ⁽²⁾	Description
	Reporting basis	V	Indicates how the security is quoted, as a percentage or in units
			Percentage
			Units
	Nominal currency	V	Currency in which the security is denominated, reported when the reporting basis equals percentage
	Positions	M	Total amount of securities held
			At nominal value ⁽⁴⁾ . Number of shares or units of a security or aggregated nominal amount (in nominal currency or euro) if the security is traded in amounts rather than in units, excluding the accrued interest.
			At market value. Amount held at the price quoted in the market in euro, including accrued interest ⁽⁵⁾ .
	Format	V ⁽⁶⁾	Specifies the format used for the positions at nominal value
			Nominal value in euro or other relevant currency
			Number of shares/units
	Confidentiality status	M	Confidentiality status for positions
			Not for publication, restricted for internal use only
			Confidential statistical information
			Not applicable
2. Basic reference data	Aggregation flag	M	Type of data
			Aggregated data (no security-by-security)
	Instrument classification	M	Classification of the security according to ESA 2010 and Regulation (EU) No 1011/2012 (ECB/2012/24)
			Short-term debt securities (F.31)
			Long-term debt securities (F.32)
			Listed shares (F.511)

Reported information ⁽¹⁾	Attribute	Status ⁽²⁾	Description
			MMF shares or units (F.521)
			Non-MMF investment fund shares or units (F.522)
	Issuer sector	M	Institutional sector of the issuer according to ESA 2010 and Regulation (EU) No 1011/2012 (ECB/2012/24)
	Issuer country	M	Country of legal incorporation or domicile of the issuer of the security
			Euro area countries
			Non-euro area Union countries
			Non-Union countries

⁽¹⁾ The electronic reporting standards are laid down separately.

⁽²⁾ M: mandatory attribute; V: voluntary attribute.

⁽³⁾ Only if direct and custodian reporting cannot be distinguished.

⁽⁴⁾ Not reported if market values are reported.

⁽⁵⁾ The inclusion of accrued interest is recommended, on a best efforts basis.

⁽⁶⁾ Not reported if market values (and the respective other changes in volume/transactions) are reported.;

ANNEX II

Annex II to Guideline ECB/2013/7 is replaced by the following:

'ANNEX II

LETTER OF NOTIFICATION TO GROUP DATA REPORTING AGENTS

Notification of classification as group data reporting agent pursuant to Regulation (EU) No 1011/2012 (ECB/2012/24) ⁽¹⁾

[Dear Sir/Madam]

We hereby notify you, on behalf of the European Central Bank (ECB), that *[legal name of group data reporting agent]* has been classified by the ECB's Governing Council as a group data reporting agent for statistical purposes, in accordance with Article 2(1)(b) and 2(4) of Regulation (EU) No 1011/2012 (ECB/2012/24).

The reporting obligations of *[legal name of the group data reporting agent]* as group data reporting agent are laid down in Article 3a of Regulation (EU) No 1011/2012 (ECB/2012/24).

Reasons for classification as "group data reporting agent"

The Governing Council has determined that *[legal name of the group data reporting agent]* qualifies as a group data reporting agent according to the following criteria, under Regulation (EU) No 1011/2012 (ECB/2012/24):

- (a) *[legal name of the group data reporting agent]* is head of a banking group, as defined in Article 1(10), and referred to in Article 2(1)(b)(i) of Regulation (EU) No 1011/2012 (ECB/2012/24) or is an institution or financial institution established in a participating Member State which is not part of a banking group (hereinafter "entity"), in accordance with Article 2(1)(b)(ii) of Regulation (EU) No 1011/2012 (ECB/2012/24);
- (b) *[legal name of the group data reporting agent]* meets the following criteria ⁽²⁾:
 - (i) [the value of the total balance sheet assets of *[legal name of the group data reporting agent]*'s banking group; or the total balance sheet assets of *[legal name of the group data reporting agent]* is greater than 0,5 % of the total consolidated balance sheet assets of the European Union banking groups, according to the most recent data available to the ECB, i.e. (a) data with reference to the end of December of the calendar year preceding the sending of this notification letter; or (b) if the data under (a) are not available, data with reference to the end of December of the previous year];
 - (ii) [the banking group or entity is important for the stability and the functioning of the financial system in the euro area for the following reason: *[add here the justification that makes the banking group or entity important for the stability and the functioning of the financial system in the euro area:*
 - *the banking group or entity is closely and extensively interconnected with other financial institutions in the euro area;*
 - *the banking group or entity has a strong and extensive cross-border activity;*
 - *the banking group or entity activity is largely concentrated in one segment of the euro area banking business, for which it represents a major player;*
 - *the banking group or entity has a complex corporate structure which goes beyond the domestic territory*]];

⁽¹⁾ Regulation (EU) No 1011/2012 of the European Central Bank of 17 October 2012 concerning statistics on holdings of securities (ECB/2012/24) (OJ L 305, 1.11.2012, p. 6).

⁽²⁾ Insert the relevant criteria that the notified head of a banking group or entity meets to qualify as a group data reporting agent, as decided by the Governing Council.

- (iii) [the banking group or entity is important for the stability and the functioning of the financial system in [relevant euro area Member States] for the following reason: *[add here the justification that makes the banking group or entity important for the stability and the functioning of the financial system in the relevant euro area Member States:*
- *the banking group or entity is closely and extensively interconnected with other financial institutions in the domestic territory;*
 - *the banking group or entity activity is largely concentrated in [specify the segment of banking business], in which it is a major domestic player]].*

Information source supporting the classification as “group data reporting agent”

The ECB derives the total balance sheet assets of the European Union entities or banking groups on the basis of information collected from national central banks on the consolidated balance sheet of banking groups in the relevant Member State, calculated pursuant to Articles 18(1), 18(4), 18(8), 19(1), 19(3) and Article 23 of Regulation (EU) No 575/2013 of the European Parliament and of the Council ⁽¹⁾.

[Where necessary, further explanations of the methodology applied to any additional inclusion criteria agreed by the Governing Council should be incorporated here.]

Objections and Governing Council review

Any request for review by the ECB's Governing Council of the classification of [legal name of the group data reporting agent] as a group data reporting agent as a result of the justifications given above is to be addressed within 15 ECB working days of receipt of this letter to [insert NCB's name and address]. [Legal name of the group data reporting agent] must include the reasons for such a request and all supporting information.

Starting date of the reporting obligations

In the absence of any objection, [legal name of the group data reporting agent] is to report statistical information pursuant to Article 3a of Regulation (EU) No 1011/2012 (ECB/2012/24) by [insert starting date for reporting, i.e. no later than six months after sending the letter].

Changes to the status of the notified entity

You are requested to inform [name of notifying NCB] of any change of [legal name of the group data reporting agent]'s name or legal form, merger, restructuring and any other event or circumstances that may affect [legal name of the group data reporting agent]'s reporting obligations, within 10 ECB working days of such an event.

Notwithstanding the occurrence of such an event, [legal name of the group data reporting agent] will remain subject to the reporting obligations set out in Regulation (EU) No 1011/2012 (ECB/2012/24) until we notify you otherwise on behalf of the ECB.

Yours faithfully

[signature]’.

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

