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II

(Non-legislative acts)

REGULATIONS

COMMISSION IMPLEMENTING REGULATION (EU) 2016/2005

of 16 November 2016

imposing a provisional anti-dumping duty on imports of certain lightweight thermal paper originating in the Republic of Korea

THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EU) 2016/1036 of the European Parliament and of the Council of 8 June 2016 on protection against dumped imports from countries not members of the European Union ⁽¹⁾ ('the basic Regulation'), and in particular Article 7 thereof,

After consulting the Member States,

Whereas:

1. PROCEDURE

1.1. Initiation

- (1) On 18 February 2016, the European Commission ('the Commission') initiated an anti-dumping investigation with regard to imports into the Union of certain lightweight thermal paper originating in the Republic of Korea ('the country concerned') on the basis of Article 5 of Council Regulation (EC) No 1225/2009 ⁽²⁾. It published a Notice of Initiation in the *Official Journal of the European Union* ⁽³⁾ ('the Notice of Initiation').
- (2) The Commission initiated the investigation following a complaint lodged on 4 January 2016 by the European Thermal Paper Association (ETPA) ('the complainant') on behalf of producers representing more than 25 % of the total Union production of certain lightweight thermal paper. The complaint contained evidence of dumping and of resulting material injury that was sufficient to justify the initiation of the investigation.

1.2. Interested parties

- (3) In the Notice of Initiation, the Commission invited interested parties to contact it in order to participate in the investigation. In addition, the Commission specifically informed the known Union producers, the known exporting producers and the Korean authorities, known importers, users and traders about the initiation of the investigation and invited them to participate.
- (4) Interested parties had an opportunity to comment on the initiation of the investigation and to request a hearing with the Commission and/or the Hearing Officer in trade proceedings ('the Hearing Officer').

⁽¹⁾ OJ L 176, 30.6.2016, p. 21.⁽²⁾ Council Regulation (EC) No 1225/2009 (OJ L 343, 22.12.2009, p. 51) was repealed by Regulation (EU) 2016/1036 of the European Parliament and of the Council ('the basic Regulation').⁽³⁾ OJ C 62, 18.2.2016, p. 7.

- (5) Two hearings were held with the Hearing Officer upon request of the Hansol group, to which the two related cooperating exporting producers belong. During the first hearing in March 2016, exemption from replying to the questionnaire was requested for a number of related converters. Following the hearing and a verification visit to one of the related converters to ascertain the arguments underlying the exemption request, the Commission maintained that the questionnaire needed to be completed by one of the related converters and granted exemption to three other related converters. At the second hearing in September 2016, the two cooperating exporting producers, a number of unrelated importers and users, and representatives of the Korean government raised a number of claims as regards the definition of the product concerned, the complaint, injury, the causal link and Union interest.

(a) *Sampling*

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

Sampling of Union producers

- (7) In its Notice of Initiation, the Commission stated that it had provisionally selected a sample of Union producers. The Commission selected the sample on the basis of the highest representative sales volume while ensuring a geographical spread. This sample consisted of three Union producers in two different Member States. The sampled Union producers accounted for between 75 % and 95 % ⁽¹⁾ of the sales volumes to unrelated customers in the Union of the companies that came forward in the standing exercise and of the estimated total sales volume to unrelated customers in the Union. The Commission invited the interested parties to comment on the provisional sample. No parties made comments on the provisional sample, thus the provisional sample was confirmed. The sample is representative of the Union industry.

Sampling of importers

- (8) To decide whether sampling was necessary and, if so, to select a sample, the Commission asked unrelated importers to provide the information specified in the Notice of Initiation.
- (9) One unrelated converter with importing activities provided the requested information and agreed to be included in the sample. In view of the low number of replies, the Commission decided that the sampling was not necessary. No comments were made.

(b) *Replies to the questionnaire*

- (10) The Commission sent questionnaires to two related exporting producers, namely Hansol Paper Co., Ltd ('Hansol Paper') and Hansol Artone Paper Co., Ltd ('Artone'), both belonging to the Hansol group as well as to their related trader Hansol Europe B.V. ('Hansol Europe') and related converter Schades Ltd ('Schades'). Questionnaires were also sent to the three sampled Union producers, and around 50 parties (26 users, 21 intermediaries, two associations and one unrelated importer) who expressed an interest in the investigation.
- (11) Questionnaire replies were received from the two exporting producers and their related trader and converter, the three sampled Union producers, nine unrelated converters, two traders at different levels, one unrelated converter with importing activities and one association. Moreover, eleven parties responded with free format submissions.

(c) *Verification visits*

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

— Union producers:

- Lecta Group/Torraspapel SA, Barcelona, Spain
- Mitsubishi HiTec Paper Europe GmbH, Bielefeld, Germany
- Papierfabrik August Koehler SE, Oberkirch, Germany

⁽¹⁾ This information is in ranges because of the risk that a sampled company reverse-engineers its competitors' data.

- Importer/User:
 - Papiery Powlekane 'PASACO' sp. z o.o., Solec Kujawski, Poland
- Exporting producers in the Republic of Korea:
 - Hansol Group (Hansol Paper and Artone), Seoul, the Republic of Korea
- Trader related to exporter producers of the Hansol group:
 - Hansol Europe, Hoofddorp, the Netherlands
- Converter related to exporter producers of the Hansol group:
 - Schades, Ripley, the United Kingdom

(d) *Presentation of data*

- (13) Given the limited number of parties that submitted some data, some of the figures presented below are in the form of ranges.

1.3. Investigation period and period considered

- (14) The investigation of dumping and injury covered the period from 1 January 2015 to 31 December 2015 ('the investigation period'). The examination of trends relevant for the assessment of injury covered the period from 1 January 2012 to the end of the investigation period ('the period considered').

2. PRODUCT CONCERNED AND LIKE PRODUCT

2.1. Product concerned

- (15) The product concerned is lightweight thermal paper ('LWTP') weighing 65 gr/m² or less; in rolls of a width of 20 cm or more, a weight of the roll (including the paper) of 50 kg or more and a diameter of the roll (including the paper) of 40 cm or more ('jumbo rolls'); with or without a base coat on one or both sides; coated with a thermo-sensitive substance (that is a mixture of dye and a developer that react and form an image when heat is applied) on one or both sides; and with or without a top coat, originating in the Republic of Korea, currently falling within CN codes ex 4809 90 00, ex 4811 90 00, ex 4816 90 00 and ex 4823 90 85 ('the product concerned').
- (16) LWTP can be produced with several types of developers: with developers containing bisphenol A and bisphenol S (LWTP containing phenol), or with developers that do not contain any phenol (phenol-free LWTP). Both types of LWTP are concerned by the present investigation.
- (17) Lightweight thermal paper is used in point-of-sale (POS) applications such as the receipts issued by retail.

2.2. Like product

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

2.3. Claims regarding product scope

- (20) The cooperating exporting producer requested the exclusion of phenol-free LWTP from the product scope on the grounds that phenol-free LWTP is neither produced nor exported from the Republic of Korea and that it is different from LWTP containing phenol, because of its chemical composition, consumer perception, production processes, end-uses and market price. The same party also requested the exclusion of LWTP weighing less than 44 gr/m².
- (21) In this respect, the investigation showed that there are several types of LWTP — including those with or without phenol and those of less than 44 gr/m² — and that all form one single product, because they all share similar basic characteristics, similar production processes, identical end-uses and are interchangeable from the point of view of users and consumers. Indeed, the investigation showed that all product types consist of a base paper with a thermo-sensitive coating and that in essence all products are the result of similar production processes. Furthermore, all types of LWTP have similar properties and are used for printing with a thermal printer. Therefore, from the point of view of the user and the consumer, they all have similar end-results.
- (22) In addition, it should be noted that the request for exclusion of the LWTP weighing less than 44 gr/m² was in any event not substantiated with evidence.
- (23) Although the exporting producer claimed that there might be different consumer perception between LWTP containing phenol or not, no substantiate evidence was put forward to justify that claim and the investigation confirmed that the vast majority of consumers is not aware of the particular composition of LWTP and therefore do not make any difference between LWTP containing phenol or not. In addition, market prices do not significantly differ between LWTP containing phenol or phenol-free LWTP. Therefore, it is provisionally concluded that all types of LWTP compete between each other, albeit with some price differences. The price competition amongst product types is further developed in section 5.2.4.
- (24) For the reasons above, products weighing less than 44 gr/m² and phenol-free LWTP cannot be excluded from the definition of the like product at this stage. Both claims were thus provisionally rejected.

3. DUMPING

3.1. Preliminary remark

- (25) In the investigation period, the Hansol group sold between 15 and 25 % of its total Union sales volume of the product concerned either directly to unrelated parties or indirectly for re-sales via related parties; the bulk of its Union sales (between 75 % and 85 %) were sales to related parties destined for conversion into small rolls. The ranges are given for reasons of confidentiality. In order to arrive at a representative calculation of dumping, both sales channels have been included in that calculation and given the appropriate weight.

3.2. Normal value

- (26) The Commission first examined whether the total volume of domestic sales for the cooperating exporting producers was representative, in accordance with Article 2(2) of the basic Regulation. The domestic sales are representative if the total domestic sales volume of the like product to independent customers on the domestic market per exporting producer represented at least 5 % of its total export sales volume of the product concerned to the Union during the investigation period. On this basis, the total sales by the exporting producers of the like product on the domestic market were representative.
- (27) The Commission subsequently identified the product types sold domestically that were identical or closely resembling the product types sold for export to the Union for the exporting producers with representative domestic sales.
- (28) The Commission then examined whether the domestic sales by the exporting producers on its domestic market for each product type that is identical or comparable with a product type sold for export to the Union were representative, in accordance with Article 2(2) of the basic Regulation. The domestic sales of a product type are representative if the total volume of domestic sales of that product type to independent customers during the investigation period represents at least 5 % of the total volume of export sales of the identical or comparable product

type to the Union. The Commission established that three products were sold at volumes less than 5 % of the total volume of export sales to the Union. These product types were considered to be comparable product types to those sold in the domestic market, the only differences being the weight of the paper and in one instance, the type of phenol used. For these product types, the normal value was constructed.

- (29) The Commission next defined the proportion of profitable sales to independent customers on the domestic market for each product type during the investigation period in order to decide whether to use actual domestic sales for the calculation of the normal value, in accordance with Article 2(4) of the basic Regulation.
- (30) The normal value is based on the actual domestic price per product type, irrespective of whether those sales are profitable or not, if:
 - (a) the sales volume of the product type, sold at a net sales price equal to or above the calculated cost of production, represented more than 80 % of the total sales volume of this product type; and
 - (b) the weighted average sales price of that product type is equal to or higher than the unit cost of production.
- (31) In this case, the normal value is the weighted average of the prices of all domestic sales of that product type during the investigation period.
- (32) The normal value is the actual domestic price per product type of only the profitable domestic sales of the product types during the investigation period, if:
 - (a) the volume of profitable sales of the product type represents 80 % or less of the total sales volume of this type; or
 - (b) the weighted average price of this product type is below the unit cost of production.
- (33) The analysis of domestic sales showed that most of the domestic sales were profitable and that the weighted average sales price was higher than the cost of production. Accordingly, the normal value was calculated as a weighted average of the prices of all domestic sales during the investigation period.
- (34) For those product types with no or insufficient sales of the like product in representative quantities on the domestic market, the Commission constructed the normal value in accordance with Article 2(3) and (6) of the basic Regulation.
- (35) Normal value was constructed by adding the following to the average cost of production of the like product of the cooperating exporting producers during the investigation period:
 - (a) the weighted average selling, general and administrative ('SG&A') expenses incurred by the cooperating exporting producers on domestic sales of the like product, in the ordinary course of trade, during the investigation period; and
 - (b) the weighted average profit realised by the cooperating exporting producers on domestic sales of the like product, in the ordinary course of trade, during the investigation period.
- (36) For the product types not sold in representative quantities on the domestic market, the average SG&A expenses and profit of transactions made in the ordinary course of trade on the domestic market for those types were added. For the product types not sold at all on the domestic market, the weighted average SG&A expenses and profit of all transactions made in the ordinary course of trade on the domestic market were added.

3.3. Export price

- (37) As explained in recital 25, the Union sales of the Hansol group during the investigation period consisted of jumbo rolls sold to unrelated parties as well as jumbo rolls sold to related parties for re-sales, but the vast majority of the sales to the Union were sales of the product concerned to related companies for conversion into small rolls that were subsequently resold to unrelated customers.

- (38) For sales of the product concerned directly to independent customers in the Union, the export price was the price actually paid or payable for the product concerned when sold for export to the Union, in accordance with Article 2(8) of the basic Regulation.
- (39) For sales of the product concerned to the Union through related companies acting as an importer/trader and/or as a converter, the export price was established on the basis of the price at which the imported product or imported and converted product was first resold to independent customers in the Union, in accordance with Article 2(9) of the basic Regulation. The sales price by the related party to unrelated customers was adjusted backwards to an ex-works price by deducting the SG&A of the related party, a reasonable amount of profit and other allowances whenever applicable. If the sale concerned a small roll, the reported and verified conversion costs were deducted in addition.
- (40) With respect to the profit margin used, in line with established case-law of Union courts, the Commission did not use profit margins of the related companies as they are considered unreliable. One unrelated importer cooperated but its profitability was confidential and cannot be disclosed. Therefore, in the absence of any other information, a reasonable profit margin used in a previous proceeding concerning another paper product (coated fine paper) manufactured by a similar industry was used ⁽¹⁾. As both products and industries are very similar (both are capital intensive industries, and in addition some producers of LWTP also produce coated fine paper), this method for determining a reasonable profit margin was found to be reasonable. The profit margin used, in the absence of any other available information, is 4,5 %.

3.4. Comparison

- (41) The Commission compared the normal value and the export price of the exporting producers on an ex-works basis.
- (42) Where justified by the need to ensure a fair comparison, the Commission adjusted the normal value and/or the export price for differences affecting prices and price comparability, in accordance with Article 2(10) of the basic Regulation.
- (43) As the origin of the jumbo rolls used for the production and sales of the small rolls was untraceable, the export price of jumbo rolls sold to related parties for conversion into small rolls has been compared to a normal value established at an aggregate level, i.e. based, for each product type, on an average domestic sales price and cost of production for both Hansol Paper and Artone.
- (44) The dumping margin for the export prices for direct sales of jumbo rolls to unrelated parties and sales of jumbo rolls via related parties was established by comparing the Hansol Paper export price per product type with the Hansol Paper normal value per product type and the Artone export price per product type with the Artone normal value per product type.

3.5. Dumping margin

- (45) The dumping margin thus calculated is 10 %-15 % for sales of jumbo rolls which are subsequently converted into small rolls for sales to unrelated parties and 0,5-5 % for sales of jumbo rolls to unrelated parties and related parties.
- (46) As explained in recital 25, 15 %-25 % of the Hansol group's exports to the Union were (direct or indirect) sales of jumbo rolls during the investigation period, whereas the remaining sales were sales of jumbo rolls to related parties that were converted and resold as small rolls. The above dumping margins have been weighted accordingly. This was done by applying the share of the jumbo rolls sales for direct or indirect sales to unrelated parties (i.e. 15 %-25 %) to the dumping margin calculated for jumbo rolls (0,5 %-5 %) and by applying the share of the jumbo rolls sales to related parties for conversion into and subsequent resale as small rolls to unrelated parties (i.e. 75 %-85 %) to the dumping margin calculated for jumbo rolls converted into small rolls (10 %-15 %).
- (47) For the cooperating exporting producers, the Commission compared the weighted average normal value of each type of the like product with the weighted average export price of the corresponding type of the product concerned, in accordance with Article 2(11) and (12) of the basic Regulation.

⁽¹⁾ Recital 73 of Council Implementing Regulation (EU) No 451/2011 (OJ L 128, 14.5.2011, p. 1).

- (48) On this basis, the provisional weighted average dumping margins expressed as a percentage of the CIF Union frontier price, duty unpaid, are as follows:

Company	Provisional dumping margin
Hansol group (Hansol Paper Co., Ltd and Hansol Artone Paper Co., Ltd) (%)	12,1
All other companies (%)	12,1

- (49) For all other exporting producers in the Republic of Korea, the Commission established the dumping margin on the basis of the facts available, in accordance with Article 18 of the basic Regulation. To this end, the Commission determined the level of cooperation of the exporting producers. The level of cooperation is the volume of exports of the cooperating exporting producers to the Union expressed as proportion of the total export volume — as reported in Eurostat import statistics — from the country concerned to the Union.
- (50) The level of cooperation in this case is high because the imports of the cooperating exporting producers constituted the total exports to the Union during the investigation period. On this basis, the Commission decided to base the residual dumping margin at the level of the cooperating company.

4. INJURY

4.1. Definition of the Union industry and Union production

- (51) The like product was manufactured by five producers in the Union during the investigation period. They constitute the 'Union industry' within the meaning of Article 4(1) of the basic Regulation.
- (52) The total Union production during the investigation period was established at around 372 645 tonnes. The Commission established the figure on the basis of the questionnaire reply submitted by the complainant, cross-checked against the individual questionnaire replies of the sampled Union producers. As indicated in recital 7, three Union producers were selected in the sample representing between 75 and 95 % of the total Union production of the like product.

4.2. Union consumption

- (53) The Commission established the Union consumption on the basis of sales to unrelated customers in the Union by the Union industry (source: questionnaire reply submitted by the complainant and verified individual questionnaire replies of the sampled Union producers), the complainant's estimates of LWTP imports from the United States of America (USA) and the People's Republic of China (PRC) and the sales in the Union of the exporting producer (source: dumping questionnaire).
- (54) Union consumption developed as follows:

Table 1

Union consumption (tonnes)

	2012	2013	2014	Investigation period
Total Union consumption	163 000-168 000	178 000-183 000	178 000-183 000	189 000-194 000
<i>Index</i>	100	109	108	115

Source: injury and dumping questionnaires.

- (55) Over the period considered Union consumption increased by 15 %, mainly in the period 2012-2013 and then in the period 2014-2015.

4.3. Imports from the country concerned

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

- (56) The Commission established the volume of imports on the basis of the questionnaire reply submitted by the exporting producer. The market share of the imports was established on the basis of Union consumption (see recital 53).
- (57) Imports into the Union from the country concerned developed as follows:

Table 2

Import volume (tonnes) and market share

	2012	2013	2014	Investigation period
Volume of imports from the country concerned (tonnes)	1 000-2 000	12 000-17 000	19 000-25 000	23 000-28 000
<i>Index</i>	100	1 268	1 949	2 279
Market share (%)	0,7	8,0	12,4	13,6
<i>Index</i>	100	1 169	1 801	1 975

Source: dumping and injury questionnaires.

- (58) In 2015 imports from the Republic of Korea were 22,8 times bigger than in 2012. Their market share increased from 0,7 % in 2012 to 13,6 % in the investigation period.

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

- (59) The Commission established the prices of imports on the basis of the questionnaire reply submitted by the exporting producer.
- (60) The average price of imports into the Union from the country concerned developed as follows:

Table 3

Import prices (EUR/tonnes)

	2012	2013	2014	Investigation period
Average price of Korean imports	1 400-1 500	1 450-1 550	1 300-1 400	1 200-1 300
<i>Index</i>	100	103	92	85

Source: dumping questionnaire.

- (61) The average price of imports into the Union from the country concerned decreased by 15 % overall. It is noted that the price in 2012 is based on a very low level of imports. There is a clear coincidence in time between the increase in market shares and the price drop.

- (62) The Commission determined the price undercutting during the investigation period by comparing:
- (a) the weighted average sales prices per product type of the sampled Union producers charged to unrelated customers on the Union market, adjusted to an ex-works level; and
 - (b) the corresponding weighted average prices per product type of the imports from the cooperating producer to the first independent customer on the Union market, established on a Cost, Insurance, Freight (CIF) basis, with appropriate adjustments for post-importation costs.
- (63) In line with the methodology explained in recital 25, the Commission took into consideration the sales volume of the product concerned either directly to unrelated and sales to related parties in the Union destined for conversion into small rolls.
- (64) The price comparison was made on a type-by-type basis. Transactions were duly adjusted where necessary. Rebates and discounts were deducted. The result of the comparison was expressed as a percentage of the sampled Union producers' turnover during the investigation period. It showed a weighted average undercutting margin of 8,1 % by the imports from the country concerned on the Union market. Some 84 % of the import volumes were found to be undercutting.

4.4. Economic situation of the Union industry

4.4.1. General remarks

- (65) In accordance with Article 3(5) of the basic Regulation, the examination of the impact of the dumped imports on the Union industry included an evaluation of all economic indicators having a bearing on the state of the Union industry during the period considered.
- (66) For the injury determination, the Commission distinguished between macroeconomic and microeconomic injury indicators. The Commission evaluated the macroeconomic indicators on the basis of data contained in the questionnaire reply and subsequent submissions from the complainant. The Commission evaluated the microeconomic indicators on the basis of data contained in the questionnaire replies submitted by the sampled Union producers. Both sets of data were found to be representative of the economic situation of the Union industry.
- (67) The macroeconomic indicators are: production, production capacity, capacity utilisation, sales volume, market share, growth, employment, productivity and magnitude of the dumping margin and recovery from past dumping.
- (68) The microeconomic indicators are: average unit prices, unit cost, labour costs, inventories, profitability, cash flow, investments, return on investments, and ability to raise capital.

4.4.2. Macroeconomic indicators

4.4.2.1. Production, production capacity and capacity utilisation

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

Table 4

Production, production capacity and capacity utilisation

	2012	2013	2014	Investigation period
Production volume (tonnes)	376 150	344 525	349 601	372 645
Index	100	92	93	99

	2012	2013	2014	Investigation period
Production capacity (tonnes)	393 333	404 080	401 142	402 997
<i>Index</i>	100	103	102	102
Capacity utilisation (%)	96	85	87	92
<i>Index</i>	100	89	91	97

Source: injury questionnaires and information submitted by the complainant.

- (70) Production of the product under investigation is a high fixed cost enterprise. During the period considered, the Union industry's production volume decreased by one per cent. A lower production level is observed in 2013 and 2014, when one sampled Union producer experienced certain difficulties.
- (71) Overall production capacity was relatively stable. The figure in 2012 was abnormally low and reflects the fact that one Union producer ceased temporarily production of this product for exceptional circumstances. That producer operated normally in 2013. It is further noted that another Union producer, the smallest one, has been phasing out the production of the product in question over the period considered.
- (72) The overall decrease of the capacity utilisation rate is linked to the decrease in the production volume. As explained in recital 125 below, the high capacity utilisation rate shown in table 4 does not mean that the industry cannot produce more.

4.4.2.2. Sales volume and market share

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

Table 5

Sales volume and market share

	2012	2013	2014	Investigation period
Sales volume on the Union market (tonnes)	159 000-164 000	160 000-165 000	153 000-158 000	160 000-165 000
<i>Index</i>	100	101	97	101
Market share (%)	96,9	90,3	86,7	85,1
<i>Index</i>	100	94	90	88

Source: injury questionnaires and information submitted by the complainant.

- (74) The Union industry sales volume on the Union market increased by 1 % during the period considered.
- (75) During the period considered, the Union industry's market share decreased from 96,9 % to 85,1 % since it could not benefit from the increase in consumption. In order to maintain its level of sales and to avoid an even stronger shrinking of its market share, the Union industry was forced to lower its sales prices due to the continuous price pressure exerted by the imports concerned.

4.4.2.3. Growth

- (76) The Union consumption increased by 15 % during the period considered, while the sales volume of the Union Industry on the Union market stagnated. The Union industry thus lost market share, contrary to imports from the country concerned, whose market share increased during the period considered capturing almost all the increase in consumption.

4.4.2.4. Employment and productivity

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

Table 6

Employment and productivity

	2012	2013	2014	Investigation period
Number of employees	851	784	797	842
<i>Index</i>	100	92	94	99
Productivity (unit/employee)	442	439	439	443
<i>Index</i>	100	99	99	100

Source: injury questionnaires and information submitted by the complainant.

- (78) The employment level of the Union industry did not change significantly in the period considered. The employment level follows closely production. The Union industry endeavoured to keep jobs despite shrinking profitability.
- (79) The productivity of the Union industry's workforce, measured as output per person employed per year, did not vary a lot. The production process was already optimised to a significant extent.

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

- (80) The dumping margin was significantly above the *de minimis* level. The impact of the magnitude of the actual margin of dumping on the Union industry was not negligible, given the increasing volume and the shrinking prices of imports from the country concerned.
- (81) This is the first anti-dumping investigation regarding the product concerned. Therefore, no data were available to assess the effects of possible past dumping.

4.4.3. Microeconomic indicators

4.4.3.1. Prices and factors affecting prices

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

Table 7

Sales prices in the Union

	2012	2013	2014	Investigation period
Average unit sales price in the Union on the market (EUR/tonnes)	1 316	1 297	1 181	1 176
<i>Index</i>	100	98	90	89
Unit cost of production (EUR/tonnes)	1 177	1 176	1 155	1 215
<i>Index</i>	100	100	98	103

Source: injury questionnaires.

- (83) During the period considered, sales prices have on average decreased (– 11 %), unlike the corresponding cost (+ 3 %). In the investigation period, sales prices were on average lower than the unit cost of production.
- (84) In order to limit the loss in market share, the Union producers followed the downward price trend of imports and reduced their sales price significantly. The increase in cost of production can be partly explained by the fact that LWTP production is a high fixed costs enterprise correlated with the drop in production (– 3 % amongst sampled Union producers). Union producers partly offset raw materials' cost increases derived from a disadvantageous exchange rate USD/EUR (paper pulp is traded in USD) by keeping a tight grip on other costs and rationalisation.

4.4.3.2. Labour costs

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

Table 8

Average labour costs per employee

	2012	2013	2014	Investigation period
Average labour costs per employee (EUR)	64 244	63 424	65 919	67 047
<i>Index</i>	100	99	103	104

Source: injury questionnaires.

- (86) During the period considered, overall the average wage per employee went up by 4 %. This is in line with the overall increase in prices in the Union due to inflation.

4.4.3.3. Inventories

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

Table 9

Inventories

	2012	2013	2014	Investigation period
Closing stocks (tonnes)	24 000-29 000	15 000-20 000	23 000-28 000	23 000-28 000
<i>Index</i>	100	65	94	93
Closing stocks as a percentage of production (%)	7,9	5,9	8,3	7,6
<i>Index</i>	100	74	105	96

Source: injury questionnaires.

- (88) During the period considered the level of closing stocks decreased by 7 %. In general the like product is produced on the basis of specific orders of the users. Stocks are not considered to be an important injury indicator for this type of industry because in general they follow production and are not bigger than the production of one month. Closing stocks as a percentage of production shows a similar percentage in the beginning and the end of the period considered.

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

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

Table 10

Profitability, cash flow, investments and return on investments

	2012	2013	2014	Investigation period
Profitability of sales in the Union to unrelated customers (% of sales turnover)	13,0	11,5	5,3	– 0,5
<i>Index</i>	100	89	41	– 4
Cash flow (EUR)	80 000 000-100 000 000	45 000 000-65 000 000	10 000 000-30 000 000	10 000 000-30 000 000
<i>Index</i>	100	64	19	21

	2012	2013	2014	Investigation period
Investments (EUR)	1 500 000- 6 500 000	2 000 000- 7 000 000	6 000 000- 11 000 000	4 500 000- 9 000 000
<i>Index</i>	100	116	280	203
Return on investments (%)	203,93	132,56	58,28	57,17
<i>Index</i>	100	65	29	28

Source: injury questionnaire.

- (90) The Commission established the profitability of the sampled Union producers by expressing the pre-tax net profit of the sales of the like product to unrelated customers in the Union as a percentage of the turnover of those sales.
- (91) Profitability developed negatively over the period considered from a profit situation in 2012 to losses in the investigation period (– 0,5 %). While the trend is partly linked to rationalisation within some Union producers, the considerable price and volume pressure exerted on the Union industry by the increasing imports from the country concerned over the period 2013-2015 have not allowed the Union industry to benefit from the increasing Union consumption.
- (92) The net cash flow is the ability of the Union producers to self-finance their activities. The trend in net cash flow followed a deep downward trend, mainly due to the shrinking profitability.
- (93) The return on investments is the profit in percentage of the net book value of investments. It went down (– 72 %), in line with profitability. Except for a specific investment to improve efficiency by one Union producer in the period 2014-2015, the sampled producers kept their level of investment to the amounts absolutely necessary to keep on running.
- (94) The ability to raise capital has been affected by the shrinking profitability, as can be seen from the low level of investments for this type of industry.

4.4.4. Conclusion on injury

- (95) Over the period considered, the Union industry's injury is material and patent in terms of price-related injury indicators such as sales price depression (– 11 %), decreasing profitability (from + 13 % to – 0,5 %), cash flow and return on net assets. Due to the drop in selling prices, concrete actions to improve efficiency and keep a tight grip on costs could not prevent Union producers from becoming loss-making in the investigation period. Moreover, when it comes to volume-related injury indicators, the Union industry was unable to benefit from the increase in the Union consumption. Indeed, the market share of Union producers decreased by 12 percentage points during the period considered.
- (96) Due to the specificities of this type of industry (capital intensive and working basically non-stop), volume-related indicators such as production or sales volume showed a rather stable trend in absolute terms. However, this has to be seen in a context of a growing demand, thus in relative terms the situation deteriorated.
- (97) Despite concrete actions (such as in view of further optimising internal processes) by the Union industry during the period considered to improve its overall performance, its situation deteriorated significantly namely as regards profitability and loss of market share. The difficulties to raise capital put certain investments on hold.
- (98) On the basis of the above, the Commission concluded at this stage that the Union industry suffered material injury within the meaning of Article 3(5) of the basic Regulation.

5. CAUSATION

- (99) In accordance with Article 3(6) of the basic Regulation, the Commission examined whether the dumped imports from the country concerned caused material injury to the Union industry. In accordance with Article 3(7) of the basic Regulation, the Commission also examined whether other known factors could at the same time have injured the Union industry. The Commission ensured that any possible injury caused by factors other than the dumped imports from the country concerned was not attributed to the dumped imports. These factors are: other imports, the effects of phenol-free LWTP prices, anti-dumping duties in the USA, the export performance of Union producers, the increasing competition amongst them, a series of cost issues, global internet and increased digitalisation (i.e. more paperless payments), price pressure from large retail chains and rationalisation within the Union industry.

5.1. Effects of the dumped imports

- (100) Sales prices of the exporting producers decreased on average by 15 % over the period considered. By continuously lowering their unit sales price at dumped level during the period considered, the producers from the countries concerned were able to significantly increase their market share from 2012 (0,7 %) to the investigation period (13,6 %).
- (101) The continuous increase in imports from the Republic of Korea following the capacity expansion of the exporting producer at undercutting prices had a clear negative impact on the performance of the Union industry. Dumped imports forced the Union industry to decrease its Union sales prices to limit its loss of market share, which translated into losses in the investigation period. Furthermore, the Union industry's sales volume remained stable, thus it was unable to benefit from the increase in Union consumption and hence lost market share by almost 12 %.
- (102) In view of the clearly established coincidence in time between, on the one hand, the ever-increasing level of dumped imports at continuously decreasing prices — which were also found to undercut Union prices — and, on the other hand, the Union industry's stagnation of sales volume, loss of market share and price depression resulting in a loss-making situation amongst sampled producers, it is concluded that the dumped imports were responsible for the injurious situation of the Union industry.

5.2. Effects of other factors

5.2.1. Imports from third countries

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

Table 11

Imports from third countries

		2012	2013	2014	Investigation period
Total of all third countries except the country concerned	Volume (tonnes)	3 500-5 000	2 000-3 500	1 500-3 000	2 000-3 500
	Index	100	75	44	63
	Market share (%)	2,4	1,7	1,0	1,3
	Average price (EUR)	799	631	677	1 147
	Index	100	79	85	143

Source: dumping questionnaire and ETPA's estimates.

- (104) Imports from the country concerned are almost all imports into the Union. Other imports (from the USA and the PRC) decreased by 37 % during the period considered. The market share of such imports was 1,3 % in the investigation period, thus below *de minimis* and unlikely to have caused any injury to Union producers and break the causal link.

5.2.2. Export performance of the Union industry

- (105) The volume of exports (unrelated sales) of the sampled Union producers developed over the period considered as follows:

Table 12

Export performance of the sampled Union producers

	2012	2013	2014	Investigation period
Export volume (tonnes)	70 000-90 000	90 000-110 000	100 000-120 000	95 000-115 000
<i>Index</i>	100	125	135	127
Average price (EUR/tonnes)	1 234	1 177	1 127	1 211
<i>Index</i>	100	95	91	98

Source: injury questionnaires.

- (106) The volume of exports to unrelated customers increased by 27 % over the period considered. As to prices, they fell over the period considered (– 2 %), but less than the price on the Union market (– 11 %). In view of the fact that profitability on export markets, even if declining, was better than in the Union, Union producers seized certain export opportunities in order to maximise capacity utilisation and dilute fixed costs.
- (107) On the basis of the above, the export performance of the Union industry is unlikely to have caused injury to Union producers and break the causal link.

5.2.3. Anti-dumping duties in the USA

- (108) The exporting producer claimed that the Union industry suffered injury because one sampled producer could not sell LWTP in the USA due to high anti-dumping duties affecting this product.
- (109) These circumstances had some impact on one Union producer as regards production volume (see above recital 70). However, those circumstances would have no effect on most of the data relating to that Union producer, such as the profitability of sales in the Union and cash flow.
- (110) In any case the impact is limited as regards the Union industry as a whole. The reasons are manifold. First, the issue concerns only one of the Union producers — it should be noted that the other two sampled producers, not subject to measures, increased their sales to the USA. Second, the producer in question managed to partially compensate by increasing exports to other markets. Last, the USA lifted the anti-dumping duties in question in February 2015. The overall impact in the investigation period is therefore almost inexistent.
- (111) On the basis of the above, the impact of the anti-dumping duties in the USA is not deemed significant for the overall Union industry so as to break the causal link.

5.2.4. Price depression of phenol-free LWTP

- (112) The exporting producer claimed that the Union's price depression was not caused by Korean imports but rather by a price decrease in phenol-free LWTP, a product produced and sold by the Union industry, but not exported from the Republic of Korea. This allegation is based on the purchase price of some companies related to the exporting producer (purchases from two Union producers).
- (113) In this respect it should first be noted that, as explained above (see recital 20 and following), phenol-free LWTP is interchangeable and competes with phenol-containing LWTP, thus its prices can also be influenced by Korean imports and the overall market, where phenol-containing LWTP is predominant (84 % of the Union consumption). Moreover, the Union industry data showed that over the period considered the unit sales prices of phenol-free LWTP dropped less than the unit sales prices of phenol-containing LWTP. So in fact the price depression is even more important when disregarding the impact of the phenol-free LWTP sales of the Union industry. Furthermore, the undercutting calculation based on a comparison of similar product types, i.e. excluding phenol-free types which were not imported, was found to be significant.

5.2.5. Other reasons

- (114) According to some parties, Union producers suffered because of increasing competition amongst them (for capacity utilisation), high costs (due to a worldwide increase in raw materials prices linked to the USD/EUR exchange rate & increasing labour and energy costs), global internet and increased digitalisation (i.e. more paperless payments) and price pressure from large retail chains (such as petrol stations and supermarkets). However, none of these factors was found to break the causal link between material injury and dumped imports from the Republic of Korea.
- (115) There is no evidence of any anti-competitive practices. Nothing on file showed that competition amongst Union producers (for capacity utilisation) was unfair.
- (116) As regards the allegation of high costs, it is noted that Union producers kept a tight grip on costs during the period considered, their increase being minor (+ 3 %). Such an increase includes any changes in paper pulp prices (representing around one third of total LWTP costs), energy costs and labour costs, the latter being analysed in more detail in recitals 85-86.
- (117) The investigation could not confirm that global internet and increased digitalisation (i.e. more paperless payments) could be a source of injury to the Union industry. On the contrary, Union consumption of LWTP was found to be increasing steadily.
- (118) As to the allegation that there would be some price pressure from large retail chains (such as petrol stations and supermarkets), the interested parties did not provide any substantiate evidence and the investigation could not confirm it.
- (119) It is further noted that the investigation showed that some Union producers underwent restructuring and reorganisation processes in the recent past with a view to improve their competitiveness. Some of these processes are still on-going and some of the concrete actions foreseen, such as specific investments, were hindered by the effect of dumped imports on those producers' profitability, therefore affecting their ability to raise capital. This factor was thus not found to break the causal link between material injury and dumped imports from the Republic of Korea.

5.3. Conclusion on causation

- (120) On the basis of the above, the Commission concluded at this stage that the material injury to the Union industry was caused by the dumped imports from the country concerned and the other factors, considered individually or collectively, did not break the causal link.
- (121) The Commission distinguished and separated the effects of all known factors on the situation of the Union industry from the injurious effects of the dumped imports. The other identified factors such as the export performance of Union producers, the anti-dumping duties in the USA, higher costs and a series of rationalisation processes were provisionally not found to break the causal link, even considering their possible combined effect.

6. UNION INTEREST

- (122) In accordance with Article 21 of the basic Regulation, the Commission examined whether it could clearly conclude that it was not in the Union interest to adopt measures in this case, despite the determination of injurious dumping. The determination of the Union interest was based on an appreciation of all the various interests involved, including those of the Union industry, traders on various levels and users.

6.1. Interest of the Union industry

- (123) The Union industry consists of five producers located in three Member States (Germany, Spain and Finland). None opposed the initiation of the investigation.
- (124) All Union producers participated actively to the investigation and argued that the imposition of measures could safeguard employment, promote larger investments and contribute to the reversing trend of decreasing profitability observed since the Korean exporter entered the EU market.
- (125) The Union industry underwent already significant restructuring in the past and is constantly attentive to improve its efficiency in the production process. The comparison of the production volume figures in Table 4 above with the Union consumption depicted in recitals 53-55 shows that, contrary to what a party claimed, the Union industry can meet demand in the Union. The high capacity utilisation rate shown in Table 4 above does not mean that the Union industry cannot produce more. On the one hand, Union producers have multi-purpose equipment with 'swing capacity', namely the capacity to turn the production to a different product. On the other hand, the smaller Union producer that has been phasing out the production of the product in question could reconsider this choice if there is a fair competition.
- (126) It is expected that the imposition of measures will restore a level playing field and a fair price level on the Union market, and improve the Union industry's profitability to levels considered normal for this capital intensive industry. If there were no duties, some of the Union producers might have to reduce their LWTP activities, or even dismantle them, and cut jobs. This might leave the market with less competition and many users with even more limited sources of supply.
- (127) In the absence of measures, the situation of the Union industry is very likely to further deteriorate. Further losses of profit and market share are likely to happen since there are no grounds to establish that price depression will stop without measures.
- (128) The Commission therefore concluded at this stage that the imposition of anti-dumping duties would be in the interest of Union industry.

6.2. Interest of other interested parties

- (129) The Commission services sent questionnaires to 50 interested parties. However, not all of them replied to the questionnaires: 25 converters, traders at different level and one association (the Confederation of European Paper Industries, 'CEPI') made representations, but only 14 parties did actually reply to the questionnaire. Those responses were however not always exhaustive, some of them being mere allegations not confirmed by verifiable evidence.
- (130) Three of the converters who did reply to the questionnaire, expressed to be in favour of the measures, mainly on the ground that measures would restore fair conditions of competition in the EU market. In terms of purchase volume of LWTP, these converters weigh more than the ones that did not express views or were opposing the measures. Also CEPI was in favour of the measures, and claimed that general upstream industries, unrelated converters and end-consumers would be negatively affected by Korean dumped imports.
- (131) The parties opposing the imposition of measures fear a shortage of paper and price increases, a lack of alternative sources of supply, anticompetitive practices by the Union producers, and, ultimately, the end of some converting activities and/or converters. However, the investigation showed that there are several available sources of supply in the European Union, there is no indication of anti-competitive practices from Union producers and that the imposition of measures would not entail significant price increases, bearing also in mind the level of the dumping margin.

- (132) Finally, both the exporting producer and the Government of the Republic of Korea claimed that the Union interest analysis should take into account the investments made by the Hansol group in the Union in the period 2013-2016 and of number of jobs pertaining to the related converters. However, they did not provide any evidence specific to the production of LWTP.
- (133) Moreover, since the measure would only restore fair competition in the Union market, it is considered that anti-dumping measures will entail that imports of the product concerned will enter the Union at non-injurious prices. This should benefit independent converters.
- (134) The Commission therefore concluded at this stage that the impact of anti-dumping duties on the parties opposing measures that does not outweigh the positive effect of measures to the Union industry. As to parties that made unsubstantiated representations, the investigation could not show that the imposition of measures would have a significant impact, if at all, on them.

6.3. Conclusion on Union interest

- (135) On the basis of the above, the Commission concluded that there were no compelling reasons that it was not in the Union interest to impose measures on imports of LWTP originating in the Republic of Korea at this stage of the investigation.

7. PROVISIONAL ANTI-DUMPING MEASURES

- (136) On the basis of the conclusions reached by the Commission on dumping, injury, causation and Union interest, provisional measures should be imposed to prevent further injury being caused to the Union industry by the dumped imports.

7.1. Injury elimination level (Injury margin)

- (137) To determine the level of the measures, the Commission first established the amount of duty necessary to eliminate the injury suffered by the Union industry.
- (138) The injury would be eliminated if the Union industry was able to cover its costs of production and to obtain a profit before tax on sales of the like product in the Union market that could be reasonably achieved under normal conditions of competition by an industry of this type in the sector, namely in the absence of dumped imports.
- (139) In the complaint the complainant requested the Commission to use 'around 10 %' of turnover as reasonable non-injurious profit margin. The investigation showed that the actual profitability of the Union industry before the surge of Korean imports had a major impact was 13 % in 2012 and 11,5 % in 2013. On these grounds, the Commission therefore considers that the profit margin achieved by the industry in the most recent representative year, i.e. the year 2013, is an appropriate basis for a target profit.
- (140) On this basis, the Commission calculated a non-injurious price of the like product for the Union industry by adding the above-mentioned profit margin of 11,5 % to the cost of production during the investigation period of the sampled Union producers.
- (141) The Commission then determined the injury elimination level on the basis of a comparison of the weighted average import price of the cooperating exporting producer in the country concerned, as established for the price undercutting calculations, with the weighted average non-injurious price of the like product sold by the sampled Union producers on the Union market during the investigation period. Any difference resulting from this comparison was expressed as a percentage of the weighted average import CIF value. The injury margin was provisionally established at 35,8 %.

7.2. Provisional measures

- (142) Provisional anti-dumping measures should be imposed on imports of certain lightweight thermal paper originating in the Republic of Korea, in accordance with the lesser duty rule in Article 7(2) of the basic Regulation. The Commission compared the injury margins and the dumping margins. The amount of the duties should be set at the level of the lower of the dumping and the injury margins, i.e. at the level of the dumping margin.
- (143) On the basis of the above, the provisional anti-dumping duty rates, expressed on the CIF Union border price, customs duty unpaid, should be as follows:

Country	Company	Dumping margin	Injury margin	Provisional anti-dumping duty
The Republic of Korea	Hansol group (Hansol Paper Co., Ltd and Hansol Artone Paper Co., Ltd) (%)	12,1	35,8	12,1
	All other companies (%)	12,1	35,8	12,1

- (144) As also explained in recital 50, the level of cooperation in this case is high as the imports of the cooperating exporting producers constituted the total exports to the Union during the investigation period. Therefore, the residual anti-dumping duty is based at the level of the cooperating company.
- (145) A company may request the application of these individual anti-dumping duty rates if it changes subsequently the name of its entity. The request must be addressed to the Commission ⁽¹⁾. The request must contain all the relevant information enabling to demonstrate that the change does not affect the right of the company to benefit from the duty rate which applies to it. If the change of name of the company does not affect its right to benefit from the duty rate which applies to it, a notice informing about the change of name will be published in the *Official Journal of the European Union*.
- (146) To ensure a proper enforcement of the anti-dumping duties, the anti-dumping duty for all other companies should apply not only to the non-cooperating exporting producers in this investigation, but also to the producers which did not have exports to the Union during the investigation period.

8. FINAL PROVISIONS

- (147) In the interests of sound administration, the Commission will invite the interested parties to submit written comments and/or to request a hearing with the Commission and/or the Hearing Officer in trade proceedings within a fixed deadline.
- (148) The findings concerning the imposition of provisional duties are provisional and may be amended at the definitive stage of the investigation,

HAS ADOPTED THIS REGULATION:

Article 1

1. A provisional anti-dumping duty is imposed on imports of certain lightweight thermal paper weighing 65 gr/m² or less; in rolls of a width of 20 cm or more, a weight of the roll (including the paper) of 50 kg or more and a diameter of the roll (including the paper) of 40 cm or more ('jumbo rolls'); with or without a base coat on one or both sides; coated with a thermos-sensitive substance on one or both sides; and with or without a top coat, originating in the Republic of Korea, currently falling within CN codes ex 4809 90 00, ex 4811 90 00, ex 4816 90 00 and ex 4823 90 85 (TARIC codes: 4809 90 00 10, 4811 90 00 10, 4816 90 00 10, 4823 90 85 20).

⁽¹⁾ European Commission, Directorate-General for Trade, Directorate H, Rue de la Loi 170, 1040 Brussels, BELGIUM.

2. The rate of the provisional anti-dumping duty applicable to the net, free-at-Union-frontier price, before duty, of the product described in paragraph 1 shall be 12,1 %.
3. The release for free circulation in the Union of the product referred to in paragraph 1 shall be subject to the provision of a security deposit equivalent to the amount of the provisional duty.
4. Unless otherwise specified, the provisions in force concerning customs duties shall apply.

Article 2

1. Within 25 calendar days of the date of entry into force of this Regulation, interested parties may:
 - (a) request disclosure of the essential facts and considerations on the basis of which this Regulation was adopted;
 - (b) submit their written comments to the Commission; and
 - (c) request a hearing with the Commission and/or the Hearing Officer in trade proceedings.
2. Within 25 calendar days of the date of entry into force of this Regulation, the parties referred to in Article 21(4) of Regulation (EU) 2016/1036 may comment on the application of the provisional measures.

Article 3

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

Article 1 shall apply for a period of six months.

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

Done at Brussels, 16 November 2016.

For the Commission
The President
Jean-Claude JUNCKER

COMMISSION IMPLEMENTING REGULATION (EU) 2016/2006**of 16 November 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 November 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	84,6
	ZZ	84,6
0707 00 05	TR	142,1
	ZZ	142,1
0709 93 10	MA	98,6
	TR	136,9
	ZZ	117,8
0805 20 10	MA	74,2
	ZZ	74,2
0805 20 30, 0805 20 50, 0805 20 70, 0805 20 90	TR	66,5
	ZZ	66,5
0805 50 10	TR	87,5
	ZZ	87,5
0806 10 10	BR	301,7
	IN	166,9
	LB	214,0
	PE	324,2
	TR	139,3
	US	365,3
	ZA	345,1
	ZZ	265,2
	CL	174,1
	NZ	139,2
0808 10 80	ZA	129,4
	ZZ	147,6
0808 30 90	CN	104,3
	TR	168,6
	ZZ	136,5

⁽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'.

DECISIONS

COMMISSION DECISION (EU) 2016/2007

of 1 February 2016

State aid SA.36754-2014/C (ex 2014/NN and 2013/N) which Hungary has partly implemented and is planning to implement in favour of AUDI HUNGARIA MOTOR Ltd

(notified under document C(2016) 405)

(Only the Hungarian text is authentic)

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union (TFEU), and in particular the first subparagraph of 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 ⁽¹⁾ cited above

Whereas:

1. PROCEDURE

- (1) By electronic notification registered on 16 September 2013 (SANI No 8899), corrected by communication of 25 September 2013, the Hungarian authorities notified pursuant to paragraph 65 of the Guidelines on national regional aid for 2007-2013 ⁽²⁾ (hereinafter 'RAG 2007-13') their intention to grant regional aid for a large investment project to be carried out in Győr by AUDI HUNGARIA MOTOR Ltd (hereinafter 'AHM').
- (2) By letter dated 9 July 2014, the Commission informed Hungary of its decision to initiate the procedure laid down in Article 108(2) of the TFEU (hereinafter 'the opening decision') in respect of the regional aid to be implemented in favour of the investment project by AHM, in view of carrying out an in-depth assessment on the basis of the Communication from the Commission on the criteria for an in-depth assessment of regional aid to large investment projects ⁽³⁾ (hereinafter 'IDAC').
- (3) Hungary submitted comments and the necessary information for the in-depth assessment by letter of 9 October 2014 (2014/101245).
- (4) The Commission decision to initiate the formal investigation procedure was published in the *Official Journal of the European Union* on 21 November 2014 ⁽⁴⁾. Third parties were invited to submit their comments.
- (5) By letters dated 25 November 2014 (2014/119782), 28 July 2015 (2015/074087) and 24 August 2015 (2015/083208), the Commission requested further information, which was provided by Hungary by letters dated 13 February 2015 (2015/014716), 30 September 2015 (2015/096577) and 9 October 2015 (2015/100135).
- (6) The Commission received no comments from interested parties.

⁽¹⁾ OJ C 418, 21.11.2014, p. 25.

⁽²⁾ Guidelines on national regional aid for 2007-2013 (OJ C 54, 4.3.2006, p. 13). On 28 June 2013 the Commission adopted the Guidelines on Regional State Aid for 2014-2020, in which it extended the period of application of the RAG until 30 June 2014 (paragraph 186) (OJ C 209, 23.1.2013, p. 1).

⁽³⁾ OJ C 223, 16.9.2009, p. 3.

⁽⁴⁾ See footnote 1.

2. DETAILED DESCRIPTION OF THE MEASURE/AID

2.1. OBJECTIVE OF THE MEASURE

- (7) The Hungarian authorities intend to promote regional development by providing regional aid in the form of a direct grant and a corporate tax allowance to AHM for investments on AHM's location in Győr, situated in the region of Western Transdanubia (Nyugat-Dunántúl). Western Transdanubia is an assisted area eligible for regional aid pursuant to Article 107(3)(a) of the TFEU with a standard regional aid ceiling for large enterprises of 30 % gross grant equivalent (hereinafter 'GGE') in accordance with the Hungarian regional aid map 2007-2013 ⁽⁵⁾.

2.2. THE BENEFICIARY

- (8) The beneficiary of the aid is AHM, a wholly owned subsidiary of Audi Hungaria Services Zrt. Audi Hungaria Services Zrt. is a subsidiary of AUDI AG, which itself is a member of the Volkswagen Group (hereinafter 'VW Group'). The seat of the VW Group is in Wolfsburg, Germany, and its business is divided into two divisions, the Automotive Division and the Financial Service Division. The Automotive Division comprises two business areas: 'passenger cars' and 'commercial vehicles, power engineering'.
- (9) The Automotive division of VW Group is made up of twelve brands: Volkswagen, AUDI, ŠKODA, SEAT, Bentley, Porsche, Bugatti, Lamborghini, Ducati, Volkswagen Commercial vehicles, Scania and MAN. Each brand has its own character and operates as an independent entity on the market. The Volkswagen Group manufactures cars ranging from small cars to luxury and commercial vehicles.
- (10) In 2014, the Volkswagen Group operated a total of 118 factories worldwide ⁽⁶⁾ and delivered 10,1 million cars to customers, corresponding to a 12 % share of the passenger car market in the world. Its revenue reached EUR 202 billion and it counted 592 586 employees ⁽⁷⁾.
- (11) In 2014, the AUDI AG employed 79 483 people, delivered 1,7 million new vehicles to customers globally, and its revenue reached EUR 53 billion.
- (12) In 2014 AHM produced 135 232 cars, counted 11 274 employees and its revenue reached EUR 7,2 billion.

2.3. THE INVESTMENT PROJECT

- (13) AHM is producing engines and engine components in Győr. In addition, AHM was assembling cars on a platform-based approach before the notified investment project was completed at the end of 2014.
- (14) The investment project had three objectives: increased flexibility and diversification in the assembly operation, increased output of assembled cars, and deepened vertical integration of the car production process.
- (15) The first objective was to increase the flexibility of the assembly operation by replacing the earlier platform-based technology by the so-called module-based manufacturing process (Modularer Querbaukasten, hereinafter 'MQB') technology. Whereas the platform-based technology used in Győr allowed only the assembly of cars using the same platform (mainly of the same or similar length, frequently belonging only to one segment), the newly installed MQB technology allows the assembly of cars of different lengths and belonging to a range of segments (in this case the A and B segments and, theoretically, also the A0 segment, [...]) ^(*) on the same manufacturing line. The new technology was installed in a new plant, while the old platform-based assembly activity was completely phased out in 2014, and the old assembly line was dismantled and removed. The whole car production in Győr is based on the MQB technology now. The MQB technology is based on the principle of modularity (standardization of the components of different models, belonging to different market segments), allowing for major cost savings. In view of the required standardization, and due to the physical distance (approximately 1,5 km) between the former and the new place of assembly, the old assembly line could not be integrated into the new production process. The new plant allows for the manufacturing of several models of Audi passenger cars: the new generations of the models assembled already in the past in Győr (Audi TT Coupé,

⁽⁵⁾ State Aid N 487/2006 — Hungary Regional State aid map 2007-2013 (OJ C 256, 24.10.2006, p. 6) and prolonged by State aid No. SA.36879 (2013/N) — Hungary Prolongation of the Regional aid map 2007-2013 until 30 June 2014 (OJ C 69, 7.3.2014, p. 1).

⁽⁶⁾ 72 in Europe and 46 in countries in America, Asia and Africa.

⁽⁷⁾ Annual Report 2014 Volkswagen Group.

^(*) Business secret

TT Roadster and A3 Cabriolet) and a completely new member of the A3 model family with a four-door body (A3 Sedan). The successor models were subject to various changes regarding design and technical improvements. However, the continuity concerning quality, high cross-generational design standards and technical development, as well as maintenance of principal geometrical dimensions and equipment, resulted in an unchanged classification by POLK ⁽⁸⁾. The Audi TT Coupé and TT Roadster remain in segment B, while A3 Cabriolet remains in segment A and the new A3 Sedan is also to be listed in segment A.

- (16) The second objective of the project was to increase the overall technical capacity of the assembly operation in Győr from [60 000-110 000] to [130 000-180 000] passenger cars per year. It is envisaged to use on average [...] % of the new capacity for manufacturing cars of the A segment and [...] % for manufacturing cars of the B segment. The increased capacity allows both assembling the additional product (A3) and a higher number of successor models.
- (17) The third objective of the project aimed at deepening the vertical integration of the production activities in Győr. The earlier assembly operation is transformed into a fully integrated production plant for passenger cars: the investment into the new assembly plant is accompanied by the construction of a body shop, a paint shop and a press shop, which will serve predominantly the production of the above models. Only a small part (up to [...] %) of the output of the new body and paint shop is shipped, in the form of body shells, to other car manufacturing plants of the VW Group outside the EEA. About [...] % of the body parts manufactured in the new press shop are used to manufacture cars in Győr. The other [...] % of the body parts produced in Győr are delivered to other production sites of the VW Group. Initially, it was planned that these body parts would be used in the production of vehicles belonging to the POLK B-segment. However, after the opening decision Hungary informed the Commission that due to changes in demand the [...] % share of the output of the press shop could be used — in other production sites of the VW Group — for production of A0 to C cars.
- (18) Work on the investment project started in February 2011 and was completed on 31 December 2014.

2.4. COSTS OF THE INVESTMENT PROJECT

- (19) In the present case, the eligible expenditure consists of investments in buildings, machinery and equipment, but none in intangible assets. Used assets are excluded.
- (20) The total eligible investment costs of the investment project in nominal value amount to HUF 342 936 million (EUR 1 144 million ⁽⁹⁾). In present value ⁽¹⁰⁾ this amount is HUF 355 550 million (EUR 1 186 million). Table I provides a breakdown of the total eligible costs.

Table I

Eligible investment costs in nominal value (HUF million)

Years	2011	2012	2013	2014	Total
Building	[...]	[...]	[...]	[...]	[...]
Machinery/equipment	[...]	[...]	[...]	[...]	[...]
Intangible assets	—	—	—	—	0
TOTAL	[...]	[...]	[...]	[...]	342 936

⁽⁸⁾ R. L. Polk & Co. (also referred to as POLK) is a globally integrated organisation and a major market information and analytics provider in the automotive industry. On 16 July 2013, IHS Inc., the leading global source of critical information and analytics completed its acquisition of R. L. Polk & Co. With the addition of POLK, IHS Automotive provides expertise and predictive insight across the entire automotive value chain. POLK differentiates the car market along segments A000, A00, A0, A, B, C, D and E, where segment A000 means urban small cars and segment E is the ultra-luxury category. From segment A000 to E, the average price, size and the average engine performance of passenger cars gradually increase.

⁽⁹⁾ Figures expressed in EUR are given in this decision on the basis of an exchange rate of 299,67 HUF/EUR, applicable at the time of notification

⁽¹⁰⁾ The present values in this decision are calculated on the basis of a discounting rate of 5,62 percent, applicable at the time of notification. The base year for discounting purposes is 2013, i.e. the year of notification.

2.5. FINANCING OF THE INVESTMENT

- (21) The Hungarian authorities confirm that the beneficiary's own contribution, free of any public support, exceeds 25 % of the eligible costs.

2.6. LEGAL BASIS

- (22) The national legal basis for the financial support is the following:
- (a) a direct grant will be provided in application of the provisions of the aid scheme XR 47/2007 ⁽¹¹⁾ which is exempted from notification pursuant to Commission Regulation (EC) No 1628/2006 ⁽¹²⁾ (hereinafter 'RAG BER') below the individual notification threshold, and which is based on the 'Government Decree 8/2007 (I.24.) of the Minister of Economy and Transport on Investment Subsidies Granted by Individual Government Decision' (Kormány egyedi döntésével megítélhető támogatások nyújtásának szabályairól szóló 8/2007. (I. 24.) GKM rendelet);
 - (b) a tax allowance will be granted in application of the provisions of the scheme 'Development Tax Benefit' N 651/2006 ⁽¹³⁾ which was established by 'Act LXXXI of 1996 on Corporate Tax and Dividend Tax' and by 'Government Decree 206/2006 (X.16.) on Development Tax Allowance' (a társasági adóról és az osztalékadóról szóló 1996. évi LXXXI. törvény és a fejlesztési adókedvezményről szóló 206/2006. (X.16.) Kormányrendelet).

2.7. THE AID MEASURE

- (23) AHM applied for the direct grant on 5 March 2010, i.e. before the start of works on the investment project. On 26 March 2010, the Hungarian authorities confirmed that the investment project is in principle eligible for the aid applied for. The Hungarian authorities made an aid offer relating to the direct grant for the investment project (except for the press shop) on 8 September 2010, which was accepted by AHM on 1 October 2010. As regards the direct grant for the press shop the offer was made on 27 April 2011 and accepted on 4 May 2011.
- (24) The beneficiary applied for the tax allowance (for which a legal entitlement subject to Commission approval exists) on 29 October 2010 (and as regards the press shop on 27 January 2011), i.e. before the start of works of the investment.
- (25) The aid was awarded, subject to Commission approval, by a granting agreement signed on 6 July 2011 (and on 28 September 2011 for the press shop).
- (26) Hungary intends to grant aid of HUF 39 952 million (EUR 133,3 million) in present value. Since the planned total eligible expenditure in present value for the project is HUF 355 550 million (EUR 1 186 million), the proposed aid intensity is 11,24 % GGE.
- (27) The Hungarian authorities confirm that the aid for the project will not be combined with aid received for the same eligible costs from other local, regional, national or Union sources; and that neither the approved maximum aid amount in present value nor the approved aid intensity would be exceeded if the amount of eligible expenditure deviates from the estimated amount.
- (28) AHM received investment aid for earlier investment activities at Győr, which started before 2003 and in 2006.

⁽¹¹⁾ The summary information sheet on the scheme XR 47/2007 (A Kormány egyedi döntésével megítélhető támogatás) was published in OJ C 180, 2.8.2007, p. 6.

⁽¹²⁾ Commission Regulation (EC) No 1628/2006 of 24 October 2006 on the application of Articles 87 and 88 of the Treaty to national regional investment aid (OJ L 302, 1.11.2006, p. 29).

⁽¹³⁾ Commission decision of 10 May 2007 in case N 651/2006 concerning the Development tax benefit (amendment of N 504/2004) (OJ C 152, 6.7.2007, p. 2). and modified by Commission decision of 30 April 2008 (N 646/2007, SA.24441), of 17 June 2008 (N 735/2007, SA.24683), of 6 May 2010 (N 132/2010, SA.30728) and of 23 February 2011 (N 685/2009, SA.29994).

- (29) The notified aid is granted under the condition that the beneficiary maintains the investment in the assisted region for a minimum period of five years after its completion.

2.8. GENERAL PROVISIONS

- (30) The Hungarian authorities undertook to submit to the Commission:
- within two months of granting the aid, a copy of the relevant acts concerning this aid measure,
 - on a five-yearly basis, starting from the approval of the aid by the Commission, an intermediary report (including information on the aid amounts being paid, on the execution of the aid contract and on any other investment projects started at the same establishment/plant),
 - within six months after payment of the last tranche of the aid, based on the notified payment schedule, a detailed final report.

3. GROUNDS FOR INITIATING THE PROCEDURE

- (31) In the opening decision, the Commission noted that the aid project respects the standard compatibility criteria laid down in the RAG 2007-13, and that the proposed aid amount and aid intensity do not exceed the maximum allowable. Nonetheless, in view of the provisions of paragraph 68 of RAG 2007-13, the Commission was unable to confirm the compatibility of the aid with the internal market within the preliminary examination.
- (32) Paragraph 68 of RAG 2007-13 requires that the Commission opens the formal investigation and proceeds to an in-depth assessment of the incentive effect, the proportionality, as well as the positive and negative effects of the aid, where the beneficiary's market share in the relevant product and geographic market exceeds 25 % before or after the investment (hereinafter also 'paragraph 68(a)-test') or where the capacity created by the investment exceeds 5 % of a market that is in relative or absolute decline (hereinafter also 'paragraph 68(b)-test').
- (33) The Commission could not exclude in the preliminary examination that the market share threshold and the threshold relating to the capacity increase by the investment in an underperforming market were not exceeded in the relevant markets.
- (34) More specifically, the Commission raised doubts about Hungary's proposal to define the relevant product market as the combined segments A0, A and B of the POLK classification and left the precise definition of the relevant product market open, and considered all plausible alternative market definitions, including in particular the narrowest segmentation for which data is available ⁽¹⁴⁾. Since AHM will produce cars as well as body parts for cars belonging to A and B segments, and theoretically to A0 segment, the Commission considered that these individual segments as well as the combined segments should all be considered as relevant plausible product markets for this case.
- (35) With regard to a possible subdivision between Passenger Car Vehicles ('PCV') and Light Commercial Vehicles ('LCV'), the Commission took the view that PCVs and LCVs will not be considered separately.
- (36) The Commission was also unable to take a definite view on the definition of the geographic market. It could not conclude whether the geographic market is the European Economic Area (hereinafter 'EEA'), or, as suggested by Hungary, consists at least of the combined markets of all of Europe, North and South America and China.

⁽¹⁴⁾ This approach is in line with the Commission's State aid decisions SA.30340 (Fiat Powertrain Technologies), decision of 9 February 2011 (C(2011) 612) in the case of SA.30340 (OJ C 151, 21.5.2011, p. 5); SA. 32169 (Volkswagen Sachsen) decision of 13 July 2011 (C(2011) 4935) in the case of SA.32169 (OJ C 361, 10.12.2011, p. 17); N 767/07 (Ford Craiova) decision of 30 April 2008 (C(2008) 1613) in the case N 767/2007 (OJ C 238, 17.9.2008, p. 4); N 635/2008 (Fiat Sicily), decision of 29 April 2009 (C(2009) 3051) in the case N 635/2008 (OJ C 219, 12.9.2009, p. 3); and N 473/2008 (Ford Espana) decision of 17 June 2009 (C(2009) 4530) in the case N 473/2008 (OJ C 19, 26.1.2010, p. 5).

- (37) The analysis under paragraph 68 (a) of the RAG 2007-13 established that the applicable 25 % market share threshold is exceeded in the individual and combined A and B segments in the EEA in all the years concerned, and in the combined A0 to B segment as from 2011.
- (38) For the analysis under paragraph 68(b) the Commission established that the relevant product markets were underperforming in the EEA; therefore the Commission had to verify whether the capacities created by the project exceed 5 % of the size of the relevant markets.
- (39) The Commission considered that, for the application of the paragraph 68(b) test, the gross capacity increase approach is appropriate. The net capacity increase approach (i.e. deduction of existing capacity from the total planned capacity) would prevent the Commission from assessing the effect of State aid on markets in decline and suffering from structural overcapacities, whenever the assisted investment would not expand the existing capacity by more than 5 % of the size of the market. However, the paragraph 68(b) test has been introduced with the very objective of identifying those situations where the market is in decline and the size of the assisted investment has a major impact on competitors.
- (40) The analysis under paragraph 68(b) for the investment project (except the press shop) showed that the 5 % threshold would only be exceeded if the total production capacity would be used for the manufacturing of B segment cars. Based on the production estimates as indicated by Hungary, it is highly unlikely that the 5 % threshold will be exceeded for any of the plausible car market segmentations.
- (41) With regard to the capacity created for the production of body parts by the press shop, the analysis under paragraph 68(b) shows that the 5 % threshold might only be exceeded if the share of the B segment car production in Győr was significantly increased. Therefore, the Commission left the question open whether the press shop capacity exceeds 5 % of the size of the market measured using apparent consumption data of the product concerned before the investment.
- (42) As the Commission could not establish that the thresholds laid down in paragraph 68 (a) and (b) of the RAG 2007-13 were not exceeded, it decided to open the formal investigation procedure. It stated in particular that if the comments received in reply to the opening of the formal investigation would not allow the Commission to conclude without any doubt that the relevant thresholds are not exceeded, it would carry out an in-depth assessment of the investment project on the basis of the IDAC. Hungary and interested third parties were invited to submit their comments.

4. COMMENTS FROM INTERESTED PARTIES

- (43) No comments were submitted by interested third parties.

5. COMMENTS FROM HUNGARY

5.1. THE RELEVANT PRODUCT MARKET

- (44) Hungary maintains its position that the product market should be defined as the combined segments A0 to B (POLK classification).
- (45) The Hungarian authorities continue to be of the view that demand-side substitutability exists at the margins of each relevant individual passenger car segment as recognised by the Commission in its previous decisions ⁽¹⁵⁾. Since there is the possibility of a demand side chain of substitution of A0 and B segments across the A segment, the Hungarian authorities consider the affected segments as a combined segment group.
- (46) They also argue that it is the very purpose of the introduction of the MQB technology to increase supply-side flexibility, enabling the beneficiary to manufacture passenger cars for segments A0, A and B on the same MQB based production line, and allowing to shift production from one market to another; the effects of the aid can be felt on all of these markets.

⁽¹⁵⁾ See N 671/2008, Mercedes-Benz Hungary (overlap between the adjacent segments A and B), SA.32169 Volkswagen Sachsen, recital 60 ff and SA.32076 Ford Espana, recital 83 (demand-side chain substitutability of A0 and B segment cars and A segment cars).

5.2. THE RELEVANT GEOGRAPHIC MARKET

- (47) Hungary maintains its view that the relevant geographic market for the automotive industry is the global market, reiterating the arguments submitted in the notification phase:
- The trade flows and the import and export quotas ⁽¹⁶⁾ of the EEA have reached a level which indicates that vehicle trading takes place in a global market.
 - Concerning the trade barriers, there is a trend over recent years that regulatory barriers are falling, there are low trade barriers between many countries and the EEA, and there is a general movement toward a higher degree of harmonisation and integration.
 - Prices that move similarly across regions are an important indicator for the existence of integrated markets. The results of the analysis of price indices ⁽¹⁷⁾ based on pricing data for the EEA and the US, show that price indices for A and B segments move together and that the correlations between them are high. This allows the conclusion that at least the US and the EEA are part of the same geographic market.
 - The costs of establishing a global distribution network are so negligibly small that they do not constitute an obstacle to profitable global sales of vehicles.
 - As transport costs are decreasing, export and import levels of vehicles are continuously increasing. Every third car produced in the EU is exported and every fifth car sold in the EU is imported.
 - The Volkswagen Group is a global car manufacturer facing global competition with other original equipment manufacturers (hereinafter 'OEMs').
 - The ten largest OEMs have a significant number of manufacturing sites all over the world. The Volkswagen Group operates 100 production plants, which are located in Europe, North America, South America, Africa and Asia. A high number of these production locations manufacture vehicles belonging to the A and B segments. The subsidiaries of large OEMs also compete internally in respect of location decisions.
- (48) Therefore Hungary considers that the relevant geographic market is wider than the EEA, and includes at least all Europe, North and South America, and China.
- (49) In addition, Hungary emphasises that Győr is worldwide the only production site for the AUDI TT Coupé, AUDI TT Roadster, AUDI A3 Cabriolet and thus addresses global demand. The Győr production of the A3 Sedan is also distributed globally (except for those manufactured exclusively for the Chinese market in Foshan, China).

5.3. CAPACITY CONSIDERATIONS

- (50) The Hungarian authorities maintain that the net capacity increase approach should be used in the paragraph 68(b) test. The objective of the investment project is among others the extension of the existing plant in Győr. The vertical integration of the production process implies that the former capacity ([60 000-110 000] vehicles per year of the segments A and B) will now be handled by the newly constructed assembly plant and newly created production facilities.
- (51) Hungary argues that regardless of (i) whether a vehicle is only assembled in a given plant or manufactured within a vertically integrated production process or (ii) whether the new generation models might have different features, the end product remains in the same segment. Thus, the capacity of [60 000-110 000] vehicles per year that was produced (assembled) before the investment project will also be produced afterwards as a result of the investment project. In addition to this existing capacity, there will be a further production capacity of [60 000-80 000] vehicles.

⁽¹⁶⁾ Based on data provided in the Preliminary Economic Analysis of the Geographic Market, Dr James A. Langenfeld, Navigant Economics (2011), which shows that about 13 % of the A segment cars and more than 25 % of the B segment cars produced in the EEA between 2004 and 2010 were exported to other regions of the world. In terms of imports, more than 14 % of A segment cars and more than 18 % of B segment cars sold in the EEA were produced in other regions.

⁽¹⁷⁾ Preliminary Economic Analysis of the Geographic Market, Dr James A. Langenfeld, Navigant Economics (2011).

- (52) Thus, the net capacity increase would amount to a maximum of [60 000-80 000] vehicles per year in the same segment group (A to B) as before. This net capacity increase does not exceed the 5 % threshold laid down in paragraph 68(b) of the RAG 2007-13.
- (53) The Hungarian authorities considered that the [...] % share of the output of the press shop which will be used in B segment vehicles manufactured in other production sites of the VW Group will not lead to an increase of the overall production of B segment cars within the VW Group, as they will solely replace the externally purchased pressed body parts by self-produced ones. According to Hungary, the calculation method applied by the Commission in the opening decision would merely lead to a double counting of the production capacity created within the VW Group. In addition, as mentioned in recital 17 of this decision, due to changes of the beneficiary's plans these body parts would be used for the production of cars belonging to A0 to C segments.

5.4. APPLICATION OF THE IDAC

- (54) The Hungarian authorities consider that based on the above presented arguments concerning the correct definition of the relevant product and geographic market as well as the application of a net capacity increase approach, the thresholds laid down in paragraph 68 of the RAG 2007-13 are not exceeded and the aid could be authorised without proceeding to an in-depth assessment of the aid.

5.5. IN-DEPTH ASSESSMENT OF THE AID MEASURE

- (55) Nonetheless, Hungary provided information necessary to carry out an in-depth assessment.

5.5.1. Positive effects of the aid

- (56) Hungary considers that the investment contributes to the regional development of Győr and Western Transdanubia for the following reasons:

- The investment project creates 2 100 new direct jobs and keeps high-skilled employees in the Western Transdanubia region and will create further demand for such workforce. A significant part of the new employees will have a college or university degree.
- In addition, a large number of indirect jobs will be created in the region by suppliers and service providers. The employment multiplier is 2,5 indirect jobs at the supplier level ⁽¹⁸⁾ per direct job created, while the multiplier for jobs induced through the spending of the suppliers' employees is 2,2 jobs per direct job created. This results in the indirect creation of 9 870 jobs.
- The region will benefit from important knowledge spill-over effects: already before the investment the beneficiary has been actively cooperating with its university partners by carrying out 15 research and development (R & D) projects per year. After the completion of the investment, the yearly number of R & D projects is expected to double as AHM plans to extend its R & D cooperation with the University of Miskolc and the Óbuda University, and to deepen the existing relations with the Széchenyi István University in Győr and the Budapest Technical University ⁽¹⁹⁾.
- The beneficiary was a founding member of the Pannon Automotive Cluster (PANAC), which operates in the region and brings together automotive suppliers and other companies (advisory, financial, logistics etc.). The investment will trigger further positive cluster effects by attracting a large number of industrial suppliers and

⁽¹⁸⁾ Hungary based the assumption of the 2,5 multiplier on a study, assessing the contribution of the motor vehicle supplier sector to the economies of the United States and its 50 states. The study was prepared for the Motor and Equipment Manufacturers Association by Economics and Business Group, Center of Automotive Research, 2007.

⁽¹⁹⁾ Already existing are the AUDI HUNGARIA Vehicle Engineering Department Group with the Department of Internal Combustion Engines, Department of Material Science and Technology and the Department of Vehicle Manufacturing.

further investments. Clustering will contribute to the development of the Western Transdanubia region by achieving external economies of scale as a result of proximity, and creating a zone of innovation and infrastructural development.

- The beneficiary provides regular (in-house and external) training for its own employees, thus contributing to the know-how transfer into the region.

5.5.2. Appropriateness of the aid

- (57) The Hungarian authorities explained that prior to making their aid granting decision, in view of furthering regional development of the Western Transdanubian region, other policy measures, for instance, to develop further the public infrastructure or to improve the education system had been considered. In previous years, however, the following general policy measures had already been taken:
- the construction of the M1 motorway that links Budapest and the Austrian-Hungarian border by crossing the region of Western Transdanubia,
 - the establishment of a business park in Győr,
 - the reconstruction work on the Budapest-Győr-Hegyeshalom railway line,
 - certain developments in the field of education, such as granting a university rank to one of the local higher education institutions (Széchenyi István University).
- (58) Despite the above mentioned developments, the region is still underdeveloped in comparison with certain neighbouring regions (Burgenland and Bratislava) and the average of the European Union in terms of GDP per capita, employment, infrastructure and education.
- (59) It was concluded that State aid for this large investment project was a more efficient instrument to target and promote the development of the region. The Hungarian Authorities also point out that even if the aid can be regarded as a selective measure, it was provided on the basis of aid schemes that are also eligible to any other investors in Hungary if they fulfil the specific criteria set forth in the legislation.

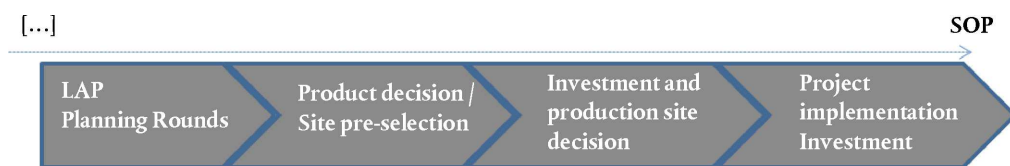
5.5.3. Incentive effect/Counter-factual scenario

- (60) Hungary offered information to prove that the aid falls under Scenario 2 of the IDAC, as it provides an incentive to the beneficiary to carry out the full investment in the Győr plant rather than locating it partly in [location 1 in a non-assisted area in the EEA] and partly in [location 2 in an assisted area in EEA eligible for regional aid pursuant to Article 107(3)(c) of the TFEU]. In particular, Hungary provided relevant, genuine and contemporary company documents which explain the multistage decision-making process concerning the location of the investment and provide financial data of the counterfactual scenario, both of which are described below.

The beneficiary's decision-making process

- (61) At VW Group, investment decisions are prepared in a multistep decision-making process in which decision-makers analyse various sites in a competitive comparison process. The major phases are: (1) Long-term Sales Planning (LAP) and planning rounds; (2) Product development, product decision and site pre-selection; and (3) Investment and location decision.
- (62) The decision-making process regarding the notified investment followed this general process. As it concerns an investment of the legally independent AUDI brand, the relevant decisions had to be taken at brand and to be confirmed at group level.

- (63) The introduction of new products within the VW Group follows the so called product creation process (PEP) which ranges from product planning to the start of production (SOP). The PEP consists of the four major phases described in the diagram below:



(1) *Long Term Sales Planning and planning rounds*

- (64) The point of departure is the Long Term Sales Planning phase in which forecasts of the market development and of potential demand as well as market fluctuations are analysed. The LAP schedules product developments for [...] years ahead and identifies which additional production capacities have to be built, or which adjustments to existing capacities are necessary. The LAP is mirrored by the annual planning rounds (PR), which the Group Supervisory Board concludes and which contain the financial framework of the scheduled investments.
- (65) At AUDI AG planning is based on the consolidated LAP of the VW Group. Already in the [20xx] planning round, the Group identified the need for increased production capacities for vehicles in the A0 and A segments. At this stage these additional capacities were not attributed to any specific site.
- (66) In view of the already high utilisation rates of installed production capacities in existing vehicle production plants, the LAP indicated that existing capacities would in the long term be insufficient to cover the needs arising from forecasted sales volume growth.

(2) *Product development, product decision and site pre-selection*

- (67) During this phase, several departments of AUDI, the VW Group and the production sites concerned work together to prepare both the product decision and the site pre-selection. The Group controlling department [...] takes the central and consolidating role during this phase.
- (68) The first step in this second phase is the product development process, which according to the beneficiary's internal rules starts at least [...] in advance of the envisaged start of production date. As the notified project includes four models, the decision on project feasibility was taken at different times with different planned start of production dates for these models ⁽²⁰⁾.
- (69) The product decision, i.e. the decision to produce a product proposed in the LAP, requires that the product development reaches a pre-defined feasibility target. The expected revenues generated by the new product are compared with the necessary production (including investment) costs. In order to determine the expected cost of production, first a particular location is set hypothetically as planning assumption (location premise). The location premise is employed in order to determine a first cost structure and framework for the project. It does not predetermine a specific production site, but serves as baseline for the assessment of expected production costs.
- (70) [...]; for an entirely new product [...] the location premise is usually based on performance indicators, i.e. the location with the best performance figures will be selected as first hypothesis. In practice, additional criteria, such as free capacities or suitable structures, are taken into consideration as well. While for the calculations regarding the product decision the product profitability is of utmost importance, the possible alternative locations are also being developed and analysed.

⁽²⁰⁾ The start of production of the A3 Cabriolet and the A3 Sedan was scheduled for November 2012 and March 2013, while the start of production of the TT Coupé and TT Roadster for February and September 2014, respectively.

- (71) At brand level, the VAP (Products Committee) and PSK (Product Strategy Committee) of AUDI AG took decisions confirming the project feasibility for all four models. The decisions identified as preliminary location premises [location 3 in a non-assisted area in the EEA] for the A3 Cabriolet and the body parts of A3 Sedan, and Győr for the A3 Sedan, TT Coupé and TT Roadster. These decisions were then confirmed at Group level by K-VAP/K-PSK.

(3) *Investment and location decision*

- (72) Once the product decision is taken, the next step is the selection of the most suitable location for the project (i.e. location decision). [Group Controlling] typically starts from the entirety of Volkswagen production sites and narrows this list down to those locations that seem suitable for the investment ⁽²¹⁾. As a result of this process, the investment and production scenarios for each realistic site are specified and summarised in a decision recommendation.
- (73) Hungary explained that in principle, when identifying suitable locations, the integration of additional capacities in only partly used facilities or the extension of existing sites is preferable to a greenfield investment since additional costs (for e.g. linking the new plant with public infrastructure, integration of the new site into the Group's logistics network etc.) are avoided. In the case at hand, the possibility of a greenfield investment in Eastern Europe was considered at an early stage of the decision-making process, but was not concretised and abandoned in the further course of the product decision process at the level of the AUDI brand ⁽²²⁾. Therefore, in the screening process for suitable locations, [Group Controlling] focused on existing sites of the group.
- (74) If the location assessment does not concern a greenfield investment, the two main criteria for identifying suitable locations are whether additional capacities can still be installed at an existing plant (i.e. 'room for enlargement or adjustment'), and whether the existing facilities at that site are compatible with the planned project (i.e. 'compatible structure').
- (75) In application of these criteria, [Group Controlling] identified four possible locations. Based on company documents provided by Hungary, the preliminary status of [Group Controlling] assessment of the four investment scenarios was discussed by AUDI and the Group in [...] 2009 ⁽²³⁾.

Table II

Investment options

Option	Description of the option
Option A ([location 2 in an assisted area in EEA eligible for regional aid pursuant to Article 107(3)(c) of the TFEU], [location 3 in a non-assisted area in the EEA], Győr)	Production of A3 Sedan in [location 2 in an assisted area in EEA eligible for regional aid pursuant to Article 107(3)(c) of the TFEU]; body construction and painting of Audi TT ⁽¹⁾ and A3 Cabriolet in [location 3 in a non-assisted area in the EEA] and delivery of painted bodies to Győr (HU) for assembly

⁽²¹⁾ Whilst during the product development and planning phase the site-preselection had been limited to AUDI locations, i.e. [location 3 in a non-assisted area in the EEA] and Győr, in this phase the location premises were challenged at group level and alternative scenarios were developed. Already three months before the product decision on the new A3 Sedan was taken in [...] 2010, [Group Controlling] started comparisons of different locations and various investment scenarios.

⁽²²⁾ In 2008, AUDI considered conceptually the idea of a greenfield investment in Eastern Europe, which was not developed in the further planning phases. In the decision recommendation prepared by the [Group Controlling] and AUDI and presented to the Group Management Meeting of [...] 2010, a greenfield investment was presented as a non-realistic option due to the investment framework and time constraints set by the envisaged production dates.

⁽²³⁾ Hungary submitted information showing all existing sites of the VW Group located in a region with 30 % or higher aid intensity (i.e. the same as or higher aid intensity than the one of Győr). However, none of these locations could be considered as those did not fulfil the criteria 'room for enlargement or adjustment' and/or of 'compatible structure'. None of these sites had sufficient free space to accommodate the investment project.

Option	Description of the option
Option B ([location 2 in an assisted area in EEA eligible for regional aid pursuant to Article 107(3)(c) of the TFEU], [location 1 in a non-assisted area in the EEA], [location 3 in a non-assisted area in the EEA])	Production of A3 Sedan in [location 2 in an assisted area in EEA eligible for regional aid pursuant to Article 107(3)(c) of the TFEU]; Production of A3 Cabriolet in [location 1 in a non-assisted area in the EEA] and production of Audi TT in [location 3 in a non-assisted area in the EEA]
Option C ([location 2 in an assisted area in EEA eligible for regional aid pursuant to Article 107(3)(c) of the TFEU], [location 1 in a non-assisted area in the EEA])	Production of A3 Sedan and Audi TT in [location 2 in an assisted area in EEA eligible for regional aid pursuant to Article 107(3)(c) of the TFEU]; Production of A3 Cabriolet in [location 1 in a non-assisted area in the EEA]
Option D (Győr)	Production of A3 Sedan, A3 Cabriolet and Audi TT in Győr (HU)
(1) The product decisions on AUDI TT Coupé and TT Roadster were taken on [...] 2011 at the Brand level and confirmed by the Group on [...] 2011. Before that, in all company documents, it was referred to a TT-successor model.	

- (76) The company documents include and compare for these Options the location-specific production costs which consist of the investment costs and the production costs which will be incurred over the reference period.
- (77) In view of these production costs — and taking into account the fact that [location 3 in a non-assisted area in the EEA] had reached its limits in terms of production capacity, and that any additional production would have required major structural expenditure — the Group Management Board decided on [...] 2010, as documented by the submitted minutes of the meeting, to exclude Options A and B from the further planning, and instructed AUDI (i) to carry out further planning for vehicle production at the Győr site; (ii) to prepare decision recommendations for the Supervisory Board of VW and of AUDI as well as for the K-VAI ⁽²⁴⁾ (iii) and to take the necessary steps to obtain State aid.
- (78) Based on a recommendation by [Group Controlling] comparing updated calculations for Options C and D and taking into account the possible regional State aid from the Hungarian state, K-VAI decided on 14 December 2010 to locate the investment in Győr (i.e. Option D). Hungary provided evidence of the considered counterfactual analysis which is described in Annex 1 to this decision, but not published for business secret reasons, and submitted a copy of the minutes of the meeting.

5.5.4. Proportionality of the aid

- (79) To prove proportionality of the aid, Hungary based itself on the calculations used for the incentive effect.
- (80) The final calculation used by Hungary to explain the counterfactual scenario and to demonstrate incentive effect show that compared to Option C, Option D has a cost disadvantage of EUR 143,3 million (present value at the time of the beneficiary's investment and location decision, i.e. present value in 2010).
- (81) This cost disadvantage amounts to EUR 153,8 million in 2013 prices ⁽²⁵⁾, which is the year applicable for the calculation of the aid, and therefore also for the proportionality.

⁽²⁴⁾ At group level, the Board of Management takes decisions about investment projects and their location via the K-VAI (Investment Board Committee) on the basis of the analysis prepared by [Group Controlling].

⁽²⁵⁾ It is necessary to determine the value of the disadvantage in 2013 prices in order to be able to compare it with the possible State aid (which is established in 2013 prices), and by that to determine the net disadvantage of Győr. For this calculation it seems appropriate to use the discount rate applicable in the EURO zone at the moment the investment decision was taken (December 2010, i.e. 2,45 %), as the investment decision was taken in EUR terms — taking into account estimated costs in EUR — by a company of which the headquarters is located in the EURO zone.

- (82) Despite the maximum allowable aid of EUR 133,3 million (in present value of 2013) ⁽²⁶⁾, there is still a cost disadvantage of EUR 20,5 million for Option D.
- (83) Hungary considers that the aid is proportionate as it does not fully compensate the location disadvantage.

5.5.5. Negative effects of the aid on competition and trade

- (84) Hungary emphasises that the regional aid serves solely to compensate for the additional costs of Option D (expansion of the production site in Győr) relative to Option C (production in the existing plants of [location 2 in an assisted area in EEA eligible for regional aid pursuant to Article 107(3)(c) of the TFEU] and [location 1 in a non-assisted area in the EEA]). The aid is proportionate and does not have any effect on competition, as the investment project, and its resulting effects on competition and trade, would have happened in any event.

5.6. HUNGARY'S COMMENTS REGARDING THE LEGALITY OF THE MEASURE

- (85) The Hungarian authorities hold on to their opinion that the aid cannot be classified as unlawful aid within the meaning of Article 1 (f) of Council Regulation (EU) 2015/1589 ⁽²⁷⁾ (hereinafter 'the Procedural Regulation'). In this context, the Hungarian authorities explain the following:
- (86) Article 108(3) of the TFEU obliges Member States to notify planned aid measures to the Commission. By adopting the Block Exemption Regulation for regional investment aid (hereafter 'RAG BER') ⁽²⁸⁾, the Commission had limited this obligation to measures exceeding the notification threshold. The Hungarian authorities have interpreted this provision as meaning that aid measures, below the notification threshold and under an existing scheme can in all cases be granted and put into effect within the competence of the Member States.
- (87) Hungary further argues that this interpretation is also in line with the provisions of the IDAC, which in their view confirms that Member States retain the possibility to grant aid up to the level which corresponds to the maximum allowable amount that an investment with eligible expenditure of EUR 100 million can receive under the applicable rules, even when the Commission adopted a negative decision ⁽²⁹⁾.
- (88) Moreover this approach and the interpretation have never been questioned by the Commission both within the present notification procedure and in the previous notifications carried out by the Hungarian authorities ⁽³⁰⁾ and further it seems to Hungary that the Commission interpreted the notification obligation by Member States in a similar way like the Hungarian authorities in the past ⁽³¹⁾.

⁽²⁶⁾ This aid amount is based on the planned eligible investment cost of EUR 1 186 million. Hungary explained during the course of implementation and approval, there were further changes to the planned costs and the investment agreement was finally signed taking into account the planned eligible costs of EUR 1 186 million in present value.

⁽²⁷⁾ Council Regulation (EU) 2015/1589 of 13 July 2015 laying down detailed rules for the application of Article 108 of the Treaty on the Functioning of the European Union (OJ L 248, 24.9.2015, p. 9). Of course, at the time that Hungary submitted its comments, the relevant provision was Article 1 (f) of 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).

⁽²⁸⁾ See footnote 12.

⁽²⁹⁾ Footnote 1 to the recital 56 of the IDAC

⁽³⁰⁾ The practice followed by the Hungarian authorities is also in line with the Commission's previous case-practice, see point (28) and point (110) of the decision on the IBIDEN where the aid had already been granted (prior the notification to Commission) to IBIDEN HU on the basis of the existing regional aid schemes up to the individual notification threshold, and only the remaining aid amount was subject to Commission approval. In the IBIDEN case, the aid was granted and partially put into effect for IBIDEN on 25 February and 3 March 2005. The national authorities notified the grant measure to the Commission on 1 April 2005 and 30 August 2006. In that procedure the Commission concluded that the aid subject to the notification is not compatible with the common market, however, the Commission through its decision confirmed that Hungarian authorities were acting in accordance with the regulations when it partially paid out the grant.

⁽³¹⁾ Only the part above the notification threshold is subject to Commission's approval as mentioned in the article on 'State aid to IBIDEN Hungary' by Evelina TUMASONYTÉ, Živilė DIDŽIOKAITĖ and András TARI in the Competition Policy Newsletter, 2008 Number 2, p. 69.

- (89) In addition, the Hungarian authorities also highlight that following the established jurisprudence of the European Courts ⁽³²⁾ Member States who comply with their notification obligation under Article 108(3) of the TFEU cannot be in a more detrimental position compared to those who are in breach of the duty to notify as this would be adverse to the basic aim of Article 108(3) of the TFEU. Hence, an interpretation which does not allow Member States to grant the aid up to the individual notification threshold would also contradict the jurisprudence with a far reaching negative consequence both on Member States and beneficiaries.
- (90) In line with the above provisions the Hungarian authorities decided to put forward the exempted aid in favour of AHM based on an existing aid scheme (XR 47/2011). However, the granted amount did not exceed the applicable notification threshold, whereas the part of the aid exceeding the threshold was granted conditional on the Commission's final decision. The Hungarian authorities confirm that no aid above the notification threshold was paid out, nor will be paid out without Commission approval.
- (91) The Hungarian authorities therefore consider that they have fully complied with their obligation to notify to the Commission the aid amount above the notification threshold; hence the aid in favour of AHM does not constitute 'unlawful aid'.

6. ASSESSMENT OF THE MEASURE/AID

6.1. EXISTENCE OF AID

- (92) The financial support in the form of a direct grant and a corporate tax allowance was/will be given by the Hungarian authorities and is financed through the general budget of the state. The support is thus given by a Member State and through State resources within the meaning of Article 107(1) of the TFEU.
- (93) As the aid is granted to a single company, AHM, the measure is selective.
- (94) The financial support in the form of a corporate tax allowance relieves the company from costs it normally would have had to bear itself. The financial support in the form of a direct grant provides to the company an advantage that it would not have under normal market conditions. Therefore, the company benefits from an economic advantage over its competitors.
- (95) The financial support was/will be given for an investment in the car sector, which is subject to intensive trade between Member States, and which is partially replacing supplies of intermediate goods from other Member States. Therefore, the measure affects trade between Member States.
- (96) The favouring of AHM and its production means that competition is distorted or threatened to be distorted.
- (97) Consequently, the Commission considers that the envisaged measure constitutes State aid within the meaning of Article 107(1) of the TFEU.

6.2. LEGALITY OF THE AID MEASURE

- (98) The Commission notes that the Hungarian authorities notified the entire aid package to AHM but only the amount exceeding the notification threshold was granted conditional on Commission approval whereas the amount below the notification threshold had been paid out on the basis of a block-exempted aid scheme. The Commission considers that this approach is in breach of Article 108(3) of the TFEU and the aid is therefore unlawful, as defined in Article 1(f) of the Procedural Regulation.

⁽³²⁾ See Judgement C-301/87 *French Republic v Commission* (Boussac) point 33 [ECR 1990, I-307. p.].

- (99) The Commission disagrees with the arguments put forward by the Hungarian authorities regarding the interpretation of the RAG BER. According to Article 7(e) of the RAG BER regional aid remains subject to the notification obligation under Article 108(3) of the TFEU, if the total amount of aid **from all sources** exceeds 75 % of the maximum amount of aid an investment with eligible expenditure of EUR 100 million could receive, applying the standard aid ceiling in force for large undertakings in the approved regional aid map on the date the aid is to be granted. This provision, which corresponds to paragraph 64 of the RAG 2007-13, was taken over in Article 6(2) of the Commission Regulation (EC) No 800/2008 ⁽³³⁾ ('GBER').
- (100) The aid schemes used by the Hungarian authorities for the aid package to AHM refer to Article 7(e) of the RAG BER and to paragraph 64 of the RAG 2007-13.
- (101) The eligible expenditure of the investment exceeds EUR 100 million, and the combined aid amount (grant and tax allowance) is above the notification threshold. For the calculation of the notification threshold aid from all sources needs to be taken into account. This position has been confirmed by the Commission in a previous case (SA.32036 — *Mondi Swiecie* case ⁽³⁴⁾). Once this threshold is exceeded, the aid package, in its entirety ⁽³⁵⁾, falls outside the RAG BER and needs to be notified to the Commission that will assess its compatibility on the basis of the applicable guidelines. In this context, the Commission assessed the aid package notified by the Hungarian authorities on the basis of the general compatibility criteria of RAG 2007-13 and concluded in its opening decision that while those criteria have been respected, it had doubts as regards the respect of the market thresholds provided for in paragraph 68 of the RAG 2007-13. Thus, it would be contrary to the applicable rules to apply the compatibility conditions of the RAG 2007-13 to the notified aid package but to consider that the amount below the notification threshold can be legally granted on the basis of the existing schemes and the provisions of the RAG BER before the Commission takes a decision on the notified aid measure.
- (102) Concerning the footnote to paragraph 56 of the IDAC, the Commission has previously rejected the argument that its authority to examine the compatibility of an aid measure under IDAC is limited to the portion of the requested aid amount which is above the notification threshold ⁽³⁶⁾. The Commission must recall its obligation to verify, on the basis of a more detailed assessment, the incentive effect and proportionality of aid measures to which that in-depth assessment is applicable, i.e. notifiable regional aid granted to large investment projects that meet the relevant conditions laid down in the RAG 2007-13.
- (103) As regards the possibility to grant aid up to the notification threshold laid down in Article 6(2) of the GBER, it is important to note that the wording of the footnote to paragraph 56 of the IDAC merely states that the Member State retains the possibility to grant aid up to the notification threshold. The logic of the architecture of the applicable rules (RAG BER, RAG 2007-13, IDAC) is that when the aid amount from all sources is limited to the notification threshold, the Member State does not need to submit the project for a detailed assessment by the Commission and can implement the aid measure in line with the conditions laid down in the block exemption Regulation. However, as soon as the Member State decides to grant an aid package that exceeds the notification threshold, the entire amount is subject to the notification obligation and its compatibility will be assessed on the basis of the applicable guidelines. This is exactly what is expressed also in Recital 7 of the GBER when it states that 'State aid within the meaning of Article 87(1) of the Treaty not covered by this Regulation should remain subject to the notification requirement of Article 88(3) of the Treaty. This Regulation should be without prejudice to the possibility for Member States to notify aid the objectives of which correspond to objectives covered by this Regulation. Such aid will be assessed by the Commission in particular on the basis of the conditions set out in this Regulation and in accordance with the criteria laid down in specific guidelines or frameworks adopted by the Commission wherever the aid measure at stake falls within the scope of application of such specific instrument'.

⁽³³⁾ Commission Regulation (EC) No 800/2008 of 6 August 2008 declaring certain categories of aid compatible with the common market in application of Articles 87 and 88 of the Treaty (General block exemption Regulation) (OJ L 214, 9.8.2008, p. 3).

⁽³⁴⁾ SA.32063 (2010/N) — LIP — *Mondi Swiecie S.A.* — Poland (OJ C 305, 10.10.2012, p. 8).

⁽³⁵⁾ As stated in paragraph 68 of the *Mondi* Decision: 'Therefore, the aid granted [...] should be notified in its entirety to the Commission if it exceeds the notification threshold'.

⁽³⁶⁾ SA.32009 (2011/C) — State aid granted to BMW AG for a large investment project in Leipzig

- (104) Before the Commission takes a decision on the notified aid, the Member State can withdraw the notification and grant the aid on the basis of the applicable block exemption regulation, if the aid amount is reduced to or below the notification threshold, and all provisions of the applied block exemption are respected.
- (105) The Hungarian authorities invoke earlier Commission decisional practice ⁽³⁷⁾. The Commission considers that the circumstances in the quoted *Ibiden* case are not comparable to the present case, as it was taken on the basis of a different legal basis (RAG 2000-2006) and MSF 2002 ⁽³⁸⁾, and not in application of the RAG BER and the RAG 2007-13. In any event, the Commission developed a different decisional practise over the last years (e.g. in the *Mondi* and *BMW* decisions mentioned above).
- (106) Finally, the above conclusions are not altered by the argument that the case-law established that Member States who comply with their notification obligation under Article 108(3) of the TFEU cannot be placed in a more detrimental position than those who had breached the obligation to notify. The Commission notes that in the quoted judgment ⁽³⁹⁾, this argument was made with regard to the compatibility assessment of an aid measure which was implemented in breach of the obligations under Article 108(3) of the TFEU. The court concluded that an additional requirement to take into consideration the real effects of the aid already put into effect would incentivise Member States to notify investment projects to the Commission only once they had been completed and would deprive the prohibition under Article 108(3) of the TFEU of its effectiveness. Therefore, the Commission considers that the case law invoked by the Hungarian authorities is not relevant as regards the notification obligation under Article 108(3) of the TFEU.
- (107) In view of the above, the Commission concludes that the aid granted to AHM is unlawful. This conclusion does not however influence the assessment of its compatibility with the internal market.

6.3. LEGAL BASIS FOR THE ASSESSMENT

- (108) The objective of the aid is to promote regional development. As the granting agreement for the investment without the press shop was signed on 6 July 2011 (for the press shop on 26 September 2011), only subject to Commission approval, the Commission considers that the aid was awarded before July 2014 and thus has to be assessed — pursuant to paragraph 188 of the RAG 2014-20 — on the basis of the RAG 2007-13, and in particular its provisions on regional investment aid for large investment projects laid down in paragraph 68. If the comments received in reply to the opening of the formal investigation within the prescribed period do not allow the Commission to conclude without any doubt in the formal investigation that the thresholds laid down in paragraph 68(a) and paragraph 68(b) of the RAG 2007-13 are not exceeded, it is required to proceed to an in-depth assessment based on the criteria laid down in the IDAC.
- (109) The Commission needs to conduct its assessment in three steps:
- first, it has to confirm that the measure is compatible with the general provisions of the RAG 2007-13,
 - second, it has to verify whether or not it can exclude without doubt that the tests under paragraph 68(a) and (b) of the RAG 2007-13 do not require an in-depth assessment,
 - third, depending on the outcome of the assessment in the second step, it may have to conduct an in-depth assessment ⁽⁴⁰⁾.

⁽³⁷⁾ Commission Decision 2008/830/EC of 30 April 2008 on State aid C 21/07 (ex N 578/06) which Hungary is planning to implement in favour of *IBIDEN Hungary Gyártó Kft.* (OJ L 295, 4.11.2008, p. 34).

⁽³⁸⁾ Communication from the Commission: Multisectoral framework on regional aid for large investment projects (OJ C 70, 19.3.2002, p. 8).

⁽³⁹⁾ Judgment C-301/87 *French Republic v Commission* (Boussac), ECR 1990, I-307.

⁽⁴⁰⁾ Of course, in any event and thus irrespective of the thresholds of paragraph 68 of the RAG 2007-13, the Commission has to balance the positive and negative effects of the aid before concluding on its compatibility with the internal market. See the General Court's judgment in case T-304/08 *Smurfit Kappa Group v Commission* EU:T:2012:351, para. 94.

6.4. COMPATIBILITY OF THE MEASURE WITH STANDARD COMPATIBILITY CRITERIA OF THE RAG 2007-13

(110) The Commission established already in paragraph 54 of the opening decision that the aid meets the general compatibility criteria laid down in the RAG 2007-13. The formal investigation did not reveal any elements that would put into question this assessment. The Commission notes in particular the following:

- The aid is granted in application of a block-exempted scheme (grant on the basis of the aid scheme XR 47/2007) and of an approved aid scheme (tax allowance on the basis of the aid scheme N 651/2006). Both schemes respect the standard compatibility criteria of the RAG 2007-13.
- The project to be supported is situated in Győr, in the region of Western Transdanubia (Nyugat-Dunántúl), an area eligible for regional investment aid, as defined by the applicable Hungarian regional State aid map.
- There is no indication that the VW Group in general, or AHM in particular, would be a firm in difficulty within the meaning of the Community guidelines on State aid for rescuing and restructuring firms in difficulty ⁽⁴¹⁾. Therefore, the aid beneficiary is eligible for regional aid in accordance with paragraph 9 of the RAG 2007-13.
- The project comprises an initial investment within the meaning of paragraph 34 of the RAG 2007-13. Initial investment is defined in paragraph 34 of the RAG 2007-13 as an investment in material and immaterial assets relating to (i) the setting up of a new establishment, (ii) the extension of an existing establishment, (iii) diversification of the output into new additional products and (iv) a fundamental change in the overall production process of an existing establishment. The investment project concerns an investment in an existing establishment and involves elements of (1) fundamental change of the production process (replacement of the platform-based assembly technology by the MQB technology), combined with increased standardisation and vertical integration of the production process (fully integrated car manufacturing plant, instead of an assembly plant), (2) diversification of the output of the establishment (new A3 Sedan, body parts from the press shop), as well as (3) the extension of the assembly capacities.
- In conformity with paragraph 40 of the RAG 2007-13, AHM is obliged to maintain the investment in the region for a minimum of five years after completion of the project.
- The beneficiary provides, in conformity with paragraph 39 of the RAG 2007-13, a financial contribution of at least 25 % of the eligible costs in a form which is free of any public support.
- The formal requirements in respect of the incentive effect, laid down in paragraph 38 of the RAG 2007-13, are respected.
- The costs eligible for investment aid (see Table II above) are defined in line with the RAG 2007-13, and the rules on cumulation are respected.
- Earlier investments fall outside the 3-year period defining a single investment project.
- The planned total eligible expenditure in present value for the project is HUF 355 550 million (EUR 1 186 million) discounted to the date of notification. According to the scaling down mechanism laid down in point 67 of the RAG 2007-13, this leads to a maximum allowable aid intensity of 11,24 % GGE (Gross Grant Equivalent) for the project.
- Since the intensity of the proposed aid (HUF 39 952 million; EUR 133,3 million in present value; 11,24 % aid intensity) does not exceed the maximum allowable aid intensity, the proposed aid intensity for the project complies with the RAG 2007-13. Hungary confirmed that no other aid than the notified aid will be granted to support the investment project.

(111) In view of these considerations, the Commission considers that the standard compatibility criteria of the RAG are met.

⁽⁴¹⁾ OJ C 244, 1.10.2004, p. 2.

6.5. APPLICATION OF THE TESTS LAID DOWN IN THE PROVISIONS OF PARAGRAPH 68 OF THE RAG 2007-13

- (112) The Commission stated in recital 105 of the opening decision that if the comments received in reply to the opening of the formal investigation do not allow the Commission to conclude without any doubt that the thresholds laid down in the paragraph 68(a) and (b) tests are not exceeded, the Commission will carry out an in-depth assessment of the investment project on the basis of the IDAC. The Commission has to assess whether the comments received allow this conclusion.

— PRODUCT CONCERNED

- (113) In paragraph 65 of its opening decision the Commission considered that for the purposes of paragraph 68 of the RAG 2007-13, the products concerned by the investment project are passenger cars belonging to the market segments A0, A, and B in accordance with the segmentation by POLK.

— RELEVANT PRODUCT MARKET

- (114) In recital 80 of the opening decision the Commission left the precise definition of the relevant product market open and considered all plausible alternative market definitions, including in particular the narrowest segmentation for which data is available. Since AHM will produce cars as well as body parts for cars belonging to A and B segments, and since it could produce, theoretically, for cars belonging to segment A0, the Commission considered that these individual segments, as well as the combined segment A0 to B and A to B should all be considered as relevant plausible product markets for this case.
- (115) In its comments to the opening decision (as described in recitals 44 to 46 of this decision), Hungary maintained its position already reflected in the opening decision, without adding any comments or information not yet presented in the preliminary examination phase. In particular, Hungary maintained its view that the relevant product market should be defined as a combined segment group of the vehicles belonging to the A0, A, and B segments and that the geographic market should be defined as including at least the combined market of all Europe, North and South America, and China (and not only the EEA market).
- (116) As to the **product market**, the Commission considers the following: the decision to carry out an in-depth assessment does not prejudice the outcome of the resulting in-depth compatibility assessment. However, before approving the aid, the Commission has to be satisfied that the positive contribution resulting from the aid measure will compensate in any event its negative effects on trade and competition. Therefore, for the purpose of deciding on whether an in-depth assessment on the compatibility of an aid measure is to be carried out or not, the product market definition should be as narrow as possible, taking account of the specific characteristics of the cars to be manufactured.
- (117) The practice of using the narrowest market definition based on individual segments in the car industry is well founded in comparable decisions, including final decisions ⁽⁴²⁾.
- (118) This case practice is founded in competition relevant economic considerations as it is based on the view that competitors in all market segments, including the smallest possible segment, deserve protection from players with market dominance.
- (119) More specifically, this approach is based on the theory that demand side substitutability between two products exists if they are considered to be substitutes by consumers in view of their characteristics, price and intended use. Through its practice of examining market shares also in the smallest possible car market segment for which

⁽⁴²⁾ See for example, the final Commission decision in the Porsche case (adopted in July 2014) when it left open the question of market definition and applied the traditional approach of examining all 'plausible market definition defining individual car segments (including the narrowest segmentation for which data are available)'. See recital 34 of this decision, citing a range of cases, including Fiat Powertrain technologies, SA.30340: Decision of 9 February 2011 (C(2011) 612) (OJ C 151, 21.5.2011, p. 5); SA.32169 Volkswagen Sachsen: Decision of 13 July 2011 (C(2011) 4935) (OJ C 361, 10.12.2011, p. 17).

information is available, the Commission follows exactly this logic: i.e. it considers that substitutability in view of price, characteristics and intended use is the strongest between products belonging to the same segment. In this sense, the application of the narrowest possible market segment as one plausible market reflects the logic of point 28 of the Horizontal Merger Guidelines ⁽⁴³⁾ which states that 'Products may be differentiated within a relevant market such that some products are closer substitutes than others. The higher the degree of substitutability between the merging firms' products, the more likely it is that the merging firms will raise prices significantly. [...] The merging firms' incentive to raise prices is more likely to be constrained when rival firms produce close substitutes to the products of the merging firms than when they offer less close substitutes (...)'

- (120) This is also why conventional cars are traditionally divided into segments, and why the automotive industry assigns models to the various well known segments. This is the consideration that has driven the Commission's practice in defining the relevant market in automotive cases also in terms of the individual segments and this is the reason why Hungary presented the relevant market related arguments in this as well as in other cases in the past in terms of segments.
- (121) Hungary did not submit any additional arguments which would contradict this view. In addition, the Commission did not receive any information from third parties during the formal investigation that would allow a better understanding of the segmentation of the market. The Commission therefore maintains its approach to leave open the exact definition of the relevant product market and to apply an approach of plausible alternative market definitions, defining individual car segments (including the narrowest segmentation for which data are available). Thus, the Commission continues to consider that the individual segments of A0, A and B, as well as the combined segment A0 to B and A to B should all be considered as relevant plausible product markets for this case ⁽⁴⁴⁾.

— GEOGRAPHIC MARKET

- (122) As to the **geographic market** the Commission maintains its initial assessment in the opening decision (see recital 87 of the opening decision) that the relevant market is the EEA or a larger market; the Commission cannot exclude that the geographic market is limited to the EEA market.
- (123) The Commission notes that Hungary maintains the arguments brought forward already in the preliminary examination, but did not submit further elements or information during the formal investigation (see recital 47 of this decision). The Commission finds that these arguments are insufficient to diffuse the concern that the geographic market could be limited to the EEA market. In particular, the Commission considers the following:

Global competition

- (124) The fact that large car producers are internationally active and in global competition is not a sufficient proof that the individual markets are integrated and constitute a single worldwide market (or a combined market of all Europe, North and South America, and China). The same applies to the argument that the ten largest OEMs have manufacturing sites and distribution systems all over the world. In fact, the Commission considers that exchange rate instability could be named as one factor that has led OEMs to build production plants closer to regional demand; and the same may hold for policies of effective protection (high tariffs on imports of final producers, low tariffs on intermediate products, giving an incentive for local production/assembly). A third argument for the existence of globalised production structures, despite not integrated markets, is the fact that certain states allow imports only if joint ventures for local production are created in parallel. The global presence of major players as manufacturers is therefore not by itself an indication of the existence of a global (or wider than the EEA) market. Similarly, the existence of distribution systems that extend across the world does not constitute proof that the market is global (or wider than the EEA) from a competition perspective. The fact that AUDI AG/VW Group intends to serve the world market for three of the four car models, and to serve the world market excluding China with the A3 Sedan models from only one site, is also not sufficient to support a conclusion that the geographic market is wider than the EEA.

⁽⁴³⁾ Guidelines on the assessment of horizontal mergers under the Council Regulation on the control of concentrations between undertakings (OJ C 31, 5.2.2004, p. 5).

⁽⁴⁴⁾ As recital 140 of this decision shows, the issue of the segmentation does not have practical implications, as it does not affect the outcome of the 68(a) test.

Trade flows

- (125) Also the argument that a high level of trade flows, e.g. the fact that about 13 % of A segment cars and more than 25 % of B segment cars of the EEA production are exported to other regions of the world, is insufficient to prove the existence of a global (or here wider than the EEA) market. The Commission considers that, whereas trade flows can give insight into the degree of integration of different geographic areas by looking at the importance of imports and exports relative to local production and consumption levels, the existence of trade flows itself is not a sufficient proof to consider that an integrated geographic market exists. In fact, there may be shipments between the EEA and other regions, but that does not mean that markets are integrated in the sense that market conditions (e.g. prices) in one market influence market conditions in the other. This holds in particular where the observed shipments relate primarily to shipments by the manufacturers themselves, as opposed to shipments by independent importers and exporters engaging in price arbitrage. Pricing may be entirely market specific (e.g. high in one market, low in another), and not aligned to the conditions to an alleged integrated market. Trade flow analysis does not address the principal question in market definition, namely whether imports or exports could defeat a price increase in the local market. The Commission notes that Hungary did not submit further empirical material that would prove the existence of correlated price movements, or the reactivity of net imports to changes in relative prices.

Trade barriers

- (126) The Commission acknowledges that the importance of trade barriers is diminishing over time. Nonetheless, the Commission is convinced that one of the main factors for overseas production, and relocation decisions of EU car manufacturers are market access barriers in the target markets. High tariff barriers still seriously hamper access for EU exporters, notably in Asia. Non-tariff barriers, including burdensome and discriminatory certification requirements, additional testing requirements excise taxes etc., have a strong impact on EU vehicle exports to the South-East Asian, Chinese, and South American markets. The Commission admits that the United States is by far the most important destination for the EU overall car exports. However, the EU and the US have strongly divergent approaches to regulation and market surveillance. Such regulatory divergence is probably even today the most significant access barrier for EU automotive exports to the US.
- (127) The Commission has further taken due note of the arguments put forward in relation to the decreasing transport costs. The Commission is not fully convinced in this respect. The future developments with regard to decreasing transport costs cannot be clearly confirmed in the current economic situation where fuel costs are fluctuating. Therefore, the mentioned future decrease in costs cannot be taken for granted.

Price correlations

- (128) The Hungarian authorities have also provided a correlation analysis of car prices in the US and an average car price for a sample of ten European countries for the A and B-segments in the period between 2005Q1 and 2010Q2, as well as an analysis of correlations between three pairs of European countries, namely Germany and France, Germany and Italy, and Germany and the United Kingdom in the same period. This analysis is intended to show that the correlation between prices in North America and the average price of the ten selected EEA countries is comparable to the correlation between car prices of Germany, France, Italy and United Kingdom. They conclude that the analysis supports the conclusion that North America and the EEA should be regarded as a single geographic market. Given that it is not disputed that these latter countries are in the same geographic market, a fortiori it means that also North America and EEA should be in the same geographic market.
- (129) The Commission notes that the dataset on which the analysis submitted by the Hungarian authorities has been carried out, is based, for each of the market segments considered (A and B-segments), and for each of the above identified six geographic areas, i.e. Northern America, sample of ten EEA countries, Germany, France, Italy, and United Kingdom on a dataset of 22 data points which cover the period from 2005Q1 to 2010Q2. The correlation analysis has been done on the index level and on the index differences ⁽⁴⁵⁾.

⁽⁴⁵⁾ In time series analysis, differentiating the data, i.e. taking differences between subsequent data points, is a methodology used to address non-stationarity of the data, i.e. the presence of time trends in the time series. The differentiated time series is thus a new series of data from which the time trend has been removed. It is thus likely stationary.

- (130) The above correlation analysis has been performed on the basis of the Fisher chained index. The Fisher chained index, like general price indexes, has the purpose to evaluate the evolution of prices of a given basket of products in a given region for a given interval of time. It does so by computing a normalised weighted average of prices. The average price is thus taking into account the relative consumption of the goods in the basket and it is scaled down against one period of reference ⁽⁴⁶⁾. There are several ways to compute an index and in the economic literature several indexes have been constructed. The Fisher index is a derived index, because it is the (geometric) average of two other indexes known as the Paasche and Laspeyres indexes. In this specific case, the Hungarian authorities also propose a version of the Fisher index that is 'chained'. This means that the price change is not relative to period immediately before, but is relative to the period of reference selected for the normalisation.
- (131) The results obtained for segment A are as follows: the correlation between the Northern America price index and the price index for the sample of ten selected EEA countries amounts to 0,94. This study found this to be similar to the correlation between the price indices for Germany and France, Italy and UK ranging from 0,90 to 0,95.
- (132) First, the Commission does not object to the use of the index and in particular the use of the Fisher chained index. However, the Commission has doubts on the underlying data that were used in order to compute such index. In fact, it cannot be excluded that spurious correlation might arise from some composition effect due to similar (common) developments in consumption patterns (determining the weights in the index, e.g. a shift towards more expensive models in the segment) instead of through developments in actual prices.
- (133) Second, the Commission notes that the analysis is conducted on simple index levels while typically a correlation analysis should take care of the existence of common developments in price (e.g. driven by common cost developments) in order to exclude them and to avoid spurious correlation. This is called partial correlation. This analysis has not been done, therefore all such correlation values might be spurious.
- (134) Third, it is worth noting that a seemingly high level of correlation (like in this case) can also be spurious if the time series are non-stationary, i.e. when there is a time trend. It is well known that when two time series are not stationary the level of correlation is artificially high. Good practice says that correlation analysis is meaningful when time series are stationary. Therefore, no evidentiary value should be given to correlation values resulting from non-stationary time series. In this case, both index series are non-stationary exhibiting a clear trend. This casts doubt on the validity of the correlation results. It is worth mentioning that the Hungarian authorities recognise this and explain that it is therefore better first to render the series stationary by taking differences (i.e. elimination of the time trend) and compute correlations on these modified time series. They come to the conclusion that the correlation values are comparable and therefore the scope of the geographic market should include North America.
- (135) The Commission does not follow this analysis. In fact, the correlation results of the modified time series of prices (after elimination of the time trend), are respectively, for North America and the sample of ten selected EEA countries, Germany and France, Germany and Italy and Germany and UK 0,39, 0,60, 0,60 and 0,55. The correlation between North America and the sample of ten selected EEA countries is thus overall quite low (0,39) and in particular substantially lower than the benchmark correlations computed on changes of the chained Fisher price index between Germany and France, Germany and Italy, and Germany and the UK.
- (136) This evidence does not seem to support the conclusion that the relevant geographic market for the A segment includes also North America. Moreover, the correlation analysis seems to be resting on some simplified assumptions that have not sufficiently been recognised or tested, e.g. absence of common shocks and existence of potentially different time trends. In addition, the results of the correlation test, if reliable, would rather support the hypothesis of the narrower scope of the geographic market.
- (137) As the market share of the aid beneficiary on the EEA market for the A segment exceeds 25 %, the threshold of the paragraph 68(a) test above which an in-depth assessment is required, is in any event exceeded. It is therefore not necessary to look into the results for the B-segment. Hungary did not submit correlation results for the A0 segment.

⁽⁴⁶⁾ For the sake of clarity, the weights used for the averages are given by the quantity consumed for each good included in the basket. Therefore the average price will follow proportionally more the movement of the price of the good that is sold more. The normalisation is just a mathematical procedure in order to scale down the value of prices against one period of reference. Different indexes have different reference periods.

Conclusion on the geographical market

- (138) In light of the above, and as the Commission did not receive any additional information during the formal investigation enabling it to conclude that the relevant geographical market is wider than the EEA, it maintains its conclusion that the relevant geographic market — independent from the product market definition chosen — is either the EEA or larger. Again, the Commission emphasises that it is required to verify that the positive contribution resulting from the aid measure will compensate in any event its negative effects on trade and competition. Therefore, for the purpose of deciding on whether an in-depth assessment on the compatibility of an aid measure is to be carried out or not, the geographic market definition should be as narrow as possible, taking account of the specific characteristics of the car(s) to be manufactured.

6.5.1. Conclusion on the paragraph 68(a) test

- (139) The Commission has carried out the test laid down in point 68(a) of the RAG in all plausible product and geographic markets to verify whether the beneficiary's market share exceeds 25 % before and after the investment.
- (140) In view of the fact that a single relevant product and geographic market could not be established, the results of all plausible markets had to be taken into account. The market share of the VW Group accounts for more than 25 % in the individual and combined A and B segments in the EEA in all the years concerned. In the combined segment of A0, A and B in the EEA, the 25 % threshold is exceeded as from year 2011. The Commission therefore concludes that the threshold laid down in paragraph in 68(a) is in any event exceeded, whatever the product market definition is, and that it is hence not necessary to decide on a definite product market definition.

6.5.2. Conclusion on the paragraph 68(b) test

- (141) As the result of the paragraph 68(a) test requires already proceeding to the in-depth assessment of the aid, it is not necessary to take a definite view on the outcome of the paragraph 68(b) test.

6.5.3. Conclusion

- (142) As the relevant threshold of the 68(a) test is exceeded, the Commission decided to conduct a detailed verification, following the opening of the procedure provided for in Article 108(2) of the TFEU, that the aid is necessary to provide an incentive effect for the investment and that the benefits of the aid measure outweigh the resulting distortion of competition and effects on trade between Member States.

6.6. IN-DEPTH ASSESSMENT OF THE AID MEASURE

- (143) The in-depth assessment is conducted on the basis of the IDAC.

6.6.1. Positive effects of the aid**6.6.1.1. Contribution to the development of the region**

- (144) The Western Transdanubia region is eligible for regional aid pursuant to Article 107(3)(a) of the TFEU. The Commission takes note of the investment's positive regional effects, as presented by Hungary (see recital 56), and considers that in particular the direct and indirect job creation effects, the potential to attract additional suppliers and service providers, the knowledge transfer into the region and the improvement of the regional skills base represent a significant contribution to the development of the region and to the achievement of the EU cohesion objective.

6.6.1.2. Appropriateness of the aid instrument

- (145) Paragraphs 17 and 18 of the IDAC underline that State aid in the form of investment subsidies is only one of the means to overcome market failures and to promote economic development in disadvantaged regions. Aid constitutes an appropriate instrument if it provides specific advantages compared with other policy measures. In accordance with paragraph 18 of the IDAC, only 'measures for which the Member State considered other policy options, and for which the advantages of using a selective instrument such as State aid for a specific company are established, are considered to constitute an appropriate instrument'.
- (146) Hungary explained that general measures to support economic development at national and regional levels through investment in basic infrastructure and productive factors have already been taken, but the region remains amongst the disadvantaged regions of the EU. The Commission considers that infrastructural developments and other general measures alone are insufficient to reduce regional disparities.
- (147) Hungary also based its explanation for appropriateness of the aid instrument on the economic situation in the Western Transdanubia region and provided evidence demonstrating that the region is disadvantaged in comparison with the bordering regions in Austria (Burgenland) and Slovakia (Bratislavský kraj). At the same time, the economic indicators of Western Transdanubia are around the average of Hungary. Nonetheless, the Commission notes that — as the status of Western Transdanubia as a region eligible for regional aid in accordance with Article 107(3)(a) of the TFEU with an aid intensity ceiling of 30 % shows — the socioeconomic situation of Western Transdanubia is under the level of the EU average.
- (148) In view of the above, the Commission concludes that the aid measure is an appropriate instrument to pursue the regional development objective in the assisted region concerned.

6.6.1.3. Incentive effect/Counterfactual scenario

- (149) As there are many valid reasons for a company to locate its investment in a certain region, even without any aid being granted, the IDAC requires the Commission to verify in detail that the aid is necessary to provide an incentive effect for the investment. The objective of this detailed assessment is to determine whether the aid actually contributes to changing the behaviour of the beneficiary, so that it undertakes (additional) investment in the assisted region concerned. In this context, the Member State is also required to give a comprehensive description of the counterfactual scenario in which no aid would be granted to the beneficiary. The scenarios have to be deemed realistic by the Commission. This verification of the substantive incentive effect goes beyond the verification of whether the formal requirements in respect of the incentive effect laid down in the RAG 2007-13 are met (see paragraph 68 of the RAG 2007-13).
- (150) Paragraph 22 of the IDAC states that the (substantive) incentive effect can be proven in two possible scenarios: in the absence of aid, no investment would take place at all since without the aid, the investment would not be profitable for the company at any location (scenario 1); in the absence of aid, the investment would take place in another location of the EU (scenario 2).
- (151) The IDAC requires the Member State to demonstrate to the Commission the existence of the incentive effect of the aid and provide clear evidence that the aid effectively had an impact on the investment choice or the location choice. It thus places the burden of proof regarding the existence of an incentive effect on the Member State. Paragraph 25 of the IDAC indicates that the Member State could provide proof of the incentive effect of the aid by providing company documents that show that a comparison has been made between the costs and benefits of locating in the assisted region selected for the investment with an alternative location. The Member State is invited to rely on financial reports, internal business plans and documents that elaborate on various investment scenarios.
- (152) The Commission notes that the Hungarian authorities submitted the required information (see recital 60) in form of comprehensive contemporary and genuine evidence documenting the multi-stage decision-making process of the VW Group and AUDI AG concerning the investment and location decision, stating that the aid to AHM falls under scenario 2, and explaining a counterfactual scenario involving, in addition to Győr, several alternative locations (location combinations), which are situated in [country 1 and country 2 of the EEA].

- (153) These locations involve the existing sites in Győr, [location 2 in an assisted area in EEA eligible for regional aid pursuant to Article 107(3)(c) of the TFEU], [location 1 in a non-assisted area in the EEA] and [location 3 in a non-assisted area in the EEA]. While Győr and [location 2 in an assisted area in EEA eligible for regional aid pursuant to Article 107(3)(c) of the TFEU] are located in assisted regions (with 30 % and 15 % aid intensity ceilings respectively, at the date of notification), [location 1 in a non-assisted area in the EEA] and [location 3 in a non-assisted area in the EEA] are situated in non-assisted regions in [country 2 of the EEA].
- (154) The calculations and cost estimates for the four options were carried out at the same level of accuracy. The options involving the sites of [location 3 in a non-assisted area in the EEA] (Option A and B) were excluded already in [...] 2010, as the [location 3 in a non-assisted area in the EEA] plant had reached its limits in terms of production capacity and the investment would have required major structural expenditure resulting into higher total costs. Thus, only Option C (production of A3 Sedan and Audi TT models in [location 2 in an assisted area in EEA eligible for regional aid pursuant to Article 107(3)(c) of the TFEU], and production of A3 Cabriolet in [location 1 in a non-assisted area in the EEA]) and Option D (production of all four models in Győr) remained as competitive options.
- (155) In the further planning process, several calculations and cost estimates were carried out. The documents provided show that these calculations were based on the same assumptions and Hungary explained that throughout the decision making process the cost estimates of Option C and Option D were kept at the same accuracy level. The documents also indicate that these calculations were comparable.
- (156) The Commission notes that AUDI AG explored the possibility of State aid already at early stages of the investment and location decision making phase. Aid application by the beneficiary on 5 March 2010, confirmation of Hungary of 26 March 2010 that the investment is in principle eligible for aid as well as the initial aid offer of Hungary of 30 March 2010 happened before any of the options would have been eliminated. The cost estimates presented to the Group Management Board on [...] 2010 already included the potential State aid to be granted by Hungary. At that point in time, a potential aid from [country 1 of the EEA], was also taken into account, but later dismissed, as it would not have been realistic to receive the aid in [country 1 of the EEA] ⁽⁴⁷⁾.
- (157) As described in recital 80 of this decision, the final estimates for production costs attributable to the location resulted in a cost disadvantage of EUR 143,3 million for Option D (Győr) compared to Option C ([location 2 in an assisted area in EEA eligible for regional aid pursuant to Article 107(3)(c) of the TFEU], and [location 1 in a non-assisted area in the EEA],) at the time when the two investment and location options were presented for a final decision to be taken by K-VAI on 14 December 2010. As documented by the minutes of the K-VAI meeting, on the basis of that counterfactual analysis, and of certain qualitative criteria, as well as on the basis of the availability of State aid, the K-VAI decided to locate the investment project in Győr on 14 December 2010.
- (158) The Commission reaffirms its view (see recital 110 of this decision), taken already in the opening decision, that the formal requirements in respect of the incentive effect laid down in paragraph 38 of the RAG 2007-13 were met: (i) with regard to the grant — as explained in recital 23 of this decision — the beneficiary submitted an application for aid and the authority responsible for administering the scheme subsequently confirmed in writing that, subject to detailed verification, the project in principle met the conditions of eligibility laid down by the scheme, before works on the project started; (ii) concerning the tax allowance, as described in recital 24 of this decision, the beneficiary applied for it well before the start of works, and as for the tax allowance there is a legal entitlement — subject to Commission approval — there was no need for the beneficiary to wait for any preliminary eligibility confirmation from the Hungarian authorities.

⁽⁴⁷⁾ Paragraph 53 of the IDAC states that under scenario 2, where evidence has to be given of an alternative location, an assessment that without aid the investment would have been located to a poorer region (higher max. regional aid intensity) or to a region that is considered to have the same regional handicap as the target region (same max. regional aid intensity) will constitute a negative element in the overall balancing test that is unlikely to be compensated by any positive element. This meant concretely for this case, that as Győr has a higher regional aid intensity (i.e. it is considered to be less developed) than [location 2 in an assisted area in EEA eligible for regional aid pursuant to Article 107(3)(c) of the TFEU], [country 1 of the EEA] would not be in the position to grant aid to this investment.

- (159) The Commission considers with regard to the substantive incentive effect that the aid effectively had an impact on the investment's location choice: VW Group's decision to locate the investment project in question in Győr was taken only after confirmation that the investment project would be eligible for State aid and supported by public authorities and the K-VAI (the body responsible for taking the final decision about the investment and the location) approved the location subject to the availability of State aid. Therefore, the Commission considers, in accordance with paragraph 23 and 25 of the IDAC that the counterfactual scenario presented by Hungary is realistic and supported by genuine and contemporary evidence. The aid therefore has a real (substantive) incentive effect. By reducing the viability gap in favour of Győr, the aid contributed to changing the location decision of the beneficiary company. Without the aid, the investment would not have taken place in Győr.

6.6.1.4. Proportionality of the aid

- (160) For the aid to be proportional, the amount and intensity of the aid must be limited to the minimum needed for the investment to take place in the assisted region.
- (161) In general, regional aid is considered to be proportional to the seriousness of the problems affecting the assisted regions if it respects the applicable regional aid ceiling, including the automatic, progressive scaling-down of the regional aid ceiling for large investment projects (which is already part of the applicable regional aid map). The applied aid intensity in this case is not higher than the regional aid ceilings corrected by the scaling-down mechanism, as already established in recital 110 of this decision.
- (162) In addition to the general principle of proportionality contained in the RAG 2007-13, the IDAC requires a more detailed assessment to be carried out. Under scenario 2 of the IDAC, the aid is considered proportionate if it equals the difference between the net costs for the beneficiary to invest in the assisted region and the net costs to invest in the alternative location.
- (163) The Commission considers on the basis of the documentation submitted (see recital 79 to 82) that the aid was limited to the amount necessary, because it does not exceed the difference in costs between Option D (locating the investment in Győr) and Option C (locating the investment in [location 2 in an assisted area in EEA eligible for regional aid pursuant to Article 107(3)(c) of the TFEU] and [location 1 in a non-assisted area in the EEA]). The calculation done at the time of the counterfactual analysis shows that without the aid, Győr was by EUR 144,3 million more expensive (in present value of 2010) than the location combination of [location 2 in an assisted area in EEA eligible for regional aid pursuant to Article 107(3)(c) of the TFEU] and [location 1 in a non-assisted area in the EEA].
- (164) This cost disadvantage amounts to EUR 153,8 million in 2013 terms, which is the year applicable for the calculation of the aid, and therefore also for the proportionality.
- (165) The gap due to the higher one-time expenditure could be narrowed by the possible State aid. Considering the aid of EUR 133,3 million in present value of 2013, Option D still has a cost disadvantage of EUR 20,5 million relative to Option C. The Commission notes that the remaining cost disadvantage was acceptable by Volkswagen Group due to certain, non-quantifiable advantages of Győr, e.g. the possibility to produce all four MQB derivatives in a single plant of AUDI, and considers that the proportionality of the aid is demonstrated.

6.6.2. Negative effects of the aid on competition and trade

- (166) Paragraph 40 of the IDAC states that 'if [...] the counterfactual analysis suggests that without the aid the investment would have gone ahead in any case, albeit possibly in another location (scenario 2), and if the aid is proportional, possible indications of distortions such as a high market share and an increase in capacity in an underperforming market would in principle be the same regardless of the aid.'
- (167) As the aid measure supports a scenario 2 investment decision and the aid is limited to the minimum, no negative effects on competition could be identified. The investment would have been carried out in another location, resulting in the same level of distortion of competition in any event. Therefore, the Commission considers that the aid has no negative effects on competition.

- (168) In accordance with paragraph 53 of the IDAC, if, without aid, the investment would have been located in a poorer region (more regional handicaps — higher maximum regional aid intensity) or in a region that is considered to have the same regional handicaps as the target region (same maximum regional aid intensity), this would constitute a negative element in the overall balancing test that is unlikely to be compensated by any positive elements, because it runs counter the very rationale of regional aid.
- (169) As Hungary confirmed that the theoretical possibility of setting up a new production plant in Eastern Europe was discarded by AUDI in the early stages of the decision-making process and that none of the existing sites with higher or same aid intensity was considered as a feasible location (see footnote 23), the Commission considers that the aid has no anti-cohesion effect that would run counter the very rationale of regional aid.

6.7. BALANCING OF POSITIVE AND NEGATIVE EFFECTS OF THE AID

- (170) Having established that the aid provides an incentive for carrying out the investment in the region concerned and is proportionate, it is necessary to balance the positive effects of the aid with its negative effects.
- (171) The assessment confirmed that the aid measure has an incentive effect attracting an investment which offers an important contribution to the regional development of a disadvantaged region which is eligible for regional aid pursuant to Article 107(3)(a) of the TFEU, without depriving from the investment any region with the same or a higher aid intensity ceiling (no anti-cohesion effect). The Commission considers that attracting an investment to a poorer region is more beneficial for cohesion within the Union than if the same investment had been located in a more developed region. As stated in paragraph 53 of the IDAC, the Commission considers that 'the positive effects of regional aid which merely compensate for the difference in net costs relative to a more developed alternative investment location [...], will normally be considered, under the balancing test, to outweigh any negative effects in the alternative location for new investment'.
- (172) In view of the above, the Commission finds that, given that the aid is proportional to the difference in net costs for carrying out the investment in the selected location, as compared to a more developed alternative location, the positive effects of the aid, in terms of its objective and appropriateness, as demonstrated above, outweigh the negative effects in the alternative location.
- (173) In accordance with paragraph 68 of the RAG 2007-13, and in light of the in-depth assessment conducted on the basis of the IDAC, the Commission concludes that the aid is necessary to provide an incentive effect for the investment and that the benefits of the aid measure outweigh the resulting distortion of competition and negative effect on trade between Member States.

7. CONCLUSION

- (174) The Commission finds that Hungary has unlawfully implemented regional aid in favour of the investment project by AHM in breach of Article 108(3) of the TFEU. However, the Commission concludes that the regional investment aid in favour of AUDI HUNGARIA MOTOR Ltd — awarded before 1 July 2014 under the condition that it is partly subject to Commission approval — fulfils all the conditions laid down in the RAG 2007-13 and in the IDAC and can therefore be considered compatible with the internal market in accordance with Article 107(3)(a) of the TFEU,

HAS ADOPTED THIS DECISION:

Article 1

The State aid which Hungary has implemented for AUDI HUNGARIA MOTOR Ltd amounting to a maximum of HUF 39 952 million (discounted to the date of notification) in present value and representing a maximum aid intensity of 11,24 % in gross grant equivalent is compatible with the internal market within the meaning of Article 107(3)(a) of the TFEU.

Article 2

This Decision is addressed to Hungary.

Done at Brussels, 1 February 2016.

For the Commission
Margrethe VESTAGER
Member of the Commission

COMMISSION IMPLEMENTING DECISION (EU) 2016/2008**of 15 November 2016****concerning animal health control measures relating to lumpy skin disease in certain Member States***(notified under document C(2016) 7023)***(Text with EEA relevance)**

THE EUROPEAN COMMISSION,

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

Having regard to Council Directive 89/662/EEC of 11 December 1989 concerning veterinary checks in intra-Community trade with a view to the completion of the internal market ⁽¹⁾, and in particular Article 9(4) thereof,

Having regard to Council Directive 90/425/EEC of 26 June 1990 concerning veterinary and zootechnical checks applicable in intra-Community trade in certain live animals and products with a view to the completion of the internal market ⁽²⁾, and in particular Article 10(4) thereof,

Having regard to Council Directive 92/119/EEC of 17 December 1992 introducing general Community measures for the control of certain animal diseases and specific measures relating to swine vesicular disease ⁽³⁾, and in particular Article 14(2), Articles 19(1)(a) and 19(3)(a), and Article 19(4) and (6) thereof,

Having regard to Council Directive 2002/99/EC of 16 December 2002 laying down the animal health rules governing the production, processing, distribution and introduction of products of animal origin for human consumption ⁽⁴⁾, and in particular Article 4(3) thereof,

Whereas:

- (1) Lumpy skin disease (LSD) is a vector transmitted viral disease of bovine animals. According to the Scientific Opinion of the European Food Safety Authority (the EFSA) on lumpy skin disease, adopted on 3 December 2014, (the EFSA Opinion) ⁽⁵⁾ direct and indirect transmission of LSD may occur. LSD is characterised by severe losses of livestock production and has the potential to spread very quickly, notably through live animals, vectors and certain products obtained from infected animals.
- (2) Directive 92/119/EEC lays down general control measures to be applied in the event of an outbreak of certain animal diseases, including LSD. These include control measures to be taken in the event of a suspicion and the confirmation of the presence of LSD in a holding, including the establishment of protection and surveillance zones around outbreaks and other additional control measures to prevent the spread of the disease and eliminate the infection. Those control measures also provide for vaccination in the event of an outbreak of LSD as a supplement to other control measures.
- (3) Commission Implementing Decisions (EU) 2015/1500 ⁽⁶⁾ and (EU) 2016/645 ⁽⁷⁾ lay down certain protective measures in relation to the confirmation of LSD in Greece in 2015 and in Bulgaria in 2016. Those protective measures include the establishment of an infected zone in those Member States, which is described in the Annex to each of those Implementing Decisions, and which includes the area where LSD was confirmed and the protection and surveillance zones duly established by Greece and Bulgaria in accordance with Directive 92/119/EEC. Implementing Decisions (EU) 2015/1500 and (EU) 2016/645 have been amended several times due to the evolution of the disease situation, including the extension of the infected zone in order to include additional regional units of Greece and Bulgaria. Those Implementing Decisions apply until 31 December 2016.

⁽¹⁾ OJ L 395, 30.12.1989, p. 13.

⁽²⁾ OJ L 224, 18.8.1990, p. 29.

⁽³⁾ OJ L 62, 15.3.1993, p. 69.

⁽⁴⁾ OJ L 18, 23.1.2003, p. 11.

⁽⁵⁾ EFSA Journal 2015; 13(1): 3986.

⁽⁶⁾ Commission Implementing Decision (EU) 2015/1500 of 7 September 2015 concerning certain protective measures against lumpy skin disease in Greece and repealing Implementing Decision (EU) 2015/1423 (OJ L 234, 8.9.2015, p. 19).

⁽⁷⁾ Commission Implementing Decision (EU) 2016/645 of 22 April 2016 concerning certain protective measures against lumpy skin disease in Bulgaria (OJ L 108, 23.4.2016, p. 61).

- (4) Commission Implementing Decisions (EU) 2015/2055 ⁽¹⁾ and (EU) 2016/1183 ⁽²⁾ provide that Greece and Bulgaria may carry out emergency vaccination of bovine animals kept on holdings in the vaccination zone as set out in Annex I to those Implementing Decisions.
- (5) Apart from Greece and Bulgaria, between April and August 2016, a considerable number of third countries in South East Europe have also reported outbreaks of LSD in their territories for the first time, namely Albania, the former Yugoslav Republic of Macedonia, Kosovo ⁽³⁾, Montenegro and Serbia. All those third countries have notified the Commission that vaccination against LSD has been included in their current disease control policy, amongst other measures.
- (6) According to the EFSA Opinion ⁽⁴⁾ only live attenuated vaccines against LSD are commercially available. The EFSA Opinion describes the Neethling attenuated LSD virus vaccine as highly effective in preventing morbidity. As homologous LSD vaccines are more effective than vaccines based on attenuated sheep pox viruses, their use is to be recommended, subject to availability by vaccine producers which are exclusively operating outside the Union. Also, according to the EFSA Opinion, the causative agent of LSD may be present up to 92 days in the skin of affected animals even without visible lesions.
- (7) There is no vaccine against LSD with a marketing authorisation in the Union. Emergency vaccination in accordance with Article 19 of Directive 92/119/EEC may therefore only be carried out in accordance with Article 8 of Directive 2001/82/EC of the European Parliament and of the Council ⁽⁵⁾, which permits Member States to provisionally allow the use of immunological veterinary medicinal products without a marketing authorisation in the event of a serious epizootic disease as it is the case with LSD.
- (8) According to the Urgent Advice on Lumpy Skin Disease of the EFSA, adopted on 29 July 2016 ⁽⁶⁾, vaccination against LSD is the most effective way to reduce the spread of that disease. In order to eradicate LSD, it is necessary to implement the vaccination of the entire susceptible population in regions at risk for the introduction of LSD and those affected by LSD in order to minimise the number of outbreaks, and high animal- and farm-level vaccination coverage should be achieved. Therefore, a 'solid' preventive and control policy for LSD should provide for vaccination.
- (9) The risk of the spread of LSD from vaccinated animals and products thereof is different from the risks arising from non-vaccinated and possibly incubating animals. Therefore, it is necessary to lay down conditions for the dispatch of vaccinated bovine animals and of products derived from such animals. Also, the risk of the spread of LSD from animals, whether or not vaccinated, originating in an area where vaccination against LSD is applied but where no LSD outbreaks have occurred, is different from the risk posed by such animals when they originate from LSD affected areas. Therefore, specific conditions should also be laid down for these animals.
- (10) Scientific knowledge about LSD is incomplete. Vaccinated bovine animals are protected from clinical signs but not necessarily from infection and not all vaccinated animals respond with a protective immunity. Therefore, in order to minimise the risk, it should only be permitted to dispatch consignments of vaccinated animals after a period of at least 28 days, which is the maximum incubation period for LSD, following vaccination.
- (11) In terms of the risk of the spread of LSD, different commodities pose different levels of risk. As indicated in the EFSA Opinion, the movement of live bovine animals, bovine semen and raw hides and skins from infected bovine animals pose a higher risk in terms of exposure and consequences than other products such as milk and dairy products, treated hides and skins or fresh meat, meat preparations and meat products originating from bovine animals. However scientific or experimental evidence is lacking on their role of transmission of LSD. Therefore, the control measures provided for in this Decision should be balanced and proportionate to the risks. Similarly, the transmission of LSD through semen, ova and embryos of animals of the bovine species cannot be excluded.

⁽¹⁾ Commission Implementing Decision (EU) 2015/2055 of 10 November 2015 laying down the conditions for setting out the programme for emergency vaccination of bovine animals against lumpy skin disease in Greece and amending Implementing Decision (EU) 2015/1500 (OJ L 300, 17.11.2015, p. 31).

⁽²⁾ Commission Implementing Decision (EU) 2016/1183 of 14 July 2016 approving the emergency vaccination programme against lumpy skin disease of bovine animals in Bulgaria and amending the Annex to Implementing Decision (EU) 2016/645 (OJ L 195, 20.7.2016, p. 75).

⁽³⁾ This designation is without prejudice to positions on status, and is in line with UNSCR 1244 and the ICJ Opinion on the Kosovo Declaration of Independence.

⁽⁴⁾ EFSA Journal 2015;13(1):3986 [73 pp.].

⁽⁵⁾ Directive 2001/82/EC of the European Parliament and of the Council of 6 November 2001 on the Community code relating to veterinary medicinal products (OJ L 311, 28.11.2001, p. 1).

⁽⁶⁾ EFSA Journal 2016;14(8):4573 [27 pp.].

Therefore, certain protective measures should be provided for those commodities based on the EFSA Opinion and the relevant most updated standards and recommendations from the World Organisation for Animal Health (OIE).

- (12) Skeletal muscle meat from bovine animals is considered to be a safe commodity according to the OIE Scientific Commission for Animal Diseases ⁽¹⁾ and as indicated in Annex 36 of Part B of the Report of the OIE Terrestrial Animal Health Standards Commission meeting of February 2016 ⁽²⁾. There is no scientific or experimental evidence suggesting that the LSD virus can be transmitted to susceptible animals through fresh meat, meat preparations or meat products. Although the EFSA Opinion indicates that the LSD virus may survive in meat for a non-indicated period of time, the existing Union ban on feeding ruminant proteins to ruminants laid down in Regulation (EC) No 1069/2009 of the European Parliament and of the Council ⁽³⁾ and Article 7 of Regulation (EC) No 999/2001 of the European Parliament and of the Council ⁽⁴⁾ rules out the possibility of a possible oral transmission of LSD.
- (13) Milk and dairy products, as well as colostrum, may represent a risk for the spread of LSD only when destined for feeding to animals of the susceptible species. Therefore, risk mitigation measures intended to prevent the spread of LSD through such products when intended for animal feeding should be laid down.
- (14) Council Directive 64/432/EEC ⁽⁵⁾ and Commission Decision 93/444/EEC ⁽⁶⁾ provide that health certificates are to accompany the movements of animals. Where derogations from the prohibition on the dispatch of live animals from the areas listed in Annex I to this Decision are applied to live animals intended for intra-Union trade or for export to a third country, those health certificates should include a reference to this Decision so to ensure that adequate and accurate health information is provided in the relevant certificates.
- (15) For reasons of clarity and simplification Implementing Decisions (EU) 2015/1500, (EU) 2015/2055, (EU) 2016/645 and (EU) 2016/1183 should be repealed and replaced by this Decision which introduces amended and uniform measures for all Member States affected by LSD or implementing vaccination against LSD.
- (16) The approval of the vaccination programmes submitted by the Member States concerned and now included in Implementing Decisions (EU) 2015/2055 and (EU) 2016/1183 for Greece and Bulgaria respectively, as well as the approval of the vaccination programme submitted by Croatia should be subject to another Implementing Decision to be adopted.
- (17) Bulgaria has advised the Commission that the vaccination of all bovine animals against LSD was completed on 15 July 2016 and the last occurrence of LSD on its territory was confirmed on 1 August 2016. Accordingly, certain areas of Bulgaria where LSD has never occurred but where vaccination against that disease has been carried out, should be listed in Part I of the Annex I to this Decision as a 'free zone with vaccination', while the remaining part of the territory of that Member State should be listed as an 'infected zone'.
- (18) The measures provided for in this Decision are in accordance with the opinion of the Standing Committee on Plants, Animals, Food and Feed,

HAS ADOPTED THIS DECISION:

Article 1

Subject matter and scope

This Decision lays down animal health control measures in relation to lumpy skin disease in the Member States or parts thereof as listed in Annex I (the Member States concerned) including the minimum requirements for vaccination programmes against lumpy skin disease submitted by the Member States to the Commission for approval.

⁽¹⁾ http://www.oie.int/fileadmin/Home/eng/International_Standard_Setting/docs/pdf/SCAD/A_SCAD_Feb2016.pdf (Annex 15, Article 11.11.1-bis. Safe commodities).

⁽²⁾ http://www.oie.int/fileadmin/Home/eng/International_Standard_Setting/docs/pdf/A_TAHSF_Feb_2016_Part_B.pdf

⁽³⁾ Regulation (EC) No 1069/2009 of the European Parliament and of the Council of 21 October 2009 laying down health rules as regards animal by-products and derived products not intended for human consumption and repealing Regulation (EC) No 1774/2002 (Animal by-products Regulation) (OJ L 300, 14.11.2009, p. 1).

⁽⁴⁾ Regulation (EC) No 999/2001 of the European Parliament and of the Council of 22 May 2001 laying down rules for the prevention, control and eradication of certain transmissible spongiform encephalopathies (OJ L 147, 31.5.2001, p. 1).

⁽⁵⁾ Council Directive 64/432/EEC of 26 June 1964 on animal health problems affecting intra-Community trade in bovine animals and swine (OJ L 121 29.7.1964, p. 1977/64).

⁽⁶⁾ Commission Decision 93/444/EEC of 2 July 1993 on detailed rules governing intra-Community trade in certain live animals and products intended for exportation to third countries (OJ L 208, 19.8.1993, p. 34).

Article 2

Definitions

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

- (1) 'bovine animal' means ungulates of the species *Bos taurus*, *Bos indicus*, *Bison bison* and *Bubalus bubalis*;
- (2) 'captive wild ruminants' means wild ruminants of species known to be involved in the transmission and spread of lumpy skin disease according to the latest available scientific knowledge;
- (3) 'infected zone' is the part of the territory of a Member State listed in Part II of Annex I to this Decision which includes the area where lumpy skin disease was confirmed and any protection and surveillance zones established in accordance with Article 10 of Directive 92/119/EEC, and where vaccination against lumpy skin disease may be implemented following the approval of vaccination programmes by the Commission;
- (4) 'free zone with vaccination' is the part of the territory of a Member State listed in Part I of Annex I to this Decision which includes the areas outside the infected zone for lumpy skin disease, where vaccination against lumpy skin disease is implemented following the approval of vaccination programmes by the Commission.

Article 3

Restrictions on the dispatch on bovine animals and captive wild ruminants and certain animal products from the areas listed in Annex I

The Member States concerned shall prohibit the dispatch of consignments of:

- (a) live bovine animals and captive wild ruminants from the areas listed in Parts I and II of Annex I;
- (b) semen, ova and embryos of bovine animals and captive wild ruminants from the areas listed in Parts I and II of Annex I;
- (c) colostrum, milk and dairy products of bovine animals and captive wild ruminants destined for animal feed from the areas listed in Part II of Annex I;
- (d) unprocessed animal by-products from bovine animals and captive wild ruminants, other than those referred to in point (e), from the areas listed in Parts I and II of Annex I;
- (e) untreated raw hides and skins destined for human consumption or untreated hides and skins not intended for human consumption of bovine animals and captive wild ruminants from the areas listed in Parts I and II of Annex I.

Article 4

Derogation from the prohibition on the dispatch of live bovine animals and captive wild ruminants from the areas listed in Part I of Annex I

1. By way of derogation from the prohibition provided for in point (a) of Article 3, the competent authority may authorise the dispatch of live bovine animals and captive wild ruminants from holdings situated in the areas listed in Part I of Annex I provided that those animals comply with at least one of the following sets of conditions:

- (a) the animals are dispatched to areas listed in Part I or II of Annex I of the same or another Member State or to a third country and comply with the following conditions:
 - (i) the animals were vaccinated against lumpy skin disease at least 28 days prior to date of dispatch and come from a holding on which the animals have been resident for a period of at least 28 days and in which all animals of susceptible species have been vaccinated against lumpy skin disease at least 28 days prior to the date of dispatch;
 - (ii) all the animals on the holding of origin were clinically checked on the day of loading for dispatch and did not show any clinical symptoms of lumpy skin disease;

- (iii) the animals are not subject to any of the restrictions provided for in Directive 92/119/EEC;
 - (iv) the competent authority at the place of origin is implementing a vaccination programme against lumpy skin disease which complies with the conditions laid down in Annex II and which has been approved by the Commission and it has informed the Commission and the other Member States of the commencement date of its vaccination programme; and
 - (v) a channelling procedure in accordance with Article 12 has been set up, under the control of the competent authorities of the Member States of the places of origin, transit and destination, in order to ensure that the animals are transported in a safe manner and that they are not subsequently dispatched to another Member State or third country; or
- (b) the animals are dispatched to any area of the same or another Member State or a third country and comply with the following conditions:
- (i) the animals were vaccinated against lumpy skin disease at least three months prior to the date of dispatch and come from a holding on which all animals of susceptible species were vaccinated against lumpy skin disease at least 28 days prior to the date of dispatch;
 - (ii) all the animals on the holding of origin were clinically checked on the day of loading for dispatch and did not show any clinical symptoms of lumpy skin disease;
 - (iii) the animals are not subject to any of the restrictions provided for in Directive 92/119/EEC;
 - (iv) the animals have been resident since birth, or for a period of at least 28 days prior to the date of dispatch, on a holding where, in a radius of at least 20 km, no presence of lumpy skin disease has been confirmed during the three months prior to the date of dispatch and before that any confirmation of infection with lumpy skin disease was subject to culling and destruction of all susceptible animals on the affected holdings, located in an area listed in Part I of Annex I in a Member State where all animals in all its areas listed in Part I of Annex I have been vaccinated or revaccinated against lumpy skin disease, in accordance with Annex II, at least three months prior to the date of dispatch and remain within the immunity period of time stated in the specifications of the vaccine by the manufacturer;
 - (v) the competent authority at the place of origin has implemented a vaccination programme against lumpy skin disease, which complied with the conditions laid down in Annex II and which was approved by the Commission and it has informed the Commission and the other Member States of commencement date and the completion date of its vaccination programme; and
 - (vi) a channelling procedure in accordance with Article 12 has been set up, under the control of the competent authorities of the Member States of the places of origin, transit and destination, in order to ensure that the animals are transported in a safe manner and that they are not subsequently dispatched to another Member State or third country; or
- (c) the animals are dispatched to any area of a Member State or a third country and comply with the following conditions:
- (i) the animals comply with any other appropriate animal health guarantees, based on a positive outcome of a risk assessment of measures against the spread of lumpy skin disease, required by the competent authority of the Member State of the place of origin and approved by the competent authorities of the countries of places of transit and of destination, prior to the date of dispatch of such animals;
 - (ii) the animals were vaccinated against lumpy skin disease at least 28 days prior to date of dispatch and come from a holding on which all animals of susceptible species were vaccinated against lumpy skin disease at least 28 days prior to the date of dispatch;
 - (iii) all the animals on the holding of origin were clinically checked on the day of loading for dispatch and did not show any clinical symptoms of lumpy skin disease;
 - (iv) the animals are not subject to any of the restrictions provided for in Directive 92/119/EEC;
 - (v) the animals have been resident since birth, or for a period of at least 28 days prior to date of dispatch, on a holding where, in a radius of at least 20 km no presence of lumpy skin disease has been confirmed during the three months prior to the date of dispatch and before that any confirmation of infection with lumpy skin disease was subject to culling and destruction of all susceptible animals on the affected holdings;

- (vi) a channelling procedure in accordance with Article 12 has been set up, under the control of the competent authorities of the Member States of the places of origin, transit and destination, in order to ensure that the animals, dispatched in accordance with the animal health guarantees provided for in point (i) are transported in a safe manner and are not subsequently dispatched to another Member State or third country;
- (vii) the competent authority at the place of origin is implementing a vaccination programme against lumpy skin disease, which complies with the conditions laid down in Annex II and which has been approved by the Commission and it has informed the Commission and the other Member States of the commencement date of its vaccination programme; and
- (viii) the Member State of the place of origin must immediately inform the Commission and the other Member States of the animal health guarantees and the approval by the competent authorities provided for in point (i).

2. Where bovine animals and captive wild ruminants comply with the requirements for the derogation provided for in paragraph 1 of this Article, the following additional wording shall be added to the corresponding health certificate for those animals as laid down in Directive 64/432/EEC, or in Decision 93/444/EEC:

‘..... (Animals) in compliance with (Article 4(1)(a) or (b) or (c), indicate as appropriate) of Commission Implementing Decision (EU) 2016/2008 concerning animal health control measures relating to lumpy skin disease in certain Member States’.

Article 5

Derogation from the prohibition on the dispatch of live bovine animals and captive wild ruminants from the areas listed in Part II of Annex I

1. By way of derogation from the prohibition provided for in point (a) of Article 3, the competent authority may authorise the dispatch of live bovine animals and captive wild ruminants from holdings situated in the areas listed in Part II of Annex I to any area of a Member State or a third country provided that those animals comply with the following conditions:

- (a) the animals comply with appropriate animal health guarantees, based on a positive outcome of a risk assessment of measures against the spread of lumpy skin disease, required by the competent authority of the Member State of the place of origin and approved by the competent authorities of the countries of the places of transit and of destination, prior to the date of dispatch of such animals;
- (b) the animals were vaccinated against lumpy skin disease at least 28 days prior to date of dispatch and come from a holding on which all animals of susceptible species were vaccinated against lumpy skin disease at least 28 days prior to the date of dispatch;
- (c) all the animals on the holding of origin were clinically checked on the day of loading for dispatch and did not show any clinical symptoms of lumpy skin disease;
- (d) the animals are not subject to any of the restrictions provided for in Directive 92/119/EEC;
- (e) the animals have been resident since birth, or for a period of at least 28 days prior to the date of dispatch, on a holding where, in a radius of at least 20 km no presence of lumpy skin disease has been confirmed during the three months prior to the date of dispatch and before that any confirmation of infection with lumpy skin disease was subject to culling and destruction of all susceptible animals on the affected holdings, located in an area listed in Part II of Annex I in a Member State where all animals in all its areas listed in Part II of Annex I have been vaccinated or revaccinated against lumpy skin disease, in accordance with Annex II, at least three months prior to the date of dispatch and remain within the immunity period stated in the specifications of the vaccine by the manufacturer;
- (f) the competent authority at the place of origin is implementing a vaccination programme against lumpy skin disease, which complies with the conditions laid down in Annex II and which has been approved by the Commission and it has informed the Commission and the other Member States of the commencement date and the completion date of its vaccination programme in accordance with Annex II;

- (g) a channelling procedure in accordance with Article 12 has been set up, under the control of the competent authorities of the Member States of the places of origin, transit and destination, in order to ensure that the animals, dispatched in accordance with the animal health guarantees provided for in point (a) are transported in a safe manner and are not subsequently dispatched to another Member State or third country; and
 - (h) the Member State of the place of origin must immediately inform the Commission and the other Member States of the animal health guarantees and the approval by the competent authorities provided for in point (a).
2. Where bovine animals and captive wild ruminants comply with the requirements for the derogation provided for in paragraph 1 of this Article, the following additional wording shall be added to the corresponding health certificate for those animals as laid down in Directive 64/432/EEC, or in Decision 93/444/EEC:

‘..... (Animals) in compliance with Article 5(1) of Commission Implementing Decision (EU) 2016/2008 concerning animal health control measures relating to lumpy skin disease in certain Member States’.

Article 6

Special conditions for the dispatch of live bovine animals and captive wild ruminants within the areas listed in Parts I and II of Annex I of the same Member State

1. By way of derogation from the prohibition provided for in point (a) of Article 3, and subject to compliance with paragraph 2 of this Article, the competent authority may authorise the dispatch of consignments of live bovine animals and captive wild ruminants from holdings situated in an area listed in:
- (a) Part I of Annex I to a destination situated within another area listed in Part I or Part II of Annex I of the same Member State;
 - (b) Part II of Annex I to a destination situated within another area listed in Part II of Annex I of the same Member State.
2. The derogation provided for in paragraph 1 shall only apply to consignments of live bovine animals and captive wild ruminants provided that the animals comply with at least one of the following conditions:
- (a) the animals were vaccinated against lumpy skin disease at least 28 days prior to date of dispatch and come from a holding on which all animals of susceptible species were vaccinated against lumpy skin disease at least 28 days prior to the date of dispatch;
 - (b) the animals, irrespective of their individual vaccination status or vaccination in their holding of origin against lumpy skin disease may be moved for emergency slaughter to a slaughterhouse, provided that the holding of origin is not subject to any of the restrictions provided for in Directive 92/119/EEC in relation to lumpy skin disease, that prohibit such a movement;
 - (c) the animals are unvaccinated offspring less than four months old born to dams vaccinated at least 28 days prior to parturition and may be moved to another holding provided that all animals of susceptible species on the holding of origin have been vaccinated or revaccinated according to the manufacturer's instructions of the vaccine used at least 28 days prior to the date of the intended movement and the holding is not subject to any of the restrictions provided for in Directive 92/119/EEC in relation to lumpy skin disease, that prohibit such a movement.

Article 7

Derogations from the prohibition on the dispatch of semen, ova and embryos of bovine animals and captive wild ruminants from the areas listed in Part I of Annex I

1. By way of derogation from the prohibition provided for in point (b) of Article 3, the competent authority may authorise the dispatch of semen, ova and embryos of bovine animals and captive wild ruminants from semen collection centres or other establishments situated in an area listed in Part I of Annex I to another area listed in Part I or II of Annex I of the same or another Member State provided that the donor animals and the semen, ova and embryos comply with the following conditions:
- (a) the donor animals were vaccinated and revaccinated against lumpy skin disease according to the manufacturer's instructions of the vaccine used, the first vaccination being administered at least 60 days prior to the date of collection of the semen, ova or embryo; or the donor animals were subjected to a serological test to detect specific antibodies against lumpy skin disease virus on the day of the collection and at least 28 days after the semen collection period or the day of collection for embryos and ova, with negative results;

- (b) the donor animals were kept, during the 60 days prior to the date of collection of the semen, ova or embryos, in an artificial insemination centre or other appropriate establishment where, in a radius of at least 20 km, no presence of lumpy skin disease has been confirmed during the three months prior to the date of collection of the semen, ova or embryos and before that any confirmation of infection with lumpy skin disease was subject to culling and destruction of all susceptible animals on the affected holdings;
- (c) the donor animals were clinically checked 28 days prior to the date of collection, as well as throughout the entire collection period, and did not show any clinical symptoms of lumpy skin disease;
- (d) the donor animals were subjected to lumpy skin disease agent detection by polymerase chain reaction (PCR) conducted on blood samples collected at commencement and at least every 14 days thereafter during the semen collection period or on the day of collection for embryos and ova, with negative results;
- (e) the semen was subjected to lumpy skin disease agent detection by PCR with negative results; and
- (f) the competent authority at the place of origin is implementing a vaccination programme against lumpy skin disease, which complies with the conditions laid down in Annex II and which has been approved by the Commission and it has informed the Commission and the other Member States of the commencement date and the completion date of its vaccination programme in accordance with Annex II.

2. By way of derogation from the prohibition provided for in point (b) of Article 3, the competent authority may authorise the dispatch of semen, ova and embryos of bovine animals and captive wild ruminants from semen collection centres or other establishments situated in the areas listed in Part I of Annex I to any area of a Member State or a third country provided that the donor animals and the semen, ova and embryos comply with the following conditions:

- (a) the conditions laid down in paragraph 1(a) to (f);
- (b) the donor animals comply with any other appropriate animal health guarantees, based on a positive outcome of a risk assessment of the impact of such dispatch and of the measures against the spread of lumpy skin disease, required by the competent authority of the Member State of the place of origin and approved by the competent authorities of the countries of the places of transit and of destination, prior to the dispatch of such semen, ova or embryos; and
- (c) the Member State of the place of origin must immediately inform the Commission and the other Member States of the animal health guarantees and the approval by the competent authorities provided for in point (b).

3. Where semen, embryos and ova which comply with the requirements of paragraph (1) or (2) of this Article are dispatched to another Member State or third country, the following additional wording shall be added to the corresponding health certificates laid down in Directives 88/407/EEC, 89/556/EEC or in Decision 93/444/EEC:

'..... (Semen, ova and/or embryos, indicate as appropriate) in compliance with (Article 7(1) or (2), indicate as appropriate) of Commission Implementing Decision (EU) 2016/2008 concerning animal health control measures relating to lumpy skin disease in certain Member States'.

Article 8

Derogation from the prohibition on the dispatch of unprocessed animal by-products from bovine animals and captive wild ruminants from the areas listed in Parts I and II of Annex I

By way of derogation from the prohibition provided for in point (d) of Article 3, the competent authority may authorise the dispatch of unprocessed animal by-products from bovine animals and captive wild ruminants from:

- (a) an area listed in Part I of Annex I to a destination located within the same Member State or in an area listed in Part I or Part II of Annex I of another Member State;
- (b) an area listed in Part II of Annex I to a destination located within the same Member State or in an area listed in Part II of Annex I of another Member State provided that:
 - (i) the unprocessed animal by-products are dispatched under the official supervision of the competent authorities for processing or disposal in a plant approved in accordance Regulation (EC) No 1069/2009; and

- (ii) when the destination is located in another Member State a channelling procedure in accordance with Article 12 is set up, under the control of the competent authorities of the Member States of the places of origin, transit and destination, in order to ensure that the unprocessed animal by-products are transported in a safe manner to the place of destination and are not subsequently dispatched to another Member State or third country.

Article 9

Derogations from the prohibition on the dispatch of hides and skins of bovine animals and captive wild ruminants from the areas listed in Parts I and II of Annex I

1. By way of derogation from the prohibition provided for in point (e) of Article 3, the competent authority may authorise the dispatch of hides and skins of bovine animals and captive wild ruminants from an area listed in Part I of Annex I to another area listed in Part I or II of Annex I of the same or another Member State provided that:

- (a) these are untreated raw hides and skins destined for human consumption or untreated hides and skins dispatched under the official supervision of the competent authorities for processing or disposal in an approved plant;
- (b) when the destination is located in another Member State a channelling procedure in accordance with Article 12 is set up, under the control of the competent authorities of the Member States of the places of origin, transit and destination, in order to ensure that the hides and skins are transported in a safe manner to the place of destination and are not subsequently dispatched to another Member State or third country before being processed at least in accordance with Article 9(2)(b); and
- (c) the hides and skins originate from holdings which are not subject to any of the restrictions provided for in Directive 92/119/EEC in relation to lumpy skin disease.

2. By way of derogation from the prohibition provided for in point (e) of Article 3, the competent authority may authorise the dispatch of hides and skins of bovine animals and captive wild ruminants from an area listed in Part I or II of Annex I to any area of the same or another Member State or third country provided that:

- (a) these are untreated raw hides and skins destined for human consumption or untreated hides and skins originating from holdings which are not subject to any of the restrictions provided for in Directive 92/119/EEC in relation to lumpy skin disease;
- (b) the hides and skins have been:
 - (i) treated in accordance with point 28(b) to (e) of Annex I to Commission Regulation (EU) No 142/2011 ⁽¹⁾; or
 - (ii) subjected to one of the treatments set out in point (4)(b)(ii) of Chapter I of Section XIV of Annex III to Regulation (EC) No 853/2004 of the European Parliament and of the Council ⁽²⁾; and
- (c) the hides and skins have undergone all precautions to avoid recontamination with pathogenic agents after treatment.

3. By way of derogation from the prohibition provided for in point (e) of Article 3, the competent authority may authorise the dispatch of hides and skins of bovine animals and captive wild ruminants from an area listed in Part II of Annex I to another area listed in Part II of Annex I of the same or another Member State provided that:

- (a) these are untreated raw hides and skins destined for human consumption or untreated hides and skins dispatched under the official supervision of the competent authorities for processing or disposal in an approved plant;
- (b) when the destination is located in another Member State a channelling procedure in accordance with Article 12 is set up, under the control of the competent authorities of the Member States of the places of origin, transit and destination, in order to ensure that the hides and skins are transported in a safe manner to the place of destination and are not subsequently dispatched to another Member State, before being processed at least in accordance with Article 9(2)(b); and

⁽¹⁾ Commission Regulation (EU) No 142/2011 of 25 February 2011 implementing Regulation (EC) No 1069/2009 of the European Parliament and of the Council laying down health rules as regards animal by-products and derived products not intended for human consumption and implementing Council Directive 97/78/EC as regards certain samples and items exempt from veterinary checks at the border under that Directive (OJ L 54, 26.2.2011, p. 1).

⁽²⁾ Regulation (EC) No 853/2004 of the European Parliament and of the Council of 29 April 2004 laying down specific hygiene rules for food of animal origin (OJ L 139, 30.4.2004, p. 55).

- (c) the hides and skins originate from holdings which are not subject to any of the restrictions provided for in Directive 92/119/EEC in relation to lumpy skin disease.
4. By way of derogation from the prohibition provided for in point (e) of Article 3, the competent authority may authorise the dispatch of hides and skins of bovine animals and captive wild ruminants from an area listed in Part I or II of Annex I to any area of the same or another Member State or third country provided that:
- (a) the hides and skins comply with any other appropriate animal health guarantees based on a positive outcome of a risk assessment of measures against the spread of lumpy skin disease, required by the competent authority of the Member State of the place of origin and approved by the competent authorities of the countries of the places of transit and destination, prior to the dispatch of such hides and skins;
- (b) the hides and skins originate from holdings which are not subject to any restrictions provided for by Directive 92/119/EEC in relation to lumpy skin disease;
- (c) a channelling procedure in accordance with Article 12 is set up, under the control of the competent authorities of the Member States of the places of origin, transit and destination, in order to ensure that the hides and skins, dispatched in accordance with the additional animal health guarantee requirements provided for in point (a) of this paragraph, are transported in a safe manner to the place of destination and are not subsequently dispatched to another Member State before being processed at least in accordance with Article 9(2)(b); and
- (d) the Member State of the place of origin must immediately inform the Commission and the other Member States of the animal health guarantees and the approval by the competent authorities provided for in point (a).

Article 10

Derogation from the prohibition on the dispatch of colostrum, milk and dairy products destined for animal feed from the areas listed in Part II of Annex I

1. By way of derogation from the prohibition provided for in point (c) of Article 3, the competent authority may authorise the dispatch of colostrum, milk and dairy products destined for animal feed obtained from bovine animals and captive wild ruminants kept on holdings situated in the areas listed in Part II of Annex I provided that the colostrum, milk and dairy products have been subjected to a treatment to ensure the destruction of the foot-and-mouth virus as described in points 1.1 to 1.5 of Part A of Annex IX to Council Directive 2003/85/EC ⁽¹⁾ and the consignment complies with paragraph 2 of this Article.
2. The competent authority shall only authorise the dispatch to other Member States of consignments of colostrum, milk and dairy products in accordance with the derogation provided for in paragraph 1 of this Article where the consignments are accompanied by an official health certificate, as set out in the Annex to Commission Regulation (EC) No 599/2004 ⁽²⁾, and Part II of that health certificate shall be completed with the following attestation:

‘Colostrum, milk or dairy products complying with Article 10 of Commission Implementing Decision (EU) 2016/2008 concerning animal health control measures relating to lumpy skin disease in certain Member States’.

Article 11

Requirements concerning transport vehicles, cleansing and disinfection

1. The competent authority shall ensure that before any transport vehicle which has been in contact with animals of susceptible species in an area listed in Part II of Annex I leaves that area, the operator or driver of that vehicle provides evidence showing that, since the last contact with those animals, the vehicle has been cleansed and disinfected in a manner to inactivate the lumpy skin disease virus and treated with authorised insecticides that are effective against vectors of lumpy skin disease.

⁽¹⁾ Council Directive 2003/85/EC of 29 September 2003 on Community measures for the control of foot-and-mouth disease repealing Directive 85/511/EEC and Decisions 89/531/EEC and 91/665/EEC and amending Directive 92/46/EEC (OJ L 306, 22.11.2003, p. 1).

⁽²⁾ Commission Regulation (EC) No 599/2004 of 30 March 2004 concerning the adoption of a harmonised model certificate and inspection report linked to intra-Community trade in animals and products of animal origin (OJ L 94, 31.3.2004, p. 44).

2. The competent authority shall specify the information to be submitted by the operator or driver of the transport vehicle, as provided for in paragraph 1, in order to demonstrate that the required cleansing, disinfection and disinsection have taken place.

Article 12

Channelling procedure

The competent authority shall ensure that the channelling procedure for the transport of live bovine animals and captive wild ruminants, unprocessed animal by-products and untreated hides and skins as covered by the derogations provided for in Articles 4, 5, 6, 8 and 9 comply with the following requirements:

- (a) each vehicle that is used for the transport of those live animals, unprocessed animal by-products or untreated hides and skins has been:
 - (i) individually registered by the competent authority of the Member State of the place of dispatch either for the purpose of the transport of live animals, or for unprocessed animal by-products or for untreated hides and skins using the channelling procedure;
 - (ii) sealed by the official veterinarian after loading for dispatch; only an official from the competent authority of the place of destination may break the seal and replace it with a new one; each loading or replacement of seals must be notified to the competent authority at the place of destination;
- (b) the transport takes place:
 - (i) under official supervision;
 - (ii) directly, without stopping unless a rest period required by Council Regulation (EC) No 1/2005 ⁽¹⁾ takes place in a control post. When a rest period of one day or more is foreseen at a control post during the movement through an area listed in Part II of Annex I, the animals are protected against attacks by vectors;
 - (iii) taking the route that has been authorised by the competent authority at the place of origin;
- (c) the consignment includes only live animals or unprocessed animal by-products or untreated hides and skins of the same health status;
- (d) the official veterinarian responsible for the holding of the place of destination must confirm each arrival to the competent authority of the place of origin;
- (e) after the unloading of the live animals, or the unprocessed animal by-products or untreated hides and skins the vehicle and any other equipment which have been used in the transport, are cleaned, disinfected and treated with authorised insecticides that are effective against known vectors of lumpy skin disease in their entirety within a closed area of the place of destination under the supervision of the official veterinarian;
- (f) before the first dispatch from areas listed in Part I or II of Annex I for which a channelling procedure takes place, the competent authority of the place of origin shall ensure that the necessary arrangements are in place with the relevant competent authorities in order to ensure the emergency plan, the chain of command and full cooperation of services in case of accidents during the transport, a major breakdown of the vehicle or any fraudulent action of the operator or driver and the driver or the operator of the truck or other vehicle shall immediately notify the competent authority of any accident or major breakdown of the vehicle; and
- (g) in the case of untreated hides and skins or unprocessed animal by-products, the vehicles must be completely leak proof from all sides including their door closure.

Article 13

Vaccination programmes against lumpy skin disease

Vaccination programmes against lumpy skin disease submitted by the Member States to the Commission for approval shall comply with the minimum requirements set out in Annex II.

⁽¹⁾ Council Regulation (EC) No 1/2005 of 22 December 2004 on the protection of animals during transport and related operations and amending Directives 64/432/EEC and 93/119/EC and Regulation (EC) No 1255/97 (OJ L 3, 5.1.2005, p. 1).

*Article 14***Repeal**

Implementing Decisions (EU) 2015/1500, (EU) 2015/2055, (EU) 2016/645 and (EU) 2016/1183 are repealed and their measures replaced by the measures provided for in this Decision.

*Article 15***Applicability**

This Decision shall apply until 31 December 2019.

*Article 16***Addressees**

This Decision is addressed to the Member States.

Done at Brussels, 15 November 2016.

For the Commission
Vytenis ANDRIUKAITIS
Member of the Commission

ANNEX I

PART I

‘Free zones with vaccination’1. *Croatia*

The entire territory of Croatia.

2. *Bulgaria*

A. The following provinces in Bulgaria:

- Province of Burgas
- Province of Varna
- Province of Dobrich
- Province of Razgrad
- Province of Silistra
- Province of Ruse
- Province of Pleven

B. The following municipalities in Bulgaria:

- The municipalities of Opaka, Popovo and Antonovo in the province of Targovishte.
- The municipalities of Shumen, Kaspichan, Novi Pazar, Nikola Kozlevo, Kaolinovo, Venets and Hitrino in the province of Shumen.
- The municipalities of Svishtov, Polski Trambesh and Strazhitsa, in the province of Veliko Tarnovo.

PART II

‘Infected zones’1. *Greece*

A. The following regions in Greece:

- Region of Attica
- Region of Central Greece
- Region of Central Macedonia
- Region of Eastern Macedonia and Thrace
- Region of Epirus
- Region of Peloponnese
- Region of Thessaly
- Region of Western Greece
- Region of Western Macedonia

B. The following regional units in Greece:

- Regional unit of Limnos

2. *Bulgaria*

The entire territory of Bulgaria excluding the areas listed in Part I.

ANNEX II

MINIMUM REQUIREMENTS FOR LUMPY SKIN DISEASE VACCINATION PROGRAMMES (REFERRED TO IN ARTICLE 13)**1. GENERAL REQUIREMENTS**

The vaccination programmes submitted by the Member States shall provide at least for:

- (a) vaccination of all bovine animals and where applicable captive wild ruminants, independently of their sex, age and gestational or productive status within the area where vaccination will be implemented;
- (b) vaccination of the offspring of vaccinated bovine animals and where applicable captive wild ruminants, in accordance with the instructions of the manufacturer of the vaccine used at the age of not less than 4 months;
- (c) revaccination of all bovine animals and where applicable captive wild ruminants, in accordance with the instructions of the manufacturer;
- (d) measures that will be in place to avoid the spread of possible vaccine virus. Any residual quantities of vaccine shall be returned to the point of vaccine distribution with a written record on the number of animals vaccinated and the number of doses used and subsequently safely destroyed under official supervision;
- (e) vaccination to be carried out under the supervision and control of the competent authority, by an official of the competent authority or a veterinarian authorised by and under supervision of the competent authority;
- (f) entry of the details for each vaccinated bovine animal by the competent authority in the dedicated online database connected with the central database established in accordance with Regulation (EC) No 1760/2000 of the European Parliament and of the Council ⁽¹⁾. The records shall ensure a link between the vaccinated dam and the offspring;
- (g) establishment of an increased surveillance area of at least 20 km around the area where vaccination is practiced, in which intensified surveillance shall be carried out and the movement of bovine animals shall be subject to controls by the competent authority.

2. MINIMUM INFORMATION TO BE PROVIDED

The vaccination programmes submitted by the Member States shall provide at least the following information:

- (a) the exact areas where vaccination will be implemented;
- (b) the type or types of vaccine that will be used;
- (c) the number of holdings and animals, per species and categories that will be vaccinated, per area;
- (d) the method and line of command regarding the implementation of the vaccination (storage, distribution of the vaccine, personnel that will perform vaccination, recording or special identification of vaccinated animals, prioritisation of vaccination per areas, official supervision of the vaccination, vaccination of new-born calves, revaccination of animals according to the manufacturer's instructions);
- (e) the timeline for the vaccination programme (inauguration, expected date of completion per area, date of completion in the entire area where vaccination is implemented);
- (f) all measures accompanying vaccination including restrictions in the movements of animals and dispatch of products and by-products thereof.

3. MINIMUM REPORTING REQUIREMENTS

The Member States which have submitted a vaccination programme shall report to the Commission at least the following:

- (a) immediate notification of the exact date of launching of the vaccination campaign;
- (b) monthly progress reports providing the exact vaccine coverage achieved in each area;

⁽¹⁾ Regulation (EC) No 1760/2000 of the European Parliament and of the Council of 17 July 2000 establishing a system for the identification and registration of bovine animals and regarding the labelling of beef and beef products and repealing Council Regulation (EC) No 820/97 (OJ L 204, 11.8.2000, p. 1).

- (c) immediate notification of the exact date of completion of vaccination in each area (vaccine coverage of at least 95 %, both at herd as well as at animal level);
 - (d) after completion of the first round of vaccination monthly reports submitted within the first week of each month, providing an account of the animals that were vaccinated during the previous month and the reason for vaccination (e.g. new calves, revaccination etc.);
 - (e) other information derived from the dedicated online database upon request from the Commission.
-

COMMISSION IMPLEMENTING DECISION (EU) 2016/2009**of 15 November 2016****approving the vaccination programmes against lumpy skin disease submitted by the Member States***(notified under document C(2016) 7219)***(Only the Bulgarian, Croatian and Greek texts are authentic)****(Text with EEA relevance)**

THE EUROPEAN COMMISSION,

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

Having regard to Council Directive 89/662/EEC of 11 December 1989 concerning veterinary checks in intra-Community trade with a view to the completion of the internal market ⁽¹⁾, and in particular Article 9(4) thereof,

Having regard to Council Directive 90/425/EEC of 26 June 1990 concerning veterinary and zootechnical checks applicable in intra-Community trade in certain live animals and products with a view to the completion of the internal market ⁽²⁾, and in particular Article 10(4) thereof,

Having regard to Council Directive 92/119/EEC of 17 December 1992 introducing general Community measures for the control of certain animal diseases and specific measures relating to swine vesicular disease ⁽³⁾, and in particular Article 19(1)(a), (3)(a) and (6) thereof,

Whereas:

- (1) Lumpy skin disease (LSD) is a primarily vector transmitted viral disease of bovine animals characterised by severe losses and with the potential for important spread, notably through live animals and products obtained from infected animals.
- (2) Directive 92/119/EEC lays down general measures for the control of certain animal diseases. These include measures to be taken in the event of a suspicion and the confirmation of LSD in a holding, the measures to be taken in restriction zones and other additional measures to control the disease. Those measures also provide for vaccination in case of an outbreak of LSD as a supplement to other control measures subject to approval by the Commission.
- (3) Commission Implementing Decision (EU) 2015/2055 ⁽⁴⁾ and Commission Implementing Decision (EU) 2016/1183 ⁽⁵⁾ provide that Greece and Bulgaria may carry out emergency vaccination of bovine animals kept on holdings in the vaccination zone as set out in Annex I to each of those Implementing Decisions. In view of the current epidemiological situation of LSD, Croatia which is under imminent threat, due to LSD occurrence in the region, notified the Commission on its intention to launch a vaccination campaign against LSD on 8 August 2016 respectively.
- (4) In accordance with the Urgent advice on lumpy skin disease of the European Food Safety Authority adopted on 29 July 2016 ⁽⁶⁾ vaccination against LSD is the most effective way of reducing disease spread. In order to reach the above described effects, it is necessary to implement vaccination of the entire susceptible population in regions at risk for LSD introduction or affected by LSD in order to minimise the number of outbreaks, and high animal- and farm-level vaccination coverage should be achieved.

⁽¹⁾ OJ L 395, 30.12.1989, p. 13.

⁽²⁾ OJ L 224, 18.8.1990, p. 29.

⁽³⁾ OJ L 62, 15.3.1993, p. 69.

⁽⁴⁾ Commission Implementing Decision (EU) 2015/2055 of 10 November 2015 laying down the conditions for setting out the programme for emergency vaccination of bovine animals against lumpy skin disease in Greece and amending Implementing Decision (EU) 2015/1500 (OJ L 300, 17.11.2015, p. 31).

⁽⁵⁾ Commission Implementing Decision (EU) 2016/1183 of 14 July 2016 approving the emergency vaccination programme against lumpy skin disease of bovine animals in Bulgaria and amending the Annex to Implementing Decision (EU) 2016/645 (OJ L 195, 20.7.2016, p. 75).

⁽⁶⁾ EFSA Journal 2016;14(8):4573 [27 pp.].

- (5) For reasons of clarity and simplification, the approval of the vaccination programmes of Greece and Bulgaria, currently included in Implementing Decisions (EU) 2015/2055 and (EU) 2016/1183 respectively, should be provided for in this Decision. In addition, the vaccination programme submitted by Croatia, should be approved. The vaccination programmes of Greece and Bulgaria, currently included in Implementing Decisions (EU) 2015/2055 and (EU) 2016/1183 respectively, and the vaccination programme submitted by Croatia fulfil the minimum requirements for lumpy skin disease vaccination programmes set out in Annex II to Commission Implementing Decision (EU) 2016/2008 ⁽¹⁾ concerning animal health control measures relating to lumpy skin disease in certain Member States.
- (6) In order to be successful a vaccination programme against LSD, together with other control measures, should be applied during several consecutive years to ensure immunisation of the whole susceptible population for sufficient time.
- (7) The measures provided for in this Decision are in accordance with the opinion of the Standing Committee on Plants, Animals, Food and Feed,

HAS ADOPTED THIS DECISION:

Article 1

Approval of vaccination programmes against lumpy skin disease

The vaccination programmes against lumpy skin disease listed in the Annex are hereby approved.

Article 2

Applicability

This Decision shall apply until 31 December 2019.

Article 3

Addressees

This Decision is addressed to the Republic of Bulgaria, the Hellenic Republic and the Republic of Croatia.

Done at Brussels, 15 November 2016.

For the Commission
Vytenis ANDRIUKAITIS
Member of the Commission

⁽¹⁾ Commission Implementing Decision (EU) 2016/2008 of 15 November 2016 concerning animal health control measures relating to lumpy skin disease in certain Member States (see page 51 of this Official Journal).

ANNEX

- The vaccination programme submitted by Greece.
 - The vaccination programme submitted by Bulgaria.
 - The vaccination programme submitted by Croatia.
-

COMMISSION IMPLEMENTING DECISION (EU) 2016/2010**of 16 November 2016****amending the Annex to Implementing Decision (EU) 2016/1968 concerning certain protective measures in relation to highly pathogenic avian influenza of subtype H5N8 in Hungary***(notified under document C(2016) 7506)***(Only the Hungarian text is authentic)****(Text with EEA relevance)**

THE EUROPEAN COMMISSION,

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

Having regard to Council Directive 89/662/EEC of 11 December 1989 concerning veterinary checks in intra-Community trade with a view to the completion of the internal market ⁽¹⁾, and in particular Article 9(4) thereof,

Having regard to Council Directive 90/425/EEC of 26 June 1990 concerning veterinary and zootechnical checks applicable in intra-Community trade in certain live animals and products with a view to the completion of the internal market ⁽²⁾, and in particular Article 10(4) thereof,

Whereas:

- (1) Commission Implementing Decision (EU) 2016/1968 ⁽³⁾ was adopted following an outbreak of highly pathogenic avian influenza of subtype H5N8 in a holding in Hungary, and the establishment of protection and surveillance zones by the competent authority of that Member State in accordance with Council Directive 2005/94/EC ⁽⁴⁾. Implementing Decision (EU) 2016/1968 provides that the protection and surveillance zones established by Hungary in accordance with Directive 2005/94/EC are to comprise at least the areas listed as protection and surveillance zones in the Annex to that Implementing Decision.
- (2) Since the date of adoption of Implementing Decision (EU) 2016/1968, Hungary has notified the Commission of further outbreaks of avian influenza of subtype H5N8 in poultry holdings outside the areas listed in the Annex to Implementing Decision (EU) 2016/1968.
- (3) Following these further outbreaks, Hungary took the control measures required pursuant to Directive 2005/94/EC, including the establishment of protection and surveillance zones around these outbreaks.
- (4) The Commission has examined the control measures taken by Hungary and it is satisfied that the borders of the new protection and surveillance zones, established by the competent authority of that Member State, in accordance with Article 16(1) of Directive 2005/94/EC, are at a sufficient distance to the actual holdings where the new outbreaks of HPAI have been confirmed.
- (5) In order to prevent any unnecessary disturbance to trade within the Union and to avoid unjustified barriers to trade being imposed by third countries, it is necessary to rapidly describe the new protection and surveillance zones established by Hungary at Union level.
- (6) Accordingly, the Annex to Implementing Decision (EU) 2016/1968 should be amended to include the new protection and surveillance zones.
- (7) Implementing Decision (EU) 2016/1968 should therefore be amended accordingly.
- (8) The measures provided for in this Decision are in accordance with the opinion of the Standing Committee on Plants, Animals, Food and Feed,

⁽¹⁾ OJ L 395, 30.12.1989, p. 13.

⁽²⁾ OJ L 224, 18.8.1990, p. 29.

⁽³⁾ Commission Implementing Decision (EU) 2016/1968 of 9 November 2016 concerning certain protective measures in relation to highly pathogenic avian influenza of subtype H5N8 in Hungary (OJ L 303, 10.11.2016, p. 23).

⁽⁴⁾ Council Directive 2005/94/EC of 20 December 2005 on Community measures for the control of avian influenza and repealing Directive 92/40/EEC (OJ L 10, 14.1.2006, p. 16).

HAS ADOPTED THIS DECISION:

Article 1

The Annex to Implementing Decision (EU) 2016/1968 is replaced by the text set out in the Annex to this Decision.

Article 2

This Decision is addressed to Hungary.

Done at Brussels, 16 November 2016.

For the Commission
Vytenis ANDRIUKAITIS
Member of the Commission

ANNEX

‘ANNEX

PART A

Protection zone as referred to in Article 1:

ISO Country Code	Member State	Code (if available)	Name	Date until applicable in accordance with Article 29 of Directive 2005/94/EC
HU	Hungary	[Postal/ADNS code]	Area comprising:	
			That parts of Orosháza district of Békés county and that parts of Makó district of Csongrád county contained within a circle of radius 3 kilometres, centred on GPS coordinates N46.39057; E20.74251; supplemented with the entire built-up areas of Tótkomlós and Nagyér localities	27.11.2016
			That parts of Kiskunmajsa district of Bács-Kiskun county contained within a circle of radius 3 kilometres, centred on GPS coordinates N46.469039; E19.801094	2.12.2016
			That parts of Kiskunfélegyháza, Kecskemét and Kiskunmajsa districts of Bács-Kiskun county contained within a circle of radius 3 kilometres, centred on GPS coordinates N46.682422; E19.638406; supplemented with the entire built-up areas of Bugac (without Bugac-Alsómonostor) and Móricgát-Erdőszéplak localities	3.12.2016
			That parts of Kiskunhalas district of Bács-Kiskun county contained within a circle of radius 3 kilometres, centred on GPS coordinates N46.268418; E19.573609	5.12.2016
			That parts of Kiskunhalas district of Bács-Kiskun county contained within a circle of radius 3 kilometres, centred on GPS coordinates N46.229847; E19.619350; supplemented with the entire built-up area of Kelebia-Újfalu locality	5.12.2016

PART B

Surveillance zone as referred to in Article 1:

ISO Country Code	Member State	Code (if available)	Name	Date until applicable in accordance with Article 31 of Directive 2005/94/EC
HU	Hungary	[Postal/ADNS code]	Area comprising:	
			The area of the parts of Orosháza and Mezőkovácsháza districts of Békés county and the area of the parts of Makó district of Csongrád county beyond the area described in the protection zone and within the circle of radius 10 kilometres, centred on GPS coordinates N46.39057; E20.74251; supplemented with the entire built-up areas of Békéssámson, Kaszaper, Végegyháza and Mezőhegyes localities	6.12.2016

ISO Country Code	Member State	Code (if available)	Name	Date until applicable in accordance with Article 31 of Directive 2005/94/EC
			That parts of Orosháza district of Békés county and that parts of Makó district of Csongrád county contained within a circle of radius 3 kilometres, centred on GPS coordinates N46.39057; E20.74251; supplemented with the entire built-up areas of Tótkomlós and Nagyér localities	28.11.2016-6.12.2016
			The area of the parts of Kiskunmajsa and Kiskunhalas districts of Bács-Kiskun county and the area of the parts of Kistelek and Mórahalom districts of Csongrád county beyond the area described in the protection zone and within the circle of radius 10 kilometres, centred on GPS coordinates N46.469039; E19.801094	11.12.2016
			That parts of Kiskunmajsa district of Bács-Kiskun county contained within a circle of radius 3 kilometres, centred on GPS coordinates N46.469039; E19.801094	3.12.2016-11.12.2016
			The area of the parts of Kiskunfélegyháza, Kecskemét, Kiskőrös and Kiskunmajsa districts of Bács-Kiskun county beyond the area described in the protection zone and within the circle of radius 10 kilometres, centred on GPS coordinates N46.682422; E19.638406	12.12.2016
			That parts of Kiskunfélegyháza, Kecskemét and Kiskunmajsa districts of Bács-Kiskun county contained within a circle of radius 3 kilometres, centred on GPS coordinates N46.682422; E19.638406 supplemented with the entire built-up areas of Bugac (without Bugac-Alsómonostor) and Móricgát-Erdőszéplak localities	4.12.2016-12.12.2016
			The area of the parts of Kiskunhalas and Jánoshalma districts of Bács-Kiskun county and the area of the parts of Mórahalom district of Csongrád county beyond the area described in the protection zone and within the circle of radius 10 kilometres, centred on GPS coordinates N46.268418; E19.573609; supplemented with the entire built-up area of Balotaszállás locality	14.12.2016
			That parts of Kiskunhalas district of Bács-Kiskun county contained within a circle of radius 3 kilometres, centred on GPS coordinates N46.268418; E19.573609	6.12.2016-14.12.2016
			The area of the parts of Kiskunhalas and Jánoshalma districts of Bács-Kiskun county and the area of the parts of Mórahalom district of Csongrád county beyond the area described in the protection zone and within the circle of radius 10 kilometres, centred on GPS coordinates N46.229847; E19.619350	14.12.2016
			That parts of Kiskunhalas district of Bács-Kiskun county contained within a circle of radius 3 kilometres, centred on GPS coordinates N46.229847; E19.619350; supplemented with the entire built-up area of Kelebia-Újfalu locality	6.12.2016-14.12.2016'

COMMISSION IMPLEMENTING DECISION (EU) 2016/2011**of 16 November 2016****concerning certain protective measures in relation to highly pathogenic avian influenza of subtype H5N8 in Germany***(notified under document C(2016) 7508)***(Only the German text is authentic)****(Text with EEA relevance)**

THE EUROPEAN COMMISSION,

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

Having regard to Council Directive 89/662/EEC of 11 December 1989 concerning veterinary checks in intra-Community trade with a view to the completion of the internal market ⁽¹⁾, and in particular Article 9(4) thereof,

Having regard to Council Directive 90/425/EEC of 26 June 1990 concerning veterinary and zootechnical checks applicable in intra-Community trade in certain live animals and products with a view to the completion of the internal market ⁽²⁾, and in particular Article 10(4) thereof,

Whereas:

- (1) Avian influenza is an infectious viral disease in birds, including poultry. Infections with avian influenza viruses in domestic poultry cause two main forms of that disease that are distinguished by their virulence. The low pathogenic form generally only causes mild symptoms, while the highly pathogenic form results in very high mortality rates in most poultry species. That disease may have a severe impact on the profitability of poultry farming.
- (2) Although avian influenza is mainly found in birds, humans have also been infected with the causative virus occasionally and under certain circumstances.
- (3) In the event of an outbreak of avian influenza, there is a risk that the disease agent spreads to other holdings where poultry or other captive birds are kept. As a result it may spread from one Member State to other Member States or to third countries through trade in live poultry or other captive birds or their products.
- (4) Council Directive 2005/94/EC ⁽³⁾ sets out certain preventive measures relating to the surveillance and the early detection of avian influenza and the minimum control measures to be applied in the event of an outbreak of that disease in poultry or other captive birds. That Directive provides for the establishment of protection and surveillance zones in the event of an outbreak of highly pathogenic avian influenza.
- (5) Germany notified the Commission of several outbreaks of highly pathogenic avian influenza of subtype H5N8 in holdings on its territory where poultry or other captive birds are kept and it took the measures required in accordance with Directive 2005/94/EC, including the establishment of protection and surveillance zones.
- (6) The Commission has examined the measures taken by Germany in accordance with Directive 2005/94/EC and it is satisfied that the boundaries of the protection and surveillance zones, established by the competent authority in that Member State, are at sufficient distance to any holding where an outbreak has been confirmed.
- (7) In order to prevent any unnecessary disturbance to trade within the Union and to avoid unjustified barriers to trade being imposed by third countries, it is necessary to rapidly describe at Union level, in collaboration with Germany, the protection and surveillance zones established in that Member State.

⁽¹⁾ OJ L 395, 30.12.1989, p. 13.

⁽²⁾ OJ L 224, 18.8.1990, p. 29.

⁽³⁾ Council Directive 2005/94/EC of 20 December 2005 on Community measures for the control of avian influenza and repealing Directive 92/40/EEC (OJ L 10, 14.1.2006, p. 16).

- (8) Accordingly, the protection and surveillance zones in Germany, where the measures provided for in Directive 2005/94/EC are applied, should be described in the Annex to this Decision and the duration of that regionalisation should be fixed.
- (9) The measures provided for in this Decision are in accordance with the opinion of the Standing Committee on Plants, Animals, Food and Feed,

HAS ADOPTED THIS DECISION:

Article 1

Germany shall ensure that the protection and surveillance zones established in accordance with Article 16(1) of Directive 2005/94/EC comprise at least the areas listed as protection and surveillance zones in Parts A and B of the Annex to this Decision.

Article 2

This Decision shall apply until 31 December 2016.

Article 3

This Decision is addressed to the Federal Republic of Germany.

Done at Brussels, 16 November 2016.

For the Commission
Vytenis ANDRIUKAITIS
Member of the Commission

ANNEX

PART A

Protection zone as referred to in Article 1:

ISO Country Code	Member State	Code (if available)	Name	Date until applicable in accordance with Article 29 of Directive 2005/94/EC
DE	Germany		Area comprising:	
			Kreis Schleswig-Flensburg: Ab Ortsteil Triangel, Gemeinde Nübel Richtung Norden auf die Schleswiger Straße bis zur Gemeindegrenze Nübel/Tolk, entlang dieser Gemeindegrenze bis zur Schleswiger Straße, östlich am Ortsteil Wellspang vorbei bis zur Gemeindegrenze Böklund, südlich an der Gemeindegrenze entlang bis zur Kattbeker Straße, links ab bis zur Hans-Christophersen-Allee, diese rechts weiter, übergehend in Bellig und Struxdorf bis zur Gemeindegrenze Struxdorf/Böel, an dieser entlang Richtung Süden bis Ortsteil Boholzau, rechts auf Gemeindegrenze Struxdorf/Twedt bis zur Straße Boholz, diese links weiter auf Boholzau und Buschau, bis Ortsteil Buschau, links ab auf Buschau, dann rechts weiter auf Buschau, gleich wieder links auf Lücke bis zur B 201, rechts weiter Richtung Süden bis links Höckerberg, weiter Osterholz bis Sportplatz, dann rechts auf Verbindungsstraße zur Straße Friedenstal, links weiter bis zur Gemeindegrenze Loit/Steinfeld, dieser folgen bis Gemeindegrenze Steinfeld/Taarstedt, dieser links folgen bis Gemeindegrenze Taarstedt/Ulsnis, rechts weiter auf dieser Gemeindegrenze, weiter auf der Gemeindegrenze Taarstedt/Goltoft und Taarstedt/Brodersby und Taarstedt/Schaalby bis Heerweg, dann links weiter auf Heerweg bis Hauptstraße, weiter rechts auf Hauptstraße bis Raiffeisenstraße, rechts weiter auf Hauptstraße bis B 201, links weiter auf B 201 bis Ortsteil Triangel. Stadt Lübeck: Von der Kreisgrenze entlang des Sonnenbergsredder bis zum Parkplatz im Waldusener Forst, Richtung Waldhusener Weg, Waldhusener Weg folgend bis zur B75, über die B75 Richtung Solmitzstraße, von der Dummersdorfer Straße zum Neunteilsredder bis Weg Dummersbarn bis zur Trave, die Trave entlang, Richtung Pötenitzer Wiek, die Landstraße querend zur Lübecker Bucht, Landesgrenze über den Wasserweg zur Strandpromenade, hinüber zur Berlingstraße, über Godewind und Fahrenberg, über Steenkamp zu Rödsaal, Timmendorfer Weg Richtung B76, die B76 überqueren und Bollbrügg folgen, entlang der Kreisgrenze zu Ostholstein bis Sonnenbergsredder. Kreis Ostholstein: In der Gemeinde Ratekau nachfolgend beschriebenes Gebiet: Travemünder Straße bis zur Kreisgrenze zur Stadt Lübeck; Ab der Kreisgrenze Ortsteil Kreuzkamp, Offendorfer Straße gen Norden entlang dem Sonnenbergsredder — K15. Vor Warnsdorf entlang des Bachverlaufs bis zum Schloss Warnsdorf. Der Schlossstr. und der Niendorfer Str. bis zur Tarvemünder Straße.	5.12.2016

ISO Country Code	Member State	Code (if available)	Name	Date until applicable in accordance with Article 29 of Directive 2005/94/EC
		17498	In der Gemeinde Mesekenhagen die Ortsteile — Mesekenhagen — Frätow — Gristow — Kalkvitz — Klein Karrendorf — Kowall In der Gemeinde Wackerow die Ortsteile — Groß Kieshofk — Groß Kieshof Ausbau — Klein Kieshof	5.12.2016
		18519	In der Gemeinde Sundhagen — der Ortsteil Jäger.	5.12.2016

PART B

Surveillance zone as referred to in Article 1:

ISO Country Code	Member State	Code (if available)	Name	Date until applicable in accordance with Article 31 of Directive 2005/94/EC
DE	Germany		Area comprising:	
			Kreis Schleswig-Flensburg: Entlang der äußeren Gemeindegrenze Schleswig, weiter auf äußere Gemeindegrenze Lürschau, weiter auf äußere Gemeindegrenze Idstedt, weiter auf äußere Gemeindegrenze Stolk, weiter auf äußere Gemeindegrenze Klappholz, weiter auf äußere Gemeindegrenze Havetoft, weiter auf obere Gemeindegrenze Mittelangeln, weiter auf obere Gemeindegrenze Mohrkirch, weiter auf äußere Gemeindegrenze Saustrup, weiter auf äußere Gemeindegrenze Wagersrott, weiter auf äußere Gemeindegrenze Dollrothfeld, weiter auf äußere Gemeindegrenze Boren bis zur Kreisgrenze, an der Kreisgrenze entlang bis. Kreis Rendsburg-Eckernförde: Gemeinde Kosel: gesamtes Gemeindegebiet. Gemeinde Rieseby Amtsgrenze Rieseby, südlich weiter Amtsgrenze Kosel entlang bis Kreisgrenze. Kreis Schleswig-Flensburg: Südlich an der Gemeindegrenze Borwedel entlang, weiter auf unterer Gemeindegrenze Fahrdorf bis zur Gemeindegrenze Schleswig.	14.12.2016

ISO Country Code	Member State	Code (if available)	Name	Date until applicable in accordance with Article 31 of Directive 2005/94/EC
			Stadt Lübeck: Von der Kreisgrenze über den Wasserweg durch den Petroleumhafen, weiter durch die Trave, Verlängerung des Sandbergs, die B75 queren Richtung Heiligen-Geist Kamp, weiter über die Arnimstraße und Edelsteinstraße, über Heiweg Richtung Wesloer Tannen bzw. Brandenbaumer Tannen, die Landesgrenze entlang, die Landstraße überqueren, am Wasser entlang bis zur Kreisgrenze zu Ostholstein, die Kreisgrenze entlang zum Petroleumhafen Kreis Ostholstein: Die Gemeinden Ratekau, Bad Schwartau und Timmendorfer Strand sowie der nachfolgend beschriebene Bereich der Gemeinde Scharbeutz: Dem Straßenverlauf der L 102 ab der Straße Bövelstredder folgend bis zur B76, der Bundesstraße bis zur Wasserlinie folgend, weiter bis zur Gemeindegrenze Timmendorfer Strand.	
		23923	In der Gemeinde Selmsdorf die Orte und Ortsteile — Hof Selmsdorf — Selmsdorf — Lauen — Sülsdorf — Teschow — Zarnewanz, In der Gemeinde Lüdersdorf der Ort — Palingen In der Gemeinde Schönberg der Ort — Kleinfeld	14.12.2016
		23942	In der Gemeinde Dassow die Orte und Ortsteile — Barendorf — Benckendorf	14.12.2016
		17498	Die Gemeinde Neuenkirchen mit den Ortsteilen — Neuenkirchen, — Oldenhagen, — Wampen. In der Gemeinde Wackerow die Ortsteile Wackerow, — Dreizehnhausen, — Groß Petershagen, — Immenhorst, — Jarmshagen, — Klein Petershagen, — Steffenshagen.	14.12.2016

ISO Country Code	Member State	Code (if available)	Name	Date until applicable in accordance with Article 31 of Directive 2005/94/EC
			In der Gemeinde Hinrichshagen die Ortsteile — Hinrichshagen, — Feldsiedlung, — Heimsiedlung, — Chausseesiedlung, — Hinrichshagen Hof I und II, Neu — Ungnade.	
		17489	In der Hansestadt Greifswald die Stadtteile — Fettenvorstadt, — Fleischervorstadt, — Industriegebiet, — Innenstadt, — Nördliche Mühlenvorstadt, — Obstbaumsiedlung, — Ostseeviertel, — Schönwalde II, — Stadtrandsiedlung, — Steinbeckervorstadt, — südliche Mühlenstadt, — Schönwalde I, — Südstadt.	14.12.2016
		17941	In der Hansestadt Greifswald die Stadtteile — Friedrichshagen, — Ladebow	14.12.2016
		17493	In der Hansestadt Greifswald die Stadtteile — Insel Koos, — Ostseeviertel, — Riems.	14.12.2016
		18516	In der Gemeinde Süderholz die Ortsteile — Griebenow, — Dreizehnhausen, — Kreutzmannshagen, — Willershusen.	14.12.2016
		18519	In der Gemeinde Sundhagen die Ortsteile — Horst, — Wendorf, — Gerdeswalde, — Segebadenhau, — Wilmschagen,	14.12.2016

ISO Country Code	Member State	Code (if available)	Name	Date until applicable in accordance with Article 31 of Directive 2005/94/EC
			— Wilmshagen Siedlung, — Mannhagen, — Jeesser, — Jeesser Hof, — Kirchdorf, — Dömitzow, — Reinkenhagen, — Miltzow, — Klein Miltzow, — Hankenhagen, — Oberhinrichshagen, — Reinberg, — Stahlbrode, — Falkenhagen, — Tremt.	
		18574	In der Gemeinde Garz — auf der Halbinsel Zudar ein Uferstreifen von 500 m Breite östlich von Glewitz zwischen Fähranleger und Palmer Ort.	14.12.2016
			Kreis Schleswig-Flensburg: Ab Ortsteil Triangel, Gemeinde Nübel Richtung Norden auf die Schleswiger Straße bis zur Gemeindegrenze Nübel/Tolk, entlang dieser Gemeindegrenze bis zur Schleswiger Straße, östlich am Ortsteil Wellspang vorbei bis zur Gemeindegrenze Böklund, südlich an der Gemeindegrenze entlang bis zur Kattbeker Straße, links ab bis zur Hans-Christophersen-Allee, diese rechts weiter, übergehend in Bellig und Struxdorf bis zur Gemeindegrenze Struxdorf/Böel, an dieser entlang Richtung Süden bis Ortsteil Boholzau, rechts auf Gemeindegrenze Struxdorf/Twedt bis zur Straße Boholz, diese links weiter auf Boholzau und Buschau, bis Ortsteil Buschau, links ab auf Buschau, dann rechts weiter auf Buschau, gleich wieder links auf Lücke bis zur B 201, rechts weiter Richtung Süden bis links Höckerberg, weiter Osterholz bis Sportplatz, dann rechts auf Verbindungsstraße zur Straße Friedenstal, links weiter bis zur Gemeindegrenze Loit/Steinfeld, dieser folgen bis Gemeindegrenze Steinfeld/Taarstedt, dieser links folgen bis Gemeindegrenze Taarstedt/Ulsnis, rechts weiter auf dieser Gemeindegrenze, weiter auf der Gemeindegrenze Taarstedt/Goltoft und Taarstedt/Brodersby und Taarstedt/Schaalby bis Heerweg, dann links weiter auf Heerweg bis Hauptstraße, weiter rechts auf Hauptstraße bis Raiffeisenstraße, rechts weiter auf Hauptstraße bis B 201, links weiter auf B 201 bis Ortsteil Triangel.	6.12.2016-14.12.2016

ISO Country Code	Member State	Code (if available)	Name	Date until applicable in accordance with Article 31 of Directive 2005/94/EC
			Stadt Lübeck: Von der Kreisgrenze entlang des Sonnenbergsredder bis zum Parkplatz im Waldusener Forst, Richtung Waldhusener Weg, Waldhusener Weg folgend bis zur B75, über die B75 Richtung Solmitzstraße, von der Dummersdorfer Straße zum Neunteilsredder bis Weg Dummersbarn bis zur Trave, die Trave entlang, Richtung Pötenitzer Wiek, die Landstraße querend zur Lübecker Bucht, Landesgrenze über den Wasserweg zur Strandpromenade, hinüber zur Berlingstraße, über Godewind und Fahrenberg, über Steenkamp zu Rödsaal, Timmendorfer Weg Richtung B76, die B76 überqueren und Bollbrügg folgen, entlang der Kreisgrenze zu Ostholstein bis Sonnenbergsredder. Kreis Ostholstein: In der Gemeinde Ratekau nachfolgend beschriebenes Gebiet: Travemünder Straße bis zur Kreisgrenze zur Stadt Lübeck; Ab der Kreisgrenze Ortsteil Kreuzkamp, Offendorfer Straße gen Norden entlang dem Sonnenbergsredder — K15. Vor Warnsdorf entlang des Bachverlaufs bis zum Schloss Warnsdorf. Der Schlossstr. und der Niendorfer Str. bis zur Tarvemünder Straße.	
		17498	In der Gemeinde Mesekenhagen die Ortsteile — Mesekenhagen — Frätow — Gristow — Kalkvitz — Klein Karrendorf — Kowall In der Gemeinde Wackerow die Ortsteile — Groß Kieshofk — Groß Kieshof Ausbaur — Klein Kieshof	6.12.2016-14.12.2016
		18519	In der Gemeinde Sundhagen — der Ortsteil Jäger.	6.12.2016-14.12.2016

COMMISSION IMPLEMENTING DECISION (EU) 2016/2012**of 16 November 2016****concerning certain protective measures in relation to highly pathogenic avian influenza of subtype H5N8 in Austria***(notified under document C(2016) 7512)***(Only the German text is authentic)****(Text with EEA relevance)**

THE EUROPEAN COMMISSION,

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

Having regard to Council Directive 89/662/EEC of 11 December 1989 concerning veterinary checks in intra-Community trade with a view to the completion of the internal market ⁽¹⁾, and in particular Article 9(4) thereof,

Having regard to Council Directive 90/425/EEC of 26 June 1990 concerning veterinary and zootechnical checks applicable in intra-Community trade in certain live animals and products with a view to the completion of the internal market ⁽²⁾, and in particular Article 10(4) thereof,

Whereas:

- (1) Avian influenza is an infectious viral disease in birds, including poultry. Infections with avian influenza viruses in domestic poultry cause two main forms of that disease that are distinguished by their virulence. The low pathogenic form generally only causes mild symptoms, while the highly pathogenic form results in very high mortality rates in most poultry species. That disease may have a severe impact on the profitability of poultry farming.
- (2) Although avian influenza is mainly found in birds, humans have also been infected with the causative virus occasionally and under certain circumstances also in humans.
- (3) In the event of an outbreak of avian influenza, there is a risk that the disease agent may spread to other holdings where poultry or other captive birds are kept. As a result it may spread from one Member State to other Member States or to third countries through trade in live poultry or other captive birds or their products.
- (4) Council Directive 2005/94/EC ⁽³⁾ sets out certain preventive measures relating to the surveillance and the early detection of avian influenza and the minimum control measures to be applied in the event of an outbreak of that disease in poultry or other captive birds. That Directive provides for the establishment of protection and surveillance zones in the event of an outbreak of highly pathogenic avian influenza.
- (5) Austria notified the Commission of an outbreak of highly pathogenic avian influenza of subtype H5N8 in a holding on its territory where poultry or other captive birds are kept and it took the measures required in accordance with Directive 2005/94/EC, including the establishment of protection and surveillance zones.
- (6) The Commission has examined the measures taken by Austria in accordance with Directive 2005/94/EC and it is satisfied that the boundaries of the protection and surveillance zones, established by the competent authority in that Member State, are at sufficient distance to any holding where an outbreak has been confirmed.
- (7) In order to prevent any unnecessary disturbance to trade within the Union and to avoid unjustified barriers to trade being imposed by third countries, it is necessary to rapidly describe at Union level, in collaboration with Austria, the protection and surveillance zones established in that Member State.
- (8) Accordingly, the protection and surveillance zones in Austria, where the measures provided for in Directive 2005/94/EC are applied, should be described in the Annex to this Decision and the duration of that regionalisation should be fixed.
- (9) The measures provided for in this Decision are in accordance with the opinion of the Standing Committee on Plants, Animals, Food and Feed,

⁽¹⁾ OJ L 395, 30.12.1989, p. 13.

⁽²⁾ OJ L 224, 18.8.1990, p. 29.

⁽³⁾ Council Directive 2005/94/EC of 20 December 2005 on Community measures for the control of avian influenza and repealing Directive 92/40/EEC (OJ L 10, 14.1.2006, p. 16).

HAS ADOPTED THIS DECISION:

Article 1

Austria shall ensure that the protection and surveillance zones established in accordance with Article 16(1) of Directive 2005/94/EC comprise at least the areas listed as protection and surveillance zones in Parts A and B of the Annex to this Decision.

Article 2

This Decision shall apply until 31 December 2016.

Article 3

This Decision is addressed to the Republic of Austria.

Done at Brussels, 16 November 2016.

For the Commission
Vytenis ANDRIUKAITIS
Member of the Commission

ANNEX

PART A

Protection zone as referred to in Article 1:

ISO Country Code	Member State	Code (if available)	Name	Date until applicable in accordance with Article 29 of Directive 2005/94/EC
AT	Austria		Area comprising:	
			Gemeinden Bregenz, Hard, Fußach, Lauterach	14.12.2016

PART B

Surveillance zone as referred to in Article 1:

ISO Country Code	Member State	Code (if available)	Name	Date until applicable in accordance with Article 31 of Directive 2005/94/EC
AT	Austria		Area comprising:	
			Gemeinden Langen, Buch, Schwarzach, Kennelbach, Wolfurt, Bildstein, Dornbirn, Lustenau, Lochau, Höchst, Hörbranz, Gaißau, Eichenberg	23.12.2016
			Gemeinden Bregenz, Hard, Fußach, Lauterach	15.12.2016-23.12.2016

III

(Other acts)

EUROPEAN ECONOMIC AREA

EFTA SURVEILLANCE AUTHORITY DECISION

No 138/16/COL

of 28 June 2016

authorising Iceland to derogate from Regulation (EC) No 216/2008 of the European Parliament and of the Council with respect to the existing provisions regarding the issuance of certificates of airworthiness for imported aircraft [2016/2013]

THE EFTA SURVEILLANCE AUTHORITY,

Having regard to the Act referred to at point 66n of Annex XIII to the EEA Agreement,

Regulation (EC) No 216/2008 of the European Parliament and of the Council of 20 February 2008 on common rules in the field of civil aviation and establishing a European Aviation Safety Agency, and repealing Council Directive 91/670/EEC, Regulation (EC) No 1592/2002 and Directive 2004/36/EC ⁽¹⁾, as amended ('the Act'),

as adapted to the EEA Agreement by Protocol 1 thereto, and in particular Article 14(6) and (7) of the Act,

Having regard to the opinion of the EFTA Transport Committee delivered on 10 June 2016,

Having regard to Decision 103/13/COL of the EFTA Surveillance Authority ('the Authority') of 13 March 2013 empowering the College Member with special responsibility for transport to take certain decisions and measures (Doc No 578349).

Whereas:

Iceland notified the EFTA Surveillance Authority and the European Aviation Safety Agency ('the Agency') by letter dated 25 February 2016 (Doc No 794710), of its intention to derogate from point 21.A.174(b)3(ii) of Annex I (Part 21) of the act referred to at point 66p of Annex XIII to the EEA Agreement (*Commission Regulation (EU) No 748/2012 of 3 August 2012 laying down implementing rules for the airworthiness and environmental certification of aircraft and related products, parts and appliances, as well as for the certification of design and production organisations ⁽²⁾, as amended*) ('Regulation (EU) No 748/2012') as adapted to the EEA Agreement by Protocol 1 thereto.

In accordance with point 21.A.174(b)3(ii) of Annex I (Part 21) to Regulation (EU) No 748/2012, each application for a certificate of airworthiness for an aircraft imported from a third country, shall include a statement by the competent authority of the State where the aircraft is or was registered, reflecting the airworthiness status of the aircraft on its register at the time of transfer. However, in some cases such a statement is not available and cannot be obtained. Iceland's intention is thus to waive the requirement to include such a statement.

In its decision of 6 February 2014 the European Commission authorised Sweden to derogate from the point of 21.A.174(b)3(ii) of Annex I (Part 21) to Regulation (EU) No 748/2012 and to waive the requirement to include such a statement ⁽³⁾.

⁽¹⁾ OJ L 79, 19.3.2008, p. 1.

⁽²⁾ OJ L 224, 21.8.2012, p. 1.

⁽³⁾ Annex VI of Commission Decision 2014/69/EU of 6 February 2014 authorising Sweden and the United Kingdom to derogate from certain common aviation safety rules pursuant to Article 14(6) of Regulation (EC) No 216/2008 of the European Parliament and of the Council (OJ L 39, 8.2.2014, p. 60).

That derogation applies until amendment to resolve this issue, as part of the rulemaking task RMT.0020, of Subpart H (Certificate of Airworthiness and Restricted Certificate of Airworthiness) of Annex I (Part 21) to Regulation (EU) No 748/2012 is adopted and becomes applicable.

The rulemaking task, RMT.0020, has now been merged with another rulemaking task, RMT.0278 (Importing of aircraft from other regulatory system, and Part 21 Subpart H review) and a notice of proposed rulemaking is currently in its final stages of adoption by the European Aviation Safety Agency.

Based on the above, the Authority has concluded that the notified Icelandic derogation fulfils the requirements laid down in Article 14(6) and (7) of the Act.

The measures provided for in this Decision are in accordance with the opinion of the EFTA Transport Committee,

HAS ADOPTED THIS DECISION:

Article 1

Iceland may derogate from point 21.A.174(b)3(ii) of Annex I (Part 21) to the act referred to at point 66p of Annex XIII to the EEA Agreement (*Commission Regulation (EU) No 748/2012 of 3 August 2012 laying down implementing rules for the airworthiness and environmental certification of aircraft and related products, parts and appliances, as well as for the certification of design and production organisations, as amended*) ('Regulation (EU) No 748/2012') as adapted to the EEA Agreement by Protocol 1 thereto and accept applications for a certificate of airworthiness, for aircraft imported from a third country, without a statement by the competent authority of the State where the aircraft is or was registered, reflecting the airworthiness status of the aircraft on its register at the time of transfer.

This derogation shall apply until an amendment to resolve this issue, as part of the rulemaking task RMT.0278, of Subpart H (Certificate of Airworthiness and Restricted Certificates of Airworthiness) of Annex I (Part 21) to Regulation (EU) No 748/2012, is adopted and becomes applicable to the EFTA States.

Article 2

All EFTA States shall be entitled to apply the same measures referred to in Article 1, subject to the conditions stated in the Annex to this Decision, and subject to the notification obligation set out Article 14(6) of the Act.

Article 3

The Decision is addressed to Iceland. It is authentic in the English language.

Article 4

This Decision shall be notified to Iceland, Norway and Liechtenstein.

Done at Brussels, 28 June 2016.

For the EFTA Surveillance Authority

Helga JÓNSDÓTTIR
College Member

Carsten ZATSCHLER
Director

ANNEX

CONDITIONS ATTACHED TO THE APPLICATION OF THE DEROGATION

The competent authority shall examine the aircraft documentation and inspect the aircraft to verify that:

- the historical records of the aircraft are complete and sufficient to establish the production and modification standard,
- the aircraft was produced in accordance with the type design that was the basis for the EASA type certificate. For that purpose the historical records shall include a copy of the first certificate of airworthiness or export certificate issued for the new aircraft. Alternatively the applicant for the certificate of airworthiness can obtain a statement from the type certificate holder endorsed by the State of Design regarding the production status,
- the aircraft conforms to a type design approved under a type certificate,
- any supplemental type certificate, change or repairs are approved in accordance with Annex I (Part 21) to Regulation (EU) No 748/2012 ⁽¹⁾,
- the applicable airworthiness directives have been implemented.

Finally the competent authority shall establish that the results of its investigation are consistent with the results of the investigation by the organisation performing the airworthiness review in accordance with Annex I (Part M) to Commission Regulation (EU) No 1321/2014 ⁽²⁾.

⁽¹⁾ The act referred to at point 66p of Annex XIII to the EEA Agreement (*Commission Regulation (EU) No 748/2012 of 3 August 2012 laying down implementing rules for the airworthiness and environmental certification of aircraft and related products, parts and appliances, as well as for the certification of design and production organisations, as amended*) as adapted to the EEA Agreement by Protocol 1 thereto.

⁽²⁾ The act referred to at point 66q of Annex XIII to the EEA Agreement (*Commission Regulation (EU) No 1321/2014 of 26 November 2014 on the continuing airworthiness of aircraft and aeronautical products, parts and appliances, and on the approval of organisations and personnel involved in these tasks, as amended (OJ L 362, 17.12.2014, p. 1)*), as adapted to the EEA Agreement by Protocol 1 thereto.

EFTA SURVEILLANCE AUTHORITY DECISION**No 139/16/COL****of 28 June 2016****authorising Norway to derogate from Regulation (EC) No 216/2008 of the European Parliament and of the Council with respect to flight time limitation provisions for the air operator Widerøes Flyselskap AS [2016/2014]**

THE EFTA SURVEILLANCE AUTHORITY,

Having regard to the Act referred to at point 66n of Annex XIII to the EEA Agreement,

Regulation (EC) No 216/2008 of the European Parliament and of the Council of 20 February 2008 on common rules in the field of civil aviation and establishing a European Aviation Safety Agency, and repealing Council Directive 91/670/EEC, Regulation (EC) No 1592/2002 and Directive 2004/36/EC⁽¹⁾, as amended ('the Act'),

as adapted to the EEA Agreement by Protocol 1 thereto, and in particular Article 14(7) of the Act,

Having regard to the opinion of the EFTA Transport Committee delivered on 10 June 2016,

Having regard to Decision 103/13/COL of the EFTA Surveillance Authority ('the Authority') of 13 March 2013 empowering the College Member with special responsibility for transport to take certain decisions and measures (Doc No 578349),

Whereas:

Norway notified the EFTA Surveillance Authority and the European Aviation Safety Agency ('the Agency') of its intention to grant the air operator 'Widerøes Flyselskap AS' a derogation from the provisions of ORO.FTL.210(a) of Annex III to Commission Regulation (EU) No 965/2012⁽²⁾ as regards the maximum total duty hours to which a crew member may be assigned in any 7, 14 and 28 consecutive days by approving an individual flight specification scheme for the air operator.

The air operator's proposed scheme is described as follows:

The total duty periods to which a crew member may be assigned shall not exceed:

- (1) A limit of 70 duty hours which may be distributed in any seven consecutive days within any 14 consecutive day period (instead of 60 duty hours);
- (2) A limit of 90 duty hours in any 14 consecutive days (instead of 110 duty hours);
- (3) A maximum of 180 duty hours in any 28 consecutive days (instead of 190 duty hours), spread as evenly as practicable throughout that period.

The operator's proposed rostering system (7 days on/7 days off) for pilots and cabin crew stem from its operations on air routes to and from regional airports in Norway and the fact that its crew members commute from their domicile to crew bases.

The Authority concludes, based on the European Aviation Safety Agency's assessment, that the variation could provide a level of safety equivalent to the one attained by application of ORO.FTL.210(a) of Annex III to Regulation (EU) No 965/2012, provided that the conditions described in the Annex are fulfilled in addition to the mitigation measures proposed by the operator and listed in Norway's letter of 9 December 2015.

The measures provided for in this Decision are in accordance with the opinion of the EFTA Transport Committee,

⁽¹⁾ OJ L 79, 19.3.2008, p. 1.

⁽²⁾ The act mentioned at point 66nf of Annex XIII to the EEA Agreement (Commission Regulation (EU) No 965/2012 of 5 October 2012 laying down technical requirements and administrative procedures related to air operations pursuant to Regulation (EC) No 216/2008 of the European Parliament and of the Council (OJ L 296, 25.10.2012, p. 1), as amended) as adapted to the EEA Agreement by Protocol 1 thereto.

HAS ADOPTED THIS DECISION:

Article 1

Norway may grant an approval derogating from ORO.FTL.210(a) of Annex III to Regulation (EU) No 965/2012, authorising the operator 'Widerøes Flyselskap AS' to apply the following individual flight time specification scheme:

The total duty periods to which a crew member may be assigned shall not exceed:

- (i) A limit of 70 duty hours which may be distributed in any 7 consecutive days within any 14 consecutive day period;
- (ii) A limit of 90 duty hours in any 14 consecutive days; and
- (iii) A maximum of 180 duty hours in any 28 consecutive days, spread out as evenly as practicable throughout that period;

provided that the conditions laid down in the Annex and the mitigation measures described by Norway in its notification of 9 December 2015 are fulfilled.

Article 2

All EFTA States shall be entitled to apply the same measures referred to in Article 1, specified in the Annex to this Decision, and subject to the notification obligation set out Article 14(6) of the Act.

Article 3

The Decision is addressed to Norway. It is authentic in the English language.

Article 4

This Decision shall be notified to Norway, Iceland and Liechtenstein.

Done at Brussels, 28 June 2016.

For the EFTA Surveillance Authority

Helga JÓNSDÓTTIR
College Member

Carsten ZATSCHLER
Director

ANNEX

CONDITIONS ATTACHED TO THE APPLICATION OF THE DEROGATION

- (i) The operator shall operate under Fatigue Risk Management ('FRM') in accordance with ORO.FTL.120 of Annex III to Regulation (EU) No 965/2012, and monitor the effectiveness of the proposed mitigating measures continually. The FRM shall be approved by the Norwegian Civil Aviation Authority, no later than by 1 January 2017.
 - (ii) The operator shall achieve the milestones of its implementation plan of the FRM, as presented to the Norwegian Civil Aviation Authority in its derogation request.
 - (iii) The operator shall provide the Norwegian Civil Aviation Authority with data based verification of the customised elements of its flight time specification scheme (e.g. reporting time and post flight duty), in particular when these have an impact on the time available for rest.
 - (iv) The operator shall include flight data monitoring ('FDM') event trend monitoring as a trigger for further investigation in its reactive FRM processes.
 - (v) The operator shall demonstrate that its fatigue reporting system is evolving towards a more proactive stage within the first 24 months after the derogation approval. Milestones on the evaluation of the operator's fatigue reporting system are included in the comprehensive oversight programme for the operator.
 - (vi) The Norwegian Civil Aviation Authority shall closely and continuously monitor how the operator's FRM safety assurance process recognises and mitigates potential fatigue risks arising during the initial 24 months of the derogation. Thereafter the effectiveness of the operator's FRM shall be monitored by the Norwegian Civil Aviation Authority as part of their continuous oversight activities.
 - (vii) The Norwegian Civil Aviation Authority shall ensure that an independent proportionate scientific evaluation of the effects of the derogation granted is performed within the first 24 months after the approval of the derogation. It shall analyse data on cabin and flight crew fatigue, including at least two sources of objective data (e.g. psychomotor vigilance test (PVT), actigraphy) to verify the effectiveness of the proposed mitigating measures, to include at least:
 - The effects of cumulative fatigue of high workload originating from a high number of sectors, and
 - The impact of the use of overtime on cumulative fatigue with a view of providing evidence to define an effective prescriptive limit for the use of overtime.This evaluation shall assess the effects of not less than four consecutive blocks of duty and rest cycles during peak operational periods, operating under the derogation and shall take into account the findings of the operator's FRM, as well as all scientific data and regulatory framework available at that time.
 - (viii) A report of the effects of the derogation granted, accompanied by the evaluation referred to in paragraph (vii), shall be presented to the Authority and the Agency no later than 2 years after the application of the derogation.
 - (ix) The EFTA Surveillance Authority assisted by the European Aviation Safety Agency shall review the derogation granted in light of the above mentioned report and evaluation and reserves the right to amend, suspend or revoke the derogation if it considers it appropriate to do so in light of the available evidence at that stage.
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