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I

(Legislative acts)

DIRECTIVES

COUNCIL DIRECTIVE (EU) 2019/1995**of 21 November 2019****amending Directive 2006/112/EC as regards provisions relating to distance sales of goods and certain domestic supplies of goods**

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 113 thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Parliament ⁽¹⁾,

Having regard to the opinion of the European Economic and Social Committee ⁽²⁾,

Acting in accordance with a special legislative procedure,

Whereas:

- (1) Council Directive 2006/112/EC ⁽³⁾ as amended by Council Directive (EU) 2017/2455 ⁽⁴⁾ provides that where a taxable person facilitates, through the use of an electronic interface such as a marketplace, platform, portal or other similar means, distance sales of goods imported from third territories or third countries in consignments of an intrinsic value not exceeding EUR 150 or the supply of goods within the Community by a taxable person not established within the Community to a non-taxable person, the taxable person who facilitates the supply shall be deemed to have received and supplied the goods himself. As that Directive splits a single supply into two supplies, it is necessary to determine to which of those supplies the dispatch or transport of the goods should be ascribed in order to properly determine their place of supply. It is also necessary to ensure that the chargeable event of those two supplies occurs at the same time.
- (2) Since a taxable person who facilitates through the use of an electronic interface the supply of goods to a non-taxable person in the Community may deduct, in accordance with existing rules, the value added tax (VAT) paid to suppliers not established in the Community, there is a risk that the latter might not pay the VAT to the tax authorities. To avoid that risk, the supply from the supplier selling goods through the use of an electronic interface should be exempt from VAT, while that supplier should be granted the right to deduct the input VAT which he paid in respect of the purchase or import of the goods supplied. For that purpose, the supplier should always be registered in the Member State where he acquired or imported those goods.

⁽¹⁾ Opinion of 14 November 2019 (not yet published in the Official Journal).

⁽²⁾ Opinion of 15 May 2019 (not yet published in the Official Journal).

⁽³⁾ Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax (OJ L 347, 11.12.2006, p. 1).

⁽⁴⁾ Council Directive (EU) 2017/2455 of 5 December 2017 amending Directive 2006/112/EC and Directive 2009/132/EC as regards certain value added tax obligations for supplies of services and distance sales of goods (OJ L 348, 29.12.2017, p. 7).

- (3) Furthermore, suppliers who are not established in the Community, who make use of an electronic interface to sell goods, might hold stock in several Member States and might, in addition to intra-Community distance sales of goods, supply goods from that stock to customers in the same Member State. Currently, such supplies are not covered by the special scheme for intra-Community distance sales of goods and for services supplied by taxable persons established within the Community but not in the Member State of consumption. In order to reduce the administrative burden, those taxable persons who facilitate the supply of goods to non-taxable persons in the Community through the use of an electronic interface, who are deemed to have received and supplied the goods themselves, should also be allowed to use this special scheme to declare and pay VAT for those domestic supplies.
- (4) To ensure consistency in terms of the payment of VAT and import duty upon the importation of goods, the time period for the payment of import VAT to customs where the special arrangements for the declaration and payment of import VAT are used should be aligned to that laid down in respect of customs duty in Article 111 of Regulation (EU) No 952/2013 of the European Parliament and of the Council ⁽³⁾.
- (5) In accordance with the Joint Political Declaration of 28 September 2011 of Member States and the Commission on explanatory documents ⁽⁴⁾, Member States have undertaken to accompany, in justified cases, the notification of their transposition measures with one or more documents explaining the relationship between the components of a directive and the corresponding parts of national transposition instruments. With regard to this Directive, the legislator considers the transmission of such documents to be justified.
- (6) Directive 2006/112/EC should therefore be amended accordingly,

HAS ADOPTED THIS DIRECTIVE:

Article 1

Directive 2006/112/EC is amended as follows:

- (1) in Section 2 of Chapter 1 of Title V, the following Article is added:

'Article 36b

Where a taxable person is deemed to have received and supplied goods in accordance with Article 14a, the dispatch or transport of the goods shall be ascribed to the supply made by that taxable person.;

- (2) Article 66a is replaced by the following:

'Article 66a

By way of derogation from Articles 63, 64 and 65, the chargeable event of the supply of goods by a taxable person who is deemed to have received and supplied the goods in accordance with Article 14a and of the supply of goods to that taxable person shall occur and VAT shall become chargeable at the time when the payment has been accepted.;

- (3) the following Article is inserted:

'Article 136a

Where a taxable person is deemed to have received and supplied goods in accordance with Article 14a(2), Member States shall exempt the supply of those goods to that taxable person.;

- (4) in Article 169, point (b) is replaced by the following:

'(b) transactions which are exempt pursuant to Articles 136a, 138, 142 or 144, Articles 146 to 149, Articles 151, 152, 153 or 156, Article 157(1)(b), Articles 158 to 161 or Article 164.;

⁽³⁾ Regulation (EU) No 952/2013 of the European Parliament and of the Council of 9 October 2013 laying down the Union Customs Code (OJ L 269, 10.10.2013, p. 1).

⁽⁴⁾ OJ C 369, 17.12.2011, p. 14.

- (5) in Article 204(1), the third subparagraph is replaced by the following:

‘However, Member States may not apply the option referred to in the second subparagraph to a taxable person within the meaning of point (1) of Article 358a who has opted for the special scheme for services supplied by taxable persons not established within the Community.’;

- (6) in Article 272(1), point (b) is replaced by the following:

‘(b) taxable persons carrying out none of the transactions referred to in Articles 20, 21, 22, 33, 36, 136a, 138 and 141.’;

- (7) the heading of Chapter 6 of Title XII is replaced by the following:

‘Special schemes for taxable persons supplying services to non-taxable persons or making distance sales of goods or certain domestic supplies of goods’;

- (8) the heading of Section 3 of Chapter 6 of Title XII is replaced by the following:

‘Special scheme for intra-Community distance sales of goods, for supplies of goods within a Member State made by electronic interfaces facilitating those supplies and for services supplied by taxable persons established within the Community but not in the Member State of consumption’;

- (9) Article 369a is replaced by the following:

‘Article 369a

For the purposes of this Section, and without prejudice to other Community provisions, the following definitions shall apply:

- (1) “taxable person not established in the Member State of consumption” means a taxable person who has established his business in the Community or has a fixed establishment there but who has not established his business and has no fixed establishment within the territory of the Member State of consumption;
- (2) “Member State of identification” means the Member State in the territory of which the taxable person has established his business or, if he has not established his business in the Community, where he has a fixed establishment.

Where a taxable person has not established his business in the Community, but has more than one fixed establishment therein, the Member State of identification shall be the Member State with a fixed establishment where that taxable person indicates that he will make use of this special scheme. The taxable person shall be bound by that decision for the calendar year concerned and the two calendar years following.

Where a taxable person has not established his business in the Community and has no fixed establishment therein, the Member State of identification shall be the Member State in which the dispatch or transport of the goods begins. Where there is more than one Member State in which the dispatch or transport of the goods begins, the taxable person shall indicate which of those Member States shall be the Member State of identification. The taxable person shall be bound by that decision for the calendar year concerned and the two calendar years following;

- (3) “Member State of consumption” means one of the following:

- (a) in the case of the supply of services, the Member State in which the supply is deemed to take place according to Chapter 3 of Title V;
- (b) in the case of intra-Community distance sales of goods, the Member State where the dispatch or transport of the goods to the customer ends;
- (c) in the case of the supply of goods made by a taxable person facilitating those supplies in accordance with Article 14a(2) where the dispatch or transport of the goods supplied begins and ends in the same Member State, that Member State.’;

- (10) Article 369b is replaced by the following:

‘Article 369b

Member States shall permit the following taxable persons to use this special scheme:

- (a) a taxable person carrying out intra-Community distance sales of goods;

- (b) a taxable person facilitating the supply of goods in accordance with Article 14a(2) where the dispatch or transport of the goods supplied begins and ends in the same Member State;
- (c) a taxable person not established in the Member State of consumption supplying services to a non-taxable person.

This special scheme applies to all those goods or services supplied in the Community by the taxable person concerned.’;

- (11) in Article 369e, point (a) is replaced by the following:

‘(a) if he notifies that he no longer carries out supplies of goods and services covered by this special scheme;’;

- (12) Article 369f is replaced by the following:

‘Article 369f

The taxable person making use of this special scheme shall submit by electronic means to the Member State of identification a VAT return for each calendar quarter, whether or not supplies of goods and services covered by this special scheme have been carried out. The VAT return shall be submitted by the end of the month following the end of the tax period covered by the return.’;

- (13) in Article 369g, paragraphs 1, 2 and 3 are replaced by the following:

‘1. The VAT return shall show the VAT identification number referred to in Article 369d and, for each Member State of consumption in which VAT is due, the total value exclusive of VAT, the applicable rates of VAT, the total amount per rate of the corresponding VAT and the total VAT due in respect of the following supplies covered by this special scheme carried out during the tax period:

- (a) intra-Community distance sales of goods;
- (b) supplies of goods in accordance with Article 14a(2) where the dispatch or transport of those goods begins and ends in the same Member State;
- (c) supplies of services.

The VAT return shall also include amendments relating to previous tax periods as provided in paragraph 4 of this Article.

2. Where goods are dispatched or transported from Member States other than the Member State of identification, the VAT return shall also include the total value exclusive of VAT, the applicable rates of VAT, the total amount per rate of the corresponding VAT and the total VAT due in respect of the following supplies covered by this special scheme, for each Member State where such goods are dispatched or transported from:

- (a) intra-Community distance sales of goods other than those made by a taxable person in accordance with Article 14a(2);
- (b) intra-Community distance sales of goods and supplies of goods where the dispatch or transport of those goods begins and ends in the same Member State, made by a taxable person in accordance with Article 14a(2).

In relation to the supplies referred to in point (a), the VAT return shall also include the individual VAT identification number or the tax reference number allocated by each Member State where such goods are dispatched or transported from.

In relation to the supplies referred to in point (b), the VAT return shall also include the individual VAT identification number or the tax reference number allocated by each Member State where such goods are dispatched or transported from, if available.

The VAT return shall include the information referred to in this paragraph broken down by Member State of consumption.

3. Where the taxable person supplying services covered by this special scheme has one or more fixed establishments, other than that in the Member State of identification, from which the services are supplied, the VAT return shall also include the total value exclusive of VAT, the applicable rates of VAT, the total amount per rate of the corresponding VAT and the total VAT due of such supplies, for each Member State in which he has an establishment, together with the individual VAT identification number or the tax reference number of this establishment, broken down by Member State of consumption.’;

(14) in Article 369zb, paragraph 2 is replaced by the following:

‘2. Member States shall require that the VAT referred to in paragraph 1 be payable monthly by the deadline for payment applicable to the payment of import duty.’.

Article 2

1. Member States shall adopt and publish, by 31 December 2020 at the latest, the laws, regulations and administrative provisions necessary to comply with this Directive. They shall forthwith communicate to the Commission the text of those provisions.

They shall apply those measures from 1 January 2021.

When Member States adopt those measures, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such reference is to be made.

2. Member States shall communicate to the Commission the text of the main provisions of national law which they adopt in the field covered by this Directive.

Article 3

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

Article 4

This Directive is addressed to the Member States.

Done at Brussels, 21 November 2019.

For the Council
The President
H. KOSONEN

II

(Non-legislative acts)

REGULATIONS

COMMISSION IMPLEMENTING REGULATION (EU) 2019/1996

of 28 November 2019

imposing a definitive anti-dumping duty on imports of certain prepared or preserved sweetcorn in kernels originating in the Kingdom of Thailand following an expiry review pursuant to Article 11(2) of Regulation (EU) 2016/1036

THE EUROPEAN COMMISSION,

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

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

Whereas:

1. PROCEDURE

1.1. Previous investigations and measures in force

- (1) The Council, following an anti-dumping investigation ('the original investigation'), imposed, by means of Regulation (EC) No 682/2007 ⁽²⁾, a definitive anti-dumping duty on imports of certain prepared or preserved sweetcorn in kernels currently falling under CN codes ex 2001 90 30 and ex 2005 80 00 originating in Thailand ('the definitive anti-dumping measures'). The measures took the form of an *ad valorem* duty ranging between 3,1 % and 12,9 %.
- (2) Council Regulation (EC) No 954/2008 ⁽³⁾ amended Regulation (EC) No 682/2007 with regard to the rate of duty imposed on one company and on 'all other companies'. The amended duties range between 3,1 % and 14,3 %. Imports from two Thai exporting producers from whom undertakings had been accepted by Commission Decision 2007/424/EC ⁽⁴⁾ were exempted from the duty.
- (3) The Council, by Regulation (EC) No 847/2009 ⁽⁵⁾, considered that price undertakings with fixed minimum import prices were no longer appropriate to counteract the injurious effect of dumping. Consequently, the accepted undertakings were withdrawn and the undertaking offers by 10 other Thai exporting producers were rejected.

⁽¹⁾ OJ L 176, 30.6.2016, p. 21.

⁽²⁾ Council Regulation (EC) No 682/2007 of 18 June 2007 imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of certain prepared or preserved sweetcorn in kernels originating in Thailand (OJ L 159, 20.6.2007, p. 14).

⁽³⁾ Council Regulation (EC) No 954/2008 of 25 September 2008 amending Regulation (EC) No 682/2007 imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of certain prepared or preserved sweetcorn in kernels originating in Thailand (OJ L 260, 30.9.2008, p. 1).

⁽⁴⁾ Commission Decision of 18 June 2007 accepting undertakings offered in connection with the anti-dumping proceeding concerning imports of certain prepared or preserved sweet corn in kernels originating in Thailand (2007/424/EC) (OJ L 159, 20.6.2007, p. 42).

⁽⁵⁾ Council Regulation (EC) No 847/2009 of 15 September 2009 amending Regulation (EC) No 682/2007 imposing a definitive anti-dumping duty on imports of certain prepared or preserved sweetcorn in kernels originating in Thailand (OJ L 246, 18.9.2009, p. 1).

- (4) By Regulation (EU) No 875/2013 ⁽⁶⁾, the Council re-imposed the definitive anti-dumping measures on imports of certain prepared or preserved sweetcorn in kernels originating in Thailand following an expiry review (the 'previous expiry review').
- (5) By Regulation (EU) No 307/2014 ⁽⁷⁾, following a partial interim review the Council amended the anti-dumping duty set by Regulation (EU) No 875/2013 for River Kwai International Food Industry Co., Ltd.
- (6) Following the European Court Justice, judgments of 14 December 2017 and 28 March 2019, in cases T-460/14 and C-144/18 P respectively, the Commission reopened ⁽⁸⁾ on 29 August 2019 the anti-dumping investigation concerning imports of certain prepared or preserved sweetcorn in kernels originating in Thailand that led to the adoption of Regulation (EU) No 307/2014. That investigation was reopened only in so far as it concerns River Kwai International Food Industry Co. Ltd. and resumed it at the point at which the irregularity occurred.

1.2. Request for an expiry review

- (7) Following the publication of a notice of impending expiry ⁽⁹⁾ of the anti-dumping measures in force, the Commission received a request for a review pursuant to Article 11(2) of Regulation (EU) 2016/1036 ('the basic Regulation').
- (8) The request for review was lodged on 13 June 2018 by the Association Européenne des Transformateurs de Maïs Doux ('AETMD' or 'the applicant') on behalf of Union producers representing more than 50 % of the total Union production of certain prepared or preserved sweetcorn in kernels.
- (9) The request for review was based on the grounds that the expiry of the measures would be likely to result in continuation or recurrence of dumping and injury to the Union industry.

1.3. Initiation of an expiry review

- (10) Having determined that sufficient evidence existed for the initiation of an expiry review, and after consulting the Committee established by Article 15(1) of the basic Regulation, the Commission initiated an expiry review regarding imports into the Union of certain prepared or preserved sweetcorn in kernels originating in the Kingdom of Thailand ('Thailand' or 'the country concerned'). On 12 September 2018, it published a Notice of Initiation in the *Official Journal of the European Union* ⁽¹⁰⁾ ('the Notice of Initiation').

1.4. Review investigation period and period considered

- (11) The investigation of continuation or recurrence of dumping covered the period from 1 July 2017 to 30 June 2018 ('review investigation period' or 'RIP'). The examination of trends relevant for the assessment of the likelihood of a continuation or recurrence of injury covered the period from 1 January 2015 to the end of the review investigation period ('the period considered').

⁽⁶⁾ Council Implementing Regulation (EU) No 875/2013 of 2 September 2013 imposing a definitive anti-dumping duty on imports of certain prepared or preserved sweetcorn in kernels originating in Thailand following an expiry review pursuant to Article 11(2) of Regulation (EC) No 1225/2009 (OJ L 244, 13.9.2013, p. 1).

⁽⁷⁾ Council Implementing Regulation (EU) No 307/2014 of 24 March 2014 amending Implementing Regulation (EU) No 875/2013 imposing a definitive anti-dumping duty on imports of certain prepared or preserved sweetcorn in kernels originating in Thailand following an interim review pursuant to Article 11(3) of Regulation (EC) No 1225/2009 (OJ L 91, 27.3.2014, p. 1).

⁽⁸⁾ Notice following the judgments of 14 December 2017 and 28 March 2019, in Cases T-460/14 and C-144/18 P respectively, with regard to Council Implementing Regulation (EU) No 307/2014 amending Implementing Regulation (EU) No 875/2013 imposing a definitive anti-dumping duty on imports of certain prepared or preserved sweetcorn in kernels originating in Thailand (OJ C 291/3, 29.8.2019, p. 3).

⁽⁹⁾ Notice of the impending expiry of certain anti-dumping measures (OJ C 440, 21.12.2017, p. 21).

⁽¹⁰⁾ Notice of initiation of an expiry review of the anti-dumping measures applicable to imports of certain prepared or preserved sweetcorn in kernels originating in the Kingdom of Thailand (OJ C 322, 12.9.2018, p. 4).

1.5. Interested parties

- (12) In the Notice of Initiation, interested parties were invited to contact the Commission in order to participate in the investigation. In addition, the Commission specifically informed the applicants, known Union producers, the known producers in Thailand and the authorities of Thailand, known importers, users and traders, as well as associations known to be concerned about the initiation of the investigation and invited them to participate.
- (13) Interested parties also had an opportunity to comment on the initiation of the expiry review and to request a hearing with the Commission and/or the Hearing Officer in trade proceedings.

1.6. Sampling

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

1.6.1. *Sampling of Union producers*

- (15) In the Notice of Initiation, the Commission stated that it had provisionally selected a sample of Union producers.
- (16) In accordance with Article 17(1) of the basic Regulation, the Commission selected a sample of three Union producers on the basis of the largest production volumes in 2017 and invited the interested parties to comment.
- (17) Following the comments received, the Commission replaced one company from the provisional sample by the next largest Union producer. That company demonstrated it did not have the necessary resources to cooperate in this review. The final sample of Union producers accounted for more than 60 % of the total estimated Union production volume. No other comments were received. The Commission concluded that the sample was representative of the Union industry.

1.6.2. *Sampling of importers*

- (18) To decide whether sampling was necessary and, if so, to select a sample, the Commission asked unrelated importers to provide the information specified in the Notice of Initiation. Only one unrelated importer provided the required information.
- (19) Sampling of importers was therefore not necessary.

1.6.3. *Sampling of producers in Thailand*

- (20) To decide whether sampling was necessary and, if so, to select a sample, the Commission asked all known producers in Thailand to provide the information specified in the Notice of Initiation. In addition, the Commission asked the Mission of the Kingdom of Thailand to the European Union to identify and/or contact other producers, if any, that could be interested in participating in the investigation.
- (21) Three producers in the country concerned provided the requested information and agreed to be included in the sample. In view of the low number of replies, the Commission decided that sampling was not necessary. All three producers exported the product under review to the Union during the review investigation period, and are therefore exporting producers. They account for about 80 % of all Thai exports to the Union.

1.7. Replies to the questionnaire

- (22) Copies of the questionnaires were made available on DG Trade's website when the case was initiated. The Commission sent letters to the three sampled Union producers, to the unrelated importer and to the three exporting producers which provided the required information, requesting them to complete the questionnaire intended for them.
- (23) Questionnaire replies were received from the three Union producers and the three cooperating producers in the country concerned.

- (24) No questionnaire reply was received from the unrelated importer.

1.8. Verification

- (25) The Commission sought and verified with cooperating parties all the information deemed necessary for the determination of a likelihood of continuation or recurrence of dumping and injury and of the Union interest. Verification visits pursuant to Article 16 of the basic Regulation were carried out at the premises of the following companies:

Union producers

- Bonduelle SA, Renescure, France
- Conserve Italia SCA, San Lazzaro di Savena, Italy
- Groupe d'aucy, Theix, France

Exporting producers in Thailand

- Karn Corn Co. Ltd, Kanchanaburi, Thailand
- River Kwai International Food Industrial Company Limited ('RKI'), Kanchanaburi, Thailand
- Siam Del Monte Co. Limited, Bangkok, Thailand.

2. PRODUCT UNDER REVIEW AND LIKE PRODUCT

2.1. Product under review

- (26) The product under review is the same as in the original investigation and previous expiry review namely sweetcorn (*Zea mays var. saccharata*) in kernels, prepared or preserved by vinegar or acetic acid, not frozen, currently falling under CN code ex 2001 90 30 (TARIC code 2001 90 30 10), and sweetcorn (*Zea mays var. saccharata*) in kernels prepared or preserved otherwise than by vinegar or acetic acid, not frozen, other than products of heading 2006, currently falling under CN code ex 2005 80 00 (TARIC code 2005 80 00 10) ('sweetcorn') originating in Thailand ('the product under review').
- (27) The investigation has shown that, despite differences in the preservations, the different types of the product under review all share the same basic biological and chemical characteristics and are used for the same purpose.

2.2. Like product

- (28) As established in the original investigation as well as in the previous expiry review, this expiry review investigation confirmed that the following products have the same basic biological and chemical characteristics as well as the same basic uses:
- the product under review,
 - the product produced and sold on the domestic market of Thailand, and
 - the product produced and sold in the Union by the Union industry.
- (29) Those products are therefore considered to be like products within the meaning of Article 1(4) of the basic Regulation.

3. DUMPING

3.1. Thailand

3.1.1. Preliminary remarks

- (30) During the review investigation period, imports of certain prepared or preserved sweetcorn in kernels from Thailand continued albeit at lower levels than in the investigation period of the original investigation (that is from 1 January 2005 to 31 December 2005). According to Eurostat, imports of sweetcorn from Thailand accounted for about 3,9 % of the Union market in the review investigation period, compared to 12,7 % market share during the original investigation and 6 % during the previous expiry review. In absolute terms, imports from Thailand amounted to 13 643 tonnes in the review investigation period. This followed a decrease in imports from 41 973 tonnes in the original investigation to 21 856 tonnes during the previous expiry review.

3.1.2. *Dumping during the review investigation period*

3.1.2.1. *Normal value*

- (31) The Commission first examined whether the total volume of domestic sales for each cooperating exporting producer was representative, in accordance with Article 2(2) of the basic Regulation. The domestic sales are representative if the total domestic sales volume of the like product to independent customers on the domestic market per exporting producer represented at least 5 % of its total export sales volume of the product under review to the Union during the review investigation period.
- (32) On this basis, the total domestic sales by only one exporting producer, of the like product, on the domestic market, were representative.
- (33) The Commission subsequently identified the product types sold domestically that were identical or comparable with the product types sold for export to the Union for the exporting producer with representative domestic sales.
- (34) The Commission then examined whether the domestic sales by this cooperating exporting producer on its domestic market for each product type that is identical or comparable with a product type sold for export to the Union were representative, in accordance with Article 2(2) of the basic Regulation. The domestic sales of a product type are representative if the total volume of domestic sales of that product type to independent customers during the review investigation period represents at least 5 % of the total volume of export sales of the identical or comparable product type to the Union.
- (35) The Commission then established the product types for which the domestic sales were representative and the product types for which there were no domestic sales or the domestic sales were not representative.
- (36) For the product types, for which there were representative domestic sales, the Commission next defined the proportion of profitable sales to independent customers on the domestic market, for each product type, during the review investigation period, in order to decide whether to use actual domestic sales for the calculation of the normal value, in accordance with Article 2(4) of the basic Regulation.
- (37) The normal value is based on the actual domestic price per product type, irrespective of whether those sales are profitable or not, if:
 - (a) the sales volume of the product type, sold at a net sales price equal to or above the calculated cost of production, represented more than 80 % of the total sales volume of this product type; and
 - (b) the weighted average sales price of that product type is equal to or higher than the unit cost of production.
- (38) In that case, the normal value is the weighted average of the prices of all domestic sales of that product type during the review investigation period.
- (39) The normal value is the actual domestic price per product type of only the profitable domestic sales of the product types during the review investigation period, if:
 - (a) the volume of profitable sales of the product type represents 80 % or less of the total sales volume of this type; or
 - (b) the weighted average price of this product type is below the unit cost of production.
- (40) The analysis of domestic sales for the product types with representative domestic sales showed that the weighted average sales price was lower than the unit cost of production. Accordingly, the normal value was calculated as a weighted average of the profitable sales only.
- (41) Where there were no or insufficient sales of a product type of the like product in the ordinary course of trade or where a product type was not sold in representative quantities on the domestic market, the Commission constructed the normal value in accordance with Article 2(3) and (6) of the basic Regulation.

- (42) Normal value was constructed by adding the following to the average cost of production of the like product of the cooperating exporting producer during the review investigation period:
- (a) the weighted average selling, general and administrative ('SG&A') expenses incurred by the cooperating exporting producer on domestic sales of the like product, in the ordinary course of trade, during the review investigation period; and
 - (b) the weighted average profit realised by the cooperating exporting producer on domestic sales of the like product, in the ordinary course of trade, during the review investigation period.
- (43) The cost of production was adjusted, if necessary.
- (44) For the remaining two exporting producers which did not sell the like product for domestic consumption at all, the normal value had to be constructed pursuant to Article 2(3) of the basic Regulation.
- (45) The normal value was constructed by adding to the cost of manufacturing for each product type exported to the European Union a reasonable amount for SG&A and for profits.
- (46) For one of the two exporting producers which did not sell the like product for domestic consumption, in accordance with Article 2(6)(b) of the basic Regulation, the SG&A and profit were based on the actual amount applicable to production and sales in the ordinary course of trade of the same general category of products for the exporting producer in question in the domestic market.
- (47) For the other exporting producer, which neither sold the like product nor the same general category of products for domestic consumption, in accordance with Article 2(6)(c) of the basic Regulation, the SG&A and profit were established as the average of the SG&A and profit of the same general category of products calculated for the other two cooperating exporting producers. This methodology ensures that the amount for profit so established does not exceed the profit normally realised by other exporters on sales of products of the same general category in the domestic market, as required by Art 2(6)(c) of the basic Regulation.

3.1.2.2. *Export price*

- (48) All cooperating exporting producers exported the product under review directly to independent customers in the Union, during the review investigation period. Therefore, the export price was the price actually paid or payable for the product under review when sold for export to the Union, in accordance with Article 2(8) of the basic Regulation.

3.1.2.3. *Comparison*

- (49) The Commission compared the normal value and the export price of the exporting producers on an ex-works basis.
- (50) Where justified by the need to ensure a fair comparison, the Commission adjusted the normal value and/or the export price for differences affecting prices and price comparability, in accordance with Article 2(10) of the basic Regulation.
- (51) Adjustments were made to the export price for differences in transport costs, handling and loading costs, credit costs, bank charges and commissions, when applicable and duly justified.
- (52) The downward adjustments to the export price were within the range of 1 % to 2 % for transport costs, 0,5 % to 1,5 % for handling and loading costs, 0 % to 0,5 % for credit costs, 0 % to 0,5 % for bank charges and 0,5 % to 1,5 % for commissions.
- (53) Two exporting producers claimed a negative allowance (positive adjustment) on the export price for an alleged duty compensation, under 'Other factors', as provided for in Article 2(10)(k) of the basic Regulation. The exporting producers claimed that they receive this duty compensation from the Thai government when the product under review concerned is sold for export, including to the Union market.

- (54) The exporting producers could demonstrate that an amount equivalent to less than 0,5 % of the invoice value is paid to them. However, the exporting producers failed to demonstrate any link between the duty compensation received and import charges paid for any materials incorporated in the product under review exported. Therefore, the claims for a negative allowance under Article 2(10)(k) were rejected.
- (55) The downward adjustments to the normal value were within the range of 1 % to 2 % for transport costs and 0,5 % to 1 % for credit costs.
- (56) One exporting producer, claimed an adjustment to the normal value for differences in the cost of credit granted for domestic sales, calculated using a short term interest rate for commercial loans provided by a commercial bank in Thailand. The Commission noted that the rate claimed was the maximum theoretical rate chargeable and was applicable at a date before the start of the review investigation period. This was considerably higher than the actual interest rate payable under a comparable short-term loan agreement found in the financial statements applicable during the review investigation period. The Commission therefore adjusted the allowance claimed to base it on the actually applied interest rate for comparable transactions.
- (57) Two exporting producers claimed the use of a reduced profit margin, should the Commission construct normal value, to reflect the fact that branded sales (own brand) on the domestic market carry a higher profit margin than non-branded sales (i.e. not own brand, typically customer's brand) on the Union market.
- (58) In accordance with the original investigation, the Commission accepted these claims to the extent applicable and made an adjustment under Article 2(10)(d) of the basic Regulation. The details have been disclosed to the companies concerned.

3.1.2.4. *Dumping margins*

- (59) For the cooperating exporting producers, the Commission compared the weighted average normal value of each type of the like product with the weighted average export price of the corresponding type of the product under review, in accordance with Article 2(11) and (12) of the basic Regulation.
- (60) Following final disclosure, one cooperating exporting producer commented on the calculation of their dumping margin pointing to a possible clerical error. Considering those comments, the Commission revised its calculation to correct the clerical error and determined the revised dumping margin for that cooperating exporting producer. The Commission found that that exporting producer was not dumping during the review investigation period.
- (61) Following the additional final disclosure, with regard to correction of the clerical error, another cooperating exporting producer submitted comments, with regard to the impact of the revised calculation on its own dumping margin. Those comments were submitted late, four days after the deadline for comments, and no non-confidential version of the submission was provided. As such, the Commission could not formally consider the comments. In any event, the Commission found that the comments would not have had any impact on that exporting producer's previously disclosed dumping margin.
- (62) Indeed, despite the correction of the calculation error, for one exporting producer, the Commission's conclusion in relation to dumping for the country as a whole remains unchanged. That is because the other two cooperating exporting producers, which accounted for over 90 % of total imports of the product concerned to the Union from cooperating exporting producers, were found to be dumping during the review investigation period at significant levels.
- (63) The countrywide dumping margin, based on the weighted average dumping margin of all three cooperating exporting producers, expressed as a percentage of the CIF Union frontier price, duty unpaid, was above *de minimis* (4,3 %). The Commission therefore concluded that dumping continued during the review investigation period.

4. LIKELIHOOD OF CONTINUATION OF DUMPING

- (64) Further to the finding of the existence of dumping during the review investigation period, the Commission investigated, in accordance with Article 11(2) of the basic Regulation, the likelihood of continuation of dumping, should the measures be repealed. The following additional elements were analysed: the production capacity and spare capacity in Thailand and the relation between export prices to third countries and the price level in the Union.

4.1. Production capacity and spare capacity in Thailand

- (65) The information available to the Commission on production and spare capacity consists of the data submitted by the three cooperating Thai exporting producers, data submitted by the applicant in the request for review and additional information submitted by the applicant in the course of the proceeding.
- (66) One of the Thai producers, RKI, provided production and capacity figures separately for 'Semi-finished Goods' and 'Finished Goods'. The only difference between these categories of goods was that 'Finished Goods' had a label applied to the tins, whilst the 'Semi-finished Goods' had no label applied. The Commission considered the 'Semi-finished Goods' capacity as the most relevant figure to use for the product under review, since the Finished Goods capacity was calculated based on the current labelling machine usage time, which could be increased.
- (67) In addition, based on information obtained during the verification, the Commission considered that the yield percentage used in the calculation of the Semi-finished goods production capacity for RKI was too low and revised it upwards.
- (68) As a result, the Commission estimated the spare capacity available for the three cooperating exporting producers to be around 70 000 tonnes of the product under review for the review investigation period. As the three cooperating producers accounted for around 45 % of the estimated total processing capacity for all Thai producers mentioned in the request for review (300 000 tonnes), by extrapolation, the Commission estimated that the total spare capacity for all Thai producers would be about 150 000 tonnes. This represents over 40 % of the total Union consumption for the review investigation period and about 11 times the total Thai exports of the product under review to the Union in the review investigation period.
- (69) In addition, evidence provided by the applicant showed that volumes of raw sweet corn available for processing in 2018 were expected to be between 12,5 % and 25 % higher than in 2017. ⁽¹¹⁾ Furthermore, one non-cooperating Thai sweet corn producer, Sunsweet Public Company Limited, invested THB 170,6 million (around EUR 4,5 million) in 2018 on machines and equipment to increase production capacity and production efficiency. ⁽¹²⁾
- (70) The Commission therefore concluded that the Thai producers of sweet corn have extensive spare capacity available to increase exports to the Union market should the current anti-dumping measures lapse.

4.2. Relation between export prices to third countries and the price level in the Union

- (71) In order to establish the possible development of imports should the current anti-dumping measures lapse, the Commission considered the attractiveness of the Union market with regard to prices. Since over 85 % of the sales of the cooperating Thai exporting producers to the Union market were of large classic-opening cans, and around 42 % of Thai exports to third countries were also of large classic-opening cans the analysis focused on these product types.
- (72) A comparison of such sales on an ex-works basis, showed that prices to the Union market were around 20 % higher than prices of the same product type to third countries. Considering the significantly higher prices on the Union market, it is clear that it remains an attractive market for the Thai exporting producers. This finding is representative for all Thai exporters since, as mentioned in recital (21), the cooperating producers accounted for about 80 % of all Thai exports to the Union during the review investigation period.

⁽¹¹⁾ IEG Vu article dated 24.10.2018 in AETMD submission dated 29.3.2019, Annex 8.

⁽¹²⁾ AETMD submission dated 29.3.2019.

- (73) The Commission also noted that the exporting Thai producers, which are not cooperating in the investigation, were subject to higher anti-dumping duties on average than the companies which are cooperating in the investigation. There is therefore, a greater likelihood that those companies would increase exports to the Union market should the current anti-dumping measures be allowed to lapse.
- (74) The significant export volumes and market shares from Thailand during the original investigation period (41 973 tonnes, 12,7 %) and the continuing export of the product under review from Thailand to the Union market during the review investigation period (13 643 tonnes, 3,9 %), allow the Commission to conclude that the Union market is attractive for producers of the product under review in Thailand.
- (75) Following final disclosure, the Government of Thailand argued that export volumes from Thailand dropped significantly (-67 %) compared to the original investigation period. They also argued that given that, during the period considered, the Union industry's market share increased by 1 % while that of Thai exports to the Union remained stable at 3,9 %, there was no likelihood of continuation of dumping.
- (76) However, the Government of Thailand neither disputes the fact that the product under review was overwhelmingly sold at dumped prices to the Union, nor does it dispute that the exports of the product under review continued in significant quantities despite the measures in force. The Commission therefore maintains its finding of a likelihood of continuation of dumping.
- (77) Furthermore, the Government of Thailand alleged that the adjustment to the Thai production capacity, and consequently the spare production capacity referred to in recitals (66) to (70) was unjustified, without substantiating this claim. The Thai exporting producer whose production capacity was adjusted did not dispute the adjustment. The claim is therefore rejected.
- (78) The Government of Thailand further argued that since Thai export volumes only accounted for 0,9 % of the total spare capacity of cooperating Thai exporting producers, the Union market is allegedly no longer attractive to Thai exporting producers.
- (79) However, Thai export volumes were in fact around 9 % ⁽¹³⁾ of total Thai spare capacity. This confirms that the Thai exporting producers continue to export significant volumes to the Union despite the measures in force, and have substantial spare capacities to increase their exports of the product under review should measures lapse.
- (80) Consequently, should the current anti-dumping measures lapse, the imports from Thailand to the Union are likely to increase significantly and at dumped prices.

4.3. Conclusion

- (81) Accordingly, given in particular, the dumping margin established in the review investigation period, the significant spare capacity available in Thailand and the attractiveness of the Union market, the Commission concluded that a repeal of the measures would likely result in a continuation of dumping, and that dumped exports would enter the Union market in significant quantities. It is therefore, considered that there is a likelihood of continuation of dumping should the current anti-dumping measures be allowed to lapse.

5. INJURY

5.1. Definition of the Union industry and Union production

- (82) The like product was manufactured by approximately 20 producers in the Union during the period considered. They constitute the 'Union industry' within the meaning of Article 4(1) of the basic Regulation.
- (83) The total Union production during the review investigation period was established at around 376 000 tonnes, based on the information provided by the Union Industry. As indicated in recital (15), three Union producers were selected in the sample representing more than 60 % of the total Union production of the like product.

⁽¹³⁾ Exports of 13 643 tonnes of the product under review (see Table 2) compared to a total spare capacity of 150 000 tonnes.

5.2. Union consumption

- (84) The Commission established the Union consumption as a sum of Union industry's sales volume on the Union market and total imports into the Union obtained from the Comext database (Eurostat).
- (85) Throughout the period considered, the consumption in the Union slightly increased by 2 %.

Table 1

Union Consumption (tonnes)

	2015	2016	2017	RIP
Total consumption	343 325	347 950	354 821	348 682
Index (2015 = 100)	100	101	103	102

Source: Eurostat, data submitted by the Union industry and verified questionnaire replies

5.3. Imports from the country concerned

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

- (86) The Commission established the volume of imports from Thailand into the Union on the basis of data from the Comext database (Eurostat) and the market share of the imports by comparing these import volumes with the Union consumption as shown in Table 1.
- (87) Imports of the product under review into the Union from Thailand increased by 3 %, from 13 307 tonnes in 2015 to around 13 643 tonnes in the review investigation period, following the 12 % decrease in 2016.

Table 2

Union import volume from Thailand (tonnes)

	2015	2016	2017	RIP
Volume of import from Thailand	13 307	11 674	12 341	13 643
Index (2015 = 100)	100	88	93	103

Source: Eurostat

- (88) The corresponding market share held by Thai exporters on the Union market developed in a similar manner as the import volumes and amounted to 3,9 % in the review investigation period.

Table 3

Market share of import from Thailand (%)

	2015	2016	2017	RIP
Share of import from Thailand	3,9	3,4	3,5	3,9
Index (2015 = 100)	100	87	90	100

Source: Eurostat, data submitted by the Union industry and verified questionnaire replies

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

- (89) The Commission established the prices of imports on the basis of data from the Comext database (Eurostat).
- (90) The average import prices of the product under review from Thailand decreased by 15 % in the period considered.

Table 4

Average import price from Thailand (EUR/tonne)

	2015	2016	2017	RIP
Import price from Thailand	929	913	869	786
Index (2015 = 100)	100	98	94	85

Source: Eurostat

- (91) The Commission determined the price undercutting during the review investigation period by comparing:
- (a) the weighted average sales prices per product type of the sampled Union producers charged to unrelated customers on the Union market, adjusted to an ex-works level; and
 - (b) the corresponding weighted average prices per product type of the imports from the sampled cooperating Thai producers to the first independent customer on the Union market, established on a cost, insurance, freight (CIF) basis, with appropriate adjustments for conventional customs duties and importation costs including unloading and customs clearance.
- (92) The price comparison was made on a product type basis for transactions at the same level of trade, duly adjusted where necessary, and after deduction of rebates and discounts. The result of the comparison was expressed as a percentage of the sampled Union producers' turnover during the review investigation period. It showed a weighted average undercutting margin of between -0,7 % and 4,25 % by the imports from the country concerned on the Union market. Around 79 % of import volumes from sampled exporting producers in Thailand were undercutting Union industry prices.

5.4. Imports from third countries other than Thailand

- (93) The imports of sweetcorn from third countries other than Thailand were mainly from the United States of America and the People's Republic of China ('China').
- (94) The market share of imports from other third countries decreased from 2,2 % to 1,2 % over the period considered. Individual market share of the two biggest exporting countries other than Thailand remained under 1 %.

Table 5

Imports market share

	2015	2016	2017	RIP
USA	0,9 %	0,8 %	0,6 %	0,6 %
China	0,6 %	0,4 %	0,3 %	0,4 %
Other countries	0,7 %	0,5 %	0,2 %	0,2 %
Total	2,2 %	1,7 %	1,1 %	1,2 %
Index (2015 = 100)	100	79	52	55

Source: Eurostat

5.5. Economic situation of the Union industry**5.5.1. General remarks**

- (95) In accordance with Article 3(5) of the basic Regulation, the examination of the impact of the dumped imports on the Union industry included an evaluation of all economic indicators having a bearing on the state of the Union industry during the period considered.

- (96) This market is, inter alia, characterised by two sales channels, i.e. sales under the producer's own brand and sales under retailers' brand. Sale under the first channel, as compared to the second channel, will usually trigger higher selling costs, in particular to cover marketing and advertising, and will also command higher selling price.
- (97) The investigation evidenced that all competing imports from the sampled Thai exporting producers pertained to the second channel, i.e. the retailers' brand channel. Therefore, it was considered appropriate to distinguish, in the injury analysis, between the Union industry's sales under its own brand and under the retailers' brand wherever relevant, as dumped imports compete with the Union industry's like products sold under the retailers' brand. This distinction was made in particular for the determination of sales volumes, sales prices and profitability. However, for the sake of completeness, totals (including both own brand and retailers' brand) are also shown and analysed in Tables 9, 13 and 16. During the review investigation period, the Union industry's sales under the retailers' brand accounted for around 67 % of the total Union industry's sales volume and around 57 % of their sales value.
- (98) Given that in the Union sweetcorn is only processed during the summer months, a number of injury indicators are virtually identical for 2017 and the review investigation period (1 July 2017 to 30 June 2018). This applies in particular to production and production capacity.
- (99) As mentioned in recital (14), sampling was used for the assessment of the economic situation of the Union industry.
- (100) For the injury determination, the Commission distinguished between macroeconomic and microeconomic injury indicators. The Commission evaluated the macroeconomic indicators on the basis of data submitted by the Union industry and the verified questionnaire replies from the sampled Union producers.
- (101) The Commission evaluated the microeconomic indicators on the basis of data contained in the questionnaire replies from the sampled Union producers.
- (102) Both sets of data were found to be representative of the economic situation of the Union industry.
- (103) The macroeconomic indicators are: production, production capacity, capacity utilisation, sales volume, market share, growth, employment, productivity, magnitude of the dumping margin and recovery from past dumping.
- (104) The microeconomic indicators are: average unit prices, unit cost, labour costs, inventories, profitability, cash flow, investments, return on investments, and ability to raise capital.

5.5.2. Macroeconomic indicators

5.5.2.1. Production, production capacity and capacity utilisation

- (105) From a level of around 359 000 tonnes in 2015, the Union industry's production increased by 5 % during the period considered.

Table 6

Union production

	2015	2016	2017	RIP
Production (tonnes)	359 250	343 539	376 337	376 437
Index (2015 = 100)	100	96	105	105

Source: Data submitted by the Union industry and verified questionnaire replies

- (106) Production capacity remained stable over the period considered.

Table 7

Union production capacity

	2015	2016	2017	RIP
Capacity (tonnes)	465 311	465 370	465 876	465 876
Index (2015 = 100)	100	100	100	100

Source: Data submitted by the Union industry and verified questionnaire replies

- (107) Capacity utilisation followed the same trend as the production, it increased by 5 % during the period considered to 81 %.

Table 8

Union capacity utilisation

	2015	2016	2017	RIP
Capacity utilisation (%)	77	74	81	81
Index (2015 = 100)	100	96	105	105

Source: Data submitted by the Union industry and verified questionnaire replies

5.5.2.2. Sales volume and market share

- (108) The sales of the Union industry of its production intended for the retailers' brand on the Union market to unrelated customers increased by 3 % in the review investigation period.

Table 9

Union sales volume

	2015	2016	2017	RIP
Union sales volume (retailers' brand) to unrelated customers tonnes	214 495	219 646	225 522	220 839
Index (2015 = 100)	100	102	105	103
Union sales volume (own and retailers' brand) to unrelated customers tonnes	322 501	330 246	338 455	330 875
Index (2015 = 100)	100	102	105	103

Source: Data submitted by the Union industry and verified questionnaire replies

- (109) The total (both own and retailers' brands) Union industry's sales of its production on the Union market to unrelated customers followed the same pattern as the retailers' brand sales, i.e. it increased by 3 % in during the period considered.
- (110) The market share held by the Union industry was 94 % in 2015 and it increased by one percentage point to 95 % in the review investigation period.

Table 10

Union market share

	2015	2016	2017	RIP
Market share of the Union industry (own and retailers' brand) (%)	94	95	95	95
Index (2015 = 100)	100	101	101	101

Source: Data submitted by the Union industry and verified questionnaire replies

5.5.2.3. *Growth*

- (111) Between 2015 and the review investigation period, the Union consumption slightly increased by 2 % but the Union industry managed to increase their market share by 1 % through higher sales.

5.5.2.4. *Employment and productivity*

- (112) The employment level of the Union industry first decreased by 11 % between 2015 and 2017 and then increased by 6 percentage points in the review investigation period. Overall, employment of the Union industry decreased by 5 % over the period considered, from around 2 200 to around 2 100 full time equivalents ('FTE').

Table 11

Employment

	2015	2016	2017	RIP
Employment in FTE	2 203	1 993	1 964	2 092
Index (2015 = 100)	100	90	89	95

Source: Data submitted by the Union industry and verified questionnaire replies

- (113) Productivity of the Union industry's workforce, measured as output (tonnes) per FTE per year, started from a level of 163 tonnes per FTE first increased by 17 % between 2015 and 2017, then decreased by 7 percentage points in the review investigation period. Overall, productivity increased by 10 % to 180 tonnes per FTE per year. This reflects the increased usage of advanced machinery at the expense of manual labour.

Table 12

Union productivity

	2015	2016	2017	RIP
Productivity (tonnes/FTE)	163	172	192	180
Index (2015 = 100)	100	106	117	110

Source: Data submitted by the Union industry and verified questionnaire replies

5.5.2.5. *Magnitude of the dumping margin and recovery from past dumping*

- (114) The investigation has established the continuation of dumping, and that the magnitude of the countrywide margin of dumping as shown in recital (63) is above the *de minimis* level.

- (115) At the same time, the level of imports of the product under review during the review investigation period, while being relatively limited, remained significant at 3,9 %.
- (116) The macro- and micro-indicators examined show that, although the anti-dumping measures have partially achieved their intended result of removing the injury suffered by the Union producers, the industry is still under continuous pressure due to the low prices charged by the Thai exporting producers.
- (117) Indeed the performance on the retailers' segment, which is in direct competition with the Thai imports, is poor in terms of profitability. Sales prices of the Union industry in this market segment decreased by 8 % over the period considered, whereas production costs increased by about 1 % over the same period. Clearly, the Union industry has not been in a position to recover its costs, which resulted in significant losses. Given the importance of the retailers' brand in the Union industry's sweetcorn business (around 67 % of the total Union industry's sales volume and around 57 % of sales value) this has weighted on the overall profitability. Thus, no actual recovery from the past dumping in the retailers' segment could be established and it is considered that the Union industry remains vulnerable.

5.5.3. Microeconomic indicators

5.5.3.1. Prices and factors affecting prices

- (118) Unit prices for Union industry's sales of retailers' brand products to unrelated customers decreased over the period considered by 8 % to EUR 1 114/tonne.
- (119) The Union industry's sales prices on the Union market for both own and retailers' brand to unrelated customers decreased by 4 % over the period considered to EUR 1 311/tonne.

Table 13

Unit price in the Union market

	2015	2016	2017	RIP
Union unit price (retailers' brand) to unrelated customers (EUR/tonne)	1 204	1 106	1 095	1 114
<i>Index (2015 = 100)</i>	100	92	91	92
Union unit price (own and retailers' brand) to unrelated customers (EUR/tonne)	1 365	1 291	1 289	1 311
<i>Index (2015 = 100)</i>	100	95	94	96

Source: Data submitted by the Union industry and verified questionnaire replies

5.5.3.2. Labour costs

- (120) Between 2015 and the review investigation period, average labour costs per employee increased by 8 %, due to higher total labour costs by 2 % and lower employment in FTE by 5 % in the same period.

Table 14

Average labour costs per employee

	2015	2016	2017	RIP
Labour costs (EUR/FTE)	30 529	32 581	35 537	32 903
Index (2015 = 100)	100	107	116	108

Source: Data submitted by the Union industry and verified questionnaire replies.
FTE is a full time equivalent.

5.5.3.3. *Inventories*

- (121) The level of closing stocks of the Union industry has been decreasing over the period considered. It decreased by 6 % in 2016 and 2017 and by 59 % in the review investigation period. However, it should be noted that the high level of inventories at the end of a calendar years is linked to the fact that the harvest and the canning typically end in September each year. Stocks are therefore replenished only during the summer harvest and then used up throughout the year, therefore the stock levels in the review investigation period need to be assessed separately.

Table 15

Inventories

	2015	2016	2017	RIP
Closing stock (tonnes)	198 629	186 248	186 136	80 885
Index (2015 = 100)	100	94	94	41

Source: Data submitted by the Union industry and verified questionnaire replies

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

- (122) During the period considered, the profitability of the Union industry's sales of products intended for retailers' brand, expressed as a percentage of net sales, declined from a profit of 5,2 % in 2015 to a loss of 0,7 % in the review investigation period.
- (123) The profitability of the Union industry's sales of the products intended for both own and retailers' brands also declined from 10 % in 2015 to 6,7 % in the review investigation period. The decline is thus less steep than for sales under retailers' brand alone. The decrease in profitability is explained by the fact that sales prices over the period considered decreased by 4 %, whereas production costs (predominantly unprocessed sweetcorn and cans) increased by 1 % over the same period. Clearly, the Union industry has not been in a position to pass on the increased production costs to its customers.
- (124) The return on investments ('ROI'), expressed as the profit (for both own and retailers' brand) as a percentage of the net book value of investments, broadly followed the profitability trend. It declined from a level of around 49 % in 2015 to 31,7 % in the review investigation period, thus decreasing by 35 % over the period considered.
- (125) The net cash flow from operating activities stood at around EUR 17 million in 2015. It increased to around EUR 24 million in the review investigation period (i.e. increase by 42 %). None of the sampled Union producers indicated that they experienced difficulties to raise capital.

Table 16

Profitability and return on investment

	2015	2016	2017	RIP
Union profitability (retailers' brand) (% of net sales)	5,2	-1,4	-2,6	-0,7
<i>Index (2015 = 100)</i>	100	-27	-50	-13
Union profitability (own and retailers' brand) (% of net sales)	10,0	6,1	4,8	6,7
<i>Index (2015 = 100)</i>	100	61	48	67
ROI (own and retailers' brand)(profit in % of the net book value of invest- ment)	49,0	27,3	23,7	31,7
<i>Index (2015 = 100)</i>	100	56	48	65

Source: Data submitted by the Union industry and verified questionnaire replies

Table 17

Cash flow

	2015	2016	2017	RIP
Cash flow (own and retailers' brand) (EUR)	17 197 966	32 293 239	16 496 604	24 404 977
<i>Index (2015 = 100)</i>	100	188	96	142

Source: Data submitted by the Union industry and verified questionnaire replies

- (126) The Union industry's annual investments in the production of the like product increased steadily over the period considered from around EUR 4 million in 2015 to around EUR 8 million in the review investigation period, i.e. they increased by 85 %. The investments were made for the renewal of existing equipment and productivity increase.

Table 18

Investments

	2015	2016	2017	RIP
Net investments (EUR)	4 446 615	5 622 002	7 744 202	8 232 340
<i>Index (2015 = 100)</i>	100	126	174	185

Source: Data submitted by the Union industry and verified questionnaire replies

5.6. Conclusion on the situation of the Union industry

- (127) A number of indicators developed negatively between 2015 and the review investigation period. Return on investments declined as did the profitability of sales, employment decreased by 5 %. Imports from Thailand increased with a declining average price. Extremely good crop yields in 2014 resulted in high stock levels in 2015. During the same period low-priced Thai imports negatively affected Union industry even more. In reaction, the Union industry decreased prices and production in 2016 along with de-stocking, which affected negatively their profitability. Only in 2017 the Union industry could increase production but the profitability hit the lowest level given the production and sales delay of one calendar year.
- (128) Union industry's sales of sweetcorn in retailers' brand segment were loss-making during the majority of the period considered. The industry needs the retailer-branded sales, since they account for more than half of their sales. Given the significance of the retailer-branded sales in the total sales value, the overall profitability decreased from 10 % to 6,7 %.
- (129) Some indicators marked positive development. Capacity utilisation increased to 81 %. Cash flow and investments also increased significantly. The volume of the Union industry's retailer-branded sales, which are in direct competition with Thai imports, increased by 3 %. Total sales for both segments combined increased by the same percentage. It should be however noted that the Thai imports prevented the Union industry to pass on cost increases to customers and the Union industry was therefore not able to reach satisfactory profitability levels in order to maintain a substantial market share on a market where only the Union industry and Thai imports compete as the imports from other third countries are dispersed and insignificant.
- (130) The two segments (retailers' brand and own brand) show different situation of the Union industry. On one hand, in the own-branded segment the Union industry does not face strong direct competition. The power of brand owners is strong and the market is consolidated. On the other hand, the retailers are price setters in the retailers' brand segment. Due to the competition from the Thai imports, prices are constantly under pressure. As a result, it is more difficult for the Union producers to pass on production cost increases (mainly sweetcorn and cans) to retailers due to the price pressure exercised by Thai imports.
- (131) Seemingly, the Union industry has been able to increase its market share by favouring volumes over prices. However, it cannot be ignored that for a majority of the period considered and majority of its sweetcorn business (retailers' brand) the Union industry has been loss-making.
- (132) Following final disclosure the Government of Thailand and two exporting producers argued that there was a potential threat coming from the increased volume of sweetcorn imports from China with lower import prices rather than from Thai imports.
- (133) While Chinese imports have lower average price, import volumes during the review investigation period were still negligible (0,4 % market share), therefore those imports were not considered in the injury assessment. This claim was rejected.
- (134) The Government of Thailand and the two exporting producers further argued that the underperformance of the Union industry was due to particular weather conditions in Europe in 2018. The two exporting producers made reference to a press article ⁽¹⁴⁾ about the 2018 corn crop harvest. The Commission notes firstly that the 2018 sweetcorn harvest does not affect Union industry's results in the period considered (ending in June 2018) — as the sales till June 2018 are based on the harvest of the previous year. Secondly, the article is not relevant because corn as opposed to sweetcorn is a different plant which is not used to produce the product under review.
- (135) The Union industry claimed that the injury assessment should distinguish large cans sold under retailers brand segment, where Thai exporting producers had between 20 % and 30 % market share and the Union industry suffered low profitability and material injury.

⁽¹⁴⁾ https://www.lemonde.fr/economie/article/2018/10/20/la-roumanie-vampirise-le-marche-europeen-du-mais_5372297_3234.html?xtmc=dracula&xtcr=1

- (136) As mentioned in recital (96), the sweetcorn market is characterised by two sales channels, retailers' brand channel and own brand. In accordance with Article 11(9) of the basic Regulation, and as was done in the original investigation which led to the duty, the injury assessment was based on the Union industry's overall performance (own brand + retailers' brand) as well as, for a number of injury indicators (profitability, sales volume and sales prices) on the retailers' brand. There are no changed circumstances which would justify using a different methodology. Therefore, the claim was rejected.
- (137) The injury picture of the Union industry is mixed. The anti-dumping measures have partially achieved their objective by removing some of the injury suffered by the Union industry as a consequence of dumped imports from Thailand. However, on balance, in particular taking into account the low profitability, the situation of the Union industry is still vulnerable and fragile.
- (138) Consequently, the Commission concluded that while the Union industry did suffer some injury during the review investigation period, it could not be considered material injury within the meaning of Article 3(5) of the basic Regulation.

6. LIKELIHOOD OF RECURRENCE OF INJURY

- (139) The Commission concluded in recital (138) that the Union industry did not suffer material injury during the review investigation period. Therefore, the Commission assessed, in accordance with Article 11(2) of the basic Regulation, whether there would be a likelihood of recurrence of injury from the dumped imports from Thailand if the measures were allowed to lapse. On the basis of the above-described trends, it appears that the anti-dumping measures have partially achieved their intended result of removing injury suffered by the Union producers. However, as evidenced by negative development of a number of injury indicators, the Union industry is still in a vulnerable and fragile situation.
- (140) In that regard, the Commission examined the production capacity and spare capacity in the country concerned, attractiveness of the Union market and the impact of imports from the country concerned on the situation of the Union industry should the measures be allowed to lapse.

6.1. Spare production/processing capacity

- (141) As mentioned in recitals (68) - (70), Thai exporters do have significant spare capacity to increase their exports rapidly. In addition, Thai spare processing capacity is estimated around 150 000 tonnes, which is approximately 10 times the Thai export volume to the Union.

6.2. Attractiveness of the Union market

- (142) Given the more lucrative prices on the Union market compared to third country markets as described in recital (72), it is likely that significant quantities currently exported to those countries would be re-directed to the Union market in the event of the anti-dumping measures being allowed to lapse.
- (143) On that basis, in the absence of measures, Thai producers would likely intensely increase their presence in the Union market in terms of both volume and market share and at dumped prices that would exert increased price pressure on the Union industry's sales prices.

6.3. Impact on the Union industry

- (144) With the likely arrival of large quantities of Thai imports undercutting the prices, the Union industry would be forced to reduce its production or lower its prices. Even low undercutting have significant impact on the profitability of the Union industry, as shown in the analysis of the retailers' brand in recitals (122) and (123).

- (145) Given the fragility of the Union industry, decreases in production volumes and sales prices would cause a very quick deterioration of its profitability and other performance indicators.

6.4. Conclusion on likelihood of recurrence of injury

- (146) On the basis of the above, it can be concluded that there is a likelihood of recurrence of material injury should the current anti-dumping measures lapse.
- (147) Two exporting producers commented that there is no likelihood of recurrence of material injury because the Commission did not present sufficient factual evidence of it, mainly because the Union market is not the main and preferred market for the product under review and the existing economic indicators show positive developments. This issue was also raised by the Government of Thailand.
- (148) The evidence of likelihood of recurrence of injury is detailed in recitals (139) to (145), where the Commission conducted a prospective assessment to assess the likelihood of recurrence of injury. Such an analysis is not exclusively based on the current situation regarding the main and preferred market for the product under review and Union industry performance, but it considers the likely situation in the Union market should the anti-dumping measures be repealed. Thus, this claim was rejected.

7. UNION INTEREST

- (149) In accordance with Article 21 of the basic Regulation, the Commission examined whether maintaining the existing anti-dumping measures would be against the interest of the Union as whole. The determination of the Union interest was based on an appreciation of all the various interests involved. All interested parties were given the opportunity to make their views known in accordance with Article 21(2) of the basic Regulation.

7.1. Interest of the Union industry

- (150) As mentioned in recital (139), the Union industry is still in a fragile and vulnerable situation. It could use the relief provided by the continuation of the measures to increase its sales prices (in particular for the retailers' brand) in order to recover its increased production costs. This would allow the Union industry to improve its financial situation.

7.2. Interest of retailers and consumers

- (151) In the previous expiry review investigation, it was concluded that retailers would not be disproportionately affected, even if measures were to be extended.
- (152) In the current investigation the Commission did not find any evidence suggesting that this has changed since the previous expiry review. No retailer cooperated with the investigation nor claimed that this conclusion was no longer valid. Accordingly, the Commission concluded that the measures currently in force had no substantial negative effect on the financial situation of retailers and that the continuation of the measures would not unduly affect them.
- (153) As far as consumers are concerned, the average spending in sweetcorn per household is very limited. Taking into account the moderate level of the current measures, the effects of the continued imposition of measures would likely be negligible for consumers.
- (154) Therefore, it is therefore considered that the situation of retailers and of consumers in the Union is unlikely to be substantially affected by the proposed measures.

7.3. Risk of supply shortages/competition on the Union market

- (155) The consumption in the Union remained stable at around 365 000 tonnes. The Union industry's capacity has continuously exceeded Union's demand over the period considered, reaching a level of around 466 000 tonnes in the review investigation period. It appears that the Union industry has a spare capacity to increase their production in the event of increased demand. Imports from other third countries, in particular the United States and China, can also satisfy part of the demand. Indeed, the anti-dumping measures are not intended to stop the imports from Thailand into the Union. Taking into account the low level of the anti-dumping duty, it is expected that the Thai imports will continue to account for a certain share on the Union market.
- (156) Given the above considerations, it cannot be concluded that maintaining the anti-dumping measures would likely result in a shortage of supply on the Union market or a restriction of competition on the Union market.

7.4. Conclusion on Union interest

- (157) Consequently, the Commission concluded that there were no compelling reasons of the Union interest against maintaining the existing measures on imports of the product under review.

8. ANTI-DUMPING MEASURES

- (158) On the basis of the conclusions reached by the Commission on continuation of dumping, recurrence of injury and Union interest, the anti-dumping measures on certain prepared or preserved sweetcorn in kernels originating in Thailand should be maintained.
- (159) All interested parties were informed of the essential facts and considerations on the basis of which it was intended to recommend that the existing measures be maintained. They were also granted a period to make representations subsequent to this disclosure and to request a hearing with the Commission and/or the Hearing Officer in trade proceedings. The submissions and comments were duly taken into consideration where warranted.
- (160) In view of Article 109 of Regulation (EU, Euratom) 2018/1046 ⁽¹⁵⁾, when an amount is to be reimbursed following a judgment of the Court of Justice of the European Union, the interest to be paid should be the rate applied by the European Central Bank to its principal refinancing operations, as published in the C series of the *Official Journal of the European Union* on the first calendar day of each month.
- (161) The Committee established by Article 15(1) of Regulation (EU) 2016/1036 did not deliver an opinion,

HAS ADOPTED THIS REGULATION:

Article 1

1. A definitive anti-dumping duty is imposed on imports of sweetcorn (*Zea mays var. saccharata*) in kernels, prepared or preserved by vinegar or acetic acid, not frozen, currently falling under CN code ex 2001 90 30 (TARIC code 2001 90 30 10), and sweetcorn (*Zea mays var. saccharata*) in kernels prepared or preserved otherwise than by vinegar or acetic acid, not frozen, other than products of heading 2006, currently falling under CN code ex 2005 80 00 (TARIC code 2005 80 00 10) originating in the Kingdom of Thailand.
2. The rates of the definitive anti-dumping duty applicable to the net, free-at-Union-frontier price, before duty, of the product described in paragraph 1 and manufactured by the companies listed below, shall be as follows:

⁽¹⁵⁾ Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council of 18 July 2018 on the financial rules applicable to the general budget of the Union, amending Regulations (EU) No 1296/2013, (EU) No 1301/2013, (EU) No 1303/2013, (EU) No 1304/2013, (EU) No 1309/2013, (EU) No 1316/2013, (EU) No 223/2014, (EU) No 283/2014, and Decision No 541/2014/EU and repealing Regulation (EU, Euratom) No 966/2012 (OJ L 193, 30.7.2018, p. 1).

Company	Anti-dumping duty (%)	TARIC additional code
Karn Corn Co Ltd, 68 Moo 7 Tambol Saentor, Thamaka, Kanchanaburi 711 30, Thailand	3,1	A789
Kuiburi Fruit Canning Co., Ltd, 236 Krung Thon Muang Kaew Building, Sirindhorn Rd., Bangplad, Bangkok 10700, Thailand	14,3	A890
Malee Sampran Public Co., Ltd Abico Bldg. 401/1 Phaholyothin Rd., Lumlookka, Pathumthani 12130, Thailand	12,8	A790
River Kwai International Food Industry Co., Ltd, 99 Moo 1 Thanamtuen Khaupoon Road Kaengsian, Muang, Kanchanaburi 71000 Thailand	12,8	A791
Sun Sweet Co., Ltd, 9 M. 1, Sanpatong, Chiang Mai 50120, Thailand	11,1	A792
Cooperating exporting producers listed in the Annex	12,9	A793
All other companies	14,3	A999

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

Article 2

Article 1(2) may be amended in order to include a new exporting producer and to attribute to that producer the weighted average anti-dumping duty rate applicable to the cooperating companies not included in the sample of the original investigation, where a new exporting producer in Thailand provides sufficient evidence to the Commission that:

- (a) it did not export to the Union the product described in paragraph 1 in the period between 1 January 2005 and 31 December 2005 (original investigation period);
- (b) it is not related to any exporter or producer in Thailand which is subject to the anti-dumping measures imposed by this Regulation; and
- (c) it has either actually exported to the Union the product under review or it has entered into an irrevocable contractual obligation to export a significant quantity to the Union after the end of the original investigation period.

Article 3

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

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

Done at Brussels, 28 November 2019.

For the Commission
The President
Jean-Claude JUNCKER

ANNEX

List of the cooperating exporting producers referred to in Article 1(2) under TARIC additional code A793

Name	Address
Agro-On (Thailand) Co., Ltd	50/499-500 Moo 6 Baan Mai, Pakkret, Monthaburi 11120, Thailand
B.N.H. Canning Co., Ltd	425/6-7 Sathorn Place Bldg., Klongtonnesai, Kongsan Bangkok 10600, Thailand
Boonsith Enterprise Co., Ltd	7/4 M.2, Soi Chomthong 13, Chomthong Rd., Chomthong, Bangkok 10150, Thailand
Erawan Food Public Company Limited	Panjathani Tower 16th floor, 127/21 Nonsee Rd., Chongnonsee, Yannawa, Bangkok 10120, Thailand
Great Oriental Food Products Co., Ltd	888/127 Panuch Village Soi Thanaphol 2, Samsen-Nok, Huaykwang, Bangkok 10310, Thailand
Lampang Food Products Co., Ltd	22K Building, Soi Sukhumvit 35, Klongton Nua, Wattana, Bangkok 10110, Thailand
O.V. International Import-Export Co., Ltd	121/320 Soi Ekachai 66/6, Bangborn, Bangkok 10500, Thailand
Pan Inter Foods Co., Ltd	400 Sunphavuth Rd, Bangna, Bangkok 10260, Thailand
Siam Food Products Public Co., Ltd	3195/14 Rama IV Road, Vibulthani Tower 1, 9th Fl., Klong Toey, Bangkok, 10110 Thailand
Viriyah Food Processing Co., Ltd	100/48 Vongvanij B Bldg, 18th Fl, Praram 9 Rd., Huay Kwang, Bangkok 10310 Thailand
Vita Food Factory (1989) Ltd	89 Arunammarin Rd., Banyikhan, Bangplad, Bangkok 10700, Thailand

COMMISSION IMPLEMENTING REGULATION (EU) 2019/1997**of 29 November 2019**

reopening the investigation following the judgment of 19 September 2019, in Case C-251/18 Trace Sport SAS, with regard to Council Implementing Regulation (EU) No 501/2013 of 29 May 2013 extending the definitive anti-dumping duty imposed by Implementing Regulation (EU) No 990/2011 on imports of bicycles originating in the People's Republic of China to imports of bicycles consigned from Indonesia, Malaysia, Sri Lanka and Tunisia, whether declared as originating in Indonesia, Malaysia, Sri Lanka and Tunisia or not

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 266 thereof,

Having regard to Regulation (EU) 2016/1036 of the European Parliament and of the Council of 8 June 2016 on protection against dumped imports from countries not members of the European Union ⁽¹⁾ ('the basic Regulation') and in particular Article 13 thereof,

Whereas:

1. PROCEDURE

- (1) On 26 September 2012, the Commission, by way of Regulation (EU) No 875/2012 ⁽²⁾, initiated an investigation concerning the possible circumvention of the anti-dumping measures imposed by Council Implementing Regulation (EU) No 990/2011 on imports of bicycles originating in the People's Republic of China ('the PRC') following an expiry review pursuant to Article 11(2) of Regulation (EC) No 1225/2009.
- (2) On 5 June 2013, the Council extended the anti-dumping duty imposed by Council Implementing Regulation (EU) No 990/2011 to imports of bicycles consigned from Indonesia, Malaysia, Sri Lanka and Tunisia, whether declared as originating in Indonesia, Malaysia, Sri Lanka and Tunisia or not, by Council Implementing Regulation (EU) No 501/2013 of 29 May 2013 ⁽³⁾ (the 'contested regulation').
- (3) By its judgment of 19 March 2015, in Case T-413/13 City Cycle Industries v Council, the General Court of the European Union annulled Article 1(1) and (3) of Council Implementing Regulation (EU) No 501/2013, in so far as that regulation concerns City Cycle Industries ('City Cycle').
- (4) The General Court firstly analysed, in paragraphs 82 to 97 of that judgment, the evidence communicated by City Cycle during the investigation. It concluded that that evidence did not show that City Cycle was in fact a bicycle exporter of Sri Lankan origin or that it met the criteria laid down in Article 13(2) of the basic Regulation. In the second place, in paragraph 98 of the judgment under appeal, the General Court nonetheless held that the Council had no evidence from which it could properly conclude, in recital 78 of the regulation at issue, that City Cycle was involved in transshipment operations. In the third place, in paragraph 99 of the judgment under appeal, the General Court stated that it could not be ruled out that the practices, processes or work for which there was insufficient due cause or economic justification other than the imposition of the initial anti-dumping duty, within the meaning of the second subparagraph of Article 13(1) of the basic Regulation, included City Cycle's engagement in transshipment operations.
- (5) On 26 January 2017, the appeals brought forward against the judgment of the General Court of 19 March 2015, were dismissed by judgment of the Court of Justice in Joined Cases C-248/15P, C-254/15P and C-260/15P ⁽⁴⁾, City Cycle Industries v Council.

⁽¹⁾ OJ L 176, 30.6.2016, p. 21.

⁽²⁾ Commission Regulation (EU) No 875/2012 of 25 September 2012 initiating an investigation concerning the possible circumvention of anti-dumping measures imposed by Council Implementing Regulation (EU) No 990/2011 on imports of bicycles originating in the People's Republic of China by imports of bicycles consigned from Indonesia, Malaysia, Sri Lanka and Tunisia, whether declared as originating in Indonesia, Malaysia, Sri Lanka and Tunisia or not, and making such imports subject to registration (OJ L 258, 26.9.2012, p. 21).

⁽³⁾ Council Implementing Regulation (EU) No 501/2013 of 29 May 2013 extending the definitive anti-dumping duty imposed by Implementing Regulation (EU) No 990/2011 on imports of bicycles originating in the People's Republic of China to imports of bicycles consigned from Indonesia, Malaysia, Sri Lanka and Tunisia, whether declared as originating in Indonesia, Malaysia, Sri Lanka and Tunisia or not (OJ L 153, 5.6.2013, p. 1).

⁽⁴⁾ Joined Cases C-248/15P (appeal submitted by the Union industry), C-254/15P (appeal submitted by the European Commission) and C-260/15 P (appeal submitted by the Council of the European Union).

- (6) Following that judgment of the Court of Justice, the Commission partially reopened the anti-circumvention investigation concerning imports of bicycles consigned from Sri Lanka, whether declared as originating in Sri Lanka or not that led to the adoption of the contested Regulation and resumed it at the point at which the irregularity occurred. The reopening was limited in scope to the implementation of the judgment of the Court of Justice with regard to City Cycle. As a result of this reopening the Commission adopted Implementing Regulation (EU) 2018/28 of 9 January 2018 re-imposing a definitive anti-dumping duty on imports of bicycles whether declared as originating in Sri Lanka or not from City Cycle Industries.
- (7) On 19 September 2019 in the context of a preliminary reference request made by the Rechtbank Noord-Holland, the Court of Justice ruled in Case C-251/18 Trace Sport SAS that Council Implementing Regulation (EU) No 501/2013 is invalid in so far as it concerns imports of bicycles shipped from Sri Lanka, whether declared as originating in Sri Lanka or not. The Court of Justice concluded that Council Implementing Regulation (EU) No 501/2013 did not contain any individual analysis of circumvention practices in which Kelani Cycles and Creative Cycles may have been engaged. The Court of Justice found that the conclusion as to the existence of transshipment operations in Sri Lanka could not legally be based only on the two findings expressly made by the Council, that is, first, that there had been a change in the pattern of trade between the Union and Sri Lanka and, second, that some of the exporting producers had failed to cooperate. On this basis the Court of Justice declared Council Implementing Regulation (EU) No 501/2013 invalid in so far as it concerns imports of bicycles shipped from Sri Lanka, whether or not declared as originating in that country.
- (8) In accordance with Article 266 of the Treaty on the Functioning of the European Union, the Union's institutions must take the necessary steps to comply with the judgment of the Court of Justice of the European Union.
- (9) It follows from the case-law that where a judgment of the Court of Justice annuls a regulation imposing anti-dumping duties or declares such a regulation to be invalid, the institution called upon to take such measures for the purpose of implementing that judgment does have the option of resuming the proceeding at the origin of that regulation, even if that option is not expressly set out in the applicable legislation ⁽⁵⁾.
- (10) Furthermore, except where the irregularity found has vitiated the entire proceeding with illegality, the institution concerned has the option, in order to adopt an act intended to replace the act that has been annulled or declared invalid, to resume that proceeding only at the stage when the irregularity was committed ⁽⁶⁾. That implies in particular that in a situation where an act concluding an administrative procedure is annulled, that annulment does not necessarily affect the preparatory acts, such as the initiation of the anti-circumvention procedure by Commission Regulation (EU) No 875/2012.
- (11) Thus, the Commission has the possibility to remedy the aspects of Council Implementing Regulation (EU) No 501/2013 which led to its declaration of invalidity, leaving those parts which were not affected by the judgment of the Court unaffected. ⁽⁷⁾
- (12) The Commission has therefore decided to reopen the anti-circumvention investigation in order to correct the illegality identified by the Court of Justice.
- (13) Given that Commission Implementing Regulation (EU) 2018/28 of 9 January 2018 is not affected by the irregularity identified by the Court of Justice in Case C-251/18, the definitive anti-dumping duties on imports of bicycles whether declared as originating in Sri Lanka or not from City Cycle Industries are not covered by this proceeding.

2. REOPENING PROCEDURE

2.1. Reopening

- (14) In view of the above, the Commission reopens the anti-circumvention investigation concerning imports of bicycles and other cycles (including delivery tricycles, but excluding unicycles), not motorised, CN codes ex 8712 00 30 and ex 8712 00 70 (TARIC codes 8712 00 30 10 and 8712 00 70 91), consigned from Indonesia, Malaysia, Sri-Lanka

⁽⁵⁾ Judgment of the Court of 15 March 2018, Case C-256/16 *Deichmann*, ECLI:EU:C:2018:187, paragraph 73; see also judgment of the Court of 19 June 2019, Case C-612/16 *P&J Clark International*, ECLI:EU:C:2019:508, paragraph 43

⁽⁶⁾ *Ibid*, paragraph 74; see also judgment of the Court of 19 June 2019, Case C-612/16 *P&J Clark International*, ECLI:EU:C:2019:508, paragraph 43.

⁽⁷⁾ Judgment of 3 October 2000, Case C-458/98 P *Industrie des Poudres Sphériques v Council*, ECLI:EU:C:2000:531, paragraph 80 to 85.

and Tunisia, whether declared as originating in Indonesia, Malaysia, Sri Lanka and Tunisia or not, that led to the adoption of Council Implementing Regulation (EU) No 501/2013 and resumes it at the point at which the irregularity occurred by publishing this Regulation in the *Official Journal of the European Union*.

- (15) The reopening is limited in scope to the implementation of the judgment of the Court of Justice in Case C-251/18 Trace Sport SAS. In that judgment, the illegality identified by the Court of Justice pertains to the obligation for the institutions of the Union to bear the burden of proof arising from Article 13(3) of Regulation (EU) 2016/1036 as it stood at the time.
- (16) Therefore, the lack of sufficient reasoning in Council Implementing Regulation (EU) No 501/2013 concerning the available evidence on the existence of circumventing practices in Sri Lanka must be corrected.

2.2. Registration

- (17) Pursuant to Article 14(5) of the basic Regulation, imports of the product under investigation shall be made subject to registration in order to ensure that, should the investigation result in findings of circumvention, anti-dumping duties of an appropriate amount can be levied from the date on which registration of such imports was imposed.
- (18) The Commission, by regulation, may direct Customs authorities to cease registration in respect of imports into the Union of products manufactured by producers having applied for an exemption of registration and having been found to fulfil the conditions for an exemption to be granted.

2.3. Written submission

- (19) Interested parties are invited to come forward and to make their views known, submit information and provide supporting evidence on issues pertaining to the reopening of the investigation within 20 days of the date of publication of this Regulation in the *Official Journal of the European Union*.

2.4. Possibility to be heard by the Commission investigation services

- (20) Interested parties may request to be heard by the Commission investigation services. Any request to be heard should be made in writing and should specify the reasons for the request. For hearings on issues pertaining to the reopening of the investigation the request must be submitted within 15 days of the date of publication of this Regulation in the *Official Journal of the European Union*. Thereafter, a request to be heard must be submitted within the specific deadlines set by the Commission in its communication with these parties.

2.5. Instructions for making written submissions and sending correspondence

- (21) Information submitted to the Commission for the purpose of trade defence investigations should be free from copyright. Interested parties, before submitting to the Commission information and/or data which is subject to third party copyright, must request specific permission to the copyright holder explicitly allowing (a) the Commission to use the information and data for the purpose of this trade defence proceeding; and (b) to provide the information and/or data to interested parties to this investigation in a form that allows them to exercise their rights of defence.
- (22) All written submissions and correspondence provided by interested parties for which confidential treatment is requested shall be labelled '*Limited*' ⁽⁸⁾.
- (23) Interested parties providing '*Limited*' information are required to furnish non-confidential summaries of it pursuant to Article 19(2) of the basic Regulation, which will be labelled '*For inspection by interested parties*'. These summaries should be sufficiently detailed to permit a reasonable understanding of the substance of the information submitted in confidence. If an interested party providing confidential information does not furnish a non-confidential summary of it in the requested format and quality, such information may be disregarded.

⁽⁸⁾ A '*Limited*' document is a document which is considered confidential pursuant to Article 19 of Regulation (EU) 2016/1036 of the European Parliament and of the Council (OJ L 176, 30.6.2016, p. 21) and Article 6 of the WTO Agreement on Implementation of Article VI of the GATT 1994 (Anti-Dumping Agreement). It is also a document protected pursuant to Article 4 of Regulation (EC) No 1049/2001 of the European Parliament and of the Council (OJ L 145, 31.5.2001, p. 43).

- (24) Interested parties are invited to make all submissions and requests by e-mail or TRON.tdi (<https://webgate.ec.europa.eu/tron/TDI>) ^(*) including scanned powers of attorney and certification sheets. By using e-mail or TRON.tdi, interested parties express their agreement with the rules applicable to electronic submissions contained in the document 'CORRESPONDENCE WITH THE EUROPEAN COMMISSION IN TRADE DEFENCE CASES' published on the website of the Directorate-General for Trade: http://trade.ec.europa.eu/doclib/docs/2011/june/tradoc_148003.pdf. The interested parties must indicate their name, address, telephone and a valid e-mail address and they should ensure that the provided e-mail address is a functioning official business e-mail which is checked on a daily basis. Once contact details are provided, the Commission will communicate with interested parties by e-mail only, unless they explicitly request to receive all documents from the Commission by another means of communication or unless the nature of the document to be sent requires the use of a registered mail. For further rules and information concerning correspondence with the Commission including principles that apply to submissions by e-mail, interested parties should consult the communication instructions for interested parties referred to above.

Commission address for correspondence:
European Commission
Directorate-General for Trade
Directorate H Office: CHAR 04/039 1049 Brussels
BELGIUM
E-mail: TRADE-R563-BICYCLES-CIRC@ec.europa.eu

2.6. Non-cooperation

- (25) In cases where any interested party refuses access to or does not provide the necessary information within the time limits, or significantly impedes the investigation, findings, affirmative or negative, may be made on the basis of facts available, in accordance with Article 18 of the basic Regulation.
- (26) Where it is found that any interested party has supplied false or misleading information, the information may be disregarded and use may be made of facts available.
- (27) If an interested party does not cooperate or cooperates only partially and findings are therefore based on facts available in accordance with Article 18 of the basic Regulation, the result may be less favourable to that party than if it had cooperated.
- (28) Failure to give a computerised response will not be deemed to constitute non-cooperation, provided that the interested party shows that presenting the response as requested would result in an unreasonable extra burden or unreasonable additional cost. The interested party should immediately contact the Commission.

2.7. Hearing Officer

- (29) Interested parties may request the intervention of the Hearing Officer in trade proceedings. The Hearing Officer acts as an interface between the interested parties and the Commission investigation services. The Hearing Officer reviews requests for access to the file, disputes regarding the confidentiality of documents, requests for extension of time limits and requests by third parties to be heard. The Hearing Officer may organise a hearing with an individual interested party and mediate to ensure that the interested parties' rights of defence are being fully exercised.
- (30) A request for a hearing with the Hearing Officer should be made in writing and should specify the reasons for the request. The Hearing Officer will examine the reasons for the requests. These hearings should only take place if the issues have not been settled with the Commission services in due course.
- (31) Any request must be submitted in good time and expeditiously so as not to jeopardise the orderly conduct of proceedings. To that effect, interested parties should request the intervention of the Hearing Officer at the earliest possible time following the occurrence of the event justifying such intervention. Where hearing requests are submitted outside the relevant timeframes, the Hearing Officer will also examine the reasons for such late requests, the nature of the issues raised and the impact of those issues on the rights of defence, having due regard to the interests of good administration and the timely completion of the investigation.

^(*) In order to have access to TRON.tdi, interested parties need an EU Login account. Full instructions on how to register and use TRON.tdi are available on <https://webgate.ec.europa.eu/tron/resources/documents/gettingStarted.pdf>

- (32) For further information and contact details interested parties may consult the Hearing Officer's web pages on DG Trade's website: <http://ec.europa.eu/trade/trade-policy-and-you/contacts/hearing-officer/>

2.8. Processing of personal data

- (33) Any personal data collected in this investigation will be treated in accordance with Regulation (EU) 2018/1725 of the European Parliament and of the Council ⁽¹⁰⁾.
- (34) A data protection notice that informs all individuals of the processing of personal data in the framework of Commission's trade defence activities is available on DG Trade's website: https://trade.ec.europa.eu/doclib/docs/2019/april/tradoc_157872.pdf

2.9. Instructions to customs authorities

- (35) National customs authorities are instructed to await the publication of the outcome of the reopening investigation before deciding on any claims for repayment and remission of the duties concerned by this Regulation. Such publication should normally occur within nine months from the date of publication of this Regulation.

2.10. Disclosure

- (36) Interested parties will be subsequently informed of the essential facts and considerations on the basis of which it is intended to implement the judgment and will be given an opportunity to comment,

HAS ADOPTED THIS REGULATION:

Article 1

The Commission reopens the anti-circumvention investigation concerning imports of bicycles and other cycles (including delivery tricycles, but excluding unicycles), not motorised, currently falling within CN codes ex 8712 00 30 and ex 8712 00 70 (TARIC codes 8712 00 30 10 and 8712 00 70 91), consigned from Indonesia, Malaysia, Sri Lanka and Tunisia, whether declared as originating in Indonesia, Malaysia, Sri Lanka and Tunisia or not, that led to the adoption of Council Implementing Regulation (EU) No 501/2013 of 29 May 2013 extending the definitive anti-dumping duty imposed by Council Implementing Regulation (EU) No 990/2011.

Article 2

1. The customs authorities of the Member States shall, pursuant to Article 13(3) and Article 14(5) of the basic Regulation, take the appropriate steps to register the imports into the Union identified in Article 1 of this Regulation.
2. Registration shall expire nine months following the date of entry into force of this Regulation.

Article 3

National customs authorities shall await the publication of the outcome of the reopening investigation before deciding on any claims for repayment and remission of the duties concerned by this Regulation.

Article 4

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

⁽¹⁰⁾ Regulation (EU) 2018/1725 of the European Parliament and of the Council of 23 October 2018 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data, and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC (OJ L 295, 21.11.2018, p. 39).

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

Done at Brussels, 29 November 2019.

For the Commission
The President
Jean-Claude JUNCKER

DECISIONS

COMMISSION IMPLEMENTING DECISION (EU) 2019/1998

of 28 November 2019

amending Implementing Decision (EU) 2018/320 as regards the period of application of the animal health protection measures for salamanders in relation to the fungus *Batrachochytrium salamandrivorans*

(notified under document C(2019) 8551)

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

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

Having regard to Council Directive 90/425/EEC of 26 June 1990 concerning veterinary checks applicable in intra-Union trade in certain live animals and products with a view to the completion of the internal market ⁽¹⁾, and in particular Article 10(4) thereof,

Having regard to Council Directive 91/496/EEC of 15 July 1991 laying down the principles governing the organisation of veterinary checks on animals entering the Community from third countries and amending Directives 89/662/EEC, 90/425/EEC and 90/675/EEC ⁽²⁾, and in particular Article 18(7) thereof,

Whereas:

- (1) Commission Implementing Decision (EU) 2018/320 ⁽³⁾ established certain animal health protection measures for intra-Union trade in salamanders and the introduction into the Union of such animals in relation to the fungus *Batrachochytrium salamandrivorans* (Bsal). The Implementing Decision (EU) 2018/320 is applicable until 31 December 2019.
- (2) Several Member States and stakeholders informed the Commission about their limited experience with the practical implementation of Implementing Decision (EU) 2018/320 and that so far, the competent authorities quarantined and certified only a handful of salamander consignments.
- (3) Moreover, several recent scientific and epidemiological findings have enhanced the current knowledge about a number of aspects pertaining to Bsal, as well as confirming that Bsal is endemic in several Asian countries and its appearance in Spain.
- (4) Nevertheless, significant knowledge gaps remain about its nature and diagnosis. In particular, these advances have not yet led to a clearer geographical demarcation of its presence in the majority of countries and neither to the improvement of the methods for its diagnosis nor to the potential measures to be applied for mitigating the risk of its spread via traded consignments.
- (5) The detailed animal health protection measures provided for in the Implementing Decision (EU) 2018/320 should therefore remain unchanged.
- (6) Regulation (EU) 2016/429 of the European Parliament and of the Council ⁽⁴⁾, consolidates the legal framework for a common Union animal health policy through a single, simplified and flexible regulatory framework for animal health. In particular, it provides for safeguard measures in the event of animal diseases. That Regulation will start to apply as from 21 April 2021.
- (7) Therefore, the application of Implementing Decision (EU) 2018/320 should be prolonged until the date of application of that Regulation.

⁽¹⁾ OJ L 224, 18.8.1990, p. 29.

⁽²⁾ OJ L 268, 24.9.1991, p. 56.

⁽³⁾ Commission Implementing Decision (EU) 2018/320 of 28 February 2018 on certain animal health protection measures for intra-Union trade in salamanders and the introduction into the Union of such animals in relation to the fungus *Batrachochytrium salamandrivorans* (OJ L 62, 5.3.2018, p. 18).

⁽⁴⁾ Regulation (EU) 2016/429 of the European Parliament and of the Council of 9 March 2016 on transmissible animal diseases and amending and repealing certain acts in the area of animal health (Animal Health Law) (OJ L 84, 31.3.2016, p. 1).

- (8) Implementing Decision (EU) 2018/320 should therefore be amended accordingly.
- (9) The measures provided for in this Decision are in accordance with the opinion of the Standing Committee on Plants, Animals, Food and Feed,

HAS ADOPTED THIS DECISION:

Article 1

Article 11 of Implementing Decision (EU) 2018/320 is replaced by the following:

‘Article 11

Applicability

This Decision shall apply until 20 April 2021.’

Article 2

This Decision is addressed to the Member States.

Done at Brussels, 28 November 2019.

For the Commission
Vytenis ANDRIUKAITIS
Member of the Commission

COMMISSION IMPLEMENTING DECISION (EU) 2019/1999**of 28 November 2019****amending Decision 2005/51/EC as regards the period during which soil contaminated by pesticides or persistent organic pollutants may be introduced into the Union for decontamination purposes***(notified under document C(2019) 8555)*

THE EUROPEAN COMMISSION,

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

Having regard to Council Directive 2000/29/EC of 8 May 2000 on protective measures against the introduction into the Community of organisms harmful to plants or plant products and against their spread within the Community ⁽¹⁾, and in particular the first indent of the first subparagraph of Article 15(1) thereof,

Whereas:

- (1) Pursuant to Article 4(1) of Directive 2000/29/EC, in conjunction with point 14 of Part A of Annex III to that Directive, the introduction into the Union of soil originating in certain third countries is prohibited.
- (2) By Commission Decision 2005/51/EC ⁽²⁾ Member States were temporarily authorised to provide for a derogation from those provisions, subject to specific conditions, in respect of soil contaminated by pesticides or persistent organic pollutants, when imported for decontamination purposes and destined for treatment in dedicated hazardous waste incinerators.
- (3) Pursuant to the Annex to Decision 2005/51/EC, Member States making use of the derogation shall notify the Member States and the Commission on a yearly basis of the details of each introduction into their territory of soil as referred to in point 3 of that Annex.
- (4) Some Member States have requested an extension of the authorisation to provide for that derogation. From the notifications submitted by the Member States pursuant to Decision 2005/51/EC, it appears that, when making use of that derogation, the compliance with specific conditions laid down in that Decision is sufficient to prevent the introduction of harmful organisms into the Union. Consequently, there is no phytosanitary risk arising as result of the activities covered by that Decision.
- (5) It is therefore appropriate to extend the derogation for a further period of five years until 31 December 2024.
- (6) Decision 2005/51/EC should therefore be amended accordingly.
- (7) The measures provided for in this Decision are in accordance with the opinion of the Standing Committee on Plants, Animals, Food and Feed,

HAS ADOPTED THIS DECISION:

*Article 1***Amendment of Decision 2005/51/EC**

In the second paragraph of Article 1 of Decision 2005/51/EC, the date ‘31 December 2019’ is replaced by ‘31 December 2024’.

⁽¹⁾ OJ L 169, 10.7.2000, p. 1.

⁽²⁾ Commission Decision 2005/51/EC of 21 January 2005 authorising Member States temporarily to provide for derogations from certain provisions of Council Directive 2000/29/EC in respect of the importation of soil contaminated by pesticides or persistent organic pollutants for decontamination purposes (OJ L 21, 25.1.2005, p. 21).

*Article 2***Addressees**

This Decision is addressed to the Member States.

Done at Brussels, 28 November 2019.

For the Commission
Vytenis ANDRIUKAITIS
Member of the Commission

COMMISSION IMPLEMENTING DECISION (EU) 2019/2000**of 28 November 2019****laying down a format for reporting of data on food waste and for submission of the quality check report in accordance with Directive 2008/98/EC of the European Parliament and of the Council***(notified under document C(2019) 8577)***(Text with EEA relevance)**

THE EUROPEAN COMMISSION,

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

Having regard to Directive 2008/98/EC of the European Parliament and of the Council of 19 November 2008 on waste and repealing certain Directives ⁽¹⁾, and in particular Article 37(7) thereof,

Whereas:

- (1) Directive 2008/98/EC lays down an obligation for Member States to monitor and assess the implementation of their food waste prevention measures by measuring the levels of food waste on the basis of a common methodology and to report those data to the Commission. The data is to be accompanied by a quality check report.
- (2) The format to be used by Member States for reporting of data on food waste levels is to take account of the methodologies laid down in Commission Delegated Decision (EU) 2019/1597 ⁽²⁾, which provides the common methodology to measure the levels of food waste generated in Member States.
- (3) In Delegated Decision (EU) 2019/1597, Member States are provided with a range of methods for the measurement of food waste. There is a need to collect detailed information about the methods used in each Member States, in order to ensure harmonised reporting.
- (4) The measures provided for in this Decision are in accordance with the opinion of the Committee established by Article 39 of Directive 2008/98/EC,

HAS ADOPTED THIS DECISION:

Article 1

Member States shall report the data and submit the quality check report concerning the implementation of Article 9(5) of Directive 2008/98/EC in the format laid down in the Annex to this Decision.

Article 2

This Decision is addressed to the Member States.

Done at Brussels, 28 November 2019.

For the Commission

Vytenis ANDRIUKAITIS

Member of the Commission

⁽¹⁾ OJ L 312, 22.11.2008, p. 3.

⁽²⁾ Commission Delegated Decision (EU) 2019/1597 of 3 May 2019 supplementing Directive 2008/98/EC of the European Parliament and of the Council as regards a common methodology and minimum quality requirements for the uniform measurement of levels of food waste (OJ L 248, 27.9.2019, p. 77).

FORMAT FOR REPORTING OF THE DATA ON THE LEVEL OF FOOD WASTE

A. FORMAT FOR THE REPORTING OF THE DATA ON FOOD WASTE AMOUNTS AND THE DATA RELATED TO FOOD WASTE PREVENTION

1. Data on food waste amounts (in metric tons of fresh mass)

Stage of the food supply chain	Food waste referred to in Article 1 of Delegated Decision (EU) 2019/1597		Food waste drained as or with wastewaters (referred to in Article 3(b) of Delegated Decision (EU) 2019/1597)
	Total food waste	Fraction of total food waste, composed of parts of food intended to be ingested by humans (referred to in Article 3(a) of Delegated Decision (EU) 2019/1597)	
Primary Production			
Processing and manufacturing			
Retail and other distribution of food			
Restaurants and food services			
Households			
Sum			

2. Data on management of food surplus related to food waste prevention (in metric tons of fresh mass)

Stage of the food supply chain	Food redistributed for human consumption (referred to in Article 3(c) of Delegated Decision (EU) 2019/1597)	Food placed on the market for transformation into feed (referred to in Article 3(d) of Delegated Decision (EU) 2019/1597)	Former foodstuffs (referred to in Article 3(e) of Delegated Decision (EU) 2019/1597)
Primary Production			
Processing and manufacturing			
Retail and other distribution of food			
Restaurants and food services			
Households			
Sum			

— White boxes: provision of data is mandatory.

— Shaded boxes: provision of data is voluntary.

— Provision of data is voluntary.

B. FORMAT FOR THE QUALITY CHECK REPORT ACCOMPANYING THE DATA REFERRED TO IN PART A

1. **Objectives of the report**

The objectives of the quality check report are as follows:

- evaluate the methodologies for measurement of food waste set out in Annex III and Annex IV to Delegated Decision (EU) 2019/1597;
- evaluate the quality of data on reported food waste amounts;
- evaluate the quality of data collection processes, including the scope and validation of administrative data sources and the statistical validity of survey-based approaches;
- give reasons for significant changes in reported data between reporting years and ensure confidence in the accuracy of that data.

2. **General information**

Member State:

Organisation submitting the data and the description:

Contact person/contact details:

Reporting year:

Delivery date/version:

Link to data publication by the Member State (if any):

3. **General information on data collection**

Please indicate the methodology used to measure the amount of food waste generated in the given reporting year, for each stage of the food supply chain (mark with a cross the relevant cells to indicate if the data is collected using the methodology set out in Annex III or in Annex IV to Delegated Decision (EU) 2019/1597).

Stage of the food supply chain	Data collected using the methodology set out in Annex III to Delegated Decision (EU) 2019/1597	Data collected using the methodology set out in Annex IV to Delegated Decision (EU) 2019/1597
Primary Production		
Processing and manufacturing		
Retail and other distribution of food		
Restaurants and food services		
Households		

4. **Information concerning measurement using the methodology set out in Annex III**

4.1. *General description of the sources of data for measuring food waste in the framework of the methodology set out in Annex III to Delegated Decision (EU) 2019/1597*

Please indicate the sources of data on food waste amounts for each stage of the food supply chain (mark with a cross all the relevant cells).

Stage of the food supply chain	On the basis of the data collected for the purposes of Regulation (EC) No 2150/2002 of the European Parliament and of the Council ⁽¹⁾	On the basis of a dedicated study (examples: scientific study, consultancy report)]	Other sources or combination of different sources (please specify in point 4.2) (examples: administrative reporting, voluntary commitments of the industrial sector)
Primary production			
Processing and manufacturing			
Retail and other distribution of food			
Restaurants and food services			
Households			

⁽¹⁾ Regulation (EC) No 2150/2002 of the European Parliament and of the Council of 25 November 2002 on waste statistics (OJ L 332, 9.12.2002, p. 1).

4.2. Detailed description of the methods for measuring food waste within the framework of the methodology set out in Annex III to Delegated Decision (EU) 2019/1597

For each stage of the food supply chain, please describe the methods for measuring food waste amounts, by reference to Annex III to Delegated Decision (EU) 2019/1597.

Stage of the food supply chain	Short description of the methods used (including methods used to measure amounts of food waste in mixed waste, where relevant)	Entities providing data on food waste [e.g. farmers, food companies (Food Business Operators), waste operators, municipalities, households]	In case of sampling and/or scaling please provide information about the size and selection of the sample and describe the methods of scaling	Description of the main issues affecting the accuracy of the data, including errors related to sampling, coverage, measurement, processing and non-response	Description of the data validation process, including possible sources of uncertainty and their likely impact on the results reported
Primary production					
Processing and manufacturing					
Retail and other distribution of food					
Restaurants and food services					
Households					

5. Information concerning measurement using the methodology set out in Annex IV to Delegated Decision (EU) 2019/1597

Please provide information for each stage of the food supply chain, for which calculations have been made in the reporting year.

Stage of the food supply chain	Data on food waste amounts used as a basis for the calculations		Socio-economic data used for the calculations				Description of the methods used for the calculations
	Value [t]	Year	Type of data (e.g. population, food production) ⁽¹⁾	Value ⁽¹⁾	Year ⁽¹⁾	Source ⁽¹⁾	
Primary production							
Processing and manufacturing							

Stage of the food supply chain	Data on food waste amounts used as a basis for the calculations		Socio-economic data used for the calculations				Description of the methods used for the calculations
	Value [t]	Year	Type of data (e.g. population, food production) ⁽¹⁾	Value ⁽¹⁾	Year ⁽¹⁾	Source ⁽¹⁾	
Retail and other distribution of food							
Restaurants and food services							
Households							

⁽¹⁾ In case of more sources of data used, add additional rows within the relevant stage of the food supply chain, as appropriate.

6. Voluntary reporting

Please provide information for each set of voluntarily reported data.

Name of dataset (referred to in points (a) to (e) of Article 3 of Delegated Decision (EU) 2019/1597)	Stage of the food supply chain	Short description of the data collection method	Source - link to the reference document (if applicable)

Add rows as appropriate.

7. Methodological changes and problems notifications

7.1. Description of methodological changes (if applicable)

Please describe significant methodological changes in the calculation method for the reporting year, if any (please include in particular retrospective revisions, their nature and whether break-flags are required for specific reporting years). Please describe separately for each stage of the food supply chain and provide the precise location of the respective cell(s) (table name, stage of the food supply chain, column heading).

Add rows as appropriate.

7.2. Explanation of tonnage difference (if applicable)

Please explain the causes of the tonnage difference (which stages of the food supply chain, sectors or estimates have caused the difference, and what the underlying cause is) where the variation is greater than 20 % compared to the data submitted for the previous reporting year.

Stage of the food supply chain	Variation (%)	Main reason for the difference

Add rows as appropriate.

7.3. Notification of problems (if any)

In case, you have experienced problems with the attribution of food waste to a given stage of the food supply chain please provide a description of the problems. For every specific problem, please provide the precise location of the respective cell(s) (table name, stage of the food supply chain, column heading).

8. Confidentiality

Please provide a justification to withhold the publication of specific parts of this report, if necessary. For every specific case, please provide the precise location of the respective cell(s) (table name, stage of food supply chain, column heading)

9. Main national websites, reference documents and publications

Please provide links to main national websites, reference documents and publications used in the collection of data on food waste amounts.

Stage of the food supply chain	References

Add rows as appropriate.

COMMISSION IMPLEMENTING DECISION (EU) 2019/2001**of 28 November 2019****amending Decision 2009/821/EC as regards the lists of border inspection posts and veterinary units in Traces***(notified under document C(2019) 8579)***(Text with EEA relevance)**

THE EUROPEAN COMMISSION,

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

Having regard to Council Directive 90/425/EEC of 26 June 1990 concerning veterinary checks applicable in intra-Union trade in certain live animals and products with a view to the completion of the internal market ⁽¹⁾, and in particular Article 20(1) and (3) thereof,

Having regard to Council Directive 91/496/EEC of 15 July 1991 laying down the principles governing the organisation of veterinary checks on animals entering the Community from third countries and amending Directives 89/662/EEC, 90/425/EEC and 90/675/EEC ⁽²⁾, and in particular the second subparagraph of Article 6(4) and Article 6(5) thereof,

Having regard to Council Directive 97/78/EC of 18 December 1997 laying down the principles governing the organisation of veterinary checks on products entering the Community from third countries ⁽³⁾, and in particular Article 6(2) thereof,

Whereas:

- (1) Commission Decision 2009/821/EC ⁽⁴⁾ lays down the list of border inspection posts approved in accordance with Directives 91/496/EEC and 97/78/EC and the list of central, regional and local units in the integrated computerised veterinary system (Traces). Those lists are respectively set out in Annex I and Annex II to that Decision.
- (2) Following communication from Denmark, the approval of the border inspection post at Billund airport should be restricted to equidae and other animals than ungulates, and the approval of the border inspection post at Hanstholm port should be restricted to packed fishery products. It is therefore appropriate to amend accordingly the list of entries for that Member State set out in Annex I to Decision 2009/821/EC.
- (3) Following communication from Greece, the categories of ungulates and equidae should be removed from the approval of the road border inspection post at Evzoni and the border inspection post at Thessaloniki airport should be also approved for packed products for human consumption at ambient temperature. It is therefore appropriate to amend accordingly the list of entries for that Member State set out in Annex I to Decision 2009/821/EC.
- (4) Following communication from Spain, the approval of the border inspection post at Málaga port should be restricted to products for human consumption. It is therefore appropriate to amend accordingly the list of entries for that Member State set out in Annex I to Decision 2009/821/EC.
- (5) Following communication from Italy, the approval of the border inspection post at Cagliari port should exclude the carcasses of ungulates, an inspection centre should be suspended at the border inspection post at Genova port and a new inspection centre should be added at the border inspection post at Milano-Malpensa airport. It is therefore appropriate to amend accordingly the list of entries for that Member State set out in Annex I to Decision 2009/821/EC.
- (6) Croatia informed the Commission that, following an administrative restructuring, the number of local veterinary offices was reduced from 12 to 5 units. It is therefore appropriate to amend Annex II to Decision 2009/821/EC accordingly.

⁽¹⁾ OJ L 224, 18.8.1990, p. 29.

⁽²⁾ OJ L 268, 24.9.1991, p. 56.

⁽³⁾ OJ L 24, 30.1.1998, p. 9.

⁽⁴⁾ Commission Decision 2009/821/EC of 28 September 2009 drawing up a list of approved border inspection posts, laying down certain rules on the inspections carried out by Commission veterinary experts and laying down the veterinary units in Traces (OJ L 296, 12.11.2009, p. 1).

- (7) The measures provided for in this Decision are in accordance with the opinion of the Standing Committee on Plants, Animals, Food and Feed,

HAS ADOPTED THIS DECISION:

Article 1

Annexes I and II to Decision 2009/821/EC are amended in accordance with the Annex to this Decision.

Article 2

This Decision is addressed to the Member States.

Done at Brussels, 28 November 2019.

For the Commission
Vytenis ANDRIUKAITIS
Member of the Commission

ANNEX

Annexes I and II to Decision 2009/821/EC are amended as follows:

(1) Annex I is amended as follows:

(a) the part concerning Denmark is amended as follows:

(i) the entry for the airport at Billund is replaced by the following:

'Billund	DK BLL 4	A			U(8), E, O'
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(ii) the entry for the port at Hanstholm is replaced by the following:

'Hanstholm	DK HAN 1	P		HC-T(FR)(1)(2)(3)'	
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(b) the part concerning Greece is amended as follows:

(i) the entry for the road border inspection post at Evzoni is replaced by the following:

'Evzoni	GR EVZ 3	R		HC, NHC-NT	O'
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(ii) the entry for the airport at Thessaloniki is replaced by the following:

'Thessaloniki	GR SKG 4	A		HC-T(CH)(2), HC-NT(2), NHC-NT'	O'
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(c) in the part concerning Spain, the entry for the port at Málaga is replaced by the following:

'Málaga	ES AGP 1	P		HC'	
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(d) the part concerning Italy is amended as follows:

(i) the entry for the port at Cagliari is replaced by the following:

'Cagliari	IT CAG 1	P		HC(1 6), NHC(2)'	
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(ii) the entry for the port at Genova is amended as follows:

'Genova	IT GOA 1	P	Calata Sanità (terminal Sech)	HC(2), NHC-NT(2)	
			Nino Ronco (terminal Messina)	NHC-NT(2)(*)	
			Porto di Voltri (Voltri)	HC(2), NHC-NT(2)	
			Ponte Paleocapa	NHC-NT(6)'	

(iii) the entry for the airport at Milano-Malpensa is amended as follows:

Milano-Malpensa	IT MXP 4	A	Magazzini aeroportuali ALHA	HC(2), NHC(2)	
			ALHA Airport MXP SpA		U, E
			Cargo City MLE	HC(2)	O
			Cargo Beta — Trans	HC(2), NHC(2)'	

(2) Annex II is amended as follows:

The part concerning Croatia is replaced by the following:

HR00001	Zagreb
HR00002	Varaždin
HR00003	Split
HR00004	Rijeka
HR00005	Osijek'

COMMISSION IMPLEMENTING DECISION (EU, Euratom) 2019/2002**of 28 November 2019****as regards the authorisation for Bulgaria to continue to use certain approximate estimates for the calculation of the VAT own resources base in respect of international transport of passengers until the end of 2023***(notified under document C(2019)8590)***(Only the Bulgarian text is authentic)**

THE EUROPEAN COMMISSION,

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

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

Having regard to Council Regulation (EEC, Euratom) No 1553/89 of 29 May 1989 on the definitive uniform arrangements for the collection of own resources accruing from value added tax ⁽¹⁾, and in particular the second indent of Article 6(3) thereof,

After consulting the Advisory Committee on Own Resources,

Whereas:

- (1) Under Article 390a of Council Directive 2006/112/EC ⁽²⁾, Bulgaria may, in accordance with the conditions applying in that Member State on the date of its accession, continue to exempt the international transport of passengers as referred to in point 10 of Part B of Annex X to that Directive, for as long as the same exemption is applied in any of the Member States which were members of the Community on 31 December 2006. In accordance with that Article, those transactions are to be taken into account for the determination of the value added tax (VAT) own resources base.
- (2) By Commission Decision 2010/4/EU, Euratom ⁽³⁾, Bulgaria was authorised to inter alia use approximate estimates in respect of international passenger transport as referred to in point 10 of part B of Annex X to Directive 2006/112/EC for the purpose of calculating the VAT own resources base from 1 January 2009 to 31 December 2018.
- (3) In its letter of 4 April 2019, Bulgaria requested an authorisation from the Commission to continue using certain approximate estimates for the calculation of the VAT own resources base. Bulgaria is unable to make the precise calculation of the VAT own resources base for transactions referred to in point 10 of Part B of Annex X to Directive 2006/112/EC in respect of international transport of passengers. Such calculation is likely to involve an unjustified administrative burden in relation to the effect of those transactions on Bulgaria's total VAT own resources base. Bulgaria is able to make a calculation using approximate estimates for that category of transactions. Bulgaria should therefore be authorised to continue to calculate the VAT own resources base using approximate estimates in respect of international transport of passengers.
- (4) For reasons of transparency and legal certainty it is appropriate to limit the applicability of the authorisation in time,

HAS ADOPTED THIS DECISION:

Article 1

For the purpose of calculating the VAT own resources base from 1 January 2019 to 31 December 2023, Bulgaria is authorised to use approximate estimates in respect of international transport of passengers as referred to in point 10 of part B of Annex X to Directive 2006/112/EC.

⁽¹⁾ OJ L 155, 7.6.1989, p. 9.

⁽²⁾ Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax (OJ L 347, 11.12.2006, p. 1).

⁽³⁾ Commission Decision 2010/4/EU, Euratom of 22 December 2009 authorising Bulgaria to use statistics for years earlier than the last year but one, and to use certain approximate estimates for the calculation of the VAT own resources base (OJ L 3, 7.1.2010, p. 17).

Article 2

This Decision is addressed to the Republic of Bulgaria.

Done at Brussels, 28 November 2019.

For the Commission
Günther OETTINGER
Member of the Commission

COMMISSION IMPLEMENTING DECISION (EU, Euratom) 2019/2003**of 28 November 2019****as regards the authorisation for Ireland to continue to use certain approximate estimates for the calculation of the VAT own resources base in respect of transport of passengers until the end of 2023***(notified under document C(2019) 8593)***(Only the English text is authentic)**

THE EUROPEAN COMMISSION,

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

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

Having regard to Council Regulation (EEC, Euratom) No 1553/89 of 29 May 1989 on the definitive uniform arrangements for the collection of own resources accruing from value added tax ⁽¹⁾, and in particular the second indent of Article 6(3) thereof,

After consulting the Advisory Committee on Own Resources,

Whereas:

- (1) Under Article 371 of Council Directive 2006/112/EC ⁽²⁾, Ireland may continue to exempt the transactions referred to in Part B of Annex X to that Directive if it exempted those transactions at 1 January 1978. In accordance with that Article, those transactions are to be taken into account for the determination of the value added tax (VAT) own resources base.
- (2) By Commission Decision 2010/5/EU, Euratom ⁽³⁾ Ireland was authorised to use approximate estimates in respect of the following category of transactions referred to in part B of Annex X to Directive 2006/112/EC: Transport of passengers (point 10), from 1 January 2009 to 31 December 2018.
- (3) In its letter of 30 April 2019, Ireland requested an authorisation from the Commission to continue using certain approximate estimates for the calculation of the VAT own resources base. Ireland is unable to make the precise calculation of the VAT own resources base for transactions referred to in point 10 of Part B of Annex X to Directive 2006/112/EC in respect of transport of passengers. Such calculation is likely to involve an unjustified administrative burden in relation to the effect of those transactions on Ireland's total VAT own resources base. Ireland is able to make a calculation using approximate estimates for that category of transactions. Ireland should therefore be authorised to continue to calculate the VAT own resources base using approximate estimates in respect of transport of passengers.
- (4) For reasons of transparency and legal certainty, it is appropriate to limit the applicability of the authorisation in time.

HAS ADOPTED THIS DECISION:

Article 1

For the purpose of calculating the VAT own resources base from 1 January 2019 to 31 December 2023, Ireland is authorised to use approximate estimates in respect of transport of passengers as referred to in point 10 of part B of Annex X to Directive 2006/112/EC.

⁽¹⁾ OJ L 155, 7.6.1989, p. 9.

⁽²⁾ Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax (OJ L 347, 11.12.2006, p. 1).

⁽³⁾ Commission Decision 2010/5/EU, Euratom of 22 December 2009 authorising Ireland to use certain approximate estimates for the calculation of the VAT own resources base (OJ L 3, 7.1.2010, p. 19).

Article 2

This Decision is addressed to Ireland.

Done at Brussels, 28 November 2019.

For the Commission
Günther OETTINGER
Member of the Commission

COMMISSION IMPLEMENTING DECISION (EU, Euratom) 2019/2004**of 28 November 2019****amending Decision 2005/872/EC, Euratom as regards the authorisation for the Czech Republic to use certain approximate estimates for the calculation of the VAT own resources base in respect of transport of passengers***(notified under document C(2019) 8595)***(Only the Czech text is authentic)**

THE EUROPEAN COMMISSION,

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

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

Having regard to Council Regulation (EEC, Euratom) No 1553/89 of 29 May 1989 on the definitive uniform arrangements for the collection of own resources accruing from value added tax ⁽¹⁾, and in particular the second indent of Article 6(3) thereof,

After consulting the Advisory Committee on Own Resources,

Whereas:

- (1) Under Article 381 of Council Directive 2006/112/EC ⁽²⁾, the Czech Republic may, in accordance with the conditions applying in that Member State on the date of its accession, continue to exempt the international transport of passengers, as referred to in point 10 of Part B of Annex X to that Directive, for as long as the same exemption is applied in any of the Member States which were members of the Community on 30 April 2004. In accordance with that Article, those transactions are to be taken into account for the determination of the value added tax (VAT) own resources base.
- (2) By Article 1a of Commission Decision 2005/872/EC, Euratom ⁽³⁾, the Czech Republic was authorised to use a fixed percentage of the intermediate base for transactions referred to in point 10 of Part B of Annex X to Directive 2006/112/EC regarding passenger transport.
- (3) The latest VAT own resource inspection revealed that the authorisation to use a simplified calculation method for the calculation of transactions referred to in point 10 of part B of Annex X to Directive 2006/112/EC was based on incorrect and incomplete data. If the Commission had been in possession of correct and complete data, the authorisation to use approximate estimates for transport of passengers for the period 2015 to 2020 would not have been granted to the Czech Republic. It is therefore appropriate to delete Article 1a of Decision 2005/872/EC, Euratom retroactively.
- (4) Decision 2005/872/EC, Euratom should therefore be amended accordingly,

HAS ADOPTED THIS DECISION:

Article 1

Article 1a of Decision 2005/872/EC, Euratom is deleted.

Article 2

This Decision is addressed to the Czech Republic.

⁽¹⁾ OJ L 155, 7.6.1989, p. 9.

⁽²⁾ Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax (OJ L 347, 11.12.2006, p. 1).

⁽³⁾ Commission Decision 2005/872/EC, Euratom of 21 November 2005 authorising the Czech Republic to use certain approximate estimates for the calculation of the VAT own resources base (OJ L 322, 9.12.2005, p. 19).

Article 3

This Decision shall apply from 26 November 2015.

Done at Brussels, 28 November 2019.

For the Commission
Günther OETTINGER
Member of the Commission

COMMISSION IMPLEMENTING DECISION (EU) 2019/2005**of 29 November 2019****on greenhouse gas emissions covered by Decision No 406/2009/EC of the European Parliament and of the Council for the year 2017 for each Member State**

THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EU) No 525/2013 of the European Parliament and of the Council of 21 May 2013 on a mechanism for monitoring and reporting greenhouse gas emissions and for reporting other information at national and Union level relevant to climate change and repealing Decision No 280/2004/EC ⁽¹⁾, and in particular Article 19(6) thereof,

Whereas:

- (1) Decision No 406/2009/EC of the European Parliament and of the Council ⁽²⁾ lays down annual emission allocations for each Member State for each year of the period 2013 to 2020 and a mechanism to annually assess compliance with those limits. Member States' annual emission allocations expressed in tonnes of CO₂ equivalent are contained in Commission Decision 2013/162/EU ⁽³⁾. The adjustments to the annual emission allocations for each Member State are set in Commission Implementing Decision 2013/634/EU ⁽⁴⁾.
- (2) Article 19 of Regulation (EU) No 525/2013 provides for a procedure for the review of Member States' greenhouse gas emissions inventories for the purpose of assessing compliance with Decision No 406/2009/EC. The annual review referred to in Article 19(2) of Regulation (EU) No 525/2013 was carried out on the basis of the 2017 emissions data reported to the Commission in March 2019 in accordance with the procedures laid down in Chapter III of Commission Implementing Regulation (EU) No 749/2014 ⁽⁵⁾ and Annex XVI to that Regulation.
- (3) The total amount of greenhouse gas emissions covered by Decision No 406/2009/EC for the year 2017 for each Member State should take into consideration the technical corrections and revised estimates calculated during the annual review as contained in the final review reports drawn up pursuant to Article 35(2) of Regulation (EU) No 749/2014.
- (4) This Decision should enter into force on the day of its publication in order to be aligned with the provisions of Article 19(7) of Regulation (EU) No 525/2013 which sets the date of publication of this Decision as the starting point for the four-month period when Member States are allowed to use the flexibility mechanisms under Decision No 406/2009/EC,

HAS ADOPTED THIS DECISION:

Article 1

The total sum of greenhouse gas emissions covered by Decision No 406/2009/EC for each Member State for the year 2017 arising from the corrected inventory data upon completion of the annual review referred to in Article 19(2) of Regulation (EU) No 525/2013 is set out in the Annex to this Decision.

⁽¹⁾ OJ L 165, 18.6.2013, p. 13.

⁽²⁾ Decision No 406/2009/EC of the European Parliament and of the Council of 23 April 2009 on the effort of Member States to reduce their greenhouse gas emissions to meet the Community's greenhouse gas emission reduction commitments up to 2020 (OJ L 140, 5.6.2009, p. 136).

⁽³⁾ Commission Decision 2013/162/EU of 26 March 2013 on determining Member States' annual emission allocations for the period from 2013 to 2020 pursuant to Decision No 406/2009/EC of the European Parliament and of the Council (OJ L 90, 28.3.2013, p. 106).

⁽⁴⁾ Commission Implementing Decision 2013/634/EU of 31 October 2013 on the adjustments to Member States' annual emission allocations for the period from 2013 to 2020 pursuant to Decision No 406/2009/EC of the European Parliament and of the Council (OJ L 292, 1.11.2013, p. 19).

⁽⁵⁾ Commission Implementing Regulation (EU) No 749/2014 of 30 June 2014 on structure, format, submission processes and review of information reported by Member States pursuant to Regulation (EU) No 525/2013 of the European Parliament and of the Council (OJ L 203, 11.7.2014, p. 23).

Article 2

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

Done at Brussels, 29 November 2019.

For the Commission
The President
Jean-Claude JUNCKER

ANNEX

Member State	Greenhouse gas emissions for the year 2017 covered by Decision No 406/2009/EC (tonnes of carbon dioxide equivalent)
Belgium	70824562
Bulgaria	26526793
Czechia	62395184
Denmark	32676908
Germany	466857281
Estonia	6205022
Ireland	43828744
Greece	45445291
Spain	201107413
France	352795706
Croatia	16669301
Italy	270145340
Cyprus	4270890
Latvia	9243088
Lithuania	14132498
Luxembourg	8743461
Hungary	43141883
Malta	1428480
The Netherlands	102326628
Austria	51651769
Poland	211506734
Portugal	40186365
Romania	75363245
Slovenia	10881767
Slovakia	21249803
Finland	30062237
Sweden	32530542
United Kingdom	332050822

COMMISSION DECISION (EU) 2019/2006**of 29 November 2019****on the participation of Ireland in Regulation (EU) 2018/1727 of the European Parliament and of the Council on the European Union Agency for Criminal Justice Cooperation (Eurojust)**

THE EUROPEAN COMMISSION,

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

Having regard to Protocol No 21 on the position of the United Kingdom and Ireland in respect of the area of freedom, security and justice, annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union, and in particular Article 4 thereof,

Whereas:

- (1) By letter to the Secretary General of the European Commission, registered on 9 September 2019, Ireland notified its intention to participate in Regulation (EU) 2018/1727 of the European Parliament and of the Council ⁽¹⁾.
- (2) Since there are no specific conditions attached to the participation of Ireland in Regulation (EU) 2018/1727, there is no need for transitional measures.
- (3) The participation of Ireland in Regulation (EU) 2018/1727 should therefore be confirmed.
- (4) Regulation (EU) 2018/1727 entered into force on 11 December 2018 and applies from 12 December 2019.
- (5) Pursuant to Article 4 of Protocol No 21, this Decision should enter into force as a matter of urgency on the day following that of its publication in the *Official Journal of the European Union*,

HAS ADOPTED THIS DECISION:

Article 1

The participation of Ireland in Regulation (EU) 2018/1727 is confirmed.

Article 2

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

Done at Brussels, 29 November 2019.

For the Commission
The President
Jean-Claude JUNCKER

⁽¹⁾ Regulation (EU) 2018/1727 of the European Parliament and of the Council of 14 November 2018 on the European Union Agency for Criminal Justice Cooperation (Eurojust), and replacing and repealing Council Decision 2002/187/JHA (OJ L 295, 21.11.2018, p. 138).

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