Official Journal of the European Union

L 29

English edition

Legislation

Volume 61

1 February 2018

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[1] Text with EEA relevance.

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

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[1] Text with EEA relevance.

II

(Non-legislative acts)

REGULATIONS

COMMISSION DELEGATED REGULATION (EU) 2018/153

of 23 October 2017

amending Delegated Regulation (EU) 2017/86 establishing a discard plan for certain demersal fisheries in the Mediterranean Sea

THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EU) No 1380/2013 of the European Parliament and of the Council of 11 December 2013 on the Common Fisheries Policy, amending Council Regulations (EC) No 1954/2003 and (EC) No 1224/2009 and repealing Council Regulations (EC) No 2371/2002 and (EC) No 639/2004 and Council Decision 2004/585/EC ([1]), and in particular Articles 15(6) thereof,

Whereas:

(1) Regulation (EU) No 1380/2013 aims to progressively eliminate discards in Union fisheries through the introduction of a landing obligation.

(2) In order to implement the landing obligation, Article 15(6) of Regulation (EU) No 1380/2013 empowers the Commission to adopt discard plans by means of a delegated act for a period of no more than three years on the basis of joint recommendations developed by Member States in consultation with the relevant Advisory Councils.

(3) Commission Delegated Regulation (EU) 2017/86 ([2]) has established a discard plan for certain demersal fisheries in the Mediterranean Sea applicable from 1 January 2017 until 31 December 2019, following three joint recommendations submitted to the Commission in 2016 by a number of Member States having a direct management interest in the Mediterranean Sea (Greece, Spain, France, Croatia, Italy, Cyprus, Malta and Slovenia respectively). Those three joint recommendations concerned respectively the Western Mediterranean Sea, the Adriatic Sea, and the South-Eastern Mediterranean Sea.

(4) According to Article 15(1)(d) of Regulation (EU) No 1380/2013, the landing obligation applies for the demersal fisheries in the Mediterranean Sea at the latest from 1 January 2017 to species that define the fisheries.

(5) On 2 June 2017, France, Italy and Spain submitted to the Commission a new joint recommendation for a 'Discard Plan for Demersal Fisheries in the Western Mediterranean (2018)' after consultations within the regional Pescamed High-Level Group. The same Members States submitted additional information and data on 5 July 2017 at the request of the Commission.

(6) The new joint recommendation submitted by France, Italy and Spain for the Western Mediterranean proposes that the survivability exemption, provided for by Article 3 of Delegated Regulation (EU) 2017/86 be also applied to the fisheries of Norway Lobster (*Nephrops norvegicus*) caught with all bottom trawls in the Western Mediterranean Sea. It also proposes that the application of the survivability exemption for scallop (*Pecten jacobeus*), carpet clams (*Venerupis* spp.) and Venus shells (*Venus* spp.), all caught with mechanised dredges (HMD), be extended to the Western Mediterranean Sea.

([1]) OJ L 354, 28.1.2013, p. 22.
([2]) Commission Delegated Regulation (EU) 2017/86 of 20 October 2016 establishing a discard plan for certain demersal fisheries in the Mediterranean Sea (OJ L 14, 18.1.2017, p. 4).

(7) Furthermore, the same joint recommendation suggests to extend the definition of the Western Mediterranean Sea for the purposes of this discard plan by including the General Fisheries Commission of the Mediterranean (GFCM) Geographical Sub-Area (GSA) 12.

(8) That joint recommendation also proposes to redefine the mullet fishery by including all Red mullets (*Mullus* spp.) i.e. red mullet and surmullet.

(9) The same joint recommendation suggests to update the period of reference to the years 2015 and 2016 for determining the volume of landings per vessel for hake and red mullets in the context of the implementation of the landing obligation.

(10) Finally, the joint recommendation suggests that the survivability exemption, established for mollusc bivalves (namely scallop (*Pecten jacobeus*), carpet clams (*Venerupis* spp.) and Venus shells (*Venus* spp.)) in the Western Mediterranean be applied also in the years 2018 and 2019.

(11) On 28 June 2017 Croatia, Italy and Slovenia submitted to the Commission a new joint recommendation for the Adriatic Sea providing new data on the survival rates of the common sole (*Solea solea*) for the years 2015 and 2016 after consultations within the regional Adriatica High-Level Group.

(12) The new joint recommendation submitted by Croatia, Italy and Slovenia proposes that the survivability exemption for common sole in the Adriatic Sea be applied also in the years 2018 and 2019.

(13) Those joint recommendations were assessed by the Scientific, Technical and Economic Committee for Fisheries (STECF) on 10-14 July 2017 ([1]). The STECF concluded in its evaluation that the information provided by Member States is not complete regarding the survival rates of common sole, scallop, carpet clams, Venus shells and Norway lobster. As the evidence on the survival rates of these species is not conclusive, the Commission considers that the survivability exemption allowed under Article 15(4)(b) of Regulation (EU) No 1380/2013 should be included in this Regulation for one year only. The Member States concerned should undertake to submit in good time the relevant data to the Commission to allow STECF to fully assess the justifications for the exemption and the Commission to carry out a review.

(14) In the light of these considerations, the proposed amendments to the discard plan for certain demersal fisheries in the Mediterranean Sea are compatible with the existing conservation measures in the area.

(15) The measures proposed by the new joint recommendations are in line with Article 15(4) and Article 18(3) of Regulation (EU) No 1380/2013 and may thus be included in the discard plan established by Delegated Regulation (EU) 2017/86.

(16) Delegated Regulation (EU) 2017/86 should be amended accordingly.

(17) Since the measures provided for in this Regulation impact directly on the planning of the fishing season of Union vessels and on related economic activities, this Regulation should enter into force immediately after its publication. It should apply from 1 January 2018,

HAS ADOPTED THIS REGULATION:

Article 1

Delegated Regulation (EU) 2017/86 is amended as follows:

(1) in Article 2, point (c) is replaced by the following:

"Western Mediterranean Sea' means GFCM Geographical Sub-Areas 1, 2, 5, 6, 7, 8, 9, 10, 11.1, 11.2 and 12.';

([1]) STECF 55th Plenary meeting report is available at https://stecf.jrc.ec.europa.eu/reports/plenary

(2) Article 3 is amended as follows:

paragraph 1 is replaced by the following:

'The exemption from the landing obligation pursuant to Article 15(4)(b) of Regulation (EU) No 1380/2013 for species for which scientific evidence demonstrates high survival rates shall apply in 2018 to:

(a) common sole (*Solea solea*) caught with rapido (beam trawl) (TBB) (*) in GSAs 17 and 18;

(b) scallop (*Pecten jacobeus*) caught with mechanised dredges (HMD) in the Western Mediterranean Sea;

(c) carpet clams (*Venerupis* spp.) caught with mechanised dredges (HMD) in the Western Mediterranean Sea;

(d) Venus shells (*Venus* spp.) caught with mechanised dredges (HMD) in the Western Mediterranean Sea;

(e) Norway lobster (*Nephrops norvegicus*) caught with all bottom trawls (OTB, OTT, PTB, TBN, TBS, TB, OT, PT, TX) in the Western Mediterranean Sea.

(*) Gear codes used in this Regulation refer to the codes in Annex XI to Commission Implementing Regulation (EU) No 404/2011 of 8 April 2011 laying down detailed rules for the implementation of Council Regulation (EC) No 1224/2009 establishing a Community control system for ensuring compliance with the rules of the Common Fisheries Policy (OJ L 122, 30.4.2011, p. 1). For the vessels whose LOA is less than 10 metres, gear codes used in this table refer to the codes from the FAO gear classification.'

paragraph 2 is replaced by the following:

'Common sole (*Solea solea*), scallop (*Pecten jacobeus*), carpet clams (*Venerupis* spp.), Venus shells (*Venus* spp.) and Norway lobster (*Nephrops norvegicus*) caught in the circumstances referred to in paragraph 1 shall be released immediately in the area where they have been caught.'

paragraph 3 is replaced by the following:

'By 1 May 2018, Member States having a direct management interest in the fisheries in the Mediterranean Sea shall submit to the Commission additional discard data to those provided for in the Joint Recommendations of 2 and 28 June as well as 6 July 2017 and any other relevant scientific information supporting the exemption laid down in paragraph 1. For Norway lobster (*Nephrops norvegicus*), Member States shall submit data that would provide additional proof for survival rates in the summer months. The Scientific, Technical and Economic Committee for Fisheries (STECF) shall assess those data and that information by July 2018 at the latest.';

(3) in Article 4 (a) points (i) and (ii) are replaced by the following:

(i) 'for hake (*Merluccius merluccius*) and red mullets (*Mullus* spp.), up to a maximum of 7 % for 2017 and 2018 and up to a maximum of 6 % in 2019 of the total annual catches of these species by vessels using bottom trawls; and

(ii) for hake (*Merluccius merluccius*) and red mullets (*Mullus* spp.), up to a maximum of 1 % of the total annual catches of these species by vessels using gillnets and trammel nets.';

(4) Table 1 of the Annex is replaced by the text in the Annex to this Regulation.

Article 2

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

It shall apply from 1 January 2018.

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

Done at Brussels, 23 October 2017.

For the Commission
The President
Jean-Claude JUNCKER

ANNEX

1. **Western Mediterranean Sea**

Fisheries	Fishing gear	Landing obligation
Hake (*Merluccius merluccius*) [1]	All bottom trawls (OTB, OTT, PTB, TBN, TBS, TB, OT, PT, TX)	Where the total landings per vessel of all species in 2015 and 2016 consisted of more than 25 % of hake, all catches of hake shall be subject to the landing obligation.
	All longlines (LL, LLS, LLD, LX, LTL, LHP, LHM)	
	All trammel nets and gillnets (GNS, GN, GND, GNC, GTN, GTR, GEN)	
Red mullets (*Mullus* spp.) FAO codes: MUT, MUR, MUX [1]	All bottom trawls (OTB, OTT, PTB, TBN, TBS, TB, OT, PT, TX)	Where the total landings per vessel of all species in 2015 and 2016 consisted of more than 25 % of red mullets, all catches of red mullets shall be subject to the landing obligation.
	All longlines (LL, LLS, LLD, LX, LTL, LHP, LHM)	
	All trammel nets and gillnets (GNS, GN, GND, GNC, GTN, GTR, GEN)	
Scallop (*Pecten jacobeus*), Carpet clams (*Venerupis* spp.), Venus shells (*Venus* spp.)	All mechanised dredges HMD	
Norway lobster (*Nephrops norvegicus*)	All bottom trawls OTB, OTT, PTB, TBN, TBS, TB, OT, PT, TX	All catches of Norway lobster are subject to the landing obligation

[1] Vessels listed as subject to the landing obligation in this fishery in accordance with this Regulation shall remain on the list despite the amendments to this Regulation by Delegated Regulation (EU) 2018/153 and shall continue being subject to the landing obligation in this fishery.

COMMISSION IMPLEMENTING REGULATION (EU) 2018/154

of 30 January 2018

opening a tendering procedure for buying-in skimmed milk powder during the public intervention period from 1 March to 30 September 2018

THE EUROPEAN COMMISSION,

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

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

Having regard to Council Regulation (EU) No 1370/2013 of 16 December 2013 determining measures on fixing certain aids and refunds related to the common organisation of the markets in agricultural products ([2]), and in particular Article 3(6) thereof,

Having regard to Commission Implementing Regulation (EU) 2016/1240 of 18 May 2016 laying down rules for the application of Regulation (EU) No 1308/2013 of the European Parliament and of the Council with regard to public intervention and aid for private storage ([3]), and in particular Article 12(1) thereof,

Whereas:

(1) Pursuant to Article 12 of Regulation (EU) No 1308/2013, public intervention is available for skimmed milk powder from 1 March to 30 September.

(2) Regulation (EU) No 1370/2013 provides that the quantitative limitation for buying-in skimmed milk powder at fixed price shall be set at zero tonne for the year 2018.

(3) In accordance with Article 3(2) of Regulation (EU) No 1370/2013, a tendering procedure is therefore to be opened for buying-in skimmed milk powder from the start of the public intervention period in 2018.

(4) Section 3 of Chapter II of Title II of Implementing Regulation (EU) 2016/1240 lays down rules for buying-in via a tendering procedure.

(5) In accordance with Article 9(1)(b) of Implementing Regulation (EU) 2016/1240 the time limit for Member States to notify the Commission of all admissible tenders should be set.

(6) In the interest of efficient administration, Member States should use, for their notifications to the Commission, information systems in accordance with Commission Delegated Regulation (EU) 2017/1183 ([4]) and Commission Implementing Regulation (EU) 2017/1185 ([5]),

HAS ADOPTED THIS REGULATION:

Article 1

Opening of the tendering procedure

A tendering procedure is opened from 1 March to 30 September 2018 for buying-in skimmed milk powder into intervention, under the conditions provided for in Section 3 of Chapter II of Title II of Implementing Regulation (EU) 2016/1240 and in this Regulation.

([1]) OJ L 347, 20.12.2013, p. 671.
([2]) OJ L 346, 20.12.2013, p. 12.
([3]) OJ L 206, 30.7.2016, p. 71.
([4]) Commission Delegated Regulation (EU) 2017/1183 of 20 April 2017 on supplementing Regulations (EU) No 1307/2013 and (EU) No 1308/2013 of the European Parliament and of the Council with regard to the notifications to the Commission of information and documents (OJ L 171, 4.7.2017, p. 100).
([5]) Commission Implementing Regulation (EU) 2017/1185 of 20 April 2017 laying down rules for the application of Regulations (EU) No 1307/2013 and (EU) No 1308/2013 of the European Parliament and of the Council as regards notifications to the Commission of information and documents and amending and repealing several Commission Regulations (OJ L 171, 4.7.2017, p. 113).

Article 2

Submission of tenders

1. The periods during which tenders may be submitted shall end at 11.00 (Brussels time) on the third Tuesday of the month. However, in August, the closing date for the submission of tenders shall be the fourth Tuesday of the month at 11.00 (Brussels time).

If Tuesday is a public holiday the time limit shall be 11.00 (Brussels time) on the previous working day.

2. Tenders shall be submitted to the paying agencies approved by the Member States ([1]).

Article 3

Notification to the Commission

The notification provided for in Article 9(1)(b) of Implementing Regulation (EU) 2016/1240 shall be made by 16.00 (Brussels time) on the closing dates for the submission of tenders as referred to in Article 2 of this Regulation, in accordance with Delegated Regulation (EU) 2017/1183 and Implementing Regulation (EU) 2017/1185.

Article 4

Entry into force

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

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

Done at Brussels, 30 January 2018.

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

([1]) The addresses of the paying agencies are available on the European Commission website http://ec.europa.eu/agriculture/milk/policy-instruments/index_en.htm

COMMISSION IMPLEMENTING REGULATION (EU) 2018/155

of 31 January 2018

amending Implementing Regulation (EU) No 686/2012 allocating to Member States, for the purposes of the renewal procedure, the evaluation of active substances

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EC) No 1107/2009 of the European Parliament and of the Council of 21 October 2009 concerning the placing of plant protection products on the market and repealing Council Directives 79/117/EEC and 91/414/EEC ([1]), and in particular Article 19, thereof,

Whereas:

(1) Commission Implementing Regulation (EU) No 686/2012 ([2]) allocates the evaluation of active substances to a rapporteur Member State and to a co-rapporteur Member State for the purposes of the renewal procedure. Since the evaluation of active substances whose approval expires between 1 January 2022 and 31 December 2024 has not yet been allocated to a Member State or to a co-rapporteur Member State, it is appropriate to proceed to such allocation.

(2) In view of the length of the evaluation process for active substances and the recent notification by the United Kingdom pursuant to Article 50 of the Treaty on European Union ([3]), it is necessary to re-allocate the evaluation of the active substances listed in Part B of the Annex to Implementing Regulation (EU) No 686/2012 for which the United Kingdom is the rapporteur Member State or the co-rapporteur Member State, and for which no supplementary dossier has yet been submitted. The active substances concerned are aluminium ammonium sulphate, azoxystrobin, bupirimate, carbetamide, chlormequat, ethylene, fenbuconazole, fluopicolide, fluquinconazole, flutriafol, garlic extract, metazachlor, myclobutanil, paclobutrazol, pepper, plant oils/citronella oil, propaquizafop, quizalofop-p-ethyl, quizalofop-p-tefuryl, tri-allate and urea.

(3) That allocation should be made in such a way that a balance is achieved as regards the distribution of the responsibilities and the work between Member States.

(4) This Regulation should enter into force as soon as possible given that the deadline for the submission of the supplementary dossier for some of the active substances concerned is on 28 February 2018.

(5) Implementing Regulation (EU) No 686/2012 should therefore be amended accordingly.

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

HAS ADOPTED THIS REGULATION:

Article 1

Implementing Regulation (EU) No 686/2012 is amended in accordance with the Annex to this Regulation.

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*.

([1]) OJ L 309, 24.11.2009, p. 1.
([2]) Commission Implementing Regulation (EU) No 686/2012 of 26 July 2012 allocating to Member States, for the purposes of the renewal procedure, the evaluation of the active substances (OJ L 200, 27.7.2012, p. 5).
([3]) OJ C 326, 26.10.2012, p. 13.

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

Done at Brussels, 31 January 2018.

For the Commission
The President
Jean-Claude JUNCKER

ANNEX

The Annex to Implementing Regulation (EU) No 686/2012 is amended as follows:

(1) In Part B, the entries corresponding to active substances Aluminium ammonium sulphate, Azoxystrobin, Bupirimate, Carbetamide, Chlormequat, Ethylene, Fenbuconazole, Fluopicolide, Fluquinconazole, Flutriafol, Garlic extract, Metazachlor, Myclobutanil, Paclobutrazol, Pepper, Plant oils/Citronella oil, Propaquizafop, Quizalofop-P-ethyl, Quizalofop-P-tefuryl, Tri-allate and Urea are replaced by the following corresponding entries:

Active substance	Rapporteur Member State	Co-rapporteur Member State
'Aluminium ammonium sulphate	IE	PT'
'Azoxystrobin	AT	NO'
'Bupirimate	NL	PL'
'Carbetamide	SE	BE'
'Chlormequat	AT	IT'
'Ethylene	NL	ES'
'Fenbuconazole	SI	AT'
'Fluopicolide	AT	ES'
'Fluquinconazole	CZ	SK'
'Flutriafol	SK	CZ'
'Garlic extract	IE	DK'
'Metazachlor	NL	PT'
'Myclobutanil	AT	ES'
'Paclobutrazol	AT	RO'
'Pepper	BE	IE'
'Plant oils/Citronella oil	FR	CZ'
'Propaquizafop	AT	EE'
'Quizalofop-P-ethyl	FI	SE'
'Quizalofop-P-tefuryl	HR	AT'
'Tri-allate	NL	CZ'
'Urea	EL	FI'

(2) The following Part C is added:

'PART C

ALLOCATION OF THE EVALUATION OF ACTIVE SUBSTANCES WHOSE APPROVAL EXPIRES AFTER 31 DECEMBER 2021 AND NOT LATER THAN 31 DECEMBER 2024

Active substance	Rapporteur Member State	Co-rapporteur Member State
1,4-Dimethylnaphthalene	AT	PL
Acequinocyl	DE	NL

Active substance	Rapporteur Member State	Co-rapporteur Member State
Adoxophyes orana GV strain BV-0001	DE	FR
Ametoctradin	DE	NL
Aminopyralid	FI	DK
Amisulbrom	EL	FI
Ascorbic acid	NL	FR
Aureobasidium pullulans (strains DSM 14940 and DSM 14941)	AT	DE
Bacillus firmus I-1582	FR	DK
Bacillus pumilus QST 2808	IT	NL
Benalaxyl-M	PT	IT
Benzovindiflupyr	FR	AT
Bixafen	CZ	BE
Candida oleophila strain O	SI	DE
Chlorantraniliprole	IE	DE
Cyflumetofen	ES	AT
Disodium phosphonate	FR	EL
Emamectin	NL	SI
Esfenvalerate	AT	PT
Eugenol	ES	EL
Fenpyrazamine	LV	LT
Flubendiamide	EL	AT
Flumetralin	HU	EL
Fluopyram	AT	HR
Fluxapyroxad	FR	EL
Geraniol	ES	EL
Halosulfuron methyl	IT	PL
Helicoverpa armigera nucleopolyhedrovirus (HearNPV)	EE	FR
Ipconazole	BE	FR
Isopyrazam	NO	EL
lambda-Cyhalothrin	SE	FR
Maltodextrin	IE	FR

Active substance	Rapporteur Member State	Co-rapporteur Member State
Mandipropamid	AT	PT
Metaflumizone	SE	EL
Metam (incl. -potassium and -sodium)	BE	ES
Metobromuron	FR	NO
Metsulfuron-methyl	DK	SE
Orange oil	FR	CZ
Paecilomyces fumosoroseus strain Fe9901	PL	NL
Penflufen	PL	IE
Penthiopyrad	SE	CZ
Phosphane	ES	DE
Potassium phosphonates (formerly potassium phosphite)	FR	EL
Prosulfuron	FR	SK
Pseudomonas sp. Strain DSMZ 13134	NL	BG
Pyridalyl	NL	BE
Pyriofenone	LV	EL
Pyroxsulam	DK	FI
S-Abscisic acid	NL	DK
Sedaxane	FR	AT
Sodium silver thiosulphate	NL	LV
Spinetoram	HR	ES
Spiromesifen	IT	AT
Spirotetramat	AT	NO
Spodoptera littoralis nucleopolyhedrovirus	EE	FR
Streptomyces lydicus WYEC 108	NL	DE
Tembotrione	AT	FR
Thiencarbazone	FR	EL
Thymol	ES	EL
Trichoderma asperellum (strain T34)	SE	IT
Trichoderma atroviride strain I-1237	IT	SK
Valifenalate (formerly Valiphenal)	HU	SI
Zucchini Yellow Mosaik Virus, weak strain	DK	AT’

DECISIONS

COUNCIL DECISION (EU) 2018/156

of 22 January 2018

on the position to be taken on behalf of the European Union within the Association Council established by the Association Agreement between the European Union and the European Atomic Energy Community and their Member States, of the one part, and Ukraine, of the other part, as regards supplementing Annex I-A to Chapter 1 of Title IV of that Agreement, and within the Association Committee in Trade configuration, as regards recalculating the schedule of export duty elimination set out in Annexes I-C and I-D to Chapter 1 of Title IV of that Agreement

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular the first subparagraph of Article 207(4) and Article 218(9) thereof,

Having regard to the proposal from the European Commission,

Whereas:

(1) The Association Agreement between the European Union and the European Atomic Energy Community and their Member States, of the one part, and Ukraine, of the other part ([1]) (the 'Agreement') entered into force on 1 September 2017. Article 486(3) and (4) thereof provides for the provisional application of the Agreement in part, as specified by the Union.

(2) Article 4 of Council Decision 2014/668/EU ([2]) specifies the provisions of the Agreement to be applied provisionally, including those related to the elimination of customs duties and those related to Annexes I-A to I-D to Chapter 1 of Title IV of the Agreement. The provisional application has been effective since 1 January 2016.

(3) Having unilaterally anticipated the implementation of the Schedule of concessions set out in Annex I-A to Chapter 1 of Title IV of the Agreement by means of the autonomous trade preferences provided for under Regulation (EU) No 374/2014 of the European Parliament and the Council ([3]), the Union has already applied the specific modalities of implementation of the schedule ('staging categories') which were agreed by the Parties.

(4) A clarification on the modalities of tariff dismantlement was adopted by means of Regulation (EU) No 1150/2014 of the European Parliament and the Council ([4]), in the context of the amendment to the autonomous trade preferences, with a view to specifying the reduction to be applied to the base rate of customs duties for each staging category referred to in Annex I to Regulation (EU) No 374/2014.

(5) An equivalent clarification is required to ensure that the same modalities, reflecting the joint understanding reached by the Parties during negotiations, are clearly set out for the optimal implementation of the Schedule of concessions. Such modalities are to be applied by both parties to the Agreement.

(6) Annex I-C to Chapter 1 of Title IV of the Agreement, setting out the schedules of export duty elimination of Ukraine, provides that the recalculation of the table is needed in order to maintain the relative preference, that is, same proportion, compared to the WTO-bound export duty rates applicable for each period in case the trade-related provisions of the Agreement enter into force after 15 May 2014.

([1]) OJ L 161, 29.5.2014, p. 3.

([2]) Council Decision 2014/668/EU of 23 June 2014 on the signing, on behalf of the European Union, and provisional application of the Association Agreement between the European Union and the European Atomic Energy Community and their Member States, of the one part, and Ukraine, of the other part, as regards Title III (with the exception of the provisions relating to the treatment of third-country nationals legally employed as workers in the territory of the other Party) and Titles IV, V, VI and VII thereof, as well as the related Annexes and Protocols (OJ L 278, 20.9.2014, p. 1).

([3]) Regulation (EU) No 374/2014 of the European Parliament and of the Council of 16 April 2014 on the reduction or elimination of customs duties on goods originating in Ukraine (OJ L 118, 22.4.2014, p. 1).

([4]) Regulation (EU) No 1150/2014 of the European Parliament and the Council of 29 October 2014 amending Regulation (EU) No 374/2014 on the reduction or elimination of customs duties on goods originating in Ukraine (OJ L 313, 31.10.2014, p. 1).

(7) Annex I-D to Chapter 1 of Title IV of the Agreement, setting out safeguard measures in the form of a surcharge to be applied to the export duty for specific goods, also provides that the recalculation of the table is needed in order to maintain the relative preference, that is, same proportion, compared to the WTO-bound export duty rates applicable for each period in case the trade-related provisions of the Agreement enter into force after 15 May 2014.

(8) A technical amendment in Annex I-C to Chapter 1 of Title IV of the Agreement is required to tariff code 1207 9997 00 to reflect the correct description as per United Commodities Classifier (UKTZED) of Ukraine.

(9) By Decision No 3/2014 [1], the EU-Ukraine Association Council empowered the Association Committee in Trade configuration (the 'Trade Committee') to update or amend certain trade-related annexes, including Annexes I-C and I-D to Chapter 1 of Title IV of the Agreement.

(10) The position of the Union within the Association Council and within the Trade Committee configuration should therefore be based on the attached draft Decisions,

HAS ADOPTED THIS DECISION:

Article 1

The position to be taken on behalf of the Union within the Association Council as regards supplementing Annex I-A to Chapter 1 of Title IV of the Agreement and within the Trade Committee as regards recalculating the schedule of export duty elimination set out in Annexes I-C and I-D to Chapter 1 of Title IV of the Agreement, shall be based on the draft Decisions attached to this Decision.

Article 2

This Decision shall enter into force on the date of its adoption.

Article 3

This Decision is addressed to the Commission.

Done at Brussels, 22 January 2018.

For the Council
The President
F. MOGHERINI

[1] Decision No 3/2014 of the EU-Ukraine Association Council of 15 December 2014 on the delegation of certain powers by the Association Council to the Association Committee in Trade configuration (OJ L 158, 24.6.2015, p. 4).

DRAFT

DECISION No …/2018 OF THE EU-UKRAINE ASSOCIATION COUNCIL

of … 2018

supplementing Annex I-A to Chapter 1 of Title IV of the Association Agreement between the European Union and the European Atomic Energy Community and their Member States, of the one part, and Ukraine, of the other part

THE EU-UKRAINE ASSOCIATION COUNCIL,

Having regard to the Association Agreement between the European Union and the European Atomic Energy Community and their Member States, of the one part, and Ukraine, of the other part ([1]), signed in Brussels on 27 June 2014,

Whereas:

(1) In accordance with Article 486 of the Association Agreement between the European Union and the European Atomic Energy Community and their Member States, of the one part, and Ukraine, of the other part ('the Agreement'), parts of the Agreement, including provisions on the elimination of customs duties, and related Annex I-A to Chapter 1 of Title IV of the Agreement is applied provisionally as of 1 January 2016.

(2) Regulation (EU) No 374/2014 of the European Parliament and of the Council ([2]) unilaterally established a preferential arrangement which allowed for the reduction or the elimination of customs duties on goods originating in Ukraine in accordance with Annex I to that Regulation.

(3) Such preferential arrangement corresponded to the tariff concessions which would be applied in the course of the first year of implementation of the Agreement in accordance with Annex I-A to Chapter 1 of Title IV of the Agreement.

(4) Regulation (EU) No 1150/2014 of the European Parliament and of the Council ([3]), inter alia introduced a clarification on the specific reduction to be applied to the base rate of customs duties for each 'staging category' referred to in Annex I to that Regulation.

(5) In the interest of clarity of the Agreement an equivalent clarification is required to specify the reduction to be applied to the base rate of customs duties for all subsequent years for each 'staging category' referred to in Annex I-A to Chapter 1 of Title IV of the Agreement. Such modalities of tariff dismantlement correspond to the mutual understanding reached with Ukraine during the negotiation, and will be applied by both parties to the Agreement.

(6) Article 463(2) of the Agreement provides that the Association Council is a forum for exchange of information on implementation and enforcement measures.

(7) Article 463(3) of the Agreement provides that the Association Council may update or amend the Annexes to the Agreement.

(8) It is therefore appropriate for the EU-Ukraine Association Council to adopt a decision supplementing Annex I-A to Chapter 1 of Title IV of the Agreement,

HAS ADOPTED THIS DECISION:

Article 1

A new Appendix C is added to Annex I-A to Chapter 1 of Title IV of the Agreement, as set out in the Annex to this Decision to clarify the implementation of the reduction to the base rate of customs duties to be applied for all subsequent years for each 'staging category' referred to in Annex I-A to Chapter 1 of Title IV of the Agreement.

([1]) OJ L 161, 29.5.2014, p. 3.
([2]) Regulation (EU) No 374/2014 of the European Parliament and of the Council of 16 April 2014 on the reduction or elimination of customs duties on goods originating in Ukraine (OJ L 118, 22.4.2014, p. 1).
([3]) Regulation (EU) No 1150/2014 of the European Parliament and the Council of 29 October 2014 amending Regulation (EU) No 374/2014 on the reduction or elimination of customs duties on goods originating in Ukraine (OJ L 313, 31.10.2014, p. 1).

Article 2

This Decision shall enter into force on the date of its adoption.

Done at …,

For the Association Council
The Chair

ANNEX

APPENDIX C TO ANNEX I-A TO CHAPTER 1 OF TITLE IV OF THE AGREEMENT

ELIMINATION OF CUSTOMS DUTIES

TARIFF ELIMINATION SCHEDULES OF THE PARTIES FOR GOODS ORIGINATING IN OTHER PARTY

This Appendix clarifies the reduction to the base rate of customs duties to be applied for each 'staging category'.

1. Except as otherwise provided in the Tariff Elimination Schedules of Parties included in Annex I-A to Chapter 1 of Title IV of the Agreement (hereinafter referred to as the 'Schedules'), the following clarifications apply to the elimination of customs duties by Parties pursuant to Article 29 (Elimination of Customs Duties on Imports) of Title IV (Trade and Trade-related Matters) of the Agreement:

   (a) customs duties on goods originating in Ukraine or EU (hereinafter referred to as 'originating goods') provided for in the tariff lines in staging category '0' in the Schedules shall be eliminated entirely and such goods shall be free of any customs duty on the date this Agreement enters into force;

   (b) customs duties on originating goods provided for in the tariff lines in staging category '1' in the Schedules shall be removed in two equal stages beginning on the date this Agreement enters into force, and such goods shall thereafter be free of any customs duty;

   (c) customs duties on originating goods provided for in the tariff lines in staging category '2' in the Schedules shall be removed in three equal stages beginning on the date this Agreement enters into force, and such goods shall thereafter be free of any customs duty;

   (d) customs duties on originating goods provided for in the tariff lines in staging category '3' in the Schedules shall be removed in four equal stages beginning on the date this Agreement enters into force, and such goods shall thereafter be free of any customs duty;

   (e) customs duties on originating goods provided for in the tariff lines in staging category '5' in the Schedules shall be removed in six equal stages beginning on the date this Agreement enters into force, and such goods shall thereafter be free of any customs duty;

   (f) customs duties on originating goods provided for in the tariff lines in staging category '7' in the Schedules shall be removed in eight equal stages beginning on the date this Agreement enters into force, and such goods shall thereafter be free of any customs duty;

   (g) customs duties on originating goods provided for in the tariff lines in staging category '10' in the Schedules shall be removed in eleven equal stages beginning on the date this Agreement enters into force, and such goods shall thereafter be free of any customs duty;

   (h) customs duties on originating goods provided for in tariff lines marked with '20 % in 5 years' in the Schedules shall be reduced by 20 % in six equal stages beginning on the date this Agreement enters into force, and such goods shall thereafter be subject to a customs duty equivalent to the base rate reduced by 20 %;

   (i) customs duties on originating goods provided for in tariff lines marked with '20 % in 10 years' in the Schedules shall be reduced by 20 % in eleven equal stages beginning on the date this Agreement enters into force, and such goods shall thereafter be subject to a customs duty equivalent to the base rate reduced by 20 %;

   (j) customs duties on originating goods provided for in tariff lines marked with '30 % in 5 years' in the Schedules shall be reduced by 30 % in six equal stages beginning on the date this Agreement enters into force, and such goods shall thereafter be subject to a customs duty equivalent to the base rate reduced by 30 %;

   (k) customs duties on originating goods provided for in tariff lines marked with '50 % in 5 years' in the Schedules shall be reduced by 50 % in six equal stages beginning on the date this Agreement enters into force, and such goods shall thereafter be subject to a customs duty equivalent to the base rate reduced by 50 %;

(l) customs duties on originating goods provided for in tariff lines marked with '50 % in 7 years' in the Schedules shall be reduced by 50 % in eight equal stages beginning on the date this Agreement enters into force, and such goods shall thereafter be subject to a customs duty equivalent to the base rate reduced by 50 %;

(m) customs duties on originating goods provided for in tariff lines marked with '50 % in 10 years' in the Schedules shall be reduced by 50 % in eleven equal stages beginning on the date this Agreement enters into force, and such goods shall thereafter be subject to a customs duty equivalent to the base rate reduced by 50 %;

(n) customs duties on originating goods provided for in tariff lines marked with '60 % in 5 years' in the Schedules shall be reduced by 60 % in six equal stages beginning on the date this Agreement enters into force, and such goods shall thereafter be subject to a customs duty equivalent to the base rate reduced by 60 %;

(o) customs duties on originating goods provided for in the tariff lines in staging category 'Ad valorem free (Entry Price ([1]))' in the Schedules, shall be eliminated on the date this Agreement enters into force; the liberalisation concerns the ad valorem duty only; the specific duty linked to the entry price system applicable for these originating goods shall be maintained.

2. The base rate and staging category to determine the rate of customs duty applicable at each stage of reduction for a tariff line are indicated in the corresponding tariff line in the Schedule.

3. For the purposes of the elimination of customs duties, the rate of customs duties applied in each stage shall be rounded down at least to the nearest tenth of a percentage point or, if the rate of customs duty is expressed in monetary units, at least to the nearest tenth of the official monetary unit of the Party.

4. For the purposes of this Appendix, the first reduction shall take place on the entry into force of this Agreement, and each successive reduction shall take effect on 1 January of the relevant year.

5. If the entry into force of this Agreement corresponds to a date after 1 January and before 31 December of the same year, the in-quota quantity will be pro-rated on a proportional basis for the remainder of the calendar year.

([1]) See Annex 2 to Annex I to Council Regulation (EEC) No 2658/87 of 23 July 1987 on the tariff and statistical nomenclature and on the Common Customs Tariff (OJ L 256, 7.9.1987, p. 1).

DRAFT

DECISION No …/2018 OF THE EU-UKRAINE ASSOCIATION COMMITTEE IN TRADE CONFIGURATION

of … 2018

on recalculating the schedule of export duty elimination set out in Annexes I-C and I-D to Chapter 1 of Title IV of the Association Agreement between the European Union and the European Atomic Energy Community and their Member States, of the one part, and Ukraine, of the other part

THE ASSOCIATION COMMITTEE IN TRADE CONFIGURATION,

Having regard to the Association Agreement between the European Union and the European Atomic Energy Community and their Member States, of the one part, and Ukraine, of the other part ([1]), signed in Brussels on 27 June 2014,

Whereas:

(1) In accordance with Article 486 of the Association Agreement between the European Union and the European Atomic Energy Community and their Member States, of the one part, and Ukraine, of the other part ('the Agreement'), parts of the Agreement, including provisions on the elimination of customs duties, and related Annexes I-C to I-D to Chapter 1 of Title IV of the Agreement are applied provisionally as of 1 January 2016.

(2) Annex I-C to Chapter 1 of Title IV of the Agreement, setting out the schedules of export duty elimination of Ukraine, establishes that a recalculation of the table is needed in order to maintain the relative preference, that is, same proportion, compared to the WTO-bound export duty rates applicable for each period in case the trade-related provisions of the Agreement enter into force after 15 May 2014.

(3) Annex I-D to Chapter 1 of Title IV of the Agreement, setting out safeguard measures in the form of a surcharge to be applied to the export duty for specific goods, also establishes that the recalculation of the table is needed in order to maintain the relative preference, that is, same proportion, compared to the WTO-bound export duty rates applicable for each period in case the trade-related provisions of the Agreement enter into force after 15 May 2014.

(4) A technical amendment in Annex I-C to Chapter 1 of Title IV of the Agreement is required to tariff code 1207 99 97 00 to reflect the correct description as per United Commodities Classifier (UKTZED) of Ukraine.

(5) Article 463(3) of the Agreement provides that the Association Council may update or amend the Annexes to the Agreement.

(6) Article 465(2) of the Agreement specifies that the Association Council may delegate any of its powers, including the power to take binding decisions, to the Association Committee. Under Article 465(4) of the Agreement, that Committee is to meet in a specific configuration to address all issues related to the Title IV (Trade and Trade–Related matters) of the Agreement.

(7) The EU-Ukraine Association Council empowered the Association Committee in Trade configuration (the 'Trade Committee') by Decision No 3/2014 ([2]) to update or amend certain trade-related annexes, including Annexes I-C and I-D to Chapter 1 of Title IV of the Agreement.

(8) It is therefore appropriate for the Trade Committee to adopt a decision recalculating the schedule of export duty elimination set out in Annexes I-C and I-D to Chapter 1 of Title IV of the Agreement,

HAS ADOPTED THIS DECISION:

Article 1

Annex I-C to Chapter 1 of Title IV of the Agreement between the European Union and the European Atomic Energy Community and their Member States of the one part, and Ukraine, of the other part, is hereby replaced by the text set out in Annex I to this Decision.

([1]) OJ L 161, 29.5.2014, p. 3.
([2]) Decision No 3/2014 of the EU-Ukraine Association Council of 15 December 2014 on the delegation of certain powers by the Association Council to the Association Committee in Trade configuration (OJ L 158, 24.6.2015, p. 4).

Article 2

Annex I-D to Chapter 1 of Title IV of the Agreement between the European Union and the European Atomic Energy Community and their Member States of the one part, and Ukraine, of the other part, is hereby replaced by the text set out in Annex II to this Decision.

Article 3

This Decision shall enter into force on the date of its adoption.

Done at …,

For the Association Committee in Trade configuration
The Chair

ANNEX I

ANNEX I-C TO CHAPTER 1 OF TITLE IV OF THE AGREEMENT

SCHEDULES OF EXPORT DUTY ELIMINATION

Duties expressed in % unless otherwise specified.

Livestock and hide raw materials

HS code	Description	EIF (2016 [1])	EIF+1 (2017)	EIF+2 (2018)	EIF+3 (2019)	EIF+4 (2020)	EIF+5 (2021)	EIF+6 (2022)	EIF+7 (2023)	EIF+8 (2024)	EIF+9 (2025)	EIF+10 (2026)	Safeguard measures
	Live bovine animals of domestic species, except pure-bred breeding animals:												
0102 90 05 00	Domestic species of a weight not exceeding 80 kg	8,0	7,2	6,4	5,6	4,8	4,0	3,2	2,4	1,6	0,8	0,0	
0102 90 21 00	Domestic species of a weight exceeding 80 kg but not exceeding 160 kg for slaughter	8,0	7,2	6,4	5,6	4,8	4,0	3,2	2,4	1,6	0,8	0,0	
0102 90 29 00	Domestic species of a weight exceeding 80 kg but not exceeding 160 kg not slaughter	8,0	7,2	6,4	5,6	4,8	4,0	3,2	2,4	1,6	0,8	0,0	
0102 90 41 00	Domestic species of a weight exceeding 160 kg but not exceeding 300 kg for slaughter	8,0	7,2	6,4	5,6	4,8	4,0	3,2	2,4	1,6	0,8	0,0	
0102 90 49 00	Domestic species of a weight exceeding 160 kg but not exceeding 300 kg not slaughter	8,0	7,2	6,4	5,6	4,8	4,0	3,2	2,4	1,6	0,8	0,0	

HS code	Description	EIF (2016 [1])	EIF+1 (2017)	EIF+2 (2018)	EIF+3 (2019)	EIF+4 (2020)	EIF+5 (2021)	EIF+6 (2022)	EIF+7 (2023)	EIF+8 (2024)	EIF+9 (2025)	EIF+10 (2026)	Safeguard measures
0102 90 51 00	Heifers (female bovines that have never calved) of a weight exceeding 300 kg for slaughter	8,0	7,2	6,4	5,6	4,8	4,0	3,2	2,4	1,6	0,8	0,0	
0102 90 59 00	Heifers (female bovines that have never calved) of a weight exceeding 300 kg not slaughter	8,0	7,2	6,4	5,6	4,8	4,0	3,2	2,4	1,6	0,8	0,0	
0102 90 61 00	Cows of a weight exceeding 300 kg for slaughter	8,0	7,2	6,4	5,6	4,8	4,0	3,2	2,4	1,6	0,8	0,0	
0102 90 69 00	Cows of a weight exceeding 300 kg not slaughter	8,0	7,2	6,4	5,6	4,8	4,0	3,2	2,4	1,6	0,8	0,0	
0102 90 71 00	Domestic species except heifers and cows of a weight exceeding 300 kg for slaughter	8,0	7,2	6,4	5,6	4,8	4,0	3,2	2,4	1,6	0,8	0,0	
0102 90 79 00	Domestic species except heifers and cows of a weight exceeding 300 kg not slaughter	8,0	7,2	6,4	5,6	4,8	4,0	3,2	2,4	1,6	0,8	0,0	
0102 90 90 00	Not domestic bovines	8,0	7,2	6,4	5,6	4,8	4,0	3,2	2,4	1,6	0,8	0,0	
	Live sheep:												
0104 10 10 00	Pure-bred breeding animals	8,0	7,2	6,4	5,6	4,8	4,0	3,2	2,4	1,6	0,8	0,0	

HS code	Description	EIF (2016 [1])	EIF+1 (2017)	EIF+2 (2018)	EIF+3 (2019)	EIF+4 (2020)	EIF+5 (2021)	EIF+6 (2022)	EIF+7 (2023)	EIF+8 (2024)	EIF+9 (2025)	EIF+10 (2026)	Safeguard measures
0104 10 30 00	Lambs (up to a year old)	8,0	7,2	6,4	5,6	4,8	4,0	3,2	2,4	1,6	0,8	0,0	
0104 10 80 00	Other live sheep except pure-bred breeding animals and lambs (up to a year old)	8,0	7,2	6,4	5,6	4,8	4,0	3,2	2,4	1,6	0,8	0,0	
4101	Raw hides and skins of bovine (including buffalo) or equine animals (fresh, or salted, dried, limed, pickled or otherwise preserved, but not tanned, parchment-dressed or further prepared), whether or not dehaired or split	11	9,84	8,70	7,95	7,14	6,25	5,0	3,75	2,5	1,25	0,0	see Annex I-D
4102	Raw skins of sheep or lambs (fresh, or salted, dried, limed, pickled or otherwise preserved, but not tanned, parchment-dressed or further prepared), whether or not with wool on or split, other than those excluded by note 1(c) to this chapter	11	9,84	8,70	7,95	7,14	6,25	5,0	3,75	2,5	1,25	0,0	see Annex I-D
4103 90	Other raw hides and skins (fresh, or salted, dried, limed, pickled or otherwise preserved, but not tanned, parchment-dressed or further prepared), whether or not dehaired or split, other than those excluded by note 1(b) or 1(c) to this chapter except of reptiles and swine	11	9,84	8,70	7,95	7,14	6,25	5,0	3,75	2,5	1,25	0,0	see Annex I-D

[1] Hereinafter, 2016 is shown for informative purpose and exclusively to indicate the moment of entry into force of the Agreement and conformity of the data in the table with agreed level of export duties.

Seeds of some types of oil-yielding crops

HS code	Description	EIF (2016)	EIF+1 (2017)	EIF+2 (2018)	EIF+3 (2019)	EIF+4 (2020)	EIF+5 (2021)	EIF+6 (2022)	EIF+7 (2023)	EIF+8 (2024)	EIF+9 (2025)	EIF+10 (2026)	Safeguard measures
1204 00	Linseed, whether or not broken	9,1	8,2	7,3	6,4	5,5	4,5	3,6	2,7	1,8	0,9	0,0	
1206 00	Sunflower seeds, whether or not broken	9,1	8,2	7,3	6,4	5,5	4,5	3,6	2,7	1,8	0,9	0,0	see Annex I-D
1207 99 97 00	False flax seeds (*Camelina* spp.)	9,1	8,2	7,3	6,4	5,5	4,5	3,6	2,7	1,8	0,9	0,0	

Alloyed ferrous metal scrap, nonferrous metal scrap and semi-manufactured goods of them

HS code	Description	EIF (2016)	EIF+1 (2017)	EIF+2 (2018)	EIF+3 (2019)	EIF+4 (2020)	EIF+5 (2021)	EIF+6 (2022)	EIF+7 (2023)	EIF+8 (2024)	EIF+9 (2025)	EIF+10 (2026)	Safeguard measures
7202 99 80 00	Ferrochrome nickel and other ferroalloys	13,64	10,0	9,0	8,0	7,0	6,0	5,0	4,0	3,0	2,0	0,0	
7204 21	Waste and scrap of stainless steel	10,0	9,0	8,0	7,0	6,0	5,0	4,0	3,0	2,0	1,0	0,0	see Annex I-D
7204 29 00 00	Waste and scrap of alloyed steel, other	10,0	9,0	8,0	7,0	6,0	5,0	4,0	3,0	2,0	1,0	0,0	see Annex I-D
7204 50 00 00	Waste in ingots (charge ingots) for remelt, of alloyed steel	10,0	9,0	8,0	7,0	6,0	5,0	4,0	3,0	2,0	1,0	0,0	see Annex I-D
7218 10 00 00	Stainless steel in form of ingots and in other primary forms	10,0	9,0	8,0	7,0	6,0	5,0	4,0	3,0	2,0	1,0	0,0	see Annex I-D
7401 00 00 00	Copper mattes; cement copper (precipitated copper)	10,0	9,0	8,0	7,0	6,0	5,0	4,0	3,0	2,0	1,0	0,0	see Annex I-D

HS code	Description	EIF (2016)	EIF+1 (2017)	EIF+2 (2018)	EIF+3 (2019)	EIF+4 (2020)	EIF+5 (2021)	EIF+6 (2022)	EIF+7 (2023)	EIF+8 (2024)	EIF+9 (2025)	EIF+10 (2026)	Safeguard measures
7402 00 00 00	Unrefined copper; copper anodes for electrolytic refining	10,0	9,0	8,0	7,0	6,0	5,0	4,0	3,0	2,0	1,0	0,0	see Annex I-D
7403 12 00 00	Cast bars for manufacture of wire (wire bars) of refined copper	10,0	9,0	8,0	7,0	6,0	5,0	4,0	3,0	2,0	1,0	0,0	see Annex I-D
7403 13 00 00	Refined copper billets	10,0	9,0	8,0	7,0	6,0	5,0	4,0	3,0	2,0	1,0	0,0	see Annex I-D
7403 19 00 00	Refined copper, other	10,0	9,0	8,0	7,0	6,0	5,0	4,0	3,0	2,0	1,0	0,0	see Annex I-D
7403 21 00 00	Copper-zinc base alloys (brass)	10,0	9,0	8,0	7,0	6,0	5,0	4,0	3,0	2,0	1,0	0,0	see Annex I-D
7403 22 00 00	Copper-tin base alloys (bronze)	10,0	9,0	8,0	7,0	6,0	5,0	4,0	3,0	2,0	1,0	0,0	see Annex I-D
7403 29 00 00	Other copper alloys (other than master alloys of heading 7405); copper and nickel alloys (cupro-nickels), or copper, nickel and zinc alloys (nickel silver)	10,0	9,0	8,0	7,0	6,0	5,0	4,0	3,0	2,0	1,0	0,0	see Annex I-D
7404 00	Copper waste and scrap	10,0	9,0	8,0	7,0	6,0	5,0	4,0	3,0	2,0	1,0	0,0	see Annex I-D
7405 00 00 00	Master alloys of copper	10,0	9,0	8,0	7,0	6,0	5,0	4,0	3,0	2,0	1,0	0,0	see Annex I-D
7406	Copper powders and flakes	10,0	9,0	8,0	7,0	6,0	5,0	4,0	3,0	2,0	1,0	0,0	see Annex I-D
7419 99 10 00	Copper wire grates and meshes	13,64	10,0	9,0	8,0	7,0	6,0	5,0	4,0	3,0	2,0	0,0	
7415 29 00 00	Other copper goods without threads, except for washers (including spring washers)	13,64	10,0	9,0	8,0	7,0	6,0	5,0	4,0	3,0	2,0	0,0	

HS code	Description	EIF (2016)	EIF+1 (2017)	EIF+2 (2018)	EIF+3 (2019)	EIF+4 (2020)	EIF+5 (2021)	EIF+6 (2022)	EIF+7 (2023)	EIF+8 (2024)	EIF+9 (2025)	EIF+10 (2026)	Safeguard measures
7415 39 00 00	Other copper goods with threads (except for screws, for wood, other screws, bolts and nuts)	13,64	10,0	9,0	8,0	7,0	6,0	5,0	4,0	3,0	2,0	0,0	
7418 19 90 00	Table, kitchen or other household articles and parts thereof, of copper (except for pot scourers and scouring or polishing pads, gloves and the like and cooking or heating apparatus of a kind used for domestic purposes, non-electric, and parts thereof)	10,0	9,0	8,0	7,0	6,0	5,0	4,0	3,0	2,0	1,0	0,0	see Annex I-D
7419	Other articles of copper	10,0	9,0	8,0	7,0	6,0	5,0	4,0	3,0	2,0	1,0	0,0	see Annex I-D
7503 00	Nickel waste and scrap	10,0	9,0	8,0	7,0	6,0	5,0	4,0	3,0	2,0	1,0	0,0	see Annex I-D
7602 00	Aluminium waste and scrap	10,0	9,0	8,0	7,0	6,0	5,0	4,0	3,0	2,0	1,0	0,0	see Annex I-D
7802 00 00 00	Lead waste and scrap	10,0	9,0	8,0	7,0	6,0	5,0	4,0	3,0	2,0	1,0	0,0	see Annex I-D
7902 00 00 00	Zinc waste and scrap	10,0	9,0	8,0	7,0	6,0	5,0	4,0	3,0	2,0	1,0	0,0	see Annex I-D
8002 00 00 00	Tin waste and scrap	13,64	10,0	9,0	8,0	7,0	6,0	5,0	4,0	3,0	2,0	0,0	
8101 97 00 00	Tungsten waste and scrap	13,64	10,0	9,0	8,0	7,0	6,0	5,0	4,0	3,0	2,0	0,0	
8105 30 00 00	Waste and scrap of cobalt and of articles thereof	13,64	10,0	9,0	8,0	7,0	6,0	5,0	4,0	3,0	2,0	0,0	
8108 30 00 00	Waste and scrap of titanium and of articles thereof	10,0	9,0	8,0	7,0	6,0	5,0	4,0	3,0	2,0	1,0	0,0	see Annex I-D
8113 00 40 00	Waste and scrap of cermets and of articles thereof	13,64	10,0	9,0	8,0	7,0	6,0	5,0	4,0	3,0	2,0	0,0	

Waste products and scrap of ferrous metals

HS code	Description	EIF (2016)	EIF+1 (2017)	EIF+2 (2018)	EIF+3 (2019)	EIF+4 (2020)	EIF+5 (2021)	EIF+6 (2022)	EIF+7 (2023)	EIF+8 (2024)	EIF+9 (2025)	EIF+10 (2026)	Safeguard measures
7204 10 00 00	Waste and scrap of cast iron	9,5 euro per tonne	9,5 euro per tonne	7,5 euro per tonne	7,5 euro per tonne	5 euro per tonne	5 euro per tonne	3 euro per tonne	3 euro per tonne	0,0	0,0	0,0	
7204 30 00 00	Waste and scrap of tinned iron or steel	9,5 euro per tonne	9,5 euro per tonne	7,5 euro per tonne	7,5 euro per tonne	5 euro per tonne	5 euro per tonne	3 euro per tonne	3 euro per tonne	0,0	0,0	0,0	
7204 41 10 00	Turnings, shavings, chips, milling waste, sawdust and filings	9,5 euro per tonne	9,5 euro per tonne	7,5 euro per tonne	7,5 euro per tonne	5 euro per tonne	5 euro per tonne	3 euro per tonne	3 euro per tonne	0,0	0,0	0,0	
7204 41 91 00	Trimmings and stampings in bundles	9,5 euro per tonne	9,5 euro per tonne	7,5 euro per tonne	7,5 euro per tonne	5 euro per tonne	5 euro per tonne	3 euro per tonne	3 euro per tonne	0,0	0,0	0,0	
7204 41 99 00	Trimmings and stampings in not bundles	9,5 euro per tonne	9,5 euro per tonne	7,5 euro per tonne	7,5 euro per tonne	5 euro per tonne	5 euro per tonne	3 euro per tonne	3 euro per tonne	0,0	0,0	0,0	
7204 49 10 00	waste and scrap ferrous metals, fragmentised (shredded)	9,5 euro per tonne	9,5 euro per tonne	7,5 euro per tonne	7,5 euro per tonne	5 euro per tonne	5 euro per tonne	3 euro per tonne	3 euro per tonne	0,0	0,0	0,0	
7204 49 30 00	Waste and scrap ferrous metals in bundles	9,5 euro per tonne	9,5 euro per tonne	7,5 euro per tonne	7,5 euro per tonne	5 euro per tonne	5 euro per tonne	3 euro per tonne	3 euro per tonne	0,0	0,0	0,0	

HS code	Description	EIF (2016)	EIF+1 (2017)	EIF+2 (2018)	EIF+3 (2019)	EIF+4 (2020)	EIF+5 (2021)	EIF+6 (2022)	EIF+7 (2023)	EIF+8 (2024)	EIF+9 (2025)	EIF+10 (2026)	Safeguard measures
7204 49 90 00	Waste and scrap ferrous metals sorted and non-sorted	9,5 euro per tonne	9,5 euro per tonne	7,5 euro per tonne	7,5 euro per tonne	5 euro per tonne	5 euro per tonne	3 euro per tonne	3 euro per tonne	0,0	0,0	0,0	
7204 50 00 00	Waste in bars (charge bars) for melting ferrous metals except alloyed steel	9,5 euro per tonne	9,5 euro per tonne	7,5 euro per tonne	7,5 euro per tonne	5 euro per tonne	5 euro per tonne	3 euro per tonne	3 euro per tonne	0,0	0,0	0,0	

ANNEX II

ANNEX I-D TO CHAPTER 1 OF TITLE IV OF THE AGREEMENT

SAFEGUARD MEASURES FOR EXPORT DUTIES

1. During the 15 years following the EIF of the Agreement, Ukraine may apply a safeguard measure in the form of a surcharge to the export duty on the goods listed in Annex I-D to Chapter 1 of Title IV of the Agreement, consistent with paragraphs 1 to 11, if during any 1-year period following the EIF the cumulative volume of exports from Ukraine to EU under each listed Ukrainian customs code exceeds a trigger level, as set out in its Schedule included in Annex I-D to Chapter 1 of Title IV of the Agreement.

2. The surcharge Ukraine may apply under paragraph 1 shall be set according to its Schedule included in Annex I-D to Chapter 1 of Title IV of the Agreement and can only be applied for the remainder of the period as defined in paragraph 1.

3. Ukraine shall apply any safeguard measure in a transparent manner. For this purpose, Ukraine shall as soon as possible provide written notification to the EU of its intention to apply such a measure and provide all the pertinent information including the volume (in tonnes) of domestic production or collection of materials, and the volume of exports to the Union and to the world. Ukraine shall invite the Union for consultations as far in advance of taking such measure as practicable in order to discuss this information. No measure shall be taken within 30 working days after the invitation for consultations.

4. Ukraine shall ensure that the statistics that are used as evidence for such measures are reliable, adequate and publicly accessible in a timely manner. Ukraine shall provide without delay quarterly statistics on volumes (in tonnes) of exports to the Union and to the world.

5. The implementation and operation of Article 31 of this Agreement and related Annexes may be the subject of discussion and review in the Trade Committee referred to in Article 465 of this Agreement.

6. Any supplies of the goods in question which were en route on the basis of a contract made before the surcharge is imposed under paragraphs 1, 2 and 3, shall be exempted from any such surcharge.

7. This Annex sets out: those originating goods that may be subject to safeguard measures under Article 31 of this Agreement, the trigger levels for applying such measures defined for each of the Ukrainian customs code quoted, and the maximum surcharge to export duty that may be applied each 1-year period for each such good in addition to export duty. All duties are expressed in % unless otherwise specified; EIF refers to the 12-month period following the date of entry into force of the Agreement; EIF+1 refers to the 12-month period beginning on the first anniversary of entry into force of the Agreement; and so on until EIF+15.

8. For the hide raw materials as covered below:

Coverage: the hide raw materials falling within the following Ukrainian customs codes: 4101, 4102, 4103 90.

Year (WTO)	2016 [1]	2017	2018	2019	2020	2021
Ukraine WTO commitment	22,0	21,0	20,0	20,0	20,0	20,0
Year (Agreement)	EIF	EIF+1	EIF+2	EIF+3	EIF+4	EIF+5
Ukraine export duty to EU	11,00	9,84	8,70	7,95	7,14	6,25
Trigger Level (tonne)	300,0	315,0	330,0	345,0	360,0	375,0
Maximum surcharge	0,00	0,66	1,30	2,05	2,86	3,75

[1] Hereinafter, 2016 is shown for informative purpose and exclusively to indicate the moment of entry into force of the Agreement and conformity of the data in the table with agreed level of export duties.

Year (WTO)	2022	2023	2024	2025	2026
Ukraine WTO commitment	20,0	20,0	20,0	20,0	20,0
Year (Agreement)	EIF+6	EIF+7	EIF+8	EIF+9	EIF+10
Ukraine export duty to EU	5,0	3,75	2,50	1,25	0,0
Trigger Level (tonne)	390,0	405,0	420,0	435,0	450,0
Maximum surcharge	5,0	6,25	7,5	8,75	10,0

Year (WTO)	2027	2028	2029	2030	2031
Ukraine WTO commitment	20,0	20,0	20,0	20,0	20,0
Year (Agreement)	EIF+11	EIF+12	EIF+13	EIF+14	EIF+15
Ukraine export duty to EU	0,0	0,0	0,0	0,0	0,0
Trigger Level (tonne)	450,0	450,0	450,0	450,0	450,0
Maximum surcharge	8,0	6,0	4,0	2,0	0,0

9. For the sunflower seeds, whether or not broken as covered below:

Coverage: the sunflower seeds, whether or not broken falling within the following Ukrainian customs codes: 1206 00.

Year (WTO)	2016	2017	2018	2019	2020	2021
Ukraine WTO commitment	11,0	10,0	10,0	10,0	10,0	10,0
Year (Agreement)	EIF	EIF+1	EIF+2	EIF+3	EIF+4	EIF+5
Ukraine export duty to EU	9,1	8,2	7,3	6,4	5,5	4,5
Trigger Level (tonne)	100 000,0	100 000,0	100 000,0	100 000,0	100 000,0	100 000,0
Maximum surcharge	0,9	1,8	2,7	3,6	4,5	5,5

Year (WTO)	2022	2023	2024	2025	2026
Ukraine WTO commitment	10,0	10,0	10,0	10,0	10,0
Year (Agreement)	EIF+6	EIF+7	EIF+8	EIF+9	EIF+10
Ukraine export duty to EU	3,6	2,7	1,8	0,9	0,0
Trigger Level (tonne)	100 000,0	100 000,0	100 000,0	100 000,0	100 000,0
Maximum surcharge	6,4	7,3	8,2	9,1	10,0

Year (WTO)	2027	2028	2029	2030	2031
Ukraine WTO commitment	10,0	10,0	10,0	10,0	10,0
Year (Agreement)	EIF+11	EIF+12	EIF+13	EIF+14	EIF+15
Ukraine export duty to EU	0,0	0,0	0,0	0,0	0,0
Trigger Level (tonne)	100 000,0	100 000,0	100 000,0	100 000,0	100 000,0
Maximum surcharge	8,0	6,0	4,0	2,0	0,0

10. For the alloyed ferrous metal scrap, nonferrous metal scrap and semi-manufactured goods of them as covered below:

Coverage: the waste and scrap of alloyed steel falling within the following Ukrainian customs codes: 7204 21, 7204 29 00 00, 7204 50 00 00.

Year (WTO)	2016	2017	2018	2019	2020	2021
Ukraine WTO commitment	15,0	15,0	15,0	15,0	15,0	15,0
Year (Agreement)	EIF	EIF+1	EIF+2	EIF+3	EIF+4	EIF+5
Ukraine export duty to EU	10,0	9,0	8,0	7,0	6,0	5,0
Trigger Level (tonne)	4 000,0	4 200,0	4 400,0	4 600,0	4 800,0	5 000,0
Maximum surcharge	0,0	1,0	2,0	3,0	4,0	5,0

Year (WTO)	2022	2023	2024	2025	2026
Ukraine WTO commitment	15,0	15,0	15,0	15,0	15,0
Year (Agreement)	EIF+6	EIF+7	EIF+8	EIF+9	EIF+10
Ukraine export duty to EU	4,0	3,0	2,0	1,0	0,0
Trigger Level (tonne)	5 200,0	5 400,0	5 600,0	5 800,0	6 000,0
Maximum surcharge	6,0	7,0	8,0	9,0	10,0

Year (WTO)	2027	2028	2029	2030	2031
Ukraine WTO commitment	15,0	15,0	15,0	15,0	15,0
Year (Agreement)	EIF+11	EIF+12	EIF+13	EIF+14	EIF+15
Ukraine export duty to EU	0,0	0,0	0,0	0,0	0,0
Trigger Level (tonne)	6 000,0	6 000,0	6 000,0	6 000,0	6 000,0
Maximum surcharge	8,0	6,0	4,0	2,0	0,0

Coverage: the stainless steel in form of ingots and in other primary forms falling within the following Ukrainian customs codes: 7218 10 00 00.

Year (WTO)	2016	2017	2018	2019	2020	2021
Ukraine WTO commitment	15,0	15,0	15,0	15,0	15,0	15,0
Year (Agreement)	EIF	EIF+1	EIF+2	EIF+3	EIF+4	EIF+5
Ukraine export duty to EU	10,0	9,0	8,0	7,0	6,0	5,0
Trigger Level (tonne)	2 000,0	2 100,0	2 200,0	2 300,0	2 400,0	2 500,0
Maximum surcharge	0,0	1,0	2,0	3,0	4,0	5,0

Year (WTO)	2022	2023	2024	2025	2026
Ukraine WTO commitment	15,0	15,0	15,0	15,0	15,0
Year (Agreement)	EIF+6	EIF+7	EIF+8	EIF+9	EIF+10
Ukraine export duty to EU	4,0	3,0	2,0	1,0	0,0
Trigger Level (tonne)	2 600,0	2 700,0	2 800,0	2 900,0	3 000,0
Maximum surcharge	6,0	7,0	8,0	9,0	10,0

Year (WTO)	2027	2028	2029	2030	2031
Ukraine WTO commitment	15,0	15,0	15,0	15,0	15,0
Year (Agreement)	EIF+11	EIF+12	EIF+13	EIF+14	EIF+15
Ukraine export duty to EU	0,0	0,0	0,0	0,0	0,0
Trigger Level (tonne)	3 000,0	3 000,0	3 000,0	3 000,0	3 000,0
Maximum surcharge	8,0	6,0	4,0	2,0	0,0

Coverage: the copper falling within the following Ukrainian customs codes: 7401 00 00 00, 7402 00 00 00, 7403 12 00 00, 7403 13 00 00, 7403 19 00 00.

Year (WTO)	2016	2017	2018	2019	2020	2021
Ukraine WTO commitment	15,0	15,0	15,0	15,0	15,0	15,0
Year (Agreement)	EIF	EIF+1	EIF+2	EIF+3	EIF+4	EIF+5
Ukraine export duty to EU	10,0	9,0	8,0	7,0	6,0	5,0
Trigger Level (tonne)	200,0	210,0	220,0	230,0	240,0	250,0
Maximum surcharge	0,0	1,0	2,0	3,0	4,0	5,0

Year (WTO)	2022	2023	2024	2025	2026
Ukraine WTO commitment	15,0	15,0	15,0	15,0	15,0
Year (Agreement)	EIF+6	EIF+7	EIF+8	EIF+9	EIF+10
Ukraine export duty to EU	4,0	3,0	2,0	1,0	0,0
Trigger Level (tonne)	260,0	270,0	280,0	290,0	300,0
Maximum surcharge	6,0	7,0	8,0	9,0	10,0

Year (WTO)	2027	2028	2029	2030	2031
Ukraine WTO commitment	15,0	15,0	15,0	15,0	15,0
Year (Agreement)	EIF+11	EIF+12	EIF+13	EIF+14	EIF+15
Ukraine export duty to EU	0,0	0,0	0,0	0,0	0,0
Trigger Level (tonne)	300,0	300,0	300,0	300,0	300,0
Maximum surcharge	8,0	6,0	4,0	2,0	0,0

Coverage: the copper falling within the following Ukrainian customs codes: 7403 21 00 00, 7403 22 00 00, 7403 29 00 00.

Year (WTO)	2016	2017	2018	2019	2020	2021
Ukraine WTO commitment	15,0	15,0	15,0	15,0	15,0	15,0
Year (FTA)	EIF	EIF+1	EIF+2	EIF+3	EIF+4	EIF+5
Ukraine export duty to EU	10,0	9,0	8,0	7,0	6,0	5,0
Trigger Level (tonne)	4 000,0	4 200,0	4 400,0	4 600,0	4 800,0	5 000,0
Maximum surcharge	0,0	1,0	2,0	3,0	4,0	5,0

Year (WTO)	2022	2023	2024	2025	2026
Ukraine WTO commitment	15,0	15,0	15,0	15,0	15,0
Year (Agreement)	EIF+6	EIF+7	EIF+8	EIF+9	EIF+10
Ukraine export duty to EU	4,0	3,0	2,0	1,0	0,0
Trigger Level (tonne)	5 200,0	5 400,0	5 600,0	5 800,0	6 000,0
Maximum surcharge	6,0	7,0	8,0	9,0	10,0

Year (WTO)	2027	2028	2029	2030	2031
Ukraine WTO commitment	15,0	15,0	15,0	15,0	15,0
Year (Agreement)	EIF+11	EIF+12	EIF+13	EIF+14	EIF+15
Ukraine export duty to EU	0,0	0,0	0,0	0,0	0,0
Trigger Level (tonne)	6 000,0	6 000,0	6 000,0	6 000,0	6 000,0
Maximum surcharge	8,0	6,0	4,0	2,0	0,0

Coverage: the alloyed ferrous metal scrap, nonferrous metal scrap and semi-manufactured goods of them falling within the following Ukrainian customs codes: 7404 00, 7405 00 00 00, 7406, 7418 19 90 00, 7419, 7503 00, 7602 00, 7802 00 00 00, 7902 00 00 00, 8108 30 00 00.

Year (WTO)	2016	2017	2018	2019	2020	2021
Ukraine WTO commitment	15,0	15,0	15,0	15,0	15,0	15,0
Year (Agreement)	EIF	EIF+1	EIF+2	EIF+3	EIF+4	EIF+5
Ukraine export duty to EU	10,0	9,0	8,0	7,0	6,0	5,0
Trigger Level (tonne)	200,0	210,0	220,0	230,0	240,0	250,0
Maximum surcharge	0,0	1,0	2,0	3,0	4,0	5,0

Year (WTO)	2022	2023	2024	2025	2026
Ukraine WTO commitment	15,0	15,0	15,0	15,0	15,0
Year (Agreement)	EIF+6	EIF+7	EIF+8	EIF+9	EIF+10
Ukraine export duty to EU	4,0	3,0	2,0	1,0	0,0
Trigger Level (tonne)	260,0	270,0	280,0	290,0	300,0
Maximum surcharge	6,0	7,0	8,0	9,0	10,0

Year (WTO)	2027	2028	2029	2030	2031
Ukraine WTO commitment	15,0	15,0	15,0	15,0	15,0
Year (Agreement)	EIF+11	EIF+12	EIF+13	EIF+14	EIF+15
Ukraine export duty to EU	0,0	0,0	0,0	0,0	0,0
Trigger Level (tonne)	300,0	300,0	300,0	300,0	300,0
Maximum surcharge	8,0	6,0	4,0	2,0	0,0

11. For the 5 years following the end of the transitional period, i.e. between EIF+10 and EIF+15, the safeguard mechanism will continue to be available. The maximum surcharge value will decrease linearly from its value specified at EIF +10 to 0 at EIF +15.

COUNCIL DECISION (EU) 2018/157

of 29 January 2018

appointing a member, proposed by the Italian Republic, of the Committee of the Regions

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 305 thereof,

Having regard o the proposal of the Italian Government,

Whereas:

(1) On 26 January 2015, 5 February 2015 and 23 June 2015, the Council adopted Decisions (EU) 2015/116 ([1]), (EU) 2015/190 ([2]) and (EU) 2015/994 ([3]) appointing the members and alternate members of the Committee of the Regions for the period from 26 January 2015 to 25 January 2020. On 11 July 2017, by Council Decision (EU) 2017/1334 ([4]), Mr Augusto ROLLANDIN was replaced by Mr Pierluigi MARQUIS as a member.

(2) A member's seat on the Committee of the Regions has become vacant following the end of the term of office of Mr Pierluigi MARQUIS,

HAS ADOPTED THIS DECISION:

Article 1

The following is hereby appointed as a member of the Committee of the Regions for the remainder of the current term of office, which runs until 25 January 2020:

— Mr Laurent VIERIN, *Presidente della Regione Autonoma Valle d'Aosta*.

Article 2

This Decision shall enter into force on the date of its adoption.

Done at Brussels, 29 January 2018.

For the Council
The President
R. PORODZANOV

([1]) Council Decision (EU) 2015/116 of 26 January 2015 appointing the members and alternate members of the Committee of the Regions for the period from 26 January 2015 to 25 January 2020 (OJ L 20, 27.1.2015, p. 42).
([2]) Council Decision (EU) 2015/190 of 5 February 2015 appointing the members and alternate members of the Committee of the Regions for the period from 26 January 2015 to 25 January 2020 (OJ L 31, 7.2.2015, p. 25).
([3]) Council Decision (EU) 2015/994 of 23 June 2015 appointing the members and alternate members of the Committee of the Regions for the period from 26 January 2015 to 25 January 2020 (OJ L 159, 25.6.2015, p. 70).
([4]) Council Decision (EU) 2017/1334 of 11 July 2017 appointing a member, proposed by the Italian Republic, of the Committee of the Regions (OJ L 185, 18.7.2017, p. 45).

COUNCIL DECISION (EU) 2018/158

of 29 January 2018

appointing a member, proposed by the Republic of Finland, of the Committee of the Regions

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 305 thereof,

Having regard to the proposal of the Finnish Government,

Whereas:

(1) On 26 January 2015, 5 February 2015 and 23 June 2015, the Council adopted Decisions (EU) 2015/116 ([1]), (EU) 2015/190 ([2]) and (EU) 2015/994 ([3]) appointing the members and alternate members of the Committee of the Regions for the period from 26 January 2015 to 25 January 2020.

(2) A member's seat on the Committee of the Regions has become vacant following the end of the term of office of Mr Antti LIIKKANEN,

HAS ADOPTED THIS DECISION:

Article 1

The following is hereby appointed as a member of the Committee of the Regions for the remainder of the current term of office, which runs until 25 January 2020:

— Mr Mikkel NÄKKÄLÄJÄRVI, *opiskelija, Rovaniemen kaupunginvaltuuston jäsen*.

Article 2

This Decision shall enter into force on the date of its adoption.

Done at Brussels, 29 January 2018.

For the Council
The President
R. PORODZANOV

([1]) Council Decision (EU) 2015/116 of 26 January 2015 appointing the members and alternate members of the Committee of the Regions for the period from 26 January 2015 to 25 January 2020 (OJ L 20, 27.1.2015, p. 42).
([2]) Council Decision (EU) 2015/190 of 5 February 2015 appointing the members and alternate members of the Committee of the Regions for the period from 26 January 2015 to 25 January 2020 (OJ L 31, 7.2.2015, p. 25).
([3]) Council Decision (EU) 2015/994 of 23 June 2015 appointing the members and alternate members of the Committee of the Regions for the period from 26 January 2015 to 25 January 2020 (OJ L 159, 25.6.2015, p. 70).

COUNCIL DECISION (EU, Euratom) 2018/159

of 29 January 2018

appointing two members of the Court of Auditors

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 286(2) thereof,

Having regard to the Treaty establishing the European Atomic Energy Community, and in particular Article 106a thereof,

Having regard to the proposals by Ireland and the Kingdom of Sweden,

Having regard to the opinions of the European Parliament ([1]),

Whereas:

(1) The terms of office of Mr Kevin CARDIFF and Mr Hans Gustaf WESSBERG as members of the Court of Auditors are due to expire on 28 February 2018.

(2) Two new members should therefore be appointed to the Court of Auditors,

HAS ADOPTED THIS DECISION:

Article 1

The following are hereby appointed members of the Court of Auditors for the period from 1 March 2018 to 29 February 2024:

— Mr Tony MURPHY,

— Ms EVA LINDSTRÖM.

Article 2

This Decision shall enter into force on the date of its adoption.

Done at Brussels, 29 January 2018.

For the Council
The President
R. PORODZANOV

([1]) Opinions of 17 January 2018 (not yet published in the Official Journal).

COMMISSION DECISION (EU) 2018/160

of 30 June 2017

on the State aid SA.44351 (2016/C) (ex 2016/NN) implemented by Poland for the tax on the retail sector

(notified under document C(2017) 4449)

(Only the Polish text is authentic)

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

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

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

Having called on interested parties to submit their comments pursuant to the provision(s) cited above ([1]),

Whereas:

1. PROCEDURE

(1) By press articles published in February 2016, the Commission became aware that Poland was considering to adopt a law that would introduce a turnover tax on the retail sector featuring a progressive rate structure.

(2) On 11 February and 30 May 2016, the Commission services sent letters to the Polish authorities by which they requested more information on the planned law and invited Poland to consult with them before the adoption of that law. Those letters also emphasised the similarities of that law with the Hungarian food chain inspection fee, on which the Commission had opened a formal State aid investigation, and explained the preliminary State aid assessment of that fee by the Commission in its opening decision ([2]). Finally, they informed Poland that if a measure entailing State aid is put into effect without prior Commission approval, the Commission might issue a suspension injunction.

(3) The Polish authorities replied to those letters on 2 March and 27 June 2016 respectively. By letter of 2 March 2016, the Polish authorities committed to communicate to the Commission the draft law once finalised. By letter of 27 June 2016, the Polish authorities informed the Commission that the draft law had already been submitted to the Polish Parliament and that its adoption was imminent. They also provided the Commission services with the text of the draft law.

(4) On 6 July 2016, the Polish Parliament adopted the Act on retail sales tax (USTAWA z dnia 6 lipca 2016 r. o podatku od sprzedaży detalicznej ([3]), hereinafter: 'the Act'). The Act entered into force on 1 September 2016.

(5) By letter of 8 July 2016, the Commission informed Poland of its preliminary view that the retail tax under the Act (hereinafter: the 'retail tax') constituted State aid and requested the Polish authorities to express their views on the possibility of the Commission issuing a suspension injunction. A reply was received on 22 July 2016.

(6) On 4 August 2016, the Commission received a State aid complaint against the same measure.

([1]) OJ C 406, 4.11.2016, p. 76.
([2]) See Commission Decision in case Amendment to the Hungarian food chain inspection fee (OJ C 277, 21.8.2015, p. 12); see also Commission Decisions in the following cases: SA.39235 — Hungarian advertisement tax (OJ C 136, 24.4.2015, p. 7); and SA.41187 — Hungarian health contribution of tobacco industry businesses (OJ C 277, 21.8.2015, p. 24).
([3]) See Journal of Laws of 2016, item 1155.

(7) By letter of 19 September 2016, the Commission informed Poland that it had decided to initiate the procedure laid down in Article 108(2) of the Treaty on the Functioning of the European Union (hereinafter: 'the Treaty') in respect of the aid measure (the 'Opening Decision'). The Commission also required the immediate suspension of the measure in accordance with Article 13(1) of Council Regulation (EU) 2015/1589 ([4]).

(8) The Opening Decision was published in the *Official Journal of the European Union* ([5]). The Commission invited interested parties to submit their comments on the aid measure.

(9) Poland submitted its observations to the Opening Decision by letter of 7 November 2016. The Commission did not receive comments from interested parties.

(10) By regulation of the Polish Minister for Development and Finance, which entered into force on 19 October 2016, Poland suspended the collection of the retail tax applicable to turnover generated from 1 September 2016 until 31 December 2016 ([6]). On 15 November 2016, the Polish Parliament adopted a law, which entered into force on 22 December 2016 ([7]), which suspends the application of the retail sales tax until 1 January 2018.

(11) By letter of 11 January 2017 the Commission informed Poland that no comments from interested parties had been received and invited the Polish authorities to discuss with the Commission services their own comments as well as any amendments to the Act possibly envisaged. A video-conference meeting was held on 14 March 2017.

2. DETAILED DESCRIPTION OF THE AID MEASURE

(12) The Act lays down a tax on the retail sector in Poland.

(13) Article 5 of the Act subjects to tax turnover received from the sale of goods to natural persons not carrying out any economic activity (consumers). In accordance with Article 4 of the Act, the taxable person is the retailer being a natural person, company of civil law (*spółka cywilna*), organisational unit without legal personality and moral person, such as personal companies (spółki osobowe) and other companies regulated under kodeks spolek handlowych (companies with limited responsibility (z.o.o.) and joint-stock companies (S.A.) ([8]).

(14) In accordance with Article 8 of the Act, the obligation to pay the turnover tax arises when the taxable person achieves a monthly turnover in excess of PLN 17 million. According to Article 6(1) of the Act, the taxable base is the amount of turnover exceeding PLN 17 million from retail sales conducted during one month. The retail tax is payable on a monthly basis by the twenty-fifth day of the month following the month in which the taxed revenue was generated.

(15) Article 9 of the Act lays down two tax rates:

— the tax is levied at a rate of 0,8 % on the part of the undertaking's monthly turnover from retail sales over PLN 17 million (≈ EUR 4 million ([9])) but not exceeding PLN 170 million (≈ EUR 40 million) and;

— the tax is levied at a rate of 1,4 % on the part of the undertaking's monthly turnover from retail sales above PLN 170 million.

(16) In light of Articles 6(1) and 8 of the Act, which exclude the part of the undertaking's monthly turnover from retails sales not exceeding PLN 17 million, the retail tax scheme can therefore be said to be based on a progressive rate structure comprising three different monthly turnover brackets subject to three different tax rates: a tax rate of 0 % on the amount of monthly turnover from retail sales not exceeding PLN 17 million; a tax rate of 0,8 % on the amount of monthly turnover over PLN 17 million but not exceeding PLN 170 million; and a tax rate of 1,4 % on the amount of monthly turnover from retail sales above PLN 170 million.

([4]) Council Regulation (EU) 2015/1589 of 13 July 2015 laying down detailed rules for the application of Article 108 of the Treaty on the Functioning of the European Union (OJ L 248, 24.9.2015, p. 9).
([5]) Cf. footnote [1].
([6]) See Journal of Laws of 2016, item 1723.
([7]) See Journal of Laws of 2016, item 2099.
([8]) Article 3(4) of the Act provides the definition of retailers.
([9]) At a rate of 1 PLN ≈ EUR 0,238.

3. FORMAL INVESTIGATION PROCEDURE

3.1. Grounds for initiating the formal investigation procedure

(17) The Commission opened the formal investigation procedure because it considered at that stage that the progressive rate structure of the Polish tax on the retail sector constituted unlawful and incompatible State aid.

(18) In particular, the Commission considered that the Act differentiates between undertakings engaged in the retail trade based on their turnover and therefore on their size and grants a selective advantage to undertakings with low turnover and thus smaller undertakings. Poland had advanced no convincing explanation why larger and smaller retail operators are in a different factual and legal situation when it comes to levying the tax on retail sales. Poland had therefore not demonstrated that the measure was justified by the nature or general scheme of the tax system. Therefore, the Commission provisionally considered that the Act gave rise to State aid, since all the other conditions laid down by Article 107(1) of the Treaty appeared to have been met.

(19) Finally, the Commission raised doubts as to the compatibility of the Act with the internal market. The Commission observed that none of the exceptions laid down in Article 107(2) or (3) of the Treaty seemed to apply, nor did Poland advance any argument why the retail tax would be compatible with the internal market. It further recalled that it cannot declare compatible a State aid measure which entails an indissoluble breach of other rules of Union law, such as the fundamental freedoms established by the Treaty or the provisions of Union regulations and directives. At that stage, the Commission could not exclude that the measure predominantly targeted foreign-owned undertakings, which could entail a breach of Article 49 of the Treaty establishing the fundamental freedom of establishment.

3.2. Comments from Poland

(20) The Polish authorities consider that the description of the retail tax in the opening decision as involving three different brackets and rates is incorrect. In the view of the Polish authorities, the retail tax has only two rates, given that revenues not exceeding PLN 17 million are not subject to the tax at all, regardless of the type of enterprise generating the revenue and of the total amount of revenues generated in the month concerned. In their opinion, a tax exemption is different from a zero tax rate and the thresholds apply to all taxable persons 'on equal and objective terms'.

(21) Regarding the purpose of the tax, the Polish authorities stress that the revenues to be generated by the retail tax would be assigned to financing the 500+ child benefit programme. However, given the estimated budget of this programme (*i.e.* approx. PLN 16 billion in 2016 and approx. PLN 22 billion in subsequent years), its financing would be achieved only in part through the retail tax (*i.e.* expected proceeds on a full year basis of approx. PLN 1,6 billion in 2017). Poland also argues that, besides representing an expenditure, the 500+ child benefit programme would also have a positive effect on the economy, by increasing consumption and, thus, having a direct impact on retailers' revenues.

(22) As far as the measure's financing through State resources is concerned, Poland argues that the design of the tax does not imply foregoing revenues which in normal circumstances would have been collected from the retailers. In particular, the Polish authorities assert that the tax-free amount and the reduced tax rate of 0,8 % apply to all companies and that the Polish State is foregoing resources which it could otherwise obtain from all enterprises and not just smaller ones.

(23) Poland also considers that a difference must be made between 'global progressivity', where different rates are applied to the whole turnover of undertakings depending of the size of such turnover, and 'bracketed progressivity' where different rates are applied to different parts (brackets) of the turnover of all undertakings. Bracketed progressivity would not entail, in Poland's view, any selective advantage because the same rate schedule applies to all retail undertakings. In particular, Poland argues that the progressive nature of the tax does not entail an advantage for smaller enterprises, given that the tax free amount and the reduced tax rate of 0,8 % reduce operational costs for both higher and lower revenue enterprises. For Poland, the higher revenues an undertaking generates, the more aid that undertaking receives.

(24) In addition, Poland claims that the Commission incorrectly identified the beneficiaries of the advantage, because it would not always be true that enterprises with lower revenues are smaller enterprises and enterprises generating higher revenues are larger enterprises. In fact, according to Poland, enterprises' revenues are not directly, or at least not exclusively, related to their size.

(25) Regarding the selectivity of the measure, Poland contests the reference system identified by the Commission and claims that only taxation on revenues in the retail sector exceeding PLN 17 million a month should be regarded as the system of reference. It then argues that the reason for this is the fact that revenues not exceeding PLN 17 million are not subject to the retail tax. It further claims that the design of the system is neither arbitrary nor biased and that the tax exemption applies to all taxable persons. It also argues, with reference to recital 26 of the Opening Decision, that it could not be concluded that the measure constitutes State aid without determining the single reference rate which serves as a reference point.

(26) Second, in response to recital 32 of the Opening Decision, Poland argues that the average rate of the retail tax as determined by the Commission is an artificial construction. It claims that the structure of the retail tax is based on specific rates assigned *ex ante* to two specific brackets that apply equally to all taxable persons. Furthermore, 'bracketed progressivity' is not selective since the reduced rates are applied on the same terms to all undertakings, regardless of their size. As a consequence, in Poland's view, there is no differential treatment of enterprises which find themselves in a comparable factual and legal situation.

(27) In light of the above, Poland argues that there is no need to present a justification by the nature or overall structure of the system. Nevertheless, the Polish authorities claim that the progressive structure of the retail tax and the progressive structure of the income tax should benefit from the same treatment and be considered justified for redistribution purposes. However, Poland does not provide any further arguments supporting this alleged justification.

(28) Concerning the effect on trade and the distortion of competition, Poland presented the structure of its retail sector, and notes that stores generating the highest revenues (in shopping centres) are usually located in towns which ensures higher customer frequency than those located outside towns, where customers must bear travel costs. Small stores, in turn, are located mainly in small towns and in the countryside, where the opposite is the case (stores are less accessible and frequency and turnover are lower). It further observed that tax optimisation practices are commonly used in the group of sellers with the highest revenues, which leads them to pay no corporate income, tax and that sellers with high turnover benefit from economies of scale (the more they sell, the less the unit costs are) and tend to exert their influence to reduce producers and suppliers' margins to their own benefit. Finally, it noted that the development of modern trade in Poland has significantly weakened the segment of independent retailers (51 % of the market in 2008 and 37 % in 2015).

(29) Poland concludes that: (i) even if it were to be considered that the retail tax is selective, competition would not be distorted because large-scale sellers already have a significant competitive advantage over small retailers and (ii) the progression in the tax rates of the retail tax limits adverse changes in the pattern of trade (the disappearance of small-scale trade coupled with the increase in large-format trade), which are currently distorting competition.

(30) Finally, Poland argues that the Opening Decision unjustifiably limits Member States' autonomy in developing their fiscal policy. According to Poland, it is up to a State to develop the structure of a tax being introduced, i.e. the subject, tax base and rates, which is optimal from the point of view of the fiscal policy pursued.

3.3. **Comments from interested parties**

(31) The Commission has not received any comments from interested parties.

4. **ASSESSMENT OF THE AID**

(32) As a preliminary matter, and in response to the claim made by Poland in response to the Opening Decision that the retail tax concerns a measure of direct taxation and that therefore the Commission exercising its State aid competence constitutes an unjustifiable limits on its autonomy in developing its fiscal policy, the Commission recalls that, while the Member States are considered to enjoy fiscal autonomy in the field of direct taxation, any fiscal measure a Member State adopts must comply with Article 107 of the Treaty ([10]).

([10]) See Joined Cases C-182/03 and C-217/03, *Belgium and Forum 187 ASBL v. Commission*, EU:C:2006:416, para. 81; Joined Cases C-106/09 P and C-107/09 P, *Commission v Government of Gibraltar and United Kingdom*, EU:C:2011:732; Case C-417/10 *3M Italia*, EU:C:2012:184, para. 25, and Order in Case C-529/10, *Safilo*, EU:C:2012:188, para. 18; See also Case T-538/11, *Belgium v. Commission*, EU:T:2015:188, para. 66.

4.1. **Existence of aid**

(33) According to Article 107(1) of the Treaty, any aid granted by a Member State or through State resources in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings or the provision of certain goods is incompatible with the internal market, in so far as it affects trade between Member States. For a measure to be categorised as aid within the meaning of Article 107(1), all the conditions set out in that provision must be fulfilled ([11]). It is thus well-established that, for a measure to be categorised as State aid, there must, first, be an intervention by the State or through State resources; second, the intervention must be liable to affect trade between Member States; third, it must confer a selective advantage on an undertaking and, fourth, it must distort or threaten to distort competition ([12]).

4.1.1. *State resources and imputability to the State*

(34) To constitute State aid, a measure must both be imputable to the State and financed through State resources.

(35) Since the retail tax results from an Act of the Polish Parliament, it is clearly imputable to the Polish State.

(36) As regards the measure's financing through State resources, the Court of Justice has consistently held that a measure by which the public authorities grant certain undertakings a tax exemption which, although not involving a positive transfer of State resources, places the persons to whom it applies in a more favourable financial situation than other taxpayers constitutes State aid ([13]). In recitals 37 to 60, the Commission will demonstrate that the progressive rate structure of the retail tax, described in recitals 15 and 16, results in Poland waiving tax revenue it would otherwise have been entitled to collect from retail operators with a lower level of turnover (and thus smaller retailers), if they had been subject to the same average effective retail tax rate as retail operators with a higher level of turnover (and thus larger retailers). The progressive rate structure's discrimination between retailers based on their size notably results in Poland waiving tax revenue it would otherwise have been entitled to collect from retail undertakings that operate under a franchise model as compared to retail undertaking that operate under a holding company model ([14]). By renouncing those revenues, the retail tax gives rise to a loss of State resources within the meaning of Article 107(1) of the Treaty ([15]).

4.1.2. *Advantage*

(37) According to the case law of the Union Courts, the notion of aid embraces not only positive benefits, but also measures which, in various forms, mitigate the charges which are normally included in the budget of an undertaking. ([16]) An advantage may be granted through different types of reduction in a company's tax burden and, in particular, through a reduction in the applicable tax rate, taxable base or in the amount of tax due ([17]). A measure that entails a reduction of a tax or a levy gives rise to an advantage because it places the undertakings to which it applies in a more favourable financial position than other taxpayers and results in a loss of income to the State ([18]).

(38) The Act lays down a progressive rate structure that applies to all undertakings subject to the retail tax and the tax burden carried by each retailer depends on the brackets into which its turnover falls.

(39) The progressive character of the tax has the effect that not only the amount of tax but also the average percentage of the tax levied on a retailer's turnover from retail sales increases when its turnover increases and reaches the next upper bracket ([19]). As a result, retailers with low turnover are either not subject to the retail tax or subject to the tax at substantially lower average effective rates than retailers with high turnover, thereby

([11]) See Case C-399/08 P *Commission v Deutsche Post* EU:C:2010:481, paragraph 38 and the case-law cited.
([12]) See Case C-399/08 P *Commission v Deutsche Post* EU:C:2010:481, paragraph 39 and the case-law cited.
([13]) See Joined Cases C-106/09 P and C-107/09 P *Commission v. Government of Gibraltar and United Kingdom* EU:C:2011:732, paragraph 72 and the case-law cited therein.
([14]) Retail undertakings that own and operate several shops of a retail chain and are, for the purpose of the retail tax, regarded as one single taxable person.
([15]) See Case C-169/08 *Presidente del Consiglio dei Ministri* EU:C:2009:709, paragraph 58.
([16]) Case C-143/99 *Adria-Wien Pipeline* EU:C:2001:598, paragraph 38.
([17]) See Case C-66/02 *Italy v Commission* EU:C:2005:768, paragraph 78; Case C-222/04 *Cassa di Risparmio di Firenze and Others* EU:C:2006:8, paragraph 132; Case C-522/13 *Ministerio de Defensa and Navantia* EU:C:2014:2262, paragraphs 21 to 31.
([18]) Joined Cases C-393/04 and C-41/05 *Air Liquide Industries Belgium* EU:C:2006:403, paragraph 30 and Case C-387/92 *Banco Exterior de España* EU:C:1994:100, paragraph 14.
([19]) Calculated as amount of tax due by a taxpayer in a particular month divided by the turnover of that taxpayer in that month.

reducing the charges that undertakings with low turnover have to bear as compared to undertakings with high turnover. Since the amount of turnover achieved by an undertaking correlates to a certain extent with the size of that undertaking, the progressive rate structure under the Act can be said to confer an economic advantage on smaller retailers to the detriment of larger retailers in the form of a reduction of their tax burden and a reduction in the average effective tax rate to which those undertakings are subject. Indeed, the cost represented by the tax at the end of the month for each PLN 100 turnover will be zero for undertakings with total turnovers not exceeding PLN 17 million; will progressively increase towards 0,8 % for retailers with total turnovers above PLN 17 million but not exceeding PLN 170 million; and further increase towards 1,4 % for retailers with total turnovers in excess of PLN 170 million as illustrated in the table below:

Turnover (PLN)	Marginal rate (%)	Tax (PLN)	Tax/Turnover (%)
500 000 000	1,4	5 844 000	1,2
100 000 000	0,8	664 000	0,7
20 000 000	0,8	24 000	0,1
15 000 000	0	0	0,0

(40) The progressive rate structure's discrimination between retailers based on their size also means that individual retailers operating as franchisees under a franchise model are granted an advantage, since their tax burden is determined on the basis of their individual stores' monthly turnover from retail sales, rather than on the basis of the entire chain's monthly turnover from retail sales as is the case for retail chains operating under a holding company model ([20]).

4.1.3. *Selectivity*

(41) A measure is selective if it favours certain undertakings or the production of certain goods within the meaning of Article 107(1) of the Treaty. For aid schemes, the Court of Justice has established that the selectivity of the measure should in principle be assessed by means of a three-step analysis ([21]). First, the common or normal tax regime applicable in the Member State is identified: 'the reference system'. Second, it should be determined whether a given measure constitutes a derogation from that system insofar as it differentiates between economic operators who, in light of the objectives intrinsic to the system, are in a comparable factual and legal situation. If the measure in question does not constitute a derogation from the reference system, it is not selective. If it does (and therefore is *prima facie* selective), it must be established, in the third step of the analysis, whether the derogatory measure is justified by the nature or the general scheme of the reference tax system ([22]). If a *prima facie* selective measure is justified by the nature or the general scheme of the system, it will not be considered selective and it will thus fall outside the scope of Article 107(1) of the Treaty.

4.1.3.1. System of reference

(42) The reference system is composed of a consistent set of rules that generally apply on the basis of objective criteria to all undertakings falling within its scope as defined by its objective.

([20]) In a franchise model, each franchisee is a different taxable person. In the likely situation where the franchisee only owns and operates one shops, the turnover tax applies on the turnover of that single shop. In the holding company model the single store is not a taxable person. The tax and its progressive rate schedule apply on the aggregated turnover of all the shops of the holding company.

([21]) See, for example, Case C-279/08 P *Commission v Netherlands (NOx)* EU:C:2011:551; Case C-143/99 *Adria-Wien Pipeline* EU: C:2001:598, Joined Cases C-78/08 to C-80/08, *Paint Graphos and others* EU:C:2011;550 and EU:C:2010:411, Case C-308/01 *GIL Insurance* EU: C:2004:252 and EU:C:2003;481

([22]) Commission Notice on the application of the State aid rules to measures relating to direct business taxation (OJ C 384, 10.12.1998, p. 3).

(43) Contrary to what Poland claims, the objective of the retail tax cannot be said to be to finance budget expenditure under the Family 500+ child benefit programme. Poland confirmed that tax revenues cannot be allocated wholly and exclusively to finance a predetermined type of expenditure, so that an alleged link between child care and the retail sector has not been established, nor an alleged link between the cost of the child care programme and the size of the turnover of retail operators. The financing of the Family 500+ child benefit programme cannot be regarded as an objective intrinsic to the retail tax.

(44) Rather, the objective of the retail tax is to tax the turnover of all economic operators involved in the sale of goods to natural person consumers. In the light of that objective, all undertakings deriving turnover from the sale of goods to natural persons should be considered to be in a similar factual and legal situation. The Commission therefore considers the reference system to be the retail tax applicable to the turnover of undertakings engaged in the retail sale of all sorts of goods in Poland.

(45) Contrary to what Poland claims ([23]), the reference system should not be limited only to undertakings with turnover above PLN 17 million on account of the fact that the monthly turnover from retail sales generated by undertakings not exceeding PLN 17 million is not subject to tax under the Act. That exclusion is applied to all undertakings that derive turnover from the sale of retail goods regardless of whether they achieve a turnover exceeding or not exceeding PLN 17 million.

(46) The Commission also does not consider that the progressive tax rate structure laid down by the Act forms a part of the reference system. The Court of Justice has specified that it is not always sufficient to confine the selectivity analysis to whether the measure derogates from the reference system as defined by the Member State ([24]). It is also necessary to evaluate whether the boundaries of that system have been designed by the Member State in a consistent manner or, conversely, in a clearly arbitrary or biased way, so as to favour certain undertakings over others. Otherwise, instead of laying down general rules applying to all undertakings from which a derogation is made for certain undertakings, the Member State could achieve the same result, side stepping the State aid rules, by adjusting and combining its rules in such a way that their very application results in a different burden for different undertakings ([25]). It is particularly important to recall in that respect that the Court of Justice has consistently held that Article 107(1) of the Treaty does not distinguish between measures of State intervention by reference to their causes or their aims, but defines them in relation to their effects, and thus independently of the techniques used ([26]).

(47) The result of the progressive rate structure laid down by the Act is that undertakings with low turnover from retail sales are either not subject to the retail tax or subject to the tax at substantially lower average effective rates – i.e. for each zloty of monthly turnover generated – than undertakings with high turnover, thereby reducing the charges that undertakings with low turnover have to bear as compared to undertakings with high turnover. Because each company is taxed at a different average effective tax rate, it is not possible for the Commission to identify one single reference rate. Poland has also not presented any specific rate as the reference rate or 'normal' rate and also did not explain why a higher rate would be justified by exceptional circumstances for retail operators with a high level of turnover, or why lower rates should apply to operators with lower levels of turnovers. The effect of the progressive rate structure of the tax is therefore that different undertakings pay different effective taxation rates depending on their monthly turnover and, consequently, on their size and the operating model. Consequently, the progressive tax rate structure introduced by the Act can be said to be specifically designed to favour smaller retailers over larger ones by applying different tax rates to the monthly turnover generated by undertakings involved in the sale of goods to natural person consumers and thereby subjecting undertakings with lower turnover to a lower average effective tax rate than undertakings with a higher turnover, which also tend to be foreign-owned ([27]), although both types of undertaking are engaged in the same activity.

([23]) See recital 25.
([24]) Joined Cases C-106/09 P and C-107/09 P *Commission and Spain v Government of Gibraltar and United Kingdom* EU:C:2011:732.
([25]) *Ibid*, paragraph 92.
([26]) Case C-487/06 P *British Aggregates v Commission* EU:C:2008:757, paragraphs 85 and 89 and the case-law cited, and Case C-279/08 P *Commission v Netherlands (NOx)* EU:C:2011:551, paragraph 51
([27]) Joined Cases C-106/09 P and C-107/09 P *Commission and Spain v Government of Gibraltar and United Kingdom* EU:C:2011:732.

(48) The progressive rate structure's discrimination of retailers based on their size can also be said to favour retailers operating under a franchise model or independently (as company of civil law for instance) as compared to those operating under a holding company model.

(49) Since Poland has designed the tax in such a manner so as to favour certain undertakings (namely retailers with low levels of turnover – smaller retailers – and retailers operating under a franchise model or independently (not within a chain)), and disadvantage others (namely retailers with high levels of turnover – larger retailers – and retail chains operating under a holding company model), the reference system is selective by design in a way that is not justified in light of the objective of the tax, which is to tax the turnover of all retail operators. Consequently, the Commission considers the appropriate reference system in the present case to be the imposition of a single (flat) rate tax on the monthly turnover generated from retail sales, without the progressive tax structure being a part of that system.

4.1.3.2. Derogation from the system of reference

(50) As a second step, it is necessary to determine whether the measure derogates from the application of the rules of reference in favour of certain undertakings which are in a similar factual and legal situation in light of the intrinsic objective of the system of reference.

(51) Under Article 6(1) the Act, no tax is levied on the part of the retailer's monthly turnover from retail sales not exceeding PLN 17 million. For a significant number of retailers, notably in the grocery subsector, that exemption means that they are entirely exempt from any taxation on the turnover they derive from their retail sales, since their monthly turnover derived from that activity falls below PLN 17 million. According to publically available data ([28]), 109 tax declarations establishing the amount of tax due on the retail sales were emitted for the month of September 2016, whereas according to estimates of the Polish Ministry of Finance there are approximately 200 000 retail operators operating in Poland. Consequently, the vast majority of undertakings operating on the grocery subsector of the retail sector in Poland fall below the threshold established by Article 6(1) and pay no retail tax.

(52) As regards retailers that achieve a monthly turnover in excess of PLN 17 million: their monthly turnover below that threshold is exempted from taxation; their monthly turnover above PLN 17 million but not exceeding PLN 170 million is subject to a tax rate of 0,8 %; and the part of their turnover that exceeds PLN 170 million is taxed at a rate of 1,4 %.

(53) Poland makes a distinction between 'bracketed progressivity' and 'global progressivity' and claims that, since all tax rates (i.e. the tax exemption equivalent to a 0 % rate, and the 1,4 % and 0,8 % rates) are applied on the same terms to all undertakings, there is no derogation from the reference system. However, both types of progressive taxation lead to different average effective rates being applied to different companies based on their turnover – which is the object of taxation – and ultimately their size. As the following example of three retailers (taxable persons) generating monthly turnovers of respectively PLN 10 million, PLN 100 million and PLN 750 million illustrates, although all retailers are subjected to the same tax rates and although the same portion of their income falls within the same three brackets, their effective average tax rates differ considerably. Indeed for each PLN 100 of turnover generated, Retailer 1 bears no tax, Retailer 2 bears an amount of tax of around PLN 0,7 and Retailer 3 an amount of tax of around PLN 1,2.

Monthly revenue from retail sales	Retailer 1 PLN 10 million	Retailer 2 PLN 100 million	Retailer 3 PLN 750 million
Tax due on portion of revenue not exceeding PLN 17 million	0	0	0

([28]) See https://www.wiadomoscihandlowe.pl/artykuly/podatek-handlowy-w-praktyce-wiemy-ile-firm-zlozylo,9669/5. The amount of retail tax owed declared by all taxpayers was PLN 114 million for that month. Approximately 70 % of that amount, that is PLN 78,9 million, is due by the 10 largest retailers operating in Poland and only 12 retail operators were subjected to the highest tax rate of 1,4 %. See also '*Rynek detalicznego handlu spożywczego w Polsce*', Fundacja Republikańska, Varsovie 2016 on the number of retail operators in Poland.

Monthly revenue from retail sales	Retailer 1 PLN 10 million	Retailer 2 PLN 100 million	Retailer 3 PLN 750 million
Tax due on portion of revenue above PLN 17 million but not exceeding PLN 170 million	—	PLN 664 000 (PLN 82 999 999 × 0,008)	PLN 1 224 000 (PLN 152 999 999 × 0,008)
Tax due on portion of revenue above PLN 170 million	—	—	PLN 8 120 000 (PLN 579 999 999 × 0,014)
Total tax due	**0**	**PLN 664 000**	**PLN 9 344 000**
Effective average tax rate	**0 %**	**0,664 %**	**1,246 %**

(54) As this table demonstrates, it is precisely the progressive rates and the brackets to which they apply that make the retail tax discriminatory between retailers (taxable person) depending on their level of turnover and thus on their size. Due to the progressive character of the rates laid down by the Act, undertakings with high levels of turnover are subject to both substantially higher marginal rates and to substantially higher average tax rates as compared to operators with low levels of turnover. Hence, the Commission considers that the progressive rate structure introduced by the Act derogates from the reference system – consisting of the imposition of a single (flat) rate tax on retail sales of all undertakings involved in the retail trade in Poland – in favour of retailers with lower turnover and thus smaller retailers.

(55) In light of the foregoing considerations, the Commission considers the measure to derogate from the reference system and that it is therefore *prima facie* selective.

4.1.3.3. Justification by the nature or general scheme of the system

(56) After the Commission has demonstrated that a State measure is *prima facie* selective since it discriminates between undertakings in a comparable factual and legal situation in light of the reference system, it is for the Member State to provide a justification based on the nature or general scheme of that system. A measure which derogates from the reference system is not selective if it is justified by the nature or general scheme of that system. This is the case where the selective treatment is the result of inherent mechanisms necessary for the functioning and effectiveness of the system ([29]).

(57) Poland argues that if the progressive tax structure of the Act is found to discriminate, which it disputes, it is justified on the grounds of its redistributive purposes, as is the case for profit-based taxes. Poland further claims that undertakings with high levels of turnover have a greater ability to pay, that such undertakings enjoy economies of scale, that such undertakings have the ability to exert pressure on producers' and suppliers' margins to their own benefit and that such undertakings often use tax optimisation strategies.

(58) The Commission recalls that the Act taxes undertakings on the level of their turnover. As opposed to taxes based on profit ([30]), a turnover-based tax does not take into account the costs incurred in the generation of sales. Hence, turnover taxes hit companies in respect of their size rather than their profitability or ability to pay, their ability to generate efficiencies resulting from economies of scale, their ability to influence producers' and

([29]) See for example Joined Cases C-78/08 to C-80/08 *Paint Graphos and others*, EU:C:2011:550, paragraph 69.
([30]) See Commission notice on the application of the State aid rules to measures relating to direct business taxation (OJ C 384, 10.12.1998, p. 3), para. 24. The statement on the redistributive purpose that can justify a progressive tax rate is explicitly only made as regards taxes on profits or (net) income, not as regards taxes on turnover

suppliers' margins to their own benefit ([31]), and their ability to exploit the tax optimisation strategies alleged by Poland. Consequently, none of those factors can constitute a justification for a progressive tax levied on an undertaking's turnover.

(59) Progressive turnover taxes can only be justified by the nature and general scheme, i.e. the internal logic, of the tax system if the specific objective pursued by the tax requires progressive rates. For example in the case of a turnover tax intended to address some negative externalities, a certain level of progressivity could be justified if it was shown that the externalities created by the activities subject to the tax also increase progressively when the turnover (or size) of the taxpayer increases. No such justification has been provided by the Polish authorities.

(60) Accordingly, the Commission does not consider the progressive tax rates of the retail tax to be justified by the nature and general scheme of the reference tax system. Therefore, the measure confers a selective advantage on retail undertakings with a lower level of turnover (and thus smaller undertakings).

4.1.4. *Potential distortion of competition and effect on intra-Union trade*

(61) According to Article 107(1) of the Treaty, a measure must distort or threaten to distort competition and have an effect on intra-Union trade to constitute State aid.

(62) The retail tax applies to all undertakings deriving turnover from certain retail sales in Poland. The retail trade in Poland is open to competition and is characterised by the presence of operators from other Member States. Similarly, retail operators established in Poland may have – or develop in the future – activities in other Member States. Therefore, any aid in favour of certain industry operators is liable to affect intra-EU trade.

(63) Indeed, the progressivity of the retail tax has an influence on the competitive situation of the undertakings subject to it. To the extent the measure relieves undertakings with lower levels of turnover from a tax liability they would otherwise have been obliged to pay, had they been subject to the same tax rate as undertakings with high levels of turnover, the selective advantage granted under those measures constitutes operating aid. The Court of Justice has consistently held that operating aid distorts competition, so that any aid granted to those undertakings should be considered to distort or threaten to distort competition by strengthening their financial position on the Polish retail market. Similarly, higher tax rates for larger (higher turnover) retailers may dissuade large retailer's sales and reduce their market share or force them to exit the market. Competition would be distorted as retailers would not compete only on the basis of their efficiency and competitiveness in the market place but would also face differential tax treatment depending on their turnover level which would not be justified by negative externalities they impose.

(64) Concerning the observations of Poland regarding the structure of the retail sector, the Commission notes that the fact that Poland argues ([32]) that the progressive tax rates limit adverse changes in the pattern of trade (the disappearance of small-scale trade coupled with the increase in large-format trade), which according to Poland are currently distorting competition constitutes nothing else but the confirmation that the measure has been adopted with the view to influence the competitive environment in the retail sector in the country.

(65) Consequently, the Commission considers that the measure distorts or threatens to distort competition and that it has an effect on intra-Union trade.

4.1.5. *Conclusion*

(66) Since all the conditions laid down by Article 107(1) of the Treaty are met, the Commission concludes that the retail tax with its progressive tax rates structure constitutes State aid within the meaning of that provision.

([31]) Moreover, a network of franchisees operating under the same brand may also collectively exert a similar influence on the on producers' and suppliers' margins as large integrated operators and possibly abuse it. Still, they are treated differently for the purpose of the retail tax.

([32]) See Poland's submission of 7 November 2016 to the Commission in response to the Opening Decision.

4.2. **Compatibility of the aid with the internal market**

(67) State aid shall be deemed compatible with the internal market if it falls within any of the categories listed in Article 107(2) of the Treaty ([33]) and it may be deemed compatible with the internal market if it is found by the Commission to fall within any of the categories listed in Article 107(3) of the Treaty. ([34]) However, it is the Member State granting the aid which bears the burden of proving that State aid granted by it is compatible with the internal market pursuant to Articles 107(2) or 107(3) of the Treaty ([35]).

(68) The Commission notes that the Polish authorities have not provided any arguments why the retail tax would be compatible with the internal market. Poland did not comment on the doubts expressed in the Opening Decision as regards the compatibility of the measure.

(69) The Commission considers that none of the exceptions referred to in the aforementioned provisions apply, since the measure does not appear to aim to achieve any of the objectives listed in those provisions. Consequently, the measure cannot be declared compatible with the internal market.

4.3. **Recovery of the aid**

(70) The Act was never notified nor declared compatible with the internal market by the Commission. Since it constitutes State aid within the meaning of Article 107(1) of the Treaty and new aid within the meaning of Article 1(c) of Regulation (EU) 2015/1589 that has been put into effect in violation of the standstill obligation laid down in Article 108(3) of the Treaty, that measure also constitutes unlawful aid within the meaning of Article 1(f) of Regulation (EU) 2015/1589.

(71) The consequence of the finding that the Act constitutes unlawful and incompatible State aid is that the aid has to be recovered from its recipients pursuant to Article 16 of Regulation (EU) 2015/1589.

(72) However, as a result of the suspension injunction issued by the Commission in its Opening Decision, Poland confirmed by letter of 7 November 2016 that it had suspended the payment of the retail tax under the Act.

(73) Therefore, no State aid has been effectively granted under the measure. For this reason, there is no need to require recovery.

5. **CONCLUSION**

(74) The Commission finds that Poland has unlawfully implemented the aid in question in breach of Article 108(3) of the Treaty.

(75) This decision does not prejudice possible proceedings pursuant to Article 258 TFUE on the compliance of the measure with the fundamental freedoms laid down in the Treaty, notably the freedom of establishment as guaranteed by Article 49 of the Treaty,

HAS ADOPTED THIS DECISION:

Article 1

The retail tax with the progressive tax rates structure as introduced by the Act of 6 July 2016 on retail sales tax constitutes State aid that is incompatible with the internal market within the meaning of Article 107(1) of the Treaty on the Functioning of the European Union which was unlawfully put into effect by Poland in breach of Article 108(3) of that Treaty.

Article 2

Poland shall cancel all outstanding payments of aid under the measure referred to in Article 1 with effect from the date of adoption of this decision.

([33]) The exceptions provided for in Article 107(2) of the Treaty concern: (a) aid of a social character granted to individual consumers; (b) aid to make good the damage caused by natural disasters or exceptional occurrences; and (c) aid granted to certain areas of the Federal Republic of Germany.

([34]) The exceptions provided for in Article 107(3) of the Treaty concern: (a) aid to promote the development of certain areas; (b) aid for certain important projects of common European interest or to remedy a serious disturbance in the economy of the Member State; (c) aid to develop certain economic activities or areas; (d) aid to promote culture and heritage conservation; and (e) aid specified by a Council decision.

([35]) Case T-68/03 *Olympiaki Aeroporia Ypiresies v Commission* EU:T:2007:253 paragraph 34.

Article 3

Poland shall ensure that this Decision is implemented within four months following the date of notification of this Decision.

Article 4

1. Within two months following notification of this Decision, Poland shall submit a detailed description of the measures already taken and planned to comply with this Decision;

2. Poland shall keep the Commission informed of the progress of the national measures taken to implement this Decision. It shall immediately submit, on simple request by the Commission, information on the measures already taken and planned to comply with this Decision.

Article 5

This Decision is addressed to the Republic of Poland.

Done at Brussels, 30 June 2017.

For the Commission
Margrethe VESTAGER
Member of the Commission

ISSN 1977-0677 (electronic edition)
ISSN 1725-2555 (paper edition)

Publications Office of the European Union
2985 Luxembourg
LUXEMBOURG

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