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⁽¹⁾ Text with EEA relevance.

EN

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

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II

(Non-legislative acts)

REGULATIONS

COMMISSION IMPLEMENTING REGULATION (EU) 2020/611

of 30 April 2020

re-imposing the definitive anti-dumping duty imposed by Council Regulation (EC) No 91/2009 on imports of certain iron or steel fasteners originating in the People's Republic of China to imports of certain iron or steel fasteners consigned from Malaysia, whether declared as originating in Malaysia or not

THE EUROPEAN COMMISSION,

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

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 (the 'basic Regulation') ⁽¹⁾, and in particular Articles 13 and 14(1) thereof,

Whereas:

1. PROCEDURE

- (1) By Regulation (EC) No 91/2009 ⁽²⁾, the Council imposed a definitive anti-dumping duty on imports of certain iron or steel fasteners originating in the People's Republic of China ('the PRC' or 'China'). Those measures will hereinafter be referred to as 'the original measures' and the investigation that led to these measures will hereinafter be referred to as 'the original investigation'.
- (2) Following the imposition of the definitive anti-dumping duty, the Commission received evidence that these measures were being circumvented through transshipping via Malaysia.
- (3) For that reason, on 28 November 2010, the Commission, by way of Regulation (EU) No 966/2010 ⁽³⁾, initiated an investigation concerning the possible circumvention of the anti-dumping measures imposed by Regulation (EC) No 91/2009 ('the anti-circumvention investigation').
- (4) On 26 July 2011, the Council extended the anti-dumping duty imposed by Regulation (EC) No 91/2009 to certain iron or steel fasteners consigned from Malaysia, whether declared as originating in Malaysia or not, by Council Implementing Regulation (EU) No 723/2011 ⁽⁴⁾ ('the anti-circumvention Regulation').

⁽¹⁾ OJ L 176, 30.6.2016, p. 21.

⁽²⁾ Council Regulation (EC) No 91/2009 of 26 January 2009 imposing a definitive anti-dumping duty on imports of certain iron or steel fasteners originating in the People's Republic of China (OJ L 29, 31.1.2009, p. 1).

⁽³⁾ Commission Regulation (EU) No 966/2010 of 27 October 2010 initiating an investigation concerning the possible circumvention of anti-dumping measures imposed by Council Regulation (EC) No 91/2009 on imports of certain iron or steel fasteners originating in the People's Republic of China by imports of certain iron or steel fasteners consigned from Malaysia, whether declared as originating in Malaysia or not, and making such imports subject to registration (OJ L 282, 28.10.2010, p. 29).

⁽⁴⁾ Council Implementing Regulation (EU) No 723/2011 of 18 July 2011 extending the definitive anti-dumping duty imposed by Regulation (EC) No 91/2009 on imports of certain iron or steel fasteners originating in the People's Republic of China to imports of certain iron or steel fasteners consigned from Malaysia, whether declared as originating in Malaysia or not (OJ L 194, 26.7.2011, p. 6).

- (5) On 27 February 2016, the Commission repealed the definitive anti-dumping duty imposed by Regulation (EC) No 91/2009, as extended by Implementing Regulation (EU) No 723/2011, by way of Commission Regulation (EU) 2016/278 ⁽⁵⁾.
- (6) By its judgment in Case C-644/17 *Eurobolt* of 3 July 2019 ⁽⁶⁾, the Court of Justice declared Implementing Regulation (EU) No 723/2011 invalid inasmuch as it was adopted in breach of the consultation procedure contained in Article 15(2) of Council Regulation (EC) No 1225/2009 ⁽⁷⁾.

2. IMPLEMENTATION OF THE JUDGMENT OF THE COURT OF JUSTICE IN CASE C-644/17 EUROBOLT

- (7) The Court of Justice held that the requirement to provide the Advisory Committee with all relevant information no later than 10 working days before the meeting of that committee, as laid down in Article 15(2) of Regulation (EC) No 1225/2009, constitutes an essential procedural requirement governing the proper conduct of proceedings, the breach of which renders the act concerned invalid ⁽⁸⁾. According to the Court, that provision had been infringed inasmuch as the observations of Eurobolt, a Dutch importer of fasteners from Malaysia, were not communicated to the Member States no later than 10 working days before the meeting of the Advisory Committee.
- (8) In accordance with Article 266 TFEU, the Union's institutions must take the necessary steps to comply with the judgment of the Court of Justice of the European Union. On 27 August 2019, the Commission, therefore, reopened the anti-circumvention investigation in order to correct the illegality identified by the Court of Justice ⁽⁹⁾.
- (9) The reopening of the anti-circumvention investigation was limited in scope to the implementation of the judgment of the Court of Justice in Case C-644/17 *Eurobolt*, namely to ensure that all procedural requirements arising from the Advisory Committee procedure contained in Article 15(2) of Regulation (EC) No 1225/2009 were met ⁽¹⁰⁾. That procedure has, in the meantime, been replaced by the examination committee procedure contained in Article 5 of Regulation (EU) No 182/2011 of the European Parliament and of the Council ⁽¹¹⁾.
- (10) In this respect, it should be pointed out that acts of the European Union are to be adopted in accordance with the procedural rules in force at the time of their adoption. Article 15(2) of Regulation (EC) No 1225/2009 in the form as it stood at the time of the underlying investigation was repealed. Therefore, a proceeding like the current reopening of an anti-circumvention investigation initiated pursuant to Article 13(3) of Regulation (EC) No 1225/2009 can, as from the repeal of Article 15(2) of Regulation (EC) No 1225/2009 in the form as applicable at the time of adoption of Implementing Regulation (EU) No 723/2011, be completed only on the basis of the committee procedure currently in place for the imposition of anti-circumvention measures ⁽¹²⁾. Pursuant to Article 15(3) of Regulation (EC) No 1225/2009, as amended and codified in Regulation (EU) 2016/1036, the procedure to be followed for the purposes of this re-opening is the one contained in Article 5 of Regulation (EU) No 182/2011.

⁽⁵⁾ Commission Implementing Regulation (EU) 2016/278 of 26 February 2016 repealing the definitive anti-dumping duty imposed on imports of certain iron or steel fasteners originating in the People's Republic of China, as extended to imports of certain iron or steel fasteners consigned from Malaysia, whether declared as originating in Malaysia or not (OJ L 52, 27.2.2016, p. 24).

⁽⁶⁾ Case C-644/17 *Eurobolt*, ECLI:EU:C:2019:555.

⁽⁷⁾ Council Regulation (EC) No 1225/2009 of 30 November 2009 on protection against dumped imports from countries not members of the European Community (OJ L 343, 22.12.2009, p. 51). Repealed and replaced by Regulation (EU) 2016/1036.

⁽⁸⁾ Case C-644/17 *Eurobolt*, ECLI:EU:C:2019:555, paragraph 51.

⁽⁹⁾ Commission Implementing Regulation (EU) 2019/1374 of 26 August 2019 reopening of the investigation following the judgment of 3 July 2019, in case C-644/17 *Eurobolt*, with regard to Council Implementing Regulation (EU) No 723/2011 of 18 July 2011 extending the definitive anti-dumping duty imposed by Regulation (EC) No 91/2009 on imports of certain iron or steel fasteners originating in the People's Republic of China to imports of certain iron or steel fasteners consigned from Malaysia, whether declared as originating in Malaysia or not (OJ L 223, 27.8.2019, p. 1).

⁽¹⁰⁾ Findings that were not contested by the judgment at issue remain fully valid (see, *mutatis mutandis*, Case T-650/17 *Jinan Meide Casting Co. Ltd.*, ECLI:EU:T:2019:644, paras. 333–342).

⁽¹¹⁾ Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by Member States of the Commission's exercise of implementing powers (OJ L 55, 28.2.2011, p. 13). See, in this regard, Regulation (EU) No 37/2014 of the European Parliament and of the Council of 15 January 2014 amending certain regulations relating to the common commercial policy as regards the procedures for the adoption of certain measures (OJ L 18, 21.1.2014, p. 1).

⁽¹²⁾ Judgment of the Court of 15 March 2018, Case C-256/16 *Deichmann*, ECLI:EU:C:2018:187, paragraphs 44–55.

3. ASSESSMENT OF THE CLAIMS

3.1. Claims made in the anti-circumvention investigation

- (11) Eurobolt, in its submission of 13 June 2011, questioned the legality of the Commission's interpretation of Article 13 of Regulation (EC) No 1225/2009 on two accounts. First, it argued that the extended measures should not apply to the product concerned if it was of genuine Malaysian origin. Second, Eurobolt questioned the Commission's power to, in an *ex officio* anti-circumvention investigation, allege injury on the basis of data of the original investigation without providing evidence of injury.
- (12) The Commission observed that neither claim related to the implementation of the judgment. Eurobolt's comments thus related to issues falling outside the scope of the implementation exercise. In any case, the claims could also be dismissed on the merits.
- (13) Regarding Eurobolt's first claim, and as noted in recital 46 of the anti-circumvention Regulation, Article 13(1) of the basic Regulation allows for the extension of measures to imports of the like product from 'third countries'. Article 13(4) of the basic Regulation allows for exceptions for genuine producers from that third country. As the anti-circumvention investigation revealed circumvention practises in line with the findings of investigations carried out by OLAF and the Malaysian authorities, Article 1 of the anti-circumvention Regulation extended the anti-dumping measures to imports consigned from Malaysia. However, any company that had demonstrated that it was a genuine Malaysian producer was granted an exemption from the extended measures. Moreover, requests for future exemptions were possible under Article 2 of the anti-circumvention Regulation. Accordingly, as the existence of transshipment of Chinese-origin products via Malaysia was confirmed (see recitals 34 and 45 of the anti-circumvention Regulation) and exports from genuine Malaysian producers were exempted from the extension of the measures, Eurobolt's first claim was rejected.
- (14) Regarding Eurobolt's second claim, it should be pointed out that Article 13(1) of the basic Regulation requires, *inter alia*, 'evidence of injury or that the remedial effects of the duty are being undermined in terms of the prices and/or quantities of the like product ...' (emphasis added). These two requirements are not cumulative. Recitals 37 and 38 of the anti-circumvention Regulation show that the remedial effects of the anti-dumping duty imposed by the original Regulation were undermined by the circumvention, both in terms of prices and quantities. Therefore, the legal requirements of Article 13 of the basic Regulation were met. Accordingly, there was no need or legal obligation to re-assess or re-use injury data from the original investigation with regard to imports from China. Consequently, this claim was rejected as well.
- (15) The Commission concluded from the above that Eurobolt's submission of 13 June 2011 had been duly considered and Eurobolt's claims were dealt with in the anti-circumvention Regulation, in particular in Sections 2.8 and 4 thereof. Moreover, it is important to note in this regard that Eurobolt questioned neither the evidence of transshipment of Chinese-origin products via Malaysia nor the finding that the companies from which Eurobolt sourced the product concerned had provided misleading information to the Commission and had not been able to demonstrate that they were genuine Malaysian producers.

3.2. Assessment of claims made after re-opening

- (16) Commission Implementing Regulation (EU) 2019/1374 re-opening the anti-circumvention investigation invited interested parties to make comments pertaining to the reopening of the anti-circumvention investigation. Two parties submitted comments.
- (17) Eurobolt claimed that the violation of Article 15(2) of Regulation (EC) No 1225/2009 found to have occurred by the Court of Justice cannot be cured *ex post* because it is a violation of an essential procedural requirement and therefore it vitiates the entire conduct of the original anti-circumvention investigation.
- (18) This claim is unfounded for the following reasons. A breach of Article 15(2) does not vitiate the entire proceeding, as the illegality identified by the Court did not concern the substantive findings on circumvention. The breach can therefore be cured by reopening the anti-circumvention investigation at the point at which the illegality occurred. That entailed forwarding Eurobolt's original observations, together with the draft implementing act, to the committee in line with the procedure currently in place for the imposition of anti-circumvention measures. That is the procedure referred to in recital (10) above. The applicable legal deadline for the relevant information to reach the committee requires submission no later than 14 days before the meeting of that committee. This enables the

committee, which consists of representatives of the Member States, to familiarise itself with all relevant information so that the Member States may formulate a position on the draft implementing act. As the Court of Justice has recently recognised, the resumption of the administrative procedure and the re-imposition of anti-dumping duties on imports that were made during the period of application of the regulation which was annulled can also not be considered as contrary to the rule of non-retroactivity ⁽¹³⁾.

- (19) Where a judgment of the Court of Justice invalidates an anti-dumping regulation, the institution implementing that judgment (in this case the Commission) has the option of resuming the proceeding at the origin of that Regulation ⁽¹⁴⁾. Furthermore, except where the irregularity found has vitiated the entire proceeding, the institution has the option, in order to adopt an act intended to replace the act that has been declared invalid, to resume that proceeding at the stage when the irregularity occurred ⁽¹⁵⁾.
- (20) Eurobolt also claimed that it would be inappropriate for the Commission to re-impose the anti-circumvention measures, as they have both expired and been repealed since.
- (21) In this respect, it should be pointed out that, by remedying a procedural irregularity and confirming the findings of the investigation which were not contested by the judgment at issue, the Commission complies with its obligation to impose measures on imports of the product concerned that took place during the period of application of these measures, i.e. between 27 July 2011 and 27 February 2016. Therefore, the Commission rejected Eurobolt's claim.
- (22) Another party, the European Fastener Distributor Association (EFDA), claimed '*persistent failures to take seriously the valid and carefully considered comments of European fastener distributors and their respective representative bodies.*' They also claimed that, in a case where an importer can demonstrate that they have carried out proper due diligence and taken all reasonable and appropriate measures to ensure that the imported product has been legitimately manufactured in Malaysia, they should not be responsible for paying the anti-dumping duty and any such duties paid should be reimbursed.
- (23) The Commission rejected the first EFDA claim, as the Association did not show any specific violation of due process in the investigation re-opening proceedings and did not provide any evidence in this respect.
- (24) As regards the EFDA's second claim, Article 13(4) of the basic Regulation stipulates that, where the circumventing practice, process or work takes place outside the Union, exemptions may be granted to producers of the product concerned that are found not to be engaged in the circumvention practices. Consequently, there is no scope for exemptions based on importer due diligence when the circumvention takes place outside the EU (as is the case here). Rather, it is up to the exporter to prove that they are a genuine Malaysian producer and to ask for an exemption. As mentioned in Section 4 of the anti-circumvention Regulation, a number of Malaysian exporters applied and were considered for exemptions, with a total of nine companies being granted such exemptions by the Commission. The Commission, therefore, rejected EFDA's second claim.
- (25) Having taken account of the comments made and the analysis thereof, the Commission concluded that the original measures should be re-imposed on imports of the product concerned consigned from Malaysia, whether declared as originating in Malaysia or not.

4. DISCLOSURE

- (26) All parties that came forward at the reopening of the anti-circumvention investigation were informed of the essential facts and considerations on the basis of which it was intended to re-impose the anti-dumping duty. They were granted a period within which to make representations subsequent to disclosure. Eurobolt and EFDA submitted comments.
- (27) First, Eurobolt maintained that violations of essential procedural requirements vitiate the entire proceeding, and so cannot be cured *ex post*. Second, Eurobolt maintained that the re-imposition of measures whose legal basis is an act found to be illegal by the WTO violates the rule of law and the principle of good administration. Third, Eurobolt claimed that the Commission's proposal to re-impose measures results in the absence of effective judicial protection as it means that the Commission can simply cure any violation *ex post*, and that this outcome upsets the balance of

⁽¹³⁾ Judgment of the Court of 15 March 2018, Case C-256/16 *Deichmann SE v Hauptzollamt Duisburg*, ECLI:EU:C:2018:187, paragraph 79; and judgment of the Court of 19 June 2019, C-612/16 *C & J Clark International Ltd v Commissioners for Her Majesty's Revenue & Customs*, EU:C:2019:508, paragraph 58.

⁽¹⁴⁾ Judgment of the Court of 15 March 2018, Case C-256/16 *Deichmann*, ECLI:EU:C:2018:187, paragraph 73; see also judgment of the Court of 19 June 2019, Case C-612/16 *P&J Clark International*, ECLI:EU:C:2019:508, paragraph 43.

⁽¹⁵⁾ *Ibid*, paragraph 74; see also judgment of the Court of 19 June 2019, Case C-612/16 *P&J Clark International*, EU:C:2019:508, paragraph 43.

power in trade defence proceedings. Fourth, Eurobolt claimed that the Commission's proposal ignores the decision of the Hoge Raad (the Dutch High Court) of the Netherlands in *Eurobolt v Staatssecretaris van Financiën* ⁽¹⁶⁾, and urged the Commission to refrain from interfering in customs authorities' exclusive competence to decide on the repayment of the anti-circumvention duties paid by Eurobolt.

- (28) As regards Eurobolt's first argument, which had already made upon the re-opening of the anti-circumvention investigation, the Commission refers to recital (18) and (19) above. As no new arguments were provided, this claim was rejected.
- (29) As regards Eurobolt's second argument, the Commission decided to bring the measures in line with the findings of the WTO panels and appellate body, which was the reason why the Regulation of 26 February 2016 (see recital (5) above) was issued. It decided not to do so with *ex tunc* effect. Subsequently, the Commission had the obligation to take the necessary steps to comply with a judgement of the Court of Justice, *i.e.* to correct an illegality identified by the Court. As the procedural error could be remedied and the findings of circumvention were confirmed, the Commission was entitled to re-impose the anti-circumvention duties for the period of application of the measures, based on the uncontested findings of the anti-circumvention investigation. None of the above actions implicate a violation of the principle of good administration. In any event, Eurobolt referred to the principle of good administration, but did not specify which right was allegedly violated in this respect ⁽¹⁷⁾. Therefore, the Commission rejected this claim.
- (30) As regards Eurobolt's third argument, it is established case-law that the scope and grounds of the declaration of invalidity by the Court in a judgment should be determined in each specific case (C-283/14 and C-284/14 CM *Eurologistik and GLS*, judgment of 28 January 2016, EU:C:2016:57, para. 49 and the case-law cited) and may be such that would not necessitate the full and immediate repayment of the relevant duties (case C-256/16 *Deichmann SE v Hauptzollamt Duisburg*, Judgment of the Court of 15 March 2018, paragraph 70). In the current case, the violation did not vitiate the entire proceeding with irregularity. As set out above in recitals (7) to (10), in this case the violation of the procedural requirement could be cured and the measure could be re-imposed in accordance with the applicable procedural rules. These obligations do not undermine the principle of effective judicial protection. The Commission therefore rejected this claim as well.
- (31) As regards Eurobolt's fourth argument, as set out in recital (8) above, the Commission had to take the necessary steps to comply with the judgment of the Court of Justice of the European Union. The decision of the Dutch High Court, which in addition concerned the question as to whether interests should be paid in case of repayment of the anti-dumping duties, could not discharge the Commission of its obligation arising from the judgment of the Court of Justice. In any event, the Commission's action also does not usurp the competences of the customs authorities of the Member States, as recognised by the Court of Justice in both *C&J Clark International* ⁽¹⁸⁾ and *Deichmann* ⁽¹⁹⁾. Therefore, the Commission rejected this claim.
- (32) EFDA expressed regret that its previous claim for the exemption of importers from paying anti-dumping duties in cases where importers were able to demonstrate due diligence in ensuring that the product imported had been legitimately manufactured in Malaysia was rejected. EFDA requested that the Commission reconsider its concerns.
- (33) As stated in recital (24), there is no scope for exemptions based on importer due diligence when the circumvention takes place outside the EU (as is the case here). Therefore, the Commission confirmed its previous rejection of EFDA's claim.
- (34) In view of the above, the comments made after disclosure did not give rise to a change of the conclusion of the Commission, as set out in recital (25) above.

⁽¹⁶⁾ Hoge Raad, *Eurobolt v Staatssecretaris van Financiën*, 29 November 2019, 15/04667 bis, NL:HR:2019:1875.

⁽¹⁷⁾ See judgments of 2 October 2003, *Area Cova v Council and Commission*, Case T-196/99, EU:T:2001:281 paragraph 43; of 4 October 2006, *Tillack v Commission*, Case T-193/04, EU:T:2006:292, paragraph 127; and of 13 November 2008, *SPM v Council and Commission*, Case T-128/05, EU:T:2008:494, paragraph 127.

⁽¹⁸⁾ Judgment of 19 June 2019, Case C-612/16 *C&J Clark International*, EU:C:2019:508, paragraph 84–85.

⁽¹⁹⁾ Judgment of 15 March 2018, Case C-256/16 *Deichmann*, EU:C:2018:187, paragraph 84.

- (35) In view of Article 109 of Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council ⁽²⁰⁾, when an amount is to be reimbursed following a judgment of the Court of Justice of the European Union, the interest to be paid should be the rate applied by the European Central Bank to its principal refinancing operations, as published in the C series of the *Official Journal of the European Union* on the first calendar day of each month.
- (36) This Regulation is in accordance with the opinion of the Committee established by Article 15(1) of Regulation (EU) 2016/1036,

HAS ADOPTED THIS REGULATION:

Article 1

1. The definitive anti-dumping duty applicable to 'all other companies' imposed by Article 1(2) of Regulation (EC) No 91/2009 on imports of certain iron or steel fasteners, other than of stainless steel, i.e. wood screws (excluding coach screws), self-tapping screws, other screws and bolts with heads (whether or not with their nuts or washers, but excluding screws turned from bars, rods, profiles or wire, of solid section, of a shank thickness not exceeding 6 mm and excluding screws and bolts for fixing railway track construction material), and washers, originating in the People's Republic of China, is hereby extended to imports of certain iron or steel fasteners, other than of stainless steel, i.e. wood screws (excluding coach screws), self-tapping screws, other screws and bolts with heads (whether or not with their nuts or washers, but excluding screws turned from bars, rods, profiles or wire, of solid section, of a shank thickness not exceeding 6 mm and excluding screws and bolts for fixing railway track construction material), and washers, consigned from Malaysia, whether declared as originating in Malaysia or not, and falling, during the period of application of Implementing Regulation (EU) No 723/2011, under CN codes ex 7318 12 90, ex 7318 14 91, ex 7318 14 99, ex 7318 15 59, ex 7318 15 69, ex 7318 15 81, ex 7318 15 89, ex 7318 15 90, ex 7318 21 00 and ex 7318 22 00. The TARIC codes are listed in Annex I to this Regulation.
2. Paragraph 1 of this Article shall not apply in the case of the exporting producers listed in Annex II.
3. The duty extended by paragraph 1 of this Article shall be collected on imports consigned from Malaysia, whether declared as originating in Malaysia or not, registered in accordance with Article 2 of Regulation (EU) No 966/2010 and Articles 13(3) and 14(5) of Regulation (EC) No 1225/2009, with the exception of those produced by the companies listed in paragraph 2.

Article 2

1. Duties collected on the basis of Implementing Regulation (EU) No 723/2011 shall not be reimbursed.
2. Any reimbursements that took place following the judgment of the Court of Justice Case C-644/17 *Eurobolt* (EU: C:2019:555) shall be recovered by the authorities which made those reimbursements.

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, 30 April 2020.

For the Commission
The President
Ursula VON DER LEYEN

⁽²⁰⁾ Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council of 18 July 2018 on the financial rules applicable to the general budget of the Union, amending Regulations (EU) No 1296/2013, (EU) No 1301/2013, (EU) No 1303/2013, (EU) No 1304/2013, (EU) No 1309/2013, (EU) No 1316/2013, (EU) No 223/2014, (EU) No 283/2014, and Decision No 541/2014/EU and repealing Regulation (EU, Euratom) No 966/2012 (OJ L 193, 30.7.2018, p. 1).

ANNEX I

TARIC codes for certain iron or steel fasteners as defined in Article 1(a) *Valid from 27 July 2011 to 27 February 2016*

CN codes ex 7318 12 90, ex 7318 14 91, ex 7318 14 99, ex 7318 15 59, ex 7318 15 69, ex 7318 15 81, ex 7318 15 89, ex 7318 15 90, ex 7318 21 00 and ex 7318 22 00 (TARIC codes 7318 12 90 11, 7318 12 90 91, 7318 14 91 11, 7318 14 91 91, 7318 14 99 11, 7318 15 59 11, 7318 15 59 61, 7318 15 59 81, 7318 15 69 11, 7318 15 69 61, 7318 15 69 81, 7318 15 81 11, 7318 15 81 61, 7318 15 81 81, 7318 15 89 11, 7318 15 89 61, 7318 15 89 81, 7318 15 90 21, 7318 15 90 71, 7318 15 90 91, 7318 21 00 31, 7318 21 00 95, 7318 22 00 31 and 7318 22 00 95)

(b) *Valid from 27 July 2011 to 30 June 2012*

7318 14 99 91

(c) *Valid from 1 July 2012 to 27 February 2016*

7318 14 99 20, 7318 14 99 92

ANNEX II

List of exporting producers

Name of the exporting producer	TARIC additional code
Acku Metal Industries (M) Sdn. Bhd	B123
Chin Well Fasteners Company Sdn. Bhd	B124
Jinfast Industries Sdn. Bhd	B125
Power Steel and Electroplating Sdn. Bhd	B126
Sofasco Industries (M) Sdn. Bhd	B127
Tigges Fastener Technology (M) Sdn. Bhd	B128
TI Metal Forgings Sdn. Bhd	B129
United Bolt and Nut Sdn. Bhd	B130
Andfast Malaysia Sdn. Bhd.	B265

DIRECTIVES

COMMISSION DIRECTIVE (EU) 2020/612

of 4 May 2020

amending Directive 2006/126/EC of the European Parliament and of the Council on driving licences

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

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

Having regard to Directive 2006/126/EC of the European Parliament and of the Council of 20 December 2006 on driving licences ⁽¹⁾, and in particular Article 8 thereof,

Whereas:

- (1) The existing specific provisions concerning the Member States' possibility to decide that no restriction to vehicles with automatic transmission shall be recorded on the driving licence of holders of a driving licence for vehicles of category C, CE, D and DE should be extended to holders of driving licences for vehicles of category BE, C1, C1E, D1 and D1E when the applicant already holds a driving licence obtained on a vehicle with manual transmission in at least one of the following categories: B, BE, C, CE, C1, C1E, D, DE, D1 or D1E.
- (2) That extension should be carried out in the light of technical progress, in particular in order to take into account the development and increasing use, in the transport industry, of more modern, safer and less polluting vehicles equipped with a wide range of semi-automatic, automatic or hybrid transmission systems. Furthermore, the simplification of the existing restrictions on driving automatic vehicles would reduce the administrative and financial burden on stakeholders, including SMEs and micro-enterprises operating in the field of road transport.
- (3) The requirements for test vehicle motorcycles of category A2 to be used during the test of skills and behaviour need to be adapted to technical progress, in particular to combustion engine and chassis development and to the wider use of electric motorcycles. The adaptation of the technical specifications for category A2 test vehicles should also ensure that applicants are tested on vehicles that are representative of the category for which the driving licence would be issued.
- (4) Directive 2006/126/EC should therefore be amended accordingly.
- (5) In accordance with the Joint Political Declaration of 28 September 2011 of Member States and the Commission on explanatory documents ⁽²⁾, Member States have undertaken to accompany, in justified cases, the notification of their transposition measures with one or more documents explaining the relationship between the components of a directive and the corresponding parts of national transposition instruments.
- (6) The measures provided for in this Directive are in accordance with the opinion of the Committee on driving licences,

HAS ADOPTED THIS DIRECTIVE:

Article 1

Annex II to Directive 2006/126/EC is amended in accordance with the Annex to this Directive.

⁽¹⁾ OJ L 403, 30.12.2006, p. 18.

⁽²⁾ OJ C 369, 17.12.2011, p. 14.

Article 2

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

They shall apply those provisions from 1 November 2020.

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

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

Article 3

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

Article 4

This Directive is addressed to the Member States.

Done at Brussels, 4 May 2020.

For the Commission

The President

Ursula VON DER LEYEN

ANNEX

Annex II to Directive 2006/126/EC is amended as follows:

- (a) Point 5.1.3 is replaced by the following:

‘5.1.3. Specific provisions concerning vehicles of category BE, C, CE, C1, C1E, D, DE, D1 and D1E

Member States may decide that no restriction to vehicles with automatic transmission shall be recorded on the driving licence for a category BE, C, CE, C1, C1E, D, DE, D1 or D1E vehicle referred to in point 5.1.2, when the applicant already holds a driving licence obtained on a vehicle with manual transmission in at least one of the following categories: B, BE, C, CE, C1, C1E, D, DE, D1 or D1E, and has performed the actions described in point 8.4 during the test of skills and behaviour.’;

- (b) in point 5.2, the second subparagraph of the second subtitle ‘Category A2’ is replaced by the following:

‘If the motorcycle is powered by an internal combustion engine, the cubic capacity of the engine shall be at least 250 cm³.’.

DECISIONS

COMMISSION DECISION (EU) 2020/613

of 7 February 2020

on the measure SA.17653 – C36/2007 (ex NN 25/2007) implemented by Germany for Deutsche Post AG

(notified under document C(2020) 593)

(Only the German text is authentic)

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

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

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

Having called on interested parties to submit their comments pursuant to the provision(s) cited above ⁽¹⁾ and having regard to their comments,

Whereas:

1. PROCEDURE

1.1. Relevant summary of State aid procedures

1.1.1. Opening Decision

- (1) In 1994, United Parcel Service ('UPS') filed a complaint concerning the granting of unlawful State aid to Deutsche Bundespost POSTDIENST ('POSTDIENST').
- (2) The Commission opened the formal investigation procedure on 23 October 1999 ('the Opening Decision') with regard to various State measures: compensations granted for the universal service obligation, a State guarantee and pension subsidies for the period from 1995 to 1999.
- (3) The Opening Decision was published in the *Official Journal of the European Union* ⁽²⁾. The Commission invited interested parties to submit comments.
- (4) Germany submitted comments on 16 September 1999.
- (5) Following publication, the Commission received comments from 14 interested parties, which were duly transmitted to the German Government by letter dated 15 December 1999 providing it with an opportunity to make its own observations concerning these comments.
- (6) The German authorities responded by letter dated 1 February 2000, which was registered as received on 2 February 2000.

⁽¹⁾ OJ C 306, 23.10.1999, p. 25.

⁽²⁾ OJ C 306, 23.10.1999, p. 25.

1.1.2. 2002 Decision

- (7) On 19 June 2002, the Commission adopted Decision 2002/753/EC ⁽³⁾ ('the 2002 Decision') finding that POSTDIENST and its successor Deutsche Post AG ('DPAG', while POSTDIENST and DPAG will be jointly referred to as 'Deutsche Post') priced door-to-door parcels below incremental costs and that its aggressive pricing policy did not fall within Deutsche Post's universal service obligation.
- (8) The Commission considered that the resulting losses of EUR 572 million were ultimately financed, in contravention of Articles 106 and 107 of the Treaty on the Functioning of the European Union (TFEU), by State resources which were granted to Deutsche Post in various forms (e.g. public transfers from sister company Deutsche Bundespost TELEKOM ('TELEKOM'), public guarantees for loans, and public subsidies to finance the civil servants' pensions).
- (9) Following the 2002 Decision, Germany recovered the incompatible State aid of EUR 572 million from DPAG. Deutsche Post challenged the decision in the Union Courts.

1.1.3. Further complaints after the 2002 Decision

- (10) On 13 May 2004, UPS lodged a further complaint concerning unlawful State aid granted to Deutsche Post following the 2002 Decision. UPS argues that the 2002 Decision failed to examine all measures listed in the original 1994 complaint, and that Deutsche Post enjoyed significantly higher financial benefits than the incompatible aid of EUR 572 million. In addition, UPS is of the opinion that Deutsche Post used State resources to expand its parcel operations (e.g. for the purchase of other companies) and to sell services at excessively low transfer prices to its subsidiaries Postbank AG ('POSTBANK') and Deutsche Post Euro Express GmbH & Co OHG, which have been active respectively in banking services and marketing of business parcels under the brand name 'DHL'.
- (11) The Commission services sent information requests to Germany on 9 November 2004 and 1 April 2005. Germany submitted its answers on 2 December 2004 and 3 June 2005 respectively.
- (12) On 16 July 2004, TNT Post AG & Co KG ('TNT') filed a complaint also alleging that Deutsche Post sold services at excessively low transfer prices to POSTBANK. It claimed that, whereas POSTBANK only paid variable costs for the provided services, Deutsche Post financed the common fixed costs of the distribution network entirely out of the revenues of its letter monopoly.
- (13) The Commission services sent information requests to Germany on 11 November 2004 and 25 April 2005. Germany submitted its answers on 17 December 2004 and 23 June 2005 respectively.

1.1.4. 2007 Extension Decision

- (14) Following the further complaints, the Commission informed Germany by letter of 12 September 2007 ⁽⁴⁾ of its decision to extend the proceedings that had originally been initiated in 1999 ('the 2007 Extension Decision').
- (15) The objective of the 2007 Extension Decision was to include the newly submitted information and to comprehensively address all potential distortions of competition which resulted from the public measures that were granted to Deutsche Post.
- (16) Germany submitted its comments on 14 December 2007 and Deutsche Post challenged the validity of the 2007 Extension Decision ⁽⁵⁾. On 16 November 2007, UPS and TNT submitted their comments. After an initial request for a deadline extension on 20 December 2007, Germany eventually submitted on 12 March 2008 its comments on UPS' and TNT's observations.

⁽³⁾ Commission Decision 2002/753/EC of 19 June 2002 on measures implemented by the Federal Republic of Germany for Deutsche Post AG (OJ L 247, 14.9.2002, p. 27).

⁽⁴⁾ OJ C 245, 19.10.2007, p. 21.

⁽⁵⁾ Judgment of the General Court of 8 December 2011, *Deutsche Post v Commission*, T-421/07, ECLI:EU:T:2011:720.

1.1.5. Information request of 17 July 2008

- (17) The Commission sent an information request to Germany on 17 July 2008 on all public measures under investigation including a questionnaire on revenues and costs of Deutsche Post for the period from 1989 to 2007. On 5 August 2008, Germany asked for an undefined deadline extension because the availability of certain data would have to be checked before a reply could be provided.
- (18) On 12 August 2008, the Commission explained why the investigation on the revenues and costs of Deutsche Post should be effected within the period from 1989 to 2007 and insisted on the submission of the requested information.
- (19) In its submission of 14 August 2008, Germany maintained that there was no reason for examining the revenues and costs of Deutsche Post for the period after 1994. On 22 August 2008, the Commission reserved the right to adopt an information injunction pursuant to Article 10(3) of Council Regulation (EC) No 659/1999 ⁽⁶⁾ if Germany did not provide the requested information.
- (20) On 2 October 2008, Germany presented the results of a further expert opinion to support the position that an accounting analysis after 1994 was not necessary and therefore the appropriate investigation period should be from 1990 to 1994.
- (21) On 28 October 2008, Germany submitted information on the public guarantee and the pension measure.

1.1.6. Information injunction of 30 October 2008

- (22) The Commission did not accept Germany's arguments and insisted that an analysis until 2007 was necessary to fully appreciate the competitive effects of the implemented public measures. Following the two reminders for information of 12 August 2008 and 22 August 2008, the Commission issued an information injunction on 30 October 2008 to enjoin Germany to deliver all necessary accounting information for the whole period from 1989 to 2007.
- (23) Germany and Deutsche Post challenged the validity of the information injunction ⁽⁷⁾.
- (24) On 27 November 2008, Germany submitted the requested accounting information for the period from 1989 to 1994. On 5 and 16 December 2008, Germany updated the accounting information which had been submitted on 27 November 2008.

1.1.7. Submission of accounting information for the period from 1989 to 2007

- (25) After a meeting between the responsible German Secretary of State, the CEO of DPAG and the Commissioner with responsibility for Competition Policy on 6 February 2009, Germany and Deutsche Post agreed to provide accounting information for the period after 1994.
- (26) On 3 March 2009, Germany submitted a first set of accounting information for the whole investigation period from 1989 to 2007.
- (27) Meetings between Deutsche Post and the Commission services took place on 3 March 2009 in Brussels as well as on 12 March 2009, 2 April 2009, 28 May 2009, 23 June 2009, and 18 September 2009 in Bonn. Germany submitted further information by Deutsche Post on 26 March 2009, 7 May 2009, and 22 June 2009.
- (28) Following those meetings and two lists of questions which the Commission services submitted to Deutsche Post on 4 June 2009 and 30 July 2009, Germany provided updated accounting information and further clarifications on 9 July 2009, 31 July 2009, 17 August 2009, 8 September 2009, 10 September 2009 and 15 October 2009.

⁽⁶⁾ Council Regulation (EC) No 659/1999 of 22 March 1999 laying down detailed rules for the application of Article 108 of the Treaty on the Functioning of the European Union (OJ L 83, 27.3.1999, p. 1).

⁽⁷⁾ Order of the General Court of 14 July 2010, *Deutsche Post v Commission*, T-570/08, ECLI:EU:T:2010:31, Order of the General Court of 14 July 2010, *Deutsche Post v Commission*, T- 571/08, ECLI:EU:T:2010:312, Judgment of the Court of Justice of 13 October 2011, *Deutsche Post and Germany v Commission*, C-463/10 P and C-475/10 P, ECLI:EU:C:2011:656, Order of the President of the General Court (Second Chamber) of 10 May 2012, *Germany v Commission*, T-571/08 RENV, ECLI:EU:T:2012:228 and Judgment of the General Court of 12 November 2013, *Deutsche Post v Commission*, T-570/08 RENV, ECLI:EU:T:2013:589.

- (29) On 16 and 24 September 2009, the Commission services submitted further questions to which Germany provided the answers on 14 October 2009.

1.1.8. 2011 Extension Decision

- (30) By letter dated 10 May 2011 ⁽⁸⁾, the Commission notified Germany of its decision to extend the procedure laid down in Article 108(2) TFEU that had originally been initiated in 1999 and extended in 2007, in order to conduct an in-depth investigation with regard to the pension subsidies that Deutsche Post has received since 1995 ('the 2011 Extension Decision').
- (31) After an initial request for a deadline extension on 23 May 2011, Germany submitted its comments on 29 July 2011.
- (32) On 4 October 2011, UPS submitted its comments. They were followed by comments submitted by Free and Fair Post Initiative on 5 October 2011 and comments submitted by Bundesverband Internationaler Express und Kurierdienste ('BIEK') on 7 October 2011. On 13 October 2011, the Commission communicated the comments by interested parties to Germany.
- (33) On 14 November 2011, Germany submitted its comments on the third parties' observations.
- (34) On 18 November 2011, the Commission sent a further information request concerning details of the pension financing for the period after 2007. On 2 January 2012 and 19 January 2012, Germany submitted replies. On 16 December 2011, the Commission submitted to Germany an expert study by Charles River Associates concerning profit benchmarking ⁽⁹⁾ for comments to which Germany replied on 16 January 2012.

1.1.9. 2012 Decision

- (35) On 25 January 2012, the Commission adopted Decision 2012/636/EU- ⁽¹⁰⁾ ('the 2012 Decision').
- (36) In that Decision, the Commission concluded with regard to the pension measure that the measure constitutes unlawful and incompatible State aid and ordered recovery of the aid for the period from 1 January 2003 until the comparative advantage has been brought to an end. With regard to the aid for the period from 1995 to 2002, the Commission concluded that it was impossible to quantify the amount of incompatible aid. Consequently, the Commission did not order recovery of the aid with regard to this period.
- (37) With regard to the public transfers, the Commission concluded that they were unlawfully granted by Germany in breach of Article 108(3) TFEU, but are compatible with the internal market. With regard to the public guarantee, the Commission concluded that the measure constitutes existing aid to Deutsche Post pursuant to Articles 107(1) and 108(3) TFEU.

1.2. Summary of relevant Court procedures

1.2.1. Annulment of the 2002 Decision

- (38) In its 2008 judgment ⁽¹¹⁾, the General Court annulled the 2002 Decision because the Commission failed to carry out a comprehensive analysis of all universal service revenues and costs to determine whether Deutsche Post had been under- or overcompensated.
- (39) Germany subsequently paid back the recovered State aid of EUR 572 million plus accrued interest to Deutsche Post.
- (40) On 2 September 2010, the Court of Justice dismissed the Commission's appeal against the General Court's judgment ⁽¹²⁾.

⁽⁸⁾ OJ C 263, 7.9.2011, p. 4.

⁽⁹⁾ Charles River Associates, March 2011, 'Estimating a reasonable profit margin for provision of letter services', submitted by Belgium in State aid case SA.14588 – State aid to Bpost.

⁽¹⁰⁾ Commission Decision 2012/636/EU of 25 January 2012 – Measures C 36/07 (ex NN 25/07) implemented by Germany for Deutsche Post AG (OJ L 289, 19.10.2012, p. 1).

⁽¹¹⁾ Judgment of the General Court of 1 July 2008, *Deutsche Post v Commission*, T-266/02, ECLI:EU:T:2008:235.

⁽¹²⁾ Judgment of the Court of Justice of 2 September 2010, *Commission v Deutsche Post*, C-399/08 P, ECLI:EU:C:2010:481.

1.2.2. *Annulment of the 2007 Extension Decision*

- (41) Deutsche Post challenged the validity of the 2007 Extension Decision, claiming that the 2002 Decision created legitimate expectations that the Commission would not resume its investigations.
- (42) On 8 December 2011, the General Court rejected that challenge as inadmissible ⁽¹³⁾, on the basis that the 2007 Extension Decision concerned the same measures targeted by the Opening Decision.
- (43) On 24 October 2013, the Court of Justice annulled the 2011 judgment of the General Court on the 2007 Extension Decision ⁽¹⁴⁾, referring the case back to the General Court.
- (44) On 18 September 2015, the General Court annulled the 2007 Extension Decision ⁽¹⁵⁾. The judgment was not appealed.

1.2.3. *Partial annulment of the 2012 Decision*

- (45) On 14 July 2016, the General Court annulled Articles 1 and 4 of the 2012 Decision ⁽¹⁶⁾, holding that the Commission had not proven the existence of an advantage conferred to Deutsche Post. The judgment was not appealed.
- (46) The remainder of the 2012 Decision was not appealed.

1.2.4. *Annulment of the 2011 Extension Decision*

- (47) On 10 April 2019, the General Court annulled the 2011 Extension Decision ⁽¹⁷⁾, holding that the Commission did not sufficiently motivate the opening of the formal procedure (violation of Article 296 TFEU) in relation to the existence of an advantage. The judgment was not appealed.

1.3. **Comments received following the annulment of the 2012 Decision and the 2011 Extension Decision**

- (48) Following the annulment of the 2012 Decision and the 2011 Extension Decision, the Commission received additional submissions, from UPS by letters of 24 May 2019 and 17 July 2019 and from BIEK by letter of 31 May 2019. In their letters, UPS and BIEK underlined that they remained concerned about the pension measure and urged the Commission to continue and conclude its investigation. On 28 November 2019, UPS submitted further comments.

2. **DESCRIPTION OF THE INVESTIGATED MEASURE**

2.1. **Scope of the present Decision**

- (49) At the outset, in view of the numerous decisions adopted by the Commission and the annulment of certain decisions, the Commission considers it necessary to clarify the scope of the present Decision.
- (50) The Commission recalls that it concluded in the 2012 Decision:
 - (a) with regard to the public transfers, that they were unlawfully granted by Germany in breach of Article 108(3) TFEU, but are compatible with the internal market; and
 - (b) with regard to the public guarantee, that this measure constitutes existing aid to Deutsche Post pursuant to Articles 107(1) and 108(3) TFEU.
- (51) With regard to these conclusions, the 2012 Decision has not been appealed and hence remains in force.

⁽¹³⁾ Judgment of the General Court of 8 December 2011, *Deutsche Post v Commission*, T-421/07, ECLI:EU:T:2011:720.

⁽¹⁴⁾ Judgment of the Court of Justice of 24 October 2013, *Deutsche Post v Commission*, C-77/12 P, ECLI:EU:C:2013:695.

⁽¹⁵⁾ Judgment of the General Court of 18 September 2015, *Deutsche Post v Commission*, T-421/07 RENV, ECLI:EU:T:2015:654.

⁽¹⁶⁾ Judgment of the General Court of 14 July 2016, *Germany v Commission*, T-143/12, ECLI:EU:T:2016:406.

⁽¹⁷⁾ Judgment of the General Court of 10 April 2019, *Deutsche Post v Commission*, T-388/11, ECLI:EU:T:2019:237.

- (52) Moreover, the Commission notes that the 2007 Extension Decision and the 2011 Extension Decision were annulled by the Courts.
- (53) Against this background, the investigation only concerns the payments described in the Opening Decision.
- (54) In particular, the Opening Decision refers to the following:
- (a) the payments performed by Deutsche Post to the pension fund (established in the context of the privatisation of Deutsche Post) in the amount of DEM 4 billion (approx. EUR 2,05 billion) per year between 1995 and 1999;
 - (b) the deficit of DEM 8,2 billion (approx. EUR 4,19 billion) accumulated in the pension fund as a result of the early retirement of a considerable number of Deutsche Post employees by 1999; and
 - (c) the fact that Germany, in accordance with what the German Minister of Finance announced on 18 January 1999, covered that deficit.
- (55) Against this background, the pension measure as described above forms the subject of the present Decision.

2.2. The pension measure for the period from 1995 to 1999

- (56) The pension measure based on the Law on the regulations governing the staff of the former German federal postal service (*Gesetz zum Personalrecht der Beschäftigten der früheren Deutschen Bundespost (Postpersonalrechtsgesetz)*)⁽¹⁸⁾ ('PostPersRG') has financed since 1995 a major share of the pensions for Deutsche Post's retired civil servants. To fully apprehend the effects of the pension measure in the assessment in section 5, the following sections will describe in more detail the civil servants' social benefits and contributions in comparison to the compulsory social insurances for employees under private law contracts ('private employees').

2.2.1. Social benefits for civil servants

- (57) Civil servants are entitled to old age pensions, health care and long-term care. The benefits for Deutsche Post's civil servants are the same as for all other civil servants.
- (a) The level of the pension is pre-defined, pursuant to Article 14 of the Law on civil service pensions (*Gesetz über die Versorgung der Beamten und Richter in Bund und Ländern (Beamtenversorgungsgesetz – BeamtVG)* of 24 August 1976⁽¹⁹⁾), at a certain percentage of the last salary that the civil servant earns.
 - (b) Civil servants are entitled to reimbursement of between 50 % and 70 % of health and long-term care expenses, while they have to assume the remaining expenses themselves. The exact breakdown of health care and long-term care costs depends on several criteria such as the number of children. The civil servants can choose either to insure themselves with a voluntary complementary insurance or to pay their share of the health care and long-term care expenses out of their own pocket.

2.2.2. Financing of civil servants' social benefits from 1989 to 1994 at POSTDIENST

- (58) After the first postal reform of 1989, pursuant to Article 54(2) of the Law on the corporate legal structure of the German federal postal service (*Gesetz über die Unternehmensverfassung der Deutschen Bundespost (Postverfassungsgesetz – PostVerfG)*)⁽²⁰⁾, POSTDIENST, TELEKOM and POSTBANK had to fully finance the pension payments and health expenses of the retired civil servants who were allocated to the respective companies on the basis of their former activities.
- (59) That provision lays down that, whereas the claim of the civil servant continues to be directed against the State, the State has the right to claim the entire amount from POSTDIENST, TELEKOM and POSTBANK respectively.

⁽¹⁸⁾ Article 4 of the Law on the reform of postal services and telecommunications (*Gesetz zur Neuordnung des Postwesens und der Telekommunikation (Postneuordnungsgesetz – PTNeuOG)*, 14 September 1994, Federal Law Gazette (*Bundesgesetzblatt*) ('BGBl.') 1994, Part I, No 61, p. 2325.

⁽¹⁹⁾ BGBl. 1976, Part I, No 111, p. 2485.

⁽²⁰⁾ Article 1 of the Law on the restructuring of postal and telecommunications services and of the German federal postal service (*Gesetz zur Neustrukturierung des Post- und Fernmeldewesens und der Deutschen Bundespost (Poststrukturgesetz – PostStruktG)*, 8 June 1989, BGBl. 1989, Part I, No 25, p. 1026.

2.2.3. Financing of social benefits for DPAG's civil servants since 1995

- (60) With the 1994 reform of postal services and telecommunications (*Gesetz zur Neuordnung des Postwesens und der Telekommunikation*), civil servants who had worked for POSTDIENST were, pursuant to Article 2(1) PostPersRG, transferred to DPAG. Thereby, the civil servants kept, pursuant to Article 2(3) PostPersRG, their existing legal status. DPAG took over, pursuant to Article 1(1) PostPersRG, all employer's rights and obligations from the federal State and assumed, pursuant to Article 2(3) PostPersRG, all the civil servants' claims relating to property rights.
- (61) Pursuant to Article 15 PostPersRG, the payment of pension and health expenses to retired civil servants was taken over by a newly created pension fund for Deutsche Post's civil servants. On 1 July 2001, the pension funds for Deutsche Post, TELEKOM, and POSTBANK were merged into the pension fund for civil servants of the postal service (*Postbeamtenversorgungskasse*) ('the Pension Fund').
- (62) Pursuant to Article 16(1) PostPersRG, Deutsche Post had to pay yearly contributions of EUR 2,045 billion to the Pension Fund for the period from 1995 to 1999 which total EUR 10,225 billion.
- (63) The remaining deficit (e.g. the difference between the pensions for the retired civil servants and the contribution by Deutsche Post to the Pension Fund), was covered by a pension measure, pursuant to Article 16(2) PostPersRG. The pension measure increased from EUR 151 million in 1995 to EUR 1,118 billion in 1999.
- (64) The graphs in Figures 1 and 2 below represent the respective contributions of Deutsche Post and Germany (in amount and percentage) to the Pension Fund.

Figure 1

Financing of the Pension Fund (million EUR)

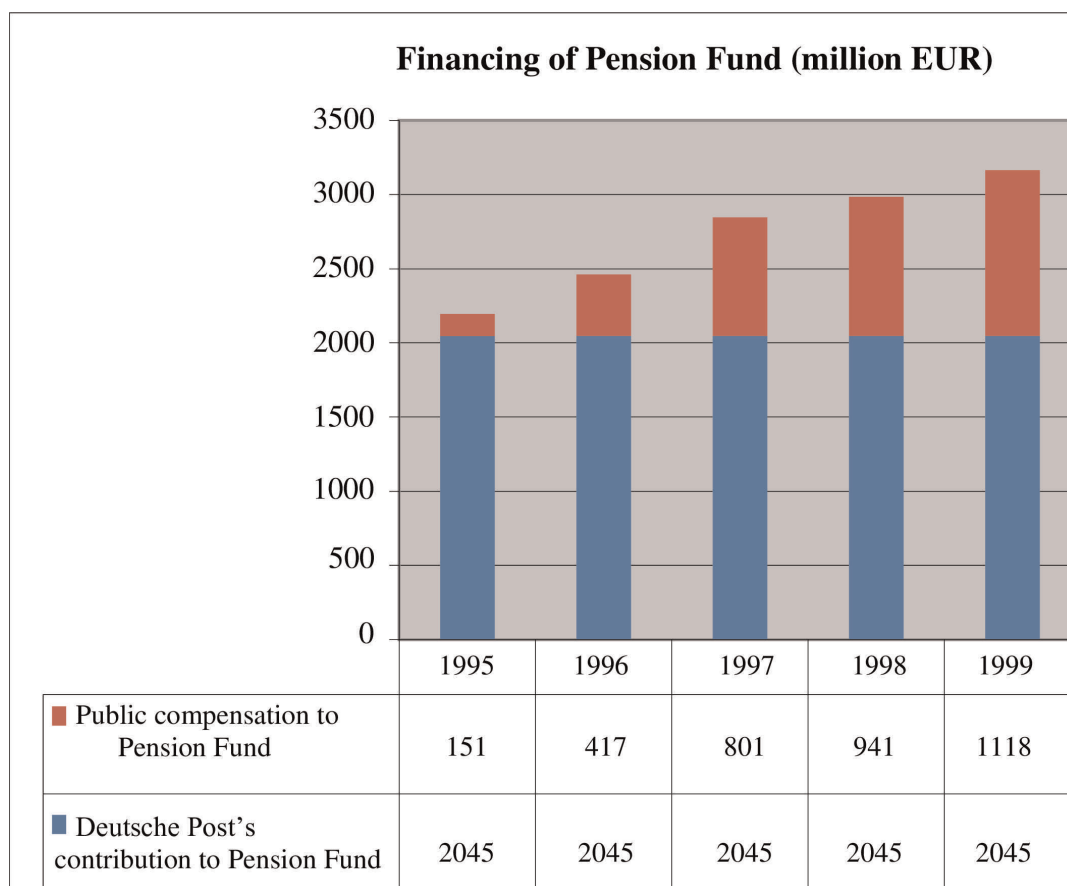
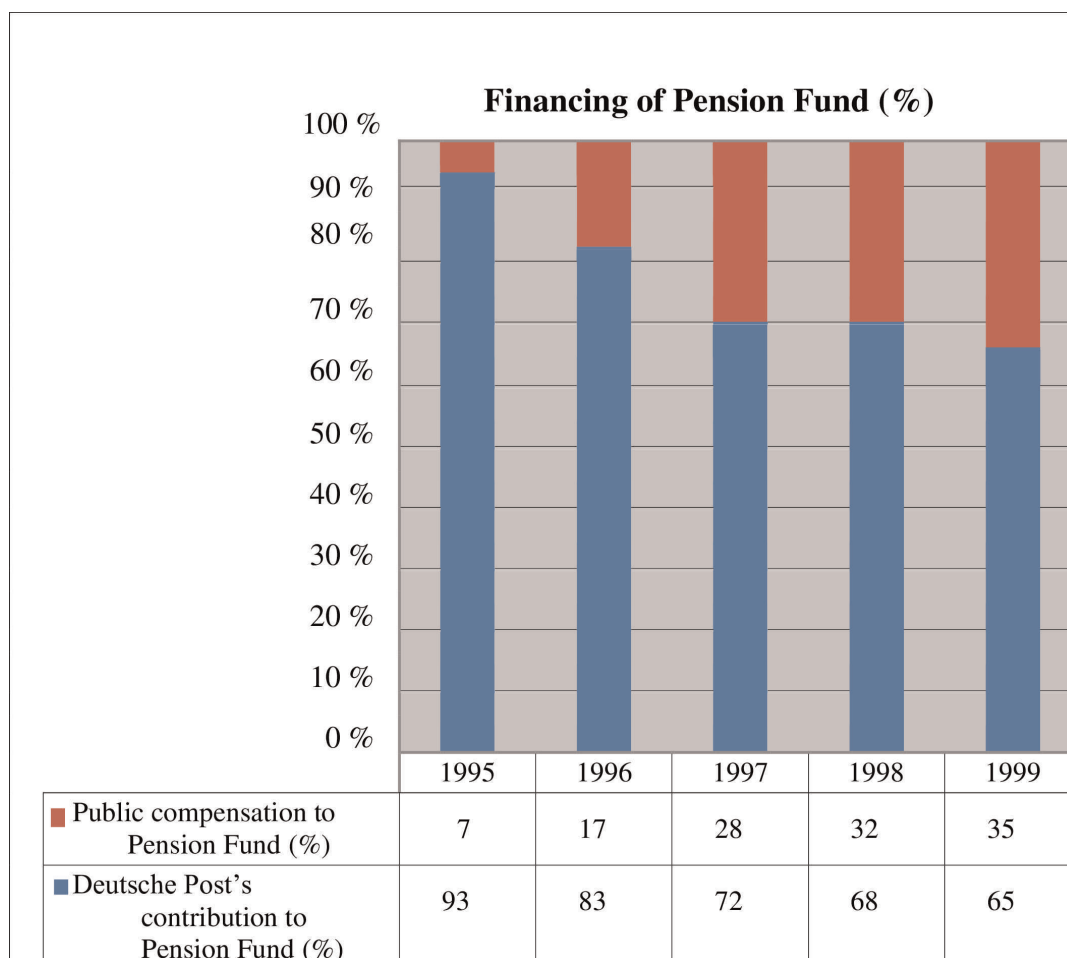


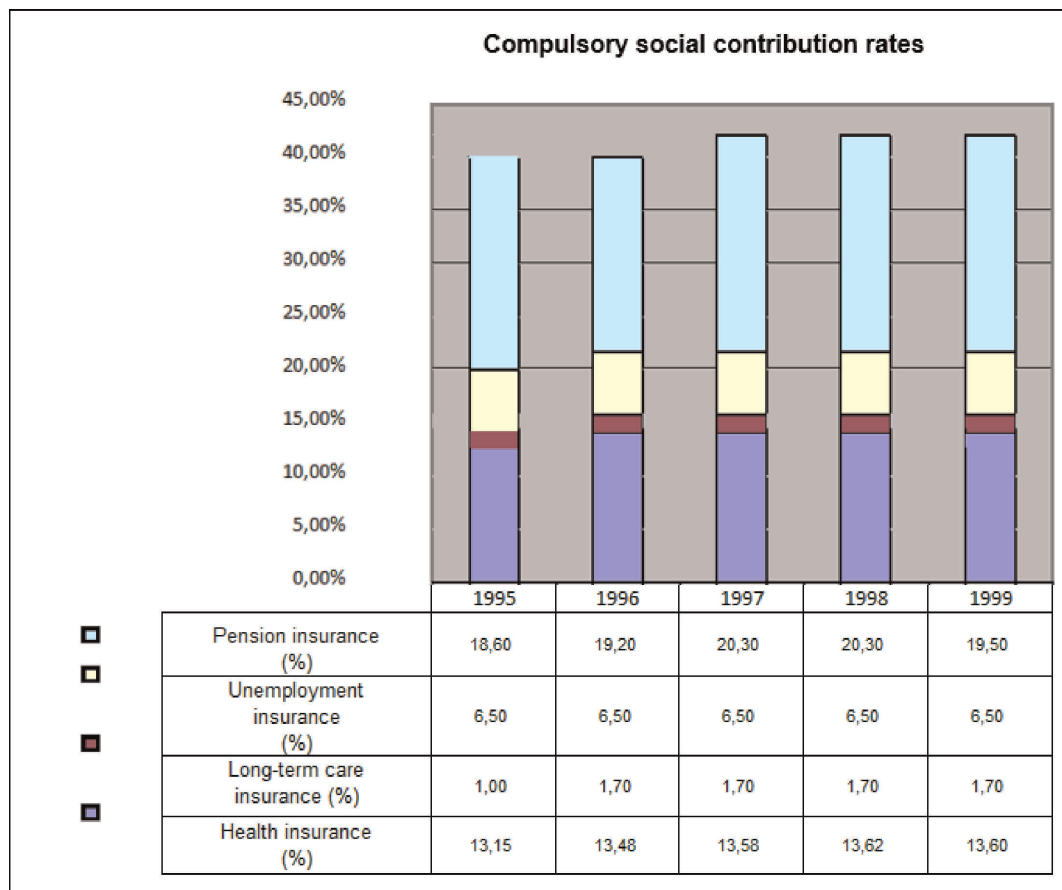
Figure 2

Contributions to the Pension Fund (%)**2.2.4. Statutory social insurances and supplementary pension insurance for Deutsche Post's private employees**

- (65) Private employees are compulsory members of four statutory social insurances: pension, unemployment, health and long-term care insurances ⁽²¹⁾. Compared to the civil servants' regime, the statutory social insurance schemes offer a different coverage for pension insurance and health and long-term care insurances:
- (a) the level of the pension is not defined in terms of percentage of the last monthly salary but of an average life-time salary;
 - (b) expenses for health and long-term care are fully covered.
- (66) There also exist important differences in the financing of the social benefits compared to those of civil servants:
- (a) the statutory social insurances are financed by joint contributions from the employee and the employer during the employee's working life ('compulsory social contributions');
 - (b) the total compulsory social contribution rate is formally divided into an employee's share and an employer's share which both cover about half of the total compulsory social contribution rate;
 - (c) the employer has the formal obligation to pay the total compulsory social contribution rate to the social insurances funds.
- (67) Figure 3 below presents the compulsory social contribution rates for private employees for the period from 1995 to 1999.

⁽²¹⁾ The sixth part of the Social Security Code (*Sozialgesetzbuch, Sechstes Buch (SGB VI)*) regulates pension insurance; the third part of the *Sozialgesetzbuch (SGB III)* regulates unemployment insurance; the fifth part of the *Sozialgesetzbuch (SGB V)* regulates health insurance; the Law on long-term care (*Gesetz zur sozialen Absicherung des Risikos der Pflegebedürftigkeit (Pflege-Versicherungsgesetz – PflegeVG)*) of 26 May 1994 (BGBl. 1994, Part I, No 30, p. 1014) and the eleventh part of the *Sozialgesetzbuch (SGB XI)* regulate long-term care insurance.

Figure 3

Compulsory social contribution rates (in percentage of private employees' gross wage)

- (68) Figure 3 shows that the compulsory social contribution rates have ranged from approximately 39 % to 42 % of the gross wage (gross wage = net wage + employee's share). Given that the employer's share and the employee's share cover about half of the total compulsory social contribution rate, their respective compulsory social contribution rates have been each in the range from approximately 19 % to 21 % of the gross wage.

- (69) Deutsche Post's private employees have not only benefited from the statutory social insurances but also from supplementary pension insurance. Private employees who started before 1997 were offered a supplementary pension insurance cover that would allow them to receive a similar level of pension as civil servants. Thus the supplementary pension insurance covered the difference between the private employees' statutory social insurance pension, which is equal to a certain percentage of the average life-time salary, and the civil servants' pension, which is equal to a certain percentage of the last salary. The detailed rules are laid down in the Charter of the supplementary pension agency of the German federal postal service (*Satzung der Versorgungsanstalt der Deutschen Bundespost*).

3. GROUNDS FOR INITIATING THE PROCEDURE

- (70) In the Opening Decision, the Commission considered that the fact that the State covered the deficit accumulated by 1999 – in connection with the early retirement of a considerable number of Deutsche Post civil servants between 1995 and 1999 – might have conferred an advantage on Deutsche Post.
- (71) Therefore, the Commission considered that its preliminary investigation of the measure could not confirm the conclusion that the measure did not constitute State aid.
- (72) In addition, the Commission concluded in the Opening Decision that based on its preliminary investigation, doubts were raised as to the compatibility of the measure with the internal market.

4. RELEVANT COMMENTS FROM INTERESTED PARTIES

- (73) Interested parties submitted comments on the Opening Decision, the (now annulled) 2007 Extension Decision and the (now annulled) 2011 Extension Decision.
- (74) This section summarizes comments that are considered relevant for the assessment of the measure at stake (i.e. the pension measure for the period from 1995 to 1999) and does not reflect all comments received in the course of past investigations on other measures and/or the pension measure for the period after 1999.

4.1. Comments from third parties

- (75) According to the British Post Office ('the Post Office'), the assumption of pension liabilities that DPAG incurred as a consequence of the early retirement of 25 % of its staff is State aid. The Post Office submits that the pension shortfall should have been financed by the sale of business assets.
- (76) According to UPS, Deutsche Post has benefited from an advantage as it has been partially released from the payment obligation it had to fulfil before 1995. Since normal operators have to bear their own pension costs, Deutsche Post was put into an advantageous position compared to its competitors.
- (77) In its submission of 28 November 2019 (following the General Court's 2019 judgment annulling the 2011 Extension Decision), UPS argues that the Commission should continue the investigation of the pension measure and, more particularly, should assess the pension measure applying the *Orange* ⁽²²⁾ case law (as opposed to the *Combus* ⁽²³⁾ case law). Furthermore, UPS takes the view that even on the basis of the *Combus* case law the Commission should conclude that the pension measure constituted incompatible aid.

4.2. Comments from Germany

- (78) According to the German authorities, the State contribution to the Pension Fund was confined to what was necessary to offset an objective disadvantage imposed by the State on DPAG.

⁽²²⁾ Judgment of the Court of Justice of 26 October 2016, *Orange v Commission*, C-211/15 P, ECLI:EU:C:2016:798.

⁽²³⁾ Judgment of the General Court of 16 March 2004, *Danske Busvognmænd v Commission*, T-157/01, ECLI:EU:T:2004:76

- (79) According to the German authorities, financing the early retirement of civil servants recruited before the privatisation of DPAG remained a basic obligation of the State vis-à-vis its civil servants. DPAG's co-responsibility for the financing of the Pension Fund therefore entailed atypical special costs. The State's contribution to the pension obligations only partly offset an objective disadvantage previously imposed by the State on DPAG. Therefore, Germany considers that there is no advantage to DPAG and also no distortion of competition or trade when the State makes a contribution toward the Pension Fund.
- (80) Based on the *Combust* judgment ⁽²⁴⁾, Germany is of the opinion that, in the course of the privatization of formerly State-owned universal service providers, the payment by the State of pension costs – which go beyond the level normally assumed by private competitors – does not constitute aid. Germany considers that a comparison should be undertaken between the social benefits for Deutsche Post's civil servants and competitors' social benefits to assess the existence of aid.

5. AID ASSESSMENT OF PENSION MEASURE

- (81) According to Article 107(1) TFEU, 'any aid granted by a Member State or through State resources in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods shall, in so far as it affects trade between Member States, be incompatible with the internal market'.
- (82) A measure qualifies as State aid if the following cumulative conditions are met: (a) the measure is granted by Member States through State resources, (b) it confers a selective economic advantage on certain undertakings or the production of certain goods, (c) the advantage distorts or threatens to distort competition, and (d) the measure affects intra-EU trade.
- (83) As the pension measure is based on Article 16 PostPersG and financed out of the public budget, it is imputable to the State and it is granted through State resources within the meaning of Article 107(1) TFEU. Moreover, as the pension measure has only been implemented to relieve Deutsche Post partly from the civil servants' pension costs and therefore ultimately benefits Deutsche Post, it is selective.

5.1. Existence of a financial advantage

5.1.1. Applicable methodology for the assessment of the presence of an advantage

- (84) On the basis of the *Combust* judgment, Germany claims that the pension measure did not provide any financial advantage because it relieved Deutsche Post from excess pension costs.
- (85) In the 2012 Decision, the Commission rejected Germany's claims that the existence of an advantage had to be established based on the *Combust* case law.
- (86) However, following the annulment of the 2012 Decision and of the 2011 Extension Decision, the Commission considers that the judgments of the General Court in Cases T-143/12 ⁽²⁵⁾ and T-388/11 ⁽²⁶⁾ oblige the Commission, in line with Article 266 TFEU, to apply the *Combust* case law in relation to the pension measure. Indeed, pursuant to the first paragraph of Article 266 TFEU, '[t]he institution [...] whose act has been declared void or whose failure to act has been declared contrary to the Treaties shall be required to take the necessary measures to comply with the judgment of the Court of Justice of the European Union'.
- (87) In its judgment of 14 July 2016, the General Court held that 'the mere assertion that the pension costs are part of the costs which are normally included in the budget of an undertaking was not sufficient to establish, in the present case, the existence of a real economic advantage in favour of Deutsche Post. The Commission, which bore the obligation to prove that advantage, did not discharge that obligation and thus erred in law' ⁽²⁷⁾.

⁽²⁴⁾ Judgment of the General Court of 16 March 2004, *Danske Busvognmænd v Commission*, T-157/01, ECLI:EU:T:2004:76, paragraph 57.

⁽²⁵⁾ Judgment of the General Court of 14 July 2016, *Germany v Commission*, T-143/12, ECLI:EU:T:2016:406.

⁽²⁶⁾ Judgment of the General Court of 10 April 2019, *Deutsche Post v Commission*, T-388/11, ECLI:EU:T:2019:237.

⁽²⁷⁾ Judgment of the General Court of 14 July 2016, *Germany v Commission*, T-143/12, ECLI:EU:T:2016:406, paragraph 154.

- (88) Against this background, the Commission will assess the presence of an advantage for Deutsche Post by applying the *Combus* case law. Notably, the Commission considers that, contrary to the view expressed by UPS, the Commission is obliged to apply the *Combus* case law to assess the pension measure, rather than applying the *Orange* ⁽²⁸⁾ case law. More particularly, the Commission considers the fact that in that judgment the Court of Justice may have discontinued its legal approach applied in *Combus* and that consequently the *Combus* case law may no longer be applicable to similar measures in other cases, does not call into question the Commission's obligation to apply the *Combus* methodology to the pension measure in the present case in accordance with the first paragraph of Article 266 TFEU (see recital (86)).

5.1.2. *Presence of an advantage in the present case*

- (89) In view of the application of the *Combus* case law in the present case, the Commission will assess whether Germany, by assuming responsibility for the difference between the lump sum fixed between 1995 and 1999 and the total amount of the costs of the pensions of former civil servants of Deutsche Post, conferred an economic advantage on Deutsche Post by comparison with its competitors.
- (90) The Commission will carry out this analysis in the following three steps in order to determine the existence of an advantage:
- (a) in a first step, the Commission will establish the level of wage-based social security contributions of other undertakings in the mail/parcel sector;
 - (b) then it will establish the level of wage-based social security contributions which Deutsche Post bears for its civil servants;
 - (c) finally, the Commission will compare the two levels.

5.1.2.1. Level of social security contributions of other undertakings in the mail/parcel sector

5.1.2.1.1. Calculation of the benchmark rate

- (91) Private competitors have to compulsorily pay out of their revenues both the employer's share as well as the employee's share of social security contributions to the State. As shown in Figure 3, the total compulsory social contribution rates for the period from 1995 to 1999 have been in the range of approximately 39 % to 42 % of the gross wage. The employer's and the employee's respective compulsory social contribution rates have been each in the range from approximately 19 % to 21 % of the gross wage (see recital 68).
- (92) Compared to the private employees, civil servants do not have to pay a share of social security contributions with regard to health care and long-term care, but instead have to cover 30 % to 50 % of their health care and long-term care expenses themselves (notably by concluding an additional private insurance). However, the civil servants' contribution of 30 % to 50 % to their health and long-term care expenses can be assumed to largely correspond in its economic effect to the private employees' contribution to the statutory health and long-term care insurances ⁽²⁹⁾.
- (93) Moreover, civil servants do not make any contributions to their pension and unemployment insurances. Deutsche Post's contribution should therefore go beyond the private employers' share and include the entire cost of the pension and unemployment insurance as well as the remaining health and long-term care expenses of the civil servants.
- (94) The benchmark rate for Deutsche Post's social contributions ('benchmark rate') has therefore to include the total contribution rates (total contribution rate = employer's share + employee's share) for the pension and unemployment insurances and the employer's share of the health and long-term care insurances.
- (95) As shown in Table 1 below, the benchmark rate has been between 32 % and 34,5 % of the private employees' gross wage for the period from 1995 to 1999.

⁽²⁸⁾ Judgment of the Court of Justice of 26 October 2016, *Orange v Commission*, C-211/15 P, ECLI:EU:C:2016:798.

⁽²⁹⁾ Given that the employees' share under the statutory health and long-term care insurances for private employees corresponds to about half of the total contribution rate (see recital 68), it can be assumed that the costs incurred by civil servants for an additional private insurance covering the 30 % to 50 % are largely equivalent to the private employees' contribution.

Table 1

Deutsche Post social contribution benchmark rate

(%)

	1995	1996	1997	1998	1999
Employer's share	19,49	20,01	21,07	21,07	20,77
Health insurance	6,44	6,48	6,82	6,82	6,82
Long-term care insurance	0,50	0,68	0,85	0,85	0,85
Unemployment insurance	3,25	3,25	3,25	3,25	3,25
Pension insurance	9,30	9,60	10,15	10,15	9,85
Employee's share	12,55	12,85	13,40	13,40	13,10
Unemployment insurance	3,25	3,25	3,25	3,25	3,25
Pension insurance	9,30	9,60	10,15	10,15	9,85
Deutsche Post benchmark rate	32,04	32,86	34,47	34,47	33,87

5.1.2.1.2. Calculation of the gross wage base

- (96) As the level of social contributions that Deutsche Post has to bear for its civil servants should be equivalent to the level of compulsory social contributions, it is important that Deutsche Post is not only subject to an equivalent rate but also that the rate is calculated on an equivalent gross wage base.
- (97) It is therefore necessary to construct a gross wage for the civil servants ('civil servants' gross wage') that provides an equivalent wage base to the private employees' gross wage.
- (98) It is assumed that the civil servants' contributions to their health and long-term care expenses equals the private employees' contributions to the statutory health and long-term care insurances (see recital (92)). Therefore, no adjustment of the wage base is necessary in this regard. However, since civil servants do not make any contributions to their pension and unemployment insurances (see recital (93)), the incurred wage (i.e. the actual wage costs) should be increased by applying a factor taking into account the private employees' share of the contributions to the statutory pension and unemployment insurances.
- (99) The following formula converts the incurred wage into a gross wage that is equivalent to the private employees' gross wage:

$$\text{Civil servants' gross wage} = \text{incurred wage} * \frac{100}{100 - (\text{private employees' share of pension and unemployment insurances})}$$

- (100) The following formula applied to the year 1997 would for example lead to the following result:

$$\text{Civil servants' gross wage} = \text{incurred wage} * \frac{100}{(100 - (3,25 + 10,15))} = \text{incurred wages} * 1,15$$

- (101) Taking e.g. the 1997 contribution rates, the civil servants' gross wage is 15 % higher than the incurred civil servants' wage.

5.1.2.2. Establishment of the gross wage-based social security contributions borne by Deutsche Post for its civil servants

5.1.2.2.1. Advantage based on comparison with benchmark rate

- (102) Pursuant to Article 16(1) PostPersRG, Deutsche Post had to pay yearly contributions of EUR 2,045 billion to the Pension Fund for the period from 1995 to 1999 which totals EUR 10,225 billion.
- (103) On that basis and considering the above, it is possible to calculate the gross wage-based social security contributions borne by Deutsche Post for the period from 1995 to 1999 and to compare it with the benchmark rate established in recital 95.

Table 2

Deutsche Post gross wage-based social security contributions and benchmark rate

	1995	1996	1997	1998	1999
Deutsche Post's contribution to Pension Fund (billion EUR)	2,045	2,045	2,045	2,045	2,045
Civil servants' take home pay (billion EUR)	3,522	2,992	2,712	2,581	2,288
Civil servants' gross wages (billion EUR)	4,050	3,441	3,119	2,968	2,631
Deutsche Post's contribution in % of gross wages	50	59	66	69	78
Benchmark rate (%)	31,93 %	33,29 %	34,44 %	34,46 %	33,85 %

- (104) From that calculation, it would not appear that Deutsche Post has benefited from an advantage since it paid more than the calculated benchmark rate.

5.1.2.2.2. Advantage based on comparison with benchmark rate taking into account the potential impact of price regulation

- (105) It *should* be noted that in recitals 332 to 338 of the 2012 Decision, the Commission considered that the price regulation of Deutsche Post was a relevant factor to calculate the gross wage-based social security contributions effectively borne by Deutsche Post and assess the proportionality of the pension measure.
- (106) This was justified by the fact that Article 20(1) and (2) of the Law on Postal Services (*Postgesetz*) of 22 December 1997 ⁽³⁰⁾ ('PostG') allows Deutsche Post to request that, when the Postal Regulator is setting the allowed level of revenues from the exclusive right and the regulated services, it includes into the costs to be recovered from consumers, an 'excess social burden' as well as the costs for the efficient provision of the universal service.
- (107) The Postal Regulator accepted this approach for the first time in the 2002 price cap decision (applied from 1 January 2003) and also approved the 'excess social burden' in the 2007 and 2011 price cap decisions. The Commission considered that from an economic point of view, this led Deutsche Post to bear effectively lower contribution rates to social costs than its apparent contribution to the Pension Fund. Based on this consideration, in the 2012 Decision the Commission was able to establish and quantify the amount of incompatible aid to be recovered for the period from 1 January 2003 to the point in time when the comparative advantage has been brought to an end.

⁽³⁰⁾ BGBl. 1997, Part I, No 88, p. 3294.

- (108) With regard to the present Decision and thus the assessment of the pension measure for the period from 1995 to 1999, it could be discussed whether in the assessment of the existence of an advantage under the *Combust* methodology the potential impact of the price regulation of Deutsche Post should be taken into account when determining the potential advantage granted to the operator by means of the pension measure.
- (109) However, the Commission considers that, in any event, the potential impact of the price regulation is not relevant with regard to the temporal scope of the measure under assessment in the present Decision, i.e. the period from 1995 to 1999.
- (110) Indeed, as the Commission observed in the 2012 Decision, the first price cap decision of the Postal Regulator which took into account an 'excess social burden' as stipulated in the PostG was taken only in 2002 for the period from 2003 to 2007 ⁽³¹⁾. By contrast, the Commission considered with regard to the period before 2003 that it could not be inferred with certainty from the legal basis for the regulated prices in force during the period from 1995 to 2002 how the competent authorities decided the composition of the regulated prices on an *ex-ante* basis ⁽³²⁾. Against this background, the Commission explained, that in the absence of any earmarked element of the tariff for social costs, it was not possible to determine the level of gross wage-based social security contributions taking into account the price regulation of Deutsche Post ⁽³³⁾. Based on these considerations, the Commission concluded in the 2012 Decision that it could not establish and quantify any amount of incompatible aid for the period from 1995 to 2002 ⁽³⁴⁾.
- (111) For the present Decision, the Commission considers that these considerations apply in the same way within the assessment of the existence of an advantage under the *Combust* methodology, i.e. the benchmarking exercise described in recital 90). Since the Commission cannot, despite its best efforts, quantify any potential impact of the price regulation on the gross wage-based social security contributions borne by Deutsche Post for its civil servants, it cannot establish the existence of an advantage on that basis.

5.2. Conclusion with regard to the existence of a financial advantage

- (112) It results from the above that, if the Commission limits itself to a direct comparison of Deutsche Post's contributions to the Pension Fund and the relevant benchmark rate, no advantage can be found for Deutsche Post. Moreover, even if the Commission were to enlarge its assessment to consider the potential impact of the regulation of Deutsche Post's prices – assuming this would be justified – it would still not be possible to determine, quantify and link to the pension measure a precise advantage for the period from 1995 to 1999.
- (113) Based on the above, the Commission considers that it cannot establish that the pension measure, implemented for the period from 1995 to 1999 to Deutsche Post, conferred an advantage to the operator within the meaning of Article 107(1) TFEU. Given that the existence of an advantage, which is one of the cumulative conditions for the existence of aid, cannot be established, the Commission concludes that the pension measure did not involve State aid.

6. CONCLUSION

- (114) The Commission finds that the pension measure implemented by Germany for the period from 1995 to 1999 does not constitute State aid within the meaning of Article 107(1) TFEU,

HAS ADOPTED THIS DECISION:

Article 1

The pension measure which Germany has implemented in favour of Deutsche Post for the period from 1995 to 1999 does not constitute State aid within the meaning of Article 107(1) of the Treaty on the Functioning of the European Union.

⁽³¹⁾ Decision 2012/636/EU, recital 332.

⁽³²⁾ *Ibid.*, recital 329.

⁽³³⁾ *Ibid.*, recital 329.

⁽³⁴⁾ *Ibid.*, recital 408.

Article 2

This Decision is addressed to Germany.

Done at Brussels, 7 February 2020.

For the Commission
Margrethe VESTAGER
Executive Vice-President

DECISION (EU) 2020/614 OF THE EUROPEAN CENTRAL BANK
of 30 April 2020
amending Decision (EU) 2019/1311 on a third series of targeted longer-term refinancing operations
(ECB/2020/25)

THE GOVERNING COUNCIL OF THE EUROPEAN CENTRAL BANK,

Having regard to the Treaty on the Functioning of the European Union, and in particular the first indent of Article 127(2) thereof,

Having regard to the Statute of the European System of Central Banks and of the European Central Bank, and in particular the first indent of Article 3.1, Article 12.1, the second indent of Article 18.1 and the second indent of Article 34.1 thereof,

Having regard to Guideline (EU) 2015/510 of the European Central Bank of 19 December 2014 on the implementation of the Eurosystem monetary policy framework (General Documentation Guideline) (ECB/2014/60) ⁽¹⁾,

Whereas:

- (1) Pursuant to Article 1(4) of Guideline (EU) 2015/510 (ECB/2014/60), the Governing Council may, at any time, change the tools, instruments, requirements, criteria and procedures for the implementation of Eurosystem monetary policy operations.
- (2) On 22 July 2019, in pursuing its price stability mandate and to preserve favourable bank lending conditions and support the accommodative stance of monetary policy in Member States whose currency is the euro, the Governing Council adopted Decision (EU) 2019/1311 of the European Central Bank (ECB/2019/21) ⁽²⁾. This Decision provided for a third series of targeted longer-term refinancing operations (TLTROs-III) to be conducted over the period from September 2019 to March 2021.
- (3) On 12 March 2020, in order to support bank lending to those most affected by the spread of the coronavirus disease (COVID-19), in particular small and medium-sized enterprises, the Governing Council decided to change certain key parameters of TLTRO-III. On 16 March 2020, the Governing Council adopted Decision (EU) 2020/407 of the European Central Bank (ECB/2020/13) ⁽³⁾ to implement some of these changes. This Decision is necessary to implement the additional changes decided by the Governing Council, in particular to provide for a temporary reduction in interest rates applied to all TLTROs-III and to lower the lending performance threshold under certain conditions.
- (4) As regards the decision to lower the lending performance threshold, the Governing Council decided, on 12 March 2020, that it should be reduced to 0% with respect to the period between 1 April 2020 and 31 March 2021. In order to also take into account the credit already provided by banks since the start of the coronavirus disease (COVID-19) crisis in Europe, the starting date of that period is moved to 1 March 2020 as decided on 30 April 2020, while the ending date remains unchanged at 31 March 2021. In addition, to cater for the expected decline in bank lending since 1 March 2020, the deviation from the benchmark outstanding amount to achieve the maximum discount through the previous lending performance criteria is reduced to 1.15% from 2.5%.
- (5) Moreover, on 30 April 2020, in order to further support the provision of credit to households and firms in the face of the prevalent economic disruptions and heightened uncertainty, the Governing Council decided to provide for an additional temporary reduction in interest rates applied to all TLTROs-III under certain conditions.

⁽¹⁾ OJ L 91, 2.4.2015, p. 3.

⁽²⁾ Decision (EU) 2019/1311 of the European Central Bank of 22 July 2019 on a third series of targeted longer-term refinancing operations (ECB/2019/21) (OJ L 204, 2.8.2019, p. 100).

⁽³⁾ Decision (EU) 2020/407 of the European Central Bank of 16 March 2020 amending Decision (EU) 2019/1311 on a third series of targeted longer-term refinancing operations (ECB/2020/13) (OJ L 80, 17.3.2020, p. 23).

- (6) In order to apply these adjusted parameters with immediate effect, this Decision should enter into force without delay.
- (7) Therefore, Decision (EU) 2019/1311 (ECB/2019/21) should be amended accordingly,

HAS ADOPTED THIS DECISION:

Article 1

Amendments

Decision (EU) 2019/1311 (ECB/2019/21) is amended as follows:

1. Article 1 is amended as follows:

(a) the following definitions are replaced:

‘(1) “benchmark net lending” means the amount of eligible net lending that a participant needs to exceed in the second reference period and, optionally, in the special reference period, in order to qualify for an interest rate on the participant’s borrowing that is lower than the initial rate applied and which is calculated in accordance with the principles and the detailed provisions set out in Article 4 and Annex I, respectively’;

‘(12) “interest rate incentive adjustment” means the reduction, if any, in the interest rate to be applied to amounts borrowed under TLTROs-III, expressed as a fraction of the average difference between the relevant maximum possible interest rate and the relevant minimum possible interest rate, as calculated in accordance with the detailed provisions set out in Annex I’;

(b) the following definitions are added:

‘(23) “rest of the life of the respective TLTRO-III” means the period from the settlement date of the respective TLTRO-III until 23 June 2020 and the period from 24 June 2021 until its maturity date or early repayment date, as applicable, thus excluding the special interest rate period’;

(24) “special interest rate period” means the period from 24 June 2020 to 23 June 2021;

(25) “special reference period” means the period from 1 March 2020 to 31 March 2021.’.

2. Article 5 is replaced by the following:

‘Article 5

Interest

1. The interest rate applicable to amounts borrowed under each TLTRO-III by participants whose eligible net lending during the special reference period equals or exceeds their benchmark net lending shall be calculated as follows, subject to the condition set out in Article 6(3a):

- (a) during the special interest rate period, the interest rate shall be the average interest rate on the deposit facility over that period minus 50 basis points. The resulting interest rate shall not, in any case, be higher than minus 100 basis points; and
- (b) during the rest of the life of the respective TLTRO-III, the interest rate shall be the average interest rate on the deposit facility over the life of the respective TLTRO-III.

2. The interest rate applicable to amounts borrowed under each TLTRO-III by participants whose eligible net lending during the special reference period is lower than their benchmark net lending but whose eligible net lending during the second reference period exceeds their benchmark net lending shall be calculated as follows:

- (a) during the special interest rate period, the interest rate shall be the lower of the following rates: (i) the average interest rate on the main refinancing operations over that period minus 50 basis points; and (ii) the interest rate calculated depending on the deviation from the benchmark outstanding amount, as in point (b); and

(b) during the rest of the life of the respective TLTRO-III, the interest rate shall be lower than the average interest rate on the main refinancing operations over the life of the respective TLTRO-III and may be as low as the average interest rate on the deposit facility over the life of the respective TLTRO-III, depending on the deviation from the benchmark outstanding amount.

3. The interest rate applicable to amounts borrowed under each TLTRO-III by participants whose eligible net lending, both during the special reference period and also during the second reference period, is lower than their benchmark net lending shall be calculated as follows:

(a) during the special interest rate period, the interest rate shall be the average interest rate on the main refinancing operations over that period minus 50 basis points; and

(b) during the rest of the life of the respective TLTRO-III, the interest rate shall be the average interest rate on the main refinancing operations over the life of the respective TLTRO-III.

4. Further details on interest rate calculations are laid down in Annex I. The final interest rate and the relevant data pertaining to its calculation shall be communicated to participants in accordance with the indicative calendar for TLTROs-III published on the ECB's website.

5. Interest shall be settled in arrears on the maturity of each TLTRO-III or on early repayment as provided for in Article 5a, as applicable.

6. If, due to the exercise of remedies available to an NCB in accordance with its contractual or regulatory arrangements, a participant is required to repay the TLTRO-III outstanding amounts before the deviation from the benchmark outstanding amount and the resulting interest rate incentive adjustment, if any, are communicated to that participant, the interest rate applicable to the amounts borrowed by that participant under each TLTRO-III shall be: (a) for the special interest rate period, the average interest rate on the main refinancing operations over that period minus 50 basis points; and (b) for the rest of the life of the respective TLTRO-III, the average rate on the main refinancing operation over the life of the respective TLTRO-III up to the date on which the repayment was required to be made by the NCB. If such repayment is required after the deviation from the benchmark outstanding amount and the resulting interest rate incentive adjustment, if any, have been communicated to the participant, the interest rate applicable to the amounts borrowed by that participant under each TLTRO-III shall be set in accordance with paragraphs 1 to 3.

3. Article 6 is amended as follows:

(a) paragraph 1(b) is replaced by the following:

‘(b) data relating to (i) the second reference period and, (ii) optionally, to the special reference period, for the purposes of determining the applicable interest rates (hereinafter referred to as the ‘second report’).’;

(b) paragraph 3a is added:

‘3a. Participants intending to take advantage of the interest rates set out in Article 5(1) shall exercise this option by separately providing, in the second report, the data relating to the special reference period, as well as the results of the auditor's evaluation of these data pursuant to Article 6(6)(b). If these conditions are not fulfilled, the interest rate applicable to the amounts borrowed by the participants shall be calculated pursuant to Article 5(2) or (3). No sanctions shall apply for the non-transmission of the data relating to the special reference period and/or the results of its respective auditor's evaluation.’;

(c) the first sub-paragraph of paragraph 6 is replaced by the following:

‘6. Each participant shall ensure that the quality of the data submitted pursuant to paragraphs 1 to 3a is evaluated by an external auditor in accordance with the following rules.’;

(d) the first sub-paragraph of point (c) of paragraph 6 is replaced by the following:

‘(c) the auditor's evaluations shall focus on the requirements set out in paragraphs 2, 3a and 4. In particular, the auditor shall.’.

4. In Article 7(1), points (b), (d) and (e) are replaced by the following:

- ‘(b) If a participant fails to make the results of the auditor’s evaluation of the first report available to the relevant NCB by the relevant deadline specified in the indicative calendar for TLTROs-III published on the ECB website, the participant shall repay all the outstanding amounts borrowed under TLTRO-III on the settlement day of the next main refinancing operation at the average rate on the main refinancing operation over the life of each respective TLTRO until the settlement day of the repayment, except during the special interest rate period, when the average rate on the main refinancing operation over such period minus 50 basis points shall apply.
- (d) If a participant fails to make the results of the auditor’s evaluation of data relating to the second reference period in the second report available to the relevant NCB by the relevant deadline, the average rate on the main refinancing operation over the life of each respective TLTRO-III shall apply to the amounts borrowed by that participant under TLTROs-III, except during the special interest rate period, when the average rate on the main refinancing operation over such period minus 50 basis points shall apply.
- (e) If a participant fails to otherwise comply with the obligations set out in Article 6(6) or (7), the average rate on the main refinancing operation over the life of each respective TLTRO-III shall apply to the amounts borrowed by that participant under TLTROs-III, except during the special interest rate period, when the average rate on the main refinancing operation over such period minus 50 basis points shall apply.’.

5. Annexes I and II are amended in accordance with the Annex to this Decision.

Article 2

Entry into force

This Decision shall enter into force on 5 May 2020.

Done at Frankfurt am Main, 30 April 2020.

For the Governing Council of the ECB
The President of the ECB
Christine LAGARDE

ANNEX

Annexes I, II and the TLTRO-III reporting table B are amended as follows:

1. In Annex I, Section 3 is replaced by the following:

‘3. Calculation of the interest rate

- A. Let $NL_{Special}$ denote the amount of eligible net lending over the special reference period from 1 March 2020 to 31 March 2021.

$$NL_{Special} = NL_{Mar2020} + \dots + NL_{Mar2021}$$

- B. Let $NS_{Mar2021}$ denote the amount obtained by summing the eligible net lending over the period 1 April 2019 to 31 March 2021 and the outstanding amount of eligible loans as at 31 March 2019; this is calculated as:

$$NS_{Mar2021} = OL_{Mar2019} + NL_{Apr2019} + \dots + NL_{Mar2021}.$$

Denote now by EX the percentage deviation of $NS_{Mar2021}$ from the benchmark outstanding amount over the period 1 April 2019 to 31 March 2021, that is,

$$EX = \frac{(NS_{Mar2021} - OAB)}{OAB} \times 100$$

EX will be rounded to 15 decimal positions. Where OAB is equal to zero, EX is deemed to equal 1.15.

- C. Let $\overline{MRO}_k$ be the average of the main refinancing operation (MRO) rate applicable over the life of TLTRO-III k and expressed as an annual percentage rate and let $\overline{DF}_k$ be the average of the deposit facility (DF) rate applicable over the life of TLTRO-III k , where the applicable interest rate refers to the life of the respective TLTRO-III, and expressed as an annual percentage rate, i.e.:

$$\overline{MRO}_k = \frac{1}{n_k} \sum_{t=1}^{n_k} MRO_{k,t}$$

$$\overline{DF}_k = \frac{1}{n_k} \sum_{t=1}^{n_k} DF_{k,t}$$

In the above equations n_k (for $k=1, \dots, 7$) denotes the number of days of the TLTRO-III k and, where the MRO is conducted under a fixed-rate full allotment regime, $MRO_{k,t}$ denotes the rate applied to the MRO on the t -th day of the TLTRO-III k , or, where the MRO is conducted under a variable-rate tender procedure, $MRO_{k,t}$ denotes the minimum bid rate applied to the MRO on the t -th day of the TLTRO-III k , and in each case is expressed as an annual percentage rate. In the above equations $DF_{k,t}$ denotes the rate applied to the deposit facility on the t -th day of the TLTRO-III k , and expressed as an annual percentage rate.

- D. Let $k_{special}$ denote the special interest rate period being the period from 24 June 2020 to 23 June 2021, and k_{rol} denote the two periods that constitute the rest of the life of the respective TLTRO-III k (referring to the period from the settlement date of the respective TLTRO-III until 23 June 2020 and the period from 24 June 2021 until the maturity of the respective TLTRO-III or until its early repayment date, as applicable).

Let $\overline{MRO}_{k_{special}}$ be the average of the MRO rate applicable during the special interest rate period from 24 June 2020 to 23 June 2021 of TLTRO-III k expressed as an annual percentage rate and let $\overline{DF}_{k_{special}}$ be the average of the DF rate applicable during the special interest rate period from 24 June 2020 to 23 June 2021 of TLTRO-III k and in each case expressed as an annual percentage rate, i.e.:

$$\overline{MRO}_{k_{special}} = \frac{1}{n_{k_{special}}} \sum_{t=1}^{n_{k_j}} MRO_{k_{special},t}$$

$$\overline{DF}_{k_{special}} = \frac{1}{n_{k_{special}}} \sum_{t=1}^{n_{k_j}} DF_{k_{special},t}$$

In the above equations $n_{k_{special}}$ denotes the number of days of the period $k_{special}$ of the TLTRO-III k and, where the MRO is conducted under a fixed-rate full allotment regime, $MRO_{k_{special},t}$ denotes the rate applied to the MRO on the t -th day of the period $k_{special}$ of the TLTRO-III k , or, where the MRO is conducted under a variable-rate tender procedure, $MRO_{k_{special},t}$ denotes the minimum bid rate applied to the MRO on the t -th day of the period $k_{special}$ of the TLTRO-III k , and in each case is expressed as an annual percentage rate. In the above equations $DF_{k_{special},t}$ denotes the rate applied to the deposit facility on the t -th day of the period k_j of the TLTRO-III k , and expressed as an annual percentage rate.

- E. Let the interest rate incentive adjustment, where applicable, measured as a fraction of the average corridor between the MRO_k and the $\overline{DF}_k$, be denoted iri ;
- F. Let the interest rate to be applied for the life of a TLTRO-III k (final interest rate), expressed as an annual percentage rate, be denoted r_k . Let the interest rate to be applied for a period k_j , with $j = special$ or rol , of a TLTRO-III k , expressed as an annual percentage rate, be denoted r_{k_j} .

- G. The interest rate r_k is defined as:

$$r_k = \frac{n_{k_{special}}}{n_k} r_{k_{special}} + \frac{n_{k_{rol}}}{n_k} r_{k_{rol}}.$$

In the above equation $n_{k_{rol}}$ denotes the number of days of the period k_{rol} of the TLTRO-III k .

The interest rate applicable to each TLTRO-III k is calculated as follows:

- (a) If a participant equals or exceeds its benchmark net lending in the special reference period, the interest rate to be applied to amounts borrowed by that participant under TLTROs-III is:
- (i) during the special interest rate period: the average of the deposit facility rate over that period minus 50 basis points, which in any case must not exceed minus 100 basis points, that is:

If $NL_{special} \geq NLB$, then $r_{k_{special}} = \min(\overline{DF}_{k_{special}} - 0.50, -1)$;
 - (ii) during the rest of the life of the respective TLTRO-III: the average of the deposit facility rate over the life of the respective TLTRO-III, that is:

if $NL_{special} \geq NLB$, then $r_{k_{rol}} = \overline{DF}_k$
- (b) If a participant does not equal or exceed its benchmark net lending in the special reference period but exceeds its benchmark outstanding amount of eligible loans during the second reference period by at least 1.15 %, the interest rate to be applied to amounts borrowed by that participant under TLTROs-III is:
- (i) during the special interest rate period: the lower of the average of the main refinancing operation rate over that period minus 50 basis points and the average of the deposit facility rate over the life of the respective TLTRO-III, that is:

if $NL_{special} < NLB$ and $EX \geq 1.15$, then $iri = 100\%$ and $r_{k_{special}} = \min(\overline{MRO}_{k_{special}} - 0.50, \overline{DF}_k)$;
 - (ii) during the rest of the life of the respective TLTRO-III: the average of the deposit facility rate over the life of the respective TLTRO-III, that is:

if $NL_{special} < NLB$ and $EX \geq 1.15$, then $iri = 100\%$ and $r_{k_{rol}} = \overline{DF}_k$

- (c) If a participant does not equal or exceed its benchmark net lending in the special reference period but exceeds its benchmark outstanding amount of eligible loans during the second reference period by less than 1.15 %, the interest rate to be applied to amounts borrowed by that participant under TLTROs-III is:

- (i) during the special interest rate period: the lower of the average of the main refinancing operation rate over that period minus 50 basis points and the interest rate calculated according to point (ii) below, that is:

If $NL_{special} < NLB$ and $0 < EX < 1.15$, then $iri = \frac{EX}{1.15}$ and

$$r_{k_{special}} = \min(\overline{MRO}_{k_{special}} - 0.50, \overline{MRO}_k - (\overline{MRO}_k - \overline{DF}_k) \times iri);$$

- (ii) during the rest of the life of the respective TLTRO-III: the interest rate that is graduated linearly depending on the percentage by which the participant exceeds its benchmark outstanding amount, that is,

If $NL_{special} < NLB$ and $0 < EX < 1.15$, then $iri = \frac{EX}{1.15}$ and

$$r_{k_{rol}} = \overline{MRO}_k - (\overline{MRO}_k - \overline{DF}_k) \times iri;$$

- (d) If a participant does not equal or exceed its benchmark net lending in the special reference period nor does it exceed its benchmark outstanding amount in the second reference period, the interest rate to be applied to amounts borrowed by that participant under TLTROs-III is:

- (i) during the special interest rate period: the average of the main refinancing operation rate over that period minus 50 basis points, that is:

If $NL_{special} < NLB$ and $EX \leq 0$, then $r_{k_{special}} = \overline{MRO}_{k_{special}} - 0.50$;

- (ii) during the rest of the life of the respective TLTRO-III: the average of the main refinancing operation rate over the life of the respective TLTRO-III, that is:

if $NL_{special} < NLB$ and $EX \leq 0$, then $iri = 0\%$ and $r_{k_{rol}} = \overline{MRO}_k$

The interest rate incentive adjustment (*iri*) will be expressed by rounding to 15 decimal positions.

The interest rates $r_{k_{special}}$ and $r_{k_{rol}}$ will be expressed by rounding to 15 decimal positions.

The final interest rate r_k will be expressed as an annual percentage rate, rounded down to the fourth decimal position.'

2. Annex II is amended as follows:

- (a) in Section 2, the following sub-paragraph is inserted after the first sub-paragraph:

'In the event that participants intend to take advantage of the interest rates set out in Article 5(1), the second report shall additionally also cover data relating to the special reference period on a similar basis to the requirements for the second reference period.';

- (b) in Section 2, the second paragraph is replaced by the following:

'As regards the use of the collected information, data on the reference outstanding amount will be used to determine the borrowing allowance. In addition, data on eligible net lending during the first reference period will be used for the calculation of the benchmark net lending and the benchmark outstanding amount. Meanwhile data on eligible net lending during the second reference period and, if applicable, the special reference period, will be used to assess the lending developments and, consequently, the interest rates applicable. All other indicators are necessary to verify the internal consistency of the information and its consistency with the statistical data collected within the Eurosystem, as well as for in-depth monitoring of the impact of the TLTRO-III programme.';

- (c) in Section 3, the second indent of the second paragraph of point (a) is replaced by the following:

— The second report requires the completed data template B for the 'second reference period', i.e. 1 April 2019 to 31 March 2021, for the purposes of calculating the eligible net lending and the comparisons against benchmarks on which the applicable interest rates are based.

- Participants intending to take advantage of the interest rates set out in Article 5(1) must in addition provide the completed data template B for the 'special reference period', i.e. 1 March 2020 to 31 March 2021, for the purposes of calculating the eligible net lending and the comparisons against the benchmark net lending on which the lower interest rates are based.;
- (d) in Section 3, the third paragraph of point (a) is replaced by the following:
- 'In template B, indicators relating to outstanding amounts must be reported as at the end of the month preceding the start of the reporting period and as at the end of the reporting period; therefore, for the first reference period outstanding amounts must be reported as at 31 March 2018 and 31 March 2019; for the second reference period outstanding amounts must be reported as at 31 March 2019 and 31 March 2021; for the special reference period outstanding amounts must be reported as at 29 February 2020 and 31 March 2021. In turn, data on transactions and adjustments must cover all relevant effects that take place during the reporting period.;
- (e) The TLTRO-III reporting template B is replaced by the following template B.

‘TLTRO-III reporting template B

Reporting period: 1 April 2018 to 31 March 2019 (first reference period) / 1 April 2019 to 31 March 2021 (second reference period) / optionally: 1 March 2020 to 31 March 2021 (special reference period)

Loans to non-financial corporations and households, excluding loans to households for house purchase (EUR thousands)

		Loans to non-financial corporations	Loans to households (including non-profit institutions serving households), excluding loans for house purchase	item	formula	validation
Main aggregates						
1	Outstanding amounts of eligible loans at the end of the month preceding the start of the reporting period.....	0	0	1	1 = 1.1 - 1.2 (+1.3)	
2	Eligible net lending in the reporting period.....	0	0	2	2 = 2.1 - 2.2	
3	Adjustments to the outstanding amounts: reductions (-) and increases (+).....	0	0	3	3 = 3.1 + 3.2	
4	Outstanding amounts of eligible loans at the end of the reporting period.....	0	0	4	4 = 4.1 - 4.2 (+4.3)	4 = 1 + 2 + 3
Underlying items						
Outstanding amounts of eligible loans at the end of the month preceding the start of the reporting period						
1.1	Outstanding amounts on the balance sheet.....			1.1		
1.2	Outstanding amounts of loans securitised or otherwise transferred but not derecognised from the balance sheet.....			1.2		
1.3	Outstanding provisions against loans reported in item 1.1 excluding 1.2 *.....			1.3		
Eligible net lending in the reporting period						
2.1	Gross lending.....			2.1		
2.2	Repayments.....			2.2		
Adjustments to the outstanding amounts: reductions (-) and increases (+)						
3.1	Loan sales and purchases and other loan transfers during the reporting period.....	0	0	3.1	3.1 = 3.1A + 3.1B + 3.1C	
3.1A	Net flows of loans that are securitised with an impact on loan stocks.....			3.1A		
3.1B	Net flows of loans that are otherwise transferred with an impact on loan stocks.....			3.1B		
3.1C	Net flows of loans that are securitised or otherwise transferred without an impact on loan stocks.....			3.1C		
3.2	Other adjustments.....	0	0	3.2	3.2 = 3.2A + 3.2B + 3.2C	
3.2A	Revaluations owing to changes in exchange rates.....			3.2A		
3.2B	Write-offs/write-downs.....			3.2B		
3.2C	Reclassifications.....			3.2C		
Outstanding amounts of eligible loans at the end of the reporting period						
4.1	Outstanding amounts on the balance sheet.....			4.1		
4.2	Outstanding amounts of loans securitised or otherwise transferred but not derecognised from the balance sheet.....			4.2		
4.3	Outstanding provisions against loans reported in item 4.1 excluding 4.2 *.....			4.3		

* Only applicable in those cases where loans are reported net of provisions; see the reporting instructions for more details.*

CORRIGENDA

Corrigendum to Commission Regulation (EU) 2020/171 of 6 February 2020 amending Annex XIV to Regulation (EC) No 1907/2006 of the European Parliament and of the Council on the Registration, Evaluation, Authorisation and Restriction of Chemicals ('REACH')

(Official Journal of the European Union L 35 of 7 February 2020)

On page 4, the table in the Annex shall read as follows:

Entry Nr	Substance	Intrinsic property(ies) referred to in Article 57	Transitional arrangements		Exempted (categories of) uses	Review periods
			Latest application date ⁽¹⁾	Sunset date ⁽²⁾		
44.	1,2-Benzenedicarboxylic acid, dihexyl ester, branched and linear EC No: 271-093-5 CAS No: 68515-50-4	Toxic for reproduction (category 1B)	27 August 2021 (*)	27 February 2023 (**)	-	-
45.	Dihexyl phthalate EC No: 201-559-5 CAS No: 84-75-3	Toxic for reproduction (category 1B)	27 August 2021 (*)	27 February 2023 (**)	-	-
46.	1,2-benzenedicarboxylic acid, di-C6-10-alkyl esters; 1,2-benzenedicarboxylic acid, mixed decyl and hexyl and octyl diesters with ≥ 0,3 % of dihexyl phthalate (EC No 201-559-5) EC No: 271-094-0; 272-013-1 CAS No: 68515-51-5; 68648-93-1	Toxic for reproduction (category 1B)	27 August 2021 (*)	27 February 2023 (**)	-	-
47.	Trixylyl phosphate EC No: 246-677-8 CAS No: 25155-23-1	Toxic for reproduction (category 1B)	27 November 2021	27 May 2023	-	-
48.	Sodium perborate; perboric acid, sodium salt EC No: 239-172-9; 234-390-0 CAS No: -	Toxic for reproduction (category 1B)	27 November 2021	27 May 2023	-	-
49.	Sodium peroxometaborate EC No: 231-556-4 CAS No: 7632-04-4	Toxic for reproduction (category 1B)	27 November 2021	27 May 2023	-	-
50.	5-sec-butyl-2-(2,4-dimethylcyclohex-3-en-1-yl)-5-methyl-1,3-dioxane [1], 5-sec-butyl-2-(4,6-dimethylcyclohex-3-en-1-yl)-5-methyl-1,3-dioxane [2] [covering any of the individual stereoisomers of [1] and [2] or any combination thereof] EC No: - CAS No: -	vPvB	27 February 2022	27 August 2023	-	-

Entry Nr	Substance	Intrinsic property(ies) referred to in Article 57	‘Transitional arrangements		Exempted (categories of) uses	Review periods
			Latest application date ⁽¹⁾	Sunset date ⁽²⁾		
51.	2-(2H-benzotriazol-2-yl)-4,6-ditertpentyl-phenol (UV-328) EC No: 247-384-8 CAS No: 25973-55-1	PBT, vPvB	27 May 2022	27 November 2023	-	-
52.	2,4-di-tert-butyl-6-(5-chlorobenzotriazol-2-yl)phenol (UV-327) EC No: 223-383-8 CAS No: 3864-99-1	vPvB	27 May 2022	27 November 2023	-	-
53.	2-(2H-benzotriazol-2-yl)-4-(tert-butyl)-6-(sec-butyl)phenol (UV-350) EC No: 253-037-1 CAS No: 36437-37-3	vPvB	27 May 2022	27 November 2023	-	-
54.	2-benzotriazol-2-yl-4,6-di-tert-butylphenol (UV-320) EC No: 223-346-6 CAS No: 3846-71-7	PBT, vPvB	27 May 2022	27 November 2023	-	-

⁽¹⁾ Date referred to in Article 58(1)(c)(ii).

⁽²⁾ Date referred to in Article 58(1)(c)(i).’

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