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⁽¹⁾ Text with EEA relevance.

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II

(Non-legislative acts)

REGULATIONS

COMMISSION DELEGATED REGULATION (EU) 2017/1575

of 23 June 2017

amending Delegated Regulation (EU) 2015/242 laying down detailed rules on the functioning of the Advisory Councils under the common fisheries policy

THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EU) No 1380/2013 of the European Parliament and of the Council of 11 December 2013 on the common fisheries policy, amending Council Regulations (EC) No 1954/2003 and (EC) No 1224/2009 and repealing Council Regulations (EC) No 2371/2002 and (EC) No 639/2004 and Council Decision 2004/585/EC ⁽¹⁾, and in particular Article 45(4) thereof,

Whereas:

- (1) Article 43 of Regulation (EU) No 1380/2013 provides for the establishment of Advisory Councils which are to promote a balanced representation of all stakeholders in the field of fisheries and aquaculture and to contribute to the objectives of the common fisheries policy.
- (2) In accordance with Article 45(4) of Regulation (EU) No 1380/2013, the Commission adopted Commission Delegated Regulation (EU) 2015/242 ⁽²⁾ laying down detailed rules on the functioning of the Advisory Councils under the common fisheries policy.
- (3) Article 2 of Delegated Regulation (EU) 2015/242 defines, inter alia, the terms 'sector organisations' and 'other interest groups', which refer to the two categories of stakeholders represented in the Advisory Councils in line with Article 45(1) of Regulation (EU) No 1380/2013.
- (4) It is necessary to further align the definition of the term 'sector organisations' to the wording of Article 45(1) of Regulation (EU) No 1380/2013 to avoid potential interpretative difficulties.
- (5) Given that there might be mixed organisations, representing both the fisheries sector and other interests, it is necessary to specify that the general assembly decides on the classification of the members of the Advisory Councils in one of the two categories referred to in Article 45(1) of Regulation (EU) No 1380/2013.
- (6) Article 4 of Delegated Regulation (EU) 2015/242 prescribes the structure and the organisation of the Advisory Councils and in particular the appointment of the executive committee by the general assembly.
- (7) In the light of the composition of the Advisory Councils, as defined in point 2(a) of Annex III to Regulation (EU) No 1380/2013, in which 60 % of the seats in the general assembly and the executive committee are allotted to sector organisations and 40 % to the other interest groups, it is necessary to grant both categories the right to decide autonomously on their representation in the executive committee and thus guarantee a balanced representation of all stakeholders in the Advisory Councils,

⁽¹⁾ OJ L 354, 28.12.2013, p. 22.

⁽²⁾ Commission Delegated Regulation (EU) 2015/242 of 9 October 2014 laying down detailed rules on the functioning of the Advisory Councils under the Common Fisheries Policy (OJ L 41, 17.2.2015, p. 1).

HAS ADOPTED THIS REGULATION:

Article 1

Delegated Regulation (EU) 2015/242 is amended as follows:

(1) In Article 2, paragraph 2 is replaced by the following:

‘2. “Sector organisations” means organisations representing the fisheries (including employed fishermen) and, where appropriate, aquaculture operators, and representatives of the processing and marketing sectors.’.

(2) Article 4 is amended as follows:

(a) in paragraph 2, the following point (c) is added:

‘(c) decide on the classification of the members of the Advisory Councils under the categories “sector organisations” or “other interest groups”. That decision shall be based on objective and verifiable criteria, such as the provisions of the statutes, the list of the members and the nature of the activities of the organisation concerned.’;

(b) paragraph 3 is replaced by the following:

‘3. Based on designations from the sector organisations and from the other interest groups for the seats allotted to them respectively, the general assembly appoints an executive committee of up to 25 members. After consultation of the Commission, the general assembly may decide to appoint an executive committee of up to 30 members to ensure appropriate representation of small scale fleets.’.

Article 2

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

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

Done at Brussels, 23 June 2017.

For the Commission

The President

Jean-Claude JUNCKER

COMMISSION DELEGATED REGULATION (EU) 2017/1576**of 26 June 2017****amending Regulation (EU) No 540/2014 of the European Parliament and of the Council as regards the Acoustic Vehicle Alerting System requirements for vehicle EU-type approval****(Text with EEA relevance)**

THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EU) No 540/2014 of the European Parliament and of the Council of 16 April 2014 on the sound level of motor vehicles and of replacement silencing systems, and amending Directive 2007/46/EC and repealing Directive 70/157/EEC ⁽¹⁾, and in particular the second paragraph of Article 8 and Article 9 thereof,

Whereas:

- (1) Regulation (EU) No 540/2014 lays down requirements for the EU type-approval of all new vehicles of categories M (vehicles used for the carriage of passengers) and N (vehicles used for the carriage of goods) with regard to their sound level. That Regulation also lays down measures concerning the Acoustic Vehicle Alerting System (AVAS) for hybrid electric and pure electric vehicles, aiming at the warning of vulnerable road users.
- (2) Following the adoption, at the 168th session of the World Forum for Harmonization of Vehicle Regulations of the United Nations Economic Commission for Europe (UNECE), which took place on 8 — 11 March 2016, of UN Regulation 138 on the approval of quiet road transport vehicles, Annex VIII to Regulation (EU) No 540/2014 should be reviewed in order to improve the accuracy of the AVAS requirements on type and volume of emitted sound, the sound generation method, the pause switch and stationary sound.
- (3) The information document pursuant to Annex I to Directive 2007/46/EC of the European Parliament and of the Council ⁽²⁾ relating to EU type-approval of a vehicle with respect to the permissible sound level and the addendum to the EU type-approval certificate should be reviewed to reflect the detailed requirements on AVAS.
- (4) In addition, to allow for the approval of hybrid electric and pure electric vehicles which are equipped with AVAS, it is appropriate to introduce testing requirements on the AVAS sound emission minimum levels in forward and reverse motion as well as on the emitted sound frequency shift.
- (5) Regulation (EU) No 540/2014 should therefore be amended accordingly.
- (6) Given that Regulation (EU) No 540/2014 has become applicable on 1 July 2016 and that it cannot be fully applied without the amendments to Annex VIII included in this act, this Regulation should enter into force as soon as possible,

HAS ADOPTED THIS REGULATION:

*Article 1***Amendments to Regulation (EU) No 540/2014**

Regulation (EU) No 540/2014 is amended as follows:

(1) Annex I is amended as follows:

(a) in Appendix 1, the following point 12.8 is added:

‘12.8. AVAS

12.8.1. Approval number of a type of vehicle with regard to its sound emission pursuant to UNECE Regulation No 138 ⁽¹⁾⁽¹⁾ OJ L 158, 27.5.2014, p. 131.⁽²⁾ Directive 2007/46/EC of the European Parliament and of the Council of 5 September 2007 establishing a framework for the approval of motor vehicles and their trailers, and of systems, components and separate technical units intended for such vehicles (Framework Directive) (OJ L 263, 9.10.2007, p. 1).

or

12.8.2. Complete reference to the test results of AVAS sound emission levels, measured in accordance with Regulation (EU) No 540/2014 ⁽¹⁾;

(b) in Appendix 2, the Addendum is amended as follows:

(i) point 3 is replaced by the following:

‘3. AVAS fitted: yes/no ⁽¹⁾’;

(ii) the following point 4 is added:

‘4. Remarks’;

(2) Annex VIII is replaced by the text in the Annex to this Regulation.

Article 2

Entry into force

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

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

Done at Brussels, 26 June 2017.

For the Commission

The President

Jean-Claude JUNKER

ANNEX

'ANNEX VIII

MEASURES CONCERNING THE ACOUSTIC VEHICLE ALERTING SYSTEM (AVAS)

SECTION I

This Annex sets out measures concerning the Acoustic Vehicle Alerting System (AVAS) for hybrid electric and pure electric vehicles.

I.1. Notwithstanding points 2(a) and (b), the provisions of section II shall apply to an AVAS installed:

- (a) in any vehicle type approved before 1 July 2019;
- (b) in any new vehicle based on the type referred to in point (a) before 1 July 2021.

I.2. The provisions of section III shall apply to an AVAS installed:

- (a) in any vehicle type approved before 1 July 2019, where the manufacturer so chooses;
- (b) in any new vehicle based on the type referred to in point (a);
- (c) in any vehicle type approved on or after 1 July 2019;
- (d) in any new vehicle based on the type referred to in point (c);
- (e) in any new vehicle on or after 1 July 2021.

SECTION II

II.1. System performance

If AVAS is installed on a vehicle, it shall comply with the requirements referred to in points II.2 and II.3.

II.2. Operation conditions

(a) Sound generation method

The AVAS shall automatically generate a sound in the minimum range of vehicle speed from start up to approximately 20 km/h and during reversing. Where the vehicle is equipped with an internal combustion engine that is in operation within the vehicle speed range defined above, the AVAS shall not generate a sound.

For vehicles having a reversing sound warning device, it is not necessary for the AVAS to generate a sound whilst reversing.

(b) Switch

The AVAS shall be fitted with a switch which is easily accessible by the vehicle driver in order to allow engaging and disengaging. Upon restarting the vehicle, AVAS shall default to the switched on position.

(c) Attenuation

The AVAS sound level may be attenuated during periods of vehicle operation.

II.3. Sound type and volume

- (a) The sound to be generated by the AVAS shall be a continuous sound that provides information to the pedestrians and other road users of a vehicle in operation. The sound should be easily indicative of vehicle behaviour and should sound similar to the sound of a vehicle of the same category equipped with an internal combustion engine.
- (b) The sound to be generated by the AVAS shall be easily indicative of vehicle behaviour, for example, through the automatic variation of sound level or characteristics in synchronisation with vehicle speed.
- (c) The sound level generated by the AVAS shall not exceed the approximate sound level of a vehicle of the M1 category equipped with an internal combustion engine and operating under the same conditions.

SECTION III

III.1. System performance

The AVAS shall comply with the requirements set out in points III.2 to III.6.

III.2. Operation conditions

(a) Sound generation method

The AVAS shall automatically generate a sound in the minimum range of vehicle speed from start up to approximately 20 km/h and during reversing. Where the vehicle is equipped with an internal combustion engine that is in operation within that vehicle speed range, the AVAS shall not generate a sound.

Vehicles having overall sound levels complying with the requirements in paragraph 6.2.8 of UNECE Regulation No 138 ⁽¹⁾ with a margin of +3 dB(A), are not required to be equipped with AVAS. The requirements laid down in paragraph 6.2.8 of UNECE Regulation No 138 for one-third octave bands and the requirements laid down in paragraph 6.2.3 of UNECE Regulation No 138 for the frequency shift as defined in paragraph 2.4 of the same UNECE Regulation ("frequency shift") shall not apply to those vehicles.

For vehicles having a reversing sound warning device, it is not necessary for the AVAS to generate a sound whilst reversing, on condition that the reversing sound of the warning device complies with the requirements laid down in the second subparagraph of paragraph 6.2 and in paragraph 6.2.2 of UNECE Regulation No 138.

The sound generated by the vehicle type submitted for approval shall be measured in accordance with the methods set out in Annex 3 and subparagraphs 6.2.1.3 and 6.2.2.2 of UNECE Regulation No 138.

(b) Switch

The AVAS may be fitted with a mechanism to enable the driver to halt the operation of an AVAS ("pause function"), which is easily accessible by the vehicle driver in order to allow engaging and disengaging. Where a pause function is fitted, the AVAS shall default to the switched on position upon restarting of the vehicle.

In addition, the pause function shall comply with the requirements laid down in paragraph 6.2.6 of UNECE Regulation No 138.

(c) Attenuation

The AVAS sound level may be attenuated during periods of vehicle operation. In those cases, the AVAS sound level shall comply with the requirements laid down in paragraph 6.2.8 of UNECE Regulation No 138.

III.3. Sound type and volume

- (a) The sound to be generated by the AVAS shall be a continuous sound that provides information to the pedestrians and other road users of a vehicle in operation. The sound shall be easily indicative of vehicle behaviour, for example, through the automatic variation of sound level or characteristics in synchronisation with vehicle speed. The sound shall be similar to the sound of a vehicle of the same category equipped with an internal combustion engine.

The following rules shall apply:

- (i) where it is generated when the vehicle is in motion, the AVAS sound shall comply with the requirements laid down in paragraphs 6.2.1.1, 6.2.1.2, 6.2.1.3, 6.2.2.1, 6.2.2.2 and 6.2.3 of UNECE Regulation No 138, as applicable;
- (ii) the vehicle may emit a sound when stationary, as set out in paragraph 6.2.4 of UNECE Regulation No 138.
- (b) The vehicle manufacturer may provide for the possibility for the driver to select from among different sounds, which shall comply with the requirements laid down in paragraph 6.2.5 of UNECE Regulation No 138.
- (c) The sound level generated by the AVAS shall not exceed the approximate sound level of a vehicle of the M₁ category equipped with an internal combustion engine and operating under the same conditions. In addition, the requirements in paragraph 6.2.7 of UNECE Regulation No 138 shall apply.
- (d) The overall sound level emitted by a vehicle complying with the second subparagraph of point 2(a) shall not exceed the approximate sound level of a vehicle of the M₁ category equipped with an internal combustion engine and operating under the same conditions.

⁽¹⁾ OJ L 9, 13.1.2017, p. 33.

III.4. Test track requirements

Until 30 June 2019, the standard ISO 10844:1994 may be applied as an alternative to the standard ISO 10844:2014 to check compliance of the test track as described in Annex 3, paragraph 2.1.2, of UNECE Regulation No 138.

III.5. Type-approval certificate

The vehicle manufacturer shall provide, as an attachment to the EU type-approval certificate, any of the following documents:

- a) the communication referred to in paragraph 5(3) of UNECE Regulation No 138, in accordance with the model set out in Annex 1 to that Regulation;
- b) the test results of AVAS sound emission levels, measured in accordance with this Regulation.

III.6. Markings

Each component of the AVAS shall bear the following markings:

- (a) the trade name or mark of the manufacturer;
- (b) a designated identification number.

The markings shall be indelible and clearly legible.'

COMMISSION IMPLEMENTING REGULATION (EU) 2017/1577**of 5 September 2017****approving non-minor amendments to the specification for a name entered in the register of protected designations of origin and protected geographical indications (Acciughe sotto sale del mar Ligure (PGI))**

THE EUROPEAN COMMISSION,

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

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

Whereas:

- (1) Pursuant to the first subparagraph of Article 53(1) of Regulation (EU) No 1151/2012, the Commission has examined Italy's application for the approval of amendments to the specification for the protected geographical indication 'Acciughe sotto sale del mar Ligure', registered under Commission Regulation (EC) No 776/2008 ⁽²⁾.
- (2) Since the amendments in question are not minor within the meaning of Article 53(2) of Regulation (EU) No 1151/2012, the Commission published the amendment application in the *Official Journal of the European Union* ⁽³⁾ as required by Article 50(2)(a) of that Regulation.
- (3) As no statement of opposition under Article 51 of Regulation (EU) No 1151/2012 has been received by the Commission, the amendments to the specification should be approved,

HAS ADOPTED THIS REGULATION:

*Article 1*The amendments to the specification published in the *Official Journal of the European Union* regarding the name 'Acciughe sotto sale del mar Ligure' (PGI) are hereby approved.*Article 2*This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

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

Done at Brussels, 5 September 2017.

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

⁽¹⁾ OJ L 343, 14.12.2012, p. 1.

⁽²⁾ Commission Regulation (EC) No 776/2008 of 4 August 2008 entering certain names in the Register of protected designations of origin and protected geographical indications (Acciughe sotto sale del Mar Ligure (PGI), Brussels grondwitloof (PGI), Œufs de Loué (PGI)) (OJ L 207, 5.8.2008, p. 7).

⁽³⁾ OJ C 146, 11.5.2017, p. 10.

COMMISSION IMPLEMENTING REGULATION (EU) 2017/1578**of 18 September 2017****amending Implementing Regulation (EU) No 1194/2013 imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of biodiesel originating in Argentina and Indonesia**

THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EU) 2015/476 of the European Parliament and of the Council of 11 March 2015 on the measures that the Union may take following a report adopted by the WTO Dispute Settlement Body concerning anti-dumping and anti-subsidy matters ⁽¹⁾ ('the WTO enabling Regulation'), and in particular Articles 1 and 2 thereof,

Whereas:

1. MEASURES IN FORCE

- (1) The Council imposed by Implementing Regulation (EU) No 1194/2013 of 19 November 2013 a definitive anti-dumping duty on imports of biodiesel originating in Argentina and Indonesia ('the definitive Regulation') ⁽²⁾.

2. REPORTS ADOPTED BY THE WTO DISPUTE SETTLEMENT BODY

- (2) On 26 October 2016, the Dispute Settlement Body ('DSB') of the World Trade Organization ('WTO') adopted the Appellate Body Report ⁽³⁾ and the Panel Report ⁽⁴⁾ as modified by the Appellate Body report ('the Reports'), in the dispute 'European Union — Anti-Dumping Measures on Biodiesel from Argentina' (WT/DS473/15). DSB stated that the Panel Report should be read in conjunction with the Appellate Body Report. The Appellate Body report found, inter alia, that the European Union had acted inconsistently with:

- Article 2.2.1.1 of the WTO Anti-Dumping Agreement ('ADA') by failing to calculate the cost of production of the product under investigation on the basis of the records kept by the producers;
- Article 2.2 of the ADA and Article VI:1(b)(ii) of the GATT 1994 by not using the cost of production in Argentina when constructing the normal value of biodiesel; and
- Article 9.3 of the ADA and Article VI:2 of the GATT 1994 by imposing anti-dumping duties in excess of the margin of dumping that should have been established under Article 2 of the ADA and Article VI:1 of the GATT 1994, respectively.

- (3) In addition, the Panel found, inter alia, that the European Union had acted inconsistently with:

- Articles 3.1 and 3.4 of the ADA in its examination of the impact of the dumped imports on the domestic industry, insofar as the examination related to production capacity and capacity utilisation are concerned.

- (4) The Appellate Body recommended that the DSB request the European Union to bring its measures into conformity with the ADA and the GATT 1994.

⁽¹⁾ OJ L 83, 27.3.2015, p. 6.

⁽²⁾ Council Implementing Regulation (EU) No 1194/2013 of 19 November 2013 imposing a definitive anti-dumping duty and collecting definitively the provisional duty on imports of biodiesel originating in Argentina and Indonesia (OJ L 315, 26.11.2013, p. 2).

⁽³⁾ WT/DS473/AB/R and WT/DS473/AB/R/Add.1.

⁽⁴⁾ WT/DS473/R and WT/DS473/R/Add.1.

3. PROCEDURE

- (5) On 20 December 2016, under Article 1(3) of the WTO enabling Regulation, the European Commission ('the Commission') initiated a review ('the review') by the publication of a Notice ⁽¹⁾ in the *Official Journal of the European Union* ('the Notice of Initiation'). The Commission informed interested parties in the investigation that led to Implementing Regulation (EU) No 1194/2013 ('the original investigation') of the review and of the manner in which the Commission intended to take into account the findings of the Reports.
- (6) Interested parties had an opportunity to comment on the initiation of the review investigation and to request a hearing with the Commission and/or the Hearing Officer in trade proceedings.
- (7) The Commission sent a questionnaire regarding production and production capacity data of the Union industry to the European Biodiesel Board ('EBB') and subsequently carried out a verification visit at their premises.

4. PRODUCT CONCERNED

- (8) The product concerned is fatty-acid mono-alkyl esters and/or paraffinic gasoils obtained from synthesis and/or hydro-treatment, of non-fossil origin, in pure form or as included in a blend originating in Argentina and Indonesia, currently falling within CN codes ex 1516 20 98, ex 1518 00 91, ex 1518 00 95, ex 1518 00 99, ex 2710 19 43, ex 2710 19 46, ex 2710 19 47, 2710 20 11, 2710 20 15, 2710 20 17, ex 3824 99 92, 3826 00 10 and ex 3826 00 90 ('the product concerned', commonly referred to as 'biodiesel').
- (9) The Reports do not affect the findings set out in recitals 16 to 27 of the definitive Regulation concerning the product concerned and the like product.

5. REVISED DUMPING FINDINGS BASED ON THE REPORTS

- (10) As indicated in the Notice of Initiation, the Commission reassessed the definitive findings of the original investigation by taking into account the recommendations and rulings of the DSB. This reassessment was based on information collected in the original investigation and information received by interested parties after the publication of the Notice of Initiation.
- (11) The original investigation of dumping and injury covered the period from 1 July 2011 to 30 June 2012 ('investigation period' or 'IP'). With respect to the parameters relevant in the context of the injury assessment, data covering the period from 1 January 2009 to the end of the investigation period were analysed ('period considered').
- (12) This Regulation seeks to correct WTO inconsistent aspects of the definitive Regulation and to bring it into conformity with the Reports.

5.1. Inclusion of Indonesia

- (13) In the Notice of Initiation, the Commission referred to the anti-dumping measures on imports of biodiesel from Indonesia imposed by the same definitive Regulation. These measures are at present subject to a pending WTO dispute by Indonesia against the Union ⁽²⁾ ('EU Measures concerning Indonesia'). In that dispute, Indonesia has raised claims similar to those that were addressed in the Reports. As the Appellate Body's legal interpretation contained in the Reports appears to be also relevant for the investigation concerning Indonesia, the Commission considered it appropriate that the anti-dumping measures imposed on imports of biodiesel from Indonesia should also be examined in a concurrent review conducted under Article 2(1) of the WTO enabling regulation, in particular as far as the definitive Regulation was found inconsistent with Article 2.2.1.1 of the ADA.
- (14) In recitals 12 to 20 of the general disclosure document, the Commission set out its preliminary analysis of the application of the Appellate Body's interpretation of Article 2.2.1.1 of the ADA for the Indonesian investigation.

⁽¹⁾ OJ C 476, 20.12.2016, p. 3. Notice of initiation regarding the anti-dumping measures in force on imports of biodiesel originating in Argentina and Indonesia, following the recommendations and rulings adopted by the Dispute Settlement Body of the World Trade Organization in the EU — Anti-Dumping Measures on Biodiesel dispute (DS473), 2016/C 476/04.

⁽²⁾ European Union — Anti-Dumping Measures on Biodiesel from Indonesia, DS480.

- (15) After disclosure, interested parties submitted comments questioning the Commission's analysis, challenging, *inter alia*, the applicability of the Appellate Body's interpretation as well as the Commission's authority to act *ex officio* on that interpretation under the WTO enabling Regulation.
- (16) Because that analysis requires further time, the Commission decided not to terminate the review concerning Indonesia at this point, but instead to continue its analysis in light of the comments received. The review initiated under Article 2(1) of the WTO enabling Regulation is therefore still ongoing and remains open insofar as it concerns Indonesia. All interested parties were informed accordingly by way of a revised disclosure document of 31 July 2017 and granted the opportunity to comment.
- (17) The Indonesian government claimed that the Commission had infringed general principles of European Union law by first disclosing its intention to amend the definitive Regulation with regard to Indonesia and subsequently by reversing that intention in order to continue the investigation concerning Indonesia.
- (18) First, the Indonesian government considered that this results in unequal and discriminatory treatment of Indonesian producers vis-à-vis the Argentinian exporting producers given that the Commission had allegedly acknowledged, as stated in the Notice of Initiation, that Indonesian imports of biodiesel are in a similar situation to that of Argentinian imports. By delaying the review in respect of Indonesia, the Indonesian exporting producers are manifestly disadvantaged compared to the Argentinian exporters.
- (19) Second, given that the Commission initiated the review with regard to both Indonesian and Argentinian imports of biodiesel, the Indonesian exporters could reasonably and legitimately expect to have the review concerning Indonesia concluded at the same time as for Argentina. This expectation was further amplified by the first disclosure document in which the Commission proposed to also amend the definitive Regulation for Indonesia. Accordingly, by changing its position through a revised disclosure the Commission allegedly infringed the principle of legitimate expectations.
- (20) Third, the Indonesian government submitted that the Commission infringed the principle of good faith by excluding the Indonesian imports from the review at a late stage of the proceeding despite, including them throughout the investigation.
- (21) At the outset, the Commission recalled that the WTO Dispute Settlement Body has already made definitive findings on the EU measures against imports of biodiesel from Argentina, while the separate dispute concerning anti-dumping measures on biodiesel from Indonesia is still pending before it. The latter are thus considered a non-disputed measure within the meaning of Article 2(1) of the WTO enabling Regulation. This is informed, *inter alia*, by the use of the term 'report' in Article 1(1) of the WTO enabling regulation to describe a disputed measure which the WTO Dispute Settlement Body has concerned itself with and adjudicated on.
- (22) The Commission also recalled that, under European Union law, the concepts of 'equal treatment' and 'non-discrimination' prohibit treating similar situations differently, or different situations in the same way, without any objective ground for doing so ⁽¹⁾. For the purpose of implementing the WTO Reports, Indonesian and Argentinian exporting producers are not objectively in the same situation: the implementation exercise vis-à-vis the investigation into injurious dumping of the product concerned from Argentina occurred under Article 1(1) of the WTO enabling regulation and is terminated through this Regulation, whereas the implementation exercise vis-à-vis the investigation into the same practices from Indonesia occurred under Article 2(1) of the WTO enabling regulation and remains open. A situation of discrimination can only arise if there is a different legal treatment for operators in the same situation.
- (23) Since, however, the review into implementation of the findings of the WTO Dispute Settlement Body vis-à-vis Argentina and Indonesia was commenced on different legal bases, completing the review into the investigation on injurious dumping from Argentina before that into the investigation on injurious dumping from Indonesia does not result in the differential treatment of a comparable situation. This is because operators find themselves in different situations.

⁽¹⁾ See, for instance, Opinion of Advocate General Jacobs of 29 April 2004 in Case C-422/02 P *Europe Chemi-Con (Deutschland) v Council*, ECLI:EU:C:2004:277, at paragraph 36.

- (24) Contrary to the arguments by the Government of Indonesia, there is, consequently, no violation of the principle of 'equal treatment' or 'non-discrimination' for the purposes of European Union law. In any case, by including permissive language ('may' and 'if it considers this appropriate') in Article 2(1) of the WTO enabling Regulation, the EU legislature has vested the Commission with significant discretion on whether or not to implement a recommendation from the WTO in respect of a non-disputed measure.
- (25) As noted above in recital 16, the Commission, after having analysed the comments received after disclosure, considered it appropriate not to conclude the review investigation as far as Indonesia is concerned at this point in time but, instead, to continue its assessment of the applicability of those findings also vis-à-vis Indonesia in light of the comments received.
- (26) Moreover, the Commission cannot accept the argument that a disclosure document gives legitimate expectations as to the final conclusion of an investigation. On the contrary, the purpose of disclosure is to inform interested parties of the Commission's preliminary findings and grant them the possibility to effectively exercise their rights of defence. It is thus the very essence of the disclosure for the Commission to take into account arguments and facts presented by interested parties.
- (27) For that reason, the cover letter to all interested parties expressly stated that 'this disclosure does not prejudice any subsequent decision which may be taken by the Commission, but where such decision is based on any different facts and considerations, these will be disclosed to your company as soon as possible'. In this particular case, that exercise led the Commission to take the position that it needs more time in analysing the applicability of the findings of the WTO Dispute Settlement Body insofar as it concerns Indonesia. This decision is of a preparatory nature and does not necessarily prejudice the Commission's final conclusion. That same decision is, furthermore, an exercise of the Commission's wide discretion when conducting the type of reviews commenced under the WTO enabling regulation, which fall within the realm of the Common Commercial Policy.
- (28) Accordingly, an interested party cannot rely on the protection of legitimate expectations before the Commission has closed the review procedure at hand if the Commission chooses to act within the powers provided to it by the Union legislator ⁽¹⁾. That argument, too, must, consequently, be rejected.
- (29) Finally, no bad faith can be inferred from the fact that his change occurred after initial disclosure of the Commission's preliminary position, nor has the Government of Indonesia presented evidence to this effect. The Commission has faithfully conducted all steps in the review investigation with full respect of due process rights of all interested parties.
- (30) The Commission therefore rejected the claims that it had breached fundamental principles of EU law by exercising its discretion not to amend, at this stage of the review, the anti-dumping measures as far as Indonesia is concerned in full respect of due process rights of all interested parties.
- (31) After the revised disclosure one exporting producer from Indonesia ('Wilmar') contested the Commission's view that it required further time to conclude its review vis-à-vis Indonesia given the clear findings of the WTO reports. It claimed also that the measures against Indonesia should be amended. In its view, the Commission is competent under the WTO enabling Regulation to amend a non-disputed measure and that its authority to act *ex officio* could therefore not be put into question. Finally, Wilmar claimed that should the Commission's findings vis-à-vis Indonesia be postponed then also the findings concerning Argentina should be postponed. From its perspective, there are legal issues pending in the Indonesian WTO proceeding that might also become relevant and applicable to the measures concerning imports of biodiesel from Argentina, notably in relation to the profit margin.
- (32) The Commission agreed with Wilmar that it is in principle competent to make findings with regard to a non-disputed measure under Article 2(1) of the WTO enabling Regulation. However, as explained above in recital 16, the Commission, after having examined the comments received, did not consider it appropriate, at this stage, to conclude the review investigation as far as Indonesia is concerned by legitimately exercising its discretion provided for in Article 2(1) of the WTO enabling Regulation.

⁽¹⁾ See judgment of 7 May 1991 in Case C-69/89 *Nakajima All Precision v Council*, ECLI:EU:C:1991:186, at paragraph 120. See also, most recently, Opinion of Advocate General Campos Sánchez-Bordona of 20 July 2017 in Case C-256/16 *Deichmann*, ECLI:EU:C:2017:580, at paragraph 49.

- (33) With regard to Wilmar's claim that also the findings concerning Argentina should be postponed, the Commission recalled that the WTO reports confirmed the methodology used in the definitive Regulation to establish a profit margin. The issue at stake in the pending Indonesian case was not raised in so far as Argentina was concerned. In any case, the Union and Argentina have agreed on a reasonable time period to implement the findings of the reports, which should be respected.

5.2. Determination of the normal value and calculation of the dumping margins

- (34) This section sets out the reassessed findings of the original investigation regarding the recommendations and rulings of the Reports that the Union acted inconsistently with:
- Article 2.2.1.1 by failing to calculate the cost of production of the product under investigation on the basis of the records kept by the producers and
 - Article 2.2 of the ADA and Article VI:1(b)(ii) of the GATT 1994 by not using the cost of production in Argentina when constructing the normal value of biodiesel.
 - Article 9.3 of the ADA and Article VI:2 of the GATT 1994 by imposing anti-dumping duties in excess of the margin of dumping that should have been established under Article 2 of the ADA and Article VI:1 of the GATT 1994, respectively
- (35) As mentioned in recital 28 of the definitive Regulation, the Commission determined that the normal value had to be constructed as the domestic sales were considered not to be in the ordinary course of trade. This finding has not been contested and remains valid.
- (36) In recitals 29 to 34 of the definitive Regulation, the Commission established that the difference in the export taxes imposed by Argentina on the main raw material input (soybean oil and soybeans in Argentina) and those imposed on the finished product (biodiesel) depressed domestic prices in Argentina, and hence this should be taken into account in the construction of the normal value.
- (37) As a result, when constructing the normal value, the Commission replaced the costs of the main raw material reported in the records of the exporting producers with reference prices published by the relevant authorities of the countries concerned.
- (38) The Commission further based its conclusions in the original investigation on the interpretation that Article 2.2.1.1 of the ADA allows the investigating authority to decline to use the records of the exporting producers if it determines that they are either (i) inconsistent with GAAP or (ii) do not reasonably reflect the costs associated with the production and sale of the product under consideration (recital 42 of the definitive Regulation).
- (39) Both the Panel and the Appellate Body shared the opinion that the Commission's determination that domestic prices of soybeans in Argentina were lower than international prices due to the Argentine export tax system was not, in itself, a sufficient basis for concluding that the producers' records did not reasonably reflect the costs of soybeans associated with the production and sale of biodiesel, or for disregarding the relevant costs in those records when constructing the normal value of biodiesel.
- (40) Following the Reports, the Commission recalculated the normal value for exporting producers in Argentina. The methodology used for this recalculation was identical to the methodology explained in recitals 40 to 49 for Argentina of Commission Regulation (EU) No 490/2013 ⁽¹⁾.
- (41) For reasons explained in recital 45 of the provisional Regulation, the domestic sales were not considered as being made in the ordinary course of trade and the normal value of the like product had to be constructed under Articles 2(3) and 2(6) of the basic Regulation. This was done by adding to the adjusted production costs during the investigation period, the selling, general and administrative expenses incurred ('SG&A') and a reasonable profit margin.

⁽¹⁾ Commission Regulation (EU) No 490/2013 of 27 May 2013 imposing a provisional duty on imports of imports of biodiesel originating in Argentina and Indonesia ('the provisional Regulation') (OJ L 141, 28.5.2013, p. 6).

- (42) As explained in recital 46 of the provisional Regulation, the Commission considered that the amount for profit could not be based on the actual data of the sampled companies in Argentina. Therefore, the amount for profit used when constructing the normal value was determined under Article 2(6)(c) of the basic Regulation on the basis of the reasonable amount of profit that a young and innovative capital intensive industry of this type under normal conditions of competition in a free and open market could achieve, that is 15 % based on turnover.
- (43) In several submissions made during this review, EBB claimed that the Reports do not preclude the Commission from making an adjustment to the raw material costs when constructing the normal value, provided it is adequately justified. It claimed that given the dramatic impact on the Union market of the Differential Export Tax (DET) mechanism and the various legal possibilities contemplated by these reports as a basis for such an adjustment, the measures against Argentina should be kept at their current level, albeit based on a different reasoning.
- (44) In particular EBB referred to the statement in the report of the Appellate Body that 'the EU authorities' determination that domestic prices of soybeans in Argentina were lower than international prices due to the Argentine export tax system was not, in itself, a sufficient basis for concluding that the producers' records did not reasonably reflect the costs of soybeans' (paragraph 6.55 of the Appellate Body report) and claimed that the WTO reports retained the possibility of disregarding raw material costs and adjusting these costs if such costs are found to be unreliable.
- (45) According to EBB, the DET system distorts the market for raw materials to the extent that normal conditions of supply and demand are no longer determinant factors for a transaction and effectively causes a transfer of value from raw material producers to biodiesel producers that is deprived of market justifications. This is, according to EBB, similar to situations of non-arms-length transactions, and/or 'other practices' that could affect the reliability of the costs in the records of an exporting producer and which are justified reasons for disregarding such costs, albeit they are actually incurred.
- (46) In support of its claim that the DET distorts the raw material market, EBB relies in particular on an analysis provided by its own experts as well as a study commissioned by them entitled 'Measuring the Distortion to Biodiesel Costs in Argentina Caused by Differential Export Taxes on Soybean Products' (the 'Heffley study'), which allegedly both demonstrate that the differential export tax system artificially and significantly depresses domestic prices of the raw material in question and are thus not reliable.
- (47) The Heffley study collected data from 2010-2016 in Argentina and the United States on the cost of producing biodiesel in these two countries. It also provided a specific market analysis for October 2011 to September 2012. It found that the cost of production for soybean biodiesel (SME) in Argentina was lower than the cost of production of the same product in the United States. This difference of 27 % was, in view of the study, 'entirely due to the DET'.
- (48) In a second step, the study compared the export price of SME from Argentina (without specifying the destination) to the average market price for SME in the United States. The average Argentinian export price of 875 USD/MT was lower than the US domestic market price of 1 198 USD/MT. This would create a strong incentive for the importation of Argentine biodiesel. The study concludes that this distortion 'stems directly' from the DET.
- (49) EBB further stressed that correcting such distortions would clearly be within the logic of the anti-dumping process. It claimed that such distortions should be corrected by making appropriate cost adjustments, in particular to raw material costs, so that they were at the level at which they would have been incurred if there had been no distortions. In doing so, allegedly the Commission would be re-establishing what the real costs would actually be on the exporter's market for the production and sale of the relevant product under normal market conditions.
- (50) Several biodiesel producers contested EBB's proposition that the Commission should disregard the recorded costs for raw material on the basis that the DET system rendered those costs unreliable. They reiterated that the Panel and the Appellate Body specifically rejected the argument that the DET, in itself, could be a basis to disregard the recorded costs and that, in any event, an investigating authority cannot reject recorded costs when the records accurately and faithfully reflect the costs actually incurred.

- (51) The Commission acknowledged that the Appellate Body did not preclude, per se, the possibility that an investigating authority could, in certain specific circumstances depart from recorded costs if the investigation would demonstrate that costs had been, e.g. over- or understated or whether non-arm length transactions or other practices had affected the reliability of the reported costs (para. 6.41 of the Appellate Body report).
- (52) However, the Appellate Body also stated that the Argentine export tax system was not, in itself, a sufficient basis for concluding that the producers' records did not reasonably reflect the costs of raw material associated with the production and sale of biodiesel, or for disregarding the relevant costs in those records when constructing the normal value of biodiesel (paragraph 6.55 of the Appellate Body report).
- (53) EBB's arguments rely on the premise that the alleged distortive effect of the DET system would make the cost for the raw material in question unreliable and should therefore be disregarded. EBB sustains that the domestic prices of soybeans in Argentina were lower than international prices due to the Argentine export tax system. However, accepting this argument would be tantamount to admit, contrary to Appellate Body findings, that the DET system, in itself, produced such effects that the costs actually incurred and reported in the company records should be disregarded, just because they were lower than international prices. In this respect, the Commission further recalls that the original investigation confirmed that the actual costs incurred for raw materials were adequately and faithfully reflected in the companies' records.
- (54) The Commission therefore rejected EBB's claim since accepting it would not be in line with the findings of the Reports.
- (55) Therefore, in order to bring the measures into conformity with the Reports and WTO consistent, the Commission found it necessary to construct the normal value on the basis of the actual costs incurred as reflected in the respective company's records.
- (56) Following disclosure, EBB repeated that the WTO ruling allowed the Commission to resort to a cost adjustment in the present case. It claimed that the Commission had misinterpreted the WTO ruling and EBB's argument.
- (57) In EBB's view, the Commission ignored the statements of the Reports that 'domestic prices of soybeans in Argentina were lower than international prices due to the Argentine export tax system'. EBB claimed that the ruling did not state, as claimed by the Commission, that the distorting effects of the DET would not, in itself, be a sufficient basis for making a cost adjustment.
- (58) EBB further repeated and stressed the fact that the prices on the domestic market were unreliable due to the DET was a sufficient basis for concluding that the producers' records did not reasonably reflect the costs of soybeans associated with the production and sale of biodiesel. The unreliability of the domestic prices allowed to disregard the recorded costs and EBB had provided the Commission with all information necessary to adjust the costs.
- (59) EBB insisted that the Panel and the Appellate Body had held that investigating authorities were free to examine the reliability of the costs registered in the records of the producers/exporters, in particular, whether all costs incurred were captured; whether the costs incurred had been over- or understated; and whether non-arms-length transactions or other practices affected the reliability of the reported costs. According to EBB, the effect of the DET system was similar to transactions that were not at arm's length and/or amounted to another practice that could affect 'the reliability of the reported costs' ⁽¹⁾.
- (60) The Commission reassessed this claim also in light of the hearing with the Hearing Officer of 20 July 2017. The Commission put forward in recitals 51 to 55 that the actual costs incurred for raw materials were adequately and faithfully reflected in the Argentinian companies' records and that the previous cost adjustment made had been found incompatible with the EU's WTO obligations.

⁽¹⁾ Panel Report, EU — Biodiesel, para. 7.242, fn. 400; Appellate Body Report, EU — Biodiesel, para. 6.41.

- (61) The Commission did not share EBB's interpretation of the Panel and Appellate Body's findings. For example, footnote 400 of the Panel Report is more nuanced than what EBB's submission suggests. The Panel found that 'the examination of the records that flows from the term 'reasonably reflect' in Article 2.2.1.1 does not involve an examination of the 'reasonableness' of the reported costs themselves, when the actual costs recorded in the records of the producer or exporter are otherwise found, within acceptable limits, to be accurate and faithful'.
- (62) Yet, by claiming that the effect of the DET system was similar to non-arms-length transactions and/or amounted to another practice, EBB precisely pointed in the direction for such examination of the reasonableness of these reported costs.
- (63) Moreover, the effects of the DET system were (i) neither similar to a non-arms-length transaction; (ii) nor amounted to such 'other practice' that could affect the reliability of the costs in the records of an exporting producer. Whatever the precise scope of these concepts, the Panel and the Appellate Body specifically rejected the Commission's basic arguments that the price distortion caused by the Argentine export tax system (DET) was, in itself, a sufficient basis to reject costs in the records of an exporting producer ⁽¹⁾.
- (64) Following the revised disclosure, EBB maintained its position that the Commission had misinterpreted the Appellate Body's statement in paragraph 6.55 of its report and overlooked the possibility provided for in paragraph 6.41 of the same report to examine the reliability of the recorded raw material costs and disregard such costs if found unreliable and provided some additional arguments in support.
- (65) With regard to the first claim EBB contended that the AB statement in paragraph 6.55 '...the EU authorities' determination that domestic prices of soybeans in Argentina were lower than international prices due to the Argentine export tax system was not, in itself, a sufficient basis for concluding that the producers' records did not reasonably reflect the costs of soybeans associated with the production and sale of biodiesel, or for disregarding those costs when constructing the normal value of biodiesel' is not a legal assessment by the Appellate Body, as claimed by the Commission, but a mere quotation of the Commission's own conclusion in the definitive Regulation. EBB further claimed that the wording 'was not, in itself a sufficient basis' implies that the Argentine export tax system could have provided a sufficient basis to disregard the costs but the Commission failed to carry out the necessary analysis. Finally, the Commission's reading of paragraph 6.55 also disregarded the fact that the Appellate Body had found it necessary to also address the subsequent issue of a benchmark. This would not have been necessary if the Appellate Body had categorically ruled out that Argentine export tax system could form the basis for a cost adjustment.
- (66) The Commission did not accept the interpretation suggested by EBB.
- (67) First, the AB statement in paragraph 6.55 referred to above is not a mere quotation of the Commission's own conclusions. On the contrary, it forms an integral part of the Appellate Body's interpretation of Article 2.2.1.1 of the ADA in paragraph 6.56. The Appellate Body expressly agreed with the Panel that this provision did not provide a sufficient basis for the Commission's conclusion to disregard the recorded costs of Argentine biodiesel producers because domestic prices of soybeans in Argentina were lower than international prices due to the Argentine export tax system. The AB repeated this normative finding verbatim in the next paragraph 6.56 under the heading 'Conclusions'.
- (68) Second, the phrase 'was not, in itself, a sufficient basis' implies, to the Commission's understanding, that the *mere existence of the export tax system* was not a sufficient basis to justify a cost adjustment as made in the original investigation. If instead (as argued by EBB) the main reason for the Appellate Body to find a WTO inconsistency of the EU measures was the insufficient *reasoning* of the Commission in the original Regulation, it would have expressly said so. However, nothing of the kind was stated the Appellate Body and the Panel. Rather, the wording 'in itself' was likely used to make clear that the operation of the export tax system in Argentina cannot 'as such' trigger a cost adjustment under Article 2.2.1.1 ADA however well-reasoned or documented its distortive effects may be.

⁽¹⁾ Appellate Body Report, EU — Biodiesel, paras. 6.54-6.55, Panel Report, EU — Biodiesel, paras. 7.248-7.249.

- (69) Third, the Commission disagreed with EBB's inference that the fact that the Appellate Body addressed the claim regarding benchmarks in paragraphs 6.58 to 6.83 was an indication that the export tax system in Argentina could indeed have been a sufficient basis to disregard the recorded costs for raw material. As can be drawn from the heading preceding paragraph 6.58, the Appellate Body therein addressed a different claim from Argentina under Article 2.2 of the ADA.
- (70) The Commission then turned to the second claim of the EBB, namely that paragraph 6.41 of the Appellate Body report provided a clear signal that costs recorded in the records of a company can be disregarded when they are based on practices which affect the reliability of the reported costs. The EBB also referred to the fact that while the Panel had presented this reasoning in a footnote only, the Appellate Body found it necessary to include it in the body of its report. This would indicate, according to EBB, that the Appellate Body wanted to dispel an overly restrictive interpretation of Article 2.2.1.1 of the ADA and give a clear signal that a cost adjustment remains possible in that context.
- (71) In paragraph 6.41 the Appellate Body addressed the claim from the EU that the Panel report seemed to suggest that an investigating authority would have to accept any cost reported in a company's record as long as it accurately reflected the costs actually incurred 'no matter how unreasonable such cost would be compared to a proxy or benchmark consistent with normal market conditions'. It rejected that reading and recalled that the Panel had actually accepted that the investigating authority can examine the reliability and accuracy recorded in the records of the producers. The investigating authority could thus determine 'whether all costs incurred are captured; whether the costs incurred have been over- or understated; and whether non-arms-length transactions or other practices affect the reliability of the reported costs'.
- (72) The Commission agreed with EBB that the Appellate Body had upheld the Panel's ruling that recorded costs could be discarded when the investigating authority has found non-arms-length transactions or other practices affecting their reliability. It also found it normal that the Appellate Body addressed a claim in the body of its ruling rather than in a footnote, as the Panel had done. However, neither the Panel nor the Appellate Body made any findings or suggestions that the export tax system in Argentina could fall under this exception of a practice affecting reliability. If the Panel or Appellate Body had considered that the Argentine export tax system could have qualified as another practice affecting reliability, they would have made this point clear and refrained from finding a WTO inconsistency of the EU measures.
- (73) The Commission therefore maintained its interpretation of the Reports that the EU could not disregard the costs actually incurred and accurately recorded when constructing the normal value of biodiesel in Argentina on the basis of distortions stemming from the mere existence of the Argentina export tax system.
- (74) In any event, the Commission then turned to the points made by EBB — and, upon disclosure also by FEDIOL, a supplier to the Union biodiesel industry —, that the Commission should look at alternative evidence for cost adjustments to counteract the distortive effects of the DET for the cost of production of biodiesel in Argentina. In this respect, it noted that collecting alternative evidence for cost adjustments to counteract the distortive effects of the DET was not the purpose of the present review investigation.

In any case, the Commission noted that the evidence contained in the Heffley Study could not be regarded as a sufficiently solid basis for a new cost adjustment, for the following reasons.

- (75) First, the IP covered July 2011-June 2012, while the Heffley Study's specific analysis deals with October 2011 to September 2012. There is, consequently, only a partial overlap of the periods considered, making it questionable whether the study's findings can be translated to the underlying investigation without adjustments. The Commission was unable to correct this mismatch without data for the period July-September 2011.
- (76) Second, the study estimated the cost of production in the US from the price of soybeans on the US market. This economic method is based on assumptions without, however, providing reliable of actual cost of production of US biodiesel. Even if one could rely on assumptions only, the idea that the costs of making biodiesel from crude soybean oil would be identical in the US and Argentina is not substantiated. Third, using an 'average' Argentinian export price overlooks the fact that the export price to the Union may be actually higher than the average.

Indeed, during the IP of the original investigation, the export price of Argentine biodiesel to the EU stood at 967 EUR/MT, which equals 1 294 USD/MT, using the exchange rates of the time, as recorded in the file. The study, though, used for this period an average export price of 1 071 USD/MT. This shows that the conclusion that the alleged benefit from the DET could not derive directly from the export prices to the Union.

- (77) Fourth, the study simply assumes, without adequate evidence to substantiate it, that the (low) cost of production on the Argentine domestic market during the period considered was exclusively caused by the DET. Indeed, the study does not consider other factors of comparative advantage which might make the production of biodiesel in Argentina cheaper than in the United States.
- (78) The Commission thus concluded that it was unable to replace accurately the recorded cost in the records of Argentinian biodiesel producers by the benchmark suggested in the Heffley study.
- (79) Following the revised disclosure, EBB clarified that the purpose of the study was only to demonstrate how the Commission, as an example, could appreciate and quantify the extent of distortion (unreliability) caused by the Argentina export tax system and not to substitute or replace an analysis by the Commission based on its own verified data collected during the original investigation.
- (80) EBB also submitted a revised study with reference data that fully corresponded to the original investigation period which showed a very similar result, i.e. a distortion of domestic prices for soybeans at around 27 %. EBB further contested the Commission's understanding that the study relied on cost of production in the US. On the contrary, the study relied on an estimated cost of production of biodiesel in Argentina. Moreover, the Commission's criticism of the study for relying on an average export price is misplaced since that price, in itself, is irrelevant for calculating the distortion to biodiesel costs in Argentina that is caused by the export tax system. Finally, the EBB contends that any alleged comparative advantages cannot explain a price difference of around 30 % and, absent any evidence to the contrary, the only reasonable explanation for such a gap is the system of export taxes in Argentina.
- (81) The Commission examined the explanations and clarifications provided by EBB. The Commission accepted that the revised study showed distortion of domestic soybean prices during the investigation period of around 27 %. However, it remained unconvinced by the other three points.
- (82) As EBB itself acknowledged, the estimated processing cost for a producer in Argentina was based on three analyses: one based on six years average cost and price data for the United States and Argentina; one based on one year of the same data of the United States and Argentina; and one based on one year's data for Argentina, with the Argentine export price as a proxy for the world price. Clearly, the situation in the United States constituted an out-of-country benchmark to find out what the costs in Argentina would be absent the distortions from the export tax.
- (83) Moreover, there was no good reason why Argentine export prices to Europe should be ignored when trying to establish the advantage that an Argentine biodiesel producer may have had as a result of the DET.
- (84) In addition, the Commission has never contested that the DET was artificially lowering the input costs for Argentine biodiesel producers, but only took issue with the assumption that the DET was the *only* cause for such a huge benefit of around 30 %.

5.3. Recalculated dumping margins

- (85) Following disclosure some Argentine exporting producers made company-specific comments regarding alleged mistakes in dumping calculations. Where appropriate, the Commission corrected these errors and revised the dumping margins and duties accordingly.

- (86) The revised duty rates in respect of all Argentine exporters in light of the findings and recommendation in the WTO reports, expressed on the CIF Union border price, customs duty unpaid, are as follows:

Country	Company	Dumping margin
Argentina	Aceitera General Deheza S.A., General Deheza, Rosario; Bunge Argentina S.A., Buenos Aires	8,1 %
	Louis Dreyfus Commodities S.A., Buenos Aires	4,5 %
	Molinos Río de la Plata S.A., Buenos Aires; Oleaginosa Moreno Hermanos S.A.F.I.C.I. y A., Bahía Blanca; Vicentin S.A.I.C., Avellaneda	6,6 %
	Other cooperating companies	6,5 %
	All other companies	8,1 %

6. REVISED INJURY FINDINGS BASED ON THE REPORTS

- (87) In the Reports, it was found, inter alia, that the EU acted inconsistently with Articles 3.1 and 3.4 of the ADA in its examination of the impact of the dumped imports on the domestic industry, insofar as it relates to production capacity and capacity utilisation. The Reports did not, however, invalidate the conclusion that the Union Industry suffered material injury during the period considered.
- (88) The Panel found that the EU authorities acted inconsistently with Articles 3.1 and 3.4 of the ADA by accepting revised data submitted by the EU domestic industry at a late stage of the investigation without assuring themselves of its accuracy and reliability (paragraph 7.395 of the Panel report). The revised data concerned 'idle capacity'. At the same time the Panel stated that the revised data did not have a significant role in the EU authorities' conclusion in the definitive Regulation on overcapacity as an 'other factor' causing injury (confirmed in paragraph 6.174 of the Appellate Body report).
- (89) Some exporting producers and CARBIO, the Argentine biodiesel exporters association, argued that the concept of 'idle capacity', as it was explained in the definitive Regulation, was rather meaningless in this industry. Either capacity existed or it did not.
- (90) For the importer Gunvor and CARBIO, it was the structural overcapacity of the industry resulting from unwarranted increases in production capacity, despite low capacity utilization rates, and not the capacity utilization rate itself, that was the cause of injury to the domestic industry.
- (91) CARBIO, Argentinian and Indonesian exporting producers further submitted that the Commission was required to re-examine production capacity and capacity utilization on the basis of 'positive evidence'. Its examination should constitute an 'objective examination' of these factors.
- (92) The Commission addressed this issue under sections 6.1 to 6.4 below.

6.1. Questionnaire reply and verification

- (93) The Commission sent out a questionnaire to EBB requesting explanations as to (i) which methodology was applied to calculate both production capacity and capacity utilisation of the Union industry during the period considered, and (ii) why in the course of the original investigation this data was revised and on what basis the new figures were produced.
- (94) The Commission also asked EBB to explain what their understanding of 'idle capacity' was; why in their view it had to be excluded from the total production capacity of the Union industry for the period considered and how the idle capacity was calculated for the non-EBB members.

- (95) The Commission received the questionnaire reply, analysed it and subsequently carried out a verification visit at the premises of EBB on 26 April 2017. At the request of the Commission, the latter had prepared for the verification visit all supporting documents and worksheets used in preparing their questionnaire reply, in particular those linking the information supplied with management and accounting records for the on the spot verification by the Commission.
- (96) The Commission verified the supporting documents, cross-checked the reported data for the period considered at their source and was able to reconcile the information in the management and accounting records with the revised data submitted in the original investigation on production capacity and capacity utilization covering the period from 1 January 2009 to the end of the investigation period. The documents contain confidential company specific data and cannot be disclosed.
- (97) Gunvor and CARBIO made a submission arguing that the Commission's questionnaire addressed to EBB was not sufficient to meet the requirements under Articles 3.1 and 3.4 of the ADA. EBB needed to explain how the revised data was supported by public sources and the Commission should not simply accept the information provided by EBB.
- (98) Moreover, Gunvor and CARBIO claimed that EBB's replies to the questionnaire had been significantly redacted and as a result, interested parties could not to understand how the data was collected, how it was assessed and how it was verified with other sources, and were therefore not in a position to evaluate whether the relevant information provided by EBB should be given any credit.
- (99) Both parties submitted data collected by Eurostat on the production, capacity and consumption of biodiesel in the EU and noted the similarity between this data and that published in the provisional Regulation, which had been collected and provided to the Commission by EBB. They submitted that the Commission should have used Eurostat data rather than the EBB data adjusted for idle capacity.
- (100) They further claimed that the definition provided by EBB regarding idle capacity was too vague and that the suggestion to reduce production capacity by excluding 'idle capacity' only emerged after the publication of the provisional Regulation, once it became clear that the figures quoted in the provisional Regulation would make it more difficult to validly establish a causal link between the allegedly dumped imports and the injury allegedly suffered by the EU industry.
- (101) The Commission rejected these claims as explained under 6.2 to 6.4 below. It carefully assessed the questionnaire reply, subsequently verified the data during a verification visit at the premises of EBB and found that the submitted and revised data was accurate and reliable and that there was no need to change the revised figures used for the definitive Regulation (see also recitals 53-58).
- (102) In addition, the Commission notes that the data collected by EBB is in line with the Eurostat data, and therefore the later provides independent confirmation of the accuracy and reliability of the EBB data. However, as the Eurostat data set was not published until 2014, it could not have been used in the original investigation.
- (103) Therefore, the revised data used in the definitive Regulation (recital 131) (see table below) were correct and confirmed after the verification visit.

	2009	2010	2011	IP
Production capacity (tonnes)	18 856 000	18 583 000	16 017 000	16 329 500
<i>Index 2009 = 100</i>	100	99	85	87
Production volume (tonnes)	8 729 493	9 367 183	8 536 884	9 052 871
<i>Index 2009 = 100</i>	100	107	98	104
Capacity utilisation	46 %	50 %	53 %	55 %
<i>Index 2009 = 100</i>	100	109	115	120

6.2. Total EU Production: Clarifications on EBB data collection process for production

- (104) In March 2013, before the publication of the provisional measures, EBB provided the Commission with production data for the Union industry, both for EBB and non-EBB members.
- (105) The production data reported was given per company, whether they were EBB members or not. This bottom-up approach ensured that the production data provided an accurate picture of EU production.
- (106) EBB members provide production data to EBB on a quarterly basis on a form sent by EBB and then this is cross-checked against market intelligence sources. A particular emphasis is put by EBB on production data as it is used to determine EBB members' financial contribution to the association.
- (107) Production data from non-EBB members are collected through direct contacts with the companies. The data reported is then cross-verified through other market intelligence sources including: national associations, other producers and specialist publications.
- (108) The data provided by EBB are thus the best available information on EU wide production for EBB and non-EBB members, based on consistent reporting by EBB of actual production for each of the EU companies producing biodiesel.
- (109) This data was used by EBB to determine the total Union production on which it based its submissions.

6.3. Total EU Production capacity: Clarifications on EBB data collection process for production capacity

- (110) In March 2013, before the publication of the provisional measures, EBB provided the Commission with production capacity data for the Union industry, both for EBB and non-EBB members.
- (111) In the same way as the production data, this was given on a company level basis for both EBB and non-EBB members.
- (112) Production capacity data from EBB members are provided by the members twice per year on a form sent by EBB and then this is cross-checked against market intelligence sources. To ensure that data are consistent, EBB requests its members to report capacity based on 330 working days per year, per plant to account for the unavoidable maintenance of plants.
- (113) Production capacity data from non-EBB members are collected through direct contacts with the companies and as with production data this is then cross-verified.
- (114) Because EBB only requests a 'snapshot' of the company's production capacity on a particular day and the concept of capacity is not always understood similarly by all companies, data provided by EBB on production capacity should be considered as being less precise than data on production.
- (115) However, the data provided by EBB are the best available information on EU wide production capacity for EBB and non-EBB members, based on a consistent reporting by EBB of actual production capacity for each of the EU companies producing biodiesel.

6.4. Clarifications on EBB identification of 'idle capacities'

- (116) After publication of the provisional Regulation, and as described in the definitive Regulation, it became apparent that the data published for production capacity were not accurately representing the reality of the situation of the Union industry. The Commission thus requested EBB to clarify its data on production capacity.
- (117) EBB provided the Commission with updated data for both its members and the non-members which identified unavailable so-called 'mothballed' production capacity, or 'idle capacity', that had initially been reported as part of the total EU production capacity.

- (118) Determination of idle capacity is made by EBB in the course of its calculation of production and production capacity from data submitted by the individual companies. Due to the nature of the data collection process described above, a review of the data provided regarding non-EBB members was necessary to ensure that production capacity data reflect as accurately as possible the reality of the EU industry.
- (119) The data provided by EBB between the provisional and the definitive Regulations were the best available information on EU wide production capacity for EBB and non-EBB members based on a consistent reporting by EBB of actual production capacity for each of the EU companies producing biodiesel.

6.5. Comments following disclosure

- (120) Following disclosure of the Commission's findings on injury several interested parties made comments on these findings.
- (121) The association of Argentine biodiesel producers, CARBIO, reiterated its view made during the review investigation that current Eurostat data on production and capacity of biodiesel should be used in the current analysis of injury and causation, rather than the data used in the original investigation.
- (122) The Commission rejected this claim. The Eurostat data coincided with the original data from EBB. However, EBB then corrected these data to better reflect idle capacity during the original investigation. As stated above in Section 6.4 the Commission verified these updates in the current review investigation. Accordingly, the original Eurostat data do not reflect the most accurate picture on production and biodiesel which had been specifically verified and used by the Commission in this case.
- (123) CARBIO also stated that the Commission should further define 'idle capacity'. The Commission reiterated that it had defined idle capacity in recitals 131-132 of the definitive Regulation. As the WTO reports did not take issue with the Commission's concept of 'idle capacity', there was no reason to change it for this review.

7. DISCLOSURE

- (124) All parties were informed of the Commission's findings and were granted a period within which they could submit comments.
- (125) Following disclosure the exporting producer Molinos de la Plata informed the Commission that it exported to the Union under the name 'Molinos Agro S.A.' rather than under the name 'Molinos Río de la Plata S.A.' and provided evidence.
- (126) The Commission scrutinized the evidence submitted and concluded that the name change was sufficiently substantiated and hence accepted the claim.
- (127) Following disclosure the cooperating Indonesian exporter Wilmar requested and was granted a hearing. It made company-specific claims regarding dumping and injury calculations and especially requested its profit margin to be lowered.
- (128) The Commission rejected these claims as they were not related to the implementation of the WTO report on Argentina. Moreover, most of them are currently pending before the WTO in the dispute brought by Indonesia.
- (129) Following the revised disclosure, Wilmar insisted that its claim with regard to its profit margin for constructing the normal value is not pending before the WTO but is an issue independent thereof and the claim is based solely on the provisions of the basic anti-dumping regulation. This claim should therefore be addressed in this review. Wilmar also claimed that the maintenance of the measures is not in the Union interest and should therefore be terminated.
- (130) The Commission recalled that this review is initiated on the basis of the WTO enabling Regulation for the purpose of implementing the findings and recommendations of the Panel and Appellate Body in the dispute *European Union — Anti-Dumping Measures on Biodiesel from Argentina* (WT/DS473/15). The review is thus limited to issues before the WTO and possible consequential and/or technical changes arising therefrom. Therefore, neither of Wilmar's claims are admissible. In addition, the Commission recalled that a similar claim regarding the

profit margin was made by Wilmar already in the original investigation and rejected therein (see recitals 43 to 46 of the definitive Regulation). Following disclosure the cooperating Argentine exporting producer COFCO Argentina S.A. (formerly known as Noble Argentina S.A.) submitted a request that the company be treated as a 'newcomer' and be included in the list of companies with individual duty rates as 'other cooperating companies'.

- (131) The Commission informed the company that it should follow the procedure for new exporting producers as set out in Article 3 of the definitive Regulation.
- (132) Following disclosure EBB requested a hearing with the Hearing Officer on the grounds that the Commission's position had not been determined on the basis of objective legal reasoning, but on the basis of political interest.
- (133) In the hearing of 20 July 2017, the Hearing Officer did not find that the rights of defence of EBB as an interested party had been infringed. At the same time, he called upon the Commission to substantiate its views why it could not disregard the Argentinian soybean prices as unreliable. The Commission included this point in its assessment of comments received upon disclosure as set out in recitals 60 to 63.

8. DEFINITIVE MEASURES

- (134) On the basis of the above reassessment, the Commission concluded that the injurious dumping determined in the original investigation is confirmed.
- (135) The anti-dumping measures applicable to imports of biodiesel originating in Argentina and Indonesia imposed by Implementing Regulation (EU) No 1194/2013 should therefore be maintained, with the revised dumping margins for Argentina recalculated as set out above.
- (136) The rate of the definitive anti-dumping duty applicable to the product concerned shall be as follows:

Country	Company	Dumping margin	Injury margin	Anti-dumping duty rate
Argentina	Aceitera General Deheza S.A., General Deheza, Rosario; Bunge Argentina S.A., Buenos Aires	8,1 %	22,0 %	8,1 %
	Louis Dreyfus Commodities S.A., Buenos Aires	4,5 %	24,9 %	4,5 %
	Molinos Agro S.A., Buenos Aires; Oleaginosa Moreno Hermanos S.A.F.I.C.I. y A., Bahia Blanca; Vicentin S.A.I.C., Avellaneda	6,6 %	25,7 %	6,6 %
	Other cooperating companies	6,5 %	24,6 %	6,5 %
	All other companies	8,1 %	25,7 %	8,1 %

- (137) Therefore, Article 1(2) of the definitive Regulation should be amended accordingly.

- (138) The Committee established by Article 15(1) of Regulation (EU) 2016/1036 ⁽¹⁾ did not deliver an opinion,

⁽¹⁾ 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 (OJ L 176, 30.6.2016, p. 21).

HAS ADOPTED THIS REGULATION:

Article 1

The table indicating the rates of the definitive anti-dumping duty applicable to the net, free-at-Union-frontier price, before duty, of the products manufactured by the companies listed in Article 1(2) of Implementing Regulation (EU) No 1194/2013 is replaced by the following table:

Country	Company	Duty rate EUR per tonne net	TARIC addi- tional code
Argentina	Aceitera General Deheza S.A., General Deheza, Rosario; Bunge Argentina S.A., Buenos Aires	79,56	B782
	Louis Dreyfus Commodities S.A., Buenos Aires	43,18	B783
	Molinos Agro S.A., Buenos Aires; Oleaginosa Moreno Hermanos S.A.F.I.C.I. y A., Bahia Blanca; Vicentin S.A.I.C., Avellaneda	62,91	B784
	Other cooperating companies: Cargill S.A.C.I., Buenos Aires; Unitec Bio S.A., Buenos Aires; Viluco S.A., Tucuman	62,52	B785
	All other companies	79,56	B999
Indonesia	PT Ciliandra Perkasa, Jakarta	76,94	B786
	PT Musim Mas, Medan	151,32	B787
	PT Pelita Agung Agrindustri, Medan	145,14	B788
	PT Wilmar Bioenergi Indonesia, Medan; PT Wilmar Nabati Indone- sia, Medan	174,91	B789
	Other cooperating companies: PT Cermerlang Energi Perkasa, Jakarta	166,95	B790
	All other companies	178,85	B999

Article 2

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

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

Done at Brussels, 18 September 2017.

For the Commission
The President
 Jean-Claude JUNCKER

COMMISSION IMPLEMENTING REGULATION (EU) 2017/1579**of 18 September 2017****establishing the allocation coefficient to be applied to the quantities covered by the applications for import licences lodged from 1 to 7 September 2017 and determining the quantities to be added to the quantity fixed for the subperiod from 1 January to 31 March 2018 under the tariff quotas opened by Regulation (EC) No 533/2007 in the poultrymeat sector**

THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EU) No 1308/2013 of the European Parliament and of the Council of 17 December 2013 establishing a common organisation of the markets in agricultural products and repealing Council Regulations (EEC) No 922/72, (EEC) No 234/79, (EC) No 1037/2001 and (EC) No 1234/2007 ⁽¹⁾, and in particular Article 188 thereof,

Whereas:

- (1) Commission Regulation (EC) No 533/2007 ⁽²⁾ opened annual tariff quotas for imports of poultrymeat products.
- (2) For some quotas, the quantities covered by the applications for import licences lodged from 1 to 7 September 2017 for the subperiod from 1 October to 31 December 2017 exceed those available. The extent to which import licences may be issued should therefore be determined by establishing the allocation coefficient to be applied to the quantities requested, calculated in accordance with Article 7(2) of Commission Regulation (EC) No 1301/2006 ⁽³⁾.
- (3) The quantities covered by the applications for import licences lodged from 1 to 7 September 2017 for the subperiod from 1 October to 31 December 2017 are, for some quotas, less than those available. The quantities for which applications have not been lodged should therefore be determined and these should be added to the quantity fixed for the following quota subperiod.
- (4) In order to ensure the efficient management of the measure, this Regulation should enter into force on the day of its publication in the *Official Journal of the European Union*,

HAS ADOPTED THIS REGULATION:

Article 1

1. The quantities covered by the applications for import licences lodged under Regulation (EC) No 533/2007 for the subperiod from 1 October to 31 December 2017 shall be multiplied by the allocation coefficient set out in the Annex to this Regulation.

2. The quantities for which import licence applications have not been lodged pursuant to Regulation (EC) No 533/2007, to be added to the subperiod from 1 January to 31 March 2018, are set out in the Annex to this Regulation.

Article 2

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

⁽¹⁾ OJ L 347, 20.12.2013, p. 671.

⁽²⁾ Commission Regulation (EC) No 533/2007 of 14 May 2007 opening and providing for the administration of tariff quotas in the poultrymeat sector (OJ L 125, 15.5.2007, p. 9).

⁽³⁾ Commission Regulation (EC) No 1301/2006 of 31 August 2006 laying down common rules for the administration of import tariff quotas for agricultural products managed by a system of import licences (OJ L 238, 1.9.2006, p. 13).

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

Done at Brussels, 18 September 2017.

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

ANNEX

Order No	Allocation coefficient — applications lodged for the subperiod from 1 October to 31 December 2017 (%)	Quantities not applied for, to be added to the quantities available for the subperiod from 1 January to 31 March 2018 (kg)
09.4067	1,838 508	—
09.4068	0,162 074	—
09.4069	0,134 791	—
09.4070	—	890 500

COMMISSION IMPLEMENTING REGULATION (EU) 2017/1580**of 18 September 2017****determining the quantities to be added to the quantity fixed for the subperiod from 1 January to 31 March 2018 under the tariff quotas opened by Regulation (EC) No 539/2007 in the egg sector and for egg albumin**

THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EU) No 1308/2013 of the European Parliament and of the Council of 17 December 2013 establishing a common organisation of the markets in agricultural products and repealing Council Regulations (EEC) No 922/72, (EEC) No 234/79, (EC) No 1037/2001 and (EC) No 1234/2007 ⁽¹⁾, and in particular Article 188(2) and (3) thereof,

Whereas:

- (1) Commission Regulation (EC) No 539/2007 ⁽²⁾ opened annual tariff quotas for imports of egg products and egg albumin.
- (2) The quantities covered by the applications for import licences lodged from 1 to 7 September 2017 for the subperiod from 1 October to 31 December 2017 are less than those available. The quantities for which applications have not been lodged should therefore be determined and these should be added to the quantity fixed for the following quota subperiod.
- (3) In order to ensure the efficient management of the measure, this Regulation should enter into force on the day of its publication in the *Official Journal of the European Union*,

HAS ADOPTED THIS REGULATION:

Article 1

The quantities for which import licence applications have not been lodged pursuant to Regulation (EC) No 539/2007, to be added to the subperiod from 1 January to 31 March 2018, are set out in the Annex to this Regulation.

Article 2

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

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

Done at Brussels, 18 September 2017.

*For the Commission,
On behalf of the President,
Jerzy PLEWA
Director-General*

Directorate-General for Agriculture and Rural Development

⁽¹⁾ OJ L 347, 20.12.2013, p. 671.

⁽²⁾ Commission Regulation (EC) No 539/2007 of 15 May 2007 opening and providing for the administration of tariff quotas in the egg sector and for egg albumin (OJ L 128, 16.5.2007, p. 19).

ANNEX

Order No	Quantities not applied for, to be added to the quantities available for the subperiod from 1 January to 31 March 2018 (in kg, shell egg equivalent)
09.4015	67 500 000
09.4401	377 061
09.4402	6 820 000

COMMISSION IMPLEMENTING REGULATION (EU) 2017/1581**of 18 September 2017****establishing the allocation coefficient to be applied to the quantities covered by the applications for import licences lodged from 1 to 7 September 2017 under the tariff quotas opened by Regulation (EC) No 1385/2007 in the poultrymeat sector**

THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EU) No 1308/2013 of the European Parliament and of the Council of 17 December 2013 establishing a common organisation of the markets in agricultural products and repealing Council Regulations (EEC) No 922/72, (EEC) No 234/79, (EC) No 1037/2001 and (EC) No 1234/2007 ⁽¹⁾, and in particular Article 188(1) and (3) thereof,

Whereas:

- (1) Commission Regulation (EC) No 1385/2007 ⁽²⁾ opened annual tariff quotas for imports of poultrymeat products.
- (2) The quantities covered by the applications for import licences lodged from 1 to 7 September 2017 for the subperiod from 1 October to 31 December 2017 exceed those available. The extent to which import licences may be issued should therefore be determined by establishing the allocation coefficient to be applied to the quantities requested, calculated in accordance with Article 7(2) of Commission Regulation (EC) No 1301/2006 ⁽³⁾.
- (3) In order to ensure the efficient management of the measure, this Regulation should enter into force on the day of its publication in the *Official Journal of the European Union*,

HAS ADOPTED THIS REGULATION:

Article 1

The quantities covered by the applications for import licences lodged under Regulation (EC) No 1385/2007 for the subperiod from 1 October to 31 December 2017 shall be multiplied by the allocation coefficient set out in the Annex to this Regulation.

Article 2

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

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

Done at Brussels, 18 September 2017.

*For the Commission,
On behalf of the President,
Jerzy PLEWA
Director-General*

Directorate-General for Agriculture and Rural Development

⁽¹⁾ OJ L 347, 20.12.2013, p. 671.

⁽²⁾ Commission Regulation (EC) No 1385/2007 of 26 November 2007 laying down detailed rules for the application of Council Regulation (EC) No 774/94 as regards opening and providing for the administration of certain Community tariff quotas for poultrymeat (OJ L 309, 27.11.2007, p. 47).

⁽³⁾ Commission Regulation (EC) No 1301/2006 of 31 August 2006 laying down common rules for the administration of import tariff quotas for agricultural products managed by a system of import licences (OJ L 238, 1.9.2006, p. 13).

ANNEX

Order No	Allocation coefficient — applications lodged for the subperiod from 1 October to 31 December 2017 (%)
09.4410	0,122017
09.4411	0,147890
09.4412	0,124570
09.4420	0,138450
09.4421	—
09.4422	0,138449

COMMISSION IMPLEMENTING REGULATION (EU) 2017/1582**of 18 September 2017****determining the quantities to be added to the quantity fixed for the subperiod from 1 January to 31 March 2018 under the tariff quota opened by Regulation (EC) No 536/2007 for poultrymeat originating in the United States of America**

THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EU) No 1308/2013 of the European Parliament and of the Council of 17 December 2013 establishing a common organisation of the markets in agricultural products and repealing Council Regulations (EEC) No 922/72, (EEC) No 234/79, (EC) No 1037/2001 and (EC) No 1234/2007 ⁽¹⁾, and in particular Article 188(2) and (3) thereof,

Whereas:

- (1) Commission Regulation (EC) No 536/2007 ⁽²⁾ opened an annual tariff quota for imports of poultrymeat products originating in the United States of America.
- (2) The quantities covered by the applications for import licences lodged from 1 to 7 September 2017 for the subperiod from 1 October to 31 December 2017 are less than those available. The quantities for which applications have not been lodged should therefore be determined and these should be added to the quantity fixed for the following quota subperiod.
- (3) In order to ensure the efficient management of the measure, this Regulation should enter into force on the day of its publication in the *Official Journal of the European Union*,

HAS ADOPTED THIS REGULATION:

Article 1

The quantities for which import licence applications have not been lodged pursuant to Regulation (EC) No 536/2007, to be added to the subperiod from 1 January to 31 March 2018, are set out in the Annex to this Regulation.

Article 2

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

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

Done at Brussels, 18 September 2017.

*For the Commission,
On behalf of the President,
Jerzy PLEWA
Director-General*

Directorate-General for Agriculture and Rural Development

⁽¹⁾ OJ L 347, 20.12.2013, p. 671.

⁽²⁾ Commission Regulation (EC) No 536/2007 of 15 May 2007 opening and providing for the administration of a tariff quota for poultrymeat allocated to the United States of America (OJ L 128, 16.5.2007, p. 6).

ANNEX

Order No	Quantities not applied for, to be added to the quantities available for the subperiod from 1 January to 31 March 2018 (kg)
09.4169	10 453 692

DECISIONS

COMMISSION DECISION (EU) 2017/1583

of 1 September 2017

specifying, pursuant to Directive 2006/7/EC of the European Parliament and of the Council, EN ISO 17994:2014 as the standard on the equivalence of microbiological methods

(notified under document C(2017) 5843)

THE EUROPEAN COMMISSION,

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

Having regard to Directive 2006/7/EC of the European Parliament and of the Council of 15 February 2006 concerning the management of bathing water quality and repealing Directive 76/160/EEC ⁽¹⁾, and in particular Article 15(2)(a) thereof,

Whereas:

- (1) Commission Decision 2009/64/EC ⁽²⁾ specifies the international standard ISO 17994:2004(E) 'Water quality — Criteria for establishing equivalence between microbiological methods' as the standard on the equivalence of microbiological methods for the purposes of Directive 2006/7/EC.
- (2) Standard ISO 17994:2004(E) is outdated and has been technically updated (e.g. terminology update, clearer specifications, and addition of a new Annex on technical calculations).
- (3) Standard ISO 17994:2004(E) has therefore been replaced by a more recent version, ISO 17994:2014 'Water quality — Requirements for the comparison of the relative recovery of microorganisms by two quantitative methods'. This international standard has been transposed by the European Committee for Standardisation in a European standard EN ISO 17994:2014. It is therefore appropriate to specify standard EN ISO 17994:2014 as the standard on the equivalence of microbiological methods for the purposes of Directive 2006/7/EC.
- (4) Decision 2009/64/EC should therefore be repealed.
- (5) The measures provided for in this Decision are in accordance with the opinion of the Committee established by Article 16(1) of Directive 2006/7/EC,

HAS ADOPTED THIS DECISION:

Article 1

For the purposes of Article 3(9) of Directive 2006/7/EC, standard EN ISO 17994:2014 'Water quality — Requirements for the comparison of the relative recovery of microorganisms by two quantitative methods' shall be specified as the standard on the equivalence of microbiological methods.

Article 2

Decision 2009/64/EC is repealed.

⁽¹⁾ OJ L 64, 4.3.2006, p. 37.

⁽²⁾ Commission Decision 2009/64/EC of 21 January 2009 specifying, pursuant to Directive 2006/7/EC of the European Parliament and of the Council, ISO 17994:2004(E) as the standard on the equivalence of microbiological methods (OJ L 23, 27.1.2009, p. 32).

Article 3

This Decision is addressed to the Member States.

Done at Brussels, 1 September 2017.

For the Commission
Karmenu VELLA
Member of the Commission

RECOMMENDATIONS

COMMISSION RECOMMENDATION (EU) 2017/1584

of 13 September 2017

on coordinated response to large-scale cybersecurity incidents and crises

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 292 thereof,

Whereas:

- (1) The use of and dependence on information and communication technologies have become fundamental aspects in all sectors of economic activity as our companies and citizens are more interconnected and interdependent across sectors and borders than ever before. A cybersecurity incident affecting organisations in more than one Member State or even the entire Union with potential serious disruptions to the internal market and more broadly to the network and information systems on which the Union economy, democracy and society rely is a scenario that Member States and EU institutions have to be well-prepared for.
- (2) A cybersecurity incident may be considered a crisis at Union level when the disruption caused by the incident is too extensive for a concerned Member State to handle on its own or when it affects two or more Member States with such a wide-ranging impact of technical or political significance that it requires timely coordination and response at Union political level.
- (3) Cybersecurity incidents can trigger a broader crisis, impacting sectors of activity beyond network and information systems and communication networks; any appropriate response must rely upon both cyber and non-cyber mitigation activities.
- (4) Cybersecurity incidents are unpredictable, often occur and evolve within very short periods of time and therefore affected entities and those with responsibilities as regards responding to and mitigating the effects of the incident must coordinate their response quickly. Furthermore, cybersecurity incidents are often not contained within any specific geographical area and may occur simultaneously or spread instantly across many countries.
- (5) An effective response to large-scale cybersecurity incidents and crises at the EU level requires swift and effective cooperation amongst all relevant stakeholders and relies on the preparedness and capabilities of individual Member States as well as coordinated joint action supported by Union capabilities. Timely and effective response to incidents relies therefore on the existence of previously established and, to the extent possible, well-rehearsed cooperation procedures and mechanisms having clearly defined the roles and responsibilities of the key actors at national and Union level.
- (6) In its conclusions ⁽¹⁾ on Critical Information Infrastructure Protection of 27 May 2011, the Council invited the EU Member States to 'strengthen collaboration among Member States and contribute, on the basis of national crisis management experiences and results and in cooperation with ENISA to the development of European cyber incident cooperation mechanisms to be tested in the framework of the next Cyber Europe exercise in 2012'.
- (7) The 2016 Communication 'Strengthening Europe's Cyber Resilience System and Fostering a Competitive and Innovative Cybersecurity Industry' ⁽²⁾ encouraged Member States to make the most out of the NIS Directive ⁽³⁾

⁽¹⁾ Council conclusions on Critical Information Infrastructure Protection 'Achievements and next steps: towards global cyber security', document 10299/11, Brussels, 27 May 2011.

⁽²⁾ COM(2016) 410 final, 5 July 2016

⁽³⁾ Directive (EU) 2016/1148 of the European Parliament and of the Council of 6 July 2016 concerning measures for a high common level of security of network and information systems across the Union (OJ L 194, 19.7.2016, p. 1).

cooperation mechanisms and to enhance cross-border cooperation related to preparedness for a large-scale cyber incident. It added that a coordinated approach to crisis cooperation across the various elements of the cyber ecosystem to be set out in a 'blueprint' would increase preparedness and that such a blueprint should also ensure synergies and coherence with existing crisis management mechanisms.

- (8) In the Council Conclusions ⁽¹⁾ on the aforementioned Communication, Member States called on the Commission to submit such a blueprint for consideration by the bodies and other relevant stakeholders. However the NIS Directive does not provide for a Union cooperation framework in case of large-scale cybersecurity incidents and crises.
- (9) The Commission, consulted with Member States in two separate consultation workshops held in Brussels on 5 April and 4 July 2017 with Member States representatives from Computer Security Incident Response Teams (CSIRTs), the Cooperation Group established by the NIS Directive and the Council Horizontal Working Party on Cyber Issues as well as representatives from the European External Action Service (EEAS), ENISA, Europol/EC3 and the General Secretariat of the Council (GSC).
- (10) The present Blueprint for coordinated response to large-scale cybersecurity incidents and crises at the Union level, annexed to this Recommendation, is the outcome of the aforementioned consultations and complements the Communication on 'Strengthening Europe's Cyber Resilience System and Fostering a Competitive and Innovative Cybersecurity Industry'.
- (11) The Blueprint describes and sets out the objectives and modes of cooperation between the Member States and EU institutions, bodies, offices and agencies (hereafter referred to as 'EU institutions') in responding to large-scale cybersecurity incidents and crises and how existing Crisis Management mechanisms can make full use of existing cybersecurity entities at EU level.
- (12) In responding to a cybersecurity crisis in the sense of recital 2, coordination of the response at political Union level in the Council will use the Integrated Political Crisis Response (IPCR) arrangements ⁽²⁾; the Commission will use the ARGUS ⁽³⁾ high-level cross-sectoral crisis coordination process. If the crisis entails an important external or Common Security and Defence Policy (CSDP) dimension, the European External Action Service (EEAS) Crisis Response Mechanism (CRM) ⁽³⁾ will be activated.
- (13) In certain areas, sectoral crisis management mechanisms at EU level provide for cooperation in case of cybersecurity incidents or crisis. For example, in the framework of the European Global Navigation Satellite System (GNSS), Council Decision 2014/496/CFSP ⁽⁴⁾ already defines the respective roles of the Council, the High Representative, the Commission, the European GNSS Agency and the Member States within the chain of operational responsibilities set up in order to react to a threat to the Union, to the Member States or to the GNSS, including in case of cyber-attacks. Therefore, this recommendation should be without prejudice to such mechanisms.
- (14) Member States have the primary responsibility for the response in case of large-scale cybersecurity incidents or crises affecting them. The Commission, the High Representative and other EU institutions or services have however an important role, stemming from Union law or from the fact that cybersecurity incidents and crises may impact all sections of economic activity within the single market, the security and international relations of the Union, as well as the institutions themselves.
- (15) At Union level, the key actors involved in response to cybersecurity crises include the newly established NIS Directive structures and mechanisms, namely the Computer Security Incident Response Teams (CSIRTs) network, as well as the relevant agencies and bodies namely the European Union Agency for Network and Information Security (ENISA), the European Cybercrime Centre at Europol (Europol/EC3), the EU Intelligence Analysis Centre (INTCEN), EU Military Staff Intelligence Directorate (EUMS INT) and Situation Room (Sitroom) working together as SIAC (the Single Intelligence Analysis Capacity), the EU Hybrid Fusion Cell (based in INTCEN), the Computer Emergency Response Team for the EU institutions (CERT-EU) and the Emergency Response Coordination Centre in the European Commission.
- (16) Cooperation amongst Member States in responding to cybersecurity incidents at technical level is provided by the CSIRTs Network established by the NIS Directive. ENISA provides the secretariat for the Network and actively

⁽¹⁾ Document 14540/16, 15 November 2016.

⁽²⁾ Further information can be found in Section 3.1 of the Appendix on Crisis management, cooperation mechanisms and actors at EU level.

⁽³⁾ Ibid.

⁽⁴⁾ Council Decision 2014/496/CFSP of 22 July 2014 on aspects of the deployment, operation and use of the European Global Navigation Satellite System affecting the security of the European Union and repealing Joint Action 2004/552/CFSP (OJ L 219, 25.7.2014, p. 53).

supports the cooperation among the CSIRTs. The national CSIRTs and the CERT-EU cooperate and exchange information on a voluntary basis including, when necessary, in response to cybersecurity incidents that affect one or more Member States. At the request of a representative of a Member State's CSIRT, they may discuss and, where possible, identify a coordinated response to an incident that has been identified within the jurisdiction of that same Member State. Relevant procedures will be set out in CSIRTs Network's Standard Operating Procedures (SOPs) ⁽¹⁾.

- (17) The CSIRTs network is also tasked with discussing, exploring and identifying further forms of operational cooperation, including in relation to categories of risks and incidents, early warnings, mutual assistance, principles and modalities for coordination, when Member States respond to cross-border risks and incidents.
- (18) The Cooperation Group established by Article 11 of the NIS Directive is tasked with providing strategic guidance for the activities of the CSIRTs network and discussing capabilities and preparedness of the Member States, and, on a voluntary basis, evaluating national strategies on the security of network and information systems and the effectiveness of CSIRTs, and identifying best practice.
- (19) A dedicated work stream within the Cooperation Group is preparing incident notification guidelines, pursuant to Article 14(7) of the NIS Directive, concerning the circumstances in which operators of essential services are required to notify incidents pursuant to Article 14(3) and the format and procedure for such notifications ⁽²⁾.
- (20) Awareness and understanding of the real-time situation, risk posture, and threats gained through reporting, assessments, research, investigation, and analysis, is vital to enable well-informed decisions. This 'situational awareness' — by all relevant stakeholders — is essential for an effective coordinated response. Situational awareness includes elements about the causes as well as the impact and origin of the incident. It is recognised that this depends on exchange and sharing of information between relevant parties in a suitable format, using a common taxonomy to describe the incident and in an appropriately secure manner.
- (21) Responding to cybersecurity incidents may take many forms, ranging from identifying technical measures which may entail two or more entities jointly investigating the technical causes of the incident (e.g. malware analysis) or identifying ways through which organisations may assess whether they have been affected (e.g. indicators of compromise), to operational decisions on applying such measures and, at the political level, deciding on the use of other instruments such as the Framework for a Joint response to malicious cyber activities ⁽³⁾ or the EU operational protocol for countering hybrid threats ⁽⁴⁾, depending on the incident.
- (22) European citizens' and businesses' trust in digital services is essential for a flourishing digital single market. Therefore, crisis communication plays a particularly important role in mitigating the negative effects of cybersecurity incidents and crises. Communication may also be used in the context of the Framework for a Joint Diplomatic Response as a means to influence the behaviour of (potential) aggressors acting from third countries. Aligning the public communication to mitigate the negative effects of cybersecurity incidents and crises and the public communication to influence an aggressor is essential for a political response to be effective.
- (23) Providing the public with information on how they can mitigate at user and organisational level the effects of an incident (for example by applying a patch or taking complementary actions to avoid the threat, etc.) could be an effective measure to mitigate a large-scale cybersecurity incident or crisis.
- (24) The Commission, through the Connecting Europe Facility (CEF) cybersecurity Digital Service Infrastructure, is developing a Core Service Platform cooperation mechanism, known as MeliCERTes, between participating Member States CSIRTs to improve their levels of preparedness, cooperation and response to emerging cyber threats and incidents. The Commission, through competitive calls for proposals for grant awards under CEF is co-funding CSIRTs in the Member States with a view to improving their operational capacities at national level.

⁽¹⁾ Under development; expected to be adopted by the end of 2017.

⁽²⁾ The guidelines are intended to be finalised by the end of 2017.

⁽³⁾ Council Conclusions on a Framework for a Joint EU Diplomatic Response to Malicious Cyber Activities ('Cyber Diplomacy Toolbox'), Doc. 9916/17

⁽⁴⁾ Joint Staff Working Document EU operational protocol for countering hybrid threats, 'EU Playbook', SWD(2016) 227 final, 5 July 2016.

- (25) Cybersecurity exercises at EU level are essential to stimulate and improve cooperation among the Member States and the private sector. To this end, since 2010, ENISA organises regular pan-European cyber incident exercises ('Cyber Europe').
- (26) The Council Conclusions ⁽¹⁾ on the Implementation of the Joint Declaration by the President of the European Council, the President of the European Commission and the Secretary-General of the North Atlantic Treaty Organisation calls for the strengthening cooperation in cyber exercises through reciprocal staff participation in respective exercises, including in particular Cyber Coalition and Cyber Europe.
- (27) The constantly evolving threat landscape and recent cybersecurity incidents are an indication of the increasing risk faced by the Union, Member States should act on the present recommendation without further delay and in any case by the end of 2018,

HAS ADOPTED THIS RECOMMENDATION:

- (1) Member States and EU institutions should establish an EU Cybersecurity Crisis Response Framework integrating the objectives and modalities of cooperation presented in the Blueprint following the guiding principles described therein.
- (2) The EU Cybersecurity Crisis Response Framework should in particular identify the relevant actors, EU institutions and Member State authorities, at all necessary levels — technical, operational, strategic/political — and develop, where necessary, standard operating procedures that define the way in which these cooperate within the context of EU crisis management mechanisms. Emphasis should be placed on enabling the exchange of information without undue delay and coordinating the response during large-scale cybersecurity incidents and crises.
- (3) To this end, Member States' competent authorities should work together towards further specifying information-sharing and cooperation protocols. The Cooperation Group should exchange experiences on these matters with relevant EU institutions.
- (4) Member States should ensure that their national crisis management mechanisms adequately address cybersecurity incident response as well as provide necessary procedures for cooperation at EU level within the context of the EU Framework.
- (5) As regards existing EU crisis management mechanisms, in line with the Blueprint, Member States should, together with Commission services and the EEAS, establish practical implementation guidelines as regards the integration of their national crisis management and cybersecurity entities and procedures into existing EU crisis management mechanisms, namely the IPCR and EEAS CRM. In particular, Member States should ensure that appropriate structures are in place to enable the efficient flow of information between their national crisis management authorities and their representatives at EU level in the context of EU crisis mechanisms.
- (6) Member States should make full use of the opportunities offered by the Cybersecurity Digital Service Infrastructures (DSI) programme of the Connecting Europe Facility (CEF), and cooperate with the Commission to ensure that the Core Service Platform cooperation mechanism, currently under development, provides the necessary functionalities and fulfils their requirements for cooperation also during cybersecurity crises.
- (7) Member States, with the assistance of ENISA and building on previous work in this area, should cooperate in developing and adopting a common taxonomy and template for situational reports to describe the technical causes and impacts of cybersecurity incidents to further enhance their technical and operational cooperation during crises. In this regard, Member States should take into account the ongoing work within the Cooperation Group on incident notification guidelines and in particular aspects related to the format of national notifications.
- (8) The procedures laid out in the Framework should be tested and when necessary revised following lessons learnt from Member State participation in national, regional, and Union as well as cyber diplomacy and NATO cybersecurity exercises. In particular, they should be tested in the context of the Cyber Europe exercises organised by ENISA. Cyber Europe 2018 presents a first such opportunity.

⁽¹⁾ ST 15283/16, 6 December 2016.

- (9) Member States and the EU institutions should regularly practise their response to large-scale cybersecurity incidents crisis at national and European level, including their political response, where necessary and with the involvement of private sector entities as appropriate.

Done at Brussels, 13 September 2017.

For the Commission

Mariya GABRIEL

Member of the Commission

ANNEX

Blueprint for coordinated response to large-scale cross-border cybersecurity incidents and crises

INTRODUCTION

This Blueprint applies to cybersecurity incidents which cause disruption too extensive for a concerned Member State to handle on its own or which affect two or more Member States or EU institutions with such a wide-ranging and significant impact of technical or political significance that they require timely policy coordination and response at Union political level.

Such large-scale cybersecurity incidents are considered a cybersecurity 'crisis'.

In case of an EU-wide crisis with cyber elements, coordination at Union political level of the response shall be carried out by the Council, using the Integrated Political Crisis Response (IPCR) arrangements.

Within the Commission, coordination will take place in accordance with the ARGUS rapid alert system.

If the crisis entails an important external or Common Security and Defence Policy (CSDP) dimension, the EEAS Crisis Response Mechanism is activated.

The Blueprint describes how these well-established Crisis Management mechanisms should make full use of existing cybersecurity entities at EU level as well as of cooperation mechanisms between the Member States.

In doing so, the Blueprint takes into account a set of guiding principles (proportionality, subsidiarity, complementarity and confidentiality of information), presents the core objectives of cooperation (effective response, shared situational awareness, public communication messages) at three levels (strategic/political, operational and technical), the mechanisms and the actors involved as well as the activities to meet said core objectives.

The Blueprint does not cover the full crisis management lifecycle (prevention/mitigation, preparedness, response, recovery) but focuses on response. Nevertheless, certain activities, in particular those related to achieving a shared situational awareness, are addressed.

It is also important to note that cybersecurity incidents can be at the origin or part of a broader crisis, impacting other sectors. Given that most cybersecurity crises are expected to have effects on the physical world, any appropriate response must rely upon both cyber and non-cyber mitigation activities. Cyber crisis response activities should be coordinated with other crisis management mechanisms at EU, national or sectoral levels.

Finally, the Blueprint does not replace and should be without prejudice to existing sector-specific or policy-specific mechanisms, arrangements or instruments such as the one set up for the European Global Navigation Satellite System (GNSS) programme ⁽¹⁾.

Guiding principles

In working towards the objectives, in identifying the necessary activities and assigning roles and responsibilities to respective actors or mechanisms, the following guiding principles have been applied and also need to be respected when preparing future implementing guidelines.

Proportionality: The great majority of cybersecurity incidents affecting Member States fall well below anything that may be considered a national 'crisis', much less a European one. The foundation of cooperation amongst Member States in responding to such incidents is provided by the Computer Security Incident Response Teams (CSIRTs) Network established by the NIS Directive ⁽²⁾. The national CSIRTs cooperate and exchange information voluntarily on a daily basis including, when necessary, in response to cybersecurity incidents that affect one or more Member States in line with the CSIRTs Network's Standard Operating Procedures (SOPs). The Blueprint should therefore make full use of these SOPs and any additional cybersecurity crisis specific tasks should be reflected therein.

⁽¹⁾ Decision 2014/496/CFSP.

⁽²⁾ Directive (EU) 2016/1148.

Subsidiarity: The principle of subsidiarity is key. Member States have the primary responsibility for the response in case of large-scale cybersecurity incidents or crises affecting them. The Commission, the European External Action Service and other EU institutions, offices, agencies and bodies have however an important role. This role is clearly set out in the IPCR arrangements but also stems from Union law or simply from the fact that cybersecurity incidents and crises may impact all sections of economic activity within the single market, the security and international relations of the Union, as well as the institutions themselves.

Complementarity: The Blueprint takes fully into account existing crisis management mechanisms at EU level, namely the Integrated Political Crisis Response (IPCR) arrangements, ARGUS, and the EEAS Crisis Response Mechanism, integrates therein the new NIS Directive structures and mechanisms, namely the CSIRTs Network, as well as the relevant agencies and bodies namely the European Union Agency for Network and Information Security (ENISA), the European Cybercrime Centre at Europol (Europol/EC3), the EU Intelligence Analysis Centre (INTCEN), EU Military Staff Intelligence Directorate (EUMS INT) and Situation Room (Sitroom) in INTCEN, working together as SIAC (the Single Intelligence Analysis Capacity); the EU Hybrid Fusion Cell (based in INTCEN); and the Computer Emergency Response Team for the EU Institutions, Bodies and Agencies (CERT-EU). In doing so, the Blueprint should also ensure that their interaction and cooperation achieves maximum complementarity and minimum overlap.

Confidentiality of information: All information exchanges in the context of the Blueprint must comply with applicable rules on security ⁽¹⁾, on the protection of personal data and the Traffic Light Protocol ⁽²⁾. For the exchange of classified information, regardless of the classification scheme applied, available accredited tools shall be used ⁽³⁾. As regards the processing of personal data, it will respect the applicable EU rules, in particular the General Data Protection Regulation ⁽⁴⁾, the ePrivacy Directive ⁽⁵⁾ as well as the Regulation ⁽⁶⁾ 'on the protection of individuals with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data'.

Core objectives

Cooperation under the Blueprint follows the three-level approach mentioned above — political, operational and technical. At each level, cooperation may include exchanging information as well as joint actions, and aims to achieve the following core objectives.

- Enable an effective response. Response may take many forms, ranging from identifying technical measures which may entail two or more entities jointly investigating the technical causes of the incident (e.g. malware analysis) or identifying ways that organisations may assess whether they have been affected (e.g. indicators of compromise), to operational decisions on applying such technical measures and, at the political level, deciding to trigger other instruments such as the EU Diplomatic Response to Malicious Cyber Activities ('Cyber Diplomacy Toolbox') or the EU operational protocol for countering hybrid threats depending on the incident.
- Share situational awareness. A sufficiently good understanding of events as they unfold by all relevant stakeholders on all three levels (technical, operational, political) is essential for a coordinated response. Situational awareness may include technological elements about the causes as well as the impact and origin of the incident. As cybersecurity incidents may affect a wide variety of sectors (finance, energy, transport, healthcare, etc.), it is imperative that the appropriate information, in the suitable format, reaches all relevant stakeholders in a timely manner.

⁽¹⁾ Commission Decision (EU, Euratom) 2015/443 of 13 March 2015 on Security in the Commission (OJ L 72, 17.3.2015, p. 41) and Commission Decision (EU, Euratom) 2015/444 of 13 March 2015 on the security rules for protecting EU classified information (OJ L 72, 17.3.2015, p. 53); Decision of the High Representative of the Union for Foreign Affairs and Security Policy of 19 April 2013 on the security rules for the European External Action Service (OJ C 190, 29.6.2013, p. 1). Council Decision 2013/488/EU of 23 September 2013 on the security rules for protecting EU classified information (OJ L 274, 15.10.2013, p. 1).

⁽²⁾ <https://www.first.org/ttp/>

⁽³⁾ In June 2016, these transmission channels included CIMS (Classified Information Management System), ACID (encryption algorithm), RUE (secure system to create, exchange and store RESTREINT UE/EU RESTRICTED documents) and SOLAN. Other means of, e.g. transmitting classified information include PGP or S/MIME.

⁽⁴⁾ Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) (OJ L 119, 4.5.2016, p. 1).

⁽⁵⁾ Directive 2002/58/EC of the European Parliament and of the Council of 12 July 2002 concerning the processing of personal data and the protection of privacy in the electronic communications sector (Directive on privacy and electronic communications) (OJ L 201, 31.7.2002, p. 37).

⁽⁶⁾ Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data (OJ L 8, 12.1.2001, p. 1) — under review.

- Agree on key public communication messages ⁽¹⁾. Crisis communications play an important role in mitigating the negative effects of cybersecurity incidents and crises but may also be used as a means for influencing the behaviour of (potential) aggressors. An appropriate message can also serve to clearly signal the likely consequences of a diplomatic response to influence the behaviour of aggressors. Aligning the public communication to mitigate the negative effects of cybersecurity incidents and crises and the public communication to influence an aggressor is essential for a political response to be effective. Particularly important in cybersecurity is the dissemination of accurate actionable information on how the public can mitigate the effects of an incident (e.g. applying a patch, taking complementary actions to avoid the threat, etc.).

COOPERATION BETWEEN MEMBER STATES AND MEMBER STATES AND EU ACTORS AT TECHNICAL, OPERATIONAL AND STRATEGIC/POLITICAL LEVELS

Effective response to large-scale cybersecurity incidents or crisis at EU level depends on effective technical, operational and strategic/political cooperation.

At each level, the actors involved should perform specific activities as regards achieving three core objectives:

- coordinated response,
- shared situational awareness,
- public communications.

Throughout the incident or crisis, lower levels of cooperation will alert, inform and support the higher levels; the higher levels will provide guidance ⁽²⁾ and decisions to the lower levels, as appropriate.

Cooperation at the technical level

Scope of activities:

- Incident handling ⁽³⁾ during a cybersecurity crisis
- Monitoring and surveillance of incident including continuous analysis of threats and risk.

Potential actors

At the technical level, the central mechanism for cooperation in the Blueprint is the CSIRTs Network, chaired by the Presidency and with secretariat provided by ENISA.

- Member States:
 - Competent authorities and single points of contact established by the NIS Directive
 - CSIRTs
- EU bodies/offices/agencies
 - ENISA
 - Europol/EC3
 - CERT-EU

⁽¹⁾ It is important here to note that public communication can refer to both communication about the incident to the public as a whole, and communication of more technical or operational information with critical sectors and/or those who have been affected. This may require the use of confidential dissemination channels and the use of specific technical tools/platforms. In either case, communication with operators and to the wider public within any Member States is the prerogative and responsibility of each Member State. Therefore, in line with the principle of subsidiarity presented above, Member States and national CSIRTs have the ultimate responsibility for the information that is disseminated within their territory and to their constituency respectively.

⁽²⁾ 'Permissions to act' — in light of a cybersecurity crisis, short reaction times are of vital importance in order to set appropriate mitigation actions. In order to provide these short reaction times, voluntary 'permissions to act' can be issued from one Member State to another, giving a Member State permission to act immediately, without having to consult with higher levels or EU institutions and going through all of the normally required, official channels, if it is not required in a particular incident (e.g. a CSIRT should not have to consult with higher levels to forward valuable information to a CSIRT in another Member State).

⁽³⁾ 'Incident handling' means all procedures supporting the detection, analysis and containment of an incident and the response thereto.

- European Commission
 - The ERCC (24/7 operational service located in DG ECHO), and the designated lead service (to be chosen between DG CNECT and DG HOME depending on the particular nature of the incident), the Secretariat-General (ARGUS secretariat), DG HR (Security Directorate), DG DIGIT (IT Security Operations).
 - For other EU agencies ⁽¹⁾ the respective parent DG in the Commission or the EEAS (first point of contact).
- EEAS
 - SIAC (Single Intelligence Analysis Capacity: EU INTCEN and EUMS INT)
 - EU Situation Room and the nominated geographic or thematic service.
 - EU Hybrid Fusion Cell (part of EU INTCEN — cybersecurity in a hybrid context).

Shared situational awareness:

- As part of the regular cooperation at technical level to support Union situational awareness, ENISA should on a regular basis prepare the EU Cybersecurity Technical Situation Report on incidents and threats, based on publicly available information, its own analysis and reports shared with it by Member States' CSIRTs (on a voluntary basis) or NIS Directive single points of contact, European Cybercrime Centre (EC3) at Europol and CERT-EU and where appropriate the European Union Intelligence Centre (INTCEN) at the European External Action Service (EEAS). The report should be made available to the relevant instances of the Council, the Commission, the HRVP and the CSIRTs Network.
- In case of major incident, the CSIRTs Network Chair, with the assistance of ENISA, prepares an EU Cybersecurity Incident Situation Report ⁽²⁾ which is presented to the Presidency, the Commission and the HRVP via the CSIRT of the rotating Presidency.
- *All other EU agencies* report to their respective parent DGs who in turn report to the Commission lead service.
- CERT-EU provides technical reports to the CSIRTs Network, EU institutions and agencies (as appropriate) and ARGUS (if activated).
- Europol/EC3 ⁽³⁾ and CERT-EU provides expert forensic analysis of technical artefacts and other technical information to the CSIRTs Network.
- EEAS SIAC: On behalf of INTCEN, the EU Hybrid Fusion Cell reports to relevant the EEAS departments.

Response:

- The CSIRTs Network exchanges technical details and analysis on the incident, such as IP addresses, indicators of compromise ⁽⁴⁾, etc. Such information should be provided without undue delay to ENISA and not later than 24 hours from when the incident is detected.
- In accordance with the CSIRTs Network Standard Operating Procedures, its members cooperate in their efforts to analyse the available technical artefacts and other technical information related to the incident with a view of determining the cause and possible technical mitigation measures.
- ENISA assists CSIRTs' in their technical activities relying on its expertise and in accordance with its mandate ⁽⁵⁾.

⁽¹⁾ Depending on the nature and the impact of the incident on different sectors of activity (finance, transport, energy, healthcare, etc.) the relevant EU agencies or bodies will be involved.

⁽²⁾ The EU Cybersecurity Incident Situation Report is an aggregation of national reports provided by national CSIRTs. The format of the report should be described in the CSIRTs Network SOPs.

⁽³⁾ In accordance and under the conditions and procedures set in EC3's legal framework.

⁽⁴⁾ 'Indicator of compromise' (IOC) in computer forensics is an artefact observed on a network or in an operating system that with high confidence indicates a computer intrusion. Typical IOCs are virus signatures and IP addresses, MD5 hashes of malware files or URLs or domain names of botnet command and control servers.

⁽⁵⁾ Proposal for a Regulation on the ENISA, the European Cybersecurity Agency and repealing Regulation (EU) No 526/2013, and on Information and Communication Technology cybersecurity certification ('Cybersecurity Act'), 13 September 2017.

- Member States' CSIRTs coordinate their technical response activities with the assistance of ENISA and the Commission.
- EEAS SIAC: On behalf of INTCEN, the EU Hybrid Fusion Cell sets the collection process to gather initial evidence in motion.

Public communications:

- CSIRTs produce technical advisories ⁽¹⁾ and vulnerability alerts ⁽²⁾ and disseminate them to their respective communities and the public following the authorisation procedures applicable in each case.
- ENISA facilitates the production and dissemination of common CSIRTs Network communications.
- ENISA coordinates its public communication activities with the CSIRTs Network and the Commission's Spokesperson service.
- ENISA and EC3 coordinate their public communication activities based on the shared situational awareness agreed among Member States. They both coordinated their public communication activities with the Commission's Spokesperson service.
- If the crisis entails an external or Common Security and Defence Policy (CSDP) dimension, the public communication should be coordinated with the EEAS and the HRVP Spokesperson service.

Cooperation at the operational level

Scope of activities:

- Preparing decision-making at the political level
- Coordinate the management of the cybersecurity crisis (as appropriate)
- Assess the consequences and impact at EU level and propose possible mitigating actions.

Potential actors

- Member States:
 - Competent authorities and single points of contact established by the NIS Directive
 - CSIRTs, cybersecurity agencies
 - Other national sectoral authorities (in case of multi-sectoral incident or crisis)
- EU bodies/offices/agencies
 - ENISA
 - Europol/EC3
 - CERT-EU
- European Commission
 - the (Deputy) Secretary-General SG (ARGUS process)
 - DG CNECT/HOME
 - Commission Security Authority
 - Other DGs (in case of multi-sectoral incident or crisis)

⁽¹⁾ Advice of technical nature as to the causes of the incident and possible mitigations.

⁽²⁾ Information about the technical vulnerability which is being exploited to negatively impact IT systems.

- EEAS
 - the (Deputy) Secretary-General for Crisis Response and SIAC (EU INTCEN and EUMS INT)
 - EU Hybrid Fusion Cell
- Council
 - the Presidency (Chair Horizontal Working Party on Cyber Issues or Coreper ⁽¹⁾) supported by the GSC, or PSC ⁽²⁾ and — if activated — with the support of the IPCR arrangements.

Situational awareness:

- Support the production of politico/strategic situation reports (e.g. the ISAA in case of IPCR activation)
- The *Council Horizontal Working Party on Cyber Issues* prepares the Coreper or PSC meeting as appropriate
- In case of IPCR activation:
 - The Presidency may call round table meetings to support its preparation for Coreper or PSC, bringing in relevant stakeholders in the Member States, the institutions, the agencies, and third parties such as non-EU countries and international organisations. These are crisis meetings to identify bottlenecks and produce proposals for action for cross-cutting issues.
 - The *Commission lead service or the EEAS as ISAA lead* prepares the ISAA report with contributions from ENISA, CSIRTs Network, Europol/EC3, EUMS INT, INTCEN and all other relevant actors. The ISAA report represents an EU-wide assessment based on correlation of technical incidents and crisis assessment (threat analysis, risk assessment, non-technical consequences and effects, non-cyber aspects of the incident or crisis, etc.) which is tailored to the needs of operational and political levels.
- In case of ARGUS activation
 - CERT-EU and EC3 ⁽³⁾ contribute directly to the exchange of information within the Commission.
- In case of the EEAS Crisis Response Mechanism activation:
 - The SIAC will intensify its information collection and aggregate the all-source information and prepare an analysis and assessment on the incident.

Response (upon request from the political level):

- Cross-border cooperation with single points of contact and national competent authorities (NIS Directive) to mitigate the consequences and effects.
- Activate all technical mitigation measures and coordinate technical capacities needed to stop or reduce the impact of the attacks on the targeted information systems.
- Cooperation and, if decided, coordination of technical capacities towards a joint or collaborative response in accordance with the **CSIRTs Network SOPs**.
- Assess the need to cooperate with relevant third parties.
- (where activated) Decision-making within the ARGUS process.
- (where activated) Preparing decisions and coordinating under the IPCR arrangements.
- (where activated) support EEAS decision-making through the EEAS Crisis Response Mechanism including as regards contacts with third countries and international organisations as well as any measure aimed at protecting CSDP missions and operations and EU delegations.

⁽¹⁾ The Permanent Representatives Committee or Coreper (Article 240 of the Treaty on the Functioning of the European Union — TFEU) is responsible for preparing the work of the Council of the European Union.

⁽²⁾ The Political and Security Committee is a Committee of the Council of the European Union dealing with the common foreign and security policy (CFSP) mentioned in Article 38 of the Treaty on European Union.

⁽³⁾ In accordance and under the conditions and procedures set in EC3's legal framework.

Public communications:

- Agree upon public messages regarding the incident.
- If the crisis entails an external or Common Security and Defence Policy (CSDP) dimension, the public communication should be coordinated with the EEAS and the HRVP Spokesperson service.

Cooperation at the strategic/political level*Potential actors*

- For Member States, Ministers responsible for cybersecurity
- For the European Council, the President
- For the Council, the rotating Presidency
- When measures within the 'Cyber Diplomatic Toolbox', PSC and Horizontal Working Party
- For the European Commission, the President or the delegated Vice-President/Commissioner
- The High Representative of the Union for Foreign Affairs Security Policy/Vice-President of the Commission.

Scope of activities: Strategic and political management of both cyber and non-cyber aspects of the crisis including measures under the Framework for a Joint EU Diplomatic Response to Malicious Cyber Activities.

Shared situational awareness:

- Identify the impacts of the disruptions caused by the crisis on the functioning of the Union.

Response:

- Activate additional crisis management mechanisms/instruments depending on the nature and impact of the incident. These may include, for example, the Civil Protection Mechanism.
- Take measures within the Framework for a Joint EU Diplomatic Response to Malicious Cyber Activities.
- Make available emergency support to affected Member States for example activating the Cybersecurity Emergency Response Fund ⁽¹⁾ once applicable.
- Cooperation and Coordination with international organisations where appropriate such as the United Nations (UN), the Organisation for Security and Cooperation in Europe (OSCE) and particularly NATO.
- Assess national security and defence implications.

Public communications:

Decide upon a common communication strategy towards the public.

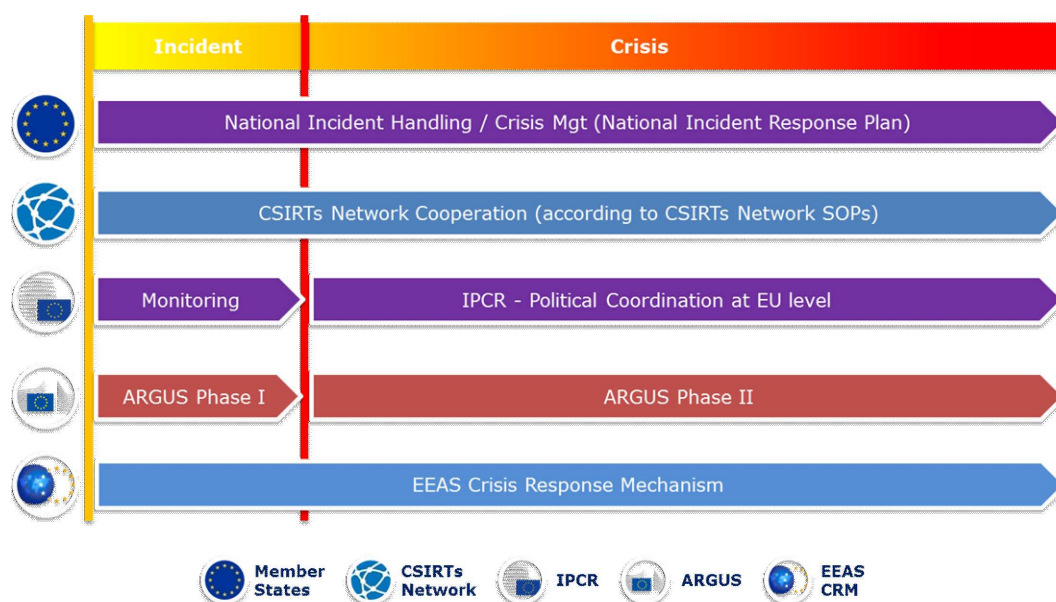
COORDINATED RESPONSE WITH MEMBER STATES AT THE EU LEVEL IN THE FRAMEWORK OF THE IPCR ARRANGEMENTS

Following the principle of complementarity at EU level, this section introduces and focuses in particular on the core objective and the responsibilities and activities of the Member States Authorities, the CSIRTs Network, ENISA, CERT-EU, Europol/EC3, INTCEN, the EU Hybrid Fusion Cell and the Council Horizontal Working Party on Cyber issues within the IPCR process. Actors are assumed to act in line with established procedures at EU or national level.

It is essential to note that, as illustrated by Figure 1, irrespective of the activation of the EU crisis management mechanisms, activities at national level as well as cooperation within the CSIRTs Network (where necessary) take place throughout any incident/crisis following the principles of subsidiarity and proportionality.

⁽¹⁾ The Cybersecurity Emergency Fund is a proposed action under the Joint Communication 'Resilience, Deterrence and Defence: Building strong cybersecurity for the EU', JOIN(2017) 450/1.

Figure 1

Cybersecurity incident/crisis response at EU level

All of the activities described below are to be carried out in accordance with and following the standard operating procedures/rules of the cooperation mechanisms involved and in line with the established mandates and competencies of individual actors and institutions. These procedures/rules may need some additions or modifications in order to achieve best possible cooperation and effective response to large-scale cybersecurity incidents and crises.

Not all actors presented below may be required to take action during any one particular incident. Nevertheless, the Blueprint and the relevant standard operating procedures of the cooperation mechanisms should foresee their potential involvement.

Given the different degree of impact on society that a cybersecurity incident or crisis may have, a high degree of flexibility as regards the involvement of sectoral actors on all levels and any appropriate response will rely upon both cyber and non-cyber mitigation activities.

Cybersecurity crisis management — Integrating cybersecurity in the IPCR process

The IPCR arrangements, described in the IPCR SOPs ⁽¹⁾, follow sequentially the steps described hereunder (the use of some of these steps will depend on the situation).

At each step we specify cybersecurity-specific activities and actors. For the reader's convenience, at each step the text from the IPCR SOPs is provided followed by the Blueprint-specific activities. This step-by-step approach also allows for clear identification of existing **gaps** in necessary capabilities and procedures that hamper an effective response to cybersecurity crises.

Figure 2 (below ⁽²⁾) is a graphical representation of the IPCR process where the new elements being introduced are highlighted in blue.

⁽¹⁾ From Document 12607/15 'IPCR Standard Operating Procedures', agreed by Friends of the Presidency group and noted by Coreper in October 2015.

⁽²⁾ A larger version of the figure may be found in the appendix.

After an incident has been detected

- **Step 2 — Analysis and advice:** based on available monitoring and alerting, the Commission services, the EEAS, and the GSC keep each other informed on possible developments, in order to be ready to advise the Presidency for a possible activation (in full or in information-sharing mode) of the IPCR.

— **Blueprint:**

- For the Commission, DG CNECT, DG HOME, DG HR.DS and DG DIGIT, supported by ENISA, EC3 and CERT-EU.
 - EEAS. Drawing on the work of the Sitroom, and intelligence sources, the EU Hybrid Fusion Cell provides situational awareness on actual and potential hybrid threats affecting the EU and its partners including cyber threats. Therefore, when the analysis and assessment of the EU Hybrid Fusion Cell indicates the existence of possible threats directed against a Member State, partner countries or organisation, INTCEN will inform (in the first instance) on the operational level, according to established procedures. The operational level will then prepare recommendations for the political strategic level, including the possible activation of crisis management arrangements in monitoring mode (e.g. EEAS Crisis Response Mechanism or the IPCR monitoring page).
 - The CSIRTs Network Chair assisted by ENISA prepares an EU Cybersecurity Incident Situation Report ⁽¹⁾ which is presented to the Presidency, the Commission and the HRVP via the CSIRT of the rotating Presidency.
- **Step 3 — Assessment/decision on IPCR activation:** the Presidency evaluates the need for political coordination, information exchange or decision-making at EU level. To this end, the Presidency may convene an informal round table meeting. The Presidency carries out an initial identification of the areas requiring Coreper or Council involvement. This will form the basis of the guidance for the production of Integrated Situational Awareness and Analysis (ISAA) reports. The Presidency will decide, in light of the characteristics of the crisis, its possible consequences, and the related political needs, on the appropriateness of convening meetings of the relevant Council Working Parties and/or Coreper and or PSC.

— **Blueprint:**

— Round table participants:

- The Commission services and the EEAS will advise the Presidency on their respective areas of competence.
- Member States' representatives in the Horizontal Working Party on Cyber Issues supported by experts from the capitals (CSIRTs, Cybersecurity Competent Authorities, others).
- Political/Strategic Guidance for ISAA reports based on the latest EU Cybersecurity Incident Situation Report and additional information provided by the round table participants.
- Relevant Working Parties and Committees:
 - Horizontal Working Party on Cyber Issues.

The Commission, EEAS and GSC, in full agreement and associating the Presidency, can also decide to activate the IPCR in information-sharing mode by generating a crisis page, in order to prepare the ground for a possible full activation.

- **Step 4 — IPCR Activation/Information gathering and exchange:** upon activation (whether in information-sharing mode or in full), a crisis page is generated on the IPCR web platform, allowing specific exchanges of information focusing on aspects that will contribute to feed ISAA and to prepare the discussion at political level. The ISAA lead service (one of the Commission services or EEAS) will depend on the circumstances of the case.
- **Step 5 — ISAA production:** the production of ISAA reports will be initiated. The Commission/EEAS will issue ISAA reports as outlined in the ISAA SOPs and may further foster information-exchange on the IPCR web platform,

⁽¹⁾ The EU Cybersecurity Incident Situation Report is an aggregation of national reports provided by national CSIRTs. The format of the report should be described in the CSIRTs Network SOPs.

or issue specific requests for information. The ISAA reports will be tailored to the needs of the political level (i.e. Coreper or the Council) as defined by the Presidency and laid out in its guidance, thus allowing a strategic overview of the situation and an informed debate on the agenda items defined by the Presidency. In accordance with the ISAA SOPs, the nature of the cybersecurity crisis will determine whether the ISAA report is prepared by one of the Commission Services (DG CNECT, DG HOME) or the EEAS.

Following the activation of the IPCR, the Presidency will outline the specific areas of focus for ISAA in order for it to support the political coordination and/or decision-making process in the Council. The Presidency will also specify the timing of the report, following consultations with the Commission services/EEAS.

— **Blueprint:**

- The ISAA report includes contributions from relevant services including:
 - The CSIRTs Network in the form of the EU Cybersecurity Incident Situation Report.
 - EC3, Sitroom, the EU Hybrid Fusion Cell, CERT-EU. The EU Hybrid Fusion Cell will support and provide contributions to the ISAA lead service and the IPCR round table, as appropriate.
 - EU sectoral agencies and bodies depending on the impacted sectors
 - Member States authorities (other than the CSIRTs).
- Gathering ISAA inputs ⁽¹⁾:
 - Commission and EU Agencies. The ARGUS IT system will provide the internal backbone network for ISAA. EU Agencies shall send their contributions to their respective responsible DGs, which in turn will feed the relevant information into ARGUS. Commission services and Agencies will gather information from existing sectorial networks with Member States and international organisations and from other relevant sources.
 - For the EEAS. The EU Situation Room supported by the other relevant EEAS departments, will provide the internal backbone network and single point of contact for ISAA. The EEAS will gather information from third countries and relevant international organisations.
- **Step 6 — Preparation of the informal Presidency round table:** the Presidency, assisted by the General Secretariat of the Council, will define the timing, agenda, participants, and expected outcome (possible deliverables) of the informal Presidency round table meeting. The GSC will relay relevant information on the IPCR web platform on behalf of the Presidency, and will issue in particular the meeting's notice.
- **Step 7 — Presidency round table/preparatory measures for EU political coordination/decision-making:** the Presidency will gather an informal round table to review the situation, and to prepare and review the items to be brought to the Coreper or Council's attention. The informal Presidency round table will also be the forum to develop, review and discuss all proposals for action to be submitted to Coreper/Council.

— **Blueprint:**

- The Council Horizontal Working Party on Cyber Issues should prepare PSC or Coreper.
- **Step 8 — Political coordination and decision-making at Coreper/Council:** The results of the Coreper/Council meetings concern the coordination of response activities at all levels, decisions on exceptional measures, political declarations, etc. These decisions also constitute an updated political/strategic guidance for the further production of ISAA reports.

— **Blueprint:**

- The political decision to coordinate the response to the cybersecurity crisis is implemented through the activities (performed by the corresponding actors) described above in Section 1 'Cooperation at Strategic/political, operational and technical levels' as regards **Response** and **Public Communication**.
- ISAA production continues based on cooperation at technical, operational and political/strategic levels as regards **Situational awareness** also described above in Section 1.

⁽¹⁾ ISAA SOPs.

- **Step 9 — Impact monitoring:** the ISAA lead service will provide, with the support of ISAA contributors, information on the evolution of the crisis and on the impact of the political decisions taken. This feedback loop will support an evolving process and support the Presidency's decision in continuing the involvement of the EU political level or in phasing down the IPCR.
 - **Step 10 — Phasing out:** following the same process as for the activation, the Presidency may convene an informal round table meeting to assess the opportunity to maintain the IPCR active or not. The Presidency can decide to close or downgrade the activation.
 - **Blueprint:**
 - ENISA may be invited to contribute to or carry out an *ex post* technical inquiry of the incident in accordance with the provisions in its mandate.
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APPENDIX

1. CRISIS MANAGEMENT, COOPERATION MECHANISMS AND ACTORS AT EU LEVEL

Crisis management mechanisms

Integrated Political Crisis Response arrangements (IPCR): the Integrated Political Crisis Response arrangements (IPCR), approved by the Council on 25 June 2013 ⁽¹⁾, are designed to facilitate a timely coordination and response at EU political level in the event of a major crisis. The IPCR also support the coordination at political level of the response to the invocation of the solidarity clause (Article 222 TFEU), as defined in Council Decision 2014/415/EU on the implementation by the Union of the solidarity clause adopted on 24 June 2014. The ICPR Standard Operating Procedures ⁽²⁾ (SOPs) set out the activation process and subsequent actions to be taken.

ARGUS: Crisis coordination system established by the European Commission in 2005 to provide a specific coordination process in case of a major multisectoral crisis. It is supported by a general rapid alert system (IT tool) with the same name. ARGUS foresees two phases, with Phase II (in case of major multi-sectoral crisis) triggering meetings of the Crisis Coordination Committee (CCC) under the authority of the Commission President or a Commissioner to whom responsibility was assigned. The CCC brings together representatives of relevant Commission DGs, Cabinets, and other EU services in order to lead and coordinate the Commission's response to the crisis. Chaired by the Deputy Secretary-General, the CCC assesses the situation, considers options and takes actionable decisions as regards the EU tools and instruments under the Commission's responsibility, and ensures that the decisions are implemented ⁽³⁾ ⁽⁴⁾.

EEAS Crisis Response Mechanism: The EEAS Crisis Response Mechanism is a structured system for the EEAS to respond to crisis and emergencies having an external nature or an important external dimension — including hybrid threats — potentially or actually impacting the EU interests or those of any Member States. By ensuring participation of relevant Commission as well as Council Secretariat officials to its meetings, the CRM facilitates synergy between diplomatic, security and defence efforts with financial, trade and cooperation instruments managed by the Commission. The Crisis Cell can be activated for the duration of the crisis.

Cooperation mechanisms

CSIRTs Network: The Computer Security Incident Response Team Network brings together all the national and governmental CSIRTs and CERT-EU. The purpose of the network is to enable and enhance information-sharing amongst the CSIRTs on threats and cybersecurity incidents and also to cooperate in responding to cybersecurity incidents and crises.

Council Horizontal Working Party on Cyber Issues: the Working Party was established to ensure the strategic and horizontal coordination of cyber policy issues in the Council and can be involved in both legislative and non-legislative activities.

Actors

ENISA: The European Union Agency for Network and Information Security was set up in 2004. The Agency works closely with Members States and the private sector to deliver advice and solutions on issues such as the pan-European Cyber Security Exercises, the development of national cyber security strategies, CSIRTs cooperation and capacity building. ENISA collaborates directly with CSIRTs throughout the EU and is the Secretariat of the CSIRTs network.

ERCC: The Emergency Response Coordination Centre in the Commission (under the Directorate-General for European Civil Protection and Humanitarian Aid Operations — DG ECHO) supports and coordinates a wide range of prevention, preparedness and response activities on 24/7 basis. Inaugurated in 2013, it acts as the hub of the Commission's crisis response (liaising with other EU crisis rooms) including as the central IPCR 24/7 contact point.

⁽¹⁾ 10708/13 on the 'Finalisation of the CCA Review process: the EU Integrated Political Crisis Response Arrangements', approved by the Council on 24 June 2013.

⁽²⁾ 12607/15 'IPCR Standard Operating Procedures', agreed by Friends of the Presidency group and noted by Coreper in October 2015.

⁽³⁾ Commission provisions on 'ARGUS' general rapid alert system, COM(2005) 662 final, 23 December 2005.

⁽⁴⁾ Commission Decision 2006/25/EC, Euratom of 23 December 2005 amending its internal Rules of Procedure (OJ L 19, 24.1.2006, p. 20), on setting up the 'ARGUS' general rapid alert system.

Europol/EC3: The European Cybercrime Centre (EC3) set up in 2013 within Europol supports the law enforcement response to cybercrime in the EU. EC3 offers operational and analytical support to Member States' investigations and serves as the central hub for criminal information and intelligence supporting operations and investigations by Member States with operational analysis, coordination and expertise as well as highly specialised technical and digital forensic support capabilities.

CERT-EU: the Computer Emergency Response Team of the EU Institutions, Bodies and Agencies has a mandate to improve the protection of the EU institutions, bodies and agencies against cyber threats. It is a member of the CSIRTs network. CERT-EU has technical agreements on sharing information about cyber threats with NATO CIRC, some third countries and major commercial actors in the field of cybersecurity.

The EU Intelligence Community comprises the EU Intelligence Analysis Centre (**INTCEN**) and EU Military Staff (EUMS) Intelligence Directorate (EUMS INT) under the SIAC arrangement of the **Single Intelligence Analysis Capacity** (SIAC). SIAC mission is to provide intelligence analyses, early warning and situational awareness to the High Representative of the European Union for Foreign Affairs and Security Policy and to the European External Action Service (EEAS). SIAC offers its services to the various EU decision making bodies in the fields of the Common Foreign and Security Policy (CFSP), the Common Security and Defence Policy (CSDP) and counterterrorism (CT), as well as to the Member States. EU INTCEN and EUMS INT are not operational agencies and do not have any collection capability. The operational level of intelligence is the Member States' responsibility. SIAC only deals with strategic analysis.

EU Hybrid Fusion Cell: The Joint Communication on Countering Hybrid Threats of April 2016 designates the EU Hybrid Fusion Cell (EU HFC) as the focal point for all source analysis on hybrid threats in the EU: its mandate was approved in December 2016 by the Commission through an inter-services consultation. Based in the INTCEN, the EU Hybrid Fusion Cell is part of the SIAC and hence works jointly with the EUMS INT and has a permanent military member assigned. Hybrid refers to the deliberate use by a State or non-State actor of a combination of multiple covert/overt, military/civilian tools and levers, such as cyber-attacks, disinformation campaigns, espionage, economic pressure, use of proxy forces or other subversive activity. The EU HFC works with an extensive network of points of contact (PoCs), both within the Commission and Member States to provide the integrated response/whole of government approach required to counter diverse challenges.

EU Sitroom: The EU Situation Room is part of the EU Intelligence and Situation Centre (EU INTCEN) and provides the EEAS with operational capacity to ensure an immediate and effective response to crises. It is a permanent civilian-military stand-by body that provides worldwide monitoring and situational awareness with a 24/7 capacity.

Relevant instruments

Framework for a Joint EU Diplomatic Response to Malicious Cyber Activities: The Framework, agreed in June 2017, is part of the EU's approach to cyber diplomacy, which contributes to conflict prevention, the mitigation of cybersecurity threats and greater stability in international relations. The framework makes full use of measures within the Common Foreign and Security Policy, including, if necessary, restrictive measures. The use of the measures within the Framework should encourage cooperation, facilitate mitigation of immediate and long-term threats and influence the behaviour of the responsible perpetrator and potential aggressors in the long term.

2. CYBERSECURITY CRISIS COORDINATION IN THE IPCR ARRANGEMENTS — HORIZONTAL COORDINATION LAYER AND POLITICAL ESCALATION

The IPCR arrangements can be (and have been) used to address technical and operational issues, but always from a political/strategic angle.

In terms of escalation, the IPCR can be used according to the level of the crisis by moving from 'monitoring mode', to 'information-sharing mode' which is the first level of IPCR activation, and 'IPCR full activation'.

Activation in full mode is a decision of a rotating Presidency of the Council of the EU. The Commission, EEAS and GSC can activate the IPCR in information-sharing mode. Monitoring and information-sharing trigger different levels of

information exchange, with information-sharing activating a demand for the production of ISAA reports. Full activation adds IPCR round table meetings to the toolbox, bringing to the table the Presidency (typically the Coreper II chair, or a subject expert at PermRep Counsellor level but exceptionally round tables were held at Ministerial level).

Actors

The rotating Presidency (typically Coreper Chair) is in the lead

For the European Council, the Cabinet of the President

For the European Commission, DSG/DG level and/or subject experts

For the EEAS, DSG/MD level and/or subject experts

For the GSC, the Cabinet of the SG, the IPCR team and the responsible DGs.

Scope of activities: Generating a common integrated picture of the situation and escalating awareness of bottlenecks or shortcomings at each of the three levels in order to address them at the political level, generating decisions at the table if they fall within the remit of the participants, or to generating proposals for action that go to Coreper II and up to Council.

Shared situational awareness:

(not active): IPCR monitoring pages can be generated to track developing situations that might escalate into a crisis with EU ramifications

(IPCR information-sharing): ISAA reports will be drafted by the ISAA lead on the basis of input from the Commission services, EEAS, and Member States (through the IPCR questionnaires)

(IPCR full activation): in addition to ISAA reports, informal IPCR round tables bring together different actors concerned in the MS, the Commission, EEAS, relevant agencies, etc. to discuss shortcomings and bottlenecks.

Cooperation and response:

Activate/synchronise additional crisis management mechanisms/instruments depending on nature and impact of the incident. These may include, for example the Civil Protection Mechanism, the Framework for a Joint EU Diplomatic Response to Malicious Cyber Activities or the 'Joint Framework on countering hybrid threats'.

Crisis communications:

The IPCR Crisis Communicator's Network may be activated by the Presidency, after consultation with the relevant services in the Commission, GSC and EEAS, in order to support the creation of common messages, or elaborate on the most effective communication tools.

3. CYBERSECURITY CRISIS MANAGEMENT IN ARGUS — INFORMATION-SHARING WITHIN THE EUROPEAN COMMISSION

Facing unexpected crises that required action at European level, i.e. the Madrid terrorist attacks (March 2004), the South-East Asia Tsunami (December 2004) and the London terrorist attacks (July 2005), the Commission in 2005 established the ARGUS coordination system, supported by an eponymous general rapid alert system ⁽¹⁾ ⁽²⁾. It aims to provide a specific **crisis coordination process** in case of a major multisectoral crisis, to enable sharing crisis-related information in real time and ensure rapid decision-making.

ARGUS defines two phases depending on the severity of the event:

Phase I: is used for 'information-sharing' on a crisis of limited scale

⁽¹⁾ Commission of the European Communities, 23 December 2005, Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions: Commission Provisions on 'ARGUS' General Rapid Alert System, COM(2005) 662 final.

⁽²⁾ Decision 2006/25/EC, Euratom.

Examples of recent Phase I reported events include the forest fires in Portugal and Israel, the 2016 Berlin attack, floods in Albania, Hurricane Matthew in Haiti and the drought in Bolivia. Any DG can open a Phase I event when it judges that a situation in its domain of competence is serious enough to warrant or benefit from information-sharing. For instance, DG CNECT or DG HOME can open a Phase I event when they judge that a cyber situation in their respective domain of competence is serious enough to warrant or benefit from information-sharing.

Phase II: is triggered in case of major multisectoral crisis or foreseeable or imminent threat for the Union.

Phase II triggers a specific coordination process enabling the Commission to take decisions and manage a rapid, coordinated and coherent response, at the highest level in its domain of competence and in cooperation with the other institutions. Phase II is meant for a major multisectoral crisis or foreseeable or imminent threat thereof. Examples of real-life Phase II events include the migration/refugee crisis (2015-ongoing), Fukushima triple disaster (2011) and the eruption of Eyjafjallajökull volcano in Iceland (2010).

Phase II is activated by the President on his own initiative or at the request of a Member of the Commission. The President may allocate the political responsibility for the Commission response to a Commissioner responsible for the service most concerned by the crisis at hand or decide to keep the responsibility to himself.

It foresees emergency meetings of the Crisis Coordination Committee (CCC). These are called under the authority of the President or a Commissioner to whom responsibility was assigned. The meetings are convened by SG through the ARGUS IT tool. The CCC is a specific operational crisis management structure established to lead and coordinate the Commission's response to the crisis, bringing together representatives of relevant Commission DGs, Cabinets, and other EU services. Chaired by the Deputy Secretary-General, the **CCC assesses the situation, considers options and takes decisions, as well as ensures that decisions and actions are implemented** while ensuring the coherence and consistency of the response. Support to the CCC is provided by the SG.

4. EEAS CRISIS RESPONSE MECHANISM

The EEAS Crisis Response Mechanism (CRM) is activated upon occurrence of a serious situation or emergency concerning or anyway involving the external dimension of the EU. CRM is activated by DSG for Crisis Response, after consultation with the HRVP or the Secretary-General. DSG for Crisis Response can also be requested to initiate the Crisis Response Mechanism by the HRVP, or the SG, or another DSG or MD.

The CRM contributes to EU's coherence in crisis response within the Security Strategy. In particular, the CRM facilitates synergy between diplomatic, security and defence efforts with financial, trade and cooperation instruments managed by the Commission.

The CRM is linked to the Commission's general emergency response system (ARGUS) and the EU Integrated Political Crisis Response arrangements (IPCR) in order to exploit synergies in case of simultaneous activation. The Situation Room in the EEAS acts as communication hub between the EEAS and the emergency response systems in the Council and Commission.

Normally, the first action related with the CRM implementation is the calling of a **Crisis Meeting** among EEAS, Commission and Council senior managers directly affected by the crisis in question. The Crisis Meeting assesses the short-term effects of the crisis and may agree on taking immediate action, or activating the Crisis Cell, or convening a Crisis Platform. Those courses can be implemented in any time sequence.

The **Crisis Cell** is a small-scale operations room where representatives of EEAS, Commission and Council services involved in the response to the crisis gathers to monitor the situation continuously in order to provide support to the EEAS Headquarters decision-makers. When activated, the Crisis Cell is operational 24 hours a day, 7 days a week.

The **Crisis Platform** gathers relevant EEAS, Commission and Council services to provide assessment on medium and long-term effects of crises and agree on action to be taken. It is chaired by the HRVP, or the Secretary-General, or the DSG for Crisis Response. The Crisis Platform evaluates the effectiveness of EU action on crisis country or region, decides on amendments of additional measures and discusses proposals for Council action. The Crisis Platform is an ad hoc meeting; therefore, it is not permanently activated.

The **Task Force** is composed of representatives of the services involved in the response and can be activated to follow and facilitate the implementation of the EU response. It evaluates the impact of EU action, prepares policy documents and options papers, contributes to the preparation of the Political Framework for Crisis Approach (PFCAs), contributes to the Communication Strategy, and adopts any other arrangements that can facilitate the implementation of the EU response.

5. REFERENCE DOCUMENTS

Below is a list of reference documents that have been taken into account in preparation of the Blueprint:

- The European Cyber Crises Cooperation Framework, Version 1, 17 October 2012.
- Report on Cyber Crisis Cooperation and Management, ENISA, 2014
- Actionable Information for Security Incident Response, ENISA, 2014
- Common practices of EU-level crisis management and applicability to cyber crises, ENISA, 2015
- Strategies for Incident Response and Cyber Crisis Cooperation, ENISA, 2016
- EU Cyber Standard Operating Procedures, ENISA, 2016
- A good practice guide of using taxonomies in incident prevention and detection, ENISA, 2017
- Communication on Strengthening Europe's Cyber Resilience System and Fostering a Competitive and Innovative Cybersecurity Industry, COM(2016) 410 final, 5 July 2016
- Council Conclusions on Strengthening Europe's Cyber Resilience System and Fostering a Competitive and Innovative Cybersecurity Industry — Council conclusions (15 November 2016), 14540/16
- Council Decision 2014/415/EU of 24 June 2014 on the arrangements for the implementation by the Union of the solidarity clause (OJ L 192, 1.7.2014, p. 53)
- Finalisation of the CCA review process: the EU Integrated Political Crisis Response (IPCR) arrangements, 10708/13, 7 June 2013
- Integrated Situational Awareness and Analysis (ISAA) — Standard Operating Procedures, DS 1570/15, 22 October 2015
- Commission provisions on 'ARGUS' general rapid alert system, COM(2005) 662 final, 23 December 2005
- Commission Decision 2006/25/EC, Euratom of 23 December 2005 amending its internal Rules of Procedure (OJ L 19, 24.1.2006, p. 20)
- ARGUS Modus Operandi, European Commission, 23 October 2013
- Council Conclusions on a Framework for a Joint EU Diplomatic Response to Malicious Cyber Activities ('Cyber Diplomacy Toolbox'), Doc. 9916/17
- EU operational protocol for countering hybrid threats 'EU Playbook', Doc. SWD(2016) 227
- EEAS Crisis Response Mechanism, 8 November 2016 (Ares(2017)880661) Joint Staff Working Document EU operational protocol for countering hybrid threats, 'EU Playbook', SWD(2016) 227 final, 5 July 2016
- Joint Communication to the European Parliament and the Council: Joint Framework on countering hybrid threats — a European Union response JOIN/2016/018 final, 6 April 2016
- EEAS(2016) 1674 — Working Document of the European External Action Service — EU Hybrid Fusion Cell — Terms of Reference

6. CYBERSECURITY-SPECIFIC ELEMENTS IN IPCR PROCESS

