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⁽¹⁾ Text with EEA relevance.

EN

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II

(Non-legislative acts)

REGULATIONS

COMMISSION IMPLEMENTING REGULATION (EU) 2017/640

of 23 March 2017

entering a name in the register of protected designations of origin and protected geographical indications (Novac afumat din Țara Bârsei (PGI))

THE EUROPEAN COMMISSION,

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

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

Whereas:

- (1) Pursuant to Article 50(2)(a) of Regulation (EU) No 1151/2012, Romania's application to register the name 'Novac afumat din Țara Bârsei' was published in the *Official Journal of the European Union* ⁽²⁾.
- (2) As no statement of opposition under Article 51 of Regulation (EU) No 1151/2012 has been received by the Commission, the name 'Novac afumat din Țara Bârsei' should therefore be entered in the register,

HAS ADOPTED THIS REGULATION:

Article 1

The name 'Novac afumat din Țara Bârsei' (PGI) is hereby entered in the register.

The name specified in the first paragraph denotes a product in Class 1.7. — Fresh fish, molluscs and crustaceans and products derived therefrom, as listed in Annex XI to Commission Implementing Regulation (EU) No 668/2014 ⁽³⁾.*Article 2*This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.⁽¹⁾ OJ L 343, 14.12.2012, p. 1.⁽²⁾ OJ C 459, 9.12.2016, p. 28.⁽³⁾ Commission Implementing Regulation (EU) No 668/2014 of 13 June 2014 laying down rules for the application of Regulation (EU) No 1151/2012 of the European Parliament and of the Council on quality schemes for agricultural products and foodstuffs (OJ L 179, 19.6.2014, p. 36).

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

Done at Brussels, 23 March 2017.

*For the Commission,
On behalf of the President,
Phil HOGAN
Member of the Commission*

COMMISSION REGULATION (EU) 2017/641**of 3 April 2017****establishing a temporary prohibition of fishing for red seabream in Union and international waters of VI, VII and VIII by vessels flying the flag of France**

THE EUROPEAN COMMISSION,

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

Having regard to Council Regulation (EC) No 1224/2009 of 20 November 2009 establishing a Union control system for ensuring compliance with the rules of the common fisheries policy ⁽¹⁾, and in particular Article 36(2) thereof,

Whereas:

- (1) Council Regulation (EU) 2016/2285 ⁽²⁾ lays down quotas for 2017.
- (2) According to the information received by the Commission, catches of the stock referred to in the Annex to this Regulation by vessels flying the flag of or registered in the Member State referred to therein have exhausted the quota allocated for 2017.
- (3) It is therefore necessary to prohibit fishing activities for that stock,

HAS ADOPTED THIS REGULATION:

*Article 1***Quota exhaustion**

The fishing quota allocated to the Member State referred to in the Annex to this Regulation for the stock referred to therein for 2017 shall be deemed to be exhausted from the date set out in that Annex.

*Article 2***Prohibitions**

Fishing activities for the stock referred to in the Annex to this Regulation by vessels flying the flag of or registered in the Member State referred to therein shall be prohibited from the date set out in that Annex. In particular it shall be prohibited to retain on board, relocate, tranship or land fish from that stock caught by those vessels after that date.

*Article 3***Entry into force**

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

⁽¹⁾ OJ L 343, 22.12.2009, p. 1.

⁽²⁾ Council Regulation (EU) 2016/2285 of 12 December 2016 fixing for 2017 and 2018 the fishing opportunities for Union fishing vessels for certain deep-sea fish stocks and amending Council Regulation (EU) 2016/72 (OJ L 344, 17.12.2016, p. 32).

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

Done at Brussels, 3 April 2017.

*For the Commission,
On behalf of the President,
João AGUIAR MACHADO
Director-General
Directorate-General for Maritime Affairs and Fisheries*

ANNEX

No	04/TQ2285
Member State	France
Stock	SBR/678-
Species	Red seabream (<i>Pagellus bogaraveo</i>)
Zone	Union and international waters of VI, VII and VIII
Closing date	16.2.2017

COMMISSION REGULATION (EU) 2017/642**of 3 April 2017****establishing a temporary prohibition of fishing for blue marlin in the Atlantic Ocean by vessels flying the flag of Spain**

THE EUROPEAN COMMISSION,

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

Having regard to Council Regulation (EC) No 1224/2009 of 20 November 2009 establishing a Union control system for ensuring compliance with the rules of the common fisheries policy ⁽¹⁾, and in particular Article 36(2) thereof,

Whereas:

- (1) Council Regulation (EU) 2017/127 ⁽²⁾ lays down quotas for 2017.
- (2) According to the information received by the Commission, catches of the stock referred to in the Annex to this Regulation by vessels flying the flag of or registered in the Member State referred to therein have exhausted the quota allocated for 2017.
- (3) It is therefore necessary to prohibit fishing activities for that stock,

HAS ADOPTED THIS REGULATION:

*Article 1***Quota exhaustion**

The fishing quota allocated to the Member State referred to in the Annex to this Regulation for the stock referred to therein for 2017 shall be deemed to be exhausted from the date set out in that Annex.

*Article 2***Prohibitions**

Fishing activities for the stock referred to in the Annex to this Regulation by vessels flying the flag of or registered in the Member State referred to therein shall be prohibited from the date set out in that Annex. In particular it shall be prohibited to retain on board, relocate, tranship or land fish from that stock caught by those vessels after that date.

*Article 3***Entry into force**

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

⁽¹⁾ OJ L 343, 22.12.2009, p. 1.

⁽²⁾ Council Regulation (EU) 2017/127 of 20 January 2017 fixing for 2017 the fishing opportunities for certain fish stocks and groups of fish stocks, applicable in Union waters and, for Union fishing vessels, in certain non-Union waters (OJ L 24, 28.1.2017, p. 1).

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

Done at Brussels, 3 April 2017.

*For the Commission,
On behalf of the President,
João AGUIAR MACHADO
Director-General
Directorate-General for Maritime Affairs and Fisheries*

ANNEX

No	05/TQ127
Member State	Spain
Stock	BUM/ATLANT
Species	Blue marlin (<i>Makaira nigricans</i>)
Zone	Atlantic Ocean
Closing date	1.1.2017

COMMISSION REGULATION (EU) 2017/643**of 3 April 2017****establishing a temporary prohibition of fishing for white marlin in the Atlantic Ocean by vessels flying the flag of Spain**

THE EUROPEAN COMMISSION,

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

Having regard to Council Regulation (EC) No 1224/2009 of 20 November 2009 establishing a Union control system for ensuring compliance with the rules of the common fisheries policy ⁽¹⁾, and in particular Article 36(2) thereof,

Whereas:

- (1) Council Regulation (EU) 2017/127 ⁽²⁾ lays down quotas for 2017.
- (2) According to the information received by the Commission, catches of the stock referred to in the Annex to this Regulation by vessels flying the flag of or registered in the Member State referred to therein have exhausted the quota allocated for 2017.
- (3) It is therefore necessary to prohibit fishing activities for that stock,

HAS ADOPTED THIS REGULATION:

*Article 1***Quota exhaustion**

The fishing quota allocated to the Member State referred to in the Annex to this Regulation for the stock referred to therein for 2017 shall be deemed to be exhausted from the date set out in that Annex.

*Article 2***Prohibitions**

Fishing activities for the stock referred to in the Annex to this Regulation by vessels flying the flag of or registered in the Member State referred to therein shall be prohibited from the date set out in that Annex. In particular it shall be prohibited to retain on board, relocate, tranship or land fish from that stock caught by those vessels after that date.

*Article 3***Entry into force**

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

⁽¹⁾ OJ L 343, 22.12.2009, p. 1.

⁽²⁾ Council Regulation (EU) 2017/127 of 20 January 2017 fixing for 2017 the fishing opportunities for certain fish stocks and groups of fish stocks, applicable in Union waters and, for Union fishing vessels, in certain non-Union waters (OJ L 24, 28.1.2017, p. 1).

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

Done at Brussels, 3 April 2017.

*For the Commission,
On behalf of the President,
João AGUIAR MACHADO
Director-General
Directorate-General for Maritime Affairs and Fisheries*

ANNEX

No	06/TQ127
Member State	Spain
Stock	WHM/ATLANT
Species	White marlin (<i>Tetrapturus albidus</i>)
Zone	Atlantic Ocean
Closing date	1.1.2017

COMMISSION REGULATION (EU) 2017/644**of 5 April 2017****laying down methods of sampling and analysis for the control of levels of dioxins, dioxin-like PCBs and non-dioxin-like PCBs in certain foodstuffs and repealing Regulation (EU) No 589/2014****(Text with EEA relevance)**

THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EC) No 882/2004 of the European Parliament and of the Council of 29 April 2004 on official controls performed to ensure the verification of compliance with feed and food law, animal health and animal welfare rules ⁽¹⁾, and in particular Article 11(4) thereof,

Whereas:

- (1) Commission Regulation (EC) No 1881/2006 ⁽²⁾ sets out the maximum levels for non-dioxin-like polychlorinated biphenyls (PCBs) dioxins and furans and for the sum of dioxins, furans and dioxin-like PCBs in certain foodstuffs.
- (2) Commission Recommendation 2013/711/EU ⁽³⁾ sets out action levels in order to stimulate a proactive approach to reduce the presence of polychlorinated dibenzo-para-dioxins and polychlorinated dibenzofurans (PCDD/Fs) and dioxin-like PCBs in food. Those action levels are a tool used by competent authorities and operators to highlight those cases where it is appropriate to identify a source of contamination and to take the necessary measures in order to reduce or eliminate it.
- (3) Commission Regulation (EC) No 589/2014 ⁽⁴⁾ establishes specific provisions concerning the sampling procedure and the methods of analysis to be applied for the official control of levels of dioxins, dioxin-like PCBs and non-dioxin-like PCBs.
- (4) The provisions laid down in this Regulation relate only to the sampling and analysis of dioxins, dioxin-like PCBs and non-dioxin-like PCBs for the implementation of Regulation (EC) No 1881/2006 and Recommendation 2013/711/EU. They do not affect the sampling strategy, sampling levels and frequency as set out in Annexes III and IV to Council Directive 96/23/EC ⁽⁵⁾. They do not affect the targeting criteria for sampling as laid down in Commission Decision 98/179/EC ⁽⁶⁾.
- (5) It is appropriate to ensure that food business operators applying the controls performed within the framework of Article 4 of Regulation (EC) No 852/2004 of the European Parliament and of the Council ⁽⁷⁾ apply sampling procedures equivalent to the sampling procedures provided for by this Regulation in order to ensure that samples taken for those controls are representative samples. Furthermore, the European Union Reference Laboratory for Dioxins and PCBs has provided evidence that analytical results in certain cases are not reliable when the performance criteria as provided in this Regulation are not applied by laboratories performing the analysis of samples taken by food business operators within the framework of Article 4 of Regulation (EC) No 852/2004. It is therefore appropriate to make the application of the performance criteria also obligatory for the analysis of those samples.

⁽¹⁾ OJ L 165, 30.4.2004, p. 1.

⁽²⁾ Commission Regulation (EC) No 1881/2006 of 19 December 2006 setting maximum levels for certain contaminants in foodstuffs (OJ L 364, 20.12.2006, p. 5).

⁽³⁾ Commission Recommendation 2013/711/EU of 3 December 2013 on the reduction of the presence of dioxins, furans and PCBs in feed and food (OJ L 323, 4.12.2013, p. 37).

⁽⁴⁾ Commission Regulation (EU) No 589/2014 of 2 June 2014 laying down methods of sampling and analysis for the official control of levels of dioxins, dioxin-like PCBs and non-dioxin-like PCBs in certain foodstuffs and repealing Regulation (EU) No 252/2012 (OJ L 164, 3.6.2014, p. 18).

⁽⁵⁾ Council Directive 96/23/EC of 29 April 1996 on measures to monitor certain substances and residues thereof in live animals and animal products and repealing Directives 85/358/EEC and 86/469/EEC and Decisions 89/187/EEC and 91/664/EEC (OJ L 125, 23.5.1996, p. 10).

⁽⁶⁾ Commission Decision 98/179/EC of 23 February 1998 laying down detailed rules on official sampling for the monitoring of certain substances and residues thereof in live animals and animal products (OJ L 65, 5.3.1998, p. 31).

⁽⁷⁾ Regulation (EC) No 852/2004 of the European Parliament and of the Council of 29 April 2004 on the hygiene of foodstuffs (OJ L 139, 30.4.2004, p. 1).

- (6) Given that the approach of the use of a decision limit to ensure that an analytical result is above the maximum level with a certain probability, as provided for in Commission Decision 2002/657/EC ⁽¹⁾, is no longer applied for the analysis of dioxins and PCBs in food, it is appropriate to delete this approach and to keep only the approach of the expanded uncertainty using the coverage factor of 2, giving a level confidence of approximately 95 %.
- (7) In line with the reporting requirements for bioanalytical screening methods, it is appropriate to also provide for physico-chemical methods used for screening specific reporting requirements.
- (8) Given that the analysis of dioxins, dioxin-like PCBs and non-dioxin-like PCBs are in most cases determined together it is appropriate to align the performance criteria for the non-dioxin-like PCBs to the performance criteria for dioxins and dioxin-like PCBs. This is a simplification, without substantial changes in practice as in the case of non-dioxin-like PCBs the relative intensity of qualifier ions compared to target ions is > 50 %.
- (9) Furthermore there are several other minor modifications proposed to the current provisions, requiring the repeal of Regulation (EU) No 589/2014 and its replacing by a new Regulation to maintain the readability of the text.
- (10) The measures provided for in this Regulation are in accordance with the opinion of the Standing Committee on Plants, Animals, Food and Feed,

HAS ADOPTED THIS REGULATION:

Article 1

For the purposes of this Regulation, the definitions and abbreviations set out in Annex I shall apply.

Article 2

Sampling for the official control of the levels of dioxins, furans, dioxin-like PCBs and non-dioxin-like PCBs in foodstuffs listed in Section 5 of the Annex to Regulation (EC) No 1881/2006 shall be carried out in accordance with the methods set out in Annex II to this Regulation.

Article 3

Sample preparation and analyses for the control of the levels of dioxins, furans and dioxin-like PCBs in foodstuffs listed in Section 5 of the Annex to Regulation (EC) No 1881/2006 shall be carried out in accordance with the methods set out in Annex III to this Regulation.

Article 4

Analyses for the control of the levels of non-dioxin-like PCBs in foodstuffs listed in Section 5 of the Annex to Regulation (EC) No 1881/2006 shall be carried out in accordance with the requirements for analytical procedures set out in Annex IV to this Regulation.

Article 5

Regulation (EU) No 589/2014 is repealed.

References to the repealed Regulation shall be construed as references to this Regulation.

⁽¹⁾ Commission Decision 2002/657/EC of 14 August 2002 implementing Council Directive 96/23/EC concerning the performance of analytical methods and the interpretation of results (OJ L 221, 17.8.2002, p. 8).

Article 6

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

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

Done at Brussels, 5 April 2017.

For the Commission

The President

Jean-Claude JUNKER

ANNEX I

DEFINITIONS AND ABBREVIATIONS

I. DEFINITIONS

For the purposes of this Regulation the definitions laid down in Annex I to Decision 2002/657/EC shall apply.

Further to those definitions, the following definitions shall apply for the purposes of this Regulation:

- 1.1. 'Action level' means the level of a given substance, as laid down in the Annex to Recommendation 2013/711/EU, which triggers investigations to identify the source of that substance in cases where increased levels of the substance are detected.
- 1.2. 'Screening methods' means methods used for the selection of those samples with levels of PCDD/Fs and dioxin-like PCBs that exceed the maximum levels or the action levels. They shall allow for a cost-effective high sample-throughput, thus increasing the chance of discovering new cases where high exposure may lead to health risks for consumers. Screening methods shall be based on bioanalytical or GC-MS methods. Results from samples exceeding the cut-off value established to check compliance with the maximum level shall be verified by a full re-analysis from the original sample using a confirmatory method.
- 1.3. 'Confirmatory methods' means methods that provide full or complementary information enabling the PCDD/Fs and dioxin-like PCBs to be identified and quantified unequivocally at the maximum or, in case of need, at the action level. Such methods utilise gas chromatography/high resolution mass spectrometry (GC-HRMS) or gas chromatography/tandem mass spectrometry (GC-MS/MS).
- 1.4. 'Bioanalytical methods' means methods based on the use of biological principles such as cell-based assays, receptor-assays or immunoassays. They do not give results at the congener level but merely an indication ⁽¹⁾ of the TEQ level, expressed in Bioanalytical Equivalents (BEQ) to acknowledge the fact that not all compounds present in a sample extract that produce a response in the test may meet all requirements of the TEQ-principle.
- 1.5. 'Bioassay apparent recovery' means the BEQ level calculated from the TCDD or PCB 126 calibration curve corrected for the blank and then divided by the TEQ level determined by the confirmatory method. It attempts to correct factors like the loss of PCDD/Fs and dioxin-like compounds during the extraction and clean-up steps, co-extracted compounds increasing or decreasing the response (agonistic and antagonistic effects), the quality of the curve fit, or differences between the TEF and the REP values. The bioassay apparent recovery is calculated from suitable reference samples with representative congener patterns around the maximum or action level.
- 1.6. 'Duplicate analysis' means separate analysis of the analytes of interest using a second aliquot of the same homogenised sample.
- 1.7. 'Accepted specific limit of quantification ⁽²⁾ of an individual congener in a sample' means the lowest content of the analyte that can be measured with reasonable statistical certainty, fulfilling the identification criteria as described in internationally recognised standards, for example, in standard EN 16215:2012 ('Animal feed — Determination of dioxins and dioxin-like PCBs by GC/HRMS and of indicator PCBs by GC/HRMS') and/or in EPA methods 1613 and 1668 as revised.

The limit of quantification of an individual congener may be identified as

- (a) the concentration of an analyte in the extract of a sample which produces an instrumental response at two different ions to be monitored with a S/N (signal/noise) ratio of 3:1 for the less intensive raw data signal;

⁽¹⁾ Bioanalytical methods are not specific to those congeners included in the TEF-scheme. Other structurally related AhR-active compounds may be present in the sample extract which contribute to the overall response. Therefore, bioanalytical results cannot be an estimate but rather an indication of the TEQ level in the sample.

⁽²⁾ The principles as described in the 'Guidance Document on the Estimation of LOD and LOQ for Measurements in the Field of Contaminants in Feed and Food' [link to website] shall be followed when applicable.

or, if for technical reasons the signal-to-noise calculation does not provide reliable results,

- (b) the lowest concentration point on a calibration curve that gives an acceptable ($\leq 30\%$) and consistent (measured at least at the start and at the end of an analytical series of samples) deviation to the average relative response factor calculated for all points on the calibration curve in each series of samples ⁽¹⁾.

- 1.8. 'Upper-bound' means the concept which requires using the limit of quantification for the contribution of each non-quantified congener.
- 1.9. 'Lower-bound' means the concept which requires using zero for the contribution of each non-quantified congener.
- 1.10. 'Medium-bound' means the concept which requires using half of the limit of quantification calculating the contribution of each non-quantified congener.
- 1.11. 'Lot' means an identifiable quantity of food delivered at one time and determined by the official to have common characteristics, such as origin, variety, type of packing, packer, consignor or markings. In the case of fish and fishery products, also the size of fish shall be comparable. In case the size and/or weight of the fish is not comparable within a consignment, the consignment may still be considered as a lot but a specific sampling procedure has to be applied.
- 1.12. 'Sublot' means designated part of a large lot in order to apply the sampling method on that designated part. Each sublot must be physically separated and identifiable.
- 1.13. 'Incremental sample' means a quantity of material taken from a single place in the lot or sublot.
- 1.14. 'Aggregate sample' means the combined total of all the incremental samples taken from the lot or sublot.
- 1.15. 'Laboratory sample' means a representative part/quantity of the aggregate sample intended for the laboratory.

II. ABBREVIATIONS USED

BEQ	Bioanalytical Equivalents
GC	Gas chromatography
HRMS	High resolution mass spectrometry
LRMS	Low resolution mass spectrometry
MS/MS	Tandem mass spectrometry
PCB	Polychlorinated biphenyl
Non-dioxin-like PCBs	PCB 28, PCB 52, PCB 101, PCB 138, PCB 153 and PCB 180
PCDD	Polychlorinated dibenzo-p-dioxins
PCDF	Polychlorinated dibenzofurans
QC	Quality control
REP	Relative potency
TEF	Toxic Equivalency Factor
TEQ	Toxic Equivalents
TCDD	2,3,7,8-Tetrachlorodibenzo-p-dioxin
U	Expanded measurement uncertainty

⁽¹⁾ The LOQ is calculated from the lowest concentration point taking into account the recovery of internal standards and sample intake.

ANNEX II

METHODS OF SAMPLING FOR OFFICIAL CONTROL OF LEVELS OF DIOXINS (PCDD/PCDF), DIOXIN-LIKE PCBs AND NON-DIOXIN-LIKE PCBs IN CERTAIN FOODSTUFFS**I. SCOPE**

Samples intended for the official control of the levels of dioxins (PCDD/Fs), dioxin-like PCBs and non-dioxin-like PCBs in foodstuffs shall be taken according to the methods described in this Annex. Aggregate samples thus obtained shall be considered as representative of the lots or sublots from which they are taken. Compliance with maximum levels laid down in Regulation (EC) No 1881/2006 shall be established on the basis of the levels determined in the laboratory samples.

To ensure compliance with the provisions in Article 4 of Regulation (EC) No 852/2004, food business operator shall, when samples are taken to control the levels of dioxins (PCDD/Fs), dioxin-like PCBs and non-dioxin-like PCBs, take the samples according to the methods described in Chapter III of this Annex or apply an equivalent sampling procedure which is demonstrated to have a same level of representation as the sampling procedure described in Chapter III of this Annex.

II. GENERAL PROVISIONS**1. Personnel**

Official sampling shall be performed by an authorised person as designated by the Member State.

2. Material to be sampled

Each lot or subplot which is to be examined shall be sampled separately.

3. Precautions to be taken

In the course of sampling and the preparation of the samples, precautions shall be taken to avoid any changes which would affect the content of dioxins and PCBs, adversely affect the analytical determination or make the aggregate samples unrepresentative.

4. Incremental samples

As far as possible, incremental samples shall be taken at various places distributed throughout the lot or subplot. Departure from such a procedure shall be recorded in the record provided for under point II.8.

5. Preparation of the aggregate sample

The aggregate sample shall be made up by combining the incremental samples. It shall be at least 1 kg unless not practical, e.g. when a single package has been sampled or when the product has a very high commercial value.

6. Replicate samples

The replicate samples for enforcement, defence and reference purposes shall be taken from the homogenised aggregate sample, unless such procedure conflicts with a Member State's rules as regard the rights of the food business operator. The size of the laboratory samples for enforcement shall be sufficient to allow at least for duplicate analyses.

7. Packaging and transmission of samples

Each sample shall be placed in a clean, inert container offering adequate protection from contamination, from loss of analytes by adsorption to the internal wall of the container and against damage in transit. All necessary precautions shall be taken to avoid any change in composition of the sample which might arise during transportation or storage.

8. Sealing and labelling of samples

Each sample taken for official use shall be sealed at the place of sampling and identified in accordance with the rules of the Member States.

A record shall be kept of each sampling, permitting each lot to be identified unambiguously and giving the date and place of sampling together with any additional information likely to be of assistance to the analyst.

III. SAMPLING PLAN

The sampling method applied shall ensure that the aggregate sample is representative of the (sub)lot that is to be controlled.

1. Division of lots into sublots

Large lots shall be divided into sublots on condition that the subplot can be separated physically. For products traded in large bulk consignments (e.g. vegetable oils) Table 1 shall apply. For other products Table 2 shall apply. Taking into account that the weight of the lot is not always an exact multiple of the weight of the sublots, the weight of the subplot may exceed the mentioned weight by a maximum of 20 %.

Table 1

Subdivision of lots into sublots for products traded in bulk consignments

Lot weight (ton)	Weight or number of sublots
≥ 1 500	500 tonnes
> 300 and < 1 500	3 sublots
≥ 50 and ≤ 300	100 tonnes
< 50	—

Table 2

Subdivision of lots into sublots for other products

Lot weight (ton)	Weight or number of sublots
≥ 15	15-30 tonnes
< 15	—

2. Number of incremental samples

The aggregate sample uniting all incremental samples shall be at least 1 kg (see point II.5).

The minimum number of incremental samples to be taken from the lot or subplot shall be as given in Tables 3 and 4.

In the case of bulk liquid products, the lot or subplot shall be thoroughly mixed insofar as possible and insofar as it does not affect the quality of the product by either manual or mechanical means immediately prior to sampling. In that case, a homogeneous distribution of contaminants is assumed within a given lot or subplot. It is therefore sufficient to take three incremental samples from a lot or subplot to form the aggregate sample.

The incremental samples shall be of similar weight. The weight of an incremental sample shall be at least 100 grams.

Departure from this procedure must be recorded in the record provided for under point II.8 of this Annex. In accordance with the provisions of Commission Decision 97/747/EC ⁽¹⁾, the aggregate sample size for hens' eggs is at least 12 eggs (for bulk lots as well as for lots consisting of individual packages, Tables 3 and 4 shall apply).

Table 3

Minimum number of incremental samples to be taken from the lot or subplot

Weight or volume of lot/sublot (in kg or litre)	Minimum number of incremental samples to be taken
< 50	3
50 to 500	5
> 500	10

If the lot or subplot consists of individual packages or units, then the number of packages or units which shall be taken to form the aggregate sample is given in Table 4.

Table 4

Number of packages or units (incremental samples) which shall be taken to form the aggregate sample if the lot or subplot consists of individual packages or units

Number of packages or units in the lot/sublot	Number of packages or units to be taken
1 to 25	at least 1 package or unit
26 to 100	about 5 %, at least 2 packages or units
> 100	about 5 %, at maximum 10 packages or units

3. Specific provisions for the sampling of lots containing whole fishes of comparable size and weight

Fishes are considered to be of comparable size and weight where the difference in size and weight does not exceed about 50 %.

The number of incremental samples to be taken from the lot are defined in Table 3. The aggregate sample uniting all incremental samples shall be at least 1 kg (see point II.5).

- Where the lot to be sampled contains small fishes (individual fishes weighing < about 1 kg), the whole fish is taken as incremental sample to form the aggregate sample. Where the resulting aggregate sample weighs more than 3 kg, the incremental samples may consist of the middle part, weighing each at least 100 grams, of the fishes forming the aggregate sample. The whole part to which the maximum level is applicable is used for homogenisation of the sample.

The middle part of the fish is where the centre of gravity is. This is located in most cases at the dorsal fin (in case the fish has a dorsal fin) or halfway between the gill opening and the anus.

- Where the lot to be sampled contains larger fishes (individual fishes weighing more than about 1 kg), the incremental sample consists of the middle part of the fish. Each incremental sample weighs at least 100 grams.

For fishes of intermediate size (about 1-6 kg) the incremental sample is taken as a slice of the fish from backbone to belly in the middle part of the fish.

⁽¹⁾ Commission Decision 97/747/EC of 27 October 1997 fixing the levels and frequencies of sampling provided for by Council Directive 96/23/EC for the monitoring of certain substances and residues thereof in certain animal products (OJ L 303, 6.11.1997, p. 12).

For very large fishes (e.g. > about 6 kg), the incremental part is taken from the right side (frontal view) dorso-lateral muscle meat in the middle part of the fish. Where the taking of such a piece of the middle part of the fish would result in significant economic damage, the taking of three incremental samples of at least 350 grams each may be considered as being sufficient independent of the size of the lot or alternatively an equal part of the muscled meat close to the tail part and the muscle meat close to the head part of one fish may be taken to form the incremental sample being representative for the level of dioxins in the whole fish.

4. Sampling of lots of fish containing whole fishes of different size and/or weight

- The provisions of point III.3 as regards sample constitution shall apply.
- Where a size or weight class/category is predominant (about 80 % or more of the lot), the sample is taken from fishes with the predominant size or weight. This sample is to be considered as being representative for the whole lot.
- Where no particular size or weight class/category predominates, then it must be ensured that the fishes selected for the sample are representative for the lot. Specific guidance for such cases is provided in 'Guidance document on sampling of whole fishes of different size and/or weight' ⁽²⁾.

5. Sampling at retail stage

Sampling of foodstuffs at the retail stage shall be done where possible in accordance with the sampling provisions set out in point III.2.

Where this is not possible, an alternative method of sampling at retail stage may be used provided that it ensures sufficient representativeness for the sampled lot or subplot.

IV. COMPLIANCE OF THE LOT WITH SPECIFICATION

1. As regards non-dioxin-like PCBs

The lot is compliant if the analytical result for the sum of non-dioxin-like PCBs does not exceed the respective maximum level, as laid down in Regulation (EC) No 1881/2006 taking into account the expanded measurement uncertainty ⁽³⁾.

The lot is non-compliant with the maximum level as laid down in Regulation (EC) No 1881/2006 if the mean of two upperbound analytical results obtained from duplicate analysis ⁽⁴⁾, taking into account the expanded measurement uncertainty, exceeds the maximum level beyond reasonable doubt.

The expanded measurement uncertainty is calculated using a coverage factor of 2 which gives a level of confidence of approximately 95 %. A lot is non-compliant if the mean of the measured values minus the expanded uncertainty of the mean is above the established maximum level.

The rules, mentioned in the paragraphs above under this point, shall apply for the analytical result obtained on the sample for official control. In case of analysis for defence or reference purposes, the national rules apply.

2. As regards dioxins (PCDD/Fs) and dioxin-like PCBs

The lot is compliant if the result of a single analysis

- performed by a screening method with a false-compliant rate below 5 % indicates that the level does not exceed the respective maximum level of PCDD/Fs and the sum of PCDD/Fs and dioxin-like PCBs as laid down in Regulation (EC) No 1881/2006,

⁽²⁾ https://ec.europa.eu/food/sites/food/files/safety/docs/cs_contaminants_catalogue_dioxins_guidance-sampling_exemples-dec2006_en.pdf

⁽³⁾ The principles as described in the 'Guidance Document on Measurement Uncertainty for Laboratories performing PCDD/F and PCB Analysis using Isotope Dilution Mass Spectrometry' [link to website] shall be followed when applicable.

⁽⁴⁾ The duplicate analysis is necessary if the result of the first determination is non-compliant. The duplicate analysis is necessary to exclude the possibility of internal cross-contamination or an accidental mix-up of samples. In case the analysis is performed in the course of a contamination incident, confirmation by duplicate analysis might be omitted in case the samples selected for analysis are through traceability linked to the contamination incident and the level found is significantly above the maximum level.

- performed by a confirmatory method does not exceed the respective maximum level of PCDD/Fs and the sum of PCDD/Fs and dioxin-like PCBs as laid down in Regulation (EC) No 1881/2006 taking into account the expanded measurement uncertainty ⁽⁵⁾.

For screening assays a cut-off value shall be established for the decision on the compliance with the respective maximum levels set for either PCDD/Fs or for the sum of PCDD/Fs and dioxin-like PCBs.

The lot is non-compliant with the maximum level as laid down in Regulation (EC) No 1881/2006 if the mean of two upperbound analytical results (duplicate analysis ⁽⁶⁾) obtained using a confirmatory method, taking into account the expanded measurement uncertainty, exceeds the maximum level beyond reasonable doubt.

The expanded measurement uncertainty is calculated using a coverage factor of 2 which gives a level of confidence of approximately 95 %. A lot is non-compliant if the mean of the measured values minus the expanded uncertainty of the mean is above the established maximum level.

The sum of the estimated expanded uncertainties of the separate analytical results of PCDD/Fs and dioxin-like PCBs has to be used for the estimated expanded uncertainty of the sum of PCDD/Fs and dioxin-like PCBs,

The rules, mentioned in the paragraphs above under this point, shall apply for the analytical result obtained on the sample for official control. In case of analysis for defence or reference purposes, the national rules apply.

V. EXCEEDANCE OF ACTION LEVELS

Action levels serve as a tool for the selection of samples in those cases where it is appropriate to identify a source of contamination and to take measures for its reduction or elimination. Screening methods shall establish the appropriate cut-off values for selection of those samples. Where significant efforts are necessary to identify a source and to reduce or eliminate the contamination, it might be appropriate to confirm exceedance of the action level by duplicate analysis using a confirmatory method and taking into account the expanded measurement uncertainty ⁽⁷⁾.

⁽⁵⁾ Guidance Document on Measurement Uncertainty for Laboratories performing PCDD/F and PCB Analysis using Isotope Dilution Mass Spectrometry [link to website], Guidance Document on the Estimation of LOD and LOQ for Measurements in the Field of Contaminants in Feed and Food [link to website].

⁽⁶⁾ The duplicate analysis is necessary if the result of the first determination applying confirmatory methods with the use of ¹³C-labelled internal standard for the relevant analytes is non-compliant. The duplicate analysis is necessary to exclude the possibility of internal cross-contamination or an accidental mix-up of samples. In case the analysis is performed in the course of a contamination incident, confirmation by duplicate analysis might be omitted in case the samples selected for analysis are through traceability linked to the contamination incident and the level found is significantly above the maximum level.

⁽⁷⁾ Identical explanation and requirements for duplicate analysis for control of action levels as in footnote 6 for maximum levels.

ANNEX III

SAMPLE PREPARATION AND REQUIREMENTS FOR METHODS OF ANALYSIS USED IN CONTROL OF THE LEVELS OF DIOXINS (PCDD/Fs) AND DIOXIN-LIKE PCBs IN CERTAIN FOODSTUFFS**1. FIELD OF APPLICATION**

The requirements set out in this Annex shall be applied where foodstuffs are analysed for the official control of the levels of 2,3,7,8-substituted polychlorinated dibenzo-p-dioxins and polychlorinated dibenzofurans (PCDD/Fs) and dioxin-like polychlorinated biphenyls (dioxin-like PCBs) and as regards sample preparation and analytical requirements for other regulatory purposes, including the controls performed by the food business operator to ensure compliance with provisions in Article 4 of Regulation (EC) No 852/2004.

Monitoring for the presence of PCDD/Fs and dioxin-like PCBs in foodstuffs may be performed with two different types of analytical methods:

(a) Screening methods

The goal of screening methods is to select those samples with levels of PCDD/Fs and dioxin-like PCBs that exceed the maximum levels or the action levels. Screening methods shall ensure cost-effective high sample-throughput, thus increasing the chance to discover new incidents where high exposure may lead to health risks for consumers. Their application shall aim to avoid false-compliant results. They may comprise bioanalytical and GC/MS methods.

Screening methods compare the analytical result with a cut-off value, providing a yes/no-decision over the possible exceedance of the maximum or action level. The concentration of PCDD/Fs and the sum of PCDD/Fs and dioxin-like PCBs in samples suspected to be non-compliant with the maximum level must be determined or confirmed by a confirmatory method.

In addition, screening methods may give an indication of the levels of PCDD/Fs and dioxin-like-PCBs present in the sample. In case of application of bioanalytical screening methods the result is expressed as Bioanalytical Equivalents (BEQ), whereas in case of application of physico-chemical GC-MS methods it is expressed as Toxic Equivalents (TEQ). The numerically indicated results of screening methods are suitable for demonstrating compliance or suspected non-compliance or exceedance of action levels and give an indication of the range of levels in case of follow-up by confirmatory methods. They are not suitable for purposes such as evaluation of background levels, estimation of intake, following of time trends in levels or re-evaluation of action and maximum levels.

(b) Confirmatory methods

Confirmatory methods allow the unequivocal identification and quantification of PCDD/Fs and dioxin-like PCBs present in a sample and provide full information on congener basis. Therefore, those methods allow the control of maximum and action levels, including the confirmation of results obtained by screening methods. Furthermore, results may be used for other purposes such as determination of low background levels in food monitoring, following of time trends, exposure assessment of the population and building of a database for possible re-evaluation of action and maximum levels. They are also important for establishing congener patterns in order to identify the source of a possible contamination. Such methods utilise GC-HRMS. For confirming compliance or non-compliance with the maximum level, also GC-MS/MS can be used.

2. BACKGROUND

For calculation of TEQ concentrations, the concentrations of the individual substances in a given sample shall be multiplied by their respective TEF, as established by the World Health Organisation and listed in the Appendix to this Annex, and subsequently summed to give the total concentration of dioxin-like compounds expressed as TEQs.

Screening and confirmatory methods may only be applied for control of a certain matrix if the methods are sensitive enough to detect levels reliably at the maximum or action level.

3. QUALITY ASSURANCE REQUIREMENTS

- Measures must be taken to avoid cross-contamination at each stage of the sampling and analysis procedure.
- The samples must be stored and transported in glass, aluminum, polypropylene or polyethylene containers suitable for storage without any influence on the levels of PCDD/Fs and dioxin-like PCBs in the samples. Traces of paper dust must be removed from the sample container.
- The sample storage and transportation has to be performed in a way that maintains the integrity of the foodstuff sample.
- Insofar as relevant, finely grind and mix thoroughly each laboratory sample using a process that has been demonstrated to achieve complete homogenisation (e.g. ground to pass a 1 mm sieve); samples have to be dried before grinding if moisture content is too high.
- Control of reagents, glassware and equipment for possible influence of TEQ- or BEQ-based results is of general importance.
- A blank analysis shall be performed by carrying out the entire analytical procedure omitting only the sample.
- For bioanalytical methods, it is of great importance that all glassware and solvents used in analysis shall be tested to be free of compounds that interfere with the detection of target compounds in the working range. Glassware shall be rinsed with solvents or/and heated at temperatures suitable to remove traces of PCDD/Fs, dioxin-like compounds and interfering compounds from its surface.
- Sample quantity used for the extraction must be sufficient to fulfill the requirements with respect to a sufficiently low working range including the concentrations of maximum or action levels.
- The specific sample preparation procedures used for the products under consideration shall follow internationally accepted guidelines.
- In the case of fish, the skin has to be removed as the maximum level applies to muscle meat without skin. However it is necessary that all remaining muscle meat and fat tissue on the inner side of the skin are carefully and completely scraped off from the skin and added to the sample to be analysed.

4. REQUIREMENTS FOR LABORATORIES

- In accordance with the provisions of Regulation (EC) No 882/2004, laboratories shall be accredited by a recognised body operating in accordance with ISO Guide 58 to ensure that they are applying analytical quality assurance. Laboratories shall be accredited following the EN ISO/IEC 17025 standard. The principles as described in the Technical Guidelines for the estimation of measurement uncertainty and limits of quantification for PCDD/F and PCB analysis shall be followed when applicable ⁽¹⁾.
- Laboratory proficiency shall be proven by the continuous successful participation in interlaboratory studies for the determination of PCDD/Fs and dioxin-like PCBs in relevant food matrices and concentration ranges.
- Laboratories applying screening methods for routine control of samples shall establish a close cooperation with laboratories applying the confirmatory method, both for quality control and confirmation of the analytical result of suspected samples.

5. BASIC REQUIREMENTS TO BE MET BY ANALYTICAL PROCEDURE FOR DIOXINS (PCDD/Fs) AND DIOXIN-LIKE PCBs

5.1. Low working range and limits of quantification

- For PCDD/Fs, detectable quantities have to be in the upper femtogram (10^{-15} g) range because of extreme toxicity of some of these compounds. For most PCB congeners limit of quantification in the nanogram (10^{-9} g) range is already sufficient. However, for the measurement of the more toxic dioxin-like PCB congeners (in particular non-ortho-substituted congeners) the lower end of the working range must reach the low picogram (10^{-12} g) levels.

⁽¹⁾ Guidance Document on Measurement Uncertainty for Laboratories performing PCDD/F and PCB Analysis using Isotope Dilution Mass Spectrometry [link to website], Guidance Document on the Estimation of LOD and LOQ for Measurements in the Field of Contaminants in Feed and Food [link to website].

5.2. High selectivity (specificity)

- A distinction is required between PCDD/Fs and dioxin-like PCBs and a multitude of other, coextracted and possibly interfering compounds present at concentrations up to several orders of magnitude higher than those of the analytes of interest. For gas chromatography/mass spectrometry (GC-MS) methods, a differentiation among various congeners is necessary, such as between toxic (e.g. the seventeen 2,3,7,8-substituted PCDD/Fs, and twelve dioxin-like PCBs) and other congeners.
- Bioanalytical methods shall be able to detect the target compounds as the sum of PCDD/Fs, and/or dioxin-like PCBs. Sample clean-up shall aim at removing compounds causing false non-compliant results or compounds that may decrease the response, causing false-compliant results.

5.3. High accuracy (trueness and precision, bioassay apparent recovery)

- For GC-MS methods, the determination shall provide a valid estimate of the true concentration in a sample. High accuracy (accuracy of the measurement: the closeness of the agreement between the result of a measurement with the true or assigned value of the measurand) is necessary to avoid the rejection of a sample analysis result on the basis of poor reliability of the determined TEQ level. Accuracy is expressed as trueness (difference between the mean value measured for an analyte in a certified material and its certified value, expressed as percentage of this value) and precision (RSD_R relative standard deviation calculated from results generated under reproducibility conditions).
- For bioanalytical methods, the bioassay apparent recovery shall be determined.

5.4. Validation in the range of maximum level and general quality control measures

- Laboratories shall demonstrate the performance of a method in the range of the maximum level, e.g. 0,5×, 1× and 2× the maximum level with an acceptable coefficient of variation for repeated analysis, during the validation procedure and/or during routine analysis.
- Regular blank controls and spiking experiments or analysis of control samples (preferably, if available, certified reference material) shall be performed as internal quality control measures. Quality control (QC) charts for blank controls, spiking experiments or analysis of control samples shall be recorded and checked to make sure the analytical performance is in accordance with the requirements.

5.5. Limit of quantification

- For a bioanalytical screening method, establishment of the LOQ is not an indispensable requirement but the method shall prove that it can differentiate between the blank and the cut-off value. When providing a BEQ-level, a reporting level shall be established to deal with samples showing a response below this level. The reporting level shall be demonstrated to be different from procedure blank samples at least by a factor of three, with a response below the working range. It shall therefore be calculated from samples containing the target compounds around the required minimum level, and not from a S/N ratio or an assay blank.
- Limit of quantification (LOQ) for a confirmatory method shall be about one fifth of the maximum level.

5.6. Analytical criteria

- For reliable results from confirmatory or screening methods, the following criteria must be met in the range of the maximum level for the TEQ value respectively the BEQ value, whether determined as total TEQ or total BEQ (as sum of PCDD/F and dioxin-like PCBs) or separately for PCDD/Fs and dioxin-like PCBs.

	Screening with bioanalytical or physico-chemical methods	Confirmatory methods
False-compliant rate (*)	< 5 %	
Trueness		– 20 % to + 20 %

	Screening with bioanalytical or physico-chemical methods	Confirmatory methods
Repeatability (RSD _r)	< 20 %	
Intermediate precision (RSD _R)	< 25 %	< 15 %
(*) With respect to the maximum levels		

5.7. Specific requirements for screening methods

- Both GC-MS and bioanalytical methods may be used for screening. For GC-MS methods the requirements as laid down in point 6 are to be used. For cell-based bioanalytical methods specific requirements are laid down in point 7.
- Laboratories applying screening methods for routine control of samples shall establish a close cooperation with laboratories applying the confirmatory method.
- Performance verification of the screening method is required during routine analysis, by analytical quality control and ongoing method validation. There must be a continuous programme for control of compliant results.
- Check on possible suppression of the cell response and cytotoxicity.

20 % of the sample extracts shall be measured in routine screening without and with TCDD added corresponding to the maximum or action level, to check if the response is possibly suppressed by interfering substances present in the sample extract. The measured concentration of the spiked sample is compared to the sum of the concentration of the unspiked extract plus the spiking concentration. If this measured concentration is more than 25 % lower than the calculated (sum) concentration, this is an indication of a potential signal suppression and the respective sample must be submitted to confirmatory analysis. Results shall be monitored in quality control charts.

- Quality control on compliant samples

Approximately 2 % to 10 % of the compliant samples, depending on sample matrix and laboratory experience, shall be confirmed.

- Determination of false-compliant rates from QC data

The rate of false-compliant results from screening of samples below and above the maximum level or the action level shall be determined. Actual false-compliant rates shall be below 5 %.

After a minimum of 20 confirmed results per matrix/matrix group is available from the quality control of compliant samples, conclusions on the false-compliant rate shall be drawn from this database. The results from samples analysed in ring trials or during contamination incidents, covering a concentration range up to, e.g. 2× the maximum level (ML), may also be included in the minimum of 20 results for evaluation of the false-compliant rate. The samples shall cover most frequent congener patterns, representing various sources.

Although screening assays shall preferentially aim to detect samples exceeding the action level, the criterion for determining false-compliant rates is the maximum level, taking into account the expanded measurement uncertainty of the confirmatory method.

- Potential non-compliant results from screening shall always be verified by a full re-analysis of the original sample by a confirmatory method. These samples may also be used to evaluate the rate of false non-compliant results. For screening methods, the rate of false non-compliant results is the fraction of results confirmed to be compliant from confirmatory analysis, while in previous screening the sample had been declared to be suspected to be non-compliant. However, evaluation of the advantageousness of the screening method shall be based on comparison of false non-compliant samples with the total number of samples checked. This rate shall be low enough to make the use of a screening tool advantageous.

- At least under validation conditions, bioanalytical methods shall provide a valid indication of the TEQ level, calculated and expressed as BEQ.
- Also for bioanalytical methods carried out under repeatability conditions, the intra-laboratory RSD_r would typically be smaller than the reproducibility RSD_R .

6. SPECIFIC REQUIREMENTS FOR GC-MS METHODS TO BE COMPLIED WITH FOR SCREENING OR CONFIRMATORY PURPOSES

6.1. **Acceptable differences between upperbound and lowerbound WHO-TEQ levels**

- The difference between upperbound level and lowerbound level shall not exceed 20 % for confirmation of the exceedance of maximum or in case of need of action levels.

6.2. **Control of recoveries**

- Addition of ^{13}C -labelled 2,3,7,8-chlorine-substituted internal PCDD/F standards and of ^{13}C -labelled internal dioxin-like PCB standards must be carried out at the very beginning of the analytical method, e.g. prior to extraction, in order to validate the analytical procedure. At least one congener for each of the tetra- to octa-chlorinated homologous groups for PCDD/Fs and at least one congener for each of the homologous groups for dioxin-like PCBs must be added (alternatively, at least one congener for each mass spectrometric selected ion recording function used for monitoring PCDD/Fs and dioxin-like PCBs). In case of confirmatory methods, all seventeen ^{13}C -labelled 2,3,7,8-substituted internal PCDD/F standards and all twelve ^{13}C -labelled internal dioxin-like PCB standards shall be used.
- Relative response factors shall also be determined for those congeners for which no ^{13}C -labelled analogue is added by using appropriate calibration solutions.
- For foodstuffs of plant origin and foodstuffs of animal origin containing less than 10 % fat, the addition of the internal standards is mandatory prior to extraction. For foodstuffs of animal origin containing more than 10 % fat, the internal standards may be added either before or after fat extraction. An appropriate validation of the extraction efficiency shall be carried out, depending on the stage at which internal standards are introduced and on whether results are reported on product or fat basis.
- Prior to GC-MS analysis, one or two recovery (surrogate) standard(s) must be added.
- Control of recovery is necessary. For confirmatory methods, the recoveries of the individual internal standards shall be in the range of 60 to 120 %. Lower or higher recoveries for individual congeners, in particular for some hepta- and octa-chlorinated dibenzo-p-dioxins and dibenzofurans, are acceptable on the condition that their contribution to the TEQ value does not exceed 10 % of the total TEQ value (based on sum of PCDD/F and dioxin-like PCBs). For GC-MS screening methods, the recoveries shall be in the range of 30 to 140 %.

6.3. **Removal of interfering substances**

- Separation of PCDD/Fs from interfering chlorinated compounds such as non-dioxin-like PCBs and chlorinated diphenyl ethers shall be carried out by suitable chromatographic techniques (preferably with a florisil, alumina and/or carbon column).
- Gas-chromatographic separation of isomers shall be sufficient (< 25 % peak to peak between 1,2,3,4,7,8-HxCDF and 1,2,3,6,7,8-HxCDF).

6.4. **Calibration with standard curve**

- The range of the calibration curve shall cover the relevant range of maximum or action levels.

6.5. **Specific criteria for confirmatory methods**

- For GC-HRMS:

In HRMS, the resolution shall typically be greater than or equal to 10 000 for the entire mass range at 10 % valley.

Fulfilment of further identification and confirmation criteria as described in internationally recognised standards, for example, in standard EN 16215:2012 (Animal feed — Determination of dioxins and dioxin-like PCBs by GC/HRMS and of indicator PCBs by GC/HRMS) and/or in EPA methods 1613 and 1668 as revised.

— For GC-MS/MS:

Monitoring of at least two specific precursor ions, each with one specific corresponding transition product ion for all labelled and unlabelled analytes in the scope of analysis.

Maximum permitted tolerance of relative ion intensities of ± 15 % for selected transition product ions in comparison to calculated or measured values (average from calibration standards), applying identical MS/MS conditions, in particular collision energy and collision gas pressure, for each transition of an analyte.

Resolution for each quadrupole to be set equal to or better than unit mass resolution (unit mass resolution: sufficient resolution to separate two peaks one mass unit apart) in order to minimise possible interferences on the analytes of interest.

Fulfilment of the further criteria as described in internationally recognised standards, for example, in standard EN 16215:2012 (Animal feed — Determination of dioxins and dioxin-like PCBs by GC/HRMS and of indicator PCBs by GC/HRMS) and/or in EPA methods 1613 and 1668 as revised, except the obligation to use GC-HRMS.

7. SPECIFIC REQUIREMENTS FOR BIOANALYTICAL METHODS

Bioanalytical methods are methods based on the use of biological principles like cell-based assays, receptor-assays or immunoassays. This point establishes requirements for bioanalytical methods in general.

A screening method in principle classifies a sample as compliant or suspected to be non-compliant. For this, the calculated BEQ level is compared to the cut-off value (see point 7.3). Samples below the cut-off value are declared compliant, samples equal or above the cut-off value as suspected to be non-compliant, requiring analysis by a confirmatory method. In practice, a BEQ level corresponding to two-thirds of the maximum level may serve as cut-off value provided that a false-compliant rate below 5 % and an acceptable rate for false non-compliant results are ensured. With separate maximum levels for PCDD/Fs and for the sum of PCDD/Fs and dioxin-like PCBs, checking compliance of samples without fractionation requires appropriate bioassay cut-off values for PCDD/Fs. For checking of samples exceeding the action levels, an appropriate percentage of the respective action level would suit as cut-off value.

If an indicative level is expressed in BEQs, the results from the the sample must be given in the working range and exceeding the reporting limit (see points 7.1.1 and 7.1.6).

7.1. Evaluation of the test response

7.1.1. General requirements

— When calculating the concentrations from a TCDD calibration curve, values at the higher end of the curve will show a high variation (high coefficient of variation (CV)). The working range is the area where this CV is smaller than 15 %. The lower end of the working range (reporting limit) must further be set significantly (at least by a factor of three) above the procedure blanks. The upper end of the working range is usually represented by the EC_{70} value (70 % of maximal effective concentration), but lower if the CV is higher than 15 % in this range. The working range shall be established during validation. Cut-off values (see point 7.3) must be within the working range.

— Standard solutions and sample extracts shall be tested in triplicate or at least in duplicate. When using duplicates, a standard solution or a control extract tested in four to six wells divided over the plate shall produce a response or concentration (only possible in the working range) based on a $CV < 15$ %.

7.1.2. Calibration

7.1.2.1. Calibration with standard curve

- Levels in samples may be estimated by comparison of the test response with a calibration curve of TCDD (or PCB 126 or a PCDD/F/dioxin-like PCB standard mixture) to calculate the BEQ level in the extract and subsequently in the sample.
- Calibration curves shall contain 8 to 12 concentrations (at least in duplicates), with enough concentrations in the lower part of the curve (working range). Special attention shall be paid to the quality of the curve-fit in the working range. As such, the R^2 value is of little or no value in estimating the goodness of fit in nonlinear regression. A better fit will be achieved by minimising the difference between calculated and observed levels in the working range of the curve (e.g. by minimising the sum of squared residuals).
- The estimated level in the sample extract is subsequently corrected for the BEQ level calculated for a matrix or solvent blank sample (to account for impurities from solvents and chemicals used), and the apparent recovery (calculated from the BEQ level of suitable reference samples with representative congener patterns around the maximum or action level). For performing a recovery correction, the apparent recovery must always be within the required range (see point 7.1.4). Reference samples used for recovery correction must comply with requirements as given in point 7.2.

7.1.2.2. Calibration with reference samples

Alternatively, a calibration curve prepared from at least four reference samples (see point 7.2: one matrix blank, plus three reference samples at 0,5×, 1,0× and 2,0× the maximum or action level) may be used, eliminating the need to correct for blank and recovery if matrix properties of the reference samples match those of the unknown samples. In this case, the test response corresponding to two-thirds of the maximum level (see point 7.3) may be calculated directly from these samples and used as cut-off value. For checking of samples exceeding the action levels, an appropriate percentage of these action levels would suit as cut-off value.

7.1.3. Separate determination of PCDD/Fs and dioxin-like PCBs

Extracts may be split into fractions containing PCDD/Fs and dioxin-like PCBs, allowing a separate indication of PCDD/Fs and dioxin-like PCB TEQ levels (in BEQs). A PCB 126 standard calibration curve shall preferentially be used to evaluate results for the fraction containing dioxin-like PCBs.

7.1.4. Bioassay apparent recoveries

The 'bioassay apparent recovery' shall be calculated from suitable reference samples with representative congener patterns around the maximum or action level and expressed as percentage of the BEQ level in comparison to the TEQ level. Depending on the type of assay and TEFs⁽¹⁾ used, the differences between TEF and REP factors for dioxin-like PCBs may cause low apparent recoveries for dioxin-like PCBs in comparison to PCDD/Fs. Therefore, if a separate determination of PCDD/Fs and dioxin-like PCBs is performed, bioassay apparent recoveries shall be: for dioxin-like PCBs 20 % to 60 %, for PCDD/Fs 50 % to 130 % (ranges apply for TCDD calibration curve). As the contribution of dioxin-like PCBs to the sum of PCDD/Fs and dioxin-like PCBs may vary between different matrices and samples, bioassay apparent recoveries for the sum parameter reflect these ranges and shall be between 30 % to 130 %.

7.1.5. Control of recoveries for clean-up

The loss of compounds during the clean-up shall be checked during validation. A blank sample spiked with a mixture of the different congeners shall be submitted to clean-up (at least $n = 3$) and the recovery and variability checked by a confirmatory method. The recovery shall be within 60 to 120 % especially for congeners contributing more than 10 % to the TEQ-level in various mixtures.

⁽¹⁾ Current requirements are based on the TEFs published in: M. Van den Berg et al, Toxicol Sci 93 (2), 223-241 (2006).

7.1.6. Reporting Limit

When reporting BEQ levels, a reporting limit shall be determined from relevant matrix samples involving typical congener patterns, but not from the calibration curve of the standards due to low precision in the lower range of the curve. Effects from extraction and clean-up must be taken into account. The reporting limit must be set significantly (at least by a factor of three) above the procedure blanks.

7.2. Use of reference samples

- Reference samples shall represent sample matrix, congener patterns and concentration ranges for PCDD/Fs and dioxin-like PCBs around the maximum or action level.
- A procedure blank, or preferably a matrix blank, and a reference sample at the maximum or action level have to be included in each test series. These samples must be extracted and tested at the same time under identical conditions. The reference sample must show a clearly elevated response in comparison to the blank sample, thus ensuring the suitability of the test. Those samples may be used for blank and recovery corrections.
- Reference samples chosen for performing a recovery correction shall be representative for the test samples, meaning that congener patterns shall not lead to an underestimation of levels.
- Extra reference samples at, e.g. 0,5× and 2× the maximum or action level may be included to demonstrate the proper performance of the test in the range of interest for the control of the maximum or action level. Combined, these samples may be used for calculating the BEQ-levels in test samples (see point 7.1.2.2).

7.3. Determination of cut-off values

The relationship between bioanalytical results in BEQ and results from confirmatory methods in TEQ shall be established (e.g. by matrix-matched calibration experiments, involving reference samples spiked at 0, 0,5×, 1× and 2× the maximum level (ML), with six repetitions on each level ($n = 24$)). Correction factors (blank and recovery) may be estimated from this relationship but shall be checked in each test series by including procedure/matrix blanks and recovery samples (see point 7.2).

Cut-off values shall be established for decision over sample compliance with maximum levels or for control of action levels, if of interest, with the respective maximum or action levels set for either PCDD/Fs and dioxin-like PCBs alone, or for the sum of PCDD/Fs and dioxin-like PCBs. They are represented by the *lower* endpoint of the distribution of bioanalytical results (corrected for blank and recovery) corresponding to the decision limit of the confirmatory method based on a 95 % level of confidence, implying a false-compliant rate < 5 %, and on a $RSD_R < 25$ %. The decision limit of the confirmatory method is the maximum level, taking into account the expanded measurement uncertainty.

In practice, the cut-off value (in BEQ) may be calculated from the following approaches (see Figure 1):

7.3.1. Use of the lower band of the 95 % prediction interval at the decision limit of the confirmatory method

$$\text{Cut-off value} = \text{BEQ}_{\text{DL}} - s_{y,x} \times t_{\alpha, f = m - 2} \sqrt{1/n + 1/m + (x_i - \bar{x})^2 / Q_{xx}}$$

with:

BEQ_{DL}	BEQ corresponding to the decision limit of the confirmatory method, being the ML taking into account the expanded measurement uncertainty
$s_{y,x}$	residual standard deviation
$t_{\alpha, f = m - 2}$	student factor ($\alpha = 5$ %, $f =$ degrees of freedom, single-sided)
m	total number of calibration points (index j)
n	number of repetitions on each level

x_i sample concentration (in TEQ) of calibration point I determined by a confirmatory method

$\bar{x}$ mean of the concentrations (in TEQ) of all calibration samples

$$Q_{xx} = \sum_{j=1}^m (x_i - \bar{x})^2 \text{ square sum parameter}$$

i = index for calibration point i

- 7.3.2. Calculation from bioanalytical results (corrected for blank and recovery) of multiple analyses of samples ($n \geq 6$) contaminated at the decision limit of the confirmatory method, as the *lower* endpoint of the data distribution at the corresponding mean BEQ value:

$$\text{Cut-off value} = \text{BEQ}_{\text{DL}} - 1,64 \times \text{SD}_R$$

with

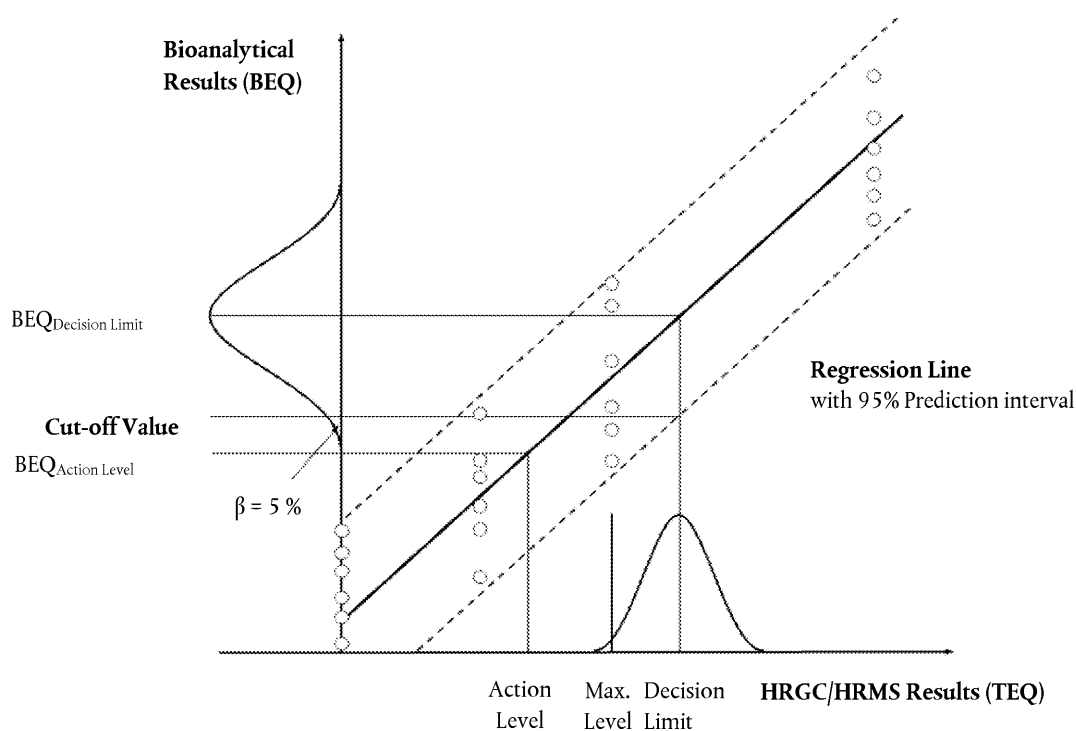
SD_R standard deviation of bioassay results at BEQ_{DL} , measured under within-laboratory reproducibility conditions

- 7.3.3. Calculation as mean value of bioanalytical results (in BEQ, corrected for blank and recovery) from multiple analysis of samples ($n \geq 6$) contaminated at two-thirds of the maximum or action level. This is based on the observation that this level will be around the cut-off determined under point 7.3.1 or 7.3.2.

Calculation of cut-off values based on a 95 % level of confidence implying a false-compliant rate < 5 %, and a $\text{RSD}_R < 25$ %:

1. from the *lower* band of the 95 % prediction interval at the decision limit of the confirmatory method,
2. from multiple analysis of samples ($n \geq 6$) contaminated at the decision limit of the confirmatory method as the *lower* endpoint of the data distribution (represented in the figure by a bell-shaped curve) at the corresponding mean BEQ value.

Figure 1



7.3.4. Restrictions to cut-off values

BEQ-based cut-off values calculated from the RSD_R achieved during validation using a limited number of samples with different matrix/congener patterns may be higher than the TEQ-based maximum or action levels due to a better precision than attainable in routine when an unknown spectrum of possible congener patterns has to be controlled. In such cases, cut-off values shall be calculated from an $RSD_R = 25 \%$, or two-thirds of the maximum or action level shall be preferred.

7.4. Performance characteristics

- Since no internal standards can be used in bioanalytical methods, tests on repeatability shall be carried out to obtain information on the standard deviation within and between test series. Repeatability shall be below 20 % and intra-laboratory reproducibility shall be below 25 %. This shall be based on the calculated levels in BEQs after blank and recovery correction.
- As part of the validation process, the test must be shown to discriminate between a blank sample and a level at the cut-off value, allowing the identification of samples above the corresponding cut-off value (see point 7.1.2).
- Target compounds, possible interferences and maximum tolerable blank levels shall be defined.
- The per cent standard deviation in the response or concentration calculated from the response (only possible in working range) of a triplicate determination of a sample extract shall not be above 15 %.
- The uncorrected results of the reference sample(s) expressed in BEQs (blank and at the maximum or action level) shall be used for evaluation of the performance of the bioanalytical method over a constant time period.
- QCcharts for procedure blanks and each type of reference sample shall be recorded and checked to make sure the analytical performance is in accordance with the requirements, in particular for the procedure blanks with regard to the requested minimum difference to the lower end of the working range and for the reference samples with regard to within-laboratory reproducibility. Procedure blanks must be well controlled in order to avoid false-compliant results when subtracted.
- The results from the confirmatory methods of suspected samples and 2 to 10 % of the compliant samples (minimum of 20 samples per matrix) shall be collected and used to evaluate the performance of the screening method and the relationship between BEQs and TEQs. This database might be used for re-evaluation of cut-off values applicable to routine samples for the validated matrices.
- Successful method performance may also be demonstrated by participation in ring trials. The results from samples analysed in ring trials, covering a concentration range up to, e.g. $2 \times ML$, may also be included in the evaluation of the false-compliant rate, if a laboratory is able to demonstrate its successful performance. The samples shall cover most frequent congener patterns, representing various sources.
- During incidents, the cut-off values may be re-evaluated, reflecting the specific matrix and congener patterns of this single incident.

8. REPORTING OF THE RESULT

Confirmatory methods

- The analytical results shall contain the levels of the individual PCDD/F and dioxin-like PCB congeners and TEQ-values shall be reported as lower-bound, upper-bound and medium-bound in order to include a maximum of information in the reporting of the results and thereby enabling the interpretation of the results according to specific requirements.
- The report shall also include the method used for extraction of PCDD/Fs, dioxin-like PCBs and lipids. The lipid content of the sample shall be determined and reported for food matrices with maximum levels expressed on fat basis and with an expected fat concentration in the range of 0-2 % (in correspondence to existing legislation). For other samples, the determination of the lipid content is optional.

- The recoveries of the individual internal standards must be made available in case the recoveries are outside the range mentioned in point 6.2 where the maximum level is exceeded (in this case, the recoveries for one of the two duplicate analysis) and in other cases upon request.
- As the expanded measurement uncertainty is to be taken into account when deciding about the compliance of a sample, this parameter shall also be made available. Thus, analytical results shall be reported as $x \pm U$ whereby x is the analytical result and U is the expanded measurement uncertainty using a coverage factor of 2 which gives a level of confidence of approximately 95 %. In case of a separate determination of PCDD/Fs and dioxin-like-PCBs the sum of the estimated expanded uncertainty of the separate analytical results of PCDD/Fs and dioxin-like PCBs has to be used for the sum of PCDD/Fs and dioxin-like PCBs.
- The results shall be expressed in the same units and with the same number of significant figures as the maximum levels laid down in Regulation (EC) No 1881/2006.

Bioanalytical screening methods

- The result of the screening shall be expressed as compliant or suspected to be non-compliant ('suspected').
- In addition, an indicative result for PCDD/F and/or dioxin-like PCBs expressed in BEQ (not TEQ) may be given (see point 1). Samples with a response below the reporting limit shall be expressed as lower than the reporting limit. Samples with a response above the working range shall be reported as exceeding the working range and the level corresponding to the upper end of the working range shall be given in BEQ.
- For each type of sample matrix, the report shall mention the maximum or action level on which the evaluation is based.
- The report shall mention the type of test applied, the basic test principle and kind of calibration.
- The report shall also include the method used for extraction of PCDD/Fs, dioxin-like PCBs and lipids. The lipid content of the sample shall be determined and reported for food matrices with maximum levels expressed on fat basis and with an expected fat concentration in the range of 0-2 % (in correspondence to existing legislation). For other samples, the determination of the lipid content is optional.
- In the case of samples suspected to be non-compliant, the report needs to include a note on the action to be taken. The concentration of PCDD/Fs and the sum of PCDD/Fs and dioxin-like PCBs in those samples with elevated levels has to be determined/confirmed by a confirmatory method.
- Non-compliant results shall only be reported from confirmatory analysis.

Physico-chemical screening methods

- The result of the screening shall be expressed as compliant or suspected to be non-compliant ('suspected').
- For each type of sample matrix, the report shall mention the maximum or action level on which the evaluation is based.
- In addition, levels for individual PCDD/F and/or dioxin-like PCB congeners and TEQ-values reported as lower-bound, upper-bound and medium-bound may be given. The results shall be expressed in the same units and with (at least) the same number of significant figures as the maximum levels laid down in Regulation (EC) No 1881/2006.
- The recoveries of the individual internal standards must be made available in case the recoveries are outside the range mentioned in point 6.2 and in other cases upon request.
- The report shall mention the GC-MS method applied.
- The report shall also include the method used for extraction of PCDD/Fs, dioxin-like PCBs and lipids. The lipid content of the sample shall be determined and reported for food matrices with maximum levels expressed on fat basis and with an expected fat concentration in the range of 0-2 % (in correspondence to existing legislation). For other samples, the determination of the lipid content is optional.

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- In case of samples suspected to be non-compliant, the report needs to include a note on the action to be taken. The concentration of PCDD/Fs and the sum of PCDD/Fs and dioxin-like PCBs in those samples with elevated levels has to be determined/confirmed by a confirmatory method.
 - Non-compliance can only be decided after confirmatory analysis.
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Appendix

WHO-TEFs for human risk assessment based on the conclusions of the World Health Organisation (WHO) 0151 International Programme on Chemical Safety (IPCS) expert meeting which was held in Geneva in June 2005 ⁽¹⁾

Congener	TEF value	Congener	TEF value
Dibenzo-<i>p</i>-dioxins ('PCDDs')		'Dioxin-like' PCBs	
		Non-ortho PCBs + Mono-ortho PCBs	
2,3,7,8-TCDD	1		
1,2,3,7,8-PeCDD	1	Non-ortho PCBs	
1,2,3,4,7,8-HxCDD	0,1	PCB 77	0,0001
1,2,3,6,7,8-HxCDD	0,1	PCB 81	0,0003
1,2,3,7,8,9-HxCDD	0,1	PCB 126	0,1
1,2,3,4,6,7,8-HpCDD	0,01	PCB 169	0,03
OCDD	0,0003		
Dibenzofurans ('PCDFs')		Mono-ortho PCBs	
2,3,7,8-TCDF	0,1	PCB 105	0,00003
1,2,3,7,8-PeCDF	0,03	PCB 114	0,00003
2,3,4,7,8-PeCDF	0,3	PCB 118	0,00003
1,2,3,4,7,8-HxCDF	0,1	PCB 123	0,00003
1,2,3,6,7,8-HxCDF	0,1	PCB 156	0,00003
1,2,3,7,8,9-HxCDF	0,1	PCB 157	0,00003
2,3,4,6,7,8-HxCDF	0,1	PCB 167	0,00003
1,2,3,4,6,7,8-HpCDF	0,01	PCB 189	0,00003
1,2,3,4,7,8,9-HpCDF	0,01		
OCDF	0,0003		

Abbreviations used: 'T' = tetra; 'Pe' = penta; 'Hx' = hexa; 'Hp' = hepta; 'O' = octa; 'CDD' = chlorodibenzodioxin; 'CDF' = chlorodibenzofuran; 'CB' = chlorobiphenyl.

⁽¹⁾ Martin van den Berg et al., The 2005 World Health Organisation Re-evaluation of Human and Mammalian Toxic Equivalency Factors for Dioxins and Dioxin-like Compounds. Toxicological Sciences 93(2), 223–241 (2006).

ANNEX IV

SAMPLE PREPARATION AND REQUIREMENTS FOR METHODS OF ANALYSIS USED IN CONTROL OF THE LEVELS OF NON-DIOXIN-LIKE PCBs IN CERTAIN FOODSTUFFS

The requirements set out in this Annex shall be applied where foodstuffs are analysed for the official control of the levels of non-dioxin-like PCBs and as regards sample preparation and analytical requirements for other regulatory purposes, including the controls performed by the food business operator to ensure compliance with the provisions in Article 4 of Regulation (EC) No 852/2004.

The provisions on sample preparation provided for in point 3 of Annex III of this Regulation shall also be applicable for the control of the levels of non-dioxin-like PCBs in food.

1. Applicable detection methods

Gas Chromatography/Electron Capture Detection (GC-ECD), GC-LRMS, GC-MS/MS, GC-HRMS or equivalent methods.

2. Identification and confirmation of analytes of interest:

- Relative retention time in relation to internal standards or reference standards (acceptable deviation of $\pm 0,25$ %).
- Gas chromatographic separation of the non-dioxin-like PCBs (from interfering substances, especially co-eluting PCBs, in particular if levels of samples are in the range of legal limits and non-compliance is to be confirmed ⁽¹⁾).
- For GC-MS techniques:
 - Monitoring of at least the following number of molecular ions or characteristic ions from the molecular cluster:
 - two specific ions for HRMS,
 - three specific ions for LRMS,
 - two specific precursor ions, each with one specific corresponding transition product ion for MS-MS.
 - Maximum permitted tolerances for abundance ratios for selected mass fragments:
Relative deviation of abundance ratio of selected mass fragments from theoretical abundance or calibration standard for target ion (most abundant ion monitored) and qualifier ion(s): ± 15 %.
- For GC-ECD:
Confirmation of results exceeding the maximum level with two GC columns with stationary phases of different polarity.

3. Demonstration of performance of method:

Validation in the range of the maximum level (0,5 to 2 times the maximum level) with an acceptable coefficient of variation for repeated analysis (see requirements for intermediate precision in point 8).

4. Limit of quantification:

The sum of the LOQs ⁽²⁾ of non-dioxin-like PCBs shall not be higher than one-third of the maximum level ⁽³⁾.

5. Quality control:

Regular blank controls, analysis of spiked samples, quality control samples, participation in interlaboratory studies on relevant matrices.

⁽¹⁾ Congeners often found to co-elute are, e.g. PCB 28/31, PCB 52/69 and PCB 138/163/164. For GC-MS also possible interferences from fragments of higher chlorinated congeners have to be considered.

⁽²⁾ The principles as described in the 'Guidance Document on the Estimation of LOD and LOQ for Measurements in the Field of Contaminants in Feed and Food' [link to website] shall be followed when applicable.

⁽³⁾ It is highly recommendable to have a lower contribution of the reagent blank level to the level of a contaminant in a sample. It is in the responsibility of the laboratory to control the variation of blank levels, in particular, if the blank levels are subtracted.

6. Control of recoveries:

- Use of suitable internal standards with physico-chemical properties comparable to analytes of interest.
- Addition of internal standards:
 - Addition to products (before extraction and clean-up process),
 - Addition also possible to extracted fat (before clean-up process), if maximum level is expressed on fat basis.
- Requirements for methods using all six isotope-labelled non-dioxin-like PCB congeners:
 - Correction of results for recoveries of internal standards,
 - Generally acceptable recoveries of isotope-labelled internal standards are between 60 and 120 %,
 - Lower or higher recoveries for individual congeners with a contribution to the sum of non-dioxin-like PCBs below 10 % are acceptable.
- Requirements for methods using not all six isotope-labelled internal standards or other internal standards:
 - Control of recovery of internal standard(s) for every sample,
 - Acceptable recoveries of internal standard(s) between 60 and 120 %,
 - Correction of results for recoveries of internal standards.
- The recoveries of unlabelled congeners shall be checked by spiked samples or quality control samples with concentrations in the range of the maximum level. Acceptable recoveries for these congeners are between 60 and 120 %.

7. Requirements for laboratories

In accordance with the provisions of Regulation (EC) No 882/2004, laboratories shall be accredited by a recognised body operating in accordance with ISO Guide 58 to ensure that they are applying analytical quality assurance. Laboratories shall be accredited following the EN ISO/IEC 17025 standard. In addition, the principles as described in Technical Guidelines for the estimation of measurement uncertainty and limits of quantification for PCB analysis shall be followed when applicable ⁽¹⁾.

8. Performance characteristics: Criteria for the sum of non-dioxin-like PCBs at the maximum level

	Isotope dilution mass spectrometry (*)	Other techniques
Trueness	– 20 to + 20 %	– 30 to + 30 %
Intermediate precision (RSD _R)	≤ 15 %	≤ 20 %
Difference between upper and lower bound calculation	≤ 20 %	≤ 20 %

(*) Use of all six ¹³C-labelled analogues as internal standards required

9. Reporting of results

- The analytical results shall contain the levels of the individual non-dioxin-like PCB congeners and the sum of non-dioxin-like PCBs, reported as lower-bound, upper-bound and medium-bound, in order to include a maximum of information in the reporting of the results and thereby enabling the interpretation of the results according to specific requirements.

⁽¹⁾ 'Guidance Document on Measurement Uncertainty for Laboratories performing PCDD/F and PCB Analysis using Isotope Dilution Mass Spectrometry' [link to website], 'Guidance Document on the Estimation of LOD and LOQ for Measurements in the Field of Contaminants in Feed and Food' [link to website].

- The report shall also include the method used for the extraction of PCBs and lipids. The lipid content of the sample shall be determined and reported for food matrices with maximum levels expressed on fat basis and with an expected fat concentration in the range of 0-2 % (in correspondence to existing legislation). For other samples, the determination of the lipid content is optional.
 - The recoveries of the individual internal standards must be made available in case the recoveries are outside the range mentioned in point 6, in case the maximum level is exceeded and in other cases upon request.
 - As the expanded measurement uncertainty is to be taken into account when deciding about the compliance of a sample, that parameter shall also be made available. Thus, analytical results shall be reported as $x \pm U$ whereby x is the analytical result and U is the expanded measurement uncertainty using a coverage factor of 2 which gives a level of confidence of approximately 95 %.
 - The results shall be expressed in the same units and with the same number of significant figures as the maximum levels laid down in Regulation (EC) No 1881/2006.
-

COMMISSION REGULATION (EU) 2017/645**of 5 April 2017****correcting the Latvian language version of Regulation (EC) No 152/2009 laying down the methods of sampling and analysis for the official control of feed****(Text with EEA relevance)**

THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EC) No 882/2004 of the European Parliament and of the Council of 29 April 2004 on official controls performed to ensure the verification of compliance with feed and food law, animal health and animal welfare rules ⁽¹⁾, and in particular Article 11(4) thereof,

Whereas:

- (1) An error has occurred in the Latvian language version of Commission Regulation (EC) No 152/2009 ⁽²⁾ as amended by Commission Regulation (EU) No 691/2013 ⁽³⁾. Therefore a correction in the text of the footnotes of the tables of points 5.1.1, 5.1.3 and 5.1.5 in Annex I is necessary in the Latvian language version of Regulation (EC) No 152/2009. The other language versions are not affected.
- (2) Regulation (EC) No 152/2009 should therefore be corrected accordingly.
- (3) The measures provided for in this Regulation are in accordance with the opinion of the Standing Committee on the Food Chain and Animal Health,

HAS ADOPTED THIS REGULATION:

Article 1

Concerns only the Latvian language version.

*Article 2*This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

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

Done at Brussels, 5 April 2017.

*For the Commission**The President*

Jean-Claude JUNKER

⁽¹⁾ OJ L 165, 30.4.2004, p. 1.⁽²⁾ Commission Regulation (EC) No 152/2009 of 27 January 2009 laying down the methods of sampling and analysis for the official control of feed (OJ L 54, 26.2.2009, p. 1).⁽³⁾ Commission Regulation (EU) No 691/2013 of 19 July 2013 amending Regulation (EC) No 152/2009 as regards methods of sampling and analysis (OJ L 197, 20.7.2013, p. 1).

COMMISSION IMPLEMENTING REGULATION (EU) 2017/646**of 5 April 2017****amending Implementing Regulation (EU) 2015/378 laying down rules for the application of Regulation (EU) No 514/2014 of the European Parliament and of the Council with regard to the implementation of the annual clearance of accounts procedure and the implementation of the conformity clearance**

THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EU) No 514/2014 of the European Parliament and of the Council of 16 April 2014 laying down general provisions on the Asylum, Migration and Integration Fund and on the instrument for financial support for police cooperation, preventing and combating crime and crisis management ⁽¹⁾, and in particular Article 47(6) thereof,

Whereas:

- (1) The first annual accounts clearance exercise carried out pursuant to Article 1 of Commission Implementing Regulation (EU) 2015/378 ⁽²⁾ highlighted the need to clarify the situation of annual pre-financing amounts that are not fully cleared by the annual accounts submitted.
- (2) It is necessary to establish arrangements for the implementation of the conformity clearance and in particular rules on criteria for determining the level of financial correction that the Commission can apply pursuant to Article 47 of Regulation (EU) No 514/2014 following the completion of that procedure.
- (3) To ensure legal certainty and equal treatment of all Member States, it is essential to clarify the criteria for determining deficiencies in the effective functioning of the management and control systems, define the main types of such deficiencies and set out the criteria for determining the level of financial correction.
- (4) Implementing Regulation (EU) 2015/378 should therefore be amended.
- (5) The measures provided for in this Regulation are in accordance with the opinion of the 'Asylum, Migration and Integration and Internal Security Funds' Committee,

HAS ADOPTED THIS REGULATION:

Article 1

Implementing Regulation (EU) 2015/378 is amended as follow:

(1) Article 1 is amended as follows:

(a) paragraph 6 is replaced by the following:

‘6. Where the amount accepted by the Commission in the decision on the clearance of annual accounts for financial year N is lower than the annual pre-financing amount for financial year N, the latter amount shall be cleared against the former. Any outstanding pre-financing amount shall be cleared in the course of subsequent clearance exercises.

The first subparagraph shall apply also in cases where a Member State submits annual accounts reporting zero payment.’;

(b) paragraph 7 is deleted;

⁽¹⁾ OJ L 150, 20.5.2014, p. 112.

⁽²⁾ Commission Implementing Regulation (EU) 2015/378 of 2 March 2015 laying down rules for the application of Regulation (EU) No 514/2014 of the European Parliament and of the Council with regard to the implementation of the annual clearance of accounts procedure and the implementation of the conformity clearance (OJ L 64, 7.3.2015, p. 30).

(2) the following articles are inserted:

Article 3a

Criteria for determining deficiencies in the effective functioning of the management and control system

1. The Commission shall base its assessment of the effective functioning of the management and control system on the results of all available audits carried out by the Member States, the Commission services and the Court of Auditors, the results of investigations carried out by European Anti-Fraud Office or any other information on compliance with the designation criteria referred to in Article 2(1) of Commission Delegated Regulation (EU) No 1042/2014 (*).

The Commission's assessment shall cover the internal control environment of the national programme, the management and control activities of the Responsible Authority, and the control and audit activities of the Audit Authority and shall be based on verification of compliance with the key requirements set out in Table 1 of the Annex.

2. Compliance with the key requirements referred to in paragraph 1 according to the categories set out in Table 2 of the Annex shall be used to assess the effective functioning of each competent authority and to reach an overall conclusion on the management and control system. Any mitigating or aggravating factors shall be taken into account in the overall conclusion on the management and control system.

3. Wherever it is assessed that any of the key requirements 2, 4, 5, 8, 11, 12 or 14 in Table 1 of the Annex, or two or more of the other key requirements in that Table fall into categories 3 or 4 set out in Table 2 of the Annex, it shall be considered as a type of serious deficiency in the effective functioning of the management and control system.

Article 3b

Criteria for applying and determining the level of financial corrections

1. The Commission shall apply financial corrections where it identifies one or more individual or systemic irregularities or one or more deficiencies in the effective functioning of the management and control system ('system deficiencies').

For the purpose of this Regulation, an irregularity means any infringement of Union or national law or any infringement of national rules resulting from an act or omission by a beneficiary or beneficiaries which has, or would have, the effect of prejudicing the general budget of the European Union by charging to it an unjustified item of expenditure.

The amount of the financial correction shall be determined on a case-by-case basis wherever possible and shall be equal to the exact amount of expenditure wrongly charged to the general budget of the Union.

Where the Commission identifies irregularities in a representative sample of expenditure in all or part of a national programme, but it is not cost-effective to verify the regularity of the other expenditure, the correction may be determined by extrapolating the results of the examination of the sample to the rest of the population from which it was drawn.

Where the Commission identifies systemic irregularities or system deficiencies but where it is not possible, even by extrapolation, to quantify the correction precisely, a flat-rate financial correction shall be applied to the expenditure declared for the part of the system affected in accordance with the indicative criteria and scales set out in paragraphs 2 and 3.

Flat-rate corrections may also be applied in respect of individual irregularities.

2. The level of flat-rate correction shall be determined taking into account the following factors:

- (a) the degree of seriousness of the irregularity or of the system deficiency in relation to the overall system or part of it, or to the types of expenditure declared;
- (b) the degree of risk of loss to which the Union budget was exposed as a result of the irregularity or system deficiency;

- (c) the vulnerability of the expenditure to fraud due to the irregularity or system deficiency;
- (d) any mitigating or aggravating factors.

3. The level of correction shall be determined as follows:

- (a) where the irregularity or irregularities or the system deficiency or deficiencies is/are so fundamental, frequent or widespread that it/they represent(s) a complete failure of the system that puts at risk the legality and regularity of all the expenditure concerned, a flat rate of 100 % shall be applied;
- (b) where the irregularity or irregularities or the system deficiency or deficiencies is/are so frequent and widespread that it/they represent(s) an extremely serious failure of the system that puts at risk the legality and regularity of a very high proportion of the expenditure concerned, a flat rate of 25 % shall be applied;
- (c) where the irregularity or irregularities or the system deficiency or deficiencies is/are due to the system functioning partially, poorly or infrequently so as to put at risk the legality and regularity of a high proportion of the expenditure concerned, a flat rate of 10 % shall be applied;
- (d) where the irregularity or irregularities or the system deficiency or deficiencies is/are due to the system functioning inconsistently so as to put at risk the legality and regularity of a significant proportion of the expenditure concerned, a flat rate of 5 % shall be applied.

In accordance with the principle of proportionality, the rate may be reduced to 2 % where the nature and gravity of the irregularity or system deficiency are not considered to justify a 5 % correction rate.

4. Where, due to a competent authority's failure to take adequate corrective measures following the application of a financial correction in a financial year, the same irregularity or irregularities or deficiency or deficiencies is/are identified in a subsequent financial year, the rate of flat rate correction may, due to the persistence of the irregularity or irregularities or deficiency or deficiencies, be raised to a level not exceeding the next level in the scale set out in paragraph 3.

(*) Commission Delegated Regulation (EU) No 1042/2014 of 25 July 2014 supplementing Regulation (EU) No 514/2014 with regard to the designation and management and control responsibilities of Responsible Authorities and with regard to status and obligations of Audit Authorities (OJ L 289, 3.10.2014, p. 3).;

- (3) a new annex is added as set out in the Annex to this Regulation.

Article 2

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

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

Done at Brussels, 5 April 2017.

For the Commission
The President
Jean-Claude JUNCKER

ANNEX

'ANNEX

Key requirements of the management and control systems and their classification with regard to their effective functioning

(referred to in Article 3a of Implementing Regulation (EU) 2015/378)

Table 1

Key requirements

	Key requirements of the management and control systems	Bodies/authorities concerned	Scope
1	Adequate description and separation of functions and adequate systems for reporting and monitoring where the Responsible Authority entrusts execution of tasks to another body	Responsible Authority/ Delegated Authority	Internal environment
2	Appropriate selection of projects	Responsible Authority/ Delegated Authority	Control activities
3	Adequate information to beneficiaries, potential beneficiaries and the public	Responsible Authority/ Delegated Authority	Internal information and communication
4	Adequate controls	Responsible Authority/ Delegated Authority	Control activities
5	Effective systems and procedures to ensure that all the documents regarding expenditure and controls are held to ensure an adequate audit trail	Responsible Authority/ Delegated Authority	Control activities
6	Reliable computerised systems for accounting, for the storage and transmission of financial data and data on indicators, for monitoring and for reporting	Responsible Authority/ Delegated Authority	Control activities/Internal information and communication
7	Effective implementation of procedures for the prevention, detection and correction of irregularities including proportionate anti-fraud measures	Responsible Authority/ Delegated Authority	Control activities
8	Appropriate procedures for drawing up the annual accounts, the management declaration and the annual summary of final audit reports and of controls carried out	Responsible Authority/ Delegated Authority	Control activities
9	Appropriate and complete account of amounts recoverable, recovered and cancelled	Responsible Authority/ Delegated Authority	Control activities
10	Adequate description and separation of functions, functional independence from the Responsible Authority and adequate systems for ensuring that any other body that carries out audits has the necessary functional independence and takes accounts of internationally accepted audit standards	Audit Authority	Internal environment

	Key requirements of the management and control systems	Bodies/authorities concerned	Scope
11	Adequate system audits	Audit Authority	Control activities
12	Adequate audits of expenditure	Audit Authority	Control activities
13	Adequate audits of accounts	Audit Authority	Control activities
14	Adequate procedures for providing reliable audit opinions and audit reports	Audit Authority	Control activities

Table 2

Classification of key requirements for the management and control systems with regard to their functioning

Category 1	Works well. No, or only minor improvement(s) needed
Category 2	Works. Some improvement(s) needed
Category 3	Works partially. Substantial improvements needed
Category 4	Essentially does not work'

COMMISSION IMPLEMENTING REGULATION (EU) 2017/647**of 5 April 2017****adopting exceptional support measures for the pigmeat market in Poland in respect of certain sows and other pigs slaughtered from 1 August to 30 November 2016**

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⁾, and in particular Article 220(1)(a) thereof,

Whereas:

- (1) Between 1 August and 30 September 2016 a series of outbreaks of African swine fever related to the human factor were confirmed and notified to the Commission by Poland. The epidemic was particularly severe because the virus circulation was confirmed at several holdings with domestic pigs in a relatively wide geographic area.
- (2) Poland immediately took the necessary animal health measures in accordance with Council Directive 2002/60/EC ⁽²⁾, which lays down the minimum measures to be applied within the Union for the control of African swine fever. In particular, Poland took control, monitoring and preventive measures in accordance with Commission Implementing Decision 2014/709/EU ⁽³⁾ as amended by Commission Implementing Decisions (EU) 2016/1236 ⁽⁴⁾, (EU) 2016/1372 ⁽⁵⁾, (EU) 2016/1405 ⁽⁶⁾ and (EU) 2016/1900 ⁽⁷⁾ and established protection and surveillance zones in accordance with Commission Implementing Decisions (EU) 2016/1367 ⁽⁸⁾ and (EU) 2016/1406 ⁽⁹⁾.
- (3) Furthermore, with a view to preventing the spread of African swine fever and in order to prevent any further disturbance of trade within Poland and abroad, Poland implemented some additional preventive measures in the areas concerned. In particular, the movement and transport of pigs has been subject to stricter surveillance measures and the marketing of pigs has been subject to restrictions within the domestic market beyond those established in Implementing Decision 2014/709/EU.
- (4) In applying those measures, Poland managed to prevent the further spread of the disease. The Union and national health measures were applied until 18 November 2016 in all relevant holdings.

⁽¹⁾ OJ L 347, 20.12.2013, p. 671.

⁽²⁾ Council Directive 2002/60/EC of 27 June 2002 laying down specific provisions for the control of African swine fever and amending Directive 92/119/EEC as regards Teschen disease and African swine fever (OJ L 192, 20.7.2002, p. 27).

⁽³⁾ Commission Implementing Decision 2014/709/EU of 9 October 2014 concerning animal health control measures relating to African swine fever in certain Member States and repealing Implementing Decision 2014/178/EU (OJ L 295, 11.10.2014, p. 63).

⁽⁴⁾ Commission Implementing Decision (EU) 2016/1236 of 27 July 2016 amending the Annex to Implementing Decision 2014/709/EU concerning animal health control measures relating to African swine fever in certain Member States, as regards the entries for Estonia, Latvia, Lithuania and Poland (OJ L 202, 28.7.2016, p. 45).

⁽⁵⁾ Commission Implementing Decision (EU) 2016/1372 of 10 August 2016 amending the Annex to Implementing Decision 2014/709/EU concerning animal health control measures relating to African swine fever in certain Member States, as regards the entries for Latvia and Poland (OJ L 217, 12.8.2016, p. 38).

⁽⁶⁾ Commission Implementing Decision (EU) 2016/1405 of 22 August 2016 amending the Annex to Implementing Decision 2014/709/EU concerning animal health control measures relating to African swine fever in certain Member States (OJ L 228, 23.8.2016, p. 33).

⁽⁷⁾ Commission Implementing Decision (EU) 2016/1900 of 26 October 2016 amending the Annex to Implementing Decision 2014/709/EU concerning animal health control measures relating to African swine fever in certain Member States, as regards the entries for Estonia, Latvia and Poland (OJ L 293, 28.10.2016, p. 46).

⁽⁸⁾ Commission Implementing Decision (EU) 2016/1367 of 10 August 2016 concerning certain protective measures relating to African swine fever in Poland (OJ L 216, 11.8.2016, p. 26).

⁽⁹⁾ Commission Implementing Decision (EU) 2016/1406 of 22 August 2016 concerning certain protective measures relating to African swine fever in Poland and repealing Implementing Decision (EU) 2016/1367 (OJ L 228, 23.8.2016, p. 46).

- (5) Poland informed the Commission that those measures affected a very large number of pig holdings and that the producers concerned suffered income losses not eligible for Union financial contribution under Regulation (EU) No 652/2014 of the European Parliament and of the Council ⁽¹⁾. On 4 November 2016, the Commission received a formal request from Poland for part-financing of certain exceptional support measures pursuant to Article 220(3) of Regulation (EU) No 1308/2013.
- (6) For the pigs reared in the areas concerned, the aid should be granted only as regards animals slaughtered. The aid amount to be paid for the animals slaughtered should be expressed as an amount per kilogram for a limited number of animals. The aid amount should be set taking into account prices as collected by Poland as well as information from invoices as regards the prices actually paid to producers from areas under animal health measures.
- (7) In view of the information provided by Poland, the maximum number of animals eligible for financing should be fixed on the basis of the request received from that Member State.
- (8) To avoid any risk of double funding, losses suffered should not have been compensated by state aids or insurances and the aid should be limited to eligible animals for which no Union financial contribution has been received under Regulation (EU) No 652/2014.
- (9) Provision should be made for the competent authorities in Poland to take all necessary measures and carry out all checks required and to inform the Commission accordingly. In particular, those checks should include *ex-ante* checks as regards the eligibility and the correctness of the application for aid.
- (10) The extent and duration of the exceptional market support measures provided for in this Regulation should be limited to what is strictly necessary to support the market. In particular, the exceptional market support measures should apply only to the production of pigs in the holdings located in the relevant delimited areas subject to the animal health measures laid down in Union and Polish legislation relevant to the outbreaks of African swine fever, in the period from 1 August to 18 November 2016.
- (11) Restrictions on the movement and transport of pigs have applied for several weeks in the areas concerned and this situation has led to market disturbance, an important price reduction and losses for producers, as well as to a substantial increase in the animals' weight, which has consequently brought about an intolerable animal welfare situation. Therefore, the measures provided for in this Regulation should cover the animals delivered to a slaughterhouse from 1 August to 30 November.
- (12) For the sake of a sound budgetary management of these exceptional market support measures and of a timely payment to the producers, Article 5(2) of Commission Delegated Regulation (EU) No 907/2014 ⁽²⁾ should not be applicable and payments made by Poland to the beneficiaries after 30 September 2017 should not be eligible for Union part-financing.
- (13) To allow the Union to perform its financial control, Poland should communicate to the Commission the clearance of the payments.
- (14) Since the restrictions related to the outbreaks of African swine fever came into force at different dates in the areas concerned and since this Regulation does not provide for a deadline for the submission of the applications for aid, it is appropriate to consider the date of entry into force of this Regulation as the date referred to in Article 29(4) of Delegated Regulation (EU) No 907/2014.
- (15) In order to ensure an immediate implementation of these measures by Poland, this Regulation should enter into force on the third day following that of its publication in the *Official Journal of the European Union*.

⁽¹⁾ Regulation (EU) No 652/2014 of the European Parliament and of the Council of 15 May 2014 laying down provisions for the management of expenditure relating to the food chain, animal health and animal welfare, and relating to plant health and plant reproductive material, amending Council Directives 98/56/EC, 2000/29/EC and 2008/90/EC, Regulations (EC) No 178/2002, (EC) No 882/2004 and (EC) No 396/2005 of the European Parliament and of the Council, Directive 2009/128/EC of the European Parliament and of the Council and Regulation (EC) No 1107/2009 of the European Parliament and of the Council and repealing Council Decisions 66/399/EEC, 76/894/EEC and 2009/470/EC (OJ L 189, 27.6.2014, p. 1).

⁽²⁾ Commission Delegated Regulation (EU) No 907/2014 of 11 March 2014 supplementing Regulation (EU) No 1306/2013 of the European Parliament and of the Council with regard to paying agencies and other bodies, financial management, clearance of accounts, securities and use of euro (OJ L 255, 28.8.2014, p. 18).

- (16) The measures provided for in this Regulation are in accordance with the opinion of the Committee for the Common Organisation of the Agricultural Markets,

HAS ADOPTED THIS REGULATION:

Article 1

1. Poland is authorised to grant aid to producers in the pigmeat sector whose holdings were subject to animal health measures for the control of African swine fever and are located in the areas of Poland referred to in Union and Polish legislation listed in the Annex. That aid shall only be granted in respect of the slaughtering of the following animals:

- (a) sows covered by CN code 0103 92 11;
- (b) other pigs covered by CN code 0103 92 19.

2. The aid referred to in paragraph 1 shall only be granted if the following conditions are met:

- (a) the animals were reared in the areas of Poland referred to in paragraph 1 and were subject to certain marketing restrictions due to African swine fever in any period from 1 August 2016 to 18 November 2016;
- (b) the animals were present in one of the areas referred to in paragraph 1 on the date on which it came under restriction or they were born and reared after that date in those areas;
- (c) the animals were slaughtered in the period from 1 August 2016 to 30 November 2016;
- (d) the producer who applies for the aid ('applicant') does not benefit, for the same animals, from state aids, insurances or aid financed by a Union contribution under Regulation (EU) No 652/2014.

Article 2

1. For the sows referred to in Article 1(1)(a), the aid shall be EUR 0,34 per kilogram of carcass weight.

2. For the other pigs referred to in Article 1(1)(b), the aid shall be calculated per kilogram on the price difference between the price reported by Poland for the area in which the holding of the producer is located for the week of the delivery of the pigs to a slaughterhouse and the price actually paid to the producer proven by means of an invoice. The aid per kilogram shall not exceed the following amounts:

- (a) EUR 0,23 per kilogram per pig with a carcass weight of 93 kilograms or less;
- (b) EUR 0,34 per kilogram per pig with a carcass weight of more than 93 kilograms but not exceeding 105 kilograms;
- (c) EUR 0,46 per kilogram per pig with a carcass weight of more than 105 kilograms.

Article 3

1. Poland shall take all necessary measures, including exhaustive administrative and on-the-spot checks in accordance with Articles 58 and 59 of Regulation (EU) No 1306/2013 of the European Parliament and of the Council ⁽¹⁾, to ensure compliance with the conditions laid down in this Regulation. In particular, Poland shall verify:

- (a) the eligibility of the applicant;
- (b) for each eligible applicant, the quantity and the price difference referred to in Article 2(2);

⁽¹⁾ Regulation (EU) No 1306/2013 of the European Parliament and of the Council of 17 December 2013 on the financing, management and monitoring of the common agricultural policy and repealing Council Regulations (EEC) No 352/78, (EC) No 165/94, (EC) No 2799/98, (EC) No 814/2000, (EC) No 1290/2005 and (EC) No 485/2008 (OJ L 347, 20.12.2013, p. 549).

- (c) that funding has not been received by any eligible applicant from any other sources to compensate the losses related to the slaughtering of the animals;
 - (d) that the animals for which aid is granted comply with the conditions linked to the restrictions applicable to the areas referred to in Article 1(1).
2. For eligible applicants for which administrative checks are completed, aid may be paid without waiting for all checks being made, notably those on applicants selected for on-the-spot checks.
3. In cases where the eligibility of an applicant was not confirmed, the aid shall be recovered and penalties applied.

Article 4

1. Expenditure shall only be eligible for Union part-financing if it has been paid by Poland to the beneficiaries by 30 September 2017 at the latest.
2. Article 5(2) of Delegated Regulation (EU) No 907/2014 shall not apply.

Article 5

The Union shall provide part-financing equivalent to 50 % of the expenditure borne by Poland for the aid referred to in Article 1 covering a maximum total of 50 000 animals.

Article 6

1. Poland shall inform the Commission of the measures taken in accordance with Article 3 not later than 10 days after the entry into force of this Regulation.
2. No later than 30 October 2017, Poland shall send to the Commission a detailed report on the implementation of this Regulation, including details as regards the execution of the measures taken and checks carried out in accordance with Article 3.
3. Poland shall communicate to the Commission the clearance of payments.

Article 7

For the purposes of Article 29(4) of Delegated Regulation (EU) No 907/2014, the operative event for the exchange rate as regards the amounts set out in Article 2 shall be the entry into force of this Regulation.

Article 8

The aid referred to in Article 1 shall be considered to be exceptional market support measures as provided for in Article 4(1)(a) of Regulation (EU) No 1306/2013.

Article 9

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

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

Done at Brussels, 5 April 2017.

For the Commission

The President

Jean-Claude JUNKER

ANNEX

Areas of Poland referred to in Article 1

Areas of Poland defined in the following Union and Polish legislation:

(a) Union legislation:

- Commission Implementing Decision (EU) 2016/1367 of 10 August 2016 concerning certain protective measures relating to African swine fever in Poland (OJ L 216, 11.8.2016, p. 26);
- Commission Implementing Decision (EU) 2016/1406 of 22 August 2016 concerning certain protective measures relating to African swine fever in Poland and repealing Implementing Decision (EU) 2016/1367 (OJ L 228, 23.8.2016, p. 46);
- Part III of the Annex to Commission Implementing Decision 2014/709/EU of 9 October 2014 concerning animal health control measures relating to African swine fever in certain Member States and repealing Implementing Decision 2014/178/EU (OJ L 295, 11.10.2014, p. 63), as amended by Implementing Decisions (EU) 2016/1236, (EU) 2016/1372, (EU) 2016/1405 and (EU) 2016/1900.

(b) Polish legislation:

- Rozporządzenie nr 3/2016 Powiatowego Lekarza Weterynarii w Hajnówce z dnia 24 czerwca 2016 r. w sprawie zwalczania afrykańskiego pomoru świń na terenie powiatu hajnowskiego (Dz. Urz. Woj. Podlaskiego z 2016 r., poz. 2668, z późn. zm.);
- Rozporządzenie nr 1/2016 Wojewody Podlaskiego z dnia 2 sierpnia 2016 r. w sprawie zwalczania afrykańskiego pomoru świń na terenie powiatów: wysokomazowieckiego i zambrowskiego (Dz. Urz. Woj. Podlaskiego z 2016 r., poz. 3218);
- Rozporządzenie nr 2/2016 Wojewody Podlaskiego z dnia 5 sierpnia 2016 r. w sprawie zwalczania afrykańskiego pomoru świń na terenie powiatów: wysokomazowieckiego i zambrowskiego (Dz. Urz. Woj. Podlaskiego z 2016 r., poz. 3253);
- Rozporządzenie nr 1/2016 Powiatowego Lekarza Weterynarii w Siemiatyczach z dnia 9 sierpnia 2016 r. w sprawie zwalczania afrykańskiego pomoru świń na terenie powiatu siemiatyckiego (Dz. Urz. Woj. Podlaskiego z 2016 r., poz. 3276);
- Rozporządzenie nr 3/2016 Wojewody Podlaskiego z dnia 10 sierpnia 2016 r. w sprawie zwalczania afrykańskiego pomoru świń na terenie powiatów: białostockiego i wysokomazowieckiego (Dz. Urz. Woj. Podlaskiego z 2016 r., poz. 3282, z późn. zm.);
- Rozporządzenie nr 5/2016 Wojewody Podlaskiego z dnia 12 sierpnia 2016 r. w sprawie zwalczania afrykańskiego pomoru świń na terenie powiatów: zambrowskiego i łomżyńskiego (Dz. Urz. Woj. Podlaskiego z 2016 r., poz. 3300);
- Rozporządzenie nr 6/2016 Wojewody Podlaskiego z dnia 12 sierpnia 2016 r. w sprawie zwalczania afrykańskiego pomoru świń na terenie powiatów: wysokomazowieckiego i zambrowskiego (Dz. Urz. Woj. Podlaskiego z 2016 r., poz. 3301);
- Rozporządzenie nr 7/2016 Wojewody Podlaskiego z dnia 12 sierpnia 2016 r. w sprawie zwalczania afrykańskiego pomoru świń na terenie powiatów: wysokomazowieckiego i białostockiego (Dz. Urz. Woj. Podlaskiego z 2016 r., poz. 3302);
- Rozporządzenie nr 1/2016 Powiatowego Lekarza Weterynarii w Bielsku Podlaskim z dnia 16 sierpnia 2016 r. w sprawie zwalczania afrykańskiego pomoru świń na terenie powiatu bielskiego (Dz. Urz. Woj. Podlaskiego z 2016 r., poz. 3308, z późn. zm.);
- Rozporządzenie Wojewody Podlaskiego nr 9/2016 z dnia 24 sierpnia 2016 r. w sprawie zwalczania afrykańskiego pomoru świń na terenie powiatów: siemiatyckiego i hajnowskiego (Dz. Urz. Woj. Podlaskiego z 2016 r., poz. 3363);
- Rozporządzenie Wojewody Podlaskiego nr 10/2016 z dnia 26 sierpnia 2016 r. w sprawie zwalczania afrykańskiego pomoru świń na terenie powiatów: siemiatyckiego i hajnowskiego (Dz. Urz. Woj. Podlaskiego z 2016 r., poz. 3375);

- Rozporządzenie Wojewody Podlaskiego nr 11/2016 z dnia 26 sierpnia 2016 r. w sprawie zwalczania afrykańskiego pomoru świń na terenie powiatów: białostockiego, łomżyńskiego, wysokomazowieckiego i zambrowskiego (Dz. Urz. Woj. Podlaskiego z 2016 r., poz. 3376);
 - Rozporządzenie Wojewody Podlaskiego nr 12/2016 z dnia 29 sierpnia 2016 r. w sprawie zwalczania afrykańskiego pomoru świń na terenie powiatów: grajewskiego oraz monieckiego (Dz. Urz. Woj. Podlaskiego z 2016 r., poz. 3385);
 - Rozporządzenie nr 13/2016 Wojewody Podlaskiego z dnia 30 września 2016 r. w sprawie zwalczania afrykańskiego pomoru świń na terenie powiatów: siemiatyckiego i hajnowskiego (Dz. Urz. Woj. Podlaskiego z 2016 r., poz. 3698);
 - Rozporządzenie nr 1 Powiatowego Lekarza Weterynarii w Białej Podlaskiej z dnia 16 sierpnia 2016 r. w sprawie zwalczania afrykańskiego pomoru świń na terenie powiatu bialskiego (Dz. Urz. Woj. Lubelskiego z 2016 r., poz. 3571, z późn. zm.);
 - Rozporządzenie nr 2 Powiatowego Lekarza Weterynarii w Białej Podlaskiej z dnia 19 sierpnia 2016 r. w sprawie zwalczania afrykańskiego pomoru świń na terenie powiatu bialskiego (Dz. Urz. Woj. Lubelskiego z 2016 r., poz. 3612);
 - Rozporządzenie nr 1/2016 Powiatowy Lekarza Weterynarii w Łosicach z dnia 12 sierpnia 2016 r. w sprawie zwalczania afrykańskiego pomoru świń na terenie powiatu łosickiego (Dz. Urz. Woj. Mazowieckiego z 2016 r., poz. 7468);
 - Rozporządzenie nr 2/2016 Powiatowego Lekarza Weterynarii w Łosicach z dnia 18 sierpnia 2016 r. w sprawie zwalczania afrykańskiego pomoru świń na terenie powiatu łosickiego (Dz. Urz. Woj. Mazowieckiego z 2016 r., poz. 7615, z późn. zm.);
 - Rozporządzenie nr 4/2016 Powiatowego Lekarza Weterynarii w Łosicach z dnia 12 września 2016 r. w sprawie zwalczania afrykańskiego pomoru świń na terenie powiatu łosickiego (Dz. Urz. Woj. Mazowieckiego z 2016 r., poz. 8028).
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COMMISSION IMPLEMENTING REGULATION (EU) 2017/648**of 5 April 2017****imposing a definitive anti-dumping duty on imports of okoumé plywood originating in the People's Republic of China following an expiry review pursuant to Article 11(2) of Regulation (EU) 2016/1036 of the European Parliament and of the Council**

THE EUROPEAN COMMISSION,

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

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

Whereas:

A. PROCEDURE**1. Measures in force**

- (1) Following an anti-dumping investigation ('the original investigation'), the Council imposed, by means of Regulation (EC) No 1942/2004 ⁽²⁾ a definitive anti-dumping duty on imports of okoumé plywood originating in the People's Republic of China ('the PRC' or 'China' or 'country concerned'). The measures took the form of an *ad valorem* duty and the duty levels imposed ranged from 6,5 % to 23,5 % for four producers and 66,7 % for all other producers. Following an expiry review, these measures were maintained by Council Implementing Regulation (EU) No 82/2011 ⁽³⁾ ('the previous review').

2. Request for an expiry review

- (2) Following the publication of a notice of impending expiry ⁽⁴⁾ of the anti-dumping measures in force, the Commission received a request for the initiation of an expiry review of the measures against the PRC pursuant to Article 11(2) of the Council Regulation (EC) No 1225/2009 ⁽⁵⁾ ('the expiry review request' or 'the request').
- (3) The request was lodged on 22 October 2015 by the European Panel Federation ('EPF') ('the applicant') on behalf of producers representing more than 25 % of the total Union production of okoumé plywood. The request is based on the grounds that the expiry of the measures would be likely to result in recurrence of dumping and recurrence of injury to the Union industry.

3. Initiation of an expiry review

- (4) Having determined, after consulting the Committee established by Article 15(1) of the basic Regulation, that sufficient evidence existed for the initiation of an expiry review, the Commission announced on 29 January 2016, by a notice published in the *Official Journal of the European Union* ⁽⁶⁾ ('Notice of Initiation'), the initiation of an expiry review pursuant to Article 11(2) of Regulation (EC) No 1225/2009.

⁽¹⁾ OJ L 176, 30.6.2016, p. 21.

⁽²⁾ Council Regulation (EC) No 1942/2004 of 2 November 2004 imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of okoumé plywood originating in the People's Republic of China (OJ L 336, 12.11.2004, p. 4.).

⁽³⁾ Council Implementing Regulation (EU) No 82/2011 of 31 January 2011 imposing a definitive anti-dumping duty on imports of okoumé plywood originating in the People's Republic of China following an expiry review pursuant to Article 11(2) of Regulation (EC) No 1225/2009 and terminating a partial interim review pursuant to Article 11(3) of Regulation (EC) No 1225/2009 (OJ L 28, 2.2.2011, p. 1).

⁽⁴⁾ Notice of the impending expiry of certain anti-dumping measures (OJ C 161, 14.5.2015, p. 8).

⁽⁵⁾ Council Regulation (EC) No 1225/2009 of 30 November 2009 on protection against dumped imports from countries not members of the European Community (OJ L 343, 22.12.2009, p. 51). This Regulation was repealed by Regulation (EU) 2016/1036.

⁽⁶⁾ Notice of initiation of an expiry review of the anti-dumping measures applicable to imports of okoumé plywood originating in the People's Republic of China (OJ C 34, 29.1.2016, p. 5.).

4. Investigation

4.1. Review investigation period and period considered

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

4.2. Parties concerned by the investigation

- (6) The Commission officially advised the applicants, the other known Union producers, the exporting producers in the PRC, importers/users which were known to be concerned, as well as the authorities of the PRC of the initiation of the expiry review.
- (7) Interested parties were given the opportunity to make their views known in writing and to request a hearing within the time limit set out in the Notice of Initiation.

4.3. Sampling

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

4.3.1. Sampling of exporting producers in the PRC

- (9) In view of the apparent large number of exporting producers in the PRC, sampling was envisaged in the Notice of Initiation.
- (10) To decide whether sampling was necessary and, if so, to select a sample, the Commission asked all known exporting producers in the PRC to provide the information specified in the Notice of Initiation. In addition, the Commission requested the Mission of the People's Republic of China to the European Union to identify and/or contact other exporting producers, if any, that could be interested in participating in the investigation.
- (11) Since only two companies in the PRC came forward, sampling was not necessary.

4.3.2. Sampling of Union producers

- (12) In the Notice of Initiation, the Commission stated that it had provisionally selected a sample of Union producers. In accordance with Article 17(1) of the basic Regulation, the Commission selected the sample on the basis of the largest representative volume of production, taking also into account the sales volume and geographical spread. The sample consisted of five Union producers. The sampled Union producers accounted for around 74 % of the total Union production during the RIP. The Commission invited interested parties to comment on the provisional sample. No comments were received within the deadline and the provisional sample was thus confirmed. The sample is considered representative for the Union industry.

4.3.3. Sampling of unrelated importers, questionnaires and cooperation

- (13) To decide whether sampling is necessary and, if so, to select a sample, the Commission asked all unrelated importers to provide the information specified in the Notice of Initiation.
- (14) Around 35 known potential importers/users were contacted at initiation stage and were invited to explain their activity and to fill in the sampling form for unrelated importers attached to the Notice of Initiation, if applicable.
- (15) Thirteen importers submitted the sampling form. All of them indicated that they did not import okoumé plywood from China. On this basis, sampling was not considered warranted.

4.4. Questionnaires and verification visits

- (16) The Commission sought and verified all the information deemed necessary for the purpose of determining the likelihood of continuation or recurrence of dumping, the likelihood of continuation or recurrence of injury and Union interest.
- (17) The Commission sent questionnaires intended for exporting producers to two companies in the PRC mentioned in recital (11), twelve known producers in potential analogue countries (Gabon, Morocco, Switzerland and Turkey), and the five sampled Union producers.
- (18) Only one company in the PRC replied partly to the questionnaire while full questionnaire replies were received from, two producers in Gabon, one producer in Morocco and five sampled Union producers.
- (19) The Commission carried out verifications at the premises of the following companies:
- (a) Union producers:
- F.A. MOURIKIS SA (Greece),
 - GARNICA PLYWOOD SA (Spain),
 - JEAN THÉBAULT SAS (France),
 - JOUBERT LES ELIOTS SAS (France),
 - JOUBERT ST-JEAN-D'ANGÉLY SAS (France).
- (b) Producer in the market economy country
- CEMA BOIS DE L'ATLAS (Morocco)

4.5. Disclosure

- (20) On 13 February, the Commission disclosed to all interested parties the essential facts and considerations on the basis of which it intends to maintain the anti-dumping measures in force and invited all interested parties to comment. No comments were submitted.

B. PRODUCT CONCERNED AND LIKE PRODUCT

1. Product concerned

- (21) The product concerned is the same as in the original investigation and is defined as follows: plywood consisting solely of sheets of wood, each ply not exceeding 6 mm thickness, with at least one outer ply of okoumé not coated by a permanent film of other materials, originating in the PRC, currently falling within CN code ex 4412 31 10 (TARIC code 4412 31 10 10). The product concerned is used for a wide variety of end-uses. It is used in the building industry in exterior joinery and carpentry applications for boarding, shutter boards, exterior basements and balustrades and riverside panelling. It is also used for more decorative purposes in, inter alia, road transports (e.g. cars, coaches, caravans, camping cars), maritime transport (yachts), furniture industry and doors.
- (22) There are two main types of okoumé plywood, plywood made solely with okoumé ('full okoumé') and plywood with at least one of the outer faces made of okoumé, the rest being made of other wood ('faced okoumé') (the latter can also be referred to as 'combi' or 'twin'). Both main types of okoumé plywood have the same external appearance. Despite differences in mechanical properties, they all share the same basic physical and technical characteristics, and are used for the same basic purposes.

2. Like product

- (23) The investigation showed that the following products have the same physical and technical characteristics as well as the same basic uses:
- the product concerned,
 - the product produced and sold in the Union by the Union industry.
- (24) The Commission concluded that these products are like products within the meaning of Article 1(4) of the basic Regulation.

C. LIKELIHOOD OF CONTINUATION OR RECURRENCE OF DUMPING

1. Preliminary remarks

- (25) In accordance with Article 11(2) of the basic Regulation, it was examined whether the expiry of the existing measures would be likely to lead to a continuation or recurrence of dumping.
- (26) As mentioned above in recital (18) only one company in the PRC replied partly to the questionnaire. This company reported that it was not producing nor selling okoumé plywood during the period considered.
- (27) In view of the lack of cooperation of any other producer in the PRC, the Commission informed the Chinese authorities that in accordance with Article 18 of the basic Regulation facts available may be used. The Commission did not receive any comments or requests for an intervention of the Hearing Officer from the Chinese authorities.
- (28) On this basis, in accordance with Article 18(1) of the basic Regulation, the findings in relation to the likelihood of continuation or recurrence of dumping set out below were based on facts available, in particular:
- (i) information in the expiry review request;
 - (ii) Eurostat statistics and the data collected by Member States pursuant to Article 14(6) of the basic Regulation ('14(6) database');
 - (iii) publicly available statistics of the Food and Agriculture Organisation of the United Nations ('FAO').

The Chinese export statistics database could not be used as its coding structure was not precise enough to provide useful information.

- (29) Eurostat and 14(6) database indicated no imports of the product concerned from the PRC during the RIP; therefore dumping could not be established during this period in the Union market.
- (30) Dumping calculations were performed in the context of the likelihood of recurrence of dumping.

2. Development of imports should measures be repealed

- (31) In order to establish the likelihood of recurrence of dumping should measures be repealed, the following elements were analysed: (i) possible dumping levels in the Union market and in other third countries; (ii) production and production capacity in China; and (iii) attractiveness of the Union market.
- (32) In accordance with Article 18 of the basic Regulation, the findings in relation to the likelihood of recurrence of dumping set out below were based on facts available, namely the sources mentioned in the recital (28).

(i) **Possible dumping levels in the Union market and other third countries**

Analogue country

- (33) Four exporting producers were granted market economy treatment (MET) in the original investigation. According to Article 2(7)(a) of the basic Regulation, normal value for the remaining exporting producers shall be determined on the basis of the price or constructed value in a market economy third country. For this purpose, a market economy third country had to be selected ('the analogue country').
- (34) Turkey was selected as an analogue country in the original investigation and in the previous review. In the Notice of Initiation of the present review, the Commission proposed to use Turkey as an analogue country.
- (35) The Commission sought information concerning producers of okoumé plywood in other potential analogue countries and contacted known producers of okoumé plywood in Gabon, Morocco and Switzerland and invited them to provide the necessary information.
- (36) Two producers in Gabon and one producer in Morocco came forward and provided the information requested. None of the Turkish producers cooperated.
- (37) Gabon was not considered a suitable analogue country since local okoumé plywood producers had a clear comparative advantage by benefiting from significantly lower raw material input costs ⁽¹⁾, the product manufactured in Gabon for sale on the domestic market appeared to be of a low quality, the domestic market was small with no imports of okoumé plywood and an import duty of 30 %.
- (38) Morocco was considered to be a suitable analogue country because, despite its high import duties, it had substantial imports of the like product which were competing with the domestically produced product.
- (39) Interested parties were invited to comment on this selection. No comments were received.

Normal value

— for exporting producers granted MET in the original investigation

- (40) As mentioned in the recital (33) above, four exporting producers were granted MET in the original investigation. Due to lack of cooperation, in accordance with Article 18 of the basic Regulation, the normal value for these exporting producers was based on the facts available, namely the estimation made in the expiry review request.

— for exporting producers not granted MET in the original investigation

- (41) One Moroccan producer cooperated and submitted a questionnaire reply. Pursuant to Article 2(7)(a) of the basic Regulation, normal value was calculated on the basis of the data verified at the premises of this producer as set out below.
- (42) Normal value was established for both main product types described in recital (22).
- (43) It was examined whether the domestic sales of the like product could be regarded as being sold in the ordinary course of trade pursuant to Article 2(4) of the basic Regulation. This was done by establishing for the like product sold on the Moroccan market the proportion of profitable domestic sales to independent customers during the RIP.
- (44) The volume of profitable sales of the like product represented less than 80 % of the total sales volume of the like product, thus the normal value was based on the actual domestic price calculated as a weighted average of profitable sales only.

⁽¹⁾ Okoumé is a tropical wood which grows predominantly in Gabon and to a lesser extent in Equatorial Guinea and in Cameroon.

Export price

- (45) As mentioned above in recital (28), due to the non-cooperation of the Chinese producers, the export price was based on facts available, in accordance with Article 18 of the basic Regulation, i.e. on information in the expiry review request. Specifically, the export price for both main product types described in recital (22) was based on more than ten commercial offers to the Union market and to other third countries (namely Bosnia and Herzegovina, Switzerland, Turkey, Gulf States and Norway), made by email or available as public commercial offers on different Chinese websites during the RIP, as contained in the expiry review request. The prices contained in the commercial offers were ranging from 313 EUR/m³ to 540 EUR/m³ (CIF). To be noted that these price levels were in the same range as the price level of okoumé plywood of imports from China reported in Eurostat and 14(6) database after the RIP (third quarter of 2016). Although the quantities concerned were marginal, this price level confirms the representativity of the commercial offers as indication of possible exports prices of okoumé plywood from China.

Comparison

- (46) The Commission compared the normal value and the export price thus established on an ex-works basis per product type described in recital (22). Where justified for the purpose of a fair comparison, the export price and normal value were adjusted for differences affecting prices and price comparability in accordance with Article 2(10) of the basic Regulation. Adjustments were made for transport costs (domestic and ocean freight) based on the facts available, in accordance with Article 18 of the basic Regulation, i.e. on information in the expiry review request.

Dumping margin

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

— for exporting producers granted MET in the original investigation

- (48) On this basis, the weighted average dumping margin expressed as a percentage of the cost, insurance, freight ('CIF') Union frontier price, duty unpaid, was above 45 % in both the Union market and other third countries.

— for exporting producers not granted MET in the original investigation

- (49) The weighted average dumping margin expressed as a percentage of the cost, insurance, freight ('CIF') Union frontier price, duty unpaid, was above 100 % in both the Union market and other third countries.

(ii) Production and production capacity in China*Production in China*

- (50) In the absence of cooperation from the Chinese producers and any publicly available information, production in the PRC was established on the basis of estimates provided by the applicant in its request for the current expiry review, based on its best knowledge of the market.
- (51) The applicant estimated the production of okoumé plywood in China on the basis of the number of okoumé logs imported in China in 2014 which were used for the production of plywood. Based on this, the production of okoumé plywood was estimated to be between at least 290 000 m³ and 2,9 million m³ at most, depending on the product type produced, as described in recital (22), that is full okoumé or faced okoumé, respectively. This corresponded to a minimum of 1,5 times to a maximum of 15 times of the total Union consumption.

Production capacity in China

- (52) In the absence of cooperation from the Chinese producers of okoumé plywood or other available information on the Chinese okoumé plywood industry, the situation of the Chinese plywood industry as a whole (regardless the

type of wood species used) was examined, as it was done in the previous review. In line with the previous investigations, it was confirmed that plywood is produced by the same companies, on the same equipment, whatever the wood species used. The previous review also established that okoumé plywood is more lucrative than other types of plywood. Therefore, in the absence of measures, it is likely that Chinese producers shift their production from other types of plywood towards the more lucrative okoumé plywood.

- (53) On this basis, significant production capacity potentially available in China is indicated by the production volumes of all types of plywood, which, based on FAO statistics, accounted for 113 million m³ during the RIP. Consequently, only a minor shift from other types of wood to okoumé is needed to substantially increase the production volumes of okoumé plywood, which could be used for exports.

(iii) ***Attractiveness of the Union market***

- (54) The main element used to establish the attractiveness of the Union market should the measures be repealed was the price level of Chinese exports to other third countries compared to the price level of the Chinese exports to the Union. The commercial offers mentioned above in recital (45) to the Union market and to other third countries indicated that during the RIP the Union market was indeed attractive as the Chinese export prices of okoumé plywood to the Union market were higher than the Chinese export prices to all other third markets for which commercial offers were available, with the exception of Norway. Namely, the export price offers to the Union market were around 30 % higher than to Bosnia and Herzegovina and around 40 % higher than to Turkey and Gulf States. As there was no statistics available on Chinese export volume of okoumé plywood to these countries, the representativity in volume terms could not be established. However higher potential export prices to the Union would make the Union market attractive as exports to the Union would yield higher profits.
- (55) In addition, anti-dumping duties on imports of Chinese plywood ⁽¹⁾ exists in the Republic of Korea, Morocco and Turkey, while the United States of America issued a preliminary determination of the countervailing measures against Chinese plywood in January 2017. Chinese exporting producers thus will have limited access to these markets and will be limited in exporting their production or re-directing their exports to these markets. This leaves the Union market even more attractive for Chinese plywood imports.
- (56) It is therefore likely that should measures be repealed, in view of the considerable production capacity in China which could be easily increased, Chinese exports would resume in considerable volumes on the Union market. It is worth recalling that before the original measures were imposed, in 2004, Chinese sales volumes in the Union market amounted to 83 606 m³, corresponding to 44 % of the Union consumption during the current RIP.

3. Conclusion on the likelihood of recurrence of dumping

- (57) In conclusion, the significant production capacity available in China, the possibility of Chinese producers to easily increase production volumes available for exports, the possible high dumped prices in other third markets as well as in the Union market and the attractiveness of the Union market, indicate that a repeal of the measures would likely result in Chinese exporting producers re-entering the Union market at dumped prices and in significant quantities. It is therefore considered that there is a likelihood of recurrence of dumping should the current anti-dumping measures be allowed to lapse.

D. DEFINITION OF THE UNION INDUSTRY

- (58) Within the Union, the like product is known to be manufactured by thirteen producers in France, Greece, Hungary, Italy and Spain. Total Union production is estimated at 162 000 m³. The Union producers accounting for the total Union production constitute the Union industry within the meaning of Article 4(1) of the basic Regulation.
- (59) As mentioned in recital (12), a sample of five Union producers, representing 74 % of the total Union production during the RIP, was selected.

⁽¹⁾ HS code 4412 31.

E. SITUATION ON THE UNION MARKET

1. Union consumption

- (60) Union consumption of okoumé plywood was established on the basis of sales volumes of the complainant Union producers and other Union producers on the Union market and the volume of imports from third countries into the Union based on Eurostat data.
- (61) During the period considered the Union consumption developed as follows:

Table 1

Union consumption

	2012	2013	2014	RIP
Total consumption (m ³)	181 749	176 005	175 652	188 727
Index (2012 = 100)	100	97	97	104

Source: Expiry review request, Eurostat, verified questionnaire replies

- (62) From 2012 to 2013 Union consumption declined. Between 2012 and 2014, the declining trend had gradually stabilised and turned towards increase during the RIP reflecting the slight improvement in some industrial activities. As a result, Union consumption has slightly increased, by 4 % during the period considered.
- (63) However, this has to be seen in the light of the developments after the previous review. Between the RIP of the previous review (1 October 2008-30 September 2009) and the RIP of the current review, Union consumption overall decreased by 35 % (from 291 421 m³ during the RIP of the previous review to 188 727 m³ during the RIP of the current review), despite the slightly increasing trend during the current period considered. The overall decreasing trend, that in fact had already started even before the previous review, was explained by the fact that okoumé plywood has to a certain extent been substituted by other tropical wood species. Also the economic crisis and the consequent reduction of certain industrial activities, including construction, nautism and light commercial/tourism vehicles, had contributed to the declining trend in demand for okoumé plywood in the Union.

2. Volume, prices and market share of imports from the PRC

2.1. Volume and market share of imports from the PRC

Table 2

Volume and market shares of imports from the PRC

	2012	2013	2014	RIP
Volume of imports (m ³)	1 043	0	62	0
Index (2012 = 100)	100	0	6	0
Market share (%)	0,57	0,00	0,04	0,00

Source: Eurostat

- (64) During the period considered of the original investigation the market share of imports from China had increased rapidly from practically zero to 18,7 % ⁽¹⁾. It had subsequently decreased to 4,3 % (12 620 m³) ⁽²⁾ during the RIP of the previous review. During the period considered of the current review, the imports from China have practically ceased, with the exception of 2012, when Chinese import volumes amounted to around 1 000 m³.

2.2. Price of imports and price undercutting

Table 3

Average price of imports from the PRC and price undercutting

	2012	2013	2014	RIP
Average price EUR/m ³	549	0,00	168	0,00
Index (2012 = 100)	100	0	31	0

Source: Eurostat

- (65) The only year where there were substantial quantities of imports from China was 2012. During that year the average price of Chinese imports was 549 EUR/m³ which was significantly lower than the Union industry prices during the same year (756 EUR/m³).

3. Import from other third countries

Table 4

Import volumes, market shares and prices from other third countries

	2012	2013	2014	RIP
Gabon	40 467	43 964	41 029	42 711
Index (2012 = 100)	100	109	101	106
Market share (%)	22,3	25,0	23,4	22,6
Average price (EUR/m ³)	628,64	625,76	636,40	645,32
Index (2012 = 100)	100	100	101	103
Morocco	15 431	7 298	5 182	4 492
Index (2012 = 100)	100	47	34	29
Market share (%)	8,5	4,1	3,0	2,4
Average price (EUR/m ³)	662,27	678,51	696,75	700,81
Index (2012 = 100)	100	102	105	106

⁽¹⁾ See recital (77) of Commission Regulation (EC) No 988/2004 of 17 May 2004 imposing provisional anti-dumping duties on imports of okoumé plywood originating in the People's Republic of China (OJ L 181, 18.5.2004, p. 5.).

⁽²⁾ See recitals (42) and (43) of Implementing Regulation (EU) No 82/2011.

	2012	2013	2014	RIP
Other third countries (*)	774	549	1 550	78
<i>Index (2012 = 100)</i>	100	71	200	10
Market share (%)	0,4	0,3	0,9	0,0
Average price (EUR/m ³)	545,80	572,55	576,47	842,50
<i>Index (2012 = 100)</i>	100	105	106	154
Total other third countries	56 672	51 812	47 761	47 281
<i>Index (2012 = 100)</i>	100	91	84	83
Market share (%)	31,2	29,4	27,2	25,1
Average price EUR/m ³	636,66	632,63	641,01	650,92
<i>Index (2012 = 100)</i>	100	99	101	102

(*) Except Gabon and Morocco

Source: Eurostat

- (66) During the period considered, imports from other third countries were almost exclusively from Gabon and Morocco, while the share of any other third country was negligible. Imports from Gabon and Morocco into the Union continuously decreased from 55 899 m³ in 2012 to around 47 203 m³ during the RIP, i.e. by 16 %. Since the Union consumption only increased by 4 % (see recital (62) and Table 1) the corresponding market share of Gabon and Morocco countries decreased to even a greater extent, i.e. from 30,8 % in 2012 to 25,0 % during the RIP or by 5,7 percentage points.
- (67) During the period considered of the current investigation the import prices from Gabon and Morocco were on average between 16 % to 17 % lower than the Union industry sales prices on the Union market (see Table 8). Compared to the import prices from China in 2012 (the only year during the period considered where China exported substantial quantities to the Union), the import prices from these countries were on average 16 % above the Chinese import prices.
- (68) More specifically, Gabon is the largest exporting third country to the Union. Import volumes from Gabon increased from 40 467 m³ in 2012 to 42 711 m³ during the RIP, i.e. by 6 %. This increase translated in a slight increase of its market share from 22,3 % in 2012 to 22,6 % during the RIP, i.e. an increase of 0,3 percentage points. The average import prices from Gabon were between 17 % to 18 % lower than the Union industry prices (see table 8), while they were above the average import prices from China in 2012, that is the only year with substantial import volumes from this country in the Union market. They were also above the potential import prices from China based on the commercial offers during the RIP referred to above in recital (45). They slightly increased from 628,64 EUR/m³ in 2012 to 645,32 EUR/m³ during the RIP, which corresponded to an increase of 3 %.
- (69) Concerning Morocco, its import volumes decreased considerably during the period considered (from 15 431 m³ in 2012 to 4 492 m³ during the RIP). Consequently the market share decreased from 8,5 % in 2012 to 2,4 % during the RIP. The import prices from Morocco were higher than the prices of imports from China in 2012, and higher than the potential import prices based on the commercial offers during the RIP referred to above in recital (45).

4. Economic situation of the Union industry

4.1. General remarks

- (70) In accordance with Article 3(5) of the basic Regulation, the Commission examined all economic factors and indices having a bearing on the state of the Union industry.
- (71) As mentioned in recital (12), sampling was used for the injury determination.
- (72) For the injury determination the Commission distinguished between macroeconomic and microeconomic injury indicators. The Commission evaluated the macroeconomic indicators relating to the whole Union industry on the basis of information provided by the applicant in the expiry review request and the provided in the replies of the sampled Union producers. The Commission evaluated the microeconomic indicators relating only to the sampled companies on the basis of data contained in the questionnaire replies of the sampled Union producers. Both sets of data were found representative of the economic situation of the Union industry.
- (73) The macroeconomic indicators are: production, production capacity, capacity utilisation, sales volume, market share, growth, employment, productivity, magnitude of the dumping margin and recovery from past dumping.
- (74) The microeconomic indicators are: average unit prices, unit cost, labour costs, inventories, profitability, cash flow, investments, return on investments, and ability to raise capital.

4.2. Macroeconomic indicators

4.2.1. Production, production capacity and capacity utilisation

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

Table 5

Production, production capacity and capacity utilisation

	2012	2013	2014	RIP
Production volume (m ³)	143 729	145 002	146 287	147 767
<i>Index (2012 = 100)</i>	100	101	102	103
Production capacity (m ³)	179 561	182 583	184 388	184 738
<i>Index (2012 = 100)</i>	100	102	103	103
Capacity utilisation (%)	80	79	79	80
<i>Index (2012 = 100)</i>	100	99	99	100

Source: Expiry review request, verified questionnaire replies

- (76) Production increased slightly during the period considered from 143 729 m³ in 2012 to 147 767 m³ during the RIP, i.e. by 3 %. This increase reflected the slight improvement in the okoumé market in the Union as mentioned in the recital (62). Despite this slight increase, the production volume of the Union industry remained below the volumes found in the investigation period of the original investigation and during RIP of the previous review, i.e. below 267 591 m³. This reflected the drop in consumption on the market and the fact that production takes place mainly on the basis of orders.

- (77) The production capacity increased slightly, in line with the production volume, from around 179 561 m³ in 2012 to 184 738 m³ during the RIP, i.e. by 3 %. This capacity is however at a considerably lower level than in the previous review, i.e. 68 % lower than 577 205 m³ established during the RIP of the previous review. This was due to the closures of a number of Union producers of okoumé plywood, including the largest producer in the Union, Plysorol, and also to the reduction in production of those Union producers that are still in the business.
- (78) Since the adaptation of the production capacity to match the lower levels of consumption took place mainly before the period considered, the capacity utilisation rate has been stable and at a higher level compared to the rates established during the RIP in the previous review (41 %) ⁽¹⁾.

4.2.2. Sales volume and market share

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

Table 6

Sales volume and market share

	2012	2013	2014	RIP
Sales volume (m ³)	124 033	124 193	127 829	141 446
Index (2012 = 100)	100	100	103	114
Market share (%)	68,2	70,6	72,8	74,9

Source: Expiry review request, verified questionnaire replies

- (80) Sales volume increased over the period considered from 124 033 m³ in 2012 to around 141 446 m³ during the RIP, i.e. by 14 %, which was more than the 4 % increase of consumption described in the recital (62). Therefore the increase in sales volumes, taking also into account the parallel decrease of imports from other third countries described in recital (66), contributed to an increase in market share of the Union industry from 68,2 % in 2012 to 74,9 % during the RIP. However, this market share level still falls short of the Union industry's 80,2 % market share during the RIP of the previous review.

4.2.3. Growth

- (81) While Union consumption increased by 4 % during the period considered, the sales volume of the Union industry increased to a higher degree, i.e. by 14 %, which translated into an increase of market share of 6,7 percentage points.

4.2.4. Employment and productivity

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

Table 7

Employment and productivity

	2012	2013	2014	RIP
Number of employees	543	480	470	492
Index (2012 = 100)	100	88	87	91

⁽¹⁾ See recital (50) of Implementing Regulation (EU) No 82/2011.

	2012	2013	2014	RIP
Productivity (m ³ /employee)	265	302	311	300
<i>Index (2012 = 100)</i>	100	114	118	113

Source: Expiry review request, verified questionnaire replies

- (83) Employment of the Union industry overall decreased from 2012 to 2014 by 13 % and subsequently increased lightly (by 4 %) from 2014 to the RIP. Overall, during the period considered it decreased by 9 %. Due to companies closures and restructuring, the employment level in the period considered was only around half of the level established during the RIP of the previous review (983 persons).
- (84) As explained in the recital (76), the production volume increased by 3 % during the period considered. Consequently, the productivity measured as annual output (cubic metres) per person employed increased by 13 % during the period considered. This reflects the fact that production increased slightly, while the employment level decreased. This is an indication of the improved efficiency and results of the restructuration by the Union producers.

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

- (85) As mentioned in the recital (29), there were no imports of the product concerned from the PRC during the RIP. Therefore there no dumping could be established during this period in the Union market and the magnitude of the dumping margin could not be assessed. Consequently there was also no direct price pressure on the Union market during the period considered. On this basis the anti-dumping measures in force were in overall effective.

4.3. Microeconomic indicators

4.3.1. Prices and factors affecting prices

- (86) The average sales prices of the Union industry to unrelated customers in the Union developed over the period considered as follows:

Table 8

Average sales prices and unit costs

	2012	2013	2014	RIP
Average unit selling price in the Union (EUR/m ³)	756	760	771	780
<i>Index (2012 = 100)</i>	100	101	102	103
Unit cost of production (EUR/m ³)	783	762	759	778
<i>Index (2012 = 100)</i>	100	97	97	99

Source: Verified questionnaire replies

- (87) The Union industry's average unit sales price to unrelated customers in the Union increased by 3 % over the period considered. These price levels were nevertheless lower than the ones observed during the previous review investigation when they had increased from 786 EUR/m³ in 2006 to 887 EUR/m³ during the RIP, peaking at 930 EUR/m³ in 2008 ⁽¹⁾.

⁽¹⁾ See recital (53) of Implementing Regulation (EU) No 82/2011.

- (88) Over the period considered the unit cost of production decreased slightly by 1 %.
- (89) The Commission established that the Union industry has been adapting to the deteriorated market situation by reducing its production capacity and its cost of production in comparison with the RIP of the previous review. As explained in the recital (77), this has entailed closures of large Union producers and reductions of production before the period considered and improvements in productivity during the period considered as described in the recital (84).

4.3.2. Labour costs

- (90) The average labour costs of the Union industry developed over the period considered as follows:

Table 9

Labour costs

	2012	2013	2014	RIP
Average labour costs per employee (EUR)	32 266	33 259	33 516	32 638
Index (2012 = 100)	100	103	104	101

Source: Verified questionnaire replies

- (91) Between 2012 and the RIP, the average labour costs per employee of the sampled Union producers was stable. It only slightly increased by 1 %.

4.3.3. Inventories

- (92) Stock levels of the Union industry developed over the period considered as follows:

Table 10

Inventories

	2012	2013	2014	RIP
Closing stocks (in m ³)	10 172	10 780	12 060	7 661
Index (2012 = 100)	100	106	119	75
Closing stocks as percentage of production (%)	9	9	10	7
Index (2012 = 100)	100	106	117	73

Source: Verified questionnaire replies

- (93) Usually, as also observed during the original investigation, the okoumé plywood is produced on order and the stock levels are therefore typically low. The stock levels however increased during the period considered of the previous review reaching 6 589 m³ during the RIP of a the previous review as a consequence of dropping sales volumes. During the period considered of the current review they still remained on a relatively high level, and decreased only during the current RIP. In any event, they still remained above the level that could reasonably be considered to reflect the amounts of goods sold but not yet delivered.

- (94) Overall closing stocks decreased by 25 % over the period considered. Closing stocks as a percentage of production decreased from 9 % in 2012 to 7 % during the RIP, i.e. by 2 percentage points.

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

Table 11

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

	2012	2013	2014	RIP
Profitability of sales in the Union to unrelated customers (% of sales turnover)	– 3,5	– 0,2	1,6	0,3
<i>Index (2012 = 100)</i>	100	195	247	208
Cash flow (EUR)	2 212 306	3 019 172	3 020 670	1 614 559
<i>Index (2012 = 100)</i>	100	136	137	73
Investments (EUR)	665 967	3 052 041	9 226 166	1 991 786
<i>Index (2012 = 100)</i>	100	458	1 385	299
Return on investments (%)	– 8,2	– 0,4	3,9	0,7
<i>Index (2012 = 100)</i>	100	195	247	208

Source: Verified questionnaire replies

- (95) 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. During the whole period considered, the Union industry profitability was very low. It was negative at the beginning of the period considered and turned only slightly positive in 2014 and during the RIP. Overall it improved from – 3,5 % in 2012 to 0,3 % during RIP. This level is markedly lower than the one observed in the previous review where it varied between 4,3 % and 9,8 %. As explained in the recitals (86) to (89) above, the improvement in profitability was due to a slight increase of sales prices and sales volumes and also a slight decrease of cost of production, which was also partly due to the improvement in productivity.
- (96) The net cash flow is the Union industry's ability to self-finance their activities. The cash flow increased from 2012 to 2014 and decreased during the RIP, reaching levels below the one of 2012. Overall, in absolute terms cash flow was at a low level throughout the period considered and it was markedly lower than during the period considered of the previous review where it varied between 10,5 million EUR and 15,9 million EUR. The low level of cash flow is in line with the low profitability observed throughout the period considered of the current review.
- (97) Linked with the downscaling of the Union industry, the investments at the beginning of period considered (2012) were at a very low level and materially below the levels observed during the previous review as well as below the level necessary to compensate the depreciation of the fixed assets. They reached comparable levels with the previous review (between 3,6 million EUR and 8,1 million EUR) in the years 2013 and 2014 but reduced again during the RIP of the current investigation.

- (98) The return on investments is the profit in percentage of the net book value of fixed assets. As the other financial indicators, the return on investment from the production and sale of the like product was negative in 2012 and 2013 and slightly positive in 2014 and RIP following the trend of profitability. Overall, return on investments increased from – 8,2 % to 0,7 % over the period considered.
- (99) As far as the ability to raise capital is concerned, the low profit of the Union industry and its weak ability to generate cash made the increase of the internally generated funds very low. Consequently, the ability to raise capital had deteriorated from the previous review. In some cases this had an impact on the ability to carry out investments.

5. Conclusion on injury

- (100) The analysis showed that the Union industry was in a fragile situation. Following the decrease of the Union market consumption after the previous review, as described in recital (62), the Union industry was forced to adapt to the deteriorated market conditions, which only improved during the RIP. The Union responded by restructuring and significantly downsizing, which resulted in the closure of a number of Union producers, a significant loss of employment as well as a substantial decrease of production capacity and production volume in comparison with the previous review. These efforts were starting to have a positive impact towards the end of the period considered of the current review, where Union industry productivity, sales, market share and profitability increased again. However, the process of recovering of the Union industry is slow and still at its very early stage as the profit achieved during the RIP were very low in comparison with those achieved during the period considered of the previous review.

F. LIKELIHOOD OF RECURRENCE OR CONTINUATION OF INJURY

- (101) The previous review concluded that the expiry of the measures would be likely to result in a recurrence of injury to the Union industry caused by dumped imports of the product concerned from China ⁽¹⁾.
- (102) Subsequent to the previous review, the Union market of okoumé plywood had deteriorated with decreased consumption as described in recitals (63) above. Consequently the recovery observed in the previous review had reversed afterwards and the Union industry had gone through a series of closures. Only during the last two years of the period considered of the current review, the Union industry had returned to profits, which were still very low and only slightly above break-even during the RIP.
- (103) The current review showed that the Union industry is in a fragile situation. Therefore, the Union industry would be particularly vulnerable should dumped and low priced imports from China re-enter the Union market. It is therefore very likely that material injury would recur should measures be allowed to lapse. A number of elements support this assessment.
- (104) First, as described in recitals (52) and (53) above, in view of the considerable production capacities of the Chinese exporting producers, the significant estimated spare capacity in China and the attractiveness of the Union market, it is likely that in the absence of measures imports from China will resume in significant quantities. As an indication of the potential of the Chinese exporting producers to quickly increase their production and exports of okoumé plywood, it is recalled that in the original investigation Chinese exporting producers were able to increase their exports to the Union market from around 9 500 m³ to more than 83 500 m³ in less than three years (from 2001 to mid-2003).
- (105) No elements have been found that would indicate that the use of okoumé in the production of plywood has been substituted in a stable manner by other wood species. The investigation found that Chinese producers are still using okoumé to manufacture plywood, as demonstrated in the recital (51) above, by the significant production volume of okoumé plywood available in China. Due to the anti-dumping duties in place imports from China almost ceased during the period considered, nevertheless, as confirmed by the investigation, there was demand for okoumé plywood on the Union market during the same period.

⁽¹⁾ See recitals 64 to 72 of Implementing Regulation (EU) No 82/2011.

- (106) Second, concerning the likely price level at which the Chinese exporting producers would export to the Union market, as there were no imports from China during the RIP, this was based on the commercial offers to the Union market and to other third countries provided in the expiry review request, described in recital (45). On this basis prices would range from 313 EUR/m³ to 540 EUR/m³. The representativity of these price indications was confirmed by the price level reported in 14(6) database after the RIP of the current review, as mentioned in recital (45).
- (107) On this basis, the import prices from China would undercut the Union industry prices on average by over 100 %.
- (108) In the likely scenario that imports from China of the product concerned would re-enter the Union market at dumped prices considerably lower than the Union industry prices and in significant quantities, the Union industry, would not be in a position to maintain its current price levels. This likely depression of prices would indeed jeopardise the current, still weak, recovery of the Union industry and the Union industry would be brought to losses very quickly.
- (109) Moreover the Union industry would rapidly lose sales and market share on the Union market and production would consequently decrease. As a result the capacity utilisation rate, which had returned to acceptable levels only after a significant restructuring process, would decrease again. This development would likely lead to further closures of Union producers. As a matter of fact, taking into account the still fragile situation of the Union industry, it is not excluded that the mere existence of this industry in the Union would be put in danger.
- (110) On the basis of the above, it is concluded that should the measures be allowed to expire, there is a likelihood of a rapid recurrence of material injury from renewed dumped imports of the product concerned from China.

G. UNION INTEREST

1. Preliminary remarks

- (111) In accordance with Article 21 of the basic Regulation, the Commission examined whether maintaining the existing measures against China would be against the interest of the Union as a whole. The determination of the Union interest was based on an appreciation of all the various interests involved, including those of the Union industry, importers and users.

2. Interest of the Union industry

- (112) The maintenance of the anti-dumping measures on imports of the product concerned from China would enhance the possibility for the Union industry to reach a reasonable level of profitability, as it would help the Union industry to maintain its prices at reasonable levels covering its cost of production. Measures would prevent Chinese exporting producers to substantially increase their export volumes at low and dumped price levels and thus push out the Union industry of the market. Indeed, there is a clear likelihood of recurrence of injurious dumping in substantial volumes which the Union industry could not withstand, especially considering its vulnerable situation after the deterioration of the market. Measures would allow the Union industry to consolidate its recovery and to improve its economic and financial indicators towards a stable and healthy profitability. On the other hand, should measures be allowed to lapse, the mere existence of the Union industry would be put in danger, leading to closures and job losses on the Union market.
- (113) Accordingly, it is concluded that the maintenance of anti-dumping measures against China would clearly be in the interest of the Union industry.

3. Interest of importers

- (114) Around 36 known potential importers/users were contacted at initiation stage and were invited to explain their activity and to fill in the sampling form for unrelated importers attached to the Notice of initiation, if applicable.

- (115) Thirteen importers submitted the sampling form. All of them indicated that they did not import okoumé plywood from China.
- (116) In the absence of any evidence suggesting that the current anti-dumping measures in force considerably affected importers, it is concluded that the continuation of measures will not affect the Union importers to a significant extent.
- (117) Concerning users, the main ones are in the building industry, industrial applications such as transports and maritime end-uses, and other outlets such as furniture. These industries account for some 80 % of the okoumé plywood consumption according to the expiry review request. Other main users are industrial manufacturers of movable products such as road, railway and maritime transports, and vertical transports (elevators).
- (118) None of the contacted at the initiation stage users came forward with comments. Moreover no operators came forward after the publication of the Notice of initiation.
- (119) While no okoumé plywood users associations are known, the Commission contacted the 'European Consumer Organisation' and invited it to make its views known. No comments were received.
- (120) In addition no other users or associations came forward with comments.
- (121) On the basis of the above, the Commission concluded that the maintenance of the measures would not have a significant negative impact on users in the Union.

4. Conclusion on Union interest

- (122) On the basis of the above, the Commission concluded that there were no compelling reasons that it was not in the Union interest to maintain measures on imports of okoumé plywood originating in China.

H. ANTI-DUMPING MEASURES

- (123) It follows from the above considerations that, under Article 11(2) of the basic Regulation, the anti-dumping measures applicable to imports of okoumé plywood originating in the PRC imposed by Implementing Regulation (EU) No 82/2011 should be maintained.
- (124) The individual company anti-dumping duty rates specified in this Regulation are solely applicable to imports of the product concerned produced by these companies and thus by the specific legal entities mentioned. Imports of the product concerned manufactured by any other company not specifically mentioned in the operative part of this Regulation with its name and address, including entities related to those specifically mentioned, cannot benefit from these rates and shall be subject to the duty rate applicable to 'all other companies'.
- (125) Any claim requesting the application of these individual anti-dumping duty rates (e.g. following a change in the name of the entity or following the setting up of new production or sales entities) should be addressed to the Commission (1) forthwith with all relevant information, in particular any modification in the company's activities linked to production, domestic and export sales associated with, for instance, that name change or that change in the production and sales entities. If appropriate, this Regulation will then be accordingly amended by updating the list of companies benefiting from individual duty rates.
- (126) In order to minimise the risks of circumvention due to the high difference in the duty rates, it is considered that special measures are needed in this case to ensure the proper application of the anti-dumping duty. These special measures include the presentation to the Customs authorities of the Member States of a valid commercial invoice, which shall conform to the requirements set out in the Article 1(3) of this Regulation. Imports not accompanied by such an invoice shall be made subject to the anti-dumping duty applicable to 'all other companies'.

- (127) Should the exports by one of the companies benefiting from lower individual duty rates increase significantly in volume after the imposition of the measures concerned, such an increase in volume could be considered as constituting in itself a change in the pattern of trade due to the imposition of measures within the meaning of Article 13(1) of the basic Regulation. In such circumstances and provided the conditions are met an anti-circumvention investigation may be initiated. This investigation may, inter alia, examine the need for the removal of individual duty rates and the consequent imposition of a country-wide duty,
- (128) The Committee established by Article 15(1) of Regulation (EU) 2016/1036 did not deliver an opinion,

HAS ADOPTED THIS REGULATION:

Article 1

1. A definitive anti-dumping duty is hereby imposed on imports of okoumé plywood, defined as plywood consisting solely of sheets of wood, each ply not exceeding 6 mm thickness, with at least one outer ply of okoumé not coated by a permanent film of other materials, currently falling within CN code ex 4412 31 10 (TARIC code 4412 31 10 10) and originating in the People's Republic of China.
2. The rate of the anti-dumping duty applicable to the net, free-at-Union frontier price, before duty, for the products described in paragraph 1 and manufactured by the companies listed below shall be as follows:

Company	Duty rate	TARIC additional code
Nantong Zongyi Plywood Co. Ltd Xingdong Town, Tongzhou City, Jiangsu Province, People's Republic of China	9,6 %	A526
Zhejiang Deren Bamboo-Wood Technologies Co. Ltd Linhai Economic Development Zone, Zhejiang, People's Republic of China	23,5 %	A527
Zhonglin Enterprise (Dangshan) Co. Ltd Xue Lou Miao Pu, Dangshan County, Anhui Province 235323, People's Republic of China	6,5 %	A528
Jiaxing Jinlin Lumber Co. Ltd North of Ganyao Town, Jiashan, Zhejiang Province, People's Republic of China	17 %	A529
All other companies	66,7 %	A999

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

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

Article 2

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

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

Done at Brussels, 5 April 2017.

For the Commission

The President

Jean-Claude JUNKER

COMMISSION IMPLEMENTING REGULATION (EU) 2017/649**of 5 April 2017****imposing a definitive anti-dumping duty on imports of certain hot-rolled flat products of iron, non-alloy or other alloy steel originating in the People's Republic of China**

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 9(4) thereof,

Whereas:

1. PROCEDURE**1.1. Provisional Measures**

- (1) On 7 October 2016 the European Commission ('the Commission') imposed a provisional anti-dumping duty on imports into the Union of certain hot-rolled flat products of iron, non-alloy or other alloy steel whether or not in coils (including 'cut-to-length' and 'narrow strip' products), not further worked than hot-rolled, not clad, plated or coated ('the product concerned') originating in the People's Republic of China ('PRC') by Commission Implementing Regulation (EU) 2016/1778 ⁽²⁾ ('the provisional Regulation').
- (2) The investigation had been initiated on 13 February 2016 ⁽³⁾ following a complaint lodged on 4 January 2016 by the European Steel Association ('Eurofer' or 'the complainant') on behalf of producers representing more than 90 % of the total Union production of certain hot-rolled flat products of iron, non-alloy or other alloy steel.
- (3) As stated in recital (23) of the provisional Regulation the investigation of dumping and injury covered the period from 1 January 2015 to 31 December 2015 ('the investigation period' or 'IP'). 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').
- (4) As mentioned in recital (3) of the provisional Regulation, the Commission also initiated the following two investigations:
 - (a) on 13 May 2016 ⁽⁴⁾, an anti-subsidy investigation on imports of the same product originating in the People's Republic of China;
 - (b) on 7 July 2016 ⁽⁵⁾, an anti-dumping investigation on imports of the same product originating in Brazil, Iran, Russia, Serbia and Ukraine.

1.2. Registration

- (5) As stated in recital (4) of the provisional Regulation, the complainant submitted on 5 April 2016 a request for registration of imports of the product concerned from the PRC. On 2 June 2016, the complainant updated the request by providing more recent financial data, but on 11 August 2016, withdrew it.

⁽¹⁾ OJ L 176, 30.6.2016, p. 21.

⁽²⁾ Commission Implementing Regulation (EU) 2016/1778 of 6 October 2016 imposing a provisional anti-dumping duty on imports of certain hot-rolled flat products of iron, non-alloy or other alloy steel originating in the People's Republic of China (OJ L 272, 7.10.2016, p. 33).

⁽³⁾ OJ C 58, 13.2.2016, p. 9.

⁽⁴⁾ Notice of initiation of an anti-subsidy proceeding concerning imports of certain hot-rolled flat products of iron, non-alloy or other alloy steel originating in the People's Republic of China (OJ C 172, 13.5.2016, p. 29).

⁽⁵⁾ Notice of initiation of an anti-dumping proceeding concerning imports of certain hot-rolled flat products of iron, non-alloy or other alloy steel originating in Brazil, Iran, Russia, Serbia and Ukraine (OJ C 246, 7.7.2016, p. 7).

1.3. Subsequent procedure

- (6) Subsequent to the disclosure of the essential facts and considerations on the basis of which the provisional anti-dumping duty was imposed (the provisional disclosure), several interested parties made written submissions. The parties who so requested were granted an opportunity to be heard.
- (7) As set out in detail from recital (135) and following below, one interested party was invited by the Commission services to request the intervention by the Hearing Officer in certain trade proceedings ('the Hearing Officer') on the accuracy of the provisional calculations and on his right to access confidential information. This hearing took place on 7 February 2017.
- (8) The Commission continued seeking and verifying all information it deemed necessary for its definitive findings. In order to have at its disposal more comprehensive data on the Union's cost of production (per product type per quarter of the investigation period), the sampled Union producers were requested to provide additional data. All sampled Union producers submitted the requested information.
- (9) The Commission informed all parties of the essential facts and considerations on the basis of which it intended to impose a definitive anti-dumping duty on imports of the product concerned into the Union. All parties were granted a period within which they could make comments on the definitive disclosure.
- (10) The comments submitted by the interested parties were considered and taken into account where appropriate.

1.4. Product concerned and like product

- (11) Recital (24) of the provisional Regulation set out the provisional definition of the product concerned.
- (12) Recitals (29) to (35) of the provisional Regulation set out the claim from a Chinese exporting producer and an importer to exclude tool steel and high-speed steel from the product scope, and the reasons why the Commission provisionally excluded tool steel and high-speed steel from the product scope.
- (13) Following definitive disclosure, the complainant reiterated its comment that this claim was not well founded and that there is a risk of circumvention in case these claims would be accepted by the Commission. The Commission observed that it already considered the risk of circumvention at provisional stage. As laid out in recital (34) of the provisional Regulation, it found that imports of tool steel and high-speed steel account volume-wise for about 1,25 % of total Chinese imports in 2015, and that they fall under different, specific CN codes. Furthermore, the Commission did not receive any evidence which would indicate a change in pattern of trade after the imposition of provisional measures, suggesting potential circumvention.
- (14) For the reasons set out in recitals (32) to (34) of the provisional Regulation and absent any new facts or evidence, the Commission maintained its decision to exclude tool steel and high-speed steel from the product scope.
- (15) Recitals (36) to (37) of the provisional Regulation set out the claim of an Italian user to exclude certain other product types from the product scope. As stated in recitals (38) and (39) of the provisional Regulation, the Commission provisionally rejected these requests but stated that it would further investigate this product exclusion request. Following the provisional disclosure, this Italian user reiterated its request.
- (16) During an on spot verification visit in the premises of the company, the Commission sought to clarify the points raised by this user.
- (17) However, the user did not bring forward any new element during these discussions. Accordingly, the Commission rejected these claims and confirmed its conclusions reached in recitals (38) and (39) of the provisional Regulation.
- (18) Following final disclosure, the Italian user reiterated its request to exclude Interstitial-Free (IF) steel types, dual-phase steel types, high carbon steel types, and non-grain oriented steel types of the product concerned. This user

referred to a discussion with Commission investigators, during which the user claims that the Commission officials would have accepted that there is a difference in terms of chemical characteristics and end-uses between 'ordinary' and other high-quality types of the product concerned. Moreover, this user referred to two other investigations where the Commission would have decided to exclude certain product types. The first case was an anti-circumvention investigation concerning certain aluminium foil from the People's Republic of China based on an alleged slight modification of the product. In that case, a particular type of aluminium foil used for further processing was allegedly excluded from the extension to the slightly modified product ⁽¹⁾. The second case concerned an investigation on certain corrosion resistant steels (CRS) originating in the People's Republic of China ⁽²⁾, where the product scope was so defined to exclude the automotive grades from the scope of the measures.

- (19) The Commission rejected this request. First, the meeting at the premises of the company was an exchange of information to clarify some points which were raised by the user. The user cannot draw any legitimate expectations from such kind of informal meeting. Moreover, contrary to what is claimed by the user, the Commission investigators never agreed that there was a difference between certain types of the product concerned in terms of chemical characteristics and end-uses. Second, it is true that the current description and the CN codes of the product concerned do include a wide variety of types from a quality perspective. However, the production of high-quality types of the product concerned by both the Union and exporting producers is inherent to the production process of the product concerned, and higher quality types are made from the same basic material and on the same production equipment. Therefore, such argument is not sufficient to lead to the exclusion requested by the user. Third, the two cases to which the user refers are both ongoing and no final conclusions have been made. In addition, one of these cases (the case concerning the particular type of aluminium foil) concerns an anti-circumvention case, and is therefore not relevant. Fourth, for the different types of the product concerned, including the so-called high-quality types, it is not possible to identify the difference between the numerous types of the product concerned based on visual inspection, and therefore an exclusion would be unmanageable by customs authorities. Fifth, in many cases, the products cannot even be differentiated by chemical analysis or microstructural tests, since such specific characteristics only arise later during the further cold rolling process. In conclusion, these types of a relatively higher quality also fully meet the definition of the product concerned, and no convincing argument has been brought forward to exclude them from the scope of the product concerned.
- (20) In the absence of any other comments regarding the product scope and the like product, the conclusions reached in recitals (24) to (28) of the provisional Regulation were confirmed.
- (21) The product concerned is thus defined as certain flat-rolled products of iron, non-alloy steel or other alloy steel, whether or not in coils (including 'cut-to-length' and 'narrow strip' products), not further worked than hot-rolled, not clad, plated or coated, originating in the PRC.

The product concerned does not include:

- products of stainless steel and grain-oriented silicon electrical steel,
- products of tool steel and high-speed steel,
- products, not in coils, without patterns in relief, of a thickness exceeding 10 mm and of a width of 600 mm or more, and
- products, not in coils, without patterns in relief, of a thickness of 4,75 mm or more but not exceeding 10 mm and of a width of 2 050 mm or more.

⁽¹⁾ Commission Implementing Regulation (EU) 2016/865 of 31 May 2016 initiating an investigation concerning the possible circumvention of anti-dumping measures imposed by Implementing Regulation (EU) 2015/2384 on imports of certain aluminium foil originating in the People's Republic of China by imports of slightly modified certain aluminium foil from the People's Republic of China, and making such imports subject to registration (OJ L 144, 1.6.2016, p. 35).

⁽²⁾ Procedures Relating To The Implementation Of The Common Commercial Policy, European Commission, Notice of initiation of an anti-dumping proceeding concerning imports of certain corrosion resistant steels originating in the People's Republic of China (OJ C 459, 9.12.2016, p. 17).

The product concerned is currently falling within CN codes 7208 10 00, 7208 25 00, 7208 26 00, 7208 27 00, 7208 36 00, 7208 37 00, 7208 38 00, 7208 39 00, 7208 40 00, 7208 52 10, 7208 52 99, 7208 53 10, 7208 53 90, 7208 54 00, 7211 13 00, 7211 14 00, 7211 19 00, ex 7225 19 10, 7225 30 90, ex 7225 40 60, 7225 40 90, ex 7226 19 10, 7226 91 91 and 7226 91 99.

2. DUMPING

2.1. Normal value

- (22) After the imposition of provisional measures, and following definitive disclosure, the Chinese Iron and Steel Association (CISA) claimed that the difference between the injury and dumping margins raised doubts as to the accuracy of the Commission's methodology. CISA estimated that the normal value in the analogue country was 61 % higher than the target price for the Union industry. According to CISA, normal values provided by a producer which is related to the complainant, as it is the case for the present investigation, are sometimes abnormally high.
- (23) Furthermore, CISA claimed that, if the data is factually correct, in view of such difference, the Commission should invalidate the choice of the USA as a valid analogue country, make adjustments to the data or use EU data instead.
- (24) Under Union law, the Commission is entitled to use prices of companies related to EU producers when the analogue country is appropriate. This was the case for investigations on high fatigue performance steel concrete reinforcement bars (South Africa) ⁽¹⁾ and on cold-rolled flat steel products (Canada) ⁽²⁾, as mentioned by CISA itself. The existence of a relationship between the analogue country producer and a Union producer does not invalidate or affect the determination of the normal value which is based on duly verified data.
- (25) The calculations regarding the normal value were performed and validated according to the applicable legal rules. They are factually correct.
- (26) The USA is a competitive market with ten domestic producers and substantial imports from several countries. It has anti-dumping and countervailing measures in force, which allows its companies to operate under normal conditions of competition. Therefore, the Commission sees no reason for not using USA prices. In addition, no supporting evidence was provided that would justify making an adjustment.
- (27) After definitive disclosure, one interested part questioned again the choice of the USA as a valid analogue country in the present case, questioning the reliability of the normal value in that country which it found much too high as compared to the price on the Union market. Given that the data of the analogue country producer have been verified and have been found to be correct, that argument was rejected.
- (28) As regards the suggestion for prices actually paid or payable in the Union, Article 2(7) of the basic Regulation only allows for the use of these prices when the use of prices in or exports of a market economy third country is not possible. Given that it is possible to use the US prices (analogue country method) in the present case, this suggestion was dismissed.
- (29) The Commission hence confirmed its findings with regard to the normal value.

2.2. Export prices

- (30) At provisional stage, the Commission made adjustments to transactions where the exporting producers export the product concerned to the Union through related companies acting as an importer.

⁽¹⁾ OJ L 23, 29.1.2016, p. 16.

⁽²⁾ OJ L 210, 4.8.2016, p. 1.

- (31) These adjustments were made with reference to the actual profit of the related importers.
- (32) Because of the relationship between these exporting producers and the related traders/importers, the actual profits of related importers must however be considered unreliable. For this reason, in line with Article 2(9) of the basic Regulation, an adequate profit margin should be established by the investigation authority on a reasonable basis. The Commission considered that the profits made by an unrelated importer constitute a reasonable basis in this situation.
- (33) However, considering that the Commission did not obtain cooperation from any unrelated importer during this investigation, it resorted to the profit of an unrelated importer of a closely resembling product. Therefore, the Commission used the profit of an importer of cold-rolled flat steel products, which is similar in many respects to the product concerned, as explained in recital (221) of the provisional regulation. This profit was determined in the investigation on cold-rolled flat steel products mentioned in recital (24) above. The calculation of the export prices was adjusted accordingly.

2.3. Comparison

- (34) The exporting producer Jiangsu Shagang Group claimed that the Commission did not disclose all adjustments carried out on Shagang's export price and referred to one specific adjustment. The Commission clarified that the legal ground for this adjustment was Article 2(10)(i) of the basic Regulation as it refers to a mark-up received by a related company which performs functions similar to those of an agent working on a commission basis. In response, Shagang claimed that it should be considered a single economic entity together with its related companies and, therefore, this adjustment should not be made. On 16 November 2016, following a request from Shagang, a hearing took place between Shagang and the Commission services to further discuss this issue. In addition, following definitive disclosure, on 12 January 2017, a second hearing took place to discuss, *inter alia*, this adjustment.
- (35) Shagang reiterated that its related companies (two traders located in Hong Kong and Singapore, respectively) only deal with Shagang products, as far as steel products are concerned and that the fact that the related traders are also involved in the trading of products (other than steel) not produced by Shagang is irrelevant in establishing the existence of a single economic entity.
- (36) Under established case-law, the Union institutions are required to consider all factors necessary to determine whether the related trader carries out the functions of an integrated sales department within that producer and that those factors cannot be limited to the product concerned. In particular, the Union institutions are entitled to take into account factors such as sales by a related trader of products other than the product concerned as well as sales by such a trader of products supplied by producers other than the producer to which it is related. Accordingly, the Commission analysed several factors and established, *inter alia*, that: (i) there was a consistent mark-up charged by a related company in China to its related traders abroad; (ii) the main activity of these traders, amounting to around 90 % of their turnover, consisted of trading products other than the product concerned including trading activities with unrelated parties; (iii) in some cases, fees and expenses were found to have been paid in export sales to the Union; (iv) the business licence of one of these related traders described its main activities as 'wholesale on a fee or contract basis, e.g. commission agents'; (v) based on verified the Profit & Loss sheet it was established that the related traders own profit covered all relevant office expenditures, instead of these expenditures being covered by financial contributions from the parent company. Therefore, the Commission found that the related traders and Shagang do not form a single economic entity. The claim was therefore rejected and the adjustment under Article 2(10)(i) of the basic Regulation was maintained.

2.4. Dumping margin

- (37) Due to the correction made on construction of the export price mentioned in recital (33) above, the dumping margins of two groups of companies were recalculated, which led to their slight increase. This increase also had an impact on the dumping margin of all other cooperating and non-cooperating companies since this margin is based on the margins of cooperating companies.

- (38) The definitive dumping margins expressed as a percentage of the CIF Union frontier price, duty unpaid, are as follows:

Table 1

Dumping margins, the PRC

Chinese exporting producers	Definitive dumping margin
Bengang Steel Plates Co., Ltd	97,3 %
Hesteel Group Co., Ltd	95,5 %
Jiangsu Shagang Group	106,9 %
Other cooperating companies	100,5 %
All other companies	106,9 %

3. INJURY**3.1. Definition of the Union industry and Union production**

- (39) In the absence of any comments with respect to the definition of the Union industry and Union production the conclusions set out in recitals (62) to (66) of the provisional Regulation were confirmed.

3.2. Union consumption

- (40) One interested party submitted that the overall Union consumption has been underestimated as sales by Union producers to related companies, made at conditions comparable to those granted on the free market, have been excluded from the calculation of the Union consumption.
- (41) This claim was rejected: First, as set out in recital (69) of the provisional Regulation, the distinction between captive and free market is relevant for the injury analysis because products destined for captive use are not exposed to direct competition from imports, and transfer prices are set within the groups according to various price policies. By contrast, production destined for the free market is in direct competition with imports of the product concerned, and prices are free market prices. Second, the total free market includes sales of Union producers to unrelated customers and non-captive sales to related companies. It has been investigated and confirmed that these non-captive sales are indeed sales at market prices and that the related buyer had a free choice of supplier, irrespective of whether this supplier was related or not. Consequently, the Union consumption (free market) has not been underestimated.
- (42) In this regard, in Tables 2 and 3 of the provisional Regulation, the development of the Union consumption on the captive market and the free market was reported and explained. By merging these two tables, the overall consumption (thus including captive and free market) evolved as follows during the period considered:

Table 2

Overall consumption (captive and free market) (tonnes)

	2012	2013	2014	IP
Overall consumption	72 181 046	74 710 254	76 026 649	77 427 389
<i>Index (2012 = 100)</i>	100	104	105	107

Source: Eurofer questionnaire reply and Eurostat

- (43) The above table shows that overall consumption has increased to a level that was higher in the investigation period than at the beginning of the period considered. The trend is explained by the increase in captive consumption which was much stronger than the increase in free market consumption in absolute terms.
- (44) Thus, the Commission confirmed its conclusions set out in recitals (67) to (74) of the provisional Regulation on Union consumption.

3.3. Imports from the country concerned

- (45) In the absence of any comments with respect to the volume, market share and price of the imports from the country concerned, the Commission also confirmed its conclusions set out in recitals (75) to (82) of the provisional Regulation on these topics.

3.4. Economic situation of the Union industry

3.4.1. General remarks

- (46) No comments concerning this part of the provisional regulation were received.

3.4.2. Macroeconomic indicators

- (47) Following provisional measures, one interested party claimed that most macroeconomic indicators of the Union industry show a positive trend and disagreed with the Commission's finding that the Union industry has incurred material injury.
- (48) This claim was rejected. First, the Commission did not state in the provisional Regulation that the Union industry has incurred material injury. On the contrary, it has stated in recital (119) of the provisional Regulation that the Union industry was in a weak situation at the end of the investigation period, but not to the extent that the Union industry has suffered material injury during the period considered within the meaning of Article 3(5) of the basic Regulation. Second, in this regard, as described in recital (117) of the provisional Regulation, the Commission referred to the fact that some macroeconomic indicators (such as the production volumes, the capacity utilisation rates due to the increase in the captive and free consumption) were still following a positive trend.
- (49) The Commission hence confirmed its conclusions set out in recitals (87) to (103) of the provisional Regulation with respect to the macroeconomic indicators.

3.4.3. Microeconomic indicators

- (50) The same interested party noted that during the period considered, no matter the volume of imports from China (low or high), the unit costs of the sampled Union producers was always higher than their sales prices, with the year 2014 as the only exception. It also indicated that the sampled Union producers remained largely unprofitable during the period considered. Therefore, this interested party requested the Commission to further investigate why:
 - (a) the sampled Union steel producers incurred during the period 2012-2013 their largest loss when the Chinese import volumes were at a low level and the prices of the Chinese imports were equal to or even higher than the ones of the Union industry;
 - (b) during the same period their sales prices were lower than their unit cost of production.
- (51) In this regard, the Commission referred first to recital (106) of the provisional Regulation. There, the Commission stated that the performance of the Union industry had been negatively affected in 2012 and 2013 by the

aftermath of the Eurozone debt crisis, as well as the decline in steel demand in 2012. In 2014, the Union industry started a recovery process which continued also in the first half of 2015. This temporary improvement of the EU industry situation was due to their increased efforts to remain competitive, in particular by increasing the productivity of the Union industry's workforce. Second, as mentioned in recital (107) of the provisional Regulation, the cost of production remained generally higher than the decreasing sales prices, and in order to limit the loss in market share, the Union producers followed the downward price spiral and reduced their sales price significantly, in particular during 2015. As a result, the Commission considered that it had sufficiently investigated and clarified these elements.

- (52) The same interested party argued also that, when calculating back the sales quantity on the basis of Tables 7 and 14 of the provisional Regulation, it found that the sampled Union producers represent only 31 % of the total Union industry sales volume whereas recital (64) of the provisional Regulation states that they represent 45 % of the total Union production. This interested party argued that such a big difference casts doubts on the representativity of the sample, and that any change in sample could have led to completely different injury findings.
- (53) As mentioned in recital (64) of the provisional Regulation, the total Union production was established at around 74,7 million. This includes both the free and the captive market. By contrast, Tables 7 and 14 in the provisional Regulation clearly refer to the free market only. Thus, they include only sales in the free market. The difference found is explained by the fact that the total production used for the comparison made by this interested party included captive sales, when it should only have included sales in the free market. Consequently, there is no reason to doubt on the representativity of the chosen sample.
- (54) In the absence of other comments, the conclusions set out in recitals (104) to (116) of the provisional Regulation were confirmed.

3.4.4. Conclusion on injury

- (55) On the basis of the analysis of the comments, as summarised in recitals (39) to (54) above, the Commission confirmed its conclusions set out in recitals (117) to (119) of the provisional Regulation. The Commission concluded that the Union industry was in a weak situation at the end of the investigation period but not to the extent that the Union industry has suffered material injury during the period considered within the meaning of Article 3(5) of the basic Regulation.

4. THREAT OF INJURY

- (56) Under the case-law, the Union institutions are entitled, in certain circumstances, to take post-investigation period data into consideration when conducting anti-dumping investigations initiated on the basis of allegations of threat of injury. Indeed, the case-law considers that the determination of whether there is a threat of injury, by its very nature, requires a prospective analysis. In addition, Article 3(9) of the basic regulation requires that the finding of a threat of material injury is to be based on facts and not merely allegation, conjecture or remote possibility and that the change in circumstances which would create a situation in which the dumping would cause injury must be clearly foreseen and imminent.
- (57) As authorised by the case-law, and as indicated in recital (122) of the provisional Regulation, the Commission continued its prospective analysis after the imposition of the provisional measures, by collecting mainly data from the second half of 2016 for all factors which it had provisionally investigated, and analysing whether these additional data could be used to confirm or invalidate the findings based on the data from the investigation period.
- (58) The Commission further recalls that under Article 6(1) of the Basic Regulation, which equally applies to investigations initiated on the basis of allegations of threat of injury, representative findings have to be based on a period ending before the initiation of proceedings. The purpose of this principle is to ensure that the results of the investigation are representative and reliable, by ensuring that the factors on which the determination of dumping and injury is based are not influenced by the conduct of the producers concerned following the initiation of the antidumping proceeding, and therefore that the definitive duty imposed as a result of the proceeding is appropriate to remedying effectively the injury caused by the dumping.

4.1. Significant rate of increase of dumped imports into the Union market indicating the likelihood of substantially increased imports

4.1.1. Update of post-IP data

- (59) As set out in recital (124) of the provisional Regulation, imports from the country concerned significantly increased from 246 720 to 1 519 304 tonnes between 2012 and the investigation period. The same recital also mentioned that the volume of Chinese imports further increased (by 8,5 %) in the first half of 2016 (773 275 tonnes), compared to the first half of 2015 (712 390 tonnes).
- (60) The available data for the additional period July-September 2016 shows that the Chinese dumped imports have started to decrease as compared to the IP (2015) and to the post-IP period January-June 2016, when expressed on the basis of monthly averages.

Table 3

Evolution of Chinese import volume (tonnes)

	2014	IP (2015)	January-June 2016	July-September 2016
Volume of imports from China	592 104	1 519 304	773 275	296 267
Average monthly Chinese imports	49 342	126 608	128 879	98 756

Source: Eurostat

- (61) The Commission thus found that the trend of increasing volumes has stopped. However, when assessing the significance and the reliability of these figures for confirming or invalidating the threat of injury analysis, the Commission also observed that:
- (a) the average monthly Chinese import volumes in the period July-September 2016 are still twice as high as the average monthly imports in 2014;
 - (b) the decrease in the average monthly Chinese import volumes from July-September 2016 (compared to 2015) can be explained by:
 - the chilling effect of the request for registration by the complainant on 5 April 2016 and its update in June 2016 (which, though, was withdrawn only in mid-August 2016),
 - the adoption by the Commission of Implementing Regulation (EU) 2016/1329 ⁽¹⁾, under which anti-dumping duties were collected retroactively for the first time, and
 - the knowledge of the intention of the Commission to decide on provisional measures within 8 months of initiation (instead of 9 months).

4.1.2. Comments from interested parties following the provisional Regulation

- (62) One interested party argued that the Commission mainly based its analysis on a data set, i.e. from the end of 2015, which is more than nine months old at the time of the investigation and which cannot give the most reliable indication as to the likelihood of substantially increased imports. Furthermore, it also argued that an analysis of the import trends for a representative period of time would have shown that import volumes are decreasing. As a result, this interested party qualified the analysis of the threat of injury by the Commission as flawed.

⁽¹⁾ Commission of Implementing Regulation (EU) 2016/1329 of 29 July 2016 levying the definitive anti-dumping duty on the registered imports of certain cold-rolled flat steel products originating in the People's Republic of China and the Russian Federation (OJ L 210, 4.8.2016, p. 27).

- (63) First, the Commission noted that it had provided all data, available at that time, in recital (124) of the provisional Regulation, both for the period considered and the post-investigation period. Second, the Commission has again updated in recital (60) all information concerning the Chinese import volumes. In that update the Commission indeed noted that there is a decrease in the average monthly Chinese import volumes from July 2016 onwards. However, this decrease can mainly be explained for the reasons as mentioned in recital (61).

4.1.3. *Comments from interested parties following definitive disclosure*

- (64) Following definitive disclosure, the China Iron and Steel Association (CISA) on the one hand welcomed the Commission's use of additional post-investigation period data, but on the other hand argued that the Commission's assessment of the evolution of the Chinese imports since July 2016 onwards was wrong. This interested party stated, from a factual point of view, that the Chinese import volumes started steadily decreasing since the beginning of 2016. Moreover, it argued that the Commission was violating the general principle of Article 3(9) of the basic Regulation by stating that the most recent decline of Chinese exports was likely to be a temporary phenomenon since a determination of a threat of material must 'be based on facts and not based on an allegation, conjecture or remote possibility'. It therefore requested the Commission to consider the most recent post-IP data on the basis of facts alone, and to refrain from interpreting the most recent post-IP data in the light of remote possibilities or unsupported assertions. Similar comments were received from two other Chinese exporting producers and from the Italian user.
- (65) The Commission agreed that the trend of increasing volumes stopped, but mainly from July 2016 onwards. However, it also observed that the absolute level was still high. While the Chinese imports for the period January-June 2016 (773 275 tonnes for 6 months) were lower than the period July-December 2015 (806 914 tonnes for 6 months), the average import volumes for the period January-June 2016 were still higher than for the period January-June 2015 (712 390 tonnes for 6 months) and for all other 6 months' periods before. Second, the Commission has not analysed the trend of import volumes as an isolated factor, but has taken a comprehensive approach. It weighted and assessed not only all the factors which are listed in Article 3(9), second subparagraph, of the basic Regulation but in addition some additional factors such as order intakes and profitability (see Sections 4.2-4.5 below), so as to have a strong factual basis for its overall assessment.
- (66) Concerning the rationale why the Chinese exports decreased mainly from the second half of 2016 onwards, the explanations by the Commission are based on three facts, i.e. the public announcements made in the Steel Communication, the registration request by the complainant in this case, and the decision on the retroactive collection of duties on certain cold-rolled steel products:

— On the basis of the Steel Communication from the Commission of 16 March 2016 ('Steel: Preserving sustainable jobs and growths in Europe') ⁽¹⁾ the Chinese exporting producers had been made aware of the intention of the Commission to 'immediately use the available margins to further accelerate the adoption of provisional measures by reducing investigation procedures by one month (from nine to eight months).' As a result, due to the initiation of this case on 13 February 2016, they had been aware that provisional measures could be imposed early October 2016.

— On 5 April 2016, the Complainant submitted a request for registration of imports from the PRC of the product concerned. On 2 June 2016, the complainant updated the request by providing more recent information. As a result, well-informed exporting producers and exporters knew that there was a risk that — if they shipped the product concerned from the second half of 2016 onwards — their exported like products could become subject to retro-active duties 90 days prior to the potential imposition of provisional duties in October 2016, i.e. by July 2016.

— On 29 July 2016, the Commission adopted an Implementing Regulation (EU) 2016/1329, under which anti-dumping duties were collected retroactively for the first time on certain cold-rolled steel products, also a steel product. As a result, the risk that measures would apply as of early July 2016 in this proceeding became even more certain because of the retroactive collection in this case involving a steel product.

⁽¹⁾ Communication from the Commission to the European Parliament, the European Council, the Council, the European Economic and Social Committee, the Committee of the Regions and the European Investment Bank, Brussels, 16.3.2016, COM(2016) 155 final, Steel: Preserving sustainable jobs and growth in Europe.

- (67) CISA also argues that the Commission's explanations on why the Chinese imports decreased from the second half of 2016 onwards are 'remote possibilities or unsupported assertions'. As shown above, the Commission's explanations are based on facts. The Commission notes that CISA itself did not provide a plausible alternative explanation as to why the Chinese exports went down.
- (68) In the absence of any other comments, the Commission hence confirmed its conclusion that the most recent decline of Chinese exports is likely to be a temporary phenomenon due to the specific circumstances identified in recital (61) that is not capable of invalidating the findings of the Commission concerning the existence of a threat of injury. If no measures are taken at the definitive stage, Chinese import volumes will most likely increase again, especially in light of the present overcapacities in the PRC and the insufficient absorption capacity of third states or the PRC itself, as explained from recital (70) onwards.

4.1.4. Conclusion

- (69) The decrease of Chinese import volumes after July 2016 can be explained by the chilling effect of the registration request and the knowledge of intention of the Commission to decide on provisional measures within 8 months of initiation. In addition, the absolute level of Chinese imports volumes after July 2016 onwards remains very high when compared to 2014. For these reasons, it is likely that this decrease in import volumes would be only temporarily, and such trend would revert if no measures are imposed. Therefore it did not change the Commission's assessment that there was a clear and imminent threat of injury at the end of the investigation period.

4.2. Sufficiently freely disposable capacity

4.2.1. Update of the post-IP data

- (70) As noted in recital (133) and the table in recital (185) of the provisional Regulation, the actual production in 2014 of the product concerned in the PRC (317,4 million tonnes) is about 5 times the total production of Russia, Ukraine, Iran and Brazil combined (57,4 million tonnes). This fact was an indication of the enormous production capacity of the product concerned in the PRC. Furthermore, as laid down in recitals (140) and (139) of the provisional Regulation, the Commission found the absorption capacity of the PRC market to be insufficient, and that it was very unlikely that third countries would be able to absorb on their own the huge amount of freely disposable capacity.
- (71) After the imposition of provisional measures, the Commission updated the table of recital (185) of the provisional Regulation on the basis of the most recent available data as follows:

Table 4

Actual production of the like product by third countries (in thousands of tonnes)

Country	Crude steel capacity estimated for the year 2015 ⁽¹⁾	Crude steel production in 2014	Crude steel production in 2015 ⁽²⁾	Theoretical excess capacity in 2015 ⁽²⁾	HRF actual production in 2014	HRF actual production in 2015
Russia	90 000	71 461	70 898	19 102	26 898	27 509
PRC	1 153 098	822 750	803 825	349 273	317 387	322 259

Country	Crude steel capacity estimated for the year 2015 ⁽¹⁾	Crude steel production in 2014	Crude steel production in 2015 ⁽²⁾	Theoretical excess capacity in 2015 ⁽²⁾	HRF actual production in 2014	HRF actual production in 2015
Ukraine	42 500	27 170	22 968	19 532	7 867	6 314
Iran	28 850	16 331	16 146	12 704	8 276	7 872
Brazil	49 220	33 897	33 256	15 964	14 229	13 388

⁽¹⁾ Source for capacity data: OECD (OECD, DSTI/SU/SC(2016)6/Final, 5 September 2016, Directorate for Science, Technology and Innovation, Updated steelmaking capacity figures and a proposed framework for enhancing capacity monitoring activity, Annex, p. 7 and following).

⁽²⁾ Source for production data: World Steel Association, Steel Statistical Yearbook 2015 (World Steel Association, Steel Statistical Yearbook 2016 Table 1 on pages 1 and 2 and Table 13 on page 35, <http://www.worldsteel.org/statistics/statistics-archive/yearbook-archive.html>).

The above updated 2015 production figures for the like product show that the country concerned outnumbers by far all other large exporting countries; the above updated 2015 capacity figures for crude steel also indicate that only the PRC has such a massive excess capacity (amounting to almost 350 million tonnes in 2015, compared to 317 million tonnes in 2014, as shown in the table of recital (185) of the provisional Regulation).

Accordingly, the Commission reiterated that the overcapacity in steel production in the PRC constitutes an important indicator for the existence of a threat of an imminent injury to the Union industry.

- (72) In addition, the information and projections concerning the Chinese capacity of crude steel and the product concerned that became available after July 2016 still showed the same inconsistencies:
- (a) On the one hand, the Commission received anecdotal information that the PRC apparently started to reduce its overcapacity: In this respect, the EU Delegation in Beijing reported that a Deputy Director of the China Iron and Steel Association (CISA) declared that the PRC is likely to cut off 70 millions of tonnes of steel overcapacity during 2016 (announcement on 28 October 2016). Furthermore, Baosteel Group and Wuhan Steel Group also announced that they completed their targeted capacity cuts for 2016 already in October 2016 (announcement on 24 October 2016).
 - (b) On the other hand, recent OECD projections ⁽¹⁾ estimate that the Chinese capacity will even further increase in 2016, 2017 and 2018. The Chinese side continued to avoid engaging in a bilateral platform between the Union and the PRC to monitor steel excess capacity. In addition, the 13th 5-year plan in relation to 'Steel industry adjustment and upgrading plan' (2016-2020) assumes crude steel production volume forecast at 750-800 million tonnes in 2020 and crude steel production capacity reduction by 100-150 million till 2020. It also encourages steel enterprises being in a good position to go overseas and set up steel production bases as well as processing and distribution centres.

In summary, the issue of overcapacity in the steel sector in the PRC is acknowledged by the Chinese authorities, and despite some announcements made after 30 June 2016, is not likely to be resolved in the near future. The Chinese overcapacity is so massive that realistically it cannot disappear in the short or medium-term period.

- (73) The data concerning the absorption capacity of the PRC that became available after July 2016 is limited. Nevertheless, the Commission found that the domestic Chinese steel demand forecast is one of 'low to no growth' in the coming 4-5 years (2015-2020) as investments (such as in construction business) are slow, what will impact dramatically the domestic Chinese finished steel consumption. ⁽²⁾

⁽¹⁾ Report of the OECD Steel Committee, 8-9 September 2016, Updated steelmaking capacity figures and a proposed framework for enhancing capacity monitoring activity.

⁽²⁾ Richard Lu, 15 July 2016, the downside Chinese steel demand scenario: gory details, http://www.crugroup.com/about-cru/cruinsight/The_downside_Chinese_steel_demand_scenario_gory_details

(74) The data concerning the absorption capacity of third countries that became available after July 2016 onwards indicated that:

- (a) On the one hand, Malaysia terminated in January 2016 a safeguard investigation with regard to hot-rolled coils against China and some other countries in January 2016, whereas Turkey terminated in April 2016 an anti-dumping investigation concerning imports of hot-rolled coils from China, France, Japan, Romania, Russia, Slovakia and Ukraine.
- (b) On the other hand, India recently imposed final duty rates in a safeguard investigation of hot-rolled flat sheet and plates of alloy and non-alloy steel. Furthermore, Brazil initiated an anti-subsidy investigation against imports of hot-rolled flat carbon steel. Finally, Turkish producers have filed new anti-dumping and counter-vailing duty petitions against imports of hot-rolled coils, originating, inter alia, in China. In this respect, following final disclosure, one interested party informed the Commission that the Turkish authorities had opened in the meantime a new dumping investigation on 21 December 2016, covering heavy plate and certain types of HRF.

As a result, on the basis of this updated information, third countries are unlikely to be able to absorbing increasing Chinese exports as a result of the huge amount of free disposable Chinese capacity. Even if the status quo in Chinese exports to other third countries was maintained, if no measures were imposed, the Union market would likely continue to be among the primary targets of Chinese dumped exports.

4.2.2. Comments from interested parties following the provisional Regulation and following definitive disclosure

- (75) Following the provisional Regulation, the complainant referred to the fact that the PRC has announced since 2008 several plans to tackle the steel overcapacity, but that none of them has succeeded. Following definitive disclosure, the complainant reiterated that previous Chinese attempts to limit the domestic steel overcapacity have also failed. As a consequence, according to this interested party, the Chinese government is likely to be unable to cure the huge overcapacity that has affected the steel sector for many years and which it has tried and failed to resolve a number of previous times.
- (76) On the other hand, following definitive disclosure, another interested party mentioned that the Chinese government has recently announced that it had met its targets for the reduction of capacity in the steel sector in 2016 and that it was strongly committed to further reduce capacity in the steel sector.
- (77) Concerning the argument that the Chinese government has consistently failed to reduce the massive steel overcapacity, the Commission is required to perform a prospective analysis in a threat of injury-case. Therefore, it considered the statements of the complainant to be irrelevant as they are related to the past and cannot be used to extrapolate the future behaviour of the Chinese government.
- (78) Concerning the opposite argument on the reduction of the Chinese capacity made by other interested parties, the Commission reiterated that the information and projections that are available concerning the Chinese capacity of crude steel and the product concerned show inconsistencies. However, while not disputing the Chinese serious commitments to reduce its capacity, the fact remains that the existing Chinese overcapacity, as shown in Table 20 of the Provisional Regulation, is so massive that it cannot realistically disappear in the short or medium-term period.
- (79) Concerning the absorption capacity of third countries, one interested party referred to the fact that Malaysia and Turkey terminated two investigations on hot-rolled coils against the PRC. Therefore, this interested party concluded that the alleged likelihood of a trade diversion to the Union has lessened.
- (80) These statements were rejected: As mentioned in recital (74), other countries are likely to adopt measures, which makes it unlikely that third countries would start absorbing on their own the huge Chinese capacity.
- (81) Concerning the absorption capacity of the PRC, no comments were received from any interested party.

4.2.3. Conclusion

- (82) In conclusion, post-IP data confirm the Commission's analysis at provisional stage: Given the limited progress on cutting the massive excess capacity in 2016, it is likely that significant volumes of the existing massive excess capacity on steel, including the like product, would continue to be directed to the Union market, if no measures are taken. The present overcapacities and the insufficient absorption capacity of third states or the PRC itself indicate the likelihood of substantially increased Chinese exports to the Union would no measures be taken at definitive stage.

4.3. Price level of imports

4.3.1. Update of post-IP data

- (83) Concerning the price level of imports, recital (142) of the provisional Regulation mentioned that the average import prices from the country concerned decreased by 33 %, from 600 EUR/tonne in 2012 to 404 EUR/tonne in 2015. Furthermore, the table in recital (145) of the provisional Regulation showed a further continuing decrease of Chinese unit prices during the post-investigation period January-June 2016 when entering the Union market.
- (84) The available data concerning the price levels of imports for the period July-September 2016 shows that the average Chinese import prices increased:

Table 5

Average Chinese import prices during the post-IP

	January 2016	June 2016	July 2016	August 2016	September 2016
Average import prices of Chinese imports (EUR/tonne)	326	308	371	367	370

Source: Eurostat

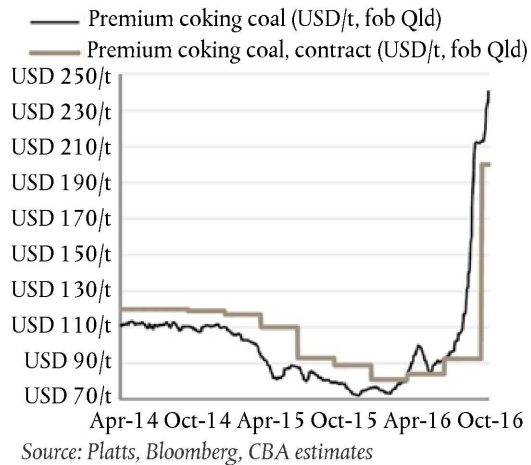
- (85) The recent rise in the Chinese import prices must be put in the following context:
- (a) The Chinese import prices were not the only ones to increase after 30 June 2016. Import prices of other main exporting countries to the Union also increased after 30 June 2016.
 - (b) The level reached in the last three months (July-September 2016) was still below the average costs of production of the EU industry (around 431 EUR/tonne at the end of the investigation period, as shown in Table 11 of recital (104) of the provisional Regulation). Hence, despite the increased in price levels, the enormous price depression remains, which puts the EU industry into an unsustainable position.
 - (c) One important reason for these global price increases of the product concerned is the increase in the raw material prices. In particular, prices of coking coal nearly doubled (to about 200 EUR/tonne) in October 2016, compared to prices in the first half of 2016. This was caused by the combined effect of mandatory working hours' reductions for Chinese coal mines and a number of disruptions at Australian mines. In this context, it should be noted that the PRC and Australia are among the top producing countries of coking coal in the world. The dramatic price increase of coking coals is shown in the chart below ⁽¹⁾.

⁽¹⁾ <http://www.businessinsider.com.au/is-it-a-bird-a-plane-no-its-the-coking-coal-price-2016-10>
<https://www.bloomberg.com/news/articles/2016-09-23/goldman-says-higher-coking-coal-prices-are-here-to-stay>

Chart

Evolution of coking coal prices

Chart of the Day: Premium coking coal prices



Therefore, it can be assumed that prices for the product concerned will start to decrease again, once the impact of these exceptional circumstances concerning coking coal have faded out.

4.3.2. Comments from interested parties following the provisional Regulation

- (86) One interested party mentioned that the analysis of the Commission is limited to June 2016, whereas prices of imports of the product concerned have been continuously increasing after June 2016. It requested the Commission to take into consideration these most recent data. Another interested party also mentioned that the prices of imports recently started increasing.
- (87) The Commission confirmed, as laid out in the table under recital (84), that Chinese import prices increased in the period July-September 2016. However, these interested parties failed to mention that prices increased globally, due to a rise in raw material prices, in particular of coking coal, as laid out in recital (85) above.

4.3.3. Comments from interested parties following definitive disclosure

- (88) Following definitive disclosure, the China Iron and Steel Association (CISA) argued again that the Commission was violating the general principle of Article 3(9) of the basic Regulation since a determination of a threat of material must 'be based on facts and not based on an allegation, conjecture or remote possibility'. It referred in this context to 'a particular context, which is made up out of mere possibilities'. Second, it alleged that the statement of the Commission that the average import price during the most recent period July-September 2016 was below the cost of production of the Union industry at the end of the IP is misleading since such a comparison is based on two different periods, and therefore, it is not an 'apple to apple' comparison. Similar comments were received from an Italian user and from the other Chinese exporting producers. One of these Chinese exporting producers mentioned that the prices of imports have decreased by 13,5 % between January 2016 and September 2016.
- (89) Another Chinese exporting producer also commented that a trend of rising import prices is an indication that there is no threat of injury and referred in this respect to the case-law.
- (90) First, concerning the allegation that the Commission violated the general principle of Article 3(9) of the basic Regulation, the Commission reiterates that it has based its determination on facts, and not on allegations, conjectures or remote possibilities. The Commission took into consideration facts such as the data in Table 5, and interpreted these data, whereby a decrease in prices had been noted till June 2016, and thereafter an increase,

mainly due to an increase in raw material prices as laid out in recital (85) above. Second, CISA itself does not provide an alternative plausible explanation for the evolution of Chinese import prices. Third, the Commission has not analysed the trend of Chinese prices as an isolated factor, but has taken a comprehensive approach. It weighted and assessed not only all the factors which are listed in Article 3(9), second subparagraph, of the basic Regulation but also additional factors such as order intakes and profitability (see Section 4.5) so as to have a strong factual basis for its overall assessment.

- (91) Concerning the allegation that the Commission misled the interested parties intentionally by comparing the average import price during the period July-September 2016 with the cost of production of the Union industry at the end of the IP, the Commission clearly distinguished both periods. Furthermore, in this context, it is important to highlight that the cost of production-data of the Union industry at the end of the IP were the most recent available data in this proceeding since post-IP data on the costs of production of the Union industry are not collected. In any case, even if — hypothetically — the cost of production of the Union industry in the most recent period had decreased, this would not invalidate the fact that the level of Chinese prices in September 2016 had been still exerting an enormous prices pressure on the Union steel industry.
- (92) Concerning the allegation that the Commission did not follow the case-law, the Commission noted that this argument is inoperative, as the Commission in the present case did analyse the development of prices of raw materials in the post-investigation period, as shown in recital (85). Hence, this argument is rejected.

4.3.4. Conclusion

- (93) Even with the rising prices of Chinese import prices from July 2016 onwards, and absent any other comments, the post-IP data on prices do as a whole not invalidate the finding that the Chinese price decreases had led to a threat of injury. This threat of injury was not removed by the recent rising Chinese import prices from July 2016 onwards. As set out in recital (85), even this increased price level does not stop the enormous price depression which puts the EU industry into an unsustainable position when comparing the increased Chinese prices with the cost of production of the Union producers at the end of the investigation period. Finally, the Commission concluded that increasing import prices might only be a temporary trend, which is likely to stop once the reasons for the raw material price increases have faded out. The Chinese exporting producers had an aggressive price setting in the Union market, in particular in the second half of 2015 and the first half of 2016. If no measures are taken, and taking into account the massive existing Chinese excess capacity in steel, including the product concerned, Chinese exporting producers could maintain an aggressive price strategy, lowering their sales prices to minimal levels.

4.4. Level of inventories

4.4.1. Update of post-IP data

- (94) Concerning the level of inventories, recital (147) of the provisional Regulation mentioned that the Commission did not consider this factor of any particular significance, mainly because Union producers produce on order, a feature which enables them to keep their inventory at low levels.
- (95) With regards to stocks in the PRC, the Commission was again unable to find comprehensive post-investigation data on stocks despite requests to Chinese cooperating producers and its own researches.
- (96) Nevertheless, the Commission found that steel inventories in the warehouses of 40 major Chinese cities reportedly decreased to 8,89 million tonnes late October 2016 from 9,41 million tonnes late September 2016. Furthermore, the steel inventories of 80 major Chinese mills amounted to 13,46 million tonnes late September 2016 ⁽¹⁾ compared to 16,07 million tonnes late September 2015.

4.4.2. Comments from interested parties following the provisional Regulation and following definitive disclosure

- (97) No comments were received from interested parties concerning the level of inventories.

⁽¹⁾ Extract from Worldsteel monthly update on the Chinese steel industry, October 2016.

4.4.3. Conclusion

- (98) In conclusion, steel inventories in the PRC remained at about the same levels after 30 June 2016 as the one laid out in recital (150) of the provisional Regulation. The Commission therefore confirmed its finding in recital (151) of the provisional Regulation.

4.5. Other elements: Profitability and order intakes in the Union by the Union industry

4.5.1. Updating the post-IP data

- (99) As set out in recital (155) of the provisional Regulation, order intakes developed negatively. In addition, the investigation established a further deterioration of the profitability of the complainants which represent about 90 % of the total production of the Union industry.

The available data for the period July 2015 up to June 2016 show a further deterioration in profitability, despite a more positive trend (compared to 2015) for its order intakes as follows:

Table 6

Evolution of profitability and order intakes of the Complainants

Description	2013	2014	2015	April 2015-March 2016	July 2015-June 2016
Profitability	– 4,86 %	– 1,28 %	– 3 % to – 5 %	– 5 % to – 7 %	– 7 % to – 9 %
Order intakes	16 631 630	16 677 099	15 529 155	15 636 444	15 944 183

Source: Eurofer, all verified except last column

4.5.2. Comments from interested parties following definitive disclosure

- (100) Following definitive disclosure, the China Iron and Steel Association (CISA) argued that, because the order intakes in the post-IP have increased, the Union producers have received more orders and therefore that the Union industry has a positive future.
- (101) The Commission agreed that the order intakes had increased slightly, but referred at the same time to the record losses incurred by the complainants which also figured in this same table. As a consequence, even if there would be a possible recovery for the Union producers during the most recent post-IP period, such a recovery would not compensate for the dramatically increasing losses incurred during the same period.

4.5.3. Conclusion

- (102) In conclusion, and absent any other comments, the Commission found a further deterioration of the profitability of the complainants in the most recent period. Accordingly, the assessment that a threat of imminent injury existed at the end of 2015 has not been invalidated. Rather the further deterioration in profitability in the entire first half of 2016 confirmed the accuracy of the Commission's assessment of this indicator.

4.6. Foreseeability and imminence of the change in circumstances

- (103) Article 3(9) of the basic Regulation provides that '... the change in circumstances which would create a situation in which the dumping would cause injury must have been clearly foreseen and must be imminent'.
- (104) As set out in recital (157) of the provisional Regulation, all the abovementioned factors have been analysed and verified with respect to the investigation period. In particular, the profitability of the sampled Union producers reached the unsustainable level of – 10 % in the fourth quarter of 2015 when Chinese price pressure was felt most.

- (105) Furthermore, the post-investigation period data revealed that the negative trend in the Union profitability, which started in the second half of 2015, continued during the first half of 2016.
- (106) The available data for the period July-September 2016 presented a mixed picture. While the Chinese import volumes decreased, the overcapacity remained threatening. Concerning the increase in Chinese prices during the same recent period, even if — hypothetically — the cost of production of the Union industry in the most recent period had decreased, the fact remains that the level of Chinese prices in September 2016 had been still exerting an enormous prices pressure on the Union steel industry. It follows that the threat of injury was imminent and foreseeable after the end of the investigation period.
- (107) The Commission thus confirmed that there was a clearly foreseeable and imminent change in circumstances at the end of the investigation period, which would have created a situation in which the dumping would have caused injury.

4.7. Conclusions on threat of injury

- (108) As mentioned in recital (158) of the provisional Regulation, while the Union industry was recovering during 2014 and the first two quarters of 2015, almost all injury indicators started to fall dramatically during the second half of 2015. The investigation revealed that this negative trend, which started in the second half of 2015, was not invalidated during the first half of 2016. As a result, all factors assessed in the framework of Article 3(9) of the basic Regulation, in particular the significant rate of increase of dumped imports in 2015 at further decreasing prices, the huge excess capacity in the PRC, and the negative developments in profitability of the Union industry point to the same direction.
- (109) The available data for the period July-September 2016 present a mixed picture. While the Chinese import volumes decreased, the overcapacity remained threatening and the prices remained below the Union industry's cost of production despite their more recent increase.
- (110) In the view of this analysis, the Commission concluded that there was a threat of a clearly foreseeable and imminent injury to the Union industry at the end of the investigation period. This assessment was not invalidated by the post-IP developments analysed above.
- (111) Furthermore, the Commission rejected the claims of CISA — following definitive disclosure — that the Commission's assessment was not in line with the case-law, by noting the following two main differences between its approach in the present case and the one that led to the adoption of Council Regulation (EC) No 926/2009 ⁽¹⁾:
- first, as mentioned in recital (119) of the provisional Regulation, the Union industry was found to be in the present case in a weak situation at the end of the investigation period, but not to the extent that it suffered material injury during the period considered within the meaning of Article 3(5) of the basic Regulation,
 - second, the Commission analysed and assessed thoroughly post-IP data to the extent possible in the present case in order to confirm or invalidate its findings, as authorised by the case-law.

5. CAUSATION

- (112) An interested party reiterated that during the investigation period Russia had the largest volume of imports into the Union and that the market share of the Chinese imports, although increasing throughout the period considered, still remained at a very low level, that is, around 4 %. Following definitive disclosure, another interested party commented also that a mere 4 % market share of the Chinese imports precluded a finding of causation.
- (113) These allegations were already dealt with in recitals (177) to (188) of the provisional Regulation. Furthermore, concerning the market share, recital (77) of the provisional Regulation stated that the total market share of the Chinese imports into the Union increased more than five times during the period considered.

⁽¹⁾ Council Regulation (EC) No 926/2009 of 24 September 2009 imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of certain seamless pipes and tubes of iron or steel originating in the People's Republic of China (OJ L 262, 6.10.2009, p. 19).

- (114) According to the complainant it would be appropriate to cumulate the effects of the dumped imports from China with the dumped imports of five other countries covered by an investigation, which is currently ongoing. Following definitive disclosure, the complainant reiterated this point.
- (115) The Commission did not find it possible in this case to cumulate the dumped imports by merging the two investigations. The concept of imports being ‘simultaneously subject to anti-dumping investigations,’ under Article 3(4) of the basic Regulation requires either imports that are under the same investigation or imports that are under two different investigations running simultaneously and that have the same or largely overlapping investigation periods. In the present case, both investigations have different investigation periods, with a six-month overlap of the IP only.
- (116) In view of the above, the Commission confirmed its conclusions set out in recitals (197) to (198) of the provisional Regulation.

6. UNION INTEREST

6.1. Interest of the Union industry

- (117) In the absence of any comments regarding the interest of the Union industry, the conclusion reached in recital (203) of the provisional Regulation was confirmed.

6.2. Interest of importers

- (118) In the absence of any comments regarding the interest of importers, the Commission confirmed its conclusion reached in recital (204) of the provisional Regulation as well.

6.3. Interest of users

- (119) Following provisional disclosure, some users claimed that it would not be in the Union interest to impose anti-dumping measures against the country concerned. They alleged that anti-dumping measures would be against the interests of users because they would:
- (a) have an anti-competitive effect; and
 - (b) lead to greater volumes of imports of downstream products manufactured in third countries.
- (120) The allegation that anti-dumping measures would have an anti-competitive effect was already dealt with in recitals (205) to (212) of the provisional Regulation. The allegation that anti-dumping measures on the product concerned would lead to greater volumes of imports of downstream products manufactured in third countries was not supported with substantive additional information. Thus, the Commission rejected this argument.
- (121) The Italian user who cooperated during the investigation argued that recital (210) of the provisional Regulation should be complemented by indicating also the impact of anti-dumping measures on its profit margin. In this respect, the Italian user mentioned that — under the assumption of an anti-dumping duty of 22,6 % — his pre-tax profit would decrease by 2,3 percentage points. As a result, it concluded that the imposition of anti-dumping measures would have a significant impact on its profitability and, a fortiori, on the other smaller unrelated users which are active in processing the product concerned. The Commission acknowledged that anti-dumping duties will have a negative effect on the profitability of the Italian user. Nevertheless, the Commission also noted that the user is not exclusively dependent on Chinese imports, but also purchased the product concerned during the investigation period from Union producers as well as from other producers in third countries. In addition, its profitability would remain positive, albeit at a lower level.
- (122) Following definitive disclosure, the complainant argued that the results of this Italian user in terms of growth and profits are in stark contrast to those of the Union producers, which are suffering heavy losses. The Commission considered that this argument did not change the analysis on the impact on users. Rather, the Union producer's interests were already taken into account as set out in Section 6.1.
- (123) Lastly, the Commission could not assess the impact of the imposition of measures on other users, since they did not cooperate during this investigation.

- (124) In view of the above and absent any other comments, the Commission confirmed its conclusion reached in recital (213) of the provisional Regulation.

6.4. Conclusion on Union interest

- (125) In the absence of any other comments concerning the Union interest, the conclusions reached in recitals (214) to (217) of the provisional Regulation were confirmed.

7. DEFINITIVE ANTI-DUMPING MEASURES

7.1. Injury elimination level

- (126) The Commission chose to provisionally establish the target profit at 7 % based on an OECD study, which simulated how the recovery of the Union industry from the recession caused by the economic and financial crisis in 2009 would have developed. After the imposition of provisional measures and as mentioned in recital (224) of the provisional Regulation, the Commission further looked into this issue not only in view of the comments received following disclosure, but also by requesting and analysing more information in this respect.
- (127) Following provisional and definitive disclosure, several parties made comments on the 7 % target profit. One interested party claimed that it was far too low, whereas another interested party submitted that it was excessive.
- (128) Eurofer considered that the 7 % target profit was far too low. Firstly, it maintained that the most appropriate method to determine the profit margin was either relying on the data from the previous investigation on hot-rolled flat products (in 2000), or relying on the profitability achieved by the steel industry during the year 2008. Basing the target profit on the profits achieved in the year 2000 would lead to a target profit of 12,9 %, whereas basing it on the achieved profits during the year 2008 would lead to a target profit of 14,4 %. Eurofer alleged that in the context of no technological and financial changes in the Union since 2000, using the profits achieved in that 2000 would be appropriate. Using the profits achieved in 2008 would be another option, since the Commission verified profitability data for a period of 10 years, including the year 2008, which was the year before the onset of the financial crisis. Eurofer added that the target profit should not derive from years affected either by the economic crisis or by dumped imports from the country concerned. Secondly, if the Commission rejected both approaches, Eurofer claimed that the target profit supported by the OECD's 2013 study should be adjusted in light of the actual results achieved during the IP by the European HRF industry. This would then lead to a reasonable profit margin of 10 %.
- (129) As explained in recital (220) of the provisional Regulation, the investigation established that basing the target profit on the profits achieved in the year 2000 is not a reasonable option. Even under the unlikely assumption that — as Eurofer alleges — there were no technological and financial changes in the Union since the year 2000, there have been at least some changes in the size of the Union market since 2000 as a result of the growing number of Member States during the period 2000-2016. Second, for the reasons as explained in recital (222) of the provisional Regulation, to base the target profit on the profits achieved in the year 2008 is also not an appropriate option, mainly because a threat of injury case requires rather a prospective analysis. Finally, Eurofer's request to increase the target profit from 7 % to 10 % — in case the target profit would not be based on either the year 2000 or the year 2008 — was not sufficiently substantiated.
- (130) The Chinese exporting producer Hebei Iron & Steel Group ⁽¹⁾ and its related importer Duferco S.A. submitted that using a 7 % target profit was excessive, inappropriate and inaccurate for the following reasons: First, it reflects an estimate of earnings which is fraught with uncertainty and of which the underlying parameters have changed in the meantime. Second, it reflects a profitability needed for the survival of the global Union steel industry, not specifically of the Union steel producers of the product concerned. Third, since the Commission had provisionally determined that imports were dumped in 2015, there was *a contrario* no dumping in the years 2012-2014, whereby profits were achieved during the latter period ranging between – 3,3 % (loss) and 0,4 % (profit). In the alternative, assuming that there was dumping during the years 2012-2014, the most recent year in which there is no evidence of dumped imports of the product concerned is the year 2011 in which profits were

⁽¹⁾ As explained in recital (168) below, 'Hebei Iron & Steel Group' changed its name to 'Hesteel Group Co., Ltd' during the investigation. Its related companies have also changed their names. The Commission duly acknowledged these name changes and adapted Article 1 paragraph 2 accordingly.

achieved amounting to 3,11 % on average. Moreover, following definitive disclosure, the same Chinese exporting producer alleged that this approach was manifestly in violation of Court's case law, since it accounted for other factors than dumping and rather is meant to ensure the survival of the Union steel industry.

- (131) First, in the Commission's view, the interested party did not substantiate its allegations that the underlying parameters which are at the basis of the study used to determine the 7 % target profit had changed in the meantime.
- (132) Second, the interested party also argued that the study reflects on a profitability needed for the survival of the global Union steel industry, not specifically of the Union steel producers of the product concerned. In this respect, as already set out in recital (223) of the provisional Regulation, absent any other reliable data, the Commission equated these figures made for the steel industry as a whole to the product concerned, as HRF makes up a big proportion of the crude steel production.
- (133) Third, concerning the remark to either use profitability data from the period 2012-2014 or from the year 2011, this does not seem appropriate. The target profit is the price which the Union industry could reasonably count on under normal conditions of competition, in the absence of the dumped imports. As mentioned in recital (106) of the provisional Regulation, the years 2012, 2013 and 2014 cannot be considered to be years under normal conditions of competition, given the aftermath of the Eurozone debt crisis, and the decline of steel demand in 2012. Furthermore, as found in the cold-rolled case ⁽¹⁾, data of 2011 cannot be relied upon due to the impact of the 2009 financial crisis which still impacted the profitability data two years later.
- (134) On the basis of the above the Commission confirmed that the 7 % target profit was the most appropriate basis in this threat of injury-case. This understanding is in line with the judgment of the Court ⁽²⁾ that the analysis of whether there is a threat of injury requires, by its very nature, a prospective analysis.

7.2. Definitive measures

7.2.1. Access to confidential data

- (135) The legal representative of a Chinese exporting producer claimed that the information disclosed in the provisional disclosure does not allow him commenting on the correctness and relevance of the Commission's findings concerning dumping margin, price effects and injury margin calculations, including whether the undercutting and underselling calculations took into account all of the sampled Union producers' sales, or only those for which there were sales of matching product types by the Chinese exporting producers. In this context, on 8 November 2016 the Chinese exporting producer requested clarifications. Moreover, on 8 November 2016 and following definitive disclosure, the Chinese exporting producer also requested access to certain confidential information. It suggested that this confidential information would only be accessed by the legal representatives, or in the alternative, to involve the Hearing Officer.
- (136) The Commission services replied on 8 December 2016 that the undercutting and underselling calculations took only into account the matching product types to compare the sales data of the Chinese exporting producer with the sales data from EU producers. In any case, the volume of comparable products sold by the Union industry represented 62 % of its total export volume. In this regard, products exported to the Union by this specific exporting producer could be matched with a comparable Union product. Furthermore, they informed the legal representative of that party that his request to access confidential information could not be accepted since the Commission is bound to protect the confidentiality of the data of the other interested parties. Since under current law there are no other means to protect the confidentiality and, at the same time, to provide parties with the requested information, the Commission services invited him to contact the Hearing Officer to have the latter to verify the confidential information.
- (137) In this context, following definitive disclosure, the complainant commented in this respect that the Commission is legally obliged to protect the confidential data submitted by all interested parties. It therefore refused to waive the protection granted to its confidential data by Article 19 of the Basic Regulation.

⁽¹⁾ OJ L 210, 4.8.2016, p. 1.

⁽²⁾ Judgment of The Court of Justice, 7 April 2016, case number C-186/14, recital 72, confirming the General Court's judgment of 29 January 2014, on case T-528/09, Hubei Xinyegang Steel Co. Ltd versus Council of the European Union, recital 71.

- (138) Under current Union law, as interpreted by the case-law, it is not legally possible to grant access to the confidential data provided by an interested party to any other party, unless with the consent of the provider of the data, or in case of litigation before the Union Courts. The only alternative is the control mechanism provided by Article 15 of the Decision of the President of the Commission of 29 February 2012 on the function and terms of reference of the Hearing Officer ⁽¹⁾. A hearing in the presence of the Hearing Officer took place on 7 February 2017, discussing the legal framework concerning access to confidential data.

7.2.2. Request for further clarifications following definitive disclosure

- (139) Following definitive disclosure, the legal representative of the same Chinese exporting producer was first heard on 12 January 2017 to discuss in detail its requested clarifications. After this meeting, he reiterated in its written submission of the same day his request to be provided with information about the injury calculations ‘to understand the nature and extent of the price effects that allegedly exist’.
- (140) On 18 January 2017, the Commission services provided in a separate letter all clarifications to the extent possible — i.e. without violating the legal obligation of the basic regulation to protect confidential data — which the legal representative of this Chinese exporting producer had requested. Furthermore, the Commission noted that there is 100 % matching between the 10 product types of the product concerned sold by this Chinese exporting producer and those sold by the Union producers. Moreover, only one out of the 10 product types represents about 75 % of his total sales volumes in the Union during the IP.

7.2.3. Including a so-called ‘importers margin’ in the calculation of underselling and undercutting margins

- (141) Following provisional and definitive disclosure, one Chinese exporting producer challenged the way the Commission had calculated the injury margin. This interested party alleged that the Chinese sales prices must be adjusted by a so-called ‘importers margin’, i.e. including customs clearance, handling, financing, SG&A, and profit (in an amount of 5 %). As such, the importer ex-warehouse price would include similar cost elements to those of the Union industry’s corresponding ex-works selling price. Furthermore, the interested party alleged that the Commission took a mere landed price (that is, without any adjustment for SG&A and profit) which is not sufficient to carry out an appropriate comparison between the respective prices of Chinese exporting producers and Union producers for undercutting and underselling calculations. To support its point, the interested party referred to two provisional Regulations, both dating from over 20 years ago. This Chinese exporting producer also alleged that the Commission had disregarded the fact that the export price at the Union frontier level would be affected by the relationship between the exporter and the importer. By doing so, the Commission would end up using, in fine, the transfer price between the related companies as a basis for the comparison with the ex-factory prices of the Union industry.
- (142) The Commission rejected this claim, for the following reason: the purpose of calculating an injury margin is to determine whether imposing a lower (than the one based on the dumping margin) duty rate to the export price of the dumped imports would be sufficient to remove the injury caused by the dumped imports. This assessment should be based on the export price at the Union frontier level which is considered to be a level comparable to the Union industry ex-works price. The methodology followed by the Commission to compare data of the Chinese exporting producers and Union producers for undercutting and underselling calculations ensures that both exporting and Union producers receive on the contrary equal treatment: The Commission considered that the determination of the relevant import price for undercutting and underselling calculations should not be influenced by whether the exports are made to related or independent operations in the Union. To that end, the relevant price to be taken into account is the price at which the product concerned is sold to the Union, and not the price at which the imported materials are then resold by importing producers in the Union. Moreover, the Commission refers to recital (144) of this Regulation. Therefore, the Commission considered that its approach was accurate.

7.2.4. Reliance by analogy on Article 2(9) of the basic Regulation

- (143) The complainant commented that the Commission should apply Article 2(9) of the basic Regulation when determining export prices for sales made via related importers in the context of the injury margin calculation. This interested party also commented that, unlike the cold rolled case, the provisional disclosure did not explicitly confirm that this methodology was used.

⁽¹⁾ OJ L 107, 19.4.2012, p. 5.

- (144) The Commission confirmed that the purpose of calculating an injury margin is to determine whether imposing a lower duty rate (than the one based on the dumping margin) to the export price of the dumped imports would be sufficient to remove the injury caused by the dumped imports. This assessment should be based on the export price at the Union frontier level which is considered to be a level comparable to the Union industry ex-works price. In the case of export sales via related importers, the export price is constructed on the basis of the resale price to the first independent customer duly adjusted pursuant to Article 2(9) of the basic Regulation. As the export price is an indispensable element in the injury margin calculation and as this provision of the basic Regulation is the only provision which gives guidance on the construction of the export price, the application of this provision by analogy is justified.
- (145) Following definitive disclosure, CISA argued that it was surprised that the Commission applied by analogy Article 2(9) of the basic Regulation. It alleged that such application was in breach of Article 2(9) of the basic Regulation itself, and vitiated by a manifest error of assessment. It also alleged that at least one sampled Chinese exporting producer was exporting via related importers and that consequently its definitive duty rate would be overstated.
- (146) First, the Commission reiterated that Article 2(9) of the basic Regulation is the only provision of the basic Regulation which gives guidance on the construction of the export price. Therefore its application is justified in the framework of calculating an injury margin. Second, contrary to what is alleged, it is Commission's practise in recent cases to consistently ⁽¹⁾ apply Article 2(9) of the basic Regulation by analogy in the framework of calculating an injury margin. Third, the purpose of the injury margin calculations is not to measure to what extent the sales of the related importers are causing injury to the Union producers, but rather whether the exports from the Chinese exporting producer have such detrimental effect through undercutting and underselling the prices of Union producers. To that end, the relevant price to be taken into account is the price at which the product concerned is sold to the Union, and not the price at which the imported materials are then resold by importing producers in the Union. In conclusion, the Commission confirmed that it has used this methodology when determining export prices for sales made via related importers.

7.2.5. *The period to be used for the injury margin calculation in a threat of injury-case*

- (147) The complainant criticised the fact that the Commission had provisionally applied a standard material injury approach by taking the average injury margin over the whole IP (i.e. 2015). It alleged that this is not a correct approach, since the threat of injury margin needs to reflect the threat, and when the threat materialises later on during the IP, the injury margin must reflect the concrete impact of the threat. In order to effectively remove the impact of the threat of injury the Commission should look at those parts of the IP where the threat of injury started to materialise. In this context, the complainant referred to the fact that the threat of injury started to impact the Union steel industry from the second half of 2015 onwards. Therefore, only the second half of 2015 should be used for calculating underselling and undercutting margins. The complainant also mentioned that threat of injury cases are aimed at allowing the Commission to act effectively and preventively before the threat of injury has caused injury. If the Commission would not be inclined to change its method of calculating the (threat of) injury margin, industries would have to wait longer, until they suffer material injury for a full year, to request protection from dumped imports in order to obtain a realistic injury margin. Such behaviour would be at the detriment of jobs and industrial activities on the Union market, and it would also undermine the objectives of the threat-of-injury complaints.
- (148) After a detailed analysis of the arguments of the complainant, the Commission recalled that it had provisionally concluded that there was a clearly foreseeable and imminent change in circumstances at the end of the investigation period, which would create a situation in which the dumping will cause injury. In this respect, the Commission referred, inter alia, to recitals (157), (159) and (198) of the provisional Regulation stating that 'while the Union industry was recovering during 2014 and the first two quarters of 2015, almost all injury indicators started to fall dramatically during the second half of 2015. The investigation revealed that this negative trend, which started in the second half of 2015, was not invalidated during the first half of 2016.' It further provided in recital (163) of the provisional Regulation that 'In view of the coincidence in time between, on the one hand,

⁽¹⁾ For instance, one can refer to the following cases:

- Council Implementing Regulation (EU) No 217/2013 of 11 March 2013, imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of certain aluminium foils in rolls originating in the People's Republic of China (OJ L 69, 13.3.2013, p. 11),
- Commission Implementing Regulation (EU) 2015/1953 of 29 October 2015 imposing a definitive anti-dumping duty on imports of certain grain-oriented flat-rolled products of silicon-electrical steel originating in the People's Republic of China, Japan, the Republic of Korea, the Russian Federation and the United States of America (OJ L 284, 30.10.2015, p. 109).

the ever-increasing level of dumped imports at continuously decreasing prices and, on the other hand, the Union industry's loss of market share and price depression resulting in further losses, in particular from the second half of 2015 onwards, the Commission concluded that the dumped imports had a negative impact on the situation of the Union industry.'

- (149) Second, as to the substance of the matter, the Commission established that, as laid out in recital (157) of the provisional Regulation, the negative trend started in the second half of 2015 and led to a clearly foreseeable and imminent change in circumstances at the end of the investigation period, which would create a situation in which the dumping would cause injury, if no measures were taken. This is in line with what was stated by the Commission in recital (113) of the provisional Regulation that 'the Union producers could partly recover during 2014 and the first half of 2015'. As a result, the second half of 2015 better reflects the actual impact of the threat of injury to the Union industry that should be removed.
- (150) Third, the Court held that the analysis of post-investigation period data is particularly appropriate in an investigation to determine whether there is a threat-of-injury which, by its very nature, requires a prospective analysis. For the Commission, the second half of 2015 seems to better respond to this requirement, as it is closer to future developments than the full IP.
- (151) Fourth, a calculation on the basis of a full investigation period, irrespective whether there were signs of negative trends, would undermine the objective of a threat of injury-case to act effectively and preventively before the threat of injury has caused injury.
- (152) For all the reasons above, the Commission accepted the view that the period for calculating the injury margins in this particular case should be based on the second half of 2015 and not on the entire investigation period.
- (153) As a result, the Commission requested additional data to cooperating producers. It received additional quarterly IP data on the cost of production per product type from the sampled Union producers and verified these data afterwards. The verifications concerned solely the additional data provided which were not requested before and ensured that the data on which the Commission eventually based its findings were reliable.
- (154) As the level of cooperation was considered high, the definitive injury margin for the PRC, applicable to non-sampled cooperating exporting producers, was calculated as the average of the three sampled exporting producers/groups of companies. The definitive injury margin for the PRC, applicable to non-cooperating exporting producers, was established at the level of the highest margin of the three cooperating companies/groups of companies.
- (155) Following definitive disclosure, CISA commented that the full IP was used as a basis to calculate the Union industry target's unit price, whereas only 6 months of the IP was used to calculate the Union free circulation unit sales price of the Chinese exporting producers, belonging to the Shagang group. As a result, CISA requested the Commission to recalculate both elements using the available data for the same period.
- (156) After analysis, this comment was found to be accurate. The Commission therefore recalculated the Union industry's target unit price for the Chinese exporting producers, belonging to the Shagang group, using as such the cost of production-data for the same period (second half of 2015) as the period used for the calculation of the Union free circulation unit sales price of all Chinese exporting producers.
- (157) The revised calculation led to the finding that the injury margins for the companies belonging to the Shagang Group went down from 36,6 % to 35,9 %
- (158) Furthermore, the Commission reviewed the initial calculations of the injury margins for the two other Chinese exporting producers. Whereas the initial calculation for the Hebei-group was assessed to be correct, the review of the initial calculation for Bengang Steel Plates Co., Ltd showed that it contained the following clerical errors:

— One product type was found to be wrongly excluded from the initial calculation. As a result, the revised calculation included this product type since this product type was both sold by the Union producers and by Bengang Steel Plates Co., Ltd.

— A few values in the data of the Union industry had been wrongly linked in the calculation sheet.

As a result of the abovementioned effects, the injury margin for this Chinese exporting producer increased to 28,1 % (instead of 25,5 %).

- (159) The revised calculation of the Union industry's target unit price was communicated to both the Shagang group and Bengang Steel Plates Co., Ltd on 16 January 2017. Since the only element which changed compared to the Commission's definitive disclosure dated 22 December 2016 was the Union industry's target price, both interested parties were asked to comment concerning these limited additional disclosures by 18 January 2017. No comments, though, came in by that date.
- (160) Following definitive disclosure, one Chinese exporting producer also commented that it was not persuaded by the reasons given that using only data covering the second half of 2015 would reflect more properly the situation of the impact of the threat. It also alleged that any selective use of the period for the purpose of the injury margin calculation would make the comparison of the dumping and injury margins for the purpose of the 'lesser-duty rule' illogic and distortive, and leading to higher margins than in case the full year of 2015 would have been used. Consequently, it requested the Commission to use a period of 12 months to calculate the injury margin, similar to the period used to calculate the dumping margins. Similar comments were received from the Italian user, who added that the selective use of information relating to part of the IP does not allow for an objective assessment of the injury elimination level in the present case.
- (161) A similar comment was received by CISA and by two Chinese exporting producers, both alleging that the choice of a six months' period is a breach of legal certainty and legitimate expectations. In this respect, whereas the other Chinese exporting producer alleged mainly that limiting the data set to a mere six months period cannot qualify as positive evidence within the meaning of Article 3(2) of the basic Regulation, CISA referred to point 5.1 of the Notice of Initiation stating that 'the investigation of dumping and injury will cover the period from 1 January 2015 to 31 December 2015 and the case-law'.
- (162) Moreover, one Chinese exporting producer also mentioned that it is the Commission's established practice to refrain from using data referring to only part of the investigation period and that the methodology applied in this case is not in line with the WTO Anti-Dumping Committee's recommendation that 'the period of data collection...should include the entirety of the period of data collection for the dumping investigation.'
- (163) The Commission rejected all these arguments as follows. First, the determination of dumping and injury is made on the basis of an investigation period and a period considered defined in line with the relevant provisions of the basic Regulation and announced in the Notice of Initiation. On the other hand, the basic Regulation does not provide any specific method for the calculation of the injury margin used for the application of the lesser-duty rule. Second, the basic regulation also does not provide specific criteria for the definition of the period during which the parameters for the calculation of the injury margin are assessed. In the present case, the Commission considered that the period chosen reflects the specificity of the case and is appropriate in the context of a prospective analysis. Moreover, the Commission used for the injury margin calculation the same 6-months period for comparing the export price and the target price to ensure an objective assessment.
- (164) Taking into account the issues mentioned above in recitals (135) to (163) above, and absent any other comments, the definitive injury margins were recalculated using the data for the second half of 2015. These definitive margins expressed as a percentage of the CIF Union frontier price, duty unpaid, are as follows. Also shown here are definitive duty rates.

Table 7

Definitive Margins and Duty Rates

Chinese exporting producers	Definitive dumping margin	Definitive injury margin	Definitive duty rate
Bengang Steel Plates Co., Ltd	97,3 %	28,1 %	28,1 %
Hesteel Group Co., Ltd	95,5 %	18,1 %	18,1 %

Chinese exporting producers	Definitive dumping margin	Definitive injury margin	Definitive duty rate
Jiangsu Shagang Group	106,9 %	35,9 %	35,9 %
Other cooperating companies	100,5 %	27,3 %	27,3 %
All other companies	106,9 %	35,9 %	35,9 %

- (165) The abovementioned injury margins were rounded down, where appropriate, to the nearest tenth of a digit following comments from an exporting producer after the definitive disclosure.
- (166) The individual company anti-dumping duty rates specified in this Regulation were established on the basis of the findings of the present investigation. Therefore, they reflect the situation found during this investigation with respect to these companies. These duty rates (as opposed to the country-wide duty applicable to 'all other companies') are thus exclusively applicable to imports of product concerned originating in the country concerned and produced by the companies and thus by the specific legal entities mentioned. Imported product concerned produced by any other company whose name is not specifically mentioned in the operative part of this Regulation, including entities related to those specifically mentioned, should not benefit from these rates and should be subject to the duty rate applicable to 'all other companies'.
- (167) Any claim requesting the application of these individual company anti-dumping duty rates (for example following a change in the name of the entity or following the setting-up of new production or sales entities) should be addressed to the Commission (*) with all relevant information, in particular any modification in the company's activities linked to production, domestic and export sales associated with, for example, that name change or that change in the production and sales entities. If appropriate, the present Regulation will be amended accordingly by updating the list of companies benefiting from individual duty rates.
- (168) 'Hebei Iron & Steel Group Co., Ltd' changed its name to 'Hesteel Group Co., Ltd' during the investigation. Some of its related companies have also changed their names. The Commission duly acknowledged these name changes and adapted Article 1 paragraph 2 accordingly.
- (169) In order to minimise the risks of circumvention, it is considered that special measures are needed in this case to ensure the proper application of the anti-dumping measures. These special measures include the following: the presentation to the customs authorities of the Member States of a valid commercial invoice which shall conform to the requirements set out in Article 1(3) of this Regulation. Imports not accompanied by such an invoice shall be made subject to the duty rate applicable to all other companies.

7.3. Release of the provisional duties

- (170) Following definitive disclosure, one interested party claimed that the Commission cannot definitively collect the provisional duties pursuant to Article 10(2) of the basic Regulation unless it is demonstrated that in the absence of provisional measures, the situation would have developed into material injury before the adoption of definitive measures.
- (171) In light of the findings in the present case, the Commission considers that, pursuant to Article 10(2) of the basic Regulation, the amounts secured by way of the provisional anti-dumping duty, imposed by the provisional Regulation, should be released.
- (172) The measures provided for in this Regulation are in accordance with the opinion of the Committee established by Article 15(1) Regulation (EU) 2016/1036,

(*) European Commission, Directorate-General for Trade, Directorate H, 1049 Brussels, Belgium.

HAS ADOPTED THIS REGULATION:

Article 1

1. A definitive anti-dumping duty is imposed on imports of imports of certain flat-rolled products of iron, non-alloy steel or other alloy steel, whether or not in coils (including 'cut-to-length' and 'narrow strip' products), not further worked than hot-rolled, not clad, plated or coated, originating in the People's Republic of China.

The product concerned does not include:

- products of stainless steel and grain-oriented silicon electrical steel,
- products of tool steel and high-speed steel,
- products, not in coils, without patterns in relief, of a thickness exceeding 10 mm and of a width of 600 mm or more, and
- products, not in coils, without patterns in relief, of a thickness of 4,75 mm or more but not exceeding 10 mm and of a width of 2 050 mm or more.

The product concerned is currently falling within CN codes 7208 10 00, 7208 25 00, 7208 26 00, 7208 27 00, 7208 36 00, 7208 37 00, 7208 38 00, 7208 39 00, 7208 40 00, 7208 52 10, 7208 52 99, 7208 53 10, 7208 53 90, 7208 54 00, 7211 13 00, 7211 14 00, 7211 19 00, ex 7225 19 10 (TARIC code 7225 19 10 90), 7225 30 90, ex 7225 40 60 (TARIC code 7225 40 60 90), 7225 40 90, ex 7226 19 10 (TARIC code 7226 19 10 90), 7226 91 91 and 7226 91 99.

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

Country	Company	Definitive duty rate	TARIC Additional Code
PRC	Bengang Steel Plates Co., Ltd	28,1 %	C157
	Handan Iron & Steel Group Han-Bao Co., Ltd	18,1 %	C158
	Hesteel Co., Ltd Tangshan Branch ⁽¹⁾	18,1 %	C159
	Hesteel Co., Ltd Chengde Branch ⁽²⁾	18,1 %	C160
	Zhangjiagang Hongchang Plate Co., Ltd	35,9 %	C161
	Zhangjiagang GTA Plate Co., Ltd	35,9 %	C162
	Other cooperating companies listed in Annex I	27,3 %	See the Annex
	All other companies	35,9 %	C999

⁽¹⁾ Formerly 'Hebei Iron & Steel Co., Ltd. Tangshan Branch'.

⁽²⁾ Formerly 'Hebei Iron & Steel Co., Ltd. Chengde Branch'.

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

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

5. Where any new exporting producer in the People's Republic of China provides sufficient evidence to the Commission that:

- (1) it did not export to the Union the product described in paragraph 1 in the period between 1 January 2015 and 31 December 2015 (investigation period);
 - (2) it is not related to any exporter or producer in the People's Republic of China which is subject to the anti-dumping measures imposed by this Regulation;
 - (3) it has actually exported to the Union the product concerned after the investigation period on which the measures are based, or it has entered into an irrevocable contractual obligation to export a significant quantity to the Union,
- paragraph 2 may be amended by adding the new exporting producer to the cooperating companies not included in the sample and thus subject to an individual duty not exceeding the weighted average duty of 27,3 %.

Article 2

The amounts secured by way of the provisional anti-dumping duties pursuant to Commission Implementing Regulation (EU) 2016/181 ⁽¹⁾ shall be definitively released.

Article 3

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

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

Done at Brussels, 5 April 2017.

For the Commission

The President

Jean-Claude JUNCKER

⁽¹⁾ Commission Implementing Regulation (EU) 2016/181 of 10 February 2016 imposing a provisional anti-dumping duty on imports of certain cold-rolled flat steel products originating in the People's Republic of China and the Russian Federation (OJ L 37, 12.2.2016, p. 1).

ANNEX

Country	Name	TARIC additional code
People's Republic of China	Angang Steel Company Limited	C150
	Inner Mongolia Baotou Steel Union Co., Ltd	C151
	Jiangyin Xingcheng Special Steel Works Co., Ltd	C147
	Shanxi Taigang Stainless Steel Co., Ltd	C163
	Shougang Jingtang United Iron & Steel Co., Ltd	C164
	Maanshan Iron & Steel Co., Ltd	C165
	Rizhao Steel Wire Co., Ltd	C166
	Rizhao Baohua New Material Co., Ltd	C167
	Tangshan Yanshan Iron and Steel Co., Ltd	C168
	Wuhan Iron & Steel Co., Ltd	C156

COMMISSION IMPLEMENTING REGULATION (EU) 2017/650**of 5 April 2017****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, 5 April 2017.

*For the Commission,
On behalf of the President,*

Jerzy PLEWA

Director-General

Directorate-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	EG	350,6
	MA	112,2
	SN	284,4
	TN	214,0
	TR	112,4
	ZZ	214,7
0707 00 05	TR	155,6
	ZZ	155,6
0709 93 10	MA	53,1
	TR	148,4
	ZZ	100,8
0805 10 22, 0805 10 24, 0805 10 28	EG	54,9
	IL	78,6
	MA	48,3
	TN	55,5
	TR	75,1
	ZZ	62,5
	ZZ	62,5
0805 50 10	TR	74,4
	ZZ	74,4
0808 10 80	BR	110,7
	CL	108,0
	CN	161,4
	US	133,8
	ZA	111,7
	ZZ	125,1
0808 30 90	AR	121,6
	CL	154,7
	CN	90,2
	ZA	127,9
	ZZ	123,6
	ZZ	123,6

⁽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

COUNCIL DECISION (EU) 2017/651

of 3 April 2017

appointing a member, proposed by the Kingdom of the Netherlands, of the Committee of the Regions

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 305 thereof,

Having regard to the proposal of the Dutch Government,

Whereas:

- (1) On 26 January 2015, 5 February 2015 and 23 June 2015, the Council adopted Decisions (EU) 2015/116 ⁽¹⁾, (EU) 2015/190 ⁽²⁾ and (EU) 2015/994 ⁽³⁾ appointing the members and alternate members of the Committee of the Regions for the period from 26 January 2015 to 25 January 2020.
- (2) A member's seat on the Committee of the Regions has become vacant following the end of the mandate on the basis of which Ms A. (Annemiek) JETTEN (*Mayor of Sluis*) was proposed,

HAS ADOPTED THIS DECISION:

Article 1

The following is hereby appointed as a member of the Committee of the Regions for the remainder of the current term of office, which runs until 25 January 2020:

— Ms A. (Annemiek) JETTEN, *Mayor of the municipality of Vlaardingen* (change of mandate).

Article 2

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

Done at Luxembourg, 3 April 2017.

For the Council

The President

R. GALDES

⁽¹⁾ Council Decision (EU) 2015/116 of 26 January 2015 appointing the members and alternate members of the Committee of the Regions for the period from 26 January 2015 to 25 January 2020 (OJ L 20, 27.1.2015, p. 42).

⁽²⁾ Council Decision (EU) 2015/190 of 5 February 2015 appointing the members and alternate members of the Committee of the Regions for the period from 26 January 2015 to 25 January 2020 (OJ L 31, 7.2.2015, p. 25).

⁽³⁾ Council Decision (EU) 2015/994 of 23 June 2015 appointing the members and alternate members of the Committee of the Regions for the period from 26 January 2015 to 25 January 2020 (OJ L 159, 25.6.2015, p. 70).

COMMISSION DECISION (EU) 2017/652**of 29 March 2017****on the proposed citizens' initiative entitled 'Minority SafePack — one million signatures for diversity in Europe'***(notified under document C(2017) 2200)***(Only the English text is authentic)**

THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EU) No 211/2011 of the European Parliament and of the Council of 16 February 2011 on the citizens' initiative ⁽¹⁾, and in particular Article 4 thereof,

Whereas:

- (1) By Commission Decision C(2013) 5969 of 13 September 2013 registration of the proposed citizens' initiative entitled 'Minority SafePack — one million signatures for diversity in Europe' was refused. The General Court of the European Union in its judgment of 3 February 2017 (case T-646/13) annulled that Decision, on the ground that the Commission has failed to comply with its obligation to state reasons by not indicating those of the measures which, among those set out in the annex to the proposed ECI, did not fall within its competence, nor the reasons in support of that conclusion. In order to take the necessary measures to comply with the judgment of the General Court a new Commission Decision on the request for registration of the proposed citizens' initiative has to be adopted.
- (2) The subject matter of the proposed citizens' initiative entitled 'Minority SafePack — one million signatures for diversity in Europe' refers to the following 'We call upon the EU to improve the protection of persons belonging to national and linguistic minorities and strengthen cultural and linguistic diversity in the Union'.
- (3) The objectives of the proposed citizens' initiative refer to the following 'We call upon the EU to adopt a set of legal acts to improve the protection of persons belonging to national and linguistic minorities and strengthen cultural and linguistic diversity in the Union. It shall include policy actions in the areas of regional and minority languages, education and culture, regional policy, participation, equality, audiovisual and other media content, and also regional (state) support'.
- (4) The annex to the proposed citizens' initiative mentions specifically 11 legal acts of the Union for which the proposed citizens' initiative aims, in essence, at proposals from the Commission, namely:
 - (a) a recommendation of the Council 'on the protection and promotion of cultural and linguistic diversity in the Union' on the basis of the second indent of Article 167(5) TFEU and the second indent of Article 165(4) TFEU;
 - (b) a decision or a regulation of the European Parliament and of the Council on the basis of the first indent of Article 167(5) TFEU and the first indent of Article 165(4) TFEU, the subject matter of which is to adapt 'funding programmes so that they become accessible for small regional and minority language communities';
 - (c) a decision or a regulation of the European Parliament and of the Council on the basis of the first indent of Article 167(5) TFEU and the first indent of Article 165(4) TFEU, the subject matter of which is to create a centre for linguistic diversity that will strengthen awareness of the importance of regional and minority languages and will promote diversity at all levels and be financed mainly by the European Union;
 - (d) a regulation of the European Parliament and of the Council on the basis of Articles 177 TFEU and 178 TFEU, the subject matter of which is to adapt the common provisions relating to EU regional funds in such a way that the protection of minorities and the promotion of cultural and linguistic diversity are included therein as thematic objectives;

⁽¹⁾ OJ L 65, 11.3.2011, p. 1.

- (e) a regulation of the European Parliament and of the Council on the basis of Articles 173(3) TFEU and 182(1) TFEU, the subject matter of which is to change the regulation relating to the 'Horizon 2020' programme for the purposes of improving research on the added value that national minorities and cultural and linguistic diversity may bring to social and economic development in regions of the EU;
 - (f) a Council directive, regulation or decision on the basis of Article 20(2) TFEU and Article 25 TFEU, for the purpose of strengthening within the EU the place of citizens belonging to a national minority, with the aim of ensuring that their legitimate concerns are taken into consideration in the election of Members of the European Parliament;
 - (g) effective measures to address discrimination and to promote equal treatment, including for national minorities, in particular through a revision of the existing Council directives on the subject of equal treatment, on the basis of Article 19(1) TFEU;
 - (h) the amendment of the EU legislation in order to guarantee approximately equal treatment for stateless persons and citizens of the Union, on the basis of Article 79(2) TFEU;
 - (i) a regulation of the European Parliament and of the Council on the basis of Article 118 TFEU, in order to introduce a unitary copyright so that the whole EU can be considered an internal market in the field of copyright;
 - (j) an amendment of Directive 2010/13/EU of the European Parliament and of the Council ⁽¹⁾, for the purpose of ensuring the freedom to provide services and the reception of audiovisual content in regions where national minorities reside, on the basis of Article 53(1) TFEU and Article 63 TFEU;
 - (k) a Council regulation or decision, with a view to the block exemption of projects promoting national minorities and their culture, on the basis of Article 109 TFEU, Article 108(4) TFEU or Article 107(3)(e) TFEU.
- (5) Legal acts of the Union for the purpose of implementing the Treaties can be adopted:
- in the areas of improvement of the knowledge and dissemination of the culture and history of the European peoples; conservation and safeguarding of cultural heritage of European significance; non-commercial cultural exchanges; and artistic and literary creation, including in the audiovisual sector,
 - in the fields of developing the European dimension in education, including inter alia through the teaching and dissemination of the languages of the Member States,
 - in defining the tasks, priority objectives and the organisation of the Structural Funds provided that the actions to be financed lead to the strengthening of the economic, social and territorial cohesion of the Union,
 - on specific measures in support of action taken in the Member States to achieve the objectives of speeding up the adjustment of industry to structural changes, encouraging an environment favourable to initiative and to the development of undertakings throughout the Union, particularly small and medium-sized undertakings, encouraging an environment favourable to cooperation between undertakings, fostering better exploitation of the industrial potential of policies of innovation, research and technological development,
 - in the area of research and technological development in the form of a multiannual framework programme establishing the scientific and technological objectives to be achieved by the Union's activities and fixing the relevant priorities, indicating the broad lines of such activities and fixing the maximum overall amount and the detailed rules for Union financial participation in the framework programme and the respective shares in each of the activities provided for,
 - in the area of rights of third-country nationals residing legally in a Member State, including the conditions governing freedom of movement and of residence in other Member States of the EU,

⁽¹⁾ Directive 2010/13/EU of the European Parliament and of the Council of 10 March 2010 on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services (Audiovisual Media Services Directive) (OJ L 95, 15.4.2010, p. 1).

- for the creation of European intellectual property rights to provide uniform protection of intellectual property rights throughout the Union and for the setting up of centralised Union-wide authorisation, coordination and supervision arrangements,
 - for the coordination of the provisions laid down by law, regulation or administrative action in Member States concerning the taking-up and pursuit of activities as self-employed person,
 - for determining the categories of aid granted by states exempted from the procedure provided for in Article 108(2) TFEU.
- (6) For those reasons, the proposed citizens' initiative, inasmuch as it aims at proposals from the Commission for legal acts of the Union for the purpose of implementing the Treaties as referred to in points (a)-(e) and (h)-(k) of recital 4 does not fall manifestly outside the framework of the Commission's powers to submit a proposal for a legal act of the Union for the purpose of implementing the Treaties in accordance with Article 4(2)(b) of the Regulation.
- (7) A legal act of the Union for the purpose of implementing the Treaties cannot be adopted for the purpose of strengthening within the EU the place of citizens belonging to a national minority, with the aim of ensuring that their legitimate concerns are taken into consideration in the election of Members of the European Parliament. Article 20(2) TFEU provides for the rights of the citizens of the Union. Those rights include the right to vote and to stand as candidates in elections to the European Parliament in the Member State of residence, under the same conditions as nationals of that State. Article 25 TFEU provides that on the basis of a report from the Commission the Council, acting unanimously in accordance with a special legislative procedure and after obtaining the consent of the European Parliament, may adopt provisions to strengthen or to add to the rights listed in Article 20(2) TFEU. However, the rights strengthened or added by such provisions must be directed against other Member States than that of which the Union citizen concerned is a national or against the Union institutions. Conversely, the legal act envisaged by the proposed citizens' initiative entitled 'Minority SafePack — one million signatures for diversity in Europe' contains no similar qualifications. Accordingly, it would also create rights enforceable against the Member State of which the Union citizen is a national. Therefore Article 25 and Article 20(2) TFEU cannot constitute legal bases for the adoption of a legal act of the Union for the purpose of implementing the Treaties 'for the purpose of strengthening within the EU the place of citizens belonging to a national minority, with the aim of ensuring that their legitimate concerns are taken into consideration in the election of Members of the European Parliament'. Inasmuch the legal act envisaged by the proposed citizens' initiative entitled 'Minority SafePack — one million signatures for diversity in Europe' would in essence regard the provisions necessary for the election of the Members of the European Parliament by direct universal suffrage, it is the latter institution which, in accordance with Article 223 TFEU, shall draw up a proposal to lay down these provisions, in accordance with a uniform procedure in all Member States or with principles common to all Member States. Therefore, the Commission is not empowered by the Treaties to submit a proposal for such a legal act.
- (8) A legal act of the Union for the purpose of implementing the Treaties cannot be adopted either as regards effective measures to address discrimination and to promote equal treatment, including for national minorities, in particular through a revision of the existing Council directives on the subject of equal treatment. Whilst irrespective of their field of action, the Union institutions are bound to respect 'cultural and linguistic diversity' in accordance with Article 3(3) TEU and to refrain from discrimination based on 'membership of a national minority' in accordance with Article 21(1) of the Charter of Fundamental Rights of the European Union none of these provisions constitutes a legal basis for whatever action by the institutions. Article 19 TFEU provides that without prejudice to the other provisions of the Treaties and within the limits of the powers conferred by them upon the Union, the Council, acting unanimously in accordance with a special legislative procedure and after obtaining the consent of the European Parliament may take appropriate action to combat discrimination based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation. However, this exhaustive list of grounds of discrimination does not include membership of a national minority. Therefore, Article 19 TFEU cannot constitute the legal basis for the adoption of a legal act of the Union for the purpose of implementing the Treaties proposals for 'effective measures to address discrimination and to promote equal treatment, including for national minorities'.
- (9) For those reasons, the proposed citizens' initiative, inasmuch as it aims at proposals from the Commission for legal acts of the Union for the purpose of implementing the Treaties as referred to in points (f) and (g) of recital 4 manifestly falls outside the framework of the Commission's powers to submit a proposal for a legal act of the Union for the purpose of implementing the Treaties in accordance with Article 4(2)(b) of the Regulation.

- (10) The Treaty on European Union (TEU) reinforces citizenship of the Union and enhances further the democratic functioning of the Union by providing, *inter alia*, that every citizen is to have the right to participate in the democratic life of the Union by way of a European citizens' initiative.
- (11) To this end, the procedures and conditions required for the citizens' initiative should be clear, simple, user-friendly and proportionate to the nature of the citizens' initiative so as to encourage participation by citizens and to make the Union more accessible.
- (12) The proposed citizens' initiative entitled 'Minority SafePack — one million signatures for diversity in Europe' should therefore be registered. Statements of support for this proposed citizens' initiative should be collected inasmuch as it aims at proposals from the Commission for legal acts of the Union for the purpose of implementing the Treaties as referred to in points (a)-(e) and (h)-(k) of recital 4,

HAS ADOPTED THIS DECISION:

Article 1

1. The proposed citizens' initiative entitled 'Minority SafePack — one million signatures for diversity in Europe' is hereby registered.
2. Statements of support for this proposed citizens' initiative may be collected, based on the understanding that it aims at proposals from the Commission for
 - a recommendation of the Council 'on the protection and promotion of cultural and linguistic diversity in the Union',
 - a decision or a regulation of the European Parliament and of the Council, the subject matter of which is to adapt 'funding programmes so that they become accessible for small regional and minority language communities',
 - a decision or a regulation of the European Parliament and of the Council, the subject matter of which is to create a centre for linguistic diversity that will strengthen awareness of the importance of regional and minority languages and will promote diversity at all levels and be financed mainly by the European Union,
 - a regulation adapting the general rules applicable to the tasks, priority objectives and the organisation of the Structural Funds in such a way that account is taken of the protection of minorities and the promotion of cultural and linguistic diversity provided that the actions to be financed lead to the strengthening of the economic, social and territorial cohesion of the Union,
 - a regulation of the European Parliament and of the Council, the subject matter of which is to change the regulation relating to the 'Horizon 2020' programme for the purposes of improving research on the added value that national minorities and cultural and linguistic diversity may bring to social and economic development in regions of the EU,
 - the amendment of the EU legislation in order to guarantee approximately equal treatment for stateless persons and citizens of the Union,
 - a regulation of the European Parliament and of the Council, in order to introduce a unitary copyright so that the whole EU can be considered an internal market in the field of copyright,
 - an amendment of Directive 2010/13/EU, for the purpose of ensuring the freedom to provide services and the reception of audiovisual content in regions where national minorities reside,
 - a Council regulation or decision, with a view to the block exemption of projects promoting national minorities and their culture from the procedure provided for in Article 108(2) TFEU.

Article 2

This Decision shall enter into force on 3 April 2017.

Article 3

This Decision is addressed to the organisers (members of the citizens' committee) of the proposed citizens' initiative entitled 'Minority SafePack — one million signatures for diversity in Europe', represented by Mr Hans Heinrich HANSEN and Mr Hunor KELEMEN acting as contact persons.

Done at Brussels, 29 March 2017.

For the Commission
Frans TIMMERMANS
First Vice-President

