

# Official Journal of the European Union

# L 277



English edition

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Volume 65

27 October 2022

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## I

(Legislative acts)

## REGULATIONS

**REGULATION (EU) 2022/2065 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL****of 19 October 2022****on a Single Market For Digital Services and amending Directive 2000/31/EC (Digital Services Act)****(Text with EEA relevance)**

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to the proposal from the European Commission,

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

Having regard to the opinion of the European Economic and Social Committee <sup>(1)</sup>,

Having regard to the opinion of the Committee of the Regions <sup>(2)</sup>,

Acting in accordance with the ordinary legislative procedure <sup>(3)</sup>,

Whereas:

- (1) Information society services and especially intermediary services have become an important part of the Union's economy and the daily life of Union citizens. Twenty years after the adoption of the existing legal framework applicable to such services laid down in Directive 2000/31/EC of the European Parliament and of the Council <sup>(4)</sup>, new and innovative business models and services, such as online social networks and online platforms allowing consumers to conclude distance contracts with traders, have allowed business users and consumers to impart and access information and engage in transactions in novel ways. A majority of Union citizens now uses those services on a daily basis. However, the digital transformation and increased use of those services has also resulted in new risks and challenges for individual recipients of the relevant service, companies and society as a whole.
- (2) Member States are increasingly introducing, or are considering introducing, national laws on the matters covered by this Regulation, imposing, in particular, diligence requirements for providers of intermediary services as regards the way they should tackle illegal content, online disinformation or other societal risks. Those diverging national laws negatively affect the internal market, which, pursuant to Article 26 of the Treaty on the Functioning of the European Union (TFEU), comprises an area without internal frontiers in which the free movement of goods and services and freedom of establishment are ensured, taking into account the inherently cross-border nature of the internet, which is generally used to provide those services. The conditions for the provision of intermediary services

<sup>(1)</sup> OJ C 286, 16.7.2021, p. 70.

<sup>(2)</sup> OJ C 440, 29.10.2021, p. 67.

<sup>(3)</sup> Position of the European Parliament of 5 July 2022 (not yet published in the Official Journal) and decision of the Council of 4 October 2022.

<sup>(4)</sup> Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market ('Directive on electronic commerce') (OJ L 178, 17.7.2000, p. 1).

across the internal market should be harmonised, so as to provide businesses with access to new markets and opportunities to exploit the benefits of the internal market, while allowing consumers and other recipients of the services to have increased choice. Business users, consumers and other users are considered to be 'recipients of the service' for the purpose of this Regulation.

- (3) Responsible and diligent behaviour by providers of intermediary services is essential for a safe, predictable and trustworthy online environment and for allowing Union citizens and other persons to exercise their fundamental rights guaranteed in the Charter of Fundamental Rights of the European Union (the 'Charter'), in particular the freedom of expression and of information, the freedom to conduct a business, the right to non-discrimination and the attainment of a high level of consumer protection.
- (4) Therefore, in order to safeguard and improve the functioning of the internal market, a targeted set of uniform, effective and proportionate mandatory rules should be established at Union level. This Regulation provides the conditions for innovative digital services to emerge and to scale up in the internal market. The approximation of national regulatory measures at Union level concerning the requirements for providers of intermediary services is necessary to avoid and put an end to fragmentation of the internal market and to ensure legal certainty, thus reducing uncertainty for developers and fostering interoperability. By using requirements that are technology neutral, innovation should not be hampered but instead be stimulated.
- (5) This Regulation should apply to providers of certain information society services as defined in Directive (EU) 2015/1535 of the European Parliament and of the Council <sup>(7)</sup>, that is, any service normally provided for remuneration, at a distance, by electronic means and at the individual request of a recipient. Specifically, this Regulation should apply to providers of intermediary services, and in particular intermediary services consisting of services known as 'mere conduit', 'caching' and 'hosting' services, given that the exponential growth of the use made of those services, mainly for legitimate and socially beneficial purposes of all kinds, has also increased their role in the intermediation and spread of unlawful or otherwise harmful information and activities.
- (6) In practice, certain providers of intermediary services intermediate in relation to services that may or may not be provided by electronic means, such as remote information technology services, transport, accommodation or delivery services. This Regulation should apply only to intermediary services and not affect requirements set out in Union or national law relating to products or services intermediated through intermediary services, including in situations where the intermediary service constitutes an integral part of another service which is not an intermediary service as recognised in the case-law of the Court of Justice of the European Union.
- (7) In order to ensure the effectiveness of the rules laid down in this Regulation and a level playing field within the internal market, those rules should apply to providers of intermediary services irrespective of their place of establishment or their location, in so far as they offer services in the Union, as evidenced by a substantial connection to the Union.
- (8) Such a substantial connection to the Union should be considered to exist where the service provider has an establishment in the Union or, in the absence of such an establishment, where the number of recipients of the service in one or more Member States is significant in relation to the population thereof, or on the basis of the targeting of activities towards one or more Member States. The targeting of activities towards one or more Member States can be determined on the basis of all relevant circumstances, including factors such as the use of a language or a currency generally used in that Member State, or the possibility of ordering products or services, or the use of a relevant top-level domain. The targeting of activities towards a Member State could also be derived from the availability of an application in the relevant national application store, from the provision of local advertising or

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<sup>(7)</sup> Directive (EU) 2015/1535 of the European Parliament and of the Council of 9 September 2015 laying down a procedure for the provision of information in the field of technical regulations and of rules on Information Society services (OJ L 241, 17.9.2015, p. 1).

advertising in a language used in that Member State, or from the handling of customer relations such as by providing customer service in a language generally used in that Member State. A substantial connection should also be assumed where a service provider directs its activities to one or more Member States within the meaning of Article 17(1), point (c), of Regulation (EU) No 1215/2012 of the European Parliament and of the Council <sup>(6)</sup>. In contrast, mere technical accessibility of a website from the Union cannot, on that ground alone, be considered as establishing a substantial connection to the Union.

- (9) This Regulation fully harmonises the rules applicable to intermediary services in the internal market with the objective of ensuring a safe, predictable and trusted online environment, addressing the dissemination of illegal content online and the societal risks that the dissemination of disinformation or other content may generate, and within which fundamental rights enshrined in the Charter are effectively protected and innovation is facilitated. Accordingly, Member States should not adopt or maintain additional national requirements relating to the matters falling within the scope of this Regulation, unless explicitly provided for in this Regulation, since this would affect the direct and uniform application of the fully harmonised rules applicable to providers of intermediary services in accordance with the objectives of this Regulation. This should not preclude the possibility of applying other national legislation applicable to providers of intermediary services, in compliance with Union law, including Directive 2000/31/EC, in particular its Article 3, where the provisions of national law pursue other legitimate public interest objectives than those pursued by this Regulation.
- (10) This Regulation should be without prejudice to other acts of Union law regulating the provision of information society services in general, regulating other aspects of the provision of intermediary services in the internal market or specifying and complementing the harmonised rules set out in this Regulation, such as Directive 2010/13/EU of the European Parliament and of the Council <sup>(7)</sup> including the provisions thereof regarding video-sharing platforms, Regulations (EU) 2019/1148 <sup>(8)</sup>, (EU) 2019/1150 <sup>(9)</sup>, (EU) 2021/784 <sup>(10)</sup> and (EU) 2021/1232 <sup>(11)</sup> of the European Parliament and of the Council and Directive 2002/58/EC of the European Parliament and of the Council <sup>(12)</sup>, and provisions of Union law set out in a Regulation on European Production and Preservation Orders for electronic evidence in criminal matters and in a Directive laying down harmonised rules on the appointment of legal representatives for the purpose of gathering evidence in criminal proceedings.

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<sup>(6)</sup> Regulation (EU) No 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (OJ L 351, 20.12.2012, p. 1).

<sup>(7)</sup> Directive 2010/13/EU of the European Parliament and of the Council of 10 March 2010 on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services (Audiovisual Media Services Directive) (OJ L 95, 15.4.2010, p. 1).

<sup>(8)</sup> Regulation (EU) 2019/1148 of the European Parliament and of the Council of 20 June 2019 on the marketing and use of explosives precursors, amending Regulation (EC) No 1907/2006 and repealing Regulation (EU) No 98/2013 (OJ L 186, 11.7.2019, p. 1).

<sup>(9)</sup> Regulation (EU) 2019/1150 of the European Parliament and of the Council of 20 June 2019 on promoting fairness and transparency for business users of online intermediation services (OJ L 186, 11.7.2019, p. 57).

<sup>(10)</sup> Regulation (EU) 2021/784 of the European Parliament and of the Council of 29 April 2021 on addressing the dissemination of the terrorist content online (OJ L 172, 17.5.2021, p. 79).

<sup>(11)</sup> Regulation (EU) 2021/1232 of the European Parliament and of the Council of 14 July 2021 on temporary derogation from certain provisions of Directive 2002/58/EC as regards the use of technologies by providers of number-independent interpersonal communications services for the processing of personal and other data for the purpose of combating online child sexual abuse (OJ L 274, 30.7.2021, p. 41).

<sup>(12)</sup> Directive 2002/58/EC of the European Parliament and of the Council of 12 July 2002 concerning the processing of personal data and the protection of privacy in the electronic communications sector (Directive on privacy and electronic communications) (OJ L 201, 31.7.2002, p. 37).

Similarly, for reasons of clarity, this Regulation should be without prejudice to Union law on consumer protection, in particular Regulations (EU) 2017/2394<sup>(13)</sup> and (EU) 2019/1020<sup>(14)</sup> of the European Parliament and of the Council, Directives 2001/95/EC<sup>(15)</sup>, 2005/29/EC<sup>(16)</sup>, 2011/83/EU<sup>(17)</sup> and 2013/11/EU<sup>(18)</sup> of the European Parliament and of the Council, and Council Directive 93/13/EEC<sup>(19)</sup>, and on the protection of personal data, in particular Regulation (EU) 2016/679 of the European Parliament and of the Council<sup>(20)</sup>.

This Regulation should also be without prejudice to Union rules on private international law, in particular rules regarding jurisdiction and the recognition and enforcement of judgments in civil and commercial matters, as Regulation (EU) No 1215/2012, and rules on the law applicable to contractual and non-contractual obligations. The protection of individuals with regard to the processing of personal data is governed solely by the rules of Union law on that subject, in particular Regulation (EU) 2016/679 and Directive 2002/58/EC. This Regulation should also be without prejudice to Union law on working conditions and Union law in the field of judicial cooperation in civil and criminal matters. However, to the extent that those Union legal acts pursue the same objectives as those laid down in this Regulation, the rules of this Regulation should apply in respect of issues that are not addressed or not fully addressed by those other legal acts as well as issues on which those other legal acts leave Member States the possibility of adopting certain measures at national level.

- (11) It should be clarified that this Regulation is without prejudice to Union law on copyright and related rights, including Directives 2001/29/EC<sup>(21)</sup>, 2004/48/EC<sup>(22)</sup> and (EU) 2019/790<sup>(23)</sup> of the European Parliament and of the Council, which establish specific rules and procedures that should remain unaffected.
- (12) In order to achieve the objective of ensuring a safe, predictable and trustworthy online environment, for the purpose of this Regulation the concept of 'illegal content' should broadly reflect the existing rules in the offline environment. In particular, the concept of 'illegal content' should be defined broadly to cover information relating to illegal content, products, services and activities. In particular, that concept should be understood to refer to information, irrespective of its form, that under the applicable law is either itself illegal, such as illegal hate speech or terrorist content and unlawful discriminatory content, or that the applicable rules render illegal in view of the fact that it relates to illegal activities. Illustrative examples include the sharing of images depicting child sexual abuse, the

<sup>(13)</sup> Regulation (EU) 2017/2394 of the European Parliament and of the Council of 12 December 2017 on cooperation between national authorities responsible for the enforcement of consumer protection laws and repealing Regulation (EC) No 2006/2004 (OJ L 345, 27.12.2017, p. 1).

<sup>(14)</sup> Regulation (EU) 2019/1020 of the European Parliament and of the Council of 20 June 2019 on market surveillance and compliance of products and amending Directive 2004/42/EC and Regulations (EC) No 765/2008 and (EU) No 305/2011 (OJ L 169, 25.6.2019, p. 1).

<sup>(15)</sup> Directive 2001/95/EC of the European Parliament and of the Council of 3 December 2001 on general product safety (OJ L 11, 15.1.2002, p. 4).

<sup>(16)</sup> Directive 2005/29/EC of the European Parliament and of the Council of 11 May 2005 concerning unfair business-to-consumer commercial practices in the internal market and amending Council Directive 84/450/EEC, Directives 97/7/EC, 98/27/EC and 2002/65/EC of the European Parliament and of the Council and Regulation (EC) No 2006/2004 of the European Parliament and of the Council ('Unfair Commercial Practices Directive') (OJ L 149, 11.6.2005, p. 22).

<sup>(17)</sup> Directive 2011/83/EU of the European Parliament and of the Council of 25 October 2011 on consumer rights, amending Council Directive 93/13/EEC and Directive 1999/44/EC of the European Parliament and of the Council and repealing Council Directive 85/577/EEC and Directive 97/7/EC of the European Parliament and of the Council (OJ L 304, 22.11.2011, p. 64).

<sup>(18)</sup> Directive 2013/11/EU of the European Parliament and of the Council of 21 May 2013 on alternative dispute resolution for consumer disputes and amending Regulation (EC) No 2006/2004 and Directive 2009/22/EC (OJ L 165, 18.6.2013, p. 63).

<sup>(19)</sup> Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts (OJ L 95, 21.4.1993, p. 29).

<sup>(20)</sup> Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) (OJ L 119, 4.5.2016, p. 1).

<sup>(21)</sup> Directive 2001/29/EC of the European Parliament and of the Council of 22 May 2001 on the harmonisation of certain aspects of copyright and related rights in the information society (OJ L 167, 22.6.2001, p. 10).

<sup>(22)</sup> Directive 2004/48/EC of the European Parliament and of the Council of 29 April 2004 on the enforcement of intellectual property rights (OJ L 157, 30.4.2004, p. 45).

<sup>(23)</sup> Directive (EU) 2019/790 of the European Parliament and of the Council of 17 April 2019 on copyright and related rights in the Digital Single Market and amending Directives 96/9/EC and 2001/29/EC (OJ L 130, 17.5.2019, p. 92).

unlawful non-consensual sharing of private images, online stalking, the sale of non-compliant or counterfeit products, the sale of products or the provision of services in infringement of consumer protection law, the non-authorised use of copyright protected material, the illegal offer of accommodation services or the illegal sale of live animals. In contrast, an eyewitness video of a potential crime should not be considered to constitute illegal content, merely because it depicts an illegal act, where recording or disseminating such a video to the public is not illegal under national or Union law. In this regard, it is immaterial whether the illegality of the information or activity results from Union law or from national law that is in compliance with Union law and what the precise nature or subject matter is of the law in question.

- (13) Considering the particular characteristics of the services concerned and the corresponding need to make the providers thereof subject to certain specific obligations, it is necessary to distinguish, within the broader category of providers of hosting services as defined in this Regulation, the subcategory of online platforms. Online platforms, such as social networks or online platforms allowing consumers to conclude distance contracts with traders, should be defined as providers of hosting services that not only store information provided by the recipients of the service at their request, but that also disseminate that information to the public at the request of the recipients of the service. However, in order to avoid imposing overly broad obligations, providers of hosting services should not be considered as online platforms where the dissemination to the public is merely a minor and purely ancillary feature that is intrinsically linked to another service, or a minor functionality of the principal service, and that feature or functionality cannot, for objective technical reasons, be used without that other or principal service, and the integration of that feature or functionality is not a means to circumvent the applicability of the rules of this Regulation applicable to online platforms. For example, the comments section in an online newspaper could constitute such a feature, where it is clear that it is ancillary to the main service represented by the publication of news under the editorial responsibility of the publisher. In contrast, the storage of comments in a social network should be considered an online platform service where it is clear that it is not a minor feature of the service offered, even if it is ancillary to publishing the posts of recipients of the service. For the purposes of this Regulation, cloud computing or web-hosting services should not be considered to be an online platform where dissemination of specific information to the public constitutes a minor and ancillary feature or a minor functionality of such services.

Moreover, cloud computing services and web-hosting services, when serving as infrastructure, such as the underlying infrastructural storage and computing services of an internet-based application, website or online platform, should not in themselves be considered as disseminating to the public information stored or processed at the request of a recipient of the application, website or online platform which they host.

- (14) The concept of 'dissemination to the public', as used in this Regulation, should entail the making available of information to a potentially unlimited number of persons, meaning making the information easily accessible to recipients of the service in general without further action by the recipient of the service providing the information being required, irrespective of whether those persons actually access the information in question. Accordingly, where access to information requires registration or admittance to a group of recipients of the service, that information should be considered to be disseminated to the public only where recipients of the service seeking to access the information are automatically registered or admitted without a human decision or selection of whom to grant access. Interpersonal communication services, as defined in Directive (EU) 2018/1972 of the European Parliament and of the Council <sup>(24)</sup>, such as emails or private messaging services, fall outside the scope of the definition of online platforms as they are used for interpersonal communication between a finite number of persons determined by the sender of the communication. However, the obligations set out in this Regulation for providers of online platforms may apply to services that allow the making available of information to a potentially unlimited number of recipients, not determined by the sender of the communication, such as through public groups or open channels. Information should be considered disseminated to the public within the meaning of this Regulation only where that dissemination occurs upon the direct request by the recipient of the service that provided the information.

<sup>(24)</sup> Directive (EU) 2018/1972 of the European Parliament and of the Council of 11 December 2018 establishing the European Electronic Communications Code (OJ L 321, 17.12.2018, p. 36).

- (15) Where some of the services provided by a provider are covered by this Regulation whilst others are not, or where the services provided by a provider are covered by different sections of this Regulation, the relevant provisions of this Regulation should apply only in respect of those services that fall within their scope.
- (16) The legal certainty provided by the horizontal framework of conditional exemptions from liability for providers of intermediary services, laid down in Directive 2000/31/EC, has allowed many novel services to emerge and scale up across the internal market. That framework should therefore be preserved. However, in view of the divergences when transposing and applying the relevant rules at national level, and for reasons of clarity and coherence, that framework should be incorporated in this Regulation. It is also necessary to clarify certain elements of that framework, having regard to the case-law of the Court of Justice of the European Union.
- (17) The rules on liability of providers of intermediary services set out in this Regulation should only establish when the provider of intermediary services concerned cannot be held liable in relation to illegal content provided by the recipients of the service. Those rules should not be understood to provide a positive basis for establishing when a provider can be held liable, which is for the applicable rules of Union or national law to determine. Furthermore, the exemptions from liability established in this Regulation should apply in respect of any type of liability as regards any type of illegal content, irrespective of the precise subject matter or nature of those laws.
- (18) The exemptions from liability established in this Regulation should not apply where, instead of confining itself to providing the services neutrally by a merely technical and automatic processing of the information provided by the recipient of the service, the provider of intermediary services plays an active role of such a kind as to give it knowledge of, or control over, that information. Those exemptions should accordingly not be available in respect of liability relating to information provided not by the recipient of the service but by the provider of the intermediary service itself, including where the information has been developed under the editorial responsibility of that provider.
- (19) In view of the different nature of the activities of ‘mere conduit’, ‘caching’ and ‘hosting’ and the different position and abilities of the providers of the services in question, it is necessary to distinguish the rules applicable to those activities, in so far as under this Regulation they are subject to different requirements and conditions and their scope differs, as interpreted by the Court of Justice of the European Union.
- (20) Where a provider of intermediary services deliberately collaborates with a recipient of the services in order to undertake illegal activities, the services should not be deemed to have been provided neutrally and the provider should therefore not be able to benefit from the exemptions from liability provided for in this Regulation. This should be the case, for instance, where the provider offers its service with the main purpose of facilitating illegal activities, for example by making explicit that its purpose is to facilitate illegal activities or that its services are suited for that purpose. The fact alone that a service offers encrypted transmissions or any other system that makes the identification of the user impossible should not in itself qualify as facilitating illegal activities.
- (21) A provider should be able to benefit from the exemptions from liability for ‘mere conduit’ and for ‘caching’ services when it is in no way involved with the information transmitted or accessed. This requires, among other things, that the provider does not modify the information that it transmits or to which it provides access. However, this requirement should not be understood to cover manipulations of a technical nature which take place in the course of the transmission or access, as long as those manipulations do not alter the integrity of the information transmitted or to which access is provided.
- (22) In order to benefit from the exemption from liability for hosting services, the provider should, upon obtaining actual knowledge or awareness of illegal activities or illegal content, act expeditiously to remove or to disable access to that content. The removal or disabling of access should be undertaken in the observance of the fundamental rights of the recipients of the service, including the right to freedom of expression and of information. The provider can obtain such actual knowledge or awareness of the illegal nature of the content, *inter alia* through its own-initiative investigations or through notices submitted to it by individuals or entities in accordance with this Regulation in so

far as such notices are sufficiently precise and adequately substantiated to allow a diligent economic operator to reasonably identify, assess and, where appropriate, act against the allegedly illegal content. However, such actual knowledge or awareness cannot be considered to be obtained solely on the ground that that provider is aware, in a general sense, of the fact that its service is also used to store illegal content. Furthermore, the fact that the provider automatically indexes information uploaded to its service, that it has a search function or that it recommends information on the basis of the profiles or preferences of the recipients of the service is not a sufficient ground for considering that provider to have 'specific' knowledge of illegal activities carried out on that platform or of illegal content stored on it.

- (23) The exemption of liability should not apply where the recipient of the service is acting under the authority or the control of the provider of a hosting service. For example, where the provider of an online platform that allows consumers to conclude distance contracts with traders determines the price of the goods or services offered by the trader, it could be considered that the trader acts under the authority or control of that online platform.
- (24) In order to ensure the effective protection of consumers when engaging in intermediated commercial transactions online, certain providers of hosting services, namely online platforms that allow consumers to conclude distance contracts with traders, should not be able to benefit from the exemption from liability for hosting service providers established in this Regulation, in so far as those online platforms present the relevant information relating to the transactions at issue in such a way as to lead consumers to believe that that information was provided by those online platforms themselves or by traders acting under their authority or control, and that those online platforms thus have knowledge of or control over the information, even if that may in reality not be the case. Examples of such behaviour could be where an online platform fails to display clearly the identity of the trader, as required by this Regulation, where an online platform withholds the identity or contact details of the trader until after the conclusion of the contract concluded between the trader and the consumer, or where an online platform markets the product or service in its own name rather than in the name of the trader who will supply that product or service. In that regard, it should be determined objectively, on the basis of all relevant circumstances, whether the presentation could lead an average consumer to believe that the information in question was provided by the online platform itself or by traders acting under its authority or control.
- (25) The exemptions from liability established in this Regulation should not affect the possibility of injunctions of different kinds against providers of intermediary services, even where they meet the conditions set out as part of those exemptions. Such injunctions could, in particular, consist of orders by courts or administrative authorities, issued in compliance with Union law, requiring the termination or prevention of any infringement, including the removal of illegal content specified in such orders, or the disabling of access to it.
- (26) In order to create legal certainty, and not to discourage activities that aim to detect, identify and act against illegal content that providers of all categories of intermediary services undertake on a voluntary basis, it should be clarified that the mere fact that providers undertake such activities does not render unavailable the exemptions from liability set out in this Regulation, provided those activities are carried out in good faith and in a diligent manner. The condition of acting in good faith and in a diligent manner should include acting in an objective, non-discriminatory and proportionate manner, with due regard to the rights and legitimate interests of all parties involved, and providing the necessary safeguards against unjustified removal of legal content, in accordance with the objective and requirements of this Regulation. To that aim, the providers concerned should, for example, take reasonable measures to ensure that, where automated tools are used to conduct such activities, the relevant technology is sufficiently reliable to limit to the maximum extent possible the rate of errors. In addition, it is appropriate to clarify that the mere fact that the providers take measures, in good faith, to comply with the requirements of Union law, including those set out in this Regulation as regards the implementation of their terms and conditions, should not render unavailable the exemptions from liability set out in this Regulation. Therefore, any such activities and measures that a provider may have taken should not be taken into account when determining whether the provider can rely on an exemption from liability, in particular as regards whether the provider provides its service neutrally and can therefore fall within the scope of the relevant provision, without this rule however implying that the provider can necessarily rely thereon. Voluntary actions should not be used to circumvent the obligations of providers of intermediary services under this Regulation.

- (27) Whilst the rules on liability of providers of intermediary services set out in this Regulation concentrate on the exemption from liability of providers of intermediary services, it is important to recall that, despite the generally important role played by such providers, the problem of illegal content and activities online should not be dealt with by solely focusing on their liability and responsibilities. Where possible, third parties affected by illegal content transmitted or stored online should attempt to resolve conflicts relating to such content without involving the providers of intermediary services in question. Recipients of the service should be held liable, where the applicable rules of Union and national law determining such liability so provide, for the illegal content that they provide and may disseminate to the public through intermediary services. Where appropriate, other actors, such as group moderators in closed online environments, in particular in the case of large groups, should also help to avoid the spread of illegal content online, in accordance with the applicable law. Furthermore, where it is necessary to involve information society services providers, including providers of intermediary services, any requests or orders for such involvement should, as a general rule, be directed to the specific provider that has the technical and operational ability to act against specific items of illegal content, so as to prevent and minimise any possible negative effects on the availability and accessibility of information that is not illegal content.
- (28) Since 2000, new technologies have emerged that improve the availability, efficiency, speed, reliability, capacity and security of systems for the transmission, 'findability' and storage of data online, leading to an increasingly complex online ecosystem. In this regard, it should be recalled that providers of services establishing and facilitating the underlying logical architecture and proper functioning of the internet, including technical auxiliary functions, can also benefit from the exemptions from liability set out in this Regulation, to the extent that their services qualify as 'mere conduit', 'caching' or 'hosting' services. Such services include, as the case may be, wireless local area networks, domain name system (DNS) services, top-level domain name registries, registrars, certificate authorities that issue digital certificates, virtual private networks, online search engines, cloud infrastructure services, or content delivery networks, that enable, locate or improve the functions of other providers of intermediary services. Likewise, services used for communications purposes, and the technical means of their delivery, have also evolved considerably, giving rise to online services such as Voice over IP, messaging services and web-based email services, where the communication is delivered via an internet access service. Those services, too, can benefit from the exemptions from liability, to the extent that they qualify as 'mere conduit', 'caching' or 'hosting' services.
- (29) Intermediary services span a wide range of economic activities which take place online and that develop continually to provide for transmission of information that is swift, safe and secure, and to ensure convenience of all participants of the online ecosystem. For example, 'mere conduit' intermediary services include generic categories of services, such as internet exchange points, wireless access points, virtual private networks, DNS services and resolvers, top-level domain name registries, registrars, certificate authorities that issue digital certificates, voice over IP and other interpersonal communication services, while generic examples of 'caching' intermediary services include the sole provision of content delivery networks, reverse proxies or content adaptation proxies. Such services are crucial to ensure the smooth and efficient transmission of information delivered on the internet. Examples of 'hosting services' include categories of services such as cloud computing, web hosting, paid referencing services or services enabling sharing information and content online, including file storage and sharing. Intermediary services may be provided in isolation, as a part of another type of intermediary service, or simultaneously with other intermediary services. Whether a specific service constitutes a 'mere conduit', 'caching' or 'hosting' service depends solely on its technical functionalities, which might evolve in time, and should be assessed on a case-by-case basis.
- (30) Providers of intermediary services should not be, neither *de jure*, nor *de facto*, subject to a monitoring obligation with respect to obligations of a general nature. This does not concern monitoring obligations in a specific case and, in particular, does not affect orders by national authorities in accordance with national legislation, in compliance with Union law, as interpreted by the Court of Justice of the European Union, and in accordance with the conditions established in this Regulation. Nothing in this Regulation should be construed as an imposition of a general monitoring obligation or a general active fact-finding obligation, or as a general obligation for providers to take proactive measures in relation to illegal content.

- (31) Depending on the legal system of each Member State and the field of law at issue, national judicial or administrative authorities, including law enforcement authorities, may order providers of intermediary services to act against one or more specific items of illegal content or to provide certain specific information. The national laws on the basis of which such orders are issued differ considerably and the orders are increasingly addressed in cross-border situations. In order to ensure that those orders can be complied with in an effective and efficient manner, in particular in a cross-border context, so that the public authorities concerned can carry out their tasks and the providers are not subject to any disproportionate burdens, without unduly affecting the rights and legitimate interests of any third parties, it is necessary to set certain conditions that those orders should meet and certain complementary requirements relating to the processing of those orders. Consequently, this Regulation should harmonise only certain specific minimum conditions that such orders should fulfil in order to give rise to the obligation of providers of intermediary services to inform the relevant authorities about the effect given to those orders. Therefore, this Regulation does not provide the legal basis for the issuing of such orders, nor does it regulate their territorial scope or cross-border enforcement.
- (32) The applicable Union or national law on the basis of which those orders are issued might require additional conditions and should be the basis for the enforcement of the respective orders. In the event of non-compliance with such orders, the issuing Member State should be able to enforce them in accordance with its national law. The applicable national law should be in compliance with Union law, including the Charter and the TFEU provisions on the freedom of establishment and the freedom to provide services within the Union, in particular with regard to online gambling and betting services. Similarly, the application of such national laws for the enforcement of the respective orders is without prejudice to applicable Union legal acts or international agreements concluded by the Union or by Member States relating to the cross-border recognition, execution and enforcement of those orders, in particular in civil and criminal matters. On the other hand, the enforcement of the obligation to inform the relevant authorities about the effect given to those orders, as opposed to the enforcement of the orders themselves, should be subject to the rules set out in this Regulation.
- (33) The provider of intermediary services should inform the issuing authority about any follow-up given to such orders without undue delay, in compliance with the time limits set out in relevant Union or national law.
- (34) Relevant national authorities should be able to issue such orders against content considered illegal or orders to provide information on the basis of Union law or national law in compliance with Union law, in particular the Charter, and to address them to providers of intermediary services, including those established in another Member State. However, this Regulation should be without prejudice to Union law in the field of judicial cooperation in civil or criminal matters, including Regulation (EU) No 1215/2012 and a Regulation on European production and preservation orders for electronic evidence in criminal matters, and to national criminal or civil procedural law. Therefore, where those laws in the context of criminal or civil proceedings provide for conditions that are additional to or incompatible with the conditions provided for in this Regulation in relation to orders to act against illegal content or to provide information, the conditions provided for in this Regulation might not apply or might be adapted. In particular, the obligation on the Digital Services Coordinator from the Member State of the issuing authority to transmit a copy of the orders to all other Digital Services Coordinators might not apply in the context of criminal proceedings or might be adapted, where the applicable national criminal procedural law so provides.

Furthermore, the obligation for the orders to contain a statement of reasons explaining why the information is illegal content should be adapted, where necessary, under the applicable national criminal procedural law for the prevention, investigation, detection and prosecution of criminal offences. Finally, the obligation on the providers of intermediary services to inform the recipient of the service might be delayed in accordance with applicable Union or national law, in particular in the context of criminal, civil or administrative proceedings. In addition, the orders should be issued in compliance with Regulation (EU) 2016/679 and the prohibition of general obligations to monitor information or to actively seek facts or circumstances indicating illegal activity laid down in this Regulation. The conditions and requirements laid down in this Regulation which apply to orders to act against illegal content are without prejudice to other Union acts providing for similar systems for acting against specific types of illegal content, such as Regulation (EU) 2021/784, Regulation (EU) 2019/1020, or Regulation (EU) 2017/2394 that confers specific powers to order the provision of information to Member State consumer law

enforcement authorities, whilst the conditions and requirements that apply to orders to provide information are without prejudice to other Union acts providing for similar relevant rules for specific sectors. Those conditions and requirements should be without prejudice to retention and preservation rules under applicable national law, in compliance with Union law and confidentiality requests by law enforcement authorities related to the non-disclosure of information. Those conditions and requirements should not affect the possibility for Member States to require a provider of intermediary services to prevent an infringement, in compliance with Union law including this Regulation, and in particular with the prohibition of general monitoring obligations.

- (35) The conditions and requirements laid down in this Regulation should be fulfilled at the latest when the order is transmitted to the provider concerned. Therefore, the order may be issued in one of the official languages of the issuing authority of the Member State concerned. However, where that language is different from the language declared by the provider of intermediary services, or from another official language of the Member States agreed between the authority issuing the order and the provider of intermediary services, the transmission of the order should be accompanied by a translation of at least the elements of the order which are set out in this Regulation. Where a provider of intermediary services has agreed with the authorities of a Member State to use a certain language, it should be encouraged to accept orders in the same language issued by authorities in other Member States. The orders should include elements that enable the addressee to identify the issuing authority, including the contact details of a contact point within that authority where appropriate, and to verify the authenticity of the order.
- (36) The territorial scope of such orders to act against illegal content should be clearly set out on the basis of the applicable Union or national law enabling the issuance of the order and should not exceed what is strictly necessary to achieve its objectives. In that regard, the national judicial or administrative authority, which might be a law enforcement authority, issuing the order should balance the objective that the order seeks to achieve, in accordance with the legal basis enabling its issuance, with the rights and legitimate interests of all third parties that may be affected by the order, in particular their fundamental rights under the Charter. In particular in a cross-border context, the effect of the order should in principle be limited to the territory of the issuing Member State, unless the illegality of the content derives directly from Union law or the issuing authority considers that the rights at stake require a wider territorial scope, in accordance with Union and international law, while taking into account the interests of international comity.
- (37) The orders to provide information regulated by this Regulation concern the production of specific information about individual recipients of the intermediary service concerned who are identified in those orders for the purposes of determining compliance by the recipients of the service with applicable Union or national rules. Such orders should request information with the aim of enabling the identification of the recipients of the service concerned. Therefore, orders regarding information on a group of recipients of the service who are not specifically identified, including orders to provide aggregate information required for statistical purposes or evidence-based policy-making, are not covered by the requirements of this Regulation on the provision of information.
- (38) Orders to act against illegal content and to provide information are subject to the rules safeguarding the competence of the Member State in which the service provider addressed is established and the rules laying down possible derogations from that competence in certain cases, set out in Article 3 of Directive 2000/31/EC, only if the conditions of that Article are met. Given that the orders in question relate to specific items of illegal content and information, respectively, where they are addressed to providers of intermediary services established in another Member State they do not in principle restrict those providers' freedom to provide their services across borders. Therefore, the rules set out in Article 3 of Directive 2000/31/EC, including those regarding the need to justify measures derogating from the competence of the Member State in which the service provider is established on certain specified grounds and regarding the notification of such measures, do not apply in respect of those orders.

- (39) The requirements to provide information on redress mechanisms available to the provider of the intermediary service and to the recipient of the service who provided the content include a requirement to provide information about administrative complaint-handling mechanisms and judicial redress including appeals against orders issued by judicial authorities. Moreover, Digital Services Coordinators could develop national tools and guidance as regards complaint and redress mechanisms applicable in their respective territory, in order to facilitate access to such mechanisms by recipients of the service. Finally, when applying this Regulation Member States should respect the fundamental right to an effective judicial remedy and to a fair trial as provided for in Article 47 of the Charter. This Regulation should therefore not prevent the relevant national judicial or administrative authorities from issuing, on the basis of the applicable Union or national law, an order to restore content, where such content was in compliance with the terms and conditions of the provider of the intermediary service but has been erroneously considered as illegal by that provider and has been removed.
- (40) In order to achieve the objectives of this Regulation, and in particular to improve the functioning of the internal market and ensure a safe and transparent online environment, it is necessary to establish a clear, effective, predictable and balanced set of harmonised due diligence obligations for providers of intermediary services. Those obligations should aim in particular to guarantee different public policy objectives such as the safety and trust of the recipients of the service, including consumers, minors and users at particular risk of being subject to hate speech, sexual harassment or other discriminatory actions, the protection of relevant fundamental rights enshrined in the Charter, the meaningful accountability of those providers and the empowerment of recipients and other affected parties, whilst facilitating the necessary oversight by competent authorities.
- (41) In that regard, it is important that the due diligence obligations are adapted to the type, size and nature of the intermediary service concerned. This Regulation therefore sets out basic obligations applicable to all providers of intermediary services, as well as additional obligations for providers of hosting services and, more specifically, providers of online platforms and of very large online platforms and of very large online search engines. To the extent that providers of intermediary services fall within a number of different categories in view of the nature of their services and their size, they should comply with all the corresponding obligations of this Regulation in relation to those services. Those harmonised due diligence obligations, which should be reasonable and non-arbitrary, are needed to address the identified public policy concerns, such as safeguarding the legitimate interests of the recipients of the service, addressing illegal practices and protecting the fundamental rights enshrined in the Charter. The due diligence obligations are independent from the question of liability of providers of intermediary services which need therefore to be assessed separately.
- (42) In order to facilitate smooth and efficient two-way communications, including, where relevant, by acknowledging the receipt of such communications, relating to matters covered by this Regulation, providers of intermediary services should be required to designate a single electronic point of contact and to publish and update relevant information relating to that point of contact, including the languages to be used in such communications. The electronic point of contact can also be used by trusted flaggers and by professional entities which are under a specific relationship with the provider of intermediary services. In contrast to the legal representative, the electronic point of contact should serve operational purposes and should not be required to have a physical location. Providers of intermediary services can designate the same single point of contact for the requirements of this Regulation as well as for the purposes of other acts of Union law. When specifying the languages of communication, providers of intermediary services are encouraged to ensure that the languages chosen do not in themselves constitute an obstacle to communication. Where necessary, it should be possible for providers of intermediary services and Member States' authorities to reach a separate agreement on the language of communication, or to seek alternative means to overcome the language barrier, including by using all available technological means or internal and external human resources.
- (43) Providers of intermediary services should also be required to designate a single point of contact for recipients of services, enabling rapid, direct and efficient communication in particular by easily accessible means such as telephone numbers, email addresses, electronic contact forms, chatbots or instant messaging. It should be explicitly indicated when a recipient of the service communicates with chatbots. Providers of intermediary services should allow recipients of services to choose means of direct and efficient communication which do not solely rely on automated tools. Providers of intermediary services should make all reasonable efforts to guarantee that sufficient human and financial resources are allocated to ensure that this communication is performed in a timely and efficient manner.

- (44) Providers of intermediary services that are established in a third country and that offer services in the Union should designate a sufficiently mandated legal representative in the Union and provide information relating to their legal representatives to the relevant authorities and make it publicly available. In order to comply with that obligation, such providers of intermediary services should ensure that the designated legal representative has the necessary powers and resources to cooperate with the relevant authorities. This could be the case, for example, where a provider of intermediary services appoints a subsidiary undertaking of the same group as the provider, or its parent undertaking, if that subsidiary or parent undertaking is established in the Union. However, it might not be the case, for instance, when the legal representative is subject to reconstruction proceedings, bankruptcy, or personal or corporate insolvency. That obligation should allow for the effective oversight and, where necessary, enforcement of this Regulation in relation to those providers. It should be possible for a legal representative to be mandated, in accordance with national law, by more than one provider of intermediary services. It should be possible for the legal representative to also function as a point of contact, provided the relevant requirements of this Regulation are complied with.
- (45) Whilst the freedom of contract of providers of intermediary services should in principle be respected, it is appropriate to set certain rules on the content, application and enforcement of the terms and conditions of those providers in the interests of transparency, the protection of recipients of the service and the avoidance of unfair or arbitrary outcomes. Providers of the intermediary services should clearly indicate and maintain up-to-date in their terms and conditions the information as to the grounds on the basis of which they may restrict the provision of their services. In particular, they should include information on any policies, procedures, measures and tools used for the purpose of content moderation, including algorithmic decision-making and human review, as well as the rules of procedure of their internal complaint-handling system. They should also provide easily accessible information on the right to terminate the use of the service. Providers of intermediary services may use graphical elements in their terms of service, such as icons or images, to illustrate the main elements of the information requirements set out in this Regulation. Providers should inform recipients of their service through appropriate means of significant changes made to terms and conditions, for instance when they modify the rules on information that is permitted on their service, or other such changes which could directly impact the ability of the recipients to make use of the service.
- (46) Providers of intermediary services that are primarily directed at minors, for example through the design or marketing of the service, or which are used predominantly by minors, should make particular efforts to render the explanation of their terms and conditions easily understandable to minors.
- (47) When designing, applying and enforcing those restrictions, providers of intermediary services should act in a non-arbitrary and non-discriminatory manner and take into account the rights and legitimate interests of the recipients of the service, including fundamental rights as enshrined in the Charter. For example, providers of very large online platforms should in particular pay due regard to freedom of expression and of information, including media freedom and pluralism. All providers of intermediary services should also pay due regard to relevant international standards for the protection of human rights, such as the United Nations Guiding Principles on Business and Human Rights.
- (48) Given their special role and reach, it is appropriate to impose on very large online platforms and very large online search engines additional requirements regarding information and transparency of their terms and conditions. Consequently, providers of very large online platforms and very large online search engines should provide their terms and conditions in the official languages of all Member States in which they offer their services and should also provide recipients of the services with a concise and easily readable summary of the main elements of the terms and conditions. Such summaries should identify the main elements of the information requirements, including the possibility of easily opting out from optional clauses.

- (49) To ensure an adequate level of transparency and accountability, providers of intermediary services should make publicly available an annual report in a machine-readable format, in accordance with the harmonised requirements contained in this Regulation, on the content moderation in which they engage, including the measures taken as a result of the application and enforcement of their terms and conditions. However, in order to avoid disproportionate burdens, those transparency reporting obligations should not apply to providers that are micro or small enterprises as defined in Commission Recommendation 2003/361/EC <sup>(25)</sup> and which are not very large online platforms within the meaning of this Regulation.
- (50) Providers of hosting services play a particularly important role in tackling illegal content online, as they store information provided by and at the request of the recipients of the service and typically give other recipients access thereto, sometimes on a large scale. It is important that all providers of hosting services, regardless of their size, put in place easily accessible and user-friendly notice and action mechanisms that facilitate the notification of specific items of information that the notifying party considers to be illegal content to the provider of hosting services concerned ('notice'), pursuant to which that provider can decide whether or not it agrees with that assessment and wishes to remove or disable access to that content ('action'). Such mechanisms should be clearly identifiable, located close to the information in question and at least as easy to find and use as notification mechanisms for content that violates the terms and conditions of the hosting service provider. Provided the requirements on notices are met, it should be possible for individuals or entities to notify multiple specific items of allegedly illegal content through a single notice in order to ensure the effective operation of notice and action mechanisms. The notification mechanism should allow, but not require, the identification of the individual or the entity submitting a notice. For some types of items of information notified, the identity of the individual or the entity submitting a notice might be necessary to determine whether the information in question constitutes illegal content, as alleged. The obligation to put in place notice and action mechanisms should apply, for instance, to file storage and sharing services, web hosting services, advertising servers and paste bins, in so far as they qualify as hosting services covered by this Regulation.
- (51) Having regard to the need to take due account of the fundamental rights guaranteed under the Charter of all parties concerned, any action taken by a provider of hosting services pursuant to receiving a notice should be strictly targeted, in the sense that it should serve to remove or disable access to the specific items of information considered to constitute illegal content, without unduly affecting the freedom of expression and of information of recipients of the service. Notices should therefore, as a general rule, be directed to the providers of hosting services that can reasonably be expected to have the technical and operational ability to act against such specific items. The providers of hosting services who receive a notice for which they cannot, for technical or operational reasons, remove the specific item of information should inform the person or entity who submitted the notice.
- (52) The rules on such notice and action mechanisms should be harmonised at Union level, so as to provide for the timely, diligent and non-arbitrary processing of notices on the basis of rules that are uniform, transparent and clear and that provide for robust safeguards to protect the right and legitimate interests of all affected parties, in particular their fundamental rights guaranteed by the Charter, irrespective of the Member State in which those parties are established or reside and of the field of law at issue. Those fundamental rights include but are not limited to: for the recipients of the service, the right to freedom of expression and of information, the right to respect for private and family life, the right to protection of personal data, the right to non-discrimination and the right to an effective remedy; for the service providers, the freedom to conduct a business, including the freedom of contract; for parties affected by illegal content, the right to human dignity, the rights of the child, the right to protection of property, including intellectual property, and the right to non-discrimination. Providers of hosting services should act upon notices in a timely manner, in particular by taking into account the type of illegal content being notified and the urgency of taking action. For instance, such providers can be expected to act without delay when allegedly illegal content involving a threat to life or safety of persons is being notified. The provider of hosting services should inform the individual or entity notifying the specific content without undue delay after taking a decision whether or not to act upon the notice.

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<sup>(25)</sup> Commission Recommendation 2003/361/EC of 6 May 2003 concerning the definition of micro, small and medium-sized enterprises (OJ L 124, 20.5.2003, p. 36).

- (53) The notice and action mechanisms should allow for the submission of notices which are sufficiently precise and adequately substantiated to enable the provider of hosting services concerned to take an informed and diligent decision, compatible with the freedom of expression and of information, in respect of the content to which the notice relates, in particular whether or not that content is to be considered illegal content and is to be removed or access thereto is to be disabled. Those mechanisms should be such as to facilitate the provision of notices that contain an explanation of the reasons why the individual or the entity submitting a notice considers that content to be illegal content, and a clear indication of the location of that content. Where a notice contains sufficient information to enable a diligent provider of hosting services to identify, without a detailed legal examination, that it is clear that the content is illegal, the notice should be considered to give rise to actual knowledge or awareness of illegality. Except for the submission of notices relating to offences referred to in Articles 3 to 7 of Directive 2011/93/EU of the European Parliament and of the Council <sup>(26)</sup>, those mechanisms should ask the individual or the entity submitting a notice to disclose its identity in order to avoid misuse.
- (54) Where a provider of hosting services decides, on the ground that the information provided by the recipients is illegal content or is incompatible with its terms and conditions, to remove or disable access to information provided by a recipient of the service or to otherwise restrict its visibility or monetisation, for instance following receipt of a notice or acting on its own initiative, including exclusively by automated means, that provider should inform in a clear and easily comprehensible way the recipient of its decision, the reasons for its decision and the available possibilities for redress to contest the decision, in view of the negative consequences that such decisions may have for the recipient, including as regards the exercise of its fundamental right to freedom of expression. That obligation should apply irrespective of the reasons for the decision, in particular whether the action has been taken because the information notified is considered to be illegal content or incompatible with the applicable terms and conditions. Where the decision was taken following receipt of a notice, the provider of hosting services should only reveal the identity of the person or entity who submitted the notice to the recipient of the service where this information is necessary to identify the illegality of the content, such as in cases of infringements of intellectual property rights.
- (55) Restriction of visibility may consist in demotion in ranking or in recommender systems, as well as in limiting accessibility by one or more recipients of the service or blocking the user from an online community without the user being aware ('shadow banning'). The monetisation via advertising revenue of information provided by the recipient of the service can be restricted by suspending or terminating the monetary payment or revenue associated to that information. The obligation to provide a statement of reasons should however not apply with respect to deceptive high-volume commercial content disseminated through intentional manipulation of the service, in particular inauthentic use of the service such as the use of bots or fake accounts or other deceptive uses of the service. Irrespective of other possibilities to challenge the decision of the provider of hosting services, the recipient of the service should always have a right to effective remedy before a court in accordance with the national law.
- (56) A provider of hosting services may in some instances become aware, such as through a notice by a notifying party or through its own voluntary measures, of information relating to certain activity of a recipient of the service, such as the provision of certain types of illegal content, that reasonably justify, having regard to all relevant circumstances of which the provider of hosting services is aware, the suspicion that that recipient may have committed, may be committing or is likely to commit a criminal offence involving a threat to the life or safety of person or persons, such as offences specified in Directive 2011/36/EU of the European Parliament and of the Council <sup>(27)</sup>, Directive 2011/93/EU or Directive (EU) 2017/541 of the European Parliament and of the Council <sup>(28)</sup>. For example, specific items of content could give rise to a suspicion of a threat to the public, such as incitement to terrorism within the meaning of Article 21 of Directive (EU) 2017/541. In such instances, the provider of hosting services

<sup>(26)</sup> Directive 2011/93/EU of the European Parliament and of the Council of 13 December 2011 on combating the sexual abuse and sexual exploitation of children and child pornography, and replacing Council Framework Decision 2004/68/JHA (OJ L 335, 17.12.2011, p. 1).

<sup>(27)</sup> Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA (OJ L 101, 15.4.2011, p. 1).

<sup>(28)</sup> Directive (EU) 2017/541 of the European Parliament and of the Council of 15 March 2017 on combating terrorism and replacing Council Framework Decision 2002/475/JHA and amending Council Decision 2005/671/JHA (OJ L 88, 31.3.2017, p. 6).

should inform without delay the competent law enforcement authorities of such suspicion. The provider of hosting services should provide all relevant information available to it, including, where relevant, the content in question and, if available, the time when the content was published, including the designated time zone, an explanation of its suspicion and the information necessary to locate and identify the relevant recipient of the service. This Regulation does not provide the legal basis for profiling of recipients of the services with a view to the possible identification of criminal offences by providers of hosting services. Providers of hosting services should also respect other applicable rules of Union or national law for the protection of the rights and freedoms of individuals when informing law enforcement authorities.

- (57) To avoid disproportionate burdens, the additional obligations imposed under this Regulation on providers of online platforms, including platforms allowing consumers to conclude distance contracts with traders, should not apply to providers that qualify as micro or small enterprises as defined in Recommendation 2003/361/EC. For the same reason, those additional obligations should also not apply to providers of online platforms that previously qualified as micro or small enterprises during a period of 12 months after they lose that status. Such providers should not be excluded from the obligation to provide information on the average monthly active recipients of the service at the request of the Digital Services Coordinator of establishment or the Commission. However, considering that very large online platforms or very large online search engines have a larger reach and a greater impact in influencing how recipients of the service obtain information and communicate online, such providers should not benefit from that exclusion, irrespective of whether they qualify or recently qualified as micro or small enterprises. The consolidation rules laid down in Recommendation 2003/361/EC help ensure that any circumvention of those additional obligations is prevented. Nothing in this Regulation precludes providers of online platforms that are covered by that exclusion from setting up, on a voluntary basis, a system that complies with one or more of those obligations.
- (58) Recipients of the service should be able to easily and effectively contest certain decisions of providers of online platforms concerning the illegality of content or its incompatibility with the terms and conditions that negatively affect them. Therefore, providers of online platforms should be required to provide for internal complaint-handling systems, which meet certain conditions that aim to ensure that the systems are easily accessible and lead to swift, non-discriminatory, non-arbitrary and fair outcomes, and are subject to human review where automated means are used. Such systems should enable all recipients of the service to lodge a complaint and should not set formal requirements, such as referral to specific, relevant legal provisions or elaborate legal explanations. Recipients of the service who submitted a notice through the notice and action mechanism provided for in this Regulation or through the notification mechanism for content that violate the terms and conditions of the provider of online platforms should be entitled to use the complaint mechanism to contest the decision of the provider of online platforms on their notices, including when they consider that the action taken by that provider was not adequate. The possibility to lodge a complaint for the reversal of the contested decisions should be available for at least six months, to be calculated from the moment at which the provider of online platforms informed the recipient of the service of the decision.
- (59) In addition, provision should be made for the possibility of engaging, in good faith, in the out-of-court dispute settlement of such disputes, including those that could not be resolved in a satisfactory manner through the internal complaint-handling systems, by certified bodies that have the requisite independence, means and expertise to carry out their activities in a fair, swift and cost-effective manner. The independence of the out-of-court dispute settlement bodies should be ensured also at the level of the natural persons in charge of resolving disputes, including through rules on conflict of interest. The fees charged by the out-of-court dispute settlement bodies should be reasonable, accessible, attractive, inexpensive for consumers and proportionate, and assessed on a case-by-case basis. Where an out-of-court dispute settlement body is certified by the competent Digital Services Coordinator, that certification should be valid in all Member States. Providers of online platforms should be able to refuse to engage in out-of-court dispute settlement procedures under this Regulation when the same dispute, in particular as regards the information concerned and the grounds for taking the contested decision, the effects of the decision and the grounds raised for contesting the decision, has already been resolved by or is already subject to an

ongoing procedure before the competent court or before another competent out-of-court dispute settlement body. Recipients of the service should be able to choose between the internal complaint mechanism, an out-of-court dispute settlement and the possibility to initiate, at any stage, judicial proceedings. Since the outcome of the out-of-court dispute settlement procedure is not binding, the parties should not be prevented from initiating judicial proceedings in relation to the same dispute. The possibilities to contest decisions of providers of online platforms thus created should leave unaffected in all respects the possibility to seek judicial redress in accordance with the laws of the Member State concerned, and therefore should not affect the exercise of the right to an effective judicial remedy under Article 47 of the Charter. The provisions in this Regulation on out-of-court dispute settlement should not require Member States to establish such out-of-court settlement bodies.

- (60) For contractual consumer-to-business disputes regarding the purchase of goods or services, Directive 2013/11/EU ensures that Union consumers and businesses in the Union have access to quality-certified alternative dispute resolution entities. In this regard, it should be clarified that the rules of this Regulation on out-of-court dispute settlement are without prejudice to that Directive, including the right of consumers under that Directive to withdraw from the procedure at any stage if they are dissatisfied with the performance or the operation of the procedure.
- (61) Action against illegal content can be taken more quickly and reliably where providers of online platforms take the necessary measures to ensure that notices submitted by trusted flaggers, acting within their designated area of expertise, through the notice and action mechanisms required by this Regulation are treated with priority, without prejudice to the requirement to process and decide upon all notices submitted under those mechanisms in a timely, diligent and non-arbitrary manner. Such trusted flagger status should be awarded by the Digital Services Coordinator of the Member State in which the applicant is established and should be recognised by all providers of online platforms within the scope of this Regulation. Such trusted flagger status should only be awarded to entities, and not individuals, that have demonstrated, among other things, that they have particular expertise and competence in tackling illegal content and that they work in a diligent, accurate and objective manner. Such entities can be public in nature, such as, for terrorist content, internet referral units of national law enforcement authorities or of the European Union Agency for Law Enforcement Cooperation ('Europol') or they can be non-governmental organisations and private or semi-public bodies such as the organisations part of the INHOPE network of hotlines for reporting child sexual abuse material and organisations committed to notifying illegal racist and xenophobic expressions online. To avoid diminishing the added value of such mechanism, the overall number of trusted flaggers awarded in accordance with this Regulation should be limited. In particular, industry associations representing their members' interests are encouraged to apply for the status of trusted flaggers, without prejudice to the right of private entities or individuals to enter into bilateral agreements with the providers of online platforms.
- (62) Trusted flaggers should publish easily comprehensible and detailed reports on notices submitted in accordance with this Regulation. Those reports should indicate information such as the number of notices categorised by the provider of hosting services, the type of content, and the action taken by the provider. Given that trusted flaggers have demonstrated expertise and competence, the processing of notices submitted by trusted flaggers can be expected to be less burdensome and therefore faster compared to notices submitted by other recipients of the service. However, the average time taken to process may still vary depending on factors including the type of illegal content, the quality of notices, and the actual technical procedures put in place for the submission of such notices.

For example, while the Code of conduct on countering illegal hate speech online of 2016 sets a benchmark for the participating companies with respect to the time needed to process valid notifications for removal of illegal hate speech, other types of illegal content may take considerably different timelines for processing, depending on the specific facts and circumstances and types of illegal content at stake. In order to avoid abuses of the trusted flagger status, it should be possible to suspend such status when a Digital Services Coordinator of establishment opened an investigation based on legitimate reasons. The rules of this Regulation on trusted flaggers should not be understood

to prevent providers of online platforms from giving similar treatment to notices submitted by entities or individuals that have not been awarded trusted flagger status under this Regulation, from otherwise cooperating with other entities, in accordance with the applicable law, including this Regulation and Regulation (EU) 2016/794 of the European Parliament and of the Council <sup>(29)</sup>. The rules of this Regulation should not prevent the providers of online platforms from making use of such trusted flagger or similar mechanisms to take quick and reliable action against content that is incompatible with their terms and conditions, in particular against content that is harmful for vulnerable recipients of the service, such as minors.

- (63) The misuse of online platforms by frequently providing manifestly illegal content or by frequently submitting manifestly unfounded notices or complaints under the mechanisms and systems, respectively, established under this Regulation undermines trust and harms the rights and legitimate interests of the parties concerned. Therefore, there is a need to put in place appropriate, proportionate and effective safeguards against such misuse, that need to respect the rights and legitimate interests of all parties involved, including the applicable fundamental rights and freedoms as enshrined in the Charter, in particular the freedom of expression. Information should be considered to be manifestly illegal content and notices or complaints should be considered manifestly unfounded where it is evident to a layperson, without any substantive analysis, that the content is illegal or, respectively, that the notices or complaints are unfounded.
- (64) Under certain conditions, providers of online platforms should temporarily suspend their relevant activities in respect of the person engaged in abusive behaviour. This is without prejudice to the freedom by providers of online platforms to determine their terms and conditions and establish stricter measures in the case of manifestly illegal content related to serious crimes, such as child sexual abuse material. For reasons of transparency, this possibility should be set out, clearly and in sufficient detail, in the terms and conditions of the online platforms. Redress should always be open to the decisions taken in this regard by providers of online platforms and they should be subject to oversight by the competent Digital Services Coordinator. Providers of online platforms should send a prior warning before deciding on the suspension, which should include the reasons for the possible suspension and the means of redress against the decision of the providers of the online platform. When deciding on the suspension, providers of online platforms should send the statement of reasons in accordance with the rules set out in this Regulation. The rules of this Regulation on misuse should not prevent providers of online platforms from taking other measures to address the provision of illegal content by recipients of their service or other misuse of their services, including through the violation of their terms and conditions, in accordance with the applicable Union and national law. Those rules are without prejudice to any possibility to hold the persons engaged in misuse liable, including for damages, provided for in Union or national law.
- (65) In view of the particular responsibilities and obligations of providers of online platforms, they should be made subject to transparency reporting obligations, which apply in addition to the transparency reporting obligations applicable to all providers of intermediary services under this Regulation. For the purposes of determining whether online platforms and online search engines may be very large online platforms or very large online search engines, respectively, that are subject to certain additional obligations under this Regulation, the transparency reporting obligations for online platforms and online search engines should include certain obligations relating to the publication and communication of information on the average monthly active recipients of the service in the Union.
- (66) In order to ensure transparency and to enable scrutiny over the content moderation decisions of the providers of online platforms and monitoring the spread of illegal content online, the Commission should maintain and publish a database which contains the decisions and statements of reasons of the providers of online platforms when they remove or otherwise restrict availability of and access to information. In order to keep the database continuously

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<sup>(29)</sup> Regulation (EU) 2016/794 of the European Parliament and of the Council of 11 May 2016 on the European Union Agency for Law Enforcement Cooperation (Europol) and replacing and repealing Council Decisions 2009/371/JHA, 2009/934/JHA, 2009/935/JHA, 2009/936/JHA and 2009/968/JHA (OJ L 135, 24.5.2016, p. 53).

updated, the providers of online platforms should submit, in a standard format, the decisions and statement of reasons without undue delay after taking a decision, to allow for real-time updates where technically possible and proportionate to the means of the online platform in question. The structured database should allow access to, and queries for, the relevant information, in particular as regards the type of alleged illegal content at stake.

- (67) Dark patterns on online interfaces of online platforms are practices that materially distort or impair, either on purpose or in effect, the ability of recipients of the service to make autonomous and informed choices or decisions. Those practices can be used to persuade the recipients of the service to engage in unwanted behaviours or into undesired decisions which have negative consequences for them. Providers of online platforms should therefore be prohibited from deceiving or nudging recipients of the service and from distorting or impairing the autonomy, decision-making, or choice of the recipients of the service via the structure, design or functionalities of an online interface or a part thereof. This should include, but not be limited to, exploitative design choices to direct the recipient to actions that benefit the provider of online platforms, but which may not be in the recipients' interests, presenting choices in a non-neutral manner, such as giving more prominence to certain choices through visual, auditory, or other components, when asking the recipient of the service for a decision.

It should also include repeatedly requesting a recipient of the service to make a choice where such a choice has already been made, making the procedure of cancelling a service significantly more cumbersome than signing up to it, or making certain choices more difficult or time-consuming than others, making it unreasonably difficult to discontinue purchases or to sign out from a given online platform allowing consumers to conclude distance contracts with traders, and deceiving the recipients of the service by nudging them into decisions on transactions, or by default settings that are very difficult to change, and so unreasonably bias the decision making of the recipient of the service, in a way that distorts and impairs their autonomy, decision-making and choice. However, rules preventing dark patterns should not be understood as preventing providers to interact directly with recipients of the service and to offer new or additional services to them. Legitimate practices, for example in advertising, that are in compliance with Union law should not in themselves be regarded as constituting dark patterns. Those rules on dark patterns should be interpreted as covering prohibited practices falling within the scope of this Regulation to the extent that those practices are not already covered under Directive 2005/29/EC or Regulation (EU) 2016/679.

- (68) Online advertising plays an important role in the online environment, including in relation to the provision of online platforms, where the provision of the service is sometimes in whole or in part remunerated directly or indirectly, through advertising revenues. Online advertising can contribute to significant risks, ranging from advertisements that are themselves illegal content, to contributing to financial incentives for the publication or amplification of illegal or otherwise harmful content and activities online, or the discriminatory presentation of advertisements with an impact on the equal treatment and opportunities of citizens. In addition to the requirements resulting from Article 6 of Directive 2000/31/EC, providers of online platforms should therefore be required to ensure that the recipients of the service have certain individualised information necessary for them to understand when and on whose behalf the advertisement is presented. They should ensure that the information is salient, including through standardised visual or audio marks, clearly identifiable and unambiguous for the average recipient of the service, and should be adapted to the nature of the individual service's online interface. In addition, recipients of the service should have information directly accessible from the online interface where the advertisement is presented, on the main parameters used for determining that a specific advertisement is presented to them, providing meaningful explanations of the logic used to that end, including when this is based on profiling.

Such explanations should include information on the method used for presenting the advertisement, for example whether it is contextual or other type of advertising, and, where applicable, the main profiling criteria used; it should also inform the recipient about any means available for them to change such criteria. The requirements of this Regulation on the provision of information relating to advertising is without prejudice to the application of the relevant provisions of Regulation (EU) 2016/679, in particular those regarding the right to object, automated individual decision-making, including profiling, and specifically the need to obtain consent of the data subject prior to the processing of personal data for targeted advertising. Similarly, it is without prejudice to the provisions laid

down in Directive 2002/58/EC in particular those regarding the storage of information in terminal equipment and the access to information stored therein. Finally, this Regulation complements the application of the Directive 2010/13/EU which imposes measures to enable users to declare audiovisual commercial communications in user-generated videos. It also complements the obligations for traders regarding the disclosure of commercial communications deriving from Directive 2005/29/EC.

- (69) When recipients of the service are presented with advertisements based on targeting techniques optimised to match their interests and potentially appeal to their vulnerabilities, this can have particularly serious negative effects. In certain cases, manipulative techniques can negatively impact entire groups and amplify societal harms, for example by contributing to disinformation campaigns or by discriminating against certain groups. Online platforms are particularly sensitive environments for such practices and they present a higher societal risk. Consequently, providers of online platforms should not present advertisements based on profiling as defined in Article 4, point (4), of Regulation (EU) 2016/679, using special categories of personal data referred to in Article 9(1) of that Regulation, including by using profiling categories based on those special categories. This prohibition is without prejudice to the obligations applicable to providers of online platforms or any other service provider or advertiser involved in the dissemination of the advertisements under Union law on protection of personal data.
- (70) A core part of the online platform's business is the manner in which information is prioritised and presented on its online interface to facilitate and optimise access to information for the recipients of the service. This is done, for example, by algorithmically suggesting, ranking and prioritising information, distinguishing through text or other visual representations, or otherwise curating information provided by recipients. Such recommender systems can have a significant impact on the ability of recipients to retrieve and interact with information online, including to facilitate the search of relevant information for recipients of the service and contribute to an improved user experience. They also play an important role in the amplification of certain messages, the viral dissemination of information and the stimulation of online behaviour. Consequently, online platforms should consistently ensure that recipients of their service are appropriately informed about how recommender systems impact the way information is displayed, and can influence how information is presented to them. They should clearly present the parameters for such recommender systems in an easily comprehensible manner to ensure that the recipients of the service understand how information is prioritised for them. Those parameters should include at least the most important criteria in determining the information suggested to the recipient of the service and the reasons for their respective importance, including where information is prioritised based on profiling and their online behaviour.
- (71) The protection of minors is an important policy objective of the Union. An online platform can be considered to be accessible to minors when its terms and conditions permit minors to use the service, when its service is directed at or predominantly used by minors, or where the provider is otherwise aware that some of the recipients of its service are minors, for example because it already processes personal data of the recipients of its service revealing their age for other purposes. Providers of online platforms used by minors should take appropriate and proportionate measures to protect minors, for example by designing their online interfaces or parts thereof with the highest level of privacy, safety and security for minors by default where appropriate or adopting standards for protection of minors, or participating in codes of conduct for protecting minors. They should consider best practices and available guidance, such as that provided by the communication of the Commission on A Digital Decade for children and youth: the new European strategy for a better internet for kids (BIK+). Providers of online platforms should not present advertisements based on profiling using personal data of the recipient of the service when they are aware with reasonable certainty that the recipient of the service is a minor. In accordance with Regulation (EU) 2016/679, notably the principle of data minimisation as provided for in Article 5(1), point (c), thereof, this prohibition should not lead the provider of the online platform to maintain, acquire or process more personal data than it already has in order to assess if the recipient of the service is a minor. Thus, this obligation should not incentivize providers of online platforms to collect the age of the recipient of the service prior to their use. It should be without prejudice to Union law on protection of personal data.

- (72) In order to contribute to a safe, trustworthy and transparent online environment for consumers, as well as for other interested parties such as competing traders and holders of intellectual property rights, and to deter traders from selling products or services in violation of the applicable rules, online platforms allowing consumers to conclude distance contracts with traders should ensure that such traders are traceable. The trader should therefore be required to provide certain essential information to the providers of online platforms allowing consumers to conclude distance contracts with traders, including for purposes of promoting messages on or offering products. That requirement should also be applicable to traders that promote messages on products or services on behalf of brands, based on underlying agreements. Those providers of online platforms should store all information in a secure manner for the duration of their contractual relationship with the trader and 6 months thereafter, to allow any claims to be filed against the trader or orders related to the trader to be complied with.

This obligation is necessary and proportionate, so that the information can be accessed, in accordance with the applicable law, including on the protection of personal data, by public authorities and private parties with a legitimate interest, including through the orders to provide information referred to in this Regulation. This obligation leaves unaffected potential obligations to preserve certain content for longer periods of time, on the basis of other Union law or national laws, in compliance with Union law. Without prejudice to the definition provided for in this Regulation, any trader, irrespective of whether it is a natural or legal person, identified on the basis of Article 6a(1), point (b), of Directive 2011/83/EU and Article 7(4), point (f), of Directive 2005/29/EC should be traceable when offering a product or service through an online platform. Directive 2000/31/EC obliges all information society services providers to render easily, directly and permanently accessible to the recipients of the service and competent authorities certain information allowing the identification of all providers. The traceability requirements for providers of online platforms allowing consumers to conclude distance contracts with traders set out in this Regulation do not affect the application of Council Directive (EU) 2021/514<sup>(30)</sup>, which pursues other legitimate public interest objectives.

- (73) To ensure an efficient and adequate application of that obligation, without imposing any disproportionate burdens, providers of online platforms allowing consumers to conclude distance contracts with traders should make best efforts to assess the reliability of the information provided by the traders concerned, in particular by using freely available official online databases and online interfaces, such as national trade registers and the VAT Information Exchange System, or request the traders concerned to provide trustworthy supporting documents, such as copies of identity documents, certified payment accounts' statements, company certificates and trade register certificates. They may also use other sources, available for use at a distance, which offer a similar degree of reliability for the purpose of complying with this obligation. However, the providers of online platforms concerned should not be required to engage in excessive or costly online fact-finding exercises or to carry out disproportionate verifications on the spot. Nor should such providers, which have made the best efforts required by this Regulation, be understood as guaranteeing the reliability of the information towards consumer or other interested parties.
- (74) Providers of online platforms allowing consumers to conclude distance contracts with traders should design and organise their online interface in a way that enables traders to comply with their obligations under relevant Union law, in particular the requirements set out in Articles 6 and 8 of Directive 2011/83/EU, Article 7 of Directive 2005/29/EC, Articles 5 and 6 of Directive 2000/31/EC and Article 3 of Directive 98/6/EC of the European Parliament and of the Council<sup>(31)</sup>. For that purpose, the providers of online platforms concerned should make best efforts to assess whether the traders using their services have uploaded complete information on their online interfaces, in line with relevant applicable Union law. The providers of online platforms should ensure that products or services are not offered as long as such information is not complete. This should not amount to an obligation for the providers of online platforms concerned to generally monitor the products or services offered by traders through their services nor a general fact-finding obligation, in particular to assess the accuracy of the information provided by traders. The

<sup>(30)</sup> Council Directive (EU) 2021/514 of 22 March 2021 amending Directive 2011/16/EU on administrative cooperation in the field of taxation (OJ L 104, 25.3.2021, p. 1).

<sup>(31)</sup> Directive 98/6/EC of the European Parliament and of the Council of 16 February 1998 on consumer protection in the indication of the prices of products offered to consumers (OJ L 80, 18.3.1998, p. 27).

online interfaces should be user-friendly and easily accessible for traders and consumers. Additionally and after allowing the offering of the product or service by the trader, the providers of online platforms concerned should make reasonable efforts to randomly check whether the products or services offered have been identified as being illegal in any official, freely accessible and machine-readable online databases or online interfaces available in a Member State or in the Union. The Commission should also encourage traceability of products through technology solutions such as digitally signed Quick Response codes (or 'QR codes') or non-fungible tokens. The Commission should promote the development of standards and, in the absence of them, of market led solutions which can be acceptable to the parties concerned.

- (75) Given the importance of very large online platforms, due to their reach, in particular as expressed in the number of recipients of the service, in facilitating public debate, economic transactions and the dissemination to the public of information, opinions and ideas and in influencing how recipients obtain and communicate information online, it is necessary to impose specific obligations on the providers of those platforms, in addition to the obligations applicable to all online platforms. Due to their critical role in locating and making information retrievable online, it is also necessary to impose those obligations, to the extent they are applicable, on the providers of very large online search engines. Those additional obligations on providers of very large online platforms and of very large online search engines are necessary to address those public policy concerns, there being no alternative and less restrictive measures that would effectively achieve the same result.
- (76) Very large online platforms and very large online search engines may cause societal risks, different in scope and impact from those caused by smaller platforms. Providers of such very large online platforms and of very large online search engines should therefore bear the highest standard of due diligence obligations, proportionate to their societal impact. Once the number of active recipients of an online platform or of active recipients of an online search engine, calculated as an average over a period of six months, reaches a significant share of the Union population, the systemic risks the online platform or online search engine poses may have a disproportionate impact in the Union. Such significant reach should be considered to exist where such number exceeds an operational threshold set at 45 million, that is, a number equivalent to 10 % of the Union population. This operational threshold should be kept up to date and therefore the Commission should be empowered to supplement the provisions of this Regulation by adopting delegated acts, where necessary.
- (77) In order to determine the reach of a given online platform or online search engine, it is necessary to establish the average number of active recipients of each service individually. Accordingly, the number of average monthly active recipients of an online platform should reflect all the recipients actually engaging with the service at least once in a given period of time, by being exposed to information disseminated on the online interface of the online platform, such as viewing it or listening to it, or by providing information, such as traders on an online platforms allowing consumers to conclude distance contracts with traders.

For the purposes of this Regulation, engagement is not limited to interacting with information by clicking on, commenting, linking, sharing, purchasing or carrying out transactions on an online platform. Consequently, the concept of active recipient of the service does not necessarily coincide with that of a registered user of a service. As regards online search engines, the concept of active recipients of the service should cover those who view information on their online interface, but not, for example, the owners of the websites indexed by an online search engine, as they do not actively engage with the service. The number of active recipients of a service should include all unique recipients of the service that engage with the specific service. To this effect, a recipient of the service that uses different online interfaces, such as websites or applications, including where the services are accessed through different uniform resource locators (URLs) or domain names, should, where possible, be counted only once. However, the concept of active recipient of the service should not include incidental use of the service by recipients of other providers of intermediary services that indirectly make available information hosted by the provider of online platforms through linking or indexing by a provider of online search engine. Further, this Regulation does not require providers of online platforms or of online search engines to perform specific tracking of individuals

online. Where such providers are able to discount automated users such as bots or scrapers without further processing of personal data and tracking, they may do so. The determination of the number of active recipients of the service can be impacted by market and technical developments and therefore the Commission should be empowered to supplement the provisions of this Regulation by adopting delegated acts laying down the methodology to determine the active recipients of an online platform or of an online search engine, where necessary, reflecting the nature of the service and the way recipients of the service interact with it.

- (78) In view of the network effects characterising the platform economy, the user base of an online platform or an online search engine may quickly expand and reach the dimension of a very large online platform or a very large online search engine, with the related impact on the internal market. This may be the case in the event of exponential growth experienced in short periods of time, or by a large global presence and turnover allowing the online platform or the online search engine to fully exploit network effects and economies of scale and of scope. A high annual turnover or market capitalisation can in particular be an indication of fast scalability in terms of user reach. In those cases, the Digital Services Coordinator of establishment or the Commission should be able to request more frequent reporting from the provider of the online platform or of the online search engine on the number of active recipients of the service to be able to timely identify the moment at which that platform or that search engine should be designated as a very large online platform or very large online search engine, respectively, for the purposes of this Regulation.
- (79) Very large online platforms and very large online search engines can be used in a way that strongly influences safety online, the shaping of public opinion and discourse, as well as online trade. The way they design their services is generally optimised to benefit their often advertising-driven business models and can cause societal concerns. Effective regulation and enforcement is necessary in order to effectively identify and mitigate the risks and the societal and economic harm that may arise. Under this Regulation, providers of very large online platforms and of very large online search engines should therefore assess the systemic risks stemming from the design, functioning and use of their services, as well as from potential misuses by the recipients of the service, and should take appropriate mitigating measures in observance of fundamental rights. In determining the significance of potential negative effects and impacts, providers should consider the severity of the potential impact and the probability of all such systemic risks. For example, they could assess whether the potential negative impact can affect a large number of persons, its potential irreversibility, or how difficult it is to remedy and restore the situation prevailing prior to the potential impact.
- (80) Four categories of systemic risks should be assessed in-depth by the providers of very large online platforms and of very large online search engines. A first category concerns the risks associated with the dissemination of illegal content, such as the dissemination of child sexual abuse material or illegal hate speech or other types of misuse of their services for criminal offences, and the conduct of illegal activities, such as the sale of products or services prohibited by Union or national law, including dangerous or counterfeit products, or illegally-traded animals. For example, such dissemination or activities may constitute a significant systemic risk where access to illegal content may spread rapidly and widely through accounts with a particularly wide reach or other means of amplification. Providers of very large online platforms and of very large online search engines should assess the risk of dissemination of illegal content irrespective of whether or not the information is also incompatible with their terms and conditions. This assessment is without prejudice to the personal responsibility of the recipient of the service of very large online platforms or of the owners of websites indexed by very large online search engines for possible illegality of their activity under the applicable law.
- (81) A second category concerns the actual or foreseeable impact of the service on the exercise of fundamental rights, as protected by the Charter, including but not limited to human dignity, freedom of expression and of information, including media freedom and pluralism, the right to private life, data protection, the right to non-discrimination, the rights of the child and consumer protection. Such risks may arise, for example, in relation to the design of the algorithmic systems used by the very large online platform or by the very large online search engine or the misuse

of their service through the submission of abusive notices or other methods for silencing speech or hampering competition. When assessing risks to the rights of the child, providers of very large online platforms and of very large online search engines should consider for example how easy it is for minors to understand the design and functioning of the service, as well as how minors can be exposed through their service to content that may impair minors' health, physical, mental and moral development. Such risks may arise, for example, in relation to the design of online interfaces which intentionally or unintentionally exploit the weaknesses and inexperience of minors or which may cause addictive behaviour.

- (82) A third category of risks concerns the actual or foreseeable negative effects on democratic processes, civic discourse and electoral processes, as well as public security.
- (83) A fourth category of risks stems from similar concerns relating to the design, functioning or use, including through manipulation, of very large online platforms and of very large online search engines with an actual or foreseeable negative effect on the protection of public health, minors and serious negative consequences to a person's physical and mental well-being, or on gender-based violence. Such risks may also stem from coordinated disinformation campaigns related to public health, or from online interface design that may stimulate behavioural addictions of recipients of the service.
- (84) When assessing such systemic risks, providers of very large online platforms and of very large online search engines should focus on the systems or other elements that may contribute to the risks, including all the algorithmic systems that may be relevant, in particular their recommender systems and advertising systems, paying attention to the related data collection and use practices. They should also assess whether their terms and conditions and the enforcement thereof are appropriate, as well as their content moderation processes, technical tools and allocated resources. When assessing the systemic risks identified in this Regulation, those providers should also focus on the information which is not illegal, but contributes to the systemic risks identified in this Regulation. Such providers should therefore pay particular attention on how their services are used to disseminate or amplify misleading or deceptive content, including disinformation. Where the algorithmic amplification of information contributes to the systemic risks, those providers should duly reflect this in their risk assessments. Where risks are localised or there are linguistic differences, those providers should also account for this in their risk assessments. Providers of very large online platforms and of very large online search engines should, in particular, assess how the design and functioning of their service, as well as the intentional and, oftentimes, coordinated manipulation and use of their services, or the systemic infringement of their terms of service, contribute to such risks. Such risks may arise, for example, through the inauthentic use of the service, such as the creation of fake accounts, the use of bots or deceptive use of a service, and other automated or partially automated behaviours, which may lead to the rapid and widespread dissemination to the public of information that is illegal content or incompatible with an online platform's or online search engine's terms and conditions and that contributes to disinformation campaigns.
- (85) In order to make it possible that subsequent risk assessments build on each other and show the evolution of the risks identified, as well as to facilitate investigations and enforcement actions, providers of very large online platforms and of very large online search engines should preserve all supporting documents relating to the risk assessments that they carried out, such as information regarding the preparation thereof, underlying data and data on the testing of their algorithmic systems.
- (86) Providers of very large online platforms and of very large online search engines should deploy the necessary means to diligently mitigate the systemic risks identified in the risk assessments, in observance of fundamental rights. Any measures adopted should respect the due diligence requirements of this Regulation and be reasonable and effective in mitigating the specific systemic risks identified. They should be proportionate in light of the economic capacity of the provider of the very large online platform or of the very large online search engine and the need to avoid unnecessary restrictions on the use of their service, taking due account of potential negative effects on those fundamental rights. Those providers should give particular consideration to the impact on freedom of expression.

- (87) Providers of very large online platforms and of very large online search engines should consider under such mitigating measures, for example, adapting any necessary design, feature or functioning of their service, such as the online interface design. They should adapt and apply their terms and conditions, as necessary, and in accordance with the rules of this Regulation on terms and conditions. Other appropriate measures could include adapting their content moderation systems and internal processes or adapting their decision-making processes and resources, including the content moderation personnel, their training and local expertise. This concerns in particular the speed and quality of processing of notices. In this regard, for example, the Code of conduct on countering illegal hate speech online of 2016 sets a benchmark to process valid notifications for removal of illegal hate speech in less than 24 hours. Providers of very large online platforms, in particular those primarily used for the dissemination to the public of pornographic content, should diligently meet all their obligations under this Regulation in respect of illegal content constituting cyber violence, including illegal pornographic content, especially with regard to ensuring that victims can effectively exercise their rights in relation to content representing non-consensual sharing of intimate or manipulated material through the rapid processing of notices and removal of such content without undue delay. Other types of illegal content may require longer or shorter timelines for processing of notices, which will depend on the facts, circumstances and types of illegal content at hand. Those providers may also initiate or increase cooperation with trusted flaggers and organise training sessions and exchanges with trusted flagger organisations.
- (88) Providers of very large online platforms and of very large online search engines should also be diligent in the measures they take to test and, where necessary, adapt their algorithmic systems, not least their recommender systems. They may need to mitigate the negative effects of personalised recommendations and correct the criteria used in their recommendations. The advertising systems used by providers of very large online platforms and of very large online search engines can also be a catalyser for the systemic risks. Those providers should consider corrective measures, such as discontinuing advertising revenue for specific information, or other actions, such as improving the visibility of authoritative information sources, or more structurally adapting their advertising systems. Providers of very large online platforms and of very large online search engines may need to reinforce their internal processes or supervision of any of their activities, in particular as regards the detection of systemic risks, and conduct more frequent or targeted risk assessments related to new functionalities. In particular, where risks are shared across different online platforms or online search engines, they should cooperate with other service providers, including by initiating or joining existing codes of conduct or other self-regulatory measures. They should also consider awareness-raising actions, in particular where risks relate to disinformation campaigns.
- (89) Providers of very large online platforms and of very large online search engines should take into account the best interests of minors in taking measures such as adapting the design of their service and their online interface, especially when their services are aimed at minors or predominantly used by them. They should ensure that their services are organised in a way that allows minors to access easily mechanisms provided for in this Regulation, where applicable, including notice and action and complaint mechanisms. They should also take measures to protect minors from content that may impair their physical, mental or moral development and provide tools that enable conditional access to such information. In selecting the appropriate mitigation measures, providers can consider, where appropriate, industry best practices, including as established through self-regulatory cooperation, such as codes of conduct, and should take into account the guidelines from the Commission.
- (90) Providers of very large online platforms and of very large online search engines should ensure that their approach to risk assessment and mitigation is based on the best available information and scientific insights and that they test their assumptions with the groups most impacted by the risks and the measures they take. To this end, they should, where appropriate, conduct their risk assessments and design their risk mitigation measures with the involvement of representatives of the recipients of the service, representatives of groups potentially impacted by their services,

independent experts and civil society organisations. They should seek to embed such consultations into their methodologies for assessing the risks and designing mitigation measures, including, as appropriate, surveys, focus groups, round tables, and other consultation and design methods. In the assessment on whether a measure is reasonable, proportionate and effective, special consideration should be given to the right to freedom of expression.

- (91) In times of crisis, there might be a need for certain specific measures to be taken urgently by providers of very large online platforms, in addition to measures they would be taking in view of their other obligations under this Regulation. In that regard, a crisis should be considered to occur when extraordinary circumstances occur that can lead to a serious threat to public security or public health in the Union or significant parts thereof. Such crises could result from armed conflicts or acts of terrorism, including emerging conflicts or acts of terrorism, natural disasters such as earthquakes and hurricanes, as well as from pandemics and other serious cross-border threats to public health. The Commission should be able to require, upon recommendation by the European Board for Digital Services ('the Board'), providers of very large online platforms and providers of very large search engines to initiate a crisis response as a matter of urgency. Measures that those providers may identify and consider applying may include, for example, adapting content moderation processes and increasing the resources dedicated to content moderation, adapting terms and conditions, relevant algorithmic systems and advertising systems, further intensifying cooperation with trusted flaggers, taking awareness-raising measures and promoting trusted information and adapting the design of their online interfaces. The necessary requirements should be provided for to ensure that such measures are taken within a very short time frame and that the crisis response mechanism is only used where, and to the extent that, this is strictly necessary and any measures taken under this mechanism are effective and proportionate, taking due account of the rights and legitimate interests of all parties concerned. The use of the mechanism should be without prejudice to the other provisions of this Regulation, such as those on risk assessments and mitigation measures and the enforcement thereof and those on crisis protocols.
- (92) Given the need to ensure verification by independent experts, providers of very large online platforms and of very large online search engines should be accountable, through independent auditing, for their compliance with the obligations laid down by this Regulation and, where relevant, any complementary commitments undertaken pursuant to codes of conduct and crises protocols. In order to ensure that audits are carried out in an effective, efficient and timely manner, providers of very large online platforms and of very large online search engines should provide the necessary cooperation and assistance to the organisations carrying out the audits, including by giving the auditor access to all relevant data and premises necessary to perform the audit properly, including, where appropriate, to data related to algorithmic systems, and by answering oral or written questions. Auditors should also be able to make use of other sources of objective information, including studies by vetted researchers. Providers of very large online platforms and of very large online search engines should not undermine the performance of the audit. Audits should be performed according to best industry practices and high professional ethics and objectivity, with due regard, as appropriate, to auditing standards and codes of practice. Auditors should guarantee the confidentiality, security and integrity of the information, such as trade secrets, that they obtain when performing their tasks. This guarantee should not be a means to circumvent the applicability of audit obligations in this Regulation. Auditors should have the necessary expertise in the area of risk management and technical competence to audit algorithms. They should be independent, in order to be able to perform their tasks in an adequate and trustworthy manner. They should comply with core independence requirements for prohibited non-auditing services, firm rotation and non-contingent fees. If their independence and technical competence is not beyond doubt, they should resign or abstain from the audit engagement.
- (93) The audit report should be substantiated, in order to give a meaningful account of the activities undertaken and the conclusions reached. It should help inform, and where appropriate suggest improvements to the measures taken by the providers of the very large online platform and of the very large online search engine to comply with their obligations under this Regulation. The audit report should be transmitted to the Digital Services Coordinator of establishment, the Commission and the Board following the receipt of the audit report. Providers should also transmit upon completion without undue delay each of the reports on the risk assessment and the mitigation measures, as well as the audit implementation report of the provider of the very large online platform or of the very large online search engine showing how they have addressed the audit's recommendations. The audit report should

include an audit opinion based on the conclusions drawn from the audit evidence obtained. A 'positive opinion' should be given where all evidence shows that the provider of the very large online platform or of the very large online search engine complies with the obligations laid down by this Regulation or, where applicable, any commitments it has undertaken pursuant to a code of conduct or crisis protocol, in particular by identifying, evaluating and mitigating the systemic risks posed by its system and services. A 'positive opinion' should be accompanied by comments where the auditor wishes to include remarks that do not have a substantial effect on the outcome of the audit. A 'negative opinion' should be given where the auditor considers that the provider of the very large online platform or of the very large online search engine does not comply with this Regulation or the commitments undertaken. Where the audit opinion could not reach a conclusion for specific elements that fall within the scope of the audit, an explanation of reasons for the failure to reach such a conclusion should be included in the audit opinion. Where applicable, the report should include a description of specific elements that could not be audited, and an explanation of why these could not be audited.

- (94) The obligations on assessment and mitigation of risks should trigger, on a case-by-case basis, the need for providers of very large online platforms and of very large online search engines to assess and, where necessary, adjust the design of their recommender systems, for example by taking measures to prevent or minimise biases that lead to the discrimination of persons in vulnerable situations, in particular where such adjustment is in accordance with data protection law and when the information is personalised on the basis of special categories of personal data referred to in Article 9 of the Regulation (EU) 2016/679. In addition, and complementing the transparency obligations applicable to online platforms as regards their recommender systems, providers of very large online platforms and of very large online search engines should consistently ensure that recipients of their service enjoy alternative options which are not based on profiling, within the meaning of Regulation (EU) 2016/679, for the main parameters of their recommender systems. Such choices should be directly accessible from the online interface where the recommendations are presented.
- (95) Advertising systems used by very large online platforms and very large online search engines pose particular risks and require further public and regulatory supervision on account of their scale and ability to target and reach recipients of the service based on their behaviour within and outside that platform's or search engine's online interface. Very large online platforms or very large online search engines should ensure public access to repositories of advertisements presented on their online interfaces to facilitate supervision and research into emerging risks brought about by the distribution of advertising online, for example in relation to illegal advertisements or manipulative techniques and disinformation with a real and foreseeable negative impact on public health, public security, civil discourse, political participation and equality. Repositories should include the content of advertisements, including the name of the product, service or brand and the subject matter of the advertisement, and related data on the advertiser, and, if different, the natural or legal person who paid for the advertisement, and the delivery of the advertisement, in particular where targeted advertising is concerned. This information should include both information about targeting criteria and delivery criteria, in particular when advertisements are delivered to persons in vulnerable situations, such as minors.
- (96) In order to appropriately monitor and assess the compliance of very large online platforms and of very large online search engines with the obligations laid down by this Regulation, the Digital Services Coordinator of establishment or the Commission may require access to or reporting of specific data, including data related to algorithms. Such a requirement may include, for example, the data necessary to assess the risks and possible harms brought about by the very large online platform's or the very large online search engine's systems, data on the accuracy, functioning and testing of algorithmic systems for content moderation, recommender systems or advertising systems, including, where appropriate, training data and algorithms, or data on processes and outputs of content moderation or of internal complaint-handling systems within the meaning of this Regulation. Such data access requests should not

include requests to produce specific information about individual recipients of the service for the purpose of determining compliance of such recipients with other applicable Union or national law. Investigations by researchers on the evolution and severity of online systemic risks are particularly important for bridging information asymmetries and establishing a resilient system of risk mitigation, informing providers of online platforms, providers of online search engines, Digital Services Coordinators, other competent authorities, the Commission and the public.

- (97) This Regulation therefore provides a framework for compelling access to data from very large online platforms and very large online search engines to vetted researchers affiliated to a research organisation within the meaning of Article 2 of Directive (EU) 2019/790, which may include, for the purpose of this Regulation, civil society organisations that are conducting scientific research with the primary goal of supporting their public interest mission. All requests for access to data under that framework should be proportionate and appropriately protect the rights and legitimate interests, including the protection of personal data, trade secrets and other confidential information, of the very large online platform or of the very large online search engine and any other parties concerned, including the recipients of the service. However, to ensure that the objective of this Regulation is achieved, consideration of the commercial interests of providers should not lead to a refusal to provide access to data necessary for the specific research objective pursuant to a request under this Regulation. In this regard, whilst without prejudice to Directive (EU) 2016/943 of the European Parliament and of the Council <sup>(32)</sup>, providers should ensure appropriate access for researchers, including, where necessary, by taking technical protections such as through data vaults. Data access requests could cover, for example, the number of views or, where relevant, other types of access to content by recipients of the service prior to its removal by the providers of very large online platforms or of very large online search engines.
- (98) In addition, where data is publicly accessible, such providers should not prevent researchers meeting an appropriate subset of criteria from using this data for research purposes that contribute to the detection, identification and understanding of systemic risks. They should provide access to such researchers including, where technically possible, in real-time, to the publicly accessible data, for example on aggregated interactions with content from public pages, public groups, or public figures, including impression and engagement data such as the number of reactions, shares, comments from recipients of the service. Providers of very large online platforms or of very large online search engines should be encouraged to cooperate with researchers and provide broader access to data for monitoring societal concerns through voluntary efforts, including through commitments and procedures agreed under codes of conduct or crisis protocols. Those providers and researchers should pay particular attention to the protection of personal data, and ensure that any processing of personal data complies with Regulation (EU) 2016/679. Providers should anonymise or pseudonymise personal data except in those cases that would render impossible the research purpose pursued.
- (99) Given the complexity of the functioning of the systems deployed and the systemic risks they present to society, providers of very large online platforms and of very large online search engines should establish a compliance function, which should be independent from the operational functions of those providers. The head of the compliance function should report directly to the management of those providers, including for concerns of non-compliance with this Regulation. The compliance officers that are part of the compliance function should have the necessary qualifications, knowledge, experience and ability to operationalise measures and monitor the compliance with this Regulation within the organisation of the providers of very large online platform or of very large online search engine. Providers of very large online platforms and of very large online search engines should ensure that the compliance function is involved, properly and in a timely manner, in all issues which relate to this Regulation including in the risk assessment and mitigation strategy and specific measures, as well as assessing compliance, where applicable, with commitments made by those providers under the codes of conduct and crisis protocols they subscribe to.

<sup>(32)</sup> Directive (EU) 2016/943 of the European Parliament and of the Council of 8 June 2016 on the protection of undisclosed know-how and business information (trade secrets) against their unlawful acquisition, use and disclosure (OJ L 157, 15.6.2016, p. 1).

- (100) In view of the additional risks relating to their activities and their additional obligations under this Regulation, additional transparency requirements should apply specifically to very large online platforms and very large online search engines, notably to report comprehensively on the risk assessments performed and subsequent measures adopted as provided by this Regulation.
- (101) The Commission should be in possession of all the necessary resources, in terms of staffing, expertise, and financial means, for the performance of its tasks under this Regulation. In order to ensure the availability of the resources necessary for the adequate supervision at Union level under this Regulation, and considering that Member States should be entitled to charge providers established in their territory a supervisory fee to in respect of the supervisory and enforcement tasks exercised by their authorities, the Commission should charge a supervisory fee, the level of which should be established on an annual basis, on very large online platforms and very large online search engines. The overall amount of the annual supervisory fee charged should be established on the basis of the overall amount of the costs incurred by the Commission to exercise its supervisory tasks under this Regulation, as reasonably estimated beforehand. Such amount should include costs relating to the exercise of the specific powers and tasks of supervision, investigation, enforcement and monitoring in respect of providers of very large online platforms and of very large online search engines, including costs related to the designation of very large online platforms and of very large online search engines or to the set up, maintenance and operation of the databases envisaged under this Regulation.

It should also include costs relating to the set-up, maintenance and operation of the basic information and institutional infrastructure for the cooperation among Digital Services Coordinators, the Board and the Commission, taking into account the fact that in view of their size and reach very large online platforms and very large online search engines have a significant impact on the resources needed to support such infrastructure. The estimation of the overall costs should take into account the supervisory costs incurred in the previous year including, where applicable, those costs exceeding the individual annual supervisory fee charged in the previous year. The external assigned revenues resulting from the annual supervisory fee could be used to finance additional human resources, such as contractual agents and seconded national experts, and other expenditure related to the fulfilment of the tasks entrusted to the Commission by this Regulation. The annual supervisory fee to be charged on providers of very large online platforms and of very large online search engines should be proportionate to the size of the service as reflected by the number of its active recipients of the service in the Union. Moreover, the individual annual supervisory fee should not exceed an overall ceiling for each provider of very large online platforms or of very large online search engines taking into account the economic capacity of the provider of the designated service or services.

- (102) To facilitate the effective and consistent application of the obligations in this Regulation that may require implementation through technological means, it is important to promote voluntary standards covering certain technical procedures, where the industry can help develop standardised means to support providers of intermediary services in complying with this Regulation, such as allowing the submission of notices, including through application programming interfaces, or standards related to terms and conditions or standards relating to audits, or standards related to the interoperability of advertisement repositories. In addition, such standards could include standards related to online advertising, recommender systems, accessibility and the protection of minors online. Providers of intermediary services are free to adopt the standards, but their adoption does not presume compliance with this Regulation. At the same time, by providing best practices, such standards could in particular be useful for relatively small providers of intermediary services. The standards could distinguish between different types of illegal content or different types of intermediary services, as appropriate.
- (103) The Commission and the Board should encourage the drawing-up of voluntary codes of conduct, as well as the implementation of the provisions of those codes in order to contribute to the application of this Regulation. The Commission and the Board should aim that the codes of conduct clearly define the nature of the public interest objectives being addressed, that they contain mechanisms for independent evaluation of the achievement of those objectives and that the role of relevant authorities is clearly defined. Particular attention should be given to avoiding negative effects on security, the protection of privacy and personal data, as well as to the prohibition on imposing

general monitoring obligations. While the implementation of codes of conduct should be measurable and subject to public oversight, this should not impair the voluntary nature of such codes and the freedom of interested parties to decide whether to participate. In certain circumstances, it is important that very large online platforms cooperate in the drawing-up and adhere to specific codes of conduct. Nothing in this Regulation prevents other service providers from adhering to the same standards of due diligence, adopting best practices and benefitting from the guidelines provided by the Commission and the Board, by participating in the same codes of conduct.

- (104) It is appropriate that this Regulation identify certain areas of consideration for such codes of conduct. In particular, risk mitigation measures concerning specific types of illegal content should be explored via self- and co-regulatory agreements. Another area for consideration is the possible negative impacts of systemic risks on society and democracy, such as disinformation or manipulative and abusive activities or any adverse effects on minors. This includes coordinated operations aimed at amplifying information, including disinformation, such as the use of bots or fake accounts for the creation of intentionally inaccurate or misleading information, sometimes with a purpose of obtaining economic gain, which are particularly harmful for vulnerable recipients of the service, such as minors. In relation to such areas, adherence to and compliance with a given code of conduct by a very large online platform or a very large online search engine may be considered as an appropriate risk mitigating measure. The refusal without proper explanations by a provider of an online platform or of an online search engine of the Commission's invitation to participate in the application of such a code of conduct could be taken into account, where relevant, when determining whether the online platform or the online search engine has infringed the obligations laid down by this Regulation. The mere fact of participating in and implementing a given code of conduct should not in itself presume compliance with this Regulation.
- (105) The codes of conduct should facilitate the accessibility of very large online platforms and very large online search engines, in compliance with Union and national law, in order to facilitate their foreseeable use by persons with disabilities. In particular, the codes of conduct could ensure that the information is presented in a perceivable, operable, understandable and robust way and that forms and measures provided pursuant to this Regulation are made available in a manner that is easy to find and accessible to persons with disabilities.
- (106) The rules on codes of conduct under this Regulation could serve as a basis for already established self-regulatory efforts at Union level, including the Product Safety Pledge, the Memorandum of understanding on the sale of counterfeit goods on the internet, the Code of conduct on countering illegal hate speech online, as well as the Code of Practice on Disinformation. In particular for the latter, following the Commission's guidance, the Code of Practice on Disinformation has been strengthened as announced in the European Democracy Action Plan.
- (107) The provision of online advertising generally involves several actors, including intermediary services that connect publishers of advertisements with advertisers. Codes of conduct should support and complement the transparency obligations relating to advertising for providers of online platforms, of very large online platforms and of very large online search engines set out in this Regulation in order to provide for flexible and effective mechanisms to facilitate and enhance the compliance with those obligations, notably as concerns the modalities of the transmission of the relevant information. This should include facilitating the transmission of the information on the advertiser who pays for the advertisement when they differ from the natural or legal person on whose behalf the advertisement is presented on the online interface of an online platform. The codes of conduct should also include measures to ensure that meaningful information about the monetisation of data is appropriately shared throughout the value chain. The involvement of a wide range of stakeholders should ensure that those codes of conduct are widely supported, technically sound, effective and offer the highest levels of user-friendliness to ensure that the transparency obligations achieve their objectives. In order to ensure the effectiveness of codes of conduct, the Commission should include evaluation mechanisms in drawing up the codes of conduct. Where appropriate, the Commission may invite the Fundamental Rights Agency or the European Data Protection Supervisor to express their opinions on the respective code of conduct.

- (108) In addition to the crisis response mechanism for very large online platforms and very large online search engines, the Commission may initiate the drawing up of voluntary crisis protocols to coordinate a rapid, collective and cross-border response in the online environment. Such can be the case, for example, where online platforms are misused for the rapid spread of illegal content or disinformation or where the need arises for rapid dissemination of reliable information. In light of the important role of very large online platforms in disseminating information in our societies and across borders, providers of such platforms should be encouraged in drawing up and applying specific crisis protocols. Such crisis protocols should be activated only for a limited period of time and the measures adopted should also be limited to what is strictly necessary to address the extraordinary circumstance. Those measures should be consistent with this Regulation, and should not amount to a general obligation for the participating providers of very large online platforms and of very large online search engines to monitor the information which they transmit or store, nor actively to seek facts or circumstances indicating illegal content.
- (109) In order to ensure adequate oversight and enforcement of the obligations laid down in this Regulation, Member States should designate at least one authority with the task to supervise the application and enforce this Regulation, without prejudice to the possibility to designate an existing authority and to its legal form in accordance with national law. Member States should, however, be able to entrust more than one competent authority, with specific supervisory or enforcement tasks and competences concerning the application of this Regulation, for example for specific sectors where existing authorities may also be empowered, such as electronic communications' regulators, media regulators or consumer protection authorities, reflecting their domestic constitutional, organisational and administrative structure. In the exercise of their tasks, all competent authorities should contribute to the achievement of the objectives of this Regulation, namely to the proper functioning of the internal market for intermediary services where the harmonised rules for a safe, predictable and trusted online environment that facilitates innovation, and in particular the due diligence obligations applicable to different categories of providers of intermediary services, are effectively supervised and enforced, with a view to ensure that fundamental rights, as enshrined in the Charter, including the principle of consumer protection, are effectively protected. This Regulation does not require Member States to confer on competent authorities the task to adjudicate on the lawfulness of specific items of content.
- (110) Given the cross-border nature of the services at stake and the horizontal range of obligations introduced by this Regulation, one authority appointed with the task of supervising the application and, where necessary, enforcing this Regulation should be identified as a Digital Services Coordinator in each Member State. Where more than one competent authority is appointed to supervise the application of, and enforce, this Regulation, only one authority in that Member State should be designated as a Digital Services Coordinator. The Digital Services Coordinator should act as the single contact point with regard to all matters related to the application of this Regulation for the Commission, the Board, the Digital Services Coordinators of other Member States, as well as for other competent authorities of the Member State in question. In particular, where several competent authorities are entrusted with tasks under this Regulation in a given Member State, the Digital Services Coordinator should coordinate and cooperate with those authorities in accordance with the national law setting their respective tasks and without prejudice to the independent assessment of the other competent authorities. While not entailing any hierarchical supraordination over other competent authorities in the exercise of their tasks, the Digital Services Coordinator should ensure effective involvement of all relevant competent authorities and should timely report their assessment in the context of cooperation on supervision and enforcement at Union level. Moreover, in addition to the specific mechanisms provided for in this Regulation as regards cooperation at Union level, Member State should also ensure cooperation among the Digital Services Coordinator and other competent authorities designated at national level, where applicable, through appropriate tools, such as by pooling of resources, joint task forces, joint investigations and mutual assistance mechanisms.
- (111) The Digital Services Coordinator, as well as other competent authorities designated under this Regulation, play a crucial role in ensuring the effectiveness of the rights and obligations laid down in this Regulation and the achievement of its objectives. Accordingly, it is necessary to ensure that those authorities have the necessary means, including financial and human resources, to supervise all the providers of intermediary services falling within their competence, in the interest of all Union citizens. Given the variety of providers of intermediary services and their use of advanced technology in providing their services, it is also essential that the Digital Services Coordinator and the relevant competent authorities are equipped with the necessary number of staff and experts with specialised

skills and advanced technical means, and that they autonomously manage financial resources to carry out their tasks. Furthermore, the level of resources should take into account the size, complexity and potential societal impact of the providers of intermediary services falling within their competence, as well as the reach of their services across the Union. This Regulation is without prejudice to the possibility for Member States to establish funding mechanisms based on a supervisory fee charged to providers of intermediary services under national law in compliance with Union law, to the extent that it is levied on providers of intermediary services having their main establishment in the Member State in question, that it is strictly limited to what is necessary and proportionate to cover the costs for the fulfilment of the tasks conferred upon the competent authorities pursuant to this Regulation, with the exclusion of the tasks conferred upon the Commission, and that adequate transparency is ensured regarding the levying and the use of such a supervisory fee.

- (112) The competent authorities designated under this Regulation should also act in complete independence from private and public bodies, without the obligation or possibility to seek or receive instructions, including from the government, and without prejudice to the specific duties to cooperate with other competent authorities, the Digital Services Coordinators, the Board and the Commission. On the other hand, the independence of those authorities should not mean that they cannot be subject, in accordance with national constitutions and without endangering the achievement of the objectives of this Regulation, to proportionate accountability mechanisms regarding the general activities of the Digital Services Coordinators, such as their financial expenditure or reporting to the national parliaments. The requirement of independence should also not prevent the exercise of judicial review, or the possibility to consult or regularly exchange views with other national authorities, including law enforcement authorities, crisis management authorities or consumer protection authorities, where appropriate, in order to inform each other about ongoing investigations, without affecting the exercise of their respective powers.
- (113) Member States can designate an existing national authority with the function of the Digital Services Coordinator, or with specific tasks to supervise the application and enforce this Regulation, provided that any such appointed authority complies with the requirements laid down in this Regulation, such as in relation to its independence. Moreover, Member States are in principle not precluded from merging functions within an existing authority, in accordance with Union law. The measures to that effect may include, *inter alia*, the preclusion to dismiss the president or a board member of a collegiate body of an existing authority before the expiry of their terms of office, on the sole ground that an institutional reform has taken place involving the merger of different functions within one authority, in the absence of any rules guaranteeing that such dismissals do not jeopardise the independence and impartiality of such members.
- (114) Member States should provide the Digital Services Coordinator, and any other competent authority designated under this Regulation, with sufficient powers and means to ensure effective investigation and enforcement, in accordance with the tasks conferred on them. This includes the power of competent authorities to adopt interim measures in accordance with national law in case of risk of serious harm. Such interim measures, which may include orders to terminate or remedy a given alleged infringement, should not go beyond what is necessary to ensure that serious harm is prevented pending the final decision. The Digital Services Coordinators should in particular be able to search for and obtain information which is located in its territory, including in the context of joint investigations, with due regard to the fact that oversight and enforcement measures concerning a provider under the jurisdiction of another Member State or the Commission should be adopted by the Digital Services Coordinator of that other Member State, where relevant in accordance with the procedures relating to cross-border cooperation, or, where applicable, by the Commission.
- (115) Member States should set out in their national law, in accordance with Union law and in particular this Regulation and the Charter, the detailed conditions and limits for the exercise of the investigatory and enforcement powers of their Digital Services Coordinators, and other competent authorities where relevant, under this Regulation.

- (116) In the course of the exercise of those powers, the competent authorities should comply with the applicable national rules regarding procedures and matters such as the need for a prior judicial authorisation to enter certain premises and legal professional privilege. Those provisions should in particular ensure respect for the fundamental rights to an effective remedy and to a fair trial, including the rights of defence, and, the right to respect for private life. In this regard, the guarantees provided for in relation to the proceedings of the Commission pursuant to this Regulation could serve as an appropriate point of reference. A prior, fair and impartial procedure should be guaranteed before taking any final decision, including the right to be heard of the persons concerned, and the right to have access to the file, while respecting confidentiality and professional and business secrecy, as well as the obligation to give meaningful reasons for the decisions. This should not preclude the taking of measures, however, in duly substantiated cases of urgency and subject to appropriate conditions and procedural arrangements. The exercise of powers should also be proportionate to, *inter alia* the nature and the overall actual or potential harm caused by the infringement or suspected infringement. The competent authorities should take all relevant facts and circumstances of the case into account, including information gathered by competent authorities in other Member States.
- (117) Member States should ensure that violations of the obligations laid down in this Regulation can be sanctioned in a manner that is effective, proportionate and dissuasive, taking into account the nature, gravity, recurrence and duration of the violation, in view of the public interest pursued, the scope and kind of activities carried out, as well as the economic capacity of the infringer. In particular, penalties should take into account whether the provider of intermediary services concerned systematically or recurrently fails to comply with its obligations stemming from this Regulation, as well as, where relevant, the number of recipients of the service affected, the intentional or negligent character of the infringement and whether the provider is active in several Member States. Where this Regulation provides for a maximum amount of fines or of a periodic penalty payment, this maximum amount should apply per infringement of this Regulation and without prejudice to the modulation of the fines or periodic penalty payments for specific infringements. Member States should ensure that the imposition of fines or periodic penalty payments in respect of infringements should in each individual case be effective, proportionate and dissuasive by setting up national rules and procedures in accordance with this Regulation, taking into account all the criteria concerning the general conditions for imposing the fines or periodic penalty payments.
- (118) In order to ensure effective enforcement of the obligations laid down in this Regulation, individuals or representative organisations should be able to lodge any complaint related to compliance with those obligations with the Digital Services Coordinator in the territory where they received the service, without prejudice to this Regulation's rules on allocation of competences and to the applicable rules on handling of complaints in accordance with national principles of good administration. Complaints could provide a faithful overview of concerns related to a particular intermediary service provider's compliance and could also inform the Digital Services Coordinator of any more cross-cutting issues. The Digital Services Coordinator should involve other national competent authorities as well as the Digital Services Coordinator of another Member State, and in particular the one of the Member State where the provider of intermediary services concerned is established, if the issue requires cross-border cooperation.
- (119) Member States should ensure that Digital Services Coordinators can take measures that are effective in addressing and proportionate to certain particularly serious and persistent infringements of this Regulation. Especially where those measures can affect the rights and interests of third parties, as may be the case in particular where the access to online interfaces is restricted, it is appropriate to require that the measures are subject to additional safeguards. In particular, third parties potentially affected should be afforded the opportunity to be heard and such orders should only be issued when powers to take such measures as provided by other acts of Union law or by national law, for instance to protect collective interests of consumers, to ensure the prompt removal of web pages containing or disseminating child pornography, or to disable access to services that are being used by a third party to infringe an intellectual property right, are not reasonably available.

- (120) Such an order to restrict access should not go beyond what is necessary to achieve its objective. For that purpose, it should be temporary and be addressed in principle to a provider of intermediary services, such as the relevant hosting service provider, internet service provider or domain registry or registrar, which is in a reasonable position to achieve that objective without unduly restricting access to lawful information.
- (121) Without prejudice to the provisions on the exemption from liability provided for in this Regulation as regards the information transmitted or stored at the request of a recipient of the service, a provider of intermediary services should be liable for the damages suffered by recipients of the service that are caused by an infringement of the obligations set out in this Regulation by that provider. Such compensation should be in accordance with the rules and procedures set out in the applicable national law and without prejudice to other possibilities for redress available under consumer protection rules.
- (122) The Digital Services Coordinator should regularly publish, for example on its website, a report on the activities carried out under this Regulation. In particular, the report should be published in a machine-readable format and include an overview of complaints received and of their follow-up, such as the overall number of complaints received and the number of complaints that led to the opening of a formal investigation or to the transmission to other Digital Services Coordinators, without referring to any personal data. Given that the Digital Services Coordinator is also made aware of orders to take action against illegal content or to provide information regulated by this Regulation through the information sharing system, the Digital Services Coordinator should include in its annual report the number and categories of such orders addressed to providers of intermediary services issued by judicial and administrative authorities in its Member State.
- (123) In the interest of clarity, simplicity and effectiveness, the powers to supervise and enforce the obligations under this Regulation should be conferred to the competent authorities in the Member State where the main establishment of the provider of intermediary services is located, that is, where the provider has its head office or registered office within which the principal financial functions and operational control are exercised. In respect of providers that are not established in the Union, but that offer services in the Union and therefore fall within the scope of this Regulation, the Member State where those providers appointed their legal representative should have competence, considering the function of legal representatives under this Regulation. In the interest of the effective application of this Regulation, all Member States or the Commission, where applicable, should, however, have competence in respect of providers that failed to designate a legal representative. That competence may be exercised by any of the competent authorities or the Commission, provided that the provider is not subject to enforcement proceedings for the same facts by another competent authority or the Commission. In order to ensure that the principle of *ne bis in idem* is respected, and in particular to avoid that the same infringement of the obligations laid down in this Regulation is sanctioned more than once, each Member State that intends to exercise its competence in respect of such providers should, without undue delay, inform all other authorities, including the Commission, through the information sharing system established for the purpose of this Regulation.
- (124) In view of their potential impact and the challenges involved in effectively supervising them, special rules are needed regarding the supervision and enforcement in respect of providers of very large online platforms and of very large online search engines. The Commission should be responsible, with the support of national competent authorities where relevant, for oversight and public enforcement of systemic issues, such as issues with a wide impact on collective interests of recipients of the service. Therefore, the Commission should have exclusive powers of supervision and enforcement of the additional obligations to manage systemic risks imposed on providers of very large online platforms and of very large online search engines by this Regulation. The exclusive powers of the Commission should be without prejudice to certain administrative tasks assigned by this Regulation to the competent authorities of the Member State of establishment, such as the vetting of researchers.

- (125) The powers of supervision and enforcement of due diligence obligations, other than the additional obligations to manage systemic risks imposed on providers of very large online platforms and of very large online search engines by this Regulation, should be shared by the Commission and by the national competent authorities. On the one hand, the Commission could in many instances be better placed to address systemic infringements committed by those providers, such as those affecting multiple Member States or serious repeated infringements or concerning a failure to establish effective mechanisms required by this Regulation. On the other hand, the competent authorities in the Member State where the main establishment of a provider of very large online platform or of very large online search engine is located could be better placed to address individual infringements committed by those providers, that do not raise any systemic or cross-border issues. In the interest of efficiency, to avoid duplication and to ensure compliance with the principle of *ne bis in idem*, it should be for the Commission to assess whether it deems it appropriate to exercise those shared competences in a given case and, once it has initiated proceedings, Member States should no longer have the ability to do so. Member States should cooperate closely both with each other and with the Commission, and the Commission should cooperate closely with the Member States, in order to ensure that the system of supervision and enforcement set up by this Regulation functions smoothly and effectively.
- (126) The rules of this Regulation on the allocation of competence should be without prejudice to the provisions of Union law and national rules on private international law concerning jurisdiction and applicable law in civil and commercial matters, such as proceedings brought by consumers in the courts of the Member State where they are domiciled in accordance with relevant provisions of Union law. Regarding the obligations imposed by this Regulation on providers of intermediary services to inform the issuing authority of the effect given to the orders to act against illegal content and orders to provide information, the rules on allocation of competence should only apply to the supervision of enforcement of those obligations, but not to other matters related to the order, such as the competence to issue the order.
- (127) Given the cross-border and cross-sectoral relevance of intermediary services, a high level of cooperation is necessary to ensure the consistent application of this Regulation and the availability of relevant information for the exercise of enforcement tasks through the information sharing system. Cooperation may take different forms depending on the issues at stake, without prejudice to specific joint investigation exercises. It is in any case necessary that the Digital Services Coordinator of establishment of a provider of intermediary services informs other Digital Services Coordinators about issues, investigations and actions which are going to be taken vis à vis such a provider. Moreover, when a competent authority in a Member State holds relevant information for an investigation carried out by the competent authorities in the Member State of establishment, or is able to gather such information located in its territory to which the competent authorities in the Member State of establishment do not have access, the Digital Services Coordinator of destination should assist the Digital Services Coordinator of establishment in a timely manner, including through the exercise of its powers of investigation in accordance with the applicable national procedures and the Charter. The addressee of such investigatory measures should comply with them and be liable in case of failure to comply, and the competent authorities in the Member State of establishment should be able to rely on the information gathered through mutual assistance, in order to ensure compliance with this Regulation.
- (128) The Digital Services Coordinator of destination, in particular on the basis of complaints received or of the input of other national competent authorities where appropriate, or the Board in case of issues involving at least three Member States, should be able to ask the Digital Services Coordinator of establishment to take investigatory or enforcement actions with regard to a provider under its competence. Such requests for action should be based on well-substantiated evidence showing the existence of an alleged infringement with negative impact on collective interests of the recipients of the service in its Member State or having a negative societal impact. The Digital Services Coordinator of establishment should be able to rely on mutual assistance or invite the requesting Digital Services Coordinator to a joint investigation in case further information is needed to take a decision, without prejudice to the possibility to request the Commission to assess the matter if it has reason to suspect that a systemic infringement by a very large online platform or a very large online search engine may be at stake.

- (129) The Board should be able to refer the matter to the Commission in case of any disagreement as to the assessments or the measures taken or proposed or of a failure to adopt any measures in accordance with this Regulation following a cross-border cooperation request or a joint investigation. Where the Commission, on the basis of the information made available by the concerned authorities, considers that the proposed measures, including the proposed level of fines, cannot ensure the effective enforcement of the obligations laid down in this Regulation, it should accordingly be able to express its serious doubts and request the competent Digital Services Coordinator to re-assess the matter and take the necessary measures to ensure compliance with this Regulation within a defined period. This possibility is without prejudice to the Commission's general duty to oversee the application of, and where necessary enforce, Union law under the control of the Court of Justice of the European Union in accordance with the Treaties.
- (130) In order to facilitate cross-border supervision and investigations of obligations laid down in this Regulation involving several Member States, the Digital Services Coordinators of establishment should be able, through the information sharing system, to invite other Digital Services Coordinators to a joint investigation concerning an alleged infringement of this Regulation. Other Digital Services Coordinators, and other competent authorities, where appropriate, should be able to join the investigation proposed by the Digital Services Coordinator of establishment, unless the latter considers that an excessive number of participating authorities may affect the effectiveness of the investigation taking into account the features of the alleged infringement and the lack of direct effects on the recipients of the service in those Member States. Joint investigation activities may include a variety of actions to be coordinated by the Digital Services Coordinator of establishment in accordance with the availabilities of the participating authorities, such as coordinated data gathering exercises, pooling of resources, task forces, coordinated requests for information or common inspections of premises. All competent authorities participating in a joint investigation should cooperate with the Digital Services Coordinator of establishment, including by exercising their powers of investigation within their territory, in accordance with the applicable national procedures. The joint investigation should be concluded within a given timeframe with a final report taking into account the contribution of all participating competent authorities. Also the Board, where this is requested by at least three Digital Services Coordinators of destination, may recommend to a Digital Services Coordinator of establishment to launch such joint investigation and give indications on its organisation. In order to avoid deadlocks, the Board should be able to refer the matter to the Commission in specific cases, including where the Digital Services Coordinator of establishment refuses to launch the investigation and the Board does not agree with the justification given.
- (131) In order to ensure a consistent application of this Regulation, it is necessary to set up an independent advisory group at Union level, a European Board for Digital Services, which should support the Commission and help coordinate the actions of Digital Services Coordinators. The Board should consist of the Digital Services Coordinators, where these have been appointed, without prejudice to the possibility for Digital Services Coordinators to invite in its meetings or appoint ad hoc delegates from other competent authorities entrusted with specific tasks under this Regulation, where that is required pursuant to their national allocation of tasks and competences. In case of multiple participants from one Member State, the voting right should remain limited to one representative per Member State.
- (132) The Board should contribute to achieving a common Union perspective on the consistent application of this Regulation and to the cooperation among competent authorities, including by advising the Commission and the Digital Services Coordinators about appropriate investigation and enforcement measures, in particular vis à vis the providers of very large online platforms or of very large online search engines and having regard, in particular, to the freedom of the providers of intermediary services to provide services across the Union. The Board should also contribute to the drafting of relevant templates and codes of conduct and to the analysis of emerging general trends in the development of digital services in the Union, including by issuing opinions or recommendations on matters related to standards.

- (133) For that purpose, the Board should be able to adopt opinions, requests and recommendations addressed to Digital Services Coordinators or other competent national authorities. While not legally binding, the decision to deviate therefrom should be properly explained and could be taken into account by the Commission in assessing the compliance of the Member State concerned with this Regulation.
- (134) The Board should bring together the representatives of the Digital Services Coordinators and possible other competent authorities under the chairmanship of the Commission, with a view to ensuring an assessment of matters submitted to it in a fully European dimension. In view of possible cross-cutting elements that may be of relevance for other regulatory frameworks at Union level, the Board should be allowed to cooperate with other Union bodies, offices, agencies and advisory groups with responsibilities in fields such as equality, including gender equality, and non-discrimination, data protection, electronic communications, audiovisual services, detection and investigation of frauds against the Union budget as regards custom duties, consumer protection, or competition law, as necessary for the performance of its tasks.
- (135) The Commission, through the Chair, should participate in the Board without voting rights. Through the Chair, the Commission should ensure that the agenda of the meetings is set in accordance with the requests of the members of the Board as laid down in the rules of procedure and in compliance with the duties of the Board laid down in this Regulation.
- (136) In view of the need to ensure support for the Board's activities, the Board should be able to rely on the expertise and human resources of the Commission and of the competent national authorities. The specific operational arrangements for the internal functioning of the Board should be further specified in the rules of procedure of the Board.
- (137) Given the importance of very large online platforms or very large online search engines, in view of their reach and impact, their failure to comply with the specific obligations applicable to them may affect a substantial number of recipients of the services across different Member States and may cause large societal harms, while such failures may also be particularly complex to identify and address. For this reason the Commission, in cooperation with the Digital Services Coordinators and the Board, should develop the Union expertise and capabilities as regards the supervision of very large online platforms or very large online search engines. The Commission should therefore be able to coordinate and rely on the expertise and resources of such authorities, for example by analysing, on a permanent or temporary basis, specific trends or issues emerging with regard to one or more very large online platforms or very large online search engines. Member States should cooperate with the Commission in developing such capabilities, including through secondment of personnel where appropriate, and contributing to the creation of a common Union supervisory capacity. In order to develop the Union expertise and capabilities, the Commission may also draw on the expertise and capabilities of the Observatory on the Online Platform Economy as set up in Commission Decision of 26 April 2018 on setting up the group of experts for the Observatory on the Online Platform Economy, relevant expert bodies, as well as centres of excellence. The Commission may invite experts with specific expertise, including in particular vetted researchers, representatives of Union agencies and bodies, industry representatives, associations representing users or civil society, international organisations, experts from the private sector, as well as other stakeholders.
- (138) The Commission should be able to investigate infringements on its own initiative in accordance with the powers provided for in this Regulation, including by asking access to data, by requesting information or by performing inspections, as well as by relying on the support of the Digital Services Coordinators. Where supervision by the competent national authorities of individual alleged infringements by providers of very large online platforms or very large online search engines points to systemic issues, such as issues with a wide impact on collective interests of recipients of the service, the Digital Services Coordinators should be able to, on the basis of a duly reasoned request, refer such issues to the Commission. Such a request should contain, at least, all the necessary facts and circumstances supporting the alleged infringement and its systemic nature. Depending on the outcome of its own assessment, the Commission should be able to take the necessary investigative and enforcement measures pursuant to this Regulation, including, where relevant, launching an investigation or adopting interim measures.

- (139) In order to effectively perform its tasks, the Commission should maintain a margin of discretion as to the decision to initiate proceedings against providers of very large online platforms or of very large online search engine. Once the Commission initiated the proceedings, the Digital Services Coordinators of establishment concerned should be precluded from exercising their investigative and enforcement powers in respect of the concerned conduct of the provider of the very large online platform or of very large online search engine, so as to avoid duplication, inconsistencies and risks from the viewpoint of the principle of *ne bis in idem*. The Commission, however, should be able to ask for the individual or joint contribution of the Digital Services Coordinators to the investigation. In accordance with the duty of sincere cooperation, the Digital Services Coordinator should make its best efforts in fulfilling justified and proportionate requests by the Commission in the context of an investigation. Moreover, the Digital Services Coordinator of establishment, as well as the Board and any other Digital Services Coordinators where relevant, should provide the Commission with all necessary information and assistance to allow it to perform its tasks effectively, including information gathered in the context of data gathering or data access exercises, to the extent that this is not precluded by the legal basis according to which the information has been gathered. Conversely, the Commission should keep the Digital Services Coordinator of establishment and the Board informed on the exercise of its powers and in particular when it intends to initiate the proceeding and exercise its investigatory powers. Moreover, when the Commission communicates its preliminary findings, including any matter to which it objects, to providers of very large online platforms or of very large online search engines concerned, it should also communicate them to the Board. The Board should provide its views on the objections and assessment made by the Commission, which should take this opinion into account in the reasoning underpinning Commission's final decision.
- (140) In view of both the particular challenges that may arise in seeking to ensure compliance by providers of very large online platforms or of very large online search engines and the importance of doing so effectively, considering their size and impact and the harms that they may cause, the Commission should have strong investigative and enforcement powers to allow it to investigate, enforce and monitor compliance with the rules laid down in this Regulation, in full respect of the fundamental right to be heard and to have access to the file in the context of enforcement proceedings, the principle of proportionality and the rights and interests of the affected parties.
- (141) The Commission should be able to request information necessary for the purpose of ensuring the effective implementation of and compliance with the obligations laid down in this Regulation, throughout the Union. In particular, the Commission should have access to any relevant documents, data and information necessary to open and conduct investigations and to monitor the compliance with the relevant obligations laid down in this Regulation, irrespective of who possesses the documents, data or information in question, and regardless of their form or format, their storage medium, or the precise place where they are stored. The Commission should be able to directly require by means of a duly substantiated request for information that the provider of the very large online platform or of the very large online search engine concerned as well as any other natural or legal persons acting for purposes related to their trade, business, craft or profession that may be reasonably aware of information relating to the suspected infringement or the infringement, as applicable, provide any relevant evidence, data and information. In addition, the Commission should be able to request any relevant information from any public authority, body or agency within the Member State for the purpose of this Regulation. The Commission should be able to require access to, and explanations by means of exercise of investigatory powers, such as requests for information or interviews, relating to documents, data, information, data-bases and algorithms of relevant persons, and to interview, with their consent, any natural or legal persons who may be in possession of useful information and to record the statements made by any technical means. The Commission should also be empowered to undertake such inspections as are necessary to enforce the relevant provisions of this Regulation. Those investigatory powers aim to complement the Commission's possibility to ask Digital Services Coordinators and other Member States' authorities for assistance, for instance by providing information or in the exercise of those powers.

- (142) Interim measures can be an important tool to ensure that, while an investigation is ongoing, the infringement being investigated does not lead to the risk of serious damage for the recipients of the service. This tool is important to avoid developments that could be very difficult to reverse by a decision taken by the Commission at the end of the proceedings. The Commission should therefore have the power to impose interim measures by decision in the context of proceedings opened in view of the possible adoption of a decision of non-compliance. This power should apply in cases where the Commission has made a *prima facie* finding of infringement of obligations under this Regulation by the provider of very large online platform or of very large online search engine. A decision imposing interim measures should only apply for a specified period, either one ending with the conclusion of the proceedings by the Commission, or for a fixed period which can be renewed insofar as it is necessary and appropriate.
- (143) The Commission should be able to take the necessary actions to monitor the effective implementation of and compliance with the obligations laid down in this Regulation. Such actions should include the ability to appoint independent external experts and auditors to assist the Commission in this process, including where applicable from competent authorities of the Member States, such as data or consumer protection authorities. When appointing auditors, the Commission should ensure sufficient rotation.
- (144) Compliance with the relevant obligations imposed under this Regulation should be enforceable by means of fines and periodic penalty payments. To that end, appropriate levels of fines and periodic penalty payments should also be laid down for non-compliance with the obligations and breach of the procedural rules, subject to appropriate limitation periods in accordance with the principles of proportionality and *ne bis in idem*. The Commission and the relevant national authorities should coordinate their enforcement efforts in order to ensure that those principles are respected. In particular, the Commission should take into account any fines and penalties imposed on the same legal person for the same facts through a final decision in proceedings relating to an infringement of other Union or national rules, so as to ensure that the overall fines and penalties imposed are proportionate and correspond to the seriousness of the infringements committed. All decisions taken by the Commission under this Regulation are subject to review by the Court of Justice of the European Union in accordance with the TFEU. The Court of Justice of the European Union should have unlimited jurisdiction in respect of fines and penalty payments in accordance with Article 261 TFEU.
- (145) Given the potential significant societal effects of an infringement of the additional obligations to manage systemic risks that solely apply to very large online platforms and very large online search engines and in order to address those public policy concerns, it is necessary to provide for a system of enhanced supervision of any action undertaken to effectively terminate and remedy infringements of this Regulation. Therefore, once an infringement of one of the provisions of this Regulation that solely apply to very large online platforms or very large online search engines has been ascertained and, where necessary, sanctioned, the Commission should request the provider of such platform or of such search engine to draw a detailed action plan to remedy any effect of the infringement for the future and communicate such action plan within a timeline set by the Commission, to the Digital Services Coordinators, the Commission and the Board. The Commission, taking into account the opinion of the Board, should establish whether the measures included in the action plan are sufficient to address the infringement, taking also into account whether adherence to relevant code of conduct is included among the measures proposed. The Commission should also monitor any subsequent measure taken by the provider of a very large online platform or of a very large online search engine concerned as set out in its action plan, taking into account also an independent audit of the provider. If following the implementation of the action plan the Commission still considers that the infringement has not been fully remedied, or if the action plan has not been provided or is not considered suitable, it should be able to use any investigative or enforcement powers pursuant to this Regulation, including the power to impose periodic penalty payments and initiating the procedure to disable access to the infringing service.

- (146) The provider of the very large online platform or of the very large online search engine concerned and other persons subject to the exercise of the Commission's powers whose interests may be affected by a decision should be given the opportunity of submitting their observations beforehand, and the decisions taken should be widely publicised. While ensuring the rights of defence of the parties concerned, in particular, the right of access to the file, it is essential that confidential information be protected. Furthermore, while respecting the confidentiality of the information, the Commission should ensure that any information relied on for the purpose of its decision is disclosed to an extent that allows the addressee of the decision to understand the facts and considerations that led up to the decision.
- (147) In order to safeguard the harmonised application and enforcement of this Regulation, it is important to ensure that national authorities, including national courts, have all necessary information to ensure that their decisions do not run counter to a decision adopted by the Commission under this Regulation. This is without prejudice to Article 267 TFEU.
- (148) The effective enforcement and monitoring of this Regulation requires a seamless and real-time exchange of information among the Digital Services Coordinators, the Board and the Commission, based on the information flows and procedures set out in this Regulation. This may also warrant access to this system by other competent authorities, where appropriate. At the same time, given that the information exchanged may be confidential or involving personal data, it should remain protected from unauthorised access, in accordance with the purposes for which the information has been gathered. For this reason, all communications between those authorities should take place on the basis of a reliable and secure information sharing system, whose details should be laid down in an implementing act. The information sharing system may be based on existing internal market tools, to the extent that they can meet the objectives of this Regulation in a cost-effective manner.
- (149) Without prejudice to the rights of recipients of services to turn to a representative in accordance with the Directive (EU) 2020/1828 of the European Parliament and of the Council <sup>(33)</sup> or to any other type of representation under national law, recipients of the services should also have the right to mandate a legal person or a public body to exercise their rights provided for in this Regulation. Such rights may include the rights related to the submission of notices, the challenging of the decisions taken by providers of intermediary services, and the lodging of complaints against the providers for infringing this Regulation. Certain bodies, organisations and associations have particular expertise and competence in detecting and flagging erroneous or unjustified content moderation decisions, and their complaints on behalf of recipients of the service may have a positive impact on freedom of expression and of information in general, therefore, providers of online platforms should treat those complaints without undue delay.
- (150) In the interest of effectiveness and efficiency, the Commission should carry out a general evaluation of this Regulation. In particular, that general evaluation should address, *inter alia*, the scope of the services covered by this Regulation, the interplay with other legal acts, the impact of this Regulation on the functioning of the internal market, in particular regarding digital services, the implementation of codes of conduct, the obligation to designate a legal representative established in the Union, the effect of the obligations on small and micro enterprises, the effectiveness of the supervision and enforcement mechanism and the impact on the right to freedom of expression and of information. In addition, to avoid disproportionate burdens and ensure the continued effectiveness of this Regulation, the Commission should perform an evaluation of the impact of the obligations set out in this Regulation on small and medium-sized enterprises within three years from the start of its application and an evaluation on the scope of the services covered by this Regulation, particularly for very large online platforms and for very large online search engines, and the interplay with other legal acts within three years from its entry into force.

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<sup>(33)</sup> Directive (EU) 2020/1828 of the European Parliament and of the Council of 25 November 2020 on representative actions for the protection of the collective interests of consumers and repealing Directive 2009/22/EC (OJ L 409, 4.12.2020, p. 1).

- (151) In order to ensure uniform conditions for the implementation of this Regulation, implementing powers should be conferred on the Commission to lay down templates concerning the form, content and other details of reports on content moderation, to establish the amount of the annual supervisory fee charged on providers of very large online platforms and of very large online search engines, to lay down the practical arrangements for the proceedings, the hearings and the negotiated disclosure of information carried out in the context of supervision, investigation, enforcement and monitoring in respect of providers of very large online platforms and of very large online search engines, as well as to lay down the practical and operational arrangements for the functioning of the information sharing system and its interoperability with other relevant systems. Those powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council <sup>(34)</sup>.
- (152) In order to fulfil the objectives of this Regulation, the power to adopt acts in accordance with Article 290 TFEU should be delegated to the Commission to supplement this Regulation, in respect of criteria for the identification of very large online platforms and of very large online search engines, the procedural steps, methodologies and reporting templates for the audits, the technical specifications for access requests and the detailed methodology and procedures for setting the supervisory fee. It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level, and that those consultations be conducted in accordance with the principles laid down in the Interinstitutional Agreement of 13 April 2016 on Better Law-Making <sup>(35)</sup>. In particular, to ensure equal participation in the preparation of delegated acts, the European Parliament and the Council receive all documents at the same time as Member States' experts, and their experts systematically have access to meetings of Commission expert groups dealing with the preparation of delegated acts.
- (153) This Regulation respects the fundamental rights recognised by the Charter and the fundamental rights constituting general principles of Union law. Accordingly, this Regulation should be interpreted and applied in accordance with those fundamental rights, including the freedom of expression and of information, as well as the freedom and pluralism of the media. When exercising the powers set out in this Regulation, all public authorities involved should achieve, in situations where the relevant fundamental rights conflict, a fair balance between the rights concerned, in accordance with the principle of proportionality.
- (154) Given the scope and impact of societal risks that may be caused by very large online platforms and very large online search engines, the need to address those risks as a matter of priority and the capacity to take the necessary measures, it is justified to limit the period after which this Regulation starts to apply to the providers of those services.
- (155) Since the objectives of this Regulation, namely to contribute to the proper functioning of the internal market and to ensure a safe, predictable and trusted online environment in which the fundamental rights enshrined in the Charter are duly protected, cannot be sufficiently achieved by the Member States because they cannot achieve the necessary harmonisation and cooperation by acting alone, but can rather, by reason of territorial and personal scope, be better achieved at the Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve those objectives.
- (156) The European Data Protection Supervisor was consulted in accordance with Article 42(1) of Regulation (EU) 2018/1725 of the European Parliament and of the Council <sup>(36)</sup> and delivered an opinion on 10 February 2021 <sup>(37)</sup>,

<sup>(34)</sup> Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by Member States of the Commission's exercise of implementing powers (OJ L 55, 28.2.2011, p. 13).

<sup>(35)</sup> OJ L 123, 12.5.2016, p. 1.

<sup>(36)</sup> Regulation (EU) 2018/1725 of the European Parliament and of the Council of 23 October 2018 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data, and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC (OJ L 295, 21.11.2018, p. 39).

<sup>(37)</sup> OJ C 149, 27.4.2021, p. 3.

HAVE ADOPTED THIS REGULATION:

## CHAPTER I

### GENERAL PROVISIONS

#### *Article 1*

##### **Subject matter**

1. The aim of this Regulation is to contribute to the proper functioning of the internal market for intermediary services by setting out harmonised rules for a safe, predictable and trusted online environment that facilitates innovation and in which fundamental rights enshrined in the Charter, including the principle of consumer protection, are effectively protected.
2. This Regulation lays down harmonised rules on the provision of intermediary services in the internal market. In particular, it establishes:
  - (a) a framework for the conditional exemption from liability of providers of intermediary services;
  - (b) rules on specific due diligence obligations tailored to certain specific categories of providers of intermediary services;
  - (c) rules on the implementation and enforcement of this Regulation, including as regards the cooperation of and coordination between the competent authorities.

#### *Article 2*

##### **Scope**

1. This Regulation shall apply to intermediary services offered to recipients of the service that have their place of establishment or are located in the Union, irrespective of where the providers of those intermediary services have their place of establishment.
2. This Regulation shall not apply to any service that is not an intermediary service or to any requirements imposed in respect of such a service, irrespective of whether the service is provided through the use of an intermediary service.
3. This Regulation shall not affect the application of Directive 2000/31/EC.
4. This Regulation is without prejudice to the rules laid down by other Union legal acts regulating other aspects of the provision of intermediary services in the internal market or specifying and complementing this Regulation, in particular, the following:
  - (a) Directive 2010/13/EU;
  - (b) Union law on copyright and related rights;
  - (c) Regulation (EU) 2021/784;
  - (d) Regulation (EU) 2019/1148;
  - (e) Regulation (EU) 2019/1150;
  - (f) Union law on consumer protection and product safety, including Regulations (EU) 2017/2394 and (EU) 2019/1020 and Directives 2001/95/EC and 2013/11/EU;
  - (g) Union law on the protection of personal data, in particular Regulation (EU) 2016/679 and Directive 2002/58/EC;

- (h) Union law in the field of judicial cooperation in civil matters, in particular Regulation (EU) No 1215/2012 or any Union legal act laying down the rules on law applicable to contractual and non-contractual obligations;
- (i) Union law in the field of judicial cooperation in criminal matters, in particular a Regulation on European Production and Preservation Orders for electronic evidence in criminal matters;
- (j) a Directive laying down harmonised rules on the appointment of legal representatives for the purpose of gathering evidence in criminal proceedings.

### Article 3

#### Definitions

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

- (a) ‘information society service’ means a ‘service’ as defined in Article 1(1), point (b), of Directive (EU) 2015/1535;
- (b) ‘recipient of the service’ means any natural or legal person who uses an intermediary service, in particular for the purposes of seeking information or making it accessible;
- (c) ‘consumer’ means any natural person who is acting for purposes which are outside his or her trade, business, craft, or profession;
- (d) ‘to offer services in the Union’ means enabling natural or legal persons in one or more Member States to use the services of a provider of intermediary services that has a substantial connection to the Union;
- (e) ‘substantial connection to the Union’ means a connection of a provider of intermediary services with the Union resulting either from its establishment in the Union or from specific factual criteria, such as:
  - a significant number of recipients of the service in one or more Member States in relation to its or their population; or
  - the targeting of activities towards one or more Member States;
- (f) ‘trader’ means any natural person, or any legal person irrespective of whether it is privately or publicly owned, who is acting, including through any person acting in his or her name or on his or her behalf, for purposes relating to his or her trade, business, craft or profession;
- (g) ‘intermediary service’ means one of the following information society services:
  - (i) a ‘mere conduit’ service, consisting of the transmission in a communication network of information provided by a recipient of the service, or the provision of access to a communication network;
  - (ii) a ‘caching’ service, consisting of the transmission in a communication network of information provided by a recipient of the service, involving the automatic, intermediate and temporary storage of that information, performed for the sole purpose of making more efficient the information’s onward transmission to other recipients upon their request;
  - (iii) a ‘hosting’ service, consisting of the storage of information provided by, and at the request of, a recipient of the service;
- (h) ‘illegal content’ means any information that, in itself or in relation to an activity, including the sale of products or the provision of services, is not in compliance with Union law or the law of any Member State which is in compliance with Union law, irrespective of the precise subject matter or nature of that law;

- (i) 'online platform' means a hosting service that, at the request of a recipient of the service, stores and disseminates information to the public, unless that activity is a minor and purely ancillary feature of another service or a minor functionality of the principal service and, for objective and technical reasons, cannot be used without that other service, and the integration of the feature or functionality into the other service is not a means to circumvent the applicability of this Regulation;
- (j) 'online search engine' means an intermediary service that allows users to input queries in order to perform searches of, in principle, all websites, or all websites in a particular language, on the basis of a query on any subject in the form of a keyword, voice request, phrase or other input, and returns results in any format in which information related to the requested content can be found;
- (k) 'dissemination to the public' means making information available, at the request of the recipient of the service who provided the information, to a potentially unlimited number of third parties;
- (l) 'distance contract' means 'distance contract' as defined in Article 2, point (7), of Directive 2011/83/EU;
- (m) 'online interface' means any software, including a website or a part thereof, and applications, including mobile applications;
- (n) 'Digital Services Coordinator of establishment' means the Digital Services Coordinator of the Member State where the main establishment of a provider of an intermediary service is located or its legal representative resides or is established;
- (o) 'Digital Services Coordinator of destination' means the Digital Services Coordinator of a Member State where the intermediary service is provided;
- (p) 'active recipient of an online platform' means a recipient of the service that has engaged with an online platform by either requesting the online platform to host information or being exposed to information hosted by the online platform and disseminated through its online interface;
- (q) 'active recipient of an online search engine' means a recipient of the service that has submitted a query to an online search engine and been exposed to information indexed and presented on its online interface;
- (r) 'advertisement' means information designed to promote the message of a legal or natural person, irrespective of whether to achieve commercial or non-commercial purposes, and presented by an online platform on its online interface against remuneration specifically for promoting that information;
- (s) 'recommender system' means a fully or partially automated system used by an online platform to suggest in its online interface specific information to recipients of the service or prioritise that information, including as a result of a search initiated by the recipient of the service or otherwise determining the relative order or prominence of information displayed;
- (t) 'content moderation' means the activities, whether automated or not, undertaken by providers of intermediary services, that are aimed, in particular, at detecting, identifying and addressing illegal content or information incompatible with their terms and conditions, provided by recipients of the service, including measures taken that affect the availability, visibility, and accessibility of that illegal content or that information, such as demotion, demonetisation, disabling of access to, or removal thereof, or that affect the ability of the recipients of the service to provide that information, such as the termination or suspension of a recipient's account;
- (u) 'terms and conditions' means all clauses, irrespective of their name or form, which govern the contractual relationship between the provider of intermediary services and the recipients of the service;

- (v) 'persons with disabilities' means 'persons with disabilities' as referred to in Article 3, point (1), of Directive (EU) 2019/882 of the European Parliament and of the Council <sup>(38)</sup>;
- (w) 'commercial communication' means 'commercial communication' as defined in Article 2, point (f), of Directive 2000/31/EC;
- (x) 'turnover' means the amount derived by an undertaking within the meaning of Article 5(1) of Council Regulation (EC) No 139/2004 <sup>(39)</sup>.

## CHAPTER II

### LIABILITY OF PROVIDERS OF INTERMEDIARY SERVICES

#### *Article 4*

##### **'Mere conduit'**

1. Where an information society service is provided that consists of the transmission in a communication network of information provided by a recipient of the service, or the provision of access to a communication network, the service provider shall not be liable for the information transmitted or accessed, on condition that the provider:

- (a) does not initiate the transmission;
- (b) does not select the receiver of the transmission; and
- (c) does not select or modify the information contained in the transmission.

2. The acts of transmission and of provision of access referred to in paragraph 1 shall include the automatic, intermediate and transient storage of the information transmitted in so far as this takes place for the sole purpose of carrying out the transmission in the communication network, and provided that the information is not stored for any period longer than is reasonably necessary for the transmission.

3. This Article shall not affect the possibility for a judicial or administrative authority, in accordance with a Member State's legal system, to require the service provider to terminate or prevent an infringement.

#### *Article 5*

##### **'Caching'**

1. Where an information society service is provided that consists of the transmission in a communication network of information provided by a recipient of the service, the service provider shall not be liable for the automatic, intermediate and temporary storage of that information, performed for the sole purpose of making more efficient or more secure the information's onward transmission to other recipients of the service upon their request, on condition that the provider:

- (a) does not modify the information;
- (b) complies with conditions on access to the information;
- (c) complies with rules regarding the updating of the information, specified in a manner widely recognised and used by industry;

<sup>(38)</sup> Directive (EU) 2019/882 of the European Parliament and of the Council of 17 April 2019 on the accessibility requirements for products and services (OJ L 151, 7.6.2019, p. 70).

<sup>(39)</sup> Council Regulation (EC) No 139/2004 of 20 January 2004 on the control of concentrations between undertakings (OJ L 24, 29.1.2004, p. 1).

- (d) does not interfere with the lawful use of technology, widely recognised and used by industry, to obtain data on the use of the information; and
- (e) acts expeditiously to remove or to disable access to the information it has stored upon obtaining actual knowledge of the fact that the information at the initial source of the transmission has been removed from the network, or access to it has been disabled, or that a judicial or an administrative authority has ordered such removal or disablement.

2. This Article shall not affect the possibility for a judicial or administrative authority, in accordance with a Member State's legal system, to require the service provider to terminate or prevent an infringement.

#### *Article 6*

#### **Hosting**

1. Where an information society service is provided that consists of the storage of information provided by a recipient of the service, the service provider shall not be liable for the information stored at the request of a recipient of the service, on condition that the provider:

- (a) does not have actual knowledge of illegal activity or illegal content and, as regards claims for damages, is not aware of facts or circumstances from which the illegal activity or illegal content is apparent; or
- (b) upon obtaining such knowledge or awareness, acts expeditiously to remove or to disable access to the illegal content.

2. Paragraph 1 shall not apply where the recipient of the service is acting under the authority or the control of the provider.

3. Paragraph 1 shall not apply with respect to the liability under consumer protection law of online platforms that allow consumers to conclude distance contracts with traders, where such an online platform presents the specific item of information or otherwise enables the specific transaction at issue in a way that would lead an average consumer to believe that the information, or the product or service that is the object of the transaction, is provided either by the online platform itself or by a recipient of the service who is acting under its authority or control.

4. This Article shall not affect the possibility for a judicial or administrative authority, in accordance with a Member State's legal system, to require the service provider to terminate or prevent an infringement.

#### *Article 7*

#### **Voluntary own-initiative investigations and legal compliance**

Providers of intermediary services shall not be deemed ineligible for the exemptions from liability referred to in Articles 4, 5 and 6 solely because they, in good faith and in a diligent manner, carry out voluntary own-initiative investigations into, or take other measures aimed at detecting, identifying and removing, or disabling access to, illegal content, or take the necessary measures to comply with the requirements of Union law and national law in compliance with Union law, including the requirements set out in this Regulation.

#### *Article 8*

#### **No general monitoring or active fact-finding obligations**

No general obligation to monitor the information which providers of intermediary services transmit or store, nor actively to seek facts or circumstances indicating illegal activity shall be imposed on those providers.

*Article 9***Orders to act against illegal content**

1. Upon the receipt of an order to act against one or more specific items of illegal content, issued by the relevant national judicial or administrative authorities, on the basis of the applicable Union law or national law in compliance with Union law, providers of intermediary services shall inform the authority issuing the order, or any other authority specified in the order, of any effect given to the order without undue delay, specifying if and when effect was given to the order.
2. Member States shall ensure that when an order referred to in paragraph 1 is transmitted to the provider, it meets at least the following conditions:
  - (a) that order contains the following elements:
    - (i) a reference to the legal basis under Union or national law for the order;
    - (ii) a statement of reasons explaining why the information is illegal content, by reference to one or more specific provisions of Union law or national law in compliance with Union law;
    - (iii) information identifying the issuing authority;
    - (iv) clear information enabling the provider of intermediary services to identify and locate the illegal content concerned, such as one or more exact URL and, where necessary, additional information;
    - (v) information about redress mechanisms available to the provider of intermediary services and to the recipient of the service who provided the content;
    - (vi) where applicable, information about which authority is to receive the information about the effect given to the orders;
  - (b) the territorial scope of that order, on the basis of the applicable rules of Union and national law, including the Charter, and, where relevant, general principles of international law, is limited to what is strictly necessary to achieve its objective;
  - (c) that order is transmitted in one of the languages declared by the provider of intermediary services pursuant to Article 11(3) or in another official language of the Member States, agreed between the authority issuing the order and that provider, and is sent to the electronic point of contact designated by that provider, in accordance with Article 11; where the order is not drafted in the language declared by the provider of intermediary services or in another bilaterally agreed language, the order may be transmitted in the language of the authority issuing the order, provided that it is accompanied by a translation into such declared or bilaterally agreed language of at least the elements set out in points (a) and (b) of this paragraph.
3. The authority issuing the order or, where applicable, the authority specified therein, shall transmit it, along with any information received from the provider of intermediary services concerning the effect given to that order to the Digital Services Coordinator from the Member State of the issuing authority.
4. After receiving the order from the judicial or administrative authority, the Digital Services Coordinator of the Member State concerned shall, without undue delay, transmit a copy of the order referred to in paragraph 1 of this Article to all other Digital Services Coordinators through the system established in accordance with Article 85.
5. At the latest when effect is given to the order or, where applicable, at the time provided by the issuing authority in its order, providers of intermediary services shall inform the recipient of the service concerned of the order received and to the effect given to it. Such information provided to the recipient of the service shall include a statement of reasons, the possibilities for redress that exist, and a description of the territorial scope of the order, in accordance with paragraph 2.

6. The conditions and requirements laid down in this Article shall be without prejudice to national civil and criminal procedural law.

#### Article 10

### Orders to provide information

1. Upon receipt of an order to provide specific information about one or more specific individual recipients of the service, issued by the relevant national judicial or administrative authorities on the basis of the applicable Union law or national law in compliance with Union law, providers of intermediary services shall, without undue delay inform the authority issuing the order, or any other authority specified in the order, of its receipt and of the effect given to the order, specifying if and when effect was given to the order.

2. Member States shall ensure that when an order referred to in paragraph 1 is transmitted to the provider, it meets at least the following conditions:

(a) that order contains the following elements:

- (i) a reference to the legal basis under Union or national law for the order;
- (ii) information identifying the issuing authority;
- (iii) clear information enabling the provider of intermediary services to identify the specific recipient or recipients on whom information is sought, such as one or more account names or unique identifiers;
- (iv) a statement of reasons explaining the objective for which the information is required and why the requirement to provide the information is necessary and proportionate to determine compliance by the recipients of the intermediary services with applicable Union law or national law in compliance with Union law, unless such a statement cannot be provided for reasons related to the prevention, investigation, detection and prosecution of criminal offences;
- (v) information about redress mechanisms available to the provider and to the recipients of the service concerned;
- (vi) where applicable, information about which authority is to receive the information about the effect given to the orders;

(b) that order only requires the provider to provide information already collected for the purposes of providing the service and which lies within its control;

(c) that order is transmitted in one of the languages declared by the provider of intermediary services pursuant to Article 11(3) or in another official language of the Member States, agreed between the authority issuing the order and the provider, and is sent to the electronic point of contact designated by that provider, in accordance with Article 11; where the order is not drafted in the language declared by the provider of intermediary services or in another bilaterally agreed language, the order may be transmitted in the language of the authority issuing the order, provided that it is accompanied by a translation into such declared or bilaterally agreed language of at least the elements set out in points (a) and (b) of this paragraph.

3. The authority issuing the order or, where applicable, the authority specified therein, shall transmit it, along with any information received from the provider of intermediary services concerning the effect given to that order to the Digital Services Coordinator from the Member State of the issuing authority.

4. After receiving the order from the judicial or administrative authority, the Digital Services Coordinator of the Member State concerned shall, without undue delay, transmit a copy of the order referred to in paragraph 1 of this Article to all Digital Services Coordinators through the system established in accordance with Article 85.

5. At the latest when effect is given to the order, or, where applicable, at the time provided by the issuing authority in its order, providers of intermediary services shall inform the recipient of the service concerned of the order received and the effect given to it. Such information provided to the recipient of the service shall include a statement of reasons and the possibilities for redress that exist, in accordance with paragraph 2.
6. The conditions and requirements laid down in this Article shall be without prejudice to national civil and criminal procedural law.

### CHAPTER III

#### DUE DILIGENCE OBLIGATIONS FOR A TRANSPARENT AND SAFE ONLINE ENVIRONMENT

##### SECTION 1

##### *Provisions applicable to all providers of intermediary services*

###### Article 11

##### **Points of contact for Member States' authorities, the Commission and the Board**

1. Providers of intermediary services shall designate a single point of contact to enable them to communicate directly, by electronic means, with Member States' authorities, the Commission and the Board referred to in Article 61 for the application of this Regulation.
2. Providers of intermediary services shall make public the information necessary to easily identify and communicate with their single points of contact. That information shall be easily accessible, and shall be kept up to date.
3. Providers of intermediary services shall specify in the information referred to in paragraph 2 the official language or languages of the Member States which, in addition to a language broadly understood by the largest possible number of Union citizens, can be used to communicate with their points of contact, and which shall include at least one of the official languages of the Member State in which the provider of intermediary services has its main establishment or where its legal representative resides or is established.

###### Article 12

##### **Points of contact for recipients of the service**

1. Providers of intermediary services shall designate a single point of contact to enable recipients of the service to communicate directly and rapidly with them, by electronic means and in a user-friendly manner, including by allowing recipients of the service to choose the means of communication, which shall not solely rely on automated tools.
2. In addition to the obligations provided under Directive 2000/31/EC, providers of intermediary services shall make public the information necessary for the recipients of the service in order to easily identify and communicate with their single points of contact. That information shall be easily accessible, and shall be kept up to date.

###### Article 13

##### **Legal representatives**

1. Providers of intermediary services which do not have an establishment in the Union but which offer services in the Union shall designate, in writing, a legal or natural person to act as their legal representative in one of the Member States where the provider offers its services.

2. Providers of intermediary services shall mandate their legal representatives for the purpose of being addressed in addition to or instead of such providers, by the Member States' competent authorities, the Commission and the Board, on all issues necessary for the receipt of, compliance with and enforcement of decisions issued in relation to this Regulation. Providers of intermediary services shall provide their legal representative with necessary powers and sufficient resources to guarantee their efficient and timely cooperation with the Member States' competent authorities, the Commission and the Board, and to comply with such decisions.
3. It shall be possible for the designated legal representative to be held liable for non-compliance with obligations under this Regulation, without prejudice to the liability and legal actions that could be initiated against the provider of intermediary services.
4. Providers of intermediary services shall notify the name, postal address, email address and telephone number of their legal representative to the Digital Services Coordinator in the Member State where that legal representative resides or is established. They shall ensure that that information is publicly available, easily accessible, accurate and kept up to date.
5. The designation of a legal representative within the Union pursuant to paragraph 1 shall not constitute an establishment in the Union.

#### Article 14

##### **Terms and conditions**

1. Providers of intermediary services shall include information on any restrictions that they impose in relation to the use of their service in respect of information provided by the recipients of the service, in their terms and conditions. That information shall include information on any policies, procedures, measures and tools used for the purpose of content moderation, including algorithmic decision-making and human review, as well as the rules of procedure of their internal complaint handling system. It shall be set out in clear, plain, intelligible, user-friendly and unambiguous language, and shall be publicly available in an easily accessible and machine-readable format.
2. Providers of intermediary services shall inform the recipients of the service of any significant change to the terms and conditions.
3. Where an intermediary service is primarily directed at minors or is predominantly used by them, the provider of that intermediary service shall explain the conditions for, and any restrictions on, the use of the service in a way that minors can understand.
4. Providers of intermediary services shall act in a diligent, objective and proportionate manner in applying and enforcing the restrictions referred to in paragraph 1, with due regard to the rights and legitimate interests of all parties involved, including the fundamental rights of the recipients of the service, such as the freedom of expression, freedom and pluralism of the media, and other fundamental rights and freedoms as enshrined in the Charter.
5. Providers of very large online platforms and of very large online search engines shall provide recipients of services with a concise, easily-accessible and machine-readable summary of the terms and conditions, including the available remedies and redress mechanisms, in clear and unambiguous language.
6. Very large online platforms and very large online search engines within the meaning of Article 33 shall publish their terms and conditions in the official languages of all the Member States in which they offer their services.

#### Article 15

##### **Transparency reporting obligations for providers of intermediary services**

1. Providers of intermediary services shall make publicly available, in a machine-readable format and in an easily accessible manner, at least once a year, clear, easily comprehensible reports on any content moderation that they engaged in during the relevant period. Those reports shall include, in particular, information on the following, as applicable:

- (a) for providers of intermediary services, the number of orders received from Member States' authorities including orders issued in accordance with Articles 9 and 10, categorised by the type of illegal content concerned, the Member State issuing the order, and the median time needed to inform the authority issuing the order, or any other authority specified in the order, of its receipt, and to give effect to the order;
- (b) for providers of hosting services, the number of notices submitted in accordance with Article 16, categorised by the type of alleged illegal content concerned, the number of notices submitted by trusted flaggers, any action taken pursuant to the notices by differentiating whether the action was taken on the basis of the law or the terms and conditions of the provider, the number of notices processed by using automated means and the median time needed for taking the action;
- (c) for providers of intermediary services, meaningful and comprehensible information about the content moderation engaged in at the providers' own initiative, including the use of automated tools, the measures taken to provide training and assistance to persons in charge of content moderation, the number and type of measures taken that affect the availability, visibility and accessibility of information provided by the recipients of the service and the recipients' ability to provide information through the service, and other related restrictions of the service; the information reported shall be categorised by the type of illegal content or violation of the terms and conditions of the service provider, by the detection method and by the type of restriction applied;
- (d) for providers of intermediary services, the number of complaints received through the internal complaint-handling systems in accordance with the provider's terms and conditions and additionally, for providers of online platforms, in accordance with Article 20, the basis for those complaints, decisions taken in respect of those complaints, the median time needed for taking those decisions and the number of instances where those decisions were reversed;
- (e) any use made of automated means for the purpose of content moderation, including a qualitative description, a specification of the precise purposes, indicators of the accuracy and the possible rate of error of the automated means used in fulfilling those purposes, and any safeguards applied.

2. Paragraph 1 of this Article shall not apply to providers of intermediary services that qualify as micro or small enterprises as defined in Recommendation 2003/361/EC and which are not very large online platforms within the meaning of Article 33 of this Regulation.

3. The Commission may adopt implementing acts to lay down templates concerning the form, content and other details of reports pursuant to paragraph 1 of this Article, including harmonised reporting periods. Those implementing acts shall be adopted in accordance with the advisory procedure referred to in Article 88.

## SECTION 2

### *Additional provisions applicable to providers of hosting services, including online platforms*

#### Article 16

##### **Notice and action mechanisms**

1. Providers of hosting services shall put mechanisms in place to allow any individual or entity to notify them of the presence on their service of specific items of information that the individual or entity considers to be illegal content. Those mechanisms shall be easy to access and user-friendly, and shall allow for the submission of notices exclusively by electronic means.

2. The mechanisms referred to in paragraph 1 shall be such as to facilitate the submission of sufficiently precise and adequately substantiated notices. To that end, the providers of hosting services shall take the necessary measures to enable and to facilitate the submission of notices containing all of the following elements:

- (a) a sufficiently substantiated explanation of the reasons why the individual or entity alleges the information in question to be illegal content;
- (b) a clear indication of the exact electronic location of that information, such as the exact URL or URLs, and, where necessary, additional information enabling the identification of the illegal content adapted to the type of content and to the specific type of hosting service;
- (c) the name and email address of the individual or entity submitting the notice, except in the case of information considered to involve one of the offences referred to in Articles 3 to 7 of Directive 2011/93/EU;
- (d) a statement confirming the bona fide belief of the individual or entity submitting the notice that the information and allegations contained therein are accurate and complete.

3. Notices referred to in this Article shall be considered to give rise to actual knowledge or awareness for the purposes of Article 6 in respect of the specific item of information concerned where they allow a diligent provider of hosting services to identify the illegality of the relevant activity or information without a detailed legal examination.

4. Where the notice contains the electronic contact information of the individual or entity that submitted it, the provider of hosting services shall, without undue delay, send a confirmation of receipt of the notice to that individual or entity.

5. The provider shall also, without undue delay, notify that individual or entity of its decision in respect of the information to which the notice relates, providing information on the possibilities for redress in respect of that decision.

6. Providers of hosting services shall process any notices that they receive under the mechanisms referred to in paragraph 1 and take their decisions in respect of the information to which the notices relate, in a timely, diligent, non-arbitrary and objective manner. Where they use automated means for that processing or decision-making, they shall include information on such use in the notification referred to in paragraph 5.

#### Article 17

##### Statement of reasons

1. Providers of hosting services shall provide a clear and specific statement of reasons to any affected recipients of the service for any of the following restrictions imposed on the ground that the information provided by the recipient of the service is illegal content or incompatible with their terms and conditions:

- (a) any restrictions of the visibility of specific items of information provided by the recipient of the service, including removal of content, disabling access to content, or demoting content;
- (b) suspension, termination or other restriction of monetary payments;
- (c) suspension or termination of the provision of the service in whole or in part;
- (d) suspension or termination of the recipient of the service's account.

2. Paragraph 1 shall only apply where the relevant electronic contact details are known to the provider. It shall apply at the latest from the date that the restriction is imposed, regardless of why or how it was imposed.

Paragraph 1 shall not apply where the information is deceptive high-volume commercial content.

3. The statement of reasons referred to in paragraph 1 shall at least contain the following information:
  - (a) information on whether the decision entails either the removal of, the disabling of access to, the demotion of or the restriction of the visibility of the information, or the suspension or termination of monetary payments related to that information, or imposes other measures referred to in paragraph 1 with regard to the information, and, where relevant, the territorial scope of the decision and its duration;
  - (b) the facts and circumstances relied on in taking the decision, including, where relevant, information on whether the decision was taken pursuant to a notice submitted in accordance with Article 16 or based on voluntary own-initiative investigations and, where strictly necessary, the identity of the notifier;
  - (c) where applicable, information on the use made of automated means in taking the decision, including information on whether the decision was taken in respect of content detected or identified using automated means;
  - (d) where the decision concerns allegedly illegal content, a reference to the legal ground relied on and explanations as to why the information is considered to be illegal content on that ground;
  - (e) where the decision is based on the alleged incompatibility of the information with the terms and conditions of the provider of hosting services, a reference to the contractual ground relied on and explanations as to why the information is considered to be incompatible with that ground;
  - (f) clear and user-friendly information on the possibilities for redress available to the recipient of the service in respect of the decision, in particular, where applicable through internal complaint-handling mechanisms, out-of-court dispute settlement and judicial redress.
4. The information provided by the providers of hosting services in accordance with this Article shall be clear and easily comprehensible and as precise and specific as reasonably possible under the given circumstances. The information shall, in particular, be such as to reasonably allow the recipient of the service concerned to effectively exercise the possibilities for redress referred to in of paragraph 3, point (f).
5. This Article shall not apply to any orders referred to in Article 9.

#### Article 18

#### **Notification of suspicions of criminal offences**

1. Where a provider of hosting services becomes aware of any information giving rise to a suspicion that a criminal offence involving a threat to the life or safety of a person or persons has taken place, is taking place or is likely to take place, it shall promptly inform the law enforcement or judicial authorities of the Member State or Member States concerned of its suspicion and provide all relevant information available.
2. Where the provider of hosting services cannot identify with reasonable certainty the Member State concerned, it shall inform the law enforcement authorities of the Member State in which it is established or where its legal representative resides or is established or inform Europol, or both.

For the purpose of this Article, the Member State concerned shall be the Member State in which the offence is suspected to have taken place, to be taking place or to be likely to take place, or the Member State where the suspected offender resides or is located, or the Member State where the victim of the suspected offence resides or is located.

## SECTION 3

***Additional provisions applicable to providers of online platforms****Article 19***Exclusion for micro and small enterprises**

1. This Section, with the exception of Article 24(3) thereof, shall not apply to providers of online platforms that qualify as micro or small enterprises as defined in Recommendation 2003/361/EC.

This Section, with the exception of Article 24(3) thereof, shall not apply to providers of online platforms that previously qualified for the status of a micro or small enterprise as defined in Recommendation 2003/361/EC during the 12 months following their loss of that status pursuant to Article 4(2) thereof, except when they are very large online platforms in accordance with Article 33.

2. By derogation from paragraph 1 of this Article, this Section shall apply to providers of online platforms that have been designated as very large online platforms in accordance with Article 33, irrespective of whether they qualify as micro or small enterprises.

*Article 20***Internal complaint-handling system**

1. Providers of online platforms shall provide recipients of the service, including individuals or entities that have submitted a notice, for a period of at least six months following the decision referred to in this paragraph, with access to an effective internal complaint-handling system that enables them to lodge complaints, electronically and free of charge, against the decision taken by the provider of the online platform upon the receipt of a notice or against the following decisions taken by the provider of the online platform on the grounds that the information provided by the recipients constitutes illegal content or is incompatible with its terms and conditions:

- (a) decisions whether or not to remove or disable access to or restrict visibility of the information;
- (b) decisions whether or not to suspend or terminate the provision of the service, in whole or in part, to the recipients;
- (c) decisions whether or not to suspend or terminate the recipients' account;
- (d) decisions whether or not to suspend, terminate or otherwise restrict the ability to monetise information provided by the recipients.

2. The period of at least six months referred to in paragraph 1 of this Article shall start on the day on which the recipient of the service is informed about the decision in accordance with Article 16(5) or Article 17.

3. Providers of online platforms shall ensure that their internal complaint-handling systems are easy to access, user-friendly and enable and facilitate the submission of sufficiently precise and adequately substantiated complaints.

4. Providers of online platforms shall handle complaints submitted through their internal complaint-handling system in a timely, non-discriminatory, diligent and non-arbitrary manner. Where a complaint contains sufficient grounds for the provider of the online platform to consider that its decision not to act upon the notice is unfounded or that the information to which the complaint relates is not illegal and is not incompatible with its terms and conditions, or contains information indicating that the complainant's conduct does not warrant the measure taken, it shall reverse its decision referred to in paragraph 1 without undue delay.

5. Providers of online platforms shall inform complainants without undue delay of their reasoned decision in respect of the information to which the complaint relates and of the possibility of out-of-court dispute settlement provided for in Article 21 and other available possibilities for redress.

6. Providers of online platforms shall ensure that the decisions, referred to in paragraph 5, are taken under the supervision of appropriately qualified staff, and not solely on the basis of automated means.

#### Article 21

### Out-of-court dispute settlement

1. Recipients of the service, including individuals or entities that have submitted notices, addressed by the decisions referred to in Article 20(1) shall be entitled to select any out-of-court dispute settlement body that has been certified in accordance with paragraph 3 of this Article in order to resolve disputes relating to those decisions, including complaints that have not been resolved by means of the internal complaint-handling system referred to in that Article.

Providers of online platforms shall ensure that information about the possibility for recipients of the service to have access to an out-of-court dispute settlement, as referred to in the first subparagraph, is easily accessible on their online interface, clear and user-friendly.

The first subparagraph is without prejudice to the right of the recipient of the service concerned to initiate, at any stage, proceedings to contest those decisions by the providers of online platforms before a court in accordance with the applicable law.

2. Both parties shall engage, in good faith, with the selected certified out-of-court dispute settlement body with a view to resolving the dispute.

Providers of online platforms may refuse to engage with such out-of-court dispute settlement body if a dispute has already been resolved concerning the same information and the same grounds of alleged illegality or incompatibility of content.

The certified out-of-court dispute settlement body shall not have the power to impose a binding settlement of the dispute on the parties.

3. The Digital Services Coordinator of the Member State where the out-of-court dispute settlement body is established shall, for a maximum period of five years, which may be renewed, certify the body, at its request, where the body has demonstrated that it meets all of the following conditions:

- (a) it is impartial and independent, including financially independent, of providers of online platforms and of recipients of the service provided by providers of online platforms, including of individuals or entities that have submitted notices;
- (b) it has the necessary expertise in relation to the issues arising in one or more particular areas of illegal content, or in relation to the application and enforcement of terms and conditions of one or more types of online platform, allowing the body to contribute effectively to the settlement of a dispute;
- (c) its members are remunerated in a way that is not linked to the outcome of the procedure;
- (d) the out-of-court dispute settlement that it offers is easily accessible, through electronic communications technology and provides for the possibility to initiate the dispute settlement and to submit the requisite supporting documents online;
- (e) it is capable of settling disputes in a swift, efficient and cost-effective manner and in at least one of the official languages of the institutions of the Union;
- (f) the out-of-court dispute settlement that it offers takes place in accordance with clear and fair rules of procedure that are easily and publicly accessible, and that comply with applicable law, including this Article.

The Digital Services Coordinator shall, where applicable, specify in the certificate:

- (a) the particular issues to which the body's expertise relates, as referred to in point (b) of the first subparagraph; and
- (b) the official language or languages of the institutions of the Union in which the body is capable of settling disputes, as referred to in point (e) of the first subparagraph.

4. Certified out-of-court dispute settlement bodies shall report to the Digital Services Coordinator that certified them, on an annual basis, on their functioning, specifying at least the number of disputes they received, the information about the outcomes of those disputes, the average time taken to resolve them and any shortcomings or difficulties encountered. They shall provide additional information at the request of that Digital Services Coordinator.

Digital Services Coordinators shall, every two years, draw up a report on the functioning of the out-of-court dispute settlement bodies that they certified. That report shall in particular:

- (a) list the number of disputes that each certified out-of-court dispute settlement body has received annually;
- (b) indicate the outcomes of the procedures brought before those bodies and the average time taken to resolve the disputes;
- (c) identify and explain any systematic or sectoral shortcomings or difficulties encountered in relation to the functioning of those bodies;
- (d) identify best practices concerning that functioning;
- (e) make recommendations as to how to improve that functioning, where appropriate.

Certified out-of-court dispute settlement bodies shall make their decisions available to the parties within a reasonable period of time and no later than 90 calendar days after the receipt of the complaint. In the case of highly complex disputes, the certified out-of-court dispute settlement body may, at its own discretion, extend the 90 calendar day period for an additional period that shall not exceed 90 days, resulting in a maximum total duration of 180 days.

5. If the out-of-court dispute settlement body decides the dispute in favour of the recipient of the service, including the individual or entity that has submitted a notice, the provider of the online platform shall bear all the fees charged by the out-of-court dispute settlement body, and shall reimburse that recipient, including the individual or entity, for any other reasonable expenses that it has paid in relation to the dispute settlement. If the out-of-court dispute settlement body decides the dispute in favour of the provider of the online platform, the recipient of the service, including the individual or entity, shall not be required to reimburse any fees or other expenses that the provider of the online platform paid or is to pay in relation to the dispute settlement, unless the out-of-court dispute settlement body finds that that recipient manifestly acted in bad faith.

The fees charged by the out-of-court dispute settlement body to the providers of online platforms for the dispute settlement shall be reasonable and shall in any event not exceed the costs incurred by the body. For recipients of the service, the dispute settlement shall be available free of charge or at a nominal fee.

Certified out-of-court dispute settlement bodies shall make the fees, or the mechanisms used to determine the fees, known to the recipient of the service, including to the individuals or entities that have submitted a notice, and to the provider of the online platform concerned, before engaging in the dispute settlement.

6. Member States may establish out-of-court dispute settlement bodies for the purposes of paragraph 1 or support the activities of some or all out-of-court dispute settlement bodies that they have certified in accordance with paragraph 3.

Member States shall ensure that any of their activities undertaken under the first subparagraph do not affect the ability of their Digital Services Coordinators to certify the bodies concerned in accordance with paragraph 3.

7. A Digital Services Coordinator that has certified an out-of-court dispute settlement body shall revoke that certification if it determines, following an investigation either on its own initiative or on the basis of the information received by third parties, that the out-of-court dispute settlement body no longer meets the conditions set out in paragraph 3. Before revoking that certification, the Digital Services Coordinator shall afford that body an opportunity to react to the findings of its investigation and its intention to revoke the out-of-court dispute settlement body's certification.

8. Digital Services Coordinators shall notify to the Commission the out-of-court dispute settlement bodies that they have certified in accordance with paragraph 3, including where applicable the specifications referred to in the second subparagraph of that paragraph, as well as the out-of-court dispute settlement bodies the certification of which they have revoked. The Commission shall publish a list of those bodies, including those specifications, on a dedicated website that is easily accessible, and keep it up to date.

9. This Article is without prejudice to Directive 2013/11/EU and alternative dispute resolution procedures and entities for consumers established under that Directive.

## Article 22

### Trusted flaggers

1. Providers of online platforms shall take the necessary technical and organisational measures to ensure that notices submitted by trusted flaggers, acting within their designated area of expertise, through the mechanisms referred to in Article 16, are given priority and are processed and decided upon without undue delay.

2. The status of 'trusted flagger' under this Regulation shall be awarded, upon application by any entity, by the Digital Services Coordinator of the Member State in which the applicant is established, to an applicant that has demonstrated that it meets all of the following conditions:

- (a) it has particular expertise and competence for the purposes of detecting, identifying and notifying illegal content;
- (b) it is independent from any provider of online platforms;
- (c) it carries out its activities for the purposes of submitting notices diligently, accurately and objectively.

3. Trusted flaggers shall publish, at least once a year easily comprehensible and detailed reports on notices submitted in accordance with Article 16 during the relevant period. The report shall list at least the number of notices categorised by:

- (a) the identity of the provider of hosting services,
- (b) the type of allegedly illegal content notified,
- (c) the action taken by the provider.

Those reports shall include an explanation of the procedures in place to ensure that the trusted flagger retains its independence.

Trusted flaggers shall send those reports to the awarding Digital Services Coordinator, and shall make them publicly available. The information in those reports shall not contain personal data.

4. Digital Services Coordinators shall communicate to the Commission and the Board the names, addresses and email addresses of the entities to which they have awarded the status of the trusted flagger in accordance with paragraph 2 or whose trusted flagger status they have suspended in accordance with paragraph 6 or revoked in accordance with paragraph 7.

5. The Commission shall publish the information referred to in paragraph 4 in a publicly available database, in an easily accessible and machine-readable format, and shall keep the database up to date.

6. Where a provider of online platforms has information indicating that a trusted flagger has submitted a significant number of insufficiently precise, inaccurate or inadequately substantiated notices through the mechanisms referred to in Article 16, including information gathered in connection to the processing of complaints through the internal complaint-handling systems referred to in Article 20(4), it shall communicate that information to the Digital Services Coordinator that awarded the status of trusted flagger to the entity concerned, providing the necessary explanations and supporting documents. Upon receiving the information from the provider of online platforms, and if the Digital Services Coordinator considers that there are legitimate reasons to open an investigation, the status of trusted flagger shall be suspended during the period of the investigation. That investigation shall be carried out without undue delay.

7. The Digital Services Coordinator that awarded the status of trusted flagger to an entity shall revoke that status if it determines, following an investigation either on its own initiative or on the basis information received from third parties, including the information provided by a provider of online platforms pursuant to paragraph 6, that the entity no longer meets the conditions set out in paragraph 2. Before revoking that status, the Digital Services Coordinator shall afford the entity an opportunity to react to the findings of its investigation and its intention to revoke the entity's status as trusted flagger.

8. The Commission, after consulting the Board, shall, where necessary, issue guidelines to assist providers of online platforms and Digital Services Coordinators in the application of paragraphs 2, 6 and 7.

#### Article 23

### Measures and protection against misuse

1. Providers of online platforms shall suspend, for a reasonable period of time and after having issued a prior warning, the provision of their services to recipients of the service that frequently provide manifestly illegal content.

2. Providers of online platforms shall suspend, for a reasonable period of time and after having issued a prior warning, the processing of notices and complaints submitted through the notice and action mechanisms and internal complaints-handling systems referred to in Articles 16 and 20, respectively, by individuals or entities or by complainants that frequently submit notices or complaints that are manifestly unfounded.

3. When deciding on suspension, providers of online platforms shall assess, on a case-by-case basis and in a timely, diligent and objective manner, whether the recipient of the service, the individual, the entity or the complainant engages in the misuse referred to in paragraphs 1 and 2, taking into account all relevant facts and circumstances apparent from the information available to the provider of online platforms. Those circumstances shall include at least the following:

- (a) the absolute numbers of items of manifestly illegal content or manifestly unfounded notices or complaints, submitted within a given time frame;
- (b) the relative proportion thereof in relation to the total number of items of information provided or notices submitted within a given time frame;
- (c) the gravity of the misuses, including the nature of illegal content, and of its consequences;
- (d) where it is possible to identify it, the intention of the recipient of the service, the individual, the entity or the complainant.

4. Providers of online platforms shall set out, in a clear and detailed manner, in their terms and conditions their policy in respect of the misuse referred to in paragraphs 1 and 2, and shall give examples of the facts and circumstances that they take into account when assessing whether certain behaviour constitutes misuse and the duration of the suspension.

*Article 24***Transparency reporting obligations for providers of online platforms**

1. In addition to the information referred to in Article 15, providers of online platforms shall include in the reports referred to in that Article information on the following:
  - (a) the number of disputes submitted to the out-of-court dispute settlement bodies referred to in Article 21, the outcomes of the dispute settlement, and the median time needed for completing the dispute settlement procedures, as well as the share of disputes where the provider of the online platform implemented the decisions of the body;
  - (b) the number of suspensions imposed pursuant to Article 23, distinguishing between suspensions enacted for the provision of manifestly illegal content, the submission of manifestly unfounded notices and the submission of manifestly unfounded complaints.
2. By 17 February 2023 and at least once every six months thereafter, providers shall publish for each online platform or online search engine, in a publicly available section of their online interface, information on the average monthly active recipients of the service in the Union, calculated as an average over the period of the past six months and in accordance with the methodology laid down in the delegated acts referred to in Article 33(3), where those delegated acts have been adopted.
3. Providers of online platforms or of online search engines shall communicate to the Digital Services Coordinator of establishment and the Commission, upon their request and without undue delay, the information referred to in paragraph 2, updated to the moment of such request. That Digital Services Coordinator or the Commission may require the provider of the online platform or of the online search engine to provide additional information as regards the calculation referred to in that paragraph, including explanations and substantiation in respect of the data used. That information shall not include personal data.
4. When the Digital Services Coordinator of establishment has reasons to consider, based the information received pursuant to paragraphs 2 and 3 of this Article, that a provider of online platforms or of online search engines meets the threshold of average monthly active recipients of the service in the Union laid down in Article 33(1), it shall inform the Commission thereof.
5. Providers of online platforms shall, without undue delay, submit to the Commission the decisions and the statements of reasons referred to in Article 17(1) for the inclusion in a publicly accessible machine-readable database managed by the Commission. Providers of online platforms shall ensure that the information submitted does not contain personal data.
6. The Commission may adopt implementing acts to lay down templates concerning the form, content and other details of reports pursuant to paragraph 1 of this Article. Those implementing acts shall be adopted in accordance with the advisory procedure referred to in Article 88.

*Article 25***Online interface design and organisation**

1. Providers of online platforms shall not design, organise or operate their online interfaces in a way that deceives or manipulates the recipients of their service or in a way that otherwise materially distorts or impairs the ability of the recipients of their service to make free and informed decisions.
2. The prohibition in paragraph 1 shall not apply to practices covered by Directive 2005/29/EC or Regulation (EU) 2016/679.
3. The Commission may issue guidelines on how paragraph 1 applies to specific practices, notably:
  - (a) giving more prominence to certain choices when asking the recipient of the service for a decision;

- (b) repeatedly requesting that the recipient of the service make a choice where that choice has already been made, especially by presenting pop-ups that interfere with the user experience;
- (c) making the procedure for terminating a service more difficult than subscribing to it.

#### Article 26

### Advertising on online platforms

1. Providers of online platforms that present advertisements on their online interfaces shall ensure that, for each specific advertisement presented to each individual recipient, the recipients of the service are able to identify, in a clear, concise and unambiguous manner and in real time, the following:

- (a) that the information is an advertisement, including through prominent markings, which might follow standards pursuant to Article 44;
- (b) the natural or legal person on whose behalf the advertisement is presented;
- (c) the natural or legal person who paid for the advertisement if that person is different from the natural or legal person referred to in point (b);
- (d) meaningful information directly and easily accessible from the advertisement about the main parameters used to determine the recipient to whom the advertisement is presented and, where applicable, about how to change those parameters.

2. Providers of online platforms shall provide recipients of the service with a functionality to declare whether the content they provide is or contains commercial communications.

When the recipient of the service submits a declaration pursuant to this paragraph, the provider of online platforms shall ensure that other recipients of the service can identify in a clear and unambiguous manner and in real time, including through prominent markings, which might follow standards pursuant to Article 44, that the content provided by the recipient of the service is or contains commercial communications, as described in that declaration.

3. Providers of online platforms shall not present advertisements to recipients of the service based on profiling as defined in Article 4, point (4), of Regulation (EU) 2016/679 using special categories of personal data referred to in Article 9(1) of Regulation (EU) 2016/679.

#### Article 27

### Recommender system transparency

1. Providers of online platforms that use recommender systems shall set out in their terms and conditions, in plain and intelligible language, the main parameters used in their recommender systems, as well as any options for the recipients of the service to modify or influence those main parameters.

2. The main parameters referred to in paragraph 1 shall explain why certain information is suggested to the recipient of the service. They shall include, at least:

- (a) the criteria which are most significant in determining the information suggested to the recipient of the service;
- (b) the reasons for the relative importance of those parameters.

3. Where several options are available pursuant to paragraph 1 for recommender systems that determine the relative order of information presented to recipients of the service, providers of online platforms shall also make available a functionality that allows the recipient of the service to select and to modify at any time their preferred option. That functionality shall be directly and easily accessible from the specific section of the online platform's online interface where the information is being prioritised.

*Article 28***Online protection of minors**

1. Providers of online platforms accessible to minors shall put in place appropriate and proportionate measures to ensure a high level of privacy, safety, and security of minors, on their service.
2. Providers of online platform shall not present advertisements on their interface based on profiling as defined in Article 4, point (4), of Regulation (EU) 2016/679 using personal data of the recipient of the service when they are aware with reasonable certainty that the recipient of the service is a minor.
3. Compliance with the obligations set out in this Article shall not oblige providers of online platforms to process additional personal data in order to assess whether the recipient of the service is a minor.
4. The Commission, after consulting the Board, may issue guidelines to assist providers of online platforms in the application of paragraph 1.

## SECTION 4

***Additional provisions applicable to providers of online platforms allowing consumers to conclude distance contracts with traders****Article 29***Exclusion for micro and small enterprises**

1. This Section shall not apply to providers of online platforms allowing consumers to conclude distance contracts with traders that qualify as micro or small enterprises as defined in Recommendation 2003/361/EC.

This Section shall not apply to providers of online platforms allowing consumers to conclude distance contracts with traders that previously qualified for the status of a micro or small enterprise as defined in Recommendation 2003/361/EC during the 12 months following their loss of that status pursuant to Article 4(2) thereof, except when they are very large online platforms in accordance with Article 33.

2. By derogation from paragraph 1 of this Article, this Section shall apply to providers of online platforms allowing consumers to conclude distance contracts with traders that have been designated as very large online platforms in accordance with Article 33, irrespective of whether they qualify as micro or small enterprises.

*Article 30***Traceability of traders**

1. Providers of online platforms allowing consumers to conclude distance contracts with traders shall ensure that traders can only use those online platforms to promote messages on or to offer products or services to consumers located in the Union if, prior to the use of their services for those purposes, they have obtained the following information, where applicable to the trader:

- (a) the name, address, telephone number and email address of the trader;
- (b) a copy of the identification document of the trader or any other electronic identification as defined by Article 3 of Regulation (EU) No 910/2014 of the European Parliament and of the Council <sup>(40)</sup>;

<sup>(40)</sup> Regulation (EU) No 910/2014 of the European Parliament and of the Council of 23 July 2014 on electronic identification and trust services for electronic transactions in the internal market and repealing Directive 1999/93/EC (OJ L 257, 28.8.2014, p. 73).

- (c) the payment account details of the trader;
- (d) where the trader is registered in a trade register or similar public register, the trade register in which the trader is registered and its registration number or equivalent means of identification in that register;
- (e) a self-certification by the trader committing to only offer products or services that comply with the applicable rules of Union law.

2. Upon receiving the information referred to in paragraph 1 and prior to allowing the trader concerned to use its services, the provider of the online platform allowing consumers to conclude distance contracts with traders shall, through the use of any freely accessible official online database or online interface made available by a Member State or the Union or through requests to the trader to provide supporting documents from reliable sources, make best efforts to assess whether the information referred to in paragraph 1, points (a) to (e), is reliable and complete. For the purpose of this Regulation, traders shall be liable for the accuracy of the information provided.

As regards traders that are already using the services of providers of online platforms allowing consumers to conclude distance contracts with traders for the purposes referred to in paragraph 1 on 17 February 2024, the providers shall make best efforts to obtain the information listed from the traders concerned within 12 months. Where the traders concerned fail to provide the information within that period, the providers shall suspend the provision of their services to those traders until they have provided all information.

3. Where the provider of the online platform allowing consumers to conclude distance contracts with traders obtains sufficient indications or has reason to believe that any item of information referred to in paragraph 1 obtained from the trader concerned is inaccurate, incomplete or not up-to-date, that provider shall request that the trader remedy that situation without delay or within the period set by Union and national law.

Where the trader fails to correct or complete that information, the provider of the online platform allowing consumers to conclude distance contracts with traders shall swiftly suspend the provision of its service to that trader in relation to the offering of products or services to consumers located in the Union until the request has been fully complied with.

4. Without prejudice to Article 4 of Regulation (EU) 2019/1150, if a provider of an online platform allowing consumers to conclude distance contracts with traders refuses to allow a trader to use its service pursuant to paragraph 1, or suspends the provision of its service pursuant to paragraph 3 of this Article, the trader concerned shall have the right to lodge a complaint as provided for in Articles 20 and 21 of this Regulation.

5. Providers of online platforms allowing consumers to conclude distance contracts with traders shall store the information obtained pursuant to paragraphs 1 and 2 in a secure manner for a period of six months after the end of the contractual relationship with the trader concerned. They shall subsequently delete the information.

6. Without prejudice to paragraph 2 of this Article, the provider of the online platform allowing consumers to conclude distance contracts with traders shall only disclose the information to third parties where so required in accordance with the applicable law, including the orders referred to in Article 10 and any orders issued by Member States' competent authorities or the Commission for the performance of their tasks under this Regulation.

7. The provider of the online platform allowing consumers to conclude distance contracts with traders shall make the information referred to in paragraph 1, points (a), (d) and (e) available on its online platform to the recipients of the service in a clear, easily accessible and comprehensible manner. That information shall be available at least on the online platform's online interface where the information on the product or service is presented.

*Article 31***Compliance by design**

1. Providers of online platforms allowing consumers to conclude distance contracts with traders shall ensure that its online interface is designed and organised in a way that enables traders to comply with their obligations regarding pre-contractual information, compliance and product safety information under applicable Union law.

In particular, the provider concerned shall ensure that its online interface enables traders to provide information on the name, address, telephone number and email address of the economic operator, as defined in Article 3, point (13), of Regulation (EU) 2019/1020 and other Union law.

2. Providers of online platforms allowing consumers to conclude distance contracts with traders shall ensure that its online interface is designed and organised in a way that it allows traders to provide at least the following:

- (a) the information necessary for the clear and unambiguous identification of the products or the services promoted or offered to consumers located in the Union through the services of the providers;
- (b) any sign identifying the trader such as the trademark, symbol or logo; and,
- (c) where applicable, the information concerning the labelling and marking in compliance with rules of applicable Union law on product safety and product compliance.

3. Providers of online platforms allowing consumers to conclude distance contracts with traders shall make best efforts to assess whether such traders have provided the information referred to in paragraphs 1 and 2 prior to allowing them to offer their products or services on those platforms. After allowing the trader to offer products or services on its online platform that allows consumers to conclude distance contracts with traders, the provider shall make reasonable efforts to randomly check in any official, freely accessible and machine-readable online database or online interface whether the products or services offered have been identified as illegal.

*Article 32***Right to information**

1. Where a provider of an online platform allowing consumers to conclude distance contracts with traders becomes aware, irrespective of the means used, that an illegal product or service has been offered by a trader to consumers located in the Union through its services, that provider shall inform, insofar as it has their contact details, consumers who purchased the illegal product or service through its services of the following:

- (a) the fact that the product or service is illegal;
- (b) the identity of the trader; and
- (c) any relevant means of redress.

The obligation laid down in the first subparagraph shall be limited to purchases of illegal products or services made within the six months preceding the moment that the provider became aware of the illegality.

2. Where, in the situation referred to in paragraph 1, the provider of the online platform allowing consumers to conclude distance contracts with traders does not have the contact details of all consumers concerned, that provider shall make publicly available and easily accessible on its online interface the information concerning the illegal product or service, the identity of the trader and any relevant means of redress.

## SECTION 5

***Additional obligations for providers of very large online platforms and of very large online search engines to manage systemic risks****Article 33***Very large online platforms and very large online search engines**

1. This Section shall apply to online platforms and online search engines which have a number of average monthly active recipients of the service in the Union equal to or higher than 45 million, and which are designated as very large online platforms or very large online search engines pursuant to paragraph 4.
2. The Commission shall adopt delegated acts in accordance with Article 87 to adjust the number of average monthly active recipients of the service in the Union referred to in paragraph 1, where the Union's population increases or decreases at least by 5 % in relation to its population in 2020 or its population after adjustment by means of a delegated act in the year in which the latest delegated act was adopted. In such a case, it shall adjust the number so that it corresponds to 10 % of the Union's population in the year in which it adopts the delegated act, rounded up or down to allow the number to be expressed in millions.
3. The Commission may adopt delegated acts in accordance with Article 87, after consulting the Board, to supplement the provisions of this Regulation by laying down the methodology for calculating the number of average monthly active recipients of the service in the Union, for the purposes of paragraph 1 of this Article and Article 24(2), ensuring that the methodology takes account of market and technological developments.
4. The Commission shall, after having consulted the Member State of establishment or after taking into account the information provided by the Digital Services Coordinator of establishment pursuant to Article 24(4), adopt a decision designating as a very large online platform or a very large online search engine for the purposes of this Regulation the online platform or the online search engine which has a number of average monthly active recipients of the service equal to or higher than the number referred to in paragraph 1 of this Article. The Commission shall take its decision on the basis of data reported by the provider of the online platform or of the online search engine pursuant to Article 24(2), or information requested pursuant to Article 24(3) or any other information available to the Commission.

The failure by the provider of the online platform or of the online search engine to comply with Article 24(2) or to comply with the request by the Digital Services Coordinator of establishment or by the Commission pursuant to Article 24(3) shall not prevent the Commission from designating that provider as a provider of a very large online platform or of a very large online search engine pursuant to this paragraph.

Where the Commission bases its decision on other information available to the Commission pursuant to the first subparagraph of this paragraph or on the basis of additional information requested pursuant to Article 24(3), the Commission shall give the provider of the online platform or of the online search engine concerned 10 working days in which to submit its views on the Commission's preliminary findings and on its intention to designate the online platform or the online search engine as a very large online platform or as a very large online search engine, respectively. The Commission shall take due account of the views submitted by the provider concerned.

The failure of the provider of the online platform or of the online search engine concerned to submit its views pursuant to the third subparagraph shall not prevent the Commission from designating that online platform or that online search engine as a very large online platform or as a very large online search engine, respectively, based on other information available to it.

5. The Commission shall terminate the designation if, during an uninterrupted period of one year, the online platform or the online search engine does not have a number of average monthly active recipients of the service equal to or higher than the number referred to in paragraph 1.

6. The Commission shall notify its decisions pursuant to paragraphs 4 and 5, without undue delay, to the provider of the online platform or of the online search engine concerned, to the Board and to the Digital Services Coordinator of establishment.

The Commission shall ensure that the list of designated very large online platforms and very large online search engines is published in the *Official Journal of the European Union*, and shall keep that list up to date. The obligations set out in this Section shall apply, or cease to apply, to the very large online platforms and very large online search engines concerned from four months after the notification to the provider concerned referred to in the first subparagraph.

#### Article 34

### Risk assessment

1. Providers of very large online platforms and of very large online search engines shall diligently identify, analyse and assess any systemic risks in the Union stemming from the design or functioning of their service and its related systems, including algorithmic systems, or from the use made of their services.

They shall carry out the risk assessments by the date of application referred to in Article 33(6), second subparagraph, and at least once every year thereafter, and in any event prior to deploying functionalities that are likely to have a critical impact on the risks identified pursuant to this Article. This risk assessment shall be specific to their services and proportionate to the systemic risks, taking into consideration their severity and probability, and shall include the following systemic risks:

- (a) the dissemination of illegal content through their services;
- (b) any actual or foreseeable negative effects for the exercise of fundamental rights, in particular the fundamental rights to human dignity enshrined in Article 1 of the Charter, to respect for private and family life enshrined in Article 7 of the Charter, to the protection of personal data enshrined in Article 8 of the Charter, to freedom of expression and information, including the freedom and pluralism of the media, enshrined in Article 11 of the Charter, to non-discrimination enshrined in Article 21 of the Charter, to respect for the rights of the child enshrined in Article 24 of the Charter and to a high-level of consumer protection enshrined in Article 38 of the Charter;
- (c) any actual or foreseeable negative effects on civic discourse and electoral processes, and public security;
- (d) any actual or foreseeable negative effects in relation to gender-based violence, the protection of public health and minors and serious negative consequences to the person's physical and mental well-being.

2. When conducting risk assessments, providers of very large online platforms and of very large online search engines shall take into account, in particular, whether and how the following factors influence any of the systemic risks referred to in paragraph 1:

- (a) the design of their recommender systems and any other relevant algorithmic system;
- (b) their content moderation systems;
- (c) the applicable terms and conditions and their enforcement;
- (d) systems for selecting and presenting advertisements;
- (e) data related practices of the provider.

The assessments shall also analyse whether and how the risks pursuant to paragraph 1 are influenced by intentional manipulation of their service, including by inauthentic use or automated exploitation of the service, as well as the amplification and potentially rapid and wide dissemination of illegal content and of information that is incompatible with their terms and conditions.

The assessment shall take into account specific regional or linguistic aspects, including when specific to a Member State.

3. Providers of very large online platforms and of very large online search engines shall preserve the supporting documents of the risk assessments for at least three years after the performance of risk assessments, and shall, upon request, communicate them to the Commission and to the Digital Services Coordinator of establishment.

#### Article 35

### Mitigation of risks

1. Providers of very large online platforms and of very large online search engines shall put in place reasonable, proportionate and effective mitigation measures, tailored to the specific systemic risks identified pursuant to Article 34, with particular consideration to the impacts of such measures on fundamental rights. Such measures may include, where applicable:

- (a) adapting the design, features or functioning of their services, including their online interfaces;
- (b) adapting their terms and conditions and their enforcement;
- (c) adapting content moderation processes, including the speed and quality of processing notices related to specific types of illegal content and, where appropriate, the expeditious removal of, or the disabling of access to, the content notified, in particular in respect of illegal hate speech or cyber violence, as well as adapting any relevant decision-making processes and dedicated resources for content moderation;
- (d) testing and adapting their algorithmic systems, including their recommender systems;
- (e) adapting their advertising systems and adopting targeted measures aimed at limiting or adjusting the presentation of advertisements in association with the service they provide;
- (f) reinforcing the internal processes, resources, testing, documentation, or supervision of any of their activities in particular as regards detection of systemic risk;
- (g) initiating or adjusting cooperation with trusted flaggers in accordance with Article 22 and the implementation of the decisions of out-of-court dispute settlement bodies pursuant to Article 21;
- (h) initiating or adjusting cooperation with other providers of online platforms or of online search engines through the codes of conduct and the crisis protocols referred to in Articles 45 and 48 respectively;
- (i) taking awareness-raising measures and adapting their online interface in order to give recipients of the service more information;
- (j) taking targeted measures to protect the rights of the child, including age verification and parental control tools, tools aimed at helping minors signal abuse or obtain support, as appropriate;
- (k) ensuring that an item of information, whether it constitutes a generated or manipulated image, audio or video that appreciably resembles existing persons, objects, places or other entities or events and falsely appears to a person to be authentic or truthful is distinguishable through prominent markings when presented on their online interfaces, and, in addition, providing an easy to use functionality which enables recipients of the service to indicate such information.

2. The Board, in cooperation with the Commission, shall publish comprehensive reports, once a year. The reports shall include the following:

- (a) identification and assessment of the most prominent and recurrent systemic risks reported by providers of very large online platforms and of very large online search engines or identified through other information sources, in particular those provided in compliance with Articles 39, 40 and 42;

- (b) best practices for providers of very large online platforms and of very large online search engines to mitigate the systemic risks identified.

Those reports shall present systemic risks broken down by the Member States in which they occurred and in the Union as a whole, as applicable.

3. The Commission, in cooperation with the Digital Services Coordinators, may issue guidelines on the application of paragraph 1 in relation to specific risks, in particular to present best practices and recommend possible measures, having due regard to the possible consequences of the measures on fundamental rights enshrined in the Charter of all parties involved. When preparing those guidelines the Commission shall organise public consultations.

### Article 36

#### **Crisis response mechanism**

1. Where a crisis occurs, the Commission, acting upon a recommendation of the Board may adopt a decision, requiring one or more providers of very large online platforms or of very large online search engines to take one or more of the following actions:

- (a) assess whether, and if so to what extent and how, the functioning and use of their services significantly contribute to a serious threat as referred to in paragraph 2, or are likely to do so;
- (b) identify and apply specific, effective and proportionate measures, such as any of those provided for in Article 35(1) or Article 48(2), to prevent, eliminate or limit any such contribution to the serious threat identified pursuant to point (a) of this paragraph;
- (c) report to the Commission by a certain date or at regular intervals specified in the decision, on the assessments referred to in point (a), on the precise content, implementation and qualitative and quantitative impact of the specific measures taken pursuant to point (b) and on any other issue related to those assessments or those measures, as specified in the decision.

When identifying and applying measures pursuant to point (b) of this paragraph, the service provider or providers shall take due account of the gravity of the serious threat referred to in paragraph 2, of the urgency of the measures and of the actual or potential implications for the rights and legitimate interests of all parties concerned, including the possible failure of the measures to respect the fundamental rights enshrined in the Charter.

2. For the purpose of this Article, a crisis shall be deemed to have occurred where extraordinary circumstances lead to a serious threat to public security or public health in the Union or in significant parts of it.

3. When taking the decision referred to in paragraph 1, the Commission shall ensure that all of the following requirements are met:

- (a) the actions required by the decision are strictly necessary, justified and proportionate, having regard in particular to the gravity of the serious threat referred to in paragraph 2, the urgency of the measures and the actual or potential implications for the rights and legitimate interests of all parties concerned, including the possible failure of the measures to respect the fundamental rights enshrined in the Charter;
- (b) the decision specifies a reasonable period within which specific measures referred to in paragraph 1, point (b), are to be taken, having regard, in particular, to the urgency of those measures and the time needed to prepare and implement them;
- (c) the actions required by the decision are limited to a period not exceeding three months.

4. After adopting the decision referred to in paragraph 1, the Commission shall, without undue delay, take the following steps:

- (a) notify the decision to the provider or providers to which the decision is addressed;

- (b) make the decision publicly available; and
- (c) inform the Board of the decision, invite it to submit its views thereon, and keep it informed of any subsequent developments relating to the decision.

5. The choice of specific measures to be taken pursuant to paragraph 1, point (b), and to paragraph 7, second subparagraph, shall remain with the provider or providers addressed by the Commission's decision.

6. The Commission may on its own initiative or at the request of the provider, engage in a dialogue with the provider to determine whether, in light of the provider's specific circumstances, the intended or implemented measures referred to in paragraph 1, point (b), are effective and proportionate in achieving the objectives pursued. In particular, the Commission shall ensure that the measures taken by the service provider under paragraph 1, point (b), meet the requirements referred to in paragraph 3, points (a) and (c).

7. The Commission shall monitor the application of the specific measures taken pursuant to the decision referred to in paragraph 1 of this Article on the basis of the reports referred to in point (c) of that paragraph and any other relevant information, including information it may request pursuant to Article 40 or 67, taking into account the evolution of the crisis. The Commission shall report regularly to the Board on that monitoring, at least on a monthly basis.

Where the Commission considers that the intended or implemented specific measures pursuant to paragraph 1, point (b), are not effective or proportionate it may, after consulting the Board, adopt a decision requiring the provider to review the identification or application of those specific measures.

8. Where appropriate in view of the evolution of the crisis, the Commission, acting on the Board's recommendation, may amend the decision referred to in paragraph 1 or in paragraph 7, second subparagraph, by:

- (a) revoking the decision and, where appropriate, requiring the very large online platform or very large online search engine to cease to apply the measures identified and implemented pursuant to paragraph 1, point (b), or paragraph 7, second subparagraph, in particular where the grounds for such measures do not exist anymore;
- (b) extending the period referred to paragraph 3, point (c), by a period of no more than three months;
- (c) taking account of experience gained in applying the measures, in particular the possible failure of the measures to respect the fundamental rights enshrined in the Charter.

9. The requirements of paragraphs 1 to 6 shall apply to the decision and to the amendment thereof referred to in this Article.

10. The Commission shall take utmost account of the recommendation of the Board issued pursuant to this Article.

11. The Commission shall report to the European Parliament and to the Council on a yearly basis following the adoption of decisions in accordance with this Article, and, in any event, three months after the end of the crisis, on the application of the specific measures taken pursuant to those decisions.

#### Article 37

#### **Independent audit**

1. Providers of very large online platforms and of very large online search engines shall be subject, at their own expense and at least once a year, to independent audits to assess compliance with the following:

- (a) the obligations set out in Chapter III;
- (b) any commitments undertaken pursuant to the codes of conduct referred to in Articles 45 and 46 and the crisis protocols referred to in Article 48.

2. Providers of very large online platforms and of very large online search engines shall afford the organisations carrying out the audits pursuant to this Article the cooperation and assistance necessary to enable them to conduct those audits in an effective, efficient and timely manner, including by giving them access to all relevant data and premises and by answering oral or written questions. They shall refrain from hampering, unduly influencing or undermining the performance of the audit.

Such audits shall ensure an adequate level of confidentiality and professional secrecy in respect of the information obtained from the providers of very large online platforms and of very large online search engines and third parties in the context of the audits, including after the termination of the audits. However, complying with that requirement shall not adversely affect the performance of the audits and other provisions of this Regulation, in particular those on transparency, supervision and enforcement. Where necessary for the purpose of the transparency reporting pursuant to Article 42(4), the audit report and the audit implementation report referred to in paragraphs 4 and 6 of this Article shall be accompanied with versions that do not contain any information that could reasonably be considered to be confidential.

3. Audits performed pursuant to paragraph 1 shall be performed by organisations which:

- (a) are independent from, and do not have any conflicts of interest with, the provider of very large online platforms or of very large online search engines concerned and any legal person connected to that provider; in particular:
  - (i) have not provided non-audit services related to the matters audited to the provider of very large online platform or of very large online search engine concerned and to any legal person connected to that provider in the 12 months' period before the beginning of the audit and have committed to not providing them with such services in the 12 months' period after the completion of the audit;
  - (ii) have not provided auditing services pursuant to this Article to the provider of very large online platform or of very large online search engine concerned and any legal person connected to that provider during a period longer than 10 consecutive years;
  - (iii) are not performing the audit in return for fees which are contingent on the result of the audit;
- (b) have proven expertise in the area of risk management, technical competence and capabilities;
- (c) have proven objectivity and professional ethics, based in particular on adherence to codes of practice or appropriate standards.

4. Providers of very large online platforms and of very large online search engines shall ensure that the organisations that perform the audits establish an audit report for each audit. That report shall be substantiated, in writing, and shall include at least the following:

- (a) the name, address and the point of contact of the provider of the very large online platform or of the very large online search engine subject to the audit and the period covered;
- (b) the name and address of the organisation or organisations performing the audit;
- (c) a declaration of interests;
- (d) a description of the specific elements audited, and the methodology applied;
- (e) a description and a summary of the main findings drawn from the audit;
- (f) a list of the third parties consulted as part of the audit;
- (g) an audit opinion on whether the provider of the very large online platform or of the very large online search engine subject to the audit complied with the obligations and with the commitments referred to in paragraph 1, namely 'positive', 'positive with comments' or 'negative';
- (h) where the audit opinion is not 'positive', operational recommendations on specific measures to achieve compliance and the recommended timeframe to achieve compliance.

5. Where the organisation performing the audit was unable to audit certain specific elements or to express an audit opinion based on its investigations, the audit report shall include an explanation of the circumstances and the reasons why those elements could not be audited.

6. Providers of very large online platforms or of very large online search engines receiving an audit report that is not 'positive' shall take due account of the operational recommendations addressed to them with a view to take the necessary measures to implement them. They shall, within one month from receiving those recommendations, adopt an audit implementation report setting out those measures. Where they do not implement the operational recommendations, they shall justify in the audit implementation report the reasons for not doing so and set out any alternative measures that they have taken to address any instances of non-compliance identified.

7. The Commission is empowered to adopt delegated acts in accordance with Article 87 to supplement this Regulation by laying down the necessary rules for the performance of the audits pursuant to this Article, in particular as regards the necessary rules on the procedural steps, auditing methodologies and reporting templates for the audits performed pursuant to this Article. Those delegated acts shall take into account any voluntary auditing standards referred to in Article 44(1), point (e).

#### Article 38

### Recommender systems

In addition to the requirements set out in Article 27, providers of very large online platforms and of very large online search engines that use recommender systems shall provide at least one option for each of their recommender systems which is not based on profiling as defined in Article 4, point (4), of Regulation (EU) 2016/679.

#### Article 39

### Additional online advertising transparency

1. Providers of very large online platforms or of very large online search engines that present advertisements on their online interfaces shall compile and make publicly available in a specific section of their online interface, through a searchable and reliable tool that allows multicriteria queries and through application programming interfaces, a repository containing the information referred to in paragraph 2, for the entire period during which they present an advertisement and until one year after the advertisement was presented for the last time on their online interfaces. They shall ensure that the repository does not contain any personal data of the recipients of the service to whom the advertisement was or could have been presented, and shall make reasonable efforts to ensure that the information is accurate and complete.

2. The repository shall include at least all of the following information:

- (a) the content of the advertisement, including the name of the product, service or brand and the subject matter of the advertisement;
- (b) the natural or legal person on whose behalf the advertisement is presented;
- (c) the natural or legal person who paid for the advertisement, if that person is different from the person referred to in point (b);
- (d) the period during which the advertisement was presented;
- (e) whether the advertisement was intended to be presented specifically to one or more particular groups of recipients of the service and if so, the main parameters used for that purpose including where applicable the main parameters used to exclude one or more of such particular groups;
- (f) the commercial communications published on the very large online platforms and identified pursuant to Article 26(2);
- (g) the total number of recipients of the service reached and, where applicable, aggregate numbers broken down by Member State for the group or groups of recipients that the advertisement specifically targeted.

3. As regards paragraph 2, points (a), (b) and (c), where a provider of very large online platform or of very large online search engine has removed or disabled access to a specific advertisement based on alleged illegality or incompatibility with its terms and conditions, the repository shall not include the information referred to in those points. In such case, the repository shall include, for the specific advertisement concerned, the information referred to in Article 17(3), points (a) to (e), or Article 9(2), point (a)(i), as applicable.

The Commission may, after consultation of the Board, the relevant vetted researchers referred to in Article 40 and the public, issue guidelines on the structure, organisation and functionalities of the repositories referred to in this Article.

#### Article 40

##### **Data access and scrutiny**

1. Providers of very large online platforms or of very large online search engines shall provide the Digital Services Coordinator of establishment or the Commission, at their reasoned request and within a reasonable period specified in that request, access to data that are necessary to monitor and assess compliance with this Regulation.

2. Digital Services Coordinators and the Commission shall use the data accessed pursuant to paragraph 1 only for the purpose of monitoring and assessing compliance with this Regulation and shall take due account of the rights and interests of the providers of very large online platforms or of very large online search engines and the recipients of the service concerned, including the protection of personal data, the protection of confidential information, in particular trade secrets, and maintaining the security of their service.

3. For the purposes of paragraph 1, providers of very large online platforms or of very large online search engines shall, at the request of either the Digital Service Coordinator of establishment or of the Commission, explain the design, the logic, the functioning and the testing of their algorithmic systems, including their recommender systems.

4. Upon a reasoned request from the Digital Services Coordinator of establishment, providers of very large online platforms or of very large online search engines shall, within a reasonable period, as specified in the request, provide access to data to vetted researchers who meet the requirements in paragraph 8 of this Article, for the sole purpose of conducting research that contributes to the detection, identification and understanding of systemic risks in the Union, as set out pursuant to Article 34(1), and to the assessment of the adequacy, efficiency and impacts of the risk mitigation measures pursuant to Article 35.

5. Within 15 days following receipt of a request as referred to in paragraph 4, providers of very large online platforms or of very large online search engines may request the Digital Services Coordinator of establishment, to amend the request, where they consider that they are unable to give access to the data requested because one of following two reasons:

- (a) they do not have access to the data;
- (b) giving access to the data will lead to significant vulnerabilities in the security of their service or the protection of confidential information, in particular trade secrets.

6. Requests for amendment pursuant to paragraph 5 shall contain proposals for one or more alternative means through which access may be provided to the requested data or other data which are appropriate and sufficient for the purpose of the request.

The Digital Services Coordinator of establishment shall decide on the request for amendment within 15 days and communicate to the provider of the very large online platform or of the very large online search engine its decision and, where relevant, the amended request and the new period to comply with the request.

7. Providers of very large online platforms or of very large online search engines shall facilitate and provide access to data pursuant to paragraphs 1 and 4 through appropriate interfaces specified in the request, including online databases or application programming interfaces.

8. Upon a duly substantiated application from researchers, the Digital Services Coordinator of establishment shall grant such researchers the status of 'vetted researchers' for the specific research referred to in the application and issue a reasoned request for data access to a provider of very large online platform or of very large online search engine pursuant to paragraph 4, where the researchers demonstrate that they meet all of the following conditions:

- (a) they are affiliated to a research organisation as defined in Article 2, point (1), of Directive (EU) 2019/790;
- (b) they are independent from commercial interests;
- (c) their application discloses the funding of the research;
- (d) they are capable of fulfilling the specific data security and confidentiality requirements corresponding to each request and to protect personal data, and they describe in their request the appropriate technical and organisational measures that they have put in place to this end;
- (e) their application demonstrates that their access to the data and the time frames requested are necessary for, and proportionate to, the purposes of their research, and that the expected results of that research will contribute to the purposes laid down in paragraph 4;
- (f) the planned research activities will be carried out for the purposes laid down in paragraph 4;
- (g) they have committed themselves to making their research results publicly available free of charge, within a reasonable period after the completion of the research, subject to the rights and interests of the recipients of the service concerned, in accordance with Regulation (EU) 2016/679.

Upon receipt of the application pursuant to this paragraph, the Digital Services Coordinator of establishment shall inform the Commission and the Board.

9. Researchers may also submit their application to the Digital Services Coordinator of the Member State of the research organisation to which they are affiliated. Upon receipt of the application pursuant to this paragraph the Digital Services Coordinator shall conduct an initial assessment as to whether the respective researchers meet all of the conditions set out in paragraph 8. The respective Digital Services Coordinator shall subsequently send the application, together with the supporting documents submitted by the respective researchers and the initial assessment, to the Digital Services Coordinator of establishment. The Digital Services Coordinator of establishment shall take a decision whether to award a researcher the status of 'vetted researcher' without undue delay.

While taking due account of the initial assessment provided, the final decision to award a researcher the status of 'vetted researcher' lies within the competence of Digital Services Coordinator of establishment, pursuant to paragraph 8.

10. The Digital Services Coordinator that awarded the status of vetted researcher and issued the reasoned request for data access to the providers of very large online platforms or of very large online search engines in favour of a vetted researcher shall issue a decision terminating the access if it determines, following an investigation either on its own initiative or on the basis of information received from third parties, that the vetted researcher no longer meets the conditions set out in paragraph 8, and shall inform the provider of the very large online platform or of the very large online search engine concerned of the decision. Before terminating the access, the Digital Services Coordinator shall allow the vetted researcher to react to the findings of its investigation and to its intention to terminate the access.

11. Digital Services Coordinators of establishment shall communicate to the Board the names and contact information of the natural persons or entities to which they have awarded the status of 'vetted researcher' in accordance with paragraph 8, as well as the purpose of the research in respect of which the application was made or, where they have terminated the access to the data in accordance with paragraph 10, communicate that information to the Board.

12. Providers of very large online platforms or of very large online search engines shall give access without undue delay to data, including, where technically possible, to real-time data, provided that the data is publicly accessible in their online interface by researchers, including those affiliated to not for profit bodies, organisations and associations, who comply with the conditions set out in paragraph 8, points (b), (c), (d) and (e), and who use the data solely for performing research that contributes to the detection, identification and understanding of systemic risks in the Union pursuant to Article 34(1).

13. The Commission shall, after consulting the Board, adopt delegated acts supplementing this Regulation by laying down the technical conditions under which providers of very large online platforms or of very large online search engines are to share data pursuant to paragraphs 1 and 4 and the purposes for which the data may be used. Those delegated acts shall lay down the specific conditions under which such sharing of data with researchers can take place in compliance with Regulation (EU) 2016/679, as well as relevant objective indicators, procedures and, where necessary, independent advisory mechanisms in support of sharing of data, taking into account the rights and interests of the providers of very large online platforms or of very large online search engines and the recipients of the service concerned, including the protection of confidential information, in particular trade secrets, and maintaining the security of their service.

#### Article 41

### Compliance function

1. Providers of very large online platforms or of very large online search engines shall establish a compliance function, which is independent from their operational functions and composed of one or more compliance officers, including the head of the compliance function. That compliance function shall have sufficient authority, stature and resources, as well as access to the management body of the provider of the very large online platform or of the very large online search engine to monitor the compliance of that provider with this Regulation.

2. The management body of the provider of the very large online platform or of the very large online search engine shall ensure that compliance officers have the professional qualifications, knowledge, experience and ability necessary to fulfil the tasks referred to in paragraph 3.

The management body of the provider of the very large online platform or of the very large online search engine shall ensure that the head of the compliance function is an independent senior manager with distinct responsibility for the compliance function.

The head of the compliance function shall report directly to the management body of the provider of the very large online platform or of the very large online search engine, and may raise concerns and warn that body where risks referred to in Article 34 or non-compliance with this Regulation affect or may affect the provider of the very large online platform or of the very large online search engine concerned, without prejudice to the responsibilities of the management body in its supervisory and managerial functions.

The head of the compliance function shall not be removed without prior approval of the management body of the provider of the very large online platform or of the very large online search engine.

3. Compliance officers shall have the following tasks:

- (a) cooperating with the Digital Services Coordinator of establishment and the Commission for the purpose of this Regulation;
- (b) ensuring that all risks referred to in Article 34 are identified and properly reported on and that reasonable, proportionate and effective risk-mitigation measures are taken pursuant to Article 35;
- (c) organising and supervising the activities of the provider of the very large online platform or of the very large online search engine relating to the independent audit pursuant to Article 37;

- (d) informing and advising the management and employees of the provider of the very large online platform or of the very large online search engine about relevant obligations under this Regulation;
- (e) monitoring the compliance of the provider of the very large online platform or of the very large online search engine with its obligations under this Regulation;
- (f) where applicable, monitoring the compliance of the provider of the very large online platform or of the very large online search engine with commitments made under the codes of conduct pursuant to Articles 45 and 46 or the crisis protocols pursuant to Article 48.

4. Providers of very large online platforms or of very large online search engines shall communicate the name and contact details of the head of the compliance function to the Digital Services Coordinator of establishment and to the Commission.

5. The management body of the provider of the very large online platform or of the very large online search engine shall define, oversee and be accountable for the implementation of the provider's governance arrangements that ensure the independence of the compliance function, including the division of responsibilities within the organisation of the provider of very large online platform or of very large online search engine, the prevention of conflicts of interest, and sound management of systemic risks identified pursuant to Article 34.

6. The management body shall approve and review periodically, at least once a year, the strategies and policies for taking up, managing, monitoring and mitigating the risks identified pursuant to Article 34 to which the very large online platform or the very large online search engine is or might be exposed to.

7. The management body shall devote sufficient time to the consideration of the measures related to risk management. It shall be actively involved in the decisions related to risk management, and shall ensure that adequate resources are allocated to the management of the risks identified in accordance with Article 34.

#### Article 42

### Transparency reporting obligations

1. Providers of very large online platforms or of very large online search engines shall publish the reports referred to in Article 15 at the latest by two months from the date of application referred to in Article 33(6), second subparagraph, and thereafter at least every six months.

2. The reports referred to in paragraph 1 of this Article published by providers of very large online platforms shall, in addition to the information referred to in Article 15 and Article 24(1), specify:

- (a) the human resources that the provider of very large online platforms dedicates to content moderation in respect of the service offered in the Union, broken down by each applicable official language of the Member States, including for compliance with the obligations set out in Articles 16 and 22, as well as for compliance with the obligations set out in Article 20;
- (b) the qualifications and linguistic expertise of the persons carrying out the activities referred to in point (a), as well as the training and support given to such staff;
- (c) the indicators of accuracy and related information referred to in Article 15(1), point (e), broken down by each official language of the Member States.

The reports shall be published in at least one of the official languages of the Member States.

3. In addition to the information referred to in Articles 24(2), the providers of very large online platforms or of very large online search engines shall include in the reports referred to in paragraph 1 of this Article the information on the average monthly recipients of the service for each Member State.

4. Providers of very large online platforms or of very large online search engines shall transmit to the Digital Services Coordinator of establishment and the Commission, without undue delay upon completion, and make publicly available at the latest three months after the receipt of each audit report pursuant to Article 37(4):

- (a) a report setting out the results of the risk assessment pursuant to Article 34;
- (b) the specific mitigation measures put in place pursuant to Article 35(1);
- (c) the audit report provided for in Article 37(4);
- (d) the audit implementation report provided for in Article 37(6);
- (e) where applicable, information about the consultations conducted by the provider in support of the risk assessments and design of the risk mitigation measures.

5. Where a provider of very large online platform or of very large online search engine considers that the publication of information pursuant to paragraph 4 might result in the disclosure of confidential information of that provider or of the recipients of the service, cause significant vulnerabilities for the security of its service, undermine public security or harm recipients, the provider may remove such information from the publicly available reports. In that case, the provider shall transmit the complete reports to the Digital Services Coordinator of establishment and the Commission, accompanied by a statement of the reasons for removing the information from the publicly available reports.

#### Article 43

### Supervisory fee

1. The Commission shall charge providers of very large online platforms and of very large online search engines an annual supervisory fee upon their designation pursuant to Article 33.
2. The overall amount of the annual supervisory fees shall cover the estimated costs that the Commission incurs in relation to its supervisory tasks under this Regulation, in particular costs related to the designation pursuant to Article 33, to the set-up, maintenance and operation of the database pursuant to Article 24(5) and to the information sharing system pursuant to Article 85, to referrals pursuant to Article 59, to supporting the Board pursuant to Article 62 and to the supervisory tasks pursuant to Article 56 and Section 4 of Chapter IV.
3. The providers of very large online platforms and of very large online search engines shall be charged annually a supervisory fee for each service for which they have been designated pursuant to Article 33.

The Commission shall adopt implementing acts establishing the amount of the annual supervisory fee in respect of each provider of very large online platform or of very large online search engine. When adopting those implementing acts, the Commission shall apply the methodology laid down in the delegated act referred to in paragraph 4 of this Article and shall respect the principles set out in paragraph 5 of this Article. Those implementing acts shall be adopted in accordance with the advisory procedure referred to in Article 88.

4. The Commission shall adopt delegated acts, in accordance with Article 87, laying down the detailed methodology and procedures for:
  - (a) the determination of the estimated costs referred to in paragraph 2;
  - (b) the determination of the individual annual supervisory fees referred to in paragraph 5, points (b) and (c);
  - (c) the determination of the maximum overall limit defined in paragraph 5, point (c); and
  - (d) the detailed arrangements necessary to make payments.

When adopting those delegated acts, the Commission shall respect the principles set out in paragraph 5 of this Article.

5. The implementing act referred to in paragraph 3 and the delegated act referred to in paragraph 4 shall respect the following principles:

- (a) the estimation of the overall amount of the annual supervisory fee takes into account the costs incurred in the previous year;
- (b) the annual supervisory fee is proportionate to the number of average monthly active recipients in the Union of each very large online platform or each very large online search engine designated pursuant to Article 33;
- (c) the overall amount of the annual supervisory fee charged on a given provider of very large online platform or very large search engine does not, in any case, exceed 0,05 % of its worldwide annual net income in the preceding financial year.

6. The individual annual supervisory fees charged pursuant to paragraph 1 of this Article shall constitute external assigned revenue in accordance with Article 21(5) of Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council <sup>(41)</sup>.

7. The Commission shall report annually to the European Parliament and to the Council on the overall amount of the costs incurred for the fulfilment of the tasks under this Regulation and the total amount of the individual annual supervisory fees charged in the preceding year.

## SECTION 6

### ***Other provisions concerning due diligence obligations***

#### *Article 44*

#### **Standards**

1. The Commission shall consult the Board, and shall support and promote the development and implementation of voluntary standards set by relevant European and international standardisation bodies, at least in respect of the following:

- (a) electronic submission of notices under Article 16;
- (b) templates, design and process standards for communicating with the recipients of the service in a user-friendly manner on restrictions resulting from terms and conditions and changes thereto;
- (c) electronic submission of notices by trusted flaggers under Article 22, including through application programming interfaces;
- (d) specific interfaces, including application programming interfaces, to facilitate compliance with the obligations set out in Articles 39 and 40;
- (e) auditing of very large online platforms and of very large online search engines pursuant to Article 37;
- (f) interoperability of the advertisement repositories referred to in Article 39(2);
- (g) transmission of data between advertising intermediaries in support of transparency obligations pursuant to Article 26(1), points (b), (c) and (d);
- (h) technical measures to enable compliance with obligations relating to advertising contained in this Regulation, including the obligations regarding prominent markings for advertisements and commercial communications referred to in Article 26;

<sup>(41)</sup> Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council of 18 July 2018 on the financial rules applicable to the general budget of the Union, amending Regulations (EU) No 1296/2013, (EU) No 1301/2013, (EU) No 1303/2013, (EU) No 1304/2013, (EU) No 1309/2013, (EU) No 1316/2013, (EU) No 223/2014, (EU) No 283/2014, and Decision No 541/2014/EU and repealing Regulation (EU, Euratom) No 966/2012 (OJ L 193, 30.7.2018, p. 1).

- (i) choice interfaces and presentation of information on the main parameters of different types of recommender systems, in accordance with Articles 27 and 38;
- (j) standards for targeted measures to protect minors online.

2. The Commission shall support the update of the standards in the light of technological developments and the behaviour of the recipients of the services in question. The relevant information regarding the update of the standards shall be publicly available and easily accessible.

#### Article 45

### Codes of conduct

1. The Commission and the Board shall encourage and facilitate the drawing up of voluntary codes of conduct at Union level to contribute to the proper application of this Regulation, taking into account in particular the specific challenges of tackling different types of illegal content and systemic risks, in accordance with Union law in particular on competition and the protection of personal data.

2. Where significant systemic risk within the meaning of Article 34(1) emerge and concern several very large online platforms or very large online search engines, the Commission may invite the providers of very large online platforms concerned or the providers of very large online search engines concerned, and other providers of very large online platforms, of very large online search engines, of online platforms and of other intermediary services, as appropriate, as well as relevant competent authorities, civil society organisations and other relevant stakeholders, to participate in the drawing up of codes of conduct, including by setting out commitments to take specific risk mitigation measures, as well as a regular reporting framework on any measures taken and their outcomes.

3. When giving effect to paragraphs 1 and 2, the Commission and the Board, and where relevant other bodies, shall aim to ensure that the codes of conduct clearly set out their specific objectives, contain key performance indicators to measure the achievement of those objectives and take due account of the needs and interests of all interested parties, and in particular citizens, at Union level. The Commission and the Board shall also aim to ensure that participants report regularly to the Commission and their respective Digital Services Coordinators of establishment on any measures taken and their outcomes, as measured against the key performance indicators that they contain. Key performance indicators and reporting commitments shall take into account differences in size and capacity between different participants.

4. The Commission and the Board shall assess whether the codes of conduct meet the aims specified in paragraphs 1 and 3, and shall regularly monitor and evaluate the achievement of their objectives, having regard to the key performance indicators that they might contain. They shall publish their conclusions.

The Commission and the Board shall also encourage and facilitate regular review and adaptation of the codes of conduct.

In the case of systematic failure to comply with the codes of conduct, the Commission and the Board may invite the signatories to the codes of conduct to take the necessary action.

#### Article 46

### Codes of conduct for online advertising

1. The Commission shall encourage and facilitate the drawing up of voluntary codes of conduct at Union level by providers of online platforms and other relevant service providers, such as providers of online advertising intermediary services, other actors involved in the programmatic advertising value chain, or organisations representing recipients of the service and civil society organisations or relevant authorities to contribute to further transparency for actors in the online advertising value chain beyond the requirements of Articles 26 and 39.

2. The Commission shall aim to ensure that the codes of conduct pursue an effective transmission of information that fully respects the rights and interests of all parties involved, as well as a competitive, transparent and fair environment in online advertising, in accordance with Union and national law, in particular on competition and the protection of privacy and personal data. The Commission shall aim to ensure that the codes of conduct at least address the following:

- (a) the transmission of information held by providers of online advertising intermediaries to recipients of the service concerning the requirements set in Article 26(1), points (b), (c) and (d);
- (b) the transmission of information held by providers of online advertising intermediaries to the repositories pursuant to Article 39;
- (c) meaningful information on data monetisation.

3. The Commission shall encourage the development of the codes of conduct by 18 February 2025 and their application by 18 August 2025.

4. The Commission shall encourage all the actors in the online advertising value chain referred to in paragraph 1 to endorse the commitments stated in the codes of conduct, and to comply with them.

#### Article 47

### Codes of conduct for accessibility

1. The Commission shall encourage and facilitate the drawing up of codes of conduct at Union level with the involvement of providers of online platforms and other relevant service providers, organisations representing recipients of the service and civil society organisations or relevant authorities to promote full and effective, equal participation, by improving access to online services that, through their initial design or subsequent adaptation, address the particular needs of persons with disabilities.

2. The Commission shall aim to ensure that the codes of conduct pursue the objective of ensuring that those services are accessible in compliance with Union and national law, in order to maximise their foreseeable use by persons with disabilities. The Commission shall aim to ensure that the codes of conduct address at least the following objectives:

- (a) designing and adapting services to make them accessible to persons with disabilities by making them perceivable, operable, understandable and robust;
- (b) explaining how the services meet the applicable accessibility requirements and making this information available to the public in an accessible manner for persons with disabilities;
- (c) making information, forms and measures provided pursuant to this Regulation available in such a manner that they are easy to find, easy to understand, and accessible to persons with disabilities.

3. The Commission shall encourage the development of the codes of conduct by 18 February 2025 and their application by 18 August 2025.

#### Article 48

### Crisis protocols

1. The Board may recommend that the Commission initiate the drawing up, in accordance with paragraphs 2, 3 and 4, of voluntary crisis protocols for addressing crisis situations. Those situations shall be strictly limited to extraordinary circumstances affecting public security or public health.

2. The Commission shall encourage and facilitate the providers of very large online platforms, of very large online search engines and, where appropriate, the providers of other online platforms or of other online search engines, to participate in the drawing up, testing and application of those crisis protocols. The Commission shall aim to ensure that those crisis protocols include one or more of the following measures:

- (a) prominently displaying information on the crisis situation provided by Member States' authorities or at Union level, or, depending on the context of the crisis, by other relevant reliable bodies;
- (b) ensuring that the provider of intermediary services designates a specific point of contact for crisis management; where relevant, this may be the electronic point of contact referred to in Article 11 or, in the case of providers of very large online platforms or of very large online search engines, the compliance officer referred to in Article 41;
- (c) where applicable, adapt the resources dedicated to compliance with the obligations set out in Articles 16, 20, 22, 23 and 35 to the needs arising from the crisis situation.

3. The Commission shall, as appropriate, involve Member States' authorities, and may also involve Union bodies, offices and agencies in drawing up, testing and supervising the application of the crisis protocols. The Commission may, where necessary and appropriate, also involve civil society organisations or other relevant organisations in drawing up the crisis protocols.

4. The Commission shall aim to ensure that the crisis protocols set out clearly all of the following:

- (a) the specific parameters to determine what constitutes the specific extraordinary circumstance the crisis protocol seeks to address and the objectives it pursues;
- (b) the role of each participant and the measures they are to put in place in preparation and once the crisis protocol has been activated;
- (c) a clear procedure for determining when the crisis protocol is to be activated;
- (d) a clear procedure for determining the period during which the measures to be taken once the crisis protocol has been activated are to be taken, which is strictly limited to what is necessary for addressing the specific extraordinary circumstances concerned;
- (e) safeguards to address any negative effects on the exercise of the fundamental rights enshrined in the Charter, in particular the freedom of expression and information and the right to non-discrimination;
- (f) a process to publicly report on any measures taken, their duration and their outcomes, upon the termination of the crisis situation.

5. If the Commission considers that a crisis protocol fails to effectively address the crisis situation, or to safeguard the exercise of fundamental rights as referred to in paragraph 4, point (e), it shall request the participants to revise the crisis protocol, including by taking additional measures.

## CHAPTER IV

## IMPLEMENTATION, COOPERATION, PENALTIES AND ENFORCEMENT

## SECTION 1

***Competent authorities and national Digital Services Coordinators****Article 49***Competent authorities and Digital Services Coordinators**

1. Member States shall designate one or more competent authorities to be responsible for the supervision of providers of intermediary services and enforcement of this Regulation ('competent authorities').
2. Member States shall designate one of the competent authorities as their Digital Services Coordinator. The Digital Services Coordinator shall be responsible for all matters relating to supervision and enforcement of this Regulation in that Member State, unless the Member State concerned has assigned certain specific tasks or sectors to other competent authorities. The Digital Services Coordinator shall in any event be responsible for ensuring coordination at national level in respect of those matters and for contributing to the effective and consistent supervision and enforcement of this Regulation throughout the Union.

For that purpose, Digital Services Coordinators shall cooperate with each other, other national competent authorities, the Board and the Commission, without prejudice to the possibility for Member States to provide for cooperation mechanisms and regular exchanges of views between the Digital Services Coordinator and other national authorities where relevant for the performance of their respective tasks.

Where a Member State designates one or more competent authorities in addition to the Digital Services Coordinator, it shall ensure that the respective tasks of those authorities and of the Digital Services Coordinator are clearly defined and that they cooperate closely and effectively when performing their tasks.

3. Member States shall designate the Digital Services Coordinators by 17 February 2024.

Member States shall make publicly available, and communicate to the Commission and the Board, the name of their competent authority designated as Digital Services Coordinator and information on how it can be contacted. The Member State concerned shall communicate to the Commission and the Board the name of the other competent authorities referred to in paragraph 2, as well as their respective tasks.

4. The provisions applicable to Digital Services Coordinators set out in Articles 50, 51 and 56 shall also apply to any other competent authorities that the Member States designate pursuant to paragraph 1 of this Article.

*Article 50***Requirements for Digital Services Coordinators**

1. Member States shall ensure that their Digital Services Coordinators perform their tasks under this Regulation in an impartial, transparent and timely manner. Member States shall ensure that their Digital Services Coordinators have all necessary resources to carry out their tasks, including sufficient technical, financial and human resources to adequately supervise all providers of intermediary services falling within their competence. Each Member State shall ensure that its Digital Services Coordinator has sufficient autonomy in managing its budget within the budget's overall limits, in order not to adversely affect the independence of the Digital Services Coordinator.

2. When carrying out their tasks and exercising their powers in accordance with this Regulation, the Digital Services Coordinators shall act with complete independence. They shall remain free from any external influence, whether direct or indirect, and shall neither seek nor take instructions from any other public authority or any private party.

3. Paragraph 2 of this Article is without prejudice to the tasks of Digital Services Coordinators within the system of supervision and enforcement provided for in this Regulation and the cooperation with other competent authorities in accordance with Article 49(2). Paragraph 2 of this Article shall not prevent the exercise of judicial review and shall also be without prejudice to proportionate accountability requirements regarding the general activities of the Digital Services Coordinators, such as financial expenditure or reporting to national parliaments, provided that those requirements do not undermine the achievement of the objectives of this Regulation.

#### Article 51

### Powers of Digital Services Coordinators

1. Where needed in order to carry out their tasks under this Regulation, Digital Services Coordinators shall have the following powers of investigation, in respect of conduct by providers of intermediary services falling within the competence of their Member State:

- (a) the power to require those providers, as well as any other persons acting for purposes related to their trade, business, craft or profession that may reasonably be aware of information relating to a suspected infringement of this Regulation, including organisations performing the audits referred to in Article 37 and Article 75(2), to provide such information without undue delay;
- (b) the power to carry out, or to request a judicial authority in their Member State to order, inspections of any premises that those providers or those persons use for purposes related to their trade, business, craft or profession, or to request other public authorities to do so, in order to examine, seize, take or obtain copies of information relating to a suspected infringement in any form, irrespective of the storage medium;
- (c) the power to ask any member of staff or representative of those providers or those persons to give explanations in respect of any information relating to a suspected infringement and to record the answers with their consent by any technical means.

2. Where needed for carrying out their tasks under this Regulation, Digital Services Coordinators shall have the following enforcement powers, in respect of providers of intermediary services falling within the competence of their Member State:

- (a) the power to accept the commitments offered by those providers in relation to their compliance with this Regulation and to make those commitments binding;
- (b) the power to order the cessation of infringements and, where appropriate, to impose remedies proportionate to the infringement and necessary to bring the infringement effectively to an end, or to request a judicial authority in their Member State to do so;
- (c) the power to impose fines, or to request a judicial authority in their Member State to do so, in accordance with Article 52 for failure to comply with this Regulation, including with any of the investigative orders issued pursuant to paragraph 1 of this Article;
- (d) the power to impose a periodic penalty payment, or to request a judicial authority in their Member State to do so, in accordance with Article 52 to ensure that an infringement is terminated in compliance with an order issued pursuant to point (b) of this subparagraph or for failure to comply with any of the investigative orders issued pursuant to paragraph 1 of this Article;
- (e) the power to adopt interim measures or to request the competent national judicial authority in their Member State to do so, to avoid the risk of serious harm.

As regards the first subparagraph, points (c) and (d), Digital Services Coordinators shall also have the enforcement powers set out in those points in respect of the other persons referred to in paragraph 1 for failure to comply with any of the orders issued to them pursuant to that paragraph. They shall only exercise those enforcement powers after providing those other persons in good time with all relevant information relating to such orders, including the applicable period, the fines or periodic payments that may be imposed for failure to comply and the possibilities for redress.

3. Where needed for carrying out their tasks under this Regulation, Digital Services Coordinators shall, in respect of providers of intermediary services falling within the competence of their Member State, where all other powers pursuant to this Article to bring about the cessation of an infringement have been exhausted and the infringement has not been remedied or is continuing and is causing serious harm which cannot be avoided through the exercise of other powers available under Union or national law, also have the power to take the following measures:

- (a) to require the management body of those providers, without undue delay, to examine the situation, adopt and submit an action plan setting out the necessary measures to terminate the infringement, ensure that the provider takes those measures, and report on the measures taken;
- (b) where the Digital Services Coordinator considers that a provider of intermediary services has not sufficiently complied with the requirements referred to in point (a), that the infringement has not been remedied or is continuing and is causing serious harm, and that that infringement entails a criminal offence involving a threat to the life or safety of persons, to request that the competent judicial authority of its Member State order the temporary restriction of access of recipients to the service concerned by the infringement or, only where that is not technically feasible, to the online interface of the provider of intermediary services on which the infringement takes place.

The Digital Services Coordinator shall, except where it acts upon the Commission's request referred to in Article 82, prior to submitting the request referred to in the first subparagraph, point (b), of this paragraph invite interested parties to submit written observations within a period that shall not be less than two weeks, describing the measures that it intends to request and identifying the intended addressee or addressees thereof. The provider of intermediary services, the intended addressee or addressees and any other third party demonstrating a legitimate interest shall be entitled to participate in the proceedings before the competent judicial authority. Any measure ordered shall be proportionate to the nature, gravity, recurrence and duration of the infringement, without unduly restricting access to lawful information by recipients of the service concerned.

The restriction of access shall be for a period of four weeks, subject to the possibility for the competent judicial authority, in its order, to allow the Digital Services Coordinator to extend that period for further periods of the same lengths, subject to a maximum number of extensions set by that judicial authority. The Digital Services Coordinator shall only extend the period where, having regard to the rights and interests of all parties affected by that restriction and all relevant circumstances, including any information that the provider of intermediary services, the addressee or addressees and any other third party that demonstrated a legitimate interest may provide to it, it considers that both of the following conditions have been met:

- (a) the provider of intermediary services has failed to take the necessary measures to terminate the infringement;
- (b) the temporary restriction does not unduly restrict access to lawful information by recipients of the service, having regard to the number of recipients affected and whether any adequate and readily accessible alternatives exist.

Where the Digital Services Coordinator considers that the conditions set out in the third subparagraph, points (a) and (b), have been met but it cannot further extend the period pursuant to the third subparagraph, it shall submit a new request to the competent judicial authority, as referred to in the first subparagraph, point (b).

4. The powers listed in paragraphs 1, 2 and 3 shall be without prejudice to Section 3.
5. The measures taken by the Digital Services Coordinators in the exercise of their powers listed in paragraphs 1, 2 and 3 shall be effective, dissuasive and proportionate, having regard, in particular, to the nature, gravity, recurrence and duration of the infringement or suspected infringement to which those measures relate, as well as the economic, technical and operational capacity of the provider of the intermediary services concerned where relevant.
6. Member States shall lay down specific rules and procedures for the exercise of the powers pursuant to paragraphs 1, 2 and 3 and shall ensure that any exercise of those powers is subject to adequate safeguards laid down in the applicable national law in compliance with the Charter and with the general principles of Union law. In particular, those measures shall only be taken in accordance with the right to respect for private life and the rights of defence, including the rights to be heard and of access to the file, and subject to the right to an effective judicial remedy of all affected parties.

#### Article 52

#### **Penalties**

1. Member States shall lay down the rules on penalties applicable to infringements of this Regulation by providers of intermediary services within their competence and shall take all the necessary measures to ensure that they are implemented in accordance with Article 51.
2. Penalties shall be effective, proportionate and dissuasive. Member States shall notify the Commission of those rules and of those measures and shall notify it, without delay, of any subsequent amendments affecting them.
3. Member States shall ensure that the maximum amount of fines that may be imposed for a failure to comply with an obligation laid down in this Regulation shall be 6 % of the annual worldwide turnover of the provider of intermediary services concerned in the preceding financial year. Member States shall ensure that the maximum amount of the fine that may be imposed for the supply of incorrect, incomplete or misleading information, failure to reply or rectify incorrect, incomplete or misleading information and failure to submit to an inspection shall be 1 % of the annual income or worldwide turnover of the provider of intermediary services or person concerned in the preceding financial year.
4. Member States shall ensure that the maximum amount of a periodic penalty payment shall be 5 % of the average daily worldwide turnover or income of the provider of intermediary services concerned in the preceding financial year per day, calculated from the date specified in the decision concerned.

#### Article 53

#### **Right to lodge a complaint**

Recipients of the service and any body, organisation or association mandated to exercise the rights conferred by this Regulation on their behalf shall have the right to lodge a complaint against providers of intermediary services alleging an infringement of this Regulation with the Digital Services Coordinator of the Member State where the recipient of the service is located or established. The Digital Services Coordinator shall assess the complaint and, where appropriate, transmit it to the Digital Services Coordinator of establishment, accompanied, where considered appropriate, by an opinion. Where the complaint falls under the responsibility of another competent authority in its Member State, the Digital Services Coordinator receiving the complaint shall transmit it to that authority. During these proceedings, both parties shall have the right to be heard and receive appropriate information about the status of the complaint, in accordance with national law.

*Article 54***Compensation**

Recipients of the service shall have the right to seek, in accordance with Union and national law, compensation from providers of intermediary services, in respect of any damage or loss suffered due to an infringement by those providers of their obligations under this Regulation.

*Article 55***Activity reports**

1. Digital Services Coordinators shall draw up annual reports on their activities under this Regulation, including the number of complaints received pursuant to Article 53 and an overview of their follow-up. The Digital Services Coordinators shall make the annual reports available to the public in a machine-readable format, subject to the applicable rules on the confidentiality of information pursuant to Article 84, and shall communicate them to the Commission and to the Board.
2. The annual report shall also include the following information:
  - (a) the number and subject matter of orders to act against illegal content and orders to provide information issued in accordance with Articles 9 and 10 by any national judicial or administrative authority of the Member State of the Digital Services Coordinator concerned;
  - (b) the effects given to those orders, as communicated to the Digital Services Coordinator pursuant to Articles 9 and 10.
3. Where a Member State has designated several competent authorities pursuant to Article 49, it shall ensure that the Digital Services Coordinator draws up a single report covering the activities of all competent authorities and that the Digital Services Coordinator receives all relevant information and support needed to that effect from the other competent authorities concerned.

*SECTION 2****Competences, coordinated investigation and consistency mechanisms****Article 56***Competences**

1. The Member State in which the main establishment of the provider of intermediary services is located shall have exclusive powers to supervise and enforce this Regulation, except for the powers provided for in paragraphs 2, 3 and 4.
2. The Commission shall have exclusive powers to supervise and enforce Section 5 of Chapter III.
3. The Commission shall have powers to supervise and enforce this Regulation, other than those laid down in Section 5 of Chapter III thereof, against providers of very large online platforms and of very large online search engines.
4. Where the Commission has not initiated proceedings for the same infringement, the Member State in which the main establishment of the provider of very large online platform or of very large online search engine is located shall have powers to supervise and enforce the obligations under this Regulation, other than those laid down in Section 5 of Chapter III, with respect to those providers.
5. Member States and the Commission shall supervise and enforce the provisions of this Regulation in close cooperation.

6. Where a provider of intermediary services does not have an establishment in the Union, the Member State where its legal representative resides or is established or the Commission shall have powers, as applicable, in accordance with paragraphs 1 and 4 of this Article, to supervise and enforce the relevant obligations under this Regulation.

7. Where a provider of intermediary services fails to appoint a legal representative in accordance with Article 13, all Member States and, in case of a provider of a very large online platform or very large online search engine, the Commission shall have powers to supervise and enforce in accordance with this Article.

Where a Digital Services Coordinator intends to exercise its powers under this paragraph, it shall notify all other Digital Services Coordinators and the Commission, and ensure that the applicable safeguards afforded by the Charter are respected, in particular to avoid that the same conduct is sanctioned more than once for the infringement of the obligations laid down in this Regulation. Where the Commission intends to exercise its powers under this paragraph, it shall notify all other Digital Services Coordinators of that intention. Following the notification pursuant to this paragraph, other Member States shall not initiate proceedings for the same infringement as that referred to in the notification.

#### Article 57

### Mutual assistance

1. Digital Services Coordinators and the Commission shall cooperate closely and provide each other with mutual assistance in order to apply this Regulation in a consistent and efficient manner. Mutual assistance shall include, in particular, exchange of information in accordance with this Article and the duty of the Digital Services Coordinator of establishment to inform all Digital Services Coordinators of destination, the Board and the Commission about the opening of an investigation and the intention to take a final decision, including its assessment, in respect of a specific provider of intermediary services.

2. For the purpose of an investigation, the Digital Services Coordinator of establishment may request other Digital Services Coordinators to provide specific information in their possession as regards a specific provider of intermediary services or to exercise their investigative powers referred to in Article 51(1) with regard to specific information located in their Member State. Where appropriate, the Digital Services Coordinator receiving the request may involve other competent authorities or other public authorities of the Member State in question.

3. The Digital Services Coordinator receiving the request pursuant to paragraph 2 shall comply with such request and inform the Digital Services Coordinator of establishment about the action taken, without undue delay and no later than two months after its receipt, unless:

- (a) the scope or the subject matter of the request is not sufficiently specified, justified or proportionate in view of the investigative purposes; or
- (b) neither the requested Digital Service Coordinator nor other competent authority or other public authority of that Member State is in possession of the requested information nor can have access to it; or
- (c) the request cannot be complied with without infringing Union or national law.

The Digital Services Coordinator receiving the request shall justify its refusal by submitting a reasoned reply, within the period set out in the first subparagraph.

#### Article 58

### Cross-border cooperation among Digital Services Coordinators

1. Unless the Commission has initiated an investigation for the same alleged infringement, where a Digital Services Coordinator of destination has reason to suspect that a provider of an intermediary service has infringed this Regulation in a manner negatively affecting the recipients of the service in the Member State of that Digital Services Coordinator, it may request the Digital Services Coordinator of establishment to assess the matter and to take the necessary investigatory and enforcement measures to ensure compliance with this Regulation.

2. Unless the Commission has initiated an investigation for the same alleged infringement, and at the request of at least three Digital Services Coordinators of destination that have reason to suspect that a specific provider of intermediary services infringed this Regulation in a manner negatively affecting recipients of the service in their Member States, the Board may request the Digital Services Coordinator of establishment to assess the matter and take the necessary investigatory and enforcement measures to ensure compliance with this Regulation.

3. A request pursuant to paragraph 1 or 2 shall be duly reasoned, and shall at least indicate:

- (a) the point of contact of the provider of the intermediary services concerned as provided for in Article 11;
- (b) a description of the relevant facts, the provisions of this Regulation concerned and the reasons why the Digital Services Coordinator that sent the request, or the Board, suspects that the provider infringed this Regulation, including the description of the negative effects of the alleged infringement;
- (c) any other information that the Digital Services Coordinator that sent the request, or the Board, considers relevant, including, where appropriate, information gathered on its own initiative or suggestions for specific investigatory or enforcement measures to be taken, including interim measures.

4. The Digital Services Coordinator of establishment shall take utmost account of the request pursuant to paragraphs 1 or 2 of this Article. Where it considers that it has insufficient information to act upon the request and has reasons to consider that the Digital Services Coordinator that sent the request, or the Board, could provide additional information, the Digital Services Coordinator of establishment may either request such information in accordance with Article 57 or, alternatively, may launch a joint investigation pursuant to Article 60(1) involving at least the requesting Digital Services Coordinator. The period laid down in paragraph 5 of this Article shall be suspended until that additional information is provided or until the invitation to participate in the joint investigation is refused.

5. The Digital Services Coordinator of establishment shall, without undue delay and in any event not later than two months following receipt of the request pursuant to paragraph 1 or 2, communicate to the Digital Services Coordinator that sent the request, and the Board, the assessment of the suspected infringement and an explanation of any investigatory or enforcement measures taken or envisaged in relation thereto to ensure compliance with this Regulation.

#### Article 59

#### **Referral to the Commission**

1. In the absence of a communication within the period laid down in Article 58(5), in the case of a disagreement of the Board with the assessment or the measures taken or envisaged pursuant to Article 58(5) or in the cases referred to in Article 60(3), the Board may refer the matter to the Commission, providing all relevant information. That information shall include at least the request or recommendation sent to the Digital Services Coordinator of establishment, the assessment by that Digital Services Coordinator, the reasons for the disagreement and any additional information supporting the referral.

2. The Commission shall assess the matter within two months following the referral of the matter pursuant to paragraph 1, after having consulted the Digital Services Coordinator of establishment.

3. Where, pursuant to paragraph 2 of this Article, the Commission considers that the assessment or the investigatory or enforcement measures taken or envisaged pursuant to Article 58(5) are insufficient to ensure effective enforcement or otherwise incompatible with this Regulation, it shall communicate its views to the Digital Services Coordinator of establishment and the Board and request the Digital Services Coordinator of establishment to review the matter.

The Digital Services Coordinator of establishment shall take the necessary investigatory or enforcement measures to ensure compliance with this Regulation, taking utmost account of the views and request for review by the Commission. The Digital Services Coordinator of establishment shall inform the Commission, as well as the requesting Digital Services Coordinator or the Board that took action pursuant to Article 58(1) or (2), about the measures taken within two months from that request for review.

#### Article 60

### Joint investigations

1. The Digital Services Coordinator of establishment may launch and lead joint investigations with the participation of one or more other Digital Services Coordinators concerned:

- (a) at its own initiative, to investigate an alleged infringement of this Regulation by a given provider of intermediary services in several Member States; or
- (b) upon recommendation of the Board, acting on the request of at least three Digital Services Coordinators alleging, based on a reasonable suspicion, an infringement by a given provider of intermediary services affecting recipients of the service in their Member States.

2. Any Digital Services Coordinator that proves that it has a legitimate interest in participating in a joint investigation pursuant to paragraph 1 may request to do so. The joint investigation shall be concluded within three months from its launch, unless otherwise agreed amongst the participants.

The Digital Services Coordinator of establishment shall communicate its preliminary position on the alleged infringement no later than one month after the end of the deadline referred to in the first subparagraph to all Digital Services Coordinators, the Commission and the Board. The preliminary position shall take into account the views of all other Digital Services Coordinators participating in the joint investigation. Where applicable, this preliminary position shall also set out the enforcement measures envisaged.

3. The Board may refer the matter to the Commission pursuant to Article 59, where:

- (a) the Digital Services Coordinator of establishment failed to communicate its preliminary position within the deadline set out in paragraph 2;
- (b) the Board substantially disagrees with the preliminary position communicated by the Digital Services Coordinator of establishment; or
- (c) the Digital Services Coordinator of establishment failed to initiate the joint investigation promptly following the recommendation by the Board pursuant to paragraph 1, point (b).

4. In carrying out the joint investigation, the participating Digital Services Coordinators shall cooperate in good faith, taking into account, where applicable, the indications of the Digital Services Coordinator of establishment and the Board's recommendation. The Digital Services Coordinators of destination participating in the joint investigation shall be entitled, at the request of or after having consulted the Digital Services Coordinator of establishment, to exercise their investigative powers referred to in Article 51(1) in respect of the providers of intermediary services concerned by the alleged infringement, with regard to information and premises located within their territory.

## SECTION 3

**European Board for Digital Services**

## Article 61

**European Board for Digital Services**

1. An independent advisory group of Digital Services Coordinators on the supervision of providers of intermediary services named 'European Board for Digital Services' (the 'Board') is established.
2. The Board shall advise the Digital Services Coordinators and the Commission in accordance with this Regulation to achieve the following objectives:
  - (a) contributing to the consistent application of this Regulation and effective cooperation of the Digital Services Coordinators and the Commission with regard to matters covered by this Regulation;
  - (b) coordinating and contributing to guidelines and analysis of the Commission and Digital Services Coordinators and other competent authorities on emerging issues across the internal market with regard to matters covered by this Regulation;
  - (c) assisting the Digital Services Coordinators and the Commission in the supervision of very large online platforms.

## Article 62

**Structure of the Board**

1. The Board shall be composed of Digital Services Coordinators who shall be represented by high-level officials. The failure by one or more Member States to designate a Digital Services Coordinator shall not prevent the Board from performing its tasks under this Regulation. Where provided for by national law, other competent authorities entrusted with specific operational responsibilities for the application and enforcement of this Regulation alongside the Digital Services Coordinator may participate in the Board. Other national authorities may be invited to the meetings, where the issues discussed are of relevance for them.
2. The Board shall be chaired by the Commission. The Commission shall convene the meetings and prepare the agenda in accordance with the tasks of the Board pursuant to this Regulation and in line with its rules of procedure. When the Board is requested to adopt a recommendation pursuant to this Regulation, it shall immediately make the request available to other Digital Services Coordinators through the information sharing system set out in Article 85.
3. Each Member State shall have one vote. The Commission shall not have voting rights.

The Board shall adopt its acts by simple majority. When adopting a recommendation to the Commission referred to in Article 36(1), first subparagraph, the Board shall vote within 48 hours after the request of the Chair of the Board.

4. The Commission shall provide administrative and analytical support for the activities of the Board pursuant to this Regulation.
5. The Board may invite experts and observers to attend its meetings, and may cooperate with other Union bodies, offices, agencies and advisory groups, as well as external experts as appropriate. The Board shall make the results of this cooperation publicly available.
6. The Board may consult interested parties, and shall make the results of such consultation publicly available.
7. The Board shall adopt its rules of procedure, following the consent of the Commission.

*Article 63***Tasks of the Board**

1. Where necessary to meet the objectives set out in Article 61(2), the Board shall in particular:
  - (a) support the coordination of joint investigations;
  - (b) support the competent authorities in the analysis of reports and results of audits of very large online platforms or of very large online search engines to be transmitted pursuant to this Regulation;
  - (c) issue opinions, recommendations or advice to Digital Services Coordinators in accordance with this Regulation, taking into account, in particular, the freedom to provide services of the providers of intermediary service;
  - (d) advise the Commission on the measures referred to in Article 66 and, adopt opinions concerning very large online platforms or very large online search engines in accordance with this Regulation;
  - (e) support and promote the development and implementation of European standards, guidelines, reports, templates and code of conducts in cooperation with relevant stakeholders as provided for in this Regulation, including by issuing opinions or recommendations on matters related to Article 44, as well as the identification of emerging issues, with regard to matters covered by this Regulation.
2. Digital Services Coordinators and, where applicable, other competent authorities that do not follow the opinions, requests or recommendations addressed to them adopted by the Board shall provide the reasons for this choice, including an explanation on the investigations, actions and the measures that they have implemented, when reporting pursuant to this Regulation or when adopting their relevant decisions, as appropriate.

## SECTION 4

***Supervision, investigation, enforcement and monitoring in respect of providers of very large online platforms and of very large online search engines****Article 64***Development of expertise and capabilities**

1. The Commission, in cooperation with the Digital Services Coordinators and the Board, shall develop Union expertise and capabilities, including, where appropriate, through the secondment of Member States' personnel.
2. In addition, the Commission, in cooperation with the Digital Services Coordinators and the Board, shall coordinate the assessment of systemic and emerging issues across the Union in relation to very large online platforms or very large online search engines with regard to matters covered by this Regulation.
3. The Commission may ask the Digital Services Coordinators, the Board and other Union bodies, offices and agencies with relevant expertise to support the assessment of systemic and emerging issues across the Union under this Regulation.
4. Member States shall cooperate with the Commission, in particular through their respective Digital Services Coordinators and other competent authorities, where applicable, including by making available their expertise and capabilities.

*Article 65***Enforcement of obligations of providers of very large online platforms and of very large online search engines**

1. For the purposes of investigating compliance of providers of very large online platforms and of very large online search engines with the obligations laid down in this Regulation, the Commission may exercise the investigatory powers laid down in this Section even before initiating proceedings pursuant to Article 66(2). It may exercise those powers on its own initiative or following a request pursuant to paragraph 2 of this Article.
2. Where a Digital Services Coordinator has reason to suspect that a provider of a very large online platform or of a very large online search engine has infringed the provisions of Section 5 of Chapter III or has systemically infringed any of the provisions of this Regulation in a manner that seriously affects recipients of the service in its Member State, it may send, through the information sharing system referred to in Article 85, a request to the Commission to assess the matter.
3. A request pursuant to paragraph 2 shall be duly reasoned and at least indicate:
  - (a) the point of contact of the provider of the very large online platform or of the very large online search engine concerned as provided for in Article 11;
  - (b) a description of the relevant facts, the provisions of this Regulation concerned and the reasons why the Digital Services Coordinator that sent the request suspects that the provider of the very large online platforms or of the very large online search engine concerned infringed this Regulation, including a description of the facts that show that the suspected infringement is of a systemic nature;
  - (c) any other information that the Digital Services Coordinator that sent the request considers relevant, including, where appropriate, information gathered on its own initiative.

*Article 66***Initiation of proceedings by the Commission and cooperation in investigation**

1. The Commission may initiate proceedings in view of the possible adoption of decisions pursuant to Articles 73 and 74 in respect of the relevant conduct by the provider of the very large online platform or of the very large online search engine that the Commission suspect of having infringed any of the provisions of this Regulation.
2. Where the Commission decides to initiate proceedings pursuant to paragraph 1 of this Article, it shall notify all Digital Services Coordinators and the Board through the information sharing system referred to in Article 85, as well as the provider of the very large online platform or of the very large online search engine concerned.

The Digital Services Coordinators shall, without undue delay after being informed of initiation of the proceedings, transmit to the Commission any information they hold about the infringement at stake.

The initiation of proceedings pursuant to paragraph 1 of this Article by the Commission shall relieve the Digital Services Coordinator, or any competent authority where applicable, of its powers to supervise and enforce provided for in this Regulation pursuant to Article 56(4).

3. In the exercise of its powers of investigation under this Regulation the Commission may request the individual or joint support of any Digital Services Coordinators concerned by the suspected infringement, including the Digital Services Coordinator of establishment. The Digital Services Coordinators that have received such a request, and, where involved by the Digital Services Coordinator, any other competent authority, shall cooperate sincerely and in a timely manner with the Commission and shall be entitled to exercise their investigative powers referred to in Article 51(1) in respect of the provider of the very large online platform or of the very large online search engine at stake, with regard to information, persons and premises located within the territory of their Member State and in accordance with the request.

4. The Commission shall provide the Digital Services Coordinator of establishment and the Board with all relevant information about the exercise of the powers referred to in Articles 67 to 72 and its preliminary findings referred to in Article 79(1). The Board shall submit its views on those preliminary findings to the Commission within the period set pursuant to Article 79(2). The Commission shall take utmost account of any views of the Board in its decision.

#### Article 67

##### **Requests for information**

1. In order to carry out the tasks assigned to it under this Section, the Commission may, by simple request or by decision, require the provider of the very large online platform or of the very large online search engine concerned, as well as any other natural or legal person acting for purposes related to their trade, business, craft or profession that may be reasonably aware of information relating to the suspected infringement, including organisations performing the audits referred to in Article 37 and Article 75(2), to provide such information within a reasonable period.

2. When sending a simple request for information to the provider of the very large online platform or of the very large online search engine concerned or other person referred to in paragraph 1 of this Article, the Commission shall state the legal basis and the purpose of the request, specify what information is required and set the period within which the information is to be provided, and the fines provided for in Article 74 for supplying incorrect, incomplete or misleading information.

3. Where the Commission requires the provider of the very large online platform or of the very large online search engine concerned or other person referred to in paragraph 1 of this Article to supply information by decision, it shall state the legal basis and the purpose of the request, specify what information is required and set the period within which it is to be provided. It shall also indicate the fines provided for in Article 74 and indicate or impose the periodic penalty payments provided for in Article 76. It shall further indicate the right to have the decision reviewed by the Court of Justice of the European Union.

4. The providers of the very large online platform or of the very large online search engine concerned or other person referred to in paragraph 1 or their representatives and, in the case of legal persons, companies or firms, or where they have no legal personality, the persons authorised to represent them by law or by their constitution shall supply the information requested on behalf of the provider of the very large online platform or of the very large online search engine concerned or other person referred to in paragraph 1. Lawyers duly authorised to act may supply the information on behalf of their clients. The latter shall remain fully responsible if the information supplied is incomplete, incorrect or misleading.

5. At the request of the Commission, the Digital Services Coordinators and other competent authorities shall provide the Commission with all necessary information to carry out the tasks assigned to it under this Section.

6. The Commission shall, without undue delay after sending the simple request or the decision referred to in paragraph 1 of this Article, send a copy thereof to the Digital Services Coordinators, through the information sharing system referred to in Article 85.

#### Article 68

##### **Power to take interviews and statements**

1. In order to carry out the tasks assigned to it under this Section, the Commission may interview any natural or legal person who consents to being interviewed for the purpose of collecting information, relating to the subject-matter of an investigation, in relation to the suspected infringement. The Commission shall be entitled to record such interview by appropriate technical means.

2. If the interview referred to in paragraph 1 is conducted on other premises than those of the Commission, the Commission shall inform the Digital Services Coordinator of the Member State in the territory of which the interview takes place. If so requested by that Digital Services Coordinator, its officials may assist the officials and other accompanying persons authorised by the Commission to conduct the interview.

#### Article 69

### Power to conduct inspections

1. In order to carry out the tasks assigned to it under this Section, the Commission may conduct all necessary inspections at the premises of the provider of the very large online platform or of the very large online search engine concerned or of another person referred to in Article 67(1).

2. The officials and other accompanying persons authorised by the Commission to conduct an inspection shall be empowered to:

- (a) enter any premises, land and means of transport of the provider of the very large online platform or of the very large online search engine concerned or of the other person concerned;
- (b) examine the books and other records related to the provision of the service concerned, irrespective of the medium on which they are stored;
- (c) take or obtain in any form copies of or extracts from such books or other records;
- (d) require the provider of the very large online platform or of the very large online search engine or the other person concerned to provide access to and explanations on its organisation, functioning, IT system, algorithms, data-handling and business practices and to record or document the explanations given;
- (e) seal any premises used for purposes related to the trade, business, craft or profession of the provider of the very large online platform or of the very large online search engine or of the other person concerned, as well as books or other records, for the period and to the extent necessary for the inspection;
- (f) ask any representative or member of staff of the provider of the very large online platform or of the very large online search engine or the other person concerned for explanations on facts or documents relating to the subject-matter and purpose of the inspection and to record the answers;
- (g) address questions to any such representative or member of staff relating to the subject-matter and purpose of the inspection and to record the answers.

3. Inspections may be carried out with the assistance of auditors or experts appointed by the Commission pursuant to Article 72(2), and of Digital Services Coordinator or other competent national authorities of the Member State in the territory of which the inspection is conducted.

4. Where the production of required books or other records related to the provision of the service concerned is incomplete or where the answers to questions asked under paragraph 2 of this Article are incorrect, incomplete or misleading, the officials and other accompanying persons authorised by the Commission to conduct an inspection shall exercise their powers upon production of a written authorisation specifying the subject matter and purpose of the inspection and the penalties provided for in Articles 74 and 76. In good time before the inspection, the Commission shall inform the Digital Services Coordinator of the Member State in the territory in which the inspection is to be conducted thereof.

5. During inspections, the officials and other accompanying persons authorised by the Commission, the auditors and experts appointed by the Commission, the Digital Services Coordinator or the other competent authorities of the Member State in the territory of which the inspection is conducted may require the provider of the very large online platform or of the very large online search engine or other person concerned to provide explanations on its organisation, functioning, IT system, algorithms, data-handling and business conducts, and may address questions to its key personnel.

6. The provider of the very large online platform or of the very large online search engine or other natural or legal person concerned shall be required to submit to an inspection ordered by decision of the Commission. The decision shall specify the subject matter and purpose of the inspection, set the date on which it is to begin and indicate the penalties provided for in Articles 74 and 76 and the right to have the decision reviewed by the Court of Justice of the European Union. The Commission shall consult the Digital Services Coordinator of the Member State on territory of which the inspection is to be conducted prior to taking that decision.

7. Officials of, and other persons authorised or appointed by, the Digital Services Coordinator of the Member State on the territory of which the inspection is to be conducted shall, at the request of that Digital Services Coordinator or of the Commission, actively assist the officials and other accompanying persons authorised by the Commission in relation to the inspection. To this end, they shall have the powers listed in paragraph 2.

8. Where the officials and other accompanying persons authorised by the Commission find that the provider of the very large online platform or of the very large online search engine or the other person concerned opposes an inspection ordered pursuant to this Article, the Member State in the territory of which the inspection is to be conducted shall, at the request of those officials or other accompanying persons and in accordance with the national law of the Member State, afford them necessary assistance, including, where appropriate under that national law, in the form of coercive measures taken by a competent law enforcement authority, so as to enable them to conduct the inspection.

9. If the assistance provided for in paragraph 8 requires authorisation from a national judicial authority in accordance with the national law of the Member State concerned, such authorisation shall be applied for by the Digital Services Coordinator of that Member State at the request of the officials and other accompanying persons authorised by the Commission. Such authorisation may also be applied for as a precautionary measure.

10. Where the authorisation referred to in paragraph 9 is applied for, the national judicial authority before which a case has been brought shall verify that the Commission decision ordering the inspection is authentic and that the coercive measures envisaged are neither arbitrary nor excessive having regard to the subject matter of the inspection. When conducting such verification, the national judicial authority may ask the Commission, directly or through the Digital Services Coordinators of the Member State concerned, for detailed explanations, in particular those concerning the grounds on which the Commission suspects an infringement of this Regulation, concerning the seriousness of the suspected infringement and concerning the nature of the involvement of the provider of the very large online platform or of the very large online search engine or of the other person concerned. However, the national judicial authority shall not call into question the necessity for the inspection nor demand information from the case file of the Commission. The lawfulness of the Commission decision shall be subject to review only by the Court of Justice of the European Union.

## Article 70

### Interim measures

1. In the context of proceedings which may lead to the adoption of a decision of non-compliance pursuant to Article 73(1), where there is an urgency due to the risk of serious damage for the recipients of the service, the Commission may, by decision, order interim measures against the provider of the very large online platform or of the very large online search engine concerned on the basis of a *prima facie* finding of an infringement.

2. A decision under paragraph 1 shall apply for a specified period of time and may be renewed in so far this is necessary and appropriate.

*Article 71***Commitments**

1. If, during proceedings under this Section, the provider of the very large online platform or of the very large online search engine concerned offers commitments to ensure compliance with the relevant provisions of this Regulation, the Commission may by decision make those commitments binding on the provider of the very large online platform or of the very large online search engine concerned and declare that there are no further grounds for action.
2. The Commission may, upon request or on its own initiative, reopen the proceedings:
  - (a) where there has been a material change in any of the facts on which the decision was based;
  - (b) where the provider of the very large online platform or of the very large online search engine concerned acts contrary to its commitments; or
  - (c) where the decision was based on incomplete, incorrect or misleading information provided by the provider of the very large online platform or of the very large online search engine concerned or other person referred to in Article 67(1).
3. Where the Commission considers that the commitments offered by the provider of the very large online platform or of the very large online search engine concerned are unable to ensure effective compliance with the relevant provisions of this Regulation, it shall reject those commitments in a reasoned decision when concluding the proceedings.

*Article 72***Monitoring actions**

1. For the purposes of carrying out the tasks assigned to it under this Section, the Commission may take the necessary actions to monitor the effective implementation and compliance with this Regulation by providers of the very large online platform and of the very large online search engines. The Commission may order them to provide access to, and explanations relating to, its databases and algorithms. Such actions may include, imposing an obligation on the provider of the very large online platform or of the very large online search engine to retain all documents deemed to be necessary to assess the implementation of and compliance with the obligations under this Regulation.
2. The actions pursuant to paragraph 1 may include the appointment of independent external experts and auditors, as well as experts and auditors from competent national authorities with the agreement of the authority concerned, to assist the Commission in monitoring the effective implementation and compliance with the relevant provisions of this Regulation and to provide specific expertise or knowledge to the Commission.

*Article 73***Non-compliance**

1. The Commission shall adopt a non-compliance decision where it finds that the provider of the very large online platform or of the very large online search engine concerned does not comply with one or more of the following:
  - (a) the relevant provisions of this Regulation;
  - (b) interim measures ordered pursuant to Article 70;
  - (c) commitments made binding pursuant to Article 71.

2. Before adopting the decision pursuant to paragraph 1, the Commission shall communicate its preliminary findings to the provider of the very large online platform or of the very large online search engine concerned. In the preliminary findings, the Commission shall explain the measures that it considers taking, or that it considers that the provider of the very large online platform or of the very large online search engine concerned should take, in order to effectively address the preliminary findings.

3. In the decision adopted pursuant to paragraph 1 the Commission shall order the provider of the very large online platform or of the very large online search engine concerned to take the necessary measures to ensure compliance with the decision pursuant to paragraph 1 within a reasonable period specified therein and to provide information on the measures that that provider intends to take to comply with the decision.

4. The provider of the very large online platform or of the very large online search engine concerned shall provide the Commission with a description of the measures it has taken to ensure compliance with the decision pursuant to paragraph 1 upon their implementation.

5. Where the Commission finds that the conditions of paragraph 1 are not met, it shall close the investigation by a decision. The decision shall apply with immediate effect.

#### Article 74

##### Fines

1. In the decision referred to in Article 73, the Commission may impose on the provider of the very large online platform or of the very large online search engine concerned fines not exceeding 6 % of its total worldwide annual turnover in the preceding financial year where it finds that the provider, intentionally or negligently:

- (a) infringes the relevant provisions of this Regulation;
- (b) fails to comply with a decision ordering interim measures under Article 70; or
- (c) fails to comply with a commitment made binding by a decision pursuant to Article 71.

2. The Commission may adopt a decision imposing on the provider of the very large online platform or of the very large online search engine concerned or on another natural or legal person referred to in Article 67(1) fines not exceeding 1 % of the total annual income or worldwide turnover in the preceding financial year, where they intentionally or negligently:

- (a) supply incorrect, incomplete or misleading information in response to a simple request or request by a decision pursuant to Article 67;
- (b) fail to reply to the request for information by decision within the set period;
- (c) fail to rectify within the period set by the Commission, incorrect, incomplete or misleading information given by a member of staff, or fail or refuse to provide complete information;
- (d) refuse to submit to an inspection pursuant to Article 69;
- (e) fail to comply with the measures adopted by the Commission pursuant to Article 72; or
- (f) fail to comply with the conditions for access to the Commission's file pursuant to Article 79(4).

3. Before adopting the decision pursuant to paragraph 2 of this Article, the Commission shall communicate its preliminary findings to the provider of the very large online platform or of the very large online search engine concerned or to another person referred to in Article 67(1).

4. In fixing the amount of the fine, the Commission shall have regard to the nature, gravity, duration and recurrence of the infringement and, for fines imposed pursuant to paragraph 2, the delay caused to the proceedings.

*Article 75***Enhanced supervision of remedies to address infringements of obligations laid down in Section 5 of Chapter III**

1. When adopting a decision pursuant to Article 73 in relation to an infringement by a provider of a very large online platform or of a very large online search engine of any of the provisions of Section 5 of Chapter III, the Commission shall make use of the enhanced supervision system laid down in this Article. When doing so, it shall take utmost account of any opinion of the Board pursuant to this Article.

2. In the decision referred to in Article 73, the Commission shall require the provider of a very large online platform or of a very large online search engine concerned to draw up and communicate, within a reasonable period specified in the decision, to the Digital Services Coordinators, the Commission and the Board an action plan setting out the necessary measures which are sufficient to terminate or remedy the infringement. Those measures shall include a commitment to perform an independent audit in accordance with Article 37(3) and (4) on the implementation of the other measures, and shall specify the identity of the auditors, as well as the methodology, timing and follow-up of the audit. The measures may also include, where appropriate, a commitment to participate in a relevant code of conduct, as provided for in Article 45.

3. Within one month following receipt of the action plan, the Board shall communicate its opinion on the action plan to the Commission. Within one month following receipt of that opinion, the Commission shall decide whether the measures set out in the action plan are sufficient to terminate or remedy the infringement, and shall set a reasonable period for its implementation. The possible commitment to adhere to relevant codes of conduct shall be taken into account in that decision. The Commission shall subsequently monitor the implementation of the action plan. To that end, the provider of a very large online platform or of a very large online search engine concerned shall communicate the audit report to the Commission without undue delay after it becomes available, and shall keep the Commission up to date on steps taken to implement the action plan. The Commission may, where necessary for such monitoring, require the provider of a very large online platform or of a very large online search engine concerned to provide additional information within a reasonable period set by the Commission.

The Commission shall keep the Board and the Digital Services Coordinators informed about the implementation of the action plan, and about its monitoring thereof.

4. The Commission may take necessary measures in accordance with this Regulation, in particular Article 76(1), point (e), and Article 82(1), where:

- (a) the provider of the very large online platform or of the very large online search engine concerned fails to provide any action plan, the audit report, the necessary updates or any additional information required, within the applicable period;
- (b) the Commission rejects the proposed action plan because it considers that the measures set out therein are insufficient to terminate or remedy the infringement; or
- (c) the Commission considers, on the basis of the audit report, any updates or additional information provided or any other relevant information available to it, that the implementation of the action plan is insufficient to terminate or remedy the infringement.

*Article 76***Periodic penalty payments**

1. The Commission may adopt a decision, imposing on the provider of the very large online platform or of the very large online search engine concerned or other person referred to in Article 67(1), as applicable, periodic penalty payments not exceeding 5 % of the average daily income or worldwide annual turnover in the preceding financial year per day, calculated from the date appointed by the decision, in order to compel them to:

- (a) supply correct and complete information in response to a decision requiring information pursuant to Article 67;
- (b) submit to an inspection which it has ordered by decision pursuant to Article 69;

- (c) comply with a decision ordering interim measures pursuant to Article 70(1);
- (d) comply with commitments made legally binding by a decision pursuant to Article 71(1);
- (e) comply with a decision pursuant to Article 73(1), including where applicable the requirements it contains relating to the action plan referred to in Article 75.

2. Where the provider of the very large online platform or of the very large online search engine concerned or other person referred to in Article 67(1) has satisfied the obligation which the periodic penalty payment was intended to enforce, the Commission may fix the definitive amount of the periodic penalty payment at a figure lower than that under the original decision.

#### Article 77

##### **Limitation period for the imposition of penalties**

1. The powers conferred on the Commission by Articles 74 and 76 shall be subject to a limitation period of five years.
2. Time shall begin to run on the day on which the infringement is committed. However, in the case of continuing or repeated infringements, time shall begin to run on the day on which the infringement ceases.
3. Any action taken by the Commission or by the Digital Services Coordinator for the purpose of the investigation or proceedings in respect of an infringement shall interrupt the limitation period for the imposition of fines or periodic penalty payments. Actions which interrupt the limitation period shall include, in particular, the following:
  - (a) requests for information by the Commission or by a Digital Services Coordinator;
  - (b) inspection;
  - (c) the opening of a proceeding by the Commission pursuant to Article 66(1).
4. Each interruption shall start time running afresh. However, the limitation period for the imposition of fines or periodic penalty payments shall expire at the latest on the day on which a period equal to twice the limitation period has elapsed without the Commission having imposed a fine or a periodic penalty payment. That period shall be extended by the time during which the limitation period has been suspended pursuant to paragraph 5.
5. The limitation period for the imposition of fines or periodic penalty payments shall be suspended for as long as the decision of the Commission is the subject of proceedings pending before the Court of Justice of the European Union.

#### Article 78

##### **Limitation period for the enforcement of penalties**

1. The power of the Commission to enforce decisions taken pursuant to Articles 74 and 76 shall be subject to a limitation period of five years.
2. Time shall begin to run on the day on which the decision becomes final.
3. The limitation period for the enforcement of penalties shall be interrupted:
  - (a) by notification of a decision varying the original amount of the fine or periodic penalty payment or refusing an application for variation;
  - (b) by any action of the Commission, or of a Member State acting at the request of the Commission, designed to enforce payment of the fine or periodic penalty payment.
4. Each interruption shall start time running afresh.

5. The limitation period for the enforcement of penalties shall be suspended for so long as:
- (a) time to pay is allowed;
  - (b) enforcement of payment is suspended pursuant to a decision of the Court of Justice of the European Union or to a decision of a national court.

#### *Article 79*

#### **Right to be heard and access to the file**

1. Before adopting a decision pursuant to Article 73(1), Article 74 or 76, the Commission shall give the provider of the very large online platform or of the very large online search engine concerned or other person referred to in Article 67(1) the opportunity of being heard on:
- (a) preliminary findings of the Commission, including any matter to which the Commission has taken objections; and
  - (b) measures that the Commission may intend to take in view of the preliminary findings referred to point (a).
2. The provider of the very large online platform or of the very large online search engine concerned or other person referred to in Article 67(1) may submit its observations on the Commission's preliminary findings within a reasonable period set by the Commission in its preliminary findings, which may not be less than 14 days.
3. The Commission shall base its decisions only on objections on which the parties concerned have been able to comment.
4. The rights of defence of the parties concerned shall be fully respected in the proceedings. They shall be entitled to have access to the Commission's file under the terms of a negotiated disclosure, subject to the legitimate interest of the provider of the very large online platform or of the very large online search engine or other person concerned in the protection of their business secrets. The Commission shall have the power to adopt decisions setting out such terms of disclosure in case of disagreement between the parties. The right of access to the file of the Commission shall not extend to confidential information and internal documents of the Commission, the Board, Digital Service Coordinators, other competent authorities or other public authorities of the Member States. In particular, the right of access shall not extend to correspondence between the Commission and those authorities. Nothing in this paragraph shall prevent the Commission from disclosing and using information necessary to prove an infringement.
5. The information collected pursuant to Articles 67, 68 and 69 shall be used only for the purpose of this Regulation.

#### *Article 80*

#### **Publication of decisions**

1. The Commission shall publish the decisions it adopts pursuant to Article 70(1), Article 71(1) and Articles 73 to 76. Such publication shall state the names of the parties and the main content of the decision, including any penalties imposed.
2. The publication shall have regard to the rights and legitimate interests of the provider of the very large online platform or of the very large online search engine concerned, any other person referred to in Article 67(1) and any third parties in the protection of their confidential information.

#### *Article 81*

#### **Review by the Court of Justice of the European Union**

In accordance with Article 261 TFEU, the Court of Justice of the European Union has unlimited jurisdiction to review decisions by which the Commission has imposed fines or periodic penalty payments. It may cancel, reduce or increase the fine or periodic penalty payment imposed.

*Article 82***Requests for access restrictions and cooperation with national courts**

1. Where all powers pursuant to this Section to bring about the cessation of an infringement of this Regulation have been exhausted, the infringement persists and causes serious harm which cannot be avoided through the exercise of other powers available under Union or national law, the Commission may request the Digital Services Coordinator of establishment of the provider of the very large online platform or of the very large online search engine concerned to act pursuant to Article 51(3).

Prior to making such request to the Digital Services Coordinator, the Commission shall invite interested parties to submit written observations within a period that shall not be less than 14 working days, describing the measures it intends to request and identifying the intended addressee or addressees thereof.

2. Where the coherent application of this Regulation so requires, the Commission, acting on its own initiative, may submit written observations to the competent judicial authority referred to Article 51(3). With the permission of the judicial authority in question, it may also make oral observations.

For the purpose of the preparation of its observations only, the Commission may request that judicial authority to transmit or ensure the transmission to it of any documents necessary for the assessment of the case.

3. When a national court rules on a matter which is already the subject matter of a decision adopted by the Commission under this Regulation, that national court shall not take any decision which runs counter to that Commission decision. National courts shall also avoid taking decisions which could conflict with a decision contemplated by the Commission in proceedings it has initiated under this Regulation. To that effect, a national court may assess whether it is necessary to stay its proceedings. This is without prejudice to Article 267 TFEU.

*Article 83***Implementing acts relating to Commission intervention**

In relation to the Commission intervention covered by this Section, the Commission may adopt implementing acts concerning the practical arrangements for:

- (a) the proceedings pursuant to Articles 69 and 72;
- (b) the hearings provided for in Article 79;
- (c) the negotiated disclosure of information provided for in Article 79.

Before the adoption of any measures pursuant to the first paragraph of this Article, the Commission shall publish a draft thereof and invite all interested parties to submit their comments within the period set out therein, which shall not be less than one month. Those implementing acts shall be adopted in accordance with the advisory procedure referred to in Article 88.

*SECTION 5****Common provisions on enforcement****Article 84***Professional secrecy**

Without prejudice to the exchange and to the use of information referred to in this Chapter, the Commission, the Board, Member States' competent authorities and their respective officials, servants and other persons working under their supervision, and any other natural or legal person involved, including auditors and experts appointed pursuant to Article 72(2), shall not disclose information acquired or exchanged by them pursuant to this Regulation and of the kind covered by the obligation of professional secrecy.

*Article 85***Information sharing system**

1. The Commission shall establish and maintain a reliable and secure information sharing system supporting communications between Digital Services Coordinators, the Commission and the Board. Other competent authorities may be granted access to this system where necessary for them to carry out the tasks conferred to them in accordance with this Regulation.
2. The Digital Services Coordinators, the Commission and the Board shall use the information sharing system for all communications pursuant to this Regulation.
3. The Commission shall adopt implementing acts laying down the practical and operational arrangements for the functioning of the information sharing system and its interoperability with other relevant systems. Those implementing acts shall be adopted in accordance with the advisory procedure referred to in Article 88.

*Article 86***Representation**

1. Without prejudice to Directive (EU) 2020/1828 or to any other type of representation under national law, recipients of intermediary services shall at least have the right to mandate a body, organisation or association to exercise the rights conferred by this Regulation on their behalf, provided the body, organisation or association meets all of the following conditions:
  - (a) it operates on a not-for-profit basis;
  - (b) it has been properly constituted in accordance with the law of a Member State;
  - (c) its statutory objectives include a legitimate interest in ensuring that this Regulation is complied with.
2. Providers of online platforms shall take the necessary technical and organisational measures to ensure that complaints submitted by bodies, organisations or associations referred to in paragraph 1 of this Article on behalf of recipients of the service through the mechanisms referred to in Article 20(1) are processed and decided upon with priority and without undue delay.

*SECTION 6****Delegated and implementing acts****Article 87***Exercise of the delegation**

1. The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article.
2. The delegation of power referred to in Articles 24, 33, 37, 40 and 43 shall be conferred on the Commission for five years starting from 16 November 2022. The Commission shall draw up a report in respect of the delegation of power not later than nine months before the end of the five-year period. The delegation of power shall be tacitly extended for periods of an identical duration, unless the European Parliament or the Council opposes such extension not later than three months before the end of each period.

3. The delegation of power referred to in Articles 24, 33, 37, 40 and 43 may be revoked at any time by the European Parliament or by the Council. A decision of revocation shall put an end to the delegation of power specified in that decision. It shall take effect the day following that of its publication in the *Official Journal of the European Union* or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.
4. Before adopting a delegated act, the Commission shall consult experts designated by each Member State in accordance with the principles laid down in the Interinstitutional Agreement of 13 April 2016 on Better Law-Making.
5. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.
6. A delegated act adopted pursuant to Articles 24, 33, 37, 40 and 43 shall enter into force only if no objection has been expressed by either the European Parliament or the Council within a period of three months of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by three months at the initiative of the European Parliament or of the Council.

#### Article 88

#### **Committee procedure**

1. The Commission shall be assisted by a committee ('the Digital Services Committee'). That Committee shall be a Committee within the meaning of Regulation (EU) No 182/2011.
2. Where reference is made to this paragraph, Article 4 of Regulation (EU) No 182/2011 shall apply.

#### CHAPTER V

#### **FINAL PROVISIONS**

#### Article 89

#### **Amendments to Directive 2000/31/EC**

1. Articles 12 to 15 of Directive 2000/31/EC are deleted.
2. References to Articles 12 to 15 of Directive 2000/31/EC shall be construed as references to Articles 4, 5, 6 and 8 of this Regulation, respectively.

#### Article 90

#### **Amendment to Directive (EU) 2020/1828**

In Annex I to Directive (EU) 2020/1828, the following point is added:

'(68) Regulation (EU) 2022/2065 of the European Parliament and of the Council of 19 October 2022 on a Single Market for Digital Services and amending Directive 2000/31/EC (Digital Services Act) (OJ L 277, 27.10.2022, p. 1).'

#### Article 91

#### **Review**

1. By 18 February 2027, the Commission shall evaluate and report to the European Parliament, the Council and the European Economic and Social Committee on the potential effect of this Regulation on the development and economic growth of small and medium-sized enterprises.

By 17 November 2025, the Commission shall evaluate and report to the European Parliament, the Council and the European Economic and Social Committee on:

- (a) the application of Article 33, including the scope of providers of intermediary services covered by the obligations set out in Section 5 of Chapter III of this Regulation;
- (b) the way that this Regulation interacts with other legal acts, in particular the acts referred to in Article 2(3) and (4).

2. By 17 November 2027, and every five years thereafter, the Commission shall evaluate this Regulation, and report to the European Parliament, the Council and the European Economic and Social Committee.

This report shall address in particular:

- (a) the application of paragraph 1, second subparagraph, points (a) and (b);
- (b) the contribution of this Regulation to the deepening and efficient functioning of the internal market for intermediary services, in particular as regards the cross-border provision of digital services;
- (c) the application of Articles 13, 16, 20, 21, 45 and 46;
- (d) the scope of the obligations on small and micro enterprises;
- (e) the effectiveness of the supervision and enforcement mechanisms;
- (f) the impact on the respect for the right to freedom of expression and information.

3. Where appropriate, the report referred to in paragraphs 1 and 2 shall be accompanied by a proposal for amendment of this Regulation.

4. The Commission shall, in the report referred to in paragraph 2 of this Article, also evaluate and report on the annual reports on their activities by the Digital Services Coordinators provided to the Commission and the Board pursuant to Article 55(1).

5. For the purpose of paragraph 2, Member States and the Board shall send information on the request of the Commission.

6. In carrying out the evaluations referred to in paragraph 2, the Commission shall take into account the positions and findings of the European Parliament, the Council, and other relevant bodies or sources, and shall pay specific attention to small and medium-sized enterprises and the position of new competitors.

7. By 18 February 2027, the Commission, after consulting the Board, shall carry out an assessment of the functioning of the Board and of the application of Article 43, and shall report it to the European Parliament, the Council and the European Economic and Social Committee, taking into account the first years of application of the Regulation. On the basis of the findings and taking utmost account of the opinion of the Board, that report shall, where appropriate, be accompanied by a proposal for amendment of this Regulation with regard to the structure of the Board.

#### *Article 92*

#### **Anticipated application to providers of very large online platforms and of very large online search engines**

This Regulation shall apply to providers of very large online platforms and of very large online search engines designated pursuant to Article 33(4) from four months after the notification to the provider concerned referred to in Article 33(6) where that date is earlier than 17 February 2024.

*Article 93***Entry into force and application**

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

2. This Regulation shall apply from 17 February 2024.

However, Article 24(2), (3) and (6), Article 33(3) to (6), Article 37(7), Article 40(13), Article 43 and Sections 4, 5 and 6 of Chapter IV shall apply from 16 November 2022.

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

Done at Strasbourg, 19 October 2022.

*For the European Parliament*  
*The President*  
R. METSOLA

*For the Council*  
*The President*  
M. BEK

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## II

(Non-legislative acts)

## INTERNATIONAL AGREEMENTS

**COUNCIL DECISION (EU) 2022/2066**

**of 21 February 2022**

**on the conclusion, on behalf of the European Union, of the Implementing Protocol to the Fisheries Partnership Agreement between the Gabonese Republic and the European Community (2021-2026)**

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 43, in conjunction with Article 218(6), second subparagraph, point (a)(v) and Article 218(7) thereof,

Having regard to the proposal from the European Commission,

Having regard to the consent of the European Parliament <sup>(1)</sup>,

Whereas:

- (1) In accordance with Council Decision (EU) 2021/1117 <sup>(2)</sup>, the Implementing Protocol to the Fisheries Partnership Agreement between the Gabonese Republic and the European Community (2021-2026) <sup>(3)</sup> (the 'Protocol') was signed on 29 June 2021, subject to its conclusion at a later date.
- (2) The Protocol has been applied on a provisional basis from the date of its signature.
- (3) The objective of the Fisheries Partnership Agreement between the Gabonese Republic and the European Community <sup>(4)</sup> (the 'Agreement') and of the Protocol is to enable the Union and the Gabonese Republic ('Gabon') to work more closely together to further promote the development of a sustainable fisheries policy and the responsible exploitation of fisheries resources in the Gabonese fishing zone and in the Atlantic Ocean, while contributing to decent working conditions in the fisheries sector.
- (4) The Protocol should be approved.
- (5) Article 9 of the Agreement establishes a Joint Committee responsible for monitoring the implementation of the Agreement. Furthermore, pursuant to Article 19(5) of the Protocol, the Joint Committee may adopt certain amendments to the Protocol. In order to facilitate the adoption of such amendments, the Commission should be empowered, subject to respecting specific substantive and procedural conditions, to approve them on behalf of the Union under a simplified procedure.
- (6) The Union's position on amendments that are proposed to the Protocol should be established by the Council. The Commission should approve the proposed amendments on behalf of the Union, unless a number of Member States constituting a blocking minority, in accordance with Article 16(4) of the Treaty on European Union, object to them.

<sup>(1)</sup> Consent of 14 December 2021 (not yet published in the Official journal).

<sup>(2)</sup> Council Decision (EU) 2021/1117 of 28 June 2021 on the signing, on behalf of the European Union, and provisional application of the Implementing Protocol to the Fisheries Partnership Agreement between the Gabonese Republic and the European Community (2021-2026) (OJ L 242, 8.7.2021, p. 3).

<sup>(3)</sup> OJ L 242, 8.7.2021, p. 5.

<sup>(4)</sup> OJ L 109, 26.4.2007, p. 3.

- (7) The Protocol should enter into force as soon as possible, in view of the economic importance of Union fishing activities in the Gabonese fishing zone and the need to reduce as much as possible the period of interruption of such activities,

HAS ADOPTED THIS DECISION:

*Article 1*

The Implementing Protocol to the Fisheries Partnership Agreement between the Gabonese Republic and the European Community (2021-2026) (the 'Protocol') is hereby approved on behalf of the Union.

*Article 2*

The President of the Council shall, on behalf of the Union, give the notification provided for in Article 26 of the Protocol.

*Article 3*

In accordance with the procedure set out in the Annex to this Decision, the Commission is hereby authorised to approve, on behalf of the Union, amendments to the Protocol to be adopted by the Joint Committee established under Article 9 of the Fisheries Partnership Agreement between the Gabonese Republic and the European Community.

*Article 4*

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

Done at Brussels, 21 February 2022.

*For the Council*  
*The President*  
J. DENORMANDIE

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## ANNEX

PROCEDURE FOR THE APPROVAL OF AMENDMENTS TO THE PROTOCOL TO BE ADOPTED BY THE  
JOINT COMMITTEE

Where, in accordance with Article 19(5) of the Implementing Protocol to the Fisheries Partnership Agreement between the Gabonese Republic and the European Community (2021-2026) (the 'Protocol'), the Joint Committee is asked to adopt modifications to the Protocol, the Commission shall be authorised to approve the proposed amendments on behalf of the Union under the following conditions:

- (1) The Commission shall ensure that the approval on behalf of the Union:
    - (a) is in accordance with the objectives of the common fisheries policy;
    - (b) is consistent with the relevant rules adopted by regional fisheries management organisations and takes account of joint management by coastal States;
    - (c) takes account of the latest statistical, biological and other relevant information sent to the Commission.
  - (2) Before approving proposed amendments on behalf of the Union, the Commission shall submit them to the Council, sufficiently in advance of the relevant Joint Committee meeting.
  - (3) The compliance of the proposed amendments with the conditions set out in point 1 of this Annex shall be assessed by the Council.
  - (4) The Commission shall approve the proposed amendments on behalf of the Union, unless a number of Member States constituting a blocking minority in the Council in accordance with Article 16(4) of the Treaty on European Union object to those amendments. However, if there is such a blocking minority, the Commission shall reject the proposed amendments on behalf of the Union.
  - (5) If, in the course of subsequent meetings of the Joint Committee, including on-the-spot meetings, it is impossible to reach an agreement on the proposed amendments, the matter shall be referred back to the Council, in accordance with the procedure set out in points (2) to (4), in order for the Union position to take account of new factors.
  - (6) The Commission is invited to take, in due time, any steps necessary as a follow-up to the decision of the Joint Committee regarding the proposed amendments, including, where appropriate, the publication of the relevant decision in the *Official Journal of the European Union* and the submission of any proposal necessary for the implementation of that decision.
  - (7) As regards other matters which do not concern amendments to the Protocol in accordance with Article 19(5) thereof, the position to be adopted by the Union in the Joint Committee shall be determined in accordance with the Treaties and established working practices.
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# REGULATIONS

## COMMISSION IMPLEMENTING REGULATION (EU) 2022/2067

of 25 October 2022

### amending Annex I to Implementing Regulation (EU) 2021/605 laying down special control measures for African swine fever

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EU) 2016/429 of the European Parliament and of the Council of 9 March 2016 on transmissible animal diseases and amending and repealing certain acts in the area of animal health ('Animal Health Law') <sup>(1)</sup>, and in particular Article 71(3) thereof,

Whereas:

- (1) African swine fever is an infectious viral disease affecting kept and wild porcine animals and can have a severe impact on the concerned animal population and the profitability of farming causing disturbance to movements of consignments of those animals and products thereof within the Union and exports to third countries.
- (2) Commission Implementing Regulation (EU) 2021/605 <sup>(2)</sup> was adopted within the framework of Regulation (EU) 2016/429, and it lays down special disease control measures regarding African swine fever to be applied for a limited period of time by the Member States listed in Annex I thereto (the Member States concerned), in restricted zones I, II and III listed in that Annex.
- (3) The areas listed as restricted zones I, II and III in Annex I to Implementing Regulation (EU) 2021/605 are based on the epidemiological situation of African swine fever in the Union. Annex I to Implementing Regulation (EU) 2021/605 was last amended by Commission Implementing Regulation (EU) 2022/1911 <sup>(3)</sup> following changes in the epidemiological situation as regards that disease in Germany and Italy. Since the date of adoption of that Implementing Regulation, the epidemiological situation as regards that disease in certain Member States concerned has evolved.
- (4) Any amendments to restricted zones I, II and III in Annex I to Implementing Regulation (EU) 2021/605 should be based on the epidemiological situation as regards African swine fever in the areas affected by that disease and the overall epidemiological situation of African swine fever in the Member State concerned, the level of risk for the further spread of that disease, as well as scientifically based principles and criteria for geographically defining zoning due to African swine fever and the Union's guidelines agreed with the Member States at the Standing Committee on Plants, Animals, Food and Feed and publicly available on the Commission's website <sup>(4)</sup>. Such amendments should also take account of international standards, such as the Terrestrial Animal Health Code <sup>(5)</sup> of the World Organisation for Animal Health (WOAH) and justifications for zoning provided by the competent authorities of the Member States concerned.

<sup>(1)</sup> OJ L 84, 31.3.2016, p. 1.

<sup>(2)</sup> Commission Implementing Regulation (EU) 2021/605 of 7 April 2021 laying down special control measures for African swine fever (OJ L 129, 15.4.2021, p. 1).

<sup>(3)</sup> Commission Implementing Regulation (EU) 2022/1911 of 6 October 2022 amending Annex I to Implementing Regulation (EU) 2021/605 laying down special control measures for African swine fever (OJ L 261, 7.10.2022, p. 6).

<sup>(4)</sup> Working Document SANTE/7112/2015/Rev. 3 'Principles and criteria for geographically defining ASF regionalisation'; [https://ec.europa.eu/food/animals/animal-diseases/control-measures/asf\\_en](https://ec.europa.eu/food/animals/animal-diseases/control-measures/asf_en)

<sup>(5)</sup> OIE Terrestrial Animal Health Code, 29th Edition, 2021. Volumes I and II ISBN 978-92-95115-40-8; <https://www.woah.org/en/what-we-do/standards/codes-and-manuals/terrestrial-code-online-access/>

- (5) Commission Delegated Regulation (EU) 2020/689 <sup>(6)</sup> supplements the rules for the control of the listed diseases referred to in Article 9(1), points (a), (b) and (c), of Regulation (EU) 2016/429, and defined as category A, B and C diseases in Commission Implementing Regulation (EU) 2018/1882 <sup>(7)</sup>. In particular, Article 9 of Delegated Regulation (EU) 2020/689 provides for certain measures to classify an animal or a group of animals as a suspected or confirmed case of a listed disease, including African swine fever.
- (6) Commission Delegated Regulation (EU) 2020/687 <sup>(8)</sup> supplements the rules for the control of the listed diseases referred to in Article 9(1), points (a), (b) and (c), of Regulation (EU) 2016/429, and defined as category A, B and C diseases in Implementing Regulation (EU) 2018/1882. In particular, Articles 63 to 66 of Delegated Regulation (EU) 2020/687 provide for certain measures to be taken in the event of an official confirmation of an outbreak of a category A disease in wild animals, including African swine fever in wild porcine animals. Notably, those measures provide for the establishment of an infected zone and prohibitions on movements of wild animals of listed species and products of animal origin thereof.
- (7) In May 2022, Italy has informed the Commission of the current African swine fever situation on its territory, following a suspected case of that disease in a wild porcine animal in the Rieti Province, in the Lazio Region. Using the precautionary principle, the competent authority of that Member State treated the suspected case of African swine fever as if it were a confirmed case of African swine fever, and established an infected zone as provided for in the case of the official confirmation of that disease in Delegated Regulation (EU) 2020/687 and Implementing Regulation (EU) 2021/605.
- (8) In October 2022, Italy informed the Commission that the continuous and detailed disease control measures and the passive surveillance of kept and wild porcine animals demonstrate the absence of the circulation of the African swine fever virus in the Rieti province, and that the Italian competent authority is in a position to conclude that the suspected case of African swine fever in the Rieti province should not be considered as a confirmed case of African swine fever in accordance with Article 9(2), point (b), of Delegated Regulation (EU) 2020/689 because, despite the fact that a nucleic acid specific to the disease was identified in the results of tests on the animal, the animal did not show any clinical signs consistent with the disease and any epidemiological links with another suspected or confirmed cases was ruled out.
- (9) In addition, since the date of adoption of Implementing Regulation (EU) 2022/1911 there have been new outbreaks of African swine fever in wild porcine animals in Germany. Furthermore, the epidemiological situation in certain zones listed as restricted zones I and III in Poland has improved as regards kept and wild porcine animals.
- (10) In October 2022, several outbreaks of African swine fever in wild porcine animals were observed in the state of Brandenburg in Germany, in an area currently listed as a restricted zone II in Annex I to Implementing Regulation (EU) 2021/605, located in close proximity to an area in the state of Brandenburg currently listed as a restricted zone I in that Annex. Those new outbreaks of African swine fever in wild porcine animals constitute an increased level of risk, which should be reflected in Annex I to Implementing Regulation (EU) 2021/605. Accordingly, the current boundaries of the restricted zones I and II should be amended to take account of those recent outbreaks.
- (11) Following those recent outbreaks of African swine fever in wild porcine animals in the state of Brandenburg in Germany and taking into account the current epidemiological situation as regards African swine fever in the Union, zoning in this Member State has been reassessed and updated in accordance with Articles 5, 6 and 7 of Implementing Regulation (EU) 2021/605. In addition, the risk management measures in place have also been reassessed and updated. These changes should be reflected in Annex I to Implementing Regulation (EU) 2021/605.

<sup>(6)</sup> Commission Delegated Regulation (EU) 2020/689 of 17 December 2019 supplementing Regulation (EU) 2016/429 of the European Parliament and the Council as regards rules for surveillance, eradication programmes, and disease-free status for certain listed and emerging diseases (OJ L 174, 3.6.2020, p. 211).

<sup>(7)</sup> Commission Implementing Regulation (EU) 2018/1882 of 3 December 2018 on the application of certain disease prevention and control rules to categories of listed diseases and establishing a list of species and groups of species posing a considerable risk for the spread of those listed diseases (OJ L 308, 4.12.2018, p. 21).

<sup>(8)</sup> Commission Delegated Regulation (EU) 2020/687 of 17 December 2019 supplementing Regulation (EU) 2016/429 of the European Parliament and the Council as regards rules for the prevention and control of certain listed diseases (OJ L 174, 3.6.2020, p. 64).

- (12) Furthermore, taking into account the effectiveness of the disease control measures for African swine fever for kept porcine animals in certain restricted zones III listed in Annex I to Implementing Regulation (EU) 2021/605 being applied in Poland in accordance with Delegated Regulation (EU) 2020/687, and in particular those laid down in Articles 22, 25 and 40 thereof, and in line with the risk mitigation measures for African swine fever set out in the WOA Code, certain areas in the Lubelskie, Podkarpackie, Wielkopolskie and Lubuskie regions in Poland, currently listed as restricted zones III in Annex I to Implementing Regulation (EU) 2021/605 should now be listed as restricted zones II in that Annex, due to the absence of outbreaks of African swine fever in kept porcine animals in those restricted zones III for the past 12 months, while the disease is still present in wild porcine animals. Those restricted zones III should now be listed as restricted zones II taking account of the current African swine fever epidemiological situation.
- (13) Also, taking into account the effectiveness of the disease control measures for African swine fever for kept porcine animals in the restricted zones I listed in Annex I to Implementing Regulation (EU) 2021/605 being applied in Poland in accordance with Delegated Regulation (EU) 2020/687, and in particular those laid down in Articles 64, 65 and 67 thereof, and in line with the risk mitigation measures for African swine fever set out in the WOA Code, certain zones in the Podkarpackie, Łódzkie and Śląskie regions in Poland, currently listed as restricted zones I in Annex I to Implementing Regulation (EU) 2021/605 should now be deleted from the restricted zones I in that Annex, due to the absence of African swine fever outbreaks in kept and wild porcine animals in those restricted zones I for the past 12 months. The restricted zones I should now be deleted from that Annex to take account of the current African swine fever epidemiological situation.
- (14) Also, on the basis of the information and justifications received from Italy, in particular taking account of the completion of the epidemiological investigation and the effectiveness of the disease control measures for African swine fever; and taking account of the current favourable African swine fever situation in wild porcine animals in the Lazio region and the disease control measures duly implemented by Italy, in order to prevent any unnecessary disturbance to trade, it is appropriate that the restricted zones I and II in the province of Rieti should now be deleted from Annex I to Implementing Regulation (EU) 2021/605 to take account of the current African swine fever epidemiological situation in that Member State.
- (15) In order to take account of the recent developments in the epidemiological situation of African swine fever in the Union, and in order to combat the risks associated with the spread of that disease in a proactive manner new restricted zones of a sufficient size should be demarcated for Germany and Poland, and listed as restricted zones I and II in Annex I to Implementing Regulation (EU) 2021/605. Also, certain parts of restricted zone I should be deleted from that Annex for Poland. As the situation as regards African swine fever is very dynamic in the Union, when demarcating those new restricted zones, account has been taken of the epidemiological situation in the surrounding areas.
- (16) Given the urgency of the epidemiological situation in the Union as regards the spread of African swine fever, it is important that the amendments to be made to Annex I to Implementing Regulation (EU) 2021/605 by this Implementing Regulation take effect as soon as possible.
- (17) 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*

Annex I to Implementing Regulation (EU) 2021/605 is replaced by the text set out 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*.

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

Done at Brussels, 25 October 2022.

*For the Commission*  
*The President*  
Ursula VON DER LEYEN

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## ANNEX

Annex I to Implementing Regulation (EU) 2021/605 is replaced by the following:

## 'ANNEX I

**RESTRICTED ZONES**

## PART I

**1. Germany**

The following restricted zones I in Germany:

Bundesland Brandenburg:

— Landkreis Dahme-Spreewald:

— Gemeinde Alt Zauche-Wußwerk,

— Gemeinde Byhleguhre-Byhlen,

— Gemeinde Märkische Heide, mit den Gemarkungen Alt Schadow, Neu Schadow, Pretschen, Plattkow, Wittmannsdorf, Schuhlen-Wiese, Bückchen, Kuschkow, Gröditsch, Groß Leuthen, Leibchel, Glietz, Groß Leine, Dollgen, Krugau, Dürrenhofe, Biebersdorf und Klein Leine,

— Gemeinde Neu Zauche,

— Gemeinde Schwielochsee mit den Gemarkungen Groß Liebitz, Guhlen, Mochow und Siegadel,

— Gemeinde Spreewaldheide,

— Gemeinde Straupitz,

— Landkreis Märkisch-Oderland:

— Gemeinde Müncheberg mit den Gemarkungen Müncheberg, Eggersdorf bei Müncheberg und Hoppegarten bei Müncheberg,

— Gemeinde Bliesdorf mit den Gemarkungen Kunersdorf – westlich der B167 und Bliesdorf – westlich der B167

— Gemeinde Märkische Höhe mit den Gemarkungen Reichenberg und Batzlow,

— Gemeinde Wriezen mit den Gemarkungen Haselberg, Frankenfelde, Schulzendorf, Lüdersdorf Biesdorf, Rathsdorf – westlich der B 167 und Wriezen – westlich der B167

— Gemeinde Buckow (Märkische Schweiz),

— Gemeinde Strausberg mit den Gemarkungen Hohenstein und Ruhlsdorf,

— Gemeine Garzau-Garzin,

— Gemeinde Waldsiefersdorf,

— Gemeinde Rehfelde mit der Gemarkung Werder,

— Gemeinde Reichenow-Mögelin,

— Gemeinde Prötzel mit den Gemarkungen Harnekop, Sternebeck und Prötzel östlich der B 168 und der L35,

— Gemeinde Oberbarnim,

— Gemeinde Bad Freienwalde mit der Gemarkung Sonnenburg,

— Gemeinde Falkenberg mit den Gemarkungen Dannenberg, Falkenberg westlich der L 35, Gersdorf und Krüge,

— Gemeinde Höhenland mit den Gemarkungen Steinbeck, Wollenberg und Wölsickendorf,

— Landkreis Barnim:

— Gemeinde Joachimsthal östlich der L220 (Eberswalder Straße), östlich der L23 (Töpferstraße und Templiner Straße), östlich der L239 (Glambecker Straße) und Schorfheide (JO) östlich der L238,

- Gemeinde Friedrichswalde mit der Gemarkung Glambeck östlich der L 239,
- Gemeinde Althüttendorf,
- Gemeinde Ziethen mit den Gemarkungen Groß Ziethen und Klein Ziethen westlich der B198,
- Gemeinde Chorin mit den Gemarkungen Golzow, Senftenhütte, Buchholz, Schorfheide (Ch), Chorin westlich der L200 und Sandkrug nördlich der L200,
- Gemeinde Britz,
- Gemeinde Schorfheide mit den Gemarkungen Altenhof, Werbellin, Lichterfelde und Finowfurt,
- Gemeinde (Stadt) Eberswalde mit den Gemarkungen Finow und Spechthausen und der Gemarkung Eberswalde südlich der B167 und westlich der L200,
- Gemeinde Breydin,
- Gemeinde Melchow,
- Gemeinde Sydower Fließ mit der Gemarkung Grüntal nördlich der K6006 (Landstraße nach Tuchen), östlich der Schönholzer Straße und östlich Am Postweg,
- Hohenfinow südlich der B167,
- Landkreis Uckermark:
  - Gemeinde Passow mit den Gemarkungen Briest, Passow und Schönow,
  - Gemeinde Mark Landin mit den Gemarkungen Landin nördlich der B2, Grünow und Schönermark,
  - Gemeinde Angermünde mit den Gemarkungen Frauenhagen, Mürow, Angermünde nördlich und nordwestlich der B2, Dobberzin nördlich der B2, Kerkow, Welsow, Bruchhagen, Greiffenberg, Günterberg, Biesenbrow, Görldorf, Wolletz und Altkünkendorf,
  - Gemeinde Zichow,
  - Gemeinde Casekow mit den Gemarkungen Blumberg, Wartin, Luckow-Petershagen und den Gemarkungen Biesendahlshof und Casekow westlich der L272 und nördlich der L27,
  - Gemeinde Hohenselchow-Groß Pinnow mit der Gemarkung Hohenselchow nördlich der L27,
  - Gemeinde Tantow,
  - Gemeinde Mescherin außer der Gemarkung Neurochlitz östlich der B2, dieser folgend bis zur Gemarkungsgrenze Rosow, weiter in nordwestlicher Richtung bis Rosow, weiter auf der K7311 zur Landesgrenze zu Mecklenburg-Vorpommern, dieser folgend in östlicher Richtung bis zur polnischen Grenze,
  - Gemeinde Gartz (Oder) mit der Gemarkung Geesow westlich der B2 sowie den Gemarkungen Gartz und Hohenreinkendorf nördlich der L27 und der B2 bis zur Kastanienallee, dort links abbiegend dem Schülerweg folgend bis Höhe Bahnhof, von hier in östlicher Richtung den Salveybach kreuzend bis zum Tantower Weg, diesen in nördlicher Richtung bis zu Stettiner Straße, diese weiter folgend bis zur B2, dieser in nördlicher Richtung folgend,
  - Gemeinde Pinnow nördlich und westlich der B2,
- Landkreis Oder-Spree:
  - Gemeinde Storkow (Mark),
  - Gemeinde Spreehagen mit den Gemarkungen Braunsdorf, Markgrafpieske, Lebbin und Spreehagen,
  - Gemeinde Grünheide (Mark) mit den Gemarkungen Kagel, Kienbaum und Hangelsberg,
  - Gemeinde Fürstenwalde westlich der B 168 und nördlich der L 36,

- Gemeinde Rauen,
- Gemeinde Wendisch Rietz bis zur östlichen Uferzone des Scharmützelsees und von der südlichen Spitze des Scharmützelsees südlich der B246,
- Gemeinde Reichenwalde,
- Gemeinde Bad Saarow mit der Gemarkung Petersdorf und der Gemarkung Bad Saarow-Pieskow westlich der östlichen Uferzone des Scharmützelsees und ab nördlicher Spitze westlich der L35,
- Gemeinde Tauche mit der Gemarkung Werder,
- Gemeinde Steinhöfel mit den Gemarkungen Jänickendorf, Schönfelde, Beerfelde, Gölsdorf, Buchholz, Tempelberg und den Gemarkungen Steinhöfel, Hasenfelde und Heinersdorf westlich der L36 und der Gemarkung Neuendorf im Sande nördlich der L36,
- Landkreis Spree-Neiße:
  - Gemeinde Turnow-Preilack mit der Gemarkung Turnow,
  - Gemeinde Drachhausen,
  - Gemeinde Schmogrow-Fehrow,
  - Gemeinde Drehnow,
  - Gemeinde Teichland mit den Gemarkungen Maust und Neuendorf,
  - Gemeinde Guhrow,
  - Gemeinde Werben,
  - Gemeinde Dissen-Striesow,
  - Gemeinde Briesen,
  - Gemeinde Drebkau mit den Gemarkungen Jehserig, Schorbus, Domsdorf, Drebkau, Laubst, Leuthen, Siewisch, Casel und Greifenhain,
  - Gemeinde Kolkwitz mit den Gemarkungen Klein Gaglow nördl. der BAB 15, Kolkwitz, Gulben, Papitz, Babow, Eichow, Krieschow, Limberg, Glinzig, Milkersdorf und Hähnchen,
  - Gemeinde Burg (Spreewald)
  - Kreisfreie Stadt Cottbus außer den Gemarkungen Kahren, Gallinchen, Groß Gaglow und der Gemarkung Kiekebusch südlich der BAB,
- Landkreis Oberspreewald-Lausitz:
  - Gemeinde Neupetershain,
  - Gemeinde Lauchhammer,
  - Gemeinde Schwarzheide,
  - Gemeinde Schipkau,
  - Gemeinde Senftenberg mit den Gemarkungen Brieske, Niemtsch, Senftenberg, Reppist, Hosena, Großkoschen, Kleinkoschen und Sedlitz,
  - die Gemeinde Schwarzbach mit der Gemarkung Biehlen,
  - Gemeinde Neu-Seeland mit den Gemarkungen Lieske, Bahnsdorf und Lindchen,
  - Gemeinde Großräschen mit den Gemarkungen Dörrwalde und Allmosen,
  - Gemeinde Tettau,
- Landkreis Elbe-Elster:
  - Gemeinde Großthiemig,
  - Gemeinde Hirschfeld,
  - Gemeinde Gröden,

- Gemeinde Schraden,
- Gemeinde Merzdorf,
- Gemeinde Röderland mit der Gemarkung Wainsdorf, Präsen, Stolzenhain a.d. Röder,
- Gemeinde Plessa mit der Gemarkung Plessa,
- Landkreis Prignitz:
  - Gemeinde Groß Pankow mit den Gemarkungen Baek, Tangendorf, Tacken, Hohenvier, Strigleben, Steinberg und Gulow,
  - Gemeinde Perleberg mit der Gemarkung Schönfeld,
  - Gemeinde Karstädt mit den Gemarkungen Postlin, Strehlen, Blüten, Klockow, Premslin, Glövzin, Waterloo, Karstädt, Dargardt, Garlin und die Gemarkungen Groß Warnow, Klein Warnow, Reckenzin, Streesow und Dallmin westlich der Bahnstrecke Berlin/Spandau-Hamburg/Altona,
  - Gemeinde Gülitz-Reetz,
  - Gemeinde Putlitz mit den Gemarkungen Lockstädt, Mansfeld und Laaske,
  - Gemeinde Triglitz,
  - Gemeinde Marienfließ mit der Gemarkung Frehne,
  - Gemeinde Kümmernitztal mit der Gemarkungen Buckow, Preddöhl und Grabow,
  - Gemeinde Gerdshagen mit der Gemarkung Gerdshagen,
  - Gemeinde Meyenburg,
  - Gemeinde Pritzwalk mit der Gemarkung Steffenshagen,

Bundesland Sachsen:

- Landkreis Bautzen
  - Gemeinde Arnsdorf, sofern nicht bereits Teil der Sperrzone II,
  - Gemeinde Cunewalde,
  - Gemeinde Demitz-Thumitz, sofern nicht bereits Teil der Sperrzone II,
  - Gemeinde Doberschau-Gaußig,
  - Gemeinde Göda, sofern nicht bereits Teil der Sperrzone II,
  - Gemeinde Großharthau, sofern nicht bereits Teil der Sperrzone II,
  - Gemeinde Großpostwitz/O.L.,
  - Gemeinde Hochkirch, sofern nicht bereits der Sperrzone II,
  - Gemeinde Kubschütz, sofern nicht bereits Teil der Sperrzone II,
  - Gemeinde Neukirch/Lausitz,
  - Gemeinde Obergurig,
  - Gemeinde Schmölln-Putzkau,
  - Gemeinde Sohland a. d. Spree,
  - Gemeinde Stadt Bautzen, sofern nicht bereits Teil der Sperrzone II,
  - Gemeinde Stadt Bischhofswerda, sofern nicht bereits Teil der Sperrzone II,
  - Gemeinde Stadt Radeberg, sofern nicht bereits Teil der Sperrzone II,
  - Gemeinde Stadt Schirgiswalde-Kirschau,
  - Gemeinde Stadt Wilthen,
  - Gemeinde Steinigtwolmsdorf,

- Stadt Dresden:
  - Stadtgebiet, sofern nicht bereits Teil der Sperrzone II,
- Landkreis Meißen:
  - Gemeinde Diera-Zehren, sofern nicht bereits Teil der Sperrzone II,
  - Gemeinde Glaubitz, sofern nicht bereits Teil der Sperrzone II,
  - Gemeinde Hirschstein,
  - Gemeinde Käbschütztal,
  - Gemeinde Klipphausen, sofern nicht bereits Teil der Sperrzone II,
  - Gemeinde Niederau, sofern nicht bereits Teil der Sperrzone II,
  - Gemeinde Nünchritz, sofern nicht bereits Teil der Sperrzone II,
  - Gemeinde Röderau, sofern nicht bereits Teil der Sperrzone II,
  - Gemeinde Stadt Gröditz, sofern nicht bereits Teil der Sperrzone II,
  - Gemeinde Stadt Lommatzsch,
  - Gemeinde Stadt Meißen, sofern nicht bereits Teil der Sperrzone II,
  - Gemeinde Stadt Nossen außer Ortsteil Nossen,
  - Gemeinde Stadt Riesa,
  - Gemeinde Stadt Strehla,
  - Gemeinde Stauchitz,
  - Gemeinde Wülknitz, sofern nicht bereits Teil der Sperrzone II,
  - Gemeinde Zeithain,
- Landkreis Mittelsachsen:
  - Gemeinde Reinsberg,
- Landkreis Sächsische Schweiz-Osterzgebirge:
  - Gemeinde Bannewitz,
  - Gemeinde Dürrröhrsdorf-Dittersbach,
  - Gemeinde Kreischa,
  - Gemeinde Lohmen,
  - Gemeinde Müglitztal,
  - Gemeinde Stadt Dohna,
  - Gemeinde Stadt Freital,
  - Gemeinde Stadt Heidenau,
  - Gemeinde Stadt Hohnstein,
  - Gemeinde Stadt Neustadt i. Sa.,
  - Gemeinde Stadt Pirna,
  - Gemeinde Stadt Rabenau mit den Ortsteilen Lübau, Obernaundorf, Oelsa, Rabenau und Spechtritz,
  - Gemeinde Stadt Stolpen,
  - Gemeinde Stadt Tharandt mit den Ortsteilen Fördergersdorf, Großopitz, Kurort Hartha, Pohrsdorf und Spechtshausen,
  - Gemeinde Stadt Wilsdruff, sofern nicht bereits Teil der Sperrzone II,

## Bundesland Mecklenburg-Vorpommern:

## — Landkreis Vorpommern Greifswald

- Gemeinde Penkun,
- Gemeinde Nadrensee,
- Gemeinde Krackow,
- Gemeinde Glasow,
- Gemeinde Grambow,

## — Landkreis Ludwigslust-Parchim:

- Gemeinde Barkhagen mit den Ortsteilen und Ortschaften: Altenlinden, Kolonie Lalchow, Plauerhagen, Zarchlin, Barkow-Ausbau, Barkow,
- Gemeinde Blievenstorf mit dem Ortsteil: Blievenstorf,
- Gemeinde Brenz mit den Ortsteilen und Ortschaften: Neu Brenz, Alt Brenz,
- Gemeinde Domsühl mit den Ortsteilen und Ortschaften: Severin, Bergrade Hof, Bergrade Dorf, Zieslütbe, Alt Dammerow, Schlieven, Domsühl, Domsühl-Ausbau, Neu Schlieven,
- Gemeinde Gallin-Kuppentin mit den Ortsteilen und Ortschaften: Kuppentin, Kuppentin-Ausbau, Daschow, Zahren, Gallin, Penzlin,
- Gemeinde Ganzlin mit den Ortsteilen und Ortschaften: Dresenow, Dresenower Mühle, Twietfort, Ganzlin, Tönchow, Wendisch Priborn, Liebhof, Gnevsdorf,
- Gemeinde Granzin mit den Ortsteilen und Ortschaften: Lindenbeck, Greven, Beckendorf, Bahlenrade, Granzin,
- Gemeinde Grabow mit den Ortsteilen und Ortschaften: Fresenbrügge, Grabow, Griemoor, Heidehof, Kaltehof, Winkelmoor,
- Gemeinde Groß Laasch mit den Ortsteilen und Ortschaften: Groß Laasch,
- Gemeinde Kremmin mit den Ortsteilen und Ortschaften: Beckentin, Kremmin,
- Gemeinde Kritzow mit den Ortsteilen und Ortschaften: Schlemmin, Kritzow,
- Gemeinde Lewitzrand mit dem Ortsteil und Ortschaften: Matzlow-Garwitz (teilweise),
- Gemeinde Lübz mit den Ortsteilen und Ortschaften: Bobzin, Broock, Broock Ausbau, Hof Gischow, Lübz, Lutheran, Lutheran Ausbau, Riederfelde, Ruthen, Wessentin, Wessentin Ausbau,
- Gemeinde Neustadt-Glewe mit den Ortsteilen und Ortschaften: Hohes Feld, Kiez, Klein Laasch, Liebs Siedlung, Neustadt-Glewe, Tuckhude, Wabel,
- Gemeinde Obere Warnow mit den Ortsteilen und Ortschaften: Grebbin und Wozinkel, Gemarkung Kossebade teilweise, Gemarkung Herzberg mit dem Waldgebiet Bahlenholz bis an die östliche Gemeindegrenze, Gemarkung Woeten unmittelbar östlich und westlich der L16,
- Gemeinde Parchim mit den Ortsteilen und Ortschaften: Dargelütz, Neuhof, Kiekindemark, Neu Klockow, Möderitz, Malchow, Damm, Parchim, Voigtsdorf, Neu Matzlow,
- Gemeinde Passow mit den Ortsteilen und Ortschaften: Unterbrüz, Brüz, Welzin, Neu Brüz, Weisin, Charlottenhof, Passow,
- Gemeinde Plau am See mit den Ortsteilen und Ortschaften: Reppentin, Gaarz, Silbermühle, Appelburg, Seelust, Plau-Am See, Plötzenhöhe, Klebe, Lalchow, Quetzin, Heidekrug,
- Gemeinde Rom mit den Ortsteilen und Ortschaften: Lancken, Stralendorf, Rom, Darze, Paarsch,
- Gemeinde Spornitz mit den Ortsteilen und Ortschaften: Dütschow, Primark, Steinbeck, Spornitz,
- Gemeinde Werder mit den Ortsteilen und Ortschaften: Neu Bentheden, Bentheden, Tannenhof, Werder.

## 2. Estonia

The following restricted zones I in Estonia:

- Hiiu maakond.

## 3. Greece

The following restricted zones I in Greece:

- in the regional unit of Drama:
  - the community departments of Sidironero and Skaloti and the municipal departments of Livadero and Ksiropotamo (in Drama municipality),
  - the municipal department of Paranesti (in Paranesti municipality),
  - the municipal departments of Kokkinogeia, Mikropoli, Panorama, Pyrgoi (in Prosotsani municipality),
  - the municipal departments of Kato Nevrokopi, Chrysokefalo, Achladea, Vathytopos, Volakas, Granitis, Dasotos, Eksohi, Katafyto, Lefkogeia, Mikrokleisoura, Mikromilea, Ochyro, Pagoneri, Perithorio, Kato Vrontou and Potamoi (in Kato Nevrokopi municipality),
- in the regional unit of Xanthi:
  - the municipal departments of Kimmerion, Stavroupoli, Gerakas, Dafnonas, Komnina, Kariofyto and Neochori (in Xanthi municipality),
  - the community departments of Satres, Thermes, Kotyli, and the municipal departments of Myki, Echinon and Oraio and (in Myki municipality),
  - the community department of Selero and the municipal department of Sounio (in Avdira municipality),
- in the regional unit of Rodopi:
  - the municipal departments of Komotini, Anthochorio, Gratini, Thrylorio, Kalhas, Karydia, Kikidio, Kosmio, Pandrosos, Aigeiros, Kallisti, Meleti, Neo Sidirochori and Mega Doukato (in Komotini municipality),
  - the municipal departments of Ipio, Arriana, Darmeni, Archontika, Fillyra, Ano Drosini, Aratos and the community Departments Kehros and Organi (in Arriana municipality),
  - the municipal departments of Iasmos, Sostis, Asomatoi, Polyanthos and Amvrosia and the community department of Amaxades (in Iasmos municipality),
  - the municipal department of Amaranta (in Maroneia Sapon municipality),
- in the regional unit of Evros:
  - the municipal departments of Kyriaki, Mandra, Mavroklisi, Mikro Dereio, Protokklisi, Roussa, Goniko, Geriko, Sidirochori, Megalo Derio, Sidiro, Giannouli, Agriani and Petrolofos (in Soufli municipality),
  - the municipal departments of Dikaia, Arzos, Elaia, Therapio, Komara, Marasia, Ormenio, Pentalofos, Petrotia, Plati, Ptelea, Kyprinos, Zoni, Fulakio, Spilaio, Nea Vyssa, Kavili, Kastanies, Rizia, Sterna, Ampelakia, Valtos, Megali Doxipara, Neochori and Chandras (in Orestiada municipality),
  - the municipal departments of Asvestades, Ellinochori, Karoti, Koufovouno, Kiani, Mani, Sitochori, Alepochori, Asproneri, Metaxades, Vrysika, Doksa, Elafoxori, Ladi, Paliouri and Poimeniko (in Didymoteixo municipality),
- in the regional unit of Serres:
  - the municipal departments of Kerkini, Livadia, Makrynitsa, Neochori, Platanakia, Petrissi, Akritochori, Vyroneia, Gonimo, Mandraki, Megalochori, Rodopoli, Ano Poroia, Katw Poroia, Sidirokastro, Vamvakophyto, Promahonas, Kamaroto, Strymonochori, Charopo, Kastanousi and Chortero and the community departments of Achladochori, Agkistro and Kapnophyto (in Sintiki municipality),

- the municipal departments of Serres, Elaionas and Oinoussa and the community departments of Orini and Ano Vrontou (in Serres municipality),
- the municipal departments of Dasochoriou, Irakleia, Valtero, Karperi, Koimisi, Lithotopos, Limnochori, Podismeno and Chrysochorafa (in Irakleia municipality).

#### 4. Latvia

The following restricted zones I in Latvia:

- Dienvidkurzemes novada, Grobiņas pagasts, Nīcas pagasta daļa uz ziemeļiem no apdzīvotas vietas Bernāti, autoceļa V1232, A11, V1222, Bārtas upes, Otaņķu pagasts, Grobiņas pilsēta,
- Ropažu novada Stopiņu pagasta daļa, kas atrodas uz rietumiem no autoceļa V36, P4 un P5, Acones ielas, Dauguļupes ielas un Dauguļupītes.

#### 5. Lithuania

The following restricted zones I in Lithuania:

- Kalvarijos savivaldybė,
- Klaipėdos rajono savivaldybė: Agluonėnų, Dovilų, Gargždų, Priekulės, Vėžaičių, Kretingalės ir Dauparų-Kvietinių seniūnijos,
- Marijampolės savivaldybė išskyrus Šumskų ir Sasnavos seniūnijos,
- Palangos miesto savivaldybė,
- Vilkaviškio rajono savivaldybė: Bartninkų, Gražiškių, Keturvalakių, Pajevonio, Virbalio, Vištyčio seniūnijos.

#### 6. Hungary

The following restricted zones I in Hungary:

- Békés megye 950950, 950960, 950970, 951950, 952050, 952750, 952850, 952950, 953050, 953150, 953650, 953660, 953750, 953850, 953960, 954250, 954260, 954350, 954450, 954550, 954650, 954750, 954850, 954860, 954950, 955050, 955150, 955250, 955260, 955270, 955350, 955450, 955510, 955650, 955750, 955760, 955850, 955950, 956050, 956060, 956150 és 956160 kódszámú vadgazdálkodási egységeinek teljes területe,
- Bács-Kiskun megye 600150, 600850, 601550, 601650, 601660, 601750, 601850, 601950, 602050, 603250, 603750 és 603850 kódszámú vadgazdálkodási egységeinek teljes területe,
- Budapest 1 kódszámú, vadgazdálkodási tevékenységre nem alkalmas területe,
- Csongrád-Csanád megye 800150, 800160, 800250, 802220, 802260, 802310 és 802450 kódszámú vadgazdálkodási egységeinek teljes területe,
- Fejér megye 400150, 400250, 400351, 400352, 400450, 400550, 401150, 401250, 401350, 402050, 402350, 402360, 402850, 402950, 403050, 403450, 403550, 403650, 403750, 403950, 403960, 403970, 404650, 404750, 404850, 404950, 404960, 405050, 405750, 405850, 405950,
- 406050, 406150, 406550, 406650 és 406750 kódszámú vadgazdálkodási egységeinek teljes területe,
- Győr-Moson-Sopron megye 100550, 100650, 100950, 101050, 101350, 101450, 101550, 101560 és 102150 kódszámú vadgazdálkodási egységeinek teljes területe,
- Jász-Nagykun-Szolnok megye 750150, 750160, 750260, 750350, 750450, 750460, 754450, 754550, 754560, 754570, 754650, 754750, 754950, 755050, 755150, 755250, 755350 és 755450 kódszámú vadgazdálkodási egységeinek teljes területe,
- Komárom-Esztergom megye 250150, 250250, 250450, 250460, 250550, 250650, 250750, 251050, 251150, 251250, 251350, 251360, 251650, 251750, 251850, 252250, kódszámú vadgazdálkodási egységeinek teljes területe,

- Pest megye 571550, 572150, 572250, 572350, 572550, 572650, 572750, 572850, 572950, 573150, 573250, 573260, 573350, 573360, 573450, 573850, 573950, 573960, 574050, 574150, 574350, 574360, 574550, 574650, 574750, 574850, 574860, 574950, 575050, 575150, 575250, 575350, 575550, 575650, 575750, 575850, 575950, 576050, 576150, 576250, 576350, 576450, 576650, 576750, 576850, 576950, 577050, 577150, 577350, 577450, 577650, 577850, 577950, 578050, 578150, 578250, 578350, 578360, 578450, 578550, 578560, 578650, 578850, 578950, 579050, 579150, 579250, 579350, 579450, 579460, 579550, 579650, 579750, 580250 és 580450 kódszámú vadgazdálkodási egységeinek teljes területe.

## 7. Poland

The following restricted zones I in Poland:

w województwie kujawsko – pomorskim:

- powiat rypiński,
- powiat brodnicki,
- powiat grudziądzki,
- powiat miejski Grudziądz,
- powiat wąbrzeski,

w województwie warmińsko-mazurskim:

- gminy Wielbark i Rozogi w powiecie szczycieńskim,

w województwie podlaskim:

- gminy Wysokie Mazowieckie z miastem Wysokie Mazowieckie, Czyżew i część gminy Kulesze Kościelne położona na południe od linii wyznaczonej przez linię kolejową w powiecie wysokomazowieckim,
- gminy Miastkowo, Nowogród, Śniadowo i Zbójna w powiecie łomżyńskim,
- gminy Szumowo, Zambrów z miastem Zambrów i część gminy Kołaki Kościelne położona na południe od linii wyznaczonej przez linię kolejową w powiecie zambrowskim,
- gminy Grabowo, Kolno i miasto Kolno, Turośl w powiecie kolneńskim,

w województwie mazowieckim:

- powiat ostrołęcki,
- powiat miejski Ostrołęka,
- gminy Bielsk, Brudzeń Duży, Bulkowo, Drobin, Gąbin, Łąck, Nowy Duninów, Radzanowo, Słupno, Staroźreby i Stara Biała w powiecie plockim,
- powiat miejski Płock,
- powiat ciechanowski,
- gminy Baboszewo, Dzierżanin, Joniec, Nowe Miasto, Płońsk i miasto Płońsk, Raciąż i miasto Raciąż, Sochocin w powiecie płońskim,
- powiat sierpecki,
- gmina Biezuń, Lutocin, Siemiątkowo i Żuromin w powiecie żuromińskim,
- część powiatu ostrowskiego niewymieniona w części II załącznika I,
- gminy Dzieżgowo, Lipowiec Kościelny, Mława, Radzanów, Strzegowo, Stupsk, Szreńsk, Szydłowo, Wiśniewo w powiecie mławskim,
- powiat przasnyski,
- powiat makowski,
- powiat pułtuski,
- część powiatu wyszkowskiego niewymieniona w części II załącznika I,
- część powiatu węgrowskiego niewymieniona w części II załącznika I,
- część powiatu wołomińskiego niewymieniona w części II załącznika I,
- gminy Mokobody i Suchożebry w powiecie siedleckim,

- gminy Dobrze, Jakubów, Kałuszyn, Stanisławów w powiecie mińskim,
  - gminy Bielany i gmina wiejska Sokołów Podlaski w powiecie sokołowskim,
  - powiat gostyniński,
- w województwie podkarpackim:
- gmina Krempna w powiecie jasielskim,
  - część powiatu ropczycko – sędziszowskiego niewymieniona w części II załącznika I,
  - gminy Pruchnik, Rokietnica, Roźwienica, w powiecie jarosławskim,
  - gminy Fredropol, Krasiczyn, Krzywczyna, Przemyśl, część gminy Orły położona na zachód od linii wyznaczonej przez drogę nr 77, część gminy Żurawica na zachód od linii wyznaczonej przez drogę nr 77 w powiecie przemyskim,
  - powiat miejski Przemyśl,
  - gminy Gać, Jawornik Polski, Kańczuga, część gminy Zarzecze położona na południe od linii wyznaczonej przez rzekę Mlecza w powiecie przeworskim,
  - powiat łańcucki,
  - gminy Trzebownisko, Głogów Małopolski, część gminy Świlcza położona na północ od linii wyznaczonej przez drogę nr 94 i część gminy Sokołów Małopolski położona na południe od linii wyznaczonej przez drogę nr 875 w powiecie rzeszowskim,
  - gmina Raniżów w powiecie kolbuszowskim,
  - część powiatu dębickiego niewymieniona w części II załącznika I,
- w województwie świętokrzyskim:
- gminy Nowy Korczyn, Solec-Zdrój, Wiślica, Stopnica, Tuczępy, Busko Zdrój w powiecie buskim,
  - powiat kazimierski,
  - powiat skarżyski,
  - część powiatu opatowskiego niewymieniona w części II załącznika I,
  - część powiatu sandomierskiego niewymieniona w części II załącznika I,
  - gminy Bogoria, Osiek, Staszów i część gminy Rytwiany położona na wschód od linii wyznaczonej przez drogę nr 764, część gminy Szydłów położona na wschód od linii wyznaczonej przez drogę nr 756 w powiecie staszowskim,
  - gminy Pawłów, Wąchock, część gminy Brody położona na zachód od linii wyznaczonej przez drogę nr 9 oraz na południowy – zachód od linii wyznaczonej przez drogi: nr 0618T biegnącą od północnej granicy gminy do skrzyżowania w miejscowości Lipie, drogę biegnącą od miejscowości Lipie do wschodniej granicy gminy i część gminy Mirzec położona na zachód od linii wyznaczonej przez drogę nr 744 biegnącą od południowej granicy gminy do miejscowości Tychów Stary a następnie przez drogę nr 0566T biegnącą od miejscowości Tychów Stary w kierunku północno – wschodnim do granicy gminy w powiecie starachowickim,
  - powiat ostrowiecki,
  - gminy Fałków, Ruda Maleniecka, Radoszyce, Smyków, Słupia Konecka, część gminy Końskie położona na zachód od linii kolejowej, część gminy Stąporków położona na południe od linii kolejowej w powiecie koneckim,
  - gminy Bodzentyn, Bieliny, Łągów, Morawica, Nowa Słupia, część gminy Raków położona na wschód od linii wyznaczonej przez drogi nr 756 i 764, część gminy Chęciny położona na południe od linii wyznaczonej przez drogę nr 762, część gminy Górno położona na południe od linii wyznaczonej przez drogę biegnącą od wschodniej granicy gminy łączącą miejscowości Leszczyna – Cedzyna oraz na południe od linii wyznaczonej przez ul. Kielecką w miejscowości Cedzyna biegnącą do wschodniej granicy gminy, część gminy Daleszyce położona na północ od linii wyznaczonej przez drogę nr 764 biegnącą od wschodniej granicy gminy do skrzyżowania z drogą łączącą miejscowości Daleszyce – Słopiec – Borków, dalej na północ od linii wyznaczonej przez tę drogę biegnącą od skrzyżowania z drogą nr 764 do przecięcia z linią rzeki Belnianka, następnie na północ od linii wyznaczonej przez rzeki Belnianka i Czarna Nida biegnącej do zachodniej granicy gminy w powiecie kieleckim,

- gminy Działoszyce, Michałów, Pińczów, Złota w powiecie pińczowskim,
- gminy Imielno, Jędrzejów, Nagłowice, Sędziszów, Słupia, Sobków, Wodzisław w powiecie jędrzejowskim,
- gminy Moskorzew, Radków, Secemin, część gminy Włoszczowa położona na zachód od linii wyznaczonej przez drogę nr 742 biegnącą od północnej granicy gminy do miejscowości Konieczno i dalej na zachód od linii wyznaczonej przez drogę łączącą miejscowości Konieczno – Rogienice – Dąbie – Podłazie, część gminy Kluczewsko położona na północ od linii wyznaczonej przez drogę biegnącą od wschodniej granicy gminy i łączącą miejscowości Krogulec – Nowiny – Komorniki do przecięcia z linią rzeki Czarna, następnie na północ od linii wyznaczonej przez rzekę Czarna biegnącą do przecięcia z linią wyznaczoną przez drogę nr 742 i dalej na zachód od linii wyznaczonej przez drogę nr 742 biegnącą od przecięcia z linią rzeki Czarna do południowej granicy gminy w powiecie włoszczowskim,

w województwie łódzkim:

- gminy Łyszkowice, Kocierzew Południowy, Kiernoza, Chąšno, Nieborów, część gminy wiejskiej Łowicz położona na północ od linii wyznaczonej przez drogę nr 92 biegnącej od granicy miasta Łowicz do zachodniej granicy gminy oraz część gminy wiejskiej Łowicz położona na wschód od granicy miasta Łowicz i na północ od granicy gminy Nieborów w powiecie łowickim,
- gminy Cielądz, Rawa Mazowiecka z miastem Rawa Mazowiecka w powiecie rawskim,
- gminy Bolimów, Głuchów, Godzianów, Lipce Reymontowskie, Maków, Nowy Kawęczyn, Skierniewice, Słupia w powiecie skierniewickim,
- powiat miejski Skierniewice,
- gminy Mniszków, Paradyż, Sławno i Żarnów w powiecie opoczyńskim,
- gminy Czerniewice, Inowódz, Lubochnia, Rzeczyca, Tomaszów Mazowiecki z miastem Tomaszów Mazowiecki, Zelechlinek w powiecie tomaszowskim,

gmina Przedbórz w powiecie radomszczańskim, w województwie pomorskim:

- gminy Ostaszewo, miasto Krynica Morska oraz część gminy Nowy Dwór Gdański położona na południowy – zachód od linii wyznaczonej przez drogę nr 55 biegnącą od południowej granicy gminy do skrzyżowania z drogą nr 7, następnie przez drogę nr 7 i S7 biegnącą do zachodniej granicy gminy w powiecie nowodworskim,
- gminy Lichnowy, Miłoradz, Malbork z miastem Malbork, część gminy Nowy Staw położona na zachód od linii wyznaczonej przez drogę nr 55 w powiecie malborskim,
- gminy Mikołajki Pomorskie, Stary Targ i Sztum w powiecie sztumskim,
- powiat gdański,
- Miasto Gdańsk,
- powiat tczewski,
- powiat kwidzyński,

w województwie lubuskim:

- gmina Lubiszyn w powiecie gorzowskim,
- gmina Dobięgniew w powiecie strzelecko – drezdeneckim,

w województwie dolnośląskim:

- gminy Dziadowa Kłoda, Międzybórz, Syców, Twardogóra, część gminy wiejskiej Oleśnica położona na północ od linii wyznaczonej przez drogę nr S8, część gminy Dobroszyce położona na wschód od linii wyznaczonej przez linię kolejową biegnącą od północnej do południowej granicy gminy w powiecie oleśnickim,
- gminy Jordanów Śląski, Kobierzyce, Mietków, Sobótka, część gminy Żórawina położona na zachód od linii wyznaczonej przez autostradę A4, część gminy Kąty Wrocławskie położona na południe od linii wyznaczonej przez autostradę A4 w powiecie wrocławskim,

- część gminy Domaniów położona na południowy zachód od linii wyznaczonej przez autostradę A4 w powiecie oławskim,
- gmina Wiązów w powiecie strzelińskim,
- część powiatu średzkiego niewymieniona w części II załącznika I,
- miasto Świeradów – Zdrój w powiecie lubańskim,
- gminy Pielgrzymka, miasto Złotoryja, część gminy wiejskiej Złotoryja położona na zachód od linii wyznaczonej przez drogę biegnącą od północnej granicy gminy w miejscowości Nowa Wieś Złotoryjska do granicy miasta Złotoryja oraz na południe od linii wyznaczonej przez drogę nr 382 biegnącą od granicy miasta Złotoryja do wschodniej granicy gminy w powiecie złotoryjskim,
- gmina Mirsk w powiecie lwóweckim,
- gminy Janowice Wielkie, Mysłakowice, Stara Kamienica w powiecie karkonoskim,
- część powiatu miejskiego Jelenia Góra położona na północ od linii wyznaczonej przez drogę nr 366,
- gminy Bolków, Męcinka, Mściwojów, Paszowice, miasto Jawor w powiecie jaworskim,
- gminy Dobromierz, Jaworzyna Śląska, Marcinowice, Strzegom, Żarów w powiecie świdnickim,
- gminy Dzierżoniów, Pieszycy, miasto Bielawa, miasto Dzierżoniów w powiecie dzierżoniowskim,
- gminy Głuszycza, Mieroszów w powiecie wałbrzyskim,
- gmina Nowa Ruda i miasto Nowa Ruda w powiecie kłodzkim,
- gminy Kamienna Góra, Marciszów i miasto Kamienna Góra w powiecie kamiennogórskim,

w województwie wielkopolskim:

- gminy Koźmin Wielkopolski, Rozdrażew, miasto Sulmierzyce, część gminy Krotoszyn położona na wschód od linii wyznaczonej przez drogi: nr 15 biegnącą od północnej granicy gminy do skrzyżowania z drogą nr 36, nr 36 biegnącą od skrzyżowania z drogą nr 15 do skrzyżowania z drogą nr 444, nr 444 biegnącą od skrzyżowania z drogą nr 36 do południowej granicy gminy w powiecie krotoszyńskim,
- gminy Brodnica, część gminy Dolsk położona na wschód od linii wyznaczonej przez drogę nr 434 biegnącą od północnej granicy gminy do skrzyżowania z drogą nr 437, a następnie na wschód od drogi nr 437 biegnącej od skrzyżowania z drogą nr 434 do południowej granicy gminy, część gminy Śrem położona na wschód od linii wyznaczonej przez drogę nr 310 biegnącą od zachodniej granicy gminy do miejscowości Śrem, następnie na wschód od drogi nr 432 w miejscowości Śrem oraz na wschód od drogi nr 434 biegnącej od skrzyżowania z drogą nr 432 do południowej granicy gminy w powiecie śremskim,
- gminy Borek Wielkopolski, Piaski, Pogorzela, w powiecie gostyńskim,
- gmina Grodzisk Wielkopolski i część gminy Kamieniec położona na wschód od linii wyznaczonej przez drogę nr 308 w powiecie grodziskim,
- gmina Czempin w powiecie kościańskim,
- gminy Kleszczewo, Kostrzyn, Kórnik, Pobiedziska, Mosina, miasto Puszczykowo, część gminy wiejskiej Murowana Goślina położona na południe od linii kolejowej biegnącej od północnej granicy miasta Murowana Goślina do północno-wschodniej granicy gminy w powiecie poznańskim,
- gmina Kiszkowo i część gminy Kłecko położona na zachód od rzeki Mała Wełna w powiecie gnieźnieńskim,
- powiat czarnkowsko-trzcianecki,
- część gminy Wronki położona na północ od linii wyznaczonej przez rzekę Wartę biegnącą od zachodniej granicy gminy do przecięcia z drogą nr 182, a następnie na wschód od linii wyznaczonej przez drogi nr 182 oraz 184 biegnącą od skrzyżowania z drogą nr 182 do południowej granicy gminy w powiecie szamotulskim,

- gmina Budzyń w powiecie chodzieskim,
  - gminy Mieścisko, Skoki i Wągrowiec z miastem Wągrowiec w powiecie wągrowieckim,
  - powiat pleszewski,
  - gmina Zagórów w powiecie słupeckim,
  - gmina Pyzdry w powiecie wrzesińskim,
  - gminy Kotlin, Żerków i część gminy Jarocin położona na wschód od linii wyznaczonej przez drogi nr S11 i 15 w powiecie jarocińskim,
  - powiat ostrowski,
  - powiat miejski Kalisz,
  - powiat kaliski,
  - powiat turecki,
  - gminy Rzgów, Grodziec, Krzymów, Stare Miasto, Rychwał w powiecie konińskim,
  - powiat kępiński,
  - powiat ostrzeszowski,
- w województwie opolskim:
- gminy Domaszowice, Pokój, część gminy Namysłów położona na północ od linii wyznaczonej przez linię kolejową biegnącą od wschodniej do zachodniej granicy gminy w powiecie namysłowskim,
  - gminy Wołczyn, Kluczbork, Byczyna w powiecie kluczborskim,
  - gminy Praszka, Gorzów Śląski część gminy Rudniki położona na północ od linii wyznaczonej przez drogę nr 42 biegnącą od zachodniej granicy gminy do skrzyżowania z drogą nr 43 i na zachód od linii wyznaczonej przez drogę nr 43 biegnącą od północnej granicy gminy do skrzyżowania z drogą nr 42 w powiecie oleskim,
  - gmina Grodków w powiecie brzeskim,
  - gminy Komprachcice, Łubniany, Murów, Niemodlin, Tułowice w powiecie opolskim,
  - powiat miejski Opole,
- w województwie zachodniopomorskim:
- gminy Nowogródek Pomorski, Barlinek, Myślibórz, część gminy Dębno położona na wschód od linii wyznaczonej przez drogę nr 126 biegnącą od zachodniej granicy gminy do skrzyżowania z drogą nr 23 w miejscowości Dębno, następnie na wschód od linii wyznaczonej przez drogę nr 23 do skrzyżowania z ul. Jana Pawła II w miejscowości Cychry, następnie na północ od ul. Jana Pawła II do skrzyżowania z ul. Ogrodową i dalej na północ od linii wyznaczonej przez ul. Ogrodową, której przedłużenie biegnie do wschodniej granicy gminy w powiecie myśliborskim,
  - gmina Stare Czarnowo w powiecie gryfińskim,
  - gmina Bielice, Kozielice, Pyrzyce w powiecie pyrzyckim,
  - gminy Bierzwnik, Krzęcin, Pełczyce w powiecie choszczeńskim,
  - część powiatu miejskiego Szczecin położona na zachód od linii wyznaczonej przez rzekę Odra Zachodnia biegnącą od północnej granicy gminy do przecięcia z drogą nr 10, następnie na południe od linii wyznaczonej przez drogę nr 10 biegnącą od przecięcia z linią wyznaczoną przez rzekę Odra Zachodnia do wschodniej granicy gminy,
  - gminy Dobra (Szczecińska), Police w powiecie polickim,
- w województwie małopolskim:
- powiat brzeski,
  - powiat gorlicki,
  - powiat proszowicki,

- część powiatu nowosądeckiego niewymieniona w części II załącznika I,
- gminy Czorsztyn, Krościenko nad Dunajcem, Ochotnica Dolna w powiecie nowotarskim,
- powiat miejski Nowy Sącz,
- powiat tarnowski,
- powiat miejski Tarnów,
- część powiatu dąbrowskiego niewymieniona w części III załącznika I.

## 8. Slovakia

The following restricted zones I in Slovakia:

- in the district of Nové Zámky, Sikenička, Pavlová, Bíňa, Kamenín, Kamenný Most, Malá nad Hronom, Belá, Lubá, Šarkan, Gbelce, Bruty, Mužla, Obid, Štúrovo, Nána, Kamenica nad Hronom, Chľaba, Lefa, Bajtava, Salka, Malé Kosihy,
- in the district of Veľký Krtíš, the municipalities of Ipeľské Predmostie, Veľká nad Ipľom, Hrušov, Kleňany, Sečianky,
- in the district of Levice, the municipalities of Keľ, Čata, Pohronský Ruskov, Hronovce, Želiezovce, Zalaba, Malé Ludince, Šalov, Sikenica, Pastovce, Bielovce, Ipeľský Sokolec, Lontov, Kubáňovo, Sazdice, Demandice, Dolné Semerovce, Vyškovce nad Ipľom, Preseľany nad Ipľom, Hrkovce, Tupá, Horné Semerovce, Hokovce, Slatina, Horné Turovce, Veľké Turovce, Šahy, Tešmak, Plášťovce, Ipeľské Uľany, Bátovce, Pečenice, Jabloňovce, Bohunice, Pukanec, Uhliská,
- in the district of Krupina, the municipalities of Dudince, Terany, Hontianske Moravce, Sudince, Súdovce, Lišov,
- the whole district of Ružomberok,
- in the region of Turčianske Teplice, the municipalities of Turček, Horná Štubňa, Čremošné, Háj, Rakša, Mošovce,
- in the district of Martin, the municipalities of Blatnica, Folkušová, Necpaly,
- in the district of Dolný Kubín, the municipalities of Kraľovany, Žaškov, Jasenová, Vyšný Kubín, Oravská Poruba, Leštiny, Osádka, Malatiná, Chlebnice, Krivá,
- in the district of Tvrdošín, the municipalities of Oravský Biely Potok, Habovka, Zuberec,
- in the district of Žarnovica, the municipalities of Rudno nad Hronom, Voznica, Hodruša-Hámre,
- the whole district of Žiar nad Hronom, except municipalities included in zone II.

## 9. Italy

The following restricted zones I in Italy:

Piedmont Region:

- in the province of Alessandria, the municipalities of Casalnoceto, Oviglio, Tortona, Viguzzolo, Frugarolo, Bergamasco, Castellar Guidobono, Berzano Di Tortona, Cerreto Grue, Carbonara Scrivia, Casasco, Carentino, Frascaro, Paderna, Montegioco, Spineto Scrivia, Villaromagnano, Pozzolo Formigaro, Momperone, Merana, Monleale, Terzo, Borgoratto Alessandrino, Casal Cermelli, Montemarzino, Bistagno, Castellazzo Bormida, Bosco Marengo, Castelspina, Volpeglino, Alice Bel Colle, Gamalero, Volpedo, Pozzol Groppo, Sarezzano,
- in the province of Asti, the municipalities of Olmo Gentile, Nizza Monferrato, Incisa Scapaccino, Roccaverano, Castel Boglione, Mombaruzzo, Maranzana, Castel Rocchero, Rocchetta Palafea, Castelletto Molina, Castelnuovo Belbo, Montabone, Quaranti, Fontanile, Calamandrana, Bruno, Sessame, Monastero Bormida, Bubbio, Cassinasco, Serole, Loazzolo, Cessole, Vesime, San Giorgio Scarampi,
- in the province of Cuneo, the municipalities of Bergolo, Pezzolo Valle Uzzone, Cortemilia, Levice, Castelletto Uzzone, Perletto,

Liguria Region:

- in the province of Genova, the municipalities of Rovegno, Rapallo, Portofino, Cicagna, Avegno, Montebruno, Santa Margherita Ligure, Favale Di Malvaro, Recco, Camogli, Moconesi, Tribogna, Fascia, Uscio, Gorreto, Fontanigorda, Neirone, Rondanina, Lorsica, Propata;
- in the province of Savona, the municipalities of Cairo Montenotte, Quiliano, Dego, Altare, Piana Crixia, Giusvalla, Albissola Marina, Savona,

Emilia-Romagna Region:

- in the province of Piacenza, the municipalities of Ottone, Zerba,

Lombardia Region:

- in the province of Pavia, the municipalities of Rocca Susella, Montesegele, Menconico, Val Di Nizza, Bagnaria, Santa Margherita Di Staffora, Ponte Nizza, Brallo Di Pregola, Varzi, Godiasco, Cecima,

Lazio Region:

- in the province of Rome,

North: the municipalities of Riano, Castelnuovo di Porto, Capena, Fiano Romano, Morlupo, Sacrofano, Magliano Romano, Formello, Campagnano di Roma, Anguillara;

West: the municipality of Fiumicino;

South: the municipality of Rome between the boundaries of the municipality of Fiumicino (West), the limits of Zone 3 (North), the Tiber river up to the intersection with the Grande Raccordo Anulare GRA Highway, the Grande Raccordo Anulare GRA Highway up to the intersection with A24 Highway, A24 Highway up to the intersection with Viale del Tecnopolo, viale del Tecnopolo up to the intersection with the boundaries of the municipality of Guidonia Montecelio;

East: the municipalities of Guidonia Montecelio, Montelibretti, Palombara Sabina, Monterotondo, Mentana, Sant'Angelo Romano, Fonte Nuova.

PART II

**1. Bulgaria**

The following restricted zones II in Bulgaria:

- the whole region of Haskovo,
- the whole region of Yambol,
- the whole region of Stara Zagora,
- the whole region of Pernik,
- the whole region of Kyustendil,
- the whole region of Plovdiv, excluding the areas in Part III,
- the whole region of Pazardzhik, excluding the areas in Part III,
- the whole region of Smolyan,
- the whole region of Dobrich,
- the whole region of Sofia city,
- the whole region of Sofia Province,
- the whole region of Blagoevgrad excluding the areas in Part III,
- the whole region of Razgrad,
- the whole region of Kardzhali,
- the whole region of Burgas,
- the whole region of Varna excluding the areas in Part III,
- the whole region of Silistra,

- the whole region of Ruse,
- the whole region of Veliko Tarnovo,
- the whole region of Pleven,
- the whole region of Targovishte,
- the whole region of Shumen,
- the whole region of Sliven,
- the whole region of Vidin,
- the whole region of Gabrovo,
- the whole region of Lovech,
- the whole region of Montana,
- the whole region of Vratza.

## 2. Germany

The following restricted zones II in Germany:

Bundesland Brandenburg:

- Landkreis Oder-Spree:
  - Gemeinde Grunow-Dammendorf,
  - Gemeinde Mixdorf
  - Gemeinde Schlaubetal,
  - Gemeinde Neuzelle,
  - Gemeinde Neißemünde,
  - Gemeinde Lawitz,
  - Gemeinde Eisenhüttenstadt,
  - Gemeinde Vogelsang,
  - Gemeinde Ziltendorf,
  - Gemeinde Wiesenau,
  - Gemeinde Friedland,
  - Gemeinde Siehdichum,
  - Gemeinde Müllrose,
  - Gemeinde Briesen,
  - Gemeinde Jacobsdorf
  - Gemeinde Groß Lindow,
  - Gemeinde Brieskow-Finkenheerd,
  - Gemeinde Ragow-Merz,
  - Gemeinde Beeskow,
  - Gemeinde Rietz-Neuendorf,
  - Gemeinde Tauche mit den Gemarkungen Stremmen, Ranzig, Trebatsch, Sabrodt, Sawall, Mitweide, Lindenberg, Falkenberg (T), Görsdorf (B), Wulfersdorf, Giesensdorf, Briescht, Kossenblatt und Tauche,
  - Gemeinde Langewahl,
  - Gemeinde Berkenbrück,
  - Gemeinde Steinhöfel mit den Gemarkungen Arensdorf und Demitz und den Gemarkungen Steinhöfel, Hasenfelde und Heinersdorf östlich der L 36 und der Gemarkung Neuendorf im Sande südlich der L36,

- Gemeinde Fürstenwalde östlich der B 168 und südlich der L36,
- Gemeinde Diensdorf-Radlow,
- Gemeinde Wendisch Rietz östlich des Scharmützelsees und nördlich der B 246,
- Gemeinde Bad Saarow mit der Gemarkung Neu Golm und der Gemarkung Bad Saarow-Pieskow östlich des Scharmützelsees und ab nördlicher Spitze östlich der L35,
- Landkreis Dahme-Spreewald:
  - Gemeinde Jamlitz,
  - Gemeinde Lieberose,
  - Gemeinde Schwielochsee mit den Gemarkungen Goyatz, Jessern, Lamsfeld, Ressen, Speichrow und Zaue,
- Landkreis Spree-Neiße:
  - Gemeinde Schenkendöbern,
  - Gemeinde Guben,
  - Gemeinde Jänschwalde,
  - Gemeinde Tauer,
  - Gemeinde Peitz,
  - Gemeinde Kolkwitz mit der Gemarkung Klein Gaglow südl. der BAB 15,
  - Gemeinde Turnow-Preilack mit der Gemarkung Preilack,
  - Gemeinde Teichland mit der Gemarkung Bärenbrück,
  - Gemeinde Heinersbrück,
  - Gemeinde Forst,
  - Gemeinde Groß Schacksdorf-Simmersdorf,
  - Gemeinde Neiße-Malxetal,
  - Gemeinde Jämlitz-Klein Düben,
  - Gemeinde Tschernitz,
  - Gemeinde Döbern,
  - Gemeinde Felixsee,
  - Gemeinde Wiesengrund,
  - Gemeinde Spremberg,
  - Gemeinde Welzow,
  - Gemeinde Neuhausen/Spree,
  - Gemeinde Drebkau mit der Gemarkung Kausche,
  - Kreisfreie Stadt Cottbus mit den Gemarkungen Kahren, Gallinchen, Groß Gaglow und der Gemarkung Kiekebusch südlich der BAB 15,
- Landkreis Märkisch-Oderland:
  - Gemeinde Bleyen-Genschmar,
  - Gemeinde Neuhardenberg
  - Gemeinde Golzow,
  - Gemeinde Küstriner Vorland,
  - Gemeinde Alt Tucheband,
  - Gemeinde Reitwein,

- Gemeinde Podelzig,
- Gemeinde Gusow-Platkow,
- Gemeinde Seelow,
- Gemeinde Vierlinden,
- Gemeinde Lindendorf,
- Gemeinde Fichtenhöhe,
- Gemeinde Lietzen,
- Gemeinde Falkenhagen (Mark),
- Gemeinde Zeschdorf,
- Gemeinde Treplin,
- Gemeinde Lebus,
- Gemeinde Müncheberg mit den Gemarkungen Jahnsfelde, Trebnitz, Obersdorf, Münchehofe und Hermersdorf,
- Gemeinde Märkische Höhe mit der Gemarkung Ringenwalde,
- Gemeinde Bliesdorf mit der Gemarkung Metzdorf und Gemeinde Bliesdorf – östlich der B167 bis östlicher Teil, begrenzt aus Richtung Gemarkungsgrenze Neutrebbin südlich der Bahnlinie bis Straße „Sophienhof“ dieser westlich folgend bis „Ruesterchegraben“ weiter entlang Feldweg an den Windrädern Richtung „Herrnhof“, weiter entlang „Letschiner Hauptgraben“ nord-östlich bis Gemarkungsgrenze Alltrebbin und Kunersdorf – östlich der B167,
- Gemeinde Bad Freienwalde mit den Gemarkungen Altglietzen, Altranft, Bad Freienwalde, Bralitz, Hohenwutzen, Schiffmühle, Hohensaaten und Neuenhagen,
- Gemeinde Falkenberg mit der Gemarkung Falkenberg östlich der L35,
- Gemeinde Oderaue,
- Gemeinde Wriezen mit den Gemarkungen Altwriezen, Jäckelsbruch, Neugaul, Bearegard, Eichwerder, Rathsdorf – östlich der B167 und Wriezen – östlich der B167,
- Gemeinde Neulewin,
- Gemeinde Neutrebbin,
- Gemeinde Letschin,
- Gemeinde Zechin,
- Landkreis Barnim:
  - Gemeinde Lunow-Stolzenhagen,
  - Gemeinde Parsteinsee,
  - Gemeinde Oderberg,
  - Gemeinde Liepe,
  - Gemeinde Hohenfinow (nördlich der B167),
  - Gemeinde Niederfinow,
  - Gemeinde (Stadt) Eberswalde mit den Gemarkungen Eberswalde nördlich der B167 und östlich der L200, Sommerfelde und Tornow nördlich der B167,
  - Gemeinde Chorin mit den Gemarkungen Brodowin, Chorin östlich der L200, Serwest, Neuehütte, Sandkrug östlich der L200,
  - Gemeinde Ziethen mit der Gemarkung Klein Ziethen östlich der Serwester Dorfstraße und östlich der B198,

- Landkreis Uckermark:
  - Gemeinde Angermünde mit den Gemarkungen Crussow, Stolpe, Gellmersdorf, Neukünkendorf, Bölkendorf, Herzsprung, Schmargendorf und den Gemarkungen Angermünde südlich und südöstlich der B2 und Dobberzin südlich der B2,
  - Gemeinde Schwedt mit den Gemarkungen Criewen, Zützen, Schwedt, Stendell, Kummerow, Kunow, Vierraden, Blumenhagen, Oderbruchwiesen, Enkelsee, Gatow, Hohenfelde, Schöneberg, Flemisdorf und der Gemarkung Felchow östlich der B2,
  - Gemeinde Pinnow südlich und östlich der B2,
  - Gemeinde Berkholz-Meyenburg,
  - Gemeinde Mark Landin mit der Gemarkung Landin südlich der B2,
  - Gemeinde Casekow mit der Gemarkung Woltersdorf und den Gemarkungen Biesendahlshof und Casekow östlich der L272 und südlich der L27,
  - Gemeinde Hohenselchow-Groß Pinnow mit der Gemarkung Groß Pinnow und der Gemarkung Hohenselchow südlich der L27,
  - Gemeinde Gartz (Oder) mit der Gemarkung Friedrichsthal und den Gemarkungen Gartz und Hohenreinkendorf südlich der L27 und der B2 bis Kastanienallee, dort links abbiegend dem Schülerweg folgend bis Höhe Bahnhof, von hier in östlicher Richtung den Salveybach kreuzend bis zum Tantower Weg, diesen in nördlicher Richtung bis zu Stettiner Straße, diese weiter folgend bis zur B2, dieser in nördlicher Richtung folgend,
  - Gemeinde Mescherin mit der Gemarkung Neurochlitz östlich der B2, dieser folgend bis zur Gemarkungsgrenze Rosow, weiter in nordwestlicher Richtung bis Rosow, weiter auf der K7311 zur Landesgrenze zu Mecklenburg-Vorpommern, dieser folgend in östlicher Richtung bis zur polnischen Grenze,
  - Gemeinde Passow mit der Gemarkung Jamikow,
- Kreisfreie Stadt Frankfurt (Oder),
- Landkreis Prignitz:
  - Gemeinde Karstädt mit den Gemarkungen Neuhof und Kribbe und den Gemarkungen Groß Warnow, Klein Warnow, Reckenzin, Streesow und Dallmin östlich der Bahnstrecke Berlin/Spandau-Hamburg/Altona,
  - Gemeinde Berge,
  - Gemeinde Pirow mit den Gemarkungen Hülsebeck, Pirow, Bresch und Burow,
  - Gemeinde Putlitz mit den Gemarkungen Sagast, Nettelbeck, Porep, Lütkenhof, Putlitz, Weitendorf und Telschow,
  - Gemeinde Marienfließ mit den Gemarkungen Jännersdorf, Stepenitz und Krependorf,
- Landkreis Oberspreewald-Lausitz:
  - Gemeinde Senftenberg mit der Gemarkung Peickwitz,
  - Gemeinde Hohenbocka,
  - Gemeinde Grünewald,
  - Gemeinde Hermsdorf,
  - Gemeinde Kroppen,
  - Gemeinde Ortrand,
  - Gemeinde Großmehlen,
  - Gemeinde Lindenau,
  - Gemeinde Frauendorf,
  - Gemeinde Ruhland,
  - Gemeinde Guteborn
  - Gemeinde Schwarzbach mit der Gemarkung Schwarzbach,

## Bundesland Sachsen:

## — Landkreis Bautzen:

- Gemeinde Arnsdorf nördlich der B6,
- Gemeinde Burkau,
- Gemeinde Crostwitz,
- Gemeinde Demitz-Thumitz nördlich der S111,
- Gemeinde Elsterheide,
- Gemeinde Frankenthal,
- Gemeinde Göda nördlich der S111,
- Gemeinde Großdubrau,
- Gemeinde Großharthau nördlich der B6,
- Gemeinde Großnaundorf,
- Gemeinde Haselbachtal,
- Gemeinde Hochkirch nördlich der B6,
- Gemeinde Königswartha,
- Gemeinde Kubschütz nördlich der B6,
- Gemeinde Laußnitz,
- Gemeinde Lichtenberg,
- Gemeinde Lohsa,
- Gemeinde Malschwitz,
- Gemeinde Nebelschütz,
- Gemeinde Neukirch,
- Gemeinde Neschwitz,
- Gemeinde Ohorn,
- Gemeinde Oßling,
- Gemeinde Ottendorf-Okrilla,
- Gemeinde Panschwitz-Kuckau,
- Gemeinde Puschwitz,
- Gemeinde Räckelwitz,
- Gemeinde Radibor,
- Gemeinde Ralbitz-Rosenthal,
- Gemeinde Rammenau,
- Gemeinde Schwepnitz,
- Gemeinde Spreetal,
- Gemeinde Stadt Bautzen nördlich der S111 bis Abzweig S 156 und nördlich des Verlaufs S 156 bis Abzweig B6 und nördlich des Verlaufs der B 6 bis zur östlichen Gemeindegrenze,
- Gemeinde Stadt Bernsdorf,
- Gemeinde Stadt Bischofswerda nördlich der B6 nördlich der S111,
- Gemeinde Stadt Elstra,
- Gemeinde Stadt Großröhrsdorf,
- Gemeinde Stadt Hoyerswerda,
- Gemeinde Stadt Kamenz,

- Gemeinde Stadt Königsbrück,
  - Gemeinde Stadt Lauta,
  - Gemeinde Stadt Pulsnitz,
  - Gemeinde Stadt Radeberg nördlich der B6,
  - Gemeinde Stadt Weißenberg,
  - Gemeinde Stadt Wittichenau,
  - Gemeinde Steina,
  - Gemeinde Wachau,
  - Stadt Dresden:
    - Stadtgebiet nördlich der BAB4 bis zum Verlauf westlich der Elbe, dann nördlich der B6,
  - Landkreis Görlitz,
  - Landkreis Meißen:
    - Gemeinde Diera-Zehren östlich der Elbe,
    - Gemeinde Ebersbach,
    - Gemeinde Glaubitz östlich des Grödel-Elsterwerdaer-Floßkanals,
    - Gemeinde Klipphausen östlich der S177,
    - Gemeinde Lampertswalde,
    - Gemeinde Moritzburg,
    - Gemeinde Niederau östlich der B101,
    - Gemeinde Nünchritz östlich der Elbe und südlich des Grödel-Elsterwerdaer-Floßkanals,
    - Gemeinde Priestewitz,
    - Gemeinde Röderau östlich des Grödel-Elsterwerdaer-Floßkanals,
    - Gemeinde Schönfeld,
    - Gemeinde Stadt Coswig,
    - Gemeinde Stadt Gröditz östlich des Grödel-Elsterwerdaer-Floßkanals,
    - Gemeinde Stadt Großenhain,
    - Gemeinde Stadt Meißen östlich des Straßenverlaufs der S177 bis zur B6, dann B6 bis zur B101, ab der B101 Elbtalbrücke Richtung Norden östlich der Elbe,
    - Gemeinde Stadt Radebeul,
    - Gemeinde Stadt Radeburg,
    - Gemeinde Thienendorf,
    - Gemeinde Weinböhla,
    - Gemeinde Wülknitz östlich des Grödel-Elsterwerdaer-Floßkanals,
  - Landkreis Sächsische Schweiz-Osterzgebirge:
    - Gemeinde Stadt Wilsdruff nördlich der BAB4 zwischen den Abfahrten Wilsdruff und Dreieck Dresden-West,
- Bundesland Mecklenburg-Vorpommern:
- Landkreis Ludwigslust-Parchim:
    - Gemeinde Balow mit dem Ortsteil: Balow,
    - Gemeinde Brunow mit den Ortsteilen und Ortschaften: Bauerkühl,
    - Brunow (bei Ludwigslust), Klüß, Löcknitz (bei Parchim),

- Gemeinde Dambeck mit dem Ortsteil und der Ortslage:
- Dambeck (bei Ludwigslust),
- Gemeinde Ganzlin mit den Ortsteilen und Ortslagen: Barackendorf, Hof Retzow, Klein Damerow, Retzow, Wangelin,
- Gemeinde Gehlsbach mit den Ortsteilen und Ortslagen: Ausbau Darß, Darß, Hof Karbow, Karbow, Karbow-Ausbau, Quaßlin, Quaßlin Hof, Quaßliner Mühle, Vietlütbe, Wahlstorf
- Gemeinde Groß Godems mit den Ortsteilen und Ortslagen:
- Groß Godems, Klein Godems,
- Gemeinde Karrenzin mit den Ortsteilen und Ortslagen: Herzfeld, Karrenzin, Karrenzin-Ausbau, Neu Herzfeld, Repzin, Wulfsahl,
- Gemeinde Kreien mit den Ortsteilen und Ortslagen: Ausbau Kreien,
- Hof Kreien, Kolonie Kreien, Kreien, Wilsen,
- Gemeinde Kritzow mit dem Ortsteil und der Ortslage: Benzin,
- Gemeinde Lübz mit den Ortsteilen und Ortslagen: Burow, Gischow, Meyerberg,
- Gemeinde Möllenbeck mit den Ortsteilen und Ortslagen: Carlshof, Horst, Menzendorf, Möllenbeck,
- Gemeinde Muchow mit dem Ortsteil und Ortslage: Muchow,
- Gemeinde Parchim mit dem Ortsteil und Ortslage: Slate,
- Gemeinde Prislich mit den Ortsteilen und Ortslagen: Marienhof, Neese, Prislich, Werle,
- Gemeinde Rom mit dem Ortsteil und Ortslage: Klein Niendorf,
- Gemeinde Ruhner Berge mit den Ortsteilen und Ortslagen: Dorf Polnitz, Drenkow, Griebow, Jarchow, Leppin, Malow, Malower Mühle, Marnitz, Mentin, Mooster, Poitendorf, Polnitz, Suckow, Tessenow, Zachow,
- Gemeinde Siggelkow mit den Ortsteilen und Ortslagen: Groß Pankow, Klein Pankow, Neuburg, Redlin, Siggelkow,
- Gemeinde Stolpe mit den Ortsteilen und Ortslagen: Barkow, Granzin, Stolpe Ausbau, Stolpe,
- Gemeinde Ziegendorf mit den Ortsteilen und Ortslagen: Drefahl, Meierstorf, Neu Drefahl, Pampin, Platschow, Stresendorf, Ziegendorf,
- Gemeinde Zierzow mit den Ortsteilen und Ortslagen: Kolbow, Zierzow.

### 3. Estonia

The following restricted zones II in Estonia:

- Eesti Vabariik (välja arvatud Hiiu maakond).

### 4. Latvia

The following restricted zones II in Latvia:

- Aizkraukles novads,
- Alūksnes, novada Alsviķu, Annas, Ilzenes, Jaunalūksnes, Jaunlaicenes, Kalncempju, Liepnas, Malienas, Mālpes, Mārkalnes, Pededzes, Veclaicenes, Zeltiņu, Ziemera pagasts, Jaunannas pagasta daļa uz ziemeļrietumiem no Pededzes upes, Alūksnes pilsēta,
- Augšdaugavas novads,
- Ādažu novads,
- Balvu, novada Baltinavas, Bērzpils, Briežuciema, Krišjāņu, Kupravas, Lazdukalna, Lazdulejas, Medņevas, Rugāju, Susāju, Šķilbēnu, Tilžas, Vectilžas, Vecumu, Žīguru, Viļakas pilsēta,

- Bauskas novads,
- Cēsu novads,
- Dienvidkurzemes novada Aizputes, Cīravas, Lažas, Durbes, Dunalkas, Tadaikšu, Vecpils, Bārtas, Sakas, Bunkas, Priekules, Gramzdas, Kalētu, Virgas, Dunikas, Vaiņodes, Gaviezes, Rucavas, Vērgales, Medzes pagasts, Nīcas pagasta daļa uz dienvidiem no apdzīvotas vietas Bernāti, autoceļa V1232, A11, V1222, Bārtas upes, Embūtes pagasta daļa uz dienvidiem no autoceļa P116, P106, autoceļa no apdzīvotas vietas Dinsdurbe, Kalvenes pagasta daļa uz rietumiem no ceļa pie Vārtājas upes līdz autoceļam A9, uz dienvidiem no autoceļa A9, uz rietumiem no autoceļa V1200, Kazdangas pagasta daļa uz rietumiem no ceļa V1200, P115, P117, V1296, Aizputes, Durbes, Pāvilostas, Priekules pilsēta,
- Dobeles novads,
- Gulbenes, novada Beļavas, Daukstu, Druvienas, Galgauskas, Jaungulbenes, Lejasciema, Lizuma, Līgo, Rankas, Stāmerienas, Stradu, Tirzas pagasts, Litenes pagasta daļa uz rietumiem no Pededzes upes, Gulbenes pilsēta,
- Jelgavas novads,
- Jēkabpils novads,
- Krāslavas novads,
- Kuldīgas novada Alsungas, Gudenieku, Kurmāles, Rendas, Kabiles, Vārmes, Pelču, Snēpeles, Turlavas, Laidu pagasta daļa uz ziemeļiem no autoceļa V1296, Ēdoles pagasta daļa uz rietumiem no autoceļa V1269, V1271, V1288, P119, Īvandes pagasta daļa uz dienvidiem no autoceļa P119, Rumbas pagasta daļa uz dienvidiem no autoceļa P120, Kuldīgas pilsēta,
- Ķekavas novads,
- Limbažu novads,
- Līvānu novads,
- Ludzas novads,
- Madonas novads,
- Mārupes novads,
- Ogres novads,
- Olaines novads,
- Preiļu, novada Aglonas, Aizkalnes, Pelēču, Preiļu, Riebiņu, Rožkalnu, Saunas, Sīļukalna, Stabulnieku, Upmalas, Vārkavas pagasts, Galēnu pagasta daļa uz rietumiem no autoceļa V740, V595, Rušonas pagasta daļa uz dienvidiem no autoceļa V742, Preiļu pilsēta,
- Rēzeknes, novada Audriņu, Bērzgales, Čornajas, Dekšāres, Dricānu, Gaigalavas, Griškānu, Ilzeskalna, Kantinieku, Kaunatas, Lendžu, Mākoņkalna, Nagļu, Nautrēnu, Ozolaines, Ozolmuižas, Pušas, Rikavas, Sakstagala, Sokolku, Stoļerovas, Stružānu, Vērēmu, Viļānu pagasts, Lūznavas pagasta daļa uz austrumiem no autoceļa A13 līdz apdzīvotai vietai Vertukšne, uz austrumiem no Vertukšnes ezera, Maltas pagasta daļa uz austrumiem no autoceļa Vertukšne – Rozentova un uz austrumiem no autoceļa P56, P57, V569, Feimaņu pagasta daļa uz dienvidiem no autoceļa V577, V742, Viļānu pilsēta,
- Ropažu novada Garkalnes, Ropažu pagasts, Stopiņu pagasta daļa, kas atrodas uz austrumiem no autoceļa V36, P4 un P5, Acones ielas, Daugulupes ielas un Daugulupītes, Vangažu pilsēta,
- Salaspils novads,
- Saldus novads,
- Saulkrastu novads,
- Siguldas novads,
- Smiltenes novads,
- Talsu novads,
- Tukuma novads,

- Valkas novads,
- Valmieras novads,
- Varakļānu novads,
- Ventspils novada Ances, Popes, Puzes, Tārgales, Vārves, Užavas, Usmas, Jūrkalnes pagasts, Ugāles pagasta daļa uz ziemeļiem no autoceļa V1347, uz austrumiem no autoceļa P123, Ziru pagasta daļa uz rietumiem no autoceļa V1269, P108, Piltenes pagasta daļa uz ziemeļiem no autoceļa V1310, V1309, autoceļa līdz Ventas upei, Piltenes pilsēta,
- Daugavpils valstspilsētas pašvaldība,
- Jelgavas valstspilsētas pašvaldība,
- Jūrmalas valstspilsētas pašvaldība,
- Rēzeknes valstspilsētas pašvaldība.

## 5. Lithuania

The following restricted zones II in Lithuania:

- Alytaus miesto savivaldybė,
- Alytaus rajono savivaldybė,
- Anykščių rajono savivaldybė,
- Akmenės rajono savivaldybė,
- Birštono savivaldybė,
- Biržų miesto savivaldybė,
- Biržų rajono savivaldybė,
- Druskininkų savivaldybė,
- Elektrėnų savivaldybė,
- Ignalinos rajono savivaldybė,
- Jonavos rajono savivaldybė,
- Joniškio rajono savivaldybė,
- Jurbarko rajono savivaldybė: Eržvilko, Juodaičių, Seredžiaus, Smalininkų ir Viešvilės seniūnijos,
- Kaišiadorių rajono savivaldybė,
- Kauno miesto savivaldybė,
- Kauno rajono savivaldybė,
- Kazlų rūdos savivaldybė: Kazlų Rūdos seniūnija, išskyrus vakarinė dalis iki kelio 2602 ir 183, Plutiškių seniūnija.
- Kelmės rajono savivaldybė,
- Kėdainių rajono savivaldybė,
- Klaipėdos rajono savivaldybė: Judrėnų, Endriejavo ir Veiviržėnų seniūnijos,
- Kupiškio rajono savivaldybė,
- Kretingos rajono savivaldybė,
- Lazdijų rajono savivaldybė,
- Mažeikių rajono savivaldybė,
- Molėtų rajono savivaldybė: Alantos, Balninkų, Čiulėnų, Inturkės, Joniškio, Luokesos, Mindūnų, Suginčių ir Videniškių seniūnijos,
- Pagėgių savivaldybė,
- Pakruojo rajono savivaldybė,

- Panevėžio rajono savivaldybė,
- Panevėžio miesto savivaldybė,
- Pasvalio rajono savivaldybė,
- Radviliškio rajono savivaldybė,
- Rietavo savivaldybė,
- Prienų rajono savivaldybė,
- Plungės rajono savivaldybė,
- Raseinių rajono savivaldybė,
- Rokiškio rajono savivaldybė,
- Skuodo rajono savivaldybė,
- Šakių rajono savivaldybė: Kriūkų, Lekėčių ir Lukšių seniūnijos,
- Šalčininkų rajono savivaldybė,
- Šiaulių miesto savivaldybė,
- Šiaulių rajono savivaldybė,
- Šilutės rajono savivaldybė,
- Širvintų rajono savivaldybė: Čiobiškio, Gelvonų, Jauniūnų, Kernavės, Musinkų ir Širvintų seniūnijos,
- Šilalės rajono savivaldybė,
- Švenčionių rajono savivaldybė,
- Tauragės rajono savivaldybė,
- Telšių rajono savivaldybė,
- Trakų rajono savivaldybė,
- Ukmergės rajono savivaldybė: Deltuvos, Lyduokių, Pabaisko, Pivonijos, Siesikų, Šešuolių, Taujėnų, Ukmergės miesto, Veprių, Vidiškių ir Žemaitkiemo seniūnijos,
- Utenos rajono savivaldybė,
- Varėnos rajono savivaldybė,
- Vilniaus miesto savivaldybė,
- Vilniaus rajono savivaldybė: Avižienių, Bezdonių, Buivydžių, Dūkštų, Juodšilių, Kalvelių, Lavoriškių, Maišiagalos, Marijampolio, Medininkų, Mickūnų, Nemenčinės, Nemenčinės miesto, Nemėžio, Pagirių, Riešės, Rudaminos, Rukainių, Sudervės, Sužionių, Šatrininkų ir Zujūnų seniūnijos,
- Visagino savivaldybė,
- Zarasų rajono savivaldybė.

## 6. Hungary

The following restricted zones II in Hungary:

- Békés megye 950150, 950250, 950350, 950450, 950550, 950650, 950660, 950750, 950850, 950860, 951050, 951150, 951250, 951260, 951350, 951450, 951460, 951550, 951650, 951750, 952150, 952250, 952350, 952450, 952550, 952650, 953250, 953260, 953270, 953350, 953450, 953550, 953560, 953950, 954050, 954060, 954150, 956250, 956350, 956450, 956550, 956650 és 956750 kódszámú vadgazdálkodási egységeinek teljes területe,
- Borsod-Abaúj-Zemplén megye valamennyi vadgazdálkodási egységének teljes területe,
- Fejér megye 403150, 403160, 403250, 403260, 403350, 404250, 404550, 404560, 404570, 405450, 405550, 405650, 406450 és 407050 kódszámú vadgazdálkodási egységeinek teljes területe,

- Hajdú-Bihar megye valamennyi vadgazdálkodási egységének teljes területe,
- Heves megye valamennyi vadgazdálkodási egységének teljes területe,
- Jász-Nagykun-Szolnok megye 750250, 750550, 750650, 750750, 750850, 750970, 750980, 751050, 751150, 751160, 751250, 751260, 751350, 751360, 751450, 751460, 751470, 751550, 751650, 751750, 751850, 751950, 752150, 752250, 752350, 752450, 752460, 752550, 752560, 752650, 752750, 752850, 752950, 753060, 753070, 753150, 753250, 753310, 753450, 753550, 753650, 753660, 753750, 753850, 753950, 753960, 754050, 754150, 754250, 754360, 754370, 754850, 755550, 755650 és 755750 kódszámú vadgazdálkodási egységeinek teljes területe,
- Komárom-Esztergom megye: 250350, 250850, 250950, 251450, 251550, 251950, 252050, 252150, 252350, 252450, 252450, 252550, 252650, 252750, 252850, 252860, 252950, 252960, 253050, 253150, 253250, 253350, 253450 és 253550 kódszámú vadgazdálkodási egységeinek teljes területe,
- Nógrád megye valamennyi vadgazdálkodási egységeinek teljes területe,
- Pest megye 570150, 570250, 570350, 570450, 570550, 570650, 570750, 570850, 570950, 571050, 571150, 571250, 571350, 571650, 571750, 571760, 571850, 571950, 572050, 573550, 573650, 574250, 577250, 580050 és 580150 kódszámú vadgazdálkodási egységeinek teljes területe,
- Szabolcs-Szatmár-Bereg megye valamennyi vadgazdálkodási egységének teljes területe.

## 7. Poland

The following restricted zones II in Poland:

w województwie warmińsko-mazurskim:

- gminy Kalinowo, Stare Juchy, Prostki oraz gmina wiejska Elk w powiecie elckim,
- powiat elbląski,
- powiat miejski Elbląg,
- część powiatu gołdapskiego niewymieniona w części III załącznika I,
- powiat piski,
- powiat bartoszycki,
- część powiatu oleckiego niewymieniona w części III załącznika I,
- część powiatu giżyckiego niewymieniona w części III załącznika I,
- powiat braniewski,
- powiat kętrzyński,
- powiat lidzbarski,
- gminy Dźwierzuty Jedwabno, Pasym, Świętajno, Szczytno i miasto Szczytno w powiecie szczycieńskim,
- powiat mrągowski,
- część powiatu węgorzewskiego niewymieniona w części III załącznika I,
- powiat olsztyński,
- powiat miejski Olsztyn,
- powiat nidzicki,
- gminy Kisielice, Susz, Zalewo w powiecie iławskim,
- część powiatu ostródzkiego niewymieniona w części III załącznika I,
- gmina Iłowo – Osada, część gminy wiejskiej Działdowo położona na południe od linii wyznaczonej przez linię kolejową biegnącą od wchodniej do zachodniej granicy gminy, część gminy Płońnica położona na południe od linii wyznaczonej przez linię kolejową biegnącą od wchodniej do zachodniej granicy gminy, część gminy Lidzbark położona na południe od linii wyznaczonej przez drogę nr 544 biegnącą od wschodniej granicy gminy do skrzyżowania z drogą nr 541 oraz na zachód od linii wyznaczonej przez drogę nr 541 biegnącą od północnej granicy gminy do skrzyżowania z drogą nr 544 w powiecie działdowskim,

w województwie podlaskim:

- powiat bielski,
- powiat grajewski,
- powiat moniecki,
- powiat sejneński,
- gminy Łomża, Piątnica, Jedwabne, Przytuły i Wizna w powiecie łomżyńskim,
- powiat miejski Łomża,
- powiat siemiatycki,
- powiat hajnowski,
- gminy Ciechanowiec, Klukowo, Szepietowo, Kobylin-Borzymy, Nowe Piekuty, Sokoły i część gminy Kulesze Kościelne położona na północ od linii wyznaczonej przez linię kolejową w powiecie wysokomazowieckim,
- gmina Rutki i część gminy Kołaki Kościelne położona na północ od linii wyznaczonej przez linię kolejową w powiecie zambrowskim,
- gminy Mały Płock i Stawiski w powiecie kolneńskim,
- powiat białostocki,
- powiat suwalski,
- powiat miejski Suwałki,
- powiat augustowski,
- powiat sokólski,
- powiat miejski Białystok,

w województwie mazowieckim:

- gminy Domanice, Korczew, Kotuń, Mordy, Paprotnia, Przesmyki, Siedlce, Skórzec, Wiśniew, Wodynie, Zbuczyn w powiecie siedleckim,
- powiat miejski Siedlce,
- gminy Ceranów, Jabłonna Lacka, Kosów Lacki, Repki, Sabnie, Sterdyń w powiecie sokołowskim,
- powiat łosicki,
- powiat sochaczewski,
- powiat zwoleński,
- powiat kozienicki,
- powiat lipski,
- powiat radomski
- powiat miejski Radom,
- powiat szydłowiecki,
- gminy Lubowidz i Kuczbork Osada w powiecie żuromińskim,
- gmina Wieczfnia Kościelna w powiecie mławskim,
- gminy Bodzanów, Słubice, Wyszogród i Mała Wieś w powiecie płockim,
- powiat nowodworski,
- gminy Czerwińsk nad Wisłą, Naruszewo, Załuski w powiecie płońskim,
- gminy: miasto Kobyłka, miasto Marki, miasto Ząbki, miasto Zielonka, część gminy Tłuszcz ograniczona liniami kolejowymi: na północ od linii kolejowej biegnącej od wschodniej granicy gminy do miasta Tłuszcz oraz na wschód od linii kolejowej biegnącej od północnej granicy gminy do miasta Tłuszcz, część gminy Jadów położona na północ od linii kolejowej biegnącej od wschodniej do zachodniej granicy gminy w powiecie wołomińskim,

- powiat garwoliński,
  - gminy Boguty – Pianki, Brok, Zaręby Kościelne, Nur, Małkinia Górna, część gminy Wąsewo położona na południe od linii wyznaczonej przez drogę nr 60, część gminy wiejskiej Ostrów Mazowiecka położona na południe od miasta Ostrów Mazowiecka i na południe od linii wyznaczonej przez drogę 60 biegnącą od zachodniej granicy miasta Ostrów Mazowiecka do zachodniej granicy gminy w powiecie ostrowskim,
  - część gminy Sadowne położona na północny- zachód od linii wyznaczonej przez linię kolejową, część gminy Łochów położona na północny – zachód od linii wyznaczonej przez linię kolejową w powiecie węgrowskim,
  - gminy Brańszczyk, Długosiodło, Rząśnik, Wyszków, część gminy Zabrodzie położona na wschód od linii wyznaczonej przez drogę nr S8 w powiecie wyszkowskim,
  - gminy Cegłów, Dębe Wielkie, Halinów, Latowicz, Mińsk Mazowiecki i miasto Mińsk Mazowiecki, Mrozy, Siennica, miasto Sulejówek w powiecie mińskim,
  - powiat otwocki,
  - powiat warszawski zachodni,
  - powiat legionowski,
  - powiat piaseczyński,
  - powiat pruszkowski,
  - powiat grójecki,
  - powiat grodziski,
  - powiat żyrardowski,
  - powiat białobrzegi,
  - powiat przysuski,
  - powiat miejski Warszawa,
- w województwie lubelskim:
- powiat bialski,
  - powiat miejski Biała Podlaska,
  - powiat janowski,
  - powiat puławski,
  - powiat rycki,
  - powiat łukowski,
  - powiat lubelski,
  - powiat miejski Lublin,
  - powiat lubartowski,
  - powiat łęczyński,
  - powiat świdnicki,
  - powiat biłgorajski,
  - powiat hrubieszowski,
  - powiat krasnostawski,
  - powiat chełmski,
  - powiat miejski Chełm,
  - powiat tomaszowski,
  - powiat kraśnicki,
  - powiat opolski,
  - powiat parczewski,

- powiat włodawski,
  - powiat radzyński,
  - powiat miejski Zamość,
  - powiat zamojski,
- w województwie podkarpackim:
- powiat stalowowolski,
  - powiat lubaczowski,
  - gminy Medyka, Stubno, część gminy Orły położona na wschód od linii wyznaczonej przez drogę nr 77, część gminy Żurawica na wschód od linii wyznaczonej przez drogę nr 77 w powiecie przemyskim,
  - powiat jarosławski,
  - gmina Kamień w powiecie rzeszowskim,
  - gminy Cmolas, Dzikowiec, Kolbuszowa, Majdan Królewski i Niwiska powiecie kolbuszowskim,
  - powiat leżajski,
  - powiat niżański,
  - powiat tarnobrzeski,
  - gminy Adamówka, Sieniawa, Tryńcza, Przeworsk z miastem Przeworsk, Zarzecze w powiecie przeworskim,
  - gmina Ostrów, część gminy Sędziszów Małopolski położona na północ od linii wyznaczonej przez drogę nr A4,
  - część gminy Czarna położona na północ od linii wyznaczonej przez drogę nr A4, część gminy Żyraków położona na północ od linii wyznaczonej przez drogę nr A4, część gminy wiejskiej Dębica położona na północ od linii wyznaczonej przez drogę nr A4 w powiecie dębickim,
  - część powiatu mieleckiego niewymieniona w części III załącznika I,
- w województwie małopolskim:
- gminy Nawojowa, Piwniczna Zdrój, Rytro, Stary Sącz, część gminy Łącko położona na południe od linii wyznaczonej przez rzekę Dunajec w powiecie nowosądeckim,
  - gmina Szczawnica w powiecie nowotarskim,
- w województwie pomorskim:
- gminy Dzierżgoń i Stary Dzierżgoń w powiecie sztumskim,
  - gmina Stare Pole, część gminy Nowy Staw położona na wschód od linii wyznaczonej przez drogę nr 55 w powiecie malborskim,
  - gminy Stegny, Sztutowo i część gminy Nowy Dwór Gdański położona na północny – wschód od linii wyznaczonej przez drogę nr 55 biegnącą od południowej granicy gminy do skrzyżowania z drogą nr 7, następnie przez drogę nr 7 i S7 biegnącą do zachodniej granicy gminy w powiecie nowodworskim,
- w województwie świętokrzyskim:
- gmina Tarłów i część gminy Ożarów położona na północ od linii wyznaczonej przez drogę nr 74 biegnącą od miejscowości Honorów do zachodniej granicy gminy w powiecie opatowskim,
  - część gminy Brody położona wschód od linii wyznaczonej przez drogę nr 9 i na północny – wschód od linii wyznaczonej przez drogę nr 0618T biegnącą od północnej granicy gminy do skrzyżowania w miejscowości Lipie oraz przez drogę biegnącą od miejscowości Lipie do wschodniej granicy gminy i część gminy Mirzec położona na wschód od linii wyznaczonej przez drogę nr 744 biegnącą od południowej granicy gminy do miejscowości Tychów Stary a następnie przez drogę nr 0566T biegnącą od miejscowości Tychów Stary w kierunku północno – wschodnim do granicy gminy w powiecie starachowickim,

- gmina Gowarczów, część gminy Końskie położona na wschód od linii kolejowej, część gminy Stąporków położona na północ od linii kolejowej w powiecie koneckim,
  - gminy Dwikozy i Zawichost w powiecie sandomierskim,
- w województwie lubuskim:
- gminy Bogdaniec, Deszczno, Kłodawa, Kostrzyn nad Odrą, Santok, Witnica w powiecie gorzowskim,
  - powiat miejski Gorzów Wielkopolski,
  - gminy Drezdenko, Strzelce Krajeńskie, Stare Kurowo, Zwierzyn w powiecie strzelecko – drezdeneckim,
  - powiat żarski,
  - powiat słubicki,
  - gminy Brzeźnica, Iłowa, Gozdnicza, Małomice Wymiarki, Żagań i miasto Żagań w powiecie żagańskim,
  - powiat krośnieński,
  - powiat zielonogórski
  - powiat miejski Zielona Góra,
  - powiat nowosolski,
  - powiat sulęciński,
  - powiat międzyrzecki,
  - powiat świebodziński,
  - powiat wschowski,
- w województwie dolnośląskim:
- powiat zgorzelecki,
  - gminy Gaworzyce, Grębocice, Polkowice i Radwanice w powiecie polkowickim,
  - część powiatu wołowskiego niewymieniona w części III załącznika I,
  - gmina Jeżów Sudecki w powiecie karkonoskim,
  - gminy Rudna, Ścinawa, miasto Lubin i część gminy Lubin niewymieniona w części III załącznika I w powiecie lubińskim,
  - gmina Malczyce, Miękinia, Środa Śląska, część gminy Kostomłoty położona na północ od linii wyznaczonej przez drogę nr A4, część gminy Udanin położona na północ od linii wyznaczonej przez drogę nr A4 w powiecie średzkim,
  - gmina Wądroże Wielkie w powiecie jaworskim,
  - gminy Kunice, Legnickie Pole, Prochowice, Ruja w powiecie legnickim,
  - gminy Wisznia Mała, Trzebnica, Zawonia, część gminy Oborniki Śląskie położona na południe od linii wyznaczonej przez drogę nr 340 w powiecie trzebnickim,
  - gminy Leśna, Lubań i miasto Lubań, Olszyna, Platerówka, Siekierczyn w powiecie lubańskim,
  - powiat miejski Wrocław,
  - gminy Czernica, Długołęka, Siechnice, część gminy Żórawina położona na wschód od linii wyznaczonej przez autostradę A4, część gminy Kąty Wrocławskie położona na północ od linii wyznaczonej przez autostradę A4 w powiecie wrocławskim,
  - gminy Jelcz – Laskowice, Oława z miastem Oława i część gminy Domaniów położona na północny wschód od linii wyznaczonej przez autostradę A4 w powiecie oławskim,

- gmina Bierutów, miasto Oleśnica, część gminy wiejskiej Oleśnica położona na południe od linii wyznaczonej przez drogę nr S8, część gminy Dobroszyce położona na zachód od linii wyznaczonej przez linię kolejową biegnącą od północnej do południowej granicy gminy w powiecie oleśnickim,
- gmina Cieszków, Krośnice, część gminy Milicz położona na wschód od linii łączącej miejscowości Poradów – Piotrkosice – Sulimierz – Sułów – Gruszcza w powiecie milickim,
- część powiatu bolesławieckiego niewymieniona w części III załącznika I,
- powiat głogowski,
- gmina Niechlów w powiecie górowskim,
- gmina Świerzawa, Wojcieszów, część gminy Zagrodno położona na zachód od linii wyznaczonej przez drogę łączącą miejscowości Jadwisin – Modlikowice Zagrodno oraz na zachód od linii wyznaczonej przez drogę nr 382 biegnącą od miejscowości Zagrodno do południowej granicy gminy w powiecie złotoryjskim,
- gmina Gryfów Śląski, Lubomierz, Lwówek Śląski, Wleń w powiecie lwóweckim,
- gminy Czarny Bór, Stare Bogaczowice, Walim, miasto Boguszów – Gorce, miasto Jedlina – Zdrój, miasto Szczawno – Zdrój w powiecie wałbrzyskim,
- powiat miejski Wałbrzych,
- gmina Świdnica, miasto Świdnica, miasto Świebodzice w powiecie świdnickim,

w województwie wielkopolskim:

- gminy Siedlec, Wolsztyn, część gminy Przemęt położona na zachód od linii wyznaczonej przez drogę łączącą miejscowości Borek – Kluczewo – Sączkowo – Przemęt – Błotnica – Starkowo – Boszkowo – Letnisko w powiecie wolsztyńskim,
- gmina Wielichowo, Rakoniewice, Granowo, część gminy Kamieniec położona na zachód od linii wyznaczonej przez drogę nr 308 w powiecie grodziskim,
- powiat międzychodzki,
- powiat nowotomyski,
- powiat obornicki,
- część gminy Połajewo na położona na południe od drogi łączącej miejscowości Chraplewo, Tarnówko-Boruszyn, Krosin, Jakubowo, Połajewo – ul. Ryczywolska do północno-wschodniej granicy gminy w powiecie czarnkowsko-trzcianeckim,
- powiat miejski Poznań,
- gminy Buk, Czerwonak, Dopiewo, Komorniki, Rokietnica, Stęszew, Swarzędz, Suchy Las, Tarnowo Podgórne, część gminy wiejskiej Murowana Goślina położona na północ od linii kolejowej biegnącej od północnej granicy miasta Murowana Goślina do północno-wschodniej granicy gminy w powiecie poznańskim,
- gminy
- część powiatu szamotulskiego niewymieniona w części I i III załącznika I,
- gmina Pępowo w powiecie gostyńskim,
- gminy Kobylin, Zduny, część gminy Krotoszyn położona na zachód od linii wyznaczonej przez drogi: nr 15 biegnącą od północnej granicy gminy do skrzyżowania z drogą nr 36, nr 36 biegnącą od skrzyżowania z drogą nr 15 do skrzyżowania z drogą nr 444, nr 444 biegnącą od skrzyżowania z drogą nr 36 do południowej granicy gminy w powiecie krotoszyńskim,
- gmina Wijewo w powiecie leszczyńskim,

w województwie łódzkim:

- gminy Białaczów, Drzewica, Opoczno i Poświętne w powiecie opoczyńskim,
- gminy Biała Rawska, Regnów i Sadkowice w powiecie rawskim,

— gmina Kowiesy w powiecie skierniewickim,

w województwie zachodniopomorskim:

— gmina Boleszkowice i część gminy Dębno położona na zachód od linii wyznaczonej przez drogę nr 126 biegnącą od zachodniej granicy gminy do skrzyżowania z drogą nr 23 w miejscowości Dębno, następnie na zachód od linii wyznaczonej przez drogę nr 23 do skrzyżowania z ul. Jana Pawła II w miejscowości Cychry, następnie na południe od ul. Jana Pawła II do skrzyżowania z ul. Ogrodową i dalej na południe od linii wyznaczonej przez ul. Ogrodową, której przedłużenie biegnie do wschodniej granicy gminy w powiecie myśliborskim,

— gminy Cedynia, Gryfino, Mieszkowice, Moryń, część gminy Chojna położona na zachód od linii wyznaczonej przez drogi nr 31 biegnącą od północnej granicy gminy i 124 biegnącą od południowej granicy gminy w powiecie gryfińskim,

— gmina Kołbaskowo w powiecie polickim,

w województwie opolskim:

— gminy Brzeg, Lubsza, Lewin Brzeski, Olszanka, Skarbimierz w powiecie brzeskim,

— gminy Dąbrowa, Dobrzeń Wielki, Popielów w powiecie opolskim,

— gminy Świerczów, Wilków, część gminy Namysłów położona na południe od linii wyznaczonej przez linię kolejową biegnącą od wschodniej do zachodniej granicy gminy w powiecie namysłowskim.

## 8. Slovakia

The following restricted zones II in Slovakia:

— the whole district of Gelnica except municipalities included in zone III,

— the whole district of Poprad

— the whole district of Spišská Nová Ves,

— the whole district of Levoča,

— the whole district of Kežmarok

— in the whole district of Michalovce except municipalities included in zone III,

— the whole district of Košice-okolie,

— the whole district of Rožnava,

— the whole city of Košice,

— in the district of Sobrance: Remetské Hámre, Vyšná Rybnica, Hlivišťa, Ruská Bystrá, Podhorod', Choňkovce, Ruský Hrabovec, Inovce, Beňatina, Koňuš,

— the whole district of Vranov nad Topľou,

— the whole district of Humenné except municipalities included in zone III,

— the whole district of Snina,

— the whole district of Prešov except municipalities included in zone III,

— the whole district of Sabinov except municipalities included in zone III,

— the whole district of Svidník, except municipalities included in zone III,

— the whole district of Stropkov, except municipalities included in zone III,

— the whole district of Bardejov,

— the whole district of Stará Ľubovňa,

— the whole district of Revúca,

— the whole district of Rimavská Sobota except municipalities included in zone III,

- in the district of Veľký Krtíš, the whole municipalities not included in Part I,
- the whole district of Lučenec,
- the whole district of Poltár,
- the whole district of Zvolen, except municipalities included in zone III,
- the whole district of Detva,
- the whole district of Krupina, except municipalities included in zone I,
- the whole district of Banská Stiavnica,
- in the district of Žiar nad Hronom the municipalities of Hronská Dúbrava, Trnavá Hora,
- the whole district of Banská Bystrica, except municipalities included in zone III,
- the whole district of Brezno,
- the whole district of Liptovský Mikuláš,
- the whole district of Trebišov.

## 9. Italy

The following restricted zones II in Italy:

Piedmont Region:

- in the Province of Alessandria, the municipalities of Cavatore, Castelnuovo Bormida, Cabella Ligure, Carrega Ligure, Francavilla Bisio, Carpeneto, Costa Vescovalo, Grogno, Orsara Bormida, Pasturana, Melazzo, Mornese, Ovada, Predosa, Lerma, Fraconalto, Rivalta Bormida, Fresonara, Malvicino, Ponzone, San Cristoforo, Sezzadio, Rocca Grimalda, Garbagna, Tassarolo, Mongiardino Ligure, Morsasco, Montaldo Bormida, Prasco, Montaldeo, Belforte Monferrato, Albera Ligure, Bosio, Cantalupo Ligure, Castelletto D'orba, Cartosio, Acqui Terme, Arquata Scrivia, Parodi Ligure, Ricaldone, Gavi, Cremolino, Brignano-Frascata, Novi Ligure, Molare, Cassinelle, Morbello, Avolasca, Carezzano, Basaluzzo, Dernice, Trisobbio, Strevi, Sant'Agata Fossili, Pareto, Visone, Voltaggio, Tagliolo Monferrato, Casaleggio Boiro, Capriata D'orba, Castellania, Carrosio, Cassine, Vignole Borbera, Serravalle Scrivia, Silvano D'orba, Villalvernia, Roccaforte Ligure, Rocchetta Ligure, Sardigliano, Stazzano, Borghetto Di Borbera, Grondona, Cassano Spinola, Montacuto, Gremiasco, San Sebastiano Curone, Fabbrica Curone, Spigno Monferrato, Montechiaro d'Acqui, Castelletto d'Erro, Ponti, Denice,
- in the province of Asti, the municipality of Mombaldone,

Liguria Region:

- in the province of Genova, the municipalities of Bogliasco, Arenzano, Ceranesi, Ronco Scrivia, Mele, Isola Del Cantone, Lumarzo, Genova, Masone, Serra Riccò, Campo Ligure, Mignanego, Busalla, Bargagli, Savignone, Torriglia, Rossiglione, Sant'Olcese, Valbrenna, Sori, Tiglieto, Campomorone, Cogoleto, Pieve Ligure, Davagna, Casella, Montoggio, Crocefieschi, Vobbia;
- in the province of Savona, the municipalities of Albisola Superiore, Celle Ligure, Stella, Pontinvrea, Varazze, Urbe, Sassello, Mioglia,

Lazio Region:

- the Area of the Municipality of Rome within the administrative boundaries of the Local Health Unit "ASL RM1".

## PART III

### 1. Bulgaria

The following restricted zones III in Bulgaria:

- in Blagoevgrad region:
  - the whole municipality of Sandanski
  - the whole municipality of Strumyani
  - the whole municipality of Petrich,

- the Pazardzhik region:
  - the whole municipality of Pazardzhik,
  - the whole municipality of Panagyurishte,
  - the whole municipality of Lesichevo,
  - the whole municipality of Septemvri,
  - the whole municipality of Strelcha,
- in Plovdiv region
  - the whole municipality of Hisar,
  - the whole municipality of Suedinenie,
  - the whole municipality of Maritsa
  - the whole municipality of Rodopi,
  - the whole municipality of Plovdiv,
- in Varna region:
  - the whole municipality of Byala,
  - the whole municipality of Dolni Chiflik.

## 2. Italy

The following restricted zones III in Italy:

- Sardinia Region: the whole territory.

## 3. Latvia

The following restricted zones III in Latvia:

- Dienvidkurzemes novada Embūtes pagasta daļa uz ziemeļiem autoceļa P116, P106, autoceļa no apdzīvotas vietas Dinsdurbe, Kalvenes pagasta daļa uz austrumiem no ceļa pie Vārtājas upes līdz autoceļam A9, uz ziemeļiem no autoceļa A9, uz austrumiem no autoceļa V1200, Kazdangas pagasta daļa uz austrumiem no ceļa V1200, P115, P117, V1296,
- Kuldīgas novada Rudbāržu, Nīkrāces, Padures, Raņķu, Skrundas pagasts, Laidu pagasta daļa uz dienvidiem no autoceļa V1296, Ēdoles pagasta daļa uz austrumiem no autoceļa V1269, V1271, V1288, P119, Īvandes pagasta daļa uz ziemeļiem no autoceļa P119, Rumbas pagasta daļa uz ziemeļiem no autoceļa P120, Skrundas pilsēta,
- Ventspils novada Zlēku pagasts, Ugāles pagasta daļa uz dienvidiem no autoceļa V1347, uz rietumiem no autoceļa P123, Ziru pagasta daļa uz austrumiem no autoceļa V1269, P108, Piltenes pagasta daļa uz dienvidiem no autoceļa V1310, V1309, autoceļa līdz Ventas upei,
- Alūksnes novada Jaunannas pagasta daļa uz dienvidaustrumiem no Pededzes upes,
- Balvu novada Kubulu, Viksnas, Bērzkalnes, Balvu pagasts, Balvu pilsēta,
- Gulbenes novada Litenes pagasta daļa uz austrumiem no Pededzes upes,
- Preiļu novada Silajāņu pagasts, Galēnu pagasta daļa uz austrumiem no autoceļa V740, V595, Rušonas pagasta daļa uz ziemeļiem no autoceļa V742,
- Rēzeknes novada Silmalas pagasts, Lūznavas pagasta daļa uz rietumiem no autoceļa A13 līdz apdzīvotai vietai Vertukšne, uz rietumiem no Vertukšnes ezera, Maltas pagasta daļa uz rietumiem no autoceļa Vertukšne – Rozentova un uz rietumiem no autoceļa P56, P57, V569, Feimaņu pagasta daļa uz ziemeļiem no autoceļa V577, V742.

## 4. Lithuania

The following restricted zones III in Lithuania:

- Jurbarko rajono savivaldybė: Jurbarko miesto seniūnija, Girdžių, Jurbarkų Raudonės, Skirsnemunės, Veliuonos ir Šimkaičių seniūnijos,
- Molėtų rajono savivaldybė: Dubingių ir Giedraičių seniūnijos,

- Marijampolės savivaldybė: Sasnavos ir Šunskų seniūnijos,
- Šakių rajono savivaldybė: Barzdų, Gelgaudiškio, Griškabūdžio, Kidulių, Kudirkos Naumiesčio, Sintautų, Slavikų, Sudargo, Šakių, Plokščių ir Žvirgždaičių seniūnijos.
- Kazlų rūdos savivaldybė: Antanavos, Jankų ir Kazlų Rūdos seniūnijos: vakarinė dalis iki kelio 2602 ir 183,
- Vilkaviškio rajono savivaldybė: Gižų, Kybartų, Klausučių, Pilviškių, Šeimenos ir Vilkaviškio miesto seniūnijos.
- Širvintų rajono savivaldybė: Alionių ir Zibalų seniūnijos,
- Ukmergės rajono savivaldybė: Želvos seniūnija,
- Vilniaus rajono savivaldybė: Paberžės seniūnija.

## 5. Poland

The following restricted zones III in Poland:

w województwie zachodniopomorskim:

- gminy Banie, Trzcińsko – Zdrój, Widuchowa, część gminy Chojna położona na wschód linii wyznaczonej przez drogi nr 31 biegnącą od północnej granicy gminy i 124 biegnącą od południowej granicy gminy w powiecie gryfińskim,

w województwie warmińsko-mazurskim:

- część powiatu działdowskiego niewymieniona w części II załącznika I,
- część powiatu iławskiego niewymieniona w części II załącznika I,
- powiat nowomiejski,
- gminy Dąbrówno, Grunwald i Ostróda z miastem Ostróda w powiecie ostródzkim,
- gmina Banie Mazurskie, część gminy Gołdap położona na południe od linii wyznaczonej przez drogę biegnącą od zachodniej granicy gminy i łączącą miejscowości Pietraszki – Grygieliszki – Łobody – Bałupiany – Piękne Łąki do skrzyżowania z drogą nr 65, następnie od tego skrzyżowania na zachód od linii wyznaczonej przez drogę nr 65 biegnącą do skrzyżowania z drogą nr 650 i dalej na zachód od linii wyznaczonej przez drogę nr 650 biegnącą od skrzyżowania z drogą nr 65 do miejscowości Wronki Wielkie i dalej na zachód od linii wyznaczonej przez drogę łączącą miejscowości Wronki Wielkie – Suczki – Pietrasze – Kamionki – Wilkasy biegnącą do południowej granicy gminy w powiecie gołdapskim,
- część gminy Pozdezdrze położona na wschód od linii wyznaczonej przez drogę biegnącą od zachodniej do południowej granicy gminy i łączącą miejscowości Stręgiel – Gębałka – Kuty – Jakunówko – Jasieniec, część gminy Budry położona na wschód od linii wyznaczonej przez drogę biegnącą od wschodniej do południowej granicy gminy i łączącą miejscowości Skalisze – Budzewo – Budry – Brzozówko w powiecie węgorzewskim,
- część gminy Krukłanki położona na północ od linii wyznaczonej przez drogę biegnącą od północnej do wschodniej granicy gminy i łączącą miejscowości Jasieniec – Jeziorowskie – Podlesne w powiecie giżyckim,
- część gminy Kowale Oleckie położona na zachód od linii wyznaczonej przez drogę biegnącą od północnej do południowej granicy gminy i łączącą miejscowości Wierzbianki – Czerwony Dwór – Mazury w powiecie oleckim,

w województwie podkarpackim:

- gminy Borowa, Czermin, Radomyśl Wielki, Wadowice Górne w powiecie mieleckim,

w województwie lubuskim:

- gminy Niegosławice, Szprotawa w powiecie żagańskim,

w województwie wielkopolskim:

- gminy Krzemieniewo, Lipno, Osieczna, Rydzyna, Świąciechowa, Włoszakowice w powiecie leszczyńskim,

- powiat miejski Leszno,
- gminy Kościan i miasto Kościan, Krzywiń, Śmigiel w powiecie kościańskim,
- część gminy Dolsk położona na zachód od linii wyznaczonej przez drogę nr 434 biegnącą od północnej granicy gminy do skrzyżowania z drogą nr 437, a następnie na zachód od drogi nr 437 biegnącej od skrzyżowania z drogą nr 434 do południowej granicy gminy, część gminy Śrem położona na zachód od linii wyznaczonej przez drogę nr 310 biegnącą od zachodniej granicy gminy do miejscowości Śrem, następnie na zachód od drogi nr 432 w miejscowości Śrem oraz na zachód od drogi nr 434 biegnącej od skrzyżowania z drogą nr 432 do południowej granicy gminy w powiecie śremskim,
- gminy Gostyń, Krobia i Poniec w powiecie gostyńskim,
- część gminy Przemęt położona na wschód od linii wyznaczonej przez drogę łączącą miejscowości Borek – Kluczewo – Sączkowo – Przemęt – Błotnica – Starkowo – Boszkowo – Letnisko w powiecie wolsztyńskim,
- powiat rawicki,
- gmina Pniewy, część gminy Duszniki położona na północ od linii wyznaczonej przez autostradę A2 oraz na zachód od linii wyznaczonej przez drogę biegnącą od wschodniej granicy gminy, łączącą miejscowości Ceradz Kościelny – Grzebienisko – Wierzeja – Wilkowo, biegnącą do skrzyżowania z autostradą A2, część gminy Kaźmierz położona zachód od linii wyznaczonej przez rzekę Sarna, część gminy Ostroróg położona na południe od linii wyznaczonej przez drogę nr 184 biegnącą od południowej granicy gminy do skrzyżowania z drogą nr 116 oraz na południe od linii wyznaczonej przez drogę nr 116 biegnącą od skrzyżowania z drogą nr 184 do zachodniej granicy gminy, część gminy Szamotuły położona na zachód od linii wyznaczonej przez rzekę Sarna biegnącą od południowej granicy gminy do przecięcia z drogą nr 184 oraz na zachód od linii wyznaczonej przez drogi nr 184 biegnącą od przecięcia z rzeką Sarna do północnej granicy gminy w powiecie szamotulskim,

w województwie dolnośląskim:

- część powiatu górowskiego niewymieniona w części II załącznika I,
- część gminy Lubin położona na południe od linii wyznaczonej przez drogę nr 335 biegnącą od zachodniej granicy gminy do granicy miasta Lubin oraz na zachód od linii wyznaczonej przez drogę nr 333 biegnącą od granicy miasta Lubin do południowej granicy gminy w powiecie lubińskim
- gminy Prusice, Żmigród, część gminy Oborniki Śląskie położona na północ od linii wyznaczonej przez drogę nr 340 w powiecie trzebnickim,
- część gminy Zagrodno położona na wschód od linii wyznaczonej przez drogę łączącą miejscowości Jadwisin – Modlikowice – Zagrodno oraz na wschód od linii wyznaczonej przez drogę nr 382 biegnącą od miejscowości Zagrodno do południowej granicy gminy, część gminy wiejskiej Złotoryja położona na wschód od linii wyznaczonej przez drogę biegnącą od północnej granicy gminy w miejscowości Nowa Wieś Złotoryjska do granicy miasta Złotoryja oraz na północ od linii wyznaczonej przez drogę nr 382 biegnącą od granicy miasta Złotoryja do wschodniej granicy gminy w powiecie złotoryjskim
- gmina Gromadka w powiecie bolesławieckim,
- gminy Chocianów i Przemków w powiecie polkowickim,
- gminy Chojnów i miasto Chojnów, Krotoszyce, Miłkowice w powiecie legnickim,
- powiat miejski Legnica,
- część gminy Wołów położona na wschód od linii wyznaczonej przez linię kolejową biegnącą od północnej do południowej granicy gminy, część gminy Wińsko położona na południe od linii wyznaczonej przez drogę nr 36 biegnącą od północnej do zachodniej granicy gminy, część gminy Brzeg Dolny położona na wschód od linii wyznaczonej przez linię kolejową od północnej do południowej granicy gminy w powiecie wołowskim,
- część gminy Milicz położona na zachód od linii wyznaczonej przez drogę łączącą miejscowości Poradów – Piotrkosice – Sulimierz-Sułów – Gruszczyca w powiecie milickim,

w województwie świętokrzyskim:

- gminy Gnojno, Pacanów w powiecie buskim,
- gminy Łubnice, Oleśnica, Połaniec, część gminy Rytwiany położona na zachód od linii wyznaczonej przez drogę nr 764, część gminy Szydłów położona na zachód od linii wyznaczonej przez drogę nr 756 w powiecie staszowskim,
- gminy Chmielnik, Masłów, Miedziana Góra, Mniów, Łopuszno, Piekoszów, Pierzchnica, Sitkówka-Nowiny, Strawczyn, Zagnańsk, część gminy Raków położona na zachód od linii wyznaczonej przez drogi nr 756 i 764, część gminy Chęciny położona na północ od linii wyznaczonej przez drogę nr 762, część gminy Górno położona na północ od linii wyznaczonej przez drogę biegnącą od wschodniej granicy gminy łączącą miejscowości Leszczyna – Cedzyna oraz na północ od linii wyznaczonej przez ul. Kielecką w miejscowości Cedzyna biegnącą do wschodniej granicy gminy, część gminy Daleszyce położona na południe od linii wyznaczonej przez drogę nr 764 biegnącą od wschodniej granicy gminy do skrzyżowania z drogą łączącą miejscowości Daleszyce – Słopiec – Borków, dalej na południe od linii wyznaczonej przez tę drogę biegnącą od skrzyżowania z drogą nr 764 do przecięcia z linią rzeki Belnianka, następnie na południe od linii wyznaczonej przez rzeki Belnianka i Czarna Nida biegnącej do zachodniej granicy gminy w powiecie kieleckim,
- powiat miejski Kielce,
- gminy Krasocin, część gminy Włoszczowa położona na wschód od linii wyznaczonej przez drogę nr 742 biegnącą od północnej granicy gminy do miejscowości Konieczno i dalej na wschód od linii wyznaczonej przez drogę łączącą miejscowości Konieczno – Rogienice – Dąbie – Podłazie, część gminy Kluczewsko położona na południe od linii wyznaczonej przez drogę biegnącą od wschodniej granicy gminy i łączącą miejscowości Krogulec – Nowiny – Komorniki do przecięcia z linią rzeki Czarna, następnie na południe od linii wyznaczonej przez rzekę Czarna biegnącą do przecięcia z linią wyznaczoną przez drogę nr 742 i dalej na wschód od linii wyznaczonej przez drogę nr 742 biegnącą od przecięcia z linią rzeki Czarna do południowej granicy gminy w powiecie włoszczowskim,
- gmina Kije w powiecie pińczowskim,
- gminy Małogoszcz, Oksa w powiecie jędrzejowskim,

w województwie małopolskim:

- gminy Dąbrowa Tarnowska, Radgoszcz, Szczucin w powiecie dąbrowskim.

## 6. Romania

The following restricted zones III in Romania:

- Zona oraşului Bucureşti,
- Judeţul Constanţa,
- Judeţul Satu Mare,
- Judeţul Tulcea,
- Judeţul Bacău,
- Judeţul Bihor,
- Judeţul Bistriţa Năsăud,
- Judeţul Brăila,
- Judeţul Buzău,
- Judeţul Călăraşi,
- Judeţul Dâmboviţa,
- Judeţul Galaţi,
- Judeţul Giurgiu,
- Judeţul Ialomiţa,
- Judeţul Ilfov,
- Judeţul Prahova,

- Județul Sălaj,
- Județul Suceava
- Județul Vaslui,
- Județul Vrancea,
- Județul Teleorman,
- Județul Mehedinți,
- Județul Gorj,
- Județul Argeș,
- Județul Olt,
- Județul Dolj,
- Județul Arad,
- Județul Timiș,
- Județul Covasna,
- Județul Brașov,
- Județul Botoșani,
- Județul Vâlcea,
- Județul Iași,
- Județul Hunedoara,
- Județul Alba,
- Județul Sibiu,
- Județul Caraș-Severin,
- Județul Neamț,
- Județul Harghita,
- Județul Mureș,
- Județul Cluj,
- Județul Maramureș.

## 7. Slovakia

The following restricted zones III in Slovakia:

- The whole district of Vranov and Topľou,
- In the district of Humenné: Lieskovec, Myslina, Humenné, Jasenov, Brekov, Závadka, Topoľovka, Hudcovce, Ptičie, Chlmec, Porúbka, Brestov, Gruzovce, Ohradzany, Slovenská Volová, Karná, Lackovce, Kochanovce, Hažín nad Cirochou, Závada, Nižná Sitnica, Vyšná Sitnica, Rohožník, Prituľany, Ruská Poruba, Ruská Kajňa,
- In the district of Michalovce: Strážske, Staré, Oreské, Zbudza, Voľa, Nacina Ves, Pusté Čemerné, Lesné, Rakovec nad Ondavou, Petrovce nad Laborcom, Trnava pri Laborci, Vinné, Kaluža, Klokočov, Kusín, Jovsa, Poruba pod Vihorlatom, Hojné, Lúčky, Závadka, Hažín, Zalužice, Michalovce, Krásnovce, Šamudovce, Vrbnica, Žbince, Lastomír, Zemplínska Široká, Čečehov, Jastrabie pri Michalovciach, Iňačovce, Senné, Palín, Sliepkovce, Hatalov, Budkovce, Stretava, Stretávka, Pavlovce nad Uhom, Vysoká nad Uhom, Bajany,
- In the district of Rimavská Sobota: Jesenské, Gortva, Hodejov, Hodejovec, Širkovce, Šimonovce, Drňa, Hostice, Gemerské Dechtáre, Jestice, Dubovec, Rimavské Janovce, Rimavská Sobota, Belín, Pavlovce, Sútor, Bottovo, Dúžava, Mojín, Konrádovce, Čierny Potok, Blhovce, Gemerček, Hajnáčka,
- In the district of Gelnica: Hrišovce, Jaklovce, Kluknava, Margecany, Richnava,

- In the district of Sabinov: Daletice,
  - In the district of Prešov: Hrabkov, Krížovany, Žipov, Kvačany, Ondrašovce, Chminianske Jakubovany, Klenov, Bajerov, Bertotovce, Brežany, Bzenov, Fričovce, Hendrichovce, Hermanovce, Chmiňany, Chminianska Nová Ves, Janov, Jarovnice, Kojatice, Lažany, Mikušovce, Ovčie, Rokycany, Sedlice, Suchá Dolina, Svinia, Šindliar, Široké, Štefanovce, Vífaz, Župčany,
  - the whole district of Medzilaborce,
  - In the district of Stropkov: Havaj, Malá Poľana, Bystrá, Mikové, Varechovce, Vladiča, Staškovce, Makovce, Veľkrop, Solník, Korunková, Bukovce, Krišľovce, Jakušovce, Kolbovce,
  - In the district of Svidník: Pstruša,
  - In the district of Zvolen: Očová, Zvolen, Sliach, Veľká Lúka, Lukavica, Sielnica, Železná Breznica, Trnie, Turová, Kováčová, Budča, Hronská Breznica, Ostrá Lúka, Bacúrov, Breziny, Podzámčok, Michalková, Zvolenská Slatina, Lieskovec,
  - In the district of Banská Bystrica: Sebedín-Bečov, Čerín, Dúbravica, Oravce, Mólča, Horná Mičiná, Dolná Mičiná, Vlkanová, Hronsek, Badín, Horné Pršany, Malachov, Banská Bystrica,
  - The whole district of Sobrance except municipalities included in zone II.'
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**COMMISSION IMPLEMENTING REGULATION (EU) 2022/2068**  
**of 26 October 2022**

**imposing a definitive anti-dumping duty on imports of certain cold-rolled flat steel products originating in the People's Republic of China and the Russian Federation following an expiry review pursuant to Article 11(2) of Regulation (EU) 2016/1036 of the European Parliament and of the Council**

THE EUROPEAN COMMISSION,

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

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

Having regard to Regulation (EU) 2015/477 of the European Parliament and of the Council of 11 March 2015 on measures that the European Union may take in relation to the combined effect of anti-dumping or anti-subsidy measures with safeguard measures <sup>(2)</sup>, and in particular Article 1 thereof,

Whereas:

**1. PROCEDURE**

**1.1. Previous investigations and measures in force**

- (1) By Regulation (EU) 2016/1328 <sup>(3)</sup> the European Commission imposed anti-dumping duties on imports of certain cold-rolled flat steel products ('CRF') originating in the People's Republic of China ('the PRC' or 'China') and the Russian Federation ('Russia') ('the original measures'). The investigation that led to the imposition of the original measures will hereinafter be referred to as 'the original investigation'.
- (2) The anti-dumping duties currently in force for the PRC are 19,7 % on imports from the sampled exporting producers, 20,5 % on the non-sampled cooperating companies and 22,1 % on all other companies, and for Russia range between 18,7 % and 34 % for the sampled exporting producers with a duty rate of 36,1 % for all other companies.

**1.2. Request for an expiry review**

- (3) Following the publication of a notice of impending expiry <sup>(4)</sup> the European Commission ('the Commission') received a request for a review pursuant to Article 11(2) of the basic Regulation.

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<sup>(1)</sup> OJ L 176, 30.6.2016, p. 21.

<sup>(2)</sup> OJ L 83, 27.3.2015, p. 11.

<sup>(3)</sup> Commission Implementing Regulation (EU) 2016/1328 of 29 July 2016 imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of certain cold rolled flat steel products originating in the People's Republic of China and the Russian Federation (OJ L 210, 4.8.2016, p. 1).

<sup>(4)</sup> OJ C 389, 16.11.2020, p. 4.

- (4) The request for review was lodged on 3 May 2021 by the European Steel Association ('EUROFER') ('the applicant') on behalf of the Union industry of CRF in the sense of Article 5(4) of the basic Regulation. The request for review was based on the grounds that the expiry of the measures would likely result in recurrence of dumping and continuation or recurrence of injury to the Union industry.

### 1.3. Initiation of an expiry review

- (5) Having determined, after consulting the Committee established by Article 15(1) of the basic Regulation, that sufficient evidence existed for the initiation of an expiry review the Commission initiated, on 3 August 2021, an expiry review with regard to imports to the Union of CRF originating in the PRC and Russia ('the countries concerned') on the basis of Article 11(2) of the basic Regulation. It published a Notice of Initiation in the *Official Journal of the European Union* <sup>(5)</sup> ('the Notice of Initiation').

### 1.4. Review investigation period and period considered

- (6) The investigation of a continuation or recurrence of dumping covered the period from 1 July 2020 to 30 June 2021 ('review investigation period'). The examination of trends relevant for the assessment of the likelihood of a continuation or recurrence of injury covered the period from 1 January 2017 to the end of the review investigation period ('the period considered').

### 1.5. Interested parties

- (7) In the Notice of Initiation, interested parties were invited to contact the Commission in order to participate in the investigation. In addition, the Commission specifically informed the applicant, all known Union producers, the known producers in the PRC and Russia and the authorities of the PRC and Russia, known importers, users and traders about the initiation of the expiry review and invited them to participate.

### 1.6. Comments on initiation

- (8) Interested parties had an opportunity to comment on the initiation of the expiry review and to request a hearing with the Commission and/or the Hearing Officer in trade proceedings. The Commission received comments from three exporting producers in Russia, the Russian government, one unrelated importer and one user.
- (9) In their comments on initiation, the three Russian exporting producers claimed that the applicant had failed to present sufficient and reliable evidence that there was a likelihood of continuation or recurrence of injurious dumping from imports from Russia. In addition, the Russian government, the Russian exporting producers, the unrelated importer and a user claimed there was no causal link between the Union industry's injury situation and imports of CRF from China and Russia. The reasoning of the different parties was that the injury to the Union industry, if it existed, was caused by other factors than injurious imports from Russia and China due to the negligible imports volumes of CRF from the countries concerned.
- (10) However, as also stated in the Notice of Initiation, the applicant alleged that 'the removal of injury as originally established has been mainly due to the existence of measures and that any recurrence of substantial imports at dumped prices from the countries concerned would likely lead to a recurrence of injury to the Union industry should measures be allowed to lapse' <sup>(6)</sup>. The purpose of the review investigation was to establish whether the expiry of measures is likely to result in continuation or recurrence of injury caused by dumped imports from the countries concerned. The information provided by the applicant at the initiation stage was sufficient to show that injury caused by dumped imports would recur if dumped imports were to resume at higher volumes. Therefore, the Commission rejected the parties' claims on causality.

<sup>(5)</sup> Notice of initiation of an expiry review of the anti-dumping measures applicable to imports of certain cold-rolled flat steel products originating in the People's Republic of China and the Russian Federation (OJ C 311, 3.8.2021, p. 6).

<sup>(6)</sup> OJ C 311, 3.8.2021, p. 8, par. 4.2.

- (11) The Russian government claimed that the applicant did not present sufficient evidence of the increased dumping, as stated in Article 5.2 of the Anti-dumping Agreement, while calculating normal value. Furthermore, it argued that the information provided in the open version of the request for expiry review was not detailed enough and showed no exact figures used for calculating the margin, because transport costs, export costs as well as prices on the Russian CRF market and the calculations themselves had been provided in approximate figures. The Russian government requested the Commission to examine the calculations provided in the request and to provide the evidence that these calculations are trustworthy. Moreover, the Russian government referred to Article 6.2 of the Anti-dumping Agreement stating that without an opportunity for a reasonable understanding of the substance of information submitted in confidence, the applicant prevented both the Russian government and the Russian producers, as well as other interested parties from an opportunity to defend their interests in full and asked the Commission and Eurofer to provide more detailed data on dumping margin calculations.
- (12) Concerning the claim on the sufficiency of evidence, the request for review acknowledged that Russian exports of the product concerned to the Union decreased sharply in comparison to the investigation period of the original investigation. Therefore, the request assessed the likelihood of recurrence of dumping by reference to export prices to third countries other than the Union. The analysis of the evidence showed that the request contained sufficient evidence of likelihood of recurrence of dumping.
- (13) The dumping margin calculated in the request reflected the pricing behaviour of the Russian exporting producers on third country markets and did not necessarily reflect the exact degree of dumping which was calculated in the investigation. However, the applicant provided sufficient evidence in the request on export price and normal value showing likelihood of recurrence of dumping. The applicant also provided a sufficiently detailed description of the methodology used in its dumping calculation to permit a reasonable understanding of the substance of the information submitted in confidence.
- (14) In order to assess the normal value of CRF for the Russian exporting producers, the applicant had collected publicly available and subscription-based information on the domestic selling prices of 1 tonne of CRF by the main exporters on their domestic market for the period of reference. The Commission verified and confirmed the export price with the Global Trade Atlas ('GTA') database.
- (15) Since imports of the product under review from Russia to the Union have been negligible following the imposition of the anti-dumping duties in 2016, the applicant based the export price on several sources of price information on export sales of Russian CRF to any third countries in 2020. These export prices for 1 tonne of CRF were established on the basis of market intelligence on export prices from Russia. The export price was verified and confirmed with the average GTA price of the three main Russian export destinations.
- (16) The applicant had thus compared, the average ex-works export price of CRF steel products from Russia with a normal value based on Russian domestic prices.
- (17) In its statutory analysis, the Commission took into account only those elements for which evidence was sufficiently adequate and accurate.
- (18) Therefore, the claims of the Russian government were rejected.
- (19) The Commission considered that the non-confidential version of the request available in the file for inspection by interested parties contained all the essential evidence and non-confidential summaries of the confidential data allowing interested parties to properly exercise their rights of defence. Therefore, this claim was rejected.

#### 1.7. Sampling

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

### 1.7.1. *Sampling of Union producers*

- (21) In the Notice of Initiation, the Commission stated that it had provisionally selected a sample of three Union producers. The Commission selected the sample on the basis of the production and sales volumes of the like product. The sample consisted of three Union producers that accounted for more than 30 % of the estimated total volume of production of the like product in the Union and more than 20 % of the estimated total volume of sales.
- (22) In accordance with Article 17(2) of the basic Regulation, the Commission invited interested parties to comment on the provisional sample. No comments were received and the provisional sample was thus confirmed and was considered representative of the Union industry.

### 1.7.2. *Sampling of importers*

- (23) To decide whether sampling was necessary and, if so, to select a sample, the Commission asked unrelated importers to provide the information specified in the Annex to the Notice of Initiation.
- (24) No unrelated importer replied to the sampling form. Consequently, the Commission decided that sampling was not necessary.

### 1.7.3. *Sampling of exporting producers in Russia and China*

- (25) To decide whether sampling was necessary and, if so, to select a sample, the Commission asked all exporting producers in Russia and China to provide the information specified in the Notice of Initiation. In addition, the Commission asked the Chinese and Russian authorities to identify and/or contact other exporting producers, if any, that could be interested in participating in the investigation.
- (26) At the initiation, the Commission made available a copy of the questionnaires in the file for inspection by interested parties and on DG TRADE's website.
- (27) No Chinese exporting producers provided the requested information and/or agreed to be included in the sample. The Commission informed the Mission of the People's Republic of China to the European Union about its intention to apply facts available in accordance with Article 18 of the basic Regulation. No comments were received.
- (28) Therefore, since there was no cooperation from the Chinese producers, the findings with regard to the imports from the PRC were made on the basis of the facts available pursuant to Article 18 of the basic Regulation, in particular using trade statistics on imports and exports (Eurostat, the Global Trade Atlas ('GTA') <sup>(7)</sup> and OECD <sup>(8)</sup>).
- (29) Three Russian exporting producers, namely PJSC Magnitogorsk Iron and Steel Works (MMK) and its related companies (MMK Group), PJSC Novolipetsk Steel (NLMK) and its related companies (NLMK Group) and PJSC Severstal (Severstal) and its related companies (SEVERSTAL Group), provided the requested information and agreed to be included in the sample. However, on 6 September 2021, these three exporting producers informed the Commission that they had decided not to submit individual anti-dumping questionnaire replies but would cooperate with the Commission on all other aspects of the expiry review, such as comments on the review request, likelihood of continuation or recurrence of injury and Union interest. Subsequently, on 13 September 2021, the three Russian exporting producers submitted comments on the request for expiry review, the alleged continuation and likelihood of recurrence of injurious dumping and Union interest. They invited the Commission to conduct selective verification of relevant company-specific data, such as production, capacity and capacity utilisation submitted together with the comments.

<sup>(7)</sup> <https://www.gtis.com/gta/>

<sup>(8)</sup> [https://qdd.oecd.org/subject.aspx?Subject=ExportRestrictions\\_IndustrialRawMaterials](https://qdd.oecd.org/subject.aspx?Subject=ExportRestrictions_IndustrialRawMaterials)

- (30) Following this communication, on 21 September and 19 November 2021 the Commission informed the aforementioned exporting producers that it considered them as non-cooperating parties and informed them about its intention to apply Article 18 of the basic Regulation and make use of facts available to determine its findings in the investigation. The Commission also informed the authorities of Russia about its intention to apply facts available in accordance with Article 18 of the basic Regulation.
- (31) On 30 September and 29 November 2021, the Commission received comments from the three Russian exporting producers regarding the application of Article 18 of the basic Regulation. They disagreed with the Commission's assessment of their cooperation status and reiterated their intention to cooperate on other aspects of the review such as continuation or recurrence of injury, likelihood of further injurious dumping and Union interest. They invited again the Commission to verify the data on production, capacity and capacity utilisation they had submitted.
- (32) In this respect, the Russian exporting producers did not submit the requested necessary information in their questionnaire replies. The Commission considered that the Russian exporting producers provided only fragmented information limited to production, capacity and production volume, without supporting evidence. Consequently, since the exporting producers did not provide sufficient and reliable information for the Commission to arrive at a reasonable accurate finding, the Commission used the information available on the file as explained in recital 30. In any event, the Commission used the information provided by the three Russian producers to the extent possible in this regard.
- (33) The Commission sent a questionnaire concerning the existence of significant distortions in the PRC within the meaning of Article 2(6a)(b) of the basic Regulation to the Government of the People's Republic of China ('GOC').
- (34) The Commission also sent questionnaires to the sampled Union producers. The same questionnaires had also been made available online <sup>(9)</sup> on the day of initiation. In addition, the Commission sent a questionnaire to the Union producers association, EUROFER.
- (35) Questionnaire replies were received from the three sampled Union producers and EUROFER.

#### 1.7.4. Verification

- (36) The Commission sought and verified all the information deemed necessary for the determination of likelihood of continuation or recurrence of dumping and injury and of the Union interest. Due to the outbreak of the COVID-19 pandemic and the consequent measures taken to deal with the outbreak ('the COVID-19 Notice') <sup>(10)</sup>, the Commission was unable to carry out verification visits at the premises of the sampled companies. Instead, the Commission performed Remote cross-checks ('RCCs') of the information provided by the following companies via videoconference:

#### **Union producers**

- Voestalpine Stahl GmbH, Austria
- ThyssenKrupp Steel Europe AG, Germany
- ArcelorMittal Belgium, Belgium

#### 1.8. Subsequent procedure

- (37) On 19 August 2022, the Commission disclosed the essential facts and considerations on the basis of which it intended to maintain the anti-dumping duties in force regarding imports from the PRC and Russia. All parties were granted the opportunity to make comments on the disclosure.

<sup>(9)</sup> [https://trade.ec.europa.eu/tdi/case\\_details.cfm?id=2538](https://trade.ec.europa.eu/tdi/case_details.cfm?id=2538)

<sup>(10)</sup> Notice on the consequences of the COVID-19 outbreak on anti-dumping and anti-subsidy investigations (2020/C 86/06) (OJ C 86, 16.3.2020, p. 6).

- (38) The comments made by interested parties were considered by the Commission and taken into account, where appropriate. The parties who so requested were granted a hearing.

## 2. PRODUCT UNDER REVIEW, PRODUCT CONCERNED AND LIKE PRODUCT

### 2.1. Product under review

- (39) The product under review is the same as in the original investigation namely flat-rolled products of iron or non-alloy steel, or other alloy steel but excluding of stainless steel, of all widths, cold-rolled (cold-reduced), not clad, plated or coated and not further worked than cold-rolled (cold-reduced), currently falling under CN codes ex 7209 15 00 (TARIC code 7209 15 00 90), 7209 16 90, 7209 17 90, 7209 18 91, ex 7209 18 99 (TARIC code 7209 18 99 90), ex 7209 25 00 (TARIC code 7209 25 00 90), 7209 26 90, 7209 27 90, 7209 28 90, 7211 23 30, ex 7211 23 80 (TARIC codes 7211 23 80 19, 7211 23 80 95 and 7211 23 80 99), ex 7211 29 00 (TARIC codes 7211 29 00 19 and 7211 29 00 99), 7225 50 80 and 7226 92 00 ('the product under review').
- (40) The following product types are excluded from the definition of the product under review:
- flat-rolled products of iron or non-alloy steel, of all widths, cold-rolled (cold-reduced), not clad, plated or coated, not further worked than cold-rolled, whether or not in coils, of all thickness, electrical,
  - flat-rolled products of iron or non-alloy steel, of all widths, cold-rolled (cold-reduced), not clad, plated or coated, in coils, of a thickness of less than 0,35 mm, annealed (known as 'black plates'),
  - flat-rolled products of other alloy steel, of all widths, of silicon-electrical steel, and
  - flat-rolled products of alloy steel, not further worked than cold-rolled (cold-reduced), of high-speed steel.
- (41) Cold-rolled flat steel products are produced from hot-rolled coils. The cold-rolling process is defined by passing a sheet or strip that has previously been hot rolled and pickled – through cold rolls, i.e. below the softening temperature of the metal. Cold-rolled flat steel products are manufactured to meet certain specifications or proprietary end-user specifications. They can be delivered in various forms: in coils (oiled or not oiled), in cut lengths (sheet) or narrow strips. Cold-rolled flat steel products are an industrial input purchased by end-users for a variety of applications, mainly in manufacturing (general industry, packaging, automotive, etc.) but also in construction.

### 2.2. Product concerned

- (42) The product concerned by this investigation is the product under review originating in the PRC and Russia.

### 2.3. Like product

- (43) As established in the original investigation, this expiry review investigation confirmed that the following products have the same basic physical characteristics as well as the same basic uses:
- the product concerned when exported to the Union;
  - the product under review sold on the domestic market of the PRC and Russia; and
  - the product under review produced and sold in the Union by the Union industry.
- (44) These products are therefore considered to be like products within the meaning of Article 1(4) of the basic Regulation.

### 3. DUMPING

#### 3.1. People's Republic of China

##### 3.1.1. Preliminary remarks

- (45) During the review investigation period, imports of certain cold-rolled flat steel products from China continued, albeit at lower levels than in the investigation period of the original investigation (i.e. from 1 April 2014 to 31 March 2015). According to Eurostat data, imports of certain cold-rolled flat steel products from China accounted for less than 1 % of the Union market in the review investigation period compared to 10,3 % <sup>(11)</sup> market share during the original investigation. In absolute terms, China exported about 32 000 tonnes to the Union during the review investigation period, which is a significant decrease compared to about 732 000 tonnes <sup>(12)</sup> that it exported to the Union during the investigation period of the original investigation.
- (46) During the original investigation, the Commission found that exports of the product concerned from China were dumped at a significant level on the Union market. The dumping margins of the cooperating Chinese exporters ranged from 52,7 % to 59,2 %. Due to the application of the lesser duty rule, the anti-dumping duties imposed on Chinese imports were set at a much lower level, ranging from 19,7 % to 22,1 %.
- (47) As mentioned in recital 27, none of the Chinese exporters/producers cooperated in the investigation. Therefore, the Commission informed the authorities of the PRC that due to the absence of cooperation, the Commission might apply Article 18 of the basic Regulation concerning the findings with regard to the PRC. The Commission did not receive any comments or requests for an intervention of the Hearing Officer in this regard.
- (48) Consequently, in accordance with Article 18(1) of the basic Regulation, the findings in relation to the likelihood of continuation or recurrence of dumping with regard to the PRC were based on facts available, in particular the information contained in the request for the expiry review and in the submissions by the interested parties, combined with other sources of information, such as trade statistics on imports and exports (Eurostat, the GTA <sup>(13)</sup>, and OECD <sup>(14)</sup>), and independent providers of financial data, such as Global Financials published by Dunn & Bradstreet <sup>(15)</sup>.

##### 3.1.2. Dumping

###### 3.1.2.1. Procedure for the determination of the normal value under Article 2(6a) of the basic Regulation for the imports of certain cold-rolled flat steel products originating in the PRC

- (49) Given the sufficient evidence available at the initiation of the investigation tending to show, with regard to the PRC, the existence of significant distortions within the meaning of point (b) of Article 2(6a) of the basic Regulation, the Commission initiated the investigation on the basis of Article 2(6a) of the basic Regulation.
- (50) In order to obtain information it deemed necessary for its investigation with regard to the alleged significant distortions, the Commission sent a questionnaire to the GOC. In addition, in point 5.3.2. of the Notice of Initiation, the Commission invited all interested parties to make their views known, submit information and provide supporting evidence regarding the application of Article 2(6a) of the basic Regulation within 37 days of the date of publication of the Notice of Initiation in the *Official Journal of the European Union*. No questionnaire reply was received from the GOC and no submission on the application of Article 2(6a) of the basic Regulation was received within the deadline. Subsequently, by Note Verbale dated 13 September 2021, the Commission informed the GOC that it would use facts available within the meaning of Article 18 of the basic Regulation for the determination of the existence of the significant distortions in the PRC.

<sup>(11)</sup> Commission Implementing Regulation (EU) 2016/181 of 10 February 2016 imposing a provisional anti-dumping duty on imports of certain cold-rolled flat steel products originating in the People's Republic of China and the Russian Federation (OJ L 37, 12.2.2016, p. 17), recital 113.

<sup>(12)</sup> See previous footnote.

<sup>(13)</sup> <https://www.gtis.com/gta/>

<sup>(14)</sup> [https://qdd.oecd.org/subject.aspx?Subject=ExportRestrictions\\_IndustrialRawMaterials](https://qdd.oecd.org/subject.aspx?Subject=ExportRestrictions_IndustrialRawMaterials)

<sup>(15)</sup> <https://ec.altares.eu/>

- (51) In point 5.3.2. of the Notice of Initiation, the Commission also specified that, in view of the evidence available, a possible representative third country for China was in this case Brazil, pursuant to Article 2(6a)(a) of the basic Regulation, for the purpose of determining the normal value based on undistorted prices or benchmarks. The Commission further stated that it would examine other possibly appropriate countries in accordance with the criteria set out in first indent of Article 2(6a) of the Basic regulation.
- (52) On 24 November 2020, the Commission informed by a note ('the First Note') interested parties on the relevant sources it intended to use for the determination of the normal value. In that note, the Commission provided a list of all factors of production such as raw materials, labour and energy used in the production of certain cold-rolled flat steel products. In addition, based on the criteria guiding the choice of undistorted prices or benchmarks, the Commission identified possible representative countries, namely Brazil, Mexico, Russia and Turkey. The Commission received no comments on the First Note.
- (53) On 17 March 2022, the Commission informed by a second note ('the Second Note') interested parties on the relevant sources it intended to use for the determination of the normal value, with Brazil as the representative country. No comments were received.

#### 3.1.2.2. Normal value

- (54) According to Article 2(1) of the basic Regulation, 'the normal value shall normally be based on the prices paid or payable, in the ordinary course of trade, by independent customers in the exporting country'.
- (55) However, according to Article 2(6a)(a) of the basic Regulation, 'in case it is determined [...] that it is not appropriate to use domestic prices and costs in the exporting country due to the existence in that country of significant distortions within the meaning of point (b), the normal value shall be constructed exclusively on the basis of costs of production and sale reflecting undistorted prices or benchmarks', and 'shall include an undistorted and reasonable amount of administrative, selling and general costs and for profits' ('administrative, selling and general costs' is referred hereinafter as 'SG&A').
- (56) As further explained in the following subsections, the Commission concluded in the present investigation that, based on the evidence available, and in view of the lack of cooperation of the GOC and the Chinese exporting producers, the application of Article 2(6a) of the basic Regulation was appropriate.

#### 3.1.3. Existence of significant distortions

- (57) In recent investigations concerning the steel sector in the PRC <sup>(16)</sup>, the Commission found that significant distortions in the sense of Article 2(6a)(b) of the basic Regulation were present.
- (58) In those investigations, the Commission found that there is substantial government intervention in the PRC resulting in a distortion of the effective allocation of resources in line with market principles <sup>(17)</sup>. In particular, the Commission concluded that in the steel sector, which is the main raw material to produce the product under review, not only does a substantial degree of ownership by the GOC persist in the sense of Article 2(6a)(b), first indent of the

<sup>(16)</sup> Commission Implementing Regulation (EU) 2022/191 of 16 February 2022 imposing a definitive anti-dumping duty on imports of certain iron or steel fasteners originating in the People's Republic of China (OJ L 36, 17.2.2022, p. 1); Commission Implementing Regulation (EU) 2021/2239 of 15 December 2021 imposing a definitive anti-dumping duty on imports of certain utility scale steel wind towers originating in the People's Republic of China (OJ L 450, 16.12.2021, p. 59); Commission Implementing Regulation (EU) 2021/635 of 16 April 2021 imposing a definitive anti-dumping duty on imports of certain welded pipes and tubes of iron or non-alloyed steel originating in Belarus, the People's Republic of China and Russia following an expiry review pursuant to Article 11(2) of Regulation (EU) 2016/1036 of the European Parliament and of the Council (OJ L 132, 19.4.2021, p. 145) and Commission Implementing Regulation (EU) 2020/508 of 7 April 2020 imposing a provisional anti-dumping duty on imports of certain hot rolled stainless steel sheets and coils originating in Indonesia, the People's Republic of China and Taiwan (OJ L 110, 8.4.2020, p. 3).

<sup>(17)</sup> See Implementing Regulation (EU) 2022/191 recital 195-201, Implementing Regulation (EU) 2021/2239 recitals 67-74, Implementing Regulation (EU) 2021/635 recitals 149-150 and Implementing Regulation (EU) 2020/508 recitals 158-159.

basic Regulation <sup>(18)</sup>, but the GOC is also in a position to interfere with prices and costs through State presence in firms in the sense of Article 2(6a)(b), second indent of the basic Regulation <sup>(19)</sup>. The Commission further found that the State's presence and intervention in the financial markets, as well as in the provision of raw materials and inputs have an additional distorting effect on the market. Indeed, overall, the system of planning in the PRC results in resources being concentrated in sectors designated as strategic or otherwise politically important by the GOC, rather than being allocated in line with market forces <sup>(20)</sup>. Moreover, the Commission concluded that the Chinese bankruptcy and property laws do not work properly in the sense of Article 2(6a)(b), fourth indent of the basic Regulation, thus generating distortions in particular when maintaining insolvent firms afloat and when allocating land use rights in the PRC <sup>(21)</sup>. In the same vein, the Commission found distortions of wage costs in the steel sector in the sense of Article 2(6a)(b), fifth indent of the basic Regulation <sup>(22)</sup>, as well as distortions in the financial markets in the sense of Article 2(6a)(b), sixth indent of the basic Regulation, in particular concerning access to capital for corporate actors in the PRC <sup>(23)</sup>.

- (59) Like in previous investigations concerning the steel sector in the PRC, the Commission examined in the present investigation whether it was appropriate or not to use domestic prices and costs in the PRC, due to the existence of significant distortions within the meaning of point (b) of Article 2(6a) of the basic Regulation. The Commission did so on the basis of the evidence available on the file, including the evidence contained in the request, as well as in the Commission Staff Working Document on Significant Distortions in the Economy of the People's Republic of China for the Purposes of Trade Defense Investigations <sup>(24)</sup> ('Report'), which relies on publicly available sources. That analysis covered the examination of the substantial government interventions in the PRC's economy in general, but also the specific market situation in the relevant sector including the product under review. The Commission further supplemented these evidentiary elements with its own research on the various criteria relevant to confirm the existence of significant distortions in the PRC as also found by its previous investigations in this respect.

<sup>(18)</sup> See Implementing Regulation (EU) 2022/191 recital 195-201, Implementing Regulation (EU) 2021/2239 recitals 67-74, Implementing Regulation (EU) 2021/635 recitals 115-118 and Implementing Regulation (EU) 2020/508 recitals 122-127.

<sup>(19)</sup> See Implementing Regulation (EU) 2022/191 recital 195-201, Implementing Regulation (EU) 2021/2239 recitals 67-74, Implementing Regulation (EU) 2021/635 recitals 119-122 and Implementing Regulation (EU) 2020/508 recitals 128-132: While the right to appoint and to remove key management personnel in SOEs by the relevant State authorities, as provided for in the Chinese legislation, can be considered to reflect the corresponding ownership rights, CCP cells in enterprises, state owned and private alike, represent another important channel through which the State can interfere with business decisions. According to the PRC's company law, a CCP organisation is to be established in every company (with at least three CCP members as specified in the CCP Constitution) and the company shall provide the necessary conditions for the activities of the party organisation. In the past, this requirement appears not to have always been followed or strictly enforced. However, since at least 2016 the CCP has reinforced its claims to control business decisions in SOEs as a matter of political principle. The CCP is also reported to exercise pressure on private companies to put 'patriotism' first and to follow party discipline. In 2017, it was reported that party cells existed in 70 % of some 1.86 million privately owned companies, with growing pressure for the CCP organisations to have a final say over the business decisions within their respective companies. These rules are of general application throughout the Chinese economy, across all sectors, including to the producers of SSCR producers and the suppliers of their inputs.

<sup>(20)</sup> See Implementing Regulation (EU) 2022/191 recitals 195-201, Implementing Regulation (EU) 2021/2239 recitals 67-74, Implementing Regulation (EU) 2021/635 recitals 123-129 and Implementing Regulation (EU) 2020/508 recitals 133-138.

<sup>(21)</sup> See Implementing Regulation (EU) 2022/191 recitals 195-201, Implementing Regulation (EU) 2021/2239 recitals 67-74, Implementing Regulation (EU) 2021/635 recitals 130-133 and Implementing Regulation (EU) 2020/508 recitals 139-142.

<sup>(22)</sup> See Implementing Regulation (EU) 2022/191 recitals 195-201, Implementing Regulation (EU) 2021/2239 recitals 67-74, Implementing Regulation (EU) 2021/635 recitals 134-135 and Implementing Regulation (EU) 2020/508 recitals 143-144.

<sup>(23)</sup> See Implementing Regulation (EU) 2022/191 recitals 195-201, Implementing Regulation (EU) 2021/2239 recitals 67-74, Implementing Regulation (EU) 2021/635 recitals 136-145 and Implementing Regulation (EU) 2020/508 recitals 145-154.

<sup>(24)</sup> Commission staff working document SWD(2017) 483 final/2, 20. 12. 2017, available at: [https://trade.ec.europa.eu/doclib/docs/2017/december/tradoc\\_156474.pdf](https://trade.ec.europa.eu/doclib/docs/2017/december/tradoc_156474.pdf)

- (60) The request alleged that the Chinese economy as a whole is widely influenced and affected by various all-encompassing interventions by the GOC or other public authorities on various levels of government, in view of which domestic prices and costs of the Chinese steel industry cannot be used in the present investigation. To support its position, the request referred to the Commission's recent investigations of the Chinese steel sector <sup>(25)</sup> or the conclusions of the G20 Global Forum on Steel Excess Capacity <sup>(26)</sup>.
- (61) More specifically, the request pointed out that against the background of the '*socialist market economy*' doctrine enshrined in the PRC Constitution, the omnipresence of the Chinese Communist Party ('CCP') and the government influence over the economy by means of strategic planning initiatives – such as the 13<sup>th</sup> and 14<sup>th</sup> Five-Years Plans – the GOC's interventionism takes various forms, namely administrative, financial and regulatory.
- (62) The request provided examples of elements pointing to existence of distortions, as listed in the first to sixth dash of Article 2(6a)(b) of the basic Regulation. In particular, referring to previous Commission investigations in the steel sector, to the Report, to reports by third countries authorities (USTR) and by other institutions (IMF) the applicant submitted that:
- The market of CRF is served to a significant extent by enterprises which operate under the ownership, control or policy supervision or guidance of the PRC authorities, given in particular the CCP's influence over both private and state-owned companies by means of CCP nominations in companies, as well as in view of the systematic intermingling of State and CCP offices. The applicant further submitted that while the steel sector consists approximately half of state-owned and half of private companies in terms of production and production capacity, four out of the five biggest steel producers are SOEs, including Baowu, the second largest crude steel producer worldwide which is fully state-owned and closely aligned with the GOC's steel policy. The applicant pointed out in this connection that the GOC has been pursuing the plan to consolidate 70 % of iron and steel production in ten champion companies by 2025, a strategy which affects also the CRF industry, e.g. by the Baowu acquisition of the CRF producer Maanshan Iron & Steel in 2019;
  - State presence in firms allows the state to interfere with respect to prices or costs, notably by exercising regulatory and managerial control over SOEs, as well as through an increasing role of CCP in both state-owned and private companies which have been urged in recent years to leave major decisions to the CCP. The applicant further referred to personal overlaps between the state-controlled CISA association and the largest private steel producer, the Shagang group, as well as to State presence in upstream sector companies for which targets are set which result in abnormally low costs for the steel industry.
  - Public policies or measures discriminate in favour of domestic suppliers or otherwise influence free market forces, given in particular the system of planning which funnels resources to selected industries, such as the steel sector. The applicant illustrated this by quoting the draft 14th Five-Years Plan for the steel industry which reiterates its importance for the Chinese economy, as well as by referring to other planning and strategic documents which foresee support to the steel sector, such as Made in China 2025. The applicant further referred to other public policies affecting free market forces, such as the GOC steering the prices of raw materials through numerous measures, such as export quotas, export licensing requirements, export duties or VAT rebates, through energy price differentiation. In addition, the request describes the incentives provided by the Chinese authorities to steel producers which participate in the Belt and Road Initiative, aimed at fostering the presence of Chinese companies on foreign markets;

<sup>(25)</sup> Commission Implementing Regulation (EU) 2017/649 of 5 April 2017 imposing a definitive anti-dumping duty on imports of certain hot-rolled flat products of iron, non-alloy or other alloy steel originating in the People's Republic of China (OJ L 92, 6.4.2017, p. 68); Commission Implementing Regulation (EU) 2017/969 of 8 June 2017 imposing definitive countervailing duties on imports of certain hot-rolled flat products of iron, non-alloy or other alloy steel originating in the People's Republic of China and amending Commission Implementing Regulation (EU) 2017/649 imposing a definitive anti-dumping duty on imports of certain hot-rolled flat products of iron, non-alloy or other alloy steel originating in the People's Republic of China (OJ L 146, 9.6.2017, p. 17) and Commission Implementing Regulation (EU) 2019/688 of 2 May 2019 imposing a definitive countervailing duty on imports of certain organic coated steel products originating in the People's Republic of China following an expiry review pursuant to Article 18 of the Regulation (EU) 2016/1037 of the European Parliament and of the Council (OJ L 116, 3.5.2019, p. 39).

<sup>(26)</sup> Global Forum on steel excess capacity, Ministerial Report, 20 September 2018.

- The lack, discriminatory application or inadequate enforcement of bankruptcy, corporate or property laws results in the survival of large numbers of ‘zombie companies’ which contribute to the persistence of unused capacities, an issue particularly felt in the steel sector and reverberating in the Chinese financial and borrowing markets. The applicant also pointed out that given the absence of private land ownership in China, the Chinese state intervenes in the land use by the steel sector, as also already found by the Commission in previous investigations <sup>(27)</sup>;
  - Wage costs are distorted, insofar as no free bargaining exists and the only legally recognised trade union, the ACFTU is subject to CCP leadership. The applicant also pointed out that China has still not ratified several fundamental ILO convention and that the Chinese workforce is impacted by the household registration system;
  - Access to finance is granted by institutions which implement public policy objectives, or otherwise do not act independently of the state, due to the dominant presence of State-owned and controlled banks in which the State and CCP have influence over personnel and business decisions and which align themselves with the country’s industrial policy objectives. According to the request, Chinese CRF producers massively benefit from preferential lending by those banks. The applicant pointed out that also private banks must take national policy into account when conducting their business. Similarly to the distortions in the banking sector, the request describes the dominant role of government-related players in the bond market and the distortive role of the State-owned credit rating agencies or private agencies strongly influenced by the State, which opens the way to financing at more favourable rates to encouraged industries than those that would have been available on financial markets operating according to market principles.
- (63) As indicated in recital 50, the GOC did not comment or provide evidence supporting or rebutting the existing evidence on the case file, including the Report and the additional evidence provided by the applicant, on the existence of significant distortions and/or on the appropriateness of the application of Article 2(6a) of the basic Regulation in the case at hand.
- (64) Specifically in the sector of the product under review, i.e. the steel sector, a substantial degree of ownership by the GOC persists. Many of the largest CRF producers are owned by the State, such as, for example, Hebei Iron and Steel, Handan Iron and Steel, Baoshan Iron and Steel, Shanghai Meishan Iron and Steel, BX Steel Posco Cold Rolled Sheet, WISCO International Economic and Trading, Maanshan Iron and Steel, Tianjin Rolling One Steel or Inner Mongolia Baotou Steel Union. Baosteel, another major Chinese enterprise that engages in steel manufacturing, is part of the China Baowu Steel Group Co. Ltd. (formerly Baosteel Group and Wuhan Iron & Steel), the world’s largest steel producer <sup>(28)</sup> which is ultimately 100 % owned by the central SASAC <sup>(29)</sup>. While the nominal split between the number of SOEs and privately owned companies is estimated to be almost even, from the five Chinese steel producers ranked in the top 10 of the world’s largest steel producers, four are SOEs <sup>(30)</sup>. At the same time, while the top ten producers only took up some 36 % of total industry output in 2016, the GOC set the target in the same year to consolidate 60 % to 70 % of steel production in around ten large-scale enterprises by 2025 <sup>(31)</sup>. This intention has been repeated by the GOC in April 2019, announcing a release of guidelines on steel industry consolidation <sup>(32)</sup>. Such consolidation may entail forced mergers of profitable private companies with underperforming SOEs <sup>(33)</sup>. Since there was no cooperation from Chinese exporters of the product under review, the exact ratio of the private and state owned cold-rolled flat steel producers could not be determined. However, while specific information may not be available for the CRF sector, the sector represents a sub-sector of the steel industry and the findings concerning the steel sector are therefore deemed indicative also for the product under review.

<sup>(27)</sup> Implementing Regulation (EU) 2019/688, recital 86.

<sup>(28)</sup> See at: <https://worldsteel.org/steel-topics/statistics/top-producers/> (accessed on 4 August 2022)

<sup>(29)</sup> See for example at: [www.fitchratings.com/research/corporate-finance/china-baowu-steel-group-corporation-limited-05-03-2021](http://www.fitchratings.com/research/corporate-finance/china-baowu-steel-group-corporation-limited-05-03-2021) (accessed on 4 August 2022).

<sup>(30)</sup> Report – Chapter 14, p. 358: 51 % private and 49 % SOEs in terms of production and 44 % SOEs and 56 % private companies in terms of capacity.

<sup>(31)</sup> Available at: [www.gov.cn/zhengce/content/2016-02/04/content\\_5039353.htm](http://www.gov.cn/zhengce/content/2016-02/04/content_5039353.htm); [https://policycn.com/policy\\_ticker/higher-expectations-for-large-scale-steel-enterprise/?iframe=1&secret=c8uthafuthefra4e](https://policycn.com/policy_ticker/higher-expectations-for-large-scale-steel-enterprise/?iframe=1&secret=c8uthafuthefra4e), and [www.xinhuanet.com/english/2019-04/23/c\\_138001574.htm](http://www.xinhuanet.com/english/2019-04/23/c_138001574.htm) (accessed on 4 August 2022).

<sup>(32)</sup> Available at [http://www.jjckb.cn/2019-04/23/c\\_137999653.htm](http://www.jjckb.cn/2019-04/23/c_137999653.htm) (accessed on 4 August 2022).

<sup>(33)</sup> As was the case of the merger between the private company Rizhao and the SOE Shandong Iron and Steel in 2009. See Beijing steel report, p. 58, and the acquired majority stake of China Baowu Steel Group in Magang Steel in June 2019, see <https://www.ft.com/content/a7c93fae-85bc-11e9-a028-86cea8523dc2> (accessed on 4 August 2022).

- (65) The latest Chinese policy documents concerning the steel sector confirm the continued importance which GOC attributes to the sector, including the intention to intervene in the sector in order to shape it in line with the government policies. This is exemplified by the Ministry of Industry and Information Technology's draft Guiding Opinion on Fostering a High Quality Development of Steel Industry which calls for further consolidation of the industrial foundation and significant improvement in the modernization level of the industrial chain <sup>(34)</sup> or by the 14<sup>th</sup> Five Years Plan on Developing the Raw Material Industry according to which the sector will 'adhere to the combination of market leadership and government promotion' and will 'cultivate a group of leading companies with ecological leadership and core competitiveness' <sup>(35)</sup>. Similar examples of the intention by the Chinese authorities to supervise and guide the developments of the sector can be seen at the provincial level, such as in Shandong which not only foresees 'building a steel industry ecology [...], establish manufacturing parks, extend the industrial chain and create industrial clusters' but want the steel industry to 'provide a demonstration for the transformation and upgrading [...] in our province and even the whole country' <sup>(36)</sup>.
- (66) As to the GOC being in a position to interfere with prices and costs through State presence in firms in the sense of Article 2(6a)(b), second indent of the basic Regulation, due to the lack of cooperation from the side of the CRF producers, it was impossible to systematically establish existence of personal connections between producers of the product under review and the CCP. However, given that CRF represents a subsector of the steel sector, information available with respect to steel producers is relevant also to CRF. To provide an example, Baowu's Chairman of the Board of Directors serves at the same time as the Party Committee Secretary with the General Manager being the Deputy Secretary of the Party Committee <sup>(37)</sup>. Similarly, the Chairman of Baosteel's Board of Directors occupies the position of the Party Committee's secretary, while the Executive Manager is the Deputy Secretary of the Party Committee <sup>(38)</sup>. More generally, in view of the general applicability of the legislation on CCP presence in companies, it cannot be assumed that the ability of the GOC to interfere with prices and costs through State presence in firms would be different compared to the steel sector in general.
- (67) Both public and privately owned enterprises in the CRF sector are subject to policy supervision and guidance. The following examples illustrate the above trend of an increasing level of intervention by the GOC in the CRF sector. Many CRF producers explicitly emphasise Party building activities on their websites, have party members in the company management and underline their affiliation to the CCP. For instance, Baowu indicates that 301 Party Committees exist within the group, with the number of CCP members among Baowu's staff amounting to 84 571 <sup>(39)</sup>. Moreover, the group indicates the following concerning Party building in the enterprise: 'Strengthen the leadership of the party and improve corporate governance, improve the modern enterprise system. China Baowu fully implements the requirements of the 'Opinions on Strengthening the Party's Leadership in the Improvement of Corporate Governance by Central Enterprises', [...] The revised and improved decision-making system for major matters further improved the decision-making authority of the party committee, the board of directors, managers and other governance bodies, the decision-making matters and forms authorized by the board of directors [...]. [...] Baowu adheres to and implements the simultaneous planning of party building and enterprise reform, the simultaneous establishment of party organizations and working institutions, the simultaneous allocation of party organization leaders and party affairs staff <sup>(40)</sup>'.
- (68) Further, policies discriminating in favour of domestic producers or otherwise influencing the market in the sense of Article 2(6a)(b), third indent of the basic Regulation are in place in the CRF sector. Even though CRF is a specialised industry and no specific policy documents guiding specifically the development of the CRF industry as such could be identified during the investigation, the CRF industry benefits from governmental guidance and intervention into the steel sector, given that CRF represents one of its subsectors.

<sup>(34)</sup> See: [https://www.miit.gov.cn/gzcy/yjzj/art/2020/art\\_af1bef04b9624997956b2bff6cdb7383.html](https://www.miit.gov.cn/gzcy/yjzj/art/2020/art_af1bef04b9624997956b2bff6cdb7383.html) (accessed on 13 January 2022).

<sup>(35)</sup> See Section IV, Subsection 3 of the Plan, available at: [https://www.miit.gov.cn/zwgk/zcwj/wjfb/tz/art/2021/art\\_2960538d19e34c66a5eb8d01b74cbb20.html](https://www.miit.gov.cn/zwgk/zcwj/wjfb/tz/art/2021/art_2960538d19e34c66a5eb8d01b74cbb20.html) (accessed on 13 January 2022).

<sup>(36)</sup> See the 14<sup>th</sup> Five-Years Plan on the Steel Industry development, Foreword.

<sup>(37)</sup> See the group's website, available at: [http://www.baowugroup.com/about/board\\_of\\_directors](http://www.baowugroup.com/about/board_of_directors) (accessed on 28 March 2022)

<sup>(38)</sup> See the company's website, available at: <https://www.baosteel.com/about/manager> (accessed on 28 March 2022)

<sup>(39)</sup> See the group's website, available at: [http://www.baowugroup.com/party\\_building/overview](http://www.baowugroup.com/party_building/overview) (accessed on 28 March 2022)

<sup>(40)</sup> *Ibidem*.

- (69) The steel industry is regarded as a key industry by the GOC <sup>(41)</sup>. This is confirmed in the numerous plans, directives and other documents focused on steel, which are issued at national, regional and municipal level such as the ‘Steel Industry Adjustment and Upgrading plan for 2016-2020’, valid during a significant part of the review investigation period. This Plan stated that the steel industry is ‘an important, fundamental sector of the Chinese economy, a national cornerstone’ <sup>(42)</sup>. The main tasks and objectives set out in this Plan cover all aspects of the development of the industry <sup>(43)</sup>. The 13<sup>th</sup> Five-Year Plan on Economic and Social Development <sup>(44)</sup>, applicable during the review investigation period, envisaged support to enterprises producing high-end steel product types <sup>(45)</sup>. It also focused on achieving product quality, durability and reliability by supporting companies using technologies related to clean steel production, precision rolling and quality improvement <sup>(46)</sup>. Similarly, under the 14<sup>th</sup> Five Years Plan adopted in March 2021, the GOC has earmarked the steel industry for transformation and upgrade, as well as optimization and structural adjustment <sup>(47)</sup>.
- (70) The Guiding Catalogue for Industry Restructuring (2019 Version) <sup>(48)</sup> (‘the Catalogue’) lists steel as an encouraged industry. The other important raw material used for the production of CRF is iron ore. Iron ore was covered by the National Mineral Resource Plan 2016-2020 during a significant portion of the review investigation period. The plan envisaged, among others, to ‘ensure enterprise concentration and develop large and medium sized mines competitive on the market’, ‘ensure guidance of local resources so as to concentrate them towards large-sized mining groups’, ‘reduce the burden on iron ore enterprises, raise the competitiveness of domestic iron ore enterprises’, ‘adequately control the development of 1 000 meter-deep mines and small-scale low-grade iron ore mines’.
- (71) Iron ore is also mentioned in the 13<sup>th</sup> Five-Years Plan on Steel 2016-2020, which was in force during a significant portion of the review investigation period. The plan envisaged for iron ore: ‘keep on supporting exploration works in domestic key mineral areas, [...], support a number of existing and strongly competitive domestic iron ore enterprises, thanks to a wider and intensified development, [...], and to strengthen the role of domestic mineral resources bases as regards security (of supplies)’.
- (72) Iron ore is classified as a Strategic Emerging Industry (SEI) and therefore covered by the 13<sup>th</sup> Five-Years Plan on SEIs. Iron ore and ferro alloys are also all listed in the Catalogue. Ferro alloys are further mentioned in the 2018 MIIT Guiding Catalogue for Industry Development and Transfer. The examples above concerning the steel sector in general and the iron ore business in particular, the latter being an important raw material to produce CRF, demonstrate the importance the GOC is paying to these sectors. As such, the GOC guides also the further development of the CRF sector in accordance with a broad range of policy tools and directives and controls virtually every aspect in the development and functioning of the sector. Thus, the CRF industry benefits from governmental guidance and intervention concerning the main raw materials to manufacture CRF, namely iron.
- (73) In sum, the GOC has measures in place to induce operators to comply with the public policy objectives of supporting encouraged industries, including the production of the main raw materials used in the manufacturing of CRF. Such measures impede market forces from operating freely.

<sup>(41)</sup> Report, Part III, Chapter 14, p. 346 ff.

<sup>(42)</sup> Introduction to the Plan for Adjusting and Upgrading the Steel Industry.

<sup>(43)</sup> Report, Chapter 14, p. 347.

<sup>(44)</sup> The 13<sup>th</sup> Five-Year Plan for Economic and Social Development of the People’s Republic of China (2016-2020), available at: <https://en.ndrc.gov.cn/policies/202105/P020210527785800103339.pdf> (accessed on 4 August 2022).

<sup>(45)</sup> Report – Chapter 14, p. 349.

<sup>(46)</sup> Report – Chapter 14, p. 352.

<sup>(47)</sup> See People’s Republic of China 14<sup>th</sup> Five-Year Plan for National Economic and Social Development and Long-Range Objectives for 2035, Part III, Article VIII, available at: <https://cset.georgetown.edu/publication/china-14th-five-year-plan/> (accessed on 4 August 2022).

<sup>(48)</sup> Guiding Catalogue for Industry Restructuring (2019 Version), approved by Decree of the National Development and Reform Commission of the People’s Republic of China No 29 of 27 August 2019; available at: <http://www.gov.cn/xinwen/2019-11/06/5449193/files/26c9d25f713f4ed5b8dc51ae40ef37af.pdf> (accessed on 27 June 2022).

- (74) The present investigation has not revealed any evidence that the discriminatory application or inadequate enforcement of bankruptcy and property laws according to Article 2(6a)(b), fourth indent of the basic Regulation in the CRF sector referred to above in recital 55 would not affect the manufacturers of the product under review.
- (75) The CRF sector is also affected by the distortions of wage costs in the sense of Article 2(6a)(b), fifth indent of the basic Regulation, as also referred to above in recital 55. Those distortions affect the sector both directly (when producing the product under review or the main inputs), as well as indirectly (when having access to capital or inputs from companies subject to the same labour system in the PRC)<sup>(49)</sup>.
- (76) Moreover, no evidence was submitted in the present investigation demonstrating that the CRF sector is not affected by the government intervention in the financial system in the sense of Article 2(6a)(b), sixth indent of the basic Regulation, as also referred to above in recital 55. Therefore, the substantial government intervention in the financial system leads to the market conditions being severely affected at all levels.
- (77) Finally, the Commission recalls that in order to produce CRF, a number of inputs is needed. When the producers of CRF purchase/contract these inputs, the prices they pay (and which are recorded as their costs) are clearly exposed to the same systemic distortions mentioned before. For instance, suppliers of inputs employ labour that is subject to the distortions. They may borrow money that is subject to the distortions on the financial sector/capital allocation. In addition, they are subject to the planning system that applies across all levels of government and sectors.
- (78) As a consequence, not only the domestic sales prices of CRF are not appropriate for use within the meaning of Article 2(6a)(a) of the basic Regulation, but all the input costs (including raw materials, energy, land, financing, labour, etc.) are also affected because their price formation is affected by substantial government intervention, as described in Parts I and II of the Report. Indeed, the government interventions described in relation to the allocation of capital, land, labour, energy and raw materials are present throughout the PRC. This means, for instance, that an input that in itself was produced in the PRC by combining a range of factors of production is exposed to significant distortions. The same applies for the input to the input and so forth.
- (79) No evidence or argument to the contrary has been adduced by the GOC or the exporting producers in the present investigation.
- (80) In sum, the evidence available showed that prices or costs of the product under review, including the costs of raw materials, energy and labour, are not the result of free market forces because they are affected by substantial government intervention within the meaning of Article 2(6a)(b) of the basic Regulation, as shown by the actual or potential impact of one or more of the relevant elements listed therein. On that basis, and in the absence of any cooperation from the GOC, the Commission concluded that it is not appropriate to use domestic prices and costs to establish normal value in this case. Consequently, the Commission proceeded to construct the normal value exclusively on the basis of costs of production and sale reflecting undistorted prices or benchmarks, that is, in this case, on the basis of corresponding costs of production and sale in an appropriate representative country, in accordance with Article 2(6a)(a) of the basic Regulation, as described in the following section.

#### 3.1.4. Representative country

##### 3.1.4.1. General remarks

- (81) The choice of the representative country was based on the following criteria pursuant to Article 2(6a) of the basic Regulation:
- A level of economic development similar to China. For this purpose, the Commission used countries with a gross national income per capita similar to China on the basis of the database of the World Bank<sup>(50)</sup>;

<sup>(49)</sup> See Implementing Regulation (EU) 2021/635, recitals 134-135 and Implementing Regulation (EU) 2020/508, recitals 143-144.

<sup>(50)</sup> World Bank Open Data – Upper Middle Income, <https://data.worldbank.org/income-level/upper-middle-income>.

- Production of the product under review in that country <sup>(51)</sup>;
- Availability of relevant public data in the representative country.
- Where there is more than one possible representative country, preference should be given, where appropriate, to the country with an adequate level of social and environmental protection.

(82) As explained in recitals 52 and 53, the Commission issued two notes for the file on the sources for the determination of the normal value. These notes described the facts and evidence underlying the relevant criteria. No comments were received by the parties on these elements and on the relevant sources as laid down in the two above-mentioned notes. In the Second Note, the Commission informed interested parties of its intention to consider Brazil as an appropriate representative country in the present case if the existence of significant distortions pursuant to Article 2(6a) of the basic Regulation would be confirmed.

#### 3.1.4.2. A level of economic development similar to the PRC

- (83) In the First Note on production factors, the Commission identified Brazil, Mexico, Russia and Turkey as countries with a similar level of economic development as the PRC according to the World Bank, i.e. they are all classified by the World Bank as 'upper-middle income' countries on a gross national income basis, where production of the product under review was known to take place.
- (84) The applicant had proposed Brazil as an allegedly appropriate representative country in its request, since Brazil was home to several integrated steel producers and was a prime example of a competitive domestic market for the main steel products, including the product under review. The applicant also indicated in its request that all the inputs used in the production of the product under investigation in Brazil are commonly imported from multiple origins, and to a large extent from non-distorted sources.
- (85) No comments were received concerning the countries identified in that note.

#### 3.1.4.3. Availability of relevant public data in the representative country

- (86) In the First Note the Commission indicated that for the countries identified as countries where the product under review is being produced, i.e. Brazil, Mexico, Russia and Turkey, the availability of public data needed to be further verified, in particular with regard to the public financial data from producers of the product under review.
- (87) With regard to Mexico, the Commission identified two companies that were identified in the First Note as producers. However, one of these two companies was loss making from 2016 onwards, and including 2020. For the other company, it turned out that its financial statements for the year 2020 were not consistent with its financial statements for the year before (2019): for instance, the net sales were found to be about 7 times lower in 2020 than in 2019. No information was found substantiating such difference in net sales (also impacting the net profits) between the years 2020 and 2019. Therefore, both companies were considered not to be suitable candidates for the determination of manufacturing overhead, SG&A and profit. In the absence of other information on file available to the Commission on the presence of other companies producing the product under review in Mexico with readily available financial data, the Commission concluded that Mexico could no longer be considered an appropriate representative country.
- (88) With regard to Russia, the Commission identified two companies that were identified in the First Note as producers and which had publicly available financial data. Both companies were profitable in 2020 and in the years before. However, as indicated in recital 91, the Commission identified a number of issues with the data available for Russia, as it did not import a number of important raw materials, such as liquefied natural gas, used for the production of the product under investigation. Moreover, natural gas prices appeared to be distorted in Russia. Therefore, the Commission concluded that Russia was not suitable to be considered as an appropriate representative country for this investigation.

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<sup>(51)</sup> If there is no production of the product under review in any country with a similar level of development, production of a product in the same general category and/or sector of the product under review may be considered.

- (89) With regard to Turkey, the Commission identified two companies in the First Note as producers. However, for one of them, no recent readily available financial statements were available. For the other company, despite the fact that it was profitable in 2020 and the years before, the Commission considered the level of selling and general costs ('SG&A') of this company not reasonable because its SG&A expressed as a percentage of its cost of manufacturing was low (less than 2 % in 2020) or even negative. The Commission therefore concluded that it could not use the data of these companies as an undistorted and reasonable amount for SG&A for establishing the undistorted normal value. As a result, the Commission concluded that Turkey could not be considered as an appropriate representative country for this investigation.
- (90) Finally, with respect to Brazil, the Commission identified five companies producing CRF in the First Note. However, two out of these five companies had a negative selling and general costs ('SG&A') expressed as a percentage of their cost of manufacturing, therefore their data could not be used for the purpose of establishing undistorted normal value. The other three Brazilian companies had recent public financial data showing profits and reasonable amount for SG&A for the year 2020.
- (91) The Commission also analysed the imports of the main factors of production into Brazil, Mexico, Russia and Turkey. The analysis of import data showed that Russia did not import some important factors of production. Moreover, natural gas prices appeared to be distorted in Russia. In addition, the analysis of import data showed that Turkey did not import liquefied natural gas (HS 2711 11 natural gas, liquefied) and only imported a limited quantity of oxygen (HS 2804 40 oxygen). Therefore neither Russia nor Turkey could be considered as a suitable representative country.
- (92) In the light of the above considerations, the Commission informed the interested parties with the Second Note that it intended to use Brazil as an appropriate representative country and three Brazilian companies (ArcelorMittal Brazil, CSN, and Usiminas), in accordance with Article 2(6a)(a), first indent of the basic Regulation in order to source undistorted prices or benchmarks for the calculation of normal value.
- (93) Interested parties were invited to comment on the appropriateness of Brazil as a representative country and of the three companies (ArcelorMittal Brazil, CSN, and Usiminas) as producers in the representative country. Following the Second Note, no comments were received.

#### 3.1.4.4. Level of social and environmental protection

- (94) Having established that Brazil was the only appropriate representative country, based on all of the above elements, there was no need to carry out an assessment of the level of social and environmental protection in accordance with the last sentence of Article 2(6a)(a) first indent of the basic Regulation.

#### 3.1.4.5. Conclusion

- (95) In view of the above analysis, Brazil met the criteria laid down in Article 2(6a)(a), first indent of the basic Regulation in order to be considered as an appropriate representative country.

#### 3.1.5. Sources used to establish undistorted costs

- (96) In the First Note, the Commission listed the factors of production such as materials, energy and labour used in the production of the product under review by the exporting producers and invited the interested parties to comment and propose publicly available information on undistorted values for each of the factors of production mentioned in that note.

- (97) Subsequently, in the Second Note, the Commission stated that, in order to construct the normal value in accordance with Article 2(6a)(a) of the basic Regulation, it would use GTA to establish the undistorted cost of most of the factors of production, notably the raw materials. In addition, the Commission stated that it would use the following sources for establishing undistorted costs of energy: the electricity price as charged by one of the largest electricity suppliers in Brazil, the company EDP Brasil <sup>(52)</sup>, whereas it would use the data – as further explained in recital 109 – for the price of natural gas in Brazil. Moreover, the Commission stated that for establishing undistorted costs of labour it would use the ILO statistics to determine the wages in Brazil. The ILO statistics <sup>(53)</sup> provide information on monthly wages of employees <sup>(54)</sup> and average weekly hours worked in Brazil, in the manufacturing sector <sup>(55)</sup>, in 2020.
- (98) In the Second Note, the Commission also informed the interested parties that given the absence of cooperation from Chinese exporting producers it would group together the negligible weight of some of the raw materials in the total cost of production under ‘consumables’, based on the information submitted in the request by the applicant. Further, the Commission informed that it would apply the percentage to the recalculated cost of raw materials based on the information provided by the applicant in its request for determining the consumables when using the established undistorted benchmarks in the appropriate representative country.
- (99) No comments were received.

### 3.1.6. Undistorted costs and benchmarks

#### 3.1.6.1. Factors of production

- (100) The Commission asked the applicant to provide clarifications on the relevant factors of production used for the production processes starting from semi-finished hot-rolled products and to submit an update on the level of transport costs covering the entire review investigation period. The applicant provided the requested information on 17 February 2022.
- (101) Considering all the information based on the request and subsequent information submitted by the applicant, the following factors of production and their sources have been identified in order to determine the normal value in accordance with Article 2(6a)(a) of the basic Regulation:

Table 1

#### Factors of production of certain cold-rolled flat products

| Factor of Production       | Commodity Code            | Undistorted value in CNY | Unit of measurement |
|----------------------------|---------------------------|--------------------------|---------------------|
| <b>Raw materials</b>       |                           |                          |                     |
| Dolomite                   | 251810, 251820 and 251830 | 169,9                    | Tonne               |
| Limestone                  | 252100                    | 160,8                    | Tonne               |
| Quicklime                  | 252210                    | 852,8                    | Tonne               |
| Iron ores and concentrates | 260111 and 260112         | 1 206,8                  | Tonne               |
| Ferrous products           | 720310 and 720390         | 453 671                  | Tonne               |

<sup>(52)</sup> [https://www.edp.com.br/distribuicao-es/saiba-mais/informativos/tarifas-aplicadas-a-clientes-atendidos-em-alta-e-media-tensao-\(grupo-a\)](https://www.edp.com.br/distribuicao-es/saiba-mais/informativos/tarifas-aplicadas-a-clientes-atendidos-em-alta-e-media-tensao-(grupo-a)), and <https://www.edp.com.br/distribuicao-es/saiba-mais/informativos/bandeira-tarifaria>

<sup>(53)</sup> <https://ilostat.ilo.org/>

<sup>(54)</sup> <https://ilostat.ilo.org/data/> [https://www.ilo.org/shinyapps/bulkexplorer36/?lang=en&segment=indicator&id=EAR\\_4MTH\\_SEX\\_ECO\\_CUR\\_NB\\_A](https://www.ilo.org/shinyapps/bulkexplorer36/?lang=en&segment=indicator&id=EAR_4MTH_SEX_ECO_CUR_NB_A)

<sup>(55)</sup> [https://www.ilo.org/shinyapps/bulkexplorer38/?lang=en&segment=indicator&id=HOW\\_TEMP\\_SEX\\_ECO\\_NB\\_A](https://www.ilo.org/shinyapps/bulkexplorer38/?lang=en&segment=indicator&id=HOW_TEMP_SEX_ECO_NB_A)

|  |   |         |              |
|--|---|---------|--------------|
| Anthracite and Bituminous coal   | 270111 and 270112   | 662     | Tonne        |
| Coke and semi-coke of coal   | 270400  | 2 027,6 | Tonne        |
| Oxygen   | 280440  | 8 796,3 | Cubic meter  |
| Ferro-manganese  | 720211 and 720219   | 9 388,2 | Tonne        |
| Ferro-chromium   | 720241 and 720249   | 9 470,6 | Tonne        |
| Semi-finished products of iron or non-alloy steel  | 7207  | 4 256,3 | Tonne        |
| Flat-rolled products of iron or non-alloy steel  | 72081000,<br>72082500,<br>72082610,<br>72082690,<br>72082710,<br>72082790,<br>72083610,<br>72083690,<br>72083700,<br>72083810,<br>72083890,<br>72083910,<br>72083990,<br>72084000,<br>72085100,<br>72085200,<br>72085300,<br>72085400,<br>72089000,<br>72111300,<br>72111400,<br>72111900 | 4 637,9 | Tonne        |
| Flat-rolled products of other alloy steel, of a width of 600 mm or more                              | 72253000, 72254010,<br>72254090   | 8 539,6 | Tonne        |
| Flat-rolled products of other alloy steel, of a width of less than 600 mm                            | 72269100  | 9 081,8 | Tonne        |
| <b>Byproduct: Waste</b>  |   |         |              |
| Waste and scrap of iron or steel   | 720430 and 720449   | 2 383,3 | Tonne        |
| Turnings, shavings, chips, milling waste, sawdust, filings, trimmings and stampings of iron or steel | 720441  | 3 269,1 | Tonne        |
| <b>Labour</b>  |   |         |              |
| Labour   |   | 24,8    | per man hour |
| <b>Energy</b>  |   |         |              |
| Electricity  |   | 547,7   | KWH          |
| Natural gas  | 271111 and 271112   | 1 638   | Tonne        |

## 3.1.6.2. Raw materials

- (102) Based on the information provided by the applicant in its request, there are two main production processes to produce certain cold-rolled flat steel products:

- The first production process, starting from raw materials with use of a blast oxygen furnace (BOF): In this production process, the first step is the production of the 'Full-hard cold rolled flat' (FH CRF) from raw materials (mainly iron ore and coking coal), i.e. the product obtained right after the hot-rolled material is passed through the cold rolling mill for thickness reduction. The second step is the annealing, the re-heating of the FH CRF to restore the properties of steel.
  - The second production process, starting from the semi-finished products, i.e. the hot rolled flat steel products: The production of CRF starts with the purchased hot-rolled flat steel ('HRF') coils ('pickled coils') which will constitute the overwhelming cost share of the inputs.
- (103) In order to establish the undistorted price of raw materials (in case of the first production process) and of the hot rolled flat steel products (in case of the second production process) as delivered at the gate of a representative country producer, the Commission used as a basis the weighted average import price to the representative country as reported in the GTA, to which import duties and transport costs were added. An import price in the representative country was determined as a weighted average of unit prices of imports from all third countries excluding the PRC and countries which are not members of the WTO, listed in Annex 1 of Regulation (EU) 2015/755 of the European Parliament and the Council <sup>(56)</sup>. The Commission decided to exclude imports from the PRC into the representative country as it concluded in recital 80 that it is not appropriate to use domestic prices and costs in the PRC due to the existence of significant distortions in accordance with Article 2(6a)(b) of the basic Regulation. Given that there is no evidence showing that the same distortions do not equally affect products intended for export, the Commission considered that the same distortions affected export prices. After excluding imports from the PRC into the representative country, the volume of imports from other third countries remained representative.
- (104) A number of factors of production represented a negligible share of total raw material costs in the review investigation period. As the value used for these had no appreciable impact on the dumping margin calculations, regardless of the source used, the Commission decided to include those costs into consumables. As explained in recital 98, the Commission applied the percentage provided by the applicant in its request for determining the amount of consumables when using the established undistorted benchmarks in the appropriate representative country.
- (105) With regard to import duties, the Commission noted that Brazil imported its most relevant raw materials (iron ore from more than 5 countries, and coal and coke from more than 10 countries). Given that in an expiry review it is not necessary to calculate an exact margin of dumping, but rather to establish the likelihood of continuation or recurrence of dumping, the Commission calculated import duties for each raw material on the basis of representative volumes of imports from a limited number of countries, accounting for at least 80 % of total imports of the most relevant raw materials (iron ore, coal and coke).
- (106) With regard to transport costs, absent any cooperation, the Commission asked the applicant to submit an update on the level of domestic transport costs covering the entire review investigation period. On respectively 4 and 17 February 2022, the applicant submitted the requested information. The Commission expressed the domestic transport cost for the supply of raw materials as a percentage of the actual cost of such raw materials and then applied the same percentage to the undistorted cost of the same raw materials in order to obtain the undistorted transport cost. The Commission considered that the ratio between the exporting producer's raw material and the reported transport costs could be reasonably used as an indication to estimate the undistorted transport costs of raw materials when delivered to the company's factory.

### 3.1.6.3. Labour

- (107) The Commission used the ILO statistics to determine the wages in Brazil. The ILO statistics <sup>(57)</sup> provide information on monthly wages of employees <sup>(58)</sup> and average weekly hours worked in Brazil, in the manufacturing sector <sup>(59)</sup>, in 2020.

<sup>(56)</sup> Regulation (EU) 2015/755 of the European Parliament and of the Council of 29 April 2015 on common rules for imports from certain third countries (OJ L 123, 19.5.2015, p. 33). Article 2(7) of the basic Regulation considers that domestic prices in those countries cannot be used for the purpose of determining normal value and, in any event, such import data was negligible.

<sup>(57)</sup> <https://ilostat.ilo.org/>

<sup>(58)</sup> <https://ilostat.ilo.org/data/> [https://www.ilo.org/shinyapps/bulkexplorer36/?lang=en&segment=indicator&id=EAR\\_4MTH\\_SEX\\_CO\\_CUR\\_NB\\_A](https://www.ilo.org/shinyapps/bulkexplorer36/?lang=en&segment=indicator&id=EAR_4MTH_SEX_CO_CUR_NB_A)

<sup>(59)</sup> [https://www.ilo.org/shinyapps/bulkexplorer38/?lang=en&segment=indicator&id=HOW\\_TEMP\\_SEX\\_ECO\\_NB\\_A](https://www.ilo.org/shinyapps/bulkexplorer38/?lang=en&segment=indicator&id=HOW_TEMP_SEX_ECO_NB_A)

#### 3.1.6.4. Electricity

- (108) The Commission used the electricity price tariff reported by one of the largest electricity suppliers in Brazil, the company EDP Brasil <sup>(60)</sup> to establish the undistorted value for electricity cost.

#### 3.1.6.5. Natural gas

- (109) The price of natural gas in Brazil was based on data which provides duty-paid import prices for the imported gas by combining the import quantities and values extracted from GTA with tariff data obtained from MacMap <sup>(61)</sup>.

#### 3.1.6.6. Manufacturing overhead costs, SG&A, profits and depreciation

- (110) According to Article 2(6a)(a) of the basic Regulation, 'the constructed normal value shall include an undistorted and reasonable amount for administrative, selling and general costs and for profits'. In addition, a value for manufacturing overhead costs needs to be established to cover costs not included in the factors of production referred to above.
- (111) The Commission used the financial data of three Brazilian companies (ArcelorMittal Brazil, CSN, and Usiminas), producers in the representative country, as referred to in recital 90.
- (112) In order to establish an undistorted value of the manufacturing overheads and given the absence of cooperation from the Chinese exporting producers, the Commission used facts available in accordance with Article 18 of the basic Regulation. Therefore, based on the data provided by the applicant in its request, the Commission established the ratio of manufacturing overheads to the total manufacturing and labour costs. This percentage was then applied to the undistorted value of the cost of manufacturing to obtain the undistorted value of manufacturing overheads.

#### 3.1.7. Calculation of the normal value

- (113) On the basis of the above, the Commission constructed the normal value per product type on an ex-works basis in accordance with Article 2(6a)(a) of the basic Regulation.
- (114) First, the Commission established the undistorted manufacturing costs. In the absence of cooperation by the exporting producers, the Commission relied on the information provided by the applicant in the review request on the usage of each factor (materials and labour) for the production of the product under review.
- (115) Once the undistorted manufacturing cost established, the Commission added the manufacturing overheads, SG&A and profit as noted in recital 112. Manufacturing overheads were determined based on data provided by the applicant. SG&A and profit were determined based on the financial data of three Brazilian companies (ArcelorMittal Brazil, CSN, and Usiminas) as noted in recital 111. The Commission added the following items to the undistorted costs of manufacturing:
- Manufacturing overheads, which accounted in total for 10 % of the direct costs of manufacturing starting from the first production process, and 2 %, of the direct costs of manufacturing starting from the second production process;

<sup>(60)</sup> <https://www.edp.com.br/distribuicao-es/saiba-mais/informativos/tarifas-aplicadas-a-clientes-atendidos-em-alta-e-media-tensao-grupo-a>, and <https://www.edp.com.br/distribuicao-es/saiba-mais/informativos/bandeira-tarifaria>

<sup>(61)</sup> [www.macmap.org](http://www.macmap.org)

- SG&A and other costs, which accounted for 18,5 % of the Costs of Goods Sold ("COGS") of the three Brazilian above-mentioned companies and;
- Profits, which amounted to 14,7 % of the costs of goods sold as achieved by three Brazilian above-mentioned companies, were applied to the total undistorted costs of manufacturing.

(116) On that basis, the Commission constructed the normal value per product type on an ex-works basis, in accordance with Article 2(6a)(a) of the basic Regulation. The constructed normal value was either ranging between EUR/tonne 1 200 – 1 400, or between EUR/tonne 1 500 – 1 700, depending on the production process (see recital 102 in this respect) during the review investigation period.

#### 3.1.8. *Export price*

(117) In the absence of cooperation by the exporting producers from China, the export price was determined based on 14(6) data <sup>(62)</sup> at CIF level.

#### 3.1.9. *Comparison*

(118) The Commission compared the constructed normal value established in accordance with Article 2(6a)(a) of the basic Regulation and the export price as established above.

(119) Where justified by the need to ensure a fair comparison, the Commission adjusted the normal value and/or the export price for differences affecting prices and price comparability, in accordance with Article 2(10) of the basic Regulation. Adjustments based on the information provided by the applicant were made for sea and domestic freight and unloading charges, amounting to EUR/tonne 140,44, on the export price in order to bring it to ex-works price.

#### 3.1.10. *Continuation of dumping*

(120) On this basis, the Commission established that the export price was 29,7 % lower than the normal value for the first production process starting from the raw materials, as explained in recital 102, and 8,83 % for the second production process starting from the semi-finished products.

(121) However, as the volume of imports in question was very limited, corresponding to less than 0,5 % of total imports into the Union and less than 1 % market share in the Union market, the prices were considered unrepresentative. For this reason, the Commission concluded that these low volumes do not provide a sufficient basis to conclude about the continuation of dumping. Therefore, the Commission investigated the likelihood of recurrence of dumping.

#### 3.1.11. *Likelihood of recurrence of dumping*

(122) For the analysis of the likelihood of recurrence of dumping, the following additional elements were analysed: exports to third countries, the production capacity and spare capacity in China, and the attractiveness of the Union market.

##### 3.1.11.1. *Comparison between export prices to third countries and export prices to the Union*

(123) The Commission analysed the price pattern of Chinese exports to third countries during the RIP. Therefore, it consulted publicly available information such as the Chinese exporting statistics as reported in Global Trade Atlas ("GTA") and extracted the quantities and values of the export of certain cold-rolled flat steel products under the HS codes 7209 15 90, 7209 16 90, 7209 17 90, 7209 18 90, 7209 25 00, 7209 26 00, 7209 27 00, 7209 28 00, 7211 23 00, 7211 29 00, 7225 50 00 and 7226 92 00 for the review investigation period. The export quantities (in tonnes) to all countries (European Union included) amount to 3 253 368 tonnes, of which 31 602 tonnes or about 1 % were exported to the Union.

<sup>(62)</sup> The 14(6) database provides data on imports of products that are already subject to registration or anti-dumping or anti-subsidy measures, from the countries concerned by the proceeding and from other third countries, at the level of 10-digit TARIC codes.

- (124) The Chinese export statistics provided in GTA reported an average CIF export price from China to other countries amounting to EUR/tonne 629, which was adjusted to an ex-works price (after adjustments for sea and domestic freight, and unloading charges) amounting to EUR/tonne 585. The latter price was even below the export price to the EU in the review investigation period.
- (125) Therefore, it was considered likely that, if the current measures were to be repealed, the Chinese exporting producers would start selling to the Union at levels below the normal value found.

#### 3.1.11.2. Production capacity and spare capacity in China

- (126) According to the request of the applicant, there are more than 50 exporting producers of the product under review in China. According to Chinese export statistics as reported in GTA, the Chinese exporting producers also exported to the rest of the world.
- (127) In the absence of cooperation by the Chinese exporting producers in China, the Commission based its findings with regard to the capacity of the other exporting producers on facts available, and relied on the information contained in the expiry review request as well as other available sources, such as Commission Implementing Regulation (EU) 2021/1029 <sup>(63)</sup>, a document of the OECD on the latest developments <sup>(64)</sup> in steelmaking capacities in 2021, published in September 2021 and data of the World Steel Association concerning the year 2021 <sup>(65)</sup>.
- (128) First, the information contained in the expiry review request estimated the total Chinese capacity at more than 120 million tonnes, while production and Chinese consumption were both estimated at 100 million tonnes in 2020. On this basis, the spare capacity in China was estimated at 20 million tonnes in 2020, which is indicative for the spare capacity in the review investigation period, and which significantly exceeds the total Union consumption on the free market (about 9,7 million tonnes) in the review investigation period. Second, Implementing Regulation (EU) 2021/1029 provided that despite 'the exceptional consumption surge experienced in China' (see recital 36 of Regulation (EU) 2021/1029), the 2020 Global Forum on Steel Excess Capacity ('GFSEC') Ministerial Report, based on data up to 2019, provided that 'the immediate implication of the demand outlook is that the global capacity-demand gap, an indicator of over-supply risks for the steel market, is going to increase significantly to at least 606 mmt in 2020'. It also noted 'this reversal in excess capacity can lead to trade disturbances, trigger sharply lower steel prices and hurt the economic sustainability of the steel industry'. Third, this situation was also confirmed in the OECD document, entitled 'latest development in steelmaking capacities in 2021.' The document referred not only to 'a number of new investments related to China's measures to replace outdated and small steel plants, especially in the eastern and southern coastal areas of China' but also to the fact that the Chinese government 'has found instances where some steel mills have expanded their production capacity under the framework of the capacity swap scheme'. Moreover, the OECD document referred to investments of Chinese steel companies in South Asian countries, such as the Philippines and Indonesia. Finally, even if the data of the WorldSteel Association for the year 2021 are for crude steel only, they can be considered indicative for the product concerned as the cold-rolled steel production is basically the second steel production process, after the hot-rolled steel production. In this respect, the 2021 data for the crude steel production showed that China was responsible for 52,9 % of the global world steel production, which is also an indication of the enormous production capacity of the product concerned in the PRC during the year 2021.
- (129) In addition, some main markets such as the USA and India are protected by anti-dumping measures on the product under review, which reduces access of the Chinese exporting producers.
- (130) On this basis, it is likely that Chinese producers will direct their spare capacities to the Union market in large quantities at dumped prices should the measures lapse.

#### 3.1.11.3. Attractiveness of the Union market

- (131) The Union market is among the largest markets of certain cold-rolled flat steel products worldwide.

<sup>(63)</sup> Commission Implementing Regulation (EU) 2021/1029 of 24 June 2021 amending Commission Implementing Regulation (EU) 2019/159 to prolong the safeguard measure on imports of certain steel products (OJ L 225 I, 25.6.2021, p. 1).

<sup>(64)</sup> <https://www.oecd.org/industry/ind/latest-developments-in-steelmaking-capacity-2021.pdf>

<sup>(65)</sup> <https://worldsteel.org/steel-topics/statistics/world-steel-in-figures-2022/>

- (132) The applicant claimed in its request that the Union steel safeguard measures alone, which apply to the product under review, would not be sufficient to protect the Union market against imports in significant quantities at dumped prices. As China did not receive any country-specific quota for the product under review, Chinese exporting producers have access to a large amount of residual quota volumes under which they could direct their exports to the Union market if the anti-dumping measures were to lapse. As a result, if anti-dumping measures were to be repealed, Chinese export volumes are likely to increase significantly within the residual quota and thus flood the Union market before any out-of-quota duty under the safeguard measure would become applicable.
- (133) The importer Duferco S.A. stated <sup>(66)</sup> that the Chinese authorities cancelled the 13 % rebate of value-added tax on steel exports, including on imports of the product under review with a view to curtailing the steel production in China (in order to address its carbon emissions), while ensuring Chinese domestic supply. Duferco S.A. stated that, as a result, prices of Chinese imports are expected to increase, thereby undermining the attractiveness of the Union market. The Commission, however, could not confirm this claim, as the evolution of volumes and prices depends on many other elements as well, like in particular the existing overcapacity and the attractiveness of the Union market in comparison with other third countries.

#### 3.1.11.4. Conclusion on the likelihood of recurrence

- (134) The Union market is very attractive as it is among the largest in the world. Moreover, as laid down in table 7 of recital 202, the weighted average unit sales prices of the sampled Union producers to unrelated customers on the free market in the Union amounted to EUR/tonne 622 during the review investigation period, which is above the average export price from China adjusted to an ex-works price amounting to EUR/tonne 585 (see recital 124). Thus, it would be likely that, if the current anti-dumping measures expire, Chinese producers would use their spare capacity and, in addition, divert some of their less profitable export sales from third countries to the Union market.
- (135) On the basis of the above considerations, it was concluded that there is a likelihood of recurrence of dumping should the measures be allowed to lapse.

### 3.2. Russia

#### 3.2.1. Preliminary remarks

- (136) During the review investigation period, imports of the product under review from Russia continued, albeit at significantly lower levels than in the investigation period of the original investigation (i.e. from 1 April 2014 to 31 March 2015). According to Comext (Eurostat) statistics, imports of CRF from Russia accounted for less than 3 000 tonnes in the review investigation period, compared to approximately 700 000 tonnes during the original investigation period. Imports of CRF from Russia accounted for a close to 0 % market share of both the total Union market and the free Union market in the review investigation period, compared to 9,8 % market share during the original investigation period.
- (137) As explained in recital 29, the three Russian exporting producers came forward at initiation and expressed their willingness to cooperate. However, later they informed the Commission that they did not intend to reply to the exporting producers' questionnaire.
- (138) Consequently, in accordance with Article 18 of the basic Regulation, the findings in relation to the continuation of dumping as well as to the likelihood of recurrence of dumping were based on facts available.

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<sup>(66)</sup> Initiation of expiry review of the anti-dumping measures applicable to imports of certain cold-rolled flat steel products originating in the People's Republic of China and the Russian Federation, submission on behalf of Duferco S.A., 27.8.2021, section 4.1. China, pages 6-7.

### 3.2.2. Continuation of dumping of imports during the review investigation period

#### 3.2.2.1. Normal value

- (139) As mentioned in recital 138 above, due to the non-cooperation from exporting producers in Russia, the Commission used facts available to establish the normal value. To this end, the Commission used data provided by the applicant for the review investigation period based on MEPS International <sup>(67)</sup> domestic prices references for Russia – CRF – Volga region. On that basis, the normal value was EUR/tonne 702, 97 during the review investigation period.

#### 3.2.2.2. Export price

- (140) Due to the non-cooperation from the exporting producers in Russia, the Commission had to use facts available to establish the export price.
- (141) The export price was determined based on CIF Eurostat data. Thus the export price was EUR/tonne of 755,65.

#### 3.2.2.3. Comparison

- (142) The Commission compared the normal value and the export price of the product under review on an ex-works basis. Adjustments were made, based on information provided by the applicant, for sea and domestic freight, and unloading charges, amounting to EUR/tonne 127,84 on the export price in order to bring it to ex-works level. On that basis, the adjusted ex-works export price to the Union was EUR/tonne 627, 81.

#### 3.2.2.4. Continuation of dumping

- (143) The above comparison showed the export prices to the Union, expressed as a percentage of the CIF value, were 10 % lower than the established normal value.
- (144) However, as the volume of imports in question was very limited, accounting for less than 1 % of total imports into the Union and close to 0 % of the share of the Union market, the Commission also investigated the likelihood of recurrence of dumping.

### 3.2.3. Likelihood of recurrence of dumping should measures be repealed

- (145) In accordance with Article 11(2) of the basic Regulation, the Commission investigated the likelihood of recurrence of dumping should the measures expire. In this respect, the following additional elements were analysed: the exports to third countries, the production capacity and spare capacity in Russia as well as the attractiveness of the Union market.

#### 3.2.3.1. Exports to third countries

##### (a) **Normal value**

- (146) The normal value was constructed as explained in Section 3.2.2.1 above.

##### (b) **Export price**

- (147) The export price was established on the basis of export prices of the product under review to other third countries. In this respect, due to lack of cooperation from exporting producers, the Commission used the GTA database. The average CIF export price to third countries was EUR/tonne 536 in the review investigation period. The CIF export price to third countries was reduced to ex-works level by deducting the freight and insurance costs and domestic transport cost in Russia, which amounted to EUR/tonne 127,84 as mentioned in recital 141. On that basis, the adjusted ex-works export price to third countries was EUR/tonne 408,72.

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<sup>(67)</sup> Global Steel Prices, Indexes & Forecasts | MEPS International

(c) **Price comparison**

- (148) The Commission compared the normal value established in Section 3.2.2.1 and the average export price to third countries on an ex-works basis.
- (149) The above comparison showed that the Russian exports of the product under review to third countries, expressed as a percentage of the CIF value, were 55 % lower than the normal value established.
- (150) In their submission on initiation, the three Russian exporting producers claimed that export prices to third markets are not more representative than export prices to the Union because these exports, mainly to Turkey, are composed of cheaper types of CRF, which would explain their lower prices. They suggested that high Russian export prices reported by Eurostat are representative and must be used in the assessment.
- (151) In this respect, the Commission noted that no evidence was provided to substantiate the allegation of differences in the product types. In fact, the three Russian exporting producers failed to provide a questionnaire reply allowing the Commission to perform its assessment as to the product types exported to the Union. Thus, as explained in recital 138, the Commission based its assessment on facts available. It used the GTA database to establish the Russian export price to third countries as the most appropriate source. In any event, even if the Russian export prices to the Union were used as suggested by the three Russian exporters, the Commission established in Section 3.2.2.4 above that the Russian export prices to the Union sourced from Eurostat, expressed as a percentage of the CIF value, were 10 % lower than the established normal value. Therefore, the claim was rejected.

3.2.3.2. Production capacity and spare capacity in Russia

- (152) Given the non-cooperation by the Russian exporting producers, the production capacity and spare capacity in Russia were established on the basis of facts available and in particular the information provided by the applicant concerning the review investigation period.
- (153) According to the information provided by the applicant, the total production capacity of the product under review in Russia exceeded 12 000 000 tonnes in the review investigation period. The applicant estimated that the Russian producers have a spare capacity of around 2 million tonnes that cannot be absorbed by the domestic market. In addition, the applicant submitted that the Russian producers have increased the production capacity for cold-rolled steel by approximately 1 150 000 tonnes between 2016 and 2021.
- (154) The Russian exporting producers contested the estimation of the spare capacity in Russia as provided by the applicant. In their submission on initiation, they provided data about total production capacity of the CRF industry in Russia, the overall production volume and the capacity utilisation rate. They claimed that in 2020, the Russian CRF industry had a spare capacity of [1,8 – 2,3] million tonnes which was only [4 – 8] % of the overall Union consumption (32,4 million tonnes). They further stated that taking into account the estimated growth of CRF consumption and production in Russia and the Eurasian Economic Union (EAEU), free capacity of Russian CRFS industry is projected to diminish further.
- (155) In this respect, as explained in recital 32, the Russian exporting producers did not send questionnaire replies and the Commission considered that they provided only fragmented information about production, capacity and production volume without supporting evidence and which the Commission could not verify. Consequently, since the exporting producers did not provide sufficient and reliable information as regards production capacity and production volumes, the Commission used the information available on the file.

- (156) Furthermore, the Russian exporting producers provided the data about production, capacity and capacity utilisation only in a sensitive version without a non-confidential summary. As noted in the Notice of Initiation, if a party providing confidential information fails to show good cause for a confidential treatment request or does not furnish a non-confidential summary of it in the requested format and quality, the Commission may disregard such information unless it can be satisfactorily demonstrated from appropriate sources that the information is correct. Given that the information about production, capacity and capacity utilisation was provided only in sensitive version and thus could not be subject to comments by other interested parties, it could not be satisfactorily demonstrated that the information is correct.
- (157) In any event, the data in question provided by the Russian exporting producers and the one provided by the applicant did not diverge to a large extent. Therefore, the Commission considered that an assessment based on the data provided by the Russian exporting producers would not have led to a different conclusion. As a result, the Commission rejected the claims.
- (158) After disclosure, the Russian government as well as the exporting producers challenged the Commission's findings that the exporting producers did not cooperate fully with the investigation and that no meaningful open version had been submitted (as explained in recital 156). Thus, the exporting producers claimed that the Commission misused its discretionary powers in this respect.
- (159) First, the Commission observed that the information on capacity per company was only provided by the exporting producers in an indexed form which did not allow the parties to comment on the exact capacity installed (no ranges were provided). Neither production data nor capacity utilisation data was provided in the open version. Consequently, the Commission reiterated its finding that the open version of the information about production, capacity and capacity utilisation could not be scrutinised by the other interested parties. Second, this information was not provided as part of questionnaire replies and could not be cross checked with other parts of the questionnaires and the underlying documents that companies are required to provide as evidence backing the information submitted in the questionnaire reply. Finally, as explained in recital 157 above, the Commission established that even if the data provided were to be taken into account, its findings of spare capacity would not have been altered. Consequently, the Commission rejected these claims.
- (160) The spare capacity of the product under review available in Russia represents approx. 21 % of the total Union consumption on the free market in the review investigation period when it is based on the application and approximately 20 % if the submission of the Russian exporting producers were to be taken into account.
- (161) Based on the above, the Commission concluded that the Russian exporting producers have significant spare capacities, which they could use to produce CRF to export to the Union if measures were allowed to lapse.

### 3.2.3.3. Attractiveness of the Union market

- (162) The Commission established that the Russian exporting producers exported the product under review to third markets at prices around 14 % lower than the average sales prices of the Union producers on the Union market. Taking into account this price level, exporting to the Union is potentially more attractive for the Russian exporters than exporting to all other countries.
- (163) The Union market is also attractive in view of its geographical proximity and size, with a total consumption of 33 579 173 tonnes, including a consumption on the free market of 9 677 020 tonnes in the review investigation period.

- (164) The volume of exports to third countries was 580 000 tonnes in the review investigation period, which represented 6 % of the free Union market consumption. This represents an additional volume of CRF which could be diverted to the Union market given its attractiveness should the measures expire.
- (165) After disclosure, the exporting producers and the Russian government argued that the Union market was no longer attractive for the exporting producers because of the sanctions, and even in the pre-sanctions period, 'trade flows, infrastructure and supply chains have already been destroyed' and it would take years before they were restored.
- (166) While the claim on sanctions is addressed in recitals 167 and 172 below, the Commission observed that no evidence was provided in respect of the claim that it would take years to restore exports to the Union. At the same time, given the significantly lower prices at which the Russian exporting producers continue exporting to the rest of the world, the geographical proximity and size of the Union market as well as the significant volume of exports to third countries that could be diverted to the Union, the Commission reiterated its findings that the Union market is attractive for the Russian exporting producers.
- (167) This conclusion is not called into question by recent events. The Commission noted in this respect that after the initiation of the investigation, due to the military aggression by the Russian Federation against Ukraine, the Union imposed successive packages of sanctions against Russia which also affected steel products and/or the steel companies producing and exporting the product under review after the review investigation period. The latest package of sanctions covering the product under review and/or the exporting producers contains an import ban of CRF. This ban entered into force on 16 March 2022 <sup>(68)</sup>. Given that these sanctions are linked to the military aggression and the underlying geopolitical situation, their scope, modulation, and/or duration are unpredictable. Furthermore, anti-dumping measures have a lifetime of five years. Considering the abovementioned uncertainties and the fact that the Council may further amend the precise scope and duration of sanctions at any moment, the Commission found that they cannot have a bearing in its conclusions in this proceeding.

#### 3.2.3.4. Conclusion on the likelihood of recurrence of dumping

- (168) The Commission established that Russian exporting producers sell to third countries at prices lower than the normal value.
- (169) As explained in recital 161, the spare capacity in Russia was significant in the review investigation period, representing approx. 21 % of the total Union consumption on the free market in the review investigation period, and increased between 2016 and 2021.
- (170) Finally, the attractiveness of the Union market in terms of size, geographical proximity and prices points to the likelihood that Russian exports and spare capacity would be (re)directed towards the Union, should the measures be allowed to lapse.
- (171) Following disclosure, the Russian government argued that there is no likelihood of recurrence of dumping since imports have been insignificant and, because of the sanctions, the Russian manufacturers have completely stopped exports to the Union for a long and indefinite period of time.
- (172) Regarding exports to the Union, the Commission recalled that it established a likelihood of recurrence of dumping based on the elements described above which do not include the current level of exports to the Union, which is considered a temporary situation which may change at any time. Regarding the sanctions in place, as explained in recital 167, given that their scope, modulation and/or duration are unpredictable and can be amended at any time,

<sup>(68)</sup> Regulation (EU) No 833/2014 of 31 July 2014 concerning restrictive measures in view of Russia's actions destabilising the situation in Ukraine (OJ L 229, 31.7.2014, p. 1) as amended by Council Regulation (EU) 2022/428 (OJ L 87 I, 15.3.2022, p. 13). Please refer to <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A02014R0833-20220413> for the consolidated version of Regulation (EU) No 833/2014, containing all amendments relating to the package of sanctions.

the Commission found that they cannot have a bearing on the conclusions in this proceeding. Therefore, the recent events temporarily affecting imports from Russia into the Union cannot alter the findings made as regards recurrence of dumping in this case and these claims were rejected.

- (173) Consequently, the Commission concluded that there was a likelihood of recurrence of dumping, if the measures would not be extended.

#### 4. INJURY

##### 4.1. Definition of the Union industry and Union production

- (174) The like product was manufactured by 21 producers in the Union during the period considered. They constitute the 'Union industry' within the meaning of Article 4(1) of the basic Regulation.
- (175) The total Union production during the review investigation period was established at around 30,5 million tonnes. The Commission established the figure on the basis of all the available information concerning the Union industry, such as information provided by the applicant. As indicated in recital 21, a sample of three Union producers was selected that represented more than 30 % of the total Union production of the like product.
- (176) As the Union industry is mostly vertically integrated and cold-rolled flat steel products are regarded as a primary material for the production of various value added downstream products, the captive and free market consumption were analysed separately.
- (177) The distinction between the captive and free markets is relevant for the injury analysis, because products destined for captive use are not exposed to direct competition from imports, and transfer prices are set within the groups according to various price policies and are therefore not reliable. By contrast, production destined for the free market is in direct competition with imports of the product concerned, and prices are free market prices.
- (178) To provide a picture of the Union industry that is as complete as possible, and similar to what was done in the original investigation, the Commission obtained data for the entire activity of cold-rolled flat steel products and determined whether the production was destined for captive use or for the free market. The Commission found that around 78 % of the total Union producers' production was destined for captive use.
- (179) The Commission examined certain economic indicators relating to the Union industry on the basis of data for the free market only. These indicators are: sales volume and sales prices on the Union market; market share; export volume and prices and profitability. For other indicators, such as production, capacity, productivity, employment and wages, the figures considered below relate to the whole activity and therefore no separation was warranted.

##### 4.2. Union consumption

- (180) The Commission established the Union consumption on the basis of data provided by (a) EUROFER concerning Union industry sales of the like product in the Union, cross-checked with the sampled Union producers; and (b) imports of the product under review from all third countries as reported in Eurostat.
- (181) Union consumption developed as follows:

Table 2

**Union consumption (tonnes)**

|                              | 2018       | 2019       | 2020       | Review Investigation period |
|------------------------------|------------|------------|------------|-----------------------------|
| Total Union consumption      | 39 389 717 | 38 484 642 | 31 808 880 | 33 579 173                  |
| <i>Index</i><br>(2018 = 100) | 100        | 98         | 81         | 85                          |
| Captive market               | 28 207 944 | 28 129 434 | 22 651 025 | 23 902 153                  |
| <i>Index</i><br>(2018 = 100) | 100        | 100        | 80         | 85                          |
| Free market                  | 11 181 772 | 10 355 209 | 9 157 856  | 9 677 020                   |
| <i>Index</i><br>(2018 = 100) | 100        | 93         | 82         | 87                          |

Source: Data provided by Eurofer and cross-checked with the sampled producers questionnaire replies; Eurostat.

- (182) Free market consumption has increased as compared to the 7 122 682 tonnes consumed during the investigation period of the original investigation (1 April 2014 to 31 March 2015). However, during the period considered, the Union captive consumption decreased by around 15 %, while the Union free market consumption decreased by around 13 %. Between the years 2018 to 2019 the consumption on the captive market remained stable while the consumption on the free market decreased by 7 %. The main decrease occurred between the years 2019 and 2020 when both free and captive consumption decreased substantially by 11 % and 20 % respectively. This decrease started in 2019 due to an overall slowdown in Union growth, but was exacerbated due to the overall economic slowdown caused by the Covid-19 pandemic. The slowdown in economic growth generally, and in the manufacturing sector specifically, has affected the overall demand for steel. This particularly had an impact on the automotive industry, which constitutes a significant part of the users of CRF. From 2020 to the review investigation period both captive and free consumption increased by 5 % without, however, returning to the levels of 2018.

### 4.3. Imports from the countries concerned and the rest of the world

#### 4.3.1. Volume and market share of the imports from the countries concerned and the rest of the world

- (183) The Commission established the volume of imports on the basis of Eurostat. The market share of the imports was established on the basis of a comparison between import volumes and the Union free market consumption, as reported in Table 2 above.

- (184) Imports into the Union from the countries concerned and the rest of the world developed as follows:

Table 3

**Import volume (tonnes) and market share**

|  | 2018      | 2019      | 2020      | Review Investigation period |
|--|-----------|-----------|-----------|-----------------------------|
| Volume of imports from the countries concerned | 14 367    | 4 286     | 1 435     | 9 713                       |
| <i>Index</i><br>(2018 = 100)                   | 100       | 30        | 10        | 68                          |
| Market share                                   | 0,1 %     | 0,0 %     | 0,0 %     | 0,1 %                       |
| Volume of imports from the PRC                 | 2 305     | 1 275     | 423       | 7 065                       |
| <i>Index</i><br>(2018 = 100)                   | 100       | 55        | 18        | 307                         |
| Market share PRC                               | 0,0 %     | 0,0 %     | 0,0 %     | 0,1 %                       |
| Volume of imports from Russia                  | 12 062    | 3 011     | 1 012     | 2 648                       |
| <i>Index</i><br>(2018 = 100)                   | 100       | 25        | 8         | 22                          |
| Market share Russia                            | 0,0 %     | 0,0 %     | 0,0 %     | 0,0 %                       |
| Volume of imports from the rest of the world   | 2 279 706 | 2 113 190 | 1 876 491 | 2 154 420                   |
| <i>Index</i><br>(2018 = 100)                   | 100       | 93        | 82        | 95                          |
| Market share rest of the world                 | 20,39 %   | 20,41 %   | 20,49 %   | 22,26 %                     |

Source: Eurostat

- (185) While imports from the countries concerned accounted for 20 % market share and 1,4 million tonnes in the original investigation period, they have, based on information from Eurostat, virtually disappeared from the Union market. In fact, imports from the countries concerned continued to decrease from 14 367 to 9 713 tonnes over the period considered. Although import volumes from both countries concerned increased again somewhat between 2020 and the review investigation period, in line with increasing consumption volumes in the same period, they still accounted for a market share of only 0,1 % during the review investigation period.

- (186) Total imports of the product under review from third countries other than the countries concerned decreased by 5 % (from 2,28 to 2,15 million tonnes) over the period considered. This follows the same downward trend of the Union free market consumption as mentioned in Table 2, but to a lesser degree. In addition, third countries maintained (and even increased by almost 2 percentage points) their market share in the free market over the period considered, while the Union industry lost almost 2 % market share. However, the supply of CRF on the free market was fragmented, with none of the other third countries holding a market share of more than 4 % in the Union market <sup>(69)</sup>.

#### 4.4. Economic situation of the Union industry

##### 4.4.1. General remarks

- (187) The assessment of the economic situation of the Union industry included an evaluation of all economic indicators having a bearing on the state of the Union industry during the period considered.
- (188) For the injury determination, the Commission distinguished between macroeconomic and microeconomic injury indicators. The Commission evaluated the macroeconomic indicators based on data contained in the questionnaire response submitted by Eurofer concerning the Union industry's sales of the like product, crosschecked with the data provided by the sampled Union producers. The Commission evaluated the microeconomic indicators on the basis of data contained in the questionnaire replies from the sampled Union producers. Both sets of data were found to be representative of the economic situation of the Union industry.
- (189) The macroeconomic indicators are: production, production capacity, capacity utilisation, sales volume, market share, growth, employment, productivity, magnitude of the dumping margin, and recovery from past dumping.
- (190) The microeconomic indicators are: average unit prices, unit cost, labour costs, inventories, profitability, cash flow, investments, return on investments, and ability to raise capital.

##### 4.4.2. Macroeconomic indicators

###### 4.4.2.1. Production, production capacity and capacity utilisation

- (191) The total Union production, production capacity and capacity utilisation developed over the period considered as follows:

Table 4

#### Production, production capacity and capacity utilisation

|                              | 2018       | 2019       | 2020       | Review Investigation period |
|------------------------------|------------|------------|------------|-----------------------------|
| Production volume (tonnes)   | 36 298 267 | 35 686 689 | 29 229 520 | 30 520 404                  |
| <i>Index</i><br>(2018 = 100) | 100        | 98         | 81         | 84                          |
| Production capacity (tonnes) | 45 912 036 | 45 976 102 | 48 542 510 | 44 909 450                  |
| <i>Index</i><br>(2018 = 100) | 100        | 100        | 106        | 98                          |

<sup>(69)</sup> India, Turkey, Ukraine and the Republic of Korea were the only countries with a market share above 3 % during the review investigation period, while only Taiwan and the United Kingdom had over 2 % market share.

|                              |     |    |    |    |
|------------------------------|-----|----|----|----|
| Capacity utilisation (%)     | 79  | 78 | 60 | 68 |
| <i>Index</i><br>(2018 = 100) | 100 | 98 | 76 | 86 |

Source: Eurofer, sampled Union producers

- (192) Production volumes have decreased significantly since the beginning of the period considered. The decrease follows a largely similar trend and magnitude as that observed for the decrease of the total Union consumption. Production volumes decreased by 16 % over the review investigation period.
- (193) Production capacity also decreased slightly during the period considered, and is at a much lower level than during the original investigation. This is partly because the United Kingdom was still a member of the Union during the original investigation, while their production capacity was no longer taken into account in the current review investigation. In addition, the Union industry has undertaken steps to adapt and rationalize their capacity in line with market consumption. Capacity utilisation rates therefore initially improved as compared to the original investigation. Since the slowdown of Union growth in 2019 and especially the onset of the Covid-19 pandemic, however, they again significantly decreased during the period considered, although recovering somewhat in the review investigation period (where the decrease was almost 20 percentage points lower in 2020 as compared with 2018, it was – 11 percentage points in the review investigation period as compared with 2018).

#### 4.4.2.2. Sales volume and market share

- (194) The Union industry's sales volume and market share developed over the period considered as follows:

Table 5

#### Sales volume (tonnes) and market share

|   | 2018       | 2019       | 2020       | Review Investigation period |
|---|------------|------------|------------|-----------------------------|
| Total Sales volume on the Union market – free and captive | 37 095 644 | 36 367 167 | 29 930 954 | 31 415 040                  |
| <i>Index</i><br>(2018 = 100)                              | 100        | 98         | 81         | 85                          |
| Captive market sales and use                              | 28 207 944 | 28 129 434 | 22 651 025 | 23 902 153                  |
| <i>Index</i><br>(2018 = 100)                              | 100        | 100        | 80         | 85                          |
| Free market sales   | 8 887 699  | 8 237 733  | 7 279 930  | 7 512 887                   |
| <i>Index</i><br>(2018 = 100)                              | 100        | 93         | 82         | 85                          |
| Market share of free market sales                         | 79 %       | 80 %       | 79 %       | 78 %                        |

Source: Eurofer, sampled Union producers

- (195) Total sales in the Union followed a downward trend over the period considered, with an overall decrease of 15 %. The same trend is observed with a similar magnitude for the captive and free markets, in line with the decrease in consumption shown in Table 2.
- (196) The market share of the Union industry on the free market remained rather stable throughout the period considered, but went down during the review investigation period by almost 2 %. This coincides with the increase of market share by third countries in the review investigation period, as shown in Table 3.

#### 4.4.2.3. Growth

- (197) In a context of decreasing consumption, the Union industry not only lost sales volumes in the Union but also lost market share on the free market. Consequently, there was no growth for the Union industry during the period considered.

#### 4.4.2.4. Employment and productivity

- (198) Employment and productivity developed over the period considered as follows:

Table 6

#### Employment and productivity

|                                    | 2018  | 2019  | 2020  | Review Investigation period |
|------------------------------------|-------|-------|-------|-----------------------------|
| Number of employees                | 9 634 | 9 137 | 9 773 | 9 321                       |
| <i>Index</i><br>(2018 = 100)       | 100   | 95    | 101   | 97                          |
| Productivity (tonnes/<br>employee) | 3 768 | 3 906 | 2 991 | 3 274                       |
| <i>Index</i><br>(2018 = 100)       | 100   | 104   | 79    | 87                          |

Source: Eurofer, sampled Union producers

- (199) The Union industry did not manage to maintain the number of employees engaged in the production of the product under review, which overall decreased between 2018 and the review investigation period by 3 %.
- (200) The productivity of the Union industry's workforce, measured as output (tonnes) per employee, followed a downward trend over the period considered (-13 %). The considerable decrease of the productivity is explained by the higher decrease of the production volume, which is also linked to the decrease of sales and demand for Union industry's products both on the domestic and export markets, compared to the smaller decrease of the number of employees.

#### 4.4.2.5. Magnitude of the dumping margin and recovery from past dumping

- (201) All dumping margins established during the review investigation period were significantly above the de minimis level. At the same time, the level of imports during the review investigation period was very limited, representing only 0,1 % of Union consumption. The anti-dumping measures imposed following the original investigation had allowed the Union industry to recover from past dumping, as is shown by the data for 2018 and confirmed by statements from the applicant in the review request.

## 4.4.3. Microeconomic indicators

## 4.4.3.1. Prices and factors affecting prices

- (202) The weighted average unit sales prices and cost of production of the sampled Union producers to unrelated customers in the Union developed over the period considered as follows:

Table 7

**Sales prices and cost of production in the Union (EUR/tonne)**

|  | 2018 | 2019 | 2020 | Review Investigation period |
|--|------|------|------|-----------------------------|
| Average unit sales price in the Union on the free market | 654  | 613  | 553  | 622                         |
| <i>Index</i><br>(2018 = 100)                             | 100  | 94   | 85   | 95                          |
| Unit cost of production                                  | 592  | 617  | 573  | 643                         |
| <i>Index</i><br>(2018 = 100)                             | 100  | 104  | 97   | 109                         |

Source: Sampled Union producers

- (203) Throughout the period considered, sales prices on the Union market to unrelated parties (the free market) decreased by 5 %. A detailed analysis shows that from 2018 to 2020, the sales prices decreased by 15 % before increasing again in the review investigation period by 12 %. During the same period the cost of production fluctuated but was almost 10 % higher in the review investigation period than in 2018. Apart from 2018, the average cost of production was higher than the average sales price in all years. Although sales prices increased significantly between 2020 and the review investigation period, the Union industry had not yet been able to increase the sales price to the level sufficient to cover the cost of production.

## 4.4.3.2. Labour costs

- (204) The average labour costs of the sampled Union producers developed over the period considered as follows:

Table 8

**Average labour costs per employee**

|   | 2018   | 2019   | 2020   | Review Investigation period |
|---|--------|--------|--------|-----------------------------|
| Average labour costs per employee (EUR) | 91 664 | 97 412 | 93 113 | 97 981                      |
| <i>Index</i><br>(2018 = 100)            | 100    | 106    | 102    | 107                         |

Source: Sampled Union producers

- (205) During the period considered average labour costs fluctuated but showing an overall increase of 7 %. While the number of employees went down, the overall labour costs also went down but to a lesser degree.

#### 4.4.3.3. Inventories

- (206) Stock levels of the sampled Union producers developed over the period considered as follows:

Table 9

#### Inventories

|  | 2018    | 2019    | 2020    | Review Investigation period |
|--|---------|---------|---------|-----------------------------|
| Closing stocks (tonnes)                      | 488 722 | 429 657 | 284 572 | 262 487                     |
| <i>Index</i><br>(2018 = 100)                 | 100     | 88      | 58      | 54                          |
| Closing stocks as a percentage of production | 4       | 4       | 3       | 2                           |
| <i>Index</i><br>(2018 = 100)                 | 100     | 88      | 65      | 55                          |

Source: Sampled Union producers

- (207) During the period considered, the Union industry's stock have continuously decreased. Normally any changes in stocks of CRF follow the same trends as those for production, which also decreased during the period considered as shown in Table 4 <sup>(70)</sup>. During the period considered, however, certain restructuring activities took place in one of the sampled companies, which involved a partial demerger including the stocks. In addition, one of the sampled companies had issues with several pieces of equipment during a certain time, which necessitated more sales from stock than anticipated. However, as also established in the original investigation, stocks are not considered an important injury indicator for this industry since most types of the like product are produced by the Union industry based on specific orders of the users <sup>(71)</sup>.

#### 4.4.3.4. Profitability, cash flow, investments, return on investments and ability to raise capital

- (208) Profitability, cash flow, investments and return on investments of the sampled Union producers developed over the period considered as follows:

Table 10

#### Profitability, cash flow, investments and return on investments

|  | 2018 | 2019  | 2020   | Review Investigation period |
|--|------|-------|--------|-----------------------------|
| Profitability of sales in the Union to unrelated customers (% of sales turnover) | 16,1 | - 2,8 | - 14,7 | - 3,1                       |

<sup>(70)</sup> This was also confirmed in the original investigation, see recital 136 of Implementing Regulation (EU) 2016/181.

<sup>(71)</sup> Implementing Regulation (EU) 2016/181, recital 136.

|                              |               |               |             |             |
|------------------------------|---------------|---------------|-------------|-------------|
| <i>Index</i><br>(2018 = 100) | 100           | - 17          | - 92        | - 20        |
| Cash flow (EUR)              | 1 197 337 649 | 1 024 735 660 | 744 992 480 | 822 335 704 |
| <i>Index</i><br>(2018 = 100) | 100           | 86            | 62          | 69          |
| Investments (EUR)            | 65 866 851    | 75 059 376    | 61 159 498  | 72 616 722  |
| <i>Index</i><br>(2018 = 100) | 100           | 114           | 93          | 110         |
| Return on<br>investments (%) | 5             | 0             | - 3         | - 1         |
| <i>Index</i><br>(2018 = 100) | 100           | - 8           | - 69        | - 12        |

Source: Sampled Union producers

- (209) The Commission established the profitability of the sampled Union producers by expressing the pre-tax net profit of the sales of the like product to unrelated customers in the Union as a percentage of the turnover of those sales.
- (210) Due to the imposition of the anti-dumping measures, the Union industry had been able to improve its profitability since the original investigation period, and even exceed the target profit set in that investigation <sup>(72)</sup>. However, after the peak in 2018, the decrease in Union consumption on the free market coupled with decreasing sales prices in the following years, as shown in Table 7 above, resulted in a unit cost of production that became higher than the average sales price. The reduction in the Union consumption of CRF did not allow the Union industry to set sales prices at a level which would, at least, cover the cost of production.
- (211) The net cash flow is the ability of the Union producers to self-finance their activities. The trend in net cash flow developed to a large extent in line with profitability, where it was at its peak in 2018 before declining substantially in 2019 and 2020, while recovering somewhat during the investigation period but still below the levels of 2018 and 2019.
- (212) The return on investments is the profit in percentage of the net book value of investments. While investments increased overall during the period considered, during 2020 and the review investigation period they remained below the 2019 level. The return on investment developed negatively and followed the same trend as that of the profitability.

#### 4.5. Conclusion on injury

- (213) All macroeconomic indicators showed a negative trend over the period considered such as production, capacity utilization, sales volume on the Union market (both the captive and the free market), market share, employment and productivity. Similarly, most microeconomic indicators showed a negative trend over the period considered such as sales prices on the Union free market, cost of production, profitability, closing stocks, cash flow and return on investments. Only investments showed a positive trend.

<sup>(72)</sup> Implementing Regulation (EU) 2016/1328.

- (214) Even though the Union industry managed to increase prices in the review investigation period, the Union industry still had a negative profit margin of -3,1 % in the review investigation period. The cash flow and return on investments also deteriorated, which makes it more difficult for the Union industry to raise capital and grow.
- (215) On the basis of the above, the Commission concluded that until 2018 the Union industry had recovered from past material injury within the meaning of Article 3(5) of the basic Regulation caused by dumped imports from China and Russia. However, during the period considered, the injury picture deteriorated and the Union industry was back in an economically fragile and injurious situation during the review investigation period.
- (216) Following disclosure, the Russian government disagreed with the Commission's conclusion regarding the Union industry's situation during the review investigation period. According to the Russian government, the situation improved during the review investigation period compared with the previous year, except for the unit cost of production.
- (217) However, while it is correct that some of the injury indicators improved somewhat between 2020 and the review investigation period, as also pointed out in the analysis above (for example in recital 193 or 211), the indicators showed a deterioration during the period considered. The improvement noted in the review investigation period was however not sufficient to lift the Union industry from the economically fragile situation which it faced since 2018. The Commission therefore rejected this claim.
- (218) Due to the negligible levels of imports from the countries concerned throughout the period considered, the Commission concluded that imports from China and Russia could not have caused the injury suffered by the Union industry.
- (219) Therefore, the Commission further examined the likelihood of recurrence of injury originally caused by dumped imports from China and Russia if the measures were repealed.

## 5. LIKELIHOOD OF RECURRENCE OF INJURY

- (220) The Commission concluded in recital 215 that the Union industry was in an economically fragile situation during the review investigation period. The Commission also concluded in recital 218 that the injury to the Union industry observed during the review investigation period could not have been caused by dumped imports from China and Russia due to their very limited volume. Therefore the Commission assessed, in accordance with Article 11(2) of the basic Regulation, whether there would be a likelihood of recurrence of injury caused by the dumped imports from China and Russia if the measures were allowed to lapse.
- (221) In this regard, the Commission examined the production capacity and spare capacity in the countries concerned, the relation between export prices to third countries and the price level in the Union and the impact of potential imports and price levels of such imports from these countries on the Union industry's situation should the measures be allowed to lapse.

### 5.1. Spare capacity in China and Russia and the attractiveness of the Union market

- (222) As already described in sections 3.1.11.2 and 3.2.3.2, the exporting producers in China and Russia have significant spare capacities, which together exceed substantially the current production volumes and internal demand in those countries. These spare capacities could be used to produce the product under review for export to the Union if measures were allowed to lapse. The quantities that could be exported by Chinese and Russian exporting producers are significant compared to the size of the Union market. Indeed, the spare capacities represent more than twice the total Union consumption on the free market during the review investigation period.

- (223) As described in sections 3.1.11.1 and 3.2.3.1, the Chinese and Russian exporting producers exported to their main third markets at prices significantly below the normal value as established, which, in addition, were lower than the average (target) sales prices of the Union producers on the Union market during the review investigation period. Therefore, taking into account the price level of exports from China and Russia to other third markets, exporting to the Union is potentially much more attractive for exporters from those countries. Consequently, it can be reasonably expected that, should the measures be repealed, Russian and Chinese exporting producers would again start to export high volumes of the product under review to the Union. This expectation is further reinforced by the availability of substantial spare capacity in China and Russia. As noted in recital 167, although there is currently an Union import ban on certain steel products exported from Russia including CRF <sup>(73)</sup>, it is likely that this will be a temporary measure and there is no way to foresee its duration in relation to the duration of the extension of the current measures. It therefore does not affect the conclusions about the attractiveness of the Union market.
- (224) The three Russian exporting producers claimed that the applicant in its request, overestimated the attractiveness of the Union market with respect to Russia. According to the Russian companies, if they were to increase their exports to third countries, such exports would rather be destined for Russia's preferential trading partners than for the Union. However, as also pointed out by the applicant, there is no reason why the Russian spare capacity should be used for increasing exports to Russia's preferential trading partners. Indeed, such exports benefit already currently from a 0 % duty, so they could have already now have exported duty-free. By contrast, exports to the Union are currently subject to duties and a comparison of Russian and Chinese prices to third countries plus the Union anti-dumping duty would not result in undercutting the target price while a removal of the anti-dumping duty would. Hence, it is not convincing to argue that exports to such trading partners would increase as they had not identified any change that could occur between now and the foreseeable future that would increase exports from Russia to such countries. The Commission therefore rejected the Russian exporters' claim.
- (225) Following disclosure, the three Russian exporting producers and the Russian government claimed that there would be no likelihood of recurrence of injurious dumping from Russia. In the view of those parties, 'EU law and practice prove that EU sanctions are a long-term policy instrument', while 'EU anti-dumping measures do not have a pre-established lifetime' <sup>(74)</sup>. The Russian exporting producers claimed that there is no indication that the sanctions against Russia would be relaxed or lifted. However, even if the sanctions were to be lifted, the EU market is not attractive for Russian exporters 'due to high risks of introduction of severe trade restrictions'.
- (226) As also set out in recitals 165 and 166, no evidence was provided to show why the Union market would be less attractive to Russian exporters under a scenario without sanctions. In addition, recitals 172, 223 and 248 in this regulation explain why the Commission found that the sanctions cannot have a bearing on the conclusions in this proceeding. Consequently, these claims were rejected.

## 5.2. Effect on the Union industry situation

- (227) In order to establish how the imports from China and Russia would affect the Union industry should the measures be terminated, the Commission performed a prospective and comparative price analysis without the existence of anti-dumping measures.
- (228) Due to the lack of cooperation from the exporting producers in the countries concerned in combination with the very low quantities imported in the Union from these countries, no reliable import prices could be established during the review investigation period. It was therefore not possible to perform a meaningful calculation of price undercutting on this basis. Under these circumstances, in order to estimate the likely price at which Chinese and

<sup>(73)</sup> See Regulation (EU) 2022/428 amending Regulation (EU) No 833/2014 concerning restrictive measures in view of Russia's actions destabilising the situation in Ukraine.

<sup>(74)</sup> According to the Russian exporting producers, any anti-dumping measure 'shall be terminated as the conditions underlying its impositions ceased to exist' while the Commission uses anti-dumping measures 'as a long-term trade protection tool'.

Russian producers would sell when exporting to the Union market, the Commission made a price comparison between the sample Union producers average price (ex-works) to the corresponding weighted average price of the product under review when exported to third countries <sup>(75)</sup> from China and Russia.

- (229) The result of the comparison was expressed as a percentage of the sampled Union producers' turnover during the review investigation period. It showed a price difference of almost 13 % for Russia. Therefore, the Commission found that Russian prices would undercut Union prices at a similar level in the Union market, should the measures be allowed to lapse.
- (230) The same comparison for China found that export prices from China to third countries were not lower than Union prices. However, further analysis showed that these prices were still below the Union's target price. Using the same target profit as in the original investigation (9,9 %) <sup>(76)</sup> imports from China at the level of Chinese export prices to third countries were found to be 10 % lower than the Union's target price. It would thus be likely that imports from China would cause injury if the measures were not maintained.

### 5.3. Conclusion

- (231) On the basis of the above, the Commission concluded that the absence of measures would in all likelihood result in a significant increase of dumped imports from China and Russia at injurious prices, which would likely lead to a recurrence of material injury.

## 6. UNION INTEREST

- (232) In accordance with Article 21 of the basic Regulation, the Commission examined whether maintaining the existing anti-dumping measures would clearly be against the interest of the Union as whole. The determination of the Union interest was based on an appreciation of all the various interests involved, including those of the Union industry, importers, and users.

### 6.1. Interest of the Union industry

- (233) The Union industry is located in 14 Member States (Germany, Slovak Republic, Italy, Slovenia, Luxembourg, Greece, Belgium, the Netherlands, Austria, Finland, Sweden, Portugal, Hungary and Spain). It employs over 9 000 employees in relation to the product under review.
- (234) Although the anti-dumping measures in force prevented dumped imports from the Russia and China to enter the Union market to a large extent, the Union industry was in an economically fragile situation during the review investigation period, as confirmed by the negative trends of the injury indicators.
- (235) On the basis of the above, the Commission established that there is a strong likelihood of recurrence of injury originally caused by imports from the countries concerned should the measures expire. The influx of substantial volumes of dumped imports from Russia and China would worsen the already very fragile economic situation of Union industry and threaten its viability.
- (236) The Commission thus concluded that maintaining the anti-dumping measures against Russia and China is in the interest of the Union industry.

### 6.2. Interest of users and unrelated importers

- (237) The Commission contacted all known users and unrelated importers. No users or unrelated importers came forward and cooperated in this investigation by submitting a questionnaire reply.

<sup>(75)</sup> This price was established on a CIF basis, as reported in GTA (<https://www.gtis.com/gta/>), with appropriate adjustments for post-importation costs.

<sup>(76)</sup> Implementing Regulation (EU) 2016/1328, recital 156.

- (238) One unrelated importer, Duferco S.A, and one user, ATS S.A., provided a submission on initiation. According to Duferco S.A, steel prices have significantly increased, creating shortages in the supply chain. The Russian government also pointed to Union users and consumers suffering from a sharp increase of CRF prices. ATS S.A. and the three Russian exporting producers refer to a price hike in the first half of 2021, which they claimed had harmed users and consumers of CRF. In addition, the parties claimed that the existing safeguard measures on imports of steel products constitute a standalone instrument of trade protection which contributes to price growth and a demand-supply imbalance <sup>(7)</sup>.
- (239) In this respect, safeguard measures have a different rationale and objective than that of anti-dumping measures. As explained in recital 132 above, the safeguard measures are not sufficient to protect the Union market against imports in significant quantities at dumped prices. In addition, the data supplied by Duferco S.A in support of their statement dates back to April and July 2021, covering trends observed during the review investigation period. As the analysis in section 4.4.2 showed, the Union industry's capacity utilisation was only at 68 % during the same period, while their sales prices were at a relatively low level. This indicated that there was ample room for increased production at competitive prices.
- (240) No evidence was provided by ATS S.A. or the Russian exporting producers to substantiate the statements made in their submissions. As shown in the analysis in section 4.4.3, the data for the review investigation period, which includes the first half of the year 2021, did not corroborate the statements by ATS S.A. In fact, Union industry prices were not at an abnormally high level. They were below unit cost and even below the export prices of some third countries including China, as well as the Union industry's target price.
- (241) Since none of the interested parties mentioned in recital 238, nor any other user or unrelated importer provided a questionnaire reply or any other information apart from the above-mentioned submissions, the Commission had insufficient information at its disposal to conclude that the continuation of the measures would be detrimental to the interest of the users or importers.

### 6.3. Conclusion on Union interest

- (242) On the basis of the above, the Commission concluded that there were no compelling reasons of Union interest against the maintenance of the existing measures on imports of the product under review originating in Russia and China.

## 7. CLAIMS FOR SUSPENSION/TERMINATION OF MEASURES

- (243) Three Russian exporting producers and one user (ATS S.A.) claimed that the current measures should be suspended. In addition, even before initiation of the expiry review investigation, an unrelated importer located in the United Kingdom (Stemcor London Limited) had also made a similar claim.
- (244) The arguments provided by the different parties referred to the alleged recent high price increase in the Union since the end of 2020, the diminishing imports of CRF from the countries concerned and an alleged imbalance between demand and supply. The evidence and data provided to support these arguments, albeit limited, related almost entirely to a period of time covered by the review investigation period. None of the parties had provided any data related to the period following the review investigation period or future forecast data to support their arguments, except for Union sales prices in the third quarter of 2021 and the mention of a moderate downward trend in at the end of 2021. The three Russian exporting producers claimed that 'an analytical forecast of future market developments in 2022 -2023 would be uncertain and envisage a large number of alternative, even contradictory scenarios. Even the most complex economic indicators cannot shed light on future developments.' Thus, at this stage, it is difficult to draw any conclusion on this basis as regards the existence of a temporary change in market conditions.

<sup>(7)</sup> Commission Implementing Regulation (EU) 2022/978 of 23 June 2022 amending Implementing Regulation (EU) 2019/159 imposing a definitive safeguard measure on imports of certain steel products (OJ L 167, 24.6.2022, p. 58).

- (245) The Commission recalled in this respect that Article 14(4) of the basic Regulation provides that, in the Union interest, anti-dumping measures may be suspended where market conditions have temporarily changed to an extent that injury would be unlikely to resume as a result of such suspension.
- (246) With respect to the second element, and as set out in the sections on injury, recurrence of injury and Union interest above (recital 174 and further), the Commission noted that the Union industry was still in a fragile situation during the RIP and that, in any event, there was a strong likelihood that material injury originally caused by dumped imports from China and Russia at injurious prices would recur if the measures expire. In addition, the Commission found no compelling reasons of Union interest against maintaining the measures. Therefore, on the basis of the information available in this investigation, the Commission could not conclude at this stage that that injury would be unlikely to resume as a result of a suspension, and that it would be in the Union interest to suspend the measures pursuant to Article 14(4) of the basic Regulation. Consequently, the Commission rejected the claim. The Commission reserved its right to further examine the need for suspending measures in accordance with Article 14(4) of the basic Regulation in due course.
- (247) In addition, the NLMK Group, the Severstal Group and the MMK Group claimed that because Russian CRF supplies to the Union have been fully halted by sanctions, there was no legal basis to maintain the measures either as an outcome of the ongoing expiry review or during the statutory period of measures application. The exporting producers argued that the fundamental trade flows reorientation brought about by those sanctions was of lasting nature. According to this argument, measures would not serve their purpose of protecting the Union industry and market from unfair trade practices by foreign exporters and, therefore not necessary under Article 11(1) of the basic Regulation.
- (248) The Commission noted that after the initiation of the investigation, due to the military aggression by the Russian Federation against Ukraine, the Union imposed successive packages of sanctions against Russia which also affected steel products and/or the steel companies producing and exporting the product under review after the review investigation period. However, contrary to the exporting producers' assertion, the current situation cannot be considered of a lasting nature. Indeed, as set out in recitals 167 and 172 the Commission found that those sanctions cannot have a bearing in its conclusions in this investigation. In particular, the Commission found that despite of the current sanctions, measures were still necessary within the meaning of Article 11(1) and (2) of the basic Regulation.

## 8. ANTI-DUMPING MEASURES

- (249) On the basis of the conclusions reached by the Commission on recurrence of dumping, recurrence of injury and Union interest, the anti-dumping measures on CRF from Russia and China should be maintained.
- (250) Special measures are needed to ensure the application of the individual anti-dumping duties. The companies with individual anti-dumping duties must present a valid commercial invoice to the customs authorities of the Member States. The invoice must conform to the requirements set out in Article 1(3) of this regulation. Imports not accompanied by that invoice should be subject to the anti-dumping duty applicable to 'all other companies'.
- (251) While presentation of this invoice is necessary for the customs authorities of the Member States to apply the individual rates of anti-dumping duty to imports, it is not the only element to be taken into account by the customs authorities. Indeed, even if presented with an invoice meeting all the requirements set out in Article 1(3) of this regulation, the customs authorities of Member States must carry out their usual checks and may, like in all other cases, require additional documents (shipping documents, etc.) for the purpose of verifying the accuracy of the particulars contained in the declaration and ensure that the subsequent application of the lower rate of duty is justified, in compliance with customs law.

- (252) Should the exports by one of the companies benefiting from lower individual duty rates increase significantly in volume after the imposition of the measures concerned, such an increase in volume could be considered as constituting in itself a change in the pattern of trade due to the imposition of measures within the meaning of Article 13(1) of the basic Regulation. In such circumstances and provided the conditions are met an anti-circumvention investigation may be initiated. This investigation may, inter alia, examine the need for the removal of individual duty rate(s) and the consequent imposition of a country-wide duty.
- (253) The individual company anti-dumping duty rates specified in this Regulation are exclusively applicable to imports of the product under review originating in the countries concerned and produced by the named legal entities. Imports of the product under review produced by any other company not specifically mentioned in the operative part of this Regulation, including entities related to those specifically mentioned, should be subject to the duty rate applicable to 'all other companies'. They should not be subject to any of the individual anti-dumping duty rates.
- (254) A company may request the application of these individual anti-dumping duty rates if it changes subsequently the name of its entity. The request must be addressed to the Commission <sup>(78)</sup>. The request must contain all the relevant information enabling to demonstrate that the change does not affect the right of the company to benefit from the duty rate which applies to it. If the change of name of the company does not affect its right to benefit from the duty rate which applies to it, a regulation about the change of name will be published in the *Official Journal of the European Union*.
- (255) In view of Article 109 of Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council <sup>(79)</sup> when an amount is to be reimbursed following a judgment of the Court of Justice of the European Union, the interest to be paid should be the rate applied by the European Central Bank to its principal refinancing operations, as published in the C series of the *Official Journal of the European Union* on the first calendar day of each month.
- (256) By Commission Implementing Regulation (EU) 2019/159 <sup>(80)</sup>, the Commission imposed a safeguard measure with respect to certain steel products for a period of three years. By Implementing Regulation (EU) 2021/1029, the safeguard measure was prolonged until 30 June 2024. The product under review is one of the product categories covered by the safeguard measure. Consequently, once the tariff quotas established under the safeguard measure are exceeded, both the above-quota tariff duty and the anti-dumping duty would become payable on the same imports. As such cumulation of anti-dumping measures with safeguard measures may lead to an effect on trade greater than desirable, the Commission decided to prevent the concurrent application of the anti-dumping duty with the above-quota tariff duty for the product under review for the duration of the imposition of the safeguard duty.
- (257) This means that where the above-quota tariff duty referred to in Article 1(6) of Implementing Regulation (EU) 2019/159 becomes applicable to the product under review and exceeds the level of the anti-dumping duties pursuant to this Regulation, only the above-quota tariff duty referred to in Article 1(6) of Implementing Regulation (EU) 2019/159 shall be collected. During the period of concurrent application of the safeguard and anti-dumping duties, the collection of the duties imposed pursuant to this Regulation shall be suspended. Where the above-quota tariff duty referred to in Article 1(6) of Implementing Regulation (EU) 2019/159 becomes applicable to the product under review and is set at a level lower than the level of the anti-dumping duties in this Regulation, the above-quota tariff duty referred to in Article 1(6) of Implementing Regulation (EU) 2019/159 shall be collected in addition to the difference between that duty and the higher anti-dumping duties imposed pursuant to this Regulation. The part of the amount of anti-dumping duties not collected shall be suspended.

<sup>(78)</sup> European Commission, Directorate-General for Trade, Directorate G, Rue de la Loi 170, 1040 Brussels, Belgium.

<sup>(79)</sup> Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council of 18 July 2018 on the financial rules applicable to the general budget of the Union, amending Regulations (EU) No 1296/2013, (EU) No 1301/2013, (EU) No 1303/2013, (EU) No 1304/2013, (EU) No 1309/2013, (EU) No 1316/2013, (EU) No 223/2014, (EU) No 283/2014, and Decision No 541/2014/EU and repealing Regulation (EU, Euratom) No 966/2012 (OJ L 193, 30.7.2018, p. 1).

<sup>(80)</sup> Commission Implementing Regulation (EU) 2019/159 of 31 January 2019 imposing definitive safeguard measures against imports of certain steel products (OJ L 31, 1.2.2019, p. 27).

(258) The measures provided for in this regulation are in accordance with the opinion of the Committee established by Article 15(1) Regulation (EU) 2016/1036,

HAS ADOPTED THIS REGULATION:

#### Article 1

1. A definitive anti-dumping duty is imposed on imports of flat-rolled products of iron or non-alloy steel, or other alloy steel but excluding of stainless steel, of all widths, cold-rolled (cold-reduced), not clad, plated or coated and not further worked than cold-rolled (cold-reduced), currently falling under CN ex 7209 15 00 (TARIC code 7209 15 00 90), 7209 16 90, 7209 17 90, 7209 18 91, ex 7209 18 99 (TARIC code 7209 18 99 90), ex 7209 25 00 (TARIC code 7209 25 00 90), 7209 26 90, 7209 27 90, 7209 28 90, 7211 23 30, ex 7211 23 80 (TARIC codes 7211 23 80 19, 7211 23 80 95 and 7211 23 80 99), ex 7211 29 00 (TARIC codes 7211 29 00 19 and 7211 29 00 99), 7225 50 80 and 7226 92 00 and originating in the People's Republic of China and the Russian Federation.

The following product types are excluded from the definition of the product concerned:

- flat-rolled products of iron or non-alloy steel, of all widths, cold-rolled (cold-reduced), not clad, plated or coated, not further worked than cold-rolled, whether or not in coils, of all thickness, electrical,
- flat-rolled products of iron or non-alloy steel, of all widths, cold-rolled (cold-reduced), not clad, plated or coated, in coils, of a thickness of less than 0,35 mm, annealed (known as 'black plates'),
- flat-rolled products of other alloy steel, of all widths, of silicon-electrical steel, and
- flat-rolled products of alloy steel, not further worked than cold-rolled (cold-reduced), of high-speed steel.

2. The rates of the definitive anti-dumping duty applicable to the net, free-at-Union-frontier price, before duty, of the product described in paragraph 1 and produced by the companies listed below shall be as follows:

| Country | Company   | Anti-dumping duty (%) | TARIC additional code |
|---------|---|-----------------------|-----------------------|
| PRC     | Angang Steel Company Limited, Anshan                        | 19,7                  | C097                  |
|         | Tianjin Angang Tiantie Cold Rolled Sheets Co. Ltd., Tianjin | 19,7                  | C098                  |
|         | Other cooperating companies listed in Annex                 | 20,5                  |                       |
|         | All other companies   | 22,1                  | C999                  |
| Russia  | Magnitogorsk Iron & Steel Works OJSC, Magnitogorsk          | 18,7                  | C099                  |
|         | PAO Severstal, Cherepovets                                  | 34                    | C100                  |
|         | All other companies   | 36,1                  | C999                  |

3. The application of the individual duty rates specified for the companies mentioned in paragraph 2 shall be conditional upon presentation to the Member States' customs authorities of a valid commercial invoice, on which shall appear a declaration dated and signed by an official of the entity issuing such invoice, identified by his/her name and function, drafted as follows: 'I, the undersigned, certify that the (volume) of (product under review) sold for export to the

European Union covered by this invoice was manufactured by (company name and address) (TARIC additional code) in [country concerned]. I declare that the information provided in this invoice is complete and correct.' If no such invoice is presented, the duty applicable to all other companies shall apply.

4. Article 1(2) may be amended to add new exporting producers from the People's Republic of China and make them subject to the appropriate weighted average anti-dumping duty rate for cooperating companies not included in the sample. A new exporting producer shall provide evidence that:
  - (a) it did not export the goods described in Article 1(1) originating in the People's Republic of China during the period between 1 April 2014 to 31 March 2015 (original investigation period);
  - (b) it is not related to an exporter or producer subject to the measures imposed by this Regulation; and
  - (c) it has either actually exported the product under review or has entered into an irrevocable contractual obligation to export a significant quantity to the Union after the end of the original investigation period.
5. Unless otherwise specified, the provisions in force concerning customs duties shall apply.

#### *Article 2*

1. Where the above-quota tariff duty referred to in Article 1(6) of Implementing Regulation (EU) 2019/159 becomes applicable to flat-rolled products of iron or non-alloy steel, or other alloy steel but excluding of stainless steel, of all widths, cold-rolled (cold-reduced), not clad, plated or coated and not further worked than cold-rolled (cold-reduced) and exceeds the level of the anti-dumping duty set out in Article 1(2), only the above-quota tariff duty referred to in Article 1(6) of Implementing Regulation (EU) 2019/159 shall be collected.
2. During the period of application of paragraph 1, the collection of the duties imposed pursuant to this Regulation shall be suspended.
3. Where the above-quota tariff duty referred to in Article 1(6) of Implementing Regulation (EU) 2019/159 becomes applicable to flat-rolled products of iron or non-alloy steel, or other alloy steel but excluding of stainless steel, of all widths, cold-rolled (cold-reduced), not clad, plated or coated and not further worked than cold-rolled (cold-reduced) and is set at a level lower than the anti-dumping duty set out in Article 1(2), the above-quota tariff duty referred to in Article 1(6) of Implementing Regulation (EU) 2019/159 shall be collected in addition to the difference between that duty and the higher anti-dumping duty set out in Article 1(2).
4. The part of the amount of anti-dumping duty not collected pursuant to paragraph 3 shall be suspended.
5. The suspensions referred to in paragraphs 2 and 4 shall be limited in time to the period of application of the above-quota tariff duty referred to in Article 1(6) of Implementing Regulation (EU) 2019/159.

#### *Article 3*

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

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

Done at Brussels, 26 October 2022.

*For the Commission*  
*The President*  
Ursula VON DER LEYEN

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## ANNEX

Chinese cooperating exporting producers not sampled:

| Country | Name  | TARIC additional code |
|---------|---|-----------------------|
| PRC     | Hesteel Co., Ltd Tangshan Branch, Tangshan                          | C103                  |
| PRC     | Handan Iron & Steel Group Han-Bao Co., Ltd, Handan                  | C104                  |
| PRC     | Baoshan Iron & Steel Co., Ltd, Shanghai                             | C105                  |
| PRC     | Shanghai Meishan Iron & Steel Co., Ltd, Nanjing                     | C106                  |
| PRC     | BX Steel POSCO Cold Rolled Sheet Co., Ltd, Benxi                    | C107                  |
| PRC     | Bengang Steel Plates Co., Ltd, Benxi                                | C108                  |
| PRC     | WISCO International Economic & Trading Co. Ltd, Wuhan               | C109                  |
| PRC     | Maanshan Iron & Steel Co., Ltd, Maanshan                            | C110                  |
| PRC     | Tianjin Rolling-one Steel Co., Ltd, Tianjin                         | C111                  |
| PRC     | Zhangjiagang Yangtze River Cold Rolled Sheet Co., Ltd, Zhangjiagang | C112                  |
| PRC     | Inner Mongolia Baotou Steel Union Co., Ltd, Baotou City             | C113                  |

# DECISIONS

## COMMISSION IMPLEMENTING DECISION (EU) 2022/2069

of 30 September 2022

**on granting a derogation requested by the Netherlands pursuant to Council Directive 91/676/EEC concerning the protection of waters against pollution caused by nitrates from agricultural sources**

*(notified under document C(2022) 6859)*

**(Only the Dutch version is authentic)**

THE EUROPEAN COMMISSION,

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

Having regard to Council Directive 91/676/EEC of 12 December 1991 concerning the protection of waters against pollution caused by nitrates from agricultural sources <sup>(1)</sup>, and in particular paragraph 2, third subparagraph, of Annex III thereto,

Whereas:

- (1) Directive 91/676/EEC lays down rules on the protection of waters against pollution caused by nitrates from agricultural sources.
- (2) Paragraph 2 of Annex III to Directive 91/676/EEC establishes that Member States intending to apply more livestock manure than 170 kg nitrogen per hectare (ha) are to fix amounts so as not to prejudice the achievement of the objectives specified in Article 1 of that Directive. If a Member State allows a different amount under point (b) of the second subparagraph, it shall inform the Commission, which shall examine the justification in accordance with the regulatory procedure referred to in Article 9(2).
- (3) By Decision 2005/880/EC <sup>(2)</sup>, the Commission granted a derogation requested by the Netherlands pursuant to Directive 91/676/EEC for the purpose of allowing the application of grazing livestock manure up to a limit of 250 kg nitrogen per hectare per year on farms with at least 70 % grassland.
- (4) By Decision 2010/65/EU <sup>(3)</sup>, the Commission, amending Decision 2005/880/EC, granted a derogation requested by the Netherlands pursuant to Directive 91/676/EEC for the purpose of allowing the application of grazing livestock manure up to a limit of 250 kg nitrogen per hectare per year on farms with at least 70 % grassland until 31 December 2013.
- (5) By Commission Implementing Decision 2014/291/EU <sup>(4)</sup>, which ceased to apply on 31 December 2017, the Netherlands was granted a derogation pursuant to Directive 91/676/EEC to allow the application of grazing livestock manure on farms with at least 80 % grassland up to a limit of 230 kg nitrogen per hectare per year for farms on southern and central sandy soils and on loess soils, and up to a limit of 250 kg nitrogen per hectare per year for farms on other soils. The derogation concerned 19 564 farms in 2016, corresponding to 47 % of the total net agricultural area in the Netherlands.

<sup>(1)</sup> OJ L 375, 31.12.1991, p. 1.

<sup>(2)</sup> Commission Decision 2005/880/EC of 8 December 2005 granting a derogation requested by the Netherlands pursuant to Council Directive 91/676/EEC concerning the protection of waters against pollution caused by nitrates from agricultural sources (OJ L 324, 10.12.2005, p. 89).

<sup>(3)</sup> Commission Decision 2010/65/EU of 5 February 2010 amending Decision 2005/880/EC granting a derogation requested by the Netherlands pursuant to Council Directive 91/676/EEC concerning the protection of waters against pollution caused by nitrates from agricultural sources (OJ L 35, 6.2.2010, p. 18).

<sup>(4)</sup> Commission Implementing Decision 2014/291/EU of 16 May 2014 granting a derogation requested by the Netherlands pursuant to Council Directive 91/676/EEC concerning the protection of waters against pollution caused by nitrates from agricultural sources (OJ L 148, 20.5.2014, p. 88).

- (6) By Commission Implementing Decision (EU) 2018/820 <sup>(5)</sup>, which ceased to apply on 1 January 2020, the Netherlands was granted a derogation pursuant to Directive 91/676/EEC to allow the application of grazing livestock manure on farms with at least 80 % grassland up to a limit of 230 kg nitrogen per hectare per year for farms on southern and central sandy soils and on loess soils, and up to a limit of 250 kg nitrogen per hectare per year for farms on other soils. The derogation concerned 18 818 farms in 2019, corresponding to 44,7 % of the total net agricultural area in the Netherlands.
- (7) By Commission Implementing Decision (EU) 2020/1073 <sup>(6)</sup>, which ceased to apply on 31 December 2021, the Netherlands was granted a derogation to allow the application of grazing livestock manure on farms with at least 80 % grassland up to a limit of 230 kg nitrogen per hectare per year for farms on southern and central sandy soils and on loess soils, and up to a limit of 250 kg nitrogen per hectare per year for farms on other soils. The duration of that Implementing Decision was limited to 2 years in order to enable the Netherlands to fully implement an enhanced enforcement strategy to prevent fraud in the implementation of its manure policy. Furthermore, additional conditions were included to ensure that the amount of livestock did not increase and to reduce ammonia emissions in manure application.
- (8) On 25 February 2022, the Netherlands requested a new derogation pursuant to Directive 91/676/EEC paragraph 2, third subparagraph, of Annex III.
- (9) The Netherlands reported data <sup>(7)</sup> under Article 10 of Directive 91/676/EEC which showed that for the period 2016 to 2019, approximately 14 % of the groundwater monitoring stations in the Netherlands had mean nitrate concentrations above 50 mg/l, 5 % between 40 and 50 mg/l, and 73 % below 25 mg/l. The data also showed that for the period 2016 to 2019, 99 % of the surface water monitoring stations in the Netherlands had mean nitrate concentrations below 50 mg/l and that 96 % of those monitoring stations had mean nitrate concentrations below 25 mg/l. Nevertheless, in the reporting period 2016 to 2019, 58 % of freshwaters were eutrophic and 10 % could become eutrophic if no measures were taken.
- (10) This data as published in the Report on Article 10 of Directive 91/676/EEC <sup>(8)</sup> also showed significant variations between Dutch provinces and that pollution hotspots for nitrate concentrations in groundwater and eutrophication are found in a number of Dutch provinces. In *Limburg*, 36 % of groundwater stations showed mean nitrate concentrations above 50 mg/l and 22 % showed negative trends, while 74 % of surface waters were eutrophic and 16 % at risk of becoming eutrophic if no measures were taken. In *Noord-Brabant*, 26 % of groundwater stations showed mean nitrate concentrations above 50 mg/l and 20 % showed negative trends, while 68 % of surface waters were eutrophic and 7 % at risk of becoming eutrophic if no measures were taken. In *Zeeland*, 14 % of groundwater stations showed mean nitrate concentrations above 50 mg/l and 47 % showed negative trends, while 80 % of surface waters were eutrophic and 11 % at risk of becoming eutrophic if no measures were taken. In *Zuid-Holland*, 54 % of surface waters were eutrophic and 17 % at risk of becoming eutrophic if no measures were taken. In *Noord-Holland*, 61 % of surface waters were eutrophic and 19 % at risk of becoming eutrophic if no measures were taken. In *Utrecht*, 24 % of groundwater stations showed negative trends in nitrate concentrations, while 43 % of surface waters were eutrophic and 10 % at risk of becoming eutrophic if no measures were taken. In *Gelderland*, 10 % of groundwater stations showed mean nitrate concentrations above 50 mg/l and 15 % showed negative trends. In *Overijssel*, 18 % of groundwater stations showed mean nitrate concentrations above 50 mg/l and 19 % showed negative trends, while 67 % of surface waters were eutrophic and 4 % at risk of becoming eutrophic if no measures were taken. In *Drenthe*, 15 % of groundwater stations showed mean nitrate concentrations above 50 mg/l, while 65 % of surface waters were eutrophic and 9 % at risk of becoming eutrophic if no measures were taken. In *Friesland*, 23 % of groundwater stations showed negative trends in nitrate concentrations, while, 85 % of surface waters were eutrophic. In *Groningen*, 52 % of surface waters were eutrophic and 11 % at risk of becoming eutrophic if no measures were taken. In *Flevoland*, 33 % of surface waters were eutrophic.

<sup>(5)</sup> Commission Implementing Decision (EU) 2018/820 of 31 May 2018 granting a derogation requested by the Netherlands pursuant to Council Directive 91/676/EEC concerning the protection of waters against pollution caused by nitrates from agricultural sources (OJ L 137, 4.6.2018, p. 27).

<sup>(6)</sup> Commission Implementing Decision (EU) 2020/1073 of 17 July 2020 granting a derogation requested by the Netherlands pursuant to Council Directive 91/676/EEC concerning the protection of waters against pollution caused by nitrates from agricultural sources (OJ L 234, 21.7.2020, p. 20).

<sup>(7)</sup> COM(2021) 1000 and SWD(2021) 1001 part 28.

<sup>(8)</sup> COM(2021) 1000 and SWD(2021) 1001 part 28.

- (11) The data reported by the Netherlands in 2020 and 2021 in the context of the reports under Implementing Decision (EU) 2020/1073 showed increases in nitrate concentrations in groundwater in areas with loess, sandy and clay soils. In the south and the east of the sandy soil region, the average nitrate concentration in the upper metre of the groundwater was 67 mg/l in 2021. This exceeds the Union limit value of 50 mg/l. Since 2017, the nitrate concentration has doubled in this part of the sandy soil region. The average concentration in the north of the sandy soil region remained lower than the Union limit value, but increased to 37 mg/l in 2021. In the loess soil region, the average concentration decreased slightly to 57 mg/l in 2020, but is still above the Union limit value. In the clay soil region, nitrate concentrations consistently remained below the limit value, however they have increased. In the peat soil region, the lowest concentrations were measured at an average concentration of 14 mg/l in 2021. Data also showed that root zone water from farms in the derogation monitoring network often exceeded the nitrate concentration norms even if the mean value remained below 50 mg/l.
- (12) The Netherlands applies, in conformity with Article 3(5) of Directive 91/676/EEC, an action programme throughout its whole territory. On 26 December 2021, the Netherlands adopted a new action programme for the period 2022-2025 <sup>(9)</sup> (the 7th Nitrates Action Programme), which includes additional measures to reduce nutrients (nitrogen and phosphorus) losses to the environment and is based on a regional differentiated approach depending on the level of nutrients pollution and on the soil type. However, the environment impact assessment, performed in preparation of the 7<sup>th</sup> Nitrates Action Programme by the scientific advisory commission to the Dutch authorities (Commissie van Deskundigen Meststoffenwet), found that the potential effects of the action programme would not be sufficient to achieve the water quality objectives. On 25 February 2022, the Netherlands adopted an Addendum <sup>(10)</sup> to the 7th Nitrates Action Programme referring to the National Programme for Rural Areas <sup>(11)</sup> which sets out an integral approach to nature, water and climate, including nitrogen emissions, to meet Union environmental and climate requirements. Through the Addendum the Dutch Government seeks to translate its ambitions into concrete measures aiming at achieving the water quality targets for nutrients from agricultural sources.
- (13) The 2022-2025 7<sup>th</sup> Nitrates Action Programme and its Addendum set efforts needed per region to reach water quality objectives regarding nitrates and phosphorus from agricultural sources as specified by Directive 91/676/EEC and the Dutch river basin management plan adopted in the context of Directive 2000/60/EC of the European Parliament and of the Council <sup>(12)</sup>. For nitrates concentrations in groundwater, the *Zand Noord*, *Zand Oost*, *Westelijk Noord-Brabant*, *Centraal zeelei*, *Zuidwestelijk zeeleigebied*, *Westelijk zandgebied* regions need some effort to reach the targets, while the *Gelderse Vallei*, *Oostelijk Noord-Brabant en Limburg Zand*, *Lössgebied* regions need a significant effort to reach them. For phosphorus concentrations in surface water (eutrophication), the *Zand Noord*, *Zand Oost*, *Westelijk Noord-Brabant*, *Oostelijk Noord-Brabant en Limburg Zand*, *Noordelijk zeeleigebied*, *Centraal zeelei Zuidwestelijk zeeleigebied* regions need some effort to reach the targets, while the *Gelderse Vallei*, *Lössgebied*, *Westelijk Zeelei*, *Westelijk veengebied*, *Westelijk zandgebied* regions need a significant effort to reach them. This is consistent with the data reported by the Netherlands under Article 10 of Directive 91/676/EEC.
- (14) The Netherlands will adopt a new designation of areas polluted by nitrates and phosphorus from agricultural sources (*nutrients polluted areas*), which should include all catchment areas for monitoring points for groundwater and surface water exhibiting mean nitrates pollution or occasional nitrates pollution events, at risk of being polluted and increasing trends, as well as monitoring points exhibiting eutrophication or at risk of becoming eutrophic. The designation should also take into account relevant case-law of the Court of Justice of the European Union, in particular, the rulings in cases C-221/03 <sup>(13)</sup> and C-543/16 <sup>(14)</sup>. If no new designation is in place on 1 January 2024, all areas where some or significant efforts are required will be designated as nutrients polluted areas.

<sup>(9)</sup> Original title '7e Nederlandse actieprogramma betreffende de Nitraatrichtlijn (2022-2025)'.

<sup>(10)</sup> Original title 'Addendum op het 7e actieprogramma Nitraatrichtlijn'.

<sup>(11)</sup> Nationaal Programma Landelijk Gebied.

<sup>(12)</sup> Directive 2000/60/EC of the European Parliament and of the Council of 23 October 2000 establishing a framework for Community action in the field of water policy (OJ L 327, 22.12.2000, p. 1).

<sup>(13)</sup> Judgment of the Court of Justice of 22 September 2005, C 221/03, Commission of the European Communities v Kingdom of Belgium, ECLI:EU:C:2005:573.

<sup>(14)</sup> Judgment of the Court of 21 June 2018, European Commission v Federal Republic of Germany, C-543/16, ECLI:EU:C:2018:481.

- (15) This derogation request should be considered within the broader EU policy context regarding nutrient management issues, in particular, the objectives and targets of Directives 2000/60/EC, 2006/118/EC <sup>(15)</sup> and 2008/56/EC <sup>(16)</sup> of the European Parliament and of the Council, the increasing ambition of Effort Sharing Regulation <sup>(17)</sup> and the CAP Strategic Plan for the Netherlands <sup>(18)</sup>, as well as the objectives of the European Green Deal concerning nutrient pollution. The European Green Deal sets objectives for the Union to reduce nutrients losses, and to limit non-CO<sub>2</sub> greenhouse gases, namely methane and nitrous oxide, of which fertilisation and livestock are a major source. In particular, the Union has committed, in the Farm to Fork Strategy <sup>(19)</sup> and the Zero Pollution Action Plan <sup>(20)</sup>, to reducing nutrients losses by 50 % in 2030, leading to a reduction of 20 % in fertilisers, and preserving soil fertility, and reducing by 25 % the EU ecosystems areas, measured as areas above 'critical loads' of nitrogen deposition, where air pollution threatens biodiversity.
- (16) In the 'initial proposal for the National Programme for Rural Areas' of 10 June 2022 <sup>(21)</sup>, the Dutch Government notes 'In peatland areas, Natura 2000 areas, groundwater protection areas, vulnerable watercourses, and buffer zones around Natura 2000 sites are the greatest challenges. In those areas, farmers will have more business restrictions or less development opportunities. Extensification of agriculture is then the most appropriate route'. There is also a 'commitment to create transitional areas around Natura 2000 sites'. 'Transitional areas (buffer zones) around Natura 2000 areas are areas adjacent to Natura 2000 sites which contribute to system restoration to maintain and restore the biodiversity in the Natura 2000 site concerned'.
- (17) The Commission has examined the Dutch request for derogation taking into account the requirements and objectives of Directive 91/676/EEC and the experience from the previous derogation decisions and in the light of the 7th Nitrates Action Programme and its Addendum. It has also examined the trends in water quality and taken into account the European Green Deal objectives. Based on the above, the Commission considers it is necessary to ensure a predictable transition derogation period of maximum 4 years for grassland farmers until the planned reforms as set out in the Addendum are fully incorporated in Dutch law and to accompany the gradual implementation of the new reforms. The Commission further considers that achieving the objectives of Directive 91/676/EEC requires strict additional conditions to be met by the Netherlands, in particular, but not only, in the nutrients polluted areas. The requested derogation should support the reform path defined in the Addendum and in the National Programme for Rural Areas.
- (18) The derogation granted by this Decision is without prejudice to the Netherlands' obligations to apply Council Directive 92/43/EEC <sup>(22)</sup> and the ruling of the Court of Justice of the European Union in Case C-293/17 <sup>(23)</sup>, in particular on the interpretation of Article 6(3) of that Directive; and to apply Directive 2000/60/EC and Directive 2008/56/EC and does not exclude that additional measures may be needed to fulfil obligations derived from these Directives.

<sup>(15)</sup> Directive 2006/118/EC of the European Parliament and of the Council of 12 December 2006 on the protection of groundwater against pollution and deterioration (OJ L 372, 27.12.2006, p. 19).

<sup>(16)</sup> Directive 2008/56/EC of the European Parliament and of the Council of 17 June 2008 establishing a framework for community action in the field of marine environmental policy (Marine Strategy Framework Directive) (OJ L 164, 25.6.2008, p. 19).

<sup>(17)</sup> Regulation (EU) 2018/842 of the European Parliament and of the Council of 30 May 2018 on binding annual greenhouse gas emission reductions by Member States from 2021 to 2030 contributing to climate action to meet commitments under the Paris Agreement and amending Regulation (EU) No 525/2013 (OJ L 156, 19.6.2018, p. 26).

<sup>(18)</sup> SWD(2020) 93 final – Analysis of links between CAP Reform and Green Deal; SWD(2020) 388 final – Commission recommendations for Netherlands' CAP strategic plan. SWD(2020) 388 final.

<sup>(19)</sup> A Farm to Fork Strategy for a fair, healthy and environmentally-friendly food system. COM(2020) 381 final.

<sup>(20)</sup> COM(2021) 400 final

<sup>(21)</sup> Original title 'Startnotitie Nationaal Programma Landelijk Gebied – 10 Juni 2022'.

<sup>(22)</sup> Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora (OJ L 206, 22.7.1992, p. 7).

<sup>(23)</sup> Case C-293/17 Coöperatie Mobilisation for the Environment and Vereniging Leefmilieu (ECLI:EU:C:2018:882).

- (19) It is essential to ensure that authorising additional amounts of manure per hectare per year does not delay or put at risk the requirements of other Union legislation for which nitrogen and phosphorous pollution could be an obstacle in achieving its objectives. Therefore, national authorisations for derogations to individual farmers should not be allowed in groundwater protection areas and in Natura 2000 areas, or within the buffer zones around Natura 2000 areas as defined in the Dutch National Programme for Rural Areas, and the size of which will be specified in 2023.
- (20) The livestock density in the Netherlands remains very high; in 2016, it was the highest in the Union, nearly five times higher than the Union average. According to the data provided by the Netherlands, in the period 2019 to 2021 the total livestock decreased by 2,5 %, whereas the number of cattle increased.
- (21) The overall manure production of 2020 should not be exceeded. This ceiling of maximum manure production will be embedded in national legislation on 1 January 2024. Moreover, the implementation of the reforms planned under the National Programme for Rural Areas should lead to a gradual reduction of the manure production by the end of the validity of the current Decision.
- (22) In nutrients polluted areas in particular, it is necessary to complement the 7<sup>th</sup> Nitrates Action Programme and its Addendum with specific measures recognised for their effectiveness in sustainable nutrients management at farm level and in reducing nutrients losses in groundwater and freshwater.
- (23) The Netherlands established an enhanced enforcement strategy to step up the prevention of fraud in the implementation of its manure policy. That strategy was implemented in the years 2020-2021, but suffered some delays also due to the COVID pandemic. The implementation of the strategy along its main axes of action needs to be pursued effectively and extended to other regions where the independent assessment shows a significant risk of deliberate non-compliance with the rules on manure management. The transition period for the planned agricultural reforms could also lead to increased fraud, and therefore the controls should be intensified.
- (24) The authorisations to individual farmers are subject to certain conditions that are aimed at ensuring fertilisation at farm level based on crop needs and at preventing nitrogen and phosphate losses to water. The measures laid down in this Decision should be additional to the measures already being applied through the 7<sup>th</sup> Nitrates Action Programme and its Addendum.
- (25) The Netherlands is required to implement all measures set in Annex III to Directive (EU) 2016/2284 of the European Parliament and of the Council <sup>(24)</sup> for the reduction of ammonia emissions. The report on the impact of Directive 91/676/EEC on gaseous nitrogen emissions <sup>(25)</sup> concluded that in some regions with high livestock densities, the derogation may result in higher gaseous emissions. Therefore, appropriate measures should be taken to reduce ammonia emissions, including low emission spreading techniques, where necessary in combination with a maximum temperature at which manure can be applied and a strict obligation of immediate incorporation into the soil of manure/slurry when applied on fields.

<sup>(24)</sup> Directive (EU) 2016/2284 of the European Parliament and of the Council of 14 December 2016 on the reduction of national emissions of certain atmospheric pollutants, amending Directive 2003/35/EC and repealing Directive 2001/81/EC (OJ L 344, 17.12.2016, p. 1).

<sup>(25)</sup> The impact of the Nitrates Directive on gaseous N emissions, Effects of measures in nitrates action programme on gaseous N emissions, Contract ENV.B.1/ETU/2010/0009.

- (26) The conditions laid down in Article 4 of this Decision are considered as the version of the Statutory Management Requirements established in national law in the meaning of Article 12 and 13 of Regulation (EU) 2021/2115 of the European Parliament and of the Council <sup>(26)</sup>, and the conditions laid down in Articles 5 to 9 of this Decision are considered for the entities benefiting from derogations as the version of the Statutory Management Requirements established in national law in the meaning of Article 12 and 13 of Regulation (EU) 2021/2115.
- (27) The Netherlands must comply with the objectives on greenhouse gas emissions and removals from land use, land use change and forestry in the 2030 climate and energy framework. A conversion of land use from grassland to arable land would induce an increase of emissions of soil carbon and hamper compliance with Article 4 of Regulation (EU) 2018/841 of the European Parliament and of the Council <sup>(27)</sup>.
- (28) Directive 2007/2/EC of the European Parliament and of the Council <sup>(28)</sup> lays down general rules aimed at establishing the Infrastructure for Spatial Information in the Union for the purposes of environmental policies of the Union and policies or activities of the Union which may have an impact on the environment. Where applicable, the spatial information collected in the context of this Decision should be in line with the provisions set out in that Directive. Furthermore, in order to reduce the administrative burden and enhance data coherence, the Netherlands, when collecting the necessary data under this Decision, should, where appropriate, make use of the information generated under the integrated administration and control system set up by the Netherlands pursuant to Article 67(1) of Regulation (EU) No 1306/2013 of the European Parliament and of the Council <sup>(29)</sup>.
- (29) This Decision will cease to apply on 31 December 2025.
- (30) The measures provided for in this Decision are in accordance with the opinion of the Nitrates Committee set up pursuant to Article 9 of Directive 91/676/EEC,

HAS ADOPTED THIS DECISION:

#### Article 1

#### Derogation

The derogation requested by the Netherlands by letter of 25 February 2022, for the purpose of allowing application to the land of a higher amount of nitrogen from grazing livestock manure than that provided for in paragraph 2, second subparagraph, first sentence, of Annex III to Directive 91/676/EEC, is granted as a transitional measure to accompany reforms of the agriculture and livestock sector in the Netherlands in order to meet EU environmental and climate requirements in relation to nitrogen emissions (including ammonia) and nutrients in water (including Directive 91/676/EEC), and subject to the conditions set in this Decision.

<sup>(26)</sup> Regulation (EU) 2021/2115 of the European Parliament and of the Council of 2 December 2021 establishing rules on support for strategic plans to be drawn up by Member States under the common agricultural policy (CAP Strategic Plans) and financed by the European Agricultural Guarantee Fund (EAGF) and by the European Agricultural Fund for Rural Development (EAFRD) and repealing Regulations (EU) No 1305/2013 and (EU) No 1307/2013 (OJ L 435, 6.12.2021, p. 1).

<sup>(27)</sup> Regulation (EU) 2018/841 of the European Parliament and of the Council of 30 May 2018 on the inclusion of greenhouse gas emissions and removals from land use, land use change and forestry in the 2030 climate and energy framework, and amending Regulation (EU) No 525/2013 and Decision No 529/2013/EU (OJ L 156, 19.6.2018, p. 1).

<sup>(28)</sup> Directive 2007/2/EC of the European Parliament and of the Council of 14 March 2007 establishing an Infrastructure for Spatial Information in the European Community (INSPIRE) (OJ L 108, 25.4.2007, p. 1).

<sup>(29)</sup> Regulation (EU) No 1306/2013 of the European Parliament and of the Council of 17 December 2013 on the financing, management and monitoring of the common agricultural policy and repealing Council Regulations (EEC) No 352/78, (EC) No 165/94, (EC) No 2799/98, (EC) No 814/2000, (EC) No 1290/2005 and (EC) No 485/2008 (OJ L 347, 20.12.2013, p. 549).

*Article 2***Scope of Derogation**

The derogation applies to grassland farms for which an authorisation has been granted in accordance with Article 6.

*Article 3***Definitions**

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

- (1) 'grassland farm' means any holding where at least 80 % of the acreage available for manure application is grass;
- (2) 'grazing livestock' means cattle (with the exclusion of veal calves), sheep, goats, horses, donkeys, deer and water buffalo;
- (3) 'farmland' means the acreage owned, rented or managed by the farmer under a written individual contract and on which the farmer has a direct management responsibility;
- (4) 'grassland' means permanent grassland or temporary grassland which lies less than 5 years;
- (5) 'fertilisation plan' means a calculation of the planned use and availability of nutrients;
- (6) 'fertilisation account' means the nutrient balance based on the real use and uptake of nutrients;
- (7) 'fertilisation register' means an electronic system by which farmers report on real nutrient uses and manure management;
- (8) 'southern and central sandy soils' means soils indicated as southern sandy soils and central sandy soils under the Dutch legislation Article 1 paragraph 1 of the Implementing Regulation on Fertilisers Act <sup>(30)</sup>;
- (9) 'loess soils' means soils indicated as loess soils under the Dutch legislation Article 1 paragraph 1 of the Implementing Regulation on Fertilisers Act;
- (10) 'nutrients' refer to nitrogen and phosphate.

*Article 4***General conditions for the derogation**

The derogation is granted on the following conditions:

1. The Netherlands shall develop a new designation and a new map of areas polluted by nitrates and phosphorous from agricultural sources (*nutrients polluted areas*) by 1 January 2024 at the latest, which includes all catchment areas for monitoring points for groundwater and surface water exhibiting mean nitrates pollution or occasional nitrates pollution events, at risk of being polluted and increasing trends, as well as monitoring points exhibiting eutrophication or at risk of becoming eutrophic.

As a transitional measure and until the new designation is in place at the latest by 1 January 2024, nutrients polluted areas will cover southern and central sandy soils and loess soils areas, as well as, from 1 January 2023, the catchment areas defined from regional waterbodies and qualified as nutrients inadequate areas (bad, poor and moderate) in the national analysis of water quality (2020) <sup>(31)</sup> by the Netherlands Environmental Assessment Agency (PBL).

As of 1 January 2024, a final designation and map of nutrients polluted areas shall be in place and shall include at least the areas designated in 2023 as well as any other additional area where the contribution from agriculture to the nutrients pollution is significant i.e. more than 19 % of the total nutrients load.

<sup>(30)</sup> Original title 'Uitvoeringsregeling Meststoffenwet'.

<sup>(31)</sup> [https://www.pbl.nl/sites/default/files/downloads/pbl-2020-nationale-analyse-waterkwaliteit-4002\\_0.pdf](https://www.pbl.nl/sites/default/files/downloads/pbl-2020-nationale-analyse-waterkwaliteit-4002_0.pdf).

Should the final designation and map of nutrients polluted areas not be in place on 1 January 2024, the designation provided in the 7th Nitrates Action Programme and its Addendum shall be used, which includes all areas where *some* or *significant* efforts are required to reach water quality objectives regarding nitrates and phosphorous concentrations as specified by Directive 91/676/EEC and the Dutch river basin management plan adopted in the context of Directive 2000/60/EC.

2. The Netherlands shall monitor the amount of manure produced and ensure that manure production at national level, both in terms of nitrogen and phosphate, does not exceed 489,4 million kg of nitrogen and 150,7 million kg of phosphate (amount produced in 2020), and that, as a result of the reforms set out in the Addendum being implemented, the amount of manure produced gradually decreases, and in 2025 does not exceed 440 million kg of nitrogen and 135 million kg of phosphate.
3. As of 1 January 2023, the Netherlands shall not grant authorisations for derogations as referred in Article 5 of this Decision within Natura 2000 sites established in accordance with Directive 2009/147/EC of the European Parliament and of the Council <sup>(32)</sup> and Directive 92/43/EEC, and, from 1 January 2024, in buffer zones near Natura 2000 sites as specified by the National Programme for Rural Areas, for which the critical nitrogen load for nitrogen deposition is exceeded.
4. As of 1 January 2023, the Netherlands shall not grant authorisations for derogations as referred in Article 5 of this Decision in groundwater protection areas. In areas where the groundwater is polluted by nitrates, a package of mandatory measures to reduce nutrient loads shall be applied in the groundwater protection areas by 1 January 2024.
5. The Netherlands shall put in place the following measures:
  - (a) as of January 2023, all farms shall draw up an annual fertilisation plan before the growing season. The fertilisation plan shall describe the crop rotation of the farmland and the planned application of manure and other nitrogen and phosphate fertilisers.
  - (b) an electronic fertiliser register shall be in place as of 1 January 2024 registering application of mineral fertilisers and manure production and application on the land. By 1 January 2025, all farms shall use the electronic register. The Dutch authorities shall monitor and analyse the fertilisers' application rates and provide advice to farmers on methods to reduce the overall application rates.
  - (c) buffer strips on agricultural land along water courses on which fertilisation is prohibited. This applies as of 1 January 2023 to all water courses on agricultural parcels located in the Netherlands. The buffer strips shall be set as follows:
    - (i) minimum 5 metres width buffer strips along ecological vulnerable brooks and surface water bodies as defined under Directive 2000/60/EC;
    - (ii) minimum 3 metres width buffer strip along all other watercourses in agricultural areas, including for ditches.

These minimum widths can be adjusted in areas with significant dewatering and irrigation ditches in the following way:

- 3 metres width buffer strip along surface water bodies as defined under Directive 2000/60/EC where the total area at parcel level of a buffer strip of 5 metres width would encompass more than 4 % of the agricultural parcel. Where the total area at parcel level of a buffer strip of 3 metres width along surface water bodies as defined under Directive 2000/60/EC that are not larger than 10 metres would encompass more than 4 % of the agricultural parcel, the buffer strip can be reduced to 1 metre.
  - 1 metre width buffer strip along all other water courses in agricultural areas where the total area at parcel level of a buffer strip of 3 metres width would encompass more than 4 % of the agricultural parcel. Where the total area at parcel level of a buffer strip of 1 metre width would encompass more than 4 % of the agricultural parcel, the buffer strip can be reduced to 0,5 metre.
- (iii) minimum 1 metre width buffer strip along water courses that dry up in the summer (those water courses will be dry at least during the period from 1 April to 1 October).

<sup>(32)</sup> Directive 2009/147/EC of the European Parliament and of the Council of 30 November 2009 on the conservation of wild birds (OJ L 20, 26.1.2010, p. 7).

- (d) In nutrients polluted areas, the following condition shall apply: the overall fertilisation rate from organic and chemical fertilisers shall gradually be reduced so that the rates will be 20 % lower as of 1 January 2025 compared to the rates published in the Annex to the 7th Nitrates Action Programme. If the planned revision of the fertilisation norms sets lower values, the latter shall prevail.
6. The Netherlands shall pursue the implementation of the enhanced enforcement strategy, building on the experience pursuant to the implementation of Article 4(3) of Implementing Decision (EU) 2020/1073. The enhanced enforcement strategy shall, as a minimum, include the following elements:
- (a) continued independent risk assessment of fraud cases and identification of areas and actors of manure handling and management with a higher risk of deliberate non-compliance with the national rules on manure, specified by or pursuant to the Implementing Regulation on Fertilisers Act <sup>(33)</sup>, the Decree on the use of fertilisers <sup>(34)</sup>, and the Environmental Management Activities Decree <sup>(35)</sup> as far as it concerns crop-free zones;
  - (b) continued implementation of enhanced enforcement in De Peel, Gelderse Vallei and Twente, identified as high-risk areas of deliberate non-compliance with the national rules on manure; the enhanced enforcement strategy shall progressively be extended before the end of 2025 to all other regions where the assessment shows that they are in a high-risk area, taking into account the experience and best practices gained;
  - (c) specific focus of the enforcement strategy on high-risk actors in the manure value chain including intermediaries and co-digesters in all regions;
  - (d) the automated system for real-time accountability of manure transport starting 1 January 2023;
  - (e) continued strengthening of the capacity for inspections and controls, which shall be at least equal to 40 % of the capacity required for the field inspections of grassland farms covered by an authorisation as referred to in Article 11(2), including random controls, and a better targeting of that capacity to risk areas of manure handling and management;
  - (f) individual inspection of at least 5,5 % of pig farms yearly.

#### Article 5

### Applications for authorisation

1. Grassland farmers may submit to the competent authority an application for an annual authorisation to apply a higher amount of grazing livestock manure, including manure excreted by the animals themselves, to be the amount of manure per hectare per year containing:
- (a) for 2022, up to 230 kg of nitrogen per hectare and per year in nutrients polluted areas and up to 250 kg of nitrogen per hectare and per year in other areas;
  - (b) for 2023, up to 220 kg of nitrogen per hectare and per year in nutrients polluted areas and up to 240 kg of nitrogen per hectare in other areas;
  - (c) for 2024, up to 210 kg of nitrogen per hectare and per year in nutrients polluted areas and up to 230 kg of nitrogen per hectare in other areas;
  - (d) for 2025, up to 190 kg of nitrogen per hectare and per year in nutrients polluted areas and up to 200 kg of nitrogen per hectare in other areas;
  - (e) after 31 December 2025, up to 170 kg of nitrogen per hectare and per year in all areas.

<sup>(33)</sup> Original title 'Uitvoeringsregeling Meststoffenwet'.

<sup>(34)</sup> Original title 'Besluit gebruik meststoffen'.

<sup>(35)</sup> Original title 'Activiteitenbesluit milieubeheer'.

2. Together with the application referred to in paragraph 1, applicants shall submit a written declaration that they fulfil the conditions laid down in Articles 7, 8 and 9 and that they accept that the application, as well as the fertilisation plan and the fertilisation account referred to in Article 7, may be subject to inspection as referred to in Article 11 of this Decision.

#### Article 6

### Granting of authorisations

Authorisations to grassland farms to apply a higher amount of grazing livestock manure on grassland farms, including manure excreted by the animals themselves, shall be granted subject to the conditions laid down in Articles 7, 8 and 9.

#### Article 7

### Conditions regarding application of manure and other fertilisers in grassland farms benefiting from a derogation

1. The amount of manure from grazing livestock applied to the land each year on grassland farms, including manure excreted by the animals themselves, shall not exceed the amounts specified in Article 5.
2. Phosphate from chemical fertilisers shall not be used on the grassland farm.
3. The grassland farm shall make a fertilisation plan by 28 February at the latest. The plan shall include at least the elements listed in Article 7(4) of Implementing Decision (EU) 2020/1073. The fertilisation plan shall be revised no later than 7 days following any changes in agricultural practices at the grassland farm.
4. The grassland farm shall keep a fertilisation account for each calendar year. It shall be submitted to the competent authority by 31 March of the next calendar year. The fertilisation account shall include the following elements:
  - (a) the crop acreages;
  - (b) the number and type of livestock;
  - (c) the manure production per animal;
  - (d) the amount of fertilisers imported by the grassland farm;
  - (e) the amount of manure delivered to contractors and therefore not used on the grassland farm and the name of those contractors.
5. The grassland farm shall perform nitrogen and phosphorous analysis in soil at least every 4 years for each homogeneous area of the farm, with regard to crop rotation and soil characteristics. One analysis per five hectares of land shall be required as a minimum. On the basis of that analysis, the fertilisation plan of the farm and corrective measures shall be applied.
6. Where grassland is ploughed for grassland renewal, the nitrogen application standard shall be reduced by 50 kg nitrogen per hectare after 31 May of each calendar year. Where grassland is ploughed for the cultivation of maize, the nitrogen application standard for maize shall be reduced by 65 kg nitrogen per hectare.
7. Where crop rotation includes leguminous or other plants fixing atmospheric nitrogen, fertiliser application shall be reduced accordingly.
8. Manure shall not be spread in the autumn before grass cultivation.

*Article 8***Conditions regarding land management in grassland farms benefiting from a derogation**

1. In nutrients polluted areas, grass or other crops ensuring soil coverage during the winter shall be cultivated after maize.
2. Catch crops shall not be ploughed before 1 February.
3. In nutrients polluted areas, grass shall only be ploughed in spring, except for:
  - (a) for grassland renewal, which may be done until 31 August at the latest;
  - (b) for planting flower bulbs, which may be done in autumn.
4. Ploughed grass on all soil types shall be followed immediately by a crop with high nitrogen demand, and fertilisation shall be based on soil analysis concerning mineral nitrogen and other parameters providing references for estimates of nitrogen release from soil organic matter mineralisation.

*Article 9***Conditions as regards reduction of ammonia emissions to reduce nutrient depositions also in water**

1. On grassland farms benefiting from an authorisation pursuant to Article 6, the following conditions shall apply:
  - (a) slurry shall be applied on grassland on sandy and loess soils with shallow injection;
  - (b) slurry shall be applied on grassland on clay and peat soils with shallow injection, with a trailing shoe slurry applicator with a 2:1 dilution of slurry with water or with a pulse track injector;
  - (c) slurry shall not be applied with a trailing shoe applicator where the outside temperature is 20 °C or higher;
  - (d) slurry shall be applied on arable land with injection or immediately worked in after application in one pass;
  - (e) solid manure shall be immediately worked in after application in at most two passes.
2. The Netherlands shall provide training on ammonia emission reduction measures to all grassland farmer benefiting from an authorisation. The first training shall be provided before 31 December 2023.

*Article 10***Monitoring**

1. The competent authorities shall ensure that maps are drawn up indicating the percentages of the following:
  - (a) grassland farms in each municipality which are covered by authorisations;
  - (b) livestock in each municipality which is covered by authorisations;
  - (c) agricultural land in each municipality which is covered by authorisations.

Those maps shall be updated every year.

2. The competent authorities shall establish and maintain a monitoring network for sampling of soil water, streams, shallow groundwater and drainage water at monitoring sites in grassland farms covered by an authorisation. That monitoring network shall provide data on nitrate and phosphate concentration in water leaving the root zone and entering the groundwater and surface water system.

3. The monitoring network shall comprise at least 300 farms covered by authorisations and shall be representative of each soil type (clay, peat, sandy, and sandy loess soils) and of the level of pollution, the fertilisation practices and the crop rotation. The composition of the monitoring network shall not be modified during the period of applicability of this Decision.
4. The competent authorities shall monitor the following:
  - (a) root zone water, surface waters and ground water;
  - (b) progress towards water quality objectives regarding nitrates and phosphate concentrations as specified by Directive 91/676/EEC and the Dutch river basin management plan adopted in the context of Directive 2000/60/EC in nutrients polluted areas.
5. The Netherlands shall provide the Commission with data on nitrates concentrations in surface and groundwater, and on phosphate concentration and trophic status for surface water, both under derogation and non-derogation conditions.

#### Article 11

### Controls and inspections

1. The competent authorities shall carry out administrative controls on all applications for authorisation, with the aim of assessing compliance with the conditions in Articles 7, 8 and 9. Where it is demonstrated that the conditions are not fulfilled, the competent authorities shall refuse the application and the applicant will be informed of the reasons for the refusal.

The competent authorities shall carry out administrative controls for at least 5 % of the grassland farms covered by authorisations with regard to land use, livestock number and manure production.

2. The competent authorities shall establish a programme for field inspections of grassland farms covered by authorisations on a risk analysis basis and with appropriate frequency. The programme shall take into account the results of controls of the previous years, the results of general random controls of legislation transposing Directive 91/676/EEC and any other information that might indicate non-compliance with the conditions set out in Articles 7, 8 and 9 of this Decision.

Field inspections shall be carried out in at least 5 % of the grassland farms covered by authorisations to assess compliance with the conditions in Articles 7, 8 and 9. Those inspections shall be supplemented by the inspections and controls referred to in Article 4(6).

3. Where it is established in any year that a grassland farm covered by an authorisation did not fulfil the conditions in Articles 7, 8 and 9, the holder of the authorisation shall be sanctioned in accordance with national rules and shall not be eligible for an authorisation the following year.
4. The competent authorities shall be granted the necessary powers and means to verify compliance with the conditions for an authorisation granted under this Decision.

#### Article 12

### Reporting

1. The competent authorities shall, every year by 30 June at the latest, submit a report to the Commission containing the following information:
  - (a) data related to fertilisation in all grassland farms which are covered by authorisations pursuant to Article 6, including information on yields and soil types;
  - (b) trends in livestock numbers for each livestock category in the Netherlands and in grassland farms covered by an authorisation;
  - (c) trends in national manure production as far as nitrogen and phosphate in manure are concerned;
  - (d) the implementation of the general conditions laid down in Article 4;

- (e) the maps referred to in Article 10(1);
- (f) the results of ground and surface water monitoring as regards nitrates and phosphate concentrations and eutrophication, including information on water quality trends for groundwater and surface water, both under derogation and non-derogation conditions, as well as the impact of derogations on water quality, as referred to in Article 10(4) and (5);
- (g) an evaluation, on the basis of controls carried out at farm level, of how the conditions for the authorisations set out in Articles 7, 8 and 9 are being implemented, and information on non-compliant farms, on the basis of the results of the administrative controls and inspections referred to in Article 11;
- (h) the implementation of the enhanced enforcement strategy referred to in Article 4, with specific reporting on each of the elements referred to in Article 4(6).

2. The spatial data contained in the report referred to in paragraph 1 shall, where applicable, comply with Directive 2007/2/EC. In collecting the necessary data, the Netherlands shall make use, where appropriate, of the information generated under the integrated administration and control system set up in accordance with Article 67(1) of Regulation (EU) No 1306/2013.

#### *Article 13*

#### **Period of application**

This Decision shall apply until 31 December 2025.

#### *Article 14*

#### **Addressee**

This Decision is addressed to the Kingdom of the Netherlands.

Done at Brussels, 30 September 2022.

*For the Commission*  
Virginijus SINKEVIČIUS  
*Member of the Commission*

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**COMMISSION IMPLEMENTING DECISION (EU) 2022/2070****of 26 October 2022****to not suspend the definitive anti-dumping duties on imports of mixture of urea and ammonium nitrate originating in Russia, Trinidad and Tobago and the United States of America imposed by Implementing Regulation (EU) 2019/1688**

THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EU) 2016/1036 of the European Parliament and of the Council of 8 June 2016 on protection against dumped imports from countries not members of the European Union <sup>(1)</sup> ('the basic Regulation'), and in particular Article 14(4) thereof,

After consulting the Committee established by Article 15(2) thereof,

Whereas:

**1. PROCEDURE**

- (1) On 8 October 2019, the Commission, by Implementing Regulation (EU) 2019/1688 <sup>(2)</sup> ('the original Regulation'), imposed definitive anti-dumping duties on imports of mixtures of urea and ammonium nitrate ('UAN' or 'product concerned') originating in Russia, Trinidad and Tobago and the United States of America ('countries concerned').
- (2) In May 2021, Copa-Cogeca ('the applicant'), an association of users of the product concerned, submitted information relating to an alleged temporary change of market conditions which occurred after the imposition of the definitive measures. The original investigation period ('the original IP') was from 1 July 2017 to 30 June 2018. The applicant alleged that such a temporary change would justify the suspension of the anti-dumping duties currently in force, in accordance with Article 14(4) of the Regulation (EU) 2016/1036. Other associations, i.e. AGBP (Association Générale des Producteurs de Blé) and Interore (International Ore & Fertilizer Belgium SA) also provided evidence in support of suspending the anti-dumping duties. These submissions did not contain all the necessary elements and evidence relevant for the Commission to proceed further with the analysis. The Commission engaged with the applicant to gather additional evidence supporting its claim of a temporary change of market conditions.
- (3) On 16 November 2021, and in view of the evidence available, the Commission decided to request AGBP, Copa-Cogeca and Fertilizers Europe to provide additional information pertaining to a period after the original investigation period and, more specifically, information about prices, Union demand and performance of the Union industry during the third quarter of 2021 in order to examine and assess the impact, if any, of the alleged changed circumstances on the Union market and whether injury would be unlikely to resume as a result of the suspension.
- (4) Following these submissions, Copa-Cogeca (incorporating some of the arguments raised by AGBP) and the Union industry were given the possibility to provide comments.
- (5) Based on the above information, the Commission examined whether such suspension was justified. The elements considered are summarised here below.
- (6) On 20 July 2022, the Commission disclosed its findings to AGBP, Interore, Copa-Cogeca and Fertilizers Europe. All parties were granted a period within which they could make comments subsequent to this disclosure. Comments were received from Interore, Copa-Cogeca, and Fertilizers Europe.

<sup>(1)</sup> OJ L 176, 30.6.2016, p. 21.

<sup>(2)</sup> Commission Implementing Regulation (EU) 2019/1688 of 8 October 2019 imposing a definitive anti-dumping duty and definitively collecting the provisional duty imposed on imports of mixtures of urea and ammonium nitrate originating in Russia, Trinidad and Tobago and the United States of America (OJ L 258, 9.10.2019, p. 21).

## 2. EXAMINATION OF CHANGED MARKET CIRCUMSTANCES

- (7) Article 14(4) of the basic Regulation provides that, in the Union interest, anti-dumping measures may be suspended where market conditions have temporarily changed to an extent that injury would be unlikely to resume as a result of such suspension. The Commission will examine those elements below.

### 2.1. Analysis of changes in market conditions

- (8) The alleged temporary changes of market conditions consisted of a scarcity of supply on the Union market since the volume of imports decreased and the Union industry reduced its production. The temporary imbalance between supply and demand led to a sharp increase in prices. The analysis covered two parts, i.e. first a comparison between the market conditions in the original IP and in 2021 and, second, an update on the most recent developments in 2022 for which data were available.
- (9) Since the imposition of the measures, Eurostat statistics covering up to the end of 2021 indicated that UAN imports sharply decreased. Imports from the countries concerned decreased by 69 % compared to the original IP and were only partially replaced by imports from other countries. This led to a decline of imports from all origins by almost 60 % in comparison to the volume imported in the original IP. The market share of imports also decreased from 43 % to 19 %, based on the assumption that demand in the Union remained stable, as provided by Copa-Cogeca. This created a gap in supply of 1,14 million tonnes, when comparing original IP and 2021.
- (10) In their comments on the disclosure, Copa-Cogeca pointed out that imports increased in the first half of 2022 by over 250 % when compared to the first half of 2021. The party noted that this increase coincided with a dramatic decrease in the Union production due to the factors discussed below. As far as imports are concerned, the data available to the Commission confirms this increase.

Table 1

### Import volumes

(in '000 tonnes)

|   | IP (1 July 2017 to 30 June 2018) | 2018  | 2019  | 2020  | 2021 H1 | 2021 H2 | 2022 H1 |
|---|----------------------------------|-------|-------|-------|---------|---------|---------|
| <b>All imports</b>                      | 1 927                            | 1 998 | 1 322 | 1 027 | 294     | 499     | 753     |
| <b>Imports from Trinidad and Tobago</b> | 368                              | 361   | 401   | 418   | 172     | 217     | 332     |
| <b>Imports from Russia</b>              | 613                              | 688   | 314   | 90    | 15      | 130     | 320     |
| <b>Imports from the United States</b>   | 742                              | 890   | 222   | -     | -       | -       | 37      |
| <b>Other Imports</b>                    | 204                              | 59    | 385   | 519   | 107     | 152     | 64      |

Source: the original Regulation, Eurostat.

- (11) With respect to the possible future developments in imports, the Commission observed that the United States of America ('US') seems to have concentrated its UAN sales on the domestic market since 2020. Imports from Trinidad and Tobago do not seem to be affected by the imposition in October 2019 of the definitive anti-dumping measures. They continued to enter the Union in significant quantities. In 2021, these imports represented 50 % (389 000 tonnes) of all imports to the Union. In the first four months of 2022, Trinidad and Tobago exported to the Union more than 234 000 tonnes, which is 54 % more than in the same period of last year (ca. 152 000 tonnes). Thus, it appears that UAN from Trinidad and Tobago is indeed still entering the Union in significant quantities.

- (12) As regards imports from Russia, announcements and sanctions gave us reasons to believe that any increase in Russian UAN imports was highly unlikely. Indeed, on 4 March 2022, Russia's Trade and Industry Ministry announced that it 'recommend[ed to] Russian producers to temporarily suspend export shipments of Russian fertilisers until carriers resume (regular) work and provide guarantees that Russian fertiliser exports will be completed in full.'<sup>(3)</sup>
- (13) Furthermore, the main shareholders of major Russian UAN producers such as EuroChem's Mr Melnichenko, and its CEO, Vladimir Rashevsky; Uralchem's Mr Mazepin; and ACRON's Mr Moshe Kantor, are on the EU's sanctions list. While the individual sanctions have not directly affected these Russian companies, it may have a potential impact on imports coming from Russia. It is worth noting, however, that imports from Russia continued at very significant levels (practically without decline) in 2022. Indeed, the first half of 2022 saw imports increase to import levels of 2019. In June 2022 alone, the volume of imports from Russia was greater than throughout the entire first half of 2021.
- (14) Belarus has been another source of Union imports, but this was also discontinued due to the fact that the main Belarussian producer, Grodno Azot, figures on the EU's sanctions list since 2 December 2021.
- (15) On 12 March 2022, the Ukrainian Agrarian Policy Minister Roman Leschenko also announced a ban on exports of fertilisers – including UAN.
- (16) Based on the above, the Commission concluded that it could reasonably be expected that Trinidad and Tobago will remain the main source of imports of UAN in the Union.
- (17) When looking at the data for 2021, given the reduction of imports and the stable demand estimated in recital (9), the Union industry should have increased its sales by around 31 % in comparison to their sales in the original IP, which would correspond to additional 821 000 tonnes. However, according to the information gathered on the Union industry's supply, whilst production increased substantially following the imposition of measures, such an increase was not sufficient to compensate fully for the drop in imports. Union market sales of the Union industry increased on average by around 17 %, which corresponds to around 450 000 tonnes. Given that, as mentioned in recital (9), the demand of UAN in the Union remained relatively stable since the original IP, the gap in supply created by the lower volume of imports is not being completely filled by the increase of Union industry's sales, leading to an estimated imbalance between supply and demand of around 371 000 tonnes in 2021.
- (18) As to the data for 2022, as provided by Copa-Cogeca in their comments on disclosure, the Union industry appears to have dramatically cut their production. The supply gap this has created was too large for the increase in imports in the first half of 2022, discussed in recital (10) above, to compensate for.
- (19) It can therefore be concluded that, after the original investigation, there has been a temporary imbalance between supply and demand on the Union market.
- (20) Union UAN market price ('UAN price') was established using the average price of UAN 30 ex-tank Rouen, which is the most widely recognised representative market price in Europe, and France is the largest UAN consuming country in the European Union. UAN price in the Union increased sharply in the second half of 2021. Prices have more than doubled in these six months and were in December 2021 almost four times higher than during the original IP. The average UAN price that was 154 EUR/tonne during the original IP, reached 598 EUR/tonne in December 2021.
- (21) The main reason for this price increase seems to be the rise in natural gas prices that represented, according to the information collected among Union producers, a substantial proportion of UAN's costs of production. Since the original IP, the average natural gas prices in the Union increased by almost 400 % from 6,53 USD/MMBtu<sup>(4)</sup> to 32,23 USD/MMBtu in the last quarter of 2021.

<sup>(3)</sup> <https://www.reuters.com/article/ukraine-crisis-russia-fertilizers-idINL2N2V71JG>

<sup>(4)</sup> MMBtu: Metric Million British Thermal Unit.

- (22) Imports prices of UAN showed an increase too, but to a smaller extent than the Union industry's prices. During 2021, prices from Trinidad and Tobago and Russia have consistently been lower than the published UAN market prices. In the first two quarters of 2022, this is still the case except for Trinidad and Tobago that came just slightly above published UAN market prices in the second quarter 2022.

Table 2

**Import and Rouen UAN 30 ex-tank published prices**

(in EUR)

|   | IP (1 July 2017 to 30 June 2018) | 2021 Q1 | 2021 Q2 | 2021 Q3 | 2021 Q4 | 2022 Q1 | 2022 Q2 |
|---|----------------------------------|---------|---------|---------|---------|---------|---------|
| <b>Imports from Trinidad and Tobago</b> | 140                              | 166     | 229     | 222     | 323     | 569     | 700     |
| <b>Imports from Russia</b>              | 126                              | 147     | N/A     | 269     | 302     | 483     | 451     |
| <b>Imports from the United States</b>   | 124                              | N/A     | N/A     | N/A     | N/A     | N/A     | 653     |
| <b>Other imports</b>                    | 129                              | 164     | 220     | 253     | 303     | 577     | 547     |
| <b>Rouen (France) UAN 30 ex-tank</b>    | 154                              | 255     | 237     | 318     | 591     | 695     | 689     |

Source: the original Regulation, Eurostat, and Fertecon.

- (23) As noted in recitals (17) and (18), the supply on the EU market has not been able to cope with the demand that is estimated to be relatively stable. This, together with a large increase in the raw material costs, has likely caused prices to increase.
- (24) This increase in UAN price is putting a financial burden on users since UAN cannot be easily replaced with other nitrogen fertilisers. UAN is liquid and farmers buying UAN are subject to a lock-in effect because of the necessary equipment used for distributing this liquid. Farmers using other nitrogen fertilisers need different equipment. Moreover, the quantity of UAN needed by farmers is also inelastic. During the plant cycle, farmers have a certain flexibility about the time of using UAN, but they cannot reduce the overall UAN quantity too much without risking that harvest and quality decrease.
- (25) Based on the reasons set out above, the Commission concluded that there is a temporary change in market conditions since the original IP in the sense of supply not meeting the demand and higher prices.
- (26) Following disclosure, Interore and Copa-Cogeca repeated their claim that because of the high gas prices in the Union, the Union industry did not increase its production to replace the imports and therefore the users of UAN needed the imports from the US and Trinidad and Tobago. Furthermore, Copa-Cogeca claimed that there is a lack of competition on the Union market.
- (27) As set out in recital (25), the Commission acknowledged that the supply could not meet the demand and prices of UAN had increased. As Copa-Cogeca did not bring any evidence supporting the lack of competition, this claim was rejected.

**3. LIKELIHOOD OF RESUMPTION OF INJURY**

- (28) The analysis of the additional information requested by the Commission to Fertilizers Europe, which was the complainant in the original investigation, to examine if injury would be unlikely to resume as a result of the suspension, pursuant to Article 14(4) of the basic Regulation, showed that the Union industry is currently still in an injurious situation.

- (29) Despite the spike in UAN prices, the parallel increase in natural gas prices had a major negative impact on the profitability of the Union industry. Fertilizers Europe provided data for the first three quarters of 2021 on costs of UAN sold, the ex-work prices as well as profitability figures for Union producers representing 65% of the Union industry. This data showed a clear downward trend in profitability, resulting in a lossmaking situation of - 9% on average in the third quarter of 2021.
- (30) In order to update its findings, the Commission has also made simulations on the development of profitability of the Union industry, should the current measures be suspended. This update was done by using trends in natural gas prices (by far the biggest cost driver) and UAN price between the first quarter of 2021 and the second quarter of 2022. These trends were used to update the actual costs of production and the corresponding turnover of the Union Industry to reflect their situation up to the second quarter of 2022. This update showed that the lossmaking situation of the Union industry in the third quarter of 2021 has continued in the first half of 2022.
- (31) Moreover, based on the comments on the disclosure, it is clear that the actual situation of the Union industry is worse than predicted based on the simulation. Whilst the simulation presupposed steady production and sales of the Union industry, a collapse of the production and sales of the Union industry in 2022, as presented by Copa-Cogeca, would only aggravate the situation of the Union industry. The reason for this is the development of natural gas prices and UAN prices. UAN price developed positively for a while and reached their peak in March 2022 (875 EUR/tonne). UAN price then started to fall to reach 595 EUR/tonne in June 2022. The Commission does not have any indication that UAN prices will increase in the coming months. By contrast, natural gas prices have remained at a high level in the last quarter of 2021 and the first two quarters of 2022 (on average 32,34 USD/MMBtu). While there was a dip in natural gas prices in May (29,8 USD/MMBtu), they were on the rise thereafter. In June, they were again at 34,4 USD/MMBtu and the outlook is a further even more substantial increase at prices above 50 USD/MMBtu <sup>(5)</sup>.
- (32) Under these circumstances, the Union producers were not only unable to increase production to fully compensate for the imports lost in 2021, but they had to further limit the production, as evidenced with a number of partial closures of production lines. In their comments on disclosure Copa-Cogeca itself noted that the prices of UAN in September 2022 were unable to cover the cost of gas that is required to produce UAN. With only part of variable costs already above the sales prices of UAN on the Union market and fixed costs per unit of production significantly increased due to the drop in production, it is undisputed that the Union industry was still suffering material injury.
- (33) Following disclosure, Fertilizers Europe repeated that the gas price in the Union was expected to remain high in the fourth quarter of 2022 and that the Union industry expected to suffer injury from imports.
- (34) Following disclosure, during a hearing, Copa-Cogeca commented that, for its assessment of likelihood of resumption of injury, the Commission should analyse the sales and profitability of the Union industry after the initial submission of Copa-Cogeca, i.e. from July 2021 onwards.
- (35) In this respect, the Commission noted that a decision to suspend anti-dumping measures cannot be a static exercise. The Union market of UAN has shown to be very volatile in the period after the initial submission of Copa-Cogeca, affecting the assessment of the changed market conditions and the likelihood of resumption of injury. The information initially provided by Copa-Cogeca was therefore considered to be outdated and additional information was deemed to be necessary. The additional information obtained from the Union industry showed that Union producers were suffering financial losses. Indeed, Copa-Cogeca acknowledged that the Union industry is suffering injury in 2022. In their comments on disclosure Copa-Cogeca itself notes that '[a]s far as the Union industry is concerned [...] its sales should have dropped dramatically in 2022' and that '[u]nder current market conditions, it is therefore not profitable to process natural gas into UAN. It is thus logical that almost all EU UAN facilities have been idled.'

<sup>(5)</sup> Based upon the price of Dutch TTF Gas futures, which is the delivery price at the Title Transfer Facility in the Netherlands. Dutch TTF is also the market index used by the World Bank to calculate historical gas price.

- (36) In addition, during a hearing, Copa-Cogeca claimed a lack of transparency and representativeness of the profitability data provided by the Union industry. As stated in recital (29), the Commission did obtain data showing a loss-making situation of the cooperating Union producers, representing the majority of Union production. This profitability figure was based on the turnover and costs of UAN of the Union producers. Since this information was confidential, only an aggregated figure for all cooperating Union producers could be disclosed. Moreover, as noted in recitals (32) and (35) above, Copa-Cogeca itself does not seem to contest that the Union industry is suffering material injury.
- (37) Following disclosure, Copa-Cogeca claimed that the continuation of measures would be against the Union interest and would have a negative effect on the food production in the Union. The Commission recalled that under Article 14(4) of the basic Regulation measures may be suspended in the Union interest only if injury would be unlikely to resume as a result of the suspension. Given the situation of the Union industry in September of 2022, as acknowledged by Copa-Cogeca in their comments on disclosure summarised in recitals (32) and (35) above, the Union industry continued incurring financial losses and thus injury would be likely to aggravate in case measures would be suspended, the conditions for suspension were not met, and the Commission did not consider it necessary to evaluate the Union interest under Article 14(4) of the basic Regulation.
- (38) Copa-Cogeca alleged that protective measures are unnecessary given that the Union industry is not in the position to produce any UAN currently as the gas price is much higher than the UAN price and consequently the UAN output in the Union has dropped considerably.
- (39) However, the Commission noted that Copa-Cogeca provided data showing that there is still production of UAN in the Union and that the Union industry is suffering material injury. Therefore, this claim was rejected.

#### 4. CONCLUSION

- (40) Market conditions have temporarily changed in the sense that there is insufficient supply of UAN currently on the Union market at affordable prices to meet the steady demand. This is mainly because imports of UAN have decreased significantly and the Union producers cannot fully compensate for the lost import volumes, because of a large increase in the cost of production.
- (41) Indeed, the driver behind the high current UAN record prices are the current record high natural gas prices. Gas is the main raw material for the production of UAN. These extreme gas prices plunged the Union industry into losses in the third quarter of 2021. This increase in costs could not be passed on to customers for two reasons. First, due to the flexibility noted in recital (24), farmers decided to postpone their purchase of UAN to the fertilising (spring) season. Second, because of the continuing price pressure from imports, as shown in Table 2 above. Furthermore, as acknowledged by the parties, under current market conditions, the Union industry is unable to produce and sell UAN at a profit and thus a significant part of its production capacity is idle. There are also indications that suspension would aggravate further the situation of the Union industry. Dumped imports at low prices from the countries concerned, notably Trinidad and Tobago, would lead to further pressure on the Union industry's prices and the ensuing risk of a price erosion on the Union market.
- (42) Given that the examination of post-IP developments showed that the Union industry still suffered from an injurious situation, the Commission could not conclude that market conditions had temporarily changed to an extent that injury would be unlikely to resume as a result of a suspension pursuant to Article 14(4) of the basic Regulation. This decision is without prejudice to the Commission's right to take a decision pursuant to Article 14(4) of the basic Regulation, should the situation change in the future.
- (43) Therefore, the Commission decided not to suspend the anti-dumping duties on imports of mixture of urea and ammonium nitrate originating in Russia, Trinidad and Tobago and the United States of America imposed by Implementing Regulation (EU) 2019/1688,

HAS ADOPTED THIS DECISION:

*Article 1*

The conditions to suspend the definitive anti-dumping duty imposed by Article 1 of Implementing Regulation (EU) 2019/1688 on imports of mixture of urea and ammonium nitrate originating in Russia, Trinidad and Tobago and the United States of America in accordance with Article 14(4) of the Regulation (EU) 2016/1036 are not met.

*Article 2*

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

Done at Brussels, 26 October 2022.

*For the Commission*  
*The President*  
Ursula VON DER LEYEN

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**DECISION (EU) 2022/2071 OF THE EUROPEAN CENTRAL BANK****of 20 October 2022****on transitional provisions for the application of minimum reserves by the European Central Bank following the introduction of the euro in Croatia (ECB/2022/36)**

THE EXECUTIVE BOARD OF THE EUROPEAN CENTRAL BANK,

Having regard to the Statute of the European System of Central Banks and of the European Central Bank, and in particular Article 19.1 and the first indent of Article 46.2 thereof,

Having regard to Council Regulation (EC) No 2531/98 of 23 November 1998 concerning the application of minimum reserves by the European Central Bank <sup>(1)</sup>,

Having regard to Council Regulation (EC) No 2532/98 of 23 November 1998 concerning the powers of the European Central Bank to impose sanctions <sup>(2)</sup>,

Having regard to Council Regulation (EC) No 2533/98 of 23 November 1998 concerning the collection of statistical information by the European Central Bank <sup>(3)</sup>, and in particular Articles 5(1) and 6(4) thereof,

Having regard to Regulation (EU) 2021/378 of the European Central Bank of 22 January 2021 on the application of minimum reserve requirements (ECB/2021/1) <sup>(4)</sup>,

Having regard to Regulation (EU) 2021/379 of the European Central Bank of 22 January 2021 on the balance sheet items of credit institutions and of the monetary financial institutions sector (ECB/2021/2) <sup>(5)</sup>,

Whereas:

- (1) The adoption of the euro by Croatia on 1 January 2023 means that institutions located in Croatia will be subject to minimum reserve requirements from that date in accordance with Regulation (EU) 2021/378 (ECB/2021/1).
- (2) The integration of these entities into the minimum reserve system of the Eurosystem requires the adoption of transitional provisions in order to ensure their smooth integration without creating a disproportionate burden for institutions in Member States whose currency is the euro, including Croatia.
- (3) Article 5 of the Statute of the European System of Central Banks and of the European Central Bank implies that the ECB, assisted by the national central banks, collects the necessary statistical information from the competent national authorities or directly from economic agents also to ensure timely preparation in the field of statistics in view of the adoption of the euro by a Member State,

HAS ADOPTED THIS DECISION:

*Article 1*

**Definitions**

For the purposes of this Decision, the definitions in Article 2 of Regulation (EU) 2021/378 (ECB/2021/1) apply.

<sup>(1)</sup> OJ L 318, 27.11.1998, p. 1.

<sup>(2)</sup> OJ L 318, 27.11.1998, p. 4.

<sup>(3)</sup> OJ L 318, 27.11.1998, p. 8.

<sup>(4)</sup> OJ L 73, 3.3.2021, p. 1.

<sup>(5)</sup> OJ L 73, 3.3.2021, p. 16.

## Article 2

**Transitional provisions for institutions located in Croatia**

1. In derogation from Article 8 of Regulation (EU) 2021/378 (ECB/2021/1), a transitional maintenance period shall run from 1 January 2023 to 7 February 2023 for institutions located in Croatia.
2. The reserve base of each institution located in Croatia for the transitional maintenance period shall be defined in relation to its balance sheet at 31 October 2022. Hrvatska narodna banka shall request institutions located in Croatia to report to it their reserve base in accordance with Regulation (EU) 2021/379 (ECB/2021/2). Hrvatska narodna banka shall request institutions located in Croatia that benefit from the derogation under Article 9(1) or (2) or Article 9(5), point (a), of Regulation (EU) 2021/379 (ECB/2021/2) to calculate the reserve base for the transitional maintenance period on the basis of their balance sheets at 30 September 2022.
3. In respect of the transitional maintenance period, either an institution located in Croatia or Hrvatska narodna banka shall calculate such institution's minimum reserves. The party that calculates the minimum reserves shall submit its calculation to the other party allowing sufficient time for the latter to verify it and submit revisions. The calculated minimum reserves, including any revisions thereof, shall be confirmed by the two parties at the latest on 20 December 2022. If the notified party does not confirm the amount of minimum reserves by 20 December 2022, it shall be deemed to have acknowledged that the calculated amount applies for the transitional maintenance period.
4. Article 3(2) to (4) of this Decision shall apply *mutatis mutandis* to institutions located in Croatia so that these institutions may, for their initial maintenance periods, deduct from their reserve bases any liabilities owed to institutions in Croatia, although at the time the minimum reserves are calculated such institutions will not appear on the list of institutions subject to minimum reserve requirements referred to in Article 3(3) of Regulation (EU) 2021/378 (ECB/2021/1).

## Article 3

**Transitional provisions for institutions located in other Member States whose currency is the euro**

1. The maintenance period applicable to institutions located in other Member States whose currency is the euro pursuant to Article 8 of Regulation (EU) 2021/378 (ECB/2021/1) shall remain unaffected by the transitional maintenance period for institutions located in Croatia.
2. Institutions located in other Member States whose currency is the euro may decide to deduct from their reserve base for the maintenance periods from 21 December 2022 to 7 February 2023 and from 8 February to 21 March 2023 any liabilities owed to institutions located in Croatia, although at the time the minimum reserves are calculated such institutions will not appear on the list of institutions subject to minimum reserve requirements referred to in Article 3(3) of Regulation (EU) 2021/378 (ECB/2021/1).
3. Institutions located in other Member States whose currency is the euro that decide to deduct liabilities owed to institutions located in Croatia pursuant to paragraph 2 shall, for the maintenance periods from 21 December 2022 to 7 February 2023 and from 8 February to 21 March 2023, calculate their minimum reserves on the basis of their balance sheets at 31 October 2022 and 31 December 2022 respectively and report statistical information in accordance with Part 1 of Annex III to Regulation (EU) 2021/379 (ECB/2021/2) showing institutions located in Croatia as already subject to the ECB's minimum reserve system.

This shall be without prejudice to the obligation for institutions to report statistical information for the periods concerned in accordance with Table 1 in Part 2 of Annex I to Regulation (EU) 2021/379 (ECB/2021/2), still showing institutions located in Croatia as being banks located in the 'Rest of the world'.

The tables shall be reported in accordance with the time limits and procedures laid down in Regulation (EU) 2021/379 (ECB/2021/2).

4. For the maintenance periods starting in December 2022 and February 2023, institutions located in other Member States whose currency is the euro that benefit from the derogation under Article 9(1) or (2) or Article 9(5), point (a), of Regulation (EU) 2021/379 (ECB/2021/2) and decide to deduct liabilities owed to institutions located in Croatia pursuant to paragraph 2 shall calculate their minimum reserves on the basis of their balance sheet at 30 September 2022 and report statistical information in accordance with Part 1 of Annex III to Regulation (EU) 2021/379 (ECB/2021/2) showing institutions located in Croatia as already subject to the ECB's minimum reserve system.

For the maintenance periods starting in March and May 2023, institutions located in other Member States whose currency is the euro that benefit from the derogation under Article 9(1) or (2) or Article 9(5), point (a), of Regulation (EU) 2021/379 (ECB/2021/2) and decide to deduct liabilities owed to institutions located in Croatia pursuant to paragraph 2 shall calculate their minimum reserves on the basis of their balance sheet at 31 December 2022, and report statistical information in accordance with Part 1 of Annex III to Regulation (EU) 2021/379 (ECB/2021/2) showing institutions located in Croatia as already subject to the ECB's minimum reserve system.

This shall be without prejudice to the obligation for institutions to report statistical information for the periods concerned in accordance with Table 1 in Part 2 of Annex I to Regulation (EU) 2021/379 (ECB/2021/2) still showing institutions located in Croatia as being banks located in the 'Rest of the world'.

The statistical information shall be reported in accordance with the time limits and procedures laid down in Regulation (EU) 2021/379 (ECB/2021/2).

#### *Article 4*

#### **Final provisions**

1. This Decision shall take effect on the day of its notification to the addressees.
2. It shall apply from 1 November 2022.
3. In the absence of specific provisions in this Decision, the provisions of Regulations (EU) 2021/378 (ECB/2021/1) and (EU) 2021/379 (ECB/2021/2) shall apply.

#### *Article 5*

#### **Addressees**

This Decision is addressed to Hrvatska narodna banka, institutions located in Croatia and institutions located in other Member States whose currency is the euro.

Done at Frankfurt am Main, 20 October 2022.

*The President of the ECB*  
Christine LAGARDE

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## III

(Other acts)

## EUROPEAN ECONOMIC AREA

**EFTA SURVEILLANCE AUTHORITY DECISION No 029/22/COL**

**of 9 February 2022**

**amending the substantive rules in the field of State aid by introducing new Guidelines on State aid for climate, environmental protection and energy 2022 [2022/2072]**

THE EFTA SURVEILLANCE AUTHORITY (ESA),

Having regard to the Agreement on the European Economic Area ('the EEA Agreement'), in particular to Articles 61 to 63 and Protocol 26,

Having regard to the Agreement between the EFTA States on the Establishment of a Surveillance Authority and a Court of Justice ('the Surveillance and Court Agreement'), in particular to Article 24 and Article 5(2)(b),

Having regard to Protocol 3 to the Surveillance and Court Agreement ('Protocol 3'), in particular to Article 1(1) of Part I,

Whereas:

Under Article 24 of the Surveillance and Court Agreement, ESA is to give effect to the provisions of the EEA Agreement concerning State aid.

Under Article 5(2)(b) of the Surveillance and Court Agreement, ESA is to issue notices or guidelines on matters dealt with in the EEA Agreement, if that Agreement or the Surveillance and Court Agreement expressly so provides or if ESA considers it necessary.

Under Article 1(1) of Part I of Protocol 3, ESA is to keep under constant review all systems of aid existing in the EFTA States <sup>(1)</sup> and propose any appropriate measures required by the progressive development or by the functioning of the EEA Agreement.

ESA's Guidelines on State aid for environmental protection and energy 2014–2020 ('ESA's 2014–2020 Guidelines') <sup>(2)</sup>, as amended <sup>(3)</sup>, were applicable until 31 December 2021.

ESA's 2014–2020 Guidelines corresponded to the European Commission's ('the Commission') Guidelines on State aid for environmental protection and energy 2014–2020 ('the Commission's 2014–2020 Guidelines') <sup>(4)</sup>. The Commission's 2014–2020 Guidelines, as amended <sup>(5)</sup>, were applicable until 31 December 2021.

<sup>(1)</sup> Article 1(b) of the Surveillance and Court Agreement states that 'the term "EFTA States" means the Republic of Iceland and the Kingdom of Norway and, under the conditions laid down by Article 1(2) of the Protocol Adjusting the Agreement between the EFTA States on the Establishment of a Surveillance Authority and a Court of Justice, the Principality of Liechtenstein'.

<sup>(2)</sup> ESA Decision No 301/14/COL of 16 July 2014 amending for the ninety-eighth time the procedural and substantive rules in the field of State aid by adopting new Guidelines on State aid for environmental protection and energy 2014–2020 (OJ L 131, 28.5.2015, p. 1 and EEA Supplement No 30, 28.5.2015, p. 1).

<sup>(3)</sup> ESA Decision No 90/20/COL of 15 July 2020 amending, for the one hundred and seventh time, the procedural and substantive rules in the field of State aid, by amending and prolonging certain State aid guidelines (OJ L 359, 29.10.2020, p. 16 and EEA Supplement No 68, 29.10.2020, p. 4).

<sup>(4)</sup> Communication from the Commission – Guidelines on State aid for environmental protection and energy 2014–2020 (OJ C 200, 28.6.2014, p. 1).

<sup>(5)</sup> Communication from the Commission concerning the prolongation and the amendments of the Guidelines on Regional State Aid for 2014–2020, Guidelines on State Aid to Promote Risk Finance Investments, Guidelines on State Aid for Environmental Protection and Energy 2014–2020, Guidelines on State aid for rescuing and restructuring non-financial undertakings in difficulty, Communication on the Criteria for the Analysis of the Compatibility with the Internal Market of State Aid to Promote the Execution of Important Projects of Common European Interest, Communication from the Commission – Framework for State aid for research and development and innovation and Communication from the Commission to the Member States on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to short-term export-credit insurance. 2020/C 224/02 (OJ C 224, 8.7.2020, p. 2).

On 27 January 2022, the Commission adopted Guidelines on State aid for climate, environmental protection and energy 2022 ('the 2022 Guidelines') <sup>(9)</sup>.

The 2022 Guidelines are also of relevance for the European Economic Area ('EEA').

Uniform application of the EEA State aid rules is to be ensured throughout the EEA in line with the objective of homogeneity established in Article 1 of the EEA Agreement.

According to paragraph II under the heading 'GENERAL' of Annex XV to the EEA Agreement, ESA, after consultation with the Commission, is to adopt acts corresponding to those adopted by the Commission.

The 2022 Guidelines may refer to certain European Union policy instruments and to certain European Union legal acts that have not been incorporated into the EEA Agreement. With a view to ensuring uniform application of State aid provisions and equal conditions of competition throughout the EEA, ESA will generally apply the same points of reference as the Commission when assessing the compatibility of aid with the functioning of the EEA Agreement.

Having consulted the Commission,

Having consulted the EFTA States,

HAS ADOPTED THIS DECISION:

#### *Article 1*

(1) The substantive rules in the field of State aid are amended by introducing new Guidelines on State aid for climate, environmental protection and energy 2022. The 2022 Guidelines are annexed to this Decision and form an integral part of it.

(2) ESA applies these guidelines to assess the compatibility of all notifiable aid for climate, environmental protection and energy awarded or intended to be awarded from 9 February 2022. Unlawful aid will be assessed in accordance with the rules applicable at the date on which the aid was awarded.

#### *Article 2*

ESA applies the 2022 Guidelines with the following adaptations where applicable, including, but not limited to:

- (a) if there is a reference to 'Member State(s)', ESA reads it as a reference to 'EFTA State(s)' <sup>(7)</sup>, or where appropriate 'EEA State(s)';
- (b) if there is a reference to the 'European Commission', ESA reads it, where appropriate, as a reference to the 'EFTA Surveillance Authority';
- (c) if there is a reference to 'the Treaty' or 'TFEU', ESA reads it as a reference to 'the EEA Agreement';
- (d) if there is a reference to 'Union rules on State Aid', ESA reads it as a reference to 'the EEA rules on State Aid';
- (e) if there is a reference to Article 107 TFEU or sections of that Article, ESA reads it as a reference to Article 61 of the EEA Agreement and the corresponding sections of that Article;
- (f) if there is a reference to Article 108 TFEU or sections of that Article, ESA reads it as a reference to Article 1 of Part I of Protocol 3 of the Surveillance and Court Agreement and the corresponding sections of that Article;

<sup>(9)</sup> C(2022) 481 final, not yet published in the *Official Journal of the European Union*.

<sup>(7)</sup> The 'EFTA States' refers to Iceland, Liechtenstein and Norway.

- (g) if there is a reference to Council Regulation (EU) 2015/1589 <sup>(8)</sup>, ESA reads it as a reference to Part II of Protocol 3 of the Surveillance and Court Agreement;
- (h) if there is a reference to Commission Regulation (EC) No 794/2004 <sup>(9)</sup>, ESA reads it as a reference to EFTA Surveillance Authority Decision 195/04/COL;
- (i) if there is a reference to the wording '(in-)compatible with the internal market', ESA reads it as '(in-)compatible with the functioning of the EEA Agreement';
- (j) if there is a reference to the wording 'within (or outside) the Union', ESA reads it as 'within (or outside) the EEA';
- (k) if there is a reference to 'intra-Union trade', ESA reads it as a reference to 'intra-EEA trade';
- (l) if the Guidelines set out that they will be applied to 'all sectors of economic activity', ESA applies them to 'all sectors of economic activity or parts of sectors of economic activity falling within the scope of the EEA Agreement';
- (m) if there is a reference to Commission Communications, Notices or Guidelines, ESA reads it as a reference to the corresponding ESA Guidelines.

### Article 3

Point 468 of the 2022 Guidelines is replaced by:

'ESA proposes the following appropriate measures to the EFTA States under Article 1(1) of Part I of Protocol 3 of the Surveillance and Court Agreement:

- (a) The EFTA States amend, where necessary, existing environmental protection and energy aid schemes in order to bring them into line with these guidelines no later than 31 December 2023;
- (b) The EFTA States are invited to give their explicit unconditional agreement to the proposed measures by 11 April 2022. In the absence of any reply, ESA will assume that the EFTA State in question does not agree with the proposed measures.'

Done at Brussels, 9 February 2022.

*For the EFTA Surveillance Authority*

Arne RØKSUND  
*President*  
*Responsible College Member*

Stefan BARRIGA  
*College Member*

Árni Páll ÁRNASON  
*College Member*

Melpo-Menie JOSÉPHIDÈS  
*Countersigning as Director,*  
*Legal and Executive Affairs*

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<sup>(8)</sup> 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).

<sup>(9)</sup> Commission Regulation (EC) No 794/2004 of 21 April 2004 implementing Council Regulation (EU) 2015/1589 laying down detailed rules for the application of Article 108 of the Treaty on the Functioning of the European Union (OJ L 140, 30.4.2004, p. 1).

**COMMUNICATION FROM THE COMMISSION**

**Guidelines on State aid for climate, environmental protection and energy 2022**

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## 1. INTRODUCTION

1. The Commission has made the European Green Deal a top political priority, with the aim of transforming the Union into a fair and prosperous society with a modern, resource-efficient and competitive economy, where there are no net emissions of greenhouse gases in 2050 and where economic growth is decoupled from resource use, while leaving no one behind. The climate ambitions of the Commission were reinforced in 2019 with the European Green Deal Communication <sup>(1)</sup>, setting an objective of no net emissions of greenhouse gases by 2050. In order to set our economy and society on a fair, green and prosperous path to becoming climate neutral by 2050, the Commission has also proposed to reduce net greenhouse gas emissions by at least 55 % by 2030 compared to 1990 levels <sup>(2)</sup>. Those ambitious targets have been enshrined in the European Climate Law <sup>(3)</sup>.
2. The 'Fit for 55' package of legislative proposals supports the achievement of those targets <sup>(4)</sup> and puts the Union on track to climate neutrality by 2050.
3. Delivering on the objectives of climate neutrality, climate change adaptation, resource and energy efficiency and the 'Energy Efficiency First' principle, circularity, zero pollution and recovery of biodiversity and accompanying that green transition will require significant efforts and adequate support. To achieve the ambition set out in the European Green Deal Communication, significant investment, including in renewable energy sources, will be required. The Commission has estimated that achieving the newly increased 2030 climate, energy and transport targets will require EUR 390 billion of additional annual investment compared to the levels in 2011-2020 <sup>(5)</sup>, with a further EUR 130 billion a year for the other environmental objectives estimated previously <sup>(6)</sup>. The magnitude of this investment challenge requires mobilising both the private sector and public funds in a cost-effective manner. This will affect all sectors and therefore the Union economy as a whole.

<sup>(1)</sup> Communication from the Commission to the European Parliament, the European Council, the Council, the European Economic and Social Committee and the Committee of the Regions 'The European Green Deal', COM(2019) 640 final.

<sup>(2)</sup> Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions 'Stepping up Europe's 2030 climate ambition Investing in a climate-neutral future for the benefit of our people', COM(2020) 562 final.

<sup>(3)</sup> Regulation (EU) 2021/1119 of the European Parliament and of the Council of 30 June 2021 establishing the framework for achieving climate neutrality and amending Regulations (EC) No 401/2009 and (EU) No 2018/1999 (OJ L 243, 9.7.2021, p. 1).

<sup>(4)</sup> Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions "'Fit for 55": delivering the EU's 2030 Climate Target on the way to climate neutrality', COM(2021) 550 final.

<sup>(5)</sup> [https://ec.europa.eu/info/sites/default/files/amendment-renewable-energy-directive-2030-climate-target-with-annexes\\_en.pdf](https://ec.europa.eu/info/sites/default/files/amendment-renewable-energy-directive-2030-climate-target-with-annexes_en.pdf)

<sup>(6)</sup> Communication from the Commission to the European Parliament, the Council, the European Central Bank, the European Economic and Social Committee and the Committee of the Regions 'The EU economy after COVID-19: implications for economic governance', COM(2021) 662 final.

4. Competition policy, and State aid rules in particular, has an important role to play in enabling and supporting the Union in fulfilling its Green Deal policy objectives. The European Green Deal Communication specifically states that the State aid rules will be revised to take into account those policy objectives, to support a cost-effective and just transition to climate neutrality, and to facilitate the phasing out of fossil fuels, while at the same time ensuring a level-playing field in the internal market. These guidelines reflect that revision.
5. To prevent State aid from distorting or threatening to distort competition in the internal market and affecting trade between Member States, Article 107(1) of the Treaty on the Functioning of the European Union lays down the principle that State aid is prohibited. In certain cases, however, such aid may be compatible with the internal market on the basis of Article 107(2) and (3) of the Treaty.
6. Member States must notify State aid pursuant to Article 108(3) of the Treaty, with the exception of measures that fulfil the conditions laid down in a block exemption Regulation adopted by the Commission, pursuant to Article 1 of Council Regulation (EU) 2015/1588 <sup>(7)</sup>.
7. These guidelines provide guidance on how the Commission will assess the compatibility of environmental protection, including climate protection, and energy aid measures which are subject to the notification requirement under Article 107(3), point (c), of the Treaty. Any reference to 'environmental protection' in these guidelines should be understood as a reference to environmental protection, including climate protection.
8. Under Article 107(3), point (c), of the Treaty, an aid measure may be declared compatible with the internal market provided that two conditions, one positive, one negative, are fulfilled. The positive condition is that the aid must facilitate the development of an economic activity. The negative condition is that the aid must not adversely affect trading conditions to an extent contrary to the common interest.
9. It is generally accepted that competitive markets tend to bring about efficient results in terms of prices, output and use of resources. However, State intervention may be necessary to facilitate the development of certain economic activities that would not develop at all or would not develop at the same pace or under the same conditions in the absence of aid. The intervention thereby contributes to smart, sustainable and inclusive growth.
10. In the context of environmental protection, environmental externalities, information imperfections and coordination failures mean that the costs and benefits of an economic activity might not fully be taken into account by market participants when taking consumption, investment and production decisions, in spite of regulatory interventions. Those market failures, that is to say, situations in which markets, if left to their own devices, are unlikely to produce efficient outcomes, do not lead to optimal welfare for consumers and society at large, resulting in insufficient levels of environmental protection in relation to the economic activities conducted in the absence of State support.
11. Member State authorities should ensure that the aid measure, the conditions attached to it, the procedures for adopting it and the supported activity do not contravene Union environmental law. Member State authorities should also ensure that the public concerned has the opportunity to be consulted in decision-making on aids. Finally, individuals and organisations should be given the opportunity to challenge the aid or measures implementing the aid before national courts where they can adduce evidence that the Union environmental laws are not complied with <sup>(8)</sup>.

<sup>(7)</sup> Council Regulation (EU) 2015/1588 of 13 July 2015 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to certain categories of horizontal State aid (OJ L 248, 24.9.2015, p. 1).

<sup>(8)</sup> See the Commission Notice on access to justice in environmental matters (OJ C 275, 18.8.2017, p. 1) with regard to the implementation at national level of the Aarhus Convention on access to information, public participation in decision-making and access to justice in environmental matters.

## 2. SCOPE AND DEFINITIONS

### 2.1. Scope

12. These guidelines apply to State aid granted to facilitate the development of economic activities in a manner that improves environmental protection, as well as activities in the energy sector that are governed by the Treaty, insofar as those aid measures are covered by Section 2.2 of these guidelines. These guidelines therefore also apply to those sectors which are subject to specific Union rules on State aid, unless those specific Union rules state otherwise or contain provisions on aid for environmental protection or aid in the energy sector applying to the same measure, in which case the sector specific rules prevail. These guidelines prevail over point 17(b) of the Aviation Guidelines <sup>(9)</sup> with regard to environmental aid measures in favour of large airports with a passenger volume of over 5 million per annum.
13. These guidelines do not apply to:
- (a) State aid for the design and manufacture of environmentally-friendly products, machinery, equipment or means of transport with a view to operating with fewer natural resources and action taken within plants or other production units with a view to improving safety or hygiene <sup>(10)</sup>;
  - (b) State aid for research, development and innovation which is subject to the rules set out in the Framework for State aid for research and development and innovation <sup>(11)</sup>;
  - (c) State aid covered by the rules on State aid in the agriculture and forestry sector <sup>(12)</sup> or in the fishery and aquaculture sector <sup>(13)</sup>;
  - (d) State aid for nuclear energy.
14. Aid for environmental protection and energy must not be awarded to undertakings in difficulty as defined by the Commission Guidelines on State aid for rescuing and restructuring non-financial undertakings in difficulty <sup>(14)</sup>.
15. When assessing aid in favour of an undertaking that is subject to an outstanding recovery order following a previous Commission decision declaring an aid illegal and incompatible with the internal market, the Commission will take account of the amount of aid still to be recovered <sup>(15)</sup>.

### 2.2. Aid measures covered by these guidelines

16. The Commission has identified a number of categories of environmental protection and energy measures in respect of which State aid may be compatible with the internal market under Article 107(3), point (c), of the Treaty under certain conditions:
- (a) aid for the reduction and removal of greenhouse gas emissions, including through support for renewable energy and energy efficiency;
  - (b) aid for the improvement of the energy and environmental performance of buildings;

<sup>(9)</sup> Communication from the Commission – Guidelines on State aid to airports and airlines (OJ C 99, 4.4.2014, p. 3).

<sup>(10)</sup> Environmental aid is generally less distortive and more effective if it is granted to the consumer/user of environmentally-friendly products instead of the producer/manufacturer of the environmentally-friendly product. This is without prejudice to the possibility for Member States to grant environmental aid to undertakings to enhance the level of environmental protection of their manufacturing activities.

<sup>(11)</sup> Communication from the Commission – Framework for State aid for research and development (OJ C 198, 27.6.2014, p. 1).

<sup>(12)</sup> European Union Guidelines for State aid in the agricultural and forestry sectors and in rural areas 2014 to 2020 (OJ C 204, 1.7.2014, p. 1).

<sup>(13)</sup> Communication from the Commission – Guidelines for the examination of State aid to the fishery and aquaculture sector (OJ C 217, 2.7.2015, p. 1).

<sup>(14)</sup> Communication from the Commission – Guidelines on State aid for rescuing and restructuring non-financial undertakings in difficulty (OJ C 249, 31.7.2014, p. 1).

<sup>(15)</sup> See judgment of the Court of First Instance of 13 September 1995, *TWD v Commission*, T-244/93 and T-486/93, ECLI:EU:T:1995:160, paragraph 56. See also Communication from the Commission – Commission Notice on the recovery of unlawful and incompatible State aid (OJ C 247, 23.7.2019, p. 1).

- (c) aid for the acquisition and leasing of clean vehicles (used for air, road, rail, inland waterway and maritime transport) and clean mobile service equipment and for the retrofitting of vehicles and mobile service equipment;
- (d) aid for the deployment of recharging or refuelling infrastructure for clean vehicles;
- (e) aid for resource efficiency and for supporting the transition towards a circular economy;
- (f) aid for the prevention or the reduction of pollution other than from greenhouse gases;
- (g) aid for the remediation of environmental damage, the rehabilitation of natural habitats and ecosystems, the protection or restoration of biodiversity and the implementation of nature-based solutions for climate change adaptation and mitigation;
- (h) aid in the form of reductions in taxes or parafiscal levies;
- (i) aid for the security of electricity supply;
- (j) aid for energy infrastructure;
- (k) aid for district heating and cooling;
- (l) aid in the form of reductions from electricity levies for energy-intensive users;
- (m) aid for the closure of power plants using coal, peat or oil shale and of mining operations relating to coal, peat or oil shale extraction;
- (n) aid for studies or consultancy services on matters relating to climate, environmental protection and energy.

### 2.3. Structure of the guidelines

- 17. Chapter 3 sets out the compatibility criteria that apply generally to the various categories of aid covered by these guidelines. Section 3.2.1.3.1 on cumulation applies to all categories of aid covered by these guidelines. Chapter 4 sets out specific compatibility criteria that apply to the aid measures covered by the various sections of that chapter. The compatibility criteria in Chapter 3 apply unless there are more specific provisions laid down in the dedicated specific sections in Chapter 4.
- 18. The conditions set out in these guidelines apply to aid schemes and individual aid, whether based on an aid scheme or granted ad hoc, unless otherwise specified.

### 2.4. Definitions

- 19. For the purposes of these guidelines, the following definitions apply:
  - (1) 'ad hoc aid' means aid not granted on the basis of an aid scheme;
  - (2) 'aid intensity' means the gross aid amount expressed as a percentage of the eligible costs. All figures used must be taken before any deduction of tax or other levies. Where aid is awarded in a form other than a grant, the aid amount must be the gross grant equivalent of the aid. Aid payable in several installments must be calculated at its value at the moment of granting. The interest rate to be used for discounting purposes and for calculating the aid amount in a soft loan <sup>(16)</sup> must be the reference rate applicable at the time of grant. The aid intensity is calculated per beneficiary;
  - (3) 'assisted areas' means areas which at the time of the granting of the aid are designated in an approved regional aid map in application of Articles 107(3), points (a) and (c), of the Treaty;
  - (4) 'balancing' for electricity means balancing as defined in Article 2, point (10), of Regulation (EU) 2019/943 of the European Parliament and of the Council <sup>(17)</sup>;

<sup>(16)</sup> A loan with a below-market interest rate.

<sup>(17)</sup> Regulation (EU) 2019/943 of the European Parliament and of the Council of 5 June 2019 on the internal market for electricity (OJ L 158, 14.6.2019, p. 54).

- (5) 'balance responsible party (BRP)' means balance responsible party as defined in Article 2, point (14), of Regulation (EU) 2019/943;
- (6) 'biodiversity' means biodiversity as defined in Article 2, point (15), of Regulation (EU) 2020/852 of the European Parliament and of the Council <sup>(18)</sup>;
- (7) 'biofuels' means biofuels as defined in Article 2, point (33), of Directive (EU) 2018/2001 of the European Parliament and of the Council <sup>(19)</sup>;
- (8) 'biogas' means biogas as defined in Article 2, point (28), of Directive (EU) 2018/2001;
- (9) 'bioliquids' means bioliquids as defined in Article 2, point (32), of Directive (EU) 2018/2001;
- (10) 'biomass' means the biodegradable fraction of products, waste and residues from biological origin, as defined in Article 2, point (24), of Directive (EU) 2018/2001;
- (11) 'biomass fuels' means biomass fuels as defined in Article 2, point (27), of Directive (EU) 2018/2001;
- (12) 'capacity mechanism' means capacity mechanism as defined in Article 2, point (22), of Regulation (EU) 2019/943;
- (13) 'carbon capture and storage' (CCS) means a set of technologies that make it possible to capture the carbon dioxide (CO<sub>2</sub>) emitted from industrial plants, including process-inherent emissions, or to capture it directly from ambient air, to transport it to a storage site and inject it in suitable underground geological formations for the purpose of permanent storage;
- (14) 'carbon capture and use' (CCU) means a set of technologies that make it possible to capture the CO<sub>2</sub> emitted from industrial plants, including process-inherent emissions, or to capture it directly from ambient air, and to transport it to a CO<sub>2</sub> consumption or utilisation site for full usage of that CO<sub>2</sub>;
- (15) 'CO<sub>2</sub> removal' means anthropogenic activities removing CO<sub>2</sub> from the atmosphere and durably storing it in geological, terrestrial, or ocean reservoirs, or in products. It includes existing and potential anthropogenic enhancement of biological or geochemical sinks and direct air capture and storage, but excludes natural CO<sub>2</sub> uptake not directly caused by human activities;
- (16) 'supplier obligation scheme' means a scheme in which value is created for providing goods or services by certifying those goods or services and imposing an obligation on suppliers or consumers to buy certificates;
- (17) 'clean mobile groundhandling equipment' means mobile equipment used in service activities incidental to air or maritime transport that has zero direct (tailpipe) CO<sub>2</sub> emissions;
- (18) 'clean mobile service equipment' means clean mobile terminal equipment and clean mobile groundhandling equipment;
- (19) 'clean mobile terminal equipment' means mobile equipment used for the loading, unloading and transshipment of goods and intermodal loading units, and for moving cargo within a terminal area, that has zero direct (tailpipe) CO<sub>2</sub> emissions or, in the absence of zero direct (tailpipe) CO<sub>2</sub> emission alternatives, that has significantly lower direct (tailpipe) CO<sub>2</sub> emissions than conventional terminal equipment;
- (20) 'clean vehicle' means:
  - (a) concerning two- and three-wheel vehicles and quadricycles:
    - (i) a vehicle falling within the scope of Regulation (EU) No 168/2013 that has zero tailpipe CO<sub>2</sub> emissions, calculated in accordance with the requirements laid down in Article 24 of and Annex V to that Regulation;

<sup>(18)</sup> Regulation (EU) 2020/852 of the European Parliament and of the Council of 18 June 2020 on the establishment of a framework to facilitate sustainable investment, and amending Regulation (EU) 2019/2088 (OJ L 198, 22.6.2020, p. 13).

<sup>(19)</sup> Directive (EU) 2018/2001 of the European Parliament and of the Council of 11 December 2018 on the promotion of the use of energy from renewable sources (OJ L 328, 21.12.2018, p. 82).

- (b) concerning light-duty road vehicles:
- (i) a vehicle of category M1, M2 or N1 that has zero tailpipe CO<sub>2</sub> emissions, as determined in accordance with Commission Regulation (EU) 2017/1151 <sup>(20)</sup>;
  - (ii) a clean vehicle as defined in Article 4, point (4)(a), of Directive 2009/33/EC of the European Parliament and of the Council <sup>(21)</sup>;
- (c) concerning heavy-duty road vehicles:
- (i) a zero-emission heavy-duty vehicle as defined in Article 4(5) of Directive 2009/33/EC;
  - (ii) until 31 December 2025, a low-emission heavy-duty vehicle as defined in Article 3, point (12), of Regulation (EU) 2019/1242 of the European Parliament and of the Council <sup>(22)</sup>;
  - (iii) until 31 December 2025, a clean vehicle as defined in Article 4, point (4)(b), of Directive 2009/33/EC and not falling within the scope of Regulation (EU) 2019/1242;
- (d) concerning inland waterway vessels:
- (i) an inland vessel for passenger or freight transport that has zero direct (tailpipe/exhaust) CO<sub>2</sub> emissions;
  - (ii) an inland vessel for passenger transport that has a hybrid or dual fuel engine deriving at least 50 % of its energy from zero direct (tailpipe) CO<sub>2</sub> emission fuels or plug-in power for its normal operation;
  - (iii) an inland vessel for freight transport that has direct (tailpipe) emissions of CO<sub>2</sub> per tonne kilometre (gCO<sub>2</sub>/tkm), calculated (or estimated in case of new vessels) using the International Maritime Organization Energy Efficiency Operational Indicator (EEOI), that are 50 % lower than the average reference value for emissions of CO<sub>2</sub> determined for heavy-duty vehicles (vehicle subgroup 5-LH) in accordance with Article 11 of Regulation (EU) 2019/1242;
- When assessing whether a vessel qualifies as a clean vehicle, the Commission will take into account evolutions in the sector concerned, including by referring to the technical screening criteria under which an activity qualifies as contributing substantially to climate change mitigation, as set out in the relevant delegated act under Regulation (EU) 2020/852;
- (e) concerning maritime vessels:
- (i) a sea and coastal vessel for passenger or freight transport, for port operations or for auxiliary activities that has zero direct (tailpipe) CO<sub>2</sub> emissions; or
  - (ii) a sea and coastal vessel for passenger, freight transport, for port operations or for auxiliary activities that has a hybrid or dual fuel engine deriving at least 25 % of its energy from zero direct (tailpipe) CO<sub>2</sub> emission fuels or plug-in power for its normal operation at sea and in ports or that has an attained International Maritime Organization Energy Efficiency Design Index (EEDI) value 10 % below the EEDI requirements applicable on 1 April 2022 and that is able to run on zero direct (tailpipe) CO<sub>2</sub> emission fuels or on fuels from renewable sources; or

<sup>(20)</sup> Commission Regulation (EU) 2017/1151 of 1 June 2017 supplementing Regulation (EC) No 715/2007 of the European Parliament and of the Council on type-approval of motor vehicles with respect to emissions from light passenger and commercial vehicles (Euro 5 and Euro 6) and on access to vehicle repair and maintenance information (OJ L 175, 7.7.2017, p. 1).

<sup>(21)</sup> Directive 2009/33/EC of the European Parliament and of the Council of 23 April 2009 on the promotion of clean road transport vehicles in support of low-emission mobility (OJ L 120, 15.5.2009, p. 5).

<sup>(22)</sup> Regulation (EU) 2019/1242 of the European Parliament and of the Council of 20 June 2019 setting CO<sub>2</sub> emission performance standards for new heavy-duty vehicles and amending Regulations (EC) No 595/2009 and (EU) No 2018/956 of the European Parliament and of the Council and Council Directive 96/53/EC (OJ L 198, 25.7.2019, p. 202).

- (iii) a sea and coastal vessel for freight transport that is used exclusively for operating coastal and short sea services designed to enable modal shift of freight currently transported by land to sea and that has direct (tailpipe) CO<sub>2</sub> emissions, calculated using the EEDI, that are 50 % lower than the average reference CO<sub>2</sub> emissions value defined for heavy-duty vehicles (vehicle sub group 5-LH) in accordance with Article 11 of Regulation 2019/1242;

When assessing whether a vessel qualifies as a clean vehicle, the Commission will take into account evolutions in the sector concerned, including by referring to the technical screening criteria under which an activity qualifies as contributing substantially to climate change mitigation, as set out in the relevant delegated act under Regulation (EU) 2020/852;

- (f) concerning rail rolling stock:

- (i) rolling stock that has zero direct (tailpipe) CO<sub>2</sub> emissions;
- (ii) rolling stock that has zero direct tailpipe CO<sub>2</sub> emissions when operated on a track with necessary infrastructure and that uses a conventional engine where such infrastructure is not available (bimode);

- (g) concerning aircraft:

- (i) an aircraft that has zero direct (tailpipe) CO<sub>2</sub> emissions;
- (ii) an aircraft with substantially improved environmental performance as compared to an aircraft of the same take-off mass corresponding to an alternative widely available on the market;

- (21) 'cogeneration' or combined heat and power means cogeneration as defined in Article 2, point (30), of Directive (EU) 2012/27 of the European Parliament and of the Council <sup>(23)</sup>;
- (22) 'contaminated site' means a site where there is a confirmed presence, caused by human activity, of materials or substances of such a level that they pose a significant risk to human health or the environment, taking into account current and approved future use of the land, sea bed or rivers;
- (23) 'demonstration project' means demonstration project as defined in Article 2, point (24) of Regulation (EU) 2019/943;
- (24) 'digitalisation' means the adoption of technologies carried out by electronic devices and/or systems which make it possible to increase product functionality, develop online services, modernise processes, or migrate to business models based on the disintermediation of goods production and service delivery, eventually producing a transformative impact;
- (25) 'disposal' means disposal as defined in Article 3, point 19, of Directive 2008/98/EC of the European Parliament and of the Council <sup>(24)</sup>;
- (26) 'distribution system operator' (DSO) means distribution system operator as defined in Article 2, point (29), of Directive (EU) 2019/944 of the European Parliament and of the Council <sup>(25)</sup>;
- (27) 'district heating' or 'district cooling' means district heating or district cooling as defined in Article 2, point (19), of Directive (EU) 2010/31 of the European Parliament and of the Council <sup>(26)</sup>;

<sup>(23)</sup> Directive 2012/27/EU of the European Parliament and of the Council of 25 October 2012 on energy efficiency, amending Directives 2009/125/EC and 2010/30/EU and repealing Directives 2004/8/EC and 2006/32/EC (OJ L 315, 14.11.2012, p. 1).

<sup>(24)</sup> Directive 2008/98/EC of the European Parliament and of the Council of 19 November 2008 on waste and repealing certain Directives (OJ L 312, 22.11.2008, p. 3).

<sup>(25)</sup> Directive 2019/944/EU of the European Parliament and of the Council of 5 June 2019 on common rules for the internal market for electricity and amending Directive 2012/27/EU (OJ L 158, 14.6.2019, p. 125).

<sup>(26)</sup> Directive 2010/31/EU of the European Parliament and of the Council of 19 May 2010 on the energy performance of buildings (OJ L 153, 18.6.2010, p. 13).

- (28) 'district heating and/or cooling systems' means heating and or cooling generation facilities, thermal storage and distribution network, comprising both primary- transmission- and secondary network of pipelines, to supply heating or cooling to consumers. Reference to district heating is to be interpreted as district heating and/or cooling systems, depending on whether the networks supply heating or cooling jointly or separately;
- (29) 'eco-innovation' means all forms of innovative activities, including new production processes, new products or services, and new management and business methods, resulting in or aimed at significantly improving environmental protection and significantly reducing the environmental impacts of pollution. For the purposes of this definition, the following are not considered innovations:
- (a) activities leading only to minor changes or improvements on environmental protection;
  - (b) an increase in production or service capabilities through the addition of manufacturing or logistical systems which are very similar to those already in use;
  - (c) changes in business practices, workplace organisation or external relations that are based on organisational methods already in use in the undertaking;
  - (d) changes in management strategy;
  - (e) mergers and acquisitions;
  - (f) ceasing to use a process;
  - (g) simple capital replacement or extension;
  - (h) changes resulting purely from changes in factor prices, customisation, regular seasonal and other cyclical changes;
  - (i) trading of new or significantly improved products;
- (30) 'ecosystem' means ecosystem as defined in Article 2, point (13), of Regulation (EU) 2020/852;
- (31) 'energy efficiency' means energy efficiency as defined in Article 2, point 4, of Directive 2012/27/EU;
- (32) 'energy storage' means, energy storage in the electricity system, as defined in Article 2, point 59, of Directive (EU) 2019/944;
- (33) 'energy storage facility' means, energy storage facility in the electricity system, as defined in Article 2, point 60, of Directive (EU) 2019/944;
- (34) 'efficient district heating and cooling' means efficient district heating and cooling as defined in Article 2, point (41), of Directive 2012/27/EU of the European Parliament and of the Council;
- (35) 'energy from renewable sources' means energy produced by plants using only renewable energy sources as defined in Article 2, point (1), of Directive (EU) 2018/2001, as well as the share in terms of calorific value of energy produced from renewable energy sources in hybrid plants which also use conventional energy sources and includes renewable electricity used for filling storage systems connected behind-the-meter (jointly installed or as an add-on to the renewable installation), but excludes electricity produced as a result of storage systems;
- (36) 'energy infrastructure' <sup>(27)</sup> means any physical equipment or facility which is located within the Union or linking the Union to one or more third countries and falling under the following categories:

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<sup>(27)</sup> Projects which are built for one or a small group of *ex ante* identified users and tailored to their needs ('dedicated infrastructure') do not qualify as energy infrastructure.

- (a) concerning electricity:
- (i) transmission and distribution systems, where ‘transmission’ means the transport of electricity onshore as well as offshore on the extra high-voltage and high-voltage interconnected system with a view to its delivery to final customers or to distributors, but does not include supply and ‘distribution’ means the transport of electricity onshore as well as offshore on high-voltage, medium-voltage and low-voltage distribution systems with a view to its delivery to customers, but does not include supply;
  - (ii) any equipment or installation essential for the systems referred to in point (i) to operate safely, securely and efficiently, including protection, monitoring and control systems at all voltage levels and substations;
  - (iii) fully integrated network components as defined in Article 2, point (51), of Directive (EU) 2019/944;
  - (iv) smart electricity grids, which means systems and components integrating information and communication technologies, through operational digital platforms, control systems and sensor technologies both at transmission and distribution level, aiming at a more secure, efficient and intelligent electricity transmission and distribution network, increased capacity to integrate new forms of generation, storage and consumption and facilitating new business models and market structures;
  - (v) off-shore electricity grids, which means any equipment or installation of electricity transmission or distribution infrastructure, as defined in point (i), which has dual functionality: interconnection and transmission or distribution of offshore renewable electricity from the offshore generation sites to two or more countries. This also includes smart grids as well as any offshore adjacent equipment or installation essential to operate safely, securely and efficiently, including protection, monitoring and control systems, and necessary substations if they also ensure technology interoperability and among other interface compatibility between different technologies;
- (b) concerning gas (natural gas, biogas – including biomethane – and/or renewable gas of non-biological origin):
- (i) transmission and distribution pipelines for the transport of gas that form part of a network, excluding high-pressure pipelines used for upstream distribution of natural gas;
  - (ii) underground storage facilities connected to the high-pressure gas pipelines mentioned in point (i);
  - (iii) reception, storage and regasification or decompression facilities for liquefied or compressed gas;
  - (iv) any equipment or installation essential for the system to operate safely, securely and efficiently or to enable bi-directional capacity, including compressor stations;
  - (v) smart gas grids, which means any of the following equipment or installation aiming at enabling and facilitating the integration of renewable and low-carbon gases (including hydrogen or gases of non-biological origin) into the network: digital systems and components integrating information and communication technologies, control systems and sensor technologies to enable the interactive and intelligent monitoring, metering, quality control and management of gas production, transmission, distribution and consumption within a gas network. Furthermore, smart grids may also include equipment to enable reverse flows from the distribution to the transmission level and related necessary upgrades to the existing network;

- (c) concerning hydrogen <sup>(28)</sup>:
- (i) transmission pipelines, for the high-pressure transport of hydrogen, as well as distribution pipelines for the local distribution of hydrogen, giving access to multiple network users on a transparent and non-discriminatory basis;
  - (ii) storage facilities, which means facilities used for the stocking of hydrogen of a high grade of purity, including the part of a hydrogen terminal used for storage but excluding the portion used for production operations, and including facilities reserved exclusively for hydrogen network operators in carrying out their functions. Hydrogen storage facilities include underground storage facilities connected to the high-pressure hydrogen transmission or distribution pipelines referred to in point (i);
  - (iii) dispatch, reception, regasification or decompression facilities for hydrogen or hydrogen embedded in other chemical substances with the objective of injecting the hydrogen into the grid either for gas or dedicated to hydrogen;
  - (iv) terminals, which means installations used for the transformation of liquid hydrogen into gaseous hydrogen for injection into the hydrogen network. Terminals include ancillary equipment and temporary storage necessary for the transformation process and subsequent injection into the hydrogen network, but does not include any part of the hydrogen terminal used for storage;
  - (v) interconnectors, which means a hydrogen network (or part thereof) which crosses or spans a border between Member States, or between a Member State and a third country up to the territory of the Member States or the territorial sea of that Member State;
  - (vi) any equipment or installation essential for the hydrogen system to operate safely, securely and efficiently or to enable bi-directional capacity, including compressor stations;
- (d) concerning carbon dioxide <sup>(29)</sup>:
- (i) pipelines, other than upstream pipeline networks, used to transport carbon dioxide from more than one source, that is to say, industrial installations (including power plants) that produce carbon dioxide gas from combustion or other chemical reactions involving fossil or non-fossil carbon-containing compounds, for the purpose of permanent geological storage of carbon dioxide pursuant to Article 3 of Directive 2009/31/EC of the European Parliament and of the Council <sup>(30)</sup> or for the purpose of using carbon dioxide as feedstock or to enhance the yields of biological processes;
  - (ii) facilities for liquefaction and storage of carbon dioxide in view of its transport or storage;
  - (iii) infrastructure within a geological formation used for the permanent geological storage of carbon dioxide pursuant to Article 3 of Directive 2009/31/EC and associated surface and injection facilities;
  - (iv) any equipment or installation essential for the system in question to operate properly, securely and efficiently, including protection, monitoring and control systems. This may include dedicated mobile assets for the transport and storage of carbon dioxide, provided that such mobile assets fulfil the definition of a clean vehicle;

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<sup>(28)</sup> Any of the assets listed in points (i) to (vi) concerning hydrogen may be newly constructed assets or assets converted from natural gas to hydrogen (repurposed), or a combination of the two. Assets listed under points (i) to (vi) concerning hydrogen which are subject to third party access qualify as energy infrastructure.

<sup>(29)</sup> Assets listed under points (i) to (iv) concerning carbon dioxide which are subject to third party access qualify as energy infrastructure.

<sup>(30)</sup> Directive 2009/31/EC of the European Parliament and of the Council of 23 April 2009 on the geological storage of carbon dioxide and amending Council Directive 85/337/EEC, European Parliament and Council Directives 2000/60/EC, 2001/80/EC, 2004/35/EC, 2006/12/EC, 2008/1/EC and Regulation (EC) No 1013/2006 (OJ L 140, 5.6.2009, p. 114).

- (e) infrastructure used for transmission or distribution of thermal energy in the form of steam, hot water or chilled liquids from multiple producers/users, based on use of renewable energy or waste heat from industrial applications;
  - (f) projects of common interest as defined in Article 2, point (4) of Regulation (EU) No 347/2013 of the European Parliament and of the Council <sup>(31)</sup> and projects of mutual interest referred to in Article 171 of the Treaty;
  - (g) other infrastructure categories, concerning infrastructure that enables physical or wireless connection of renewable or carbon-free energy between producers and users from multiple access and exit points and which are open to access by third parties not belonging to the infrastructure owner/manager undertakings;
- (37) 'energy performance' means energy performance of a building as defined in Article 2, point (4), of Directive 2010/31/EU;
- (38) 'energy savings' means energy savings as defined in Article 2, point (5), of Directive 2012/27/EU;
- (39) 'environmental protection' means any action or activity designed to reduce or prevent pollution, negative environmental impacts or other damage to physical surroundings (including to air, water and soil), ecosystems or natural resources by human activities, including to mitigate climate change, to reduce the risk of such damage, to protect and restore biodiversity or to lead to more efficient use of natural resources, including energy-saving measures and the use of renewable sources of energy and other techniques to reduce greenhouse gas emissions and other pollutants, as well as to shift to circular economy models to reduce the use of primary materials and increase efficiencies. It also covers actions that reinforce adaptive capacity and minimise vulnerability to climate impacts;
- (40) 'environmental tax or parafiscal levy' means a tax or levy applied on a specific tax base, products or services that have a clear negative effect on the environment or which seeks to charge certain activities, goods or services so that the environmental costs may be included in their price or so that producers and consumers are oriented towards activities which better respect the environment;
- (41) 'evaluation plan' means a document covering one or more aid schemes and containing at least the following minimum aspects:
- (a) the objectives to be evaluated,
  - (b) the evaluation questions,
  - (c) the result indicators,
  - (d) the envisaged method to conduct the evaluation,
  - (e) the data collection requirements,
  - (f) the proposed timing of the evaluation including the date of submission of the interim and the final evaluation reports,
  - (g) the description of the independent body that will carry out the evaluation or the criteria that will be used for its selection and the modalities for making the evaluation publicly available;
- (42) 'extended producer responsibility scheme' means extended producer responsibility scheme as defined in Article 2, point (21), of Directive 2008/98/EC;
- (43) 'generator' means an undertaking which produces electrical power for commercial purposes;
- (44) 'greenhouse gas' means any gas that contributes to the greenhouse effect by absorbing infrared radiation, including carbon dioxide, methane, nitrous oxide and fluorinated gases such as hydrofluorocarbons;
- (45) 'high-efficiency cogeneration' means high-efficiency cogeneration as defined in Article 2, point (34), of Directive 2012/27/EU;

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<sup>(31)</sup> Regulation (EU) No 347/2013 of the European Parliament and of the Council of 17 April 2013 on guidelines for trans-European energy infrastructure and repealing Decision No 1364/2006/EC and amending Regulations (EC) No 713/2009, (EC) No 714/2009 and (EC) No 715/2009 (OJ L 115, 25.4.2013, p. 39).

- (46) 'hydrogen network operator' means a natural or legal person who carries out the function of hydrogen network transport and is responsible for operating, ensuring the maintenance of, and, if necessary, developing the hydrogen network in a given area and, where applicable, its interconnections with other hydrogen networks, and for ensuring the long-term ability of the system to meet reasonable demands for the transport of hydrogen;
- (47) 'imbalance' means imbalance as defined in Article 2, point (8) of Commission Regulation (EU) 2017/2195;
- (48) 'imbalance settlement' means imbalance settlement as defined in Article 2, point (9) of Commission Regulation (EU) 2017/2195;
- (49) 'imbalance settlement period' means imbalance settlement period as defined in Article 2, point (15), of Regulation (EU) 2019/943;
- (50) 'individual aid' means ad hoc aid and notifiable awards of aid on the basis of an aid scheme;
- (51) 'interruptibility scheme' means a measure for security of electricity supply designed to ensure a stable frequency in the electricity system or address short term security of supply problems, including by interrupting load;
- (52) 'microenterprise', means an undertaking that fulfils the conditions for microenterprises laid down in the Commission Recommendation concerning the definition of micro, small and medium-sized enterprises <sup>(32)</sup>;
- (53) 'nature-based solution' means a solution that is inspired and supported by nature, which is cost-effective, simultaneously provides environmental, social and economic benefits and helps build resilience, and that brings more, and more diverse, nature and natural features and processes into cities, landscapes and seascapes, through locally adapted, resource-efficient and systemic interventions;
- (54) 'network congestion measure' means a measure for security of electricity supply designed to compensate for insufficiency in the electricity transmission or distribution network;
- (55) 'pollutant' means pollutant as defined in Article 2, point (10), of Regulation (EU) 2020/852;
- (56) 'polluter' means polluter as defined in the Annex, point 3 of the Council Recommendation 75/436/Euratom, ECSC, EEC <sup>(33)</sup>;
- (57) 'pollution' means pollution as defined in Article 3, point 2 of Directive 2010/75/EU of the European Parliament and of the Council <sup>(34)</sup>;
- (58) 'polluter pays principle' means that the costs of measures to deal with pollution should be borne by the polluter who causes the pollution;
- (59) 'preparing for re-use' means preparing for re-use as defined in Article 3, point 16, of Directive 2008/98/EC;
- (60) 'recharging infrastructure' means a fixed or mobile infrastructure supplying clean vehicles or clean mobile service equipment with electricity;
- (61) 'recovery' means recovery as defined in Article 3, point 15, of Directive 2008/98/EC;
- (62) 'recycling' means recycling as defined in Article 3, point 17, of Directive 2008/98/EC;
- (63) 'reference project' means an example project that is representative of the average project in a category of eligible beneficiaries for an aid scheme;

<sup>(32)</sup> Commission Recommendation of 6 May 2003 concerning the definition of micro, small and medium-sized enterprises (OJ L 124, 20.5.2003, p. 36).

<sup>(33)</sup> Council Recommendation of 3 March 1975 regarding cost allocation and action by public authorities on environmental matters (OJ L 194, 25.7.1975, p. 1).

<sup>(34)</sup> Directive 2010/75/EU of the European Parliament and of the Council of 24 November 2010 on industrial emissions (integrated pollution prevention and control) (OJ L 334, 17.12.2010, p. 17).

- (64) 'refuelling infrastructure' means fixed or mobile infrastructure for the provision of hydrogen, natural gas, in gaseous form (compressed natural gas (CNG)) and liquefied form (liquefied natural gas (LNG)), biogas and biofuels including advanced biofuels, or synthetic fuels produced from renewable or low-carbon energy;
- (65) 'rehabilitation' means environmental management actions that aim to reinstate a level of ecosystem functioning on degraded sites, where the goal is renewed and ongoing provision of ecosystem services rather than the biodiversity and integrity of a designated natural or semi-natural reference ecosystem;
- (66) 'remediation' means environmental management actions, such as the removal or detoxification of contaminants or excess nutrients from soil and water, that aims to remove sources of degradation;
- (67) 'renewable electricity' means electricity generated from renewable sources, as defined in Article 2, point (1), of Directive (EU) 2018/2001;
- (68) 'renewable energy community' means renewable energy community as defined in Article 2, point (16), of Directive (EU) 2018/2001;
- (69) 'renewable energy' means energy from renewable sources or renewable energy as defined in Article 2, point (1), of Directive (EU) 2018/2001;
- (70) 'renewable hydrogen' means hydrogen produced from renewable energy in accordance with the methodologies set out for renewable liquid and gaseous transport fuels of non-biological origin in Directive (EU) 2018/2001;
- (71) 'renewable liquid and gaseous transport fuels of non-biological origin' means renewable liquid gaseous transport fuels of non-biological origin as defined in Article 2, point (36), of Directive (EU) 2018/2001;
- (72) 'resource adequacy' means a level of generated capacity which is deemed to be adequate to meet demand levels in a bidding zone in any given period, based on the use of a conventional statistical indicator used by organisations which the Union institutions recognise as performing an essential role in the creation of a single market in electricity, for example the European Network of Transmission System Operators for Electricity (ENTSO-E);
- (73) 'resource efficiency' means reducing the quantity of inputs needed to produce a unit of output or substituting primary inputs with secondary inputs;
- (74) 'restoration' means the process of assisting the recovery of an ecosystem as a means of conserving biodiversity and increasing ecosystem resilience, notably to climate change. The restoration of ecosystems includes measures taken for the improvement of the condition of an ecosystem and the re-creation or re-establishment of an ecosystem where that condition was lost and the improvement of ecosystem resilience and adaptation to climate change;
- (75) 're-use' means re-use as defined in Article 3, point (13), of Directive 2008/98/EC and includes any operation by which products or components that are not waste are used again for purposes other than those for which they were conceived;
- (76) 'small enterprise', means an undertaking that fulfils the conditions laid down for small enterprises in the Commission Recommendation concerning the definition of micro, small and medium-sized enterprises;
- (77) 'small and medium-sized enterprise' (SME), means an undertaking that fulfils the conditions laid down in the Commission Recommendation concerning the definition of micro, small and medium-sized enterprises;
- (78) 'small mid-cap' means an undertaking that is not an SME and whose number of employees does not exceed 499, calculated in accordance with Articles 3 to 6 of Annex I to Commission Regulation (EU) No 651/2014<sup>(35)</sup>, and the annual turnover of which does not exceed EUR 100 million or the annual balance sheet of which does not exceed EUR 86 million. Several entities will be considered as one undertaking if any of the conditions listed in Article 3, point (3) of Annex I to Regulation (EU) No 651/2014 are fulfilled;

<sup>(35)</sup> Commission Regulation (EU) No 651/2014 of 17 June 2014 declaring certain categories of aid compatible with the internal market in application of Articles 107 and 108 of the Treaty (OJ L 187 26.6.2014, p. 1).

- (79) 'smart recharging' means a recharging operation in which the intensity of electricity delivered to the battery is adjusted in real-time, based on information received through electronic communication;
- (80) 'smart readiness' means the capability of buildings or building units to adapt their operation to the needs of the occupant, including optimising energy efficiency and overall performance, and to adapt their operation in response to signals from the grid;
- (81) 'standard balancing responsibilities' means non-discriminatory balancing responsibilities across technologies which do not exempt from balance responsibility any generator as set out in Article 5 of Regulation (EU) 2019/943;
- (82) 'start of works' means the first firm commitment (for example, to order equipment or start construction) that makes an investment irreversible. The buying of land and preparatory works such as obtaining permits and conducting preliminary feasibility studies are not considered as start of works. For take-overs, 'start of works' means the moment of acquiring the assets directly linked to the acquired establishment;
- (83) 'strategic reserve' means a capacity mechanism in which electricity capacity, such as generation, storage or demand response, is held outside the electricity market and only dispatched in specific circumstances;
- (84) 'total cost of ownership' means the total cost of acquiring and owning a vehicle for its lifetime, including the costs of acquiring or leasing the vehicle, fuel costs, maintenance and repair costs, insurance costs, finance costs, and taxes;
- (85) 'transmission system operator' (TSO) means transmission system operator as defined in Article 2, point (35), of Directive (EU) 2019/944;
- (86) 'vehicle' means any of the following:
- (a) a road vehicle of category M1, M2, N1, M3, N2, N3 or L;
  - (b) an inland or a sea and coastal vessel for passenger or freight transport;
  - (c) rolling stock;
  - (d) an aircraft;
- (87) 'treatment' means treatment as defined in Article 3, point 14, of Directive 2008/98/EC;
- (88) 'Union minimum tax level' means the minimum level of taxation provided for in Union law; with respect to energy products and electricity, it means the minimum level of taxation laid down in Annex I to Council Directive 2003/96/EC <sup>(36)</sup>;
- (89) 'Union standard' means:
- (a) a mandatory Union standard setting the levels to be attained in environmental terms by individual undertakings, excluding standards or targets set at Union level which are binding for Member States but not for individual undertakings;
  - (b) the obligation to use the best available techniques (BAT), as defined in Directive 2010/75/EU, and to ensure that emission levels do not exceed those that would be achieved when applying BAT; where emission levels associated with the BAT <sup>(37)</sup> have been defined in implementing acts adopted under Directive 2010/75/EU or under other applicable directives, those levels will be applicable for the purpose of these guidelines; where those levels are expressed as a range, the limit for which the BAT is first achieved for the undertaking concerned will be applicable;
- (90) 'waste' means waste as defined in Article 3, point (1), of Directive 2008/98/EC;
- (91) 'waste heat' means waste heat as defined in Article 2, point (9), of Directive (EU) 2018/2001.

<sup>(36)</sup> Council Directive 2003/96/EC of 27 October 2003 restructuring the Community framework for the taxation of energy products and electricity (OJ L 283, 31.10.2003, p. 51).

<sup>(37)</sup> This may include associated emission levels (BAT-AEL), associated energy efficiency levels (BAT-AEEL) or associated environmental performance levels (BAT-AEPL).

### 3. COMPATIBILITY ASSESSMENT UNDER ARTICLE 107(3), POINT (C), OF THE TREATY

20. These guidelines lay down the criteria for compatibility, under Article 107(3), point (c), of the Treaty, of aid measures for environmental protection, including climate protection, and energy objectives which are subject to the notification requirement in Article 108(3) of the Treaty.
21. On the basis of Article 107(3), point (c), of the Treaty, the Commission may consider compatible with the internal market State aid to facilitate the development of certain economic activities within the Union (positive condition), where such aid does not adversely affect trading conditions to an extent contrary to the common interest (negative condition).
22. When assessing whether environmental protection and energy aid can be considered compatible with the internal market under Article 107(3), point (c) of the Treaty, the Commission will analyse the following aspects:
- (a) as regards the first (positive) condition, that the aid facilitates the development of an economic activity:
    - (i) identification of the economic activity which is being facilitated by the measure, its positive effects for the society at large and, where applicable, its relevance for specific policies of the Union (see Section 3.1.1);
    - (ii) incentive effect of the aid (see Section 3.1.2);
    - (iii) absence of breach of any relevant provision of Union law (see Section 3.1.3).
  - (b) as regards the second (negative) condition that the aid does not unduly affect trading conditions to an extent contrary to the common interest:
    - (i) the need for State intervention (see Section 3.2.1.1);
    - (ii) the appropriateness of the aid (see Section 3.2.1.2);
    - (iii) the proportionality of the aid (aid limited to the minimum necessary to attain its objective) including cumulation (see Section 3.2.1.3);
    - (iv) the transparency of the aid (see Section 3.2.1.4);
    - (v) avoidance of undue negative effects of the aid on competition and trade (see Section 3.2.2);
    - (vi) weighing up the positive and negative effects of the aid (see Section 3.3).

#### 3.1. **Positive condition: the aid must facilitate the development of an economic activity**

3.1.1. *Identification of the economic activity which is being facilitated by the measure, its positive effects for society at large and, where applicable, its relevance for specific policies of the Union*

23. When notifying aid, Member States must identify the economic activities that will be facilitated as a result of the aid and how the development of those activities is supported.
24. Aid to prevent or reduce the negative effects of economic activities on climate or the environment can facilitate the development of economic activities by increasing the sustainability of the economic activity concerned. The aid can also ensure that the activity can continue in the future without creating disproportionate environmental damage and by supporting the creation of new economic activities and services (supporting the development of the so-called 'green economy').
25. Member States must also describe if and how the aid will contribute to the achievement of objectives of Union climate policy, environmental policy and energy policy and more specifically, the expected benefits of the aid in terms of its material contribution to environmental protection, including climate change mitigation, or the efficient functioning of the internal energy market.

### 3.1.2. Incentive effect

26. Aid can be considered as facilitating an economic activity only if it has an incentive effect. An incentive effect occurs when the aid induces the beneficiary to change its behaviour, to engage in additional economic activity or in more environmentally-friendly economic activity, which it would not carry out without the aid or would carry out in a restricted or different manner.
27. The aid must not support the costs of an activity that the aid beneficiary would anyhow carry out and must not compensate for the normal business risk of an economic activity <sup>(38)</sup>.
28. Proving an incentive effect entails the identification of the factual scenario and the likely counterfactual scenario in the absence of aid <sup>(39)</sup>. The Commission will examine this based on the quantification referred to in Section 3.2.1.3.
29. The Commission considers that aid does not have an incentive effect for the beneficiary in cases where the start of works on the project or activity took place prior to a written aid application by the beneficiary to the national authorities. In cases where the beneficiary starts implementing a project before applying for aid, any aid granted in respect of that project will, in principle, not be considered compatible with the internal market.
30. The aid application may take various forms, including for example a bid in a competitive bidding process. Any application must at least include the applicant's name, a description of the project or activity, including its location, and the amount of aid needed to carry it out.
31. In certain exceptional cases, aid can have an incentive effect even for projects which started before the aid application. In particular, aid is considered to have an incentive effect in the following situations:
  - (a) the aid is granted automatically in accordance with objective and non-discriminatory criteria and without further exercise of discretion by the Member State, and the measure has been adopted and is in force before work on the aided project or activity has started, except in the case of fiscal successor schemes, where the activity was already covered by the previous schemes in the form of tax advantages;
  - (b) the national authorities have published, before the start of works, a notice of their intention to establish the proposed aid measure, conditional upon the Commission's approval of the measure as required by Article 108(3) of the Treaty. That notice must be made available on a public website or other publicly accessible media with comparably broad and easy access and clearly state the type of projects that the Member State proposes to be eligible and the point in time from which the Member State intends to consider such projects eligible. The proposed eligibility must not be unduly limited. The beneficiary must have informed the granting authority prior to the start of works that the proposed aid measure was considered as a condition for the investment decisions taken. Where it relies upon such a notice to demonstrate an incentive effect, the Member State must provide, as part of its State aid notification, a copy of the notice and a link to the website on which it was published or respective proof of its availability to the public;

<sup>(38)</sup> See judgment of the Court of Justice of 13 June 2013, *HGA and others v Commission*, C-630/11 P to C-633/11 P, ECLI:EU:C:2013:387, paragraph 104.

<sup>(39)</sup> That scenario must be credible, genuine and related to decision-making factors prevalent at the time of the decision by the aid beneficiary regarding the project. Member States are invited to draw on official board documents, risk assessments, financial report, internal business plans, expert opinions and other studies related to the project under assessment. Documents containing information on demand forecasts, costs forecasts, financial forecasts, documents submitted to an investment committee and that elaborate on investment/operation scenarios, or documents provided to the financial institutions could help Member States to demonstrate the incentive effect. Those documents need to be contemporary to the decision making process concerning the investment/operation decision.

- (c) operating aid granted to existing installations for environmentally-friendly production where there is no 'start of works' because there is no significant new investment. In these cases, the incentive effect can be demonstrated by a change to operate the installation in an environmentally-friendly way rather than an alternative cheaper mode of operation that is less environmentally friendly.
32. The Commission considers that aid granted merely to cover the cost of adapting to Union standards has, in principle, no incentive effect. As a general rule, only aid to go beyond Union standards can have an incentive effect. However, in cases where the relevant Union standard has already been adopted but is not yet in force, aid can have an incentive effect if it incentivises the investment to be implemented and finalised at least 18 months before the standard enters into force, unless otherwise indicated in the Sections 4.1 to 4.13. In order not to discourage Member States from setting mandatory national standards that are more stringent or ambitious than the corresponding Union standards, aid measures may have an incentive effect irrespective of the presence of such national standards. The same is true of aid granted in the presence of mandatory national standards adopted in the absence of Union standards.
- 3.1.3. *No breach of any relevant provision of Union law*
33. If the supported activity, or the aid measure or the conditions attached to it, including its financing method when it forms an integral part of the measure, entail a violation of relevant Union law, the aid cannot be declared compatible with the internal market. This may be the case, for instance, where the aid is subject to clauses conditioning it directly or indirectly on the origin of products or equipment, such as requirements for the beneficiary to purchase domestically-produced products.
- 3.2. **Negative condition: the aid measure must not unduly affect trading conditions to an extent contrary to the common interest**
- 3.2.1. *Minimisation of distortions of competition and trade*
- 3.2.1.1. *Necessity of the aid*
34. The proposed State aid measure must be targeted towards a situation where it can bring about a material development that the market alone cannot deliver, for example by remedying market failures in relation to the projects or activities for which the aid is awarded. Whilst it is generally accepted that competitive markets tend to bring about efficient results in terms of development of economic activities, prices, output and use of resources, in the presence of market failures, public intervention in the form of State aid may improve the efficient functioning of markets and thereby contribute to the development of an economic activity to the extent that the market on its own fails to deliver an efficient outcome. The Member State should identify the market failures preventing the achievement of a sufficient level of environmental protection or an efficient internal energy market. The main market failures related to environmental protection and energy which can prevent the optimal outcome and can lead to an inefficient outcome are:
- (a) Negative externalities: they are most common for environmental aid measures and arise when pollution is not adequately priced, that is to say, the undertaking concerned does not face the full cost of pollution. In this case, undertakings acting in their own interest may have insufficient incentives to take the negative externalities arising from their economic activity into account either when they choose a particular technology or when they decide on the output level. In other words, the costs that are borne by the undertaking do not fully reflect the costs borne by consumers and society at large. Therefore undertakings typically have insufficient incentive to reduce their level of pollution or to take individual measures to protect the environment.
- (b) Positive externalities: the fact that part of the benefit from an investment will accrue to market participants other than the investor, may lead undertakings to underinvest. Positive externalities may occur for instance in the case of investments in eco-innovation, system stability, new and innovative renewable technologies and innovative demand-response measures or in the case of energy infrastructures or security of electricity supply measures that benefit many Member States or a wider number of consumers.

- (c) Asymmetric information: this typically arises in markets where there is a discrepancy between the information available to one side of the market and the information available to the other side of the market. This could, for instance, occur where external financial investors have a lack of information about the likely returns and risks of a project. It may also come up in cross-border infrastructure collaboration where one party has an information disadvantage compared to the other party. Although risk or uncertainty do not in themselves lead to the presence of a market failure, the problem of asymmetric information is linked to the degree of such risk and uncertainty. Both tend to be higher for environmental investments with a typically longer amortisation period, reinforcing a focus on a short-term horizon that could be aggravated by financing conditions for such investments in particular for SMEs.
- (d) Coordination failures: this may prevent the development of a project or its effective design due to diverging interests and incentives among investors, so called 'split incentives', the costs of contracting or liability insurance arrangements, uncertainty about the collaborative outcome and network effects, for example uninterrupted supply of electricity. These coordination failures can arise, for example, in the relationship between a building owner and a tenant in respect of energy efficient solutions. Coordination failures may be further exacerbated by information problems, in particular those related to asymmetric information. Coordination failures may also stem from the need to reach a certain critical mass before it is commercially attractive to start a project, which may be a particularly relevant aspect in (cross-border) infrastructure projects.
35. The mere existence of market failures in a certain context is, however, not sufficient to prove the necessity of State aid. Other policies and measures may already be in place to address some of the identified market failures. Examples include sectorial regulation, mandatory Union pollution standards, supply obligations, pricing mechanisms such as the Union's Emissions Trading System (ETS) and carbon taxes. Additional measures, including State aid, may only be directed at residual market failures, that is to say those that remain unaddressed by such other policies and measures. It is important also to show how State aid reinforces other policies and measures in place that aim at remedying the same market failures. Therefore, demonstrating that State aid is necessary is more difficult if it counteracts other policies targeted at the same market failures. The Member State should therefore also identify any existing policies and measures that already target the identified regulatory or market failures.
36. The Commission will consider that aid is necessary if the Member State demonstrates that it effectively targets residual market failures, also taking into account any other policies and measures already in place to address some of the market failures identified.
37. Where State aid is awarded for projects or activities which, with respect to their technological content, level of risk and size, are similar to those already delivered within the Union at market conditions, the Commission will, in principle, presume that no market failure is present and will require further evidence to demonstrate the need for State aid.
38. To demonstrate the necessity of aid, the Member State must show that the project, or in the case of schemes, the reference project, would not be carried out without the aid. The Commission will assess this based on the quantification referred to in Section 3.2.1.3 or specific evidence-based analysis submitted by the Member State showing the necessity of the aid.

#### 3.2.1.2. Appropriateness

39. The proposed aid measure must be an appropriate policy instrument to achieve the intended objective of the aid, that is to say there must not be a less distortive policy and aid instrument capable of achieving the same results.

### 3.2.1.2.1. Appropriateness among alternative policy instruments

40. State aid is not the only policy instrument available to Member States to promote increased levels of environmental protection or to ensure an efficient internal energy market. There may be other, more appropriate instruments available, such as market-based instruments or demand-side measures involving regulation, compliance with the energy efficiency first principle<sup>(40)</sup>, public procurement or standardisation, as well as an increase in funding of public infrastructure and general fiscal measures. Soft instruments, such as voluntary eco-labels and the dissemination of environmentally-friendly technologies may also play an important role in achieving a higher level of environmental protection<sup>(41)</sup>.
41. Different measures to remedy the same market failure may counteract each other. This is the case where an efficient, market-based mechanism has been put in place to specifically counter the problem of externalities, as for instance the Union's ETS. An additional support measure to address the same market failure risks undermining the efficiency of the market-based mechanism. Therefore, when an aid scheme aims at addressing residual market failures, the aid scheme must be designed in such a way as to not undermine the efficiency of the market-based mechanism.
42. Compliance with the 'polluter pays' principle through environmental legislation aims at ensuring that a market failure linked to negative externalities will be rectified. Therefore, State aid is not an appropriate instrument and cannot be granted insofar as the beneficiary of the aid could be held liable for the pollution under existing Union or national law.

### 3.2.1.2.2. Appropriateness among different aid instruments

43. State aid for environmental protection and energy can be awarded in various forms. The Member State should, however, ensure that the aid is awarded in the form that is likely to generate the least distortion of trade and competition.
44. In that respect, the Member State is required to demonstrate why other potentially less distortive forms of aid are less appropriate, such as: repayable advances as compared to direct grants; tax credits as compared to tax reductions; or forms of aid that are based on financial instruments, such as debt as compared to equity instruments, including, for example, low-interest loans or interest rebates, State guarantees, or an alternative provision of financing on favourable terms.
45. The choice of the aid instrument should be appropriate to the market failure that the aid measure aims to address. Where the actual revenues are uncertain, for instance in the case of energy saving measures, a repayable advance may constitute the most appropriate instrument.

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<sup>(40)</sup> According to that principle, Member States are to take utmost account in energy planning, and in policy and investment decisions, of alternative cost-efficient energy efficiency measures to make energy demand and energy supply more efficient, in particular by means of cost-effective end-use energy savings, demand response initiatives and more efficient conversion, transmission and distribution of energy, whilst still achieving the objectives of those decisions. See Regulation (EU) 2018/1999 of the European Parliament and of the Council of 11 December 2018 on the Governance of the Energy Union and Climate Action, amending Regulations (EC) No 663/2009 and (EC) No 715/2009 of the European Parliament and of the Council, Directives 94/22/EC, 98/70/EC, 2009/31/EC, 2009/73/EC, 2010/31/EU, 2012/27/EU and 2013/30/EU of the European Parliament and of the Council, Council Directives 2009/119/EC and (EU) 2015/652 and repealing Regulation (EU) No 525/2013 of the European Parliament and of the Council (OJ L 328, 21.12.2018, p. 1).

<sup>(41)</sup> The use of environmental labels and claims on products can be another means to allow consumers/users to make informed purchasing decisions, and to increase demand for environmental friendly products. When well designed, recognised, understood, trusted and perceived by relevant consumers, robust environmental labels and truthful environmental claims can be a powerful tool to guide and shape (consumer) behaviour towards more environmentally-friendly choices. Using a reputable labelling/certification scheme with clear criteria and subject to external (third-party) verification will be one of the most effective ways for businesses to demonstrate to consumers and stakeholders that they are meeting high environmental standards. In this light, the Commission does not include specific rules concerning aid for the design and manufacture of environmentally-friendly products in the scope of these guidelines.

46. The Member State must demonstrate that the aid and its design are appropriate to achieve the objective of the measure at which the aid is targeted.

### 3.2.1.3. Proportionality

47. Aid is considered to be proportionate if the aid amount per beneficiary is limited to the minimum needed for carrying out the aided project or activity.
48. As a general principle, aid will be considered as limited to the minimum needed for carrying out the aided project or activity if the aid corresponds to the net extra cost ('funding gap') necessary to meet the objective of the aid measure, compared to the counterfactual scenario in the absence of aid. The net extra cost is determined by the difference between the economic revenues and costs (including the investment and operation) of the aided project and those of the alternative project which the aid beneficiary would credibly carry out in the absence of aid.
49. A detailed assessment of the net extra cost will not be required if the aid amounts are determined through a competitive bidding process, because it provides a reliable estimate of the minimum aid required by potential beneficiaries <sup>(42)</sup>. Therefore, the Commission considers that the proportionality of the aid is ensured if the following criteria are fulfilled:
- (a) the bidding process is competitive, namely: it is open, clear, transparent and non-discriminatory, based on objective criteria, defined *ex ante* in accordance with the objective of the measure and minimising the risk of strategic bidding;
  - (b) the criteria are published sufficiently far in advance of the deadline for submitting applications to enable effective competition <sup>(43)</sup>;
  - (c) the budget or volume related to the bidding process is a binding constraint in that it can be expected that not all bidders will receive aid, the expected number of bidders is sufficient to ensure effective competition, and the design of undersubscribed bidding processes during the implementation of a scheme is corrected to restore effective competition in the subsequent bidding processes or, failing that, as soon as appropriate;
  - (d) *ex post* adjustments to the bidding process outcome (such as subsequent negotiations on bid results or rationing) are avoided as they may undermine the efficiency of the process's outcome.
50. The selection criteria used for ranking bids and, ultimately, for allocating the aid in the competitive bidding process should as a general rule put the contribution to the main objectives of the measure in direct or indirect relation with the aid amount requested by the applicant. This may be expressed, for example, in terms of aid per unit of environmental protection or aid per unit of energy <sup>(44)</sup>. It may also be appropriate to include other selection criteria that are not directly or indirectly related to the main objectives of the measure. In such cases, these other criteria must account for not more than 30 % of the weighting of all the selection criteria. The Member State must provide reasons for the proposed approach and ensure it is appropriate to the objectives pursued.

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<sup>(42)</sup> However, in case there is a possibility of 'zero subsidy bids' Member States should explain how proportionality will be ensured. Zero subsidy bids can arise for example because market revenues are projected to rise over time and/or because successful bidders receive concessions or other benefits as well as price-support. Price floors or caps that constrain the competitive process undermining proportionality, even if at zero, should be avoided.

<sup>(43)</sup> Six weeks will usually be sufficient. For particularly complex or novel processes this may need to be longer. In justified cases, for example with simple or regular/repeated processes, a shorter duration may be appropriate.

<sup>(44)</sup> When assessing units of environmental protection, Member States may for instance develop a methodology that accounts for emissions or other pollution at different stages of the supported economic activity, project realisation time or system integration costs. When putting the contribution to the main objectives in relation with the aid amount requested, Member States may for instance weigh the various objective criteria and select on the basis of aid amount per unit of the weighted average of the objective criteria, or select among a limited range of bids with the lowest aid amount per unit of the objective criteria the ones with highest scores on the objective criteria. The parameters of any such approach must be calibrated to ensure that the bidding process remains non-discriminatory, effectively competitive and reflects economic value.

51. Where the aid is not granted under a competitive bidding process, the net extra cost must be determined by comparing the profitability of the factual and counterfactual scenarios. To determine the funding gap in such cases, the Member State must submit a quantification, for the factual scenario and a credible counterfactual scenario, of all main costs and revenues, the estimated weighted average cost of capital (WACC) of the beneficiaries to discount future cash flows, as well as the net present value (NPV) for the factual and counterfactual scenarios, over the lifetime of the project. The Commission will verify whether this counterfactual is realistic <sup>(45)</sup>. The Member State must provide reasons for the assumptions used for each aspect of the quantification, and explain and justify any methodologies applied. The typical net extra cost can be estimated as the difference between the NPV for the factual scenario and for the counterfactual scenario over the lifetime of the reference project.
52. A counterfactual scenario may consist in the beneficiary not carrying out an activity or investment, or continuing its business without changes. Where evidence supports that this is the most likely counterfactual, the net extra cost may be approximated by the negative NPV of the project in the factual scenario without aid over the lifetime of the project (hence, implicitly assuming that the NPV of the counterfactual is zero) <sup>(46)</sup>. In particular, this can be the case for infrastructure projects.
53. For cases of individual aid and schemes benefitting a particularly limited number of beneficiaries, the calculations and projections in point 51 need to be presented at the level of the detailed project business plan, and for aid schemes on the basis of one or more reference projects. Similarly, if point 52 applies, the supporting evidence needs to be presented at the level of the detailed project business plan, and for aid schemes on the basis of one or more reference projects.
54. In certain circumstances, it may be difficult to fully identify the benefits and costs to the beneficiary and hence to quantify the NPV in the factual and counterfactual scenarios. Alternative approaches for those cases may be applied, as detailed in Chapter 4 for specific types of aid. In those cases, aid may be deemed proportionate where the aid amount does not exceed the maximum aid intensity.
55. Where a competitive bidding process is not used and future developments in costs and revenues are surrounded by a high degree of uncertainty and there is a strong asymmetry of information, the Member State may be required to introduce compensation models that are not entirely *ex ante*. Instead, these models will be a mix of *ex ante* and *ex post* or introduce *ex post* claw-back or cost monitoring mechanisms, while keeping incentives for the beneficiaries to minimise their costs and develop their business in a more efficient manner over time.

#### 3.2.1.3.1. Cumulation

56. Aid may be awarded concurrently under several aid schemes or cumulated with ad hoc or *de minimis* aid in relation to the same eligible costs, provided that the total amount of aid for a project or an activity does not lead to overcompensation or exceed the maximum aid amount allowed under these guidelines. If the Member State allows aid under one measure to be cumulated with aid under other measures, then it must specify, for each measure, the method used for ensuring compliance with the conditions set out in this point.

<sup>(45)</sup> A counterfactual that proposes as alternative investment/operation scenario a continuation in the long term of current non-environmentally sustainable activities will not be considered realistic.

<sup>(46)</sup> In the absence of an alternative project, the Commission will verify that the aid amount does not exceed the minimum necessary for the aided project to be sufficiently profitable, for example by making possible to achieve an IRR corresponding to the sector or firm specific benchmark or hurdle rate. Normal rates of return required by the beneficiary in other investment projects of a similar kind, its cost of capital as a whole or returns commonly observed in the industry concerned may also be used for this purpose. All relevant expected costs and benefits must be considered over the lifetime of the project.

57. Centrally managed Union funding that is not directly or indirectly under the control of the Member State, does not constitute State aid. Where such Union funding is combined with State aid, it has to be ensured that the total amount of public funding granted in relation to the same eligible costs does not lead to overcompensation.

#### 3.2.1.4. Transparency

58. To reduce negative effects by ensuring competitors have access to relevant information about supported activities, the Member State concerned must ensure the publication, in the Commission's transparency award module <sup>(47)</sup> or on a comprehensive State aid website, at national or regional level, of:
- (a) the full text of the approved aid scheme or the individual aid granting decision and its implementing provisions, or a link to it;
  - (b) information on each individual aid award granted ad hoc or under an aid scheme approved on the basis of these guidelines and exceeding EUR 100 000 <sup>(48)</sup>.
59. Member States must organise their comprehensive State aid websites, on which the information required by this Section is to be published, in such a way as to allow easy access to the information. Information must be published in a non-proprietary spreadsheet data format, which allows data to be effectively searched, extracted, downloaded and easily shared on the internet, for instance in CSV or XML format. The general public must have access to the website without restrictions. No prior user registration must be required to access the website.
60. For schemes in the form of tax or parafiscal levy advantages, the conditions set out in point 58(b) will be considered to be fulfilled if Member States publish the required information on individual aid amounts in the following ranges (in EUR million):
- 0,1-0,5;
  - 0,5-1;
  - 1-2;
  - 2-5;
  - 5-10;
  - 10-30;
  - 30-60;
  - 60-100;
  - 100-250;
  - 250 and more.
61. The information referred to in point 58(b) must be published within six months from the date the aid was granted, or for aid in the form of tax advantages, within one year from the date the tax declaration is due <sup>(49)</sup>. In the case of unlawful but compatible aid, Member States will be required to ensure the publication of this information *ex post* within six months from the date of the Commission's decision declaring the aid compatible. In order to allow the enforcement of State aid rules under the Treaty, the information must be available for at least 10 years from the date on which the aid was granted.

<sup>(47)</sup> State Aid Transparency Public Search, available at: <https://webgate.ec.europa.eu/competition/transparency/public?lang=en>.

<sup>(48)</sup> Upon a Member State's duly substantiated request, this requirement may be waived in case full detailed publication would undermine competition in subsequent allocation processes, for instance by allowing for strategic bidding.

<sup>(49)</sup> Where there is no formal requirement for an annual declaration, 31 December of the year for which the aid was granted will be considered as the granting date for encoding purposes.

62. The Commission will publish on its website the links to the State aid websites referred to in point 59.

3.2.2. *Avoidance of undue negative effects on competition and trade*

63. Article 107(3), point (c), of the Treaty allows the Commission to declare aid to facilitate the development of certain economic activities or of certain economic areas compatible, but only 'where such aid does not adversely affect trading conditions to an extent contrary to the common interest'.

64. The application of this negative condition requires, first, an assessment of the distortive effect of the aid in question on trading conditions. By its very nature, any aid measure will generate or threaten to generate distortions of competition and have an effect on trade between Member States as it reinforces the competitive position of the beneficiaries, even if the aid measure is necessary, appropriate, proportionate and transparent.

65. Aid for environmental purposes will, by its very nature, tend to favour environmentally-friendly products and technologies at the expense of other, more polluting ones and that effect of the aid will, in principle, not be viewed as an undue distortion of competition, since it addresses market failures that make the aid necessary. In addition, support for climate friendly products and technologies are conducive to the achievement of the European Climate Law objectives for 2030 and 2050. For measures for environmental protection, the Commission will therefore consider the distortive effects on competitors that likewise operate on an environmentally-friendly basis, even without aid.

66. The Commission considers that schemes open to a broader range of potential beneficiaries have or are likely to have a more limited distortive effect on competition than support targeted at a limited number of specific beneficiaries only, in particular where the scope of the aid measure includes all competitors willing to deliver the same service, product or benefit.

67. State aid for environmental and energy objectives may have the unintended effect of undermining market rewards to the most efficient, innovative producers as well as incentives for the least efficient ones to improve, restructure or exit the market. This may also result in inefficient barriers to the entry of more efficient or innovative potential competitors. In the long term, such distortions may stifle innovation, efficiency and the adoption of cleaner technologies. These distortive effects can be particularly important when the aid is granted to projects that provide a limited transitory benefit but lock out cleaner technologies for a longer term, including those necessary to achieve the medium-term and long-term climate targets enshrined under the European Climate Law. This can, for example, be the case for support to certain activities using fossil fuels that provide an immediate reduction of greenhouse gas emissions, but lead to slower emissions reductions in the long term. All other things being equal, the closer the aided investment is in time to the relevant target date, the greater the likelihood that its transitory benefits may be outweighed by the possible disincentives for cleaner technologies. The Commission will therefore take into account these possible short and long-term negative effects on competition and trade in its assessment.

68. Aid may also distort competition by strengthening or maintaining substantial market power of the beneficiary. Even where aid does not strengthen substantial market power directly, it may do so indirectly, by discouraging the expansion of existing competitors or inducing their exit or discouraging the entry of new competitors. This needs to be taken into account, in particular where the support measure is targeted at a limited number of specific beneficiaries or where incumbents gained market power prior to market liberalisation, as is for instance sometimes the case in energy markets. This is also relevant in competitive bidding processes in nascent markets, when there is a risk that a player with a strong market position succeeds in most bids and prevents significant new entry.

69. Apart from distortions on the product markets, aid may also give rise to effects on trade and location choice. Those distortions can arise across Member States, either when undertakings compete across borders or when they consider different locations for investment. Aid aimed at preserving economic activity in one region or attracting it away from other regions within the internal market may displace activities or investments from one region into another without any net environmental impact. The Commission will verify that the aid does

not result in any manifestly negative effects on competition and trade. For example, aid for environmental and energy objectives that merely leads to a change in location of the economic activity without improving the existing level of environmental protection in the Member States will not be considered compatible with the internal market.

70. The Commission will approve measures under these guidelines for a maximum period of 10 years, though this may be further limited in some cases (see point (76)). If a Member State wishes to extend the duration of the measure beyond that maximum period, it can re-notify the measure. That means aid could be granted under approved measures within a maximum period of 10 years from the date of the notification of the Commission's decision declaring the aid compatible.

### 3.3. Weighing the positive effects of the aid against the negative effects on competition and trade

71. As a final step, the Commission will balance the identified negative effects on competition and trading conditions of the aid measure with the positive effects of the planned aid on the supported economic activities, including its contribution to environmental protection and objectives of energy policy and, more particularly, to transition towards environmentally-sustainable activities and to the achievement of the legally binding targets under the European Climate Law and the Union's 2030 targets for energy and climate.
72. In that balancing exercise, the Commission will pay particular attention to Article 3 of Regulation (EU) 2020/852, including the 'do no significant harm' principle<sup>(50)</sup>, or other comparable methodologies. Furthermore, as part of the assessment of the negative effects on competition and trade, the Commission will take into account, where relevant, negative externalities of the aided activity where such externalities adversely affect competition and trade between Member States to an extent contrary to the common interest by creating or aggravating market inefficiencies including in particular those externalities that may hinder the achievement of climate objectives set under Union law<sup>(51)</sup>.
73. The Commission will consider an aid measure compatible with the internal market only where the positive effects outweigh the negative effects. In cases where the proposed aid measure does not address a well-identified market failure in an appropriate and proportionate way, for example due to the transitory nature of the benefit and the long term distortions it entails as set out in point 67, the negative distortive effects on competition will tend to outweigh the positive effects of the measure. The Commission will therefore be likely to conclude that the proposed aid measure is incompatible.
74. Measures that directly or indirectly involve support to fossil fuels, in particular the most polluting fossil fuels, are unlikely to create positive environmental effects and often have important negative effects because they can increase the negative environmental externalities in the market. The same applies for measures involving new investments in natural gas, unless it is demonstrated that there is no lock-in effect<sup>(52)</sup>. This will in principle render a positive balancing for such measures unlikely, as further explained in Chapter 4.

<sup>(50)</sup> For measures which are identical to measures within Recovery and Resilience Plans as approved by the Council, their compliance with the 'Do no significant harm' principle is considered fulfilled as this has already been verified.

<sup>(51)</sup> This could also be the case where the aid distorts the operation of economic instruments put in place to internalise such negative externalities (for example, by affecting price signals given by the Union ETS or a similar instrument).

<sup>(52)</sup> For example, this may be based on a national decarbonisation plan with binding targets and/or may include binding commitments by the beneficiary to implement decarbonisation technologies such as CCS/CCU or replace natural gas with renewable or low-carbon gas or to close the plant on a timeline consistent with the Union's climate targets. To meet the Union's 2030 and 2050 climate targets, there needs to be a clear downward trajectory for all fossil fuels including natural gas. The Commission's impact assessment produced for the 2030 climate target plan explains that, by 2050, 'the unabated use of natural gas will become incompatible with the climate-neutrality objective and its use [must] be reduced by 66 – 71 % compared to 2015' (SWD(2020) 176 final).

75. The Commission will generally look favourably at measures' features proposed by Member States to facilitate the participation of SMEs and, where relevant, renewable energy communities in competitive bidding processes, provided that the positive effects of ensuring participation and acceptance outweigh the possible distortive effects.
76. Further factors to be taken into account to determine the overall balance of certain categories of aid schemes in certain cases are:
- (a) a requirement of *ex post* evaluation as described in Chapter 5; in such cases, the Commission may limit the duration of the schemes (normally to four years or less) with a possibility to re-notify their extension afterwards;
  - (b) a requirement – in the absence of a competitive bidding process – to individually notify support projects of a certain size or presenting certain characteristics;
  - (c) a requirement that aid measures be subject to a time limitation.

#### 4. CATEGORIES OF AID

##### 4.1. **Aid for the reduction and removal of greenhouse gas emissions including through support for renewable energy and energy efficiency**

###### 4.1.1. *Rationale*

77. In the European Climate Law, the Union has set binding and ambitious greenhouse gas emissions reduction targets for 2030 and 2050. In Regulation (EU) 2018/1999, the Union has set out the Union's 2030 targets for energy and climate. In the Energy Efficiency Directive, the Union has set binding energy efficiency targets for 2030. State aid may be necessary to contribute to the achievement of those Union targets and related national contributions.

###### 4.1.2. *Scope and supported activities*

78. Section 4.1 lays down the compatibility rules for measures for energy from renewable sources, including aid for the production of renewable energy or synthetic fuels produced using renewable energy. It also lays down the compatibility rules for aid measures involving a wide range of other technologies primarily aimed at reducing greenhouse gas emissions<sup>(53)</sup>.

###### 4.1.2.1. Aid for renewable energy

79. This Section lays down the compatibility rules for measures to support all types of renewable energy.
80. Support for biofuels, bioliquids, biogas (including biomethane) and biomass fuels can only be approved to the extent that the aided fuels are compliant with the sustainability and greenhouse gases emissions saving criteria in Directive (EU) 2018/2001 and its implementing or delegated acts.
81. Aid for energy generation from waste may be found compatible under this section to the extent it is limited to waste that falls under the definition of renewable energy sources.
82. Aid for the production of renewable hydrogen<sup>(54)</sup> may be assessed under this Section.

<sup>(53)</sup> This covers both brownfield and greenfield investments.

<sup>(54)</sup> This includes on-grid electrolysers that have concluded renewables power purchase agreements with economic operators producing renewable electricity that fulfil the conditions set out in the Commission Delegated Regulation adopted pursuant to Article 27(3) Directive (EU) 2018/2001.

#### 4.1.2.2. Other aid for the reduction and removal of greenhouse gas emissions and energy efficiency

83. All technologies that contribute to the reduction of greenhouse gas emissions are in principle eligible, including aid for the production of low-carbon energy or synthetic fuels produced using low-carbon energy, aid for energy efficiency including high-efficiency cogeneration, aid for CCS/CCU, aid to demand response and energy storage where this reduces emissions, and aid for the reduction or avoidance of emissions resulting from industrial processes, including the processing of raw materials. It also covers support for the removal of greenhouse gases from the environment. This Section does not apply to measures whose primary objective is not the reduction or removal of greenhouse gas emissions. Where a measure contributes to both the reduction of greenhouse gas emissions and the prevention or reduction of pollution other than from greenhouse gas emissions, the compatibility of the measure will be assessed on the basis of this Section or Section 4.5, depending on which of the two objectives is predominant.
84. This Section also covers dedicated infrastructure projects (including for hydrogen, other low-carbon gases and carbon dioxide for storage/use) that do not fall under the definition of energy infrastructure, as well as projects encompassing a dedicated infrastructure or energy infrastructure, or both, combined with either production or consumption/use.
85. To the extent that aid facilitates investments to improve the energy performance of industrial activities, this Section also applies to aid to SMEs and small mid-caps that are providers of energy performance improvement measures, for the facilitation of energy performance contracting within the meaning of Article 2, point (27), of Directive 2012/27/EU.
86. Aid for energy generation from waste may be found compatible under this Section to the extent it is limited to waste used to fuel installations that fall under the definition of high-efficiency cogeneration.
87. Aid for the production of low-carbon hydrogen may be assessed under this Section.
88. Aid to support electrification using renewable electricity and/or low-carbon electricity may also be assessed under this Section, including support for heating and industrial processes.

#### 4.1.3. *Minimisation of distortions of competition and trade*

##### 4.1.3.1. Necessity of the aid

89. Points 34 to 37 do not apply to measures for the reduction of greenhouse gas emissions. The Member State must identify the policy measures already in place to reduce greenhouse gas emissions. However, while the Union's ETS and related policies and measures internalise some of the costs of greenhouse gas emissions, they may not yet fully internalise those costs.
90. The Member State should demonstrate that aid is needed for the proposed activities as required under point 38, taking into account the counterfactual situation <sup>(55)</sup> as well as relevant costs and revenues including those linked to the ETS and related policies and measures identified in point 89. Where there is significant uncertainty concerning future market developments related to a large part of the business case (as for example may be the case for renewable energy investments where electricity revenues are not coupled to input costs), support in the form of a certain guaranteed remuneration to limit exposure to negative scenarios may be considered necessary to ensure that the private investment takes place. In such cases, limits to profitability and/or clawbacks linked to possible positive scenarios may be required to ensure proportionality.

<sup>(55)</sup> The counterfactual is the activity that would have been carried out by the beneficiary in the absence of aid. In some decarbonisation cases this may involve an investment in a less environmentally-friendly alternative. In other cases no or delayed investment may be involved, but it may for example involve operating decisions that would deliver lesser environmental benefit, such as the continuing operation of existing onsite facilities and/or the purchase of energy.

91. Where the Member State demonstrates that there is a need for aid under point 90, the Commission presumes that a residual market failure remains, which can be addressed through aid for decarbonisation, unless it has evidence to the contrary.
92. For schemes that run for more than three years the Member State must confirm that it will update its analysis of relevant costs and revenues at least every three years or, for schemes involving less frequent granting, before aid is granted, to ensure that aid remains necessary for each eligible category of beneficiary. Where aid is no longer required for a category of beneficiary, that category should be removed before further aid is granted <sup>(56)</sup>.

#### 4.1.3.2. Appropriateness

93. Section 3.2.1.2 does not apply to measures for the reduction of greenhouse gas emissions. The Commission presumes that State aid can, in principle, be an appropriate measure in achieving decarbonisation goals, given that other policy instruments are typically not sufficient to achieve those goals, provided all other compatibility conditions are met. Given the scale and urgency of the decarbonisation challenge, a variety of instruments, including direct grants, may be used.
94. Aid for the facilitation of energy performance contracting, as referred to in point 85, may only take one of the following forms:
- (a) a loan or guarantee to the provider of the energy performance improvement measures under an energy performance contract;
  - (b) a financial product aimed to refinance the respective provider (for example, factoring or forfaiting).

#### 4.1.3.3. Eligibility

95. Decarbonisation measures targeting specific activities which compete with other unsubsidised activities can be expected to lead to greater distortions of competition, compared to measures open to all competing activities. Therefore, the Member State should give reasons for measures which do not include all technologies and projects that are in competition – for example all projects operating in the electricity market, or all undertakings producing substitutable products and which are technically capable of contributing efficiently to greenhouse gas emissions reductions <sup>(57)</sup>. These reasons should be based on objective considerations linked, for example, to efficiency or costs or other relevant circumstances. Such reasons may draw on evidence gathered in the public consultation referred to in Section 4.1.3.4 where applicable.
96. The Commission will assess the reasons given and will, for instance, consider that a more limited eligibility does not unduly distort competition where:
- (a) a measure targets a specific sectoral or technology based target established in Union law <sup>(58)</sup>, such as a renewable energy or energy efficiency scheme <sup>(59)</sup>;
  - (b) a measure aims specifically to support demonstration projects;
  - (c) a measure aims to address not only decarbonisation but also air quality or other pollution;

<sup>(56)</sup> This would not affect the entitlement to receive aid already granted (e.g. under a 10 year contract).

<sup>(57)</sup> The Commission will not generally require measures to be opened across borders, although this can help alleviate competition concerns.

<sup>(58)</sup> Such as, if applicable, for renewable hydrogen.

<sup>(59)</sup> Eligibility in such a case should only be limited in line with relevant definitions where available in the sectoral legislation. For example, a scheme designed to meet the Union's headline renewable energy target should be open to all technologies that meet the definition of 'renewable energy sources' in Directive (EU) 2018/2001 of the European Parliament and of the Council of 11 December 2018 on the promotion of the use of energy from renewable sources (OJ L 328, 21.12.2018, p. 8), while a scheme designed to meet a Union sub-target should be open to all technologies that can contribute to meeting that sub-target. Member States may however also further limit the scope of their support measures, including to specific types of renewable energy sources, on the basis of other objective criteria such as those listed in points 96(b) to (g).

- (d) a Member State identifies reasons to expect that eligible sectors or innovative technologies have the potential to make an important and cost-effective contribution to environmental protection and deep decarbonisation in the longer term;
  - (e) a measure is required to achieve diversification necessary to avoid exacerbating issues related to network stability <sup>(60)</sup>;
  - (f) a more selective approach can be expected to lead to lower costs of achieving environmental protection (for example through reduced system integration costs as a result of diversification, including between renewables, which could also include demand response and/or storage), and/or result in less distortion of competition;
  - (g) a project has been selected following an open call to form part of a large integrated cross-border project, jointly designed by several Member States and which aims to have an important contribution to environmental protection in the Union's common interest, and either it applies an innovative technology, which follows on from a research and development and innovation (R & D&I) activity conducted by the beneficiary or by another entity as long as the former acquires the rights to use the results of the previous R & D&I, or it is amongst the early adopters of an innovative technology in its sector.
97. Member States must regularly review eligibility rules and any rules related thereto to ensure that reasons provided to justify a more limited eligibility continue to apply for the lifetime of each scheme, that is to say, to ensure that any limitations on eligibility can still be justified when new technologies or approaches are developed or more data becomes available.

#### 4.1.3.4. Public consultation

98. Section 4.1.3.4 applies from 1 July 2023.
99. Prior to the notification of aid, other than in duly justified exceptional circumstances, Member States must consult publicly on the competition impacts and proportionality of measures to be notified under this Section. The obligation to consult does not apply in respect of amendments to already approved measures that do not alter their scope or eligibility or extend their duration beyond 10 years of the notification of the original decision of the Commission finding the aid compatible, nor in respect of cases referred to in point 100. To determine whether a measure is justified, bearing in mind the criteria in these guidelines, the following public consultation is required <sup>(61)</sup>:
- (a) for measures where the estimated average annual aid to be granted is at least EUR 150 million per year, a public consultation of at least six weeks' duration, covering:
    - (i) eligibility;
    - (ii) method and estimate of subsidy per tonne of CO<sub>2</sub> equivalent <sup>(62)</sup> emissions avoided (per project or reference project);
    - (iii) proposed use and scope of competitive bidding processes and any proposed exceptions;

<sup>(60)</sup> In a case involving regional support, the Member State should demonstrate that ancillary services and redispatching rules enable efficient participation of renewables, storage and demand response as appropriate and reward locational and technology choices that support grid stability, in line with Regulation (EU) 2019/943 and Directive (EU) 2019/944. Where the Member State identifies a local security of supply problem that cannot be solved in the medium term (e.g. within 5-10 years) with improvements to market design or sufficient network reinforcement, a measure to address this concern should be designed and assessed under Section 4.8.

<sup>(61)</sup> Member States may rely on existing national consultation processes in respect of these requirements. As long as the consultation covers the points listed in these guidelines and runs for the required period of time, a separate consultation is not required. A separate consultation may also not be required for cases referred to in point 96(g).

<sup>(62)</sup> CO<sub>2</sub> equivalent (CO<sub>2</sub> e) is a metric measure used to compare the emissions from various greenhouse gases on the basis of their global-warming potential, by converting amounts of other gases to the equivalent amount of carbon dioxide with the same global warming potential.

- (iv) main parameters for the aid allocation process <sup>(63)</sup> including for enabling competition between different types of beneficiary <sup>(64)</sup>;
  - (v) main assumptions informing the quantification used to demonstrate the incentive effect, necessity and proportionality;
  - (vi) where new investments in natural gas based generation or industrial production may be supported, proposed safeguards to ensure compatibility with the Union's climate targets (see point (129));
- (b) for measures where the estimated average annual aid to be granted is below EUR 150 million per year, a public consultation of at least four weeks' duration, covering:
- (i) eligibility;
  - (ii) proposed use and scope of competitive bidding processes and any proposed exceptions;
  - (iii) where new investments in natural gas based generation or industrial production may be supported, proposed safeguards to ensure compatibility with the Union's climate targets (see point (129));
100. No public consultation is required for measures falling under point 99(b) where competitive bidding processes are used and the measure does not support investments in fossil-fuel based energy generation, production or other activities.
101. Consultation questionnaires must be published on a public website. Member States must publish a response to the consultation summarising and addressing the input received. This should include explaining how possible negative impacts on competition have been minimised through the scope or eligibility of the proposed measure. Member States must provide a link to their response to the consultation as part of the notification of aid measures under this Section.
102. In exceptional and duly justified cases, the Commission might consider alternative methods of consultation provided that the views of interested parties are taken into account in the (continued) implementation of the aid. In such cases, the alternative methods might have to be combined with corrective actions to minimise possible distortive effects of the measure.

#### 4.1.3.5. Proportionality

103. Aid for reducing greenhouse gas emissions should in general be granted through a competitive bidding process as described in points 49 and 50, so that the objectives of the measure <sup>(65)</sup> can be attained in a proportionate manner which minimises distortions of competition and trade. The budget or volume related to the bidding process is a binding constraint in that it can be expected that not all bidders will receive aid, the expected number of bidders is sufficient to ensure effective competition, and the design of undersubscribed bidding processes during the implementation of a scheme is corrected to restore effective competition in the subsequent bidding processes or, failing that, as soon as appropriate <sup>(66)</sup>.

<sup>(63)</sup> For example, the lead-time between the competitive process and the delivery period, bid/offer rules, pricing rules.

<sup>(64)</sup> For example, if there are different contract durations, different methodologies for calculating the amount of eligible capacity/output from different technologies, different methodologies for calculating or paying subsidies.

<sup>(65)</sup> For instance, the achievement of the Member State's decarbonisation targets.

<sup>(66)</sup> Such a binding constraint can be achieved in a variety of complementary ways, including actions to alleviate possible constraints on the supply side, adjusting volume to reflect the likely available supply at a given point in time and/or modifying other features of the design of the bidding process (for instance, eligibility criteria for participation); with the aim of attaining the objective of the measure (for instance, the MS decarbonisation targets) in a proportionate manner which minimises distortions of competition and trade. While safeguarding proportionality and competitiveness, Member States may also consider legitimate expectations of investors.

104. The bidding process should, in principle, be open to all eligible beneficiaries to enable a cost effective allocation of aid and reduce competition distortions. However, the bidding process can be limited to one or more specific categories of beneficiary where evidence, including any relevant evidence gathered in the public consultation, is provided, showing for example that:
- (a) a single process open to all eligible beneficiaries would lead to a suboptimal result or not allow the achievement of the objectives of the measure; that justification may refer to the criteria in point 96;
  - (b) there is a significant deviation between the bid levels that different categories of beneficiaries are expected to offer (this would generally be the case where the expected competitive bid levels – identified on the basis of the analysis required under point 90 – differ by more than 10 %); in that case, separate competitive bidding processes may be used so that categories of beneficiary with similar costs compete against each other.
105. Where a Member State relies on the exceptions in point 104(b) for a scheme that will run for more than three years, the analysis required in point 92 should also consider whether those exceptions can still be relied upon. In particular, Member States must confirm that such schemes will be adapted over time to ensure technologies expected to bid within 10 % of each other are tendered through the same competitive bidding process. Likewise, the Member State may choose to arrange separate tenders where updated analysis under point 92 shows that costs have diverged to the point where bids differ by more than 10 %.
106. Where the analysis required under point 90 shows there may be a significant deviation between the bid levels that different categories of beneficiaries are expected to offer, Member States should consider the risk of overcompensation of cheaper technologies. This will also be taken into account by the Commission in its assessment. Where appropriate, bid caps may be required to limit the maximum bid from individual bidders in particular categories. Any bid caps should be justified with reference to the quantification for reference projects referred to in points 51, 52 and 53.
107. Exceptions from the requirement to allocate aid and determine the aid level through a competitive bidding process can be justified where evidence, including that gathered in the public consultation, is provided that one of the following applies:
- (a) there is insufficient potential supply or number of potential bidders to ensure competition; in that case, the Member State must demonstrate that it is not possible to increase competition by reducing the budget or facilitating participation in the bidding process (for example by identifying additional land for development or adapting pre-qualification requirements) as appropriate;
  - (b) beneficiaries are small projects, defined as follows:
    - (i) for electricity generation or storage projects – projects below or equal to 1 MW of installed capacity;
    - (ii) for electricity consumption – projects with a maximum demand below or equal to 1 MW;
    - (iii) for heat generation and gas production technologies – projects below or equal to 1 MW of installed capacity or equivalent;
    - (iv) for 100 % SME-owned or renewable energy community projects equal to or below 6 MW installed capacity or maximum demand;
    - (v) for projects 100 % owned by small and microenterprises or by renewable energy communities for wind generation only, equal to or below 18 MW of installed capacity;
    - (vi) for energy efficiency measures not involving energy generation benefitting SMEs, where beneficiaries receive less than EUR 300 000 per project.
  - (c) individual projects comply with both of the following conditions:
    - (i) the project has been selected following an open call to form part of a large integrated cross-border project, jointly designed by several Member States and which aims to have an important contribution to environmental protection in the Union's common interest;

- (ii) either the project applies an innovative technology which follows on from an R & D&I activity conducted by the beneficiary or by another entity as long as the former acquires the rights to use the results of the previous R & D&I activity, or it is amongst the early adopters of an innovative technology in its sector.
108. Member States may also use competitive certificates or supplier obligation schemes to establish the aid amount and allocate aid, provided that:
- (a) demand in the scheme is set below potential supply;
  - (b) the buyout or penalty price that applies to a consumer or supplier that has not bought the number of certificates required (that is to say, the price which constitutes the maximum that would be paid for support) is set at a sufficiently high level to incentivise compliance with the obligation. However, the penalty price should be based on the quantification referred to in points 51, 52 and 53 to avoid that an excessively high level leads to overcompensation;
  - (c) where schemes involve support for biofuels, bioliquids and biomass fuels, Member States must take into account the information on support already received from the mass balance system documentation under Article 30 of Directive (EU) 2018/2001, to avoid overcompensation.
109. Member States may also design support schemes targeting decarbonisation or energy efficiency in the form of reductions in taxes or parafiscal levies such as levies financing environmental policy objectives. The application of a competitive bidding process is not obligatory for such schemes. However, such aid must be granted, in principle, in the same way for all eligible undertakings operating in the same sector of economic activity that are in the same or similar factual situation in respect of the aims or objectives of the aid measure. The notifying Member State must put in place an annual monitoring mechanism to verify that the aid is still necessary. This Section does not cover reductions of taxes or levies, which reflect the essential costs of providing energy or related services. For example, reductions of network charges or charges financing capacity mechanisms are excluded from the scope of this Section.
110. Where a tax or a parafiscal levy reduction reduces recurrent operating costs, the aid amount must not exceed the difference between the costs of the environmentally-friendly project or activity and of the less environmentally-friendly counterfactual scenario. Where the more environmentally friendly project or activity may result in potential cost savings or additional revenues, these must be taken into account when determining the proportionality of aid.
111. When designing aid schemes, Member State must take into account the information on support already received from the mass balance system documentation under Article 30 of Directive (EU) 2018/2001.
112. Where concessions or other benefits are granted as part of aid measures – such as the right to use land, sea bed or rivers or a right to an infrastructure connection – Member States must ensure that such concessions are awarded on the basis of objective and transparent criteria linked to the objectives of the measure (see point (50)).
113. Where aid takes the form of a senior loan to the provider of the energy performance improvement measures under an energy performance contract, loan instruments should ensure a substantial co-investment rate by commercial providers of debt funding. This is presumed to be the case if such a rate is not lower than 30 % of the value of the underlying energy performance contracts' portfolio of the provider. The repayment by the provider of the energy performance improvement measures must be at least equal to the nominal value of the loan. Where the aid is granted in form of a guarantee, the public guarantee must not exceed 80 % of the underlying loan's principal and losses must be sustained proportionally and under same conditions by the credit institution and the State. The guaranteed amount must decrease proportionally, in such a way that the guarantee never covers more than 80 % of the outstanding loan. The public loan or guarantee to the provider of the energy performance improvement measures must be limited to maximum 10 years.

4.1.4. *Avoidance of undue negative effects on competition and trade and balancing*

114. With the exception of point 70, Sections 3.2.2 and 3.3 do not apply to measures for the reduction of greenhouse gas emissions.
115. This point applies from 1 July 2023. The subsidy per tonne of CO<sub>2</sub> equivalent emissions avoided must be estimated for each project, or in the case of schemes, each reference project, and the assumptions and methodology for that calculation provided. To the extent possible, that estimation should identify the net emissions reduction from the activity, taking into account life-cycle emissions created or reduced. Moreover, short and long-term interactions with any other relevant policies or measures, including the Union's ETS, should be considered. To enable a comparison between the costs of different environmental protection measures, the methodology should in principle be similar for all measures promoted by a Member State <sup>(67)</sup>.
116. To deliver positive environmental effects in relation to decarbonisation, the aid must not merely displace the emissions from one sector to another and must deliver overall greenhouse gas emissions reductions.
117. To avoid the risk of double subsidies and ensure the verification of the greenhouse gas emissions reductions, aid for the decarbonisation of industrial activities must reduce the emissions directly resulting from that industrial activity. Aid for improvements of the energy efficiency of industrial activities must improve energy efficiency of the beneficiaries' activities.
118. By way of exception from the requirement set out in the last sentence of point 117, improvements in the energy efficiency of industrial activities can be supported with aid granted for the facilitation of energy performance contracting.
119. Where aid for the facilitation of energy performance contracting is not granted as a result of a competitive bidding process, State aid must be granted, in principle, in the same way for all eligible undertakings operating in the same sector of economic activity that are in the same or similar factual situation in respect of the aims or objectives of the aid measure.
120. To avoid a budget being allocated to projects that are not realised, potentially blocking new market entry, Member States must demonstrate that reasonable measures will be taken to ensure that projects granted aid will actually be developed, for example setting clear deadlines for project delivery, checking project feasibility as part of pre-qualification for receiving aid, requiring collateral to be paid by participants, or monitoring project development and construction. However, Member States may grant more flexibility regarding pre-qualification requirements for projects developed and 100 % owned by SMEs or by renewable energy communities as a means to reduce barriers to their participation <sup>(68)</sup>.

<sup>(67)</sup> The principles for the calculation of greenhouse gas emissions reductions as used for the EU Innovation Fund provide a useful point of reference, available at: [https://ec.europa.eu/info/funding-tenders/opportunities/docs/2021-2027/innovfund/wp-call/2021/call-annex\\_c\\_innovfund-lsc-2021\\_en.pdf](https://ec.europa.eu/info/funding-tenders/opportunities/docs/2021-2027/innovfund/wp-call/2021/call-annex_c_innovfund-lsc-2021_en.pdf). However, where electricity is used as an input the methodology used must take into account the emissions from producing this electricity. Member States may choose to use the level of subsidy per tonne of CO<sub>2</sub> equivalent emissions avoided as a selection criterion in their aid measures but are not required to do so.

<sup>(68)</sup> In addition, as stated in point 75, the Commission will generally look favourably at other features proposed by Member States to facilitate the participation of SMEs and renewable energy communities in competitive bidding processes, provided that the positive effects of ensuring participation and acceptance outweigh the possible distortive effects.

121. Aid for decarbonisation can take a variety of forms including upfront grants and contracts for ongoing aid payments such as contracts for difference <sup>(69)</sup>. Aid which covers costs mostly linked to operation rather than investment should only be used where the Member State demonstrates that this results in more environmentally-friendly operating decisions.
122. Where aid is primarily required to cover short-term costs that may be variable such as biomass fuel costs or electricity input costs, and paid over periods exceeding one year, Member States should confirm that the production costs on which the aid amount is based will be monitored and the aid amount updated at least once per year.
123. The aid must be designed to prevent any undue distortion to the efficient functioning of markets and, in particular, preserve efficient operating incentives and price signals. For instance, beneficiaries should remain exposed to price variation and market risk, unless this undermines the attainment of the objective of the aid. In particular, beneficiaries should not be incentivised to offer their output below their marginal costs and must not receive aid for production in any periods in which the market value of that production is negative <sup>(70)</sup>.
124. The Commission will carry out a case-by-case assessment for measures that include dedicated infrastructure projects. In its assessment, the Commission will consider, among other, the size of the infrastructure in relation to the relevant market, the impact on the likelihood of additional market-based investments, the extent to which the infrastructure is initially intended for an individual user or group of users and whether a credible plan or firm commitment for connecting to a wider network exists, the duration of any derogations or exemptions from internal market legislation, the structure of the relevant market and the position of the beneficiaries in that market.
125. For instance, where the infrastructure initially connects only a limited number of users, the distortive effect can be mitigated where it is part of a plan to develop a wider Union network on the basis of the following criteria:
- (a) the accounting for the infrastructure should be separated from any other activity and costs of access and usage made transparent;
  - (b) unless this undermines the attainment of the objective of the aid, aid should be subject to commitments to open up the infrastructure <sup>(71)</sup> to third parties at fair, reasonable and non-discriminatory terms (including public calls for connection requests at equivalent conditions);
  - (c) the advantage that the beneficiaries derive until such wider development occurs may need to be offset, for instance by way of contributing to the further extension of the network;
  - (d) the advantage derived by the dedicated users may need to be limited and/or shared with other players.
126. To avoid undermining the objective of the measure or other Union environmental protection objectives, incentives must not be provided for the generation of energy that would displace less polluting forms of energy. For example, where cogeneration based on non-renewable sources is supported, or where energy production from biomass is supported, as far as possible they must not receive incentives to generate electricity or heat at times when this would mean zero air pollution renewable energy sources would be curtailed.

<sup>(69)</sup> A contract for difference entitles the beneficiary to a payment equal to the difference between a fixed 'strike' price and a reference price – such as a market price, per unit of output. They have been used for electricity generation measures in recent years but could also involve a reference price linked to the ETS – i.e. 'carbon' contracts for difference. Such carbon contracts for difference may be a useful tool for bringing to market breakthrough technologies that may be necessary to achieve industrial decarbonisation. Contracts for difference may also involve paybacks from beneficiaries to taxpayers or consumers for periods in which the reference price exceeds the strike price.

<sup>(70)</sup> Small-scale renewable electricity installations may benefit from direct price support that covers the full costs of operation and does not require them to sell their electricity on the market, in line with the exemption in Article 4(3) of Directive (EU) 2018/2001. Installations will be considered as small-scale if their capacity is below the applicable threshold in Article 5 of Regulation (EU) 2019/943.

<sup>(71)</sup> This refers to the assets list in point 19(36).

127. Aid for decarbonisation may unduly distort competition where it displaces investments into cleaner alternatives that are already available on the market, or where it locks in certain technologies, hampering the wider development of a market for and the use of cleaner solutions. The Commission will therefore also verify that the aid measure does not stimulate or prolong the consumption of fossil-based fuels and energy <sup>(72)</sup>, thereby hampering the development of cleaner alternatives and significantly reducing the overall environmental benefit of the investment. Member States should explain how they intend to avoid that risk, including by way of binding commitments to use mainly renewable or low-carbon fuels or phase out fossil fuel sources.
128. The Commission considers that certain aid measures have negative effects on competition and trade that are unlikely to be offset. In particular, certain aid measures may aggravate market failures, creating inefficiencies to the detriment of consumers and social welfare. For instance, measures that incentivise new investments in energy or industrial production based on the most polluting fossil fuels, such as coal, diesel, lignite, oil, peat and oil shale, increase the negative environmental externalities in the market. They will not be considered to have any positive environmental effects, given the incompatibility of these fuels with the Union's climate targets.
129. Similarly, measures that incentivise new investments in energy or industrial production based on natural gas may reduce greenhouse gas emissions and other pollutants in the short term but aggravate negative environmental externalities in the longer term, compared to alternative investments. For investments in natural gas to be seen as having positive environmental effects, Member States must explain how they will ensure that the investment contributes to achieving the Union's 2030 climate target and 2050 climate neutrality target. In particular, the Member States must explain how a lock in of this gas-fired energy generation or gas-fired production equipment will be avoided. For example, this may be based on a national decarbonisation plan with binding targets and/or may include binding commitments by the beneficiary to implement decarbonisation technologies such as CCS/CCU or replace natural gas with renewable or low-carbon gas or to close the plant on a timeline consistent with the Union's climate targets. The commitments should include one or more credible milestones in emissions reduction towards climate neutrality by 2050.
130. Production of biofuels from food and feed crops may create additional land demand and lead to the extension of agricultural land into areas with high-carbon stock, such as forests, wetlands and peatland, causing additional greenhouse gas emissions. This is why Directive (EU) 2018/2001 limits the amount of food and feed crops-based biofuels, bioliquids and biomass fuels that count towards the renewable energy targets. The Commission considers that certain aid measures can aggravate indirect negative externalities. The Commission will therefore, in principle, consider that State aid for biofuels, bioliquids, biogas and biomass fuels exceeding the caps determining their eligibility for the calculation of the gross final consumption of energy from renewable sources in the Member State concerned in accordance with Article 26 of Directive (EU) 2018/2001, is unlikely to produce positive effects which could outweigh the negative effects of the measure.
131. Where risks of additional competition distortions are identified or measures are particularly novel or complex, the Commission may impose conditions as set out in point 76.
132. For individual aid measures or schemes benefitting a particularly limited number of beneficiaries or an incumbent beneficiary, Member States should, in addition demonstrate that the proposed aid measure will not lead to distortions of competition, for example, through increased market power. Even when the aid does not directly increase market power, it may do so indirectly by discouraging expansion of existing competitors or inducing their exit or discouraging the entry of new competitors. In assessing the negative effects of those aid measures, the Commission will focus its analysis on the foreseeable impact the aid may have on competition between undertakings in the product market concerned, as well as in up- or downstream markets where relevant, and on the risk of overcapacity. The Commission will also assess the potential negative effects on trade, including the risk of a subsidy race between Member States that may arise in particular with respect to the choice of a location.

<sup>(72)</sup> Including low-carbon fuels from non-renewable sources and energy carriers that do not emit at the tailpipe but are produced in a carbon-intensive process.

133. Where the aid is granted without a competitive bidding process and the measure benefits a particularly limited number of beneficiaries or an incumbent beneficiary, the Commission may require the Member State to ensure that the beneficiary disseminates the know-how obtained as a result of the aided project with the aim of accelerating the roll-out of the successfully demonstrated technologies.
134. Provided that all other compatibility conditions are met, the Commission will typically find that the balance for decarbonisation measures is positive (that is to say, distortions to the internal market are outweighed by positive effects) in the light of their contribution to climate change mitigation, which is defined as an environmental objective in Regulation (EU) 2020/852 and/or in light of their contribution to meeting Union energy and climate objectives, as long as there are no obvious indications of non-compliance with the 'do no significant harm' principle<sup>(73)</sup>. In case the assumption above does not apply, the Commission will assess whether on balance the positive effects (including compliance with the points in Section 4.1.4 and any commitments related to point (129) outweigh the negative impacts on the internal market.

#### 4.2. Aid for the improvement of the energy and environmental performance of buildings

##### 4.2.1. Rationale for the aid

135. Measures aimed at improving the energy and environmental performance of buildings target negative externalities by creating individual incentives to attain targets for energy savings and for the reduction of greenhouse gas and air pollutant emissions. In addition to the general market failures identified in Chapter 3, specific market failures may arise in the field of the energy and environmental performance of buildings. For instance, when renovation works in buildings are considered, the benefits of energy and environmental performance measures do not typically accrue only to the owner of the building, who generally bears the renovation costs, but also to the tenant. The Commission therefore considers that State aid may be needed to promote investments aimed at improving the energy and environmental performance of buildings.

##### 4.2.2. Scope and supported activities

136. Aid may be granted for the improvement of the energy efficiency of buildings.
137. That aid may be combined with aid for any or all of the following measures:
- (a) the installation of integrated on-site renewable energy installations generating electricity, heat or cooling;
  - (b) the installation of equipment for the storage of the energy generated by on-site renewable energy installations;
  - (c) the construction and installation of recharging infrastructure for use by the building users, and related infrastructure, such as ducting, where the parking facilities are located either inside the building or are physically adjacent to the building;
  - (d) the installation of equipment for the digitalisation of the building's environmental and energy management and control, in particular to increase its smart-readiness, including passive in-house wiring or structured cabling for data networks and the ancillary part of the passive network on the property to which the building belongs, but excluding wiring or cabling for data networks outside the property;
  - (e) other investments that improve the energy or environmental performance of the building, including investments in green roofs and equipment for the recovery of rain water.

<sup>(73)</sup> For measures which are identical to measures within Recovery and Resilience Plans as approved by the Council, their compliance with the 'Do no significant harm' principle is considered fulfilled as this has already been verified.

138. Aid may also be granted for the improvement of the energy performance of the heating or cooling equipment inside the building. Aid for heating or cooling equipment directly connected to district heating and cooling systems will be assessed under the conditions applicable to aid for district heating and cooling set out in Section 4.10. Aid for the improvement of the energy efficiency of production processes and for energy-generating equipment used to power machinery will be assessed under the conditions applicable to aid for the reduction and removal of greenhouse gas emissions set out in Section 4.1.
139. The aid must induce:
- (a) in the case of renovation of existing buildings, energy performance improvements leading to a reduction in primary energy demand of at least 20 % compared to the situation prior to the investment or, where the improvements are part of a staged renovation, a reduction in primary energy demand of at least 30 % compared to the situation prior to the investment, over a period of five years,
  - (b) in case of renovation measures concerning the installation or replacement of just one type of building elements <sup>(74)</sup> within the meaning of Article 2, point 9, of Directive 2010/31/EU, a reduction in primary energy demand of at least 10 % compared to the situation prior to the investment, provided the Member State demonstrates the measure has at the scheme level an overall significant effect in terms of reduction of primary energy demand,
  - (c) in the case of new buildings, energy performance improvements leading to a reduction in primary energy demand of at least 10 % compared to the threshold set for the nearly zero-energy building requirements in national measures implementing Directive 2010/31/EU.

140. Aid for the improvement of the energy performance of buildings may also be granted to SMEs and small mid-caps that are providers of energy performance improvement measures for the facilitation of energy performance contracting within the meaning of Article 2, point (27), of Directive 2012/27/EU.

#### 4.2.3. *Incentive effect*

141. The requirements set out in points 142 and 143 apply in addition to those set out in Section 3.1.2.
142. The Commission considers that, in principle, aid to projects with a payback period <sup>(75)</sup> of less than five years does not have an incentive effect. However, the Member State may provide evidence to demonstrate that aid is needed to trigger a change in behaviour, even in the case of projects with a shorter payback period.
143. Where Union law imposes on undertakings minimum energy performance standards qualifying as Union standards, aid for all the necessary investments enabling undertakings to comply with those standards will be considered to have an incentive effect, provided that the aid is granted before the requirements become mandatory for the undertaking concerned <sup>(76)</sup>. The Member State must ensure that beneficiaries provide a precise renovation plan and timetable demonstrating that the aided renovation is at least sufficient to bring the building to comply with those minimum energy performance standards.

#### 4.2.4. *Minimisation of distortions of competition and trade*

##### 4.2.4.1. *Appropriateness*

144. The requirement set out in point 145 applies in addition to the requirements set out in Section 3.2.1.2.

<sup>(74)</sup> Such investments could for example aim at replacing windows or boilers in the building or focus on the wall insulation.

<sup>(75)</sup> The payback period is the amount of time needed to recover the cost of an investment (without aid).

<sup>(76)</sup> This applies wherever aid is granted to enable undertakings to comply with minimum energy performance standards qualifying as Union standards before they become mandatory for the undertaking concerned, irrespective of the existence of earlier Union standards already in force.

145. Aid for the facilitation of energy performance contracting may take the form of a loan or guarantee to the provider of the energy performance improvement measures under an energy performance contract or consist in a financial product aimed at financing the provider (for example, factoring or forfaiting).

#### 4.2.4.2. Proportionality

146. The eligible costs are the investment costs directly linked to the achievement of a higher level of energy or environmental performance.
147. The aid intensity must not exceed 30 % of the eligible costs for measures specified in points 139(a) and (c). For measures specified in point 139(b), the aid intensity must not exceed 25 %. Where aid for investments enabling undertakings to comply with minimum energy performance standards qualifying as Union standards is granted less than 18 months before the Union standards enter into force, the aid intensities must not exceed 20 % of the eligible costs for measures specified in points 139(a) and (c), or 15 % of the eligible costs for measures specified in point 139(b).
148. As regards aid granted for improving the energy performance of existing buildings, the aid intensity may be increased by 15 percentage points where the energy performance improvements lead to a reduction in primary energy demand of at least 40 %. This increase in aid intensity, however, does not apply where the project, although delivering a reduction in primary energy demand of 40 % or more, does not improve the energy performance of the building beyond the level imposed by minimum energy performance standards qualifying as Union standards entering into force within less than 18 months.
149. The aid intensity may be increased by 20 percentage points for aid granted to small undertakings or by 10 percentage points for aid granted to medium-sized undertakings.
150. The aid intensity may be increased by 15 percentage points for investments located in assisted areas fulfilling the conditions of Article 107(3), point (a), of the Treaty or by 5 percentage points for investments located in assisted areas fulfilling the conditions of Article 107(3), point (c), of the Treaty.
151. Depending on the specific characteristics of the measure, the Member State may also demonstrate, based on a funding gap analysis, as set out in points 48, 51 and 52, that a higher aid amount is required. The aid amount must not exceed the funding gap, as set out in points 51 and 52. Where aid for investments enabling undertakings to comply with minimum energy performance standards qualifying as Union standards is granted less than 18 months before the Union standards enter into force, the maximum aid amount must not exceed 70 % of the funding gap.
152. Where the aid is granted following a competitive bidding process conducted in accordance with the criteria set out in points 49 and 50, the aid amount is considered proportionate. Where aid for investments enabling undertakings to comply with minimum energy performance standards qualifying as Union standards is granted less than 18 months before the Union standards enter into force, the Member State must ensure that the risk of overcompensation is appropriately addressed, for instance by setting bid caps.
153. Aid granted in the form of financial instruments is not subject to the maximum aid intensities set out in points 147 to 151. Where the aid is granted in the form of a guarantee, the guarantee should not exceed 80 % of the underlying loan. Where the aid is granted in the form of a loan, the repayment by the owner(s) of the building to the energy efficiency fund or renewable energy fund or other financial intermediary must at least equal the nominal value of the loan.

#### 4.2.4.3. Avoidance of undue negative effects on competition and trade and balancing

154. The requirements set out in points 155 to 157 apply in addition to those set out in Section 3.2.2.
155. Aid for investments in equipment using natural gas aimed at improving the energy efficiency of buildings may lead to a reduction in energy demand in the short term but aggravate negative environmental externalities in the longer term, compared to alternative investments. Aid for the installation of equipment using natural gas may unduly distort competition where it displaces investments into cleaner alternatives that are already available on the market or where it locks in certain technologies, thereby impeding the development of a market for cleaner technologies and their use. The positive effects of measures that create such displacement or lock-in effects are unlikely to outweigh their negative effects on competition. As part of its assessment, the Commission will consider whether the equipment using natural gas replaces energy equipment using most polluting fossil fuels such as oil and coal.
156. Alternatives to energy equipment using polluting fossil fuels such as oil and coal are already available on the market. In this context, aid for the installation of energy-efficient energy equipment using such fuels is not considered to yield the same positive effects as aid for the installation of cleaner energy equipment. First, the marginal improvement in terms of reduction in energy demand is counterbalanced by the greater carbon emissions linked to the use of fossil fuels. Second, the granting of aid for installing energy equipment using solid or liquid fossil fuels entails a significant risk of locking in fossil fuel technologies and of displacing investments into cleaner and more innovative alternatives available on the market by shifting demand away from energy equipment that does not use solid or liquid fossil fuels. This would also discourage the further development of the market for non-fossil fuel technologies. The Commission therefore considers that the negative effects on competition of aid for energy equipment using solid or liquid fossil fuels are unlikely to be offset.
157. Where the aid is granted in the form of an endowment, equity, a guarantee or a loan to an energy efficiency fund or renewable energy fund or other financial intermediary, the Commission will verify that conditions are in place to ensure that the energy efficiency fund or renewable energy fund or other financial intermediaries do not receive any undue advantage and apply a commercially sound investment strategy for the purpose of implementing the energy performance aid measure. In particular, the following conditions must be fulfilled:
- (a) financial intermediaries or fund managers must be selected through an open, transparent and non-discriminatory process which is made in accordance with applicable Union and national laws;
  - (b) conditions are in place to ensure that financial intermediaries, including energy efficiency funds or renewable energy funds, are managed on a commercial basis and will ensure profit-driven financing decisions;
  - (c) the managers of the energy efficiency fund or renewable energy fund or other financial intermediaries pass the advantage on to the largest extent possible to the final beneficiaries (the owner(s) or tenant(s) of the building), in the form of higher volumes of financing, lower collateral requirements, lower guarantee premiums or lower interest rates.

#### 4.3. Aid for clean mobility

158. Sections 4.3.1 and 4.3.2 set out the conditions under which State aid for certain investments to reduce or avoid emissions of CO<sub>2</sub> and other pollutants from air, road, rail, waterborne and maritime transport sectors can facilitate the development of an economic activity in an environmentally-friendly manner, without adversely affecting trading conditions to an extent contrary to the common interest of the Union.

159. Aid for investments in light duty and heavy-duty road vehicles using gas (notably, LNG, CNG and biogas), and in the relevant gas refuelling infrastructure for road, except for LNG infrastructure exclusively for the refuelling of heavy-duty road vehicles, falls outside the scope of these guidelines. Based on the current stage of market development, these technologies are expected to have a significantly lower potential to contribute to climate change mitigation and air pollution reduction, compared to cleaner and more innovative alternatives and therefore are expected to unduly distort competition by displacing investments into those cleaner alternatives and locking in mobility solutions which are not in line with the 2030 and 2050 targets.

4.3.1. *Aid for the acquisition and leasing of clean vehicles and clean mobile service equipment and for the retrofitting of vehicles and mobile service equipment*

4.3.1.1. Rationale for the aid

160. To achieve the Union's legally binding climate neutrality objective by 2050, the European Green Deal Communication established the goal to reduce transport emissions by at least 90 % compared to 1990 levels by 2050. The Communication on a Sustainable and Smart Mobility Strategy <sup>(7)</sup> sets out a path towards achieving that objective through the decarbonisation of both the individual modes of transport and the whole transport chain <sup>(78)</sup>.

161. While existing policies may provide incentives for the uptake of clean vehicles, by setting binding CO<sub>2</sub> emission targets for the new road vehicle fleet of manufacturers <sup>(79)</sup>, by internalising the climate and environmental externalities <sup>(80)</sup>, or by boosting vehicle demand through public procurement <sup>(81)</sup>, they may not be sufficient to address in full the market failures affecting the sector concerned. Despite existing policies, certain market barriers and market failures may remain unaddressed, including the affordability of clean vehicles compared to conventional vehicles, the limited availability of recharging or refuelling infrastructure and the existence of environmental externalities. Member States may therefore provide aid to address those residual market failures and support the development of the clean mobility sector.

4.3.1.2. Scope and supported activities

162. Aid may be granted for the acquisition and leasing of new or used clean vehicles and for the acquisition and leasing of clean mobile service equipment.

163. Aid may also be granted for the retrofitting, refitting and adaptation of vehicles or mobile service equipment in the following cases:

(a) where it allows them to qualify as clean vehicles or clean mobile service equipment; or

(b) where it is necessary to allow vessels and aircraft to use, or increase the share of, biofuels and synthetic fuels, including renewable liquid and gaseous transport fuels of non-biological origin, in addition to, or as an alternative to, fossil-based fuels; or

(c) where it is necessary to allow vessels to use wind propulsion.

<sup>(7)</sup> Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions 'Sustainable and Smart Mobility Strategy: putting European transport on track for the future', COM(2020) 789 final.

<sup>(78)</sup> The Communication includes among others the ambition to have at least 30 million zero-emission cars and 80 000 zero-emission lorries in operation by 2030 and that by 2050 nearly all cars, vans, buses and new heavy-duty vehicles will be zero-emission.

<sup>(79)</sup> Regulation (EU) 2019/1242 and Regulation (EU) 2019/631 of the European Parliament and of the Council of 17 April 2019 setting CO<sub>2</sub> emission performance standards for new passenger cars and for new light commercial vehicles, and repealing Regulations (EC) No 443/2009 and (EU) No 510/2011 (OJ L 111, 25.4.2019, p. 13).

<sup>(80)</sup> For instance, through Directive 1999/62/EC of the European Parliament and of the Council of 17 June 1999 on the charging of heavy goods vehicles for the use of certain infrastructures (OJ L 187, 20.7.1999, p. 42) and the Union's ETS.

<sup>(81)</sup> For instance, through Directive 2009/33/EC.

#### 4.3.1.3. Incentive effect

164. The conditions set out in points 165 to 169 apply in addition to the conditions set out in Section 3.1.2.
165. The Member State must provide a credible counterfactual scenario in the absence of the aid. A counterfactual scenario corresponds to an investment with the same capacity, lifetime and, where appropriate, other relevant technical characteristics as the environmentally-friendly investment. Where the investment concerns the acquisition or leasing of clean vehicles or clean mobile service equipment, the counterfactual scenario generally is the acquisition or the leasing of vehicles or mobile service equipment of the same category and the same capacity, at least complying with Union standards, where applicable, that would be acquired or leased without the aid.
166. The counterfactual scenario might correspond to maintaining the existing vehicle or mobile service equipment in operation for a period corresponding to the lifetime of the environmentally-friendly investment. In that case, the discounted maintenance, repair and modernisation costs over that period should be taken into account.
167. In other cases, the counterfactual scenario may consist in a later replacement of the vehicle or mobile service equipment, in which case the discounted value of the vehicle or mobile service equipment should be taken into account and the difference in the respective economic lifetime of equipment should be equalised. This approach may be particularly relevant for vehicles that have a longer economic life, such as vessels, rail rolling stock or aircraft.
168. In the case of vehicles or mobile service equipment subject to leasing arrangements, the discounted value of the leasing of the clean vehicles or clean mobile service equipment should be compared with the discounted value of the leasing of the less environmentally-friendly vehicle or mobile service equipment that would be used in the absence of the aid.
169. Where the investment consists of adding equipment to an existing vehicle or mobile service equipment to improve its environmental performance (for example, retrofitting of pollution control systems), the eligible costs may consist of the total investment costs.

#### 4.3.1.4. Minimising distortions of competition and trade

##### 4.3.1.4.1. Appropriateness

170. The requirements set out in point 171 apply in addition to those set out in Section 3.2.1.2.
171. The verification of appropriateness among alternative policy instruments should take into consideration the potential for other types of interventions than State aid to stimulate the development of the clean mobility market and their expected impact compared to that of the proposed measure. Such other types of interventions may include the introduction of general measures aimed at promoting the acquisition of clean vehicles such as ecological bonus schemes or scrappage schemes or the creation of low-emission zones in the Member State concerned.

##### 4.3.1.4.2. Proportionality

172. The aid must not exceed the cost necessary to facilitate the development of the economic activity at issue in a manner that increases the level of environmental protection (that is to say, through the shift from conventional to clean vehicles and clean mobile service equipment), compared to the counterfactual scenario in the absence of aid. State aid may be considered proportionate where the conditions set out in points 173 to 181 are fulfilled.
173. As a general rule, the aid must be granted following a competitive bidding process conducted in accordance with the criteria set out in points 49 and 50.

174. If criteria other than the aid amount requested by the applicant are included in the context of the competitive bidding process, point 50 applies. The selection criteria may, for instance, relate to the expected environmental benefits of the investment in terms of CO<sub>2</sub> equivalent or other pollutant reductions throughout its lifetime. In such cases, to facilitate the identification of the environmental benefits, the Member State may require the applicants to indicate in their bids the expected level of emission reductions resulting from the investment, compared to the level of emissions of a comparable vehicle complying with Union standards, where applicable. Environmental criteria used in the competitive bidding process may also include life-cycle considerations such as the environmental impact of the end-of-life management of the product.
175. The design of the competitive bidding process must ensure that sufficient incentives remain for applicants to bid for projects concerning the acquisition of zero-emission vehicles, which are generally more expensive than less environmentally friendly alternatives, insofar as these are available for that transport mode. That includes ensuring that the application of the selection criteria does not put those projects at a disadvantage compared to other clean vehicles, which do not qualify as zero-emission vehicles. For example, environmental criteria may be designed as premiums allowing a higher score to be assigned to projects bringing environmental benefits beyond those deriving from the eligibility requirements or the primary objective of the measure. Where appropriate, bid caps may be required to limit the maximum bid from individual bidders in particular categories. Any bid caps should be justified with reference to the quantification for reference projects referred to in points 51, 52 and 53.
176. By way of derogation from points 173 to 175, aid may be granted without a competitive bidding process in the following cases:
- (a) where the expected number of participants is not sufficient to ensure effective competition or avoid strategic bidding;
  - (b) where the Member State provides adequate justification that a competitive bidding process, as described in points 49 and 50, is not appropriate to ensure the proportionality of the aid and that using the alternative methods in points 177 to 180 would not increase the risk of undue distortions of competition<sup>(82)</sup>, depending on the characteristics of the measure or of the sectors or transport modes concerned; or
  - (c) where it is granted for the acquisition or leasing of vehicles intended for use by undertakings active in the sector of public passenger transport by land, rail or water.
177. In the cases referred to in point 176, the aid may be considered proportionate if it does not exceed 40 % of the eligible costs. The aid intensity may be increased by 10 percentage points for zero-emission vehicles and by 10 percentage points for medium-sized enterprises or by 20 percentage points for small enterprises.
178. The eligible costs are the net extra costs of the investment. These are calculated as the difference, on the one hand, between the total cost of ownership of the clean vehicle foreseen to be acquired or leased, and on the other hand the aid and the total cost of ownership in the counterfactual scenario. Costs that are not directly linked to the achievement of a higher level of environmental protection are not eligible.
179. As regards the retrofitting of vehicles or mobile service equipment, in accordance with point 169, the eligible costs may be the total costs of the retrofitting, provided that in the counterfactual scenario the vehicles or mobile service equipment retain the same economic life in the absence of the retrofitting.

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<sup>(82)</sup> This can be demonstrated by ensuring that the aid is granted in a transparent and non-discriminatory manner, and that potential interested parties are sufficiently informed of the scope of the measure and potential conditions of aid.

180. Depending on the specific characteristics of the measure, the Member State may also demonstrate, based on a funding gap analysis, as set out in points 48, 51 and 52, that a higher aid amount is required. In such a case, the Member State must conduct an *ex post* monitoring to verify the assumptions made about the level of aid required and put in place a claw-back mechanism, as set out in point 55. The aid amount must not exceed the funding gap, as set out in points 51 and 52.

181. In the case of individual aid, the aid amount has to be determined on the basis of a funding gap analysis as set out in points 48, 51 and 52. In those cases, the Member State must conduct an *ex post* monitoring to verify the assumptions made about the level of aid required and put in place a claw-back mechanism as set out in point 55.

#### 4.3.1.5. Avoidance of undue negative effects on competition and trade and balancing

182. The requirements set out in points 183 to 189 apply in addition to those set out in Section 3.2.2.

183. The Commission considers that aid for investments in vehicles and mobile service equipment using natural gas may lead to a reduction in greenhouse gas emissions and other pollutants in the short term but aggravate negative environmental externalities in the longer term, compared to alternative investments. Aid for the acquisition of vehicles and mobile service equipment using natural gas may unduly distort competition where it displaces investments into cleaner alternatives that are already available on the market or where it locks in certain technologies, thereby impeding the development of a market for cleaner technologies and their use. Therefore, in those cases, the Commission considers that the negative effects of aid for vehicles and mobile service equipment using natural gas are unlikely to be offset.

184. Aid for the acquisition or leasing of CNG and LNG vehicles for waterborne transport and mobile service equipment may however be regarded as not having long-term lock-in effects or not displacing investments into cleaner technologies if the Member State demonstrates that cleaner alternatives are not readily available on the market and are not expected to be available in the short term <sup>(83)</sup>.

185. Alternatives to vehicles using the most polluting fossil fuels such as diesel, petrol or liquid petroleum gas (LPG) are already available on the market for use in the road, waterborne and rail transport sectors. The granting of aid for those vehicles entails a significant risk of locking in conventional technologies and of displacing investments into cleaner alternatives available on the market by shifting demand away from more environmentally-friendly vehicles. This would also discourage the further development of the market for non-fossil fuel technologies. In this context, aid for the acquisition or leasing of those vehicles, including new generation vehicles going beyond Union standards where applicable, is not considered to yield the same positive effects as aid for the acquisition or leasing of clean vehicles with lower direct (tailpipe/exhaust) CO<sub>2</sub> emissions. The Commission therefore considers that the negative effects on competition of aid for vehicles using the most polluting fossil fuels such as diesel, petrol or LPG are unlikely to be offset.

186. Zero-emission aircraft, whether electric or powered by hydrogen, are not expected to become available on the market in the short term. On that basis, the Commission considers that the negative effects of State aid for clean aircraft other than zero-emission aircraft may be offset by its positive effects where it contributes to the market introduction or accelerated uptake of new, more efficient and substantially more environmentally-friendly aircraft, in line with a pathway towards climate neutrality, without locking in certain technologies and displacing investments into cleaner alternatives.

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<sup>(83)</sup> For such an assessment, depending on the sectors and transport modes concerned, the Commission will generally consider a period of between two to five years following the notification or the implementation of the aid measure. It will base its assessment on independent market studies submitted by the Member State or on any other appropriate evidence.

187. As regards air transport, where appropriate to mitigate particularly distortive effects of the aid, including having regard to the market position of the beneficiary, or to increase the positive effects of the measures, the Commission may require that the beneficiary decommissions an equivalent number of less environmentally-friendly aircraft of a similar take-off mass as the aircraft acquired or leased with State aid.
188. When assessing the distortion of competition of aid for the acquisition or leasing of vehicles or mobile service equipment, the Commission will consider whether bringing into service new vehicles would result in or aggravate existing market failures, such as overcapacity in the sector concerned.
189. To address the expected higher distortive effects of measures granting targeted support to an individual beneficiary or a limited number of specific beneficiaries <sup>(84)</sup> in the absence of competitive bidding, the Member State must adequately justify the measure's design, and demonstrate that the higher risks of competition distortion are duly addressed <sup>(85)</sup>.

#### 4.3.2. *Aid for the deployment of recharging or refuelling infrastructure*

##### 4.3.2.1. Rationale for the aid

190. A comprehensive network of recharging and refuelling infrastructure is necessary to enable a widespread uptake of clean vehicles, and to enable the shift towards zero emission mobility. In fact, a particularly critical barrier to the market uptake of clean vehicles is the limited availability of the infrastructure to recharge or refuel them. Furthermore, the recharging and refuelling infrastructure is not spread evenly across Member States. As long as the share of clean vehicles in operation remains limited, the market alone may fail to deliver the recharging and refuelling infrastructure needed.
191. Directive 2014/94/EU of the European Parliament and of the Council <sup>(86)</sup> creates a common framework of measures for the deployment of alternative fuels infrastructure for transport in the Union and sets out a framework of common measures for the deployment of such infrastructure. Moreover, other policies promoting the uptake of clean vehicles may already provide for investment signals for the deployment of recharging and refuelling infrastructure. However, those policies alone may not be sufficient to address in full the identified market failures. Member States may therefore grant aid to address those residual market failures and support the deployment of recharging and refuelling infrastructure.

##### 4.3.2.2. Scope and supported activities

192. Aid may be granted for the construction, installation, upgrade or extension of recharging or refuelling infrastructure.
193. Projects may also include installations for smart charging operations and for the on-site production of renewable electricity or renewable or low-carbon hydrogen, connected to the recharging or refuelling infrastructure by means of a direct link, as well as on-site storage units for storing electricity or renewable or low-carbon hydrogen to be supplied as transport fuels. The nominal production capacity of the on-site electricity or hydrogen production installation should be proportionate to the rated output or refuelling capacity of the recharging or refuelling infrastructure to which it is connected.

<sup>(84)</sup> See point 66.

<sup>(85)</sup> This may include ensuring that overcompensation is excluded by verifying that the aid does not exceed the net extra costs, as demonstrated by comparing the funding gap in the factual and counterfactual scenario, and that the Member State introduces an *ex post* monitoring mechanism to verify the assumptions made about the level of aid required, together with a claw-back mechanism.

<sup>(86)</sup> Directive 2014/94/EU of the European Parliament and of the Council of 22 October 2014 on the deployment of alternative fuels infrastructure (OJ L 307, 28.10.2014, p. 1).

#### 4.3.2.3. Minimisation of distortions of competition and trade

##### 4.3.2.3.1. Necessity of the aid

194. The Member State must verify the necessity of aid to incentivise the deployment of recharging or refuelling infrastructure of the same category as the infrastructure that would be deployed with State aid <sup>(87)</sup> by means of an *ex ante* open public consultation, an independent market study or based on any other appropriate evidence as set out in Section 3.2.1.1. In particular, the Member State must demonstrate that similar infrastructure is not likely to be developed on commercial terms in the short term <sup>(88)</sup> and consider the impact of an ETS, where applicable.
195. When assessing the necessity of aid for the deployment of recharging and refuelling infrastructure that is open for access by users other than the aid beneficiary or beneficiaries, including publicly accessible recharging or refuelling infrastructure, the level of market penetration of the clean vehicles that such infrastructure would serve and the traffic volumes in the region or regions concerned may be considered.

##### 4.3.2.3.2. Appropriateness

196. The requirement set out in point 197 applies in addition to those set out in Section 3.2.1.2.
197. The verification of appropriateness among alternative policy instruments should take into consideration the potential for new regulatory interventions to stimulate the shift towards clean mobility and their expected impact compared to that of the proposed measure.

##### 4.3.2.3.3. Proportionality

198. The aid must not exceed the cost necessary to facilitate the development of the economic activity at issue, in a manner that increases the level of environmental protection. The aid may be considered proportionate where the conditions set out in points 199 to 204 are fulfilled.
199. The aid must be granted following a competitive bidding process conducted in accordance with the criteria set out in points 49 and 50. The design of the competitive bidding process must ensure that sufficient incentives remain for applicants to bid for projects concerning recharging or refuelling infrastructure supplying only renewable electricity or renewable hydrogen. The application of the award criteria must not result in projects concerning recharging or refuelling infrastructure supplying only renewable electricity or renewable hydrogen being put at a disadvantage compared to projects concerning recharging or refuelling infrastructures that also supply electricity or hydrogen that is more CO<sub>2</sub>-intensive compared to renewable electricity or renewable hydrogen or that is not renewable. Where appropriate, bid caps may be required to limit the maximum bid from individual bidders in particular categories. Any bid caps should be justified with reference to the quantification for reference projects referred to in points 51, 52 and 53.
200. By way of derogation from point 199, the aid may be granted on the basis of methods other than a competitive bidding process in the following cases:
- (a) where the expected number of participants is not sufficient to ensure effective competition or avoid strategic bidding;
  - (b) where a competitive bidding process, as set out in points 49 and 50, cannot be organised;

<sup>(87)</sup> For example, for recharging infrastructure, normal or high power.

<sup>(88)</sup> For such an assessment, the Commission will generally consider whether the recharging or refuelling infrastructure is expected to be deployed on commercial terms within a period that is relevant taking into consideration the duration of the measure. It will base its assessment on the results of the *ex ante* public consultation, independent market studies submitted by the Member State or on any other appropriate evidence.

- (c) where the aid is granted for recharging or refuelling infrastructure intended exclusively or primarily for use by undertakings active in the sector of public passenger transport by land, rail or water <sup>(89)</sup>;
  - (d) where the aid is granted for recharging or refuelling infrastructure intended exclusively or primarily for use by the aid beneficiary and which is not accessible to the public <sup>(90)</sup>, if adequately justified by the Member State concerned; or
  - (e) where the aid is granted for recharging or refuelling infrastructure intended for use by certain types of vehicle for which the relevant market penetration rate (per relevant type of vehicle) in the Member State concerned or the traffic volumes in the region or regions concerned are very limited <sup>(91)</sup>.
201. In the cases listed in point 200, the aid amount may be determined on the basis of a funding gap analysis as set out in points 48, 51 and 52. The Member State must conduct an *ex post* monitoring to verify the assumptions made about the level of aid required and put in place a claw-back mechanism as set out in point 55.
202. Alternatively to point 201, the aid may be considered proportionate if it does not exceed 30 % of the eligible costs or, where the recharging or refuelling infrastructure supplies only renewable electricity or renewable hydrogen, 40 % of the eligible costs. The aid intensity may be increased by 10 percentage points for medium-sized enterprises or by 20 percentage points for small enterprises. The aid intensity may be increased by 15 percentage points for investments located in assisted areas fulfilling the conditions in Article 107(3), point (a), of the Treaty or by 5 percentage points for investments located in assisted areas fulfilling the conditions in Article 107(3), point (c), of the Treaty.
203. In such cases, the eligible costs are all the investment costs for the construction, installation, upgrade or extension of recharging or refuelling infrastructure. For instance, these may include the costs of:
- (a) the recharging or refuelling infrastructure and related technical equipment;
  - (b) the installation of or upgrades to electrical or other components, including electrical cables and power transformers, required for connecting the recharging or refuelling infrastructure to the grid or to a local electricity or hydrogen production or storage unit and for ensuring the smart readiness of recharging infrastructure;
  - (c) civil engineering works, land or road adaptations, installation costs and costs for obtaining related permits.
204. Where a project includes the on-site production of renewable electricity or renewable or low-carbon hydrogen or the on-site storage of electricity or renewable or low-carbon hydrogen, the eligible costs may include the investment costs of the production units or of the storage facilities.

#### 4.3.2.4. Avoidance of undue negative effects on competition and trade and balancing

205. The requirements set out in points 206 to 216 apply in addition to those set out in Section 3.2.2.

<sup>(89)</sup> Recharging or refuelling infrastructure intended primarily for use by undertakings active in the sector of public passenger transport by land, rail or water may be open on an ancillary basis for use by employees, external contractors or suppliers of those undertakings.

<sup>(90)</sup> Recharging or refuelling infrastructure intended primarily for use by the aid beneficiary may be open on an ancillary basis for use by employees, external contractors or suppliers of the aid beneficiary.

<sup>(91)</sup> For instance, a measure targeting aid for investments in hydrogen refuelling stations for heavy-duty vehicles at freight terminals and logistics parks in a Member State in which the market share of hydrogen heavy-duty vehicles is less than 2 %.

206. New recharging infrastructure that allow for a transfer of electricity with a power output of up to 22 kW must be capable of supporting smart recharging functionalities. This would ensure that recharging operations are optimised and managed in a way that does not cause congestion and takes full advantage of the availability of renewable electricity and low electricity prices in the system.
207. To avoid the duplication of infrastructure and make use of assets that have not yet reached the end of their economic lifetime, in the case of refuelling infrastructure for waterborne and air transport supplying synthetic fuels, including renewable liquid and gaseous transport fuels of non-biological origin, or biofuels <sup>(92)</sup>, the Member State must justify the need for new infrastructure, taking into account the technical characteristics of the fuel or fuels to be supplied using that infrastructure. In the case of drop-in <sup>(93)</sup> synthetic fuels or biofuels, the Member State must consider the extent to which existing infrastructure can be used for the supply of drop-in synthetic fuels or biofuels.
208. Aid for the construction, installation, upgrade or extension of refuelling infrastructure may unduly distort competition where it displaces investments into cleaner alternatives that are already available on the market, or where it locks in certain technologies, thereby hampering the development of a market for cleaner technologies and their use. Therefore, in those cases, the Commission considers that the negative effects on competition of aid for refuelling infrastructure supplying natural gas-based fuels are unlikely to be offset.
209. Given the current stage of development of the market for clean mobility technologies in the waterborne sectors, aid for the construction, installation, upgrade or extension of CNG and LNG refuelling infrastructure for waterborne transport may be considered as not having long-term lock-in effects and not displacing investments into cleaner technologies if the Member State demonstrates that cleaner alternatives are not readily available on the market and are not expected to be available in the short term <sup>(94)</sup>, and provided that the infrastructure would be used to trigger the transition towards low-carbon fuels. When assessing such aid, the Commission will take into account whether the investment forms part of a credible decarbonisation pathway and the aid contributes to achieving targets set out in Union legislation on the deployment of alternative fuel infrastructure.
210. In the area of road transport, zero-emission vehicles are already a realistic option, especially for light duty vehicles. As regards heavy-duty vehicles, these are expected to become more widely available on the market in the near future. Therefore, aid for LNG refuelling infrastructure for heavy-duty vehicles granted after 2025 is likely to have negative effects on competition that are unlikely to be offset by any positive effects. When assessing aid for refuelling infrastructure for heavy-duty vehicles, the Commission will take into account whether it contributes to achieving targets set out in Union legislation on the deployment of alternative fuel infrastructure.
211. Alternatives to fossil-based fuels are already available on the market for use in the road transport sector, certain segments of the waterborne transport sector and the rail transport sector. In this context, aid for the deployment of refuelling infrastructure supplying fuels produced using fossil-based sources or energy, including fossil-based hydrogen <sup>(95)</sup>, is not considered to yield the same positive effects as aid for deployment of refuelling infrastructure supplying non-fossil-based or low-carbon fuels. Firstly, the CO<sub>2</sub> emission reductions achieved in the transport sector are likely to be counterbalanced by the continuation of CO<sub>2</sub> emissions linked to the production and use of fossil-based fuels, especially where these are not effectively captured and stored. Secondly, the granting of aid for refuelling infrastructure that supplies fossil-based fuels that are not low-carbon, may entail a risk of locking in certain production technologies, thereby displacing investments into

<sup>(92)</sup> This includes sustainable aviation fuels.

<sup>(93)</sup> Drop-in fuels refer to fuels that are functionally equivalent to the fossil fuels currently in use and fully compatible with the distribution infrastructure and the on-board machinery and engines.

<sup>(94)</sup> For such an assessment, the Commission will generally consider a period of between two to five years following the notification or the implementation of the aid measure. It will base its assessment on independent market studies submitted by the Member State or on any other appropriate evidence.

<sup>(95)</sup> See Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions 'A hydrogen strategy for a climate-neutral Europe', COM(2020) 301 final, p. 3.

cleaner alternatives by shifting demand away from production processes that do not involve the use of fossil-based sources or energy, or that are low-carbon. This would also discourage the development of the market for clean, non-fossil-based technologies for zero-emission mobility, and for the production of non-fossil fuels and energy. The Commission therefore considers that the negative effects on competition of aid for refuelling infrastructure supplying fossil-based fuels, including fossil-based hydrogen, where greenhouse gases emitted as part of the hydrogen production are not effectively captured, are unlikely to be offset, in the absence of a credible pathway towards the supply and use of renewable or low-carbon fuels in the medium term.

212. Aid for hydrogen refuelling infrastructure that does not exclusively supply renewable hydrogen or low-carbon hydrogen may therefore be regarded as not having long-term lock-in effects or not displacing investments into cleaner technologies if the Member State demonstrates a credible pathway towards the phasing out of hydrogen that is not renewable or low-carbon to supply the refuelling infrastructure by 2035.
213. In the absence of appropriate safeguards, the aid may result in the creation or the strengthening of market power positions, which may prevent or impair effective competition in nascent or developing markets. The Member State must therefore ensure that the design of the aid measure contains appropriate safeguards to address that risk. Those safeguards can include, for instance, the establishment of a maximum percentage of the budget for the measure that can be allocated to one single undertaking.
214. Where appropriate, the Commission will assess whether sufficient safeguards are in place to ensure that operators of recharging or refuelling infrastructure that offer or allow contract-based payments on their infrastructure do not unduly discriminate between mobility service providers, for example by applying unjustified preferential access conditions, or through unjustified price differentiation. Where such safeguards are not in place, the Commission considers that the measure may likely lead to undue negative effects on competition in the market for mobility services.
215. Any concession or other entrustment to a third party to operate the recharging or refuelling infrastructure must be awarded on a competitive, transparent and non-discriminatory basis, having due regard to the Union public procurement rules, where applicable.
216. Where aid is granted for the construction, installation, upgrade or extension of recharging or refuelling infrastructure that is open for access by users other than the aid beneficiary or beneficiaries, including publicly accessible recharging or refuelling infrastructure, the infrastructure must be accessible to the public and provide non-discriminatory access to users, including, as appropriate, in relation to tariffs, authentication and payment methods and other terms and conditions of use. In addition, the Member State must ensure that the fees charged to users other than the aid beneficiary or beneficiaries for using the recharging or refuelling infrastructure correspond to market prices.

#### 4.4. **Aid for resource efficiency and for supporting the transition towards a circular economy**

##### 4.4.1. *Rationale for the aid*

217. The Circular Economy Action Plan ('CEAP') <sup>(96)</sup> provides a future-oriented agenda which aims at accelerating the Union's transition to a circular economy as part of the transformational change promoted by the European Green Deal Communication. The CEAP promotes circular economy processes, encourages sustainable consumption and production, and aims to ensure that waste is prevented and that resources used are kept in the Union economy for as long as possible. Those goals are also a prerequisite to achieving the Union's 2050 climate neutrality target and a cleaner and more sustainable economy.

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<sup>(96)</sup> Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions 'A new Circular Economy Action Plan For a cleaner and more competitive Europe', COM(2020) 98 final.

218. The CEAP specifically mentions the need to reflect objectives linked to the circular economy in the context of the revision of the State aid guidelines in the field of the environment and energy. In this respect, financial support in the form of State aid, combined with broad, clear, and consistent rules, can play a key role in supporting circularity in production processes as part of a wider transformation of the Union industry towards climate-neutrality and long-term competitiveness. It can also play a key role in helping to create a well-functioning Union market for secondary raw materials that will reduce pressure on natural resources and will create sustainable growth and jobs and will strengthen resilience.
219. The CEAP further recognises the increasing importance of biological resources as key input to the economy of the EU. In line with the EU Bioeconomy Strategy <sup>(97)</sup>, the bioeconomy is supportive of the European Green Deal objectives, as it contributes to a carbon neutral economy, enhances environmental, economic, and social sustainability, and promotes green growth. Financial support in the form of State aid can play a key role in supporting the deployment of sustainable bioeconomy practices, such as the support for sustainably produced bio-based materials and products, which can help to achieve climate neutrality and would not be taken up by the market alone.

#### 4.4.2. *Scope and supported activities*

220. Aid under this Section may be granted for the following types of investments:
- (a) investments aimed at improving resource efficiency through any of the following:
    - (i) a net reduction in the resources consumed in the production of the same quantity of output <sup>(98)</sup>;
    - (ii) the replacement of primary raw materials or feedstock with secondary (re-used or recycled) or recovered raw materials or feedstock; or
    - (iii) the replacement of fossil-based raw materials or feedstock with bio-based raw materials or feedstock;
  - (b) investments for the reduction, prevention, preparing for re-use, material recovery, decontamination and recycling of waste <sup>(99)</sup> generated by the beneficiary;
  - (c) investments for the preparing for re-use, material recovery, decontamination and recycling of waste generated by third parties and which would otherwise be disposed of, or be treated based on a treatment operation that is situated lower in the priority order of the waste hierarchy <sup>(100)</sup> or in a less resource-efficient manner, or would lead to a lower quality of recycling;
  - (d) investments for the reduction, prevention, preparing for re-use, material recovery, decontamination, re-use and recycling of other products, materials or substances <sup>(101)</sup> generated by the beneficiary or by third parties, which do not necessarily qualify as waste, and which would otherwise be unused, disposed of or recovered in a less resource-efficient manner, would constitute waste unless re-used or would lead to a lower quality of recycling;

<sup>(97)</sup> Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions 'A sustainable Bioeconomy for Europe: Strengthening the connection between economy, society and the environment', COM(2018)673 final and SWD(2018)431.

<sup>(98)</sup> The resources consumed may include all material resources consumed, with the exception of energy. The reduction may be determined by measuring or estimating consumption before and after the implementation of the aid measure, including any adjustment for external conditions that may affect resource consumption.

<sup>(99)</sup> See the definitions of re-use, recovery, preparing for re-use, recycling, and waste in points 19(59), (61), (62), (75) and (90).

<sup>(100)</sup> The waste hierarchy consists of (a) prevention, (b) preparing for re-use, (c) recycling, (d) other recovery, for instance energy recovery, and (e) disposal. See Article 4, point (1), of Directive 2008/98/EC.

<sup>(101)</sup> Other products, materials or substances may include by-products (as referred to in Article 5 of Directive 2008/98/EC), agricultural, aquaculture, fisheries and forestry residues, waste water, rain water and runoff water, minerals, mining waste, nutrients, residual gases from production processes, redundant products, parts and materials, etc. Redundant products, parts and materials are products, parts or materials that are no longer needed by or useful for its holder but are suitable for re-use.

(e) investments for the separate collection <sup>(102)</sup> and sorting of waste or other products, materials or substances with a view to the preparing for re-use or recycling.

221. Under certain conditions, aid to cover operating costs may be granted for the separate collection and sorting of waste in relation to specific waste streams or types of waste (see point (247)).
222. Aid relating to the recovery of residual heat from production processes or aid relating to CCU will be assessed under the conditions applicable to aid for the reduction of greenhouse gas emissions set out in Section 4.1.
223. Aid relating to the production of biofuels, bioliquids, biogas and biomass fuels from waste will be assessed under the conditions applicable to aid for the reduction of greenhouse gas emissions set out in Section 4.1.
224. Aid for energy generation from waste will be assessed under the conditions applicable to aid for the reduction of greenhouse gas emissions set out in Section 4.1. Where it is related to investments in district heating and cooling systems or for their operation, aid for the production of energy or heat from waste will be assessed under the conditions applicable to aid for district heating or cooling set out in Section 4.10.

#### 4.4.3. *Incentive effect*

225. The requirements set out in points 226 to 233 apply in addition to those set out in Section 3.1.2.
226. As regards the requirement set out in point 28 for the Member State to identify a credible counterfactual scenario, the counterfactual scenario will generally correspond to an investment with the same capacity, lifetime and, where appropriate, other relevant technical characteristics, as the environmentally-friendly investment.
227. The counterfactual scenario may also consist in maintaining the existing installations or equipment in operation for a period corresponding to the lifetime of the environmentally-friendly investment. In that case, the discounted maintenance, repair and modernisation costs over that period should be taken into account.
228. In certain cases, the counterfactual scenario may consist in a later replacement of the installations or equipment, in which case the discounted value of the installations and equipment should be taken into account and the difference in the respective economic lifetime of the installations or equipment should be equalised.
229. In the case of equipment subject to leasing arrangements, the discounted value of the leasing of the environmentally-friendly equipment should be compared with the discounted value of the leasing of the less environmentally-friendly equipment that would be used in the absence of the aid.
230. Where the investment consists in adding installations or equipment to existing facilities, installations or equipment, the eligible costs will consist of the total investment costs.
231. The Commission considers that, in principle, aid to projects with a payback period of less than five years does not have an incentive effect. However, the Member State may provide evidence to demonstrate that aid is needed to trigger a change in behaviour, even in the case of projects with a shorter payback period.

<sup>(102)</sup> See the definition of 'separate collection' in Article 3, point (11), of Directive 2008/98/EC.

232. Aid for investments enabling undertakings to merely comply with mandatory Union standards already in force will not be considered to have an incentive effect (see point (32)). As explained in point 32, aid may be regarded as having an incentive effect where it enables an undertaking to increase its level of environmental protection in compliance with mandatory national standards that are more stringent than Union standards or that are adopted in the absence of Union standards.

233. Aid for the adaptation to Union standards adopted but not yet in force will be considered to have an incentive effect if the investment is implemented and finalised at least 18 months before the Union standards enter into force.

#### 4.4.4. *Minimisation of distortions on competition and trade*

##### 4.4.4.1. Necessity of the aid

234. The requirements set out in points 235 and 236 apply in addition to those set out in Section 3.2.1.1.

235. The investment must go beyond established commercial practices that are generally applied throughout the Union and across technologies <sup>(103)</sup>.

236. In the case of aid for the separate collection and sorting of waste or other products, materials or substances, the Member State must demonstrate that such separate collection and sorting is underdeveloped in that Member State <sup>(104)</sup>. Where aid to cover operating costs is granted, the Member State must demonstrate that such aid is required during a transitional period to facilitate the development of activities relating to the separate collection and sorting of waste. The Member State must take into account any obligations of undertakings under extended producer responsibility schemes, which it may have implemented pursuant to Article 8 of Directive 2008/98/EC.

##### 4.4.4.2. Appropriateness

237. The requirements set out in point 238 apply in addition to those set out in Section 3.2.1.2.

238. In accordance with the 'polluter pays' principle <sup>(105)</sup>, undertakings generating waste should not be relieved from the costs of waste treatment. The aid should therefore not relieve undertakings that generate waste from any costs or obligations relating to the treatment of waste for which they are liable under Union or national law, including under extended producer responsibility schemes. In addition, the aid should not relieve undertakings from costs that should be considered as normal costs for an undertaking.

##### 4.4.4.3. Proportionality

239. The eligible costs are the extra investment costs determined by comparing the total investment costs of the project with those of a less environmentally-friendly project or activity, which may be one of the following:

- (a) a comparable investment as described under point 226 that would credibly be realised without aid and which does not achieve the same level of resource efficiency;
- (b) treating the waste based on a treatment operation that is situated lower in the priority order of the waste hierarchy or in a less resource-efficient way;

<sup>(103)</sup> From a technological perspective, the investment should lead to a higher degree of recyclability or to a higher quality of the recycled material as compared to normal practice.

<sup>(104)</sup> Where adequately demonstrated by the Member State, the specific situation at the level of the region or regions concerned may also be considered.

<sup>(105)</sup> See the definition in point 19(58).

- (c) the conventional production process relating to the primary raw material or product, if the re-used or recycled (secondary) product is technically and economically substitutable with the primary raw material or product;
- (d) any other counterfactual scenario based on duly justified assumptions.
240. Where the product, substance or material would constitute waste unless re-used and there is no legal requirement for that product, substance or material to be disposed of or otherwise be treated, the eligible costs may correspond to the investment necessary to recover the product, substance or material concerned.
241. The aid intensity must not exceed 40 % of the eligible costs.
242. The aid intensity may be increased by 10 percentage points for medium-sized enterprises or by 20 percentage points for small enterprises.
243. The aid intensity may be increased by 15 percentage points for investments located in assisted areas fulfilling the conditions in Article 107(3), point (a), of the Treaty or by 5 percentage points for investments located in assisted areas fulfilling the conditions in Article 107(3), point (c), of the Treaty.
244. The aid intensity may be increased by 10 percentage points for eco-innovation activities, provided that the following cumulative conditions are fulfilled:
- (a) the eco-innovation activity must be new or substantially improved compared to the state of the art in its industry in the Union <sup>(106)</sup>;
- (b) the expected environmental benefit must be significantly higher than the improvement resulting from the general evolution of the state of the art in comparable activities <sup>(107)</sup>;
- (c) the innovative character of the activity involves a clear degree of risk, in technological, market or financial terms, which is higher than the risk generally associated with comparable non-innovative activities <sup>(108)</sup>.
245. By way of derogation from points 241 to 244, the Member State may also demonstrate, based on a funding gap analysis, as set out in points 48, 51 and 52, that a higher aid intensity is required. In such a case, the Member State must conduct an *ex post* monitoring to verify the assumptions made about the level of aid required and put in place a claw-back mechanism, as set out in point 55. The aid amount must not exceed the funding gap, as set out in points 51 and 52.
246. Where the aid is granted following a competitive bidding process conducted in accordance with the criteria set out in points 49 and 50, the aid amount is considered proportionate.
247. The aid may cover operating costs where it relates to the separate collection and sorting of waste or other products, materials or substances in relation to specific waste streams or types of waste with a view to the preparing for re-use or recycling, in which case the following conditions must be fulfilled:

<sup>(106)</sup> The novelty could, for example, be demonstrated by the Member States on the basis of a precise description of the innovation and of market conditions for its introduction or diffusion, comparing it with state-of-the-art processes or organisational techniques generally used by other undertakings in the same industry.

<sup>(107)</sup> If quantitative parameters can be used to compare eco-innovative activities with standard, non-innovative activities, 'significantly higher' means that the marginal improvement expected from eco-innovative activities in terms of reduced environmental risk or pollution or improved efficiency in energy or resources should be at least twice as high as the marginal improvement expected from the general evolution of comparable non-innovative activities. Where the proposed approach is not appropriate for a given case, or if no quantitative comparison is possible, the application file for State aid should contain a detailed description of the method used to assess this criterion, ensuring a standard comparable to that of the proposed method.

<sup>(108)</sup> This risk could be demonstrated by the Member State for instance in terms of: costs in relation to the undertaking's turnover, time required for the development, expected gains from the eco-innovation activity in comparison with the costs, and probability of failure.

- (a) the aid must be granted following a competitive bidding process conducted in accordance with the criteria set out in points 49 and 50 which must be open, on a non-discriminatory basis, to all operators providing separate collection and sorting services;
- (b) where there is a high level of uncertainty about the future evolution of the operating costs for the duration of the measure, the competitive bidding process may include rules that limit aid in certain well-identified circumstances, provided those rules and circumstances are established *ex ante*;
- (c) any investment aid granted to an installation used for the separate collection and sorting of waste in relation to specific waste streams or types of waste must be deducted from the operating aid granted to that same installation when both forms of aid cover the same eligible costs;
- (d) the aid may be granted for a maximum period of five years.

#### 4.4.5. *Avoidance of undue negative effects on competition and trade*

- 248. The requirements set out in points 249 to 252 apply in addition to those set out in Section 3.2.2.
- 249. The aid must not incentivise the generation of waste or the increased use of resources.
- 250. The aid must not merely increase demand for the waste or other materials and resources intended to be re-used, recycled or recovered without increasing the collection of those materials.
- 251. When assessing the impact of the aid on the market, the Commission will take into account the potential effects of the aid on the functioning of the markets for primary and secondary materials relating to the products concerned.
- 252. In particular, when assessing the impact on the market of aid for operating costs relating to the separate collection and sorting of waste or other products, materials or substances in relation to specific waste streams or types of waste in view of preparing for re-use or recycling, the Commission will take into account the potential interactions with extended producer responsibility schemes in the Member State concerned.

#### 4.5. **Aid for the prevention or the reduction of pollution other than from greenhouse gases**

##### 4.5.1. *Rationale for the aid*

- 253. The European Green Deal Communication's zero pollution ambition for a toxic-free environment should ensure that, by 2050, pollution is reduced to levels no longer harmful for humans and natural ecosystems and respect the boundaries our planet can cope with, thus creating a toxic-free environment, in line with the UN 2030 Agenda for Sustainable Development <sup>(109)</sup> and the long-term objectives of the 8<sup>th</sup> Environment Action Programme <sup>(110)</sup>. The Union has set out specific targets for reducing the level of pollution, such as for cleaner

<sup>(109)</sup> The UN 2030 Agenda for Sustainable Development is available at: <https://sustainabledevelopment.un.org/content/documents/21252030%20Agenda%20for%20Sustainable%20Development%20web.pdf>.

<sup>(110)</sup> Proposal for a Decision of the European Parliament and of the Council on a General Union Environment Action Programme to 2030, COM(2020) 652 final.

air<sup>(111)</sup> and for zero pollution of water bodies<sup>(112)</sup>, less noise, minimised used and release of substances of concern, plastic litter and microplastics pollution and waste<sup>(113)</sup>, as well as targets for excess nutrients and fertilisers, hazardous pesticides and substances causing antimicrobial resistance<sup>(114)</sup>.

254. Financial support in the form of State aid can contribute substantially to the environmental objective of reducing forms of pollution other than from greenhouse gas emissions.

#### 4.5.2. *Scope and supported activities*

255. Aid for the prevention or the reduction of pollution other than from greenhouse gases may be granted for investments enabling undertakings to go beyond Union standards for environmental protection, to increase the level of environmental protection in the absence of Union standards or to comply with Union standards that are adopted but not yet in force.
256. Where the aid is granted in the form of tradable permits<sup>(115)</sup>, the aid measure must be designed in such a way as to prevent or reduce pollution beyond the levels imposed by Union standards that are mandatory for the undertakings concerned.
257. The aid must target the prevention or reduction of pollution directly linked to the beneficiary's own activities.
258. The aid must not merely displace pollution from one sector to another or from one environmental medium to another (for example, from air to water). Where the aid targets the reduction of pollution, it must achieve an overall reduction of pollution.
259. Section 4.5 does not apply to aid measures that fall within the scope of Section 4.1. Where a measure contributes to both the prevention or reduction of greenhouse gas emissions and the prevention or reduction of pollution other than from greenhouse gas emissions, the compatibility of the measure will be assessed either on the basis of Section 4.1 or on the basis of this Section, depending on which of the two objectives is predominant<sup>(116)</sup>.

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<sup>(111)</sup> Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions 'A Clean Air Programme for Europe', COM(2013) 918 final. See also Directive 2004/107/EC of the European Parliament and of the Council of 15 December 2004 relating to arsenic, cadmium, mercury, nickel and polycyclic aromatic hydrocarbons in ambient air (OJ L 23, 26.1.2005, p. 3) and Directive 2008/50/EC of the European Parliament and of the Council of 21 May 2008 on ambient air quality and cleaner air for Europe (OJ L 152, 11.6.2008, p. 1) for ground-level ozone, particulate matter, nitrogen oxides, dangerous heavy metals and a number of other pollutants. See also Directive (EU) 2016/2284 of the European Parliament and of the Council of 14 December 2016 on the reduction of national emissions of certain atmospheric pollutants, amending Directive 2003/35/EC and repealing Directive 2001/81/EC (OJ L 344, 17.12.2016, p. 1) for the most important transboundary air pollutants: sulphur dioxides, nitrogen oxides, ammonia, non-methane volatile organic compounds and particulate matter.

<sup>(112)</sup> Directive 2000/60/EC of the European Parliament and of the Council of 23 October 2000 establishing a framework for Community action in the field of water policy (OJ L 327, 22.12.2000, p. 1) requires, unless exemptions apply, good ecological status, for all surface and groundwater bodies.

<sup>(113)</sup> Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions 'Pathway to a Healthy Planet for All EU Action Plan: Towards Zero Pollution for Air, Water and Soil', COM(2021) 400 final.

<sup>(114)</sup> Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions 'A Farm to Fork Strategy for a fair, healthy and environmentally-friendly food system', COM(2020) 381 final.

<sup>(115)</sup> Tradable permits can involve State aid, in particular when Member States grant permits and allowances below their market value.

<sup>(116)</sup> To determine which of the two objectives is predominant the Commission may require the Member State to provide a comparison of the expected results of the measure in terms of the prevention or reduction of emissions of greenhouse gases and of other pollutants on the basis of credible, detailed quantifications.

#### 4.5.3. *Incentive effect*

260. The requirements set out in points 261 and 262 apply in addition to those set out in Section 3.1.2.
261. Aid is considered to have an incentive effect when it enables an undertaking to prevent or reduce pollution in the absence of Union standards or beyond the levels required by Union standards that are already in force. As explained in point 32, aid may also be regarded as having an incentive effect where it enables an undertaking to prevent or reduce pollution in compliance with mandatory national standards that are more stringent than the Union standards or that are adopted in the absence of Union standards.
262. Aid for the adaptation to Union standards adopted but not yet in force will be considered to have an incentive effect if the investment is implemented and finalised at least 18 months before the Union standards enter into force.

#### 4.5.4. *Minimisation of distortions on competition and trade*

##### 4.5.4.1. *Necessity of the aid*

263. The requirements set out in point 264 apply in addition to those set out in Section 3.2.1.1.
264. For aid in the form of tradable permits <sup>(117)</sup>, the Member State must demonstrate that the following cumulative conditions are fulfilled:
- (a) full auctioning leads to a substantial increase in production costs for each sector or category of individual beneficiaries;
  - (b) the substantial increase in production costs cannot be passed on to customers without leading to significant sales reductions <sup>(118)</sup>;
  - (c) individual undertakings in the sector do not have the possibility to reduce emission levels in order to reduce the cost of the certificates to a level that is bearable for those undertakings. The fact that consumption cannot be reduced may be demonstrated by comparing the emission levels with those derived from the best performing technique in the European Economic Area. Any undertaking achieving the best performing technique can benefit at most from an allowance under the tradable permit scheme corresponding to the increase in production cost, and which cannot be passed on to customers. Any undertaking having a worse environmental performance benefits from a lower allowance, proportionate to its environmental performance.

##### 4.5.4.2. *Proportionality*

265. The eligible costs are the extra investment costs directly linked to the achievement of a higher level of environmental protection.
266. The extra investment costs consist of the difference between the aided investment costs and those of the investment under the counterfactual scenario as described in points 226 to 230. Where the project consists in the early adaptation to Union standards that are not yet in force, the counterfactual scenario should in principle be that described in point 228.
267. The aid intensity must not exceed 40 % of the eligible costs.
268. The aid intensity may be increased by 10 percentage points for medium-sized enterprises or by 20 percentage points for small enterprises.

<sup>(117)</sup> Tradable permits can involve State aid, in particular when Member States grant permits and allowances below their market value.

<sup>(118)</sup> The analysis may be conducted on the basis of estimates of the product price elasticity of the sector concerned, among other factors, as well as on estimates of lost sales as well as their impact on the profitability of the beneficiary.

269. The aid intensity may be increased by 15 percentage points for investments located in assisted areas fulfilling the conditions in Article 107(3), point (a), of the Treaty or by 5 percentage points for investments located in assisted areas fulfilling the conditions in Article 107(3), point (c), of the Treaty.
270. The aid intensity may be increased by 10 percentage points for eco-innovation activities, provided that the conditions set out in point 244(a) to (c) are fulfilled.
271. By way of derogation from points 267 to 270, the Member State may also demonstrate, based on a funding gap analysis, as set out in points 48, 51 and 52, that a higher aid amount is required. In such a case, the Member State must conduct an *ex post* monitoring to verify the assumptions made about the level of aid required and put in place a claw-back mechanism, as set out in point 55. The aid amount must not exceed the funding gap, as set out points 51 and 52.
272. Where the aid is granted following a competitive bidding process conducted in accordance with the criteria set out in points 49 and 50, the aid amount is considered proportionate.
273. For aid in the form of tradable permits, the Commission will also verify that:
- (a) the allocation is carried out in a transparent way, based on objective criteria and on data sources of the highest quality available; and
  - (b) the total amount of tradable permits or allowances granted to each undertaking for a price below their market value is not higher than its expected needs as estimated for a situation without the trading scheme.

4.5.5. *Avoidance of undue negative effects on competition and trade*

274. The requirements set out in point 275 apply in addition to those set out in Section 3.2.2.
275. For aid in the form of tradable permits, the Commission will also verify that:
- (a) the choice of beneficiaries is based on objective and transparent criteria and the aid is granted in principle in the same way for all competitors in the same sector if they are in a similar factual situation;
  - (b) the allocation methodology does not favour certain undertakings <sup>(119)</sup> or certain sectors, unless it is justified by the environmental logic of the scheme itself or where such rules are necessary for consistency with other environmental policies;
  - (c) new entrants do not receive permits or allowances on more favourable conditions than existing undertakings operating on the same markets;
  - (d) where higher allocations are granted to existing installations compared to new entrants, this does not result in creating undue barriers to entry.

4.6. **Aid for the remediation of environmental damage, the rehabilitation of natural habitats and ecosystems, the protection or restoration of biodiversity and the implementation of nature-based solutions for climate change adaptation and mitigation**

4.6.1. *Rationale for the aid*

276. The Biodiversity Strategy for 2030 <sup>(120)</sup> aims at protecting nature, reversing the degradation of ecosystems and putting the Union's biodiversity on a path to recovery by 2030. As a core part of the European Green Deal Communication, it sets ambitious targets and commitments for 2030 to achieve healthy and resilient ecosystems.

<sup>(119)</sup> For example new entrants or on the contrary existing undertakings or installations.

<sup>(120)</sup> Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions 'EU biodiversity Strategy for 2030 bringing nature back into our lives', COM(2020) 380 final.

277. Financial support in the form of State aid can contribute substantially to the environmental objective of protecting and restoring biodiversity and ecosystems, in several ways, including by providing incentives to repair the damage to contaminated sites, rehabilitate degraded natural habitats and ecosystems or undertake investments for the protection of ecosystems.
278. The EU strategy for adaptation to climate change <sup>(121)</sup> aims at leveraging investments in nature-based solutions for adaptation <sup>(122)</sup>, given that their implementation on a large scale would increase climate resilience and contribute to multiple objectives of the European Green Deal.

#### 4.6.2. *Scope and supported activities*

279. This Section lays down compatibility rules for aid measures for the remediation of environmental damage, the rehabilitation of natural habitats and ecosystems, the protection or restoration of biodiversity and the implementation of nature-based solutions for climate change adaptation and mitigation.
280. This Section does not apply to:
- (a) aid for remediation or rehabilitation following the closure of power plants and mining or extraction operations to the extent that the aid in question is covered by Section 4.12 <sup>(123)</sup>;
  - (b) aid to make good the damage caused by natural disasters, such as earthquakes, avalanches, landslides, floods, tornadoes, hurricanes, volcanic eruptions and wild fires of natural origin.
281. Aid under this Section may be granted for the following activities:
- (a) the remediation of environmental damage, including damage to the quality of the soil, surface water or groundwater or to the marine environment;
  - (b) the rehabilitation of natural habitats and ecosystems from a degraded state;
  - (c) the protection or restoration of biodiversity or of ecosystems to contribute to achieving the good condition of ecosystems or to protect ecosystems that are already in good condition;
  - (d) the implementation of nature-based solutions for climate change adaptation and mitigation.
282. This Section does not apply to aid measures that fall within the scope of Section 4.1. Where a measure contributes to both the reduction of greenhouse gas emissions and the remediation of environmental damage, the rehabilitation of natural habitats and ecosystems, the protection or restoration of biodiversity and the implementation of nature-based solutions for climate change adaptation and mitigation, the compatibility of the measure will be assessed either on the basis of Section 4.1 or of this Section, depending on which of the two objectives is predominant <sup>(124)</sup>.

#### 4.6.3. *Incentive effect*

283. The requirements set out in points 284 to 287 apply in addition to those set out in Section 3.1.2.

<sup>(121)</sup> Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions 'Forging a climate-resilient Europe – the new EU Strategy on Adaptation to Climate Change', COM(2021) 82 final.

<sup>(122)</sup> <https://www.eea.europa.eu/publications/nature-based-solutions-in-europe/>.

<sup>(123)</sup> For instance, aid for the rewetting of peatlands that is not linked to aid for the early closure of peat extraction operations or to aid for exceptional costs linked to such activities may be covered under Section 4.6.

<sup>(124)</sup> To determine which of the two objectives is predominant the Commission may require the Member State to provide a comparison of the expected results of the measure in terms of the prevention or reduction of emissions of greenhouse gases and of the remediation of environmental damage, the rehabilitation of natural habitats and ecosystems, the protection or restoration of biodiversity and the implementation of nature-based solutions for climate change adaptation and mitigation, where appropriate on the basis of credible, detailed quantifications.

284. Without prejudice to Directive 2004/35/EC of the European Parliament and of the Council or other relevant Union rules <sup>(125)</sup>, aid for the remediation of environmental damage, the rehabilitation of natural habitats and ecosystems, the protection or restoration of biodiversity and the implementation of nature-based solutions for climate change adaptation and mitigation may be regarded as having an incentive effect only when the entity or undertaking at the origin of the environmental damage cannot be identified or be held legally liable for financing the works necessary to prevent and correct environmental damage in accordance with the 'polluter pays' principle.
285. The Member State must demonstrate that all necessary measures, including legal action, have been taken to identify the liable entity or undertaking at the origin of the environmental damage and make it bear the relevant costs. Where the entity or undertaking liable under the applicable law cannot be identified or made to bear the costs, aid may be granted to support the entire remediation or rehabilitation works and may be regarded as having an incentive effect. The Commission may consider that an undertaking cannot be made to bear the costs of remediating the environmental damage it has caused where it has ceased to legally exist and no other undertaking can be regarded as its legal or economic successor <sup>(126)</sup> or where there is insufficient financial security to meet the costs of remediation.
286. Aid granted for the implementation of compensatory measures referred to in Article 6, point (4), of Council Directive 92/43/EEC <sup>(127)</sup> does not have an incentive effect. Aid to cover the extra costs necessary to increase the scope or ambition of those measures beyond the legal obligations under Article 6, point (4), of that Directive may be found to have an incentive effect.
287. Aid for the remediation of environmental damage and for the rehabilitation of natural habitats and ecosystems will be considered to have an incentive effect when the remediation or rehabilitation costs exceed the increase in land value (see point (288)).

#### 4.6.4. Proportionality

288. For investments in the remediation of environmental damage or the rehabilitation of natural habitats and ecosystems, the eligible costs are the costs incurred for the remediation or rehabilitation works, less the increase in the value of the land or property. Evaluations of the increase in value of the land or property resulting from the remediation or rehabilitation must be carried out by an independent qualified expert.
289. For investments in the protection or restoration of biodiversity and in the implementation of nature-based solutions for climate change adaptation and mitigation, the eligible costs are the total costs of the works resulting in the contribution to protecting or restoring biodiversity or in the implementation of nature-based solutions for climate change adaptation and mitigation.
290. Where aid is granted for the implementation of nature-based solutions in buildings, for which an energy performance certificate exists, Member States would need to demonstrate that these investments do not prevent the implementation of energy efficiency measures recommended in the energy performance certificate.
291. The aid intensity may reach up 100 % of the eligible costs.

<sup>(125)</sup> Directive 2004/35/CE of the European Parliament and of the Council of 21 April 2004 on environmental liability with regard to the prevention and remedying of environmental damage (OJ L 143 30.4.2004, p. 56). See also Commission Notice Guidelines providing a common understanding of the term 'environmental damage' as defined in Article 2 of Directive 2004/35/EC of the European Parliament and of the Council on environmental liability with regard to the prevention and remedying of environmental damage (OJ C 118, 7.4.2021, p. 1).

<sup>(126)</sup> See Commission Decision C(2012) 558 final of 17 October 2012 in case SA.33496 (2011/N) – Austria –Einzelfall, Altlast, DECON Umwelttechnik GmbH, recitals 65-69 (OJ C 14, 17.1.2013, p. 1).

<sup>(127)</sup> Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora (OJ L 206, 22.7.1992, p. 7).

#### 4.7. Aid in the form of reductions in taxes or parafiscal levies

292. Section 4.7 covers aid in the area of environmental protection in the form of reduction in taxes or parafiscal levies. It is structured in two sub-sections, each of them having a distinct logic. Section 4.7.1 tackles taxes or levies which sanction environmentally harmful behaviour and therefore aim to direct undertakings and consumers towards more environmentally-friendly choices. Under Section 4.7.2, Member States may choose to encourage, by means of targeted reductions in taxes or levies, undertakings to change or adapt their behaviour by engaging in more environmentally-friendly projects or activities.

##### 4.7.1. Aid in the form of reductions in environmental taxes and parafiscal levies

###### 4.7.1.1. Rationale for the aid

293. Environmental taxes or parafiscal levies are imposed in order to internalise the external costs of environmentally harmful behaviour, thereby discouraging such behaviour by putting price on it and increasing the level of environmental protection. In principle, environmental taxes and parafiscal levies should reflect the overall costs to society (external costs), and correspondingly, the amount of tax or parafiscal levy paid per unit of emissions, other pollutants or resources consumed should be the same for all the undertakings that are responsible for the environmentally harmful behaviour. While reductions in environmental taxes or parafiscal levies may adversely impact the environmental protection objective, they may nonetheless be needed where the beneficiaries would otherwise be placed at such a competitive disadvantage that it would not be feasible to introduce the environmental tax or parafiscal levy in the first place.

294. Where environmental taxes or parafiscal levies could not be enforced without putting the economic activities of certain undertakings at risk, granting a more favourable treatment to some undertakings may allow to achieve a higher general level of contribution to the environmental taxes or parafiscal levies. Accordingly, in some circumstances, reductions in environmental taxes or levies can indirectly contribute to a higher level of environmental protection. However, they should not undermine the overall objective of the environmental tax or parafiscal levy to discourage environmentally harmful behaviour and/or increase the cost of such behaviour where satisfactory alternatives are not available.

###### 4.7.1.2. Scope and supported activities

295. The Commission will consider that aid in the form of tax or levy reductions may be granted if the Member State demonstrates that both of the following conditions are fulfilled:

- (a) the reductions are targeted at the undertakings most affected by the environmental tax or levy that would not be able to pursue their economic activities in a sustainable manner without the reduction;
- (b) the level of environmental protection actually achieved by implementing the reductions is higher than the one that would be achieved without the implementation of these reductions.

296. To demonstrate that the two conditions in point 295 are fulfilled, the Member State must provide the following information to the Commission:

- (a) a description of the sectors or categories of beneficiaries eligible for the reductions,
- (b) a list of the largest beneficiaries in each sector concerned, their turnover, market shares, the size of the tax base and the proportion that the environmental tax or levy would represent in their pre-tax profit with and without the reduction,
- (c) a description of the situation of those beneficiaries explaining why they would not be able to pay the standard rate of environmental tax or levy,

- (d) an explanation of how the reduced tax or levy would contribute to an actual increase of the level of environmental protection compared to the level of environmental protection to be achieved in the absence of reductions (for example by comparing the standard rate that would be implemented with the reductions to the standard rate that would be implemented without the reductions, the number of undertakings that would be subject to the tax or levy in total or other indicators reflecting actual change in environmentally harmful behaviour).

#### 4.7.1.3. Minimisation of distortions of competition and trade

297. When environmental taxes are harmonised, the Commission may apply a simplified approach to assess the necessity and proportionality of the aid. In the context of Directive 2003/96/EC, the Commission may apply a simplified approach for tax reductions respecting the Union minimum tax level set out in points 298 and 299.
298. The Commission will consider aid in the form of reductions on harmonised taxes necessary and proportional provided that the following cumulative conditions are fulfilled:
- (a) the beneficiaries pay at least the Union minimum tax level set by the applicable Directive;
  - (b) the choice of beneficiaries is based on objective and transparent criteria;
  - (c) the aid is granted in principle in the same way for all undertakings in the same sector, if they are in a similar factual situation,
  - (d) the Member State verifies the necessity of aid to indirectly contribute to a higher level of environmental protection by means of an *ex ante* open public consultation where the sectors eligible for the reductions are properly described and a list of the largest beneficiaries for each sector is provided.
299. Member States can grant the aid in the form of a reduction of the tax rate or as a fixed annual compensation amount (tax refund), or as a combination of the two. The advantage of the tax refund approach is that undertakings remain exposed to the price signal given by the environmental tax. The amount of the tax refund should be calculated on the basis of historical data, i.e. the level of production, and the consumption or pollution observed for the undertaking in a given base year. The level of the tax refund must not go beyond the Union minimum tax amount that would otherwise be due for the base year.
300. When environmental taxes are non-harmonised or the beneficiaries pay less than the Union minimum level of the harmonised tax where allowed by the applicable Directive, an in-depth assessment of the necessity and proportionality of the aid is needed, as set out in Sections 4.7.1.3.1 to 4.7.1.3.3.

##### 4.7.1.3.1. Necessity

301. The requirements set out in points 302 and 303 apply in addition to the requirements set out in Section 3.2.1.1.
302. The Commission will consider the aid to be necessary if the following cumulative conditions are fulfilled:
- (a) the selection of beneficiaries is based on objective and transparent criteria, and the aid is granted in the same way for all eligible undertakings operating in the same sector of economic activity that are in the same or similar factual situation in respect of the aims or objectives of the aid measure;
  - (b) the environmental tax or parafiscal levy without the reduction would lead to a substantial increase in production costs, calculated as a proportion of the gross value added for each sector or category of beneficiaries;
  - (c) the substantial increase in production costs could not be passed on to customers without leading to significant reductions of sales volumes.

303. For tax reductions for biofuels, bioliquids and biomass fuels, the Member State must put in place a mechanism to verify that the measure is still necessary, applying the necessity conditions of Section 4.1.3.1., and take appropriate measures, such as termination of the exemption or a reduction of the support level.

#### 4.7.1.3.2. Appropriateness

304. The requirements set out in points 305 and 306 apply in addition to the requirements set out in Section 3.2.1.2.
305. The Commission will authorise aid schemes for maximum periods of 10 years, after which a Member State can re-notify the measure if it re-evaluates the appropriateness of the aid measures concerned.
306. Where the aid is granted as a tax refund, the amount of the tax refund should be calculated on the basis of historical data, that is to say the level of production, and the consumption or pollution observed for the undertaking in a given base year.

#### 4.7.1.3.3. Proportionality

307. Section 3.2.1.3 does not apply to aid in the form of reductions in environmental taxes and parafiscal levies.
308. The Commission will consider the aid to be proportionate if at least one of the following conditions is fulfilled:
- (a) each aid beneficiary pays at least 20 % of the nominal amount of the environmental tax or parafiscal levy that would otherwise be applicable to that beneficiary in the absence of the reduction;
  - (b) the tax or levy reduction does not exceed 100 % of the national environmental tax or parafiscal levy, and is conditional on the conclusion of agreements between the Member State and the beneficiaries or associations of beneficiaries whereby the beneficiaries or associations of beneficiaries commit themselves to achieve environmental protection objectives which have the same effect as if beneficiaries or associations of beneficiaries paid at least 20 % of the national tax or levy. Such agreements or commitments may relate, among other things, to a reduction in energy consumption, a reduction in emissions and other pollutants, or any other environmental protection measure.
309. Such agreements must fulfil the following cumulative conditions:
- (a) the substance of the agreements is negotiated by the Member State, specifies the targets and fixes a time schedule for reaching the targets;
  - (b) the Member State ensures independent and regular monitoring of the commitments in the agreements;
  - (c) the agreements are revised periodically in the light of technological and other developments and provide for effective penalties in the event that the commitments are not met.

### 4.7.2. *Aid for environmental protection in the form of reductions in taxes or parafiscal levies*

#### 4.7.2.1. Rationale for the aid

310. Member States may consider incentivising undertakings to engage in projects or activities that increase the level of environmental protection by means of reductions in taxes or parafiscal levies. Where such reductions aim at incentivising the beneficiaries to undertake projects or activities resulting in less pollution or consumption of resources, the Commission will assess the measures in the light of the requirements set out in Section 4.7.2.

#### 4.7.2.2. Scope and supported activities

311. This Section covers aid for environmentally-friendly projects and activities that fall within the scope of Sections 4.2 to 4.6 and that take the form of reductions in taxes or parafiscal levies.
312. Where the tax or levy reduction primarily pursues a decarbonisation objective, Section 4.1 applies.
313. This Section does not cover reductions of taxes or levies that reflect the essential costs of providing energy or related services. For example, reductions of network charges or charges financing capacity mechanisms are excluded from the scope of Section 4.7.2. This Section does not cover reductions from levies on electricity consumption that finance an energy policy objective.

#### 4.7.2.3. Incentive effect

314. The requirements set out in points 315 and 316 apply in addition to those set out in Section 3.1.2.
315. For each eligible project or reference project for a category of beneficiaries, the Member State must submit a quantification, as set out in point 51, or equivalent data, for assessment by the Commission, comparing the profitability of the reference project or activity with and without the tax or parafiscal levy reduction and showing that the reduction incentivises the realisation of the environmentally-friendly project or activity.
316. Aid for projects starting before the aid application is submitted is considered to have an incentive effect where the following cumulative conditions are fulfilled:
- (a) the measure establishes a right to aid in accordance with objective and non-discriminatory criteria and without further exercise of discretion by the Member State;
  - (b) the measure has been adopted and is in force before work on the aided project or activity has started, except in the case of fiscal successor schemes, where the activity was already covered by the previous schemes in the form of tax or parafiscal advantages.

#### 4.7.2.4. Proportionality

317. Section 3.2.1.3 does not apply to aid for environmental protection in the form of reductions in taxes or parafiscal levies.
318. The aid must not exceed the normal rate or the amount of the tax or levy that would otherwise be applicable.
319. Where the tax or parafiscal levy reduction is linked to investment costs, the aid will be considered proportionate, provided it does not exceed the aid intensities and maximum aid amounts in Sections 4.2 to 4.6. Where those Sections require a competitive bidding process, that requirement does not apply to aid granted in the form of tax or parafiscal levy reductions.
320. Where the tax or parafiscal levy reduction reduces recurrent operating costs, the aid amount must not exceed the difference between the operating costs of the environmentally-friendly project or activity and of the less environmentally-friendly counterfactual scenario. Where the more environmentally friendly project or activity may result in potential cost savings or additional revenues, these must be taken into account when determining the proportionality of the aid.

#### 4.7.2.5. Avoidance of undue negative effects on competition and trade

321. The requirements set out in points 322 to 324 apply in addition to those set out in Section 3.2.2.
322. State aid must be granted in the same way for all eligible undertakings operating in the same sector of economic activity that are in the same or similar factual situation in respect of the aims or objectives of the aid measure.
323. The Member State must ensure that aid remains necessary for the duration of schemes that run for more than three years and evaluate the schemes at least every three years.
324. If the tax or parafiscal levy reduction concerns projects falling within the scope of:
- (a) Section 4.2, points 154 to 156 apply;
  - (b) Section 4.3.1, points 183 to 188 apply;
  - (c) Section 4.3.2, points 206 to 216 apply.

#### 4.8. Aid for the security of electricity supply

##### 4.8.1. Rationale for the aid

325. Market and regulatory failures may mean price signals fail to provide efficient investment incentives, leading for instance to inadequate electricity resource mix, capacity, flexibility or location. Moreover, the significant transformation in the electricity sector due to technological change and climate challenges raises new challenges for ensuring the security of electricity supply. While an increasingly integrated electricity market will normally allow exchange of electricity EU wide, thereby mitigating national security of supply problems, situations may occur where even in coupled markets security of supply may not be guaranteed at all times in some Member States or regions. As a result, Member States may consider the introduction of measures to ensure certain levels of security of electricity supply.

##### 4.8.2. Scope and supported activities

326. This Section covers compatibility rules for aid measures aimed at increasing the security of electricity supply. This includes capacity mechanisms and any other measures for dealing with long and short-term security of supply issues resulting from market failures preventing sufficient investment in electricity generation capacity, storage or demand response, interconnection, as well as network congestion measures which aim to treat the insufficiency of electricity transmission and distribution networks <sup>(128)</sup>.
327. Such measures may also be designed to support environmental protection objectives, for example through the exclusion of more polluting capacity or measures to give more environmentally beneficial capacity an advantage in the selection process.
328. As part of their notification, Member States should identify the economic activities that will be developed as a result of the aid. Aid for increasing the security of electricity supply directly facilitates the development of economic activities linked to electricity generation, storage and demand response, including new investments and the efficient refurbishment and maintenance of existing assets. It may also indirectly support a wide range of economic activity that relies on electricity as an input including the electrification of heat and transport.

<sup>(128)</sup> This section does not cover ancillary services, including measures of System Defence Plans pursuant to Commission Regulation (EU) 2017/2196, with the aim of ensuring operational security that are procured by TSOs or DSOs through a non-discriminatory competitive bidding process open to all resources that can contribute to the identified operational security requirement, without involvement of the State in the procurement and financing of the service.

4.8.3. *Incentive effect*

329. The rules on incentive effect in points 29, 30, 31 and 32 apply.

4.8.4. *Minimisation of distortions of competition and trade*

4.8.4.1. *Necessity*

330. Section 3.2.1.1 does not apply to measures for the security of electricity supply.

331. The nature and causes of the security of electricity supply problem, and therefore of the need for State aid to ensure security of electricity supply, must be properly analysed and quantified, including when and where the problem is expected to arise with reference where applicable to the reliability standard as defined in Article 25 of Regulation (EU) 2019/943. For network congestion measures, the Member State should provide analysis (after consultation of and taking into account the view of the responsible NRA) identifying and justifying with a cost benefit analysis the level of security of supply pursued with the proposed measure. For all security of supply measures, the unit of measure for quantification should be described and its method of calculation should be provided, with reference to any relevant requirements in sectoral legislation.

332. Where applicable, the identification of a security of electricity supply problem should be consistent with the latest available analysis carried out by ENTSO-E for electricity in accordance with the internal energy market legislation, notably:

- (a) for measures targeting resource adequacy, the European resource adequacy assessments referred to in Article 23 of Regulation (EU) 2019/943;
- (b) for network congestion measures, the reports on structural congestions and other major physical congestions between and within bidding zones, mentioned in Article 14, point (2), of Regulation (EU) 2019/943.

333. Member States may also rely on national resource adequacy assessments to demonstrate the necessity of capacity mechanisms, to the extent permitted under Article 24 of Regulation (EU) 2019/943. For other security of supply measures including network congestion measures, Member States may also rely on a national assessment of the necessity of the proposed intervention. The national assessments referred to in this point should be either approved by or reviewed by the responsible NRA.

334. Measures related to the risk of electricity crises should be identified in the national risk-preparedness plan provided for in Article 11 of Regulation (EU) 2019/941 <sup>(129)</sup>.

335. Member States proposing to introduce several measures targeting security of electricity supply must clearly explain how they interact with one another in ensuring the overall cost effectiveness of the combined measures for ensuring security of supply, for example as regards capacity mechanisms by explaining how they reach (but do not go beyond) the reliability standard referred to in point 331.

336. The regulatory or market failure(s), along with any other issues preventing a sufficient level of security of electricity supply (and of environmental protection if relevant) being achieved in the absence of intervention, must be identified.

337. Existing measures that already target the market or regulatory failure(s) or other issues identified in point 336 must also be identified.

338. Member States must demonstrate the reasons why the market cannot be expected to deliver security of electricity supply in the absence of State aid, taking account of market reforms and improvements planned by the Member State and technology developments.

339. In its assessment, the Commission will take account of the following elements to be provided by the Member State:

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<sup>(129)</sup> Regulation (EU) 2019/941 of the European Parliament and of the Council of 5 June 2019 on risk-preparedness in the electricity sector (risk-preparedness regulation) (OJ L 158, 14.6.2019, p. 1).

- (a) an assessment of the impact of variable generation, including that originating from neighbouring systems;
- (b) an assessment of the impact of demand-side and storage participation, including a description of measures to encourage demand side management;
- (c) an assessment of the actual or potential existence of interconnectors and major internal transmission grid infrastructure, including a description of projects under construction and planned;
- (d) an assessment of any other element which might cause or exacerbate the security of electricity supply problem, such as caps on wholesale prices or other regulatory or market failures. Where required under Regulation (EU) 2019/943, the implementation plan referred to in Article 20(3) of that Regulation must be subject to a Commission opinion before aid can be granted. The implementation plan and opinion will be taken into account in the necessity assessment; and
- (e) any relevant content in an action plan under Article 15 of the Regulation (EU) 2019/943.

#### 4.8.4.2. Appropriateness

340. Section 3.2.1.2 does not apply to measures for the security of electricity supply.
341. Member States should primarily consider alternative ways of achieving security of electricity supply, in particular more efficient electricity market design that can alleviate the market failures that undermine security of electricity supply. For instance, improving the functioning of electricity imbalance settlement, better integrating variable generation, incentivising and integrating demand response and storage, enabling efficient price signals, removing barriers to cross-border trade, and improving infrastructure, including interconnection. Aid may be found appropriate for security of supply measures where, despite appropriate and proportionate improvements to market design <sup>(30)</sup> and investments in network assets, whether already implemented or planned, a security of supply concern remains.
342. For network congestion measures Member States should in addition explain how the efficiency of redispatch measures is being improved in line with Article 13 of Regulation (EU) 2019/943.

#### 4.8.4.3. Eligibility

343. The aid measure should be open to all beneficiaries or projects technically capable of contributing efficiently to the achievement of the security of supply objective. This includes generation, storage and demand response, as well as the aggregation of small units of these forms of capacity into larger blocks.
344. Limitations on participation in security of supply measures that aim to ensure those measures do not undermine environmental protection are deemed appropriate (see points 368 and 369).
345. Member States are encouraged to introduce additional criteria or features in their security of supply measures to promote the participation of greener technologies (or reduce the participation of polluting technologies) necessary to support the delivery of the Union's environmental protection objectives. Such additional criteria or features must be objective, transparent and non-discriminatory in relation to clearly identified environmental protection objectives, and must not result in the overcompensation of beneficiaries.

<sup>(30)</sup> Taking account of Regulation (EU) 2019/943 and Directive (EU) 2019/944.

346. Where technically feasible, measures for security of electricity supply must be open to direct cross-border participation of capacity providers located in another Member State <sup>(131)</sup>. Member States must ensure that foreign capacity capable of providing equivalent technical performance to domestic capacities has the opportunity to participate in the same competitive process as domestic capacity. Member States may require foreign capacity to be located in a Member State that has a direct network connection with the Member State applying the measure. Where applicable, the relevant rules set out in Article 26 of Regulation (EU) 2019/943 must also be complied with.

#### 4.8.4.4. Public consultation

347. Section 4.8.4.4 applies from 1 July 2023.
348. Prior to the notification of aid, other than in duly justified exceptional circumstances, Member States must consult publicly on the proportionality and competition impacts of measures to be notified under this Section. The obligation to consult does not apply in respect of amendments to already approved measures that do not alter their scope or eligibility or extend their duration beyond 10 years of the original decision date, nor in respect of cases referred to in point 349. To determine whether a measure is justified, bearing in mind the criteria in these guidelines, the following public consultation is required <sup>(132)</sup>:
- (a) for measures where the estimated average annual aid to be granted is at least EUR 100 million per year, a public consultation of at least six weeks' duration, covering:
    - (i) eligibility;
    - (ii) proposed use and scope of competitive bidding processes and any proposed exceptions;
    - (iii) main parameters for the aid allocation process <sup>(133)</sup> including for enabling competition between different types of beneficiary <sup>(134)</sup>;
    - (iv) the methodology for allocating the costs of the measure to consumers;
    - (v) if a competitive bidding process is not used, the assumptions and data informing the quantification used to demonstrate the proportionality of the aid, including costs, revenues, operating assumptions and lifetime, and WACC; and
    - (vi) where new investments in natural gas based generation may be supported, proposed safeguards to ensure consistency with the Union's climate targets.
  - (b) for measures where the estimated average annual aid granted is below EUR 100 million per year, a public consultation of at least four weeks' duration, covering:
    - (i) eligibility;
    - (ii) proposed use and scope of competitive bidding processes and any proposed exceptions;
    - (iii) the methodology for allocating the costs of the measure to consumers; and
    - (iv) where new investments in natural gas based generation may be supported, proposed safeguards to ensure consistency with the Union's climate targets.
349. No public consultation is required for measures falling under point 348(b) where competitive bidding processes are used and the measure does not support investments in fossil-fuel based energy generation.

<sup>(131)</sup> Technical feasibility is presumed for capacity mechanisms, for which cross border participation is required under Regulation (EU) 2019/943.

<sup>(132)</sup> Member States may rely on existing national consultation processes in respect of these requirements. As long as the consultation covers the points listed here, a separate consultation is not required.

<sup>(133)</sup> For example the lead-time between the competitive process and the delivery period, bid/offer rules, pricing rules.

<sup>(134)</sup> For example if there are different contract durations, different methodologies for calculating the amount of eligible capacity/output from different technologies, different methodologies for calculating or paying subsidies.

350. Consultation questionnaires must be published on a public website. Member States must publish a response to the consultation summarising and addressing the responses received. This should include explaining how possible impacts on competition have been minimised through the scope/eligibility of the proposed measure. Member States must provide a link to their consultation response as part of the notification of aid measures under this section.
351. In exceptional and duly justified cases, the Commission might consider alternative methods of consultation provided that the views of interested parties are taken into account in the (continued) implementation of the aid. In such cases, the consultation might have to be combined with corrective actions to minimise possible distortive effects of the measure.

#### 4.8.4.5. Proportionality

352. The rules set out in points 353, 354, 355, 356 and 357 apply in addition to the rules set out in points 49, 50, 51, 52, 53 and 55.
353. Demand in security of supply measures should be set based on the reliability standard or cost benefit analysis referred to in point 331, and based on the analysis under points 332, 333 and 334 of the resources needed to ensure an adequate level of security of supply. The analysis used to set the level of demand must be at most 12 months old at the point in time when the demand level is set.
354. The lead-time between the granting of the aid and the deadline by when projects must be delivered should allow effective competition between the various eligible projects.
355. Exceptions from the requirement to allocate aid and determine the aid level through a competitive bidding process can only be justified:
- (a) where evidence is provided, including any evidence gathered in the public consultation where applicable, demonstrating that there is likely to be insufficient potential participation in such a bidding process to ensure competition; or
  - (b) for network congestion measures only, where the Member State provides analysis (after consultation of and taking into account the view of the responsible NRA) based on evidence, including that gathered in the public consultation where applicable, that a tender would be less cost-effective for example because of strategic bidding or market distortion.
356. The beneficiaries of security of supply measures should have efficient incentives to contribute to security of supply during the delivery period. These incentives should in general be related to the value of lost load (VOLL) <sup>(135)</sup>. For example, where a beneficiary is not available, they should face a penalty related to VOLL. Other than for network congestion measures, this penalty should in general come from electricity imbalance settlement prices to avoid distortions to market functioning.
357. Member States may also use competitive certificates/supplier obligation schemes, provided that:
- (a) demand in the scheme is set below potential supply; and
  - (b) the buyout/penalty price that applies to a consumer/supplier that has not bought the number of certificates required (i.e. the price which constitutes the maximum that will be paid to beneficiaries) is set at a level that ensures beneficiaries cannot be overcompensated.

#### 4.8.5. Avoidance of undue negative effects on competition and trade and balancing

358. Other than point 70, Section 3.2.2 does not apply to measures for the security of electricity supply.

<sup>(135)</sup> As determined according to Article 11 of Regulation (EU) 2019/943.

359. The aid must be designed to maintain the efficient functioning of markets and preserve efficient operating incentives and price signals.
360. Incentives must not be provided for generation of energy that would displace less polluting forms of energy.
361. The requirements in points 359 and 360 will generally be met when a measure pays for capacity (EUR per megawatt (MW)) rather than for electricity output (EUR/MWh). Where there is a payment per MWh, additional attention is needed to ensure adverse market effects are avoided, and less polluting generation sources are not displaced.
362. Security of supply measures must meet any applicable design conditions in Article 22 of Regulation (EU) 2019/943 <sup>(136)</sup>.
363. For strategic reserves and any other measures for resource adequacy, including interruptibility schemes, where capacity is held outside the market, to ensure market price formation is not distorted the following additional cumulative requirements apply:
- (a) the resources of the measure are to be dispatched only if the transmission system operators are likely to exhaust their balancing resources to establish an equilibrium between demand and supply <sup>(137)</sup>;
  - (b) during imbalance settlement periods where resources in the measure are dispatched, imbalances in the market are to be settled at least at VOLL or at a higher value than the intraday technical price limit <sup>(138)</sup>, whichever is higher;
  - (c) the output of the measure following dispatch is to be attributed to balance responsible parties through the imbalance settlement mechanism;
  - (d) the resources do not receive remuneration from the wholesale electricity market or balancing markets;
  - (e) the resources in the measure are to be held outside the energy markets for at least the duration of the contractual period.
364. For network congestion measures, where resources are held outside the market those resources cannot receive remuneration from the wholesale electricity market or balancing markets and must be held outside the energy markets for at least the duration of the contractual period.
365. For capacity mechanisms other than strategic reserves, Member States must ensure that the measure:
- (a) is constructed so as to ensure that the price paid for availability automatically tends to zero when the level of capacity supplied is expected to be adequate to meet the level of capacity demanded;
  - (b) remunerates the participating resources only for their availability and ensure that the remuneration does not affect decisions of the capacity provider on whether or not to generate; and
  - (c) enables capacity obligations to be transferable between eligible capacity providers.
366. Security of electricity supply measures should not:
- (a) create undue market distortions nor limit cross-zonal trade;

<sup>(136)</sup> For measures included in the risk preparedness plan referred to in Regulation (EU) 2019/941, see also Article 12(1) of that Regulation.

<sup>(137)</sup> That requirement is without prejudice to the activation of resources before actual dispatch in order to respect the ramping constraints and operating requirements of the resources. The output of the strategic reserve during activation must not be attributed to balance groups through wholesale markets and must not change their imbalances.

<sup>(138)</sup> As referred to in Article 10(1) of Regulation (EU) 2019/943.

- (b) reduce incentives to invest in interconnection capacity – for example by reducing congestion revenue for existing or new interconnectors;
  - (c) undermine market coupling, including intra-day and balancing markets;
  - (d) undermine investment decisions on capacity which preceded the measure.
367. To avoid undermining incentives for demand response and exacerbating the market failures that lead to the need for security of supply measures, and to ensure the security of supply intervention is as limited in size as possible, the costs of a security of supply measure should be borne by the market participants who contribute to the need for the measure. For example, this may be achieved by allocating the costs of a security of supply measure to electricity consumers in periods of peak electricity demand or by allocating the costs of a network congestion measure to consumers in the region experiencing scarcity at times when the capacity in the measure is dispatched. However, such a cost allocation may not be required where the Member State provides analysis based on evidence, including that gathered in the public consultation, that allocating costs in this way would undermine the cost effectiveness of the measure or result in severe competition distortions that would clearly undermine the potential benefits of such a cost allocation.
368. The Commission considers that certain aid measures have negative effects on competition and trade that are unlikely to be offset. In particular, certain aid measures may aggravate market failures, creating inefficiencies to the detriment of consumer and social welfare. For instance, measures – including network congestion measures and interruptibility schemes – that do not respect the emissions threshold applicable to capacity mechanisms set out in Article 22 of Regulation (EU) 2019/943 and that may incentivise new investments in energy based on the most polluting fossil fuels, such as coal, diesel, lignite, oil, peat and oil shale increase the negative environmental externalities in the market.
369. Measures that incentivise new investments in energy generation based on natural gas may support security of electricity supply but aggravate negative environmental externalities in the longer term, compared to alternative investments in non-emitting technologies. To enable the Commission to verify that the negative effects of such measures can be offset by positive effects in the balancing test, Member States should explain how they will ensure that such investment contributes to achieving the Union's 2030 climate target and 2050 climate neutrality target. In particular, the Member States must explain how a lock-in of this gas-fired energy generation will be avoided. For example, this may include binding commitments by the beneficiary to implement decarbonisation technologies such as CCS/CCU or replace natural gas with renewable or low-carbon gas or to close the plant on a timeline consistent with the Union's climate targets.
370. For individual aid measures or schemes benefitting only a particularly limited number of beneficiaries or an incumbent beneficiary, Member States should, in addition, demonstrate that the proposed aid measure will not lead to increased market power.

#### 4.9. **Aid for energy infrastructure**

##### 4.9.1. *Rationale for the aid*

371. In order to meet the Union's climate targets, significant investment and upgrading of energy infrastructure will be required. A modern energy infrastructure is crucial for an integrated energy market that meets climate targets while ensuring security of supply of in the Union. Adequate energy infrastructure is a necessary element of an efficient energy market. Improving energy infrastructure enhances system stability, resource adequacy, integration of different energy sources and energy supply in under-developed networks.
372. Where market operators cannot deliver the infrastructure needed, State aid may be necessary in order to overcome market failures and to ensure that the Union's considerable infrastructure needs are met. One market failure that may arise in the field of energy infrastructure is related to problems of coordination. Diverging interests among investors, uncertainty about the collaborative outcome and network effects may prevent the development of a project or its effective design. At the same time, energy infrastructure may generate substantial positive externalities, whereby the costs and benefits of the infrastructure may occur asymmetrically among the different market participants and Member States. The Commission therefore considers that aid to

energy infrastructure can be beneficial to the internal market by contributing to addressing these market failures. This applies in particular to infrastructure projects having a cross-border impact such as projects of common interest, as defined in Article 2, point (4), of Regulation (EC) No 347/2013.

373. In line with the Notion of Aid Notice <sup>(139)</sup>, support to energy infrastructure within the framework of a legal monopoly is not subject to State aid rules. In the energy sector, this is particularly relevant for those Member States where the construction and operation of certain infrastructures is exclusively reserved by law for the TSO or DSO.
374. The Commission considers that a legal monopoly which excludes distortions of competition exists where the following cumulative conditions are met:
- (a) the construction and operation of the infrastructure is subject to a legal monopoly established in compliance with Union law; this is the case where the TSO/DSO is legally the only entity entitled to make a certain type of investment or activity and no other entity can operate an alternative network <sup>(140)</sup>;
  - (b) the legal monopoly not only excludes competition on the market, but also for the market, in that it excludes any possible competition to become the exclusive operator of the infrastructure in question;
  - (c) the service is not in competition with other services;
  - (d) if the operator of the energy infrastructure is active in another (geographical or product) market that is open to competition, cross-subsidisation is excluded; this requires that separate accounts are used, costs and revenues are allocated in an appropriate way and public funding provided for the service subject to the legal monopoly cannot benefit other activities. As regards electricity and gas infrastructure, as Article 56 of Directive (EU) 2019/944 and Article 31 of Directive 2009/73/EC of the European Parliament and of the Council require vertically integrated entities to keep separate accounts for each of their activities, this requirement will in all likelihood be satisfied.
375. Similarly, the Commission considers that there is no State aid involved in investments where the energy infrastructure is run under a 'natural monopoly', which is deemed to exist where the following cumulative conditions are met:
- (a) an infrastructure faces no direct competition, which is the case where the energy infrastructure cannot be economically replicated and hence where no operators other than the TSO/DSO are involved;
  - (b) alternative financing in the network infrastructure, in addition to the network financing, is insignificant in the sector and Member State concerned;
  - (c) the infrastructure is not designed to selectively favour a specific undertaking or sector but provides benefits for society at large.
  - (d) Member States also have to ensure that the funding provided for the construction and/or operation of the energy network infrastructure cannot be used to cross-subsidise or indirectly subsidise other economic activities. For electricity and gas infrastructure, see point 374.

<sup>(139)</sup> See the Commission Notice on the Notion of State aid as referred to in Article 107(1) of the Treaty on the Functioning of the European Union (OJ C 262, 19.7.2016, p. 1). Given that the notion of State aid is an objective and legal concept defined directly by the Treaty (judgment of the Court of Justice of 22 December 2008, *British Aggregates v Commission*, C-487/06 P, ECLI:EU:C:2008:757, paragraph 111) the views set out in points 373 to 375 are without prejudice to the interpretation of the notion of State aid by the Union Courts (judgment of the Court of Justice of 21 July 2011, *Alcoa Trasformazioni v Commission*, C-194/09 P, ECLI:EU:C:2011:497, paragraph 125); the primary reference for interpreting the Treaty is always the case-law of the Union Courts.

<sup>(140)</sup> A legal monopoly exists where a given service is reserved by law or regulatory measures to an exclusive provider in a determined geographic area (also within one Member State), with a clear prohibition for any other operator to provide such service (not even to satisfy a possible residual demand from certain customer groups). However, the mere fact that the provision of a public service is entrusted to a specific undertaking does not mean that such undertaking enjoys a legal monopoly.

#### 4.9.2. *Scope and supported activities*

376. This Section 4.9 applies to aid for the construction or upgrade investments of energy infrastructure, as defined in point 19(36) <sup>(141)</sup>. Eligible investments may include digitalisation, smartening of energy infrastructure, e.g. in order to enable integration of renewable or low-carbon energy, as well as upgrades on grounds of climate resilience. Operating costs should in general be borne by network users, and aid for these costs should therefore not generally be required. In exceptional circumstances where a Member State demonstrates that operating costs cannot be recovered from network users, and where the operating aid is unrelated to sunk costs but leads to a change in behaviour that enables the delivery of security of supply or environmental protection objectives, operating aid for infrastructure may be found compatible. Unless the project is excluded from State aid control (see point 374 and 375), the Commission will assess it as set out in this Section.
377. This Section 4.9 will also apply to energy storage facilities until 31 December 2023, connected to transmission or distribution lines (stand-alone electricity storage <sup>(142)</sup>) irrespective of the voltage levels <sup>(143)</sup>.

#### 4.9.3. *Minimisation of distortions of competition and trade*

##### 4.9.3.1. *Necessity and appropriateness*

378. Sections 3.2.1.1. and 3.2.1.2 are not applicable to aid for energy infrastructure.
379. Energy infrastructure is typically financed through user tariffs. For many infrastructure categories those tariffs are subject to regulation, in order to ensure the necessary level of investments while preserving user rights, ensure cost-reflectiveness and are set with no interference from the State.
380. The granting of State aid is a way to overcome market failures which cannot be fully addressed by means of compulsory user tariffs. Therefore, to demonstrate the need for State aid, the following principles apply:
- (a) the Commission considers that for projects of common interest as defined in Article 2, point (4), of Regulation (EU) No 347/2013 which are fully subjected to internal energy market legislation, the market failures in terms of coordination problems are such that financing by means of tariffs may not be sufficient and State aid may be granted;
  - (b) for projects of common interest which are partially or fully exempted from internal energy market legislation, and for other infrastructure categories, the Commission will carry out a case-by-case assessment of the need for State aid. In its assessment, the Commission will consider the following factors: (i) the extent to which a market failure leads to a sub-optimal provision of the necessary infrastructure; (ii) the extent to which the infrastructure is open to third party access and subject to tariff regulation; and (iii) the extent to which the project contributes to the security of energy supply in the Union or to the climate neutrality objectives of the Union. For infrastructure between the Union and a third country, if the project is not contained in the list of projects of mutual interest, other factors may also be taken into account to assess the compatibility with Internal Market rules <sup>(144)</sup>.
  - (c) For electricity storage facilities, the Commission may require the demonstration by the Member State of a specific market failure in the development of facilities to provide similar services.

<sup>(141)</sup> This section does not apply to projects involving dedicated infrastructure and/or other energy infrastructure combined with production and/or consumption activities.

<sup>(142)</sup> As different from 'behind-the-meter' storage facilities.

<sup>(143)</sup> Support to energy storage may also be assessed under Sections 4.1, 4.2, 4.3, and 4.8 where relevant. Storage assets selected as PCIs – in line with applicable TEN-E legislation – qualify as energy infrastructure under this section and support would be assessed under section 4.9. Support to storage assets which are “owned or controlled” by the TSOs or DSOs, in compliance with Articles 54 and/or 36 of Directive 944/2019, is also covered by the section 4.9.

<sup>(144)</sup> In particular, the Commission will consider whether the third country or countries involved have a high level of regulatory alignment and support the overall policy objectives of the Union, in particular as they relate to a well-functioning internal energy market; security of energy supply based on cooperation and solidarity; an energy system on a trajectory towards decarbonisation in line with the Paris Agreement and the Union's climate objectives; and avoiding carbon leakage.

#### 4.9.3.2. Proportionality of the aid

381. Proportionality will be assessed on the basis of the funding gap principle as set out in points 48, 51, and 52. For aid to infrastructure, as explained in point 52, the counterfactual scenario is presumed to be the situation in which the project would not take place. The introduction of monitoring and claw-back mechanisms may be necessary where there is a risk of windfall profits, e.g. when the aid is close to the maximum allowed, while keeping incentives for the beneficiaries to minimise their costs and develop their business in a more efficient manner over time.

#### 4.9.4. *Avoidance of undue negative effects on competition and trade and balancing*

382. Section 3.2.2. is not applicable to energy infrastructure. In analysing the impact of State aid to energy infrastructure on competition, the Commission's approach will be as follows:

- (a) In view of the existing requirements under the internal energy market legislation, which are aimed at strengthening competition, the Commission will generally consider that aid for energy infrastructure subject to full internal market regulation does not have undue distortive effects <sup>(145)</sup>.
- (b) For infrastructure projects which are exempted, in whole or in part, from internal energy market legislation, the Commission will carry out a case-by-case assessment of the potential distortions of competition taking into account, in particular, the degree of third party access to the aided infrastructure, access to alternative infrastructure, crowding-out of private investment and the competitive position of the beneficiary or beneficiaries. For infrastructure exempted in whole from internal energy market legislation, the negative distortive effects on competition are considered particularly serious.
- (c) In addition to the approach outlined in points (a) and (b), the Commission considers that for natural gas infrastructure investments, the Member States need to demonstrate the following positive effects capable of off-setting the negative effects on competition: (i) whether the infrastructure is ready for the use of hydrogen and leads to an increase of the use of renewable gases, or alternatively the reason why it is not possible to design the project so that it is ready for the use of hydrogen and how the project does not create a lock-in effect for the use of natural gas; and (ii) how the investment contributes to achieving the Union's 2030 climate target and 2050 climate neutrality target.
- (d) For support to electricity storage facilities- as well as of other PCIs and PMIs infrastructure not subject to internal market legislation-, the Commission will in particular assess the risks of distortion of competition which may arise in related services markets as well as on other energy markets.

#### 4.10. **Aid for district heating and cooling**

##### 4.10.1. *Rationale for the aid*

383. The construction or the upgrade of district heating and cooling systems can make a positive contribution to environmental protection by increasing the energy efficiency and sustainability of the supported system. Sectorial legislation on the promotion of renewable energy (Directive 2018/2001/EU) specifically requires Member States to take the necessary steps with a view to developing efficient district heating and cooling infrastructure to promote heating and cooling from renewable energy sources <sup>(146)</sup>.

<sup>(145)</sup> For infrastructure between one Member State and one or more third countries; – For the part located on Union territory, the projects will need to be in line with Directives 2009/73/EC and (EU) 2019/944; – For the third country or countries involved, the projects will need to have a high level of regulatory alignment and support the overall policy objectives of the Union, in particular to ensure a well-functioning internal energy market, security of energy supplies based on cooperation and solidarity, and an energy system on a trajectory towards decarbonisation in line with the Paris Agreement and the Union's climate objectives; and, in particular, avoiding carbon leakage.

<sup>(146)</sup> Article 20 of Directive (EU) 2018/2001 states that 'Member States shall, where relevant, take the necessary steps with a view to developing a district heating and cooling infrastructure to accommodate the development of heating and cooling from large biomass, solar energy, ambient energy and geothermal energy facilities and from waste heat and cold'.

384. However, the environmental externalities associated with the operation of district heating and cooling can lead to inefficient underinvestment in the construction and upgrade of district heating and cooling systems. State aid can contribute to addressing this market failure by triggering additional efficient investment or by supporting exceptional operating costs due to the need to promote the environmental purpose of district heating systems.

#### 4.10.2. *Scope and supported activities*

385. Support that is limited to district heating distribution networks can, under certain circumstances be considered to fall outside of State aid control as an infrastructure measure which does not affect competition and trade. This would in particular be the case when district heating networks are run in the same way as other energy infrastructure through separation from the heating generation, third-party access and regulated tariffs.
386. In such circumstances, whenever the district heating distribution networks are run in a situation of natural or legal monopoly or both, the same conditions points 374 and 375 apply <sup>(147)</sup>.
387. Unless the project is excluded from State aid control (see point 385 <sup>(148)</sup>), the Commission will assess it as set out in this Section.
388. This Section applies to aid for the construction, the upgrade or the operation of a heating or cooling generation and storage plants or the distribution network or both.
389. Such aid measures typically cover the construction, upgrade and operation of the generation unit to use renewable energy <sup>(149)</sup>, waste heat or highly-efficient cogeneration including thermal storage solutions, or the upgrade of the distribution network to reduce losses and increase efficiency, including through smart and digital solutions <sup>(150)</sup>. Aid for energy generation based on waste may be found compatible under this section to the extent that it is limited to either waste that meets the definition of renewable energy sources or waste used to fuel installations that meet the definition of high-efficiency cogeneration.
390. Where aid is granted for the upgrade of a district heating and cooling system without meeting at that stage the standard of efficient district heating and cooling <sup>(151)</sup>, the Member State must commit to ensure that the aid beneficiary starts the works to reach that standard within three years following the upgrade works.

#### 4.10.3. *Necessity and appropriateness*

391. Sections 3.2.1.1. and 3.2.1.2. do not apply to aid to district heating or cooling. The Commission considers that State aid can contribute to addressing market failures by triggering the investment costs needed for the creation, extension or upgrade of efficient district heating and cooling systems.

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<sup>(147)</sup> In order to make sure that the distribution network is run genuinely as a facility open to users, in line with the SEIP Communication (see section 4.3.3. of Communication of the Commission on a Sustainable Europe Investment Plan – annex to the European Green Deal Communication – of 14.1.2020 COM(2020) 21 final), normally – in analogy with internal market rules for the energy sector, notably gas or electricity – specific rules would need to be in place (mandating third party access, unbundling and regulated tariffs), beyond mere ‘separate accounting’.

<sup>(148)</sup> While in the cases of natural or legal monopoly or both, support to district heating distribution infrastructure falls outside of State aid rules (subject to specific conditions), any support to district heating generation activity would remain subject to State aid rules.

<sup>(149)</sup> The amount of energy captured by heat pumps to be considered renewable shall be calculated as per Annex VII of Directive 2018/2001/EU. In addition, where electricity is used, it may be considered as fully renewable in analogy with the methods used to consider electricity as fully renewable under Directive 2018/2001/EU – as well as delegated legislation – or other equivalent methods ensuring that all electricity actually used would derive from renewable sources, provided that double counting of renewable energy and overcompensation are avoided. Support to new investments or upgrade – as well as operation – must not relate in any case to co-firing installations which use fuels other than RES energy or waste heat.

<sup>(150)</sup> Heating and cooling equipment, including thermal storage, within customers premises as referred to under point 138, when linked to district heating or cooling systems- can also be covered.

<sup>(151)</sup> See Article 2, point (41), of Directive 2012/27/EU.

392. Operating costs should in general be paid for by heat consumers, and aid for these costs should therefore not generally be required. Where a Member State demonstrates that operating costs cannot be passed on to heat consumers without undermining environmental protection, operating aid for heat generation may be found compatible insofar as the net extra operating costs (as compared to a counterfactual scenario) contribute to the realisation of environmental benefits (such as reduction of CO<sub>2</sub> and other pollution as compared to alternative heating solutions <sup>(152)</sup>). This would for example be the case where there is evidence that residential heat consumers (or other entities not exercising economic activities) would switch to more polluting heat sources in the absence of operating aid <sup>(153)</sup> or that, in the absence of support, the long-term viability of the district heating system would be threatened to the advantage of more polluting heating solutions. For operating aid to district heating generation facilities, points 122 and 126 apply.
393. In addition, State aid for efficient district heating and cooling systems –using waste as input fuel can make a positive contribution to environmental protection, provided that it does not circumvent the waste hierarchy principle <sup>(154)</sup>.

#### 4.10.4. *Proportionality of the aid measure*

394. Proportionality will be assessed on the basis of the funding gap principle as set out in points 48, 51, and 52.
395. For the construction, upgrade and operation of distribution networks, as set out in point 52, the counterfactual scenario would be the situation in which the project would not take place.

#### 4.10.5. *Avoidance of undue negative effects on competition and trade and balancing*

396. Section 3.2.2. does not apply to aid for district heating or cooling. The Commission considers that the support to upgrade, construction or operation of district heating and cooling systems which rely on the most polluting fossil fuels such as coal, lignite, oil and diesel, have negative consequences on competition and trade which are unlikely to be offset unless the following cumulative conditions are fulfilled:
- (a) the aid is limited to investments on the distribution network;
  - (b) the distribution network already enables the transport of heat or cooling generated from renewable energy sources, waste heat or carbon neutral sources;
  - (c) the aid does not result in increased generation of energy from the most polluting fossil fuels (for example, by connecting additional customers) <sup>(155)</sup>;
  - (d) there is a clear timeline involving firm commitments for transitioning away from the most polluting fossil fuels, in view of the Union's 2030 climate target and the 2050 climate neutrality target <sup>(156)</sup>.

<sup>(152)</sup> In this context, Member States shall in particular demonstrate that the supported district heating systems have put in place the necessary measures to increase efficiency, reduce CO<sub>2</sub> and other pollution sources as well as network losses.

<sup>(153)</sup> Heat consumers which are undertakings exercising economic activities, must pay in any case their full share of heating costs, at least equivalent to their cheapest alternative heating source, to avoid competition distortions in other markets.

<sup>(154)</sup> The waste hierarchy consists of (a) prevention, (b) preparing for re-use, (c) recycling, (d) other recovery, for instance energy recovery, and (e) disposal. See Article 4, point (1), of Directive 2008/98/EC.

<sup>(155)</sup> Member States must demonstrate that measures have been taken to add sustainable heating sources to the system to cater for additional customers.

<sup>(156)</sup> Member States should for example provide evidence that the district heating systems at stake are either part of a national or local decarbonisation plans, or part of the integrated national energy and climate plans in accordance with Annex I to Regulation (EU) 2018/1999 on the necessity to build new infrastructure for district heating and cooling from renewable sources in order to achieve the Union target set in Article 3(1) of the Directive (EU) 2018/2001 and commit to transitioning away from fossil fuels by pursuing intermediate and final targets towards climate neutrality by 2050.

397. As regards the construction, upgrade or operation of district heating generation installations, measures that incentivise new investments in, or operation of energy generation assets based on natural gas may reduce greenhouse gas emissions in the short term but aggravate negative environmental externalities in the longer term, compared to alternative investments or counterfactual scenarios. For those investments in or operation based on natural gas to be seen as having positive environmental effects, Member States must explain how they will ensure that the aid contributes to achieving the Union's 2030 climate target and 2050 climate neutrality target and, in particular, how a lock-in of the gas-fired energy generation will be avoided and how it does not displace investments into cleaner alternatives that are already available on the market, thereby impeding the development of cleaner technologies and their use. For example, this may include binding commitments by the beneficiary to implement CCS/CCU or replace natural gas with renewable or low-carbon gas or to close the plant on a timeline consistent with the Union's climate targets.
398. In analysing the impact of State aid for district heating and cooling systems on competition, the Commission will carry out an assessment balancing the benefits of the project in terms of energy efficiency and sustainability<sup>(157)</sup> against the negative effects on competition and in particular the possible negative impact on alternative technologies or providers of heating and cooling services and networks. In this context, the Commission will take into account whether the district heating system is or may be open to third party access<sup>(158)</sup> and whether sustainable alternative heating solutions are possible<sup>(159)</sup>.

#### 4.11. **Aid in the form of reductions from electricity levies for energy-intensive users**

##### 4.11.1. *Rationale for the aid*

399. The transformation of the Union's economy in line with the European Green Deal Communication is partially financed through levies on electricity consumption. The realisation of the Green Deal requires that Member States put in place ambitious decarbonisation policies to significantly reduce Union greenhouse gas emissions by 2030 and reach climate neutrality by 2050. In this context, it is likely that Member States will continue to finance such policies through levies and it is therefore possible that those levies may increase. The funding of decarbonisation support through levies does as such not target a negative externality. Those levies are therefore not environmental levies for the purpose of these guidelines and Section 4.7.1 does not apply to these levies.
400. For certain economic sectors which are particularly exposed to international trade and rely heavily on electricity for their value creation, the obligation to pay the full amount of levies on electricity consumption which finance energy and environmental policy objectives can heighten the risk of activities in these sectors moving outside the Union to locations where environmental disciplines are absent or less ambitious. In addition, such levies increase the cost of electricity compared to the cost of direct emissions resulting from recourse to other energy sources and can therefore discourage the electrification of production processes, which is central to the successful decarbonisation of the Union economy. To mitigate those risks and adverse impacts on the environment, Member States can grant reductions from such levies for companies active in the economic sectors concerned.
401. This Section sets out the criteria which the Commission will apply when assessing the development of an economic activity, incentive effect, necessity, appropriateness, proportionality and competition impacts of reductions in electricity levies for certain energy-intensive users. The compatibility criteria in Chapter 3 apply only to the extent there are no specific rules in Section 4.11.

<sup>(157)</sup> In light of their contribution to climate mitigation which is defined as an environmental objective in Regulation (EU) 2020/852 as long as there are no obvious indications of non-compliance with the do no significant harm principle.

<sup>(158)</sup> See also Article 24 of Directive 2018/2001/EU.

<sup>(159)</sup> See also Articles 18(5) and 24 of Directive 2018/2001/EU.

402. The Commission has used appropriate measures to identify those sectors which are particularly exposed to the risks mentioned in point 400 and it has introduced proportionality requirements taking into consideration that, if the levy reductions are too high or awarded to too many electricity consumers, the overall funding of support to energy from renewable sources might be threatened and distortions of competition and trade may be particularly high.

4.11.2. *Scope: Levies from which reductions can be granted*

403. Member States may grant reductions from levies on electricity consumption which finance energy and environmental policy objectives. This includes levies financing support to renewable sources or to combined heat and power and levies financing social tariffs or energy prices in isolated regions. Section 4.11 does not cover levies which reflect part of the cost of providing electricity to the beneficiaries in question. For example, exemptions from network charges or from charges financing capacity mechanisms are not covered by this Section. Levies on the consumption of other forms of energy, in particular natural gas, are also not covered by this Section.

404. The location decisions of undertakings and the associated adverse environmental impact are dependent on the overall combined financial effect of levies from which reductions can be granted. Member States wishing to introduce a measure to be assessed under this Section therefore have to include all such reductions in a single scheme and, as part of the notification, have to inform the Commission of the cumulative effect of all eligible levies and all reductions proposed. Should a Member State decide at a later stage to introduce additional reductions on levies covered by this Section, it will have to notify an amendment to the existing scheme.

4.11.3. *Minimisation of distortions on competition and trade*

4.11.3.1. Eligibility

405. For levies covered under Section 4.11.2, the risk at sectoral level of activities moving outside the European Union to locations where environmental disciplines are absent or less ambitious largely depends on the electro-intensity of the sector in question and its openness to international trade. Accordingly, aid can only be granted to undertakings from:
- (a) sectors at significant risk, for which the multiplication of their trade intensity and electro-intensity at Union level reaches at least 2 % and whose trade intensity and electro-intensity at Union level is at least 5 % for each indicator;
  - (b) sectors at risk, for which the multiplication of their trade intensity and electro-intensity at Union level reaches at least 0,6 % and whose trade intensity and electro-intensity at Union level is at least 4 % and 5 % respectively.

The sectors meeting these eligibility criteria are listed in Annex I.

406. A sector or subsector <sup>(160)</sup> that is not included in Annex I will also be considered eligible provided that it meets the eligibility criteria of point 405 and that Member States demonstrate this with data that is representative of the sector or subsector at Union level <sup>(161)</sup>, verified by an independent expert and based on a time period of at least three consecutive years starting no earlier than 2013.
407. Should a Member State grant support only to a subset of eligible beneficiaries or grant different levels of reductions to eligible beneficiaries falling within the same category of either point 405(a) or (b), it must demonstrate that that decision is made on the basis of objective, non-discriminatory and transparent criteria and that the aid is granted, in principle, the same way for all eligible beneficiaries in the same sector if they are in a similar factual situation.

<sup>(160)</sup> In the definition of the Statistical Classification of Economic Activities in the European Community ('NACE rev. 2' classification), to a level of disaggregation not higher than eight digits ('PRODCOM' level).

<sup>(161)</sup> For example, data covering a significant percentage of the gross value added at EU level of the concerned sector or subsector.

#### 4.11.3.2. Proportionality of the aid measure

408. The Commission will consider the aid to be proportionate if the beneficiaries from sectors in point 405(a) and (b) pay respectively at least 15 % and 25 % of the costs generated by the electricity levies which a Member State includes in its scheme. The Commission also considers that, in order for the aid to be proportionate, such reductions must not result in a levy below 0.5 EUR/MWh.
409. However, own contributions based on point 408 might go beyond what undertakings which are particularly exposed can bear. Therefore, the Member State may instead limit the additional costs resulting from the electricity levies to 0,5 % of the gross value added ('GVA') of the undertakings in sectors from point 405(a) and to 1 % of the GVA of the undertakings in sectors from point 405(b). The Commission also considers that, in order for the aid to be proportionate, such reductions must not result in a levy below 0.5 EUR/MWh.
410. The Commission will consider the aid to be proportionate if the application of the higher aid intensities under points 408 and 409 are extended to the undertakings from sectors from point 405(b), provided that the concerned undertakings reduce the carbon footprint of their electricity consumption. For this purpose, beneficiaries will cover at least 50 % of their electricity consumption from carbon-free sources, out of which either at least 10 % will be covered by a forward instrument such as a power purchase agreement or at least 5 % will be covered by on-site or near-site generation.
411. For the purpose of point 409 the GVA of an undertaking will be the gross value added at factor costs, which is the GVA at market prices less any indirect taxes plus any subsidies. Gross value added at factor cost can be calculated from turnover, plus capitalised production, plus other operating income, plus or minus changes in stocks, minus purchases of goods and services <sup>(162)</sup>, minus other taxes on products that are linked to turnover but not deductible, minus duties and taxes linked to production. Alternatively, GVA at factor cost can be calculated from gross operating surplus by adding personnel costs. Income and expenditure classified as financial or extraordinary in company accounts are excluded from the value added. The value added at factor costs is calculated at gross level, as value adjustments (such as depreciation) are not subtracted <sup>(163)</sup>.
412. For the purposes of point 411, the arithmetic mean over the most recent 3 years for which GVA data is available will be used.

#### 4.11.3.3. Form of State aid

413. Member States can grant the aid in the form of a reduction in levies, as a fixed annual compensation amount (refund), or as a combination of the two <sup>(164)</sup>. Where the aid is granted in the form of a reduction in levies, an *ex post* monitoring mechanism needs to be put in place to ensure that any over-payment of aid will be repaid before 1 July of the following year. Where the aid is granted in the form of a refund, it must be calculated on the basis of the observed levels of electricity consumption and, if applicable, the gross value added over the period of time during which the eligible levies were applied.

<sup>(162)</sup> 'Goods and services' do not include personnel costs.

<sup>(163)</sup> Code 12 15 0 within the legal framework established by Council Regulation (EC, Euratom) No 58/97 of 20 December 1996 concerning structural business statistics (OJ L 014, 17.1.1997, p. 1).

<sup>(164)</sup> The use of fixed annual compensations (refunds) has the advantage that undertakings benefitting from the aid face the same increase in the marginal cost of electricity (i.e. the same increase in the cost of electricity for every extra MWh consumed), thereby limiting potential distortions of competition within the sector.

#### 4.11.3.4. Energy Audits and Management Systems

414. For aid granted under Section 4.11, the Member State must commit to verifying that the beneficiary complies with its obligation to conduct an energy audit within the meaning of Article 8 of Directive 2012/27/EU. It can be conducted either as a stand-alone energy audit or within the framework of a certified Energy Management System or Environmental Management System, as specified in the Article 8 Energy Efficiency Directive.
415. The Member State must also commit to monitoring that beneficiaries required to conduct an energy audit under Article 8(4) of Directive 2012/27/EU do one or more of the following:
- (a) implement recommendations of the audit report, to the extent that the pay-back time for the relevant investments does not exceed 3 years and that the costs of their investments is proportionate;
  - (b) reduce the carbon footprint of their electricity consumption, so as to cover at least 30 % of their electricity consumption from carbon-free sources;
  - (c) invest a significant share of at least 50 % of the aid amount in projects that lead to substantial reductions of the installation's greenhouse gas emissions; where applicable, the investment should lead to reductions to a level well below the relevant benchmark used for free allocation in the Union ETS.

#### 4.11.3.5. Transitional rules

416. To avoid disruptive changes in the levy burden for individual undertakings that do not meet the eligibility conditions set out in Section 4.11, Member States can establish a transitional plan for those undertakings. The transitional plan will be limited to undertakings that comply with the two following cumulative criteria:
- (a) in at least one of the last two years prior to the adaptation under point 468(a), they received aid in the form of reduced levies under a national aid scheme declared compatible on the basis of Section 3.7.2 of the Guidelines on State aid for environmental protection and energy 2014-2020 <sup>(165)</sup>;
  - (b) at the time when the aid under point 416(a) was granted, they met the eligibility criteria of Section 3.7.2 of the Guidelines on State aid for environmental protection and energy 2014-2020.
417. Such transitional plan will entail a progressive and complete adjustment to the conditions resulting from the application of the eligibility and proportionality criteria set out in section 4.11, to be completed by the year 2028 in line with the following schedule:
- (a) for the levies applicable to the years until 2026, concerned undertakings pay at least 35 % of the costs generated by the electricity levies which a Member State includes in its scheme or the equivalent to 1,5 % of their GVA;
  - (b) for the levies applicable to the year 2027, concerned undertakings pay at least 55 % of the costs generated by the electricity levies which a Member State includes in its scheme or the equivalent to 2,5 % of their GVA;
  - (c) for the levies applicable to the year 2028, concerned undertakings pay at least 80 % of the costs generated by the electricity levies which a Member State includes in its scheme or the equivalent to 3,5 % of their GVA;
418. The transitional plan may allow that the aid intensities under point 417(a) are applied for the entire transitional period, provided that the undertakings concerned reduce the carbon footprint of their electricity consumption. For this purpose, beneficiaries will cover at least 50 % of their electricity consumption from carbon-free sources, out of which either at least 10 % will be covered by a forward instrument such as a power purchase agreement or at least 5 % will be covered by on-site or near-site generation.

<sup>(165)</sup> Communication from the Commission – Guidelines on State aid for environmental protection and energy 2014-2020 (OJ C 200, 28.6.2014).

419. The Commission considers that non-notified aid granted in the form of reduced electricity levies for energy-intensive users in the period prior to the publication of these guidelines can be declared compatible with the internal market under the following cumulative conditions:

- (a) that the aid was necessary for the development of the economic activities carried out by the beneficiaries;
- (b) that excessive competition distortions have been avoided.

**4.12. Aid for the closure of power plants using coal, peat or oil shale and of mining operations relating to coal, peat or oil shale extraction**

420. The shift away from power generation based on coal, peat and oil shale is one of the most important drivers of decarbonisation in the power sector in the Union. Sections 4.12.1 and 4.12.2 lay down the compatibility rules applicable to two types of measures that Member States may take to support the closure of power plants that burn coal (including both hard coal and lignite), peat or oil shale and of mining operations for these fuels (together referred to as 'coal, peat and oil shale activities').

421. Sections 4.12.1 and 4.12.2 set out the criteria which the Commission will apply when assessing the incentive effect, necessity, appropriateness, proportionality and effects on competition and trade. The compatibility criteria in Chapter 3 apply only for those criteria for which there are no specific rules in Sections 4.12.1 and 4.12.2.

422. Accelerating the energy transition in Member States with very low income per capita is particularly challenging. In order to support the green transition in the most affected regions through phasing out the most polluting energy sources, Member States may need to combine the phase out of the coal, peat or oil shale activities with a simultaneous investment in more environmentally-friendly generation, such as natural gas. The Commission may exceptionally, until 31 December 2023, base its assessment of such investments in Member States with Real GDP per capita at market prices in EUR at or below 35 % of the Union average in 2019 on criteria diverging from these guidelines. The projects covered by this point must:

- (a) involve a simultaneous closure of power plants using coal, peat or oil shale of at least the same capacity as the new generation covered by the investment, by no later than 2026;
- (b) concern Member States which do not have a capacity mechanism in place and that commit to undertake the necessary market reforms so that security of electricity supply can be ensured in future without recourse to individual support measures; and
- (c) be part of a credible and ambitious decarbonisation strategy, including the prevention of stranded assets in view of the 2030 and 2050 targets (see point (129)).

*4.12.1. Aid for the early closure of profitable coal, peat and oil shale activities*

*4.12.1.1. Rationale for the aid*

423. The shift away from coal, peat and oil shale activities is largely driven by regulation, market forces such as the effects of carbon prices and competition from renewable sources with low marginal costs.

424. However, Member States may decide to accelerate this market driven transition by prohibiting the generation of power based on these fuels as of a certain date. This prohibition can create situations in which profitable coal, peat and oil shale activities have to close before the end of their economic lifetime and can hence result in forgone profit. Member States may wish to grant compensation outside court procedures in order to ensure legal certainty and predictability, facilitating the green transition.

#### 4.12.1.2. Scope and supported activities

425. This Section sets out compatibility rules for measures taken to accelerate the closure of profitable coal, peat and oil shale activities and to compensate the affected undertakings. Such compensation would typically be calculated on the basis of the forgone profits incurred by the undertakings due to the early closure. It may also cover additional costs incurred by the undertakings, for instance relating to additional social and environmental costs, if these costs are directly caused by the early closure of the profitable activities. Additional costs cannot include costs where they would have also occurred in the counterfactual scenario.
426. Measures covered by this Section can facilitate the development of certain economic activities or areas. For instance, such measures can create space for the development of other power generation activities in line with the Green Deal in order to offset the reduction in the power generation capacity caused by the early closure. In the absence of the measure, this development may not take place to the same extent. In addition, the predictability and legal certainty introduced by such measures can help to facilitate the ordered closure of coal, peat and oil shale activities.

#### 4.12.1.3. Incentive effect

427. The measure needs to trigger a change in the economic behaviour of the operators, which close down their coal, peat and oil shale activities earlier than the end of their economic lifetime. To determine whether this is the case, the Commission will compare the factual scenario (i.e. the effects of the measure) with a counterfactual scenario (i.e. in the absence of the measure). The measure should not lead to a circumvention of the rules applicable to measures for security of supply.

#### 4.12.1.4. Necessity and appropriateness

428. The Commission considers that there is a need for a measure if the Member State can demonstrate that the measure is targeted towards a situation where it can bring about a material improvement that the market alone cannot deliver. For instance, by enabling the phase-out of power generation capacity based on coal, peat and oil shale and thereby contributing to the development of the economic activity of power generation from alternative sources, which would not occur to the same extent without the measure. In this context, the Commission may also consider whether the market itself would have achieved a similar CO<sub>2</sub> emissions reduction without the measure or whether the measure contributes significantly to ensure legal certainty and predictability that would not have been there in the absence of the measure, thereby facilitating the green transition.
429. Furthermore, the Member State should demonstrate that the measure is an appropriate policy instrument to achieve the intended objective, that is to say there must not be a less distortive policy and aid instrument capable of achieving the same results. For instance, if the measure is well targeted to contribute to the development of electricity generation from alternative sources, whilst mitigating the impact on the electricity market functioning and employment, and to ensure predictability of the closure, while contributing to the CO<sub>2</sub> emission reduction targets.

#### 4.12.1.5. Proportionality

430. The aid must in principle be granted through a competitive bidding process on the basis of clear, transparent and non-discriminatory criteria, in line with Section 3.2.1.3<sup>(166)</sup>. This requirement does not apply where the Member State demonstrates that a bidding process is unlikely to be competitive for objective reasons. This can, for example, be the case where the number of potential participants is limited, provided this is not due to discriminatory eligibility criteria.

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<sup>(166)</sup> The 30 % requirement set out in point 50 does not apply to bidding processes under Section 4.12. Member States may consider the use of additional criteria, such as other environmental benefits to be achieved.

431. If the aid is granted through a competitive bidding process, the Commission will presume that the aid is proportionate and limited to the minimum necessary.
432. In the absence of a competitive bidding process, the Commission will assess proportionality on a case-by-case basis to verify that the compensation is limited to the minimum necessary. In this context, the Commission will analyse in detail the assumptions used by the Member State to determine the forgone profits and additional costs on the basis of which the compensation for the early closure was calculated, by comparing the expected profitability in the factual and counterfactual scenarios. The counterfactual scenario should be based on duly justified assumptions, realistic market developments and reflect the projected revenues and costs of each entity in question, whilst taking into account possible direct functional links between entities.
433. Where the closure of the coal, peat and oil shale activities occurs more than three years after the compensation has been awarded, the Member State must introduce a mechanism to update the calculation of the compensation based on the most recent assumptions, unless it can demonstrate why the use of such a mechanism is not justified due to exceptional circumstances in the case at hand.

#### 4.12.1.6. Avoidance of undue negative effects on competition and trade

434. The Member State must identify and quantify the expected environmental benefits of the measure, where possible in terms of aid per tonne of CO<sub>2</sub> equivalent emissions avoided. Furthermore, the Commission will consider it positively if measures include a voluntary cancellation of CO<sub>2</sub> emission allowances at national level.
435. It is important to ensure that the measure is structured in a way that limits to the minimum any distortion of competition in the market. If the aid is granted through a competitive bidding process open to all operators of coal, peat or oil shale activities on a non-discriminatory basis, the Commission will presume that the aid has limited distortive effects on competition and trade. In the absence of a competitive bidding process, the Commission will assess the aid's effects on competition and trade based on the design of the measure and its effect on the relevant market.

#### 4.12.2. *Aid for exceptional costs in relation to the closure of uncompetitive coal, peat and oil shale activities*

##### 4.12.2.1. Rationale for the aid

436. The closure of uncompetitive coal, peat and oil shale activities can generate significant social and environmental costs at the level of the power plants and the mining operations. Member States may decide to cover such exceptional costs to mitigate the social and regional consequences of the closure.

##### 4.12.2.2. Scope and supported activities

437. This Section sets out compatibility rules for measures taken to cover exceptional costs resulting from the closure of uncompetitive coal, peat and oil shale activities.
438. Measures covered by this Section can facilitate the social, environmental and safety transition of the area concerned.
439. This Section applies to the extent that the measure is not covered by the Council Decision of 10 December 2010 on State aid to facilitate the closure of uncompetitive coal mines <sup>(167)</sup>.

<sup>(167)</sup> Council Decision of 10 December 2010 on State aid to facilitate the closure of uncompetitive coal mines (OJ L 336, 21.12.2010, p. 24).

#### 4.12.2.3. Necessity and appropriateness

440. The Commission will consider aid to cover exceptional costs necessary and appropriate to the extent that it can help mitigate the social and environmental impact of the closure of uncompetitive coal, peat and oil shale activities in the region and the Member State concerned.

#### 4.12.2.4. Incentive effect and proportionality

441. State aid for exceptional costs may only be used to cover the costs resulting from the closure of uncompetitive coal, peat and oil shale activities.
442. The categories of eligible costs covered are defined in Annex II. Costs resulting from non-compliance with environmental regulations and costs related to current production are not eligible.
443. Without prejudice to Directive 2004/35/EC of the European Parliament and of the Council <sup>(168)</sup> or other relevant Union rules <sup>(169)</sup>, aid to cover exceptional environmental costs, may be regarded as having an incentive effect only when the entity or undertaking at the origin of the environmental damage cannot be identified or be held legally liable for financing the works necessary to prevent and correct environmental damage in accordance with the 'polluter pays' principle.
444. The Member State must demonstrate that all necessary measures, including legal action, have been taken to identify the liable entity or undertaking at the origin of the environmental damage and make it bear the relevant costs. Where the entity or undertaking liable under the applicable law cannot be identified or made to bear the costs, aid may be granted to support the entire remediation or rehabilitation works and may be regarded as having an incentive effect. The Commission may consider that an undertaking cannot be made to bear the costs of remediating the environmental damage it has caused where it has ceased to legally exist and no other undertaking can be regarded as its legal or economic successor <sup>(170)</sup> or where there is insufficient financial security to meet the costs of remediation.
445. The aid amount must be limited to the coverage of exceptional costs of the beneficiary and must not exceed the costs actually incurred. The Commission will require the Member State to clearly and separately identify the aid amount for each category of eligible costs, as detailed in Annex II. Where the Member State covers such costs on the basis of estimations, before they are actually incurred by the beneficiary, it must carry out an *ex post* verification of the costs incurred on the basis of detailed statements provided by the beneficiary to the granting authority, including invoices or certificates showing the exceptional costs incurred, and adjust the amounts granted accordingly.

#### 4.12.2.5. Avoidance of undue negative effects on competition and trade

446. Provided that the aid is limited to the coverage of exceptional costs incurred by the beneficiary, the Commission considers that it has limited distortive effects on competition and trade.

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<sup>(168)</sup> Directive 2004/35/CE of the European Parliament and of the Council of 21 April 2004 on environmental liability with regard to the prevention and remedying of environmental damage (OJ L 143 30.4.2004, p. 56).

<sup>(169)</sup> See also Commission Notice Guidelines providing a common understanding of the term 'environmental damage' as defined in Article 2 of Directive 2004/35/EC of the European Parliament and of the Council on environmental liability with regard to the prevention and remedying of environmental damage 2021/C 118/01 (OJ C 118, 7.4.2021, p. 1).

<sup>(170)</sup> See Commission Decision C(2012) 558 final of 17 October 2012 in case SA.33496 (2011/N) – Austria – Einzelfall, Altlast, DECON Umwelttechnik GmbH, recitals 65-69 (OJ C 14, 17.1.2013, p. 1).

447. Aid received for exceptional costs should be shown in the profit-and-loss accounts of the beneficiary as a separate item of revenue distinct from turnover. Where the beneficiary continues trading or operating after closing down the relevant coal, peat and oil shale activities, it must keep precise and separate accounts for those activities. The aid granted must be managed in such a way that there is no possibility of it being transferred to other economic activities of the same undertaking.

4.13. **Aid for studies or consultancy services on matters relating to climate, environmental protection and energy**

4.13.1. *Scope and supported activities*

448. This Section applies to aid for studies or consultancy services directly linked to projects or activities covered by these guidelines on matters relating to climate, environmental protection and energy. Aid may be granted irrespective of whether the study or the consultancy service is followed by an investment covered by these guidelines.

449. The study or consultancy service must not be a continuous or periodic activity nor relate to the undertaking's usual operating costs.

4.13.2. *Incentive effect*

450. The requirement set out in point 451 applies in addition to those set out in Section 3.1.2.

451. Aid for energy audits required by Directive 2012/27/EU may be considered to have an incentive effect only to the extent that the energy audit is carried out in addition to the mandatory energy audit under that Directive.

4.13.3. *Proportionality*

452. The eligible costs are the costs of the study or consultancy services relating to projects or activities covered by these guidelines. Where only part of the study or consultancy service concerns investments covered by these guidelines, the eligible costs are the costs of the parts of the study or consultancy service relating to those investments.

453. The aid intensity must not exceed 60 % of the eligible costs.

454. The aid intensity may be increased by 20 percentage points for studies or consultancy services undertaken on behalf of small enterprises and by 10 percentage points for studies or consultancy services undertaken on behalf of medium-sized enterprises.

## 5. EVALUATION

455. To further ensure that distortions of competition and trade are limited, the Commission may require notifiable aid schemes to be subject to an *ex post* evaluation. Evaluations should be carried out for schemes where the potential distortions of competition and trade are particularly high, that is to say schemes that may risk significantly restricting or distorting competition if their implementation is not reviewed in due time.

456. *Ex post* evaluation will be required for schemes with large aid budgets, or containing novel characteristics, or when significant market, technology or regulatory changes are foreseen. In any event, *ex post* evaluation will be required for schemes when the State aid budget or accounted expenditures exceed EUR 150 million in any given year or EUR 750 million over the total duration of the schemes. The total duration of the schemes includes the combined duration of the scheme and any predecessor scheme covering a similar objective and geographical area, starting from 1 January 2022. Given the objectives of the evaluation, and in order not to impose a disproportionate burden on Member States and on smaller aid projects, the *ex post* evaluation requirement only applies for aid schemes with a total duration that exceeds three years, starting from 1 January 2022.

457. The *ex post* evaluation requirement may be waived with respect to aid schemes that are the immediate successors of schemes covering a similar objective and geographical area that have been subject to an evaluation, delivered a final evaluation report in compliance with the evaluation plan approved by the Commission and have not generated any negative findings. Any scheme where the final evaluation report is not in compliance with the approved evaluation plan must be suspended with immediate effect.
458. The *ex post* evaluation should aim at verifying whether the assumptions and conditions underlying the compatibility of the scheme have been achieved, in particular the necessity and the effectiveness of the aid measure in the light of its general and specific objectives and should provide indications on the impact of the scheme on competition and trade.
459. The Member State must notify a draft evaluation plan, which will be an integral part of the Commission's assessment of the scheme, as follows:
- (a) together with the aid scheme, if its State aid budget exceeds EUR 150 million in any given year or EUR 750 million over its total duration; or
  - (b) within 30 working days following a significant modification increasing the budget of the scheme to over EUR 150 million in any given year or EUR 750 million over the total duration of the scheme; or
  - (c) for schemes not falling under (a) or (b), within 30 working days after recording in official accounts expenditures in excess of EUR 150 million in the previous year.
460. The draft evaluation plan must be in accordance with the common methodological principles provided by the Commission <sup>(171)</sup>. The evaluation plan approved by the Commission must be made public.
461. The *ex post* evaluation must be carried out by an expert independent from the aid granting authority on the basis of the evaluation plan. Each evaluation must include at least one interim and one final evaluation report. Both reports must be made public.
462. In case of aid schemes excluded from the scope of a block exemption regulation exclusively on the grounds of their large budget, the Commission will assess their compatibility solely on the basis of the evaluation plan.
463. The final evaluation report must be submitted to the Commission in due time to allow for the assessment of the possible prolongation of the aid scheme and at the latest nine months before its expiry. That deadline could be reduced for schemes triggering the evaluation requirement in their last two years of implementation. The precise scope and arrangements for each evaluation will be set out in the decision approving the aid scheme. Any subsequent aid measure with a similar objective must describe how the results of the evaluation have been taken into account.

## 6. REPORTING AND MONITORING

464. Under Council Regulation (EU) 2015/1589 <sup>(172)</sup> and Commission Regulation (EC) No 794/2004 <sup>(173)</sup>, Member States must submit annual reports to the Commission.

<sup>(171)</sup> Commission Staff Working Document, Common methodology for State aid evaluation, 28.5.2014, SWD(2014) 179 final.

<sup>(172)</sup> 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).

<sup>(173)</sup> Commission Regulation (EC) No 794/2004 of 21 April 2004 implementing Council Regulation (EC) No 659/1999 laying down detailed rules for the application of Article 93 of the EC Treaty (OJ L 140, 30.4.2004, p. 1).

465. Member States must maintain detailed records regarding all aid measures. Such records must contain all information necessary to establish that the conditions regarding eligible costs and maximum aid intensities have been fulfilled. Those records must be maintained for 10 years from the date of award of the aid and must be provided to the Commission upon request.

#### 7. APPLICABILITY

466. The Commission will apply these guidelines to assess the compatibility of all notifiable aid for climate, environmental protection and energy awarded or intended to be awarded from 27 January 2022. Unlawful aid will be assessed in accordance with the rules applicable at the date on which the aid was awarded.
467. These guidelines replace the Guidelines on State aid for environmental protection and energy 2014-2020 <sup>(174)</sup>.
468. The Commission proposes the following appropriate measures to Member States under Article 108(1) of the Treaty:
- (a) Member States amend, where necessary, existing environmental protection and energy aid schemes in order to bring them into line with these guidelines no later than 31 December 2023;
  - (b) Member States give their explicit unconditional agreement to the appropriate measures proposed in point 468(a) within two months from the date of publication of these guidelines in the *Official Journal of the European Union*. In the absence of any reply, the Commission will assume that the Member State in question does not agree with the proposed measures.

#### 8. REVISION

469. The Commission intends to carry out an evaluation of these guidelines as from 31 December 2027, to examine their effectiveness, efficiency, relevance, coherence and added value.
470. The Commission may decide to review or amend these guidelines at any time if this should be necessary for reasons associated with competition policy or to take account of other Union policies and international commitments or for any other justified reason.

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<sup>(174)</sup> Communication from the Commission – Guidelines on State aid for environmental protection and energy 2014-2020 (OJ C 200, 28.6.2014, p. 1).

## ANNEX 1

**List of eligible sectors under Section 4.11****Sectors at significant risk as referred to in Section 4.11.3.1**

| NACE code | Description  |
|-----------|--|
| 0510      | Mining of hard coal  |
| 0620      | Extraction of natural gas  |
| 0710      | Mining of iron ores  |
| 0729      | Mining of other non-ferrous metal ores   |
| 0811      | Quarrying of ornamental and building stone, limestone, gypsum, chalk and slate                       |
| 0891      | Mining of chemical and fertiliser minerals   |
| 0893      | Extraction of salt   |
| 0899      | Other mining and quarrying n.e.c.  |
| 1020      | Processing and preserving of fish, crustaceans and molluscs  |
| 1031      | Processing and preserving of potatoes  |
| 1032      | Manufacture of fruit and vegetable juice   |
| 1039      | Other processing and preserving of fruit and vegetables  |
| 1041      | Manufacture of oils and fats   |
| 1062      | Manufacture of starches and starch products  |
| 1081      | Manufacture of sugar   |
| 1086      | Manufacture of homogenised food preparations and dietetic food                                       |
| 1104      | Manufacture of other non-distilled fermented beverages   |
| 1106      | Manufacture of malt  |
| 1310      | Preparation and spinning of textile fibres   |
| 1320      | Weaving of textiles  |
| 1330      | Finishing of textiles  |
| 1391      | Manufacture of knitted and crocheted fabrics   |
| 1393      | Manufacture of carpets and rugs  |
| 1394      | Manufacture of cordage, rope, twine and netting  |
| 1395      | Manufacture of non-wovens and articles made from non-wovens, except apparel                          |
| 1396      | Manufacture of other technical and industrial textiles   |
| 1411      | Manufacture of leather clothes   |
| 1431      | Manufacture of knitted and crocheted hosiery   |
| 1511      | Tanning and dressing of leather; dressing and dyeing of fur  |
| 1610      | Sawmilling and planing of wood   |
| 1621      | Manufacture of veneer sheets and wood-based panels   |
| 1622      | Manufacture of assembled parquet floors  |
| 1629      | Manufacture of other products of wood; manufacture of articles of cork, straw and plaiting materials |

| NACE code | Description  |
|-----------|--|
| 1711      | Manufacture of pulp  |
| 1712      | Manufacture of paper and paperboard  |
| 1722      | Manufacture of household and sanitary goods and of toilet requisites             |
| 1724      | Manufacture of wallpaper   |
| 1920      | Manufacture of refined petroleum products  |
| 2011      | Manufacture of industrial gases  |
| 2012      | Manufacture of dyes and pigments   |
| 2013      | Manufacture of other inorganic basic chemicals                                   |
| 2014      | Manufacture of other organic basic chemicals                                     |
| 2015      | Manufacture of fertilisers and nitrogen compounds                                |
| 2016      | Manufacture of plastics in primary forms   |
| 2017      | Manufacture of synthetic rubber in primary forms                                 |
| 2059      | Manufacture of other chemical products n.e.c.                                    |
| 2060      | Manufacture of man-made fibres   |
| 2110      | Manufacture of basic pharmaceutical products                                     |
| 2211      | Manufacture of rubber tyres and tubes; retreading and rebuilding of rubber tyres |
| 2219      | Manufacture of other rubber products   |
| 2221      | Manufacture of plastic plates, sheets, tubes and profiles                        |
| 2222      | Manufacture of plastic packinggoods  |
| 2229      | Manufacture of other plastic products  |
| 2311      | Manufacture of flat glass  |
| 2312      | Shaping and processing of flat glass   |
| 2313      | Manufacture of hollow glass  |
| 2314      | Manufacture of glass fibres  |
| 2319      | Manufacture and processing of other glass, including technical glassware         |
| 2320      | Manufacture of refractory products   |
| 2331      | Manufacture of ceramic tiles and flags   |
| 2342      | Manufacture of ceramic sanitary fixtures   |
| 2343      | Manufacture of ceramic insulators and insulating fittings                        |
| 2344      | Manufacture of other technical ceramic products                                  |
| 2349      | Manufacture of other ceramic products  |
| 2351      | Manufacture of cement  |
| 2391      | Production of abrasive products  |
| 2399      | Manufacture of other non-metallic mineral products n.e.c.                        |
| 2410      | Manufacture of basic iron and steel and of ferro-alloys                          |
| 2420      | Manufacture of tubes, pipes, hollow profiles and related fittings, of steel      |
| 2431      | Cold drawing of bars   |
| 2432      | Cold rolling of narrow strip   |
| 2434      | Cold drawing of wire   |

| NACE code | Description  |
|-----------|--|
| 2442      | Aluminium production   |
| 2443      | Lead, zinc and tin production  |
| 2444      | Copper production  |
| 2445      | Other non-ferrous metal production                                       |
| 2446      | Processing of nuclear fuel   |
| 2451      | Casting of iron  |
| 2550      | Forging, pressing, stamping and roll-forming of metal; powder metallurgy |
| 2561      | Treatment of coating metals  |
| 2571      | Manufacture of cutlery   |
| 2593      | Manufacture of wire products, chain and springs                          |
| 2594      | Manufacture of fasteners and screw machine products                      |
| 2611      | Manufacture of electronic components                                     |
| 2720      | Manufacture of batteries and accumulators                                |
| 2731      | Manufacture of fibre optic cables  |
| 2732      | Manufacture of other electronic and electric wires and cables            |
| 2790      | Manufacture of other electrical equipment                                |
| 2815      | Manufacture of bearings, gears, gearing and driving elements             |
| 3091      | Manufacture of motorcycles   |
| 3099      | Manufacture of other transport equipment n.e.c.                          |

#### Sectors at risk as referred to in Section 4.11.3.1

| NACE code | Description  |
|-----------|--|
| 1011      | Processing and preserving of meat  |
| 1012      | Processing and preserving of poultry meat  |
| 1042      | Manufacture of margarine and similar edible fats                                   |
| 1051      | Operation of dairies and cheese making   |
| 1061      | Manufacture of grain mill products   |
| 1072      | Manufacture of rusks and biscuits; manufacture of preserved pastry goods and cakes |
| 1073      | Manufacture of macaroni, noodles, couscous and similar farinaceous products        |
| 1082      | Manufacture of cocoa, chocolate and sugar confectionery                            |
| 1085      | Manufacture of prepared meals and dishes   |
| 1089      | Manufacture of other food products n.e.c.  |
| 1091      | Manufacture of prepared feeds for farm animals                                     |
| 1092      | Manufacture of prepared pet foods  |
| 1107      | Manufacture of soft drinks; production of mineral waters and other bottled waters  |
| 1723      | Manufacture of paper stationery  |

| NACE code | Description   |
|-----------|---|
| 1729      | Manufacture of other articles of paper and paperboard                 |
| 2051      | Manufacture of explosives   |
| 2052      | Manufacture of glues  |
| 2332      | Manufacture of bricks, tiles and construction products, in baked clay |
| 2352      | Manufacture of lime and plaster                                       |
| 2365      | Manufacture of fibre cement   |
| 2452      | Casting of steel  |
| 2453      | Casting of light metals   |
| 2591      | Manufacture of steel drums and similar containers                     |
| 2592      | Manufacture of light metal packaging                                  |
| 2932      | Manufacture of other parts and accessories for motor vehicles         |

## ANNEX 2

**Definition of costs referred in Section 4.12.2**

## 1. Costs by undertakings which have closed or are closing coal, peat and oil shale activities

The following cost categories exclusively, and only if they result from the closure of coal, peat and oil shale activities:

- (a) the cost of paying social welfare benefits resulting from the pensioning-off of workers before they reach statutory retirement age;
- (b) other exceptional expenditure on workers who have lost or who lose their jobs;
- (c) the payment of pensions and allowances outside the statutory system to workers who have lost or who lose their jobs and to workers entitled to such payments before the closure;
- (d) the cost covered by the undertakings for the re-adaptation of workers in order to help them find new jobs outside the coal, peat and oil shale industry, especially training costs;
- (e) the supply of free coal, peat and oil shale to workers who have lost or who lose their jobs and to workers entitled to such supply before the closure, or the monetary equivalent;
- (f) residual costs resulting from administrative, legal or tax provisions which are specific to the coal, peat and oil shale industry;
- (g) additional underground safety work resulting from the closure of coal, peat and oil shale activities;
- (h) mining damage, provided that it has been caused by the coal, peat and oil shale activities which have been closed or which are being closed;
- (i) all duly justified costs related to the rehabilitation of former power plants and mining operations, including:
  - residual costs resulting from contributions to bodies responsible for water supplies and for the removal of waste water;
  - other residual costs resulting from water supplies and the removal of waste water;
- (j) residual costs to cover former workers' health insurance;
- (k) costs related to the cancelling or modification of ongoing contracts (for a maximum value of 6 months of production);
- (l) exceptional intrinsic depreciation provided that it results from the closure of coal, peat and oil shale activities;
- (m) costs of surface recultivation.

The increase in the value of the land must be deducted from the eligible costs for the cost categories referred to in points (g), (h), (i) and (m).

## 2. Costs made by several undertakings

The following cost categories exclusively:

- (a) increase in contributions, outside the statutory system, to cover social security costs as a result of the drop, following closure of coal, peat and oil shale activities, in the number of contributors;
  - (b) expenditure, resulting from the closure of coal, peat and oil shale activities, on the supply of water and the removal of waste water;
  - (c) increase in contributions to bodies responsible for supplying water and removing waste water, provided that this increase is the result of a reduction, following the closure of coal, peat and oil shale activities, in the production subject to levy.
-

## CORRIGENDA

**Corrigendum to to Directive (EU) 2015/719 of the European Parliament and of the Council of 29 April 2015 amending Council Directive 96/53/EC laying down for certain road vehicles circulating within the Community the maximum authorised dimensions in national and international traffic and the maximum authorised weights in international traffic**

(Official Journal of the European Union L 115 of 6 May 2015)

On page 4, in Article 1, first paragraph:

*for:* 'Directive 96/53/EC is amended as follows:

(1) point (a) of Article 1(1) is replaced by the following:

“(a) the dimensions of motor vehicles in categories M2 and M3 and their trailers in category O and motor vehicles in categories N2 and N3 and their trailers in categories O3 and O4, as defined in Annex II to Directive 2007/46/EC of the European Parliament and of the Council (\*);”;

*read:* 'Directive 96/53/EC is amended as follows:

(1) point (a) of Article 1(1) is replaced by the following:

“(a) the dimensions of motor vehicles in categories M2 and M3 and their trailers in category O and motor vehicles in categories N2 and N3 and their trailers in categories O3 and O4, as defined in Annex II to Directive 2007/46/EC of the European Parliament and of the Council (\*);”.

On page 9, points (c) and (d) of Article 1(9):

*for:* '(c) point 2.2.2(c) is replaced by the following:

“(c) two-axle motor vehicle with three-axle semi-trailer carrying, in intermodal transport operations, one or more containers or swap bodies, up to a total maximum length of 45 feet: 42 tonnes”;

(d) in point 2.2.2, the following point is added:

“(d) three-axle motor vehicle with two- or three-axle semi-trailer carrying, in intermodal transport operations, one or more containers or swap bodies, up to a total maximum length of 45 feet: 44 tonnes”;

*read:* '(c) point 2.2.2(c) is replaced by the following:

“(c) three-axle motor vehicle with two- or three-axle semi-trailer carrying, in intermodal transport operations, one or more containers or swap bodies, up to a total maximum length of 45 feet: 44 tonnes”;

(d) in point 2.2.2, the following point is added:

“(d) two-axle motor vehicle with three-axle semi-trailer carrying, in intermodal transport operations, one or more containers or swap bodies, up to a total maximum length of 45 feet: 42 tonnes”;

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**Corrigendum to Commission Delegated Regulation (EU) 2022/1299 of 24 March 2022 supplementing Directive 2014/65/EU of the European Parliament and of the Council with regard to regulatory technical standards specifying the content of position management controls by trading venues**

*(Official Journal of the European Union L 197 of 26 July 2022)*

On page 2, in Article 2(1):

*for:* '1. As part of their position management controls, trading venues offering trading in commodity derivatives shall set accountability levels in the spot month as defined in Article 2(3) of Commission Delegated Regulation 2022/1301 (\*) and in the other months as defined in Article 2(4) of Delegated Regulation 2022/1301 for commodity derivatives made available for trading that are physically settled or can be physically settled.'

*read:* '1. As part of their position management controls, trading venues offering trading in commodity derivatives shall set accountability levels in the spot month as defined in Article 2, point (3) of Commission Delegated Regulation (EU) 2022/1302 (\*) and in the other months as defined in Article 2, point (4) of Delegated Regulation (EU) 2022/1302 for commodity derivatives made available for trading that are physically settled or can be physically settled.'

On page 2, footnote 4:

*for:* 'Commission Delegated Regulation (EU) 2022/1301 of 31 March 2022 amending the regulatory technical standards laid down in Delegated Regulation (EU) 2020/1226 as regards the information to be provided in accordance with the STS notification requirements for on-balance-sheet synthetic securitisations (OJ L 197, xx.xx.2022, p. 10).'

*read:* 'Commission Delegated Regulation (EU) 2022/1302 of 20 April 2022 supplementing Directive 2014/65/EU of the European Parliament and of the Council with regard to regulatory technical standards for the application of position limits to commodity derivatives and procedures for applying for exemption from position limits (OJ L 197, 26.7.2022, p. 52).'

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



Publications Office  
of the European Union  
L-2985 Luxembourg  
LUXEMBOURG

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