

Official Journal of the European Union

L 155



English edition

Legislation

Volume 60

17 June 2017

Contents

II *Non-legislative acts*

REGULATIONS

- ★ **Commission Delegated Regulation (EU) 2017/1018 of 29 June 2016 supplementing Directive 2014/65/EU of the European Parliament and of the Council on markets in financial instruments with regard to regulatory technical standards specifying information to be notified by investment firms, market operators and credit institutions ⁽¹⁾** 1
- ★ **Commission Implementing Regulation (EU) 2017/1019 of 16 June 2017 imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of certain concrete reinforcement bars and rods originating in the Republic of Belarus** 6

DECISIONS

- ★ **Council Implementing Decision (EU) 2017/1020 of 8 June 2017 on the launch of automated data exchange with regard to vehicle registration data in Croatia** 21
- ★ **Commission Decision (EU) 2017/1021 of 10 January 2017 on State aid SA.44727 2016/C (ex 2016/N) which France is planning to implement in favour of the Areva group (notified under document C(2016) 9029) ⁽¹⁾** 23

⁽¹⁾ Text with EEA relevance.

EN

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

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

II

(Non-legislative acts)

REGULATIONS

COMMISSION DELEGATED REGULATION (EU) 2017/1018

of 29 June 2016

supplementing Directive 2014/65/EU of the European Parliament and of the Council on markets in financial instruments with regard to regulatory technical standards specifying information to be notified by investment firms, market operators and credit institutions

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

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

Having regard to Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU ⁽¹⁾, and in particular the third subparagraph of Articles 34(8) and the third subparagraph of Article 35(11) thereof,

Whereas:

- (1) It is important to specify the information that investment firms, market operators and, where required by Directive 2014/65/EU, credit institutions should notify to the competent authorities of their home Member State when they wish to provide investment services or perform investment activities as well as ancillary services in another Member State, in order to establish uniform information requirements and to benefit from the possibility to provide services throughout the Union.
- (2) The scope and the content of information to be communicated to the home competent authority by investment firms, credit institutions or market operators wishing to provide investment services or activates as well as ancillary activities or arrangements to facilitate access and trading vary according to the purpose and the form of the passport rights. For reasons of clarity it is therefore appropriate to define different types of passport notification for the purposes of this Regulation.
- (3) For the same reasons, it is also important to clarify the information that investment firms or market operators, operating a multilateral trading facility ('MTF'), or organised trading facility ('OTF'), should submit when they wish to facilitate, within the territory of another Member State, access to and trading on those systems by remote users, members or participants established in that other Member State.
- (4) Competent authorities of home and host Member States should receive updated information in case of any change in the particulars of a passport notification, including any withdrawal or cancellation of the authorisation to provide investment services and activities. That information should ensure those competent authorities are able to make an informed decision that is consistent with their powers and responsibilities.
- (5) Changes to the name, address and contact details of investment firms in the home Member State are to be considered relevant and should therefore be notified as a change of branch particulars notification or as a change of tied agent particulars notification.

⁽¹⁾ OJ L 173, 12.6.2014, p. 349.

- (6) It is important for competent authorities of the home and host Member State to cooperate in addressing the threat of money laundering. This Regulation, and in particular the communication of the investment firm's programme of operations, should facilitate the assessment and supervision by the competent authority of the host Member State of the adequacy of the systems and controls to prevent money laundering and terrorist financing of a branch established in its territory, including the skill, knowledge and good character of its money laundering reporting officer.
- (7) The provisions in this Regulation are closely linked, since they deal with notifications related to the exercise of the freedom to provide investment services and activities and the exercise of the right of establishment that apply to investment firms, market operators and, where foreseen, credit institutions. To ensure coherence between those provisions, which should enter into force at the same time, and to facilitate a comprehensive view and compact access to them by persons subject to those obligations, it is desirable to include all regulatory technical standards for notification of information required by Title II, Chapter III of Directive 2014/65/EU in a single Regulation.
- (8) For reasons of consistency and in order to ensure the smooth functioning of the financial markets, it is necessary that the provisions laid down in this Regulation and the related national provisions transposing Directive 2014/65/EU apply from the same date.
- (9) This Regulation is based on the draft regulatory technical standards submitted by ESMA to the Commission.
- (10) In accordance with Article 10 of Regulation (EU) No 1095/2010 of the European Parliament and of the Council ⁽¹⁾, the European Securities and Markets Authority (ESMA) has conducted open public consultations on such draft regulatory technical standards, analysed the potential related costs and benefits and requested the opinion of the Securities and Markets Stakeholder Group established in accordance with Article 37 of that Regulation,

HAS ADOPTED THIS REGULATION:

Article 1

Scope

1. This Regulation shall apply to investment firms and market operators operating a multilateral trading facility ('MTF') or an organised trading facility ('OTF').
2. This Regulation shall also apply to credit institutions, authorised under Directive 2013/36/EU of the European Parliament and of the Council ⁽²⁾, which provide one or more investment services or perform investment activities, and wish to use tied agents under the following rights:
 - (a) the right of freedom to provide investment services and activities in accordance with Article 34(5) of Directive 2014/65/EU;
 - (b) the right of establishment in accordance with Article 35(7) of Directive 2014/65/EU.

Article 2

Definitions

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

- (a) 'investment services and activities passport notification' means a notification made in accordance with Article 34(2) of Directive 2014/65/EU, or in accordance with Article 34(5) of Directive 2014/65/EU;

⁽¹⁾ Regulation (EU) No 1095/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Securities and Markets Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/77/EC (OJ L 331, 15.12.2010, p. 84).

⁽²⁾ Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC (OJ L 176, 27.6.2013, p. 338).

- (b) 'branch passport notification' or 'tied agent passport notification' means a notification made in accordance with Article 35(2) of Directive 2014/65/EU, or in accordance with Article 35(7) of Directive 2014/65/EU;
- (c) 'notification for the provision of arrangements to facilitate access to an MTF or an OTF' means a notification made in accordance with Article 34(7) of Directive 2014/65/EU.
- (d) 'passport notification' means an investment services and activities passport notification, a branch passport notification, tied agent passport notification, or a notification for the provision of arrangements to facilitate access to an MTF or an OTF.

Article 3

Information to be notified for the purposes of the investment services and activities passport notification

1. Investment firms shall ensure that the investment services and activities passport notification submitted pursuant to Article 34(2) of Directive 2014/65/EU includes the following information:
 - (a) the name, address and contact details of the investment firm along with the name of a specified contact person at the investment firm;
 - (b) a programme of operations which includes the following items:
 - (i) details of the particular investment services, activities and ancillary services to be provided in the host Member State and the financial instruments to be used; and
 - (ii) confirmation as to whether the investment firm wishes to use tied agents, established in its home Member State, to provide services in the host Member State and, if so the name, address, contact details of such tied agents and the investment services or activities, ancillary services and financial instruments to be provided by the latter.
2. Credit institutions referred to in Article 1(2)(a) submitting an investment services and activities passport notification in accordance with Article 34(5) of Directive 2014/65/EU shall ensure that such notification contains the information set out in points (a) and (b)(ii) of paragraph 1.

Article 4

Information to be notified concerning the change of investment services and activities particulars

Investment firms and such credit institutions as are referred to in Article 1(2)(a) shall ensure that a notification to communicate a change in particulars, pursuant to Article 34(4) of Directive 2014/65/EU, includes details of any change to any of the information contained in the initial investment services and activities passport notification.

Article 5

Information to be notified concerning arrangements to facilitate access to an MTF or OTF

Investment firms and market operators submitting notifications regarding arrangements to facilitate access to an MTF or OTF pursuant to Article 34(7) of Directive 2014/65/EU shall ensure such notification includes the following information:

- (a) the name, address and contact details of the investment firm or the market operator, along with the name of a specified contact person at the investment firm or the market operator;
- (b) a short description of the appropriate arrangements to be in place and the date from which these arrangements will be provided in the host Member State;
- (c) a short description of the business model of the MTF or the OTF, including the type of the financial instruments traded, the type of participants, and the marketing approach of the MTF or OTF to target remote users, members or participants.

*Article 6***Information to be notified in a branch passport notification or a tied agent passport notification**

1. Investment firms and such credit institutions as are referred to in Article 1(2)(b) shall ensure that a branch passport notification or a tied agent passport notification submitted pursuant to Article 35(2) or Article 35(7) of Directive 2014/65/EU as applicable, includes the following information:

- (a) the name, address and contact details of the investment firm or credit institution in the home Member State, and the name of a specified contact person at the investment firm or credit institution;
- (b) the name, address and contact details in the host Member State of the branch or of the tied agent from which documents may be obtained;
- (c) the name of those persons responsible for the management of the branch or of the tied agent;
- (d) reference to the location, electronic or otherwise, of the public register where the tied agent is registered; and
- (e) a programme of operations.

2. The programme of operations referred to in point (e) of paragraph 1 shall comprise the following items:

- (a) a list of investment services, activities, ancillary services and financial instruments to be provided;
- (b) an overview explaining how the branch or the tied agent will contribute to the investment firm's, credit institution's or group's strategy, and setting out whether the investment firm is a member of a group, and what the main functions of the branch or tied agent will be;
- (c) a description of the type of client or counterparty with which the branch or tied agent will be dealing and of how the investment firm or credit institution will obtain and deal with those clients and counterparties;
- (d) the following information on the organisational structure of the branch or tied agent:
 - (i) functional, geographical and legal reporting lines if a matrix management structure is in operation;
 - (ii) description of the manner in which the branch or the tied agent fits into the corporate structure of the investment firm or credit institution, or of the group if the investment firm or credit institution is a member of a group;
 - (iii) the rules for reporting by the branch or the tied agent to the head office;
- (e) details of individuals performing key functions with the branch or the tied agent, including the individuals responsible for day-to-day branch or tied agent operations, compliance and dealing with complaints;
- (f) details of any outsourcing arrangements critical to the operations of the branch or the tied agent;
- (g) summary details of the systems and controls that will be put in place, including:
 - (i) arrangements that will be put in place to safeguard client money and customer assets;
 - (ii) arrangements for the compliance with the rules of conduct of business and other obligations that fall under the responsibility of the competent authority of the host Member State according to Article 35(8) of Directive 2014/65/EU and record keeping under Article 16(6) of that Directive;
 - (iii) internal arrangements for controls on staff, which shall include controls over personal account dealing;
 - (iv) arrangements to comply with anti-money-laundering obligations;
 - (v) details of controls over outsourcing and other arrangements with third parties in connection with the investment services or activities carried on by the branch or the tied agent;
 - (vi) the name, address and contact details of the accredited compensation scheme of which the investment firm or credit institution is a member;
- (h) forecast statements for both profit and loss and cash flow, over an initial 36-month period.

3. When a branch is to be established in a host Member State and intends to use tied agents in that Member State, in accordance with Article 35(2)(c) of Directive 2014/65/EU, the programme of operations referred to in point (e) of paragraph 1 shall also comprise information regarding the identity, address and contact details of each such tied agent.

Article 7

Information to be notified concerning the change of branch or tied agent particulars

1. Investment firms and such credit institutions as are referred to in Article 1(2)(b) shall ensure that a notification to communicate a change in particulars, pursuant to Article 35(10) of Directive 2014/65/EU, includes details of any change to any of the information contained in the initial branch passport notification or tied agent passport notification.

2. Investment firms and such credit institutions as are referred to in Article 1(2)(b) shall ensure that any changes to the branch passport notification or tied agent passport notification that relate to the termination of the operation of the branch, or the cessation of the use of a tied agent, shall include the following information:

- (a) the name of the person or persons who will be responsible for the process of terminating the operation of the branch or the tied agent;
- (b) the schedule of the planned termination;
- (c) the details and processes proposed to wind down the business operations, including details of how client interests are to be protected, complaints resolved and any outstanding liabilities discharged.

Article 8

Entry into force and application

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

It shall apply from the date that appears first in the second subparagraph of Article 93(1) of Directive 2014/65/EU.

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

Done at Brussels, 29 June 2016.

For the Commission

The President

Jean-Claude JUNCKER

COMMISSION IMPLEMENTING REGULATION (EU) 2017/1019**of 16 June 2017****imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of certain concrete reinforcement bars and rods originating in the Republic of Belarus**

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:

A. PROCEDURE**1. Provisional Measures**

- (1) The European Commission ('the Commission') initiated on 31 March 2016 ⁽²⁾ an investigation following a complaint lodged on 15 February 2016 by the European Steel Association ('EUROFER' or 'the complainant') on behalf of producers representing more than 25 % of the total Union production of rebars.
- (2) The Commission imposed on 20 December 2016 a provisional anti-dumping duty on imports of certain concrete reinforcement bars and rods originating in the Republic of Belarus ('Belarus' or 'the country concerned') by Implementing Regulation (EU) 2016/2303 ⁽³⁾ ('the provisional Regulation').

2. Subsequent procedure

- (3) Subsequent to the disclosure of the essential facts and considerations on the basis of which a provisional anti-dumping duty was imposed ('the provisional disclosure'), the complainant and the sole Belarusian exporting producer made written submissions making known their views on the provisional findings. The parties who so requested were granted an opportunity to be heard.
- (4) Hearings took place with the Belarusian exporting producer and with Union producers.
- (5) The Commission considered the oral and written comments submitted by the interested parties and, where appropriate, modified the provisional findings.
- (6) In order to verify the questionnaires replies mentioned in recitals (124) and (133) of the provisional Regulation, which were not verified at the provisional stage of the procedure, verification visits were carried out at the premises of the following parties:
 - a) Unrelated importer in the Union:
 - Duferco Deutschland GmbH, Germany
 - b) Union users:
 - ATG Deutschland GmbH, Germany
 - Tilts Ltd, Latvia

⁽¹⁾ OJ L 176, 30.6.2016, p. 21.

⁽²⁾ OJ C 114, 31.3.2016, p. 3.

⁽³⁾ Commission Implementing Regulation (EU) 2016/2303 of 19 December 2016 imposing a provisional anti-dumping duty on imports of certain concrete reinforcement bars and rods originating in the Republic of Belarus (OJ L 345, 20.12.2016, p. 4).

- (7) The Commission informed all parties of the essential facts and considerations on the basis of which it intends to impose a definitive anti-dumping duty on imports of rebars ('the definitive disclosure'). All parties were granted a period within which they could make comments on the definitive disclosure. After definitive disclosure, in the light of the findings as established in recitals (18) to (24) of the General Disclosure Document the Commission analysed injury indicators excluding data pertaining to the Italian market for which all parties were informed (the additional final disclosure). Subsequently, all parties were granted a period within which they could make comments on the additional disclosure. The comments submitted by the interested parties were considered and taken into account where appropriate.

3. Sampling

- (8) In the absence of comments concerning the method of sampling, the provisional findings set out in recitals (7) to (10) of the provisional Regulation are confirmed.

4. Investigation period and period considered

- (9) In the absence of comments concerning the investigation period ('IP') and the period considered, the periods established in recital (14) of the provisional Regulation are confirmed.

B. PRODUCT CONCERNED AND LIKE PRODUCT

- (10) As set out in recitals (15) to (16) of the provisional Regulation, the product subject to investigation was defined as 'certain concrete reinforcement bars and rods, made of iron or non-alloy steel, not further worked than forged, hot-rolled, hot-drawn or hot-extruded, but including those twisted after rolling and also those containing indentations, ribs, grooves or other deformations produced during the rolling process, originating in Belarus and currently falling within CN codes ex 7214 10 00, ex 7214 20 00, ex 7214 30 00, ex 7214 91 10, ex 7214 91 90, ex 7214 99 10, ex 7214 99 71, ex 7214 99 79 and ex 7214 99 95 ('rebars' or 'the product concerned'). High fatigue performance iron or steel concrete reinforcing bars and rods are excluded'.
- (11) Already at provisional stage of the investigation, the exporting producer from Belarus pointed to an alleged inconsistency between the complaint (referring to two CN codes) and the notice of initiation (NoI) (referring to nine CN codes). After explanations given in this regard in the provisional regulation, the Belarussian exporter changed the nature of its claim and requested the inclusion of an additional sentence in the descriptive part of the product concerned in order to make it clear that round bars and other types of bars without indents, ribs or other deformations, which are also covered by the additional seven CN codes, are not included in the product concerned.
- (12) On the other hand, contrary to the claim of the Belarusian company, the complainant claimed that round bars and other bars without deformation should be included in the product scope.
- (13) After careful examination, the Commission concludes that the descriptive part of definition of the product concerned in the complaint and in the NoI clearly does not encompass round bars and bars without deformation and, therefore, these bars fall outside the product scope. Furthermore, all the data concerning product concerned collected for the dumping calculations and injury analysis did not include data referring to the round bars or bars without deformation. Therefore, the definition of the product scope should make it clear that round bars and bars without deformation are not part of the product concerned. Hence, the Commission accepts the changes in the description of the product concerned suggested by the Belarusian exporting producer. During this assessment, the Commission verified that the CN codes ex 7214 99 71 and ex 7214 99 79 referred exclusively to round bars and bars without deformation and, therefore, excluded the reference made to them in the definition of the product scope. The Commission also noticed that these bars had been incorrectly included in the information set out in recitals (62), (63), (65) and (103) of the provisional Regulation (Union consumption, volume and market share of the imports concerned, prices of imports, and imports from third countries) and therefore this data was revised accordingly.

- (14) Taking into account the above, the Commission clarifies the definition of the product concerned as followed:

'The product concerned is certain concrete reinforcement bars and rods, made of iron or non-alloy steel, not further worked than forged, hot-rolled, hot-drawn or hot-extruded, whether or not twisted after rolling, containing indentations, ribs, grooves or other deformations produced during the rolling process, originating in Belarus and currently falling within CN codes ex 7214 10 00, ex 7214 20 00, ex 7214 30 00, ex 7214 91 10, ex 7214 91 90, ex 7214 99 10 and ex 7214 99 95 ('the product concerned'). High fatigue performance iron or steel concrete reinforcing bars and rods and other long products, such as round bars are excluded'.

C. DUMPING

- (15) In the absence of comments concerning details of dumping calculation, the provisional findings and conclusions set out in recitals (19) to (55) of the provisional Regulation are confirmed.

D. UNION INDUSTRY

- (16) In the absence of any comments concerning the Union industry, the provisional findings and conclusions set out in recitals (56) to (59) of the provisional Regulation are confirmed.

E. INJURY

- (17) As mentioned in the recitals (13) and (14), the round bars and bars without deformation are not part of the product concerned. These products are currently falling within CN codes ex 7214 99 71 and 7214 99 79. The revised information presented in the tables, as set out in recitals (62), (63) and (65) of the provisional Regulation, is as follows:

1. Union consumption

	2012	2013	2014	IP
Consumption (in tonnes)	9 308 774	8 628 127	9 239 505	9 544 273
<i>Index (2012 = 100)</i>	100	93	99	103

2. Volume and market share of the imports concerned

	2012	2013	2014	IP
Volume (tonnes)	159 395	140 970	236 109	457 755
<i>Index (2012 = 100)</i>	100	88	148	287
Market share on EU consumption (%)	1,8	1,6	2,6	4,8
<i>Index (2012 = 100)</i>	100	95	149	280

Prices of imports

	2012	2013	2014	IP
Average price (in EUR/tonne)	495	463	436	372
<i>Index (2013 = 100)</i>	100	93	88	75

- (18) The correction of the figures above did not have any impact on the injury assessment. Indeed, the trends observed were the same and therefore the Commission's findings in recitals (62) to (66) of the provisional Regulation are confirmed.

3. Unreliability of certain injury data of the Union industry as a result of price-fixing

- (19) As described in recital (132) of the provisional Regulation, the Belarusian exporting producer and one of the non-sampled Union importers raised the issue of alleged price-fixing among the Union producers, which would have rendered the injury data unreliable. This claim was further developed by the Belarusian company in its submission after provisional disclosure. The Belarusian exporting producer indicated that a cartel investigation was currently being conducted by Italian Competition Authority (Autorità Garante della Concorrenza e del Mercato ('AGCM')) with regard to certain companies located in Northern Italy. One of the companies concerned is part of the sample of the Union producers in the current antidumping investigation.
- (20) Following this claim, the Commission requested relevant information from AGCM to evaluate whether and to what extent those facts influence the reliability of the injury data of the Union industry in the present anti-dumping proceedings.
- (21) According to the case-law, in a situation where an investigation into anti-competitive behaviour is pending at a national competition authority, the Commission has to consider whether the Union industry, through this behaviour, has contributed to the injury suffered and establish that the injury on which it bases its conclusions did not derive from the anticompetitive behaviour. The Commission may in such a situation not wait until the competent national authority concludes its investigation, but has to request the relevant information from the parties and the national authorities, as appropriate, under the procedural rules for anti-dumping investigations and carry out an assessment of that information ⁽¹⁾.
- (22) Following a request based on Article 6(3) of the basic Regulation, AGCM has informed the Commission that on 21 October 2015 it opened a formal investigation with respect to six Italian producers of concrete reinforcement bars and welded wire for an alleged infringement of Article 101 TFEU ⁽²⁾. One of these companies is the Italian sampled producer in the current anti-dumping investigation. AGCM extended the proceedings in September 2016 to also cover under the investigation two additional Italian producers. Following the in-depth assessment of all available information, AGCM issued a Statement of Objections that was communicated to the relevant companies on 18 January 2017. The anti-competitive conduct being investigated concerns an alleged exchange of information and price collusion between the eight Italian companies that would cover several phases of the value added chain of their activities from the purchase of inputs, through the levels of production capacity and effective production, up to the sale of the output, which would have taken place over the period 2010 to 2016. On account of its supply and demand side characteristics, the relevant geographic market was defined as national in the formal decision to launch the investigation.
- (23) The information submitted by AGCM shows that the product concerned in this investigation, rebars, overlaps with the products subject to the antitrust investigation, and also that the alleged cartel was in force during the whole investigation period. In these circumstances, the Commission considers that the data of the sampled Italian producer is not reliable for the purpose of the injury analysis.
- (24) As a result, the Commission has analysed Union consumption, volume and market share of the imports concerned and also the macroeconomic and microeconomic injury indicators excluding data pertaining to the Italian market. For the sake of transparency, the relevant figures excluding the Italian companies are presented below.

(a) Union consumption

	2012	2013	2014	IP
Consumption (in tonnes)	7 400 363	7 241 202	7 917 877	8 149 861
Index (2012 = 100)	100	98	107	110

⁽¹⁾ Judgment in *Extramet v Council*, C-358/89, EU:C:1992:257, paragraphs 17 to 20. See also, by analogy, judgments in *Matra v Commission*, C-225/91, EU:C:1993:239, paragraphs 40 to 47; in *RJB Mining v Commission*, T-156/98, EU:T:2001:29, paragraphs 107 to 126; and in *Secop v Commission*, T-79/14, EU:T:2016:118, 79 to 86.

⁽²⁾ Case 1742.

(b) Volume and market share of the imports concerned

	2012	2013	2014	IP
Volume (tonnes)	159 395	140 970	236 109	457 755
<i>Index (2012 = 100)</i>	100	88	148	287
Market share on EU consumption (%)	2,2	1,9	3,0	5,6
<i>Index (2012 = 100)</i>	100	90	138	261

(25) Macroeconomic indicators (tables):

(a) Production, production capacity and capacity utilisation

	2012	2013	2014	IP
Production volume (tonnes)	10 108 006	9 652 130	10 283 598	9 605 712
<i>Index (2012 = 100)</i>	100	95	102	95
Production capacity (tonnes)	13 850 553	14 047 161	14 173 253	13 910 700
<i>Index (2012 = 100)</i>	100	101	102	100
Capacity utilisation (%)	73	69	73	69
<i>Index (2012 = 100)</i>	100	94	99	95

(b) Sales volume, market share and growth

	2012	2013	2014	IP
Sales volume unrelated (tonnes)	6 358 083	6 177 049	6 232 069	6 229 333
<i>Index (2012 = 100)</i>	100	97	98	98
Market share unrelated sales (%)	86	85	79	76
<i>Index (2012 = 100)</i>	100	99	92	89
Sales volume related (tonnes)	355 888	361 542	730 267	625 858
<i>Index (2012 = 100)</i>	100	102	205	176
Market share related sales (%)	5	5	9	8
<i>Index (2012 = 100)</i>	100	104	192	160

(c) Employment and productivity

	2012	2013	2014	IP
Number of employees	4 314	4 103	4 278	4 189
<i>Index (2012 = 100)</i>	100	95	99	97
Productivity (MT/employee)	2 343	2 353	2 404	2 293
<i>Index (2012 = 100)</i>	100	100	103	98

(26) Microeconomic indicators (tables — indexed for confidentiality reasons):

(a) Average unit selling prices on the Union market and unit cost of production

	2012	2013	2014	IP
Average unit selling price in the Union to unrelated customers (EUR/tonne)				
<i>Index (2012 = 100)</i>	100	93	89	78
Unit cost of goods sold (EUR/tonne)				
<i>Index (2012 = 100)</i>	100	96	91	81

(b) Profitability, cash flow, investments, return on investments and ability to raise capital

	2012	2013	2014	IP
Profitability of sales in the Union to unrelated customers (% of sales turnover)				
<i>Index (2012 = 100)</i>	100	– 593	– 435	– 603
Cash flow (EUR)				
<i>Index (2012 = 100)</i>	100	35	51	14
Investments (EUR)				
<i>Index (2012 = 100)</i>	100	83	79	72
Return on investments				
<i>Index (2012 = 100)</i>	100	– 606	– 500	– 645

(c) Stocks

	2012	2013	2014	IP
Closing stocks (tonnes)				
<i>Index (2012 = 100)</i>	100	85	106	73

(d) Labour costs

	2012	2013	2014	IP
Average labour costs per employee (EUR)				
<i>Index (2012 = 100)</i>	100	100	104	103

- (27) On that basis, the Commission notes that the development of the injury indicators without the data pertaining to Italy is practically the same to the one reflecting the whole Union market including Italy. It can therefore be concluded that following the exclusion of data relating to the Italian market from the injury analysis, the situation of the Union industry is still one of material injury within the meaning of Article 3(5) of the basic Regulation
- (28) As far as undercutting is concerned, the Commission first notes that the undercutting margin found at provisional stage was 4,5 %. The Commission has re-examined the existence of undercutting in the light of the findings above in recitals (19) to (23). Undercutting is established by using data from the sampled companies. Hence, the Commission has excluded from the undercutting calculations the data relating to the Italian producer that is part of the sample. The undercutting margin based on all sampled companies minus the Italian one remains significant at a level of 4,4 %.
- (29) The Belarussian exporting producer also claimed that the undercutting (and underselling) calculations should not be done by comparison to the prices of all transactions of the sampled Union producers but only in comparison to those happening where the competition with Belarussian import takes place. Undercutting calculations are normally performed on the basis of dumped imports of the product concerned into the Union with all comparable sales of the Union industry. However, given the specific circumstances of this case and the particular characteristics of the product concerned, the Commission has also calculated an undercutting margin by limiting the analysis to those Member States where the Belarussian products were first sold, mainly in the Netherlands, Germany, Poland, and Lithuania. This approach is based on the conservative assumption that the immediate and direct pressure exercised by the dumped imports on Union sales prices first took place in those Member States. Any subsequent trickling through of the effect to other Member States has thus deliberately been ignored. Under this scenario, the duly adjusted weighted average sales prices of the Belarussian dumped imports were compared to the corresponding sales prices of the sampled Union producers, excluding the one located in Italy, charged to unrelated customers in those regions where direct competition with Belarussian products occurred. This resulted in an undercutting margin of 2,8 %, instead of the 4,5 % margin as established in recital (68) of the provisional Regulation.
- (30) The product concerned by this investigation can be considered a commodity product, which is very price sensitive. It is therefore concluded that even an undercutting margin of 2,8 % is significant and sufficient to cause price depression as explained in recitals (83), (84) and (98) of the provisional Regulation.
- (31) Following final disclosure, the Belarussian exporting producer also claimed that the findings above in recitals (19) to (23) would most likely have spill-over effects on other Member States, especially in France, where the parent company of one of the Italian producers has a subsidiary holding a strong market position. However, with respect to the alleged anti-competitive conduct in Italy, AGCM has defined the relevant geographic market as national. Moreover, the evidence of the file summarized in recitals (19) to (23) on its own does not support such a claim. This claim is therefore rejected.

4. Conclusion on injury

- (32) In the absence of any additional comments with regard to injury to the Union industry, the provisional findings and conclusions set out in recitals (70) to (95) of the provisional Regulation are confirmed.

F. CAUSATION

1. Effect of dumped imports

- (33) In the absence of any comments with regard to the effect of dumped imports on the economic situation of the Union industry, the findings and conclusions set out in recitals (97) to (100) of the provisional Regulation are confirmed.

2. Effect of other factors

2.1. Export performance of the Union industry

- (34) In the absence of any comments with regard to export performance of the Union industry, the conclusion set out in recital (101) of the provisional Regulation is confirmed.

2.2. Sales to related parties

- (35) In the absence any comments with regard to the sales to related parties, the conclusions set out in recitals (102) to (103) of the provisional Regulation are confirmed.

2.3. Imports from third countries

- (36) As mentioned in the recitals (13) and (14), the round bars and bars without deformation are not part of the product concerned. The revised information presented in the tables, as set out in recital (103) of the provisional Regulation, is as follows:

Country		2012	2013	2014	IP
Norway	Volume (tonnes)	195 366	184 632	201 617	215 046
	Index (2012 = 100)	100	95	103	110
	Market share (%)	2,1	2,1	2,2	2,3
	Average price (EUR/tonne)	551	495	483	431
Bosnia and Herzegovina	Volume (tonnes)	47 702	79 184	105 909	116 927
	Index (2012 = 100)	100	166	222	245
	Market share (%)	0,5	0,9	1,1	1,2
	Average price (EUR/tonne)	566	479	455	415
Turkey	Volume (tonnes)	92 920	136 128	195 115	103 484
	Index (2012 = 100)	100	147	210	111
	Market share (%)	1,0	1,6	2,1	1,1
	Average price (EUR/tonne)	515	472	456	419
Ukraine	Volume (tonnes)	66 295	6 089	24 771	112 605
	Index (2012 = 100)	100	9	37	170
	Market share (%)	0,7	0,1	0,3	1,2
	Average price	501	489	441	393
Rest of the World	Volume (tonnes)	124 713	155 609	192 020	288 853
	Index (2012 = 100)	100	125	154	232
	Market share (%)	1,3	1,8	2,1	3,0
	Average price (EUR/tonne)	732	667	568	469

- (37) The correction of the figures above did not have any impact on the findings in recital (104) of the provisional Regulation. Indeed, throughout the period considered the prices of imports from the third countries were on average always higher than the prices of the Union industry. The only exporting country with lower average prices than the Union industry was Belarus in the IP which was the same year when volumes of imports from Belarus increased most rapidly. Therefore the Commission's findings in recital (104) of the provisional Regulation are confirmed.

- (38) With regard to the imports from third countries, the Belarusian exporting producer did not agree with the Commission's conclusion that individual market shares of third countries, with exception of Ukraine's, had increased only marginally. The Belarusian exporting producer supported its opinion with imports statistics for the year 2016, which is a period subsequent to the IP. Furthermore, it pointed out to an alleged discrepancy between the import figures reported in table 6.3.3 of the provisional Regulation and available Eurostat statistics.
- (39) In response to this claim, it should first be noted that post IP trends and data are normally not taken into account in the injury and causation analysis. While the Commission agreed in the recital (111) of the provisional Regulation to collect and review certain post IP data, it was undertaken in the context of the claims concerning the impact of so called 'VAT fraud scheme', the alleged subsequent gap between demand and supply of the product concerned on the markets of Poland and the Baltic States, and the abnormally high level of IP export volumes from Belarus allegedly resulting from that scheme.
- (40) Secondly, the Commission cannot base its finding concerning the effects of imports from third countries on post IP import figures presented by the interested party, since it should only analyse trends observed during the period considered (2012-2015), and on which it collected information during the investigation. As explained in recital (39), in this investigation, the Commission assessed limited post IP data to address an exceptional situation, that is, the VAT fraud scheme. Thus, the findings of recital (104) of the provisional Regulation which relate to changes of market shares of third countries during the period under consideration, which ends in 2015, were confirmed.
- (41) Even if the development of imports from third countries after IP were taken into account, it would not change the Commission's conclusion on the potential impact of these imports on the situation of the Union industry, as those prices remained higher than prices of imports from Belarus.
- (42) Finally, with regard to the alleged discrepancy between the import figures reported in the provisional Regulation and Eurostat statistics, it should be noted that the latter statistics include also import volumes of so-called high fatigue performance bars which are not part of the product scope of this procedure and were not reported in table 6.3.3 of the provisional Regulation⁽¹⁾. Taking into account the above, the claims of the Belarussian exporting producer concerning the impact of third countries' imports are rejected.
- (43) In the absence of other comments with regard to the imports from third countries, the conclusions set out in recital (104) of the provisional Regulation are confirmed.

2.4. *Costs evolution*

- (44) In the absence of any comments with regard to the costs evolution, the conclusion set out in recital (105) of the provisional Regulation is confirmed.

2.5. *Impact of the so-called 'VAT fraud scheme'*

- (45) The Belarusian exporting producer reiterated in its submission the comments made at the provisional stage of the investigation with regard to the impact of the so-called VAT fraud scheme on the Union market, and claimed the Commission had failed to discharge its duty of investigating the matter. According to the exporting producer, this scheme was the main reason for the financial difficulties of some Union producers. As a result of this fraud scheme two producers located in Latvia (in early 2013) and Slovakia (in late 2014) went bankrupt and stopped production of the like product. Furthermore, one Union producer in Poland stopped the production of the like product for 3 months in 2014 due to upgrading its machinery. All these events together allegedly led to a shortage of supply mainly on the Polish and on the Baltic markets from 2013 onwards. This alleged gap would have been filled by the Belarusian exports.
- (46) The Belarusian exporting producer further claimed that, because of the VAT scheme, the year 2015 (IP) was an 'unusual year' in terms of high volumes of the product concerned exported to the Union and that export volumes started to decrease already at the end of the IP and continued decreasing after the IP.

⁽¹⁾ Namely, export volumes to Ireland and UK were excluded.

- (47) In response to these claims, the Commission first looked into the exports data provided by the Belarusian statistics office and noted the following. The increase in the volume of exports by the exporting producer to the Union correlated with the decrease in the volume exports of the exporting producer to the Russian market. As described in the table below, between 2013 and 2015, the Belarusian exporting producer decreased its sales to Russia significantly by around 370 000 tonnes and increased its sales to the Union market by approximately the same amount, i.e. 380 000 tonnes.

	2012	2013	2014	IP	2016
Total exports sales	836	787	878	831	689
<i>Index 2012 = 100</i>	100	94	105	99	82
Exports to Russia	545	591	474	221	157
<i>Index 2012 = 100</i>	100	108	87	41	29
Total exports to EU	170	147	255	530	250
<i>Index 2012 = 100</i>	100	86	150	312	147
Exports to Baltic States	105	110	140	137	132
<i>Index 2012 = 100</i>	100	105	133	130	126
Exports to Poland	2	5	50	150	15
<i>Index 2012 = 100</i>	100	250	2 500	7 500	750
Exports to Other Member States	63	32	65	243	103
<i>Index 2012 = 100</i>	100	51	103	386	163

Source: Extracts from the Belarus statistics office.

- (48) Secondly, the Commission evaluated the situation on the Polish and the Baltic States' markets. Concerning 2013, Polish and Baltic states' markets were faced with the decrease of production of one Polish producer and the stop of production of one Latvian producer. Moreover, from 1 October 2013 the Polish government applied reverse charge VAT mechanisms to some 40 steel products, from fencing and pipes to finished flat-steel products as well as rebars, and thus tackling the VAT fraud scheme. The analysis of the export sales from Belarus to the Union market showed that the Belarusian exporting producer sales to Poland and the Baltic States remained stable, at around 110 000 tonnes compared with 2012. Therefore it is concluded that the Belarusian exporting producer did not take advantage of the alleged shortage of supply by the Union production in 2013 and that the other Union producers present in the market were able to supply the market either from stocks or by re-directing export sales to these markets ⁽¹⁾.
- (49) Concerning 2014, one Polish producer stopped production for one quarter in order to upgrade its machinery and one Slovak producer stopped its production in August 2014 (the company was declared in bankruptcy in February 2015). The quantity not available as a result of those events is estimated at around 133 000 tonnes.
- (50) The analysis of the export sales from Belarus to the Union market showed that the Belarusian exporting producer sales to Poland and the Baltic States indeed increased by around 75 000 tonnes. However the exporting producer also increased its sales to other Union markets such as Germany from basically minimal quantities to around 120 000 tonnes. Therefore the argument that the Belarusian exporting producer increased its sales to the Union market only because of the exceptional market situation in Poland and the Baltic states is rejected, as it also increased (at even higher pace) its sales to other parts of the Union market where no exceptional circumstances existed.

⁽¹⁾ Analiza wpływu zmian administracyjnych na wielkość szarej strefy na rynku pretów zbrojeniowych i sytuacji sektora finansów publicznych' Ernst & Young, Warsaw March 2014.

- (51) Concerning the investigation period, the Latvian producer re-opened in March 2015. The Polish production was back to normal. Therefore, there was no longer an exceptional market situation in these parts of the Union market.
- (52) Despite this, the Belarusian exporting producer increased its sales to Poland even further and it maintained its sales to the Baltic States compared to 2014. Moreover the sharpest increase took place on other parts of the Union market (mainly in Bulgaria, the Netherlands, and Germany).
- (53) Therefore, it is concluded that the increase of the Belarusian exports to the European Union was not due to the gap between demand and supply in the Union market but to the redirection of the volume lost on the Russian market. Thus, the claim of inadequate assessment of the impact of the VAT fraud scheme in the provisional determination is unfounded and is, therefore, rejected.
- (54) In accordance with recital (111) of the provisional Regulation the Commission assessed the volume imports after the investigation period. The data showed that the imports from Belarus decreased somewhat, but they were still well above the 2013 levels and more or less at 2014 levels. Therefore the argument that the increase of imports from Belarus was temporary in nature and was explained by the particular market situation on certain Union market segments is rejected.
- (55) In the absence of other comments with regard to the VAT fraud scheme and post IP developments, the findings and conclusions set out in recitals (106) to (111) of the provisional Regulation are confirmed.

3. Conclusion on causation

- (56) In summary, the Commission considers that none of the arguments put forward by the interested parties after the provisional disclosure were able to alter the provisional findings which established a causal link between the dumped imports and the material injury suffered by the Union industry during the IP. Thus, the conclusions set out in recitals (112) to (115) of the provisional Regulation are confirmed.
- (57) The Commission has found that the only other factor that may have had an impact on the situation of the Union industry was imports from third countries, as stated in the recital (104) of the provisional Regulation. However, the Commission concluded that those imports could not break the causal link between Belarusian dumped imports and the material injury found to the Union industry and that the dumped imports from Belarus remained the main cause of injury.
- (58) Based on the above analysis, which distinguished and separated the effects of all known factors on the situation of the Union industry from the injurious effects of the dumped imports, it is concluded that the dumped imports from Belarus caused material injury to the Union industry within the meaning of Article 3(6) of the basic Regulation.

G. UNION INTEREST

1. Interest of the Union industry

- (59) In the absence of any comments with regard to the interest of the Union industry, the conclusions set out in recitals (117) to (122) of the provisional Regulation are confirmed.

2. Interest of users and importers

- (60) The Belarusian exporting producer claimed in its submissions that the Commission's assessment of Union interest did not take into account particular problems of importers and users located in the Baltic States. It claimed that, due to logistic reasons (such as, railway connections or certificate requirements), Belarus is the only source of supply of rebars for those companies.
- (61) In this regard, the Commission confirmed that the only cooperating user located in the Baltic States experienced certain technical problems with deliveries from the Union producers (none of them being located in the Baltic States). On the other hand, this company stated that purchases from Belarus could be, and in the post IP period effectively were, replaced by purchases from Russia and to some extent also from Ukraine.

- (62) Furthermore, the Commission received very low cooperation from the companies located in the Baltic States, which seems to indicate that they do not perceive that they would be negatively affected by potential antidumping measures concerning Belarusian imports of the product concerned.
- (63) In the absence of other comments with regard to the interest of the users and importers, the conclusions set out in recitals (123) to (131) and recital (134) of the provisional Regulation are confirmed.

3. Potential absorption of the duties

- (64) In its submission after the provisional disclosure, the complainant claimed that the level of antidumping duty proposed at provisional stage (12,5 %) would not be sufficient, as the measure could easily be absorbed by the Belarusian exporting producer, which is a state-owned company, located in a non-market economy country with alleged favourable access to the subsidized raw material metal scrap.
- (65) With regard to this claim, it should be stressed that the potential absorption can only be a matter of a separate anti-absorption investigation on the basis of Article 12 of the basic Regulation and cannot affect in advance the level of antidumping measures imposed in the original investigation. Furthermore, the evidence available in this investigation does not support the allegation of the easy access to a subsidized raw material by the Belarusian producer; in fact, the Commission found that the company purchases most of its raw material from Russia and Ukraine, countries considered as market economies.

4. Strategic importance of the EU-Belarus cooperation in the steel sector

- (66) In its submission after the provisional disclosure, the Belarusian exporting producer and the Belarusian authorities referred to the strategic importance of the cooperation with the EU in the steel sector, and the fact that measures may negatively affect Belarusian purchases of capital equipment in the Union, the establishment of network of related trading companies in the Union, and any cooperation with European financial institutions.
- (67) In response to this point, the Commission underlines that the measures have as sole purpose to restore a level playing field on the Union market. It is not of a punitive nature. If the exporting producer increases its prices durably, so that dumping ceases to exist, it can ask for a refund and an interim review. Therefore, the Commission does not consider those considerations to be relevant for the assessment of Union interest.

5. Conclusion on Union interest

- (68) In summary, none of the arguments put forward by the interested parties demonstrates that there are compelling reasons against the imposition of measures on imports of the product concerned from Belarus. Any negative effects on unrelated users and importers can be mitigated by the availability of alternative sources of supply. Moreover, when considering the overall impact of the anti-dumping measures on the Union market, the positive effects, in particular on the Union industry, appear to outweigh the potential negative impacts on the other interested parties. Thus, the conclusions set out in recitals (135) to (137) of the provisional Regulation are confirmed.

H. DEFINITIVE ANTI-DUMPING MEASURES

1. Injury elimination level (injury margin)

1.1. Target profit

- (69) Following provisional disclosure, the Union industry contested the target profit used in order to determine the injury elimination level as set out in recital (143) of the provisional Regulation. The same claims were reiterated after final disclosure.
- (70) The target profit used in the provisional injury margin calculations amounted to 4,8 %. This figure was based on the 2012 profit margin found for a very similar product, HFP rebars, and used in the recent anti-dumping procedure concerning imports of HFP rebars originating in China ⁽¹⁾.

⁽¹⁾ OJ L 204, 29.7.2016, p. 70.

- (71) The complainant in its submission contested the use of the same target profit used in the HFP rebars investigation and claimed that these two products and their respective markets are different. The complainant suggested using a target profit even higher than originally proposed in the complaint, 16 % or 17 %, which was the profit achieved by the Union producers in 2006 or considered 'desirable in the long term for the sound steel industry' ⁽¹⁾.
- (72) In this regard, the target profit used in these proceedings, which the Commission found to be the most appropriate, is based on the figure actually achieved in 2012 (which is within the period considered) by the Union producers of a very similar product manufactured to a large extent using the same facilities for production of the product concerned in this investigation. It is also recalled that in the complaint EUROFER requested a target profit of 9,9 %, which was used in an investigation on wire rod, a product definitely more distant from the product concerned than HFP rebars. Finally, the purpose of the establishment of the injury margin is to remove the part of injury caused by dumped imports, but not by other factors such as the economic crisis. While the profit of 1,3 %, which was the only profit achieved by the Union industry in the period considered ⁽²⁾, was found to be inappropriate due to the impact of the VAT fraud scheme, it appears more congruous to use a profit margin that was achieved by the industry in the same period, verified and found appropriate for a very similar product in an antidumping procedure with mostly overlapping periods. The claim of the Union industry is therefore rejected.

1.2. *Post importation costs*

- (73) In the provisional calculation of the injury margin, an adjustment of 2 % was used for post-importation costs ⁽³⁾. In its submission after provisional disclosure, the Belarusian exporting producer claimed that in this particular case a higher figure of 4-6 % should be used, since this level of adjustment would better reflect the actual post-importation costs the importers/users have to cover.
- (74) Following this claim, the Commission looked in more detail into the level and structure of the importation and post-importation costs declared by the cooperating importer and users referred to in recital (6).
- (75) Based on the findings of the verification visits of these companies, the Commission does not find grounds to change the level of adjustment. The actual post importation costs for the importer and one of the users were (on average for the whole IP) below 2 %. Only for one company (the German user), post importation costs were higher than 2 %, within the claimed range of 4-6 %. However, this company had non-standard post importation operations for the transport of the product concerned from its warehouses to inland production sites. These are not standard post-importation costs, common to importers, but costs very specific to this company's operation. It should be stressed that, for the purpose of the injury margin calculations, export prices are established at an EU border level (adjusted for post-importation costs) and compared with ex works prices of the Union producers. Costs of transportation of the product to the users' production sites are not relevant in this context and thus are not taken into account. Based on the above, the Commission confirms the post-importation cost established at provisional stage at 2 % as reasonable. The claim is therefore rejected.

1.3. *Other issues concerning injury margin calculation*

- (76) After provisional disclosure, both the complainant and the Belarusian exporting producer raised several additional minor points with regard to the injury margin calculations.
- (77) The complainant indicated that the establishment of the CIF price for the undercutting and underselling calculations should not be based on transfer price to related importers but recalculated from the independent re-sales. The Commission hereby confirms that in fact the CIF price used for the calculation of undercutting and underselling at the provisional stage is based on independent re-sales.

⁽¹⁾ By McKinsey report delivered to the OECD Steel Committee meeting December 2013.

⁽²⁾ Profit achieved in a year 2012; for the other years of the period considered, i.e. 2013-2015, the Union producers recorded a loss.

⁽³⁾ Specific disclosure received by the interested parties Annex 3.

- (78) The complainant proposed an 'alternative' method of cost allocation between different types of product for the calculation of undercutting and underselling. However, this proposal was made after provisional measures when all the questionnaire replies were already verified on spot and calculations completed. In any event, cost allocation is irrelevant for the injury margin calculation in this case, as the injury margin was based on per product type ex-work prices and not on per product type costs. The claim is therefore rejected.
- (79) The complainant also proposed to base the injury margin not on the data of the whole IP but on a chosen quarter of IP where the margin would be 'more representative'. However, the complainant failed to provide any evidence that there are any special circumstances in this case which would justify departing from the standard practice of the Commission to base the injury margin on the whole IP. The claim is therefore rejected.
- (80) The Commission has decided to apply caution as far as the calculation of the injury margin is concerned. Indeed, given the unreliability of certain data for the reasons set out above at recitals (19) to (23) and the specificities of this case, the Commission has revised the calculation of the injury elimination level by excluding data from the sampled Italian producer and limiting the calculation to sales in the Netherlands, Germany, Poland, and Lithuania. This calculation is a mirror of the undercutting calculation mentioned above in recital (29) that resulted in an undercutting margin of 2,8 %. On this basis, the revised injury margin is established at a level 10,6 %.
- (81) After final disclosure, the complainant contested the methodology followed by the Commission in this case, on the grounds that the Commission had de facto narrowed down the scope of the investigation to reduce it to a regional investigation. It also claimed that the above injury elimination level would not remove injury to the overall Union industry. The complainant further noted that the Belarussian dumped imports took place in 16 different Member States, i.e. many more than those used by the Commission for its establishment of the injury margin.
- (82) In this respect, it should be noted that the Commission has actually based his injury analysis on the situation of the overall Union industry, and has concluded that removing Italy from the assessment does not change the injury picture. As far as the injury elimination level is concerned, even though imports from Belarus indeed took place in a number of Member States (in fact 13), the Commission based the injury elimination calculations on the data pertaining only to the companies in the sample, which sold the like product in a more limited number of countries, for the reasons explained in recital (29). This is without prejudice to the possibility, for all interested parties, to request an interim review once the findings of the cartel investigation are finalized, and depending on the situation prevailing at that time.

1.4. Conclusion on injury elimination level

- (83) In the absence of any other comments regarding the injury elimination level, the level of the definitive injury elimination level is established at 10,6 %.

2. Definitive measures

- (84) In view of the conclusions reached with regard to dumping, injury, causation and Union interest, and in accordance with Article 9(4) of the basic Regulation, definitive anti-dumping measures should be imposed on the imports of the product concerned at the level of the injury margin, in accordance with the lesser duty rule.
- (85) After final disclosure the Belarussian exporting producer claimed that the circumstances of the case justified the imposition of measures under the form of a partial duty free amount, i.e. that the first 200 000 tons imported would be free of duty, and that the duration of the measures should be limited to two years.
- (86) It is recalled that dumping results from price discrimination and therefore the remedy should consist of anti-dumping duties or a price undertaking. A duty free quota as requested by the Belarussian exporter does not contain any price element which would remedy injurious dumping and can therefore not be accepted. In this case there is also no justification for reducing the period of application of the measures. Should the circumstances change, the Belarussian has the possibility to request a review of the measures pursuant to Article 11(3) of the basic Regulation. The claims are therefore rejected. It is also recalled that the Commission may revisit the findings should the cartel investigation put in question the definitive findings set out in this regulation.

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

Company	Injury margin (%)	Dumping margin (%)	Definitive anti-dumping duty rate (%)
BMZ	10,6	58,4	10,6
All other companies	10,6	58,4	10,6

3. Definitive collection of the provisional duties

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

(89) 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 imposed on imports of certain concrete reinforcement bars and rods, made of iron or non-alloy steel, not further worked than forged, hot-rolled, hot-drawn or hot-extruded, whether or not twisted after rolling, containing indentations, ribs, grooves or other deformations produced during the rolling process. High fatigue performance iron or steel concrete reinforcing bars and rods are excluded. Other long products, such as round bars are excluded. The product is originating in Belarus and is currently falling within CN codes ex 7214 10 00, ex 7214 20 00, ex 7214 30 00, ex 7214 91 10, ex 7214 91 90, ex 7214 99 10 and ex 7214 99 95 (TARIC codes: 7214 10 00 10, 7214 20 00 20, 7214 30 00 10, 7214 91 10 10, 7214 91 90 10, 7214 99 10 10, 7214 99 95 10).

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 shall be 10,6 %.

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

Article 2

The amounts secured by way of the provisional anti-dumping duties pursuant to the Implementing Regulation (EU) 2016/2303 shall be definitively collected.

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, 16 June 2017.

For the Commission

The President

Jean-Claude JUNCKER

DECISIONS

COUNCIL IMPLEMENTING DECISION (EU) 2017/1020

of 8 June 2017

on the launch of automated data exchange with regard to vehicle registration data in Croatia

THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to Council Decision 2008/615/JHA of 23 June 2008 on the stepping up of cross-border cooperation, particularly in combating terrorism and cross-border crime ⁽¹⁾, and in particular Article 33 thereof,

Having regard to the opinion of the European Parliament ⁽²⁾,

Whereas:

- (1) In accordance with Article 25(2) of Decision 2008/615/JHA, the supply of personal data provided for under that Decision may not take place until the general provisions on data protection set out in Chapter 6 of that Decision have been implemented in the national law of the territories of the Member States involved in such supply.
- (2) Article 20 of Council Decision 2008/616/JHA ⁽³⁾ provides that the verification that the condition referred to in recital 1 has been met with respect to automated data exchange in accordance with Chapter 2 of Decision 2008/615/JHA is to be done on the basis of an evaluation report based on a questionnaire, an evaluation visit and a pilot run.
- (3) In accordance with point 1.1 of Chapter 4 of the Annex to Decision 2008/616/JHA, the questionnaire drawn up by the relevant Council Working Group concerns each of the automated data exchanges and is to be answered by a Member State as soon as it believes it fulfils the prerequisites for sharing data in the relevant data category.
- (4) Croatia has completed the questionnaire on data protection and the questionnaire on vehicle registration data (VRD) exchange.
- (5) A successful pilot run has been carried out by Croatia with the Netherlands.
- (6) An evaluation visit has taken place in Croatia and a report on the evaluation visit has been produced by the Dutch and Romanian evaluation team and forwarded to the relevant Council Working Group.
- (7) An overall evaluation report, summarising the results of the questionnaire, the evaluation visit and the pilot run concerning VRD exchange, has been presented to the Council.
- (8) On 19 December 2016, the Council, having noted the agreement of all Member States bound by Decision 2008/615/JHA, concluded that Croatia had fully implemented the general provisions on data protection set out in Chapter 6 of Decision 2008/615/JHA.
- (9) Therefore, for the purposes of automated searching of VRD, Croatia should be entitled to receive and supply personal data pursuant to Article 12 of Decision 2008/615/JHA.

⁽¹⁾ OJ L 210, 6.8.2008, p. 1.

⁽²⁾ Opinion of 13 February 2017 (not yet published in the Official Journal).

⁽³⁾ Council Decision 2008/616/JHA of 23 June 2008 on the implementation of Decision 2008/615/JHA on the stepping up of cross-border cooperation, particularly in combating terrorism and cross-border crime (OJ L 210, 6.8.2008, p. 12).

- (10) In its judgment of 22 September 2016 in Joined Cases C-14/15 and C-116/15 ⁽¹⁾, the Court of Justice of the European Union held that Article 25(2) of Decision 2008/615/JHA unlawfully lays down the requirement of unanimity for the adoption of measures necessary to implement that Decision.
- (11) However, Article 33 of Decision 2008/615/JHA confers upon the Council implementing powers with a view to adopting measures necessary to implement that Decision, in particular as regards the receiving and supply of personal data provided for under that Decision.
- (12) As the conditions for triggering the exercise of such implementing powers have been met and the procedure in this regard has been followed, an Implementing Decision on the launch of automated data exchange with regard to VRD in Croatia should be adopted in order to allow that Member State to receive and supply personal data pursuant to Article 12 of Decision 2008/615/JHA.
- (13) Denmark is bound by Decision 2008/615/JHA and is therefore taking part in the adoption and application of this Decision which implements Decision 2008/615/JHA.
- (14) The United Kingdom and Ireland are bound by Decision 2008/615/JHA and are therefore taking part in the adoption and application of this Decision which implements Decision 2008/615/JHA,

HAS ADOPTED THIS DECISION:

Article 1

For the purposes of automated searching of vehicle registration data, Croatia is entitled to receive and supply personal data pursuant to Article 12 of Decision 2008/615/JHA as from 18 June 2017.

Article 2

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

This Decision shall apply in accordance with the Treaties.

Done at Luxembourg, 8 June 2017.

For the Council
The President
U. REINSALU

⁽¹⁾ Judgment of the Court of Justice of 22 September 2016, *Parliament v Council*, Joined Cases C-14/15 and C-116/15, ECLI:EU:C:2016:715.

COMMISSION DECISION (EU) 2017/1021**of 10 January 2017****on State aid SA.44727 2016/C (ex 2016/N) which France is planning to implement in favour of the Areva group***(notified under document C(2016) 9029)***(Only the French text is authentic)****(Text with EEA relevance)**

THE EUROPEAN COMMISSION,

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

Having regard to the Treaty establishing the European Atomic Energy Community,

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

Having called on interested parties to submit their comments pursuant to those articles ⁽¹⁾, and having regard to their comments,

Whereas:

1. PROCEDURE

- (1) On 29 April 2016, after pre-notification contacts, the French authorities notified to the Commission restructuring aid in favour of the Areva group ('the Areva Group') in the form of two capital injections by the French State. The French authorities sent additional information to the Commission by letters dated 27 May and 6 July 2016.
- (2) By letter dated 19 July 2016, the Commission informed the French authorities that it had decided to initiate the procedure laid down in Article 108(2) of the Treaty on the Functioning of the European Union ('TFEU') in respect of the aid. The French authorities sent their comments on that decision to the Commission by letter dated 12 September 2016.
- (3) The Commission decision to initiate the procedure ('the opening decision') was published in the *Official Journal of the European Union* ⁽²⁾ on 19 August 2016. The Commission called on interested parties to submit their comments.
- (4) The Commission received comments within the deadline from the following interested parties: Urenco, Teollisuuden Voima Oyj ('TVO'), Siemens, the Areva Group, and a third party who wished to remain anonymous. It forwarded them to France, giving it the opportunity to comment on them, and received its comments by letter of 18 October 2016.
- (5) The French authorities sent a number of additional comments on 30 November and again on 7, 12, 21 and 22 December 2016.
- (6) In parallel to the proceedings in respect of the restructuring aid, on 27 July 2016 the French authorities notified to the Commission rescue aid of EUR 3.3 billion in the form of two loans to the Areva Group, one of EUR 2 billion granted to the parent company Areva SA ('Areva SA'), and the other of EUR 1.3 billion to its wholly owned subsidiary New Areva ('New Areva') ⁽³⁾. These loans are to be converted into capital in these two entities when the capital injections at issue in this Decision are made. The notified rescue aid, registered under number SA.46077, is the subject of a separate decision.

⁽¹⁾ OJ C 301, 19.8.2016, p. 2.

⁽²⁾ See footnote 1.

⁽³⁾ This entity is described in recital 33 of this Decision.

2. DETAILED DESCRIPTION OF THE AID

2.1. Beneficiary and background to the granting of the aid

2.1.1. Overview of the Areva Group

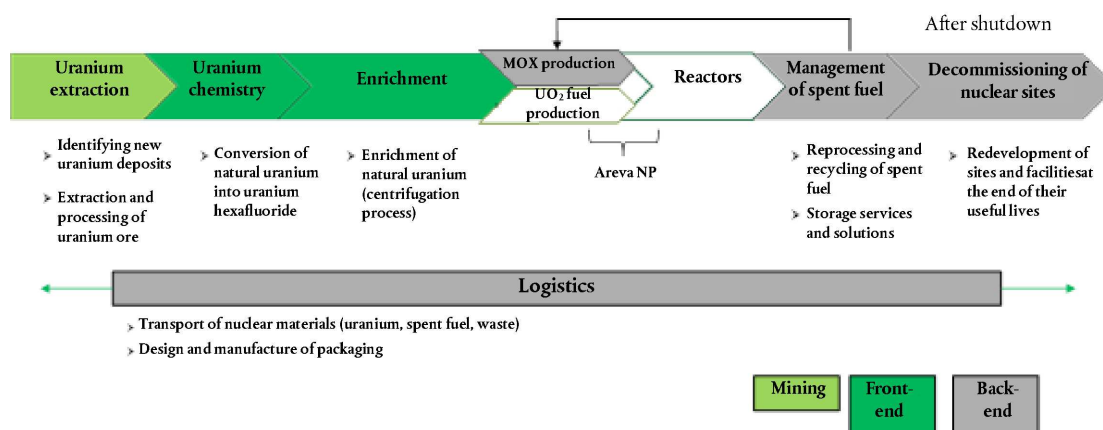
- (7) The Areva Group is listed on the stock exchange. The French State directly or indirectly controls 86,52 % of it. The State directly owns 28,83 % of the parent company, Areva SA, and indirectly owns 54,37 % and 3,32 %, via the Atomic Energy Commission (*Commissariat à l'Énergie Atomique*, 'CEA') and Bpifrance Participations respectively. Areva SA controls the various Areva Group subsidiaries in the proportions shown in Figure 2 below.
- (8) The Areva Group is active in the whole range of nuclear-cycle activities, through four business lines:
- (a) mining (exploration, development, extraction and site reclamation), accounting for 18 % of its turnover in 2015;
 - (b) front-end operations (conversion and enrichment of uranium, fuel design and production), accounting for 28 % of its turnover in 2015;
 - (c) back-end operations (nuclear waste reprocessing and recycling as MOX fuel ⁽⁴⁾, nuclear logistics, decommissioning and services), accounting for 19 % of its turnover in 2015;
 - (d) reactors and associated services (design, construction and maintenance of nuclear reactors, including naval propulsion reactors, and ancillary activities such as nuclear measurements), accounting for 34 % of its turnover in 2015.
- (9) The group's operations also include renewable energies, though this activity is on a smaller scale and is currently being rationalised. It accounted for less than 1 % of the Areva Group's turnover in 2015.
- (10) These four business lines can be grouped into two main historically distinct and complementary activities: (i) nuclear fuel cycle management, comprising mining, and front-end and back-end operations, and (ii) reactors. The first was carried on by Cogema and the second by Framatome, before these two entities merged in 2001 to form the Areva Group.

Figure 1

Overview of the Areva Group's activities

THE GROUP'S ACTIVITIES

The Areva Group's activities in the nuclear energy sector fall into four main categories:

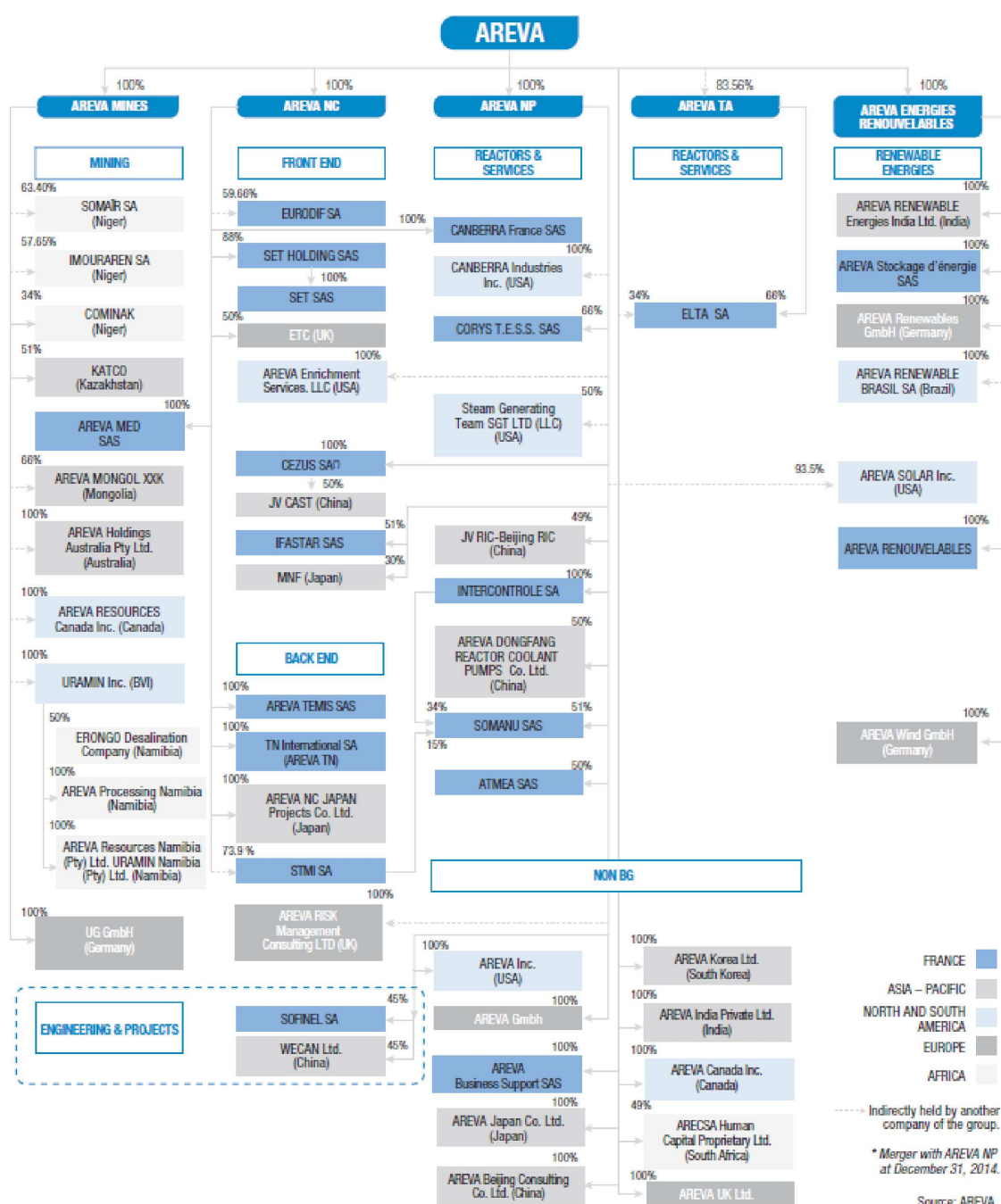


⁽⁴⁾ Spent fuel removed from a nuclear reactor is comprised of 94 % to 95 % (depleted) uranium and 1 % plutonium. Both can be recycled as 'new' fuel for nuclear power stations in the form of MOX (mixed oxide fuel).

- (11) The distinction between the two main business categories was carried over into the organisation chart for the merged Areva Group, as shown in Figure 2. The reactors business was housed in the subsidiary Areva Nuclear Power ('Areva NP') (and, where naval propulsion was concerned, in Société Technique pour l'Énergie Atomique ('Areva TA')), while the fuel cycle business was divided between Areva Nuclear Cycle ('Areva NC') for the front end and back end of the cycle, and the subsidiary 'Areva Mines' for mining activities. Nuclear fuel assembly, despite being linked to the fuel cycle, was housed in Areva NP because of the close synergies between assembly and reactor design ^(?).

Figure 2

Simplified organisation chart for the Areva Group as at 31 December 2014



^(?) In the rest of this Decision, any references to 'the reactors business' are understood to include fuel assemblies, unless otherwise specified.

- (12) As at 31 December 2015 the Areva Group employed 39 537 people. In 2015 its total turnover came to EUR 8,2 billion, compared with EUR 8,3 billion in 2014. However, applying IFRS Standard 5 on Non-current Assets Held for Sale and Discontinued Operations ⁽⁶⁾ resulted in a published turnover for the Areva Group of EUR 4,2 billion.

2.1.2. *The difficulties encountered by the Areva Group*

- (13) The difficulties encountered by the Areva Group arise first from the consequences of the sharp downturn in the nuclear market and from the adverse economic and financial conditions since 2008. Second, the Areva Group made significant losses on a small number of industrial projects. Lastly, its profitability fell as a result of certain acquisitions and the development of certain activities.
- (14) Regarding the first difficulty, the accident at Fukushima in 2011 contributed to a rapid downturn in nuclear markets. Since that date, a number of reactors have been shut down and countries such as Germany and Switzerland have decided to pull out of nuclear energy. Plans for new power stations in countries such as China have also been put on hold. Both the fuel and the reactor markets have been affected, and the Areva Group's results have suffered as a consequence.
- (15) With sources of long-term financing drying up as a result of the financial crisis in 2008 and the entry into force of new prudential rules, it has become more difficult to finance capital-intensive projects such as nuclear power stations.
- (16) Moreover, the contraction of the market and the resulting overcapacity hit at a time when the Areva Group had decided to invest in modernisation and was facing an increase in its operating costs. This had a direct impact on its cash flows and forced it to resort to debt to finance its short-term operations. At the same time, in view of the deteriorating market outlook, the Areva Group had to write down assets.
- (17) Regarding the second difficulty, the Areva Group accumulated major losses on a number of industrial projects, the most important of which is the construction of a new-generation nuclear plant at Olkiluoto in Finland ('OL3 project') for TVO.
- (18) The project is being led by a consortium ('the Consortium') formed in 2003 by the Areva Group, through Areva NP and its subsidiary Areva GmbH ('Areva GmbH'), and Siemens. The project is some nine years behind schedule and has overrun its costs, resulting in a loss on completion for the Areva Group estimated at EUR 5,5 billion ⁽⁷⁾. The Areva Group has issued a liability guarantee, via its parent company Areva SA, in favour of its customer TVO, although according to the French authorities questions remain regarding its validity and scope.
- (19) The OL3 project is the subject of a major arbitration case between the Consortium and TVO, with each party claiming that the other is responsible for the significant delays and cost overruns at the site. The parties are seeking several billion euros in compensation from each other. [...] ^(*).
- (20) The Consortium and TVO had started negotiating an overall settlement, contractually setting a new provisional date for delivery ⁽⁸⁾ [...], in order to resolve the arbitration dispute [...] ⁽⁹⁾ [...].
- (21) The French authorities also gave details of the losses associated with the JHR projects (Jules Horowitz Reactor — a planned materials testing reactor under construction at CEA's Cadarache site) and [...] (upgrade of the [...] reactor at the [...] plant), which have generated losses of several hundred million euros to date.

⁽⁶⁾ As they were shortly to be sold off, the activities of Areva NP, Areva TA and Canberra were not included in the consolidated turnover for the Areva Group in 2015.

⁽⁷⁾ Estimate made at the end of 2015.

^(*) Confidential information.

⁽⁸⁾ Referred to as the 'Provisional Take Over Date' in the agreement. This is the date when, assuming the contractual terms regarding availability and performance have been met, the plant is accepted and commissioned by the customer.

⁽⁹⁾ A 'carve-out' is an operation to separate from an undertaking that is going to be sold assets or activities that will not be included in the sale and to give them, if needed, the operational and legal independence that they did not previously have. [...].

- (22) Lastly, regarding the third difficulty, the financial health of the Areva Group also deteriorated as a result of unprofitable acquisitions and development projects, in particular in mining (the acquisition of Uramin, for example, gave rise to losses of close on EUR [...]) and in renewable energy.
- (23) For all these reasons, the Areva Group has recorded substantial accumulated losses in excess of EUR 9 billion over the financial years 2011 to 2015. The Areva Group financed these losses and the investments needed to modernise its industrial plant ⁽¹⁰⁾ with debt, via both banks ('banking debt') and the capital markets ('bond debt'). After it drew down new banking lines in early 2016, its debt on 5 January 2016 stood at EUR 9,4 billion ⁽¹¹⁾, EUR 6 billion of which was bond debt.
- (24) In view of the outlook for the Areva Group, its capital structure does not allow it to cover its debts, which is why the French authorities have launched a wide-ranging restructuring exercise in cooperation with the Areva Group.

2.2. Areva Group's restructuring plan

- (25) In their notification of 29 April 2016 the French authorities outlined a restructuring plan covering the period from November 2014 to December 2019 ('the restructuring period') with a view to restoring the Areva Group's competitiveness and improving its financial structure. Under the plan, the Areva Group will refocus its activities on the nuclear fuel cycle. The restructuring plan will be accompanied by industrial restructuring under a Performance and Competitiveness Plan designed to generate cost savings of some EUR 500 million by 2018 within the continuing business operations, and major financial restructuring, primarily recapitalisation of the Areva Group.

2.2.1. Refocusing on the fuel cycle business

- (26) Refocusing on the fuel cycle business will be achieved by (i) divesting the Areva Group's other activities, (ii) creating the new legal entity New Areva to carry on the fuel cycle operations, and (iii) ring-fencing certain liabilities in the current parent company Areva SA.

2.2.1.1. Divestments made or planned by the Areva Group

- (27) The divestments concern the following subsidiaries and operations:
- (a) The operations managed today by Areva NP, a wholly owned subsidiary of Areva SA.
 - (b) Areva TA, which is 83,58 % owned, directly or indirectly, by Areva SA. In view of the sensitive nature of Areva TA's nuclear propulsion business, the Areva Group's stakes in the company are being sold to a consortium of public shareholders (French State, CEA and French defence firm DCNS). The divestment agreement was signed by the parties to the transaction on 15 December 2016. Areva TA is being divested without its subsidiary Elta, which is being sold off separately.
 - (c) Canberra, which is wholly owned by the Areva Group: this divestment took place on 1 July 2016.
 - (d) Smaller-scale divestments, such as the subsidiary Elta (66 % of which is held by Areva TA and 34 % by Areva SA), which specialises in electronic systems for the aerospace industry, [...].
- (28) The Areva Group also plans to withdraw in the short and medium term from practically all its activities in renewable energy and energy storage. Adwen, a company specialising in offshore wind energy, is in the process of being sold to the Spanish group Gamesa. In floating offshore wind, [...]. In biomass, [...]. In 2014 the Areva Group decided to gradually wind down its concentrated solar power activities, once current projects have been completed. Lastly, the Areva Group retains a minority stake in an undertaking that is developing electrolysis technologies for energy storage and a small research and development operation in flow batteries and hydrogen fuel cells.

⁽¹⁰⁾ For example, the Areva Group decided to modernise its conversion and enrichment plants, Comurhex II and Georges Besse II.

⁽¹¹⁾ This is the figure for the Areva Group's gross debt, i.e. without taking account of cash and cash equivalents.

- (29) The divestment of the activities carried on to date by Areva NP is subject to specific arrangements and a number of conditions set out in the share purchase agreement ('the SPA') signed by EDF and the Areva Group on 15 November 2016.
- (30) First, the parties have agreed that EDF should be insulated from a certain number of risks linked today to Areva NP. These risks are associated primarily with the continuation of the OL3 project, but also with the anomalies detected during quality audits of equipment manufactured by Areva NP at the Le Creusot, Jeumont and Saint-Marcel plants ('the components contracts'). To insulate EDF, the parties chose a hive-down mechanism whereby Areva NP's principal activities will be transferred to a new entity ('New Areva NP') for sale to EDF. The activities related to performance of the OL3 contract [...] ⁽¹²⁾ will remain with the old Areva NP, and through it the parent company Areva SA.
- (31) Lastly, the sale will take place only once certain conditions have been met. These include the condition that [...] Flamanville 3 project does not throw up any anomalies that would significantly push up the costs or delay the project. [...] vessel is [...] subject to a specific testing programme following the discovery in 2014 of non-compliant values in analyses conducted on a part similar to that at Flamanville 3, resulting in a higher than expected carbon concentration ('carbon segregation'). The Areva Group and EDF proposed further tests ('demonstration programme') to provide additional guarantees to demonstrate the reliability and safety of the vessel despite the carbon segregation issue. These adaptations to the testing programme were approved by the French Nuclear Safety Authority (*Autorité de Sûreté Nucléaire*, 'ASN') ⁽¹³⁾. The tests comprising the demonstration programme ran until the end of 2016. On 16 December 2016 the Areva Group and EDF submitted the final report on the tests to ASN, which expects to take five months to analyse the results and publish its final conclusions.
- (32) The initial restructuring plan saw New Areva keep a strategic 15 % stake in New Areva NP. However, in response to the doubts raised by the Commission during its in-depth investigation, the French authorities have committed to a full divestment by the Areva Group of its reactors business, which means that Areva SA and New Areva will have no capital links with New Areva NP following implementation of the restructuring plan notified to the Commission.

2.2.1.2. Hive-down of the nuclear fuel cycle business

- (33) The Areva Group set up the company New Areva, which today is wholly owned by Areva SA, to take over:
- (a) all the Areva Group's fuel cycle assets in mining, chemicals, enrichment, decommissioning, recycling and fuel cycle engineering, including the stakes in Areva NC and Areva Mines, but excluding the assets held for sale;
 - (b) the bonds and intra-group debt.
- (34) On 30 August 2016 the agreement on partial transfer of assets from Areva SA to New Areva was signed and on 27 September 2016 the agreement of all the holders of bonds transferred to New Areva was obtained. The creation of New Areva was approved by the extraordinary general meeting of Areva SA shareholders on 3 November 2016.
- (35) The capital of the new entity is to be increased in the amount of EUR 3 billion by the French State and a number of third-party investors. The French State will inject EUR 2,5 billion, and the third-party investors, EUR 500 million. With the shares in New Areva valued, before the transaction, at EUR 2 billion, after the transaction its capital will be held in the following proportions: 40 % by Areva SA, 50 % directly by the French State, and 10 % by third-party investors.

⁽¹²⁾ [...].

⁽¹³⁾ See EDF and Areva Group press releases of 13 April 2016: <https://www.edf.fr/en/edf/flamanville-epr-advancement-of-reactor-vessel-testing-programme-areva> and <http://www.areva.com/EN/news-10753/flamanville-epr-advancement-of-reactor-vessel-testing-programme.html>.

2.2.1.3. Ring-fencing of certain liabilities of the Areva Group

- (36) As part of the restructuring, the risks associated with the OL3 project and [...] will be borne by the current parent company, Areva SA, either directly or via Areva NP. Areva SA will also retain the Areva Group's banking debt, but will lose its principal business activities with the divestment of New Areva NP and the hive-down of the fuel cycle operations.

2.2.2. Performance and Competitiveness Plan

- (37) In order to improve its competitiveness and operational performance after refocusing on the fuel cycle, the Areva Group has started to implement a Performance and Competitiveness Plan.
- (38) The aim is to make cost savings of EUR 500 million per year, thanks to substantial efforts.
- (39) The Performance and Competitiveness Plan has four strands: (i) selectivity in purchasing, (ii) better use of sales forces, (iii) improved productivity (in particular through a voluntary redundancy plan) and (iv) wage moderation. The first measures were taken in 2015 and the Plan is expected to run until 2018.

2.2.3. Financial restructuring

- (40) The barely sustainable financial structure of the Areva Group calls for restructuring.
- (41) The proceeds from the divestment of the various subsidiaries listed in recitals 27 and 28 will constitute a first source of financing for the liquidity requirements of the Areva Group.
- (42) The Areva Group is also mobilising own financing of around EUR [0-2 billion], split between a structural reduction of EUR [0-1 billion] in the minimum cash balance and various transfers of claims worth EUR [0-1 billion]. These transactions are described in more detail in recital 321.
- (43) However, these resources are not sufficient to tackle the Areva Group's debt position. The French authorities estimate the Areva Group's capital shortfall at EUR 5 billion. The restructuring plan therefore includes a capital contribution of EUR 5 billion, broken down as follows:
- (a) EUR 3 billion for New Areva, subscribed as set out in recital 35. This amount was calculated on the basis of two objectives: first, securing New Areva's liquidity needs up to 2019 inclusive and, second, enabling New Areva, by the end of the restructuring period, to reach debt ratios compatible with an investment grade risk profile so that it can refinance itself on the markets [...] ⁽¹⁴⁾.
 - (b) EUR 2 billion for Areva SA, subscribed entirely by the French State, to cover the costs of the operations that will continue to be housed in Areva SA (primarily the OL3 project costs, [...], and the repayment of the Areva Group's banking debt ⁽¹⁵⁾).

2.3. Notified aid

- (44) On 29 April 2016 the French authorities notified as a single restructuring aid measure the planned subscription by the French State to two capital injections in Areva SA and New Areva respectively for a total amount of EUR 4,5 billion. This aid is to be financed from the French State's own funds.

⁽¹⁴⁾ According to calculations by the Areva Group and the French authorities, by the end of 2019 New Areva will have an S&P net debt/EBITDA ratio of [...] and an S&P operational cash flow/net debt ratio of [...].

⁽¹⁵⁾ The details of these costs and the suitability of the aid amount to cover them are analysed in section 5.2.3.2 of this Decision.

- (45) The compatibility of restructuring aid has to be assessed under the Guidelines on State aid for rescuing and restructuring non-financial undertakings in difficulty ⁽¹⁶⁾ ('the Guidelines'). Following a preliminary investigation, the Commission expressed doubts about the compatibility of the aid with the Guidelines.

2.4. Grounds for initiating the procedure

2.4.1. Doubts about the plan for returning the restructured Areva Group to long-term viability

- (46) The Commission questioned whether the assumptions underpinning the plan for returning the Areva Group to long-term viability were realistic.
- (47) It found that the baseline scenario for New Areva did not clearly identify what impact, including in terms of lost synergies, the various divestments under the restructuring plan (especially of New Areva NP) might have on the nuclear fuel cycle operations. There was a contradiction here with the assertion by the French authorities that the divestments reduced the competitiveness of the restructured Areva Group and thus constituted genuine compensatory measures.
- (48) The Commission also found that the adverse scenario had not been based on a proper sensitivity analysis clearly identifying and ranking the main risk factors for the Areva Group.
- (49) In addition, the Commission had doubts about whether New Areva could return to long-term viability in an adverse scenario, as this scenario threw up a financing gap [...].
- (50) In respect of Areva SA, the forecasts notified by the French authorities still involved too many uncertainties, including around the quantification of the hive-down scenario.

2.4.2. Doubts about the proportionality of the aid

- (51) In the light of the information notified by the French authorities, the Commission concluded that the principle of adequate burden-sharing appeared to have been complied with, though it required clarifications on the treatment of the existing minority shareholders.
- (52) However, the Commission had doubts about the Areva Group's own contribution to the costs of its restructuring. The forecasts provided by the French authorities implied that the Areva Group would in principle be able to finance more than 50 % of its restructuring costs. However, the total of the own contributions came to EUR [9-11 billion], which was higher than the financing shortfall estimated at EUR [8-9 billion], and no justification for the difference was provided. Moreover, several of the elements of the own contribution, such as the planned divestments or the contribution from third-party investors to New Areva's capital injection, were still too uncertain to be classified as 'real and actual'.

2.4.3. Doubts about the measures to limit distortions of competition

- (53) The Commission recognised that the various total or partial divestments undertaken by the Areva Group resulted in a significant reduction in the scope of its business — some 50 % based on consolidated turnover or on the number of staff. However, the impact of these divestments on the competitive situation was not obvious.
- (54) In the Commission's view, not all the divestments could be placed on the same footing. The sale of relatively small subsidiaries such as Areva TA or Canberra was not in proportion to the scale of the planned aid.
- (55) There remained the partial divestment of New Areva NP, which did seem in line with the amount of the aid, but did not appear to have a direct impact on the markets in which the Areva Group would have a significant position after the restructuring. The Commission had questions therefore about the two assumptions underpinning the assertion by the French authorities that this was a pro-competitive measure: first, that there were strong synergies between the reactors business and the fuel cycle business, such that there was an advantage to operating as an integrated group in nuclear markets; and second, that the Areva Group would lose the benefit of these synergies by divesting its subsidiary New Areva NP.

⁽¹⁶⁾ OJ C 249, 31.7.2014, p. 1.

- (56) Regarding the second assumption in particular, the Commission noted that, by virtue of a Memorandum of Understanding signed by EDF and the Areva Group on 20 July 2015, the two groups appeared to be rebuilding contractually the synergies that had previously existed structurally.
- (57) For these different reasons, the Commission had doubts about the effects that the divestment of New Areva NP would have on the Areva Group's competitive position in its markets after the restructuring, and thus about whether this compensatory measure was sufficient.
- (58) Lastly, the Commission was surprised that the French authorities refused to give an undertaking as required in the Guidelines that the restructuring aid would not be used to acquire shares. The Commission therefore invited the French authorities to include any such transactions in the restructuring plan, if they were found to be indispensable to the return to long-term viability of the Areva Group.

3. COMMENTS BY THIRD PARTIES

3.1. The Areva Group

- (59) The Areva Group gave its full support to the comments submitted by the French authorities on 12 September 2016, which it had helped to formulate.
- (60) With respect to the doubts expressed by the Commission, the Areva Group stressed the following key points:
 - (a) The Areva Group was confident that the restructured Group would return to long-term viability, thanks to its modernised industrial plant and the expected growth in energy demand.
 - (b) The divestment of New Areva NP to EDF constituted a sufficient compensatory measure. It would have a significant negative impact on the restructured Areva Group's competitive position: besides a 50 % reduction in its turnover, the divestment would result in (i) the Group's withdrawal from a large number of markets (in particular the construction and maintenance of nuclear reactors, and the production of fuel assemblies), and (ii) lost synergies linked to the lack of opportunities for cost pooling (such as in the commercial field, fuel assemblies, and research and development and engineering).
 - (c) A ban on acquiring stakes did not constitute an appropriate compensatory measure. Areva believed that it needed to be able to undertake [...] in the future, or to enter into partnerships.
- (61) The Areva Group also stressed the strategic importance of the restructuring aid for the nuclear industry and the economy in Europe: it was a direct job provider, a key player in maintaining the nuclear sector, involved in numerous segments of the nuclear value chain, and a crucial contributor to the smooth functioning of Europe's nuclear power fleet.
- (62) The Areva Group also stressed that the restructuring plan was progressing well, with (i) the divestments of Canberra (finalised) and the Areva Group's share in Adwen (option exercised), and (ii) the approval by the bondholders of the partial transfer of assets from Areva SA to New Areva, and the simultaneous transfer of the bond debt to New Areva. Moreover, the approval of the Hinkley Point C project meant a favourable outlook for the plan.

3.2. Urenco

- (63) Urenco was born out of political cooperation between Germany, the Netherlands and the United Kingdom. Established in 1970, its main business is uranium enrichment, and it has plants in the three countries that set it up, as well as in the United States.
- (64) Urenco began by painting a broad picture of the nuclear fuel cycle value chain, and then went on to develop a three-pronged argument: first, the aid under scrutiny would significantly strengthen the Areva Group; second, the distortive effect would be felt particularly on the enrichment market to the detriment of Urenco and the other competitors in this segment; and consequently, the competitive measures proposed by the French authorities were insufficient and needed to go further.

- (65) On the first point, Urenco stated that the restructuring plan failed to include any capacity reduction measures in any of the Areva Group's business lines, despite its financial difficulties and the overcapacity in its markets. New Areva would retain the same assets in the nuclear fuel cycle as in the past, and would thus be ideally placed to maintain a strong position in these markets.
- (66) This was all the more evident in that the State intervention helped to repair the balance sheets of the newly established entities and wipe the slate clean of historic poor management. New Areva NP and New Areva were thus restored to a position where they had the freedom to make new investments, access financing and leverage bargaining power. New Areva's competitors, by contrast, had to bear the full costs of their past investments and could count on their profits alone for future development.
- (67) On the second point, Urenco took the view that the distortions of competition would be felt over the long term in the enrichment segment, which was characterised by overcapacity and a limited number of highly capital-intensive projects.
- (68) According to Urenco, worldwide enrichment capacity was significantly higher than demand [...]. This overcapacity was all the more detrimental because part of the growth in demand came from countries such as China and Russia, which were largely closed to Western companies. As for the demand that could be accessed by Western companies, EDF's electro-nuclear fleet represented a major share, and it was therefore vital that the closer ties between EDF and the Areva Group did not restrict Urenco's access to EDF.
- (69) The aid under scrutiny also helped the Areva Group to remain active in MOX fuel, even though this fuel was less competitive than enriched natural uranium. Without the State aid, this business would have been closed or scaled down, freeing up the markets for the Areva Group's competitors (in particular for supplying EDF, [0-25] % of whose demand could be met with MOX fuel).
- (70) New Areva's repaired balance sheet would also free it up to develop trading in enrichment services ('separative work units — SWUs'), an activity that required significant financial room for manoeuvre. This market [...] could help to place New Areva in a stronger position than its non-subsidised competitors, whose financial structure, reflecting the highly capital-intensive projects in the sector, did not allow them to take this kind of risk.
- (71) Lastly, Urenco argued that New Areva would continue to benefit from the advantages of vertical integration in the fuel cycle markets.
- (72) On the third point, Urenco stressed that the competitive measures should be offered in the markets in which the Areva Group would operate after the restructuring, all the more so since most of these markets (mining, conversion and enrichment) currently faced overcapacity.
- (73) Urenco did not share the view of the French authorities that withdrawing from the reactors business would give rise to lost synergies on such a scale that the fuel operations would be affected. The fact that there were numerous non-integrated but successful players (such as Urenco, Cameco and KAP) demonstrated that the importance of these synergies was relative. Moreover, they concerned only the supply of fuel to new reactors; [...].
- (74) In any event, the strategic partnership between EDF and New Areva would recreate any synergies lost. New Areva would keep a strategic stake in the joint subsidiary with EDF, which would involve a certain degree of coordination between the two groups and could be an incentive for EDF to favour New Areva. In addition, they would have the same shareholder: the French State. And closer cooperation was on the cards, as the Commission noted in its opening decision. Lastly, the disadvantages of the split would be felt primarily by New Areva NP, which would have to form new sales teams for the sale of fuel assemblies, while New Areva would keep the benefits of integration on the fuel cycle side.
- (75) Accordingly, Urenco proposed the following pro-competition measures:
- (a) that EDF undertake to keep supply open to all fuel cycle operators;

- (b) that the State aid should not disproportionately improve the position of New Areva's subsidiary operating in enrichment, without ensuring that the subsidiary was kept separate from the recapitalisation (such as by ensuring that the debts associated with the construction of the Georges Besse II plant were repaid only by cash flow from that activity);
 - (c) that New Areva be prohibited from increasing the capacity of the Georges Besse II plant at least during the restructuring period, without undermining the obligations of the Areva Group [...] in relation to [...] ⁽¹⁷⁾;
 - (d) that New Areva reduce its MOX capacity and refrain from using its recovered liquidity to develop SWU trading activities.
- (76) Urenco also wanted the French authorities to explore other pro-competition measures to be spread across all the segments, such as the sale of an activity to a new entrant, in order to reduce the synergies derived from New Areva's integration on the fuel cycle side. Lastly, Urenco stressed the importance of compliance with the ban on acquiring any undertaking during the restructuring period, unless it could be shown that such an acquisition was indispensable to the Areva Group's return to viability.

3.3. TVO

- (77) TVO is a Finnish electricity generator established in 1969 and owned by other Finnish electricity undertakings and by industrial companies. TVO is the future owner of OL3, a nuclear power plant using European Pressurised Reactor ('EPR') technology, that is still under construction. The construction contract for this plant [...] was concluded on 18 December 2003 with the Consortium. The initial date of delivery was 30 April 2009. Following numerous delays, the Consortium has now announced that delivery will take place in December 2018.
- (78) TVO stressed the importance of the OL3 reactor for the energy sector in Finland and in Europe. Once it had been commissioned, OL3 would contribute 9 % of total electricity generation in Finland by 2020, and meet 14 % of total electricity demand, thereby helping Finland to increase its energy independence. In addition, OL3 was a pioneering project, which should pave the way for a 'resurgence' of the nuclear industry.
- (79) The OL3 project was in its final stage of completion. External construction was almost complete, but some construction and fitting work was still ongoing inside the plant, particularly with respect to the nuclear island (reactor). Some 2 400 people were working on the site. TVO stressed that the OL3 project was now entering the crucial commissioning phase, which would ultimately take it to the provisional delivery date. This phase required the ongoing support of the Consortium, which had the EPR knowledge and expertise.
- (80) TVO also referred to the arbitration dispute between itself and the Consortium. The total amount claimed by the Consortium was currently some EUR [0-5 billion], while the amount claimed by TVO to cover its own costs and losses came to EUR [0-5 billion] according to its latest estimates. The total combined amount claimed by the two parties to the dispute therefore came to around EUR [0-10 billion].
- (81) TVO went on to explain its understanding of the Areva Group's restructuring plan, now based on 'plan B', i.e. transferring New Areva NP to EDF after ring-fencing the OL3 project and the resources needed to complete it, as well as leaving in this 'legacy structure' the components contracts and part of the Areva Group's debt.
- (82) Overall, TVO supported the planned recapitalisation of the Areva Group by the French State. However, it had concerns about the potential negative impact of the group's restructuring on the OL3 project. In particular, TVO wondered about the ability of the legacy structure, in which the ring-fenced OL3 project would be placed, to maintain the resources necessary for the proper completion of the project. The legacy structure would have limited financial resources to meet what could be significant debts that were difficult to quantify at this stage.
- (83) The financial resources of the legacy structure were composed of: EUR 2 billion in capital injections, EUR 2,5 billion in proceeds from the sale of New Areva NP to EDF, residual proceeds from the sales of Areva's non-strategic activities and the balance still owed by TVO to the Areva Group for the completion of the

⁽¹⁷⁾ [...].

OL3 project. Mirroring these resources, the costs borne by the legacy structure were estimated to be: the costs of completing the OL3 project and the associated guarantees, the repayment of the banking debt of EUR 3,4 billion, potential guarantees to EDF for the contracts for nuclear plants whose components were to be audited, other guarantees linked to the sale of non-strategic assets and, if TVO were to win the ongoing arbitration dispute, an amount that could be as high as EUR [0-5 billion].

- (84) TVO therefore questioned the ability of the restructured Areva Group to cope with the risks associated with the OL3 project, in particular the costs of completing it, and set out the implications of its doubts for the restructuring aid assessment under the Guidelines, and more specifically the degree to which the aid contributed to an objective of common interest, the long-term return to viability of the Areva Group, and the one-time-last-time principle.
- (85) First, as regards the objective of common interest, TVO endorsed the argument made by France highlighting the contribution made by the aid to achieving the objectives of the Euratom Treaty, set out in Article 2(d) thereof. However, TVO stressed the need also to consider Article 2(b) and (c) of the Treaty. With respect to Article 2(c), the aid contributed to the completion of OL3, which was an important project for the development of the European energy sector and for security of supply in the Nordic countries. With respect to Article 2(b), the nuclear safety objective implied, as laid down in Article 11 of the Convention on Nuclear Safety that 'each Contracting Party shall take the appropriate steps to ensure that sufficient numbers of qualified staff with appropriate education, training and retraining are available for all safety-related activities in or for each nuclear installation, throughout its life'. Given that TVO's expertise was mainly restricted to the operation of power plants, it was relying on the Consortium's expertise to ensure the safety of the OL3 project. However, a restructuring plan involving the ring-fencing of the OL3 project in a legacy structure risked giving rise to under-allocation of qualified staff from the Areva Group to the project, loss of back-office support from the Areva Group in France and Germany, loss of the Areva Group's technical infrastructure and potential problems with project sub-contractors.
- (86) Second, as regards the return to long-term viability of the Areva Group, TVO questioned whether the capital injection into Areva SA was sufficient, whether the assumptions underlying the restructuring plan were realistic, and therefore whether the aid could ensure the long-term viability of Areva SA.
- (87) Third, as regards the one-time-last-time principle, if the restructuring plan did not ensure that the Areva Group was able to meet its obligations in respect of the completion of the OL3 project, additional obligations in the form of damages associated with new delays could arise. It would then be impossible to approve new State aid because of the one-time-last-time principle.
- (88) In order to address these doubts and questions, TVO stressed that any restructuring plan had to comprise:
- (a) operational measures to ensure that sufficient human, technical and financial resources remained available and were set aside to ensure the proper completion of the OL3 project within the deadlines agreed and in line with the performance level guaranteed in the initial construction contract, and to cover other potential costs until the end of the guarantee period and beyond;
 - (b) sufficient financial resources allocated to the entity in which the OL3 project was to be housed, and earmarked in full for this project specifically, in order to cover the residual costs of completion and the other obligations deriving from the various contracts concluded between the Areva Group and TVO.

3.4. Siemens

- (89) Together with two companies belonging to the Areva Group (Areva GmbH and Areva NP), Siemens is part of the Consortium sponsoring the OL3 project. Although the Areva Group is carrying the biggest share of the project, the members of the Consortium are jointly and severally liable to their client, TVO, for the completion of the project.
- (90) While the Siemens group expressed full support for the intervention by the French State on behalf of the Areva Group, it nevertheless had a number of reservations.

- (91) First, Siemens questioned whether the aid was sufficient to cover the commitments and risks borne by Areva SA:
- (a) Siemens estimated the Areva Group's exposure to the OL3 project at between EUR [0-5 billion] and EUR [0-5 billion] in a baseline scenario, while an adverse scenario, including (i) [...] and (ii) [...], could see it rise to EUR [...].
 - (b) Siemens also pointed to the additional liabilities, such as certain banking liabilities, borne by Areva SA to the tune of EUR 3,4 billion.
- (92) Siemens then wondered how the structure that was to house the OL3 project would have sufficient legal, human, financial and operational resources to carry the project to completion, if the activities and operational resources in construction were to be transferred to New Areva NP for sale to EDF. The almost inevitable outsourcing of part of the project to New Areva NP could [...].
- (93) Siemens also expressed concern that the Areva Group's restructuring plan designed to ring-fence OL3 in a specific structure might be blocked [...] by TVO.
- (94) According to Siemens, these risks could be covered by additional mechanisms such as (i) additional financial resources from the French State, (ii) a State guarantee covering any additional liabilities arising from the OL3 project, or (iii) an undertaking from the French State to finance any additional capital shortfall linked to the project.
- (95) Lastly, given that Siemens and the Areva Group bore joint liability within the Consortium, Siemens was worried that it would have to cover the financial costs that the Areva Group was unable to meet, which in its view, would be incompatible with the burden-sharing principle laid down in the Guidelines.

3.5. Third party wishing to remain anonymous

- (96) A final third party, who wished to remain anonymous, alerted the Commission to the distortions of competition generated by the aid under scrutiny. According to this third party, both New Areva and New Areva NP would end up stronger as a result of the restructuring, thanks to the State intervention.
- (97) Undertakings in receipt of State support had a distinct competitive advantage in the nuclear industry, which was characterised by very intense competition and a demand for increasingly broad guarantees.
- (98) Lastly, the anonymous third party took the view that the future cooperation between New Areva and New Areva NP would recreate important synergies that would distort competition.

4. COMMENTS BY FRANCE

- (99) The comments by France are divided into four parts, corresponding to the main doubts raised by the Commission in the opening decision. First, the French authorities seek to demonstrate that the only measure which could constitute State aid is the capital injection into Areva SA and New Areva. They then respond to the Commission's doubts concerning the robustness of the assumptions underlying the business plan, the proportionality of the aid and the proposed competition measures.

4.1. Only the capital injection could constitute State aid

- (100) The French authorities pointed out first that the possibility of the Areva Group granting State aid to third parties by selling its subsidiaries at too low a price (i) was not relevant in this procedure, and (ii) was entirely theoretical because it had an incentive to maximise the return on its divestments. They also pointed out that the Areva Group was receiving no aid from the divestments of New Areva NP and Areva TA, which involved State resources but were being carried out at market price.
- (101) As regards New Areva NP, the French authorities explained that a specific type of governance had been introduced within EDF to ensure that EDF's interests were protected. In that context, a working group composed of independent managers had been specifically created for the acquisition of New Areva NP, in order to check whether the transaction was in the interests of EDF's shareholders and to give an independent opinion to EDF's

Board of Directors. No State representative sat on the working group. On the basis of the work done by the group, which had also commissioned a valuation study from the bank Société Générale, EDF had finally taken the acquisition decision.

- (102) The French authorities also explained that they had ultimately opted for a hive-down for EDF's acquisition of the Areva Group's reactors business. According to the French authorities, these new divestment arrangements had no impact on the valuation carried out by the parties and their advisers under the previous divestment plan: EUR 2,5 billion for 100 % of the capital. Irrespective of the legal arrangements for the divestment, the economic reality remained the same for EDF, which would take over Areva NP's historical activities without bearing the risks linked to the OL3 project. EDF would also be insulated against the risks linked to the components contracts. These risks had not been taken into account in the valuation of January 2016, but the insulation mechanism agreed by the parties meant the substance of the valuation need not be altered.
- (103) As regards Areva TA, the valuation process had been organised in two stages, in accordance with the most common market practices: (i) between January and May 2016, the Areva Group had provided the consortium of buyers with financial, operational, legal and tax information, and organised several working sessions with the Areva TA management team; (ii) the consortium had then had access to a data room and had been able to hold question and answer discussions with Areva TA management. In this context, the Areva Group and the buyer had been assisted by 12 legal, banking and due diligence advisers.
- (104) On 18 August 2016, the buying consortium described in recital 27 had submitted an offer valuing Areva TA shares at EUR [0-2 billion]. This valuation was based on the discounted cash flows method ('DCF') method, applied to a business plan based on assumptions agreed with the buyer. The price had been set out in the contract of sale signed on 15 December 2016.
- (105) The French authorities considered therefore that the final valuation was based on commonly recognised methods, after the usual due diligence.

4.2. The Areva Group is implementing a restructuring plan to restore its long-term viability

- (106) The French authorities first presented updated financial projections for New Areva. They were based on assumptions deemed to be extremely conservative: (i) the price of uranium had been revised downwards, [...], (ii) the projections for mining activities had been revised downwards, (iii) an additional risk had been taken into account as regards [...], (iv) a strengthened cost reduction plan had been incorporated for enrichment and conversion, (v) the cost of implementing the hive-down had been stabilised at EUR [200-900 million] over the period 2016-2025. The adverse scenario assumptions had also been revised downwards, following similar reasoning.
- (107) The French authorities then addressed the various doubts raised by the Commission concerning the plan for restoring viability.

4.2.1. New Areva's business plan takes into account the consequences of the proposed divestments

- (108) The French authorities argued that, given the length of nuclear industry cycles, the time horizon for the main losses of synergy extended beyond the Areva Group's financial projections (2016-2025). New Areva had a full order book for the next five to 10 years, which meant a degree of inertia in the development of its market shares. This characteristic was nevertheless common to all nuclear material suppliers; supply contracts typically extended over a period of many years, usually five to 10 years depending on the type of material (unprocessed, converted or enriched uranium) and the nature of the customer. However, the various divestments planned, especially that of New Areva NP, would undermine New Areva's competitive position in the longer term.
- (109) Furthermore, the Areva Group was implementing a Performance and Competitiveness Plan, which would cushion the shorter-term impact of the divestment of New Areva NP on its structural costs. For example, the Plan aimed precisely at achieving gains in the diversification of purchases to compensate for the loss of purchase volume

resulting from the divestment of New Areva NP. However, the adverse financial projections assumed that the Plan's objectives would only be [50-100] % achieved, and that therefore a negative impact would be felt.

4.2.2. *Sensitivity analysis and risk reduction strategy*

- (110) The French authorities and the Areva Group had identified the key risk factors affecting the future of New Areva. They pointed out that the baseline scenario was already very conservative, and it was therefore unlikely that all the adverse assumptions would occur at the same time.
- (111) The first of these factors was the euro/dollar exchange rate. [...]. An analysis of exposures was carried out monthly and coverage was contracted as necessary to cover a minimum percentage of future payments. Furthermore, some activities, such as mining, benefited in part from natural protection against this risk: 50 % of New Areva's mining output would originate in Canada, whose currency was correlated to the dollar.
- (112) The second risk concerned [...]. The consequences in the adverse scenario were around EUR – [0-100 million] on accumulated operational cash flows for the period 2016-2025. The French authorities pointed out that the Areva Group was already taking a series of cost optimisation and reduction measures to limit the impact of this risk, in the form of operational improvements aimed at [...]. These improvements were included in the Performance and Competitiveness Plan, which ran until 2018, [...] could be sought beyond 2018 if the risk materialised.
- (113) The third risk identified related to the consequences of a possible failure of [...]. This was unlikely in the view of the French authorities, as [...]. Nevertheless, a failure [...] would affect New Areva's income.
- (114) The financial projections for New Areva lastly took into account a number of contingencies [...], the extent of which differed according to whether the baseline or adverse scenario was considered. These amounted to EUR [1-2 billion] in the adverse scenario over the period 2016-2025, i.e. EUR [0-1 billion] more than in the baseline scenario. The French authorities indicated the corrective action that could be taken: additional commercial or productivity measures (e.g. optimising purchases and reducing the wage bill), or adjusting the investment plan [...].

4.2.3. *New Areva will be able to refinance itself on the markets over the period 2015-2025*

- (115) In response to the doubt raised by the Commission in recital 151 of the opening decision, the French authorities stated that, in the baseline scenario, New Areva's financing needs would materialise [...]. It was expected that New Areva would have re-established sufficiently good financial ratios by that time that recourse to the bond markets would be possible without calling into question the investment grade rating of the undertaking.
- (116) In contrast, in the adverse scenario, New Areva would need [...] of financing. However, the French authorities explained that New Areva would be able to bridge the gap [...], without jeopardising the company's return to viability [...].

4.2.4. *Areva SA will have the resources to cover its financial needs over the period 2016-2025*

- (117) The French authorities had undertaken to ensure that Areva SA carried out no activities other than those specifically provided for in the restructuring plan notified to the Commission. On that basis, they considered that Areva SA would have sufficient resources to cover its financial needs.
- (118) The French authorities confirmed their assumptions for the costs of completing the OL3 project over the period 2017-2025. These projections resulted in negative cash flow of EUR [0-2 billion] over the period in question. [...].
- (119) On the basis of these assumptions, Areva SA's business plan showed surplus liquidity of EUR [0-500 million] at the end of the period in the baseline scenario and EUR [0-100 million] in the adverse scenario. [...].

4.3. The aid measure is proportionate and limited to the minimum necessary

4.3.1. The principle of fair burden-sharing is respected with regard to minority shareholders

- (120) First, the French authorities pointed out that substantial provisions for losses and asset write-downs had already been set aside, and that the share price was historically low. The responsibility for past management was therefore largely borne by the minority shareholders, in proportion to their stake.
- (121) Second, they anticipated that the State would be obliged by the Financial Markets Authority ('AMF') to make a public buy-back offer. The price offered to shareholders would be closely monitored by the AMF, which would ensure that a multi-criteria valuation method was followed.

4.3.2. The Areva Group's own contribution is sufficient, real and actual

- (122) As regards the possible excess liquidity referred to in recital 172 of the opening decision, the French authorities considered that the fact that the liquidity used to implement the restructuring plan exceeded the restructuring costs did not in itself imply that the aid was not kept to the minimum. The Guidelines set a floor for the own contribution but did not establish either a ceiling or a mathematical relationship between the amount of State aid and the restructuring costs.
- (123) In other words, the French authorities considered that a clear distinction should be drawn between the two distinct legal criteria. These were, on the one hand, the financing required in view of the financial projections to return to viability and, on the other, limiting the State aid to the minimum by requiring a significant own contribution to the restructuring costs. This interpretation was reflected in the Commission's practice in previous decisions ⁽¹⁸⁾ of accepting that the own contribution exceeded the restructuring costs without this excess liquidity meaning that the aid was not limited to the minimum.
- (124) Lastly, the French authorities stressed that the Areva Group needed a liquidity cushion if the adverse scenario occurred.
- (125) As regards the doubts raised by the Commission concerning the real and actual nature of the Areva Group's own contribution, the French authorities provided a number of clarifications and reiterated that the Commission had, in its previous decisions, accepted that future sales of assets were accounted for as an own contribution provided they were subject to an independent assessment of the market value of the asset ⁽¹⁹⁾.
- (126) As regards the divestment of New Areva NP, the French authorities pointed out that independent valuations had been carried out and sent to the Commission with the notification. France also stressed the aspects which made it possible to establish the real and actual nature of the divestment of New Areva NP: first, the contract for EDF's purchase of New Areva NP shares signed on 15 November 2016; second, the fact that the conditions precedent attached to the sale did not call the sale into question. The French authorities were thus confident about the ASN's findings concerning the demonstration programme for the Flamanville 3 vessel, since all the related tests had been conducted without revealing any non-compliance in the view of EDF and the Areva Group. In addition, [...] the negotiations with TVO did not call into question the divestment of New Areva NP but affected only the timetable.
- (127) As regards the divestment of Canberra, the French authorities noted that it had actually been implemented since 1 July 2016.

⁽¹⁸⁾ See, for example, Commission Decision (EU) 2016/2068 of 29 July 2013 on State aid SA.35611 (13/C) that France plans to implement in favour of the PSA Peugeot Citroën SA Group (OJ L 325, 30.11.2016, p. 1).

⁽¹⁹⁾ Commission Decision (EU) 2015/119 of 29 July 2014 on the State aid SA.36874 (2013/C) (ex 2013/N) which Poland is planning to implement for LOT Polish Airlines SA and on the measure SA.36752 (2014/NN) (ex 2013/CP) implemented by Poland for LOT Polish Airlines SA, recital 269 (OJ L 25, 30.1.2015, p. 1); Commission Decision 2012/397/EU of 24 October 2011 on State aid SA 32600 (2011/C) — France — Restructuring aid to SeaFrance SA granted by the SNCF, recital 155 (OJ L 195, 21.7.2012, p. 1).

- (128) The divestment of Areva TA was being finalised, as was apparent from the information already summarised in recitals 103 to 105 of this Decision.
- (129) As regards the subsidiary Elta, a unilateral purchase promise had been received from the ECA Group on 4 August 2016, and the sale had been notarised on 1 December 2016 at a price of EUR [0-10 million].
- (130) It was intended that the Areva Group's stake in its subsidiary Adwen would be fully divested; a EUR 60 million floor price having been secured by the Gamesa group. The divestment was scheduled to be carried out at the beginning of January 2017.
- (131) However, the divestments [...] would not occur before [...].
- (132) Lastly, as regards the involvement of third-party investors in New Areva's capital injection, the French authorities pointed out that they had received expressions of interest from [...] Japanese groups JNFL and MHI [...]. The state of play in the negotiations was as follows. The MHI and JNFL groups had each submitted a firm offer [...] for 5 % of New Areva's capital, valued at EUR 250 million. [...].

4.4. The Areva Group proposes measures to minimise the distortions of competition

- (133) According to the French authorities, the divestment of New Areva NP was a particularly significant compensatory measure because it would mean that the Areva Group simply withdrew from a large number of markets in which the EDF Group would then be the leading competitor. By divesting New Areva NP, the Areva Group was giving up one third of its assets and around half of its turnover. It was also giving up all of the advantages stemming from the integrated model it had developed over the last 15 years and was thus making a major strategic shift. In addition, the Areva Group was giving up the positive cash flows that New Areva NP would generate over the period.
- (134) In support of this reasoning, the French authorities referred in detail to the various points raised by the Commission in the opening decision.

4.4.1. Quantification of the compensatory measures

- (135) The French authorities pointed out that 'measures to limit distortions of competition should address both moral hazard concerns and possible distortions in the markets where the beneficiary operates', taking into account 'the characteristics of the market concerned' ⁽²⁰⁾.
- (136) In the case in question, any risk of moral hazard could be excluded in their view since the past losses had been borne by the existing shareholders of the Areva Group, in particular the State, through provisions and asset write-downs. Furthermore, in the light of the characteristics of the relevant markets, the State aid preserved, more than it restricted, effective competition as most of the markets in which New Areva would operate had an oligopolistic structure, which would be exacerbated by the disappearance of an operator.
- (137) According to the French authorities, a comparison of the markets in the counterfactual scenario without aid clearly showed that only the continued presence of the Areva Group allowed effective competition in the market to be maintained.
- (138) Thus, the divestment of New Areva NP was more than sufficient as a compensatory measure, particularly as it imposed short-term losses of synergy on the Areva Group, and in the medium-term deprived it of the particularly profitable development prospects described below in Section 4.4.2.

⁽²⁰⁾ Guidelines, point 87 (emphasis added by the French authorities).

4.4.2. *The divestment of New Areva NP penalises all of New Areva's activities over the long term*

4.4.2.1. Front-end operations

- (139) The integrated Areva Group had an integrated marketing and sales force for natural uranium, conversion services, enrichment, and design and manufacture of fuel assemblies, and any possible combination of these products and services. Integrating the sale of fuel assemblies with front-end services gave the Areva Group a significant information and trading advantage. Electricity generators usually had a single buyer for the supply of fuel assemblies. Because of the low substitutability of fuel assemblies, a supplier of assemblies was a key partner for an electricity generator, which was not the case of a front-end supplier, whose products and services were fungible.
- (140) The French authorities gave the example of an electricity generator [...] to which the Areva Group had been able to expand its sales to include front-end products and services as part of an invitation to tender for fuel assemblies. Today, [5-10] out of every 10 customers were customers of both Areva NC and Areva NP.
- (141) Furthermore, the unbundling of New Areva NP's activities would make logistical optimisation more difficult. In future New Areva would have to work with New Areva NP's fuel assembly manufacturers in the same way as with all the other American and European manufacturers and would therefore miss out on logistical improvements, e.g. delivery costs would increase and its ability to fine-tune its production of enriched uranium would be reduced.
- (142) The French authorities also explained that any supplier of front-end products and services supported by a supplier of fuel assemblies and reactors had an undeniable competitive advantage for tenders at the beginning of the cycle. A buyer of a new plant would generally require the contractor to supply the first reactor core as well as possible reloads. By being integrated with Areva NP, the Areva Group had automatic access to this for its front-end operations. The Areva Group was also able to negotiate better terms and conditions for its uranium, since such negotiations were generally conducted privately, without an open procedure. Finally, this type of contract allowed a commercial relationship to be established, including in markets which are difficult to access, such as China.
- (143) This competitive advantage was reflected in the contracts negotiated by the Areva Group for the reactors in OL3 and Taishan 1 and 2 [...]. In the case of Taishan 1 and 2, for example, [...]. Such terms and conditions could not have been negotiated without the benefits of integration: by comparison, the Areva Group could only enter into contracts [...].
- (144) All future sales of reactors by New Areva NP thus represented missed opportunities for New Areva to sell front-end material under the best possible terms and conditions. According to the French authorities, New Areva NP would be well placed to win the projects [...]. New Areva NP could also aspire to the projects [...]. On account of the length of nuclear cycles, however, these lost synergies would not be felt until after the end of the period for which the Areva Group had provided financial projections.
- (145) The lost synergies were particularly evident in the early life of a reactor, but they were also felt throughout its lifetime. Some electricity generators preferred to use a single tender combining purchase of uranium and conversion, enrichment and assembly services, including for reactors whose closure was already planned (end of life).
- (146) Lastly, the end of integration would make it more difficult to develop an integrated chain for the recycling of reprocessed uranium, as this required a high level of logistical coordination between the supplier of fuel assemblies (New Areva NP) and the supplier of reprocessing services (New Areva).
- (147) All these lost synergies would penalise New Areva and benefit its competitors. By remaining integrated, the Areva Group would have been ideally placed to take advantage of the expected market recovery, in particular because of its upgraded equipment. A sizeable market was opening up, for example, in managing end-of-life reactors for electricity generators. However, owing to the expected loss of synergies, the French authorities and the Areva Group were focusing on [...].

- (148) In contrast, New Areva's competitors would be able to take advantage of the opportunities created by the break-up of the Areva Group, including in the supply of fuel to new reactors. New Areva would have to take on competitors which were integrated, like Rosatom, or in the process of vertical integration, like KHNP, Toshiba/Westinghouse and CNNC.

4.4.2.2. Back-end operations

- (149) The divestment of New Areva NP would be [...] for New Areva's operations in recycling and processing spent fuel. MOX sales depended on a fleet of light water reactors on the market that could be operated with MOX fuel assemblies. The size of this fleet depended on the efforts New Areva NP was willing to make to propose and roll out the technology in the future.
- (150) The decision by an electricity generator to 'mox' a reactor depended on its ability to maintain the performance of its reactor and associated costs. These two factors, in turn, depended on good cooperation between the designer of the reactor, the designer of the assemblies and the supplier of the mixed material. To date, this cooperation had been possible because of the Areva Group's ability to act as a central arbitrator between the differing interests of these entities.
- (151) New Areva NP thus [...] to promote an increase in the number of MOX reactors in so far as [...]. Until now, being part of the same group had enabled intra-group agreements [...] capable of aligning the differing interests of the two operations. This would no longer be the case in the future, and significant losses of synergy were therefore likely in the long term.
- (152) The lost synergies would also be felt in the decommissioning and logistics segments. Decommissioning was highly integrated with reactor design and the supply of services to the installed base. The logistics operations were currently customers of Areva NP in two respects: for the shipment of contaminated maintenance tools and for the shipment of fuel assemblies. These intra-group services were likely to be either brought in house by New Areva NP or put out to competition in the future.
- (153) Decommissioning and logistics were both dynamic markets, in which the Areva Group [...].

4.4.3. *The overall strategic and industrial partnership between New Areva and EDF would not allow the synergies currently associated with Areva NP's integration within the Areva Group to be restored*

- (154) The French authorities had provided the Commission with the Memorandum of Understanding of 28 July 2016 between EDF and the Areva Group. Annex 7 thereof concerned the creation of an overall strategic and industrial partnership.
- (155) According to the French authorities, the partnership was not likely to recreate lost synergies [...].
- (156) [...] the French authorities emphasised that New Areva NP and New Areva were about to enter into a customer/supplier relationship. [...].
- (157) Consequently, no strategic partnership could reproduce the strength of the intra-group trade-offs and synergies of the past.
- (158) Nevertheless, in response to the Commission's objections on this point, the French authorities had undertaken to ensure that, during the restructuring period, New Areva NP — under the supervision of EDF and New Areva — would not enter into any strategic partnership or other framework agreement for commercial cooperation which was designed to benefit New Areva in cases where New Areva NP would wish to make a customer an integrated offer with a nuclear material supplier, in the markets identified in recitals 344 and 347 — supply of fuel assemblies and construction of new reactors. This undertaking did not prevent New Areva and New Areva NP from making joint offers, provided that New Areva had been chosen on the basis of commercial and technical criteria.

4.4.4. *The French authorities undertake to ensure that the Areva Group takes the behavioural measures referred to in point 84 of the Guidelines*

- (159) While reiterating the importance of partnerships in the nuclear field, the French authorities had undertaken that, during the restructuring period, the Areva Group (Areva SA and New Areva) and the companies under its control would refrain from acquiring, directly or indirectly, shares in any company which was not already under its control, with the exception of projects indispensable for restoring the Areva Group's viability. This undertaking did not apply to shares acquired by New Areva and the companies directly or indirectly controlled by it for the purposes of the financial management of (i) decommissioning funds which the Areva Group was obliged to manage under a legal or regulatory obligation, (ii) pension funds for Areva Group staff, (iii) liquidity investments. They had also undertaken to ensure that the Areva Group (Areva SA and New Areva) would refrain from publicising the support it received as a competitive advantage when marketing its products and services.

4.5. Observations by the French authorities on the comments by interested parties

4.5.1. *Comments by TVO and Siemens*

- (160) The French authorities considered that Areva SA would be able to finance all its forecast requirements.
- (161) On the one hand, it was incorrect to suggest that the Areva Group was jeopardising the smooth finalisation of OL3 through the restructuring plan. The success of the project was essential for all parties to the restructuring: Areva SA, of course, but also New Areva (for the supply of fuel) and New Areva NP (for the demonstration value of this first EPR). Areva SA would therefore have all the necessary operational resources — which would not be carved out and diverted immediately to New Areva NP — to successfully complete the project. This should dispel all TVO's doubts on this matter.
- (162) In particular, the French authorities stressed the existence of [...] specific cooperation between Areva NP and New Areva NP, allowing Areva NP to call on New Areva NP as soon as necessary [...].
- (163) On the other hand, the needs of Areva SA had been properly estimated by the French authorities, in a conservative manner.
- (164) As regards the costs of finalising OL3, the Areva Group's estimate was comparable, or even more conservative, than that of TVO, except for [...], but the French authorities rejected [...], which in their view completely lacked credibility. The French authorities did not comment on the estimate of Siemens, which could not be analysed in detail at that level of aggregation.
- (165) As regards the damages which might result from an unfavourable outcome of the arbitration proceedings, [...].
- (166) According to the French authorities, it would be entirely inappropriate and contrary to the objectives and spirit of the rules on restructuring aid to increase the amount of aid in order to guarantee to third parties the payment of damages which they might be awarded in an action brought against the beneficiary of the aid. First, this type of contingency did not fall within the definition of the risks to be taken into account in establishing the adverse scenario. The Guidelines referred only to macroeconomic and trade factors. Second, such an increase in aid would be contrary to the principles of proportionality and limitation of aid to the strict minimum. Third, in practice the arguments of TVO and Siemens would result in the State guaranteeing the solvency of their jointly liable debtor/co-debtor, which would constitute State aid to Siemens and TVO. The Commission had explicitly

acknowledged that State guarantees for hypothetical disputes constituted State aid ⁽²¹⁾ and had already excluded the principle of their compatibility ⁽²²⁾. Fourth, the arguments of Siemens and TVO were inconsistent because they did not take into account the possibility of a positive outcome for the Consortium. Fifth, in the event of an unfavourable arbitration outcome, [...].

- (167) In the case of [...]. The French authorities had put forward several arguments.
- (168) As regards [...].
- (169) Furthermore, the regulatory problems associated with carbon segregation were in the process of being settled in EDF's existing fleet. The ASN had authorised the restart of all the reactors operating in France with steam generators manufactured in Le Creusot (in which carbon segregation issues had been identified), and eight of the 12 reactors with steam generators manufactured by the Japanese partner of Areva NP.
- (170) Nor had any anomaly been found to date in Taishan's primary loop. In any event, the contract stipulated that the contractual liability of the Areva Group would be capped at EUR [0-1 billion] for the Taishan project.
- (171) [...], any request would require evidence of definite damage, i.e. a genuine safety flaw in a component leading to a high risk of failure.
- (172) As regards all matters involving the civil liability of the Areva Group, the French authorities had informed the Commission that [...].
- (173) As regards the argument by Siemens that the estimated resources of Areva SA should enable it to cover a maximum theoretical amount covering all the theoretically possible risks, the French authorities emphasised that the examples of the Commission's decision-making practice on which Siemens based its reasoning all came from procedures opened under the temporary framework for aid to restructure financial institutions in the context of the economic and financial crisis. This reasoning by analogy advocated by Siemens was therefore invalid in this case, in the view of the French authorities. They also argued that the worst-case scenario under the Guidelines could not cover all the theoretically possible risks but had to remain within the sphere of possible events.
- (174) Lastly, in reply to the argument by Siemens that an under-capitalisation of Areva SA would contravene the principle of adequate burden-sharing set out in the Guidelines, the French authorities noted that the principle applied only to shareholders and subordinated creditors, who should not be unduly protected by the effects of the aid.

4.5.2. *Comments by Urenco*

- (175) First, the French authorities pointed out that Urenco had played a large part in the overcapacity which had characterised the uranium enrichment market since Fukushima. Urenco's share in global enrichment capacity had doubled between 2007 and 2015, as the Areva Group's share had decreased.

4.5.2.1. *On the alleged distortions of competition*

- (176) The French authorities then showed that the State aid would not create any distortion of competition but, on the contrary, would help to stimulate competition in the long term.

⁽²¹⁾ Commission Decision 2009/174/EC of 21 October 2008 on measure C 35/04 implemented by Hungary for Postabank and Takarékpénztár Rt./Erste Bank Hungary Nyrt, recital 57 (OJ L 62, 6.3.2009, p. 14); Commission Decision 2008/214/EC of 18 July 2007 on State aid C 27/2004 which the Czech Republic has implemented for GE Capital Bank a.s. and GE Capital International Holdings Corporation, USA, recital 86 (OJ L 67, 11.3.2008, p. 3).

⁽²²⁾ Commission Decision 2014/189/EU of 28 December 2012 on State aid SA.33760 (12/N-2, 11/C, 11/N); SA.33763 (12/N-2, 11/C, 11/N); SA.33764 (12/N-2, 11/C, 11/N); SA.30521 (MC 2/10); SA.26653 (C9/09); SA.34925 (12/N-2, 12/C, 12/N); SA.34927 (12/N-2, 12/C, 12/N); SA.34928 (12/N-2, 12/C, 12/N) implemented by the Kingdom of Belgium, the French Republic and the Grand Duchy of Luxembourg in favour of Dexia, DBB/Belfius and DMA, recital 213 (OJ L 110, 12.4.2014, p. 1).

- (177) The relatively modest presence of the Areva Group in the decommissioning and logistics markets explained why the aid would not distort competition. Similarly, the Areva Group was the only global player operating a reprocessing plant on an industrial scale, and its continued presence in this segment could not, therefore, harm competition that did not exist.
- (178) In the mining, conversion and enrichment segments, the market structures were highly concentrated; the Areva Group was also the only sizeable European group in the mining and conversion segments. The disappearance of the Areva Group from these segments would therefore undermine competition by helping to increase concentration even further.
- (179) Furthermore, the Areva Group would not be unduly strengthened by the State aid in the specific enrichment segment. First, the French authorities pointed out that the capacity of the Areva Group to sign contracts for enrichment services was not linked to its credit rating, but to other characteristics such as supply price, contractual flexibility, quality of logistics, etc. Second, the enrichment subsidiary of the Areva Group (Société d'Enrichissement du Tricastin — 'SET') was already profitable and financially independent, [...]. [...], this activity would contribute more to the return to viability of the restructured Areva Group than the amount of aid it received itself. Third, Areva had not been active in the trading of SWUs for at least 10 years, [...].

4.5.2.2. On the compensatory measures

- (180) The French authorities referred to the arguments set out in their comments of 12 September 2016 to point out that the disappearance of synergies linked to the integrated model would penalise not only operations at the beginning and end of the cycle but also, more generally, all operations throughout the life cycle of the reactor. The divestment of New Areva NP was therefore a sufficient measure. For the reasons set out in those same comments, the strategic partnership with EDF would not recreate the synergies, and the fact that the French State was a shareholder in both groups changed nothing, since they were independent economic units with their own decision-making power.
- (181) As regards, in particular, the different measures advocated by Urenco, the French authorities argued that:
- (a) Urenco's request for EDF to undertake to launch open calls for tenders was unjustified both in law and in fact. First, the French State could not impose anything on EDF, which was a third party in this State aid procedure. Second, EDF as an independent economic entity had no incentive to favour New Areva. Lastly, the precedent from the Framatome/Siemens/Cogema concentration was irrelevant because that measure had concerned fuel assemblies, for which there were strong (including regulatory) barriers to entry, and because the State was no longer legally in a position to make any undertaking on behalf of EDF;
 - (b) the ring-fencing of enrichment activities was superfluous in so far as SET was already financially independent. In addition, such a measure would give rise to insuperable operational difficulties owing to the degree of operational overlap between the subsidiary and other entities within the Areva Group;
 - (c) the prohibition on expanding the capacity of the Georges Besse II plant was inconsistent with the undertaking given by the Areva Group, [...]. The French authorities had therefore undertaken to ensure that, during the restructuring period, the Areva Group did not increase the capacity of the Georges Besse II plant, with the exception of acquiring and installing centrifuges as set out in its existing agreements [...];
 - (d) the divestment or the limitation of the MOX production operation were inappropriate. First, this operation would be weakened by the divestment of New Areva NP. Second, since MOX and UOX fuel were not substitutable, the distortion of competition was minimal for competitors like Urenco offering only UOX. Third, the production of MOX was vital for the survival of the nuclear processing sector. Fourth, Urenco's assertion that MOX production was not profitable compared with UOX disregarded the numerous positive externalities associated with its production;
 - (e) additional divestments, for example in logistics, would undermine the restoration of New Areva's long-term viability and were all the more unjustified as the distortions created by the aid were minimal in these markets.

5. ASSESSMENT OF THE AID

5.1. Existence of aid

- (182) The Commission has to assess whether the measures covered by this procedure constitute State aid within the meaning of Article 107(1) TFEU.
- (183) Under Article 107(1) TFEU, any aid granted by a Member State or through State resources in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods shall, in so far as it affects trade between Member States, be incompatible with the internal market.
- (184) The Commission considers that a public measure can thereby be classified as State aid if all of the following conditions are met: (i) the measure must be granted by the State or through State resources, (ii) it must confer an economic advantage on its recipient; (iii) that advantage must be selective, and (iv) the measure must distort or threaten to distort competition and be liable to affect trade between Member States.

5.1.1. *The French State's subscription to the capital injections into Areva SA and New Areva*

- (185) Although these two interventions are seemingly separate, the Commission considers that the State's subscription to the capital injections into Areva SA and New Areva respectively must be regarded as a single aid measure made available to Areva. It is apparent from the analysis of the difficulties and indebtedness of the Areva Group that as a whole it needs capital. The fact that this overall need for recapitalisation is subsequently broken down between Areva SA and New Areva is nothing more than an implementing arrangement for recapitalising Areva.
- (186) This subscription is attributable to the State and is granted through State resources. The two capital injections will be subscribed to by the State directly through its own resources.
- (187) This confers an economic advantage on the Areva Group. On the one hand, this investment improves the position of the Areva Group by enabling it to meet a significant part of its debts. On the other hand, the Areva Group would not have been able to obtain such capital under normal market conditions, since no private investor would have subscribed in those circumstances to any capital injection into the Areva Group in view of its serious financial situation. The two third-party investors MHI and JNFL will not subscribe to the capital of the Areva Group in the same way as the French State, since their investment will concern only one of the two entities of the restructured Areva Group (New Areva), and for a minority stake of [...] %.
- (188) The advantage thus granted to the Areva Group is selective. The State's subscription to these capital injections is an *ad hoc* measure which exclusively benefits the Areva Group for the purposes of its restructuring.
- (189) Lastly, the advantage granted to the Areva Group through the State subscription to the capital injections is liable to affect trade between Member States. The different markets on which the Areva Group operates are characterised by a high level of trade between these States. In this regard, the Commission has already had cause to regard the nuclear markets as at least pan-European ⁽²³⁾. In addition, the advantage granted to the Areva Group provides it with additional financial resources enabling it to remain active on the market. The measure is therefore liable to distort competition.
- (190) In the light of the above, the Commission concludes that the French State's subscription to the capital injections in Areva SA and New Areva constitutes State aid within the meaning of Article 107(1) TFEU, in favour of the Areva Group, amounting to EUR 4,5 billion.

5.1.2. *Divestments carried out under the restructuring plan*

- (191) In the opening decision, the Commission noted that the various divestments envisaged by the Areva Group could constitute aid if they were not carried out at market price. They would constitute aid either to the buyer, if the

⁽²³⁾ See, inter alia, the Commission Decision of 19 September 2006 in Case M.4153, *Toshiba/Westinghouse*, paragraphs 37 to 50.

sale price were considered excessively low, or to the seller (the Areva Group) if the sale price were considered excessively high — aid to the seller being relevant only in the event of divestment to another public entity, provided that the criteria of imputability and State resources are met. The Commission notes that, according to point 63 of the Guidelines, divestments comprising an aid element to the seller (the Areva Group) cannot be taken into account in calculating the own contribution.

- (192) As regards divestments to non-public third parties (Canberra, Elta, Adwen), the Commission acknowledges that aid from the Areva Group to these buyers, by means of an unduly low price, is unlikely since the Areva Group has every incentive to maximise the proceeds from these divestments. Moreover, the divestments took place through competitive processes likely to maximise the price obtainable by Areva.
- (193) In contrast, in the case of the divestments of New Areva NP and Areva TA, it could not be ruled out *a priori* that EDF or the public consortium buying Areva TA might make an offer at an unduly high price so as to benefit the Areva Group. Nevertheless, the Commission can conclude, on the basis of the reasoning set out below in parts 5.1.2.1 and 5.1.2.2, that the divestments are being carried out at market price, which rules out an economic advantage within the meaning of Article 107(1) TFEU.

5.1.2.1. Sale of a majority stake in New Areva NP

- (194) The sale to EDF of a majority stake in New Areva NP was not the subject of an open, transparent and unconditional call for tender. However, the private sale of controlling stakes is common practice in the market. As regards New Areva NP, account should also be taken of its area of business and links with the operation of nuclear power plants, where the sale of controlling stakes by tendering procedure is not common market practice. In addition, before agreeing to the sale of the stake, the parties to the transaction had recourse to independent studies, so as to determine the sale price for themselves. While it is true that ultimately the actual selling price is the result of a negotiation between a willing seller and buyer, the fact remains that the use of such studies for negotiation prior to agreement on price is also common market practice, which a prudent investor would follow ⁽²⁴⁾.
- (195) As regards the content of the studies, following an evaluation of the value of the shareholding based on a multi-criteria approach, EDF's financial adviser, the bank BNP Paribas, delivered the following opinion on 24 July 2015: 'On the basis of the information on and characteristics of the operation referred to above, at present the price of EUR 2,7 billion for 100 % of the capital of Areva NP proposed by EDF in the context of the operation is, in our view, reasonable for EDF from a strictly financial point of view.' EDF then contracted the bank Société Générale to carry out the due diligence. The French authorities have provided the Commission with a detailed presentation of the results of this due diligence, dated January 2016, in which Société Générale confirms the valuation renegotiated between the parties of EUR 2,5 billion for 100 % of the capital.
- (196) The valuation carried out by Société Générale is very detailed (127 pages of analyses) and is based on the DCF method, which is generally accepted in financial matters.
- (197) First, Société Générale reworked with EDF the business plans produced by the Areva Group for each of the five business lines within the scope of New Areva NP: installed base, fuel assemblies, manufacture, major projects, and other (auxiliary functions, contingencies, etc.). These business plans run until 2023. The adjustments relate to many assumptions affecting a large number of New Areva NP projects. [...] ⁽²⁵⁾.
- (198) On the basis of the business plans, the enterprise value of each business line is calculated using a DCF method. Société Générale applies a different weighted average cost of capital ('WACC') for each business line, based on the risk specific to each of these activities. This WACC is estimated on the basis of a fairly detailed Capital Asset Pricing Model (CAPM) methodology: for each business line, a WACC is estimated for each country of operation, then a weighted WACC is calculated from these various geographical WACCs. The risk-free interest rates are derived from multiple sources (SG Research, Bloomberg, Associés en Finance), the country risk premiums are based on the work of Professor Damodaran of NYU Stern School of Business, and the cost of debt is based on

⁽²⁴⁾ Judgment of the Court of 5 June 2012, *Commission v EDF*, C-124/10P, ECLI:EU:C:2012:318, paragraphs 84 and 104.

⁽²⁵⁾ Earnings before interest, taxes, depreciation and amortisation.

the risk premium of the bonds of comparable undertakings. These comparable undertakings, selected by Société Générale on the basis of different criteria specific to each business line, are also used to determine the beta of each activity. The sample of comparable undertakings consists of seven listed companies for the fuel business line, five for the installed base, six for manufacturing and six for major projects. The beta values obtained are corroborated by comparison with the beta predictions provided by the Barra multi-factor model.

- (199) The analysis of the value of each business line based on the DCF method also includes a terminal value after 2023. This was calculated on the basis of Gordon Shapiro's method by retaining a normalised cash flow considered representative of the cash flow generation capacity of the activity. An assumed perpetuity growth rate of zero was chosen for all business lines.
- (200) Sensitivity analyses were carried out on these enterprise values by varying parameters such as the WACC or EBITDA margin. The net debt of each business line was then subtracted from these enterprise values in order to arrive at the value of the capital. The sum of these various amounts per business line gives the total value of the capital of New Areva NP. Société Générale considered that an EBITDA multiple of [...] could be inferred from this valuation. This EBITDA multiple seems reasonable since it is below the average and median EBITDA multiples observed for comparable transactions — Société Générale having selected a sample of 19 transactions representing the various activities of New Areva NP.
- (201) The value of the various parameters used for the DCF method, as well as the implicit EBITDA multiple, are further corroborated by comparison with the averages and medians taken from the study of comparable undertakings referred to in recital 198.
- (202) In the light of the above, the Commission confirms the finding in the opening decision that the valuation carried out by EDF and its advisers is based on the available objective, verifiable and reliable data, which reflect the economic situation at the time the transaction was decided. This finding was not challenged by any third party during the investigation. The new developments since then, such as recourse to a hive-down or the discovery of risks relating to components contracts, are not likely to affect the result since EDF was careful to fully insulate itself against such risks, in the manner described in recital 30.
- (203) On the basis of this valuation of EUR 2,5 billion for 100 % of the capital, Société Générale showed that EDF could expect an internal rate of return ('IRR') from the investment of [0-20] % in the central scenario. This scenario postulates an exit (for the calculation of the terminal value) in [...], and an exit multiple equivalent to the entry multiple, i.e. [...] x the EBITDA.
- (204) This IRR must be compared with the cost of capital weighted according to the different sectors of New Areva NP. In the case in question, Société Générale's calculations, which are based on the objective criteria listed in recital 198, provide the following indications for each business line: [0-10] % for fuel, [0-10] % for the installed base, [0-20] % for major projects, [0-10] % for production. These estimates seem reliable in that they are based on a commonly agreed methodology and sources, similar to those which the Commission itself has used in other cases, supported by the General Court where appropriate ⁽²⁶⁾. Weighting these estimates with the relative share of each business line in the turnover of New Areva NP produces a weighted average cost of capital of [0-10] %. The IRR that EDF can expect from the investment in New Areva NP is therefore above the cost of capital in the sector in question, including under a number of negative scenarios taken into account in the sensitivity analysis (concerning the year and the exit multiple) carried out by Société Générale.
- (205) In the light of these objective aspects, the Commission concludes that the divestment of New Areva NP is being carried out under normal market conditions without conferring any economic advantage on the buyer (EDF) or the seller (the Areva Group), and therefore rules out the presence of State aid.

⁽²⁶⁾ Commission Decision (EU) 2016/154 of 22 July 2015 on State aid SA.13869 (C 68/2002) (ex NN 80/2002) — reclassification as capital of the tax-exempt accounting provisions for the renewal of the high-voltage transmission network (RAG) implemented by France in favour of EDF, recitals 182 to 189 (OJ L 34, 10.2.2016, p. 152). See also judgment of the Court of 3 July 2014, *Spain v Commission*, T-319/12, ECLI:EU:T:2014:604, paragraphs 48 to 66.

5.1.2.2. Divestment of Areva TA

- (206) The French authorities have clarified the arrangements for divesting Areva TA and provided evidence to justify the price of EUR [0-2 billion] for 100 % of the capital. This evidence was summarised in a study by the financial consultancy firm [...] dated 6 December 2016.
- (207) In the context of its due diligence, the buying consortium has developed its own business plan for Areva TA based on the seller's perspective, adapting the underlying assumptions of the plan to the best of its knowledge.
- (208) The Commission has reviewed the projections and assumptions used for this valuation and considers that it fulfils the quality requirements of a prudent investor. It is based on available objective, verifiable and reliable data which reflect the economic situation at the time the transaction was decided.
- (209) In the light of this, the Commission considers that the divestment of Areva TA is being carried out under normal market conditions without any economic advantage being conferred on the buyer or the seller (the Areva Group), and therefore rules out the presence of State aid.

5.2. Compatibility of the aid with the internal market

- (210) The French State's subscription to the injections of capital into Areva SA and New Areva constitutes State aid within the meaning of Article 107(1) TFEU that France is planning to grant to an undertaking, the Areva Group, which is active in the areas covered by the Euratom Treaty.
- (211) The Euratom Treaty established the European Atomic Energy Community, specifying the necessary instruments and allocating responsibilities with a view to achieving objectives that include nuclear safety, energy independence and the diversity and security of energy supplies ⁽²⁷⁾.
- (212) As the Commission has acknowledged in previous decisions ⁽²⁸⁾, the promotion of a successful nuclear energy sector is a fundamental objective of the Euratom Treaty, and therefore also of the European Union. As set out in the preamble to the Euratom Treaty, the Commission, as an institution of the European Atomic Energy Community, is required to create the 'conditions necessary for the development of a powerful nuclear industry which will provide extensive energy resources'. This obligation must be borne in mind when the Commission exercises its discretionary powers to authorise State aid under Article 107(3)(c) and Article 108(2) TFEU.
- (213) The TFEU sets out the conditions under which aid can be declared compatible with the internal market. Under Article 107(3)(c) TFEU, the Commission can authorise State aid if it is granted to promote the development of certain economic sectors and does not adversely affect trading conditions to an extent contrary to the common interest. Given the nature of the measure in question, the Commission will establish whether it is compatible with the provisions on restructuring aid set out in the Guidelines, mindful of the doubts expressed in the opening decision as well as the comments from France and interested third parties.

5.2.1. Eligibility of the Areva Group for restructuring aid

- (214) At the end of 2014, which was when the restructuring of the Areva Group began, the Group had negative equity totalling EUR – 244 million. New losses have been recorded since then, meaning that the Areva Group's equity situation deteriorated further in 2015. Areva Group's total equity stood at EUR – 2,3 billion on 31 December 2015.
- (215) Given the presence of negative equity, the criterion set out in point 20(a) of the Guidelines is fulfilled. The Areva Group must therefore be considered an undertaking in difficulty, making it eligible for restructuring aid.

⁽²⁷⁾ See in particular Articles 1, 2 and 52 of the Euratom Treaty.

⁽²⁸⁾ See the Commission Decision 2005/407/EC of 22 September 2004 on the State aid which the United Kingdom is planning to implement for British Energy plc (OJ L 142, 6.6.2005, p. 26), and the Commission Decision (EU) 2015/658 of 8 October 2014 on the aid measure SA.34947 (2013/C) (ex 2013/N) which the United Kingdom is planning to implement for support to the Hinkley Point C nuclear power station (OJ L 109, 28.4.2015, p. 44).

5.2.2. Contribution to a well-defined objective of common interest

- (216) The Euratom Treaty sets out the following objectives of common interest: nuclear safety, energy independence and the diversity and security of energy supplies. Under Article 2(d) of the Euratom Treaty, the Euratom Community must ensure that all users in the Community receive a regular and equitable supply of ores and nuclear fuels. By preventing the Areva Group's demise, the aid under consideration contributes to the achievement of these different objectives.
- (217) The aid enables the Areva Group, a key player in Europe's nuclear industry, to survive. The Areva Group is the leading European operator in the uranium mining market and the only European operator active in the uranium conversion, fuel recycling and MOX production markets. It has the expertise required to operate, in optimal safety and security conditions, a number of 'basic installations necessary for the development of nuclear energy' within the meaning of Article 2; this includes sites and facilities such as Comurhex II, La Hague and Melox. Lastly, the Areva Group is a key European operator in terms of the production of nuclear fuel for materials testing reactors and of target materials to be irradiated to produce radioisotopes for medical use.
- (218) Its demise would therefore have immediate consequences in terms of nuclear safety, energy independence, and the diversity and security of Europe's energy supplies.
- (219) The Guidelines also set out the conditions under which restructuring aid contributes to an objective of common interest. This is the case if the aid aims to prevent social hardship or address market failures that would be created if the undertaking left the market and its activities no longer existed.
- (220) Of the market failures listed in point 44 of the Guidelines, those that apply to the case in question are, depending on the specific markets, (i) the risk of disruption to an important service which is hard to replicate and where it would be difficult for any competitor simply to step in, (ii) the negative consequences of an undertaking with an important systemic role in a particular sector leaving the market, and (iii) the irremediable loss of important technical knowledge or expertise. The way in which the aid makes it possible to prevent these risks or negative consequences is examined below, in recitals 223 to 226.
- (221) Furthermore, the Commission must also consider other scenarios not involving a complete market exit, such as the continuation of certain activities after liquidation without State aid. The Commission must be satisfied that the objectives of common interest would not be achieved in the same way in these counterfactual scenarios that do not involve aid. This assessment is covered in part 5.2.4 of this Decision.
- (222) As regards the consequences of the Areva Group exiting its markets, the Commission notes the following.
- (223) As regards the mining business, given that the Areva Group is the main European operator in the sector, its exit from the market would result in Europe's uranium being principally supplied by non-European operators, including the Russian (Rosatom) and Kazakh (KAP) operators, which account for around [30-50] % of the market ⁽²⁹⁾. It appears unlikely that any European or even Western operator (such as the Canadian operator Cameco) will strengthen its mining capacity to the extent required to achieve the objective of ensuring the diversity and security of the European Union's supply. The Areva Group's exit from the market could also lead to an increase in the price of uranium in the long term, given the concentration in that market. In this regard, the Areva Group has an essential systemic role in terms of Europe's uranium supply.
- (224) As regards the conversion business, the Areva Group is the last European operator active in this market. Its exit from the market would have serious negative consequences. Firstly, it would jeopardise the European Union's energy independence, given that the conversion of uranium is an indispensable link in the nuclear energy production chain. Secondly, it would reduce competition in that market, which is already highly concentrated, and this could give rise to additional costs for European electricity generators, and consequently for European consumers. In this regard, the Areva Group has an important systemic role in terms of the European fuel-cycle business and, if it exited the market, there would be a risk of disruption to an important service.

⁽²⁹⁾ These market shares are the Areva Group's estimates.

[illegible]

[illegible]

Table 2

Financial projections for New Areva (adverse scenario)

[illegible]

EUR million	2012	2013	2014	2015	O2016	O2017	O2018	B2019	B2020	B2021	B2022	B2023	B2024	B2025	Total 16-25
Comm and marketing costs	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	
Administrative costs	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	
Other costs and proceeds from operations	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	
Total non-operational costs	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]
EBIT	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]
<i>as % of turnover</i>	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]
D&A and movements in provisions	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]
EBITDA	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]
<i>as % of turnover</i>	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]
Var. operational working capital requirements	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]
Operational investments	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]
Operational divestments	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]
Proceeds from divestments	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]
Operational cash flow	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]

(231) These projections are based on a series of assumptions, the most important of which are described in recital 106. The Commission acknowledges the conservative nature of these assumptions, particularly the uranium price projections. Even applying the conservative assumptions, there is a market consensus ⁽³⁰⁾ on the medium-term recovery of the market and the progressive increase in the price of nuclear materials, which is a positive factor for the Areva Group's return to viability.

(232) In recital 150 of the opening decision, the Commission noted that the adverse scenario put forward by the French authorities was not based on a sensitivity analysis allowing the risks to the undertaking's business to be ranked and anticipated.

(233) The Commission notes that the French authorities have addressed this issue in the comments that they provided during the in-depth investigation.

⁽³⁰⁾ See, for example, the projections from the UxC consultancy firm, included in the notification.

- (234) The sensitivities of different assumptions have thus been calculated, which made it possible to identify the main business risks: euro/dollar exchange rate, operating conditions [...], failure to [...], failure to achieve the targets set out in the Performance and Competitiveness Plan. These risks are clearly reflected in the adverse scenario. For the 2016-2025 period, the cumulative EBITDA is [0-30] % lower than in the baseline scenario and the operational cash flow is [0-30] % lower. The adverse scenario was therefore clearly produced using these downward sensitivities.
- (235) The French authorities also put forward a strategy to mitigate these main risks, as indicated in recitals 111 to 114.
- (236) As regards the euro/dollar exchange rate, the Areva Group has a strict policy in place to cover this risk. An exposure analysis is carried out every month and hedging contracts are entered into as and when required to cover a minimum percentage of future payments. Furthermore, certain activities that are essential to the restructured Areva Group's return to viability, such as mining, enjoy partial natural protection against this risk: [20-70] % of New Areva's mining production will take place in Canada, where the currency is correlated to the dollar. As a result of these two factors combined — natural protection for certain core activities and a proactive risk-coverage policy for the remaining activities — the Commission considers that a credible risk-reduction strategy is being implemented.
- (237) As regards the operating conditions for the [...] business, the Areva Group has already implemented a risk-reduction strategy based on achieving operational improvements that would offset the additional cost [...]. These improvements are included in the Performance and Competitiveness Plan that is in place until 2018, and new sources of optimisation could be sought after 2018 if the risk were to materialise. The Commission takes the view that the Areva Group's chosen approach is rational in that the aim is to maintain the profitability of its assets [...] by making best use of the levers over which it has control.
- (238) As regards the risk linked to [...], it is certain that a [...] would have a negative impact on the future business activity of New Areva. However, the French authorities have indicated that it is unlikely that this risk will materialise, [...]. This subject was, for example [...]. The Commission therefore considers that a satisfactory risk-reduction strategy is in place.
- (239) Lastly, as regards the failure to achieve the objectives in the Performance and Competitiveness Plan, the French authorities have indicated that New Areva could broaden the scope of the Plan and extend its duration, for example in terms of reducing purchasing or payroll costs. The Commission considers that seeking out additional competitiveness measures would be a rational approach if all of the objectives in the previous plan were not achieved.
- (240) On the basis of the information at its disposal, the Commission therefore considers that the Areva Group is implementing a satisfactory strategy to reduce the main risks to its business. This doubt can therefore be dispelled and the compatibility of New Areva's restructuring plan with point 50 of the Guidelines, which was called into question in the opening decision, is established.
- (241) The Commission also had concerns about New Areva's ability to secure the financing needed for its return to viability in the long term in the adverse scenario.
- (242) The French authorities have provided the necessary clarifications. In the adverse scenario, it is expected that financing of EUR [0-1 billion] will be needed in [...]. This financing requirement, [...], will in all likelihood be met [...]. However, the French authorities have demonstrated that, in the adverse scenario, New Areva will regain an investment grade rating [...], even taking account of [...]. That will allow the company to refinance itself at a reasonable cost on the capital markets.
- (243) However, the problem remains for [...]. Two reasons suggest that this obstacle can be overcome. Firstly, by that time New Areva will once again have sufficiently robust economic and financial fundamentals to enable it [...]. [...] New Areva to secure bank financing that, in terms of duration and amount, corresponds to its requirements. Secondly, the high-yield bond markets have developed substantially in recent years, which will enable New Areva to make use of these markets if required. Financing on these markets is admittedly more costly, but New Areva would have limited issuing requirements given that it should regain an investment grade rating [...].

- (244) [...]. In terms of the amount of aid, it is therefore satisfactory, in the baseline scenario, if New Areva achieves an investment grade rating [...], that is to say, before its refinancing requirements materialise. In the adverse scenario, [...] New Areva's return to long-term viability is not fundamentally called into question.
- (245) In the light of these explanations, the Commission takes the view that New Areva will be in a position to meet its financing needs [...], including in the adverse scenario. Its prospects of returning to long-term viability are therefore not compromised.
- (246) Lastly, the Commission expressed doubts in the opening decision regarding the apparent failure to take account, in the business plan, of the fuel-cycle business and the loss of synergies resulting from the divestment of its reactors business.
- (247) Once again, the Commission considers that the responses provided by the French authorities dispel this doubt. These responses comprise two arguments.
- (248) Firstly, it is clear that the loss of synergies will have the most significant impact during a time period that falls partly outside the period covered by the business plan notified to the Commission (2016-2025). This is due to the very long economic cycles in the nuclear field. Contracts for the supply of nuclear materials thus generally cover a long period, typically five to 10 years depending on the type of material (unprocessed, converted or enriched uranium) and the type of client. As a result, quite marked time-lags are necessarily observed during the first few years of the business plan. The loss of synergies will be felt first and foremost when New Areva's main supply contracts come up for renewal, or when new power plant projects are awarded to New Areva NP, i.e. towards the end of (or even beyond) the period covered by the 2016-2025 business plan. In this respect, the growth assumptions for New Areva's turnover at the end of the period covered by the business plan are prudent. The assumptions are based on [...], even though, in a counterfactual scenario in which the two historical business lines had remained integrated, the Areva Group would no doubt have been able to [...], particularly thanks to the 'end-of-life' offers where synergies come fully into play ⁽³¹⁾.
- (249) Secondly, the Areva Group is implementing an ambitious Performance and Competitiveness Plan, one of the main aims of which is to offset the loss of economies of scale caused by the various ongoing divestments, for example in purchasing. The aim of the plan is to achieve annual cost savings of EUR 500 million by 2018.
- (250) In the light of the above, the Commission concludes that the doubts it had expressed regarding certain aspects of New Areva's business plan have been allayed. The remainder of the plan to restore the entity to viability was considered satisfactory in the opening decision. Specifically, the Commission had emphasised the realistic nature of the main assumptions, and it stands by this assessment. The Commission also noted that New Areva's projected path would enable the restructured entity to return to viability by 2019 and it felt that the French authorities had chosen relevant indicators: turnover, EBITDA, operational cash flow, net financial debt, S&P ratios such as net debt/EBITDA and operational cash flow/net debt. For all of these reasons, the Commission considers that New Areva's business plan is robust, enabling it to return to viability by 2019, and that it contributes to the achievement of the objectives of common interest pursued by the aid.

5.2.3.2. Areva SA's business plan

- (251) In the opening decision, the Commission questioned the realism of the assumptions underpinning Areva SA's business plan. These doubts were further fuelled by the fact that, at the time of the opening decision, it was not clear what arrangements had been chosen for the divestment of the reactors business.
- (252) In response to the doubts expressed by the Commission, the French authorities provided an updated business plan based on more stable assumptions. Comments were also received from third parties, Siemens and TVO. The Commission therefore has the information necessary to assess whether the restructuring of the Areva Group allows Areva SA to return to long-term viability.

⁽³¹⁾ See recital 147.

- (253) In the future, Areva SA's main purpose will be to honour the liabilities retained by it (either directly, or indirectly through Areva NP), namely:
- (a) the repayment of the Areva Group's banking debt and the related interest, totalling EUR 3,4 billion for 2017 to 2025;
 - (b) various costs and provisions relating to the businesses due to be sold, amounting to a total of EUR [0-1 billion];
 - (c) any compensation payments that may be required or guarantees that could be called in [...];
 - (d) the costs linked to the completion of the OL3 project.
- (254) Given this entity's particular purpose, the question of Areva SA's return to viability essentially amounts to ensuring that the resources available to it are sufficient to cover all of these liabilities, including in the adverse scenario.
- (255) From 2017 onwards, Areva SA's resources will be as follows:
- (a) the EUR 2 billion capital injection planned by the French State;
 - (b) the proceeds from the ongoing divestments, totalling around EUR [1-5 billion] ⁽³²⁾ but which could rise by EUR [200-700 million] if the price premium set out in the SPA governing the divestment of New Areva NP is paid ⁽³³⁾;
 - (c) the value of the assets remaining on Areva SA's balance sheet [...], i.e. primarily the shares that Areva SA will retain in New Areva.
- (256) The resources listed in recital 255 can be estimated to a reasonable degree of accuracy. Firstly, the amount of the capital injection is certain. Secondly, the proceeds from the divestments are likely to amount to at least EUR [1-5 billion], given that the SPA signed by EDF and the Areva Group indicates a price of EUR 2,5 billion ⁽³⁴⁾ for 100 % of New Areva NP's equity, and that the Adwen subsidiary was sold for EUR 60 million ⁽³⁵⁾. Thirdly, Areva SA's shareholding in New Areva can be valued, using a conservative estimate, at EUR 2 billion.
- (257) On this last point, Areva SA's remaining stake in New Areva is certainly the most difficult of Areva SA's resources to evaluate. [...]. Despite this uncertainty, a cautious approach would be to use the current value of the shareholding as a benchmark. The stake has been valued by the two Japanese investors referred to in recital 132, on the basis of a report drawn up by the financial adviser [...] on 23 September 2016, at EUR 2 billion for 100 % of the equity. This approach is conservative given that, if New Areva recovers in line with the projected path in the restructuring plan, the value of its equity [...] will in principle be higher than it is today. [...].
- (258) As a result of these various factors, Areva SA will have EUR [3-7 billion] available to cover its requirements. In addition, there could also be a price premium of EUR [200-700 million] split between 2017 and 2019, as well as EUR 2 billion [...] its stake in New Areva.
- (259) Since the extent of Areva SA's resources are known, the match between its resources and its forecast staff numbers should be examined. A greater degree of uncertainty surrounds Areva SA's forecast staff numbers. The amount of banking debt and interest to be repaid is certain: EUR 3,4 billion from 2017 onwards. The costs and provisions relating to the businesses due to be sold are concentrated in the first few years of the business plan and are therefore not subject to major uncertainty. They are estimated at EUR [0-1 billion]. However, given the nature of the risks linked to [...], they are difficult to assess. And there are also uncertainties surrounding the completion of the OL3 project.

⁽³²⁾ EUR 2,5 billion for 100 % of New Areva NP's capital, and EUR 60 million for the divestment of Adwen.

⁽³³⁾ The SPA signed by EDF and the Areva Group provides that the price of EUR 2,5 billion could be increased if New Areva NP achieves certain targets, such as a reduction in its working capital requirement at the time the transaction takes place, or a predefined target EBITDA in 2019. The French authorities anticipate that New Areva NP's situation at the time the transaction takes place, then in 2019, will trigger these readjustment clauses, leading to the payment of a total price premium of EUR [200-700 million].

⁽³⁴⁾ This reasoning is based on the assumption that the divestment of New Areva to EDF will take place in accordance with the terms of the SPA signed on 15 November 2016.

⁽³⁵⁾ The proceeds from the divestment of Areva TA are not taken into account in Areva SA's cash-flow plan, since its impact is neutral in cash-flow terms, as it will be used to repay directly the EUR [0-1 billion] in customer advances that the Areva Group had mobilised through Areva TA.

- (260) Firstly, regarding the risks linked to [...], the SPA governing the divestment of New Areva NP lists the liability guarantees granted to EDF [...]. The aim of these liability guarantees is to protect EDF against the potential financial consequences that could be caused by [...].
- (261) As regards contractual liability, [...].
- (262) [...], this risk is now limited.
- (263) For all matters regarding civil liability [...].
- (264) In the light of the above, the Commission takes the view that Areva SA's exposure to the risks [...] is difficult to quantify but, in any event, is probably limited to [...].
- (265) As regards the cost of completing OL3 and the related financial and legal risks, the Commission has received a number of comments from third parties. It is necessary to distinguish between two issues: on the one hand, the cost of completing the construction work in itself and, on the other, the financial risk linked to the various ongoing legal proceedings between the parties involved in the project.
- (266) The French authorities, TVO and Siemens have all provided a different estimate of the costs of completing the OL3 project and the factors that could affect the costs.
- (267) The scenario put forward by the French authorities, which is based on information from the Areva Group, results in net cash flow of EUR [(1,5)-(0,5) billion] [...]. This cash flow comprises the following:
- (a) EUR [...] in net operational cash flow for completion of the OL3 project, [...]. When harmonised over the same reference period, this estimate is close to those put forward by TVO and Siemens. One can therefore conclude that there is a relative consensus regarding this underlying assumption;
 - (b) provisions for project-related risks totalling EUR [0-1 billion]. This estimate is between the lower range (EUR [0-1 billion]) and the upper range (EUR [0-1 billion]) estimated by TVO, and [...].
- (268) In addition to these estimates, [...]. In such a scenario, the additional cost for Areva SA would, [...], be EUR [0-1 billion].
- (269) Given the scope and complexity of the OL3 project, it is difficult to compare these different projections. However, this comparison is needed in order to reconcile the requirement for the aid to be limited to the minimum, implying that the public injections of capital into Areva SA must not be excessive, with the requirement for Areva SA to have sufficient resources to honour its liabilities, including in an adverse scenario.
- (270) Contrary to the argument put forward by Siemens, the Commission takes the view that this adverse scenario need not reflect all of the maximum risks that are theoretically possible. It is for the Commission, based on facts, to identify what in its view constitutes a sufficiently conservative adverse scenario.
- (271) In the case in question, the main variable influencing the cost of completing the OL3 project is the risk of delays [...]. On the basis of the information gathered during its in-depth investigation, the Commission takes the view that the adverse scenario can be based on an assumption [...]. There are two main reasons behind this choice. Firstly, the Commission notes that, at the time of its assessment, the provisional timetable for the construction works [...] was respected. Furthermore, TVO and the Areva Group have publicly expressed their satisfaction ⁽³⁶⁾ with the project's progress, due to the improved cooperation on the ground. Secondly, from 2017 onwards, the OL3 project will have the benefit of the feedback from the tests conducted in Taishan. The EPR project in Taishan has progressed well, with the result that it is now around five months ahead of the OL3 project. In the light of these considerations, there is no objective reason for the Commission to think that, even in an adverse scenario, the project would be delivered [...] — an assumption that [...] did not include in their comments.

⁽³⁶⁾ <http://www.areva.com/EN/news-10858/olkiluoto-3-epr-new-milestones-achieved.html>.

- (272) Using this assumption for the adverse scenario, the following cash cost estimates (net of the balance still to be paid by TVO) are obtained, from 2017 onwards: around EUR [0-3 billion] for TVO, and EUR [0-3 billion] for Siemens. These estimates are, respectively, some EUR [...] higher than the French authorities' estimates. The French authorities refute the relevance of the estimates from Siemens and TVO, and it is clear that the Areva Group is best placed to identify and estimate its own costs. Nevertheless, these divergent views and the history of the project are arguments in favour of a cautious approach. A comparison of these three estimates results, for example, in a conservative estimate of EUR [0-3 billion]. This amount can be used for the Commission's assessment.
- (273) In addition to these liabilities, there are the main legal risks borne by Areva SA as part of the OL3 project. These risks are twofold. On the one hand, there is the amount of compensation that Areva SA or Areva NP might have to pay [...] and, on the other, the arbitration dispute between the Consortium and TVO.
- (274) Siemens informed the Commission [...].
- (275) It is impossible to assess the scale or the likelihood of the legal risk linked to the ongoing arbitration dispute between TVO and the Consortium. The information submitted by the French authorities, Siemens and TVO indicates that an arbitration award on the merits will be handed down [...]. However, using the available information, it is currently impossible to anticipate the outcome of this dispute, which is one of the most complex ever dealt with by an arbitration tribunal. In theory, the Consortium's maximum exposure could reach EUR [...], [...]. Given that it is impossible to assess the likelihood of the risk, [...]. This causes problems when applying the Guidelines given that, as indicated in recital 269, the Commission must be satisfied that the restructured undertaking has the necessary resources to honour its liabilities, while the amount of aid must not be disproportionate.
- (276) In short, a conservative assessment of Areva SA's liabilities, based on the comments submitted by the French authorities and interested parties, leads to the following conclusion: Areva SA is exposed to quantifiable liabilities totalling around EUR [3-7 billion] ⁽³⁷⁾.
- (277) As well as these liabilities, there are [...] a number of liabilities that are more difficult to quantify: the risks linked [...], on the one hand, and the risk that Areva SA may have to contribute to any compensation payable by the Consortium to TVO in the ongoing arbitration dispute, on the other.
- (278) Set against these liabilities, Areva SA has EUR [3-7 billion] ⁽³⁸⁾, as well as assets [...] of considerable value through its stake of around 40 % in New Areva. The existence of this shareholding, valued today at EUR 2 billion, was not taken into account by Siemens and TVO in their comments. However, the shareholding gives the Commission reassurance as to the ability of Areva SA (and of Areva NP, through Areva SA) to honour its liabilities, even though it is currently impossible to assess part of these liabilities. The illiquid nature of this shareholding in the short term does not affect this conclusion, since the main effects of certain risks, if they were to materialise, would only be felt from 2019 ⁽³⁹⁾, which is when New Areva will be in the process of completing its restructuring and when its shares will be both more valuable and more liquid than they are today.
- (279) In the light of the above, the Commission concludes that, although it is manifestly difficult to estimate the value of Areva SA's liabilities with certainty, the information submitted during the in-depth investigation confirms that Areva SA will have enough resources to honour its liabilities, including in an adverse scenario involving significant additional costs in the OL3 project, compensation to be paid in the various disputes relating to OL3, and the calling-in of a number of liability guarantees [...].

⁽³⁷⁾ This comprises the EUR 3,4 billion of banking debt, EUR [0-1 billion] of costs and provisions relating to the businesses due to be sold, and EUR [0,5-1,5 billion] of negative operational cash flow linked to the completion of OL3 (excluding the legal risk). [...].

⁽³⁸⁾ Depending on whether the price premium for New Areva NP is paid or not.

⁽³⁹⁾ This applies, for example, to any compensation that the Areva Group, as a member of the Consortium, would have to pay TVO following the award by the arbitration tribunal, which would be made [...].

- (280) On this issue, TVO put forward another type of argument. According to TVO, the Commission should assess the restructuring not only from a financial point of view, but it should also be satisfied that a sufficient level of human and technical resources will be retained in Areva NP, which will remain TVO's co-contractor even when part of Areva NP's legacy assets are sold to EDF through New Areva NP. According to TVO, an insufficient level of human and technical resources would contravene Article 2(b) and (c) of the Euratom Treaty.
- (281) The Commission notes that, in its assessment of the restructuring of the Areva Group from the point of view of State aid control, it is not required to take a position on the way in which, in technical terms, the Areva Group meets its contractual obligations towards TVO. The Commission does, however, point out that, as laid down in Article 6(f) of Council Directive 2009/71/Euratom ⁽⁴⁰⁾, as amended by Council Directive 2014/87/Euratom ⁽⁴¹⁾, licence holders must provide for and maintain financial and human resources with appropriate qualifications and competences, necessary to fulfil their obligations with respect to the nuclear safety of a nuclear installation. In accordance with the same Article, licence holders must also ensure that contractors and subcontractors under their responsibility and whose activities might affect the safety of a nuclear installation have the necessary human resources with appropriate qualifications and competences to fulfil their obligations. As a result, Areva NP must maintain the resources necessary to fulfil the obligations listed above. The Commission concluded in recital 279 that Areva NP will have sufficient financial resources. Furthermore, the Commission notes that [...] of the human resources can be provided [...] to Areva NP. Moreover, the Commission does not doubt that, from a business point of view, it is in New Areva's interest for OL3 to be a complete success, as it will be proof of its ability to sell and build EPR reactors. However, the responsibility of licence holders under the Directive cannot be delegated. In response to the argument put forward by TVO, the Commission therefore reiterates the need for the licence holder to continue to maintain the human resources necessary to fulfil its obligations with respect to the nuclear safety of OL3.

5.2.4. *Need for State intervention and incentive effect*

- (282) For the aid to be considered both necessary and an incentive within the meaning of points 53 and 59 of the Guidelines, it must be demonstrated that rescue scenarios not involving aid would prevent the objectives of common interest pursued by the aid from being achieved. These scenarios can include (i) an alternative restructuring through the reorganisation of existing debt, divestments of activities or private capital injections, (ii) a sale or (iii) liquidation.
- (283) As regards the alternative scenario involving restructuring, the Commission confirms the position already described in the opening decision, namely that:
- (a) the current plan includes a significant level of divestment — more than 50 % of the Areva Group's turnover and 30 % of its assets before the restructuring — meaning that any further divestments would pose a risk to the Areva Group's return to viability without there being any clear benefits in terms of competition or the structure of markets, as will be demonstrated in section 5.2.7.2 of this Decision;
 - (b) no private investors are willing to provide all the capital needed by the Areva Group, and a shareholding of EUR 500 million is already planned for private investors;
 - (c) [...].
- (284) As regards a sale or a liquidation, the Commission takes the view that there would be a significant risk that the objectives of common interest would not be achieved, particularly the objectives under the Euratom Treaty regarding the safety and continuity of the Union's supplies of nuclear material.
- (285) Firstly, the continuity of the operations currently carried out by the Areva Group would be hampered by the length of the authorisation process for new nuclear operators ⁽⁴²⁾. Any change of operator requires authorisation from the ministers responsible for nuclear safety, once the ASN has given its opinion. One specific aim of this process is to ensure that the new operator has (i) the requisite technical skills to carry out the activities concerned

⁽⁴⁰⁾ Council Directive 2009/71/Euratom of 25 June 2009 establishing a Community framework for the nuclear safety of nuclear installations (OJ L 172, 2.7.2009, p. 18).

⁽⁴¹⁾ Council Directive 2014/87/Euratom of 8 July 2014 amending Directive 2009/71/Euratom establishing a Community framework for the nuclear safety of nuclear installations (OJ L 219, 25.7.2014, p. 42).

⁽⁴²⁾ As a result of these long timescales, the divestment of New Areva NP to EDF cannot take place before the end of 2017, i.e. after an investigation lasting around one and a half years has been carried out. In this specific case, the timescale involved was shorter given that EDF and the Areva Group, which already operate basic nuclear facilities in France, are well known to the ASN, which would not be the case for any other potential buyer.

safely and over the long term (this therefore covers technical resources, organisation, setting-up and experience of operating basic nuclear facilities) and (ii) the requisite financial capacity. The process is long and complex, since in practice it involves: an investigation by the ASN; an assessment by the relevant ministers; a drafting and adoption procedure for the decree signed by the Prime Minister and the ministers responsible for nuclear safety. The rules establish a three-year time limit for examining requests ⁽⁴³⁾. Authorisation only takes effect once the ASN has established that the operator meets the conditions laid down in the Environmental Code regarding the establishment of a fund for end-of-life provisions. A liquidation accompanied by a piecemeal sale of the Areva Group's assets would therefore entail the risk that certain activities that are essential to the continuity and the security of the Union's supplies of nuclear material would cease to be carried out for a certain period of time, which would be contrary to the objectives of common interest pursued by the aid under consideration.

- (286) Secondly, some of the fuel-cycle activities acquired by New Areva are less profitable than others. [...] is particularly profitable and will contribute to around [...] % of New Areva's EBITDA in 2020, according to the projections notified by the French authorities. However, [...] is less profitable when considered in isolation. If a liquidation leading to a piecemeal sale were to take place, it is possible that only certain profitable assets ([...], for example) would be sold, leaving behind activities that are nonetheless essential to the security of the Union's supply of fissile material, [...].

5.2.5. Appropriateness of the aid measure

- (287) With a net debt/EBITDA ratio ⁽⁴⁴⁾ of 8,2 on 31 December 2014, the Areva Group is faced with a problem of excessive debt that cannot be solved by the ongoing significant divestments alone. Although these divestments concern almost 50 % of the Areva Group's turnover before the restructuring, they will actually generate only EUR [1-5 billion] to EUR [2-6 billion] ⁽⁴⁵⁾, whereas the total amount of funding required is at least EUR [8-9 billion].
- (288) In these circumstances, additional borrowing cannot solve the Areva Group's problems and the Commission takes the view that a capital injection is the most appropriate aid measure to address the difficulties the Areva Group is facing and to restore its financial viability.

5.2.6. Proportionality of the aid

- (289) Restructuring aid is considered proportionate if the undertaking's own contribution to its restructuring costs is at least 50 % in principle, and if the burden has been shared adequately, particularly through measures designed to reduce the risk of moral hazard.

5.2.6.1. Adequate burden-sharing

- (290) The Commission already noted in the opening decision that provisions for losses and significant depreciation of assets had already been made. As the State is, directly and indirectly, the majority and longest-standing shareholder in the Areva Group, it is the party which bears most of these past losses. The French authorities have indicated that the current Areva Group does not have any subordinated creditors, so that the burden-sharing principle set out in point 66 of the Guidelines is fulfilled.
- (291) The Commission also noted that the undertaking's governance had been reformed, moving from a supervisory board to a management board structure, with a view to increasing shareholder control over strategic decisions.

⁽⁴³⁾ See Article 4 of Decree No 2007-1557 of 2 November 2007 regarding basic nuclear facilities and the monitoring of the transport of radioactive substances in respect of nuclear safety.

⁽⁴⁴⁾ On the basis of the data taken from the 2014 accounts published by the Areva Group: EBITDA of EUR 711 million and net debt of EUR 5,8 billion.

⁽⁴⁵⁾ The difference between the two amounts is due to the price premium that could be paid by EDF for the purchase of New Areva NP under certain conditions.

- (292) However, the Commission expressed concerns regarding the situation of minority shareholders ⁽⁴⁶⁾. In the light of the French authorities' comments, it appears that this doubt can be dispelled. The fact that the AMF requires the State to make a public buy-back offer, at a price calculated using a multi-criteria valuation method, means that the Areva Group's worsened situation will automatically be reflected in the price, thereby ensuring that the position of minority shareholders will not be unduly protected by the aid.

5.2.6.2. Own contribution

- (293) On 18 December 2016, the French authorities provided the Commission with an updated table of the Areva Group's restructuring costs, as well as its sources of financing (Table 3).

Table 3

Sources of financing for Areva's restructuring plan

State aid		Own contributions		
Type	Amount (EUR billion)	Type		Amount (EUR billion)
Capital injection into Areva SA	2,00	Own funding	Divestment of New Areva NP	2,50
Capital injection into New Areva	2,50		Divestment of Canberra	[0-1]
			Divestment of Areva TA	[0-1]
			Other divestments	[0-1]
			Own funding	[0-1]
		External finance	Third-party participation in the capital injection into New Areva	0,50
TOTAL	4,50	TOTAL		[3-7]

Cost of restructuring: around [8-9]

- (294) According to the Areva Group's latest estimates sent by the French authorities on 30 November 2016, the costs of the industrial and financial restructuring come to around EUR [8-9 billion] in total. The breakdown of these costs is shown in Table 4.

Table 4

Areva's restructuring costs

Costs of restructuring	
EUR million	Total 2015-2019
1. Financial restructuring	
Interest	[...]
Repayment of existing debt	[...]
Financial restructuring total (A)	[...]

⁽⁴⁶⁾ The minority shareholders are, in decreasing order of their stake, KIA (Kuwait Investment Authority) (5 %), Public (4 %), EDF (2 %), Employees (1 %), Total (1 %) and Areva (< 1 %).

2. Industrial restructuring
2.1. Included in the operational cash flow

Company reorganisation	[...]
Production losses	[...]
Carve-out costs	[...]
[...]	[...]
Contingencies	[...]
Total operational cash flow (B)	[...]

2.2. Included in the non-operational cash flow

Costs linked to SET and Eurodif	[...]
[...]	[...]
CIGEO	[...]
Additional cost of hive-down scheme	[...]
Total non-operational cash flow (C)	[...]
Industrial restructuring total (D) = (B) + (C)	[...]

Grand Total (A) + (D) [8-9]

(295) The costs of the industrial restructuring include several items of expenditure that have been identified in the operational and non-operational cash flows.

(296) Firstly, the following costs have been identified in the operational cash flow:

- (a) company restructuring costs as well as costs related to the industrial reorganisation and production losses totalling EUR [...], including the company restructuring costs (particularly the measures to support and encourage staff departures) and the costs of industrial reorganisation (particularly the costs linked to the streamlining and closing of sites), as well as the production losses linked to strikes that may occur on account of the reorganisation;
- (b) the carve-out costs required for the divestment of New Areva NP at a total cost of EUR [...] over the restructuring period;
- (c) the costs linked to the OL3 project during the restructuring period, totalling EUR [0-2 billion] during that period;
- (d) extraordinary contingency costs linked to the restructuring, totalling EUR [...].

(297) Secondly, the following costs have been identified in the non-operational cash flow:

- (a) taxation costs resulting from [...];
- (b) [...]SET and Eurodif ⁽⁴⁷⁾, [...];
- (c) additional provisions required as a result of the decision by the Minister for Ecology, Sustainable Development and Energy to increase the estimated costs of the CIGEO project, totalling EUR [...];
- (d) the costs linked to the hive-down, estimated at EUR [...].

(298) The cost of the Areva Group's industrial restructuring therefore comes to around EUR [0-5 billion].

(299) The financial restructuring takes particular account of the repayment of debts that will enable the undertaking in difficulty to return to viability.

(300) Debt repayments during the restructuring period amount to EUR 3,4 billion, in addition to the EUR [0-5 billion] of debt-related costs, making a total of EUR [0-5 billion].

⁽⁴⁷⁾ Eurodif is the Areva Group's subsidiary responsible for the conversion business.

- (301) The Commission notes that all of the cost items included in Table 4 are linked to the ongoing restructuring. As the operations generating these costs are an inherent and essential part of the restructuring programme, the Areva Group must be able to cover these costs in order to return to viability.
- (302) However, the Commission observes, following on from the opening decision, that a gap remains between the total restructuring cost (EUR [8-9 billion]) and the total of the sources of financing for the Areva Group's restructuring (EUR [9-11 billion]).
- (303) However, the doubt associated with this observation, regarding possible excess liquidity, can be dispelled in the light of the following three arguments. Firstly, the Guidelines do not lay down any mathematical relationship between the restructuring costs and the combined amount of the aid and own funds. The Commission has thus accepted in the past that the total amount of the aid and the own contribution could exceed the restructuring costs, although this did not prevent the aid from being limited to the minimum ⁽⁴⁸⁾. Secondly, if New Areva were to experience an adverse scenario, and refinancing were thus required in the circumstances described, for example, in recitals 242 and 243, the apparent 'excess liquidity' would be essential for the restructuring of the Areva Group and its return to viability. Thirdly, the French authorities have undertaken to ensure that Areva SA's sole economic function will be to honour the liabilities that it will retain under the restructuring plan. It will therefore not be possible to use the amounts allocated to Areva SA for any purpose other than to cover these liabilities. Once these liabilities have been honoured, Areva SA will be liquidated. Any excess liquidity at the time of the liquidation, which would therefore be carried out while the undertaking was solvent, will then be returned to the shareholders of Areva SA, in accordance with French commercial law on liquidation. However, Areva SA's share capital will be held entirely by its public shareholders once the minority shareholders' stakes have been bought back, as described in recital 292.
- (304) Next, the Commission notes that the Areva Group is mobilising an own contribution of EUR [3-7 billion]. In this case, the Commission can consider an own contribution of at least EUR [4-4,5 billion], equating to 50 % of the restructuring costs, as adequate within the meaning of point 64 of the Guidelines. Given that the amount indicated by the French authorities is higher than this, the Commission confirms that this criterion is met.
- (305) Lastly, it must be demonstrated that (i) the effect of the own contribution is comparable to the effect of the aid granted — in this case, a positive effect on the undertaking's solvency and not only on its liquidity — and (ii) that the contributions are 'real, that is to say actual' within the meaning of point 63 of the Guidelines.
- (306) The own contribution presented by the French authorities comes from three different sources: divestments of assets and subsidiaries, capital injections, and internal financing (essentially comprising a structural reduction in the Areva Group's minimum cash balance). The main effect of these sources of own contributions is to improve the solvency of the Areva Group, in line with the requirement in point 62 of the Guidelines.
- (307) However, it is unclear if these sources are real and actual.
- (308) The Commission considers that the divestment of an asset or of a subsidiary can be counted as a real and actual own contribution provided that the divestment has already taken place under the restructuring plan, or, if it has not yet been completed, on condition that there are no serious impediments that would prevent it from taking place before the restructuring period ends.
- (309) The information summarised in recitals 127 to 131, regarding the divestments of Canberra, Areva TA, Elta and Adwen, enables the Commission to consider that these divestments are sufficiently certain and therefore form an integral part of the Areva Group's own contribution to its restructuring. The total of these divestments is EUR [0-2 billion].
- (310) However, at the present time, the divestment of New Areva NP is still uncertain.

⁽⁴⁸⁾ See, for example, the Decision (EU) 2016/2068.

- (311) It is unlikely that the divestment will be jeopardised by potential opposition from TVO, following the failure of the negotiations referred to in recital 20. On the one hand, in the Commission's view, TVO's interests are properly protected in the chosen restructuring plan, particularly with regard to the Areva Group's future ability to honour its commitments. On the other hand, TVO has not informed the Commission of any intention to block or delay the divestment of New Areva NP.
- (312) However, as noted in recital 31 et seq., the divestment of New Areva NP remains subject to a number of conditions precedent, some of which pose an objective risk to the completion of the transaction.
- (313) Specifically, the divestment is subject to the ASN's conclusions on the outcome of the demonstration programme regarding the carbon segregation issue at the Flamanville 3 vessel; these conclusions must confirm the absence of any anomalies that would result in significant cost increases or delays to the project. These conclusions are expected to be available by mid-2017.
- (314) The French authorities have informed the Commission that all of the planned tests in the demonstration programme have been carried out; in the eyes of the Areva Group and EDF, none of the tests revealed any non-compliance making the vessel unfit for use. As a result, the Areva Group and EDF expect a favourable outcome from the demonstration programme and are confident that the vessel will be found to meet the ASN's requirements within the required timeframe.
- (315) The Commission takes note of the opinion expressed by the Areva Group and EDF but considers that the transaction is not sufficiently certain until the ASN, an independent authority and the only judge of the test results, has given its conclusions on the outcome of the demonstration programme. The Commission notes that the French authorities must ensure the ASN's effective independence from undue influence on its regulatory decision-making, in accordance with Directive 2009/71/Euratom establishing a Community framework for the nuclear safety of nuclear installations, as amended by Directive 2014/87/Euratom. Furthermore, [...]. This is in fact a known risk, which [...]. It is extremely difficult to quantify this risk, since its occurrence depends on an independent authority's conclusions on an extremely technical nuclear safety issue. This explains why the Commission must wait until this risk has been eliminated before it can consider the divestment of New Areva NP a real and actual source of an own contribution.
- (316) Furthermore, the completion of the transaction also depends on the Commission adopting a positive decision, this time in respect of the control of concentrations⁽⁴⁹⁾. However justified it may be, this condition precedent means that the outcome of the transaction depends on the decision of an independent authority — in this case, the Commission. As the market survey that must precede the Commission's assessment has not been carried out at the time of this Decision, the Commission cannot prejudge the outcome of its market survey relating to the control of concentrations or the decision it will take in respect of the concentration.
- (317) If the Commission decided to prohibit the concentration, the very principle of the transaction would be jeopardised and the Areva Group would not be able to prove that the proceeds of the divestment of the reactors business are real and actual. This eventuality cannot be completely ruled out at this stage. However, if the Commission's assessment following the market survey does not justify prohibiting the concentration, the Commission will adopt a decision to approve the transaction, if necessary with measures to remedy any potential negative effects on competition ('remedies'). A decision to approve the concentration, even one that includes remedies, would remove the uncertainty caused by the fact that the transaction and the expected proceeds for the Areva Group are subject to the Commission's decision on the concentration. In fact, the existence of remedies would not significantly alter the amount that the Areva Group would receive for the divestment of New Areva NP. In a scenario where, for example, a structural remedy were required, EDF would need to sell the assets in question (which could belong to either EDF or New Areva NP), without the sale calling into question the purchase of New Areva NP or, in principle, the price stipulated in the purchase contract. The Commission does not rule out the possibility that the price could be increased (in the form of a price premium) or reduced (if remedies were applied or by virtue of guarantees granted to EDF in the SPA), but it considers that the central

⁽⁴⁹⁾ Council Regulation (EC) No 139/2004 of 20 January 2004 on the control of concentrations between undertakings (the EC Merger Regulation) (OJ L 24, 29.1.2004, p. 1).

value of EUR 2,5 billion agreed by the parties to the transaction with the help of their advisers is a realistic estimate of the market price of the divestment and, consequently, of the own contribution that the Areva Group could receive as a result.

- (318) As long as these two conditions precedent have not been met — the positive opinion from the ASN on the outcome of the demonstration programme for the Flamanville 3 vessel, and the authorisation (non-prohibition) of the concentration by the Commission — the Commission takes the view that the transaction remains subject to uncertainties that are too great for the own contribution resulting from the divestment of New Areva NP to be considered real and actual. However, the proceeds from this divestment will be counted as a real and actual own contribution once these two conditions have been met.
- (319) The Commission considers that a capital injection by a third party can be counted as a real and actual own contribution, provided that the capital injection has already taken place under the restructuring plan, or, if it has not yet been completed, on condition that there are no serious impediments that would prevent it from taking place before the restructuring period ends. The Commission applies this logic to the investments of MHI and JNFL in New Areva.
- (320) The French authorities have forwarded to the Commission the offers made by these two investors: one offer is from MHI, for a 5 % stake at a price of EUR 250 million, and the other is from JNFL, also for a 5 % stake at EUR 250 million. These are firm offers insofar as [...]. The Commission therefore takes the view that these offers will constitute a real and actual source of an own contribution once the conditions referred to in recitals 315 and 316 have been met.
- (321) Lastly, as regards the own funds mobilised by the Areva Group, the French authorities have sent the Commission information regarding a total amount of around EUR [0-2 billion]. This amount is the result of a reduction of around EUR [0-1 billion] in the Areva Group's minimum cash balance, and of transfers of tax receivables and trade receivables of EUR [0-1 billion]. The French authorities have demonstrated that the reduction in the minimum cash balance was the result of a long process designed to optimise cash inflows and outflows and spread them out over the year, so that it is structural in nature and not likely to be increased in the future. The Commission notes that these measures have already been implemented successfully and that they are therefore real and actual.

5.2.6.3. Conclusion on own contribution

- (322) The total amount of own contributions submitted by the French authorities is EUR [3-7 billion]. This amount is higher than 50 % of the total amount of restructuring costs.
- (323) These sources of own contributions have a broadly comparable effect to that of the aid itself in that they improve the solvency of the Areva Group, in line with point 62 of the Guidelines.
- (324) However, the main source of the Areva Group's own contribution, namely the proceeds from the divestment of New Areva NP, can only be considered sufficiently real and actual if the two conditions precedent identified in recitals 315 and 316 are lifted; these conditions are linked to the sovereign decisions of independent administrative authorities that neither the parties to the transaction nor the French authorities can influence, which is, moreover, entirely justified since they relate to matters of nuclear safety. A further effect of this is that the own contributions originating from the subscription by MHI and JNFL to New Areva's capital increase will also be real and actual when these conditions are lifted.
- (325) In the light of the above, the Commission concludes that a sufficient, real and actual own contribution in accordance with point 63 of the Guidelines will exist on the date the two conditions identified in recitals 315 and 316 are lifted.

5.2.7. Avoidance of undue negative effects on competition and trade

- (326) Under point 38(f) of the Guidelines, the negative effects of the aid must be sufficiently limited, so that the overall balance of the measure is positive. The Commission therefore has to examine whether the 'one time, last time' principle has been complied with and whether measures have been taken to limit distortions of competition.

5.2.7.1. 'One time, last time' principle

- (327) Examinations of previous Commission decisions in this area and information provided by the French authorities have revealed that the Areva Group has not benefited from any rescue aid, restructuring aid or temporary restructuring support in the last 10 years. On this basis, the Commission concludes that the 'one time, last time' principle has been complied with.

5.2.7.2. Measures to limit distortions of competition

- (328) When restructuring aid is granted, measures must be taken to limit distortions of competition, so that the adverse effects on trading conditions are minimised as much as possible and positive effects outweigh any adverse ones. Measures to limit distortions of competition will usually take the form of structural measures although, in particular cases, the Commission may accept behavioural measures or market opening measures in place of some or all of the structural measures that would otherwise be required.
- (329) Point 78 of the Guidelines states that structural measures 'should take place in particular in the market or markets where the undertaking will have a significant market position after restructuring, in particular those where there is significant excess capacity'.
- (330) However, measures taken to limit distortions of competition must not undermine the beneficiary's prospects of restoring viability, or harm competition, the consumer or the market structure.
- (331) Finally, point 84 of the Guidelines defines the behavioural measures that must be applied in all cases, to avoid undermining the effects of structural measures.
- (332) In their notification of 29 April 2016, the French authorities presented the divestment programme implemented by the Areva Group as an adequate compensatory measure. The Commission took the view in the opening decision that most of the planned divestments⁽⁵⁰⁾ could not be considered adequate compensatory measures because they were not on a similar scale as the effect of the aid on the company⁽⁵¹⁾, and because they were not related to markets on which New Areva will be active after the restructuring. The Commission's position on this point has not changed.
- (333) This position did not relate to the divestment of the reactors business, the scale of which was recognised by the Commission in the opening decision: by separating from New Areva NP, the restructured Areva Group cut off a substantial portion of its business, accounting for one third of the assets and nearly half of the pre-restructuring turnover of the Areva Group.
- (334) Nonetheless, the Commission had concerns about the competitive effects of this divestment and whether they were sufficient to reduce the distortions of competition generated by the aid. In the light of the Guidelines, the Commission believes that these concerns should be addressed by answering the following three questions:
- (a) Is New Areva NP a 'loss-making activity [the divestment of which] would at any rate be necessary to restore long-term viability' of the Areva Group, within the meaning of point 78 of the Guidelines?
 - (b) Will the end of the integration between the reactors and fuel businesses have a real impact, mainly as a result of the lost synergies, on the Areva Group's competitiveness on 'the market or markets where [it] will have a significant market position after restructuring', i.e. on New Areva's markets, as specified by point 78 of the Guidelines?
 - (c) Are additional measures liable to lead to a deterioration in the structure of the market, contrary to what is required by point 80 of the Guidelines?

⁽⁵⁰⁾ Especially Areva TA, Canberra, Adwen, Elta.

⁽⁵¹⁾ Together, these subsidiaries account for around 5 % of the Areva Group's pre-restructuring balance sheet and a small portion of its turnover, whereas the planned State aid represents almost 20 % of the balance sheet as at 31 December 2015 and six month's pre-restructuring turnover.

- (335) With regard to the first question in recital 334, the Commission notes that the reactors business has been the source of substantial losses for the Areva Group in recent years, as described in recitals 17 and 21. It must therefore be determined if these losses are structural in nature and if they would continue to restrict the profitability of the Areva Group if the divested business were to remain within the Group.
- (336) Unlike the difficulties encountered by the fuel-cycle business, those suffered by the reactors business were not mainly caused by the post-Fukushima downturn. These losses are mainly associated with a limited number of major industrial projects, primarily OL3, the risks of which were mostly idiosyncratic. These major projects consisted of the first plants of a new type of reactor technology (EPR). It is common for the first plants of a new type of technology to suffer larger losses, since subsequent projects benefit from the experience acquired. However, OL3, as well as Flamanville 3 and Taishan 1 and 2, are scheduled to be finished by the end of 2018. This will allow future new reactor projects (Hinkley Point C and potentially others in the longer term) to benefit from a wealth of experience. New Areva NP's Major Projects business will therefore be less risky than in the past.
- (337) Alongside the Major Projects business, New Areva NP will own other businesses such as installed base services (maintenance) and the supply of fuel assemblies. These businesses are less risky than the Major Projects business and provide a healthy source of positive cash flow for New Areva NP, with average EBITDA margins of around [0-30] % and [0-30] % respectively ⁽⁵²⁾.
- (338) The business sold to EDF (New Areva NP) will include all activities currently held by Areva NP, minus the liabilities accumulated through a number of very specific major industrial projects which generated significant losses in the past ⁽⁵³⁾. Taking this business scope into account, New Areva NP is not a structurally loss-making company. Firstly, its Major Projects business is less risky now that the first plants OL3, Taishan 1 and 2 and Flamanville 3 have [...]. Secondly, it benefits from a healthy and robust industrial base, with installed base services and the supply of fuel assemblies. The purchase price of EUR 2,5 billion agreed between the Areva Group and EDF is a clear sign that New Areva NP has real profitability prospects and is not structurally loss-making.
- (339) In a counterfactual scenario in which the State aid absorbed some of the past losses anyway but the Areva Group remained integrated on all nuclear markets, the Group could expect additional positive cash flow of around EUR [0-2] billion over the period to 2015-2023 ⁽⁵⁴⁾, thanks to the contribution from New Areva NP.
- (340) In the light of these various elements, New Areva NP does not appear to be a structurally loss-making business which needs to be sold to restore the Areva Group's long-term viability. On the contrary, this is an adequate compensatory measure, especially since it is structural in nature, in line with point 77 of the Guidelines.
- (341) In relation to the second question in recital 334, the problem lies with knowing whether or not the vertical integration of the reactors and fuel-cycle businesses is an advantage in the current climate on the nuclear markets. According to Urenco, it is an advantage whose effects are limited to sales of new reactors, [...]. Urenco believes that the existence of non-integrated yet successful operators suggests that integration is not, in any case, an essential factor in the success of a group operating in the nuclear industry. The French authorities, however, believe that it is a definite advantage that produces effects in all markets relating to the nuclear fuel cycle.
- (342) First of all, the Commission would point out that the current trend on the nuclear markets is toward vertical integration, including among historically non-integrated companies. One of the Areva Group's main competitors, the Russian company Rosatom, is integrated throughout the value chain. The Korean nuclear reactor manufacturer KHNP is integrated upstream with a stake in the mining operator Denison and plans to invest in the Imouraren project, while Toshiba/Westinghouse is investing in mines in Kazakhstan. CNCC, meanwhile, currently only has conversion and enrichment capabilities and a stake in the Langer Heinrich mine in Namibia, run by the mining company Paladin; however, it is seeking a foothold on the fuel assembly market, in order to

⁽⁵²⁾ Areva NP valuation exercise by Société Générale, January 2016.

⁽⁵³⁾ The OL3 project alone — the first plant using EPR technology — generated losses on completion of around EUR 5,5 billion.

⁽⁵⁴⁾ Areva NP valuation exercise by Société Générale, January 2016.

take advantage of the synergies arising from the integration of these various activities. To boost its sales of natural uranium, the Kazakh mining company KAP — which Urenco lists among non-integrated operators — is currently looking to build a fuel assembly plant in cooperation with another operator.

- (343) This overall trend, which has not diminished, rather increased in the post-Fukushima climate, applies to major players in the nuclear industry. In contrast, Urenco's non-integrated model is used by relatively few companies. This shows that the integration of the reactors business (including the manufacture of fuel assemblies) with the fuel cycle business has a number of potential advantages.
- (344) As regards the nature of these advantages, it is clear to the Commission that an integrated group benefits significantly if its sales force is pooled between the fuel assembly segment, which is where it interacts with its electricity-generator customers, and front end-operations, which are more like commodities for which the suppliers are more or less interchangeable. It is revealing in this regard that [5-10] out of 10 customers of Areva NP (the future New Areva NP) are also customers of Areva NC (the future New Areva).
- (345) The French authorities gave the example of the electricity generator [...], which launched a call for tenders for the manufacture of fuel assemblies. Formally, the call for tenders related solely to the manufacture of fuel assemblies, and therefore to an activity included in the future business scope of New Areva NP. However, [...] invited tenderers to improve their bids by including the supply of enriched fissile material — an activity that will be covered by New Areva NP in the future. Thanks to its integrated sales force, the Areva Group has in the past been able to include the supply of enriched fissile material in its fuel assembly bids.
- (346) In the future, New Areva NP will be able to call upon any supplier of enriched fissile material in this type of situation, instead of New Areva being selected automatically or exclusively; in fact, New Areva NP will have an incentive to place fissile material suppliers in competition, in order to improve the quality of its eventual overall offering. This will provide many opportunities for New Areva's competitors, first among which is Urenco.
- (347) The benefits of the integration of the reactors and fuel-cycle businesses are also felt when fuel supplies are included with the sale of a new reactor — a point that Urenco does not deny. In practice, the designer and manufacturer of the reactor (currently Areva NP within the Areva Group) almost systematically provides the fuel assemblies for the reactor's initial core, as well as its initial reloads, until the reactor reaches 'cruising speed'. Reactors are subject to performance guarantees intrinsically linked to the quality of the fuel assemblies, at the very least during the reactor's start up and power ramp-up phases. To ensure complete control over the quality of the fuel assemblies and therefore the performance of the reactor, the reactor supplier provides the electricity generator, its customer, with fuel assemblies corresponding to the reactor's initial core and initial reloads.
- (348) For their part, electricity generators prefer to have a single partner whom they can call upon or hold liable in case there are any difficulties in the crucial reactor start-up and power ramp-up phases. TVO, for example, has emphasised [...]. The supply model combining fuel assemblies for the reactor's initial core and initial reloads is therefore preferred by many customers, as confirmed by [...].
- (349) This centralised supply model is becoming more widespread, since many potential customers are buying nuclear technology for the first time. As they do not have large dedicated teams, they much prefer to source from a single supplier that can, on its own, meet all of their needs in terms of both front-end products and services and fuel assemblies. The contracts concluded along these lines therefore encompass more than just the initial core and initial reloads, and are often even of a longer duration than those applying to currently operational reactors. This is the case, for example, of [...].
- (350) A supplier of front-end products and services working alongside a supplier of fuel assemblies and reactors therefore has a competitive advantage. When selling reactors, the Areva Group currently includes the initial core and initial reloads, as well as subsequent reloads where requested by the customer (typically, [...]). In concrete terms, including the sale of fuel assemblies in new reactor projects in this way benefits the Areva Group's front-end activities (which will be acquired by New Areva) in three ways:
- (a) given that, previously, Areva NP had systematically used the Areva Group's uranium and conversion and enrichment services to meet this demand, these solutions helped secure higher sales volumes for uranium, conversion and enrichment;

- (b) these contracts, which are negotiated privately during discussions relating to the purchase of the reactor, can be concluded on more favourable terms and conditions than those negotiated under an open procedure, which would be subject to competition from many other companies operating in mining, conversion and enrichment; the often longer duration of these contracts helps secure selling prices in the long term on a market where prices are dynamic;
- (c) finally, this type of contract allows a supplier of uranium and conversion and enrichment services to establish itself and gradually forge a reputation and credibility on new markets which are difficult to access, as was the case [...].
- (351) These sales have so far been high for the mining, conversion and enrichment businesses, which will be acquired by New Areva. For an EPR initial core, requirements stand at around [0-2 000] kSWU for enrichment (representing [0-20] % of New Areva's annual capacities), [0-2 000] tUF6 for conversion (representing [0-20] % of New Areva's annual capacities) and [0-2 000] tU3O8 for natural uranium (representing [0-20] % of New Areva's annual production in 2015). One reload represents one third of these volumes, and in most cases fuel assemblies are reloaded every 18 months. According to the Areva Group, it is common for the designer and manufacturer of a nuclear reactor to negotiate the supply of at least [...] in addition to the initial core.
- (352) For each fuel contract negotiated as part of [...] projects, the Areva Group has benefited from contracts for higher volumes and longer periods than it would have been able to conclude if Areva NP had not designed and built the nuclear reactor. The comparison between the [...] projects (for which Areva NP built the plant) and the reactor built by [...] is enlightening in this regard. The Areva Group was only able to contract for [...] % of the fuel needs of the reactor built by [...], for a period of only [...] years, even though it has fuel supply contracts for [...]. In this context, the divestment of New Areva NP's businesses is likely to have a significant impact on those of New Areva.
- (353) Urenco does not consider these synergies to have significant value [...]. The Commission acknowledges that most reactors currently under construction are located in countries such as Russia and China where the market is largely closed to Western nuclear power plant suppliers. The Commission also acknowledges that, since Fukushima, new reactor construction projects have become rarer. However, there are still a number of projects that have a good chance of seeing the light of day and for which New Areva NP appears to be well positioned. This is the case for projects that follow on from those won by Areva NP in the past: [...]. New Areva NP could also bid for the projects of [...]. For all of these projects, if New Areva NP wishes to include the supply of enriched material in its reactor offering, it will now be able to call upon any enriched material supplier it chooses, with a real incentive to place potential suppliers in competition with one another, amid intense price pressure in this type of call for tenders.
- (354) Of course, this prospect relates more to the medium and long term. However, industrial cycles in the nuclear markets are extremely long and the Commission therefore believes there are grounds for taking into account lost synergies, the main effects of which will be felt in the medium and long term.
- (355) The French authorities have also convincingly demonstrated that strong synergies existed between the reactors business and the back-end fuel cycle — synergies which New Areva and New Areva NP will have little incentive to recreate in the future.
- (356) In the medium and long term, New Areva NP's capacity to increase its sales from processing and recycling services for export depends on the existence on the market of a fleet of light-water reactors able to run with MOX fuel assemblies, known as 'MOX reactors'. Indeed, MOX fuel is not as such interchangeable with conventional fuel: reactors for which MOX is to be used must have been designed or adapted to accommodate this type of fuel. This means that the Areva Group's MOX business depends directly on the fleet of 'moxed' reactors worldwide.
- (357) However, New Areva NP [...].
- (358) [...] New Areva NP is responsible for selling them. [...].

- (359) [...] the French authorities explained that the situation was different as long as the Areva Group was integrated, since this meant it had the capacity to make a profit from MOX production, the design and construction of reactors and the selling of fuel assemblies. In fact, although Areva NP was indeed responsible for selling fuel (as New Areva NP will be in the future), it was under the supervision of Areva SA [...].
- (360) [...], the long-term growth prospects of the MOX segment ([...]) must be downgraded. However, replacing a non-MOX reactor in a call for tenders with a MOX reactor project reduces New Areva NP's captive demand and consequently increases demand for conventional fuel, for which New Areva NP is in competition with other operators, such as Urenco.
- (361) In a more general sense, New Areva and New Areva NP will enter into a customer/supplier relationship for an entire range of services that were previously supplied in-house, which will have potentially negative consequences for both New Areva NP and New Areva. This reasoning applies particularly to logistics operations, which will be more difficult to optimise. The French authorities have provided the following example. The natural uranium remains the property of the electricity generator that acquired it, which then entrusts its chosen suppliers with carrying out conversion and enrichment, followed by the manufacturers of fuel assemblies. Either the enrichment company or the designated manufacturer is tasked with delivering the enriched uranium. To ensure that the logistics are fully optimised, especially for delivery and stock management (in terms of both volumes and content of enriched uranium), enrichment companies and fuel-assembly manufacturers can draw up a contract setting out all the ways in which operations can be optimised. Belonging to the same group facilitates discussion and enhances the potential ways of optimising operations, given the lack of opposing interests between the enrichment company and the fuel-assembly manufacturer. The Areva Group has always benefited from this advantage in relation to its intra-group deliveries. In contrast, Areva NC, for example, has been overcharged [...], which it has never been able to effectively challenge since it refuses to discuss the costs incurred.
- (362) In the light of the above, the Commission concludes that if the restructured Areva Group had remained integrated with the reactors business, it would have benefited substantially from that integration and in particular from its ability to formulate integrated solutions including the activities of both New Areva NP and New Areva.
- (363) In recital 189 of the opening decision, the Commission expressed concern about the consequences of the planned strategic partnership between EDF and the Areva Group, especially in terms of the contractual re-creation of the commercial synergies observed in the past. Urenco has shared its concerns with the Commission on this subject.
- (364) The Commission concedes that a contractual partnership based on the concept of 'best effort' has little chance of recreating synergies as strong as those that previously existed within a consolidated group. However, a partnership that included a kind of favoured commercial cooperation, restricting the ability of New Areva NP's competitors to team up with New Areva NP to develop integrated solutions, would undermine the positive effects for competition of the divestment of New Areva NP.
- (365) In this context, the Commission notes the commitment by the French authorities to ensure that, during the restructuring period, EDF-controlled New Areva NP and New Areva do not enter into any strategic partnership or other framework agreement for commercial cooperation aimed at favouring New Areva in situations where New Areva NP wishes to provide a customer with an integrated offering alongside a supplier of nuclear material.
- (366) In the light of this commitment, the Commission believes that New Areva NP will be free to offer its customers the possibility of procuring nuclear material from operators other than New Areva. When New Areva needs to renew its order book, it will not be able to count on the structural synergies which the Areva Group benefited from in the past. The Commission's doubts on this point can therefore be dispelled.
- (367) With regard to the third question in recital 334, the Commission believes it necessary to carry out a market-by-market analysis to ensure that no distortions of competition persist, on any of the markets on which New Areva NP will hold a significant position, which would render the compensatory measure proposed by the French authorities inadequate.

- (368) Before going into detail with respect to each market, the Commission would first of all point out that it has made sure that the aid to the Areva Group is not so large that it would place the restructured group (i.e. New Areva) in an unusually good financial position in relation to its competitors. The aid has been calculated to allow the company to restore its long-term viability, which means helping it regain an 'investment-grade' rating. However, New Areva will still have sizeable debts [...]. It is expected that, after restructuring, New Areva will benefit from a [...] financial rating, which is no better than the rating of competitors like Urenco ⁽⁵⁵⁾. Consequently, New Areva will not enjoy markedly greater financial agility than its competitors after restructuring.
- (369) There are four major global players in the mining market. The main operator is KAP, which holds [0-50 %] of the market, followed by Cameco, with [0-50 %] of global production. The Areva Group and Rosatom, via its subsidiary AtomEnergProm, hold [0-30] % and [0-30] % of global production respectively ⁽⁵⁶⁾. KAP and Cameco have regularly increased their production in recent years and are expected to maintain or continue to increase it further in the near future.
- (370) On the mining market, if New Areva were to obtain additional concessions (for example in the form of divestments), this would risk giving an advantage to operators who already hold significant positions in this concentrated market, with a risk for both the market structure and for the EU's security of uranium supply.
- (371) Moreover, the mining business is a [...] contributor to restoring the viability of the Areva Group, since it accounts for [...] of New Areva's EBITDA up to 2020. Weakening this activity would endanger the Group's ability to restore viability, with no obvious benefit to competition.
- (372) In the light of these factors, the Commission does not believe compensatory measures, in addition to the divestment of New Areva NP and the commitments given by France, to be justified in the mining segment.
- (373) The conversion sector has four main operators by market share: Rosatom/TVEL ([0-50] %), Cameco ([0-50] %), Conver Dyn ([0-50] %) and the Areva Group ([0-50] %) ⁽⁵⁷⁾. The Chinese company CNNC is also present, but currently only supplies to the Chinese market. The Areva Group is now Europe's sole conversion company following the closure of the SFL plant in the United Kingdom.
- (374) The conversion activity is part of the [...] business. Any additional measure that weakens New Areva NP in this business could strengthen the market's existing oligopolistic structure and threaten the viability of this essential link in the fuel cycle, in which New Areva will be the only European operator.
- (375) Consequently, the Commission does not believe compensatory measures, in addition to the divestment of New Areva NP and the commitments given by France, to be justified in the conversion segment.
- (376) On the enrichment market, in 2014 the Areva Group held a global market share of approximately [0-30 %], while its two main competitors, Rosatom/Tenex and Urenco, each held more than [0-50] % ⁽⁵⁸⁾.
- (377) Urenco has informed the Commission of its concerns regarding the distortions of competition on the enrichment market created by the restructuring aid. In summary, these concerns relate to (i) New Areva's alleged financial agility compared to its unaided competitors; (ii) the risk that EDF, which is one of Urenco's key customers, will favour New Areva for its enriched uranium requirements; (iii) the increased excess capacity on the European enrichment market, especially if New Areva were to decide to increase the capacity of its Georges Besse II plant or to expand in SWU trading; (iv) the continuation or even strengthening of the MOX fuel business, which competes with Urenco's conventional fuel even though Urenco believes it to be less competitive.

⁽⁵⁵⁾ In December 2016, Urenco had a BBB+ rating (S&P).

⁽⁵⁶⁾ These market shares are the Areva Group's estimates.

⁽⁵⁷⁾ These market shares are the Areva Group's estimates.

⁽⁵⁸⁾ CNNC and Centrus (formerly Usec) each have a market share of around [0-20 %], although Centrus now only operates as a trader, not a producer. These market shares are the Areva Group's estimates [...].

- (378) The Commission has already demonstrated, in recital 368, that New Areva will not be in a better financial position than Urenco after the restructuring. This concern is therefore unfounded. Moreover, the French authorities have indicated that the Areva Group's enrichment business, housed in the subsidiary SET, already had positive net cash flow in 2016, and this trend is set to continue in the period from 2017 to 2030. In this regard, SET will contribute more to restoring the viability of the rest of the Areva Group through the scheduled payment of dividends than it will benefit from the effects of the aid.
- (379) Nor does the Commission see any risk that EDF would favour New Areva NP to the detriment of Urenco for its supply of enriched material. Firstly, there will be no capital link between EDF-controlled New Areva NP and New Areva which would justify EDF favouring the latter over its competitors. The Commission notes in this regard that EDF does not appear to have favoured the Areva Group in the past, since Urenco currently satisfies a significant portion of EDF's enriched uranium requirements. Secondly and in turn, the absence of a capital link eliminates any incentive for New Areva to offer more advantageous conditions to New Areva NP than to another customer, because it will no longer be able to partially recoup the benefits as a shareholder that it would grant as a supplier.
- (380) With regard to the increase in excess capacity on the European enrichment market, the Commission notes that the French authorities have undertaken to ensure that, during the restructuring period, the Areva Group does not increase the capacity of its Georges Besse II plant, with the exception of the acquisition and installation of centrifuges planned in its existing agreements [...]. The Commission therefore believes that the restructuring aid granted to the Areva Group will not be used to finance the increase in excess capacity on the European enrichment market. Trading, meanwhile, does not increase production capacity but, rather, optimises the existing capacities on the market. Furthermore, the Areva Group has not expanded this activity in the past decade [...].
- (381) On the issue of MOX, the Commission demonstrated in recitals 356 to 360 that the divestment of New Areva NP would have adverse effects on that segment's long-term growth, thereby increasing the size of the market accessible to producers of conventional fuels, such as Urenco. There is therefore no justification for obtaining additional measures in this market segment.
- (382) In a general sense, the Commission emphasises that the loss of synergies arising from the divestment of New Areva NP will generate opportunities for New Areva NP's competitors in the enrichment segment, especially in the specific circumstances described in recitals 353 and 360.
- (383) In the light of these factors, the Commission does not believe compensatory measures, in addition to the divestment of New Areva NP and the commitments given by France, to be justified in the enrichment segment.
- (384) With regard to back-end fuel-cycle operations (nuclear waste reprocessing and MOX production), the Areva Group holds a market share of around [50-100] % ⁽⁵⁹⁾ on the reprocessing market and is currently the only company handling all spent-fuel reprocessing and recycling and MOX production operations. The restructuring aid does not create any obvious distortion of competition insofar as the Areva Group is the only operator in this segment. The Commission concedes that MOX is a competitor of conventional fuel, for which New Areva will have competition from other suppliers. However, for the reasons described in recitals 356 to 360, additional measures are not justified in this market.
- (385) Finally, logistics and decommissioning are relatively minor markets for the Areva Group, in which it will not hold a particularly significant position after the restructuring. As regards logistics, for example, in 2013 the Areva Group held a market share in terms of volume of around [0-50] % for the production of packaging needed for the dry storage and transportation of spent fuel ('casks'), with the German company GNS holding [50-100] % of this market. On the decommissioning market, New Areva will have a market share of approximately [0-20] % and will be in competition with a large number of other companies (Onet, Vinci, Bouygues, Westinghouse, Amec, Nukem, Iberdrola, etc.). No especially obvious distortion of competition has been brought to the attention of the Commission during the investigation into these markets, on which there is no excess capacity. Specific additional measures for these markets are not, therefore, justified.

⁽⁵⁹⁾ This market share is the Areva Group's estimate.

- (386) In light of the above, the Commission concludes that, following the divestment of New Areva NP by the Areva Group and the commitments given by France, no distortion of competition justifying an additional measure will exist on the markets on which the Areva Group will hold a significant position after the restructuring.
- (387) Concluding its analysis of the measures taken to limit the distortions of competition created by the aid, the Commission notes the commitments given by the French authorities to comply with point 84(a) and (b) of the Guidelines.
- (388) In this regard, point 84(a) of the Guidelines states that beneficiaries of restructuring aid must refrain from acquiring shares in any company during the restructuring period, except where indispensable to ensure the long-term viability of the beneficiary. This obligation refers to acquisitions of shares made to expand the beneficiary's presence in existing or new markets via external growth, not to the rationalisation and use of existing means of production via internal growth. The Commission believes that, in this case, the creation of production joint ventures for the sole purpose of rationalising production facilities using existing assets, rather than acquiring and jointly exploiting new assets, cannot be considered an acquisition of shares, provided that the shareholders in the joint venture do not have individual drawing rights greater than their own contributions.
- (389) Similarly, for the purpose of implementing point 84(a) of the Guidelines in this case, the acquisition of undertakings with a view to decommissioning any assets they may hold is not considered an acquisition of shares. On the decommissioning market, [...] the owner of an undertaking holding assets that are to be decommissioned — such as a disused nuclear power plant — asks the service providers wishing to take on the decommissioning to form a consortium for the purpose of acquiring the undertaking and its decommissioning provisions, and to use those provisions to decommission the assets. For the undertakings in the acquiring consortium, and especially for the Areva Group, this scenario represents a specific way of continuing to provide the services it already provides, rather than an acquisition of shares allowing the Areva Group to expand its presence via external growth.
- (390) In the light of the above, the French authorities have undertaken to ensure that, throughout the restructuring period, the Areva Group (Areva SA and New Areva) and the undertakings under its control refrain from acquiring shares, directly or indirectly, in any undertaking that is not already under its control, with the exception of the following projects:
- (a) [...]
 - (b) [...]
 - (c) [...]
 - (d) [...]
 - (e) [...]
 - (f) [...]
 - (g) [...]
 - (h) [...]
 - (i) [...]
 - (j) [...]
 - (k) [...]
 - (l) [...]
 - (m) [...]
 - (n) [...]

(o) [...]

(p) [...]

(q) [...]

- (391) The Commission considers these projects essential to restoring the viability of the Areva Group, for the following reasons.
- (392) First of all, the Commission notes that these projects contribute EUR [...] to restoring the long-term viability (2017-2025) of the Areva Group. Since this figure is approximately the same as the annual EBITDA during this period, the Commission feels that these projects are essential for carrying out the restructuring plan.
- (393) Furthermore, some of these projects [...] relate to the mining activities of the Areva Group. In this regard, the Areva Group will be faced with the closure of a number of large mines, for example in [...]. However, the mining business is a [...] contributor to New Areva's long-term viability, as already explained in recital 371. Given that economic cycles in this field are extremely long, it is essential for any business wishing to remain active therein in the long term to have an ongoing portfolio of mining projects at various stages of development. The Areva Group's mining projects included in points (a) to (d) of recital 390 are mainly aimed at replacing the capacity that will be lost [...].
- (394) Moreover, the development of the activities of the Areva Group [...], which is pursuing an ambitious nuclear energy development strategy, is also crucial to restoring its viability. [...]. The projects in question take the form of joint ventures with the company [...]. Having analysed the projects [...] listed under points (a), (d), (e), (g), (h), (j) and (q) of recital 390, the Commission believes that they are essential for the Areva Group's development strategy, which is itself crucial to the company's long-term viability.
- (395) The same argument applies to the Areva Group's development projects [...]. These projects [...] are referred to in points (o) and (p) of recital 390.
- (396) Another group of projects [...] relates to [...], which are dynamic markets on which the Areva Group must maintain a presence to ensure the success of its restructuring plan. These projects are referred to in points (i) to (n) of recital 390.
- (397) Finally, the project referred to under point (f) of recital 390 relating to [...].
- (398) The Commission may approve any other investment that proves to be indispensable to ensure the long-term viability of the Areva Group and is not a means of bypassing the obligation to limit the Group's presence on existing markets. The intention to make such an acquisition and the information allowing the Commission to verify whether these conditions are met and, where applicable, approve or not oppose the acquisition must be notified to the Commission within a reasonable time frame, as part of the process for monitoring the restructuring plan.
- (399) Secondly, in line with point 84(b) of the Guidelines, the French authorities have undertaken to ensure that the Areva Group (Areva SA and New Areva) refrain from publicising State support as a competitive advantage when marketing its products and services.

5.2.8. *Transparency of aid*

- (400) In accordance with point 38(g) of the Guidelines, Member States, the Commission, economic operators and the public must have easy access to all relevant acts and pertinent information about the aid awarded. This means that the provisions on transparency laid down in point 96 of the Guidelines must be complied with.
- (401) The Commission notes that the French authorities have provided assurances that the transparency conditions laid down in point 96 of the Guidelines will be complied with. In particular, the French authorities undertake to publish and make publicly available the information outlined in the communication ⁽⁶⁰⁾ on transparency. This information will be available at <https://www.legifrance.gouv.fr> or at <http://www.economie.gouv.fr/agence-participations-etat>.

⁽⁶⁰⁾ OJ C 198, 27.6.2014, p. 30.

6. COMMITMENTS GIVEN BY FRANCE

- (402) The Commission notes the commitments given by France under this procedure.
- (403) The French authorities have undertaken to ensure that:
- (a) the Areva Group's divestment of its reactors business is total, which means that Areva SA and New Areva will no longer have any capital link with New Areva NP following the notified restructuring plan.
 - (b) during the restructuring period, the Areva Group does not increase the capacity of the Georges Besse II plant, with the exception of the acquisition and installation of centrifuges planned under its existing agreements [...];
 - (c) Areva SA does not carry out any activities other than those specifically set out in the restructuring plan notified to the Commission;
 - (d) during the restructuring period, EDF-controlled New Areva NP and New Areva do not enter into any strategic partnership or other framework agreement for commercial cooperation aimed at favouring New Areva in situations where New Areva NP wishes to provide a customer with an integrated offering alongside a supplier of nuclear material, in the markets identified in recitals 344 and 347 (supply of fuel assemblies and construction of new reactors). This commitment does not prevent New Areva and New Areva NP from formulating joint bids, provided that New Areva was selected on the basis of commercial and technical criteria.
 - (e) during the restructuring period, the Areva Group (Areva SA and New Areva) and the undertakings under its control refrain from acquiring shares, directly or indirectly, in any undertaking that is not already under its control, with the exception of the projects referred to in recital 390. This commitment does not apply to acquisitions of shares by New Areva and the companies it controls directly or indirectly, for the purposes of the financial management of (i) the decommissioning funds that the Areva Group is required to manage pursuant to a legal or regulatory requirement; (ii) the Areva Group's staff pension funds; (iii) its cash investments.
 - (f) the Areva Group (Areva SA and New Areva) refrain from publicising State support as a competitive advantage when marketing its products and services.

7. CONCLUSIONS

- (404) The subscription by the French State to the capital injections in Areva SA and New Areva constitute State aid for restructuring of EUR 4,5 billion.
- (405) This aid will comply with the criteria set out in the Guidelines and will therefore be compatible with the internal market when the existence of a real and actual own contribution at least equal to half the restructuring costs has been confirmed, i.e. when the conditions precedent identified in recital 318 and described in Article 2 of this Decision are lifted.
- (406) It follows that the aid cannot be implemented until these two conditions are met,

HAS ADOPTED THIS DECISION:

Article 1

The State aid of EUR 4,5 billion that France plans to implement in favour of the Areva Group is compatible with the internal market pursuant to Article 107(3) of the Treaty on the Functioning of the European Union and the conditions laid down in Article 2 of this Decision.

Article 2

The implementation of the aid referred to in Article 1 of this Decision is conditional on the following being obtained:

- (a) the ASN's conclusions on the results of the demonstration programme regarding the carbon segregation issue identified in parts of the Flamanville 3 EPR reactor vessel, to the effect that the parts of the vessel are not deemed unfit for use as a result of the segregation; or, alternatively, a decision by EDF, notified to the Areva Group with a view to completing the divestment of New Areva NP, to lift the condition precedent concerning the Flamanville 3 EPR reactor in relation to the carbon segregation identified in the parts of that reactor's vessel;
- (b) the Commission's authorisation of the concentration between EDF and New Areva NP.

Article 3

- 1. The Areva Group's restructuring plan, as communicated by France, shall be implemented in its entirety.
- 2. France shall communicate to the Commission half-yearly reports on the implementation of the restructuring plan, on the Areva Group's position on the markets where it operates, and on compliance with the commitments given by France under this Decision. These reports shall be provided throughout the restructuring period, starting from the notification of this Decision. The first report shall reach the Commission within six months of the date of notification of this Decision.
- 3. France shall inform the Commission when one of the two events described in Article 2(a) of this Decision occurs.

Article 4

This Decision is addressed to the French Republic.

Done at Brussels, 10 January 2017.

For the Commission
Margrethe VESTAGER
Member of the Commission

