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⁽¹⁾ Text with EEA relevance

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II

(Non-legislative acts)

REGULATIONS

COMMISSION DELEGATED REGULATION (EU) 2016/1400

of 10 May 2016

supplementing Directive 2014/59/EU of the European Parliament and of the Council with regard to regulatory technical standards specifying the minimum elements of a business reorganisation plan and the minimum contents of the reports on the progress in the implementation of the plan**(Text with EEA relevance)**

THE EUROPEAN COMMISSION,

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

Having regard to Directive 2014/59/EU of the European Parliament and of the Council of 15 May 2014 establishing a framework for the recovery and resolution of credit institutions and investment firms and amending Council Directive 82/891/EEC, and Directives 2001/24/EC, 2002/47/EC, 2004/25/EC, 2005/56/EC, 2007/36/EC, 2011/35/EU, 2012/30/EU and 2013/36/EU, and Regulations (EU) No 1093/2010 and (EU) No 648/2012, of the European Parliament and of the Council ⁽¹⁾, and in particular points (a) and (b) of Article 52(12) thereof,

Whereas:

- (1) It is essential to lay down detailed rules on the minimum elements that should be included in a business reorganisation plan for its approval and on the minimum contents of the reports drawn up in case of reorganisation of the institutions and entities subject to the provisions of Directive 2014/59/EU.
- (2) The guidelines and communications adopted by the Commission in relation to the assessment of compliance with the Union State aid framework relating to the restructuring of firms in difficulties in the financial sector, pursuant to Article 107(3) of the Treaty, may provide useful reference for the elaboration of the business reorganisation plan even where no State aid has been granted, since they share with the business reorganisation plan the objective of restoring the institution or entity's long-term viability.
- (3) Business reorganisation plans should be able to use information contained in the recovery plan and the resolution plan, to the extent that such information is still relevant to the restoration of the long-term viability of the institution or entity referred to in points (b), (c) or (d) of Article 1(1) of Directive 2014/59/EU and taking into account the application of the bail-in tool.
- (4) The restructuring of the institution or entity referred to in points (b), (c) or (d) of Article 1(1) of Directive 2014/59/EU and its activities subsequent to the application of the bail-in tool should address the reasons for its failure. The basis for the reorganisation strategy should therefore be the factors that caused the entry of any institution or entity into resolution. That strategy may also take into account the crisis prevention and management measures that have been taken and implemented by the competent authority or the resolution

⁽¹⁾ OJ L 173, 12.6.2014, p. 190.

authority respectively. The source and extent of the difficulties encountered by such institution or entity may be illustrated by including information on the fulfilment of the relevant regulatory and prudential requirements prior to resolution.

- (5) Although the failure of the institution or entity referred to in points (b), (c) and (d) of Article 1(1) of Directive 2014/59/EU may have been caused by a particular set of reasons, such institution or entity may have suffered from other shortcomings which did not trigger the failure, but could undermine its long-term viability. The reorganisation should address any shortcomings. A successful reorganisation strategy should follow a comprehensive analysis of both the institution or entity under reorganisation, its strengths and weaknesses, as well as the relevant markets where that institution or entity operates and the risks and opportunities that they present. In order for a business reorganisation plan to be considered credible by the resolution authority and the competent authority, it should restore the institution's long term viability based on prudent assumptions.
- (6) Restoring the long-term viability of the institution or entity referred to in points (b), (c) and (d) of Article 1(1) of Directive 2014/59/EU following resolution means that, at the latest by the end of the reorganisation period, the institution or entity is capable of fulfilling its internal capital adequacy assessment process, and all the relevant prudential and other regulatory requirements on a forward-looking basis, and that it has a viable business model that is also sustainable in the long-term.
- (7) The resolution authority and the competent authority should be provided with sufficiently detailed information to assess the business reorganisation plan and monitor its implementation. The requirement to provide such information should take into account its relevance for the corporate structure of the institution or entity referred to in points (b), (c) and (d) of Article 1(1) of Directive 2014/59/EU, and its relevance for the reorganisation and its reliability, especially in the case of a systemic crisis.
- (8) Fluctuations are an inherent part of the economic cycle. Any business plan should therefore be subject to analyses of alternative scenarios, with appropriate changes in the key underlying assumptions. Although long-term viability should be restored under any scenario, the development of full alternative reorganisation strategies would incur disproportionate costs for the institution or entity referred to in points (b), (c) and (d) of Article 1(1) of Directive 2014/59/EU, while alternative scenarios should in principle be less likely to occur than the base-case scenario.
- (9) The business reorganisation plan should allow the resolution authority and the competent authority to assess its impact on achieving the resolution objectives, and in particular ensuring continuity of critical functions and avoiding a significant adverse effect on the financial system.
- (10) The frequency and detail of the monitoring of the implementation of the business reorganisation plan should allow early identification of any deviations or other difficulties. Quarterly reporting of data and performance is a common methodology in the financial sector and allows such timely observation. The business reorganisation plan should also allow for adjustments to the milestones or measures originally envisaged therein, when justified by the circumstances.
- (11) This Regulation is based on the draft regulatory technical standards submitted by the European Banking Authority ('EBA') to the Commission.
- (12) The EBA has conducted open public consultations on the draft regulatory technical standards on which this Regulation is based, analysed the potential related costs and benefits and requested the opinion of the Banking Stakeholder Group established in accordance with Article 15(1) of Regulation (EU) No 1093/2010 of the European Parliament and of the Council ⁽¹⁾,

⁽¹⁾ Regulation (EU) No 1093/2010 of the European Parliament and of the Council establishing a European Supervisory Authority (European Banking Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/78/EC (OJ L 331, 15.12.2010, p. 12).

HAS ADOPTED THIS REGULATION:

Article 1

Definitions

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

- (1) 'reorganisation period' means the period, which shall be of a reasonable timescale, between the application of the bail-in tool and the moment when the institution or entity referred to in points (b), (c) or (d) of Article 1(1) of Directive 2014/59/EU under resolution is expected to have restored its long-term viability, during which measures included in the business reorganisation plan are implemented;
- (2) 'base case' means the business scenario which the management body or the person or persons appointed to operate the institution or entity referred to in points (b), (c) or (d) of Article 1(1) of Directive 2014/59/EU consider as most likely to materialise in the process of restoring the long-term viability of the institution or entity.

Article 2

Strategy and measures

1. The business reorganisation plan shall include all of the following:
 - (a) a historic and financial account of the factors that contributed to the difficulties of the institution or entity referred to in points (b), (c) or (d) of Article 1(1) of Directive 2014/59/EU including the relevant performance indicators that deteriorated in the period preceding the resolution and the reason for their deterioration;
 - (b) a short description of crisis prevention and crisis management measures, where such measures have been applied by the competent authority, the resolution authority or the institution or entity referred to in points (b), (c) or (d) of Article 1(1) of Directive 2014/59/EU before the submission of the business reorganisation plan;
 - (c) a description of the business reorganisation strategy and the measures intended to restore the long-term viability of the institution or entity during the reorganisation period including a description of each of the following:
 - (i) the reorganised business model;
 - (ii) the measures implementing the business reorganisation strategy at group, entity and business line level;
 - (iii) the target duration of the reorganisation period and important milestones;
 - (iv) the interaction with the resolution authority and the competent authority;
 - (v) the strategy regarding the involvement of relevant external stakeholders such as labour unions or organisations;
 - (vi) the internal and external communication strategy for the business reorganisation measures.
2. Where parts of the institution or entity referred to in points (b), (c) or (d) of Article 1(1) of Directive 2014/59/EU are to be wound down or sold, the reorganisation strategy referred to in paragraph 1(c) of this Article shall identify all of the following:
 - (a) the relevant entity or business line, the method for the winding down or sale, including the underlying assumptions and any possible expected losses;
 - (b) the expected timescale;
 - (c) any financing or services provided by or to the remaining institution or entity.

3. Any proceeds from the divestment of assets, entities or business lines envisaged by the business reorganisation plan shall be calculated prudently and with reference either to a reliable benchmark or valuation, such as an expert valuation, a market sounding exercise or the value of similar business lines or entities. The calculation shall take into account the likelihood of loss realisation.

4. For the parts of the institution or entity referred to in points (b), (c) or (d) of Article 1(1) of Directive 2014/59/EU that will not be wound down or sold, the business reorganisation plan shall indicate ways to remedy any shortcomings in their operation or performance that may have an impact on their long-term viability, even if these shortcomings are not directly related to the failure of that institution or entity.

5. The measures set out in the business reorganisation plan shall take into account the strengths and weaknesses of the institution or entity referred to in points (b), (c) or (d) of Article 1(1) of Directive 2014/59/EU and its reorganised business model by reference to the economic and market environment in which it operates.

6. The reorganisation strategy may include measures previously identified in the recovery plan or in the resolution plan, provided the resolution plan is accessible to the institution or entity referred to in points (b), (c) or (d) of Article 1(1) of Directive 2014/59/EU and when such measures remain valid following resolution. This option does not imply any obligation on the resolution authority to share the resolution plan with the management body or with the person or persons appointed in accordance with Article 72(1) of Directive 2014/59/EU.

Article 3

Financial performance — Regulatory requirements

1. The business reorganisation plan shall include the projected financial performance of the institution or entity referred to in points (b), (c) or (d) of Article 1(1) of Directive 2014/59/EU during the reorganisation period and demonstrate how long-term viability will be restored. It shall set out in particular:

- (a) the costs and the impact of the reorganisation on the profit and loss statement and the balance sheet of the institution or entity;
- (b) a description of the funding requirements during the reorganisation period and potential sources of funding;
- (c) the way the institution or entity will be able to operate covering all its costs, including depreciation and financial charges and provide an acceptable financial return by the end of the reorganisation period;
- (d) a post-resolution balance sheet reflecting the new debt and capital structure and the write-down of assets based on the valuation conducted pursuant to Article 36(1) of Directive 2014/59/EU or the *ex-post* definitive valuation referred to in Article 36(10) thereof;
- (e) a projection of the key financial metrics at group, entity and business line level, relating to, in particular, liquidity, loan performance, funding profile, profitability and efficiency.

2. The business reorganisation plan shall set out the actions the institution or entity will take to ensure that it is able to fulfil all the applicable prudential and other regulatory requirements on a forward-looking basis as quickly as possible and at the latest by the end of the reorganisation period, including the minimum requirements for own funds and eligible liabilities within the meaning of Article 45 of Directive 2014/59/EU.

Article 4

Viability assessment

1. The business reorganisation plan shall contain sufficient information to allow the resolution authority and the competent authority to assess the feasibility of the proposed measures. The business reorganisation plan shall set out at least:

- (a) the assumptions regarding the expected macroeconomic and market developments in the base case, compared with appropriate sector-wide benchmarks;
- (b) a concise presentation of alternative reorganisation strategies or set of measures and justification as to why the measures in the business reorganisation plan have been chosen to restore long-term viability of the institution or entity referred to in points (b), (c) and (d) of Article 1(1) of Directive 2014/59/EU, while respecting the resolution objectives and principles.

2. The business reorganisation plan shall include the necessary information to enable the resolution authority or the competent authority to conduct a detailed analysis of the business reorganisation's impact on the critical functions of the institution or entity referred to in points (b), (c) or (d) of Article 1(1) of Directive 2014/59/EU and on financial stability.

3. The business reorganisation plan shall include an analysis of an alternative set of key underlying assumptions, in which best-case and worst-case scenarios are considered. Restoration of long-term viability shall be possible under all scenarios, although the period, the measures and the financial performance may differ.

4. With regard to the best-case and worst-case scenarios referred to in paragraph 3, the business reorganisation plan shall include a summary of the key information used in developing each scenario and the performance of the institution or entity referred to in points (b), (c) or (d) of Article 1(1) of Directive 2014/59/EU under each scenario. Such summary shall include in particular:

- (a) the underlying assumptions, such as key macroeconomic variables;
- (b) the projection of the profit and loss statement and the balance sheet;
- (c) the key financial metrics at group, entity and business line level.

Article 5

Implementation and adjustments

1. The business reorganisation plan shall include specific, appropriate and at least quarterly implementation milestones and performance indicators. These milestones and indicators may be adjusted, in line with the process laid down in paragraph 2.

2. The business reorganisation plan shall provide for the possibility for the management body or any person or persons appointed in accordance with Article 72(1) of Directive 2014/59/EU to adjust the reorganisation strategy or individual measures where their implementation is no longer expected to contribute to the restoration of the long-term viability within the contemplated timescale. Such adjustments shall be communicated to the resolution authority and the competent authority in the progress report on the implementation of the business reorganisation plan referred to in Article 6. Where necessary for reasons of urgency, such adjustments may also be communicated through extraordinary reports.

3. The management body or the person or persons appointed in accordance with Article 72(1) of Directive 2014/59/EU shall not deviate from the implementation of the business reorganisation plan before obtaining approval for the adjustments according to the procedure set out in paragraphs (7), (8) and (9) of Article 52 of Directive 2014/59/EU.

Article 6

Progress report

1. The progress report to be submitted to the resolution authority pursuant to Article 52(10) of Directive 2014/59/EU shall include a review and assessment of the progress of the implementation of business reorganisation plan, covering at least the following:

- (a) the milestones that are met, the measures that are realised and how their impact compares to that envisaged by the business reorganisation plan;
- (b) the performance of the institution or entity and a comparison with the forecasts of the business reorganisation plan and previous progress reports;
- (c) the reasons why any milestones or performance indicators have not been achieved and proposals to remedy the delays or shortfalls;
- (d) any other issues arising in the execution of the business reorganisation plan that may prevent the restoration of the long-term viability of the institution or entity referred to in points (b), (c) and (d) of Article 1(1) of Directive 2014/59/EU;

- (e) the upcoming measures and milestones and an assessment of how likely they are to be met;
- (f) updated financial performance projections;
- (g) where necessary and justified, a proposal for adjustments to individual measures, milestones or performance indicators, in accordance with Article 5(2).

2. Resolution authorities may at all times require the management body or the person or persons appointed in accordance with Article 72(1) of Directive 2014/59/EU to provide information relating to the implementation of the business reorganisation plan.

Article 7

Entry into force

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

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

Done at Brussels, 10 May 2016.

For the Commission

The President

Jean-Claude JUNCKER

COMMISSION DELEGATED REGULATION (EU) 2016/1401**of 23 May 2016****supplementing Directive 2014/59/EU of the European Parliament and of the Council establishing a framework for the recovery and resolution of credit institutions and investment firms with regard to regulatory technical standards for methodologies and principles on the valuation of liabilities arising from derivatives****(Text with EEA relevance)**

THE EUROPEAN COMMISSION,

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

Having regard to Directive 2014/59/EU of the European Parliament and of the Council of 15 May 2014 establishing a framework for the recovery and resolution of credit institutions and investment firms and amending Council Directive 82/891/EEC, and Directives 2001/24/EC, 2002/47/EC, 2004/25/EC, 2005/56/EC, 2007/36/EC, 2011/35/EU, 2012/30/EU and 2013/36/EU, and Regulations (EU) No 1093/2010 and (EU) No 648/2012, of the European Parliament and of the Council ⁽¹⁾, and in particular Article 49(5) thereof,

Whereas:

- (1) Directive 2014/59/EU entrusts resolution authorities with the power to write down and convert liabilities of an institution under resolution.
- (2) Derivative contracts may represent a significant share of the liability structure of certain credit institutions. However, the valuation of such contracts is a complex process given that their value is linked to the value of underlying instruments, assets or entities, which evolves over time and only crystallises at maturity or upon close-out.
- (3) Past experience illustrates that the complexity of valuing derivative liabilities upon failure of one of the counterparties may make the valuation process time-consuming, involve enormous costs and give rise to litigation.
- (4) Furthermore, practice illustrates that derivative contracts may contain different methodologies to determine the amount due between counterparties upon close-out, some of them leaving the determination of the close-out amount or the close-out date, or both, entirely to the non-defaulting counterparty.
- (5) Accordingly, in order to avoid moral hazard and ensure the efficiency of the resolution actions, resolution authorities should adopt and implement appropriate methodologies to value liabilities arising from derivative contracts within a timeframe compatible with the swiftness of the resolution process and based on objective and, where practicable, readily available information. It is important that the valuation methodology sets out some procedural provisions on communication of close-out decisions by the resolution authority as well as on how to obtain replacement trades from the closed-out counterparties.
- (6) Derivative contracts subject to a netting agreement give rise to a single close-out amount in the event of a contractual early termination. Article 49 of Directive 2014/59/EU provides that the value of such contracts is determined on a net basis in accordance with the terms of the agreement. The resolution authority or independent valuer should therefore respect netting sets defined in the netting arrangements without being able to choose certain contracts and exempt others.
- (7) Pursuant to Article 49 of Directive 2014/59/EU, the value of derivative contracts is determined by the resolution authority or independent valuer as part of the valuation process carried out under Article 36 of that Directive. With respect to derivative liabilities, the valuation process should aim to determine a prompt and *ex ante* valuation for bail-in purposes, and at the same time allow the resolution authority adequate flexibility for *ex post* adjustment of claim amounts.

⁽¹⁾ OJ L 173, 12.6.2014, p. 190.

- (8) The assessment of whether to bail-in or to exclude derivative liabilities from the scope of bail-in pursuant to Article 44(3) of Directive 2014/59/EU should be made prior to the decision to close out as part of the valuation process under Article 36 of that Directive.
- (9) The valuation of derivative liabilities should enable resolution authorities to assess, prior to taking a decision to close out, the potential amount by which those liabilities might be bailed in following the close-out, as well as the potential destruction in value which might arise as a result of the close-out.
- (10) The close-out of derivative contracts may crystallise additional losses that are not reflected in the going-concern valuation, stemming for example from actual replacement costs incurred by the counterparty that would increase the close-out costs owed by the institution under resolution, or from costs incurred by the institution under resolution in re-establishing trades on exposures subject to open market risk resulting from the close-out. If the losses incurred or expected to be incurred from the close-out of derivatives exceed the share of the corresponding liabilities that would be effectively available for bail-in, the excess loss may increase the burden of bail-in for other creditors of the institution under resolution. In such cases, the amount of losses that would be borne by liabilities not arising from derivative contracts in a bail-in would be higher than without the close-out and bail-in of derivative contracts, and therefore the resolution authority may consider exempting derivative contracts from bail-in in accordance with Article 44(3)(d) of Directive 2014/59/EU and with the Commission Delegated Regulation (EU) 2016/860 ⁽¹⁾ adopted under Article 44(11) of that Directive. Any exercise of the bail-in power in relation to such liabilities should be subject to the exemptions set out in Article 44(2) of Directive 2014/59/EU and to the discretionary exemptions laid down in Article 44(3) of that Directive as specified in the Delegated Regulation (EU) 2016/860.
- (11) Since there is a need for consistent interpretation of paragraphs (3) and (4) of Article 49 of Directive 2014/59/EU, methodologies and principles for the valuation of derivatives carried out by independent valuers and resolution authorities should be specified.
- (12) A valuation methodology relying on actual or hypothetical replacement costs for the closed out liabilities would achieve outcomes similar to predominant market practice and would be consistent with the principles governing the valuation required under Article 74 of Directive 2014/59/EU, which is aimed at establishing whether shareholders and creditors would have received better treatment if the institution under resolution had entered into normal insolvency proceedings (the 'no-creditor-worse-off' principle).
- (13) In applying the valuation methodology, the resolution authority should be able to rely on various sources of data, including data sources provided by the institution under resolution, counterparties or third parties. It is nevertheless appropriate to set out principles on the types of data that have to be taken into consideration in the course of the valuation in order to ensure an objective determination of value.
- (14) Counterparties of derivative contracts closed out by resolution authorities may choose to conclude one or more replacement trades to replace their exposure upon close-out. Such replacement trades should constitute a privileged data source for the valuation as long as they are concluded on commercially reasonable terms as at the close-out date or as soon as reasonably practicable thereafter. Resolution authorities should therefore, when communicating the close-out decision, give counterparties the possibility to provide evidence of commercially reasonable replacement trades within a deadline consistent with the expected reference point in time for the valuation. Where counterparties have provided such evidence within the deadline, the valuer should determine the close-out amount at the prices of those replacement trades. If counterparties have not provided evidence of commercially reasonable replacement trades within the deadline, resolution authorities should be able to carry out their valuation on the basis of available market information, such as mid-prices and bid-offer spreads in order to assess hypothetical replacement costs, i.e. the loss or costs that would have been incurred as a result of re-establishing a hedge or a related trading position on a net risk exposure basis.
- (15) Derivative products and markets are very heterogeneous and it is not possible to identify a single market practice for entering into replacement trades. Therefore, the notion of 'commercially reasonable replacement trades' has to be broadly defined in order to enable the valuer to conduct the required assessment in all market contexts. That notion should thus be understood as a replacement trade entered into on a netted risk exposure basis, on terms consistent with common market practice and making reasonable efforts in order to obtain best value for money.

⁽¹⁾ Commission Delegated Regulation (EU) 2016/860 of 4 February 2016 specifying further the circumstances where exclusion from the application of write-down or conversion powers is necessary under Article 44(3) of Directive 2014/59/EU of the European Parliament and of the Council establishing a framework for the recovery and resolution of credit institutions and investment firms (OJ L 144, 1.6.2016, p. 11).

In particular, the valuer could consider, among other elements, the number of dealers approached by the counterparty, the number of firm quotes obtained, and whether the quote offering the best price has been chosen. The resolution authority should also be able to specify in the close-out notice the criteria that it will apply in its assessment.

- (16) Union legislation adopted in recent years has, in line with international standards, sought to increase transparency and risk mitigation in the market for derivative contracts by providing for mandatory clearing through central counterparties ('CCP') for standardised over-the-counter ('OTC') derivatives, valuation and margining requirements for CCP-cleared derivatives and for a wide range of OTC derivatives and mandatory reporting to trade depositories for all OTC derivatives.
- (17) In the event that a CCP clearing member is placed under resolution, and the resolution authority closed-out derivative contracts prior to a bail-in, that clearing member would qualify as a defaulting clearing member with regard to the CCP in relation to the particular netting set(s). The internal procedures and mechanisms governing the default of a clearing member ('CCP default procedures') implemented by CCPs in light of the requirements of Regulation (EU) No 648/2012 of the European Parliament and of the Council⁽¹⁾, offer a reliable basis to determine the value of the derivative liability arising across the netting set from the close-out, also in the context of bail-in in a resolution process.
- (18) Conducting CCP default procedures may take several days or more following the trigger event. For the particular case of resolution, waiting for the completion of default procedures over a very long period in order to set the value of derivatives could undermine the resolution timeline and objectives and could result in unnecessary disruption in financial markets. It is therefore necessary for the resolution authority to agree with the CCP and the CCP's competent authority on a deadline by which the early termination amount has to be determined, taking into account both the constraints of the CCP and those of the resolution authority.
- (19) The early termination amount determined by the CCP in line with its default management procedures within the agreed deadline should be endorsed by the valuer. Where the CCP fails to determine the early termination amount within the agreed deadline or does not apply its default procedures, the resolution authority should have the possibility to rely on its own estimates to determine the early termination amount. The resolution authority should also be able to apply a provisional determination based on its own estimates where such action is justified by the urgency of the resolution process and provided it updates its valuation upon completion of the CCP default procedure at the expiry of the deadline. The resolution authority should be able to consider information provided by the CCP after the deadline in the *ex post* definitive valuation, if available at that time, and in any event when performing the valuation of difference in treatment pursuant to Article 74 of Directive 2014/59/EU. This Regulation should be without prejudice to the default management procedures run by CCPs in accordance with Regulation (EU) No 648/2012.
- (20) The provisions in this Regulation should not affect CCP internal procedures for the transfer of the assets and positions established between a defaulting clearing member and its clients, adopted in accordance with Article 48(4) of Regulation (EU) No 648/2012, and should be consistent with any other relevant provisions or conditions of authorisation which might affect the close-out of the relevant derivative contracts.
- (21) The point in time for the valuation of derivative contracts should reflect the valuation principle which takes into account the actual or the hypothetical replacement costs incurred by counterparties. In order for the valuation to be as accurate as possible, the valuation should be carried out on the close-out date or, if that would not be commercially reasonable, the first day and time on which a market price is available for the underlying asset. In those cases where the early termination amount is determined by a CCP or is determined at the price of replacement trades, the reference point in time should be that of the CCP determination or that of the replacement trades.
- (22) If the resolution authority, due to urgency, decides to carry out a provisional valuation pursuant to Article 36(9) of Directive 2014/59/EU, the resolution authority or the valuer should be able, as part of that provisional valuation, to produce a provisional determination of the value of derivative liabilities prior to that reference point in time, based on value estimates and available data as at that time. Where the resolution authority takes resolution action on the basis of the provisional valuation in accordance with Article 36(12) of Directive

⁽¹⁾ Regulation (EU) No 648/2012 of the European Parliament and of the Council of 4 July 2012 on OTC derivatives, central counterparties and trade repositories (OJ L 201, 27.7.2012, p. 1).

2014/59/EU, relevant market developments observed or evidence of actual replacement trades at the reference point in time would either be reflected in a subsequent provisional valuation or, in the final valuation carried out pursuant to Article 36(10) of that Directive.

- (23) This Regulation is based on the draft regulatory technical standards submitted by the European Banking Authority to the Commission.
- (24) The European Banking Authority has conducted open public consultations on the draft regulatory technical standards on which this Regulation is based, has consulted the European Securities and Markets Authority, has analysed the potential related costs and benefits and requested the opinion of the Banking Stakeholder Group established in accordance with Article 37 of Regulation (EU) No 1093/2010 of the European Parliament and of the Council ⁽¹⁾,

HAS ADOPTED THIS REGULATION:

Article 1

Definitions

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

- (1) 'netting set' means a group of contracts subject to a netting arrangement as defined in Article 2(1)(98) of Directive 2014/59/EU;
- (2) 'valuer' means the independent expert appointed to carry out the valuation in compliance with the requirements and the criteria set out in Part Four of Commission Delegated Regulation (EU) 2016/1075 ⁽²⁾ or the resolution authority when conducting the valuation pursuant to paragraphs (2) and (9) of Article 36 of Directive 2014/59/EU;
- (3) 'central counterparty', or 'CCP', means a CCP as defined in Article 2(1) of Regulation (EU) No 648/2012, to the extent that it is either:
- (a) established in the Union and authorised in accordance with the procedure set out in Articles 14 to 21 of Regulation (EU) No 648/2012;
 - (b) established in a third country and recognised in accordance with the procedure set out in Article 25 of Regulation (EU) No 648/2012;
- (4) 'clearing member' means a clearing member as defined in Article 2(14) of Regulation (EU) No 648/2012;
- (5) 'close-out date' means the day and time of the close-out specified in the communication by the resolution authority of the decision to close-out;
- (6) 'replacement trade' means a transaction entered into on or after the close-out date of a derivative contract to re-establish, on a net risk exposure basis, any hedge or related trading position that has been terminated on equivalent economic terms as the closed-out transaction;
- (7) 'commercially reasonable replacement trade' means a replacement trade entered into on a netted risk exposure basis, on terms consistent with common market practice and by making reasonable efforts to obtain best value for money.

⁽¹⁾ Regulation (EU) No 1093/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Banking Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/78/EC (OJ L 331, 15.12.2010, p. 12).

⁽²⁾ Commission Delegated Regulation (EU) 2016/1075 of 23 March 2016 supplementing Directive 2014/59/EU of the European Parliament and of the Council with regard to regulatory technical standards specifying the content of recovery plans, resolution plans and group resolution plans, the minimum criteria that the competent authority is to assess as regards recovery plans and group recovery plans, the conditions for group financial support, the requirements for independent valuers, the contractual recognition of write-down and conversion powers, the procedures and contents of notification requirements and of notice of suspension and the operational functioning of the resolution colleges (OJ L 184, 8.7.2016, p. 1).

*Article 2***Comparison between the destruction in value that would arise from the close-out and the bail-in potential of derivative contracts**

1. For the purpose of Article 49(4)(c) of Directive 2014/59/EU, the resolution authority shall compare the following:
 - (a) the amount of losses that would be borne by the derivative contracts in a bail-in, obtained by multiplying:
 - (i) the share, within all equally ranked liabilities, of liabilities arising from the derivative contracts determined as part of the valuation under Article 36 of Directive 2014/59/EU and not falling within the exclusions from bail-in pursuant to Article 44(2) of that Directive; by
 - (ii) the total losses expected to be borne by all liabilities ranking equally to derivatives, including the derivative liabilities stemming from the close-out;with
 - (b) the destruction in value based on an assessment of the amount of the costs, expenses, or other impairment in value that is expected to be incurred as a result of the close-out of the derivative contracts, and obtained by calculating the sum of the following elements:
 - (i) the risk of an increased counterparty close-out claim arising from re-hedging costs expected to be incurred by the counterparty, by taking into account the bid-offer, mid-to-bid or mid-to-offer spreads in line with Article 6(2)(b);
 - (ii) the cost expected to be incurred by the institution under resolution in establishing any comparable derivative trades considered necessary in order to re-establish a hedge for any open exposure or in order to maintain an acceptable risk profile in line with the resolution strategy. The establishment of a comparable derivative trade may be achieved by taking into consideration initial margin requirements and prevailing bid-offer spreads;
 - (iii) any reduction to franchise value arising from the close-out of derivative contracts, including any valuation impairment for other or underlying assets that are linked to the derivative contracts being closed out, and any impact on funding costs or income levels;
 - (iv) any precautionary buffer against possible adverse implications from close-out, such as errors and disputes in respect of transactions or collateral exchange.
2. The comparison under paragraph 1 shall be made before a decision to close-out is taken, as part of the valuation to inform decisions about resolution actions required under Article 36 of Directive 2014/59/EU. Once a delegated act adopted by the Commission pursuant to Article 36(15) of that Directive enters into force, the comparison shall follow the requirements set out in that delegated act.

*Article 3***Communication of the decision to close out**

1. Prior to exercising the write-down and conversion powers in relation to liabilities arising from derivative contracts, the resolution authority shall communicate the decision to close out contracts pursuant to Article 63(1)(k) of Directive 2014/59/EU to the counterparties to those contracts.
2. The decision to close out shall take effect immediately, or at a later close-out date and time as specified in the communication.

3. In the decision referred to in paragraph 1, the resolution authority shall specify a date and time, taking account of the requirements in Article 8(1)(c), by which counterparties may provide evidence to the resolution authority of commercially reasonable replacement trades for the purpose of determining the close-out amount pursuant to Article 6(1). The counterparty shall also provide to the resolution authority a summary of any commercially reasonable replacement trades.

4. The resolution authority may change the date and time by which counterparties may provide evidence of commercially reasonable replacement trades where such change is consistent with Article 8(1)(c).

Any decision to change the date and time by which counterparties may provide evidence of commercially reasonable replacement trades shall be communicated to the counterparty.

5. In the decision referred to in paragraph 1, the resolution authority may specify the criteria it intends to apply when assessing whether replacement trades are commercially reasonable.

6. This Article shall not apply to the close-out and valuation of centrally cleared derivative contracts entered into between the institution under resolution, acting as a clearing member, and a CCP.

Article 4

Role of the netting agreement

For contracts subject to a netting agreement, the valuer shall determine, in accordance with Articles 2, 5, 6, and 7, a single amount which the institution under resolution has the legal right to receive or the legal obligation to pay as a result of the close-out of all the derivative contracts in the netting set, as defined in the netting agreement.

Article 5

Valuation principle for early termination amount

1. The valuer shall determine the value of liabilities arising from derivative contracts as an early termination amount calculated as the sum of the following amounts:

- (a) unpaid amounts, collateral or other amounts due from the institution under resolution to the counterparty, less unpaid amounts, collateral and other amounts due from the counterparty to the institution under resolution on the close-out date;
- (b) a close-out amount covering the amount of losses or costs incurred by derivative counterparties, or gains realised by them, by replacing or obtaining the economic equivalent of material terms of the terminated contracts and the option rights of the parties in respect of those contracts.

2. For purposes of paragraph 1, unpaid amounts means, in respect of closed-out derivative contracts, the sum of the following:

- (a) amounts that became payable on or prior to the close-out date and which remain unpaid on that date;
- (b) an amount equal to the fair market value of the asset which was required to be delivered for each obligation of the derivative contracts which was required to be settled by delivery on or prior to the close-out date and which has not been settled as at the close-out date;
- (c) amounts in respect of interest or compensation accrued during the period from the date on which relevant payment or delivery obligations fell due through to the close-out date.

*Article 6***Determination of the close-out amount**

1. Where a counterparty has provided evidence of commercially reasonable replacement trades within the deadline set out in Article 3(3), the valuer shall determine the close-out amount at the prices of those replacement trades.
2. Where a counterparty has not provided evidence of any replacement trades within the deadline set out in Article 3(3), where the valuer concludes that the communicated replacement trades were not concluded on commercially reasonable terms, or where Articles 7(7) or 8(2) apply, the valuer shall determine the close-out amount on the basis of the following:
 - (a) the mid-market end-of-day prices in line with the business-as-usual processes within the institution under resolution at the date determined pursuant to Article 8;
 - (b) the mid-to-bid spread or mid-to-offer spread, depending on the direction of the netted risk position;
 - (c) adjustments to the prices and spreads mentioned in points (a) and (b) where necessary to reflect the liquidity of the market for the underlying risks or instruments and the size of the exposure relative to market depth, as well as possible model risk.
3. With regard to intra-group liabilities, the valuer may establish the value at mid-market end-of-day prices as referred to in paragraph 2(a), without regard to paragraph 2(b) and 2(c), where the resolution strategy would imply re-hedging the terminated transactions via another intra-group derivative transaction or group of transactions.
4. For determining a value of the close-out amount pursuant to paragraph 2, the valuer shall consider a full range of available and reliable data sources and may rely on observable market data or theoretical prices generated by valuation models aimed at estimating values, including the following sources of data:
 - (a) data provided by third parties, such as observable market data or valuation parameters data and quotes from market-makers or, where a contract is centrally cleared, values or estimates obtained from CCPs;
 - (b) for standardised products, valuations generated by the valuer's own systems;
 - (c) data available within the institution under resolution, such as internal models and valuations including independent price verifications performed pursuant to Article 105(8) of Regulation (EU) No 575/2013 of the European Parliament and of the Council ⁽¹⁾;
 - (d) data provided by counterparties other than evidence of replacement trades communicated pursuant to Article 3(3), including data on current or previous valuation disputes with regard to similar or related transactions and quotes;
 - (e) any other relevant data.
5. For the purpose of paragraph 2(b), the resolution authority may instruct the institution under resolution to perform an updated independent price verification as at the reference point in time determined pursuant to Article 8, using end-of-day information available on the close-out date.
6. This Article shall not apply to the determination of a close-out amount for cleared derivative contracts entered into between an institution under resolution and a CCP, except in the exceptional circumstances set out in Article 7(7).

*Article 7***Valuation of cleared derivative contracts entered into between an institution under resolution and a CCP**

1. The valuer shall establish the value of liabilities arising from derivative contracts entered between, on the one hand, an institution under resolution acting as a clearing member and, on the other hand, a CCP, based on the valuation

⁽¹⁾ Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012 (OJ L 176, 27.6.2013, p. 1).

principle specified in Article 5. The early termination amount shall be determined by the CCP, within the deadline specified in paragraph 5, in accordance with the CCP default procedures, after deducting the collateral provided by the institution under resolution including initial margin, variation margin and contributions of the institution under resolution to the default fund of the CCP.

2. The resolution authority shall communicate to the CCP and the CCP's competent authority its decision to close out the derivative contracts pursuant to Article 63(1)(k) of Directive 2014/59/EU. The decision to close out shall take effect immediately, or on the date and time specified in the communication.

3. The resolution authority shall instruct the CCP to provide its valuation of the early termination amount for all the derivative contracts in the relevant netting set, in accordance with the CCP default procedure.

4. The CCP shall provide the resolution authority with the CCP default procedure documents and shall report the default management steps undertaken.

5. The resolution authority shall, in agreement with the CCP and the CCP's competent authority, set the deadline by which the CCP must provide the valuation of the early termination amount. For that purpose, the resolution authority, the CCP and the CCP's competent authority shall take both of the following into account:

(a) the default procedure, as established by the CCP governance rules in compliance with Article 48 of Regulation (EU) No 648/2012;

(b) the resolution timeline.

6. The resolution authority may change the deadline set under paragraph 5 upon agreement with the CCP and the CCP's competent authority.

7. By derogation to paragraph 1, the resolution authority may decide to apply the methodology laid down in Article 6, after consulting the CCP's competent authority, in either of the following cases:

(a) the CCP does not provide the valuation of the early termination amount within the deadline set by the resolution authority pursuant to paragraph 5; or

(b) the CCP's valuation of the early termination amount is not in line with the CCP default procedures set out in Article 48 of Regulation (EU) No 648/2012.

Article 8

Point in time for establishing the value of derivative liabilities and early determination

1. The valuer shall determine the value of derivative liabilities at the following point in time:

(a) where the valuer determines the early termination amount at the prices of replacement trades pursuant to Article 6(1), the day and time of the conclusion of the replacement trades;

(b) where the valuer determines the early termination amount in accordance with the CCP default procedures pursuant to Article 7(1), the day and time when the early termination amount has been determined by the CCP;

(c) in all other cases, the close-out date or, where that would not be commercially reasonable, the day and time at which a market price is available for the underlying asset.

2. The valuer may, as part of a provisional valuation carried out pursuant to Article 36(9) of Directive 2014/59/EU, determine the value of liabilities arising from derivatives earlier than at the point in time determined pursuant to paragraph 1. Such early determination shall be made on the basis of estimates, relying on the principles laid down in Article 5 and Article 6(2) to (5), and on data available at the time of the determination.

3. Where the valuer carries out an early determination pursuant to paragraph 2, the resolution authority may at any time request the valuer to update the provisional valuation to take into account relevant observable market developments or evidence of commercially reasonable replacement trades concluded at the point in time determined pursuant to paragraph 1. These developments or evidence, where available by the date and time specified pursuant to Article 3(2), shall be taken into account in the *ex post* definitive valuation carried out pursuant to Article 36(10) of Directive 2014/59/EU.

4. Where the valuer carries out an early determination pursuant to paragraph 2 in relation to derivative contracts entered into between an institution under resolution acting as a clearing member and a CCP, the valuer shall take due account of any estimate of expected close-out costs provided by the CCP.

Where the CCP provides a valuation of the early termination amount in accordance with the CCP default procedures by the deadline set pursuant to Article 7(5) and (6), that valuation shall be taken into account in the *ex post* definitive valuation carried out pursuant to Article 36(10) of Directive 2014/59/EU.

Article 9

Entry into force

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

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

Done at Brussels, 23 May 2016.

For the Commission

The President

Jean-Claude JUNKER

COMMISSION IMPLEMENTING REGULATION (EU) 2016/1402**of 22 August 2016**

withdrawing the acceptance of the undertaking for three exporting producers under Implementing Decision 2013/707/EU confirming the acceptance of an undertaking offered in connection with the anti-dumping and anti-subsidy proceedings concerning imports of crystalline silicon photovoltaic modules and key components (i.e. cells) originating in or consigned from the People's Republic of China for the period of application of definitive measures

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union ('the Treaty'),

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 anti-dumping Regulation'), and in particular Article 8 thereof,

Having regard to Regulation (EU) 2016/1037 of the European Parliament and of the Council of 8 June 2016 on protection against subsidised imports from countries not members of the European Union ⁽²⁾ ('the basic anti-subsidy Regulation'), and in particular Article 13 thereof,

Informing the Member States,

Whereas:

A. UNDERTAKING AND OTHER EXISTING MEASURES

- (1) By Regulation (EU) No 513/2013 ⁽³⁾, the European Commission ('the Commission') imposed a provisional anti-dumping duty on imports into the European Union ('the Union') of crystalline silicon photovoltaic modules ('modules') and key components (i.e. cells and wafers) originating in or consigned from the People's Republic of China ('the PRC').
- (2) A group of exporting producers gave a mandate to the China Chamber of Commerce for Import and Export of Machinery and Electronic Products ('CCCME') to submit a price undertaking on their behalf to the Commission, which they did. It is clear from the terms of that price undertaking that it constitutes a bundle of individual price undertakings for each exporting producer, which is, for reasons of practicality of administration, coordinated by the CCCME.
- (3) By Decision 2013/423/EU ⁽⁴⁾, the Commission accepted that price undertaking with regard to the provisional anti-dumping duty. By Regulation (EU) No 748/2013 ⁽⁵⁾, the Commission amended Regulation (EU) No 513/2013 to introduce the technical changes necessary due to the acceptance of the undertaking with regard to the provisional anti-dumping duty.
- (4) By Implementing Regulation (EU) No 1238/2013 ⁽⁶⁾, the Council imposed a definitive anti-dumping duty on imports into the Union of modules and cells originating in or consigned from the PRC ('the products concerned'). By Implementing Regulation (EU) No 1239/2013 ⁽⁷⁾, the Council also imposed a definitive countervailing duty on imports into the Union of the products concerned.

⁽¹⁾ OJ L 176, 30.6.2016, p. 21.

⁽²⁾ OJ L 176, 30.6.2016, p. 55.

⁽³⁾ OJ L 152, 5.6.2013, p. 5.

⁽⁴⁾ OJ L 209, 3.8.2013, p. 26.

⁽⁵⁾ OJ L 209, 3.8.2013, p. 1.

⁽⁶⁾ OJ L 325, 5.12.2013, p. 1.

⁽⁷⁾ OJ L 325, 5.12.2013, p. 66.

- (5) Following the notification of an amended version of the price undertaking by a group of exporting producers ('the exporting producers') together with the CCCME, the Commission confirmed by Implementing Decision 2013/707/EU ⁽¹⁾ the acceptance of the price undertaking as amended ('the undertaking') for the period of application of definitive measures. The Annex to this Decision lists the exporting producers for whom the undertaking was accepted, inter alia:
- (a) Ningbo Osda Solar Co. Ltd, covered by the TARIC additional code: B859 ('Osda Solar');
 - (b) Ningbo Qixin Solar Electrical Appliance Co. Ltd together with its related company in the Union, jointly covered by the TARIC additional code: B860 ('Qixin Solar');
 - (c) SHANDONG LINUO PHOTOVOLTAIC HI-TECH CO. LTD together with its related company in the Union, jointly covered by the TARIC additional code: B869 ('Linuo').
- (6) By Implementing Decision 2014/657/EU ⁽²⁾ the Commission accepted a proposal by the exporting producers together with the CCCME for clarifications concerning the implementation of the undertaking for the products concerned covered by the undertaking, that is modules and cells originating in or consigned from the PRC, currently falling within CN codes ex 8541 40 90 (TARIC codes 8541 40 90 21, 8541 40 90 29, 8541 40 90 31 and 8541 40 90 39) produced by the exporting producers ('product covered'). The anti-dumping and countervailing duties referred to in recital 4 above, together with the undertaking, are jointly referred to as 'measures'.
- (7) By Implementing Regulation (EU) 2015/866 ⁽³⁾ the Commission withdrew the acceptance of the undertaking for three exporting producers.
- (8) By Implementing Regulation (EU) 2015/1403 ⁽⁴⁾ the Commission withdrew the acceptance of the undertaking for another exporting producer.
- (9) By Implementing Regulation (EU) 2015/2018 ⁽⁵⁾ the Commission withdrew the acceptance of the undertaking for two exporting producers.
- (10) The Commission initiated an expiry review investigation under Article 11(2) of the basic anti-dumping Regulation by a Notice of Initiation published in the *Official Journal of the European Union* ⁽⁶⁾ on 5 December 2015.
- (11) The Commission initiated an expiry review investigation under Article 18 of the basic anti-subsidy Regulation by a Notice of Initiation published in the *Official Journal of the European Union* ⁽⁷⁾ on 5 December 2015.
- (12) The Commission also initiated a partial interim review under Article 11(3) of the basic anti-dumping Regulation and Article 19 of the basic anti-subsidy Regulation by a Notice of Initiation published in the *Official Journal of the European Union* ⁽⁸⁾ on 5 December 2015.
- (13) By Implementing Regulation (EU) 2016/115 ⁽⁹⁾ the Commission withdrew the acceptance of the undertaking for another exporting producer.
- (14) By Implementing Regulation (EU) 2016/185 ⁽¹⁰⁾, the Commission extended the definitive anti-dumping duty imposed by Regulation (EU) No 1238/2013 on imports of the products concerned originating in or consigned from the People's Republic of China to imports of the product concerned consigned from Malaysia and Taiwan, whether declared as originating in Malaysia and in Taiwan or not.

⁽¹⁾ OJ L 325, 5.12.2013, p. 214.

⁽²⁾ OJ L 270, 11.9.2014, p. 6.

⁽³⁾ OJ L 139, 5.6.2015, p. 30.

⁽⁴⁾ OJ L 218, 19.8.2015, p. 1.

⁽⁵⁾ OJ L 295, 12.11.2015, p. 23.

⁽⁶⁾ OJ C 405, 5.12.2015, p. 8.

⁽⁷⁾ OJ C 405, 5.12.2015, p. 20.

⁽⁸⁾ OJ C 405, 5.12.2015, p. 33.

⁽⁹⁾ OJ L 23, 29.1.2016, p. 47.

⁽¹⁰⁾ OJ L 37, 12.2.2016, p. 76.

- (15) By Implementing Regulation (EU) 2016/184 ⁽¹⁾, the Commission extended the definitive countervailing duty imposed by Council Regulation (EU) No 1239/2013 on imports of the products concerned originating in or consigned from the People's Republic of China to imports of the product concerned consigned from Malaysia and Taiwan, whether declared as originating in Malaysia and in Taiwan or not.
- (16) By Implementing Regulation (EU) 2016/1045 ⁽²⁾ the Commission withdrew the acceptance of the undertaking for another exporting producer.
- (17) By Implementing Regulation (EU) 2016/1382 ⁽³⁾ the Commission withdrew the acceptance of the undertaking for another five exporting producers.

B. TERMS OF THE UNDERTAKING

- (18) The exporting producers agreed, inter alia, not to sell the product covered to the first independent customer in the Union below a certain minimum import price ('the MIP') within the associated annual level of imports to the Union ('annual level') laid down in the undertaking.
- (19) The exporting producers also agreed to sell the product covered only by means of direct sales. For the purpose of the undertaking, a direct sale is defined as a sale either to the first independent customer in the Union or via a related party in the Union listed in the undertaking.
- (20) The undertaking sets out, in a non-exhaustive list, the breaches of the undertaking. That list includes, in particular, issuing a commercial invoice ('undertaking invoice' as defined in the Implementing Regulations referred to in recital 4) or resale invoice for which the underlying financial transaction (e.g. the amount of money actually received from the buyer after any adjustments for credit/debit notes and the like) is not in conformity with the face value of the commercial invoice.
- (21) The list of breaches also includes indirect sales to the Union by companies other than listed in the undertaking and taking part in a trading system leading to a risk of circumvention.
- (22) The undertaking also obliges the exporting producers to provide the Commission on a quarterly basis with detailed information on all their export sales to and resales in the Union ('the quarterly reports'). This implies that the data submitted in these quarterly reports must be complete and correct and the reported transactions fully comply with the terms of the undertaking.
- (23) The exporting producer is liable for the breach of any of its related parties, whether or not listed in the undertaking.

C. MONITORING OF THE EXPORTING PRODUCERS

- (24) While monitoring compliance with the undertaking, the Commission verified information submitted by Osda Solar, Qixin Solar, and Linuo that was relevant to the undertaking. The Commission also received evidence from customs authorities of one Member State on the basis of Article 8(9) of the basic anti-dumping Regulation and Article 13(9) and of the basic anti-subsidy Regulation.
- (25) The findings set out in recitals 26 to 34 address the problems identified for Osda Solar, Qixin Solar and Linuo which oblige the Commission to withdraw the acceptance of the undertaking for these exporting producers.

⁽¹⁾ OJ L 37, 12.2.2016, p. 56.

⁽²⁾ OJ L 170, 29.6.2016, p. 5.

⁽³⁾ OJ L 222, 17.8.2016, p. 10.

D. GROUNDS TO WITHDRAW THE ACCEPTANCE OF THE UNDERTAKING**(a) Sales by Osda Solar**

- (26) In its quarterly reports, Osda Solar had reported a sales transaction of the product covered to an allegedly unrelated importer in the Union and had issued an undertaking invoice. Based on the information available to the Commission, the importer involved in the above transaction was related to Osda Solar. As this importer is not listed as related party in the undertaking, Osda Solar breached the terms of the undertaking as described in recitals 19 and 21.
- (27) In addition, this related importer issued at least one resale invoice to the final customer in the Union for which the MIP was not respected. Therefore, Osda Solar breached the terms of the undertaking as described in recitals 18 and 23.

(b) Sales by Qixin Solar

- (28) In its quarterly reports, Qixin Solar had reported a sales transaction of the product covered to an allegedly unrelated importer in the Union and had issued an undertaking invoice. Based on the information available to the Commission, the importer involved in the above transaction was related to Qixin Solar. As this importer is not listed as related party in the undertaking, Qixin Solar breached the terms of the undertaking as described in recitals 19 and 21.
- (29) In addition, the related importer issued at least one resale invoice to the final customer in the Union for which the MIP was not respected. Therefore, Qixin Solar breached the terms of the undertaking as described in recitals 18 and 23.
- (30) Moreover, in the month in which the transaction referred to in recital 29 had taken place, Qixin Solar carried out direct sales of the product covered to the same customer, thus entering into a trading system leading to cross-compensation. Therefore, Qixin Solar breached the terms of the undertaking as described in recital 21.

(c) Sales by Linuo

- (31) In its quarterly reports, Linuo had reported a sales transaction of the product covered to an allegedly unrelated importer in the Union and had issued an undertaking invoice. Based on the information available to the Commission, the importer involved in the above transaction was related to Linuo. As this importer is not listed as related party in the undertaking, Linuo breached the terms of the undertaking as described in recitals 19 and 21.
- (32) In addition, this related importer issued at least one re-sale invoice to the final customer in the Union for which the MIP was not respected. Therefore, Linuo breached the terms of the undertaking as described in recitals 18 and 23.

E. INVALIDATION OF UNDERTAKING INVOICES

- (33) The information contained in the quarterly reports and the evidence received demonstrate that the re-sale invoices referred to in recitals 27, 29 and 32 and the undertaking invoices referred to in recital 30 are linked to the following transactions.

Number of Commercial invoice accompanying goods subject to an undertaking	Date	Issued by	Issued to
ODAEU150006	23.12.2015	Ningbo Osda Solar Co. Ltd	Triple Shine B.V.
QXC150051	20.6.2015	Ningbo Qixin Solar Electrical Appliance Co. Ltd	Energy Plus B.V

Number of Commercial invoice accompanying goods subject to an undertaking	Date	Issued by	Issued to
QXC150040	2.6.2015	Ningbo Qixin Solar Electrical Appliance Co. Ltd	München Solarenergie GmbH
QXC150046	10.6.2015	Ningbo Qixin Solar Electrical Appliance Co. Ltd	München Solarenergie GmbH
QXC150049	17.6.2015	Ningbo Qixin Solar Electrical Appliance Co. Ltd	München Solarenergie GmbH
QXC150052	23.6.2015	Ningbo Qixin Solar Electrical Appliance Co. Ltd	München Solarenergie GmbH
LNPV-058A-1502-017-1	6.2.2015	SHANDONG LINUO PHOTO-VOLTAIC HI-TECH Co. LTD	Lion Sun B.V.

Therefore, in accordance with Article 3(2)(b) of Council Implementing Regulation (EU) No 1238/2013 and Article 2(2)(b) of Council Implementing Regulation (EU) No 1239/2013, these invoices are declared invalid. The customs debt incurred at the time of acceptance of the declaration for release into free circulation should be recovered by the national customs authorities under Article 105(3)-(6) of Regulation (EU) No 952/2013 of the European Parliament and of the Council ⁽¹⁾ when the withdrawal of the undertaking in relation to the three exporting producers together with their related companies in the Union enters into force. The national customs authorities responsible for the collection of duties will be informed accordingly.

In this context, the Commission recalls that pursuant to Article 3(1)(b) read in conjunction with Annex III, No 7 of Implementing Regulation (EU) No 1238/2013 and to Article 2(1)(b) read in conjunction with Annex 2, No 7 of Implementing Regulation (EU) No 1239/2013, imports are only exempted from duties if the invoice indicates the price and possible rebates. Where those conditions are not complied with, duties are due, even where the commercial invoice accompanying the goods has not been invalidated by the Commission.

F. ASSESSMENT OF PRACTICABILITY OF THE OVERALL UNDERTAKING

- (34) The undertaking stipulates that a breach by an individual exporting producer does not automatically lead to the withdrawal of the acceptance of the undertaking for all exporting producers. In such a case, the Commission shall assess the impact of that particular breach on the practicability of the undertaking with the effect for all exporting producers and the CCCME.
- (35) The Commission has accordingly assessed the impact of the breaches by Osda Solar, Qixin Solar, and Linuo on the practicability of the undertaking with the effect for all exporting producers and the CCCME.
- (36) Although the breaches by the three exporting producers show a similar pattern, the Commission considers that the responsibility for the breaches lies with the exporting producers in question; the monitoring has so far not revealed systematic breaches of this pattern by a major number of exporting producers or the CCCME. At present, the Commission considers that the overall functioning of the undertaking is not affected and that there are no grounds for withdrawal of the acceptance of the undertaking for all exporting producers and the CCCME.
- (37) However, by letter of 11 July 2016 the Commission informed the CCCME about the above breaches by the three exporting producers showing a similar pattern and stated at the same time that should breaches of a similar pattern persist in the future, the Commission might re-assess the overall practicability of the undertaking.

⁽¹⁾ OJ L 269, 10.10.2013, p. 1.

G. WRITTEN SUBMISSIONS AND HEARINGS

- (38) Interested parties were granted the opportunity to be heard and to comment pursuant to Article 8(9) of the basic anti-dumping Regulation and Article 13(9) of the basic anti-subsidy Regulation.
- (39) Two exporting producers submitted limited comments after the disclosure on the sales channels or on the compliance with the MIP. However, the comments were of a confidential nature and despite the Commission's request no non-confidential summaries were provided within the deadline set for that purpose. Under Article 19(3) of the basic anti-dumping Regulation and Article 29(3) of the basic anti-subsidy Regulation, these comments may thus be disregarded. In any event, the comments received were not such as to alter the Commission's assessment regarding the breaches referred to in recitals 26 to 32 and the invalidation of the undertaking invoices referred to in recital 33.

H. WITHDRAWAL OF THE ACCEPTANCE OF THE UNDERTAKING AND IMPOSITIONS OF DEFINITIVE DUTIES

- (40) Therefore, in accordance with Article 8(9) of the basic anti-dumping Regulation, Article 13(9) of the basic anti-subsidy Regulation and also in accordance with the terms of the undertaking, the Commission has concluded that the acceptance of the undertaking for Osda Solar, Qixin Solar and Linuo together with their related companies in the Union shall be withdrawn.
- (41) Accordingly, pursuant to Article 8(9) of the basic anti-dumping Regulation and Article 13(9) of the basic anti-subsidy Regulation, the definitive anti-dumping duty imposed by Article 1 of Implementing Regulation (EU) No 1238/2013 and the definitive countervailing duty imposed by Article 1 of Implementing Regulation (EU) No 1239/2013 automatically apply to imports originating in or consigned from the PRC of the product concerned and produced by Osda Solar (TARIC additional code B859), Qixin Solar (TARIC additional code B860) and Linuo (TARIC additional code B869) as of the day of entry into force of this Regulation.
- (42) For information purposes the table in the Annex to this Regulation lists the exporting producers for whom the acceptance of the undertaking by Implementing Decision 2013/707/EU is not affected,

HAS ADOPTED THIS REGULATION:

Article 1

Acceptance of the undertaking in relation to Ningbo Osda Solar Co. Ltd, covered by the TARIC additional code B859, Ningbo Qixin Solar Electrical Appliance Co. Ltd together with its related company in the Union, jointly covered by the TARIC additional code B860 and SHANDONG LINUO PHOTOVOLTAIC HI-TECH CO. LTD together with its related company in the Union, jointly covered by the TARIC additional code B869 is hereby withdrawn.

Article 2

1. The following undertaking invoices are declared invalid:

Number of Commercial invoice accompanying goods subject to an undertaking	Date	Issued by	Issued to
ODAEU150006	23.12.2015	Ningbo Osda Solar Co. Ltd	Triple Shine B.V.
QXC150051	20.6.2015	Ningbo Qixin Solar Electrical Appliance Co. Ltd	Energy Plus B.V

Number of Commercial invoice accompanying goods subject to an undertaking	Date	Issued by	Issued to
QXC150040	2.6.2015	Ningbo Qixin Solar Electrical Appliance Co. Ltd	München Solarenergie GmbH
QXC150046	10.6.2015	Ningbo Qixin Solar Electrical Appliance Co. Ltd	München Solarenergie GmbH
QXC150049	17.6.2015	Ningbo Qixin Solar Electrical Appliance Co. Ltd	München Solarenergie GmbH
QXC150052	23.6.2015	Ningbo Qixin Solar Electrical Appliance Co. Ltd	München Solarenergie GmbH
LNPV-058A-1502-017-1	6.2.2015	SHANDONG LINUO PHOTOVOLTAIC HI-TECH Co. LTD	Lion Sun B.V.

2. National customs authorities are hereby directed to recover the customs debt incurred at the time of acceptance of the declaration for release into free circulation under Article 3(2)(b) of Implementing Regulation (EU) No 1238/2013 and Article 2(2)(b) of Implementing Regulation (EU) No 1239/2013.

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, 22 August 2016.

For the Commission
The President
Jean-Claude JUNKER

ANNEX

List of companies

Name of the company	TARIC additional code
Jiangsu Aide Solar Energy Technology Co. Ltd	B798
Alternative Energy (AE) Solar Co. Ltd	B799
Anhui Chaoqun Power Co. Ltd	B800
Anji DaSol Solar Energy Science & Technology Co. Ltd	B802
Anhui Schutten Solar Energy Co. Ltd Quanjiao Jingkun Trade Co. Ltd	B801
Anhui Titan PV Co. Ltd	B803
Xi'an SunOasis (Prime) Company Limited TBEA SOLAR Co. Ltd XINJIANG SANG'O SOLAR EQUIPMENT	B804
Changzhou NESL Solartech Co. Ltd	B806
Changzhou Shangyou Lianyi Electronic Co. Ltd	B807
CHINALAND SOLAR ENERGY Co. Ltd	B808
ChangZhou EGing Photovoltaic Technology Co. Ltd	B811
CIXI CITY RIXING ELECTRONICS Co. Ltd ANHUI RINENG ZHONGTIAN SEMICONDUCTOR DEVELOPMENT Co. Ltd HUOSHAN KEBO ENERGY & TECHNOLOGY Co. Ltd	B812
CSG PVtech Co. Ltd	B814
China Sunergy (Nanjing) Co. Ltd CEEG Nanjing Renewable Energy Co. Ltd CEEG (Shanghai) Solar Science Technology Co. Ltd China Sunergy (Yangzhou) Co. Ltd China Sunergy (Shanghai) Co. Ltd	B809
Dongfang Electric (Yixing) MAGI Solar Power Technology Co. Ltd	B816
EOPLLY New Energy Technology Co. Ltd SHANGHAI EBEST SOLAR ENERGY TECHNOLOGY Co. Ltd JIANGSU EOPLLY IMPORT & EXPORT Co. Ltd	B817

Name of the company	TARIC additional code
Era Solar Co. Ltd	B818
GD Solar Co. Ltd	B820
Greenway Solar-Tech (Shanghai) Co. Ltd Greenway Solar-Tech (Huaian) Co. Ltd	B821
Konca Solar Cell Co. Ltd Suzhou GCL Photovoltaic Technology Co. Ltd Jiangsu GCL Silicon Material Technology Development Co. Ltd Jiangsu Zhongneng Polysilicon Technology Development Co. Ltd GCL-Poly (Suzhou) Energy Limited GCL-Poly Solar Power System Integration (Taicang) Co. Ltd GCL SOLAR POWER (SUZHOU) LIMITED	B850
Guodian Jintech Solar Energy Co. Ltd	B822
Hangzhou Bluesun New Material Co. Ltd	B824
Hanwha SolarOne (Qidong) Co. Ltd	B826
Hengdian Group DMEGC Magnetics Co. Ltd	B827
HENGJI PV-TECH ENERGY Co. Ltd	B828
Himin Clean Energy Holdings Co. Ltd	B829
Jetion Solar (China) Co. Ltd Junfeng Solar (Jiangsu) Co. Ltd Jetion Solar (Jiangyin) Co. Ltd	B830
Jiangsu Green Power PV Co. Ltd	B831
Jiangsu Hosun Solar Power Co. Ltd	B832
Jiangsu Jiasheng Photovoltaic Technology Co. Ltd	B833
Jiangsu Runda PV Co. Ltd	B834
Jiangsu Sainty Photovoltaic Systems Co. Ltd Jiangsu Sainty Machinery Imp. And Exp. Corp. Ltd	B835
Jiangsu Seraphim Solar System Co. Ltd	B836
Jiangsu Shunfeng Photovoltaic Technology Co. Ltd Changzhou Shunfeng Photovoltaic Materials Co. Ltd Jiangsu Shunfeng Photovoltaic Electronic Power Co. Ltd	B837

Name of the company	TARIC additional code
Jiangsu Sinski PV Co. Ltd	B838
Jiangsu Sunlink PV Technology Co. Ltd	B839
Jiangsu Zhongchao Solar Technology Co. Ltd	B840
Jiangxi Risun Solar Energy Co. Ltd	B841
Jiangxi LDK Solar Hi-Tech Co. Ltd LDK Solar Hi-Tech (Nanchang) Co. Ltd LDK Solar Hi-Tech (Suzhou) Co. Ltd	B793
Jiangyin Hareon Power Co. Ltd Hareon Solar Technology Co. Ltd Taicang Hareon Solar Co. Ltd Hefei Hareon Solar Technology Co. Ltd Jiangyin Xinhui Solar Energy Co. Ltd Altusvia Energy (Taicang) Co. Ltd	B842
Jiangyin Shine Science and Technology Co. Ltd	B843
JingAo Solar Co. Ltd Shanghai JA Solar Technology Co. Ltd JA Solar Technology Yangzhou Co. Ltd Hefei JA Solar Technology Co. Ltd Shanghai JA Solar PV Technology Co. Ltd	B794
Jinko Solar Co. Ltd Jinko Solar Import and Export Co. Ltd ZHEJIANG JINKO SOLAR Co. Ltd ZHEJIANG JINKO SOLAR TRADING Co. Ltd	B845
Jinzhou Yangguang Energy Co. Ltd Jinzhou Huachang Photovoltaic Technology Co. Ltd Jinzhou Jinmao Photovoltaic Technology Co. Ltd Jinzhou Rixin Silicon Materials Co. Ltd Jinzhou Youhua Silicon Materials Co. Ltd	B795
Juli New Energy Co. Ltd	B846
Jumao Photonic (Xiamen) Co. Ltd	B847
King-PV Technology Co. Ltd	B848
Kinve Solar Power Co. Ltd (Maanshan)	B849

Name of the company	TARIC additional code
Lightway Green New Energy Co. Ltd Lightway Green New Energy(Zhuozhou) Co. Ltd	B851
Nanjing Daqo New Energy Co. Ltd	B853
NICE SUN PV Co. Ltd LEVO SOLAR TECHNOLOGY Co. Ltd	B854
Ningbo Huashun Solar Energy Technology Co. Ltd	B856
Ningbo Jinshi Solar Electrical Science & Technology Co. Ltd	B857
Ningbo Komaes Solar Technology Co. Ltd	B858
Ningbo South New Energy Technology Co. Ltd	B861
Ningbo Sunbe Electric Ind Co. Ltd	B862
Ningbo Ulica Solar Science & Technology Co. Ltd	B863
Perfectenergy (Shanghai) Co. Ltd	B864
Perlight Solar Co. Ltd	B865
Phono Solar Technology Co. Ltd Sumec Hardware & Tools Co. Ltd	B866
RISEN ENERGY Co. Ltd	B868
SHANGHAI ALEX SOLAR ENERGY SCIENCE & TECHNOLOGY Co. Ltd SHANGHAI ALEX NEW ENERGY Co. Ltd	B870
Shanghai BYD Co. Ltd BYD(Shangluo)Industrial Co. Ltd	B871
Shanghai Chaori Solar Energy Science & Technology Co. Ltd Shanghai Chaori International Trading Co. Ltd	B872
Propsolar (Zhejiang) New Energy Technology Co. Ltd Shanghai Propsolar New Energy Co. Ltd	B873
SHANGHAI SHANGHONG ENERGY TECHNOLOGY Co. Ltd	B874
SHANGHAI SOLAR ENERGY S&T Co. Ltd Shanghai Shenzhou New Energy Development Co. Ltd Lianyungang Shenzhou New Energy Co. Ltd	B875

Name of the company	TARIC additional code
Shanghai ST Solar Co. Ltd Jiangsu ST Solar Co. Ltd	B876
Shenzhen Sacred Industry Co. Ltd	B878
Shenzhen Topray Solar Co. Ltd Shanxi Topray Solar Co. Ltd Leshan Topray Cell Co. Ltd	B880
Sopray Energy Co. Ltd Shanghai Sopray New Energy Co. Ltd	B881
SUN EARTH SOLAR POWER Co. Ltd NINGBO SUN EARTH SOLAR POWER Co. Ltd Ningbo Sun Earth Solar Energy Co. Ltd	B882
SUZHOU SHENGLONG PV-TECH Co. Ltd	B883
TDG Holding Co. Ltd	B884
Tianwei New Energy Holdings Co. Ltd Tianwei New Energy (Chengdu) PV Module Co. Ltd Tianwei New Energy (Yangzhou) Co. Ltd	B885
Wenzhou Jingri Electrical and Mechanical Co. Ltd	B886
Shanghai Topsolar Green Energy Co. Ltd	B877
Shenzhen Sungold Solar Co. Ltd	B879
Wuhu Zhongfu PV Co. Ltd	B889
Wuxi Saijing Solar Co. Ltd	B890
Wuxi Shangpin Solar Energy Science and Technology Co. Ltd	B891
Wuxi Solar Innova PV Co. Ltd	B892
Wuxi Suntech Power Co. Ltd Suntech Power Co. Ltd Wuxi Sunshine Power Co. Ltd Luoyang Suntech Power Co. Ltd Zhenjiang Rietech New Energy Science Technology Co. Ltd Zhenjiang Ren De New Energy Science Technology Co. Ltd	B796

Name of the company	TARIC additional code
Wuxi Taichang Electronic Co. Ltd Wuxi Machinery & Equipment Import & Export Co. Ltd Wuxi Taichen Machinery & Equipment Co. Ltd	B893
Xi'an Huanghe Photovoltaic Technology Co. Ltd State-run Huanghe Machine-Building Factory Import and Export Corporation Shanghai Huanghe Fengjia Photovoltaic Technology Co. Ltd	B896
Yingli Energy (China) Co. Ltd Baoding Tianwei Yingli New Energy Resources Co. Ltd Hainan Yingli New Energy Resources Co. Ltd Hengshui Yingli New Energy Resources Co. Ltd Tianjin Yingli New Energy Resources Co. Ltd Lixian Yingli New Energy Resources Co. Ltd Baoding Jiasheng Photovoltaic Technology Co. Ltd Beijing Tianneng Yingli New Energy Resources Co. Ltd Yingli Energy (Beijing) Co. Ltd	B797
Yuhuan BLD Solar Technology Co. Ltd Zhejiang BLD Solar Technology Co. Ltd	B899
Yuhuan Sinosola Science & Technology Co. Ltd	B900
Zhangjiagang City SEG PV Co. Ltd	B902
Zhejiang Fengsheng Electrical Co. Ltd	B903
Zhejiang Global Photovoltaic Technology Co. Ltd	B904
Zhejiang Heda Solar Technology Co. Ltd	B905
Zhejiang Jiutai New Energy Co. Ltd Zhejiang Topoint Photovoltaic Co. Ltd	B906
Zhejiang Kingdom Solar Energy Technic Co. Ltd	B907
Zhejiang Koly Energy Co. Ltd	B908
Zhejiang Mega Solar Energy Co. Ltd Zhejiang Fortune Photovoltaic Co. Ltd	B910
Zhejiang Shuqimeng Photovoltaic Technology Co. Ltd	B911
Zhejiang Shinew Photoelectronic Technology Co. Ltd	B912

Name of the company	TARIC additional code
Zhejiang Sunflower Light Energy Science & Technology Limited Liability Company Zhejiang Yauchong Light Energy Science & Technology Co. Ltd	B914
Zhejiang Sunrupu New Energy Co. Ltd	B915
Zhejiang Tianming Solar Technology Co. Ltd	B916
Zhejiang Trunsun Solar Co. Ltd Zhejiang Beyondsun PV Co. Ltd	B917
Zhejiang Wanxiang Solar Co. Ltd WANXIANG IMPORT & EXPORT Co. Ltd	B918
ZHEJIANG YUANZHONG SOLAR Co. Ltd	B920
Zhongli Talesun Solar Co. Ltd	B922

COMMISSION IMPLEMENTING REGULATION (EU) 2016/1403
of 22 August 2016
excluding ICES Subdivisions 27 and 28.2 from the application of a fishery closure period in 2016

THE EUROPEAN COMMISSION,

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

Having regard to Council Regulation (EC) No 1098/2007 of 18 September 2007 establishing a multiannual plan for the cod stocks in the Baltic Sea and the fisheries exploiting those stocks, amending Regulation (EEC) No 2847/93 and repealing Regulation (EC) No 779/97 ⁽¹⁾, and in particular Article 29(2) thereof,

Whereas:

- (1) Provisions for setting the fisheries closure periods for cod stocks in the Baltic Sea are set out in Regulation (EC) No 1098/2007.
- (2) Under Article 29(2) of Regulation (EC) No 1098/2007, the Commission may exclude ICES Subdivisions 27 and 28.2 from the scope of the fisheries closure period if the amount of cod caught in ICES Subdivisions 27 and 28.2 during the most recent reporting period was below a certain threshold.
- (3) Taking into account the reports submitted by the relevant Member States and the advice of the Scientific, Technical and Economic Committee for Fisheries, ICES Subdivisions 27 and 28.2 should be excluded from the scope of the said fisheries closure period in 2016.
- (4) The measures provided for in this Regulation are in accordance with the opinion of the Committee for Fisheries and Aquaculture,

HAS ADOPTED THIS REGULATION:

Article 1

Article 8(1)(b) of Regulation (EC) No 1098/2007 shall not apply to ICES Subdivisions 27 and 28.2 in 2016.

Article 2

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

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

Done at Brussels, 22 August 2016.

For the Commission
The President
Jean-Claude JUNCKER

⁽¹⁾ OJ L 248, 22.9.2007, p. 1.

COMMISSION IMPLEMENTING REGULATION (EU) 2016/1404**of 22 August 2016****establishing the standard import values for determining the entry price of certain fruit and vegetables**

THE EUROPEAN COMMISSION,

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

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

Having regard to Commission Implementing Regulation (EU) No 543/2011 of 7 June 2011 laying down detailed rules for the application of Council Regulation (EC) No 1234/2007 in respect of the fruit and vegetables and processed fruit and vegetables sectors ⁽²⁾, and in particular Article 136(1) thereof,

Whereas:

- (1) Implementing Regulation (EU) No 543/2011 lays down, pursuant to the outcome of the Uruguay Round multilateral trade negotiations, the criteria whereby the Commission fixes the standard values for imports from third countries, in respect of the products and periods stipulated in Annex XVI, Part A thereto.
- (2) The standard import value is calculated each working day, in accordance with Article 136(1) of Implementing Regulation (EU) No 543/2011, taking into account variable daily data. Therefore this Regulation should enter into force on the day of its publication in the *Official Journal of the European Union*,

HAS ADOPTED THIS REGULATION:

Article 1

The standard import values referred to in Article 136 of Implementing Regulation (EU) No 543/2011 are fixed in the Annex to this Regulation.

Article 2

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

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

Done at Brussels, 22 August 2016.

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

⁽¹⁾ OJ L 347, 20.12.2013, p. 671.

⁽²⁾ OJ L 157, 15.6.2011, p. 1.

ANNEX

Standard import values for determining the entry price of certain fruit and vegetables

(EUR/100 kg)		
CN code	Third country code ⁽¹⁾	Standard import value
0702 00 00	MA	165,4
	ZZ	165,4
0707 00 05	TR	137,2
	ZZ	137,2
0709 93 10	TR	141,6
	ZZ	141,6
0805 50 10	AR	151,1
	CL	144,0
	MA	95,0
	TR	154,0
	UY	194,6
	ZA	173,8
	ZZ	152,1
	EG	222,7
	TR	135,0
	ZZ	178,9
0808 10 80	AR	110,6
	BR	102,1
	CL	125,0
	CN	160,3
	NZ	137,6
	US	141,5
	ZA	97,0
	ZZ	124,9
	AR	93,2
	CL	123,4
0808 30 90	TR	141,2
	ZA	101,3
	ZZ	114,8
0809 30 10, 0809 30 90	TR	130,7
	ZZ	130,7

⁽¹⁾ Nomenclature of countries laid down by Commission Regulation (EU) No 1106/2012 of 27 November 2012 implementing Regulation (EC) No 471/2009 of the European Parliament and of the Council on Community statistics relating to external trade with non-member countries, as regards the update of the nomenclature of countries and territories (OJ L 328, 28.11.2012, p. 7). Code 'ZZ' stands for 'of other origin'.

DECISIONS

COMMISSION IMPLEMENTING DECISION (EU) 2016/1405

of 22 August 2016

amending the Annex to Implementing Decision 2014/709/EU concerning animal health control measures relating to African swine fever in certain Member States

(notified under document C(2016) 5466)

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

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

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

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

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

Whereas:

- (1) Commission Implementing Decision 2014/709/EU ⁽⁴⁾ lays down animal health control measures in relation to African swine fever in certain Member States. The Annex to that Implementing Decision demarcates and lists certain areas of those Member States in Parts I, II, III and IV thereof differentiated by the level of risk based on the epidemiological situation. That list includes certain areas of Poland.
- (2) In August 2016, two outbreaks of African swine fever in domestic pigs occurred in the powiat bialski in Poland in an area currently listed in Part I of the Annex to Implementing Decision 2014/709/EU. The occurrence of this outbreak, together with the recent change in the epidemiological situation constitutes an increase in the level of risk that needs to be taken into account. Accordingly, certain areas of Poland listed in Part I of the Annex to Implementing Decision 2014/709/EU should now be listed in Part III of that Annex.
- (3) The Commission notes that there are several further outbreaks in domestic pigs which could, based on preliminary evidence, be attributed to human activity instead of feral pigs and that are therefore being covered by a separate Commission Decision. Once confirmatory evidence from Poland has been obtained in relation to these outbreaks, the measures provided for in this Decision should be reviewed to exclude the risk of the spread of the disease in feral pigs.
- (4) The evolution of the current epidemiological situation of African swine fever in the affected feral pig populations in the Union should be taken into account in the assessment of the animal health risk posed by that situation as regards that disease in Poland. In order to focus the animal health control measures provided for in Implementing Decision 2014/709/EU and to prevent the further spread of African swine fever, as well as to prevent any unnecessary disturbance to trade within the Union and to avoid unjustified barriers to trade by third countries, the Union list of areas subject to the animal health control measures set out in the Annex to that Implementing Decision should be amended to take into account the changes in the current epidemiological situation as regards that disease in Poland.

⁽¹⁾ OJ L 395, 30.12.1989, p. 13.

⁽²⁾ OJ L 224, 18.8.1990, p. 29.

⁽³⁾ OJ L 18, 23.1.2003, p. 11.

⁽⁴⁾ Commission Implementing Decision 2014/709/EU of 9 October 2014 concerning animal health control measures relating to African swine fever in certain Member States and repealing Implementing Decision 2014/178/EU (OJ L 295, 11.10.2014, p. 63).

- (5) The Annex to Implementing Decision 2014/709/EU should therefore be amended accordingly.
- (6) 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

The Annex to Implementing Decision 2014/709/EU is replaced by the text set out in the Annex to this Decision.

Article 2

This Decision is addressed to the Member States.

Done at Brussels, 22 August 2016.

For the Commission
Vytenis ANDRIUKAITIS
Member of the Commission

ANNEX

‘ANNEX

PART I

1. Latvia

The following areas in Latvia:

- in the novads of Bauskas, the pagasti of Īslīces, Gailīšu, Brunavas and Ceraukstes,
- in the novads of Dobeles, the pagasti of Bikstu, Zebrenes, Annenieku, Naudītes, Penkules, Auru and Krimūnu, Dobeles, Berzes, the part of the pagasts of Jaunbērzes located to the West of road P98, and the pilsēta of Dobeļe,
- in the novads of Jelgavas, the pagasti of Glūdas, Svētes, Platones, Vircavas, Jaunsvirlaukas, Zaļenieku, Vilces, Lielplatones, Elejas and Sesavas,
- in the novads of Kandavas, the pagasti of Vānes and Matkules,
- in the novads of Talsu, the pagasti of Lubes, Īves, Valdgales, Ģibuļu, Lībagu, Laidzes, Ārlavas, Abavas, the pilsētas of Sabile, Talsi, Stende and Valdemārpils,
- the novads of Brocēnu,
- the novads of Dundagas,
- the novads of Jaunpils,
- the novads of Rojas,
- the novads of Rundāles,
- the novads of Stopiņu,
- the novads of Tērvetes,
- the pilsēta of Bauska,
- the republikas pilsēta of Jelgava,
- the republikas pilsēta of Jūrmala.

2. Lithuania

The following areas in Lithuania:

- in the rajono savivaldybė of Jurbarkas, the seniūnijos of Raudonės, Veliuonos, Seredžiaus and Juodaičių,
- in the rajono savivaldybė of Pakruojis, the seniūnijos of Klovainių, Rozalimo and Pakruojis,
- in the rajono savivaldybė of Panevėžys, the part of the Krekenavos seniūnija located to the west of the river Nevėžis,
- in the rajono savivaldybė of Raseiniai, the seniūnijos of Ariogalos, Ariogalos miestas, Betygalos, Pajūjū and Šiluvos,
- in the rajono savivaldybė of Šakiai, the seniūnijos of Plokščių, Kriūkų, Lekėčių, Lukšių, Griškabūdžio, Barzdų, Žvirgždaičių, Sintautų, Kudirkos Naumiesčio, Slavikų, Šakių,
- the rajono savivaldybė of Pasvalys,
- the rajono savivaldybė of Vilkaviškis,

- the rajono savivaldybė of Radviliškis,
- the savivaldybė of Kalvarija,
- the savivaldybė of Kazlų Rūda,
- the savivaldybė of Marijampolė.

3. Poland

The following areas in Poland:

In the województwo podlaskie:

- the gminy of Augustów with the city of Augustów, Nowinka, Płaska, Sztabin and Bargłów Kościelny in the powiat augustowski,
- the gminy of Brańsk with the city of Brańsk, Boćki, Rudka, Wyszki, the part of the gmina of Bielsk Podlaski located to the West of the line created by road number 19 (going northwards from the city of Bielsk Podlaski) and prolonged by the eastern border of the city of Bielsk Podlaski and road number 66 (going southwards from the city of Bielsk Podlaski), the city of Bielsk Podlaski, the part of the gmina of Orla located to the West of road number 66, in the powiat bielski,
- the gminy of Choroszcz, Juchnowiec Kościelny, Suraż, Turośń Kościelna, Tykocin, Łapy, Poświętne, Zawady and Dobrzyniewo Duże in the powiat białostocki,
- the gminy of Drohiczyn, Dziadkowice, Grodzisk, Milejczyce and Perlejewo in the powiat siemiatycki,
- the gminy of Rutka-Tartak, Szypliszki, Suwałki, Raczki in the powiat suwalski,
- the gminy of Suchowola and Korycin in the powiat sokółski,
- the parts of the gminy of Kleszczele and Czeremcha located to the West of road number 66, in the powiat hajnowski,
- the powiat łomżyński,
- the powiat M. Białystok,
- the powiat M. Łomża,
- the powiat M. Suwałki,
- the powiat moniecki,
- the powiat sejneński,
- the powiat wysokomazowiecki,
- the powiat zambrowski.

In the województwo mazowieckie:

- the gminy of Cerańów, Jabłonna Lacka, Sterdyń and Repki in the powiat sokołowski,
- the gminy of Korczew, Przesmyki, Paprotnia, Suchożebry, Mordy, Siedlce and Zbuczyn in the powiat siedlecki,
- the powiat M. Siedlce,
- the gminy of Rzekuń, Troszyn, Czerwin and Goworowo in the powiat ostrołęcki,
- the gminy of Olszanka, Łosice and Platerów in the powiat łosicki,
- the powiat ostrowski.

In the województwo lubelskie:

- the gmina of Hanna in the powiat włodawski,
- the gminy of Miedzyrzec Podlaski with the city of Miedzyrzec Podlaski, Drelów, Łomazy, Rossosz, Piszczac, Kodeń, Tuczna, Sławatycze, Wisznice and Sosnówka in the powiat bialski.
- the gmina of Kąkolewnica Wschodnia and Komarówka Podlaska in the powiat radzyński.

PART II

1. Estonia

The following areas in Estonia:

- the linn of Kallaste,
- the linn of Rakvere,
- the linn of Tartu,
- the linn of Viljandi,
- the maakond of Harjumaa (excluding the part of the vald of Kuusalu located to the South of road 1 (E20), the vald of Aegviidu and the vald of Anija),
- the maakond of Ida-Virumaa,
- the maakond of Läänemaa,
- the maakond of Pärnumaa,
- the maakond of Põlvamaa,
- the maakond of Raplamaa,
- the part of the vald of Kuusalu located to the North of road 1 (E20),
- the part of the vald of Pärsti located to the West of road 24126,
- the part of the vald of Suure-Jaani located to the West of road 49,
- the part of the vald of Tamsalu located to the North-East of the Tallinn-Tartu railway,
- the part of the vald of Tartu located to the East of the Tallinn-Tartu railway,
- the part of the vald of Viiratsi located to the West of the line defined by the Western part of road 92 until the junction to road 155, then road 155 until the junction to road 24156, then road 24156 until it crosses Verilaske river, then the Verilaske river until it reaches the southern border of the vald,
- the vald of Abja,
- the vald of Alatskivi,
- the vald of Avanduse,
- the vald of Haaslava,
- the vald of Haljala,
- the vald of Halliste,
- the vald of Kambja,
- the vald of Karksi,

- the vald of Koonga,
- the vald of Kõpu,
- the vald of Laekvere,
- the vald of Luunja,
- the vald of Mäksa,
- the vald of Märjamaa,
- the vald of Meeksi,
- the vald of Peipsiääre,
- the vald of Piirissaare,
- the vald of Rägavere,
- the vald of Rakvere,
- the vald of Saksi,
- the vald of Sõmeru,
- the vald of Vara,
- the vald of Vihula,
- the vald of Võnnu.

2. Latvia

The following areas in Latvia:

- in the novads of Balvu, the pagsti of Vīksnas, Bērzkālnes, Vectilžas, Lazdulejas, Briežuciema, Tilžas, Bērzpils and Krišjāņu,
- in the novads of Bauskas, the pagasti of Mežotnes, Codes, Dāviņu and Vecsaules,
- in the novads of Dobele, the part of the pagasts of Jaunbērzes located to the East of road P98,
- in the novads of Gulbene the pagasti of Lejasciema, Lizuma, Rankas, Druvienas, Tirzas and Līgo,
- in the novads of Jelgava the pagasti of Kalnciema, Līvānu and Valgundes,
- in the novads of Kandava, the pagasti of Cēres, Kandavas, Zemītes and Zantes, the pilsēta of Kandava,
- in the novads of Limbaži, the pagasti of Skultes, Vidrižu, Limbaži and Umurgas,
- in the novads of Rugāji the pagsts of Lazdukalne,
- in the novads of Salacgrīva, the pagasts of Liepupes,
- in the novads of Talsi, the pagasti of Ķūļciema, Balgales, Vandzenes, Laucienes, Virbu and Strazdes,
- the novads of Ādaži,
- the novads of Aizkraukle,
- the novads of Aknīste,
- the novads of Alūksne,

- the novads of Amatas,
- the novads of Apes,
- the novads of Babītes,
- the novads of Baldones,
- the novads of Baltinavas,
- the novads of Carnikavas,
- the novads of Cēsu,
- the novads of Cesvaines,
- the novads of Engures,
- the novads of Ērgļu,
- the novads of Garkalnes,
- the novads of Iecavas,
- the novads of Ikšķiles,
- the novads of Ilūkstes,
- the novads of Inčukalna,
- the novads of Jaunjelgavas,
- the novads of Jaunpiebalgas,
- the novads of Jēkabpils,
- the novads of Ķeguma,
- the novads of Ķekavas,
- the novads of Kocēnu,
- the novads of Kokneses,
- the novads of Krimuldas,
- the novads of Krustpils,
- the novads of Lielvārdes,
- the novads of Līgatnes,
- the novads of Līvānu,
- the novads of Lubānas,
- the novads of Madonas,
- the novads of Mālpils,
- the novads of Mārupes,
- the novads of Mērsraga,
- the novads of Neretas,
- the novads of Ogres,
- the novads of Olaines,

- the novads of Ozolnieki,
- the novads of Pārgaujas,
- the novads of Pļaviņu,
- the novads of Priekule,
- the novads of Raunas,
- the novads of Ropažu,
- the novads of Salas,
- the novads of Salaspils
- the novads of Saulkrastu,
- the novads of Sējas,
- the novads of Siguldas,
- the novads of Skrīveru,
- the novads of Smiltenes,
- the novads of Tukuma,
- the novads of Varakļānu,
- the novads of Vecpiebalgas,
- the novads of Vecumnieku,
- the novads of Viesītes,
- the novads of Viļakas,
- the pilsēta of Limbaži,
- the republikas pilsēta of Jēkabpils,
- the republikas pilsēta of Valmiera.

3. Lithuania

The following areas in Lithuania:

- in the rajono savivaldybė of Anykščiai, the seniūnijos of Kavarskas, Kurkliai and the part of Anykščiai located south west to the road No.121 and No. 119,
- in the rajono savivaldybė of Jonava, the seniūnijos of Šilų, Bukonių and, in the Žeimių seniūnija, the villages of Biliušiai, Drobiškiai, Normainiai II, Normainėliai, Juškonys, Pauliukai, Mitėniškiai, Zofijauka, Naujokai,
- in the rajono savivaldybė of Kaunas, the seniūnijos of Akademijos, Alšėnų, Babtų, Batniavos, Čekiškės, Domeikavos, Ežerėlio, Garliavos, Garliavos apylinkių, Kačerginės, Kulautuvos, Linksmakalnio, Raudondvario, Ringaudų, Rokų, Samylų, Taurakiemio, Užliedžių, Vilkijos, Vilkijos apylinkių and Zapyškio,
- in the rajono savivaldybė of Kėdainiai, the seniūnijos of Josvainių, Pernaravos, Krakių, Dotnuvos, Gudžiūnų, Surviliškio, Vilainių, Truskavos, Šėtos, Kėdainių miesto,

- in the rajono savivaldybė of Panevėžys the seniūnijos of Karsakiškio, Naujamiesčio, Paįstrio, Panevėžio, Ramygalos, Smilgių, Upytės, Vadoklių, Velžio and the part of Krekenavos seniūnija located to the east of the river Nevėžis,
- in the rajono savivaldybė of Prienai the seniūnijos of Veiverių, Šilavoto, Naujosios Ūtos, Balbieriškio, Ašmintos, Išlaužo, Pakuonių,
- in the rajono savivaldybė of Šalčininkai, the seniūnijos of Jasiūnų, Turgelių, Akmenynės, Šalčininkų, Gerviškų, Butrimonių, Eišiškių, Poškonių, Dieveniškų,
- in the rajono savivaldybė of Varėna, the seniūnijos of Kaniavos, Marcinkonių, Merkinės,
- in the rajono savivaldybė of Vilnius the parts of the seniūnija of Sudervė and Dūkštai located to the North-East from the road No. 171, the seniūnijos of Maišiagala, Zujūnų, Avižienių, Riešės, Paberžės, Nemenčinės, Nemenčinės miesto, Sužionių, Buivydžių, Bezdonių, Lavoriškių, Mickūnų, Šatrininkų, Kalvelių, Nemėžių, Rudaminos, Rūkainių, Medininkų, Marijampolio, Pagirių and Juodšilių,
- the miesto savivaldybė of Alytus,
- in the rajono savivaldybė of Utena the seniūnijos of Sudeikių, Utenos, Utenos miesto, Kuktiškių, Daugailių, Tauragnų, Saldutiškio,
- in the miesto savivaldybė of Alytus the seniūnijos of Pivašiūnų, Punios, Daugų, Alovės, Nemunaičio, Raitininkų, Miroslavo, Krokiakaukio, Simno, Alytaus,
- the miesto savivaldybė of Kaunas,
- the miesto savivaldybė of Panevėžys,
- the miesto savivaldybė of Prienai,
- the miesto savivaldybė of Vilnius,
- the rajono savivaldybė of Biržai,
- the savivaldybė of Druskininkai,
- the rajono savivaldybė of Ignalina,
- the rajono savivaldybė of Lazdijai,
- the rajono savivaldybė of Molėtai,
- the rajono savivaldybė of Rokiškis,
- the rajono savivaldybė of Širvintos,
- the rajono savivaldybė of Švenčionys,
- the rajono savivaldybė of Ukmergė,
- the rajono savivaldybė of Zarasai,
- the savivaldybė of Birštonas,
- the savivaldybė of Visaginas.

4. Poland

The following areas in Poland:

In podlaskie województwo:

- the gminy of Czarna Białostocka, Gródek, Michałowo, Supraśl, Wasilków and Zabłudów in the powiat białostocki,
- the gminy of Dąbrowa Białostocka, Janów, Krynki, Kuźnica, Nowy Dwór, Sidra, Sokółka and Szudziałowo in the powiat sokólski,

- the gmina of Lipsk in the powiat augustowski,
- the gmina of Dubicze Cerkiewne, the parts of the gminy of Kleszczele and Czeremcha located to the East of road number 66, in the powiat hajnowski,
- the part of the gmina of Bielsk Podlaski located to the East of the line created by road number 19 (going northwards from the city of Bielsk Podlaski) and prolonged by the eastern border of the city of Bielsk Podlaski and road number 66 (going southwards from the city of Bielsk Podlaski), the part of the gmina of Orla located to the East of road number 66, in the powiat bielski.

PART III

1. Estonia

The following areas in Estonia:

- the linn of Elva,
- the linn of Võhma,
- the maakond of Jõgevamaa,
- the maakond of Järvamaa,
- the maakond of Valgamaa,
- the maakond of Võrumaa,
- the part of the vald of Kuusalu located to the South of road 1 (E20),
- the part of the vald of Pärsti located to the East of road 24126,
- the part of the vald of Suure-Jaani located to the East of road 49,
- the part of the vald of Tamsalu located to the South-West of the Tallinn-Tartu railway,
- the part of the vald of Tartu located to the West of the Tallinn-Tartu railway,
- the part of the vald of Viiratsi located to the East of the line defined by the Western part of road 92 until the junction to road 155, then road 155 until the junction to road 24156, then road 24156 until it crosses the Verilaske river, then the Verilaske river until it reaches the southern border of the vald,
- the vald of Aegviidu,
- the vald of Anija,
- the vald of Kadrina,
- the vald of Kolga-Jaani,
- the vald of Konguta,
- the vald of Kõo,
- the vald of Laeva,
- the vald of Nõo,
- the vald of Paistu,
- the vald of Puhja,
- the vald of Rakke,
- the vald of Rannu,

- the vald of Rõngu,
- the vald of Saarepeedi,
- the vald of Tapa,
- the vald of Tähtvere,
- the vald of Tarvastu,
- the vald of Ülenurme,
- the vald of Väike-Maarja.

2. Latvia

The following areas in Latvia:

- in the novads of Balvu, the pagasti of Kubuļu and Balvu,
- in the novads of Gulbenes, the pagasti of Beļavas, Galgauskas, Jaungulbenes, Daukstu, Stradu, Litenes and Stāmerienas,
- in the novads of Limbažu, the pagasti of Viļķenes, Pāles and Katvaru,
- in the novads of Rugāju the pagasts of Rugāju,
- in the novads of Salacgrīvas, the pagasti of Ainažu and Salacgrīvas,
- the novads of Aglonas,
- the novads of Alojas,
- the novads of Beverīnas,
- the novads of Burtnieku,
- the novads of Ciblas,
- the novads of Dagdas,
- the novads of Daugavpils,
- the novads of Kārsavas,
- the novads of Krāslavas,
- the novads of Ludzas,
- the novads of Mazsalacas,
- the novads of Naukšēnu,
- the novads of Preiļu,
- the novads of Rēzeknes,
- the novads of Riebiņu,
- the novads of Rūjienas,
- the novads of Strenču,
- the novads of Valkas,
- the novads of Vārkavas,

- the novads of Viļānu,
- the novads of Zilupes,
- the pilsēta of Ainaži,
- the pilsēta of Salacgrīva.
- the republikas pilsēta of Daugavpils,
- the republikas pilsēta of Rēzekne.

3. Lithuania

The following areas in Lithuania:

- in the rajono savivaldybė of Anykščiai, the seniūnijos of Debeikių, Skiemonių, Viešintų, Andrioniškio, Svėdasų, Troškūnų, Traupio and the part of the seniūnija of Anykščių located north east to the road No. 121 and No. 119,
- in the rajono savivaldybė of Alytus, the seniūnija of Butrimonių,
- in the rajono savivaldybė of Jonava the seniūnijos of Upninkų, Ruklos, Dumsių, Užusalių, Kulvos and, in the seniūnija of Žeimiai, the villages Akliai, Akmeniai, Barsukinė, Blauzdžiai, Gireliai, Jagėlava, Juljanava, Kuigaliai, Liepkalniai, Martynišķiai, Milašiškiai, Mimaliai, Naujasodis, Normainiai I, Paduobiai, Palankesiai, Pamelnýtėlė, Pėdžiai, Skrynės, Svalkeniai, Terespolis, Varpėnai, Žeimių gst., Žieveliškiai and Žeimių miestelis,
- the rajono savivaldybė of Kaišiadorys,
- in the rajono savivaldybė of Kaunas, the seniūnijos of Vandžiogalos, Lapių, Karmėlavos and Neveronių,
- in the rajono savivaldybė of Kėdainiai, the seniūnija of Pelėdnagių,
- in the rajono savivaldybė of Prienai, the seniūnijos of Jiezno and Staklišķių,
- in the rajono savivaldybė of Panevėžys, the seniūnijos of Miežiškų and Raguvos,
- in the rajono savivaldybė of Šalčininkai, the seniūnijos of Baltosios Vokės, Pabarės, Dainavos and Kalesninkų,
- in the rajono savivaldybė of Varėna, the seniūnijos of Valkininkų, Jakėnų, Matuizų, Varėnos and Vydenių,
- in the rajono savivaldybė of Vilnius the parts of the seniūnija of Sudervė and Dūkštai located to the South-West from the road No. 171,
- in the rajono savivaldybė of Utena, the seniūnijos of Užpalių, Vyžuonų and Leliūnų,
- the savivaldybė of Elektrėnai,
- the miesto savivaldybė of Jonava,
- the miesto savivaldybė of Kaišiadorys,
- the rajono savivaldybė of Kupiškis,
- the rajono savivaldybė of Trakai.

4. Poland

The following areas in Poland:

- the gminy of Czyże, Białowieża, Hajnówka with the city of Hajnówka, Narew, Narewka in the powiat hajnowski,
- the gminy of Mielnik, Nurzec-Stacja, Siemiatycze with the city of Siemiatycze in the powiat siemiatycki,

In the województwo mazowieckie:

- the gminy of Sarnaki, Stara Kornica and Huszlew in powiat łosicki.

In the województwo lubelskie:

- the gminy of Konstantynów, Janów Podlaski, Leśna Podlaska, Rokitno, Biała Podlaska, Zalesie and Terespol with the city of Terespol in the powiat bialski,
- the powiat M. Biała Podlaska.

PART IV

Italy

The following areas in Italy:

- all areas of Sardinia.'
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COMMISSION IMPLEMENTING DECISION (EU) 2016/1406**of 22 August 2016****concerning certain protective measures relating to African swine fever in Poland and repealing
Implementing Decision (EU) 2016/1367***(notified under document C(2016) 5467)***(Only the Polish text is authentic)****(Text with EEA relevance)**

THE EUROPEAN COMMISSION,

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

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

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

Whereas:

- (1) African swine fever is an infectious viral disease affecting domestic and feral pig populations and can have a severe impact on the profitability of pig farming causing disturbance to trade within the Union and exports to third countries.
- (2) In the event of an outbreak of African swine fever, there is a risk that the disease agent might spread to other pig holdings and to feral pigs. As a result, it may spread from one Member State to another Member State and to third countries through trade in live pigs or their products.
- (3) Council Directive 2002/60/EC ⁽³⁾ lays down minimum measures to be applied within the Union for the control of African swine fever. Article 9 of Directive 2002/60/EC provides for the establishment of protection and surveillance zones in the event of outbreaks of that disease where the measures laid down in Articles 10 and 11 of that Directive are to apply.
- (4) Poland has informed the Commission of the current African swine fever situation on its territory, and in accordance with Article 9 of Directive 2002/60/EC, it has established protection and surveillance zones where the measures referred to in Articles 10 and 11 of that Directive are applied.
- (5) In order to prevent any unnecessary disturbance to trade within the Union and to avoid unjustified barriers to trade by third countries, it is necessary to describe at Union level the areas established as protection and surveillance zones for African swine fever in Poland in collaboration with that Member State.
- (6) Accordingly, the areas identified as protection and surveillance zones in Poland should be set out in the Annex to this Decision and the duration of that regionalisation fixed.
- (7) Six outbreaks occurred in domestic pigs in powiat wysokomazowiecki, zambrowski, białostocki and bielski in August 2016. Given that Poland provides preliminary evidence that these outbreaks are linked to human activity and that there is evidence that African swine fever is not circulating in the feral pig population in the areas concerned, specific and proportionate measures are required, also taking into account the fact that Poland commits itself to apply additional national measures for control of animal movements and markets. These measures should consist in the application of the measures provided for by Directive 2002/60/EC, in particular with respect to the strict limitations of the movement and transport of pigs as provided for by Articles 10 and 11 of that Directive in areas which are grouped in two coherent zones as described in the Annex.

⁽¹⁾ OJ L 395, 30.12.1989, p. 13.

⁽²⁾ OJ L 224, 18.8.1990, p. 29.

⁽³⁾ Council Directive 2002/60/EC of 27 June 2002 laying down specific provisions for the control of African swine fever and amending Directive 92/119/EEC as regards Teschen disease and African swine fever (OJ L 192, 20.7.2002, p. 27).

- (8) In order to take into account the overall epidemiological situation and apply adequate measures, Commission Implementing Decision 2014/709/EU ⁽¹⁾ needs to be reviewed as well. Once confirmatory evidence from Poland will be obtained in relation to the outbreaks described above, the measures provided for in that Implementing Decision should be reviewed as well to exclude the risk of the spread of the disease in feral pigs.
- (9) Commission Implementing Decision (EU) 2016/1367 ⁽²⁾ sets certain protective measures relating to African swine fever in Poland. Since its adoption the epidemiological situation of this disease has changed and the measures need to be adapted. For reasons of clarity Implementing Decision (EU) 2016/1367 should therefore be repealed and replaced by this Decision.
- (10) 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

Poland shall ensure that the protection and surveillance zones established in accordance with Article 9 of Directive 2002/60/EC comprise at least the areas listed as the protection and surveillance zones in the Annex to this Decision.

Article 2

This Decision shall apply until 15 October 2016.

Article 3

Implementing Decision (EU) 2016/1367 is repealed.

Article 4

This Decision is addressed to the Republic of Poland.

Done at Brussels, 22 August 2016.

For the Commission
Vytenis ANDRIUKAITIS
Member of the Commission

⁽¹⁾ Commission Implementing Decision 2014/709/EU of 9 October 2014 concerning animal health control measures relating to African swine fever in certain Member States and repealing Implementing Decision 2014/178/EU (OJ L 295, 11.10.2014, p. 63).

⁽²⁾ Commission Implementing Decision (EU) 2016/1367 of 10 August 2016 concerning certain protective measures relating to African swine fever in Poland (OJ L 216, 11.8.2016, p. 26).

ANNEX

Poland	Areas as referred to in Article 1	Date until applicable
Protection zone	The borders of this protection zone are as follows: (a) from the east — from the northern border of the village of Sanie Dąb to the south on the road linking the village Sanie Dąb with the village Kołaki Kościelne to the intersection with the river Dąb, continued along the river Dąb to the south-east, then along the edge of the forest at the western border of the village Tybory-Olszewo, then along the road linking the village Tybory-Olszewo with the village Tybory-Kamianka, then along the western side of the village Tybory-Kamianka to the road linking the village Tybory-Kamianka with the village Jabłonka Kościelna, then south to the watercourse connecting the pond Kamianka with the river Jabłonka, then along the watercourse to its estuary to the river Jabłonka, then in a straight line south to the junction of the road no. 66 with the road linking the village Jabłonka Kościelna with the village Miodusy-Litwa; (b) from the south — along the road no. 66 in the western direction to the intersection with the river Jabłonka with the road no. 66, then along the southern border of the village of Faszczce to the river Jabłonka, further west along the river Jabłonka to the border between the village Wdziękoń Pierwszy and the village Wdziękoń Drugi, and then in a straight line north to the road no. 66, then along road no. 66 west to the intersection of the watercourse with the road no. 66 in a line of the village Wdziękoń Pierwszy; (c) from the west — to the north along the watercourse to the edge of the forest, continued along the eastern border of the reserve 'Grabówka' and then along the eastern border of the forest to the road connecting the village Grabówka with the village of Wróble-Arciszewo; (d) from the north — in a straight line to the east to the river Dąb below the village of Czarnowo Dąb, then in a straight line to the east along the northern border of the village of Sanie Dąb to the road linking the village Sanie Dąb to the village Kołaki Kościelne. The borders of this protection zone are as follows: (a) from the north — from the village Konowały along the municipal road to the intersection with the road Szosa Kruszewska, then the road Szosa Kruszewska along the southern border of the forest to the exit to the village Kruszewo; (b) from the west — across the village Kruszewo along the eastern border of the valley of the river Narew in a line of the village Waniewo to the border with the powiat wysokomazowiecki; (c) from the south — from the border with the powiat wysokomazowiecki along the west bank of the valley of the river Narew; (d) from the east — from the west bank of the valley of the river Narew in a straight line to Topilec-Kolonia, and then in a straight line to the village Konowały.	15 October 2016

Poland	Areas as referred to in Article 1	Date until applicable
	The borders of this protection zone are as follows: (a) from the north — from the intersection of the road no. 63 with the road leading to the prison in Czerwony Bór, on a curve in the direction of the village Polki Teklin then above this village to the intersection with the river Gać to the eastern border of the fish ponds around the village Poryte Jabłoń; (b) from the east — along the eastern border of the fish ponds around the village Poryte Jabłoń in the direction of the road connecting the village Poryte Jabłoń with the road no. 66, along the western border of this village in the direction of the road no. 63; (c) from the south — from the road no. 63 above the village of Stare Zakrzewo along the road linking this village with the village Tabędz, then along the western and northern border of this village; (d) from the west — a straight line towards the north to the western border of the village of Bacze Mokre, then from the western border of the village of Bacze Mokre in a straight line to the north — east reaching to the road leading to the prison in Czerwony Bór, then along this road to the road no. 63. The borders of this protection zone are as follows: (a) from the north — from the border of the powiat wysokomazowiecki, along the watercourse Brok Mały to the village Miodusy Litwa, along its south — west side; then from the border of the powiat zambrowski in the direction of the village Krajewo Białe, along the southern border of this village, then along the road in the direction of the village Stary Skarżyn; (b) from the west — along the western border of the village Stary Skarżyn to the intersection with the watercourse Brok Mały, in the south — eastern direction below the village Zaręby Krztałki to the borders of the powiat zambrowski; (c) from the south — from the borders of the powiat zambrowski along the watercourse running towards the village Kaczyn Herbasy; (d) from the east — along the road running from the village Miodusy Litwa through the village Święck Nowiny. The borders of this protection zone are as follows: (a) from the north — from the southern side of the village Kierzki in the eastern direction to the road no. 671 above the northern border of the village Czajki; (b) from the east — from the road no. 671 to the village of Jabłonowo Kąty, then in a southern direction along the west bank of the river Awissa; then to the road Idźki Średnie — Kruszewo Brodowo from the western side of the village Kruszewo Brodowo;	

Poland	Areas as referred to in Article 1	Date until applicable
	(c) from the south — from the road no. 671 in a line of the village of Idźki-Wykno along the road connecting the village Sokoły with the village Jamiołki-Godzieby; (d) from the west — from the village Jamiołki-Godzieby along the east bank of the river Ślina to the village of Jamiołki Kowale, then to the north through the village Stypułki borki to the road Kierzki — Czajki on the eastern side of the village Kierzki. The borders of this protection zone are as follows: (a) from the east — from the border of the town of Bielsk Podlaski, Adam Mickiewicz street, along the eastern outskirts of the town Bielsk Podlaski; (b) from the south — along the southern outskirts of the town Bielsk Podlaski to the village Piliki, including the village Piliki, and continued in a straight line to the road no. 66; (c) from the west — from the road no. 66 in the direction of the western outskirts of the village Augustowo, including the village Augustowo, from the village Augustowo in a straight line to the intersection of the railway and the local road no. 1575B; (d) from the north — from the intersection of the railway and the local road no. 1575B along the northern outskirts of the town Bielsk Podlaski to the border of the town of Bielsk Podlaski, Adam Mickiewicz street.	
Surveillance zone	The area indicated below excluding the protection zone detailed above: — Łomża district — Łomża municipality; — Zambrowski district — Zambrów town, Zambrów and Kołaki Kościelne municipalities; — Wysokomazowiecki district — municipalities of Kulesze Kościelne, Wysokie Mazowieckie and the town of Wysokie Mazowieckie, Kobylin Borzymy, Sokoły and Czyżew; — Białystok district — Choroszcz, Turośń Kościelna and Łapy municipalities; — Bielski district — Bielsk Podlaski town, Bielsk Podlaski and Orla municipalities.	15 October 2016

