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DIRECTIVES

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I

(Legislative acts)

DIRECTIVES

DIRECTIVE (EU) 2021/2167 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL**of 24 November 2021****on credit servicers and credit purchasers and amending Directives 2008/48/EC and 2014/17/EU****(Text with EEA relevance)**

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 53 and Article 114 thereof,

Having regard to the proposal from the European Commission,

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

Having regard to the opinion of the European Central Bank ⁽¹⁾,

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

Acting in accordance with the ordinary legislative procedure ⁽³⁾,

Whereas:

- (1) The establishment of a comprehensive strategy to address the issue of non-performing loans (NPLs) is a priority for the Union. While addressing NPLs is primarily the responsibility of credit institutions and Member States, there is also a clear Union dimension to the reduction of current stocks of NPLs, as well as to the prevention of any excessive build-up of NPLs in the future. Given the interconnectedness of the banking and financial systems across the Union, where credit institutions operate in multiple jurisdictions and Member States, there is significant potential for spill-over effects between Member States and the Union at large, both in terms of economic growth and financial stability.
- (2) An integrated financial system will enhance the resilience of the economic and monetary union to adverse shocks by facilitating private cross-border risk-sharing, while at the same time reducing the need for public risk-sharing. In order to achieve those objectives, the Union should complete the banking union and further develop a capital markets union (CMU). Addressing high stocks of NPLs and their possible future accumulation is essential to strengthening the banking union as it is indispensable for ensuring competition in the banking sector, preserving financial stability and encouraging lending so as to create jobs and growth within the Union.

⁽¹⁾ OJ C 444, 10.12.2018, p. 15.

⁽²⁾ OJ C 367, 10.10.2018, p. 43.

⁽³⁾ Position of the European Parliament of 19 October 2021 (not yet published in the Official Journal) and decision of the Council of 9 November 2021.

- (3) The Council conclusions of 11 July 2017 on Action Plan to Tackle Non-Performing Loans in Europe (the 'Action Plan') called upon various institutions to take appropriate measures to further address the high number of NPLs in the Union and prevent their possible future accumulation. The Action Plan sets out a comprehensive approach that focuses on a mix of complementary policy actions in four areas: (i) bank supervision and regulation, (ii) reform of restructuring, insolvency and debt recovery frameworks, (iii) developing secondary markets for distressed assets, and (iv) fostering restructuring of the banking system. Action in those areas is to be taken at national level and at Union level where appropriate. The Commission announced a similar intention in its communication of 11 October 2017 on completing the banking union, which called for a comprehensive package on tackling NPLs within the Union.
- (4) This Directive, together with other measures which the Commission has put forward, as well as the action taken by the European Central Bank (ECB) in the context of banking supervision under the Single Supervisory Mechanism and by the European Supervisory Authority (European Banking Authority) (EBA), established by Regulation (EU) No 1093/2010 of the European Parliament and of the Council ⁽⁴⁾, will create the appropriate environment for credit institutions to deal with NPLs on their balance sheets, and will reduce the risk of future NPL accumulation.
- (5) When developing macro-prudential approaches to prevent the emergence of system-wide risks associated with NPLs, the European Systemic Risk Board, established by Regulation (EU) No 1092/2010 of the European Parliament and of the Council ⁽⁵⁾, is required to issue, where appropriate, macro-prudential warnings and recommendations relating to the secondary market for NPLs.
- (6) Regulation (EU) 2019/630 of the European Parliament and of the Council ⁽⁶⁾ introduced new rules in Regulation (EU) No 575/2013 of the European Parliament and of the Council ⁽⁷⁾ that require credit institutions to put aside sufficient resources when new loans become non-performing, which should create appropriate incentives to address NPLs at an early stage and should prevent an excessive accumulation of them. Where loans become non-performing, more efficient enforcement mechanisms for secured loans would allow credit institutions to implement a holistic strategy to enforce NPLs, subject to strong and effective safeguards for borrowers. Nevertheless, should NPL stocks become too high, credit institutions should be able to sell them in efficient, competitive and transparent secondary markets to other operators. Competent authorities of credit institutions guide them in doing so, based on their existing bank-specific, so-called Pillar 2, powers under Regulation (EU) No 575/2013. Where NPLs become a significant and broad-based problem, Member States are able to set up national asset management companies or other alternative measures within the framework of current state aid and bank resolution rules.
- (7) This Directive should enable credit institutions to better deal with loans that become non-performing by improving conditions for the sale of the credit to third parties. Moreover, when credit institutions face a large build-up of NPLs and lack the staff or expertise to properly service them, they should be able either to outsource the servicing of those loans to a specialised credit servicer or to transfer the credit agreement to a credit purchaser that has the necessary risk appetite and expertise to manage it.
- (8) While the terms 'loans' and 'banks' are commonly referred to in the public debate in some Member States, the terms 'credit' or 'credit agreements' and 'credit institution' are used hereafter. Moreover, this Directive covers both a creditor's rights under a non-performing credit agreement and the non-performing credit agreement itself.

⁽⁴⁾ Regulation (EU) No 1093/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Banking Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/78/EC (OJ L 331, 15.12.2010, p. 12).

⁽⁵⁾ Regulation (EU) No 1092/2010 of the European Parliament and of the Council of 24 November 2010 on European Union macro-prudential oversight of the financial system and establishing a European Systemic Risk Board (OJ L 331, 15.12.2010, p. 1).

⁽⁶⁾ Regulation (EU) 2019/630 of the European Parliament and of the Council of 17 April 2019 amending Regulation (EU) No 575/2013 as regards minimum loss coverage for non-performing exposures (OJ L 111, 25.4.2019, p. 4).

⁽⁷⁾ Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and amending Regulation (EU) No 648/2012 (OJ L 176, 27.6.2013, p. 1).

- (9) This Directive should foster the development of secondary markets for NPLs in the Union by removing impediments to, and laying down safeguards for, the transfer of NPLs by credit institutions to credit purchasers, while at the same time safeguarding borrowers' rights. Any measures adopted should harmonise the authorisation requirements for credit servicers. This Directive should therefore establish a Union-wide framework for both purchasers and servicers of non-performing credit agreements issued by credit institutions, whereby credit servicers should obtain authorisation from, and be subject to the supervision of, Member States' competent authorities.
- (10) Currently, credit purchasers and credit servicers cannot reap the benefits of the internal market due to barriers erected by divergent national regimes in the absence of a dedicated and coherent regulatory and supervisory regime. At present, there are no common Union standards for the regulation of credit servicers. In particular, no common standards have been set for the regulation of debt collection. Member States have very different rules for how credit purchasers are able to acquire credit agreements from credit institutions. Credit purchasers that purchase credit issued by credit institutions are not regulated in some Member States, while in others they are subject to various requirements, sometimes amounting to a requirement to obtain an authorisation as a credit institution. Those differences between regulatory requirements have resulted in considerable obstacles to legally purchasing credit cross-border in the Union, mainly by increasing the compliance costs faced when seeking to purchase credit portfolios. As a result, credit purchasers operate in a limited number of Member States, which has resulted in weak competition in the internal market as the number of interested credit purchasers remains low. That in turn has led to an inefficient secondary market for NPLs. In addition, the essentially national markets for NPLs tend to remain of a small volume.
- (11) The limited participation of credit purchasers has resulted in low demand, weak competition and low bid prices for portfolios of credit agreements on secondary markets, which is a disincentive for credit institutions to sell non-performing credit agreements. Therefore, there is a clear Union dimension to the development of markets for credits granted by credit institutions and sold to credit purchasers. On the one hand, it should be possible for credit institutions to sell non-performing credit agreements on a Union-wide scale in efficient, competitive and transparent secondary markets. On the other hand, completion of the banking union and the CMU make it necessary to act in order to prevent the accumulation of non-performing credit agreements on credit institutions' balance sheets so that they can continue to perform their role of financing the economy. Therefore, this Directive covers credit purchasers acting in the course of their trade, business or profession when they acquire a credit agreement only where that credit agreement is a non-performing credit agreement.
- (12) Non-performing credit originally granted by a credit institution might become performing in the process of servicing the credit. In that case, credit servicers should be able to continue carrying out their activities, based on their authorisation as credit servicers in accordance with this Directive.
- (13) Certain Member States regulate credit servicing activities, but to varying degrees. Firstly, only some Member States regulate those activities, and, those that do, define them very differently. The increased regulatory compliance costs operate as a barrier to the development of expansion strategies by means of secondary establishment or cross-border provision of services. Secondly, a considerable number of Member States require authorisations for some of the activities that those credit servicers engage in. Those authorisations impose different requirements and do not provide for possibilities of cross-border scaling up. Again, that operates as a barrier to the provision of cross-border services. Finally, in some cases, local establishment is required by law, which hinders the exercise of the freedom to provide cross-border services.
- (14) While credit servicers can provide their services to credit institutions and to credit purchasers that are not credit institutions, a competitive and integrated market for credit servicers is linked to the development of a competitive and integrated market for credit purchasers. Credit purchasers often decide to outsource credit servicing activities to other entities, as they do not have the capacity to service credit themselves, and thus can be reluctant to purchase credit from credit institutions if they cannot outsource certain services.
- (15) The lack of competitive pressure on the market for purchasing credit and for credit servicing activities results in credit servicing firms charging credit purchasers high fees for their services and leads to low prices on secondary markets for credit. That reduces incentives for credit institutions to offload their stock of NPLs.

- (16) Therefore, action at Union level is necessary in order to address the position of credit purchasers and credit servicers in relation to non-performing credit originally granted by credit institutions. However, this Directive is without prejudice to the rules of Union and national law governing credit origination, including in cases when credit servicers can be considered to engage in credit intermediation. This Directive is also without prejudice to national rules imposing additional requirements in respect of a credit purchaser or a credit servicer as concerns the renegotiation of the terms and conditions of a credit agreement.
- (17) It is open to Member States to regulate credit servicing activities that do not fall within the scope of this Directive, such as services offered for credit agreements issued by non-credit institutions or credit servicing activities performed by natural persons, including by imposing requirements equivalent to those under this Directive. Those entities and natural persons, however, would not benefit from the possibility of passporting such services to other Member States.
- (18) This Directive should not affect restrictions under national law regarding the transfer of a creditor's rights under a non-performing credit agreement, or a transfer of the non-performing credit agreement itself, that is not terminated in accordance with national civil law with the effect that all amounts payable under the credit agreement become immediately due, where that is required for the transfer to an entity outside the banking system. Accordingly, there will be Member States where, taking into account the national rules, the acquisition of non-performing credit agreements that are not past due, or are less than 90 days past due, or are not terminated in accordance with national civil law by non-regulated creditors, will remain limited. It is open to Member States to regulate the transfer of performing credit agreements, including by imposing requirements equivalent to those under this Directive.
- (19) This Directive should not affect Union law concerning judicial cooperation in civil matters, notably the provisions on the law applicable to contractual obligations and on jurisdiction, including the application of those acts and provisions in individual cases under Regulations (EC) No 593/2008 ⁽⁸⁾ and (EU) No 1215/2012 ⁽⁹⁾ of the European Parliament and of the Council. All creditors and any persons representing them are bound to respect Union law in their dealings with the consumer and national authorities to ensure that consumer rights are protected.
- (20) Credit servicers and credit purchasers should always act in good faith, treat borrowers fairly and respect their privacy. They should not harass nor give misleading information to borrowers. In advance of the first debt collection and whenever requested by borrowers, they should provide information to borrowers on, among others, the transfer that took place, the identification and contact details of the credit purchaser and of the credit servicer, where one is appointed, as well as information on the amounts due by the borrower and a statement to the effect that all relevant Union and national law continues to apply.
- (21) In addition, this Directive does not reduce the scope of application of Union consumer protection rules and, to the extent that credit purchasers qualify as creditors under Directives 2008/48/EC ⁽¹⁰⁾ and 2014/17/EU ⁽¹¹⁾ of the European Parliament and of the Council, they should be subject to the specific obligations set out in Article 20 of Directive 2008/48/EC and Article 35 of Directive 2014/17/EU, respectively. Moreover, this Directive is without prejudice to the protection of consumers guaranteed by Directive 2005/29/EC of the European Parliament and of the Council ⁽¹²⁾, which prohibits unfair commercial practices including those carried out during the enforcement of

⁽⁸⁾ Regulation (EC) No 593/2008 of the European Parliament and of the Council of 17 June 2008 on the law applicable to contractual obligations (Rome I) (OJ L 177, 4.7.2008, p. 6).

⁽⁹⁾ Regulation (EU) No 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (OJ L 351, 20.12.2012, p. 1).

⁽¹⁰⁾ Directive 2008/48/EC of the European Parliament and of the Council of 23 April 2008 on credit agreements for consumers and repealing Council Directive 87/102/EEC (OJ L 133, 22.5.2008, p. 66).

⁽¹¹⁾ Directive 2014/17/EU of the European Parliament and of the Council of 4 February 2014 on credit agreements for consumers relating to residential immovable property and amending Directives 2008/48/EC and 2013/36/EU and Regulation (EU) No 1093/2010 (OJ L 60, 28.2.2014, p. 34).

⁽¹²⁾ Directive 2005/29/EC of the European Parliament and of the Council of 11 May 2005 concerning unfair business-to-consumer commercial practices in the internal market and amending Council Directive 84/450/EEC, Directives 97/7/EC, 98/27/EC and 2002/65/EC of the European Parliament and of the Council and Regulation (EC) No 2006/2004 of the European Parliament and of the Council ('Unfair Commercial Practices Directive') (OJ L 149, 11.6.2005, p. 22).

a contract where a consumer is misled as to the consumer's rights or obligations, or is subject to harassment, coercion or undue influence including in terms of the timing, location, nature or persistence of the enforcement actions, in terms of the use of threatening or abusive language or behaviour, or in terms of threats to take any action that cannot legally be taken.

- (22) Article 47 of the Charter of Fundamental Rights of the European Union ensures the right to a fair and public hearing by an independent and impartial tribunal and the possibility of being advised, defended and represented by a lawyer. That can be of particular relevance for the full and complete understanding of all the issues and legal arguments being addressed and to ensure comprehensive preparation of court representation for the case in dispute. Borrowers who lack sufficient resources should be able to resort to legal aid, where that is necessary to ensure effective access to justice and under the conditions laid down by the applicable national laws.
- (23) Union credit institutions undertake credit servicing activities as part of their normal business. They have the same obligations with regard to credit agreements that they have issued themselves as those purchased from another credit institution. Since they are already regulated and supervised, application of this Directive to their credit servicing or purchasing activities would mean unnecessary duplication of authorisation and compliance costs and therefore they are not covered by this Directive. The outsourcing by credit institutions of credit servicing activities, in relation to both performing and non-performing credit agreements, to credit servicers or to other third parties, is also outside the scope of this Directive because credit institutions are already required to observe the applicable outsourcing rules. Moreover, creditors that are non-credit institutions but are nevertheless supervised by a competent authority of a Member State in accordance with Directive 2008/48/EC or with Directive 2014/17/EU and undertake credit servicing activities for credits granted to consumers as part of their normal business are not covered by this Directive when performing credit servicing activities in that Member State. Furthermore, alternative investment fund managers, management companies and investment companies (provided that an investment company has not designated a management company) authorised or registered under Directive 2009/65/EC of the European Parliament and of the Council ⁽¹³⁾ or Directive 2011/61/EU of the European Parliament and of the Council ⁽¹⁴⁾ should also not fall within the scope of this Directive. Finally, there are some professions that undertake ancillary activities similar to credit servicing activities as part of their profession, namely public notaries, lawyers and bailiffs that pursue their professional activities under national law, and that implement the enforcement of binding measures and, therefore, Member States should be able to exempt those professions from the application of this Directive.
- (24) In order to allow existing credit purchasers and credit servicers to adapt to the requirements of the national provisions transposing this Directive and, in particular, to allow credit servicers to be authorised, this Directive allows entities that are currently providing credit servicing activities under national law to continue to do so in their home Member State for a period of 6 months after the transposition deadline of this Directive. After the expiry of that 6-month period, only credit servicers authorised under the national laws transposing this Directive should be permitted to operate on the market.
- (25) Member States that already have in place rules equivalent to, or stricter than, those established in this Directive for credit servicing activities should be able to recognise in their national law transposing this Directive the possibility for existing entities providing credit servicing activities to be automatically recognised as authorised credit servicers.
- (26) The authorisation of a credit servicer to provide credit servicing activities throughout the Union should be subject to a uniform and harmonised set of conditions that should be applied in a proportionate manner by the competent authorities.

⁽¹³⁾ Directive 2009/65/EC of the European Parliament and of the Council of 13 July 2009 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS) (OJ L 302, 17.11.2009, p. 32).

⁽¹⁴⁾ Directive 2011/61/EU of the European Parliament and of the Council of 8 June 2011 on Alternative Investment Fund Managers and amending Directives 2003/41/EC and 2009/65/EC and Regulations (EC) No 1060/2009 and (EU) No 1095/2010 (OJ L 174, 1.7.2011, p. 1).

- (27) To avoid a reduction in borrower protection and in order to promote trust, the conditions for granting and maintaining an authorisation as a credit servicer should ensure that credit servicers, persons who hold a qualifying holding in the credit servicer, and members of its management or administrative organ, have a clean police record in relation to relevant criminal offences linked to, among others, crimes against property, crimes related to financial activities, money laundering, fraud or crimes against physical integrity, and are not subject to an insolvency procedure nor have previously been declared bankrupt, unless they have been reinstated in accordance with national law. Compliance with the requirement for members of the management or administrative organ of credit servicers to have been transparent, open and cooperative in their past business dealings with supervisory and regulatory authorities should be assessed based on the information available to, or within the knowledge of, the competent authority at the time the authorisation is granted. If no information is available, or if there is no knowledge of any information, or if there is no past interaction with supervisory and regulatory authorities at that time, then the requirement is deemed fulfilled.
- (28) Member States should ensure that the management, as a whole, of a credit servicer has adequate knowledge and experience to conduct the business in a competent and responsible manner, according to the activity to be carried out. It is for each Member State to lay down the requirements regarding good repute, adequate knowledge and experience, but those should not impair the free movement of authorised credit servicers within the Union. For that purpose, the EBA should develop guidelines to reduce the risk of divergent interpretations of the requirements on adequate knowledge and experience. Further, to ensure compliance with the rules for debtor protection as well as with the rules for the protection of personal data, appropriate governance arrangements and internal control mechanisms, as well as appropriate procedures for the recording and handling of complaints, should be established and be subject to supervision. In addition, credit servicers should have in place adequate anti-money laundering and counter terrorist financing procedures where national provisions transposing Directive (EU) 2015/849 of the European Parliament and of the Council ⁽¹⁵⁾ designate credit servicers as obliged entities for the purpose of preventing and combating money laundering and terrorist financing. Moreover, credit servicers should be obliged to act fairly and with due consideration for the financial situation of borrowers. Where debt advice services facilitating debt repayment are available at national level, credit servicers should consider referring borrowers to such services.
- (29) Member States should determine, in their national law transposing this Directive, whether or not credit servicers in their territory are permitted to receive and hold funds from borrowers while performing credit servicing activities. In cases where the receiving and holding of funds from borrowers is permitted in a Member State and credit servicers intend to do so as part of their business model, additional requirements should apply to those credit servicers, in order to deal with the risks that could arise in cases of insolvency, namely account and fund segregation, as well as in cases of the discharge of the borrower. Where a credit servicer's home Member State prohibits credit servicers from receiving and holding funds from borrowers, a credit servicer cannot then do so, neither in its home Member State nor in any host Member State, even if a host Member State permits the receiving and holding of funds, precisely because the credit servicer was not authorised to that purpose by its home Member State. In contrast, where a home Member State does permit credit servicers to receive and hold funds from borrowers and includes in its national law the relevant requirements, a credit servicer should be able to receive and hold funds from borrowers in its home Member State as well as in any host Member State that also permits the receiving and holding of funds from borrowers.
- (30) To avoid lengthy procedures and uncertainty, it is necessary to establish requirements regarding the information that applicants for authorisation as a credit servicer are required to submit, as well as reasonable deadlines for the issue of an authorisation and the circumstances for its withdrawal. Where competent authorities withdraw an authorisation of a credit servicer that provides credit servicing activities in other Member States, competent authorities of the host Member State and also of the Member State where the credit was granted, when different from the host and the home Member States, should be informed. Equally, an up-to-date public register or list should be established in the home and the host Member States and made publicly available on the website of the competent authorities to ensure transparency as regards the number and identity of authorised credit servicers.

⁽¹⁵⁾ Directive (EU) 2015/849 of the European Parliament and of the Council of 20 May 2015 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, amending Regulation (EU) No 648/2012 of the European Parliament and of the Council, and repealing Directive 2005/60/EC of the European Parliament and of the Council and Commission Directive 2006/70/EC (OJ L 141, 5.6.2015, p. 73).

- (31) The contractual relationship between the credit servicer and the credit purchaser and the obligations of the credit servicer towards the credit purchaser should not be altered by the outsourcing of credit servicing activities to credit service providers. Credit servicers should be responsible for making sure that the outsourcing of their credit servicing activities to credit service providers does not result in undue operational risk, nor in non-compliance by the credit service provider with any requirements of Union or national law, nor restrict the capacity of a regulatory supervisor to perform its duty and safeguard borrower rights.
- (32) When a credit purchaser entrusts to a credit servicer the management and enforcement of a credit agreement, the credit purchaser delegates its rights and duties and also its direct contact with the borrower to the credit servicer while still remaining ultimately responsible. Accordingly, the relationship between credit purchaser and credit servicer should be clearly established in a written credit servicing agreement and it should be possible for competent authorities to verify how such a relationship is determined. Moreover, credit servicers should act fairly and with due consideration for the financial situation of borrowers. To the extent that a credit purchaser does not itself perform the servicing of the credit agreements it acquires, Member States should be able to provide that the credit servicer and the credit purchaser are required to agree in the credit servicing agreement that the credit servicer notifies the credit purchaser prior to outsourcing credit servicing activities.
- (33) To ensure the right of a credit servicer to engage in cross-border activities and to provide for their supervision, this Directive sets up a procedure for the exercise of the right of an authorised credit servicer to engage in cross-border activities. Communication between competent authorities of the home and the host Member States as well as with a credit servicer should take place within reasonable deadlines. The competent authorities of the Member State where the credit was granted should also receive information on cross-border activities from the competent authorities of the home Member State.
- (34) A credit servicer carrying out activities in a host Member State should be subject to the restrictions and requirements established in the national law of that host Member State in accordance with this Directive, including, where applicable, the prohibition on receiving and holding funds from borrowers, that are not related to other authorisation requirements of credit servicers. If, under the national provisions of a host Member State transposing this Directive, additional requirements for authorisation as a credit servicer are imposed, such additional requirements should not apply to credit servicers performing cross-border credit servicing activities in that host Member State.
- (35) In order to ensure an effective and efficient supervision of cross-border credit servicers, a specific framework should be created for cooperation between the competent authorities of the home and of the host Member States and, where appropriate, the competent authorities of the Member State where the credit was granted. That framework should allow the exchange of information, while preserving its confidentiality, professional secrecy, protection of individual and business rights, on- and off-site inspections, the provision of assistance, and the notification of results of checks and inspections and of any measures taken.
- (36) An important prerequisite for the taking up of the role by credit purchasers and credit servicers should be that they have the possibility of accessing all relevant information and Member States should make that possible, while at the same time observing Union and national data protection rules. In that context, it is essential that credit institutions provide detailed information to prospective credit purchasers so as to enable them to conduct their own assessment of the value of a creditor's rights under a non-performing credit agreement, or of the non-performing credit agreement itself. Credit institutions should provide that information only once during the process, either during the initial phase or the subsequent phases, but in any event prior to the conclusion of the contract of transfer. That obligation to provide information is necessary and justified in order for prospective credit purchasers to be able to make informed choices before entering into a transaction and, therefore, it is legitimate for credit institutions to share borrowers' personal data with prospective credit purchasers. Such information should be strictly limited to what is necessary to enable prospective credit purchasers to assess the value of a creditor's rights under a non-performing credit agreement, or of the non-performing credit agreement itself, and the likelihood of recovery of the value of that agreement. Member States should ensure that the provision of information to prospective credit purchasers and its subsequent use complies with the relevant Union data protection framework.

- (37) Where a credit institution transfers non-performing credit agreements, it should be required to inform its competent authority and the competent authorities of the host Member State, on a biannual basis, of at least the aggregate outstanding balance of the transferred credit portfolios, as well as the number and size of the credits included and whether the transfer includes credit agreements concluded with consumers. For each credit portfolio transferred in a single transaction, the information provided should include the legal entity identifier (LEI) of the credit purchaser, or where applicable of its representative, or, where not available, the identity and address of the credit purchaser and, where applicable, of its representative in the Union. Competent authorities should be able to require that the information be provided on a quarterly basis instead, whenever they consider it necessary, including due to the high number of transactions during a crisis period. The competent authorities of the host Member State should be obliged to transmit that information to the authorities competent to supervise the credit purchaser. Such transparency requirements allow for a harmonised and effective monitoring of the transfer of credit agreements within the Union. In order to comply with the principle of proportionality, competent authorities should, in order to avoid duplication, take into account information that is already available to them by other means, in particular as regards credit institutions. Member States should ensure that notification requirements to competent authorities in respect of a credit portfolio once such portfolio has been transferred to a credit purchaser remain the responsibility of the credit servicer.
- (38) The Action Plan recognised that credit institutions' data infrastructure would be strengthened by having uniform and standardised data for non-performing credit agreements. The EBA has developed data templates that provide information about credit exposures in the banking book and allow potential buyers to evaluate the value of the credit agreements and carry out their due diligence. On the one hand, applying such data templates to credit agreements would reduce information asymmetries between potential buyers and sellers of credit agreements and, thus, contribute to the development of a functioning secondary market in the Union. On the other hand, where such data templates are excessively detailed, they can generate an excessive burden for credit institutions without any appreciable gain in information terms. Therefore, the EBA should carry out a review of the data templates with a view to further developing them into implementing technical standards for credit institutions. Credit institutions should be required to use the data templates for transfers of non-performing credit agreements, including transfers to other credit institutions. That obligation should apply to transfers of non-performing credit agreements only, and does not encompass complex transactions where non-performing credit agreements are included as a part of such a transaction, including sales of branches, sales of business lines or sales of clients' portfolios not limited to non-performing credit agreements and transfers as part of an ongoing restructuring operation of the selling credit institution within insolvency, resolution or liquidation proceedings. In order to comply with the principle of proportionality, those information requirements should be applied to credit institutions in a proportionate manner having regard to the nature and size of the credits. At the same time, the extent of the obligation of credit institutions to comply with data templates should take into account the date of conclusion of the non-performing credit agreements. Other sellers of credit agreements should be able to use those standards in order to facilitate the valuation of credit agreements for sale. In addition, in the case of securitisation transactions, where mandatory transparency templates are provided for, any double reporting as a result of this Directive should be avoided.
- (39) The Commission should be empowered to adopt implementing technical standards, developed by the EBA, in order to specify the templates to be used by credit institutions for the provision of information required under this Directive. The Commission should adopt those implementing technical standards by means of implementing acts pursuant to Article 291 of the Treaty on the Functioning of the European Union and in accordance with Article 15 of Regulation (EU) No 1093/2010.
- (40) As credit purchasers are not creating new credit but, instead, and as provided in this Directive, are buying only existing non-performing credit agreements at own risk, they do not cause prudential concerns and their potential contribution to systemic risk is negligible. It is therefore not justified to require credit purchasers to apply for an authorisation but it is however important that Union and national consumer protection rules continue to apply and the borrowers' rights continue to be those arising from the initial credit agreement.
- (41) Third-country credit purchasers might make it harder for Union borrowers to rely on their rights under Union law and for national authorities to supervise the enforcement of non-performing credit agreements. Credit institutions might also be discouraged from transferring such non-performing credit agreements to third-country credit purchasers because of the reputational risk involved. To the extent that the representative of a third-country purchaser of credits granted to natural persons, including consumers and independent workers, or of credits

granted to micro, small and medium-sized enterprises (SMEs) is not a credit institution, or a non-credit institution supervised by a competent authority of a Member State in accordance with Directive 2008/48/EC or with Directive 2014/17/EU, or a credit servicer authorised in the Union, that representative should appoint such an entity in order to ensure that the same standards of borrowers' rights are preserved after the transfer of the non-performing credit agreement.

- (42) Moreover, in order to better ensure that the same standards of consumers' rights are preserved after the transfer of a non-performing credit agreement, a credit purchaser domiciled in the Union, or that has its registered office or, if under its national law it has no registered office, its head office in the Union should also be required to appoint a credit institution, or a non-credit institution supervised by a competent authority of a Member State in accordance with Directive 2008/48/EC or with Directive 2014/17/EU, or a credit servicer, to perform credit servicing activities in respect of non-performing credit agreements concluded with consumers.
- (43) Host Member States should be able to extend the obligation to appoint a credit servicer in relation to other credit agreements. In cases where the transfer of a credit portfolio includes both credit agreements with consumers, other natural persons or SMEs for which the appointment of a credit institution, or of a non-credit institution supervised by a competent authority of a Member State in accordance with Directive 2008/48/EC or with Directive 2014/17/EU, or of a credit servicer, is required and simultaneously includes also other credit agreements for which no such appointment is required, the credit purchaser or, where applicable, its representative should comply with the appointment obligation in respect of credit agreements with consumers, other natural persons or SMEs. The credit servicer and the credit purchaser should comply with applicable Union and national law, and the national authorities in individual Member States should be given the necessary powers to effectively supervise their activity.
- (44) When a credit purchaser, or its representative designated in accordance with this Directive, is required to appoint a credit servicer, or a credit institution, or a non-credit institution supervised by a competent authority of a Member State in accordance with Directive 2008/48/EC or with Directive 2014/17/EU, and opts to manage and enforce itself the rights and obligations related to a creditor's rights under a non-performing credit agreement, or the non-performing credit agreement itself, the credit purchaser, or its representative designated in accordance with this Directive, is considered to be a credit servicer, and should therefore be authorised under this Directive.
- (45) Credit purchasers that use the services of credit servicers, or of credit institutions, or of non-credit institutions supervised by a competent authority of a Member State in accordance with Directive 2008/48/EC or with Directive 2014/17/EU, should inform the competent authorities of their home Member State thereof so as to allow relevant competent authorities to exercise their supervisory powers as regards the conduct of the credit servicer, or of the credit institution, or of the non-credit institution supervised by a competent authority of a Member State in accordance with Directive 2008/48/EC or with Directive 2014/17/EU, vis-à-vis the borrower. Credit purchasers should also inform in a timely manner the competent authorities in charge of their supervision if they engage a different credit servicer, credit institution, or non-credit institution supervised by a competent authority of a Member State in accordance with Directive 2008/48/EC or with Directive 2014/17/EU.
- (46) Credit purchasers that enforce the purchased credit agreement directly should do so in compliance with the law applicable to the credit agreement, including consumer protection rules applicable to the borrower. National rules concerning in particular the enforcement of contracts, consumer protection and criminal law continue to apply and competent authorities should ensure compliance of those credit purchasers with such rules on Member States' territory.
- (47) In order to facilitate the enforcement of the obligations set out in this Directive, where a credit purchaser is not domiciled in the Union, or does not have its registered office or, if under its national law it has no registered office, its head office in the Union, national law transposing this Directive should provide that, where a transfer of a credit agreement is concluded, a third-country credit purchaser designates a representative that is domiciled in the Union, or that does have its registered office or, if under its national law it has no registered office, its head office in the

Union, mandated to be addressed by the competent authorities in addition to or instead of the credit purchaser. That representative is responsible for the obligations imposed on credit purchasers by this Directive without prejudice to obligations imposed on credit servicers. Credit purchasers transferring non-performing credit agreements should inform the competent authority of the home Member State, on a biannual basis and on an aggregated level, of at least the aggregate outstanding balance of the transferred credit portfolios, as well as the number and size of the credits included, and whether the transfer includes credit agreements concluded with consumers. For each portfolio transferred in a single transaction, the information provided should include the legal entity identifier (LEI) of the credit purchaser, or where applicable of its representative in the Union, or, where not available, the identity and address of the credit purchaser and, where applicable, of its representative in the Union. Competent authorities should be able to require that the information be provided on a quarterly basis instead, whenever they consider it necessary, including due to the high number of transactions during a crisis period.

- (48) At present, different authorities are entrusted with the authorisation and supervision of credit servicers and credit purchasers in Member States, and therefore it is essential that Member States clarify the role of such authorities and allocate adequate powers, especially as they might need to supervise entities engaged in providing services in other Member States. In order to ensure efficient and proportionate supervision across the Union, Member States should grant the necessary powers for competent authorities to carry out their duties under this Directive, including the power to obtain necessary information, to investigate possible infringements of this Directive, to handle borrowers' complaints and to impose administrative penalties and remedial measures, including the withdrawal of authorisations. Where such administrative penalties and remedial measures are applied, Member States should ensure that competent authorities apply them in a proportionate manner and give reasons for their decisions and that, in addition, those decisions should be subject to judicial review including in cases where competent authorities do not act within the timeframes provided.
- (49) The provisions concerning infringements of this Directive are without prejudice to a Member State's right to intervene in cases of infringements of national law relating to, for example, consumer protection, to borrowers' rights, or to criminal activities. In such cases, the competent authorities of the host Member State and of the Member State where the credit was granted are the ones competent to decide whether there has been an infringement of national law and thus their powers are not limited by this Directive.
- (50) Since the performance of secondary markets for credit will depend to a large extent on the good reputation of the entities involved, credit servicers should establish an efficient mechanism by which to treat complaints from borrowers. Member States should ensure that the authorities competent for the supervision of credit purchasers and credit servicers have effective and accessible procedures to deal with borrowers' complaints.
- (51) Both Regulations (EU) 2016/679 ⁽¹⁶⁾ and (EU) 2018/1725 ⁽¹⁷⁾ of the European Parliament and of the Council apply to the processing of personal data for the purposes of this Directive. In particular, where personal data is processed for the purposes of this Directive, the precise purpose should be specified, the relevant legal basis referred to, the relevant security requirements laid down in Regulation (EU) 2016/679 complied with, and the principles of necessity, proportionality, purpose limitation, and transparent and proportionate data retention period respected. For those purposes, an industry-wide code of conduct, in accordance with Article 40 of Regulation (EU) 2016/679, is preferred. Also, personal data protection by design and data protection by default should be embedded in all data processing systems developed and used within the framework of this Directive. Equally, administrative cooperation and mutual assistance between the competent authorities of the Member States should be compatible with the rules on the protection of personal data laid down in Regulation (EU) 2016/679, and in accordance with national data protection rules implementing Union law.

⁽¹⁶⁾ Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) (OJ L 119, 4.5.2016, p. 1).

⁽¹⁷⁾ Regulation (EU) 2018/1725 of the European Parliament and of the Council of 23 October 2018 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data, and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC (OJ L 295, 21.11.2018, p. 39).

- (52) In order to ensure a high level of consumer protection, Union and national law provide for a number of rights and safeguards related to credit agreements granted to a consumer. Those rights and safeguards apply in particular to the negotiation and conclusion of the credit agreement, to the use of unfair business-to-consumer commercial practices as laid down in Directive 2005/29/EC and to the performance or default of the credit agreement. That is notably the case in relation to long-term consumer credit agreements falling within the scope of Directive 2014/17/EU, in respect of the right of the consumer to discharge fully or partially the consumer's obligations under a credit agreement prior to the expiry of that credit agreement or to be informed by means of the European Standardised Information Sheet, where applicable, on the possible transfer of the credit agreement to a credit purchaser. Borrower rights should also not be altered if the transfer of the credit agreement between a credit institution and a credit purchaser takes the form of contract novation. As a general principle, it should be ensured that borrowers are not worse off following the transfer of their credit agreement from a credit institution to a credit purchaser. This Directive should not prevent Member States from applying stricter provisions in order to protect borrowers.
- (53) Without prejudice to other obligations under Directives 2008/48/EC and 2014/17/EU, and in order to ensure a high level of consumer protection, those Directives should be amended, to ensure that the consumer is presented, in due time and prior to any modifications to the terms and conditions of the credit agreement, with a clear and comprehensive list of any such changes, the timescale for their implementation and the necessary details as well as the name and address of the national authority to which the consumer is able to lodge a complaint.
- (54) The information regarding the modification of the terms and conditions of a credit agreement under Directives 2008/48/EC and 2014/17/EU, as introduced by the amendments set out in this Directive, should not affect any consumer rights laid down in Directives 2008/48/EC and 2014/17/EU, including information rights.
- (55) The importance placed by the Union legislator on the protection provided for consumers in Council Directive 93/13/EEC ⁽¹⁸⁾ and in Directives 2008/48/EC and 2014/17/EU, means that the assignment of a creditor's rights under a credit agreement, or of the credit agreement itself, to a credit purchaser should not affect the level of protection granted by Union law to consumers in any way. Credit purchasers and credit servicers should therefore comply with applicable Union and national law as applicable to the initial credit agreement and the borrower should retain the same level of protection as provided under applicable Union and national law or as determined by Union or national conflict of law rules. Member States should ensure that no costs related to the transfer of the credit agreement, other than those already included in that credit agreement, are charged to the borrower. As regards charges on consumers in the event of default, amendments should be introduced to Directive 2008/48/EC requiring Member States to follow the same rules as in Directive 2014/17/EU on the placing of caps on fees and penalties.
- (56) In respect of consumers, Directives 2008/48/EC and 2014/17/EU should be amended by this Directive to establish that Member States should require creditors to have adequate policies and procedures so that they make efforts to exercise, where appropriate, reasonable forbearance before foreclosure proceedings are initiated. Account should be taken of the EBA Guidelines on arrears and foreclosure of 19 August 2015, of the EBA Guidelines on management of non-performing and forborne exposures of 31 October 2018 and of the ECB Guidance to banks on non-performing loans of March 2017. When deciding which forbearance measures to take, creditors should take into account the individual circumstances of the consumer, the consumer's interests and rights and the consumer's ability to repay the credit, including in particular if the credit agreement is secured by residential immovable property that is the consumer's primary residence. Forbearance measures should be able to consist of certain concessions to the consumer, such as a total or partial refinancing of a credit agreement, or a modification of its existing terms and conditions including, among others, an extension of its term, a change of the type of credit agreement, a deferral of payment of all or part of the instalment repayment for a period, a change of interest rate, an offer of a payment holiday, partial repayments, currency conversions, partial forgiveness and debt consolidation. Member States should have appropriate forbearance measures in place at national level. The list of forbearance measures provided in this Directive, as amendments to Directives 2008/48/EC and 2014/17/EU, is not exhaustive, and therefore Member States remain free to provide for additional measures. Likewise, it is open to Member States not to provide for a specific measure if so foreseen at national level, as long as a reasonable number of measures remains available. Where after foreclosure proceedings outstanding debt remains, Member States should ensure the protection of

⁽¹⁸⁾ Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts (OJ L 95, 21.4.1993, p. 29).

minimum living conditions and put in place measures to facilitate debt repayment while avoiding long-term over-indebtedness. At least where the price obtained for the residential immovable property affects the amount owed by the consumer, Member States should encourage creditors to take reasonable steps to obtain the best efforts price for the foreclosed residential immovable property in the context of market conditions. Member States should not prevent the parties to a credit agreement from expressly agreeing that the transfer of the security to the creditor is sufficient in order to repay the credit, in particular when the credit is secured by the consumer's primary residence.

- (57) In order to ensure that the level of protection of the consumer is not affected in the event of an assignment to a third party of the creditor's rights under a mortgage credit agreement or of the credit agreement itself, an amendment to Directive 2014/17/EU should be introduced to establish that, in cases of a transfer of credit covered by that Directive, the consumer is entitled to plead against the credit purchaser any defence which was available to the consumer as against the original creditor and to be informed of the assignment.
- (58) In accordance with the Joint Political Declaration of 28 September 2011 of Member States and the Commission on explanatory documents ⁽¹⁹⁾, Member States have undertaken to accompany, in justified cases, the notification of their transposition measures with one or more documents explaining the relationship between the components of a directive and the corresponding parts of national transposition instruments. With regard to this Directive, the Union legislator considers the transmission of such documents to be justified.
- (59) The European Data Protection Supervisor was consulted in accordance with Article 42(1) of Regulation (EU) 2018/1725 and delivered an opinion on 24 January 2019.
- (60) The efficient functioning of this Directive should be reviewed by the Commission, as the establishment of an internal secondary market for non-performing credit agreements with a high level of consumer protection progresses. The Commission is well placed to analyse specific cross-border issues that cannot be identified or properly addressed by individual Member States, such as the risk of money laundering and terrorist financing that could arise in relation to credit servicing and credit purchasers' activities and the cooperation between competent authorities from different Member States. It is therefore appropriate that in its review of this Directive the Commission should also include a thorough assessment of the money laundering and terrorist financing risks associated with the activities performed by credit servicers and credit purchasers and the administrative cooperation between competent authorities.
- (61) Since the objectives of this Directive, namely, to enhance the development of secondary markets for NPLs in the Union while ensuring further strengthened protection of borrowers, in particular of consumers, cannot be sufficiently achieved by the Member States but can rather, by reason of its scale and effects, be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality as set out in that Article, this Directive does not go beyond what is necessary in order to achieve those objectives,

HAVE ADOPTED THIS DIRECTIVE:

TITLE I

SUBJECT MATTER, SCOPE AND DEFINITIONS

Article 1

Subject matter

This Directive lays down a common framework and requirements for:

- (a) credit servicers of a creditor's rights under a non-performing credit agreement, or of the non-performing credit agreement itself, issued by a credit institution established in the Union, who act on behalf of a credit purchaser;

⁽¹⁹⁾ OJ C 369, 17.12.2011, p. 14.

- (b) credit purchasers of a creditor's rights under a non-performing credit agreement, or of the non-performing credit agreement itself, issued by a credit institution established in the Union.

Article 2

Scope

1. This Directive shall apply to:

- (a) credit servicers acting on behalf of a credit purchaser in respect of a creditor's rights under a non-performing credit agreement, or of the non-performing credit agreement itself, issued by a credit institution established in the Union in accordance with applicable Union and national law;
- (b) credit purchasers of a creditor's rights under a non-performing credit agreement, or of the non-performing credit agreement itself, issued by a credit institution established in the Union in accordance with applicable Union and national law.

2. With regard to credit agreements falling within its scope, this Directive shall not affect contract law principles nor civil law principles under national law with regard to the transfer of a creditor's rights under a credit agreement, or of the credit agreement itself, nor the protection granted to consumers or borrowers pursuant in particular to Regulations (EC) No 593/2008 and (EU) No 1215/2012, and Directives 93/13/EEC, 2008/48/EC, 2014/17/EU and the national provisions transposing those Directives or other relevant provisions of Union and national law relating to consumer protection and borrowers' rights.

3. This Directive shall not affect the restrictions imposed in Member States' national laws regarding the transfer of a creditor's rights under a non-performing credit agreement, or of the non-performing credit agreement itself, that is not past due, or is less than 90 days past due, or is not terminated in accordance with national civil law.

4. This Directive shall not affect requirements in Member States' national laws regarding the servicing of a creditor's rights under a credit agreement, or of the credit agreement itself, when the credit purchaser is a securitisation special purpose entity as defined in Article 2, point (2), of Regulation (EU) 2017/2402 of the European Parliament and of the Council ⁽²⁰⁾ as long as such national laws:

- (a) do not affect the level of consumer protection provided by this Directive;
- (b) ensure that competent authorities receive the necessary information from credit servicers.

5. This Directive shall not apply to the following:

- (a) the servicing of a creditor's rights under a credit agreement, or of the credit agreement itself, carried out by:
 - (i) a credit institution established in the Union;
 - (ii) an alternative investment fund manager (AIFM) authorised or registered in accordance with Directive 2011/61/EU, or a management company, or an investment company authorised in accordance with Directive 2009/65/EC provided that the investment company has not designated a management company under that Directive, on behalf of the fund it manages;
 - (iii) a non-credit institution subject to supervision by a competent authority of a Member State in accordance with Article 20 of Directive 2008/48/EC or Article 35 of Directive 2014/17/EU when performing activities in that Member State;

⁽²⁰⁾ Regulation (EU) 2017/2402 of the European Parliament and of the Council of 12 December 2017 laying down a general framework for securitisation and creating a specific framework for simple, transparent and standardised securitisation, and amending Directives 2009/65/EC, 2009/138/EC and 2011/61/EU and Regulations (EC) No 1060/2009 and (EU) No 648/2012 (OJ L 347, 28.12.2017, p. 35).

- (b) the servicing of a creditor's rights under a credit agreement, or of the credit agreement itself, that was not issued by a credit institution established in the Union except where the creditor's rights under the credit agreement, or the credit agreement itself, is replaced by a credit agreement issued by such credit institution;
- (c) the purchase of a creditor's rights under a non-performing credit agreement, or of the non-performing credit agreement itself, by a credit institution established in the Union;
- (d) the transfer of a creditor's rights under a credit agreement, or of the credit agreement itself, transferred before the date referred to in Article 32(2), first subparagraph.

6. Member States may exempt from the application of this Directive the servicing of a creditor's rights under a credit agreement, or of the credit agreement itself, carried out by public notaries and bailiffs as defined by national law or lawyers as defined in Article 1(2), point (a), of Directive 98/5/EC of the European Parliament and of the Council ⁽²¹⁾ when conducting credit servicing activities as part of their profession.

Article 3

Definitions

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

- (1) 'credit institution' means a credit institution as defined in Article 4(1), point (1), of Regulation (EU) No 575/2013;
- (2) 'creditor' means a credit institution that has issued a credit, or a credit purchaser;
- (3) 'borrower' means a legal or natural person who has concluded a credit agreement with a credit institution, including its legal successor or assignee;
- (4) 'credit agreement' means an agreement as originally issued, modified or replaced, whereby a credit institution grants a credit in the form of a deferred payment, a loan or other similar financial accommodation;
- (5) 'credit servicing agreement' means a written contract concluded between a credit purchaser and a credit servicer concerning the services to be provided by the credit servicer on behalf of the credit purchaser;
- (6) 'credit purchaser' means any natural or legal person, other than a credit institution, that purchases a creditor's rights under a non-performing credit agreement, or the non-performing credit agreement itself, in the course of its trade, business or profession, in accordance with applicable Union and national law;
- (7) 'credit service provider' means a third party used by a credit servicer to perform any of the credit servicing activities;
- (8) 'credit servicer' means a legal person that, in the course of its business, manages and enforces the rights and obligations related to a creditor's rights under a non-performing credit agreement, or to the non-performing credit agreement itself, on behalf of a credit purchaser, and carries out at least one or more credit servicing activities;
- (9) 'credit servicing activities' means one or more of the following activities:
 - (a) collecting or recovering from the borrower, in accordance with national law, any payments due related to a creditor's rights under a credit agreement or to the credit agreement itself;
 - (b) renegotiating with the borrower, in accordance with national law, any terms and conditions related to a creditor's rights under a credit agreement, or of the credit agreement itself, in line with the instructions given by the credit purchaser, where the credit servicer is not a credit intermediary as defined in Article 3, point (f), of Directive 2008/48/EC or in Article 4, point (5), of Directive 2014/17/EU;

⁽²¹⁾ Directive 98/5/EC of the European Parliament and of the Council of 16 February 1998 to facilitate practice of the profession of lawyer on a permanent basis in a Member State other than that in which the qualification was obtained (OJ L 77, 14.3.1998, p. 36).

- (c) administering any complaints relating to a creditor's rights under a credit agreement or to the credit agreement itself;
- (d) informing the borrower of any changes in interest rates or charges or of any payments due related to a creditor's rights under a credit agreement or to the credit agreement itself;
- (10) 'home Member State' means, with respect to a credit servicer, the Member State in which its registered office is situated or, if under its national law it has no registered office, the Member State in which its head office is situated or, with respect to a credit purchaser, the Member State in which the credit purchaser or its representative is domiciled, or its registered office is situated or, if under its national law it has no registered office, the Member State in which its head office is situated;
- (11) 'host Member State' means the Member State, other than the home Member State, in which a credit servicer has established a branch or where it provides credit servicing activities, and in any event where the borrower is domiciled, or its registered office is situated or, if under its national law it has no registered office, the Member State in which its head office is situated;
- (12) 'consumer' means a natural person who, in credit agreements covered by this Directive, is acting for purposes which are outside his trade, business or profession;
- (13) 'non-performing credit agreement' means a credit agreement that is classified as a non-performing exposure in accordance with Article 47a of Regulation (EU) No 575/2013.

TITLE II

CREDIT SERVICERS

CHAPTER I

Authorisation of credit servicers

Article 4

General requirements

1. Member States shall require a credit servicer to obtain an authorisation in a home Member State before commencing its activities within its territory in accordance with the requirements set out in the national provisions transposing this Directive.
2. Member States shall confer the power to grant an authorisation referred to in paragraph 1 of this Article upon the competent authorities designated pursuant to Article 21(3).

Article 5

Requirements for granting an authorisation

1. Without prejudice to Article 6, Member States shall lay down the following requirements for the granting of an authorisation referred to in Article 4(1):
 - (a) the applicant is a legal person as referred to in Article 54 of the Treaty on the Functioning of the European Union and its registered office or, if under its national law it has no registered office, its head office, is in the Member State in which the applicant is seeking authorisation;
 - (b) the members of the applicant's management or administrative organ are of sufficiently good repute, which is demonstrated by proving that:
 - (i) they have a clean police record or other national equivalent in relation to relevant criminal offences, in particular those relating to property, financial services and activities, money laundering, usury, fraud, tax crimes, violation of professional secrecy or to physical integrity, and also in relation to any other offences under laws relating to companies, bankruptcy, insolvency or consumer protection;

- (ii) the cumulative effects of minor incidents do not impinge on their good repute;
 - (iii) they have always been transparent, open and cooperative in their past business dealings with supervisory and regulatory authorities;
 - (iv) they are not subject to any ongoing insolvency procedure nor have previously been declared bankrupt unless reinstated in accordance with national law;
- (c) the applicant's management or administrative organ, as a whole, has adequate knowledge and experience to conduct the business in a competent and responsible manner;
- (d) the persons who hold qualifying holdings in the applicant within the meaning of Article 4(1), point (36), of Regulation (EU) No 575/2013 are of sufficiently good repute, which is demonstrated by fulfilling the requirements set out in points (b)(i) and (iv) of this paragraph;
- (e) the applicant has in place robust governance arrangements and adequate internal control mechanisms, including risk management and accounting procedures, which ensure respect for borrower rights and compliance with the laws governing a creditor's rights under a credit agreement, or the credit agreement itself, and with Regulation (EU) 2016/679;
- (f) the applicant applies an appropriate policy ensuring compliance with rules for the protection, and the fair and diligent treatment, of borrowers, including by taking into account their financial situation and, where available, the need for such borrowers to be referred to debt advice or social services;
- (g) the applicant has in place adequate and specific internal procedures that ensure the recording and handling of complaints from borrowers;
- (h) the applicant has in place adequate anti-money laundering and counter terrorist financing procedures where national provisions transposing Directive (EU) 2015/849 designate credit servicers as obliged entities for the purpose of preventing and combating money laundering and terrorist financing;
- (i) the applicant is subject by virtue of applicable national law to reporting and public disclosure requirements.

2. The EBA shall, after consulting all relevant stakeholders and reflecting all interests involved, issue guidelines in accordance with Article 16 of Regulation (EU) No 1093/2010 for the requirements set out in paragraph 1, point (c), of this Article.

3. The competent authorities of the home Member State shall refuse an authorisation referred to in Article 4(1) where the applicant does not comply with the requirements set out in paragraph 1 of this Article and, where relevant, in Article 6(2), point (a).

Article 6

Ability to hold funds

1. Member States shall determine whether credit servicers, when performing credit servicing activities in their territory, are either:

- (a) allowed to receive and hold funds from borrowers in order to transfer those funds to credit purchasers; or
- (b) prohibited from receiving and holding funds from borrowers.

2. In cases where credit servicers are allowed to receive and hold funds from borrowers under paragraph 1, point (a), Member States shall:

- (a) lay down, in addition to the requirements for the granting of an authorisation set out in Article 5(1), a requirement that the applicant has a separate account in a credit institution into which all funds received from borrowers are to be credited and kept until their channelling to the respective credit purchaser, under the conditions agreed with the credit purchaser;
- (b) ensure that those funds are protected in accordance with national law in the interest of the credit purchasers against the claims of the other creditors of the credit servicers, in particular in the event of insolvency;
- (c) determine that, when a borrower makes a payment to a credit servicer in order to, partially or totally, reimburse the amounts due related to a creditor's rights under a non-performing credit agreement, or to the non-performing credit agreement itself, that payment is treated as having been paid to the credit purchaser;
- (d) require a credit servicer to deliver a receipt or a letter of discharge to the borrower, on paper or another durable medium, whenever the credit servicer receives funds from the borrower, acknowledging the amounts received.

3. Where a credit servicer does not intend to receive and hold funds from borrowers as part of its business model, the credit servicer shall convey that intention in its application for the authorisation referred to in Article 4(1). In such cases, the requirements laid down in accordance with paragraph 2, point (a), of this Article shall not apply.

Article 7

Procedure for authorisation of credit servicers

1. Member States shall establish a procedure for the authorisation of credit servicers that enables an applicant to submit an application and provide all the information necessary for the competent authority of the home Member State to verify that the applicant has satisfied all the conditions laid down in the national provisions transposing Article 5(1), and, where relevant, in Article 6(2), point (a).

2. The application for authorisation of credit servicers referred to in paragraph 1 shall be accompanied by the following:

- (a) evidence of the applicant's legal status and a copy of its act of incorporation and of the company by-laws;
- (b) the address of the applicant's head office or its registered office;
- (c) the identity of the members of the applicant's management or administrative organ and the persons who hold qualifying holdings within the meaning of Article 4(1), point (36), of Regulation (EU) No 575/2013;
- (d) evidence that the applicant fulfils the conditions laid down in Article 5(1), points (b) and (c);
- (e) evidence that the persons who hold qualifying holdings within the meaning of Article 4(1), point (36), of Regulation (EU) No 575/2013 fulfil the conditions laid down in Article 5(1), point (d), of this Directive;
- (f) evidence of the governance arrangements and internal control mechanisms referred to in Article 5(1), point (e);
- (g) evidence of the policy referred to in Article 5(1), point (f);
- (h) evidence of the internal procedures referred to in Article 5(1), point (g);
- (i) evidence of the procedures referred to in Article 5(1), point (h);
- (j) where relevant, evidence of the existence of a separate account in a credit institution as provided for in Article 6(2), point (a);
- (k) any outsourcing agreement as referred to in Article 12(1).

3. Member States shall ensure that the competent authorities of a home Member State assess, within 45 days of receipt of the application for authorisation, whether that application is complete.
4. Member States shall ensure that, within 90 days of receipt of a complete application or, if the application is considered incomplete, of receipt of the required information, the competent authorities of the home Member State notify the applicant whether the authorisation is granted or refused and provide reasons for refusal.
5. Member States shall ensure that an applicant has the right of appeal before a tribunal in cases where the competent authorities of the home Member State decide to refuse an application for authorisation pursuant to Article 5(3) and also in cases where, within the time limit provided for in paragraph 4 of this Article, no decision is taken by the competent authorities in respect of the application.

Article 8

Withdrawal of authorisation

1. Member States shall ensure that the competent authorities of the home Member State have the necessary supervisory and investigatory powers, and sanctioning powers, in accordance with Article 22 in order to withdraw the authorisation granted to a credit servicer, where any of the following applies to such a credit servicer:
 - (a) does not make use of the authorisation within 12 months of its grant;
 - (b) expressly renounces the authorisation;
 - (c) has ceased to engage in the activities of a credit servicer for more than 12 months;
 - (d) has acquired an authorisation through false statements or other irregular means;
 - (e) no longer fulfils the requirements for the granting of an authorisation as a credit servicer set out in Article 5(1) and, where relevant, in Article 6(2) point (a);
 - (f) commits a serious infringement of the applicable rules, including the national provisions transposing this Directive, or of other consumer protection rules, including applicable rules of the host Member State and of the Member State where the credit was granted.
2. Where an authorisation is withdrawn in accordance with paragraph 1 of this Article, Member States shall ensure that the competent authorities of the home Member State immediately inform the competent authorities of the host Member State in cases where the credit servicer provides services under Article 13, and also the competent authorities of the Member State where the credit was granted, when different from the host and the home Member States.

Article 9

List or register of authorised credit servicers

1. Member States shall ensure that the competent authorities establish and maintain at least a list or, where considered more appropriate, a national register, of all credit servicers authorised to provide services within their territory, including credit servicers providing services under Article 13 of this Directive.

The EBA shall develop guidelines in accordance with Article 16 of Regulation (EU) No 1093/2010 for establishing and maintaining such lists or registers and specifying the types of information included in them in order to guarantee a level playing field across the Union and transparency for credit purchasers and for borrowers.

2. The list or register referred to in paragraph 1 shall be made publicly accessible online on the website of the competent authorities and shall be updated on a regular basis.

3. Where an authorisation has been withdrawn pursuant to Article 8, the competent authorities shall update the list or register referred to in paragraph 1 of this Article without delay.

Article 10

Relationship with the borrower, communication of the transfer and subsequent communications

1. Member States shall require that credit purchasers and credit servicers, in their relationships with borrowers:

- (a) act in good faith, fairly and professionally;
- (b) provide information to borrowers that is not misleading, unclear or false;
- (c) respect and protect the personal information and privacy of borrowers;
- (d) communicate with borrowers in a way that does not constitute harassment, coercion or undue influence.

2. Member States shall ensure that, after any transfer of a creditor's rights under a non-performing credit agreement, or of the non-performing credit agreement itself, to a credit purchaser, and always in advance of the first debt collection, but also whenever requested by the borrower, the credit purchaser or, when appointed to perform credit servicing activities, the entity referred to in Article 2(5), point (a)(i) or (iii), or the credit servicer, sends to the borrower a communication, on paper or on another durable medium, that includes at least the following:

- (a) information on the transfer that took place, including the date of transfer;
- (b) the identification and contact details of the credit purchaser;
- (c) when appointed, the identification and contact details of the credit servicer or of the entity referred to in Article 2(5), point (a)(i) or (iii);
- (d) when appointed, evidence regarding the authorisation of a credit servicer granted pursuant to Article 7;
- (e) where relevant, the identification and contact details of the credit service provider;
- (f) presented in a prominent way, a contact reference point at the credit purchaser or, when appointed to perform credit servicing activities, at the entity referred to in Article 2(5), point (a)(i) or (iii), or at the credit servicer and, where relevant, at the credit service provider, from which to receive information when needed;
- (g) information on the amounts due by the borrower at the time of the communication, detailing what is due as capital, interests, fees and other permitted charges;
- (h) a statement to the effect that all relevant Union and national law concerning in particular the enforcement of contracts, consumer protection, borrower's rights and criminal law continues to apply;
- (i) the name, address and contact details of the competent authorities of the Member State in which the borrower is domiciled, or its registered office is situated or, if under its national law it has no registered office, the Member State in which its head office is situated and to which the borrower can submit a complaint.

The communication provided for in the first subparagraph shall be written in language which is clear and understandable for the general public.

3. Member States shall ensure that, in all subsequent communications with the borrower, the credit purchaser or, when appointed to perform credit servicing activities, the entity referred to in Article 2(5), point (a)(i) or (iii), or the credit servicer, includes the information set out in paragraph 2, point (f) of this Article, except where it is the first communication after the appointment of a new credit servicer, in which case the information set out in paragraph 2, points (c) and (d) of this Article, shall also be included.

4. Paragraphs 2 and 3 shall be without prejudice to any additional requirements regarding communications provided for in other applicable Union or national law.

*Article 11***Contractual relationship between a credit servicer and a credit purchaser**

1. When a credit purchaser does not itself perform credit servicing activities, Member States shall ensure that the appointed credit servicer provides its services in respect of the management and enforcement of a creditor's rights under a non-performing credit agreement, or of the non-performing credit agreement itself, on the basis of a credit servicing agreement with the credit purchaser.
2. The credit servicing agreement referred to in paragraph 1 shall provide for the following:
 - (a) a detailed description of credit servicing activities to be carried out by the credit servicer;
 - (b) the level of remuneration of the credit servicer or how the remuneration is to be calculated;
 - (c) the extent to which the credit servicer can represent the credit purchaser in relation to the borrower;
 - (d) an undertaking by the parties to comply with the Union and national law applicable to a creditor's rights under a credit agreement, or to the credit agreement itself, including in respect of consumer and data protection;
 - (e) a clause requiring the fair and diligent treatment of the borrowers.
3. Member States shall ensure that the credit servicing agreement referred to in paragraph 1 contains a requirement pursuant to which the credit servicer notifies the credit purchaser prior to outsourcing any of its credit servicing activities.
4. Member States shall ensure that the credit servicer keeps and maintains the following records for at least 5 years from the date on which the credit servicing agreement referred to in paragraph 1 is terminated, or for the duration of the statutory limitation period applicable in the home Member State, but in either case for a period of no longer than 10 years:
 - (a) relevant correspondence with both the credit purchaser and the borrower, under the conditions provided for under applicable national law;
 - (b) relevant instructions received from the credit purchaser in respect of a creditor's rights under each non-performing credit agreement, or the non-performing credit agreement itself, that it manages and enforces on behalf of that credit purchaser, under the conditions provided for under applicable national law;
 - (c) the credit servicing agreement.
5. Member States shall ensure that the credit servicer makes the records referred to in paragraph 4 available to competent authorities upon request.

*Article 12***Outsourcing by a credit servicer**

1. Member States shall ensure that where a credit servicer uses a credit service provider to perform any of the credit servicing activities, the credit servicer remains fully responsible for complying with all obligations under national provisions transposing this Directive. The outsourcing of those credit servicing activities shall be subject to the following conditions:
 - (a) the conclusion of a written outsourcing agreement between the credit servicer and the credit service provider under which the credit service provider is required to comply with the applicable legal provisions, including national provisions transposing this Directive, and the relevant Union or national law applicable to a creditor's rights under a credit agreement, or to the credit agreement itself;
 - (b) the outsourcing to a credit service provider of all credit servicing activities at the same time is forbidden;
 - (c) the contractual relationship between the credit servicer and the credit purchaser and the obligations of the credit servicer towards the credit purchaser or towards borrowers is not altered by the outsourcing agreement with the credit service provider;

- (d) the compliance of a credit servicer with the requirements of its authorisation as set out in Article 5(1) is not affected by the outsourcing of some of its credit servicing activities;
- (e) the outsourcing to the credit service provider does not prevent the supervision by competent authorities of a credit servicer in accordance with Articles 14 and 21;
- (f) the credit servicer has direct access to all relevant information concerning the credit servicing activities outsourced to the credit service provider;
- (g) after the outsourcing agreement is terminated, the credit servicer has the expertise and resources to be able to provide the outsourced credit servicing activities.

The outsourcing of credit servicing activities shall not be undertaken in such a way as to impair the quality of the credit servicer's internal control, or the soundness or continuity of its credit servicing activities.

2. Member States shall ensure that the credit servicer informs the competent authorities of the home Member State and, where applicable, of the host Member State, prior to outsourcing its credit servicing activities in accordance with paragraph 1.

3. Member States shall ensure that the credit servicer keeps and maintains records of relevant instructions provided to the credit service provider, in accordance with the conditions provided for under applicable national law, and of the outsourcing agreement referred to in paragraph 1 for a period of at least 5 years from the date on which the outsourcing agreement is terminated, or for the duration of the statutory limitation period applicable in the Member State, but in either case up to a maximum period of 10 years.

4. Member States shall ensure that the credit servicer and the credit service provider make the information referred to in paragraph 3 available to competent authorities upon request.

5. Member States shall ensure that credit service providers are not permitted to receive and hold funds from borrowers.

CHAPTER II

Cross-border credit servicing activities

Article 13

Freedom to provide credit servicing activities in a host Member State

1. Member States shall ensure that a credit servicer having obtained an authorisation in accordance with Article 4(1) in a home Member State has the right to provide in the Union those services that are covered by that authorisation, without prejudice to any restrictions or requirements established in the national law of the host Member State in accordance with this Directive, including, where applicable, a prohibition on receiving and holding funds from borrowers, that are not related to other authorisation requirements of credit servicers, or to those established for the renegotiation of the terms and conditions related to a creditor's rights under a credit agreement or of the credit agreement itself.

2. Member States shall ensure that where a credit servicer having obtained an authorisation in accordance with Article 4(1) in a home Member State intends to provide services in a host Member State, the credit servicer submits to the competent authority of the home Member State the following information:

- (a) the host Member State in which the credit servicer intends to provide services and, where that information is already known to the credit servicer, the Member State where the credit was granted, when different from the host and the home Member States;
- (b) where applicable, the address of the credit servicer's branch established in the host Member State;
- (c) where applicable, the identity and address of the credit service provider in the host Member State;

- (d) the identity of the persons responsible for managing the provision of credit servicing activities in the host Member State;
- (e) where applicable, details of the measures taken to adapt the internal procedures, governance arrangements and internal control mechanisms of the credit servicer in order to ensure compliance with the laws applicable to a creditor's rights under a credit agreement or to the credit agreement itself;
- (f) a description of the procedure established in order to comply with the anti-money laundering and counter terrorist financing rules, whereby the national law of the host Member State transposing Directive (EU) 2015/849 designates credit servicers as obliged entities for the purpose of preventing and combating money laundering and terrorist financing;
- (g) that the credit servicer has appropriate means to communicate in the language of the host Member State or in the language of the credit agreement;
- (h) whether or not the credit servicer is authorised in its home Member State to receive and hold funds from borrowers.

3. The competent authorities of the home Member State shall, within 45 days of receipt of all information referred to in paragraph 2, communicate that information to the competent authorities of the host Member State, which shall acknowledge receipt thereof without delay. The competent authorities of the home Member State shall thereafter inform the credit servicer of the date on which the information was communicated to the competent authorities of the host Member State and the date on which those competent authorities acknowledge receipt of the information. The competent authorities of the home Member State shall also communicate all information referred to in paragraph 2 to the competent authorities of the Member State where the credit was granted, when different from the host and the home Member States.

4. Member States shall ensure that a credit servicer has the right of appeal before a tribunal where the competent authorities of the home Member State fail to communicate the information referred to in paragraph 2.

5. Member States shall ensure that the credit servicer is able to start providing services in the host Member State from the earlier of the following:

- (a) receipt of the communication from the competent authorities of the host Member State acknowledging receipt of the communication referred to in paragraph 3;
- (b) in the absence of any receipt of the communication referred to in point (a) of this paragraph, after the expiry of 2 months from the date of submission of all information referred to in paragraph 2 to the competent authorities of the host Member State.

6. Member States shall ensure that a credit servicer informs the competent authorities of the home Member State of any subsequent change to the information that is required to be communicated in accordance with paragraph 2. In such cases, Member States shall ensure compliance with the procedure set out in paragraphs 3, 4 and 5.

7. Member States shall ensure that the competent authorities of the host Member State record in the list or register referred to in Article 9 the credit servicers which are authorised to provide credit servicing activities in their territory and the details of the home Member State.

Article 14

Supervision of credit servicers which provide cross-border services

1. Member States shall ensure that the competent authorities of the home Member State review and evaluate the ongoing compliance, by a credit servicer which performs credit servicing activities in a host Member State, with the requirements of this Directive.

2. Member States shall ensure that the competent authorities of the home Member State are empowered to supervise, investigate and impose administrative penalties and remedial measures on credit servicers in respect of the requirements of this Directive when performing their credit servicing activities in a host Member State.
3. Member States shall ensure that the competent authorities of the home Member State communicate the measures taken in respect of the credit servicer to the competent authorities of the host Member State and, where appropriate, of the Member State where the credit was granted, when different from the host and the home Member States.
4. Member States shall ensure that where a credit servicer performs credit servicing activities in a host Member State, the competent authorities of the home Member State and the competent authorities of the host Member State and, where appropriate, of the Member State where the credit was granted, when different from the host and the home Member States, shall cooperate closely in the performance of their functions and duties, in particular when carrying out checks, investigations and on-site inspections.
5. Member States shall ensure that the competent authorities of the home Member State, in the exercise of their functions and duties provided for in this Directive, ask the competent authorities of the host Member State for their assistance in carrying out an on-site inspection of a branch set up, or of a credit service provider appointed, in a host Member State. The on-site inspection of a branch or of a credit service provider shall be conducted in accordance with the law of the Member State where the inspection is carried out.
6. Member States shall further ensure that the competent authorities of the host Member State are entitled to decide on the most appropriate measures to be taken in each individual case in order to meet the request of assistance by the competent authorities of the home Member State.
7. Where the competent authorities of the host Member State decide to conduct on-site inspections on behalf of the competent authorities of the home Member State, they shall inform the competent authorities of the home Member State of the results thereof without delay.
8. On their own initiative, the competent authorities of the host Member State may conduct checks, inspections and investigations in respect of credit servicing activities provided within their territory by a credit servicer authorised in a home Member State. The competent authorities of the host Member State shall provide the results of those checks, inspections and investigations to the competent authorities of the home Member State without delay.
9. Member States shall ensure that where the competent authorities of the host Member State have evidence that a credit servicer performing credit servicing activities within its territory, as provided for in Article 13, infringes the applicable rules, including obligations arising from the national provisions transposing this Directive, they transmit that evidence to the competent authorities of the home Member State and request that they take appropriate measures, without prejudice to the supervisory, investigatory and sanctioning powers of the competent authorities of the host Member State regarding the credit servicer under national law, namely those applicable to the credit or the credit agreement.
10. Member States shall ensure that where the competent authorities of the Member State where the credit was granted, when different from the host and the home Member States, have evidence that a credit servicer infringes the obligations provided for in this Directive, or in the national rules applicable to the credit or the credit agreement, they transmit that evidence to the competent authorities of the home Member State and request that they take appropriate measures, without prejudice to the supervisory, investigatory and sanctioning powers of the competent authorities of the Member State where the credit was granted, when different from the host and the home Member States.
11. Member States shall ensure that the competent authorities of the home Member State communicate details of any administrative or other procedure initiated in respect of the evidence provided by the host Member State, or of any administrative penalties and remedial measures taken against the credit servicer, or of a reasoned decision why no measures were taken, to the competent authorities of the host Member State that referred the evidence no later than 2 months from the date of the request referred to in paragraph 9. Where a procedure has been initiated, the competent authorities of the home Member State shall regularly inform the competent authorities of the host Member State about its status.

12. Where a credit servicer continues to infringe the applicable rules, including its obligations under this Directive, and after the competent authorities of the host Member State have informed the home Member State thereof, Member States shall ensure that the competent authorities of the host Member State are entitled to impose appropriate administrative penalties and remedial measures in order to ensure compliance with this Directive when either of the following apply:

- (a) no adequate and effective steps were taken by the credit servicer to rectify the infringement in a reasonable time; or
- (b) in an urgent case, where immediate action is necessary in order to address a serious threat to the collective interests of the borrowers.

The competent authorities of the host Member State may impose the administrative penalties and remedial measures referred to in the first subparagraph notwithstanding any administrative penalties and remedial measures already imposed by the competent authorities of the home Member State.

In addition, the competent authorities of the host Member State may prohibit further activities of a credit servicer that infringes the applicable rules, including its obligations under this Directive, until such time as an adequate decision is taken by the competent authority of the home Member State or the credit servicer takes steps to remedy the infringement.

TITLE III

CREDIT PURCHASERS

Article 15

Right to information regarding a creditor's rights under a non-performing credit agreement or the non-performing credit agreement itself

1. Member States shall ensure that a credit institution provides a prospective credit purchaser with necessary information regarding a creditor's rights under a non-performing credit agreement, or the non-performing credit agreement itself, and, if applicable, the collateral, so as to enable the prospective credit purchaser to conduct its own assessment of the value of the creditor's rights under the non-performing credit agreement, or of the non-performing credit agreement itself, and the likelihood of recovery of the value of that agreement prior to entering into a contract for the transfer of that creditor's rights under the non-performing credit agreement, or of the non-performing credit agreement itself, while ensuring the protection of information made available by the credit institution and of the confidentiality of business data.

2. On a biannual basis, Member States shall require credit institutions that transfer to a credit purchaser a creditor's rights under a non-performing credit agreement, or the non-performing credit agreement itself, to inform the competent authorities of the host Member State designated in accordance with Article 21(3) of this Directive, and the competent authorities referred to in Article 4(5) of Directive 2013/36/EU of the European Parliament and of the Council ⁽²³⁾, of at least the following:

- (a) the legal entity identifier (LEI) of the credit purchaser or, where applicable, of its representative designated in accordance with Article 19, or where such identifier does not exist, of:
 - (i) the identity of the credit purchaser or of the members of the credit purchaser's management or administrative organ and the persons who hold qualifying holdings in the credit purchaser within the meaning of Article 4(1), point (36), of Regulation (EU) No 575/2013; and
 - (ii) the address of the credit purchaser or, where applicable, its representative designated in accordance with Article 19;

⁽²³⁾ Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC (OJ L 176, 27.6.2013, p. 338).

- (b) the aggregate outstanding balance of the creditor's rights under the non-performing credit agreements or of the non-performing credit agreements transferred;
 - (c) the number and size of the creditor's rights under the non-performing credit agreements or of the non-performing credit agreements transferred;
 - (d) whether the transfer includes the creditor's rights under the non-performing credit agreements, or the non-performing credit agreements themselves, concluded with consumers and the types of assets securing the non-performing credit agreements, when applicable.
3. The competent authorities referred to in paragraph 2 may require credit institutions to provide the information referred to in that paragraph on a quarterly basis whenever they deem necessary, including in order to better monitor a high number of transfers that might occur during a crisis period.
4. Member States shall ensure that the competent authorities of the host Member State communicate without delay the information referred to in paragraphs 2 and 3, and any other information that they might consider to be necessary for carrying out their functions and duties in accordance with this Directive, to the competent authorities of the home Member State of the credit purchaser.
5. Paragraphs 1 to 4 shall be applied in accordance with Regulations (EU) 2016/679 and (EU) 2018/1725.

Article 16

Implementing technical standards for data templates

1. The EBA shall develop draft implementing technical standards to specify the templates to be used by credit institutions for the provision of information referred to in Article 15(1), in order to provide detailed information on their credit exposures in the banking book to credit purchasers for the analysis, financial due diligence and valuation of a creditor's rights under a non-performing credit agreement, or of the non-performing credit agreement itself.
2. The EBA shall specify in the draft implementing technical standards referred to in paragraph 1 of this Article the data fields, including which data fields are mandatory, and the data treatment for confidential information as set out in Article 15(1).
3. The draft implementing technical standards shall be proportionate to the nature and size of credits and credit portfolios.
4. When preparing the draft implementing technical standards referred to in paragraph 1, the EBA shall take into consideration all of the following:
- (a) existing market practices in data sharing between buyers and sellers;
 - (b) the feedback received from users of their experience of using existing EBA non-performing loans transaction templates;
 - (c) existing similar requirements at Member State level;
 - (d) the importance of minimising processing costs for credit institutions and credit purchasers.
5. The EBA shall submit the draft implementing technical standards referred to in paragraph 1 to the Commission by 29 September 2022.
6. Power is conferred on the Commission to adopt the implementing technical standards referred to in paragraph 1, in accordance with Article 15 of Regulation (EU) No 1093/2010.

7. The data templates shall be used for transactions relating to credits issued on or after 1 July 2018 that become non-performing after 28 December 2021. For credits that originate between 1 July 2018 and the date of entry into force of the implementing technical standards referred to in paragraph 1, credit institutions shall complete the data template with the information already available to them.

8. Member States shall ensure that credit institutions also apply the implementing technical standards referred to in paragraph 6 to the transfer of a creditor's rights under a non-performing credit agreement, or of the non-performing credit agreement itself, to other credit institutions. The data templates shall be used by credit institutions for the provision of information between credit institutions in cases where there is only a transfer of a creditor's rights under a non-performing credit agreement, or of the non-performing credit agreement itself.

Article 17

Obligations of credit purchasers

1. Member States shall ensure that:

- (a) a credit purchaser domiciled in the Union, or that has its registered office or, if under its national law it has no registered office, its head office in the Union appoints an entity referred to in Article 2(5), point (a)(i) or (iii), or a credit servicer, to perform credit servicing activities in respect of a creditor's rights under a non-performing credit agreement, or of the non-performing credit agreement itself, concluded with consumers;
- (b) where a credit purchaser is not domiciled in the Union, or does not have its registered office or, if under its national law it has no registered office, its head office in the Union, its representative designated in accordance with Article 19(1) appoints an entity referred to in Article 2(5), point (a)(i) or (iii), or a credit servicer, except in cases where the representative is itself an entity referred to in Article 2(5), point (a)(i) or (iii), or a credit servicer, to perform credit servicing activities in respect of a creditor's rights under a non-performing credit agreement, or of the non-performing credit agreement itself, concluded with:
 - (i) natural persons, including consumers and independent workers;
 - (ii) micro, small and medium-sized enterprises (SMEs), as defined in Article 2 of the Annex to Commission Recommendation 2003/361/EC ⁽²³⁾.

Host Member States may extend the requirement provided for in the first subparagraph to other credit agreements.

2. Member States shall ensure that a credit purchaser is not subject to any additional requirements for the purchase of a creditor's rights under a non-performing credit agreement, or of the non-performing credit agreement itself, other than as provided for by the national provisions transposing this Directive, or by provisions of applicable consumer protection law, contract law, civil law or criminal law. Member States shall ensure that relevant Union and national law concerning in particular the enforcement of contracts, consumer protection, borrowers' rights, credit origination, bank secrecy rules and criminal law continues to apply to the credit purchaser upon the transfer of the creditor's rights under the credit agreement, or of the credit agreement itself, to the credit purchaser. The level of protection provided under Union and national law to consumers and other borrowers, as well as insolvency rules, shall not be affected by the transfer of the creditor's rights under the credit agreement, or of the credit agreement itself, to the credit purchaser, without prejudice to national and international rules on promissory notes and bills of exchange.

3. This Directive is without prejudice to national powers regarding credit registers, including the power to require information from credit purchasers regarding a creditor's rights under a credit agreement, or the credit agreement itself, and its performance.

4. Member States may allow credit purchasers to engage natural persons to service the credit agreements that they have acquired. Those natural persons shall be subject to a national regulation and supervision regime and shall not benefit from the freedom provided for in this Directive to perform credit servicing activities in another Member State.

⁽²³⁾ Commission Recommendation 2003/361/EC of 6 May 2003 concerning the definition of micro, small and medium-sized enterprises (OJ L 124, 20.5.2003, p. 36).

5. Member States shall ensure that the appointed credit servicer, or entity referred to in Article 2(5), point (a)(i) or (iii), complies, on behalf of the credit purchaser, with the obligations imposed on the credit purchaser pursuant to paragraph 2 of this Article and Articles 18 and 20. In cases where no credit servicer or entity referred to in Article 2(5), point (a)(i) or (iii), is appointed, the credit purchaser or its representative shall remain subject to those obligations.

Member States may require that the appointed credit servicer, or entity referred to in Article 2(5), point (a)(i) or (iii), complies, on behalf of the credit purchaser, with the obligations imposed on the credit purchaser in accordance with national law including in relation to paragraph 3 of this Article.

Article 18

Use of credit servicers or other entities

1. Where the credit purchaser or, where applicable, its representative designated in accordance with Article 19 appoints an entity referred to in Article 2(5), point (a)(i) or (iii), or a credit servicer, to perform credit servicing activities in relation to the transferred creditor's rights under a non-performing credit agreement, or the non-performing credit agreement itself, Member States shall require that credit purchaser or its representative to inform the competent authorities of its home Member State of the identity and address of the entity referred to in Article 2(5), point (a)(i) or (iii), or of the credit servicer, at the latest on the date on which the credit servicing activities start.

2. Where the credit purchaser or, where applicable, its representative designated in accordance with Article 19 appoints an entity other than the one notified under paragraph 1 of this Article, it shall notify the competent authorities of its home Member State thereof at the latest on the date of that change and shall indicate the identity and address of the new entity that it has appointed to perform credit servicing activities in relation to the transferred creditor's rights under a non-performing credit agreement or the non-performing credit agreement itself.

3. Member States shall require the competent authorities of the home Member State of the credit purchaser to transmit without undue delay to the competent authorities of the host Member State, to the competent authorities of the Member State in which the credit was granted, and to the competent authorities of the home Member State of the new credit servicer, the information received in accordance with paragraphs 1 and 2.

Article 19

Representative of a third-country credit purchaser

1. Member States shall provide that where a transfer of a creditor's rights under a non-performing credit agreement, or of the non-performing credit agreement itself, is concluded, a credit purchaser that is not domiciled in the Union, or that does not have its registered office or, if under its national law it has no registered office, its head office in the Union designates in writing a representative that is domiciled in the Union or that does have its registered office or, if under its national law it has no registered office, its head office in the Union.

2. The representative referred to in paragraph 1 shall be addressed in addition to, or instead of, the credit purchaser by competent authorities on all issues related to the ongoing compliance with this Directive and be fully responsible for compliance with the obligations imposed on the credit purchaser under the national provisions transposing this Directive.

*Article 20***Transfer of a creditor's rights under a non-performing credit agreement, or of the non-performing credit agreement itself, by a credit purchaser and communication to the competent authorities**

1. Member States shall require a credit purchaser or, where applicable, its representative designated in accordance with Article 19, that transfers a creditor's rights under a non-performing credit agreement, or the non-performing credit agreement itself, to inform the competent authorities of its home Member State on a biannual basis of the legal entity identifier (LEI) of the new credit purchaser and, where applicable, of its representative designated in accordance with Article 19 or, where such identifier does not exist, of:

- (a) the identity of the new credit purchaser or, where applicable, its representative designated in accordance with Article 19, or of the members of the new credit purchaser's or its representative's management or administrative organ and the persons who hold qualifying holdings in the new credit purchaser or its representative within the meaning of Article 4(1), point (36), of Regulation (EU) No 575/2013; and
- (b) the address of the new credit purchaser or, where applicable, of its representative designated in accordance with Article 19.

Additionally, the credit purchaser or its representative shall inform the competent authorities of its home Member State of at least the following:

- (a) the aggregate outstanding balance of the creditor's rights under the non-performing credit agreements, or of the non-performing credit agreements transferred;
- (b) the number and size of the creditor's rights under the non-performing credit agreements or of the non-performing credit agreements transferred;
- (c) whether the transfer includes a creditor's rights under a non-performing credit agreement, or a non-performing credit agreement itself, concluded with consumers and the types of assets securing the non-performing credit agreement, when applicable.

2. The competent authorities referred to in paragraph 1 may require credit purchasers or, where applicable, their representatives designated in accordance with Article 19, to provide the information referred to in that paragraph on a quarterly basis whenever those competent authorities deem necessary, including in order to better monitor a high number of transfers that might occur during a crisis period.

3. Member States shall ensure that the competent authorities referred to in paragraphs 1 and 2 transmit without undue delay the information received in accordance with those paragraphs to the competent authorities of the host Member State and to the competent authorities of the home Member State of the new credit purchaser.

TITLE IV

SUPERVISION

*Article 21***Supervision by competent authorities**

1. Member States shall ensure that credit servicers and, where applicable, credit service providers to whom credit servicing activities have been outsourced in accordance with Article 12, comply with the national provisions transposing this Directive on an ongoing basis and shall ensure that those activities are subject to adequate supervision by the competent authorities of the home Member State in order to assess such compliance.

2. The home Member State of a credit purchaser or, where applicable, its representative designated in accordance with Article 19, shall ensure that the competent authorities referred to in paragraph 1 of this Article are responsible for the supervision of the obligations set out in Article 10 and in Articles 17 to 20 in respect of the credit purchaser or, where applicable its representative designated in accordance to Article 19.

3. Member States shall designate the competent authorities responsible for carrying out the functions and duties under the national provisions transposing this Directive.

4. Where Member States designate more than one competent authority pursuant to paragraph 3, they shall determine their respective tasks and designate one of them to be a single point of entry for all necessary exchanges and interactions with competent authorities of home or host Member States.

5. Member States shall ensure that appropriate measures are in place to enable the competent authorities designated pursuant to paragraph 3 of this Article to obtain from credit purchasers or their representatives designated in accordance with Article 19, credit servicers, credit service providers to whom a credit servicer outsources credit servicing activities under Article 12, borrowers and any other persons or public authority, the information necessary to carry out the following:

- (a) assess ongoing compliance with the requirements laid down in the national provisions transposing this Directive;
- (b) investigate possible infringements of those requirements;
- (c) impose administrative penalties and remedial measures in accordance with the national provisions transposing Article 23.

6. Member States shall ensure that the competent authorities designated pursuant to paragraph 3 have the expertise, resources, operational capacity and powers necessary for the exercise of their functions and duties laid down in this Directive.

Article 22

Supervisory role and powers of competent authorities

1. Member States shall ensure that the competent authorities of the home Member State designated pursuant to Article 21(3) are given all supervisory, investigatory and sanctioning powers, necessary for the exercise of their functions and duties laid down in this Directive, including at least the following:

- (a) the power to grant or refuse an authorisation pursuant to Articles 5 and 6;
- (b) the power to withdraw an authorisation pursuant to Article 8;
- (c) the power to prohibit any of the credit servicing activities;
- (d) the power to conduct on-site and off-site inspections;
- (e) the power to impose administrative penalties and remedial measures in accordance with the national provisions transposing Article 23;
- (f) the power to review outsourcing agreements concluded between credit servicers and credit service providers in accordance with Article 12(1);
- (g) the power to require credit servicers to remove members of their management or administrative organ when they fail to comply with the requirements set out in Article 5(1), point (b);
- (h) the power to require credit servicers to modify or update their internal governance arrangements and internal control mechanisms in order to effectively ensure respect for borrowers' rights in accordance with the laws governing the credit agreement;

- (i) the power to require credit servicers to modify or update their policies adopted to ensure the fair and diligent treatment of borrowers, and the recording and handling of complaints from borrowers;
 - (j) the power to request further information pertaining to the transfer of a creditor's rights under the non-performing credit agreement, or of the non-performing credit agreement itself.
2. Member States shall ensure that the competent authorities of the host Member State designated pursuant to Article 21(3) and of the Member State where the credit was granted, when different from the host and the home Member States, are given all necessary powers for the exercise of their functions and duties laid down in this Directive.
3. Member States shall ensure that the competent authorities of the home Member State evaluate, by applying a risk-based approach, the implementation by a credit servicer of the requirements set out in Article 5(1), points (e) to (h).
4. Member States shall determine the extent of the evaluation referred to in paragraph 3, having regard to the size, nature, scale and complexity of the activities of the credit servicer concerned.
5. The competent authorities of the home Member State shall inform the competent authorities of the host Member State, or of the Member State where the credit was granted, when different from the host and the home Member States, of the results of the evaluation referred to in paragraph 3 upon request of one of those competent authorities, or where the competent authorities of the home Member State consider it appropriate. The details of any administrative penalties or remedial measures imposed shall be transmitted by the competent authorities of the home Member State to the competent authorities of the host Member State and, where appropriate, of the Member State where the credit was granted, when different from the host and the home Member States.
6. Member States shall ensure that when carrying out the evaluation referred to in paragraph 3, the competent authorities of the home and of the host Member States, and of the Member State where the credit was granted, when different from the host and the home Member States, exchange all information necessary to enable them to carry out their respective functions and duties laid down in this Directive.
7. Member States shall ensure that the competent authorities of the home Member State are able to require a credit servicer, credit service provider or credit purchaser or its representative designated in accordance with Article 19 that does not meet the requirements of the national provisions transposing this Directive to take, at an early stage, all necessary actions or steps in order to comply with those provisions.

Article 23

Administrative penalties and remedial measures

1. Without prejudice to the right of Member States to lay down criminal penalties, Member States shall lay down rules establishing appropriate administrative penalties and remedial measures applicable in at least the following situations:
- (a) a credit servicer fails to comply with the requirement set out in the national provisions transposing Article 11 or enters into an outsourcing agreement infringing the national provisions transposing Article 12 or the credit service provider to whom the credit servicing activities were outsourced commits a serious infringement of the applicable legal provisions, including the national provisions transposing this Directive;
 - (b) a credit servicer's governance arrangements and internal control mechanisms as set out in Article 5(1), point (e), fail to ensure respect for borrower rights and compliance with personal data protection rules;
 - (c) a credit servicer's policy is inadequate for the proper treatment of borrowers as set out in Article 5(1), point (f);
 - (d) a credit servicer's internal procedures as set out in Article 5(1), point (g), fail to provide for the recording and handling of complaints from borrowers according to the obligations set out in the national provisions transposing this Directive;

- (e) a credit purchaser or, where applicable, its representative designated in accordance with Article 19 fails to communicate the information provided for by national provisions transposing Articles 18 and 20;
- (f) a credit purchaser or, where applicable, its representative designated in accordance with Article 19 fails to comply with the requirement of the national provisions transposing Article 17;
- (g) a credit purchaser fails to comply with the requirement of the national provisions transposing Article 19;
- (h) a credit institution fails to communicate the information set out in the national provisions transposing Article 15;
- (i) a credit servicer allows one or more persons not complying with the requirements set out in Article 5(1), point (b), to become or remain a member of its management or administrative organ;
- (j) a credit servicer fails to comply with the requirements set out in the national provisions transposing Article 24;
- (k) a credit purchaser or, where applicable, credit servicers or any entity mentioned under Article 2(5), point (a)(i) or (iii), fails to comply with national provisions transposing Article 10;
- (l) a credit servicer receives and holds funds from borrowers when this is not permitted in a Member State in accordance with Article 6(1), point (b);
- (m) a credit servicer fails to comply with the requirements set out in the national provisions transposing Article 6(2).

2. The administrative penalties and remedial measures referred to in paragraph 1 shall be effective, proportionate and dissuasive and shall include at least the following:

- (a) a withdrawal of an authorisation to carry out activities as a credit servicer;
- (b) an order requiring the credit servicer or credit purchaser or, where applicable, its representative designated in accordance with Article 19 to remedy the infringement, and to cease the conduct and to desist from a repetition of that conduct;
- (c) administrative pecuniary penalties.

3. Member States shall ensure that administrative penalties and remedial measures are effectively implemented.

4. Member States shall ensure that, when determining the type of administrative penalties or remedial measures and the amount of the administrative pecuniary penalties, the competent authorities take into account relevant circumstances, including the following:

- (a) the gravity and the duration of the infringement;
- (b) the degree of responsibility of the credit servicer or credit purchaser or, where applicable, its representative designated in accordance with Article 19, responsible for the infringement;
- (c) the financial strength of the credit servicer or credit purchaser responsible for the infringement, including by reference to the total turnover of a legal person or the annual income of a natural person;
- (d) the importance of profits gained or losses avoided because of the infringement by the credit servicer or credit purchaser or, where applicable, its representative designated in accordance with Article 19, responsible for the infringement, insofar as those profits or losses can be determined;
- (e) the losses caused to third parties by the infringement, insofar as those losses can be determined;
- (f) the level of cooperation by the credit servicer or credit purchaser responsible for the infringement with the competent authorities;
- (g) previous infringements by the credit servicer or credit purchaser or, where applicable, its representative designated in accordance with Article 19, responsible for the infringement;
- (h) any actual or potential systemic consequences of the infringement.

5. Member States shall ensure that the competent authorities can apply the administrative penalties and remedial measures set out in paragraph 2 to members of the management or administrative organ, and to other individuals who under national law are responsible for the infringement.
6. Member States shall ensure that before taking any decision imposing the administrative penalties or remedial measures set out in paragraph 2 of this Article, the competent authorities give the concerned credit servicer, credit purchaser or where applicable, its representative designated in accordance with Article 19, the opportunity to be heard.
7. Member States shall ensure that any decision imposing the administrative penalties or remedial measures set out in paragraph 2 is properly reasoned and is subject to the right of appeal.
8. Member States may decide not to lay down rules for administrative penalties for infringements that are subject to criminal penalties under their national law. In that case, Member States shall communicate to the Commission the relevant criminal law provisions.

TITLE V

SAFEGUARDS AND DUTY TO COOPERATE

Article 24

Complaints

1. Member States shall ensure that credit servicers establish and maintain effective and transparent procedures for the handling of complaints from borrowers.
2. Member States shall ensure that the treatment by credit servicers of complaints from borrowers is free of charge and that credit servicers record the complaints and the measures taken to address them.
3. Member States shall ensure that the competent authorities establish and publish a procedure for the handling of complaints from borrowers concerning credit purchasers, credit servicers and credit service providers, and shall ensure that they are treated promptly when received.

Article 25

Personal data protection

The processing of personal data for the purposes of this Directive shall be carried out in accordance with Regulations (EU) 2016/679 and (EU) 2018/1725.

Article 26

Cooperation between competent authorities

1. Member States shall ensure that the competent authorities referred to in Articles 8, 13, 14, 15, 18, 20 and 22 cooperate with each other whenever necessary for the purpose of carrying out their functions and duties or of exercising their powers under the national provisions transposing this Directive. Those competent authorities shall also coordinate their actions in order to avoid possible duplication and overlap when applying supervisory powers and administrative penalties and remedial measures to cross-border cases.
2. Member States shall ensure that competent authorities, on request and without undue delay, provide each other with the information required for the purpose of carrying out their functions and duties under the national provisions transposing this Directive.

3. Member States shall ensure that competent authorities receiving confidential information in the exercise of their functions and duties under this Directive use that information only in the course of their functions and duties under the national provisions transposing this Directive. The exchange of information between competent authorities shall be subject to the obligation of professional secrecy referred to in Article 76 of Directive 2014/65/EU of the European Parliament and of the Council ⁽²⁴⁾.
4. Member States shall provide that all persons working, or who have worked, for the competent authorities and auditors or experts acting on behalf of the competent authorities are bound by the obligation of professional secrecy.
5. Member States shall take the necessary administrative and organisational measures to facilitate the cooperation provided for in this Article.
6. The EBA shall facilitate the exchange of information between competent authorities in the Member States and promote their cooperation.

TITLE VI

AMENDMENTS

Article 27

Amendments to Directive 2008/48/EC

Directive 2008/48/EC is amended as follows:

- (1) the following article is inserted:

'Article 11a

Information regarding the modification of the terms and conditions of a credit agreement

Without prejudice to other obligations provided for in this Directive, Member States shall ensure that prior to modifying the terms and conditions of the credit agreement, the creditor communicates the following information to the consumer:

- (a) a clear description of the proposed changes and, where applicable, of the need for consumer consent or of the changes introduced by operation of law;
- (b) the timescale for the implementation of the changes referred to in point (a);
- (c) the means for complaint available to the consumer regarding the changes referred to in point (a);
- (d) the time period available for lodging any such complaint;
- (e) the name and address of the competent authority to which the consumer can submit that complaint.;

- (2) the following article is inserted:

'Article 16a

Arrears and enforcement

1. Member States shall require creditors to have adequate policies and procedures so that they make efforts to exercise, where appropriate, reasonable forbearance before enforcement proceedings are initiated. Such forbearance measures shall take into account, among other elements, the consumer's circumstances and may consist of, among other possibilities:

- (a) a total or partial refinancing of a credit agreement;

⁽²⁴⁾ Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU (OJ L 173, 12.6.2014, p. 349).

(b) a modification of the existing terms and conditions of a credit agreement, which may include among others:

- (i) extending the term of the credit agreement;
- (ii) changing the type of credit agreement;
- (iii) deferring payment of all or part of the instalment repayment for a period;
- (iv) changing the interest rate;
- (v) offering a payment holiday;
- (vi) partial repayments;
- (vii) currency conversions;
- (viii) partial forgiveness and debt consolidation.

2. The list of potential forbearance measures set out in point (b) of paragraph 1 is without prejudice to rules set out in national law and does not require Member States to provide for all of those measures in their national law.

3. Member States may require that, where the creditor is permitted to define and impose charges on the consumer arising from the default, those charges are no greater than is necessary to compensate the creditor for costs it has incurred as a result of the default.

4. Member States may allow creditors to impose additional charges on the consumer in the event of default. In that case, Member States shall place a cap on those charges.;

(3) Article 22(1) is replaced by the following:

‘1. Insofar as this Directive contains harmonised provisions, Member States may not maintain or introduce in their national law provisions diverging from those laid down in this Directive. However, Article 16a(3) and (4) shall not preclude Member States from maintaining or introducing more stringent provisions in order to protect consumers.’.

Article 28

Amendments to Directive 2014/17/EU

Directive 2014/17/EU is amended as follows:

(1) the following article is inserted:

‘Article 27a

Information regarding the modification of the terms and conditions of a credit agreement

Without prejudice to other obligations provided for in this Directive, Member States shall ensure that, prior to modifying the terms and conditions of the credit agreement, the creditor communicates the following information to the consumer:

- (a) a clear description of the proposed changes and, where applicable, of the need for consumer consent or of the changes introduced by operation of law;
- (b) the timescale for the implementation of the changes referred to in point (a);
- (c) the means for complaint available to the consumer regarding the changes referred to in point (a);
- (d) the time period available for lodging any such complaint;
- (e) the name and address of the competent authority to which the consumer can submit that complaint.;

(2) Article 28 is amended as follows:

(a) paragraph 1 is replaced by the following:

‘1. Member States shall require creditors to have adequate policies and procedures so that they make efforts to exercise, where appropriate, reasonable forbearance before foreclosure proceedings are initiated. Such forbearance measures shall take into account, among other elements, the consumer’s circumstances and may consist of, among other possibilities:

(a) a total or partial refinancing of a credit agreement;

(b) a modification of the existing terms and conditions of a credit agreement, which may include among others:

(i) extending the term of the credit agreement;

(ii) changing the type of credit agreement;

(iii) deferring payment of all or part of the instalment repayment for a period;

(iv) changing the interest rate;

(v) offering a payment holiday;

(vi) partial repayments;

(vii) currency conversions;

(viii) partial forgiveness and debt consolidation.’;

(b) the following paragraph is inserted:

‘1a. The list of potential forbearance measures set out in point (b) of paragraph 1 is without prejudice to rules set out in national law and does not require Member States to provide for all of those measures in their national law.’;

(3) the following article is inserted:

‘Article 28a

Assignment of the creditor’s rights or of the credit agreement itself

1. In the event of an assignment to a third party of the creditor’s rights under a credit agreement, or of the credit agreement itself, the consumer shall be entitled to plead against the assignee any defence which was available to the consumer as against the original creditor, including set-off where the latter is permitted in the Member State concerned.

2. The consumer shall be informed of an assignment referred to in paragraph 1, except where the original creditor, by agreement with the assignee, continues to service the credit vis-à-vis the consumer.’.

TITLE VII

FINAL PROVISIONS

Article 29

Committee

1. The Commission shall be assisted by a committee. That committee shall be a committee within the meaning of Regulation (EU) No 182/2011 of the European Parliament and of the Council ⁽²⁵⁾.

2. Where reference is made to this paragraph, Article 4 of Regulation (EU) No 182/2011 shall apply.

⁽²⁵⁾ 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).

*Article 30***Evaluation**

1. By 29 December 2026, the Commission shall carry out an evaluation of this Directive and present a report on the main findings to the European Parliament, the Council and the European Economic and Social Committee. The evaluation shall consist of at least the following:

- (a) the number of authorised credit servicers in the Union and the number of credit servicers providing their services in a host Member State;
- (b) the number of creditors' rights under non-performing credit agreements or of non-performing credit agreements purchased from credit institutions by credit purchasers domiciled or having their registered office or, if under their national law they have no registered office, their head office, in the same Member State as the credit institution, or in a different Member State than the credit institution, or outside of the Union;
- (c) an assessment of the existing money laundering and terrorist financing risk associated with the activities performed by credit servicers and credit purchasers;
- (d) an assessment of the cooperation between competent authorities under Article 26.

2. Where the evaluation identifies significant problems with the functioning of this Directive, the report shall outline how the Commission intends to address the identified problems, including steps and timings of the potential revision.

*Article 31***Review clause**

Without prejudice to the legislative prerogatives of the European Parliament and the Council, by 29 December 2023, the Commission shall submit to the European Parliament and to the Council a report on:

- (a) the adequacy of the regulatory framework regarding a potential introduction of caps on charges arising from the event of default applicable to credit agreements concluded with:
 - (i) natural persons for purposes related to the trade, business or profession of those natural persons;
 - (ii) SMEs, as defined in Article 2 of the Annex to Recommendation 2003/361/EC;
 - (iii) any borrower, provided that the credit is guaranteed by a natural person or is secured by assets or property belonging to that natural person;
- (b) relevant aspects, including potential forbearance measures, of credit agreements concluded with:
 - (i) natural persons for purposes related to the trade, business or profession of those natural persons;
 - (ii) SMEs, as defined in Article 2 of the Annex to Recommendation 2003/361/EC;
 - (iii) any borrower, provided that the credit is guaranteed by a natural person or is secured by assets or property belonging to that natural person;
- (c) the need for, and feasibility of, developing implementing or regulatory technical standards or other appropriate means to introduce common reporting formats for communications to borrowers under Article 10(2) and on forbearance measures.

Where appropriate, the report referred to in the first paragraph shall be accompanied by a legislative proposal.

*Article 32***Transposition**

1. Member States shall adopt and publish, by 29 December 2023, the laws, regulations and administrative provisions necessary to comply with this Directive. They shall immediately communicate the text of those measures to the Commission.

2. They shall apply the measures referred to in paragraph 1 from 30 December 2023.

By way of derogation from the first subparagraph, entities already carrying out in accordance with national law credit servicing activities on 30 December 2023 shall be allowed to continue carrying out those credit servicing activities in their home Member State until 29 June 2024 or until the date on which they obtain an authorisation in accordance with this Directive, whichever is the earlier.

Member States that already have in place regimes that are equivalent to, or stricter than, those established in this Directive for credit servicing activities may allow entities already carrying out credit servicing activities under those regimes on 30 December 2023 to be automatically recognised as authorised credit servicers by the national provisions transposing this Directive.

3. When Member States adopt the measures referred to in paragraph 1, 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.

4. 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 33***Entry into force**

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

*Article 34***Addressees**

This Directive is addressed to the Member States.

Done at Strasbourg, 24 November 2021.

For the European Parliament
The President
D.M. SASSOLI

For the Council
The President
A. LOGAR

II

(Non-legislative acts)

REGULATIONS

COMMISSION DELEGATED REGULATION (EU) 2021/2168

of 21 September 2021

amending Delegated Regulation (EU) 2019/2035 supplementing Regulation (EU) 2016/429 of the European Parliament and of the Council, as regards rules for establishments keeping terrestrial animals and hatcheries, and the traceability of certain kept terrestrial animals and hatching eggs

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EU) 2016/429 of the European Parliament and of the Council of 9 March 2016 on transmissible animal diseases and amending and repealing certain acts in the area of animal health ('Animal Health Law') ⁽¹⁾, and in particular Articles 94(3), 97(2), 118(1) and (2) and 122(2) thereof,

Whereas:

- (1) Regulation (EU) 2016/429 lays down rules for the prevention and control of animal diseases that are transmissible to animals or humans. In particular, Part IV of that Regulation lays down rules for establishments keeping terrestrial animals and for hatcheries, as well as for the traceability of certain kept terrestrial animals and hatching eggs within the Union. Regulation (EU) 2016/429 also empowers the Commission to adopt rules to supplement certain non-essential elements of that Regulation by means of delegated acts.
- (2) Commission Delegated Regulation (EU) 2019/2035 ⁽²⁾ supplements Regulation (EU) 2016/429 as regards rules for establishments keeping terrestrial animals and hatcheries, and for the traceability of certain kept terrestrial animals and hatching eggs. In particular, Part II of that Delegated Regulation lays down rules on the registration and approval of establishments keeping terrestrial animals, including those establishments carrying out assembly operations, and those from which consignments of hatching eggs or poultry are moved to another Member State. In addition, Part III of that Delegated Regulation lays down rules for the traceability of kept terrestrial animals and hatching eggs, and more specifically it lays down rules for the traceability of kept bovine, ovine and caprine animals, and for the marking of hatching eggs.
- (3) The rules laid down in this Regulation are substantively linked and apply to operators transporting or keeping terrestrial animals or hatching eggs. Therefore, in the interest of coherency, simplicity and for their effective application, and to avoid a duplication of rules, they should be laid down in a single act rather than dispersed in a number of separate acts containing many cross-references. This approach is also consistent with the one of principle objectives of Regulation (EU) 2016/429, which was to streamline Union animal health rules and thus make them more transparent and easier to apply.

⁽¹⁾ OJ L 84, 31.3.2016, p. 1.

⁽²⁾ Commission Delegated Regulation (EU) 2019/2035 of 28 June 2019 supplementing Regulation (EU) 2016/429 of the European Parliament and of the Council as regards rules for establishments keeping terrestrial animals and hatcheries, and the traceability of certain kept terrestrial animals and hatching eggs (OJ L 314, 5.12.2019, p. 115).

- (4) Regulation (EU) 2016/429 provides that operators of hatcheries from which consignments of hatching eggs or poultry are moved to another Member State, and operators of establishments keeping poultry from which consignments of poultry intended for purposes other than slaughter or hatching eggs are moved to another Member State, are to apply to the competent authority for approval of their establishments. Article 94(3), point (a), of that Regulation empowers the Commission to provide for derogations from the requirement for operators to apply to the competent authority for approval for certain types of establishments that pose an insignificant risk.
- (5) Movement to another Member State of small quantities of poultry other than ratites and hatching eggs from those animals pose a minor risk for the spread of diseases. Furthermore, operators of establishments from which small quantities of such animals and hatching eggs are moved to another Member State cannot for practical reasons comply with all the requirements for approval laid down in Delegated Regulation (EU) 2019/2035. Article 4 of Delegated Regulation (EU) 2019/2035 should, therefore, be amended to provide for a derogation for operators of hatcheries and establishments keeping poultry from which less than 20 heads of poultry other than ratites and less than 20 hatching eggs of poultry other than ratites are moved to another Member State from the obligation to apply to the competent authority for approval.
- (6) Article 38(1) of Delegated Regulation (EU) 2019/2035 provides that operators keeping bovine animals are to ensure that those animals are identified by specified means of identification, while Article 38(2) thereof allows operators to replace those specified means of identification with alternative ones. Similarly, Article 45(1) and (2) of that Delegated Regulation lays down obligations on operators to identify their kept ovine and caprine animals by specified means of identification, while Article 45(4) thereof allows operators to replace those specified means of identification with alternative ones.
- (7) On the other hand, Article 269 of Regulation (EU) 2016/429 provides for the possibility for Member States to adopt in certain areas national measures that they can apply within their territories and which are additional to, or more stringent than those laid down in that Regulation. Traceability requirements for consignments of kept terrestrial animals and germinal products is one of those areas. Delegated Regulation (EU) 2019/2035 does not properly reflect that possibility. Articles 38(2), 45(4) and 48 of Delegated Regulation (EU) 2019/2035 should therefore be amended to clarify that the option provided for operators keeping bovine, ovine or caprine animals to identify those animals by alternative means of identification should be subject to authorisation by the Member State. This clarifies the role and responsibility of Member States that apply national measures in ensuring a proper implementation of additional or more stringent traceability requirements for kept bovine, ovine and caprine animals, as provided for in Article 269 of Regulation (EU) 2016/429.
- (8) Article 76 of Delegated Regulation (EU) 2019/2035 provides that operators keeping psittacidae are to ensure that the means of identification of psittacidae display the identification code of the animal. However, the definition of an identification code laid down in that Delegated Regulation exceeds what is necessary for the identification of psittacidae, and poses a significant administrative burden for Member States. Therefore, Delegated Regulation (EU) 2019/2035 should be amended to provide that the means of identification of psittacidae display instead an alphanumeric code, which enables their identification and provides a sufficient level of traceability for those animals when they are moved between Member States.
- (9) Article 80 of Delegated Regulation (EU) 2019/2035 provides that all hatching eggs are to be marked with the unique approval number of the establishment of origin. However, Regulation (EU) 2016/429 only requires establishments that send hatching eggs to another Member State to be approved. In addition, Commission Delegated Regulation (EU) 2020/688 ⁽³⁾ provides that when consignments of less than 20 hatching eggs of poultry other than ratites are moved to another Member State, those eggs are required to originate in registered establishments. Therefore, Delegated Regulation (EU) 2019/2035 should be amended to exclude operators of establishments keeping poultry and operators of hatcheries from which consignments of less than 20 hatching eggs of poultry other than ratites are moved to another Member State from the obligation to ensure that each hatching egg is marked with the unique approval number of the establishment of origin. This amendment is also consistent with the amendments to be made to Article 4 of Delegated Regulation (EU) 2019/2035 by this Regulation.

⁽³⁾ Commission Delegated Regulation (EU) 2020/688 of 17 December 2019 supplementing Regulation (EU) 2016/429 of the European Parliament and of the Council, as regards animal health requirements for movements within the Union of terrestrial animals and hatching eggs (OJ L 174, 3.6.2020, p. 140).

- (10) Article 5 of Delegated Regulation (EU) 2019/2035 lays down the requirements for the granting of approval of establishments for assembly operations of ungulates, and it provides that the competent authority is to ensure that such establishments comply with certain requirements set out in Part 1 of Annex I to that Regulation. Part 1, point 1(b) of Annex I to Delegated Regulation (EU) 2019/2035 provides that an establishment is only to be granted approval for assembly operations of ungulates if the establishment, at any given time, only accommodates the same category of ungulates of the same species and health status. However, existing assembly centres could have one or more epidemiologically separate animal accommodation areas. Those separate areas should be operated in a way which ensures that the animals kept in those areas are not in direct or indirect contact with each other. This makes it possible to keep ungulates from different species, categories or health status in an establishment as long as they are kept in different epidemiologically separate animal accommodation areas. Part 1 of Annex I to Delegated Regulation (EU) 2019/2035 should therefore be amended to provide for this possibility.
- (11) In addition, Articles 15 to 18 of Delegated Regulation (EU) 2020/688 provide for a possibility to include ovine and caprine animals in the same consignment as both species are subject to the same animal health requirements laid down in that Delegated Regulation. The possibility to assemble a consignment of both ovine and caprine animals together, should also be permitted under Delegated Regulation (EU) 2019/2035. Delegated Regulation (EU) 2019/2035 should therefore be amended to include a derogation from the main rule laid down in Part 1 of Annex I to that Regulation stating that only ungulates of the same species may be assembled together.

HAS ADOPTED THIS REGULATION:

Article 1

Delegated Regulation (EU) 2019/2035 is amended as follows:

1. Article 4 is replaced by the following:

'Article 4

Derogation from the requirement on operators to apply to the competent authority for approval of certain types of establishments

By way of derogation from Article 94(1)(a), (c) and (d) of Regulation (EU) 2016/429, operators of the following types of establishments shall not be required to apply to the competent authority for approval of their establishments in accordance with Article 96(1) of that Regulation:

- (a) establishments for assembly operations of equine animals where those animals are gathered for the purposes of competitions, races, shows, training, collective leisure or work activities or in the context of breeding activities;
- (b) hatcheries of captive birds;
- (c) hatcheries from which consignments of less than 20 hatching eggs of poultry or less than 20 heads of poultry are moved to another Member State;
- (d) establishments keeping poultry from which consignments of less than 20 heads of poultry intended for purposes other than slaughter or consignments of less than 20 hatching eggs of poultry are moved to another Member State.;

2. in Article 38(2), point (a) is replaced by the following:

'(a) one of the conventional ear tags referred to in paragraph 1 of this Article by an electronic identifier approved by the competent authority of the Member State where the bovine animals are kept, where such replacement is authorised by that Member State in accordance with Article 41(1);'

3. in Article 45(4), point (a) is replaced by the following:

'(a) one of the means of identification referred to in paragraph 2 of this Article, in accordance with the derogations provided for in Article 46, where such derogations are authorised by the Member State where the ovine and caprine animals are kept, in accordance with Article 48(5);'

4. Article 48 is amended as follows:

- (a) in paragraph 4, point (c) is deleted;
- (b) the following paragraph 5 is added:

‘5. Member States may authorise operators to replace one of the means of identification referred to in Article 45(2) in accordance with the derogations provided for in Article 45(4) for ovine and caprine animals kept in their territory.’;

5. in Article 76(1), points (a), (b) and (c) are replaced by the following:

- ‘(a) a leg-ring, as listed in Annex III, point (h), attached at least to one leg of the animal with a visible, legible and indelible display of an alphanumeric code;

or

- (b) an injectable transponder, as listed in Annex III, point (e), with a legible and indelible display of an alphanumeric code;

or

- (c) a tattoo, as listed in Annex III, point (g), applied to the animal with a visible and indelible display of an alphanumeric code.’;

6. Article 80 is replaced by the following:

‘Article 80

Obligations of operators as regards the traceability of hatching eggs

1. Operators of establishments keeping poultry and operators of hatcheries of poultry shall ensure that each hatching egg that is moved to another Member State is marked with the unique approval number of the establishment of origin of the hatching eggs.

2. Paragraph 1 shall not apply to:

- (a) operators of establishments keeping poultry from which consignments of less than 20 hatching eggs of poultry other than ratites are moved to another Member State;
- (b) operators of hatcheries from which consignments of less than 20 hatching eggs of poultry other than ratites are moved to another Member State.’;

7. in Annex I, in Part 1, point 1 is replaced by the following:

‘1. The requirements in relation to isolation and biosecurity measures of establishments for assembly operations of ungulates, as referred to in Article 5, shall be the following:

- (a) appropriate isolation facilities for the ungulates must be available;
- (b) at any given time, the establishment or each of the epidemiologically separate animal accommodation areas within the establishment must only accommodate the same category of ungulates of the same species and health status;
- (c) by way of derogation from the required separation of species of ungulates provided for in point (b), animals of the ovine and caprine species may be accommodated together at any given time in the establishment or in the same epidemiologically separate animal accommodation area within the establishment;
- (d) an appropriate system must be in place to ensure the collection of waste water;
- (e) the areas where the ungulates are kept and any passageways, and material and equipment that comes into contact with them must be cleaned and disinfected after the removal of each batch of ungulates, and where necessary before the introduction of any new batch of ungulates, in accordance with established operational procedures;
- (f) appropriate sanitary breaks must be taken after the cleaning and disinfecting operations and prior to the arrival of any new batch of ungulates in the facilities where ungulates are kept.’.

Article 2

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

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

Done at Brussels, 21 September 2021.

For the Commission
The President
Ursula VON DER LEYEN

COMMISSION IMPLEMENTING REGULATION (EU) 2021/2169**of 2 December 2021****opening a tariff quota for the year 2022 for the import into the Union of certain goods originating in Norway resulting from the processing of agricultural products covered by Regulation (EU) No 510/2014 of the European Parliament and of the Council**

THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EU) No 510/2014 of the European Parliament and of the Council of 16 April 2014 laying down the trade arrangements applicable to certain goods resulting from the processing of agricultural products and repealing Council Regulations (EC) No 1216/2009 and (EC) No 614/2009 ⁽¹⁾, and in particular Article 16(1), point (a), thereof,

Having regard to Council Decision 2004/859/EC of 25 October 2004 concerning the conclusion of an Agreement in the form of an Exchange of Letters between the European Community and the Kingdom of Norway on Protocol 2 to the bilateral Free Trade Agreement between the European Economic Community and the Kingdom of Norway ⁽²⁾, and in particular Article 3 thereof,

Whereas:

- (1) Protocol 2 to the Agreement between the European Economic Community and the Kingdom of Norway of 14 May 1973 ⁽³⁾ ('the bilateral Free Trade Agreement between the European Economic Community and the Kingdom of Norway') and Protocol 3 to the Agreement on the European Economic Area ('EEA Agreement') ⁽⁴⁾ as amended by the Decision of the EEA joint committee No 140/2001 of 23 November 2001 amending Protocols 2 and 3 to the EEA Agreement, concerning processed and other agricultural products ⁽⁵⁾, determine the trade arrangements between the Union and the Kingdom of Norway for certain agricultural and processed agricultural products.
- (2) Protocol 3 to the EEA Agreement provides for a zero rate of duty for waters containing added sugar or other sweetening matter or flavoured, classified under CN code 2202 10 00, and other non-alcoholic beverages not containing products of headings 0401 to 0404 or fat obtained from products of headings 0401 to 0404, classified under CN code 2202 90 10.
- (3) Since 1 January 2017, CN code 2202 90 has been replaced by CN codes 2202 91 00 and 2202 99. Therefore, this Regulation should cover products of CN codes 2202 10 00, ex 2202 91 00 and ex 2202 99.
- (4) The Agreement in the form of an Exchange of Letters between the European Community and the Kingdom of Norway concerning Protocol 2 to the bilateral Free Trade Agreement between the European Economic Community and the Kingdom of Norway ⁽⁶⁾ ('the Agreement in the form of an Exchange of Letters') temporarily suspends the duty-free regime applied under Protocol 2 to goods classified under CN codes 2202 10 00 (waters, including mineral waters and aerated waters, containing added sugar or other sweetening matter or flavoured) and ex 2202 90 10 (other non-alcoholic beverages containing sugar) replaced by CN codes 2202 10 00, ex 2202 91 00 and ex 2202 99. In accordance with the Agreement in the form of an Exchange of Letters, duty-free imports of those goods, originating in Norway, are to be allowed only within the limits of a duty-free quota. A duty is to be paid for imports that exceed that duty-free quota.
- (5) It is further set out in the Agreement in the form of an Exchange of Letters that if the tariff quota has not been exhausted by 31 October of a given year, the products in question will be granted unlimited duty free access to the Union from 1 January to 31 December of the following year.

⁽¹⁾ OJ L 150, 20.5.2014, p. 1.

⁽²⁾ OJ L 370, 17.12.2004, p. 70.

⁽³⁾ OJ L 171, 27.6.1973, p. 2.

⁽⁴⁾ OJ L 1, 3.1.1994, p. 3.

⁽⁵⁾ OJ L 22, 24.1.2002, p. 34.

⁽⁶⁾ OJ L 370, 17.12.2004, p. 72.

- (6) The annual quota for 2020 for the products in question opened by Commission Implementing Regulation (EU) 2019/2154 ⁽⁷⁾ had not been exhausted by 31 October 2020. Commission Implementing Regulation (EU) 2020/2122 ⁽⁸⁾ consequently provided that the duty regime laid down in the Agreement in the form of an Exchange of Letter was not to apply to imports into the Union from 1 January to 31 December 2021, thus granting the goods concerned unlimited duty-free access to the Union.
- (7) The Agreement in the Form of an Exchange of Letters requires that the duty-free quota for those waters and beverages be opened again for 2022. The last annual quota for those products was opened for 2020 by Implementing Regulation (EU) 2019/2154. As no annual quota was opened for 2021, it is appropriate to set the quota volume for 2022 at the same level as for 2020.
- (8) The measures provided for in this Regulation are in accordance with the opinion of the Committee on horizontal questions concerning trade in processed agricultural products not listed in Annex I,

HAS ADOPTED THIS REGULATION:

Article 1

1. From 1 January to 31 December 2022, the duty-free tariff quota set out in the Annex is opened for goods originating in Norway which are listed in that Annex, under the conditions specified therein.
2. The rules of origin laid down in Protocol 3 to the bilateral Free Trade Agreement between the European Economic Community and the Kingdom of Norway shall apply to the goods listed in the Annex to this Regulation.
3. For quantities imported above the quota volume set out in the Annex, a preferential duty of 0,047 EUR/litre shall apply.

Article 2

The duty-free tariff quota referred to in Article 1(1) shall be managed by the Commission in accordance with Articles 49 to 54 of Commission Implementing Regulation (EU) 2015/2447 ⁽⁹⁾.

Article 3

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

It shall apply from 1 January 2022.

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

Done at Brussels, 2 December 2021.

For the Commission
The President
Ursula VON DER LEYEN

⁽⁷⁾ Commission Implementing Regulation (EU) 2019/2154 of 16 December 2019 opening a tariff quota for the year 2020 for the import into the Union of certain goods originating in Norway resulting from the processing of agricultural products covered by Regulation (EU) No 510/2014 of the European Parliament and of the Council (OJ L 327, 17.12.2019, p. 66).

⁽⁸⁾ Commission Implementing Regulation (EU) 2020/2122 of 16 December 2020 on the granting of unlimited duty-free access to the Union for 2021 to certain goods originating in Norway resulting from the processing of agricultural products covered by Regulation (EU) No 510/2014 of the European Parliament and of the Council (OJ L 426, 17.12.2020, p. 32).

⁽⁹⁾ Commission Implementing Regulation (EU) 2015/2447 of 24 November 2015 laying down detailed rules for implementing certain provisions of Regulation (EU) No 952/2013 of the European Parliament and of the Council laying down the Union Customs Code (OJ L 343, 29.12.2015, p. 558).

Goods originating in Norway which shall be granted unlimited duty free-access to the Union from 1 January to 31 December 2022

Order No	CN code	TARIC code	Description of goods		Quota Volume
09.0709	2202 10 00		— Waters, including mineral waters and aerated waters, containing added sugar or other sweetening matter or flavoured		23,029 million litres
	ex 2202 91 00	10	— Non-alcoholic beer containing sugar		
	ex 2202 99 11	11 19	— Soya-based beverages with a protein content of 2,8 % or more by weight containing sugar (sucrose or invert sugar)	Not containing products of headings 0401 to 0404 or fat obtained from products of headings 0401 to 0404	
	ex 2202 99 15	11 19	— Soya-based beverages with a protein content of less than 2,8 % by weight; beverages based on nuts of Chapter 8 of the Common Customs Tariff, cereals of Chapter 10 of the Common Customs Tariff or seeds of Chapter 12 of the Common Customs Tariff containing sugar (sucrose or invert sugar)		
	ex 2202 99 19	11 19	— Other non-alcoholic beverages containing sugar (sucrose or invert sugar)		

COMMISSION IMPLEMENTING REGULATION (EU) 2021/2170**of 7 December 2021****imposing a definitive anti-dumping duty on imports of aluminium converter foil originating in the People's Republic of China**

THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EU) 2016/1036 of the European Parliament and of the Council of 8 June 2016 on protection against dumped imports from countries not members of the European Union ⁽¹⁾ ('the basic Regulation'), and in particular Article 9(4) thereof,

Whereas:

1. PROCEDURE**1.1. Initiation**

- (1) On 22 October 2020, the European Commission ('the Commission') initiated an anti-dumping investigation with regard to imports of aluminium converter foil originating in People's Republic of China ('the PRC', 'China' or the 'country concerned') on the basis of Article 5 of the basic Regulation ⁽²⁾.

1.2. Provisional measures

- (2) In accordance with Article 19a of the basic Regulation, on 21 May 2021, the Commission provided parties with a summary of the proposed provisional duties and details about the calculation of the dumping margins and the margins adequate to remove the injury to the Union industry ('injury margin'). Interested parties were invited to comment on the accuracy of the calculations within three working days. Two sampled exporting producers as well as one user provided comments ⁽³⁾.
- (3) On 18 June 2021, the Commission imposed a provisional anti-dumping duty by Commission Implementing Regulation (EU) 2021/983 ⁽⁴⁾ ('the provisional Regulation').

1.3. Subsequent procedure

- (4) Following the disclosure of the essential facts and considerations on the basis of which a provisional anti-dumping duty was imposed ('provisional disclosure'), users, unrelated importers, the sampled exporting producers and the Government of the People's Republic of China ('GOC') made written submissions making their views known on the provisional findings. Jiangsu Zhongji, an exporting producer, requested and received further details on the calculation of its injury margin.
- (5) After the expiry of the procedural deadlines, several further comments as well as replies to the comments made by the other parties were submitted. However, given that these comments were not submitted within the deadlines the Commission could not take them into account at the stage of the General Disclosure Document. In any event, the Commission considered all the arguments raised by interested parties during the investigation.
- (6) The parties who so requested were granted an opportunity to be heard. The Commission held hearings with three sampled exporting producers, Xiamen Xiashun, Donghai Foil and Jiangsu Zhongji as well as with three users Effegidi, Walki Oy and Gascogne Flexible, as well as a consortium representing five importers, namely Cartonal Italia, QualityFoil SARL, Cutting Packaging, Transparent Paper LTD and Now Plastics.

⁽¹⁾ OJ L 176, 30.6.2016, p. 21.

⁽²⁾ OJ C 352 I, 22.10.2020, p. 1.

⁽³⁾ See recital 394 of the provisional Regulation.

⁽⁴⁾ Commission Implementing Regulation (EU) 2021/983 of 17 June 2021 imposing a provisional duty on imports of aluminium converter foil originating in the People's Republic of China (OJ L 216, 18.6.2021, p. 142).

- (7) The Commission continued to seek and verify all the information it deemed necessary for its final findings and, given the travelling restrictions due to the Covid-19 pandemic, performed Remote Cross Checks ('RCC') regarding the information submitted by Walki Oy and QualityFoil SARL. The RCC scheduled with Manreal could not be finalized due to Manreal's insufficient cooperation. Manreal requested the intervention of the Hearing Officer, who confirmed that the termination of the RCC did not violate Manreal's rights of defence. The questionnaire reply of Manreal was thus not considered for the definitive findings. However, this did not impact the conclusions on Union interest. Despite the termination of the RCC, this company was still considered as an interested party and its comments in the investigation were taken into account.

1.4. Sampling

- (8) Following the provisional Regulation, Manreal argued that by choosing a sample of exporting producers, the Commission may have disregarded a big variety of companies focused on different sectors, as the companies sampled only represent 27 % of the Chinese aluminium converter foil ('ACF') industry.
- (9) However, Manreal did not substantiate in which aspect the sample selected by the Commission was not representative of the ACF Chinese exporting producers in the current investigation. Therefore, this claim was rejected.

1.5. Individual examination

- (10) In the absence of comments concerning this section, recital 33 of the provisional Regulation was confirmed.

1.6. Investigation period and period considered

- (11) In the absence of comments concerning the investigation period ('IP') and the period considered, recital 38 of the provisional Regulation was confirmed.

1.7. Change of geographical scope

- (12) Since 1 January 2021, the United Kingdom of Great Britain and Northern Ireland ('UK') is no longer part of the European Union. Therefore, this regulation is based on data for the European Union without the UK ('EU27').

2. PRODUCT CONCERNED AND LIKE PRODUCT

2.1. Claims regarding product scope

- (13) Following the publication of the provisional Regulation, several parties reiterated their product exclusion requests concerning the following products: ACF of gauge below 6 microns ('ACF<6') and ACF for electric car batteries ('car battery ACF'). They provided additional evidence of Union producers refusing purchase offers. However, the additional evidence provided did not change the result of the analysis of the provisional Regulation, as the Commission had collected evidence for the capability, sales and test roll production of ACF<6. One user has confirmed in its comments to the provisional Regulation to have received, post-IP, a test coil of ACF<6 from a Union producer. Further, some evidence referred to refusals of purchase offers after the IP. As discussed below in recitals 165 to 171 the exceptional situation of the COVID-19 pandemic and the following strong economic recovery, has caused an international transport shortage and supply shortages. It is however not evident that this situation will affect the market long-term. The Commission therefore rejected the requests for exclusion of ACF for ACF<6 and for ACF for electric car batteries from the product scope of the product under investigation.
- (14) Further, one user (Gascogne) argued that there would be a contradiction in the provisional findings of the Commission regarding sales of ACF<6 as the Commission found that none of the Union producers were currently actively marketing ACF<6, while, at the same time, the Commission 'could confirm sales of ACF below 6 micron of various Union producers in commercial production quantities, even if in a limited scale, over a period of ten years prior to the IP'. Gascogne further requested access to the sales data to better understand the Commission's findings in the provisional Regulation.

- (15) As ACF is ordered to the specifications of each customer, it is not unusual that a new customer for ACF<6 (or other ACF gauges) requests a test coil in order to run its own tests. In this context the Commission has found in recital 350 of the provisional Regulation that gauges below 6 microns represented a developing market segment with a relatively low consumption during the IP. It is therefore not contradictory that the Union producers have not actively marketed their products in a small market segment such as ACF<6, even if they had some limited sales in the past. As the sales data on ACF<6 is confidential business data, the Commission is not in the position to provide the requested access.
- (16) The consortium of importers claimed that there is no evidence in the provisional Regulation that the Union producers can manufacture ACF<6 in the requested quantities. However, as described in recital 50 of the provisional Regulation, the Commission has collected ample evidence that the Union producers are capable to produce ACF<6 and even specified that this includes test roll production to the customer specification. The Commission cannot disclose the evidence as it contains confidential business information. Further, the consortium has not specified what it regards to be the requested quantities in this market segment. The Commission has verified that the substantial spare capacity of the Union industry can satisfy the demand of ACF<6. As demonstrated in recital 273 of the provisional Regulation, there is not only enough capacity to address the current consumption, but also the possibility to increase the overall production. As stated in recital 51 of the provisional Regulation, the Commission has further confirmed the capacity of various producers to produce ACF<6 in the last rolling step, necessary to bring ACF to a gauge below 6 micron. Thereby the Commission has confirmed spare capacity of the Union industry specifically for the ACF<6 market segment, when demand increases in the future.
- (17) One exporting producer, Xiamen Xiashun, claimed that in the provisional Regulation the Commission did not provide data or analysis supporting its statement that the Union foil producers are preparing to meet the demand of the emerging market of battery foil.
- (18) The data showing the preparation of Union producers to meet the demand of battery foil is highly confidential and not susceptible of being summarised. These projects are not yet public and thus highly sensitive. The non-provision of the requested data or analysis is the result of a careful balancing exercise. While balancing the interest of other parties to have access to this information, the Commission concluded that even a summary of the data would reveal business secrets that could damage the business of the respective Union producers. Therefore, the requested data cannot be disclosed.
- (19) Xiamen Xiashun further claimed that the Commission did not take into account the data for future battery foil demand in the Union, which they had provided in the hearing on 23 February 2021. Xiamen Xiashun deduced from the data provided, that the Union producers do not have the capacity to meet the demand for battery foil, while meeting the demand of other ACF users.
- (20) The data Xiamen Xiashun provided and referred to is its own estimate of maximum future battery foil demand based on a publicly available overview of planned future battery projects. The figures of this overview of planned projects, however, take into account multiple major battery projects, whose realisation is indicated to take place at an undetermined moment in the future. Also, the project capacities Xiamen Xiashun took as basis for its calculation take the potential maximum capacity of a project indicating that a capacity up to a certain value could be realised.
- (21) For the next three years Xiamen Xiashun gave a substantially lower projection. Contrary to the claims of Xiamen Xiashun, the Commission has demonstrated in Table 6 at recital 273 of the provisional Regulation the substantial spare capacity of the Union industry. This capacity can meet the demand on the emerging battery foil market and clearly exceeds the demand estimated by Xiamen Xiashun for the next 3 years. It is not necessary that the current production capacity of the Union producers cover all potential future demand as they can expand their production capacity in line with the demand. The Commission therefore rejected the claim.
- (22) Further, Xiamen Xiashun claimed that in recital 59 of the provisional Regulation that the Commission dismissed the differences in technical characteristics based on the fact that there were no major exports of ACF for the use as battery foil and the battery production in the EU is in its infancy.

- (23) The claim was rejected. The Commission took the technical characteristics of battery foil into consideration in recitals 56 and 57 of the provisional Regulation. Recital 59 of the provisional Regulation merely addressed Xiamen Xiashun's claim to exclude ACF for the use as battery foil based on the low exports volumes from the PRC.
- (24) Following final disclosure, Gascogne reiterated its claim for access to the information that the Commission used in its assessment in recital 50 of the provisional Regulation to confirm sales of ACF<6 of various Union producers in commercial production quantities, even if on a limited scale, over a period of ten years prior to the IP. Gascogne claimed that the Commission should at least provide a volume range to explain what commercial production quantities exist.
- (25) Only one user actually purchased a quantity for commercial production, representing a very small part of its ACF consumption. The Commission considered every delivery not solely made for testing purposes to be commercial production.
- (26) Since the ACF<6 market is clearly a newly developing market with a low demand during the IP, the past sales were only one element of the Commission's assessment. The Commission also assessed the proven capability and capacity of the Union industry to produce the product by recent test roll production. Therefore the interest of the users to access this confidential data, even as ranges, did not outweigh the interest to protect confidential information. The Commission therefore rejected the reiterated claim to disclose details about the confidential data of the Union producer regarding the past sales of ACF<6.
- (27) Gascogne further argued that it disagreed with the Commission's view expressed in recital 13 of the General Definitive Disclosure that refusals of Union producers to accept orders for ACF<6 were due to logistics constraints and supply shortages caused by the exceptional situation of the COVID-19 pandemic and the following strong economic recovery. Gascogne reiterated its claim that the refusals of purchase offers of ACF<6 were beyond any doubt due to the Union producers' inability or unwillingness to produce this type of thickness.
- (28) Gascogne only quoted the last part of recital 13 of the General Definitive Disclosure. In the beginning of recital 13 the Commission not only referred to the documented delivery of a ACF<6 test coil from a Union producer, but also to the findings of the provisional Regulation, in which the Commission had demonstrated the ability and capacity of the Union producers to produce ACF<6, and also referred to sales over the last decade. In the provisional Regulation the Commission had further clarified that ACF<6 is a developing market with only limited demand during the IP, which explained the absence of sales by Union producers during the IP.
- (29) Following the definitive disclosure, Walki claimed the Commission did not provide the additional data it requested in its comments on the provisional Regulation. Following the introduction of a more detailed PCN, Walki specifically requested a) the percentage of the complainants' total ACF sales into the Union market of PCN thickness code 1 (thickness superior of 5.0 and inferior or equal to 6.0 microns), b) the actual total tonnage of PCN thickness code 1 produced by all complainants, c) the actual tonnage of PCN thickness code 1 ACF sold openly on the EU market by the complainants, and d) how many of the five complainants contribute to the tonnages identified in b) and c).
- (30) As indicated in recitals 48 to 50 of the provisional Regulation, the Commission has not only collected data for PCN code 1, but for the ACF<6 data exactly matching the requested product exclusion. The Commission collected information on the demand of all cooperating users during the IP, but also the sales and production of ACF<6 by all cooperating Union producers. Recital 50 of the provisional Regulation makes clear that during the IP, apart from direct negotiations, none of the Union producers is actively marketing ACF<6, and only refers to a test roll production during the IP. Furthermore, the Commission referred to commercial production quantities on a limited scale over a period of ten years prior to the IP. From this information, it is clear that during the IP, no ACF<6 sales by the sampled Union producers took place. This answers all the questions posed by Walki with regard to its exclusion request. Walki failed to substantiate how receiving the requested data for thickness PCN code 1, which includes also ACF equal to 6.0 micron would be helpful and necessary to its exclusion request, given the targeted data matching the exclusion request which the Commission has provided.

- (31) Walki explained during its hearing after final disclosure, that post-IP in October 2021, there was still no active open market sales or marketing of European producers for ACF<6. Walki submitted evidence that post-IP it did not receive a positive response to its requests for quotation on ACF<6 and explained that only one Union producer would be in the position to accept orders of ACF<6 in commercial quantity.
- (32) The Commission referred to its explanations in the Definitive General Disclosure Document as explained in the above recital 28.
- (33) Following the definitive disclosure Xiamen Xiashun argued that the Commission committed manifest errors of assessment and acted in breach of the principle of sound administration, as it did not examine with all due care and impartiality the evidence provided and did not take due account of all relevant evidence when making its determinations by not providing a meaningful summary on the plans of Union producers to increase their capacity to meet the demand for battery foil and dismissing the evidence provided by Xiamen Xiashun in respect of the expected demand for battery foil.
- (34) Xiamen Xiashun claimed that the Commission's statements that the '*substantial spare capacity of the Union industry can meet the demand on the emerging battery foil market*' contradicted its statement that '*data showing the preparation of Union producers to meet the demand of battery foil is highly confidential and not susceptible of being summarised since these projects are not yet public and thus highly sensitive*'.
- (35) Xiamen Xiashun also claimed that the Commission dismissed its comprehensive overview on the expected demand on the basis that the realisation of several battery projects was indicated to take place at an undetermined moment in the future. Xiamen Xiashun claimed that this is inherent to data relating to planned projects.
- (36) The Commission's statement that the Union industry can meet the demand on the emerging battery foil market relates to the overall spare capacity in the rolling mills. The data showing the preparation of Union producers to meet the demand of battery foil relates to the efforts of the Union industry to be able to produce according to the specific characteristics requested by battery producers. By providing a summary of these efforts, the Commission would reveal business strategies of Union producers. There is no thus contradiction between the aforementioned statements. The Commission therefore rejected this claim.
- (37) In assessing the overview on the expected future demand that Xiamen Xiashun provided from a publically available source, the Commission differentiated between projects in a planning phase with a specific timeframe and intended projects for which there is no indication of the year in which they will become operational. This is not a dismissal of evidence provided by Xiamen Xiashun, but a thorough analysis of the actual demand to be expected. Indeed, the assessment of whether the Union industry can fulfil the expected future demand was appropriately based on battery projects, whose realisation is scheduled to take place at a specific year in the future. The claim was thus rejected.

2.2. Conclusion

- (38) Following the analysis of the comments received on the product scope, the Commission confirms the product scope as described in the provisional Regulation.

3. DUMPING

- (39) Following provisional disclosure, the GOC and two sampled exporting producers commented on the provisional dumping findings.

3.1. Normal value

3.1.1. Significant distortions

- (40) The GOC and Xiamen Xiashun commented on the issue of significant distortions in China.

- (41) First, the GOC submitted that the content of the China report and the way it is used had serious factual and legal flaws. According to the GOC, the content was misrepresentative, one-sided, and out of touch with reality. The China report treated the legitimate competitive advantages of Chinese companies and the normal institutional differences between China and Europe as the basis for the determination of significant market distortion. Furthermore, the GOC claimed that the fact that the Commission accepted the market distortion allegations claimed by the Union industry based on the China report, provided unfair advantages to the Union industry, which equalled to making judgments before trial. Additionally, the GOC claimed that replacing investigations with reports did not conform to the fundamental legal spirit of fairness and justice.
- (42) In reply to the claim on factual flaws in the country report, the Commission noted that the country report is a comprehensive document based on extensive objective evidence, including legislation, regulations and other official policy documents published by the GOC, reports by international organisations, academic studies and articles by scholars, and other reliable independent sources. It was made publicly available in December 2017 so that any interested party would have ample opportunity to rebut, supplement or comment on it and the evidence on which it is based. The GOC has not provided any such rebuttal and has only submitted unsubstantiated generic comments.
- (43) Regarding the argument of the GOC suggesting that issuing a country report replaced the actual investigation, the Commission recalled that according to Article 2(6a)(e) of the basic Regulation, if the Commission deems the evidence submitted by the complainant on the significant distortions sufficient, it can initiate the investigation on this basis. However, the determination on the actual existence and impact of significant distortions and the consequent use of the methodology prescribed by Article 2(6a)(a) of the basic Regulation occurs at the time of the provisional and/or definitive disclosure as result of an investigation. The existence and potential impact of the significant distortions are not confirmed at initiation stage as claimed by the GOC, but only after an in-depth investigation, hence this argument is rejected.
- (44) Second, the GOC commented that the Commission only issued reports for a few selected countries, which was enough to raise concerns about most-favoured nation treatment. In addition, the GOC claimed that the Commission never published a clear and predictable standard for choosing the countries or sectors to publish reports on.
- (45) The Commission recalled that, as provided for by Article 2(6a)(c) of the basic Regulation, a country report shall be produced where the Commission has well-founded indications of the possible existence of significant distortions in a certain country or sector in that country. Upon approval of the new provisions of Article 2(6a) of the basic Regulation in December 2017, the Commission had such indications of significant distortions for China. The Commission also published a report on distortions in Russia and does not exclude that other reports will follow. Since the majority of trade defence investigation ("TDI") cases concerned China and since there were serious indications of distortions in that country, it was the first country for which the Commission drafted a report. Russia is the country with the second most TDI cases, hence there were objective reasons for the Commission to prepare reports on those two countries in this order.
- (46) Furthermore, the existence of a country report is not a mandatory precondition to initiate an investigation under Article 2(6a) of the basic Regulation. In fact, according to Article 2(6a)(e) of the basic Regulation, sufficient evidence proving significant distortions in any country brought by the complainants fulfilling the criteria of Article 2(6a)(b) is enough to initiate the investigation on that basis. Therefore, the rules concerning significant distortions apply to all countries without any distinction, irrespective of the existence of the country report. Therefore, the rules concerning country distortions cannot violate the most-favoured nation treatment. Therefore, the Commission rejected these claims.
- (47) Third, the GOC added that in terms of national treatment ("NT"), the concept of market distortions or corresponding standards did not exist in the EU's legislation regarding internal market or competition apart from the basic Regulation. Therefore, the GOC argued that the Commission had no authority in terms of international law nor any legislation and practices under its exclusive competence in the internal market or competition regulation to investigate the distortions in China.

- (48) The Commission based its methodology in this investigation on the provision of Article 2(6a) of the basic Regulation. It is legally irrelevant that other European laws do not use the concept of significant distortions. The area of anti-dumping is governed by the rules of the WTO Anti-Dumping Agreement ('ADA') under which dumping is to be assessed with regards to imported products, and wherein there is no requirement to assess domestic market conditions beyond the prescribed injury analysis. Therefore, this claim was rejected.
- (49) Furthermore, the GOC commented that the Commission applied discriminative rules and standards against Chinese companies when they were in similar situations compared to EU companies, including but not limited to unfair standards of evidence and burden of proof. At the same time, the Commission did not evaluate whether the EU or the Member States were subject to market distortions. This set of practices seriously affected the reliability and legitimacy of the Commission's analysis and conclusions on the core issues in anti-dumping investigations regarding dumping and injury calculation. Thus, it is enough to raise concerns about a potential breach of NT obligations under WTO rules.
- (50) The GOC did not provide any explanation or evidence concerning the alleged discriminative rules against Chinese companies. The Commission therefore considered the claims unsubstantiated. With regard to the alleged distortions in the EU, the Commission noted that in addition to this GOC claim being generic and unsubstantiated, distortions present in the EU and affecting EU companies are not the object of the analysis under Article 2(6a) of the basic Regulation which concerns the exporting country. Therefore, this concept is legally irrelevant in terms of the Union industry in the specific context of anti-dumping investigations. Therefore, the claim was rejected.
- (51) Fourth, the GOC submitted that provisions of Article 2(6a) of the basic Regulation is inconsistent with Article 2.2 of the ADA, which provides an exhaustive list of situations where the normal value can be constructed and significant distortions are not included therein. The GOC further claimed that the use of data from an appropriate representative country or international prices to construct normal value according to Article 2(6a) of the basic Regulation was also inconsistent with GATT Article 6.1(b) and Article 2.2 of the ADA, especially Article 2.2.1.1. The GOC further argued that the WTO rules required using the cost of production in the country of origin plus a reasonable amount for administrative, selling and general costs and for profits when constructing normal value. However, Article 2(6a) of the basic Regulation broadened the scope of data source to include the costs of production and sale in an appropriate representative country, or international prices, costs or benchmarks. This was beyond the scope of WTO rules according to the GOC. Therefore, irrespective of whether Article 2(5) of the basic Regulation was in line with the WTO rules, the Commission should not construct normal value when there are so-called 'market distortions' under Article 2(6a) of the basic Regulation.
- (52) The Commission considers that the provision of Article 2(6a) are consistent with the European Union's WTO obligations. It is the Commission's view that, in line with the Appellate Body's clarifications in DS473 EU-Biodiesel (Argentina), the provisions of the basic Regulation that apply generally with respect to all WTO Members, in particular Article 2(5), second sub-paragraph, permit the use of data from a third country, duly adjusted when such adjustment is necessary and substantiated. Therefore, the Commission rejected this claim.
- (53) The GOC submitted that in this case, the Commission directly disregarded the records of the Chinese exporters, which was inconsistent with Article 2.2.1.1 of the ADA. The GOC argued that the Appellate Body in DS473 EU-Biodiesel (Argentina) and the panel in DS494 EU-Cost Adjustment Methodologies II (Russia) asserted that according to Article 2.2.1.1 of the ADA, as long as the records kept by the exporter or producer under investigation corresponded – within acceptable limits – in an accurate and reliable manner, to all the actual costs incurred by the particular producer or exporter for the product under investigation, the investigation authority should use such records to determine the production cost of the investigated producers.
- (54) The Commission recalled that the disputes DS473 and DS494 did not concern the application of Article 2(6a) of the basic Regulation, which is the relevant legal basis for the determination of normal value in this investigation. These disputes also concerned different factual situations than the factual situation concerning the existence of significant distortions. Therefore, this claim was rejected.

- (55) Furthermore, the GOC submitted that the investigation conducted by the Commission based on Article 2(6a) of the basic Regulation in this case had double standards. According to the GOC, the Commission refused to accept the cost data of Chinese exporters on grounds that there were significant market distortions in the Chinese market, but it accepted the representative country's data and used it to replace the Chinese producers' data without any evaluation of whether there may be market distortions affecting these replacing data. This, according to the GOC, is a proof of 'double standards'. The GOC submitted that this approach failed to guarantee the reliability of the relevant costs in the selected representative country. Moreover, it was impossible to truly reflect the cost of the producers in the country of origin.
- (56) Finally, the GOC added that there were also development initiatives within the EU and Member States that are similar to China's five-year plans, such as the New Industrial Strategy and German Industry 4.0 etc. According to official sources, in its internal market 2017-2020, the EU aluminium industry benefited from over 200 various state aid measures, provided by the EU Member States and authorised by the Commission.
- (57) The Commission recalled that during the investigation the Commission considered whether there were elements on file pointing to the existence of any distortions present in the representative countries, also namely with regard to the main raw materials used for the production of the product concerned, for example whether they are subject to export restrictions. Furthermore, during the investigation there was ample opportunity for all parties to comment on the appropriateness of the potential representative countries considered by the Commission. In particular, the Commission publishes two notes to the file on the appropriateness of the possible representative countries and a preliminary choice of an appropriate country for the investigation. These notes are made available to all parties for their comments. Also in this case, the GOC and all other parties had the possibility to put forward claims and evidence that the possible representative countries considered were affected by significant distortions and were thus not suitable for the investigation.
- (58) The Commission noted that according to Article 2(6a)(b) of the basic Regulation, the potential impact of one or more of the distortive elements listed in that provision is analysed with regard to prices and costs in the exporting country. The cost structure and price formation mechanisms in other markets, such as the financial support alleged to be granted in the EU, do not bear any relevance whatsoever in the context of this proceeding (even if they would be present, *quod non*⁽³⁾). Therefore, this claim is unfounded and was rejected.
- (59) Xiamen Xiashun submitted a number of comments with regard to the existence significant distortions.
- (60) First, Xiamen Xiashun noted that in recital 97 of the provisional Regulation reference is made to an internet article according to which Xiamen Xiashun actively promotes party building and labour union work. Xiamen Xiashun commented that this article should be interpreted in the way as meaning solely that Xiamen Xiashun is facilitating the possibility for its workers in labour unions whether party members or not to conduct their activities within the company. However, Xiamen Xiashun underlined that the wording 'decision-making' does not mean that the party members or labour union have any say on the management and governance of the company, or the pricing setting of raw material purchases or product sales. As a result, no conclusion of government control or market distortion should be made based on that wording.
- (61) Additionally, Xiamen Xiashun opposed the findings made by the Commission in recital 97 of the provisional Regulation, explaining that the fact that there are party members in the company, does not mean that they are controlling the company. Xiamen Xiashun observed that it is legally obliged to allow the party members to organise party building activities, but it does not mean the party members have any influence over the company. It added that every person is allowed to belong to a religion or political party of its choice and it has no bearing on the decision making in the company. Furthermore, it underlined that the fact that there are party building activities organised in the company, does not mean that there are Chinese Communist Party ('CCP') members among the management of the company. Finally, Xiamen Xiashun explained that Commission's translation of the 'party building' is wrong and that the CCP's members' activities within the company are mainly those related to the studying of government policies, providing their opinion and advice to their party organization, or sometimes even some entertainment activities. It added that there was nothing in the record indicating that the CCP is controlling the respondent companies. Xiamen Xiashun repeated those comments following definitive disclosure.

⁽³⁾ See e.g. judgment of 28 February 2018 in Case C-301/16 P, *Commission v Xinyi PV Products (Anhui)*, ECLI:EU:C:2018:132, para. 56.

- (62) The Commission observed that, first, the activities of the party committee active within Xiamen Xiashun are clearly described as 'decision making' in the article quoted in recital 97 of the provisional Regulation. The article does not analyse nor interpret in detail what this 'decision making' entails. However, the Commission recalls that according to Article 2(6a) first and second indent, two elements relevant for assessing the existence of significant distortions in a country are: 'the market in question being served to a significant extent by enterprises which operate under the ownership, control or policy supervision or guidance of the authorities of the exporting country' and 'state presence in firms allowing the State to interfere with respect to prices or costs'. The involvement of the party committee into 'decision making' in Xiamen Xiashun falls under both criteria. The requirement that the State presence in the company interfere with the prices and costs does not mean that the State sets directly the prices of the goods sold, but rather that due to the presence and involvement of the party members in the company, the company can expect more favourable treatment and support from the authorities, which indirectly may impact its costs and prices. Furthermore, the presence of CCP members in the company and the fact that the company facilitates party building activities and involvement thereof into 'decision making' is a clear indicator that the company is not independent from the State, and is liable to be acting in accordance with CCP policy rather than market forces. This argument is therefore rejected.
- (63) Whereas, as a matter of principle, indeed every employee has the right to belong to the religion or political party of its choice, factually in China the situation is different, as China is a one party State and the CCP is equal with the State and its government ⁽⁶⁾. Therefore, the presence of CCP members in a company, who organise regular 'party building' activities and have 'decision making' rights, as discussed in recitals 50 and 52 above, indicates a State presence in the company. With regard to the activities of the party committee, the Commission first notes that the 'party building' activities are used by the Commission in the sense of 'activities to strengthen the party spirit in the company', or 'development of party-related activities to ensure party overall leadership' in accordance with the official guidelines ⁽⁷⁾. The Commission recalls that as already explained in recital 52 above, the party committees present in the company do have at least an indirect, albeit at least potentially distortive effect, due to the close interconnection between the State and the CCP in China.
- (64) Second, Xiamen Xiashun disputed the Commission's conclusion in recital 166 of the provisional Regulation that Xiamen Xiashun is subject to the country wide distortions concerning labour. Xiamen Xiashun argued that its wages are significantly higher than those of its competitors. Furthermore, Xiamen Xiashun observed that the burden of proof placed on exporting producers to rebut the alleged de facto presumption of the existence of 'significant distortions' has become so heavy that it is impossible for any individual company to meet. Xiamen Xiashun observed that in practice, this means that: i) it is entirely unclear as to how, and by means of which evidence, an individual company could rebut the presumption that its cost items, such as labour costs, are distorted; and ii) even if specific factual evidence is provided that comparatively shows significant differences in costs between exporting producers, this will not lead the Commission to call into question its prima facie finding as to the existence of 'significant distortions'.

⁽⁶⁾ According to an article on the website of the Central Commission for Discipline and Inspection: 'In the Chinese historical tradition, "government" has always been a broad concept bearing unlimited responsibilities. Under the leadership of the Party, the Party and the government only share the work, and there is no separation between the Party and the government. Regardless of whether the National People's Congress, the Chinese People's Political Consultative Conference, or the "one government and two houses", they all must implement the decisions and arrangements of the Party's Central Committee, be responsible to the people and be subject to their supervision. All organs exercising state power under the single leadership of the Party belong to the category of general government.' available at: https://www.ccdi.gov.cn/special/zmsjd/zm19da_zm19da/201802/t20180201_163113.html (last viewed on 16 June 2021).

⁽⁷⁾ See for example the General Office of CCP Central Committee's Guidelines on stepping up the United Front work in the private sector for the new era, from 15 September 2020. Section II.4: 'We must raise the Party's overall capacity to lead private-sector United Front work and effectively step up the work in this area', Section III.6: 'We must further step up Party building in private enterprises and enable the Party cells to play their role effectively as a fortress and enable Party members to play their parts as vanguards and pioneers.', Section VII.26: 'Improving the leadership institutions and mechanisms. Party committees at all levels must rely on the United Front work leading groups to set up and improve the mechanisms for coordinating the United Front work in the private sector, and regularly study, plan and advance the work in a coordinated manner. We must enable the United Front work departments of Party committees to fully play their leading and coordinating roles and enable federations of industry and commerce to play their bridging and assisting roles in the United Front work in the private sector.' Available at: http://www.gov.cn/zhengce/2020-09/15/content_5543685.htm

- (65) The Commission recalled that, as found in section 3.3.1.7 of the provisional Regulation, the wages in China are distorted inter alia by the restrictions of mobility due to the household registration system (hukou), as well as due to the lack of the presence of independent trade unions and lack of collective bargaining. Since the Commission's findings in section 3.3.1.7 point to the presence of horizontal, country-wide distortions in the Chinese labour market, the seriousness of those distortions lead to the conclusion that the wages costs in China are overall distorted. There are no elements on file on whose basis it could be positively established that the domestic wage costs of Xiamen Xiashun were not affected by the distortions in the labour market. First, Xiamen Xiashun has not submitted any evidence of how these horizontal distortions do not affect its labour costs, for instance by proving that its personnel was not affected by the hukou system, that there were independent trade unions and there was collective bargaining. Furthermore, there was no evidence that its wages were in accordance with market principles, as it did not submit any data in this respect. Furthermore, a certain level of wages by comparison to wages of competitors in the same business does not per se indicate that the horizontal country-wide distortions present in the labour market in the PRC did not affect the level of the wages of Xiamen Xiashun.
- (66) Following definitive disclosure, Xiamen Xiashun reiterated that its wages were significantly higher than those of its competitors, and that this difference in the level of wages should constitute evidence that it was not subject to the alleged distortions.
- (67) Xiamen Xiashun did not provide any concrete evidence that it is not subject to the country-wide distortions of wage costs, as established in section 3.3.1.7 of the provisional Regulation. Therefore, in the Commission's view the existence of a certain level of wages, by comparison to wages of competitors in the same business, does not per se indicate that the horizontal country-wide distortions present in the labour market in the PRC would not affect the level of the wages of this exporting producer. In other words, even if the wages for this exporting producer were higher than those of its competitors, this does not show that such a level of wages is not affected by the distortions in the labour market in the PRC.
- (68) As for the claim that it is not possible for exporting producers to rebut an alleged de facto presumption of the existence of significant distortions, the Commission strongly disagreed. First, there exists no purported de facto presumption, because the Commission in each and every investigation assesses in great detail the existence of significant distortions affecting the product under investigation and the exporting producers concerned, taking into account, in an even-handed manner, all evidence available on the file. Furthermore, if there are claims that horizontal distortions do not affect certain domestic costs under Article 2(6a)(a) third indent of the basic Regulation, the Commission carefully analyses them in detail, as the length of the analyses in this and other investigations concerning the PRC clearly show. If there was evidence on file that Xiamen Xiashun were not affected by the country-wide distortions present on the Chinese labour market, the Commission would certainly use the company's own cost of labour in accordance with Article 2(6a)(a) third indent of the basic Regulation.
- (69) Third, Xiamen Xiashun commented that the fact that the Commission systematically disregarded the labour costs of the Chinese exporting producers, proves that Article 2(6a) of the basic Regulation is incompatible with Article 2.2 and Article 2.2.1.1. of the ADA. This is because Article 2(6a) of the basic Regulation foresees that costs and prices are to be disregarded systematically, without examining whether the conditions set forth in Article 2.2 of the ADA are met.
- (70) The Commission recalled that in every investigation all the parties have the opportunity to provide evidence on all relevant elements, including the allegation that certain factors of production are not distorted, in accordance with Article 2(6a) third indent of the basic Regulation. As explained in recitals 55 and 56 above, the Commission does not systematically reject labour costs of the Chinese exporting producers, but analyses the data in detail in every instance in which a party makes a claim of the lack of distortions to check whether an exporting producer is affected by the significant distortions ⁽⁸⁾. Therefore, this claim is rejected.

⁽⁸⁾ As regards Xiamen Xiashun, the Commission established that the purchase price of Titanium Boron Aluminium Rod from the United Kingdom was non-distorted and therefore it did not replace it with data from the representative country. (Recital 161 of the provisional Regulation).

- (71) Fourth, Xiamen Xiashun observed that in recital 155 of the provisional Regulation, the Commission indicated that Xiamen Xiashun received certain awards or formal recognitions meaning it needed to meet eligibility requirements in order to receive them, including following the official line of the GOC and complying with the official governmental strategies and policies. Xiamen Xiashun underlined that these recognitions are merely honours received by the company and while the company needed to meet some requirements, it was not controlled by the government. Xiamen Xiashun added that there was no evidence on the record indicating it is instructed by the government to set a raw material purchase price or its product selling price contrary to market conditions.
- (72) As already explained by the Commission in recital 155 of the provisional Regulation, the rewards and titles obtained by Xiamen Xiashun not only recognise the achievements of this company, but also clearly require it to be aligned with the official policy of the government. As evidenced by the quotes in recital 155 of the provisional Regulation, only the companies following strictly the line of the government are eligible for the rewards obtained by Xiamen Xiashun, such as the Fujian Backbone Enterprise title.
- (73) Fifth, Xiamen Xiashun argued, and reiterated after definitive disclosure, that in recital 157 of the provisional Regulation the Commission concluded that that Xiamen Xiashun was subject to the country-wide distortions in respect to bankruptcy proceedings, in the absence of evidence of the contrary. Xiamen Xiashun underlined that being a successful enterprise, it cannot prove that it is not subject to distortions in bankruptcy proceedings.
- (74) As already explained in recital 157 of the provisional Regulation, the problem with bankruptcy laws in China lies in the inadequate enforcement of those laws and in the role the State holds in the insolvency proceedings. In every investigation the parties have the opportunity to provide evidence on all relevant elements and the Commission analyses the data in detail in every instance in which a party makes a claim of the lack of distortions to check whether an exporting producer is affected by the significant distortions. Therefore, this claim is rejected.
- (75) Sixth, Xiamen Xiashun commented that in recital 162 of the provisional Regulation the Commission indicated that Xiamen Xiashun established a joint venture with a State owned enterprise ('SOE'), concluding that it was closely cooperating with the Chinese state and that the country-wide distortions also concern its suppliers. Xiamen Xiashun stated that it is very common around the world that private companies do business with SOEs or government agencies, and it does not mean that the other party is forced to yield control of the business to the government. In the case of Xiamen Xiashun, the joint venture with the SOE is operated solely under the Articles of Association and the Company Law of China. Xiamen Xiashun underlined that there was no evidence on the record suggesting that the government is controlling and directing the price setting of products, supply and demand of raw materials, as well as the daily operation of the joint venture.
- (76) Whereas the Commission agrees that joint ventures between private and SOEs are very common in the world, the role of the SOEs in China is very specific, as described in section 3.3.1.3 of the provisional Regulation. An additional pertinent illustration of the distortive effect of the SOEs in China on prices and costs is the quote from an article published on a GOC's website: 'The large-scale development of state-owned enterprises in core technology and strategic industries has benefited and supported private enterprises in many aspects, such as price inclusiveness, talent transfer, technology spill-over, and capital rescue.'⁽⁹⁾ The 'benefit', 'support', 'price inclusiveness' and 'capital rescue' mentioned in the article clearly point to a distortive effect of the cooperation between the SOEs and private enterprises on the Chinese market. Following definitive disclosure, Xiamen Xiashun reiterated its comments but provided no evidence rebutting the Commission's conclusions.

3.1.2. Representative country

- (77) In the provisional Regulation, the Commission selected Turkey as the representative country in accordance with Article 2(6a) of the basic Regulation. The details on the methodology used for the selection were set out in the First and Second note made available to parties in the open file on 25 November 2020 and 17 March 2021 ('First Note' and 'Second Note'), and in recitals 170 to 197 of the provisional Regulation.

⁽⁹⁾ See the article 'The role of state-owned enterprises is irreplaceable', published on 29 November 2018, available at: http://www.gov.cn/xinwen/2018-11/29/content_5344296.htm

- (78) Xiamen Xiashun as well as Donghai repeatedly disputed the Commission's choice to use the data of companies producing aluminium extrusions as the benchmark for selling, general and administrative costs ('SG&A') and profit. In the parties' view, aluminium extrusions were not similar to ACF, there were substantial differences between the two products in terms of their use, cost of production and factors of production. Xiamen Xiashun further argued that the differences influenced profit and SG&A of the companies, and therefore, profit and SG&A of the companies producing aluminium extrusions should not be used to determine the normal value. According to Donghai, the Commission should have limited its selection to companies active in the production of ACF alone. Moreover, Donghai also argued that pursuant to Article 2(6a)(a) of the basic Regulation, it is required that the company selected from the representative country manufactures the product under investigation. Xiamen Xiashun reiterated the same claims following definitive disclosure.
- (79) First, reference is made to the Commission's assessment in recitals 184-190 of the provisional Regulation, elaborating on the selection of aluminium extrusion sector and of Turkish producers within that sector. While the Commission acknowledged that certain characteristics, end-uses, production processes and production cost for ACF and aluminium extrusions may not be identical, it is recalled that these aspects must be considered as a whole to determine whether a product or sector falls in the same general category and/or sector of the product under investigation. Moreover, in response to Donghai's argument concerning the use of data from ACF producers alone, the Commission recalled that according to Article 2(6a)(a) of the basic Regulation, it is solely required to find corresponding costs of production and sales, as well as a reasonable level of SG&A and profits, in an appropriate representative country. The use data from companies producing exactly the same product as the product concerned is not mandated by that provision.
- (80) Second, it is recalled that in applying Article 2(6a)(a) of the basic Regulation, the Commission enjoys discretion as to the selection of companies in the representative country. As part of that discretion and as outlined in the provisional Regulation (see recitals 182, 188 and 192), in the absence of data showing a reasonable level of SG&A and profits of producers of ACF in potential representative country/ies, the Commission may, if necessary, consider also producers manufacturing a product in the same general category and/or sector of the product under investigation.
- (81) Xiamen Xiashun and Donghai also contested the Commission's decision to disregard the data of a Turkish producer of ACF ⁽¹⁰⁾ because its profit was close to the breakeven point. In their view, this contradicted the Commission's approach taken in the investigation on aluminium extrusions, where the Commission, when establishing a reasonable value for SG&A and profit, took into consideration all profitable companies irrespective of their profit level, and as long as they were not loss making ⁽¹¹⁾.
- (82) It is recalled that the Turkish ACF producer identified was the only company with publicly available data for 2019 (period partially overlapping with the IP). A profit close to break-even of a sole company cannot be considered reasonable, given the level of profit achieved by a basket of other Turkish companies active in the aluminium industry in the same period. As a result, and as observed in the provisional Regulation (recital 192) the Commission considered the use of pooled and weighted financial data of a basket of companies with reasonable profit figures more adequate for the purposes of finding a reasonable amount for SG&A and profit than using the data of a sole producer the profit levels of which do not appear to be indicative of the economic situation in the sector. The Commission thus rejected the claim.

3.1.3. Sources used to establish undistorted costs for factors of production

- (83) The Commission set out the details concerning sources used to establish the normal value in recitals 198-223 of the provisional Regulation. After publication of the provisional Regulation, several parties made claims on the different sources used to determine the normal value.

⁽¹⁰⁾ Assan Aluminyum.

⁽¹¹⁾ Commission Implementing Regulation (EU) 2020/1428 of 12 October 2020 imposing a provisional anti-dumping duty on imports of aluminium extrusions originating in the People's Republic of China (OJ L 336, 13.10.2020, p. 8), recital 171.

3.1.3.1. Raw materials

- (84) Donghai considered that the Commission's approach to use the GTA database was inappropriate, since more precise surrogate values were publicly available. Donghai contested in particular the GTA values for cold rolled coil and suggested the use of alternative benchmark prices based on the CRU ⁽¹²⁾ report. However, in response to the provisional disclosure Donghai merely reiterated the claim already made in reply to the Second Note without bringing forward any new factual or legal elements. Therefore Donghai's claim was dismissed and the findings as mentioned in recitals 214-217 of the provisional Regulation were confirmed.
- (85) Donghai also repeatedly took issue with the benchmark for aluminium scrap. According to Donghai, the benchmark price of scrap should be determined by using as basis a reference to aluminium ingots prices. In the provisional Regulation (see recitals 211-212), the Commission elaborated on the reasons for applying the GTA benchmark for the aluminium scrap rather than a benchmark for aluminium ingots. As Donghai did not provide any new evidence on why the Commission should not use the value in the GTA database, the Commission rejected the claim and maintained its findings as mentioned in recitals 211-212 of the provisional Regulation.
- (86) Following definitive disclosure, Donghai also made some claims with regard to steam coal.
- (87) The Commission clarifies that steam coal is not a factor of production for the product concerned, hence no benchmark was established for steam coal. The claim was therefore dismissed.
- (88) Xiamen Xiashun as well as Donghai also argued that in the provisional Regulation, the Commission expressly considered that the price of one of the raw materials used for ACF production, aluminium ingot, was found to be undistorted for the purposes of Article 7(2a) of the basic Regulation, referring to the fact that the purchase price for ingots paid by the sampled exporting producers 'was not significantly lower as compared to prices in the below representative international markets' ⁽¹³⁾. Therefore, in the parties' view, the Commission should have used the actual price paid by the exporting producers for the ingots instead of using a benchmark value based on the GTA data.
- (89) Following definitive disclosure Xiamen Xiashun reiterated this argument.
- (90) The Commission recalled that the calculation of the normal value and the assessment related to the application of the lesser duty rule were different analyses based on different provisions of the basic Regulation. The conclusions reached under Article 2(6)(a) were based on several factors. These include an assessment of the potential impact of one or more elements listed under Article 2(6a)(b) of the basic Regulation, such as for instance public policies, interference of public authorities on the markets, state presence in firms etc. The overall assessment on the existence of distortions may also take into account the general context and situation in the country. In accordance with this Article, the Commission found that the aluminium sector in the PRC was potentially affected by significant distortions (recitals 143 and 169 of the provisional Regulation), and therefore, the normal value had to be constructed on the basis of cost of production and sale reflecting undistorted prices or benchmarks. That the average purchase price of this raw material in the PRC by the sampled exporting producers was not significantly below the benchmark price in the representative country, namely in a range of [0 %-5 %] on average, does not automatically mean that the costs of the exporting producers can be positively established not to be distorted. Indeed, under Article 7(2a) of the basic Regulation, the Commission only assesses the price level of a specific input in the domestic market and whether the price level of such input domestically is 'significantly lower' compared to an international benchmark to warrant the non-application of the lesser duty rule. This comparison of domestic and international prices under Article 7(2a) has a different purpose and context than the normal value calculation based on Article 2(6a) of the basic Regulation. There was no evidence on file supporting a finding of positive establishment under Article 2(6a)(a) third indent that the price of aluminium ingots purchased by one or more exporting producers was not affected by the significant distortions and thus warranted the use of domestic ingot prices in that context.

⁽¹²⁾ <https://www.crugroup.com/>

⁽¹³⁾ Recitals 382-383 of the provisional Regulation.

- (91) Therefore, the Commission maintained that the outcome of the examination under Article 7(2a) of the basic Regulation did not impact conclusions reached by the Commission in recitals 143 and 169 of the provisional Regulation. The Commission thus rejected the claim.
- (92) Donghai and Xiamen Xiashun also argued that the Commission should not apply import duties in relation to materials which the exporting producers produce themselves, or purchase in the PRC. In Donghai's view, the application of the import duty was against the rationale of Article 2(6a)(a) of the basic Regulation to recreate the actual costs that a theoretical company in a country with an economy not affected by significant distortions would have borne. The third paragraph of that provision requires that an '*assessment shall be done for each exporter and producer separately*'. This entailed, according to Donghai, that the normal value cannot be calculated abstractly, but must be grounded on the concrete situation of the investigated companies. Donghai referred to the previous Commission practice, based on which the objective of Article 2(6a)(a) of the basic Regulation was to '*find, in a possible representative country, all or as many of the corresponding undistorted factors of production used by the cooperating Chinese producers and of undistorted amounts for manufacturing overheads, SG&A and profits as possible*' ⁽¹⁴⁾. Consequently, Donghai considered that the inclusion of import duties for raw materials that Chinese companies purchase in their home country cannot be considered as reasonable within the meaning (and rationale) of this provision. Xiamen Xiashun also argued that the import duty was to offset VAT that is not levied by the exporting countries, so that the export price is comparable to domestic price, on which VAT applies. Therefore, for the normal value calculation import duty should not be added.
- (93) The Commission recalled that Article 2(6a) allows the Commission to establish the normal value on the basis of undistorted costs and prices in a representative country, in this case Turkey, as a proxy for what the undistorted price in the PRC would be but for the significant distortions. Since a producer in Turkey sourcing these materials from abroad would be subject to the import tax, import taxes were also taken into consideration when constructing the normal value in order to reflect the price/cost of any given raw material payable by a producer in the representative country and thus absent the significant distortions found in the PRC. The Commission thus rejected the claim.

3.1.3.2. Labour

- (94) Donghai claimed that the Commission should have used the monthly index rates rather than an average (annual) producer price index without however substantiating its claim and explaining as to how this would impact on calculation of the normal value. Donghai's claim therefore had to be dismissed.

3.1.3.3. Electricity

- (95) Donghai claimed that to establish the benchmark for electricity, the Commission should have used data from Eurostat, which were in its view more accurate than the Turkish national data used by the Commission since it excluded VAT and other recoverable taxes.
- (96) The Commission examined the claim and found that Eurostat data related to Turkey was in any case based on data received from the Turkish national statistics albeit presented differently. In addition, the Commission already deducted VAT from the Turkish national data when determining the benchmark for electricity. The Commission therefore rejected the claim.

3.1.3.4. SG&A and profits

- (97) Following the provisional disclosure, Donghai suggested that data for three additional companies, alleged to be also producers of ACF, should have been used by the Commission in order to establish the benchmark for an undistorted SG&A and profit.

⁽¹⁴⁾ Commission Implementing Regulation (EU) 2019/915 of 4 June 2019 imposing a definitive anti-dumping duty on imports of certain aluminium foil in rolls originating in the People's Republic of China following an expiry review under Article 11(2) of Regulation (EU) 2016/1036 of the European Parliament and of the Council (OJ L 146, 5.6.2019, p. 63), recital 122.

- (98) First, Donghai failed to produce any positive evidence that the additionally listed companies would have produced ACF during the IP. Second, Donghai has not provided any readily available financial data for any of these companies and the Commission did not identify any financial data for any of the three companies indicated by Donghai. Therefore, Donghai's claim was dismissed.

3.1.4. Factors of production and sources of information

- (99) Considering all the information submitted by the interested parties, the following factors of production and their sources were identified with regard to Turkey in order to determine the normal value in accordance with Article 2(6a)(a) of the basic Regulation:

Table 1

Factors of production of ACF

Factor of Production	Commodity Code	Undistorted value	Unit of measurement
Raw materials			
Aluminium ingots	7601 10	12,73	CNY/KG
Aluminium slabs	7601 20 20	13,91	CNY/KG
Aluminium foil stock	7606 12 92	26,06	CNY/KG
Rolling oil ('white spirit')	2710 12 21	5,92	CNY/KG
Rolling oil additives	2710 12 21	5,92	CNY/KG
Aluminium scrap	7602 00 19	11,01	CNY/KG
Labour			
Labour costs in manufacturing sector	n/a	59,97	CNY/hour
Energy			
Electricity	n/a	0,48-0,51 ⁽¹⁾	CNY/KWh

⁽¹⁾ Depending on the consumption of the producer and the corresponding consumption band.

3.1.5. Calculation of the normal value

- (100) The details of the calculation of the normal value were set out in recitals 224 to 231 of the provisional Regulation.
- (101) At provisional stage, as well as following final disclosure, Donghai reiterated its claim that it should be treated, together with other entities pertaining to the same corporate group ('the Nanshan Group'), in a consolidated way as far as the calculation of the normal value is concerned. More specifically, according to Donghai the Commission should only consider replacing the prices of factors of production that the Nanshan Group was buying at the beginning of the production process from an unrelated party with the benchmark prices. That way, the Commission would cover all the distorted factors of production bought by the Group. The company considered that despite being legally distinct entities, the companies of the Nanshan Group form a part of a single unit from an economic perspective since (i) they are controlled by the same entity and there is significant overlap within the group in terms of both boards of directors and at the managerial level, (ii) they are all located in the same industrial park and (iii) the production process is extremely integrated, with the output of one company constituting the input for the others. Moreover, the individual companies appear to the unrelated customers as a single entity as well, with a single website, single brand, and a single contact centre. Donghai claimed that the concept of the single economic entity was not restricted to trade defence law, but also extended to other branches of the Union law (notably competition law). In addition, decisions regarding the production are not taken at Donghai's but at group's level. According to Donghai, the Commission's findings lead to discrimination since they overlook the differences among sampled exporters. Donghai sought to demonstrate the alleged discrimination by comparing the treatment afforded in this case to Xiamen Xiashun (producer with the lowest dumping margin, producing ACF from aluminium ingots within the same legal entity) in contrast to the Nanshan Group.

- (102) Moreover, Donghai argued that the methodology also violated the provisions of Article 2(6a) of the basic Regulation which refers to the '*corresponding costs of production and sale in an appropriate representative country*'. According to Donghai, its corresponding costs of production were not those of intermediate raw materials, but those of the first raw materials in the production chain of aluminium, namely bauxite and coal. Donghai submitted that the Commission was only authorized to disregard the costs of material from unrelated suppliers.
- (103) The Commission reviewed the claim and the evidence on file. However, no new arguments were provided that would contradict the conclusions stated in recital 231 of the provisional Regulation. Establishing a production process on a consolidated basis and using factors of production of affiliated producers for upstream products other than ACF would obfuscate the industrial and economic reality of the ACF producing entities. Moreover, in the Commission's view, if prices and costs are found to be distorted in China as regards the product concerned as well as its inputs, the inputs made by the related company within the Group would also be affected by those findings. Thus, those inputs, regardless of whether they were sourced from a related supplier, should be adjusted in this context.
- (104) Furthermore, the Commission did not consider the method discriminatory. First, Donghai compares the treatment of another producer to that of Nanshan Group, while disregarding the fact that it is Donghai alone (and not the entire Nanshan Group) that is subject to the present investigation in the capacity of an exporting producer. The method applied by the Commission simply reflects the actual set up of individual producers and their production processes. Therefore, the '*corresponding*' costs of production mentioned in Article 2(6a) of the basic Regulation are the costs borne by each of the legal entities individually and equally affected by the significant distortions. Consequently, the Commission rejected the claim raised by Donghai.
- (105) Since Donghai did not provide any new evidence substantiating the claim that would alter the Commission's assessment, the Commission confirmed its provisional findings and the method to calculate the normal value as set out in recitals 224 to 231 of the provisional Regulation.

3.2. Export price

- (106) The details of the calculation of the export price were set out in recitals 232 to 235 of the provisional Regulation.
- (107) Xiamen Xiashun contested the adjustment for packing cost applied by the Commission to its export sales. It argued that the packing cost is already included in the overheads of its own manufacturing cost and, in its view, the breakdown of the manufacturing overheads provided by the company clearly indicates the different packing materials. Therefore, the packing cost is already included in the normal value and should not be deducted from the export price.
- (108) The Commission reviewed the claim and the evidence on file. However, the elements provided do not constitute sufficient evidence in the Commission's view. There is no clear indication that the materials listed are actually packing material for the product concerned when shipped to the customers, and the information provided does not allow to estimate the quantities and values of the packing materials allegedly used. Therefore the claim was rejected.
- (109) Following definitive disclosure Xiamen Xiashun reiterated the claim. It argued that the total cost of the packing items listed in the breakdown of the manufacturing overheads provided by the company, expressed as a percentage of its cost of production, is comparable to the adjustment for packing cost applied by the Commission to its export sales, thus demonstrating the double-counting.
- (110) The Commission disagreed with this assessment. First, the alleged packing cost calculated by Xiamen Xiashun is not comparable to the adjustment applied by the Commission, but is 36 % lower. Second, as admitted by the company itself, there is no quantity reported of this alleged packing materials in the information provided that would allow the Commission to estimate a reasonable consumption rate and unit price, nor has any additional information been provided that this material is actually packing material for shipments of the product concerned.

3.3. Undertaking offers

- (111) Following final disclosure, within the deadline specified in Article 8(2) of the basic Regulation, one exporting producer submitted an offer for a price undertaking: Jiangsu Zhongji Lamination Materials Co., Ltd., together with its related trader Jiangsu Zhongji Lamination Materials Co., (HK) Limited.
- (112) According to Article 8 of the basic Regulation, the price undertaking offers must be adequate to eliminate the injurious effect of dumping and their acceptance must not be considered impractical. The Commission assessed the offer in view of these criteria and considered that its acceptance would be impractical for the following reasons.
- (113) First, the company produces and sells various product types with significant differences in prices. Aluminium converter foil types cannot be easily distinguished from one another by a physical inspection. In particular, it would be very difficult to assess the thickness only by physical inspection. Without a detailed laboratory analysis the customs authorities would not be able to determine whether the imported product corresponds to what is being declared. Second, the high number of product types entails a high risk of cross-compensation among the different product types, with more expensive product types possibly being misdeclared as cheaper product types also subject to the undertaking. This renders the undertaking unenforceable and thus impractical within the meaning of Article 8 of the basic Regulation. Third, Zhongji has a high number of related companies directly involved in production or sales of the product under investigation. Furthermore, Zhongji sells the product both directly and indirectly. Such a complex group structure implies a high risk of cross-compensation. The Commission would not be able to monitor and ensure compliance with the undertaking of the indirect sales via the related company in Hong Kong and possibly via the other related companies. This, on its own, would make the offer impractical.
- (114) The Commission sent a letter to the applicant, setting out the above reasons for rejecting the undertaking offer.
- (115) The applicant submitted comments thereto. These comments were made available to interested parties on the case file.
- (116) Zhongji did not agree with the Commission's conclusions that its high number of product types makes it difficult to distinguish between them and entails a risk of cross-compensation. In its view, the products are easily identifiable by custom authorities and the prices between the different product types do not vary significantly. Moreover the company offered to export only the products types belonging to five PCNs.
- (117) In addition, as regards the complex group structure, Zhongji offered to commit to exclusively sell to the Union directly through Zhongji Lamination Materials Co., Ltd, and not to sell any other product to the same customers in the Union to which the product under investigation is sold.
- (118) The Commission reviewed the offer and the arguments put forward by the company. However, the comments and proposed changes have not removed the elements making the undertaking offers unenforceable.
- (119) Even if Zhongji's commitment to export only five PCNs would reduce, but not eliminate, the risk of cross-compensation, it would be highly impractical to enforce. As confirmed by the company in its submission, the customs authorities would not be able to determine whether the imported product corresponds to what is being declared only by physical inspection, without specific measuring tools.

- (120) For the same reason it would be extremely difficult to enforce Zhongji's commitment not to sell any other product than the product under investigation to the same customers in the EU. Moreover, Zhongji related companies export other aluminium products to the EU, that are also subject to anti-dumping measures ⁽¹⁵⁾ and there are measures in force on aluminium products that are classified under the same CN code of the product under investigation ⁽¹⁶⁾.
- (121) Therefore, the Commission considered the undertaking offer unenforceable and thus impractical within the meaning of Article 8 of the basic Regulation, and therefore rejected the offer.

3.4. Comparison

- (122) The details concerning the comparison of the normal value and the export price were set out in recitals 236 to 241 of the provisional Regulation.
- (123) Donghai considered that the SG&A and profit of the Turkish companies included allowances such as transport and insurance. Therefore, according to Donghai, in line with Article 2(10) of the basic Regulation and in order to ensure a fair comparison, the Commission should make adjustments.
- (124) Donghai failed to provide any evidence demonstrating that the SG&A and profit of the Turkish companies included transport and insurance, and therefore, that the values included different costs than the same values taken into account for the Chinese exporting producers. As a result, the Commission considered that the values on SG&A and profit of both, the Turkish companies and the Chinese exporting producers were at the same level and allowed a fair comparison.
- (125) Furthermore, Donghai contested the currency and the corresponding interest rate used for the adjustment for credit costs. According to the company, the currency of the invoice should have been used. However, since the company kept its bank accounts (and thus the cost of credit on the incoming capital) in currencies different from the invoice currency, the Commission calculated the credit cost on the basis of the accounting currency. Hence, this claim was not accepted.
- (126) Donghai reiterated the claim after the final disclosure, arguing that the Commission had already applied the currency of the invoice, for the interest rate, in a previous case.
- (127) The Commission maintains that, in its view, the approach it followed is a valid and reasonable methodology, especially since both approaches yield similar results. The claim was therefore dismissed.
- (128) Xiamen Xiashun contested the adjustment under Article 2(10)(i), set out in recitals 240 and 241 for sales through its related trading company Daching, and reiterated the claim after final disclosure. In Xiamen Xiashun's view the arguments put forward by the Commission in recital 240 do not constitute sufficient evidence to reject the existence of a single economic entity. Xiamen claimed that the fact that the trader was not located at the premises or near the producer and that the trader's own profit covered its office expenditures are not a sufficient reason to reject the existence of a single economic entity, while the fact that the trader was also acting as a purchasing entity for certain auxiliary materials for the group reinforce, rather than weaken, the company's claim.
- (129) Furthermore, Xiamen argued that the fact that the related trader negotiates the discount conditions applied to the overall sales of the product concerned to a Corporate group in the EU, even if part of the sales (to a specific legal entity) are made directly by Xiamen, supports its claim that the two companies operate as a single economic entity.

⁽¹⁵⁾ Commission Implementing Regulation (EU) 2021/1784 of 8 October 2021 imposing a definitive anti-dumping duty on imports of aluminium flat-rolled products originating in the People's Republic of China (OJ L 359, 11.10.2021, p. 6).

⁽¹⁶⁾ Commission Implementing Regulation (EU) 2015/2384 of 17 December 2015 imposing a definitive anti-dumping duty on imports of certain aluminium foils originating in the People's Republic of China and terminating the proceeding for imports of certain aluminium foils originating in Brazil following an expiry review pursuant to Article 11(2) of Council Regulation (EC) No 1225/2009 (OJ L 332, 18.12.2015, p. 63).

- (130) In the Commission's view, the cumulative presence of the elements listed in recital 240 of the provisional Regulation clearly demonstrates that Daching's functions are similar to those of an agent.
- (131) Moreover, the fact that Daching individually negotiated the discount for sales made to a specific customer reinforces the argument that it acts as an agent rather than an internal sales department. Furthermore, Xiamen Xiashun has itself a fully functional export department that placed the production orders, organised and carried out the shipping to the Union customers, including all shipping documents of the final product, and handled the export customs clearance and prepared sales documents for at least [20 % - 30 %] of its export sales of the product concerned to the EU. Therefore the Commission found that the related trader cannot be considered as an internal sales department and the two companies do not constitute a single economic entity.
- (132) The claim was therefore rejected.

3.5. Dumping margins

- (133) Donghai claimed that the Commission considered the wrong declared CIF values used as a denominator to calculate the dumping margin for its related trader Nanshan Europe, because it had calculated the value for most transactions instead of using the data provided by the company. In addition, the Commission had used the profit of an unrelated importer instead of the actual profit of Nanshan Europe to calculate the declared CIF value. This claim was partially accepted: all transactions at CIF delivery terms, as well as all transactions for which supporting documentation on the declared value were provided, have been taken over as reported by the company. For the outstanding transactions, the declared CIF value remains a calculated value, albeit based on the actual profit of the related trader.
- (134) Given that the Commission accepted some comments from the interested parties submitted after provisional disclosure, it recalculated the dumping margins accordingly.
- (135) As explained in recital 246 of the provisional Regulation, the level of cooperation in this case is high. Therefore, the Commission considered it appropriate to set the country-wide dumping margin applicable to all other non-cooperating exporting producers at the level of the highest dumping margin found for the sampled exporting producers, namely Donghai. The dumping margin thus established was 98,5 %.
- (136) The definitive dumping margins expressed as a percentage of the cost, insurance and freight (CIF) Union frontier price, duty unpaid, are as follows:

Company	Definitive dumping margin
Yantai Donghai Aluminum Foil Co., Ltd	98,5 %
Jiangsu Zhongji Lamination Materials Co., Ltd.	81,5 %
Xiamen Xiashun Aluminium Foil Co., Ltd.	16,1 %
Other cooperating companies	69,5 %
All other companies	98,5 %

- (137) The calculations of the individual dumping margins, including corrections and adjustments made following comments submitted after the provisional disclosure, were disclosed to the sampled exporting producers as part of a company-specific disclosure.

4. INJURY

4.1. Determination of the relevant Union market

- (138) Following the provisional Regulation, Manreal reiterated the claim, already made following the initiation of the investigation, for the Commission to independently collect and analyse data related to the free and the captive market.

- (139) Further to a general remark, Manreal has not substantiated how the data collected by the Commission in relation to the captive market is not reliable. The Commission therefore rejected the claim to collect further data for captive market and refers to the data indicated in table 2 below. In absence of further claims the Commission confirmed the provisional conclusion made in recital 253 of the provisional Regulation.

4.2. Union consumption

- (140) The Commission established the Union consumption on the basis of the Union producer's replies to the anti-dumping questionnaire, the macro questionnaire as well as the import data from Eurostat.
- (141) Union consumption developed as follows over the period considered. The Commission re-discloses the Union consumption table as the rounding of two figures was corrected:

Table 2

Union consumption (tonnes)

	2017	2018	2019	IP
Total Union consumption	201 281	201 696	191 084	189 149
<i>Index</i>	100	100	95	94
Captive market	27 209	27 340	28 727	29 128
<i>Index</i>	100	100	106	107
Free market	174 073	174 356	162 358	160 021
<i>Index</i>	100	100	93	92

Source: sampled and non-sampled Union producers as well as Eurostat

4.3. Claims concerning the Imports from the PRC

- (142) Jiangsu Zhongji and Donghai argued that there should be a level of trade adjustments to the undercutting and underselling calculations for Chinese producers selling to unrelated distributors as prices to unrelated distributors are allegedly lower than those charged to final users, as distributors add a mark-up.
- (143) Neither exporting producer provided any evidence, such as contracts with users or distributors, that would justify the claim that the function of distributors or users affects price comparability. The Commission further assessed the claims using the verified data of all export sales transactions to the Union submitted by Jiangsu Zhongji and Donghai for the IP.
- (144) For Jiangsu Zhongji the data showed that, among its customers, all independent distributors consistently contracted higher volumes than all users. The largest independent distributor in terms of volume purchased much larger volumes than the largest customer in the users category. It is a general business principle that contracting high volumes increases bargaining power and allows for the negotiation of lower prices. Furthermore, Jiangsu Zhongji was inconsistent in assigning sales channels to transactions in their data, designating the same customer as both end user and distributor for different transactions. The correlation between sales volumes and prices as well as the inconsistent assignment of the sales channels therefore does not allow the conclusion that, further to the volume, also the different channels had a decisive influence on the price.
- (145) On this basis, these claims were rejected as unsubstantiated in the definitive disclosure.

- (146) Following the definitive disclosure, Jiangsu Zhongji submitted two sample contracts (one with a distributor and one with an end user). Jiangsu Zhongji also acknowledged the inconsistencies in assigning different sales channels to the same customers, stating that this was a clerical error. Following these comments, the Commission carefully examined the submitted data but confirmed the conclusions made in recital 150. Notably, a majority of the sales were sold at a higher average price to distributors as compared to producers. Therefore the claim was deemed unsubstantiated.
- (147) Concerning similar claims made by Donghai, the Commission had accidentally mis-attributed certain facts to Donghai in the final disclosure. Following Donghai's comments on the final disclosure, the Commission therefore re-assessed Donghai's claims. Donghai reiterated its claim to adjust upward Nanshan Group's export prices for sales to distributors to reflect the differences in the level of trade and provided examples where prices to users were higher than prices to distributors for orders with comparable volumes. Donghai also provided two examples of contracts (one with a distributor and one with an end user). The Commission carefully examined the submitted data and concluded the following.
- (148) First, the two contracts provided constitute only a single set of contracts chosen by the company and cannot therefore demonstrate the consistent price differences between the sales channels. In addition, the sample contracts concerned different PCNs, and were thus not fully comparable.
- (149) Second, the detailed sales listing provided by Donghai was not consistent, as two key customers were classified both as end users and distributors. This concerned a significant proportion of sales.
- (150) Third, for 15 PCNs exported by Donghai to the Union, 9 PCNs were sold to both end users and distributors. Within four PCNs the sales prices to several individual end users were lower than several sales prices individual distributors. In other words, among sales of the same PCN, the prices to end-users were not consistently below those of distributors. For one PCN even the average price to distributors was higher than to the end users, and overall the average percentage price difference between end-users and distributors per PCN was not consistent but varied widely.
- (151) On the basis of the above, the Commission did not find that Donghai's prices demonstrated a consistent and quantifiable difference in the prices between products sold to end-users and to distributors. Therefore, this claim was rejected.
- (152) The Commission therefore confirmed the undercutting margins of between 3,3 % and 13,7 % by the imports from the country concerned on the Union market. The weighted average undercutting found was 10,3 %.

4.4. Economic situation of the Union industry

4.4.1. Microeconomic indicators - Labour costs

- (153) Following the provisional Regulation, Manreal requested the Commission to further investigate the increase in the Complainants' costs of production, in particular labour costs.
- (154) The Commission has indeed thoroughly assessed and verified the costs and in particular the labour costs incurred by the sampled Union producers. The Commission has explained in recital 329 of the provisional Regulation that the increase in the IP was mainly due to the restructuring of one of the sampled producers, which triggered higher labour costs. The Commission therefore rejected the claim for a further investigation.

4.4.2. Claim for a lack of injury in the reference period

- (155) After the provisional Regulation Manreal argued that there would be no injury, as the consumption of ACF as well as the production of ACF in the Union, the sales of the Union industry as well as the market share of the complainants are all stable or only marginally decreased during the reference period (the second quarter of 2019 to first quarter of 2020), as identified by the complainants.

- (156) Contrary to what Manreal argued, the reference period to analyse injury is not limited to the comparison within the one year period of second quarter of 2019 to first quarter of 2020 described by Manreal. As indicated in recital 38 of the provisional Regulation, the investigation of dumping and injury covered the period from 1 July 2019 to 30 June 2020 ('the investigation period' or 'IP'). The examination of trends relevant for the assessment of injury covered the period from 1 January 2017 to the end of the investigation period ('the period considered'). Therefore the Commission rejected Manreal's claim.

4.4.3. *Claim concerning inaccurate assessment due to the use of tonnes*

- (157) Following the provisional Regulation, Manreal argued that the data provided by the complainants and used in the provisional Regulation was inaccurate as the values were displayed in tonnes without differentiating in micron average. According to Manreal, this would affect the analysis of the Union consumption of ACF, the volume of imports from PRC, the ACF production volume, the ACF production capacity, the total sales volume on the Union market, the captive market sales, the free market sales, stock levels of Union producers, the volume of imports from other third countries and the export volume of Union producers.
- (158) Manreal based its argument on the market trend to reduce foil thickness which leads to a decrease in weight per m² of ACF. According to this reasoning, more m² might have been produced and sold in 2019 than in 2018, even if the figures in tonnes show there has been a decrease. This has allegedly caused inaccuracies in the analysis of the trends. Manreal further claimed that the Commission's conclusion that the trend to move to thinner foil affected all producers equally is incorrect as the gauge produced by each producer is defined by their customers.
- (159) Manreal requested the Commission to collect data on the EU injury that factors in microns.
- (160) With regard to the reliability of the complaint, recitals 17 and 18 of the provisional Regulation already stated that the trend to use thinner gauges of ACF does not render the data provided in tonnes unreliable as it is also complemented with market share data and the trend to move to thinner foil affects all producers equally.
- (161) With regard to the Commission's analysis, the use of tonnes as measure did not lead to an inaccurate assessment. While it is correct that a decrease in gauge decreases the weight per m², Manreal has not argued that the trend to thinner gauges is affecting the EU producers and Chinese exporters in a different way. In particular, Manreal did not claim that the decreasing market share of the Union producers is linked to the production of thinner gauges.
- (162) Concerning Manreal's claim set out in recital 17 of the provisional Regulation that the trend to thinner ACF gauges may have caused inaccuracies in the Commission's analysis, the Commission clarified that the trend to move to thinner foil affects both Union producers and producers from the PRC competing for clients requesting thinner foil. However, as indicated in recital 124 Manreal did not claim that Union producers' sales in tonnes are affected more by this trend than the sales in tonnes of the exporting producers. This would also contradict the claims by Manreal that users would prefer to buy thinner ACF from PRC producers as they would provide higher quality for thinner foils.
- (163) Furthermore, the trend to using thinner gauges is a long-term trend. No user claimed that within the period considered there has been a major shift over the entire market, during the verifications at the Union producers the Commission got confirmation that it is a slow process, as can be seen from the testing phase for ACF<6. Moreover, several users claimed that Chinese producers currently have more production in thinner gauges than the Union producers do. This would mean that in case of an increased demand of thinner ACF gauges, the recent export data from PRC in tonnes would understate their output measured in m², compared to the Union production. Therefore, the trend to thinner gauges has in any event not distorted the comparison in favour of the Union industry. Furthermore, most import data on which the Commission relies, such as data from data banks and customs' authorities is measured in tonnes.

4.4.4. *Costs for tolling*

- (164) Following the provisional Regulation Zhongji noted that a Union producer contracts related tollers in its production process and requested the Commission to clarify how such costs are taken into account to calculate the target price and required to exclude the profits realised by the related supplier.
- (165) The Commission had verified that in such case the raw material and the converted semi-finished product were owned by the producer. For the tolling a conversion fee, reflecting only the cost of production of the toller, was as charged by the toller. This conversion fee was then accounted as cost of production at the producer. The Commission therefore rejected any implied claim that the cost of production might have been inflated by the tolling as only the actual cost was charged for the tolling.

4.4.5. *Claim concerning reliability of data used*

- (166) Following the provisional Regulation, Manreal requested the Commission to independently collect more reliable data on EU production, production capacity, import, export and EU consumption of ACF, and to distinguish between ACF and AHF. Manreal suggested an analysis of the imports of ACF from China based on Eurostat Comext database or any other information in possession of DG TAXUD or, as an alternative, by collecting information from non-complaining Union producers of ACF and unrelated importers.
- (167) Manreal has not substantiated in which way the data collected and cross-checked by the Commission is unreliable. As described in the provisional disclosure the Commission has used data from the Eurostat Comext database and indeed distinguishing from AHF, as existing TARIC codes were already provided for this distinction, and has collected data from all cooperating Union producers and unrelated importers solely for ACF as defined in the investigation. The Commission therefore rejects the claim that the data collected is unreliable or that the Commission has omitted to collect reliable data.
- (168) Manreal further requested the Commission to ask the companies related to the Complainants to provide their own injury data (e.g. sales, prices, production costs and profitability) in order to have a more comprehensive picture of the economic situation of the EU industry.
- (169) As indicated in recitals 26 to 28 of the provisional Regulation, in this case the Commission chose a sample in accordance with Article 17 of the basic Regulation. This sample consisted of three companies. Manreal has not substantiated why this sample is not representative of the Union industry regarding sales, prices, production costs and profitability. The claim is therefore rejected.

4.4.6. *Conclusion on injury*

- (170) All claims of the parties following the provisional Regulation were rejected. The Commission therefore concluded, based on the findings disclosed in the provisional Regulation, that the Union industry suffered material injury within the meaning of Article 3(5) of the basic Regulation.

5. CAUSATION

5.1. **Effects of other factors**

5.1.1. *Consumption*

- (171) Xiamen Xiashun argued that a severe decrease in consumption of ACF could be the source of injury of the Union industry. Xiamen Xiashun claimed that the provisional Regulation does not give due credit to this decrease and does not accurately assess its effect on other indicators. More specifically, Xiamen Xiashun argued that the decrease in production and sales is to a large extent linked to the decrease in consumption. The company further argued that the increase in imports from China is smaller than the decrease in consumption. Xiamen Xiashun argued that the

decrease in consumption is at least in part caused by the Circular Economy guidelines. The company also claimed that the monthly average import volume of ACF from China decreased by no less than 21 % between the IP and the period from November 2020 to March 2021.

- (172) Contrary to what Xiamen Xiashun claimed, the provisional Regulation took into account the decrease in consumption. As indicated in recital 258 of the provisional Regulation, the Union consumption contracted in 2019 and in the IP. Nevertheless, the imports from the PRC increased throughout the period considered, whilst the consumption decreased. This is not indicative of the decrease in consumption being the root cause of the Union industry's injury. As to the decrease of imports post-IP, the Commission noted, that the reference periods to analyse injury and causality are the IP and the period considered. The claim that imports decreased following the IP is therefore not relevant.
- (173) Xiamen Xiashun further claimed that the decrease in production and sales of the Union industry is to a large extent linked to and the result of the decrease in consumption over the period considered.
- (174) Xiamen Xiashun did not provide any plausible explanation as to why the decrease in consumption would be linked to a large extent to the decline in sales of the Union producers by 15 % (16 % in 2019), while the imports from the PRC increased by 21 % (27 % in 2019) as indicated in recital 262 of the provisional Regulation. The Commission therefore rejected this claim. Following the definitive disclosure, Xiamen Xiashun stated that their explanation was plausible and that the Commission disregarded it. The Commission analysed the claim in detail in recitals 168 to 169 above, and, absent further information from Xiamen Xiashun, it confirms its conclusions.
- (175) Following the definitive disclosure, Xiamen Xiashun also argued that a) the Union producers are unable to supply the full range of ACF required by the users with a lesser focus on thin gauge and certain dimensions, b) the Union industry failed to make investments, and c) there is an absence of production capacity on the part of the Union industry.
- (176) The Commission has verified that the Union producers are able to supply the full range of ACF required by users, including thin gauges. The Commission has also analysed in recital 321 of the provisional Regulation that some ambitious investments of the sampled Union producers were halted, but that this was the result of the injurious situation of the Union industry, not its cause. Furthermore, the Commission has specifically analysed the capacity of the Union industry to produce thin gauges of ACF<6. The claims were thus rejected.

5.1.2. COVID-19 pandemic

- (177) Following the provisional disclosure, Zhongji put forward a series of questions about the hypothetical situation without factory shut-downs, employee absences, delays in supply of raw materials, delays in delivery of finished goods or transportation disruptions due to the COVID-19 pandemic. The Commission understands this as an argument questioning whether the COVID-19 pandemic was not causing injury.
- (178) The Commission had already analysed whether the COVID-19 pandemic had not contributed to the Union industry's injury in recitals 317 to 319 of the provisional Regulation. The Commission took due care in investigating the effects of the COVID-19 pandemic when analysing and cross-checking the data provided by the Union producers, and concluded that there were no disruptions due to COVID-19 restrictions that would have contributed to the material injury suffered by the Union industry. The Commission therefore rejected the claim that the COVID-19 pandemic has contributed to the injury.

5.1.3. *Lack of investment*

- (179) Following the provisional Regulation, Manreal argued that Union users buy Chinese ACF mainly for its higher quality rather than its price. The difference in quality between Chinese ACF and ACF produced in the Union is caused by a lack of investment from the Union industry. However, this argument of Manreal was already addressed in recital 348 of the provisional Regulation.
- (180) The consortium of importers argued that recitals 295, 300, 321 and 322 of the provisional Regulation implicitly confirmed the lack of investment and concluded that the Union producers lag behind in terms of technological development and capacity to provide ACF in volume and in the commercial quality required. The consortium, however, did not provide any new evidence.
- (181) The Commission refers to its conclusion in recital 321 of the provisional Regulation that some ambitious investments of the sampled Union producers were halted, but that this was the result of the injurious situation of the Union industry, not its cause. The Commission therefore maintained its conclusion that limited investment did not contribute to the material injury suffered by the Union industry.
- (182) Following the definitive disclosure the consortium of importers claimed that the Commission reiterated its conclusions from the provisional Regulation without providing evidence capable of rebutting the consortium's argument that the Union industry's injury resulted from a lack of investments, which resulted in an inability to provide the thin foil. The consortium claimed that while it had provided all the evidence it could reasonably gather, it would be for the Commission to verify the accuracy of these claims and, if need be, to further investigate these issues by requesting additional information from the Union producers. The lack of investments in new machinery and technologies resulted in the Union producers' lines of production becoming obsolete as the vast majority of aluminium foil plants in the EU are over 20 years old.
- (183) Contrary to what the consortium alleged, the Commission has verified the quality testing results specifically for ACF<6 during the RCCs regarding the sampled Union producers, as the consortium had claimed quality issues with the thinner foils. While the Commission has acknowledged that some investments were halted, it has also verified the investments made into existing machine parks and the resulting quality tests. The Commission therefore rejected the claim that it did not make the necessary effort to assess the claims of the consortium, further to the evidence provided.

5.1.4. *Restructuring of the Union industry*

- (184) Xiamen Xiashun argued that the restructuring of one of the sampled Union producers cannot be attributed to Chinese imports.
- (185) As mentioned in recital 288 of the provisional Regulation, it is true that the cost of restructuring of one of the sampled Union producers in the second half of the IP may have had an impact on some indicators, such as cost of production, labour cost and profitability. This is why in recitals 260 to 261, 263 and 268 of the provisional Regulation the Commission also considered the injury picture disregarding those costs. Even without those cost elements, it is clear that the Union industry suffered injury throughout the period considered. These claims were therefore rejected already in the provisional Regulation. The Commission maintained this assessment, concluding that the restructuring of the Union industry did not contribute to the material injury suffered by the Union industry.

5.1.5. *High wages and energy costs*

- (186) Following the provisional Regulation, Manreal requested the Commission to reassess the extent to which employment and labour costs as well as high energy prices pushed the Union industry's profitability down. Manreal claimed that higher labour costs led to a decline in profit margins which the Commission falsely attributed to the price pressure of ACF from China.
- (187) The Commission had already addressed this claim in recitals 329 and 330 of the provisional Regulation. Manreal did not provide any new evidence. Therefore, the Commission maintained its conclusion.

5.1.6. *Export performance of the Union industry*

- (188) Manreal requested the Commission to investigate whether the Union producers have been able to benefit from new markets open to them as a result of measures adopted in other jurisdictions.
- (189) The Commission analysed the Union industry exports to all third countries in recitals 337 to 340 of the provisional Regulation. Manreal has not substantiated which additional data the Commission should collect or how this would have an impact on the conclusion that the export performance of the Union industry did not contribute to the material injury suffered by the Union industry.

5.1.7. *Conclusion on causation*

- (190) All claims of the parties following the provisional Regulation were rejected. The Commission therefore concluded, based on the findings disclosed in the provisional Regulation, that the dumped imports from the country concerned caused material injury to the Union industry and that the other factors, considered individually or collectively, did not attenuate the causal link between the dumped imports and the material injury.

6. UNION INTEREST

6.1. **Interest of the Union industry and suppliers**

- (191) In the absence of any comments the Commission confirmed the recital 346 of the provisional Regulation that the imposition of measures is in the interest of the Union industry and its upstream suppliers.

6.2. **Interest of users**

- (192) Following the provisional Regulation, several users reiterated a number of their previous arguments. The users argued that:
- the Union industry would not provide the same quality and dimensions as Chinese producers,
 - measures would lead to supply chain interruptions,
 - measures would jeopardize the competitiveness of the converting industry,
 - measures would contravene the green goals of the Union by preventing high quality thinner ACF to be used,
 - the Commission should not dismiss State aid as an alternative to anti-dumping duties.
- (193) The Commission had already considered these claim in section 6 of the provisional Regulation and concluded that they were no compelling reasons to conclude that it is not in the Union interest to impose provisional measures. For the definitive measures the Commission took these claims, together with the additional claims raised after the provisional Regulation, into account in the weighing of the Union interest below in section 6.4.
- (194) Following the provisional Regulation, Manreal further argued that measures would not benefit the Union producers. Instead they would benefit the producers of ACF in Turkey, Thailand, Brazil or Russia as the users would buy from these countries instead of the Union producers.
- (195) However, Manreal did not substantiate why the Union producers wouldn't be able to compete with producers from other countries under fair conditions.
- (196) In addition, Manreal argued that in case the users would pass on their cost to their customers, this would put into jeopardy the competitiveness of their customers. The company did, however, not substantiate this claim further beyond making this general remark.

- (197) Manreal further argued that in recital 354 of the provisional Regulation the Commission indicated that it would impose measures in favour of integrated producers. It requested the Commission to investigate the likely effects of the measures 'in the EU fair competition'.
- (198) This is a misinterpretation of the provisional Regulation as the Commission merely stated that the non-imposition of measures would favour non-integrated users, as in the absence of measures they can purchase dumped ACF, whereas integrated users producing ACF in the Union would not benefit from this unfair advantage. As regards Manreal's request to investigate the likely effects of the measures 'in the EU fair competition', the Commission understands that Manreal claims the duties would constitute an unfair competitive advantage for integrated Union producers towards non-integrated businesses. The Commission recalled that in accordance with Article 21(1) of the basic Regulation the need to eliminate trade distorting effects of injurious dumping and to restore effective competition is given special consideration in the Commission's assessment of the Union interest.
- (199) After the provisional disclosure, Manreal further claimed that the Commission breached its rights of defence as Manreal did not have access to the analysis mentioned in recital 348 of the provisional Regulation.
- (200) The Commission is under the obligation to protect confidential business information of the parties, balancing access to that information with the interest of other parties to exercise their rights. A detailed quality analysis of products from different suppliers from the PRC and the Union over multiple years can rightfully be claimed as a business secret, which is not shared with competitors. Therefore, not sharing business secrets did not cause a breach Manreal's of rights of defence.
- (201) Two companies, Gascogne and Manreal, argued that the statement of the Commission that there would be no uniform interest of the user against measures in recital 356 of the provisional Regulation would be incorrect as all comments submitted by users were against measures.
- (202) For its assessment the Commission may also rely on confidential data submitted by users as questionnaire replies. From the data it follows that there are two users, which purchase a high percentage of their ACF from China and for whom ACF from China represents a very high part of their raw material costs but the other users mainly purchase ACF from Union producers and would not be affected in the same way by the measures. Revealing details about which percentage individual users purchase from concrete ACF producers would expose their supply chains. The parties can, however, already make their argument based on the information that users rely to a different extend on imports from the PRC.
- (203) In light of the above, the Commission confirms its assessment that there is no uniform interest of users either in favour or against the imposition of the measures, even if users who argued against the imposition of the measures, in particular the two users, for whom ACF represents a high percentage of their cost of production, mentioned in recital 347 of the provisional Regulation, may face certain negative consequences.
- (204) Following the definitive disclosure, Walki argued that the general disclosure document did not portray the users' interest correctly or fairly. Walki further claimed that the conclusion of the Commission on the lack of 'uniform interest' of users based on the fact that *'users rely to a different extent on imports from the PRC'* is a misleading and discriminatory analysis against users.
- (205) The Commission concluded that there was no uniform interest of users due to the highly different levels on which users rely on ACF originating in the PRC. With this statement, the Commission did not deny that all cooperating users opposed the imposition of anti-dumping duties.
- (206) Walki further claimed that the Commission has not responded to its request for a more adequately reasoned analysis relating to crucial elements of the Union interest. Walki referred to its comments on the provisional Regulation, in which it requested a correction of the Commission's statement with regard the reference to the arguments of users on the fact that the Union industry cannot provide the same quality ACF as the Chinese producers due to a lack of investment. Walki argued that six users submitted a common statement claiming *'that the Applicant producers do not*

have the production capability to supply certain important specifications of ACF. Their inability to commercially supply these specifications to the Union Users is attributed most clearly to the Applicants' long-term failure to invest in the production equipment and technology necessary to extend their existing ACF production range in order to supply the thinner specifications needed by these Users.'

- (207) Indeed, six users submitted a common statement claiming that the Union industry had failed to invest, further to the four users which had already provided this argument individually. However, the Commission addressed this claim on substance in sections 5.2.3 and 6.2. of the provisional Regulation. At this stage, no user has provided new factual information, but just reiterated the same claim. The Commission therefore confirmed its conclusions.
- (208) Walki further claimed that the Commission wrongfully concluded that the Union's products are not inferior on the basis of the Union producers' general ability to export and compete successfully in third country markets. Walki argued that this would only apply to the ability to produce quality thicker foil above 20 microns. It also claimed that the Commission did not indicate this would include all the thinner foils, which are at the centre of the Union supply constraint issue.
- (209) Walki further claimed that the statement that not all Chinese producers can produce efficiently high-quality product, has no bearing on the users' argument that the Union industry is not capable of efficiently producing high quality thinner foil.
- (210) The Commission has cross-checked sales data of the Union producers at hand, which shows that there are exports of ACF below 20 microns to third countries. Walki's argument that the Union producers would only be competitive with ACF above 20 microns does therefore not stand.
- (211) Walki further claimed that the Commission's assessment of the spare production capacity does not equate to an ability to produce quantities of quality thin ACF.
- (212) The Commission has duly analysed the capacity to produce thinner foil, which is limited by the machines capable of the last rolling step. Some Union producers presented test results, showing that the test roll production for ACF<6 was successfully meeting the requirements of the respective customer. The Commission further points to its assessment that ACF<6 is a developing new market and due to the very small demand during the IP, naturally not all Union manufacturers adapted their machine park yet for this market segment.
- (213) Walki further claimed that key elements of positive evidence submitted by Walki during the latter course of the investigation have been totally ignored or mistakenly represented. The Commission considered that claim to be inaccurate. The Commission took all arguments and evidence into consideration, but for confidentiality reasons, some very specific information could not be disclosed in the regulation.
- (214) Following the definitive disclosure Manreal claimed that the Commission breached the principle of good administration. Manreal argued that the Commission disregarded, with no reasoning, all Manreal's comments to the provisional Disclosure that could vary its conclusions. Further, Manreal pointed to recitals 8, 9, 108, 109, 118, 119, 131 to 134, 142, 147 to 150, 155 to 157 and 175 to 178 of the definitive disclosure, claiming that the Commission used an unfair rebuttal technique by pointing out that Manreal did not substantiate its claims sufficiently. Manreal argued that it sufficiently fulfilled its burden of proof according to the means available. The Commission should have further investigated its claims rather than pointing to a lack of substantiation. Finally, Manreal referred to paragraph 98 of the World Trade Organization's ('WTO') Appellate Body decision in EC – Hormones ⁽¹⁷⁾, claiming that it has provided prima facie evidence, which would shift the burden of proof to the defending party.
- (215) Contrary to Manreal's claim, the Commission fulfilled its obligation to assess, for each of Manreal's comments whether it was sufficiently substantiated, and has explained the reasons why it was not in each case in the recitals mentioned by Manreal. The Basic Regulation does not foresee an obligation of the Commission to further investigate comments, which are not sufficiently substantiated.
- (216) Therefore, the Commission rejected this claim.

⁽¹⁷⁾ Appellate Body Report, EC – Hormones, WT/DS26/AB/R, WT/DS48/AB/R, para. 98.

6.3. End-use exemption request

- (217) Effegidi requested an end-use exemption for ACF for the use in the production of films for cable shielding and wine bottle capsules.
- (218) The request is based on the percentage of the costs ACF represents in the production costs of films for cable shielding and wine capsules and the impact the measures would have on the company. According to Effegidi, films for cable shielding and wine capsules are niche markets and their consumption of ACF is equally negligible. This implies that an exemption from the duties for final use would not undermine the overall effectiveness of the anti-dumping duty.
- (219) However, the investigation revealed that Effegidi does not only produce the two products for which it requested the end-use exemption, but its portfolio includes a variety of other products like cable films which do not incorporate ACF, as well as other food and non-food packaging, some of which incorporate ACF. The Commission could therefore not determine the overall impact of the anti-dumping duties on the profitability of the company based on the data provided by Effegidi. Consequently, in the definitive disclosure, the Commission rejected the end-use exemption.
- (220) Following definitive disclosure, Effegidi provided the Commission with its financial statements for the years 2019, 2020 and for the first half of 2021. Effegidi further requested guidance from the Commission on what further documents it needed to provide in order to be able to be granted the end-use exemption.
- (221) The Commission found that the information sent after the definitive disclosure was not sufficient to allow the Commission to assess the overall impact of a potential exemption on the effectiveness of the duty. Effegidi did not provide any information about the cable shield and wine capsules industry.
- (222) Moreover, Effegidi was not a cooperating interested party from the early stage of the investigation and only provided its end-use exemption request on 5 July 2021, two weeks after the publication of the provisional Regulation and the additional information only after the definitive disclosure. At this late stage of investigation the Commission was not able to verify any additional data.
- (223) The Commission could therefore not assess whether the end use exemption would be in the Union interest and therefore confirmed its rejection of Effegidi's exemption request.

6.4. Interest of importers

- (224) Following the provisional disclosure, the consortium of importers reiterated the claim that the Union producers are not able to meet the existing ACF demand especially in the market segment of thin gauge ACF, in which they currently import from the PRC to meet the demand. The consortium claimed that it would take at least 2 years to make the production of thin gauge ACF effective and operational and that the Union producers do not appear to meet the demanded quality standards to replace current imports from China in this market segment.
- (225) Further to the fact that the consortium has not substantiated why it would take 2 years to make the thin gauge ACF production operational, the Commission has already concluded in section 4.5.2.1 of the provisional Regulation the Union industry appears to have sufficient spare capacity. Moreover, the Union industry has demonstrated with sales and test roll production to be able to meet the clients' demand as described in recitals 50 and 51 of the provisional Regulation.
- (226) In light of the above, the Commission confirmed its conclusion that the imposition of measures would not necessarily be in the interest of importers. However, it further assessed their likely effects when weighing the different interests at stake (see Section 6.4).
- (227) Following the definitive disclosure, the consortium claimed that the Commission completely disregarded the fact that the gradual movement of the demand into thinner gauges of ACF resulted in an increase in demand for ACF of ≤ 7 microns. Furthermore, the Commission underestimated the fact that it would take at least two years to make the production of thin gauge ACF effective and operational in the EU.

- (228) Further, the consortium claimed that the Commission failed to provide clarification on how the substantial spare capacity of the Union industry can satisfy the demand of thin gauge ACF.
- (229) The consortium also reiterated that the Union industry cannot meet the quality standards for thin gauge ACF in terms of porosity and runnability and stressed that the rolling mills producing the ACF are the same as for the car battery industry, further reducing the capacity for ACF. It claimed that overlooking of those aspects led the Commission to the erroneous conclusion that the imposition of duties is in the Union interest.
- (230) As explained in recital 51 of the provisional Regulation, the Commission assessed the capacity of the Union industry to produce thinner ACF, specifically ACF<6 by assessing the capacity of the last rolling mill step, necessary to reach this thin gauge. The previous rolling steps proved to have sufficient spare capacity. Consequently the bottleneck for the production of ACF<6 is in the last rolling step. The Commission has clarified how the Union industry can satisfy the demand of thin gauge ACF. The argument that it would take at least two years to make the production of thin gauge ACF effective and operational only applies to new capacities that the Union industry would install as a result of a restored fair price competition and a further increasing demand. As already the existing capacities can satisfy the expected demand in the near future, potential additional future capacities have not been taken into account in the Commission's calculation. It is not relevant that new capacities would require a period before becoming operational. The Commission therefore rejected the claim.

6.5. Weighing of the competing interests

- (231) In line with Article 21(1) of the basic Regulation, in the provisional Regulation the Commission assessed the competing interests and gave special consideration to the need to eliminate the trade distorting effects of injurious dumping and to restore effective competition.
- (232) In the weighing of the competing interests the Commission on one side considered that the price suppression by Chinese exports had deteriorated the situation of the Union industry and that on the other side a price rise would have a limited negative impact on the users. The Commission concluded that there were no compelling reasons to conclude that it is not in the Union interest to impose provisional measures on imports of ACF originating in China.
- (233) Following the provisional Regulation, Manreal argued that the analysis of the market and of the Union interest undertaken in the provisional Regulation is no longer valid, as a result of the drastic increase of prices and speculation in the commodities market, which are consequences of the investigation and the Covid-19 pandemic. The converting packaging industry is strongly hit not only by a 40 % price increase for aluminium, but also by a 40 % price increase for kraft paper and by container transport costs which have increased by 400 %. The average supply time for paper deliveries has increased from 3-4 weeks to 4 months. In some supply contracts, suppliers claim force majeure and deliver with a delay of 6 months while asking for 20 % higher prices than at the time of the order.
- (234) Supporting Manreal's arguments, Walki, Gascogne, and Effegidi also emphasized that post IP the market situation has fundamentally changed leading to supply shortages not only in ACF, but also their other raw materials. According to Gascogne, the aluminium price on the London Metal Exchange increased by 30 % from October 2020 to May 2021. Also under the current situation only 1 major Union producer appears to be able to supply new orders without a lead time of several months. Effegidi claimed that, according to quotes from Union producers in July 2021, supply of ACF for its production would not be available before 2022.
- (235) Another user, Alupol, argued that starting from December 2020 they noticed poor interest in contracts from the Union producers and even a 2-year supply contract concluded with one of the Union producers was terminated by the producer after half a year, which shows capacity constraints. Walki provided additional evidence relating to requests of 6.35 micron ACF, demonstrating that the supply difficulties faced in 2021 are continuing.

- (236) Also the consortium of importers argued that since the beginning of the investigation ACF prices have increased by 25 % and delivery times have increased from an average of 2 months to 4 months. Also the current supply shortage situation leads to integrated companies supplying their related entities on a preferential basis, leaving less capacity for the open market. The consortium expects the anti-dumping duties to disrupt supply-chains and lead to a supply shortage for the entire range of ACF, but in particular for gauges below 6 microns.
- (237) While these changes in the market indeed have an impact on the different interests of producers, users and importers, they are caused by the exceptional situation of the COVID-19 pandemic and the following strong economic recovery, which has caused an international transport shortage and supply shortages. Accordingly, it may require certain time for the markets to adapt until the economic recovery and growth would normalize and demand and supply would be in balance again, including in the ACF sector.
- (238) Manreal further argued that in line with Article 11 TFEU protection against dumped imports should be balanced with other goals of the Union, such as environmental protection, and concluded that the imposition of measures will have a very negative impact on the environment. Manreal argued that irrespective of possible negative impacts on jobs or industrial policy, the disappearance of more polluting Union producers would be good for the EU environment. Consequently, Manreal requested the Commission to include in the investigation the likely effects of the measures on the environment.
- (239) The Commission noted, first, that Manreal has not substantiated in which way Union producers are more polluting than Chinese producers. Moreover, while the Union sets high environmental standards for its producers, the purpose of Article 11 TFEU is not to prevent economic activity but to integrate environmental protection requirements into the policy guiding the economic activity. Manreal's suggestion to reduce emissions in the Union by allowing its industry to be wiped out by unfair competition is not only incompatible with the EU's environmental goals but would go against number of other policies. Consequently, Manreal's request to investigate the environmental impact of such a scenario was rejected.
- (240) Manreal further pointed to recital 355 of the provisional Regulation, in which the Commission stated, in reply to Manreal's previous argument that State aid could be a more suitable measure than imposing duties, that financial aid is not the right instrument to counter injurious dumping. Manreal argued that this is a policy choice that should not be adopted without consulting the Directorate-General for Competition ('DG COMP'). Manreal further claimed that the Commission's argument would presuppose that any aid granted to Union producers would not be authorised by DG COMP.
- (241) The Commission recalled that Article 9(4), first paragraph, of the basic Regulation stipulates that where the facts as finally established show that there is dumping, and injury caused thereby, and the Union interest calls for intervention, a definitive anti-dumping duty shall be imposed by the Commission. Indeed, the Commission cannot abstain from countering demonstrated injurious dumping by Chinese exporters through the legal instruments at the Commission's disposal merely because Union producers may also benefit from State aid. Moreover, State aid is granted by the Member States, not the Commission.
- (242) Consequently, none of the arguments following the provisional disclosure and the provisional Regulation raised by the users and importers changed the Commission's conclusion.
- (243) Several parties submitted together with the comments to the general definitive disclosure a request to assess a potential suspension of the duties according to Article 14(4) of the basic Regulation. Following these requests, the potential suspension of the duties will be analysed in a separate procedure.

6.6. Conclusion on the Union interest

- (244) On the basis of the above, there are no compelling reasons to conclude that it is not in the Union interest to impose definitive measures on imports of ACF originating in China.

7. LEVEL OF MEASURES

7.1. Injury margin

- (245) Following the provisional disclosure, Xiamen Xiashun argued that future compliance costs should not be added to the target price since the Note on compliance cost was published after the publication of the provisional Regulation, which violated Xiamen Xiashun's rights of defence.
- (246) The Commission rejected the claim. Xiamen Xiashun together with all other parties was given additional time to comment on the Note on compliance costs after its publication. Therefore, the late publication did not infringe its rights of defence.
- (247) Further, Xiamen Xiashun argued that environmental concerns are not exclusive to the Union industry, since Xiamen Xiashun will be subject to China's Emissions Trading Scheme and it has received a Performance Standard certification from the Aluminium Stewardship Initiative, which comprises criteria on greenhouse emissions including a CO₂ emission threshold.
- (248) The Commission rejected the claim. The PRC domestic legislation is irrelevant for the application of Article 7(2d) of the basic Regulation, according to which future costs resulting from multilateral environmental agreements, and protocols thereunder, to which the Union is a party, must be taken into account to establish the target price of the Union Industry.
- (249) Donghai argued that the target profit of 6 % should only be calculated on the conversion cost and not on the entire price of ACF.
- (250) The Commission rejected the claim as according to Article 7(2c) of the basic Regulation the target profit must be calculated on basis of the full costs and not just a part reflecting the conversion of raw material.
- (251) Zhongji and Nanshan reiterated the claim following definitive disclosure. Zhongji argued that contrary to the Commission's view, Article 7(2c) of the basic Regulation does not establish that the target profit must be calculated on the basis of the full costs, but that the Article 7(2c) only establishes that the target profit must be sufficient for the recovery of full costs. Zhongji argued that ACF producers obtain their profits on the conversion price and not on the price of raw materials.
- (252) Article 7(2c) of the basic Regulation says '*the target profit used shall be established taking into account the level of profitability needed to cover full costs*'. Full costs include raw materials. The claim was therefore dismissed.
- (253) Donghai further claimed that restructuring costs should not be part of the target price.
- (254) The Commission explained in recital 329 of the provisional Regulation that the cost increase in the IP was mainly due to the restructuring of one of the sampled producers. The Commission noted further that restructuring is a regular process in situations of dumped imports. In any event, in line with the basic Regulation, all costs must be taken into account for the target profit calculation.
- (255) Following the definitive disclosure, Zhongji reiterated the claim that extraordinary costs should be excluded from the target price. Zhongji argued that the Commission did not address Zhongji's arguments and that the Commission contradicted itself by consistently referring to these costs as 'extraordinary', but in the context of the target price considered them to be 'regular'. Zhongji however provided no new evidence.
- (256) In the absence of any further evidence, the Commission confirms recital 325 of the provisional Regulation . Restructuring is a regular process in situations of dumped imports and part of the costs of a company.

- (257) Zhongji further claimed that the Commission should apply by analogy what it has stated in the provisional Regulation in Potassium Chloride ⁽¹⁸⁾, in which the Commission decided to deduct temporary and exceptional costs borne by Canadian mining companies before using their costs as a reference for companies from Belarus, Russia and Ukraine, as it would be unreasonable to make them bear the burden of such costs. Zhongji argued that the Commission applied the same principle also in the Unwrought unalloyed magnesium Regulation ⁽¹⁹⁾ and the Certain polyethylene terephthalate (PET) Regulation ⁽²⁰⁾. Zhongji thus argued that the Commission should also in the current case disregard the restructuring costs as temporary and exceptional costs.
- (258) The Commission disagrees that the situation referred to in the provisional Regulation in the Potassium Chloride case is comparable to the current investigation. In Potassium Chloride, the temporary and exceptional cost of the Canadian companies did not have any connection to dumped imports to the Union. The same applies for the comparison to the unwrought unalloyed magnesium Regulation, in which the restructuring of the company was done following a privatisation. The exclusion of extraordinary costs in the PET case was done as a result of a particular situation, which was different from the restructuring costs at hand. In this case, as stated in recital 325 of the provisional Regulation, the restructuring costs were not exceptional and thus should be taken into consideration. The Commission therefore, rejected the claim.
- (259) Zhongji commented that the target profit for ACF with PCNs starting with 1 is unreliable. The combined production of the three sampled Union producers for the PCN starting with 1 is below 3 000 tonnes. Zhongji sees these quantities as negligible and considers that the Commission did not have the cost of production for such products, or at least they were unrepresentative due to the limited volume. This renders the target price unreliable.
- (260) Where there is no Union production of a certain PCN that is exported, unless adjustments can be reasonably made, the Commission excludes that PCN from the comparison. However, where there is production of a PCN by the Union industry, even if this quantity is lower than for other PCNs, the Commission considers it more accurate to nevertheless include that PCN in the comparison, based on the information available from sampled Union producers. Moreover, in the present case, 3 000 tonnes cannot be considered a negligible amount of production. The Commission therefore rejected the claim.
- (261) Further, Zhongji argued that some ranges for the data provided in the provisional disclosure were not meaningful as they were too wide to provide a reasonable understanding of the confidential data regarding PCN 1DA and PCN 5BA.
- (262) Zhongji refers to Union industry data regarding two PCN, which are only produced by a single Union producer. The ranges provided by the Commission therefore need to take into account not only the confidentiality of the data, but also the fact that certain values can be calculated backwards, if ranges are too narrow. For the Unit sales price and the target price the Commission has provided narrow ranges. For the quantities sold as well as the total value ex works, however, the Commission had to ensure that the values could not be calculated and opted for sufficiently wide ranges. The alternative would have been to replace the values as sensitive.
- (263) Donghai further claimed that the Commission erroneously relied on Article 2(9) of the Basic Regulation in order to determine Nanshan Europe's sales prices for the purpose of the underselling margin calculation and claimed that the Commission should have used the actual sales prices of Nanshan Group's related selling entity in the European Union and deducted solely the direct selling expenses incurred for the sales of the product concerned by this EU related selling entity

⁽¹⁸⁾ Commission Regulation (EEC) No 1031/92 of 23 April 1992 imposing a provisional anti-dumping duty on imports of potassium chloride (potash) originating in Belarus, Russia or Ukraine (OJ L 110, 28.4.1992, p. 5).

⁽¹⁹⁾ Council Regulation (EC) No 2402/98 of 3 November 1998 imposing a definitive anti-dumping duty on imports of unwrought unalloyed magnesium originating in the People's Republic of China and definitively collecting the provisional duty imposed (OJ L 298, 7.11.1998, p. 1), recital 21.

⁽²⁰⁾ Commission Regulation (EC) No 1742/2000 of 4 August 2000 imposing a provisional anti-dumping duty on imports of certain polyethylene terephthalate (PET) originating in India, Indonesia, Malaysia, the Republic of Korea, Taiwan and Thailand (OJ L 199, 5.8.2000, p. 48), recital 206.

- (264) The target price used for the purpose of the injury margin is based on the cost of production of the EU industry and the target profit, thus without including any related entities expenses. To ensure symmetry and a fair comparison, the export prices used for the injury margin calculation must therefore not include the expenses of the exporting producers' related entities. The claim is therefore dismissed.
- (265) As provided by Article 9(4), third subparagraph, of the basic Regulation, given that the Commission did not register imports during the period of pre-disclosure, the Commission analysed the development of import volumes to establish if there had been a further substantial rise in imports subject to the investigation during the period of pre-disclosure, to determine whether to reflect the additional injury resulting from such an increase in the determination of the injury margin.
- (266) Based on data from Eurostat's COMEXT and the Surveillance 2 database, import volumes from the PRC during the four weeks period of pre-disclosure were 47 % lower than the average import volumes in the investigation period on a four-week basis. On that basis, the Commission concluded that there had not been a substantial rise in imports subject to the investigation during the period of pre-disclosure.
- (267) Following the provisional Regulation Zhongji claimed that adjustments should be made as Carcano provides a call-off service, which Zhongji would not provide.
- (268) The Commission confirmed that the call-off service provided by Carcano concerns only very few sales of the sampled Union producers, and in addition the costs for this service are so low that an adjustment would not have any material impact on the results of this investigation.
- (269) Absent further comments on the injury margins, the Commission solely adjusted the margins as established in recitals 376 to 378 of the provisional Regulation due to corrected post-importation costs and also to take into consideration the changes to the declared CIF value as explained in recital 103. The final injury margins are shown below in recital 197.
- (270) Following the definitive disclosure, Nanshan requested the Commission to verify the target prices, as there were cases where thinner PCNs with lower prices than thicker PCNs, which Nanshan did not consider logical. The Commission took due care in establishing the target price and notes that those are based on the cross-checked information of the Union producers. There are other factors than thickness influencing the costs and also the target prices are based on multiple producers, which do not have precisely the same cost base.

7.2. Raw material distortions

- (271) Absent any comments concerning raw material distortions, the Commission confirmed its finding from recitals 381 to 383 of the provisional Regulation that the conditions of Article 7(2a) of the basic Regulation were not met, and as a result, the Commission found that the provisions of Article 7(2) were applicable to set the level of the definitive duty.

8. DEFINITIVE ANTI-DUMPING MEASURES

- (272) In view of the conclusions reached with regard to dumping, injury, causation, Union interest and the level of measures, and in accordance with Article 9(4) of the basic Regulation, definitive anti-dumping measures should be imposed in order to prevent further injury being caused to the Union industry by the dumped imports of the product concerned.
- (273) On the basis of the above, the definitive anti-dumping duty rates, expressed on the CIF Union border price, customs duty unpaid, should be as follows:

Company	Dumping margin	Injury margin	Definitive anti-dumping duty
Jiangsu Zhongji Lamination Materials Co., Ltd.	81,5 %	28,5 %	28,5 %
Xiamen Xiashun Aluminium Foil Co., Ltd	16,1 %	15,4 %	15,4 %
Yantai Donghai Aluminum Foil Co., Ltd.	98,5 %	24,7 %	24,7 %
Other cooperating companies	69,6 %	23,6 %	23,6 %
All other companies	98,5 %	28,5 %	28,5 %

- (274) The individual company anti-dumping duty rates specified in this Regulation were established on the basis of the findings of this investigation. Therefore, they reflected the situation found during this investigation with respect to these companies. These duty rates are exclusively applicable to imports of the product concerned originating in the country concerned and produced by the named legal entities. Imports of product concerned produced by any other company not specifically mentioned in the operative part of this Regulation, including entities related to those specifically mentioned, should be subject to the duty rate applicable to 'all other companies'. They should not be subject to any of the individual anti-dumping duty rates.
- (275) A company may request the application of these individual anti-dumping duty rates if it changes subsequently the name of its entity. The request must be addressed to the Commission ⁽²¹⁾. The request must contain all the relevant information enabling to demonstrate that the change does not affect the right of the company to benefit from the duty rate which applies to it. If the change of name of the company does not affect its right to benefit from the duty rate which applies to it, a regulation about the change of name will be published in the *Official Journal of the European Union*.
- (276) To minimise the risks of circumvention due to the difference in duty rates, special measures are needed to ensure the application of the individual anti-dumping duties. The companies with individual anti-dumping duties must present a valid commercial invoice to the customs authorities of the Member States. The invoice must conform to the requirements set out in Article 1(4) of this Regulation. Imports not accompanied by that invoice should be subject to the anti-dumping duty applicable to 'all other companies'.
- (277) While presentation of this invoice is necessary for the customs authorities of the Member States to apply the individual rates of anti-dumping duty to imports, it is not the only element to be taken into account by the customs authorities. Indeed, even if presented with an invoice meeting all the requirements set out in Article 1(4) of this Regulation, the customs authorities of Member States must carry out their usual checks and may, like in all other cases, require additional documents (shipping documents, etc.) for the purpose of verifying the accuracy of the particulars contained in the declaration and ensure that the subsequent application of the lower rate of duty is justified, in compliance with customs law.
- (278) Should the exports by one of the companies benefiting from lower individual duty rates increase significantly in volume after the imposition of the measures concerned, such an increase in volume could be considered as constituting in itself a change in the pattern of trade due to the imposition of measures within the meaning of Article 13(1) of the basic Regulation. In such circumstances and provided the conditions are met an anti-circumvention investigation may be initiated. This investigation may, inter alia, examine the need for the removal of individual duty rate(s) and the consequent imposition of a country-wide duty.

⁽²¹⁾ European Commission, Directorate-General for Trade, Directorate G, Rue de la Loi 170, 1040 Brussels, Belgium.

- (279) To ensure a proper enforcement of the anti-dumping duties, the anti-dumping duty for all other companies should apply not only to the non-cooperating exporting producers in this investigation, but also to the producers which did not have exports to the Union during the investigation period.

9. DISCLOSURE

- (280) Interested parties were informed on 28 September 2021 of the essential facts and considerations on the basis of which it was intended to recommend the imposition of a definitive countervailing duty on imports of certain ACF originating in the PRC. Interested parties were given the opportunity to provide comments subsequent to this disclosure.
- (281) Eleven parties submitted comments on disclosure. Upon request, hearings were held with Walki and Zhongji. The comments submitted by interested parties were duly considered, and, where appropriate, the findings have been modified accordingly.
- (282) In view of Article 109 of Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council ⁽²²⁾, 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.
- (283) The Committee established by Article 15(1) of Regulation (EU) 2016/1036 delivered a positive opinion,

HAS ADOPTED THIS REGULATION:

Article 1

1. A definitive anti-dumping duty is imposed on imports of aluminium converter foil of a thickness of less than 0,021 mm, not backed, not further worked than rolled, in rolls of a weight exceeding 10 kg, currently falling under CN code ex 7607 11 19 (TARIC codes 7607 11 19 60 and 7607 11 19 91) and originating in People's Republic of China.
2. The following products shall be excluded from the product described in paragraph 1:
 - Aluminium household foil of a thickness of not less than 0,008 mm and not more than 0,018 mm, not backed, not further worked than rolled, in rolls of a width not exceeding 650 mm and of a weight exceeding 10 kg.
 - Aluminium household foil of a thickness of not less than 0,007 mm and less than 0,008 mm, regardless of the width of the rolls, whether or not annealed.
 - Aluminium household foil of a thickness of not less than 0,008 mm and not more than 0,018 mm and in rolls of a width exceeding 650 mm, whether or not annealed.
 - Aluminium household foil of a thickness of more than 0,018 mm and less than 0,021 mm, regardless of the width of the rolls, whether or not annealed.
3. The rates of the definitive anti-dumping duty applicable to the net, free-at-Union-frontier price, before duty, of the product described in paragraph 1 and produced by the companies listed below shall be as follows:

⁽²²⁾ Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council of 18 July 2018 on the financial rules applicable to the general budget of the Union, amending Regulations (EU) No 1296/2013, (EU) No 1301/2013, (EU) No 1303/2013, (EU) No 1304/2013, (EU) No 1309/2013, (EU) No 1316/2013, (EU) No 223/2014, (EU) No 283/2014, and Decision No 541/2014/EU and repealing Regulation (EU, Euratom) No 966/2012 (OJ L 193, 30.7.2018, p. 1).

Company	Definitive anti-dumping duty (%)	TARIC additional code
Jiangsu Zhongji Lamination Materials Co., Ltd.	28,5 %	C686
Xiamen Xiashun Aluminium Foil Co., Ltd.	15,4 %	C687
Yantai Donghai Aluminum Foil Co., Ltd.	24,7 %	C688
Other cooperating companies (Annex)	23,6 %	
All other companies	28,5 %	C999

4. The application of the individual duty rates specified for the companies mentioned in paragraph 3 shall be conditional upon presentation to the Member States' customs authorities of a valid commercial invoice, on which shall appear a declaration dated and signed by an official of the entity issuing such invoice, identified by his/her name and function, drafted as follows: 'I, the undersigned, certify that the (volume) of (product concerned) sold for export to the European Union covered by this invoice was manufactured by (company name and address) (TARIC additional code) in [country concerned]. I declare that the information provided in this invoice is complete and correct.' If no such invoice is presented, the duty applicable to all other companies shall apply.

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

Article 2

Article 1(3) may be amended to add new exporting producers from the People's Republic of China and make them subject to the appropriate weighted average anti-dumping duty rate for cooperating companies not included in the sample. A new exporting producer shall provide evidence that:

- (a) it did not export the goods described in Article 1(1) during the period of investigation (1 July 2019-30 June 2020);
- (b) it is not related to an exporter or producer subject to the measures imposed by this Regulation; and
- (c) it has either actually exported the goods described in Article 1(1) or has entered into an irrevocable contractual obligation to export a significant quantity to the Union after the end of the period of investigation.

Article 3

The amounts secured by way of the provisional anti-dumping duty under Implementing Regulation (EU) 2021/983 shall be definitively collected. The amounts secured in excess of the definitive rates of the anti-dumping duty shall be released.

Article 4

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, 7 December 2021.

For the Commission
The President
Ursula VON DER LEYEN

ANNEX

Cooperating exporting producers not sampled

Country	Name	TARIC additional code
People's Republic of China	Zhangjiagang Fineness Aluminum Foil Co., Ltd.	C689
People's Republic of China	Kunshan Aluminium Co., Ltd.	C690
People's Republic of China	Suntown Technology Group Corporation Limited	C691
People's Republic of China	Luoyang Wanji Aluminium Processing Co., Ltd.	C692
People's Republic of China	Shanghai Sunho Aluminum Foil Co., Ltd.	C693
People's Republic of China	Binzhou Hongbo Aluminium Foil Technology Co. Ltd.	C694

DIRECTIVES

COMMISSION IMPLEMENTING DIRECTIVE (EU) 2021/2171

of 7 December 2021

amending Council Directive 66/402/EEC with regard to the seed lot and sample weights of *Avena nuda*

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

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

Having regard to Council Directive 66/402/EEC of 14 June 1966 on the marketing of cereal seed ⁽¹⁾, and in particular Article 21a thereof,

Whereas:

- (1) Commission Implementing Directive (EU) 2021/415 ⁽²⁾ amended Directive 66/402/EEC and due to a clerical error deleted the name of species *Avena nuda* from the entry in the third row of the first column of the table in Annex III to Directive 66/402/EEC. As a result, the maximum weight of a seed lot and the minimum weight of a seed sample of the species *Avena nuda* are no longer regulated. Therefore, the deleted name of species *Avena nuda* should be reinstated.
- (2) Directive 66/402/EEC should therefore be amended accordingly.
- (3) For reasons of legal certainty, the transposition date set out in this Directive should match the transposition date set out in Implementing Directive (EU) 2021/415.
- (4) The measures provided for in this Directive are in accordance with the opinion of the Standing Committee on Plants, Animals, Food and Feed,

HAS ADOPTED THIS DIRECTIVE:

Article 1

Amendment to Directive 66/402/EEC

In Annex III to Directive 66/402/EEC, the entry in the third row of the first column of the table is replaced by the following:

'Avena nuda, Avena sativa, Avena strigosa, Hordeum vulgare, Triticum aestivum subsp. aestivum, Triticum turgidum subsp. durum, Triticum aestivum subsp. spelta, Secale cereale, xTriticosecale'.

Article 2

Transposition

1. Member States shall adopt and publish, by 31 January 2022 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.

⁽¹⁾ OJ L25, 11.7.1966, p. 2309.

⁽²⁾ Commission Implementing Directive (EU) 2021/415 of 8 March 2021 amending Council Directives 66/401/EEC and 66/402/EEC in order to adapt to the evolution of scientific and technical knowledge, taxonomic groups and names of certain species of seeds and weeds (OJ L 81, 9.3.2021, p. 65).

They shall apply those provisions from 1 February 2022.

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

Entry into force

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

Addressees

This Directive is addressed to the Member States.

Done at Brussels, 7 December 2021.

For the Commission
The President
Ursula VON DER LEYEN

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