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Contents



[1] Text with EEA relevance.

EN

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

The titles of all other acts are printed in bold type and preceded by an asterisk.

DECISIONS



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**Corrigenda**

II

*(Non-legislative acts)*

# REGULATIONS

## COMMISSION IMPLEMENTING REGULATION (EU) 2021/2235

## of 15 December 2021

## operating deductions from fishing quotas available for certain stocks in 2021 in accordance with Council Regulation (EC) No 1224/2009 on account of overfishing of other stocks in the previous years and amending Implementing Regulation (EU) 2021/1420

THE EUROPEAN COMMISSION,

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

Having regard to Council Regulation (EC) No 1224/2009 of 20 November 2009 establishing a Union control system for ensuring compliance with the rules of the common fisheries policy, amending Regulations (EC) No 847/96, (EC) No 2371/2002, (EC) No 811/2004, (EC) No 768/2005, (EC) No 2115/2005, (EC) No 2166/2005, (EC) No 388/2006, (EC) No 509/2007, (EC) No 676/2007, (EC) No 1098/2007, (EC) No 1300/2008, (EC) No 1342/2008 and repealing Regulations (EEC) No 2847/93, (EC) No 1627/94 and (EC) No 1966/2006 ([1]), and in particular Article 105 (1), (2), (3) and (5) thereof,

Whereas:

(1) Fishing quotas for the year 2020 have been established by:

— Council Regulation (EU) 2018/2025 ([2]),

— Council Regulation (EU) 2019/1838 ([3]),

— Council Regulation (EU) 2019/2236 ([4]), and

— Council Regulation (EU) 2020/123 ([5]).

(2) Fishing quotas for the year 2021 have been established by:

— Council Regulation (EU) 2020/1579 ([6]),

— Council Regulation (EU) 2021/90 ([7]),

([1]) OJ L 343, 22.12.2009, p. 1.

([2]) Council Regulation (EU) 2018/2025 of 17 December 2018 fixing for 2019 and 2020 the fishing opportunities for Union fishing vessels for certain deep-sea fish stocks (OJ L 325, 20.12.2018, p. 7).

([3]) Council Regulation (EU) 2019/1838 of 30 October 2019 fixing for 2020 the fishing opportunities for certain fish stocks and groups of fish stocks applicable in the Baltic Sea and amending Regulation (EU) 2019/124 as regards certain fishing opportunities in other waters (OJ L 281, 31.10.2019, p. 1).

([4]) Council Regulation (EU) 2019/2236 of 16 December 2019 fixing for 2020 the fishing opportunities for certain fish stocks and groups of fish stocks applicable in the Mediterranean and Black Seas (OJ L 336, 30.12.2019, p. 14).

([5]) Council Regulation (EU) 2020/123 of 27 January 2020 fixing for 2020 the fishing opportunities for certain fish stocks and groups of fish stocks, applicable in Union waters and, for Union fishing vessels, in certain non-Union waters (OJ L 25, 30.1.2020, p. 1).

([6]) Council Regulation (EU) 2020/1579 of 29 October 2020 fixing for 2021 the fishing opportunities for certain fish stocks and groups of fish stocks applicable in the Baltic Sea and amending Regulation (EU) 2020/123 as regards certain fishing opportunities in other waters (OJ L 362, 30.10.2020, p. 3).

([7]) Council Regulation (EU) 2021/90 of 28 January 2021 fixing for 2021 the fishing opportunities for certain fish stocks and groups of fish stocks applicable in the Mediterranean and Black Seas (OJ L 31, 29.1.2021, p. 1).

— Council Regulation (EU) 2021/91 ([8]), and

— Council Regulation (EU) 2021/92 ([9]).

(3) Pursuant to Article 105(1) of Regulation (EC) No 1224/2009, when the Commission has established that a Member State has exceeded the fishing quotas which have been allocated to it, the Commission is to operate deductions from future fishing quotas of that Member State.

(4) Commission Implementing Regulation (EU) 2021/1420 ([10]) has established deductions from fishing quotas available for certain stocks in 2021 on account of overfishing in the previous years.

(5) For certain Member States, namely Denmark, Spain, Estonia, France and the Netherlands, certain deductions could not be operated by Implementing Regulation (EU) 2021/1420 from quotas allocated for the overfished stocks because quotas for these stocks are not available for those Member States in the year 2021.

(6) Article 105(5) of Regulation (EC) No 1224/2009 provides that, if it is not possible to operate deductions on the overfished stock in the year following the overfishing because the Member State concerned has no available quota for that stock, deductions may be operated on other stocks in the same geographical area or with the same commercial value, following consultations with the Member States concerned. According to Commission Communication 2012/C 72/07 containing Guidelines for deduction of quotas under Article 105(1), (2) and (5) of Regulation (EC) No 1224/2009 ([11]) ('the Guidelines') such deductions should be preferably operated in the following year or years from quotas allocated for stocks fished by the same fleet as the fleet that overfished the quota.

(7) The Member States concerned have been consulted in relation to the operation of certain deductions from quotas allocated for stocks other than those which have been overfished. It is therefore appropriate to operate deductions from those fishing quotas allocated to those Member States in 2021.

(8) Implementing Regulation (EU) 2021/1420 should therefore be amended accordingly.

(9) Further updates or corrections may still occur following the detection, for the current or previous exercises, of errors, omissions or misreporting in the catch figures declared by the Member States pursuant to Article 33 of Regulation (EC) No 1224/2009,

HAS ADOPTED THIS REGULATION:

*Article 1*

The fishing quotas fixed for the year 2021 in Regulations (EU) 2020/1579, (EU) 2021/90, (EU) 2021/91, and (EU) 2021/92, referred to in Annex I to this Regulation, shall be reduced by applying the deductions on the alternative stocks set out in that Annex.

*Article 2*

The Annex to Implementing Regulation (EU) 2021/1420 is replaced by the text set out in Annex II to this Regulation.

([8]) Council Regulation (EU) 2021/91 of 28 January 2021 fixing, for the years 2021 and 2022, the fishing opportunities for Union fishing vessels for certain deep-sea fish stocks (OJ L 31, 29.1.2021, p. 20).

([9]) Council Regulation (EU) 2021/92 of 28 January 2021 fixing for 2021 the fishing opportunities for certain fish stocks and groups of fish stocks, applicable in Union waters and, for Union fishing vessels, in certain non-Union waters (OJ L 31, 29.1.2021 p. 31).

([10]) Commission Implementing Regulation (EU) 2021/1420 of 30 August 2021 operating deductions from fishing quotas available for certain stocks in 2021 on account of overfishing in the previous years (OJ L 305, 31.8.2021, p. 10).

([11]) Communication from the Commission – Guidelines for deduction of quotas under Article 105(1), (2) and (5) of Regulation (EC) No 1224/2009 (2012/C 72/07) (OJ C 72, 10.3.2012, p. 27) as amended by Communication 2019/C 192/03 (OJ C 192, 7.6.2019, p. 5).

*Article 3*

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

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

Done at Brussels, 15 December 2021.

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

*ANNEX I*

**DEDUCTIONS FROM FISHING QUOTAS FOR THE YEAR 2021 TO BE APPLIED ON ALTERNATIVE STOCKS**

| OVERFISHED STOCKS | | | | | | | ALTERNATIVE STOCKS | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| Member State | Species code | Area code | Species name | Area name | Quantity that cannot be deducted from the 2021 fishing quota for the overfished stock (in kilograms) | | Member State | Species code | Area code | Species name | Area name | Quantity to be deducted from the 2021 fishing quota for the alternative stocks (in kilograms) |
| **DK** | COD | 1N2AB. | Cod | Norwegian waters of 1 and 2 | 1 606 | | **DK** | HER | 1/2- | Herring | Union, Faroese, Norwegian and international waters of 1 and 2 | 1 606 |
| **DK** | DGS | 15X14 | Picked dogfish | Union and international waters of 1, 5, 6, 7, 8, 12 and 14 | 4 718 | | **DK** | MAC | 2CX14- | Mackerel | 6, 7, 8a, 8b, 8d and 8e; Union and international waters of 5b; international waters of 2a, 12 and 14 | 4 718 |
| **DK** | POK | 1N2AB. | Saithe | Norwegian waters of 1 and 2 | 80 933 | | **DK** | HER | 1/2- | Herring | Union, Faroese, Norwegian and international waters of 1 and 2 | 80 933 |
| **ES** | GHL | 1N2AB. | Greenland halibut | Norwegian waters of 1 and 2 | 33 603 | | **ES** | COD | 1/2B. | Cod | 1 and 2b | 33 603 |
| **ES** | OTH | 1N2AB. | Other species | Norwegian waters of 1 and 2 | 22 078 | | **ES** | COD | 1N2AB. | Cod | Norwegian waters of 1 and 2 | 22 078 |
| **EE** | COD | 1N2AB. | Cod | Norwegian waters of 1 and 2 | 16 377 | | **EE** | RNG | 5B67- | Roundnose grenadier | 6 and 7; United Kingdom and international waters of 5b | 34 000 |
| **FR** | GHL | 1N2AB. | Greenland halibut | Norwegian waters of 1 and 2 | 8 988 | | **FR** | REB | 1N2AB. | Redfish | Norwegian waters of 1 and 2 | 8 988 |

| | | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| **FR** | NEP | 08C. | Norway lobster | 8c | 5 342 | | **FR** | POL | 08C. | Pollack | 8c | 5 342 |
| **FR** | WHM | ATLANT | White marlin | Atlantic Ocean | 2 450 | | **FR** | BUM | ATLANT | Blue marlin | Atlantic Ocean | 2 450 |
| **NL** | WHB | 8C3411 | Blue whiting | 8c, 9 and 10; Union waters of CECAF 34.1.1 | 12 235 | | **NL** | WHB | 1X14 | Blue whiting | Union and international waters of 1, 2, 3, 4, 5, 6, 7, 8a, 8b, 8d, 8e, 12 and 14 | 12 235 |

*ANNEX II*

The Annex to Implementing Regulation (EU) 2021/1420 is replaced by the following:

*'ANNEX*

**DEDUCTIONS FROM FISHING QUOTAS FOR THE YEAR 2021 FOR STOCKS WHICH HAVE BEEN OVERFISHED**

| Member State | Species code | Area code | Species name | Area name | Initial quota 2020 (in kilo grams) | Permitted landings 2020 (Total adapted quantity in kilo grams) (1) | Total catches 2020 (quantity in kilo grams) | Quota consumption related to permitted landings | Overfishing related to permitted landing (quantity in kilograms) | Multiplying factor (2) | Additional Multiplying factor (3), (4) | Outstanding deductions from previous year(s) (quantity in kilo grams) (5) | Deductions from fishing quotas for 2021 (6) and subsequent years (quantity in kilo grams) | Deductions from 2021 fishing quotas for the overfished stocks (7) (quantity in kilo grams) | Deductions from 2021 fishing quotas for alternative stocks (quantity in kilo grams) | To be deducted from fishing quotas for 2022 and subsequent year(s) (quantity in kilo grams) |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| **DE** | HER | 4AB. | Herring | Union and Norwegian waters of 4 north of 53° 30′ N | 39 404 000 | 18 997 930 | 20 355 612 | 107,15 % | 1 357 682 | / | / | / | 1 357 682 | 1 357 682 | / | / |
| **DE** | MAC | 2CX14- | Mackerel | 6, 7, 8a, 8b, 8d and 8e; Union and international waters of 5b; international waters of 2a, 12 and 14 | 23 416 000 | 21 146 443 | 22 858 079 | 108,09 % | 1 711 636 | / | / | / | 1 711 636 | 1 711 636 | / | / |
| **DK** | COD | 1N2A-B. | Cod | Norwegian waters of 1 and 2 | / | / | 1 606 | N/A | 1 606 | 1,00 | / | / | 1 606 | / | 1 606 | / |
| **DK** | DGS | 15X14 | Picked dogfish | Union and international waters of 1, 5, 6, 7, 8, 12 and 14 | / | / | 4 718 | N/A | 4 718 | 1,00 | / | / | 4 718 | / | 4 718 | / |

| | | | | | | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| **DK** | HER | 03A. | Herring | 3a | 10 309 000 | 7 482 731 | 7 697 049 | 102,86 % | 214 318 | / | / | / | 214 318 | 214 318 | / | / |
| **DK** | HER | 4AB. | Herring | Union and Norwegian waters of 4 north of 53° 30′ N | 59 468 000 | 75 652 933 | 81 089 507 | 107,19 % | 5 436 574 | / | / | / | 5 436 574 | 5 436 574 | / | / |
| **DK** | MAC | 2A34. | Mackerel | 3a and 4; Union waters of 2a, 3b, 3c and Subdivisions 22-32 | 19 998 000 | 17 987 493 | 18 625 387 | 103,55 % | 637 894 | / | / | / | 637 894 | 637 894 | / | / |
| **DK** | MAC | 2A4A--N | Mackerel | Norwegian waters of 2a and 4a | 14 453 000 | 13 507 878 | 13 531 201 | 100,17 % | 23 323 | / | / | / | 23 323 | 23 323 | / | / |
| **DK** | POK | 1N2A-B. | Saithe | Norwegian waters of 1 and 2 | / | 7 800 | 88 733 | 1 137,60 % | 80 933 | 1,00 | / | / | 80 933 | / | 80 933 | / |
| **DK** | PRA | N1GR-N. | Northern prawn | Greenland waters of NAFO 1 | 1 400 000 | 2 800 000 | 2 818 891 | 100,67 % | 18 891 | / | / | / | 18 891 | 18 891 | / | / |
| **DK** | SAN | 234_2-R | Sandeel | Union waters of sandeels management area 2r | 59 106 000 | 56 042 763 | 57 756 024 | 103,06 % | 1 713 261 (9) | / | / | / | 1 713 261 (9) | 1 713 261 (9) | / | / |
| **ES** | COD | 1/2B. | Cod | 1 and 2b | 11 688 000 | 9 576 615 | 9 581 250 | 100,05 % | 4 635 | / | / | / | 4 635 | 4 635 | / | / |
| **ES** | GHL | 1N2A-B. | Greenland halibut | Norwegian waters of 1 and 2 | / | / | 22 402 | N/A | 22 402 | 1,00 | A | / | 33 603 | / | 33 603 | / |
| **ES** | OTH | 1N2A-B. | Other species | Norwegian waters of 1 and 2 | / | / | 22 078 | N/A | 22 078 | 1,00 | / | / | 22 078 | / | 22 078 | / |
| **ES** | RJU | 9-C. | Undulate ray | Union waters of 9 | 15 000 | 15 000 | 21 072 | 140,48 % | 6 072 | 1,00 | / | 2 067 | 8 139 | 8 139 | / | / |
| **EE** | COD | 1N2A-B. | Cod | Norwegian waters of 1 and 2 | / | 300 000 | 316 377 | 105,46 % | 16 377 | / | / | / | 16 377 | / | 34 000 | / |
| **FR** | GHL | 1N2A-B. | Greenland halibut | Norwegian waters of 1 and 2 | / | / | 8 988 | N/A | 8 988 | 1,00 | / | / | 8 988 | / | 8 988 | / |

| | | | | | | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| **FR** | NEP | 08C. | Norway lobster | 8c | 0 | 0 | 5 342 | N/A | 5 342 | 1,00 | / | / | 5 342 | / | 5 342 | / |
| **FR** | WH-M | ATLA-NT | White marlin | Atlantic Ocean | / | / | 1 225 | N/A | 1 225 | 1,00 | C | / | 2 450 | / | 2 450 | / |
| **IE** | ALB | AN05N | Northern albacore | Atlantic Ocean, north of 5° N | 2 891 010 | 2 743 260 | 2 938 449 | 107,12% | 195 189 | / | C ([8]) | / | 195 189 | 195 189 | / | / |
| **LV** | HER | 3D--R30 | Herring | Union waters of Subdivisions 25-27, 28.2, 29 and 32 | 4 253 000 | 6 135 144 | 6 138 817 | 100,06 % | 3 673 | / | C ([8]) | / | 3 673 | 3 673 | / | / |
| **LV** | SPR | 3BCD--C | Sprat | Union waters of subdivisions 22-32 | 29 073 000 | 28 618 753 | 28 635 182 | 100,06 % | 16 429 | / | C ([8]) | / | 16 429 | 16 429 | / | / |
| **NL** | HER | 4AB. | Herring | Union and Norwegian waters of 4 north of 53° 30′ N | 51 717 000 | 50 896 907 | 51 002 687 | 100,21 % | 105 780 | / | / | / | 105 780 | 105 780 | / | / |
| **NL** | WHB | 8C341-1 | Blue whiting | 8c, 9 and 10; Union waters of CECAF 34.1.1 | / | / | 12 235 | N/A | 12 235 | 1,00 | / | / | 12 235 | / | 12 235 | / |
| **PL** | HER | 1/2- | Herring | Union, Faroese, Norwegian and international waters of 1 and 2 | 593 000 | 1 226 015 | 1 329 820 | 108,47 % | 103 805 | / | / | / | 103 805 | 103 805 | / | / |
| **PL** | MAC | 2CX14- | Mackerel | 6, 7, 8a, 8b, 8d and 8e; Union and international waters of 5b; international waters of 2a, 12 and 14 | 1 649 000 | 4 724 236 | 5 185 187 | 109,76 % | 460 951 | / | / | / | 460 951 | 460 951 | / | / |
| **PT** | ALB | AN05N | Northern albacore | Atlantic Ocean, north of 5° N | 2 273 970 | 1 638 457 | 1 595 315 | 97,37 % | - 43 142 ([10]) | N/A | N/A | 635 513 ([11]) | 635 513 ([11]) | 635 513 ([11]) | / | / |

| | | | | | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| **PT** | ALF | 3X14- | Alfonsi-nos | Union and international waters of 3, 4, 5, 6, 7, 8, 9, 10, 12 and 14 | 164 000 | 155,278 | 158,601 | 102,14 % | 3 323 | / | A ([8]) | / | 3 323 | 3 323 | / | / |
| **PT** | BET | ATLA-NT | Bigeye tuna | Atlantic Ocean | 3 058 330 | 3 058 330 | 3 069 582 | 100,37 % | 11 252 | / | C ([8]) | / | 11 252 | 11 252 | / | / |
| **PT** | HKE | 8C341-1 | Hake | 8c, 9 and 10; Union waters of CECAF 34.1.1 | 2 614 000 | 1 996 154 | 2 135 737 | 106,99 % | 139 583 | / | C ([8]) | / | 139 583 | 139 583 | / | / |
| **PT** | SWO | AS05N | Sword-fish | Atlantic Ocean, South of 5° N | 299 030 | 299 030 | 309 761 | 103,59 % | 10 731 | / | / | / | 10 731 | 10 731 | / | / |

([1]) Quotas available to a Member State pursuant to the relevant fishing opportunities Regulations after taking into account exchanges of fishing opportunities in accordance with Article 16(8) of Regulation (EU) No 1380/2013 of the European Parliament and of the Council on the Common Fisheries Policy, amending Council Regulations (EC) No 1954/2003 and (EC) No 1224/2009 and repealing Council Regulations (EC) No 2371/2002 and (EC) No 639/2004 and Council Decision 2004/585/EC (OJ L 354, 28.12.2013, p. 22), quota transfers from 2019 to 2020 in accordance with Article 4(2) of Council Regulation (EC) No 847/96 introducing additional conditions for year-to-year management of TACs and quotas (OJ L 115, 9.5.1996, p. 3) and with Article 15(9) of Regulation (EU) No 1380/2013 or reallocation and deduction of fishing opportunities in accordance with Articles 37 and 105 of Regulation (EC) No 1224/2009.

([2]) As set out in Article 105(2) of Regulation (EC) No 1224/2009. Deduction equal to the overfishing * 1,00 shall apply in all cases of overfishing equal to, or less than, 100 tonnes.

([3]) As set out in Article 105(3) of Regulation (EC) No 1224/2009 and provided that the extent of overfishing exceeds 10 %.

([4]) Letter "A" indicates that an additional multiplying factor of 1,5 has been applied due to consecutive overfishing in the years 2018, 2019 and 2020. Letter "C" indicates that an additional multiplying factor of 1,5 has been applied as the stock is subject to a multiannual plan.

([5]) Remaining quantities from previous year(s).

([6]) Deductions to operate in 2021.

([7]) Deductions to operate in 2021 that could be actually applied considering the available quota on 7 September 2021.

([8]) Additional multiplying factor not applicable because the overfishing does not exceed 10 % of the permitted landings.

([9]) To be deducted from sandeel management area 3r.

([10]) As Article 4 of Regulation (EC) No 847/96 is not applicable to the ALB/AN05N stock, this unused quantity cannot be utilised to reduce the remaining half of the deduction due in 2021.

([11]) At Portugal's request, the deduction of 1 271 026 kilos due in 2020 on account of overfishing in 2019 has been equally spread over two years (2020 and 2021).'

# COMMISSION IMPLEMENTING REGULATION (EU) 2021/2236

## of 15 December 2021

## on the specific rules for implementing Regulation (EU) 2021/1529 of the European Parliament and of the Council establishing an Instrument for Pre-accession Assistance (IPA III)

THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EU) 2021/1529 of the European Parliament and of the Council of 15 September 2021 establishing an Instrument for Pre-accession Assistance (IPA III) ([1]), and in particular Article 16 thereof,

Whereas:

(1) Regulation (EU) 2021/947 of the European Parliament and of the Council ([2]) lays down rules and procedures for the implementation of assistance, which are applicable to IPA III assistance. Recital 52 and Article 16 of Regulation (EU) 2021/1529 empowers the Commission to set out specific rules establishing uniform conditions for the implementation of the Regulation. Specific rules should be laid down for addressing the specific situations in particular for indirect management with beneficiaries listed in Annex I to the Regulation (EU) 2021/1529 (the 'IPA III beneficiaries'), for cross-border cooperation as defined in Article 2(b) of Regulation (EU) 2021/1529 and rural development assistance.

(2) In order to ensure that pre-accession assistance is implemented in all IPA III beneficiaries in a uniform manner and respecting the principle of sound financial management, the Commission and the IPA III beneficiaries should conclude arrangements in the form of financial framework partnership agreements and sectoral agreements laying down the principles for their cooperation under this Regulation.

(3) The Commission should support the IPA III beneficiaries in their efforts to develop their capacity to manage Union funds according to the principles and rules provided for in Union legislation. To this effect and where appropriate, the Commission should entrust budget implementation tasks to the IPA III beneficiaries.

(4) It is necessary to set out specific rules for entrusting budget implementation tasks to the IPA III beneficiaries in accordance with Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council ([3]).

(5) It is necessary to set out detailed rules on monitoring and evaluation by the IPA III beneficiaries when implementing IPA III assistance under indirect management.

(6) It is necessary to set specific rules for reporting in order to further detail the reporting requirements to be complied with by the IPA III beneficiaries.

(7) IPA III will continue to support setting up and strengthening of sector coordination and monitoring systems proportionate to the responsibilities of the IPA beneficiary. The structures set up in the context of the sector approach under IPA and IPA II may continue to perform their duties and new sectoral monitoring committees should be established when the responsibilities of the IPA beneficiary so justify.

([1]) OJ L 330, 20.9.2021, p. 1.

([2]) Regulation (EU) 2021/947 of the European Parliament and of the Council of 9 June 2021 establishing the Neighbourhood, Development and International Cooperation Instrument – Global Europe, amending and repealing Decision No 466/2014/EU and repealing Regulation (EU) 2017/1601 and Council Regulation (EC, Euratom) No 480/2009 (OJ L 209, 14.6.2021, p. 1).

([3]) 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).

(8) It is necessary to set out specific rules for establishing financial correction and the procedure to be applied towards the IPA III beneficiaries when implementing IPA III assistance under indirect management.

(9) IPA III assistance should be used to promote cross-border cooperation between IPA III beneficiaries. Genuine cross-border cooperation between IPA III beneficiaries should include the joint development, implementation and financing of activities resulting in the intensification of neighbourly relations, sustainable partnerships for socio-economic development or the removal of obstacles to this development.

(10) It is therefore necessary to define uniform rules for the management of cross-border cooperation between IPA III beneficiaries, including the roles and responsibilities of the structures and authorities involved in the management of the cross border cooperation programmes.

(11) Cross-border cooperation between one or more Member States and one or more IPA III beneficiaries, as defined in Article 2(a) of Regulation (EU) 2021/1529 should not be covered by this Implementing Regulation, unless financing agreements concluded in accordance with Article 59 of Regulation (EU) 2021/1059 of the European Parliament and of the Council ([4]) refer to this Implementing Regulation, a given financial framework partnership agreement or a specific provision thereof.

(12) Rural development assistance under IPA III should increase competitiveness of the agri-food sector and promote a gradual alignment with the *acquis* on the Common Agricultural Policy of the Union. Specific rules are necessary to finance assistance of a similar nature to that under the European Agriculture Fund for Rural Development, through management and control systems respecting good governance principles and resembling structures with functions of a similar nature in the Member States.

(13) In order to allow for timely programming and implementation of the IPA III programmes for 2021, this Regulation should enter into force on the day following that of its publication in the *Official Journal of the European Union*.

(14) The measures provided for in this Regulation are in accordance with the opinion of the IPA III committee,

HAS ADOPTED THIS REGULATION:

TITLE I

**SUBJECT MATTER AND GENERAL FRAMEWORK FOR IMPLEMENTATION OF IPA ASSISTANCE**

*Article 1*

**Subject matter and scope**

This Regulation lays down specific rules establishing uniform conditions for implementing Regulation (EU) 2021/1529 with regard to structures of implementation of IPA III assistance, indirect management with IPA III beneficiaries and specific rules for cross-border cooperation and agriculture and rural development assistance. Cross-border cooperation between one or more Member States and one or more IPA III beneficiaries, as defined in Article 2(a) of Regulation (EU) 2021/1529 is not covered by this implementing Regulation, unless financing agreements concluded in accordance with Article 59 of Regulation (EU) 2021/1059 refer to this Implementing Regulation, a given financial framework partnership agreement or a specific provision thereof.

([4]) Regulation (EU) 2021/1059 of the European Parliament and of the Council of 24 June 2021 on specific provisions for the European territorial cooperation goal (Interreg) supported by the European Regional Development Fund and external financing instruments (OJ L 231, 30.6.2021, p. 94).

*Article 2*

**Definitions**

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

(a) 'IPA III beneficiary' means one of the beneficiaries listed in the Annex I to Regulation (EU) 2021/1529;

(b) 'financial framework partnership agreement' means an arrangement concluded between the Commission and an IPA III beneficiary laying down the principles of the financial cooperation between the IPA III beneficiary and the Commission under this Regulation;

(c) 'sectoral agreement' means an arrangement concluded between the Commission and an IPA III beneficiary for implementing a specific IPA III programme, setting out the rules and procedures to be respected, which are not contained in the financial framework partnership agreement or financing agreements;

(d) 'financing agreement' means an annual or multi-annual agreement concluded between the Commission and an IPA III beneficiary, for implementing the IPA III assistance;

(e) 'authority' means a public entity or body of an IPA III beneficiary or a Member State at central, regional or local level;

(f) 'major project' means a project comprising of a series of works, activities or services which is intended, in itself, to accomplish a definite and indivisible task of a precise economic or technical nature, which has clearly identified goals and whose total cost exceeds that which is specified in the financial framework partnership agreement;

(g) 'beneficiary' means a public or private body, responsible for initiating and implementing operations within a cross-border cooperation programme;

(h) 'operation' means a project, contract, action or group of projects selected by the contracting authority of the programme concerned, or under its responsibility, contributing to the objectives of the priority or priorities to which it relates;

(i) 'lead IPA III beneficiary' means the IPA III beneficiary, which has been appointed as leader and therefore hosts the contracting authority for the cross-border programme.

*Article 3*

**Principles of Union financing**

IPA III assistance shall support the adoption and implementation of the IPA III beneficiaries' reforms as referred to in Article 3 of Regulation (EU) 2021/1529. Specific programmes and stand-alone actions may require both IPA III beneficiary and Union financial contributions.

*Article 4*

**Principle of ownership**

1. The ownership of the programming and implementation of IPA III assistance shall lay primarily with the IPA III beneficiary.

2. The IPA III beneficiary shall appoint a National IPA Co-ordinator (NIPAC).

3. The NIPAC shall ensure a close link between the use of IPA III assistance and the general accession process.

4. The NIPAC shall be the main counterpart of the Commission for the overall process of coordination of programming in line with the objectives and thematic priorities of the IPA III programming framework referred to in Article 7 of Regulation (EU) 2021/1529 (the 'IPA III programming framework'), monitoring of implementation, evaluation and reporting of IPA III assistance, including the coordination within the IPA III beneficiary's administration and with other donors. The NIPAC shall also endeavour that the IPA III beneficiary's administration takes all necessary steps to facilitate the implementation of the related programmes.

5. The NIPAC shall co-ordinate the participation of IPA III beneficiaries in the relevant territorial and cross-border cooperation programmes under Regulation (EU) 2021/1529 and Regulation (EU) 2021/1059. The NIPAC may delegate this coordination task to a structure established for the management of cross-border cooperation, as appropriate.

6. The NIPAC shall be a high-ranking representative of the government or the central administration of the IPA III beneficiary with the appropriate authority.

*Article 5*

**Financial framework partnership agreement, sectoral agreements and financing agreement**

1. The Commission and the IPA III beneficiary shall conclude a financial framework partnership agreement setting out specific arrangements for the management, control, supervision, monitoring, evaluation, reporting and audit of IPA III assistance committing the IPA III beneficiary to transpose into its legal order the relevant Union regulatory requirements. The financial framework partnership agreement may be complemented by sectoral agreements setting out specific provisions for the management and implementation of IPA III assistance in specific policy areas or programmes.

2. With the exception of duly justified cases, IPA III assistance shall only be granted to the IPA III beneficiary after the financial framework partnership agreement and, where relevant, the applicable sectoral agreement, have entered into force.

3. Financing agreements shall provide the terms on which the IPA III assistance shall be granted, including the applicable methods of implementation of IPA III assistance, implementation deadlines, as well as rules on the eligibility of expenditure.

4. Where programmes are implemented under indirect management by an IPA III beneficiary, the financial framework partnership agreement, sectoral agreement, where applicable, and the financing agreement taken as a whole shall comply with Article 129, Article 155(6) and Article 158 of Regulation (EU, Euratom) 2018/1046.

5. The financial framework partnership agreement shall apply to all financing agreements. Sectoral agreements, where relevant, shall apply to all financing agreements concluded in relation to the policy area or programme covered by the sectoral agreement.

6. In addition to the elements provided for in Article 130 of Regulation (EU, Euratom) 2018/1046, the financial framework partnership agreements and, where relevant, sectoral agreements shall lay down, in particular, detailed provisions concerning:

(a) the structures and authorities needed for the management, control, supervision, monitoring, evaluation, reporting and audit of IPA III assistance, as well as their functions and responsibilities;

(b) conditions and control requirements for the establishment of the required structures and authorities by the IPA III beneficiary in order to allow for entrusting budget implementation tasks of IPA III assistance;

(c) rules on taxes, duties and charges in accordance with Article 27(9) and (10) of Regulation (EU) 2021/947;

(d) requirements for payments, examination and acceptance of accounts and financial corrections procedures, de-commitment of unused funds and closure of the programmes.

*Article 6*

**Reporting**

By 15 February of the following financial year, the NIPAC shall provide the Commission with an annual report on the implementation of financial assistance under IPA III. Other reporting requirements shall be set out in the financial framework partnership agreement.

*Article 7*

**IPA monitoring committee**

1. The Commission and the IPA III beneficiary shall have in place an IPA monitoring committee no later than six months after the entry into force of the first financing agreement. That committee shall also fulfil the responsibilities of the IPA monitoring committee under Council Regulation (EC) No 1085/2006 ([5]) and Regulation (EU) No 231/2014 of the European Parliament and of the Council ([6]).

2. The IPA monitoring committee shall review the overall effectiveness, efficiency, quality, coherence, coordination and compliance of the implementation of all actions towards achieving the results set out in the financing agreements and in the IPA III programming framework. For that purpose, it shall base itself, where relevant, on the information provided by the sectoral monitoring committees referred to in Article 10 and other existing central coordination structures of the IPA III beneficiary.

3. The IPA monitoring committee shall be composed of representatives of the Commission, the NIPAC, of other relevant authorities and bodies of the IPA III beneficiary, as well as, where relevant, bilateral donors, international organisations, international financial institutions and other stakeholders, including civil society and private sector organisations.

4. A representative of the Commission and the NIPAC shall co-chair the IPA monitoring committee meetings.

5. The IPA monitoring committee shall adopt its rules of procedure.

6. The IPA monitoring committee shall meet at least once a year. Ad hoc meetings may be convened at the initiative of the Commission or of the IPA III beneficiary in particular on a thematic basis.

TITLE II

**INDIRECT MANAGEMENT BY IPA III BENEFICIARIES**

*Article 8*

**Structures and authorities**

1. In the event of indirect management by the IPA III beneficiary, the following structures and authorities shall be established by the IPA III beneficiary:

(a) the National IPA Co-ordinator (NIPAC);

(b) the National Authorising Officer (NAO);

(c) the Management Structure composed of the NAO Support Office and the Accounting Body;

(d) the Managing Authorities and Intermediate Bodies;

(e) the Audit Authority.

2. The roles and responsibilities of the structures referred to in paragraph 1 shall be defined in the financial framework partnership agreement.

3. The IPA III beneficiary shall ensure adequate segregation of duties between and within the structures and authorities referred to in paragraph 1.

([5]) Council Regulation (EC) No 1085/2006 of 17 July 2006 establishing an Instrument for Pre-Accession Assistance (IPA) (OJ L 210, 31.7.2006, p. 82).

([6]) Regulation (EU) No 231/2014 of the European Parliament and of the Council of 11 March 2014 establishing an Instrument for Pre-accession Assistance (IPA II) (OJ L 77, 15.3.2014, p. 11).

*Article 9*

**Indirect management with an IPA III beneficiary**

1. The Commission may implement IPA III assistance in indirect management with an IPA III beneficiary by concluding a financing agreement in accordance with Articles 154 and 158 of Regulation (EU, Euratom) 2018/1046.

2. Prior to signing a financing agreement, the Commission shall obtain evidence that the conditions set out in Article 154(4), first subparagraph, points (a) to (f), of Regulation (EU, Euratom) 2018/1046 are fulfilled. The Commission shall also ensure that the structures and authorities referred to in Article 8 of this Regulation have been set up.

3. The NAO shall monitor the continued fulfilment by the structures and authorities referred to in Article 8 of the requirements referred to in paragraph 2 of this Article. In case of failure to satisfy those requirements, the NAO shall inform the Commission immediately, and shall take the appropriate safeguard measures regarding payments made or contracts signed.

4. Multiannual programmes covered by a financing agreement and making use of the provisions of Article 30(3), first subparagraph, of Regulation (EU) 2021/947 shall be implemented in indirect management with IPA III beneficiaries. Decisions adopting multi-annual action plans as referred to in Article 23 of Regulation (EU) 2021/947 shall, where appropriate, include an indicative list of major projects. The Commission shall apply Article 30(3), second and third subparagraph of Regulation (EU) 2021/947, unless an earlier deadline for the automatic decommitments has been specified in a sectoral or financing agreement.

5. The amount concerned by the de-commitment referred to in paragraph 4 shall be reduced by the amounts equivalent to that part of the budget commitment to which one of the following conditions applies:

(a) the action is suspended by a legal proceeding or by an administrative appeal having suspensory effect;

(b) it has not been possible to make a payment request for reasons of *force majeure* seriously affecting implementation of all or part of the programme.

The IPA III beneficiary claiming *force majeure* shall demonstrate the direct consequences of the *force majeure* on the implementation of all or part of the programme.

6. The IPA III beneficiary shall send to the Commission information on the conditions referred to in paragraph 5, points (a) and (b) of this Article in the annual report referred to in Article 6.

*Article 10*

**Sectoral monitoring committees**

1. The IPA III beneficiary shall have in place IPA sectoral monitoring committees to monitor annual and multiannual programmes implemented in indirect management by the IPA III beneficiary, which are financed under Regulation (EC) No 1085/2006, Regulation (EU) No 231/2014 and Regulation (EU) 2021/1529 in a specific sector. Such committees shall be in place no later than six months after the entry into force of the first financing agreement in that sector.

2. In accordance with the principle of proportionality, in the case of annual programmes implemented in indirect management, the obligation of having in place an IPA sectoral monitoring committee may be waived in the financing agreement.

3. Where an IPA sectoral monitoring committee has been established, that committee may, in addition to the multiannual programmes implemented in indirect management, monitor other annual programmes financed by under Regulation (EC) No 1085/2006, Regulation (EU) No 231/2014 and Regulation (EU) 2021/1529 implemented in direct or indirect management in the same specific sector.

4. For cross-border cooperation programmes, the Joint Monitoring Committee referred to in Article 18 shall fulfil the functions of IPA sectoral monitoring committee.

5. Each IPA sectoral monitoring committee shall monitor the progress of programme implementation. It shall review the effectiveness, efficiency, quality, coherence, coordination and compliance of the implementation of the actions in the programme and their consistency with the relevant strategies.

6. Each IPA sectoral monitoring committee shall adopt its rules of procedure.

7. The IPA sectoral monitoring committee shall be composed of representatives of relevant IPA III beneficiary authorities and bodies, other stakeholders such as economic, social and environmental partners and international organisations, international financial institutions and civil society. The Commission shall participate in the work of the committee. A senior representative of the IPA III beneficiary shall chair the IPA sectoral monitoring committee meetings. Depending on the policy area or programme, the Commission may co-chair the committee meetings.

8. The IPA sectoral monitoring committees shall meet at least twice every twelve months.

*Article 11*

**Evaluations by the IPA III beneficiary in indirect management**

1. The IPA III beneficiary implementing IPA III assistance in indirect management shall be responsible for carrying out evaluations of the programmes it manages, in accordance with Article 34 of Regulation (EU, Euratom) 2018/1046, Article 42 of Regulation (EU) 2021/947 and applicable Commission guidelines.

2. The IPA III beneficiary shall, in consultation with the Commission, draw up an evaluation plan presenting the evaluation activities to be carried out.

*Article 12*

**Financial corrections by the Commission**

1. In order to ensure that the IPA III assistance has been used in accordance with the applicable rules, the Commission shall apply financial correction mechanisms.

2. A financial correction may arise from either of the following causes:

(a) identification of any error, irregularity, fraud, corruption;

(b) identification of a weakness or deficiency in the management and control systems of the IPA III beneficiary;

(c) failure to ensure achievement of results or the sustainability of the action, or both;

(d) follow-up by the Commission on the audit activity reports and opinions of the audit authority.

3. If the Commission finds that expenditure under the programmes covered by IPA III has been incurred and paid in a way that has infringed applicable rules, it shall decide what amounts are to be excluded from Union financing.

4. Financial corrections shall be made as appropriate by compensation, in the situations referred to in paragraph 2.

5. The Commission shall apply the financial corrections on the basis of identification of the amounts unduly spent and the financial implications for the budget. Where such amounts cannot be identified precisely in order to apply individual corrections, the Commission may apply flat-rate corrections or corrections based on an extrapolation of the findings. When deciding the amount of a correction, the Commission shall take into account the nature and gravity and/or the extent and financial implications of any situation referred to in paragraph 2.

*Article 13*

**Examination and acceptance of accounts**

The Commission shall satisfy itself that the accounts are complete, accurate and true by applying an examination and acceptance of accounts procedure specified in the financial framework partnership agreement, or in the sectoral agreement where applicable.

TITLE III

**CROSS-BORDER COOPERATION BETWEEN IPA III BENEFICIARIES**

*Article 14*

**Thematic priorities and co-financing**

1. The thematic priorities of IPA III assistance for cross-border cooperation shall be those defined in Annex III to Regulation (EU) 2021/1529.

2. The Union co-financing rate at the level of each thematic priority shall not be higher than 85 % of the eligible expenditure of a cross-border cooperation programme.

*Article 15*

**Technical assistance**

1. Each cross-border cooperation programme shall include a specific budget allocation for technical assistance support, which shall be limited to 10% of the Union contribution to the cross-border cooperation programme.

Technical assistance may support preparatory, management, monitoring, evaluation, information, communication, networking, dispute resolution, control and audit activities related to the implementation of the programme as well as activities to reinforce the administrative capacity for implementing the programme. The technical assistance may support in particular the financing of the Joint Technical Secretariat, activities for the reduction of the administrative burden for beneficiaries, including electronic data exchange systems, and actions to reinforce the capacity of, and exchange best practices between, authorities in the participating countries and of beneficiaries to manage IPA III assistance.

2. Technical assistance support may also concern the preceding and subsequent programming periods.

*Article 16*

**Programming and selection of operations**

1. Cross-border cooperation programmes shall be drawn up in accordance with the model programme provided by the Commission and shall be prepared jointly by the participating IPA III beneficiaries and submitted to the Commission by electronic means. The participating IPA III beneficiaries and the Commission shall agree on the list of eligible regions, which shall be included in the relevant cross-border cooperation programme.

2. Operations selected under a cross-border cooperation programme shall deliver clear cross-border impacts and benefits.

3. Operations under cross-border cooperation programmes shall be selected by the contracting authority through calls for proposals covering the whole eligible area.

4. Participating IPA III beneficiaries may also identify operations outside call for proposals. In that event, the operations shall be specifically mentioned in the cross-border cooperation programme referred to in paragraph 1.

5. Operations selected for cross-border cooperation shall involve beneficiaries from at least two participating IPA III beneficiaries. Beneficiaries shall cooperate in the development and implementation of operations. In addition, they shall cooperate in either the staffing or the financing of operations or both.

6. An operation may be implemented in a single participating IPA III beneficiary, provided that cross-border impacts and benefits are identified.

*Article 17*

**Beneficiaries**

1. The beneficiaries shall be established in an IPA III beneficiary participating in the programme.

2. The beneficiaries shall appoint one of them as lead beneficiary. The lead beneficiary shall ensure the implementation of the entire operation, monitor that the operation is implemented in accordance with the conditions set out in the contract and lay down the arrangements with other beneficiaries to guarantee the sound financial management of the funds allocated to the operation, including the arrangements for recovering amounts unduly paid.

*Article 18*

**Structures and authorities**

1. The following structures shall be involved in the management of cross-border cooperation programmes in the IPA III beneficiaries:

(a) the NIPACs of the IPA III beneficiaries participating in the cross-border cooperation programme, which are jointly responsible for ensuring that the objectives set out in the proposed cross-border cooperation programmes are consistent with the objectives in the IPA III programming framework;

(b) the NAO and the Management Structure, referred to in Article 8(1), point (c), of the lead IPA III beneficiary when the cross-border programme is implemented in indirect management;

(c) the cross-border cooperation structures in all the participating IPA beneficiaries which shall cooperate closely in the programming and implementation of the relevant cross-border cooperation programme. In case of indirect management, the cross-border cooperation structure in the lead IPA III beneficiary shall perform the tasks of Managing Authority referred to in Article 8(1), point (d). The Managing Authority shall designate intermediate bodies;

(d) the Audit Authority referred to in Article 8(1), point (e), when the cross-border programme is implemented in indirect management with the IPA III beneficiary. Where the Audit Authority does not have the authorisation to carry out its functions in the whole territory covered by a cross-border cooperation programme, it shall be assisted by a group of auditors comprising representatives of each country participating in the cross-border cooperation programme.

2. The roles and responsibilities of the structures referred to in paragraph 1 shall be further defined in the financial framework partnership agreement.

3. The participating IPA III beneficiaries shall establish for each cross-border cooperation programme a Joint Monitoring Committee ('JMC') which shall also fulfil the role of the sectoral monitoring committee referred to in Article 10.

4. A Joint Technical Secretariat ('JTS') shall be set up to assist the Commission as well as other structures and authorities including the JMC. The same JTS may assist in the preparation and implementation of more than one cross-border cooperation programmes.

5. In indirect management by IPA III beneficiary, the participating IPA III beneficiaries shall conclude a bilateral or multilateral arrangement setting out their respective responsibilities for implementing the relevant cross-border cooperation programme. The minimum requirements for such arrangement shall be defined in the financial framework partnership agreement.

*Article 19*

**Specific financing provisions**

Cross-border cooperation programmes under IPA III shall be implemented in direct or indirect management, through multiannual programmes.

TITLE IV

**AGRICULTURE AND RURAL DEVELOPMENT**

*Article 20*

**Specific provisions of rural development assistance**

1. Rural development assistance shall be subject to a multi-annual programme, which is a multiannual action plan in accordance with Articles 23 and 24 of Regulation (EU) 2021/947, to be drawn up at central level, prepared by the relevant authorities designated by the IPA III beneficiary and submitted to the Commission after consulting the appropriate stakeholders.

2. Rural development programmes shall be implemented by the IPA III beneficiaries in indirect management in accordance with Article 62(1), point (c) of Regulation (EU, Euratom) 2018/1046 and shall enable financing of selected types of actions as funded under the European Agricultural Fund for Rural Development.

3. For rural development programmes, the structures referred to in Article 8(1), point (d) shall consist of the IPA Rural Development (IPARD) Agency and the IPARD Managing Authority, which shall operate in close cooperation.

4. In determining the share of public expenditure as a percentage of total eligible cost of investment, account shall not be taken of national aid to facilitate access to loans granted without any Union contribution provided under Regulation (EU) 2021/1529.

5. Investment projects under rural development programmes shall remain eligible for Union financing provided they do not undergo a substantial modification within five years from the final payment.

6. For rural development programmes, the sectoral monitoring committee referred to in Article 10 shall be the sectoral IPARD monitoring committee.

TITLE V

**FINAL PROVISION**

*Article 21*

***Entry into force and application***

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

It shall apply from 1 January 2021.

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

Done at Brussels, 15 December 2021.

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

# COMMISSION IMPLEMENTING REGULATION (EU) 2021/2237

## of 15 December 2021

## amending Regulation (EU) No 965/2012 as regards the requirements for all-weather operations and for flight crew training and checking

THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EU) 2018/1139 of the European Parliament and of the Council of 4 July 2018 on common rules in the field of civil aviation and establishing a European Union Aviation Safety Agency, and amending Regulations (EC) No 2111/2005, (EC) No 1008/2008, (EU) No 996/2010, (EU) No 376/2014 and Directives 2014/30/EU and 2014/53/EU of the European Parliament and of the Council, and repealing Regulations (EC) No 552/2004 and (EC) No 216/2008 of the European Parliament and of the Council and Council Regulation (EEC) No 3922/91 ([1]), and in particular Articles 23(1), 27(1) and 31 thereof,

Whereas:

(1) Operators and personnel that are involved in the operation of aircraft, as well as national competent authorities, should comply with the relevant essential requirements for air operations set out in Regulation (EU) 2018/1139.

(2) Commission Regulation (EU) No 965/2012 ([2]) lays down detailed rules for air operations. The existing rules regulating all-weather operations should be updated to ensure that they reflect recent technological advancements in new airborne systems and the best practices in the domain of air operations.

(3) To ensure a high level of civil aviation safety in the Union, it is necessary to address all-weather operations in all relevant aviation domains, including initial airworthiness, air operations, flight crew licensing and aerodromes and take into account worldwide aviation experience and scientific and technical progress in air operations. Therefore, the new rules should improve harmonisation with the United States Federal Aviation Administration requirements and include in Union law as much as feasible the latest amendments to the standards adopted by the International Civil Aviation Organization (ICAO), namely ICAO Annex 6, Part I (11th edition), Part II (10th edition) and Part III (9th edition), regarding all-weather operations and the instrument approach terminology.

(4) In addition, safe helicopter operations under instrument flight rules (IFR) should be enabled, including the use of point-in-space approaches and departures. So far, helicopter operations have been taking place essentially under visual flight rules, therefore helicopter-operating rules were further developed. However, new helicopter-specific point-in-space approaches and departures, as well as low-level helicopter routes, are currently available, allowing the helicopters to fly under IFR. Consequently, the operating rules should be changed accordingly.

(5) To improve safety in a cost-effective way, new training requirements on specialised operations (SPO), on multi-pilot operations with helicopters, on the greater use of simulators as well as on greater variety of events used in training and checking in helicopter commercial air transport (CAT), should be set out.

(6) The new rules should be performance- and risk-based, in order to be resilient to continuous technological progress. They should not be technology-dependent and may accommodate future changes, thus avoiding dependency on particular technological solutions.

([1]) OJ L 212, 22.8.2018, p. 1.

([2]) Commission Regulation (EU) No 965/2012 of 5 October 2012 laying down technical requirements and administrative procedures related to air operations pursuant to Regulation (EC) No 216/2008 of the European Parliament and of the Council (OJ L 296, 25.10.2012, p. 1).

(7) The new rules should allow efficiency gains based on technological advancements and the operational use of new, advanced technologies such as enhanced flight vision systems (EFVS), as well as the application of some advanced new operational procedures, which support all-weather operations. The use of innovative training tools for the purpose of flight crew training and checking should also be sought.

(8) The new rules on all-weather operations and flight crew training and checking should contribute to allow for a level playing field for all actors in the internal aviation market of the Union and improve the competitiveness of the Union's aviation industry.

(9) The aerodrome operating minima should be aligned as much as possible between CAT operations, non-commercial operations with complex motor-powered aircraft (NCC) and specialised operations (SPO). The requirements for all-weather operations for non-commercial operations with other-than complex motor-powered aircraft (NCO) should also be simplified to incentivise the use of instrument flight rules.

(10) Based on operational experience and considering the nature of operations and the lower risks involved, some alleviations to flight crew training and checking requirements, which were previously available only for CAT, should be extended to SPO and NCC operations. Operational developments have shown that the required level of safety can be maintained with less stringent and more flexible requirements. Similarly, some increased flexibility regarding operations with different aircraft types or variants should be provided for small helicopter operators. Small simple single-engine helicopter types that behave in a similar way in normal and emergency conditions should also benefit from some of the simplifications that are currently available within an aeroplane class rating.

(11) Regulation (EU) No 965/2012 should, therefore, be amended accordingly to fully implement the essential requirements for air operations of Annex V to Regulation (EU) 2018/1139.

(12) The European Union Aviation Safety Agency has prepared draft implementing rules and submitted them to the Commission with Opinion No 02/2021 ([3]) in accordance with Article 76(1) of Regulation (EU) 2018/1139.

(13) The measures provided for in this Regulation are in accordance with the opinion of the committee established in accordance with Article 127 of Regulation (EU) 2018/1139,

HAS ADOPTED THIS REGULATION:

*Article 1*

**Amendments to Regulation (EU) No 965/2012**

Regulation (EU) No 965/2012 is amended as follows:

(1) in Article 5(2), point (a)(iv) is replaced by the following:

'(iv) low-visibility operations (LVOs) or operations with operational credits;';

(2) Annexes I, II, III, IV, V, VI, VII and VIII are amended in accordance with the Annex to this Regulation.

*Article 2*

**Date of entry into force and application**

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

It shall apply from 30 October 2022.

([3]) https://www.easa.europa.eu/document-library/opinions

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

Done at Brussels, 15 December 2021.

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

*ANNEX*

Annexes I, II, III, IV, V, VI, VII and VIII to Regulation (EU) No 965/2012 are amended as follows:

(1) Annex I is amended as follows:

(a) the following point (6) is inserted:

'(6) 'aerodrome operating minima' means the limits of usability of an aerodrome for:

(a) take-off, expressed in terms of runway visual range (RVR) and/or visibility and, if necessary, ceiling ;

(b) landing in 2D instrument approach operations, expressed in terms of visibility and/or RVR, minimum descent altitude/height (MDA/H) and, if necessary, ceiling;

(c) landing in 3D instrument approach operations, expressed in terms of visibility and/or RVR and decision altitude/height (DA/H) as appropriate to the type and/or category of the operation';

(b) point (11) is deleted;

(c) points (13) to (16) are deleted;

(d) the following point (18a) is inserted:

'(18a) 'ceiling' means the height above the ground or water of the base of the lowest layer of cloud below 6 000 m (20 000 ft) covering more than half the sky;';

(e) point (20) is replaced by the following:

'(20) 'circling' means the visual phase of a circling approach operation;';

(f) the following point (20a) is inserted:

'(20a) 'circling approach operation' means a Type A instrument approach operation to bring an aircraft into position for landing on a runway/final approach and take-off area (FATO) that is not suitably located for a straight-in approach;';

(g) point (27) is replaced by the following:

'(27) 'continuous descent final approach (CDFA)' means a technique, consistent with stabilised approach procedures, for flying the final approach segment (FAS) of an instrument non-precision approach (NPA) procedure as a continuous descent, without level-off, from an altitude/height at or above the final approach fix altitude/height:

(a) for straight-in approach operations, to a point approximately 15 m (50 ft) above the landing runway threshold or the point where the flare manoeuvre begins; or

(b) for circling approach operations, until MDA/H or visual flight manoeuvre altitude/height is reached;';

(h) the following point (35a) is inserted:

'(35a) 'decision altitude (DA) or decision height (DH)' means a specified altitude or height in a 3D instrument approach operation at which a missed approach procedure must be initiated if the required visual reference to continue the approach has not been established;';

(i) point (46) is replaced by the following:

'(46) 'enhanced flight vision system (EFVS)' is an electronic means to provide the flight crew with a real-time sensor-derived or enhanced display of the external scene topography (the natural or man-made features of a place or region especially in a way to show their relative positions and elevation) through the use of imaging sensors; an EFVS is integrated with a flight guidance system and is implemented on a head-up display or an equivalent display system; if an EFVS is certified according to the applicable airworthiness requirements and an operator holds the necessary specific approval (when required), then it may be used for EFVS operations and may allow operations with operational credits;';

(j) the following points (46a) and (46b) are inserted:

'(46a) 'EFVS operation' means an operation in which visibility conditions require an EFVS to be used instead of natural vision in order to perform an approach or landing, identify the required visual references or conduct a roll-out;

(46b) 'EFVS 200 operation' means an operation with an operational credit in which visibility conditions require an EFVS to be used down to 200 ft above the FATO or runway threshold. From that point to land, natural vision is used. The RVR shall not be less than 550 m;';

(k) point (47) is replaced by the following:

'(47) 'enhanced vision system (EVS)' is an electronic means to provide the flight crew with a real-time image of the actual external scene topography (the natural or man-made features of a place or region especially in a way to show their relative positions and elevation) through the use of imaging sensors;';

(l) the following point (48b) is inserted:

'(48b) 'final approach segment (FAS)' means that segment of an instrument approach procedure (IAP) in which alignment and descent for landing are accomplished;';

(m) the following point (52a) is inserted:

'(52a) 'go-around' means a transition from an approach operation to a stabilised climb. This includes manoeuvres conducted at or above the MDA/H or DA/H, or below the DA/H (balked landings);';

(n) point (55) is replaced by the following:

'(55) 'head-up display landing system (HUDLS)' means the total airborne system which provides head-up guidance to the pilot to enable the pilot to either control the aircraft or to monitor the autopilot during take-off (if applicable), approach and landing (and roll-out if applicable), or go-around. It includes all the sensors, computers, power supplies, indications and controls;';

(o) point (56) is deleted;

(p) the following points (69d) and (69e) are inserted:

'(69d) 'instrument approach operation' means an approach and landing using instruments for navigation guidance based on an instrument approach procedure (IAP). There are two methods for executing instrument approach operations:

(a) a two-dimensional (2D) instrument approach operation, using lateral navigation guidance only; and

(b) a three-dimensional (3D) instrument approach operation, using both lateral and vertical navigation guidance;

(69e) 'instrument approach procedure (IAP)' means a series of predetermined manoeuvres by reference to flight instruments with specified protection from obstacles from the initial approach fix or, where applicable, from the beginning of a defined arrival route to a point from which a landing can be completed and thereafter, if a landing is not completed, to a position at which holding or en-route obstacle clearance criteria apply. IAPs are classified as follows:

(a) non-precision approach (NPA) procedure, which means an IAP designed for 2D instrument approach operations Type A;

(b) approach procedure with vertical guidance (APV) means a performance-based navigation (PBN) IAP designed for 3D instrument approach operations Type A;

(c) precision approach (PA) procedure means an IAP based on navigation systems designed for 3D instrument approach operations Type A or B;';

(q) the following point (72b) is inserted:

'(72b) 'line check' means a check conducted by the operator and completed by the pilot or the technical crew member to demonstrate competence in carrying out normal line operations described in the operations manual;';

(r) points (74) and (75) are replaced by the following:

'(74) 'low-visibility operations (LVOs)' means approach or take-off operations on a runway with a runway visual range less than 550 m or with a decision height less than 200 ft;

(75) 'low-visibility take-off (LVTO)' means a take-off with an RVR less than 550 m;';

(s) point (76) is deleted;

(t) the following point (78c) is inserted:

'(78c) 'minimum descent altitude (MDA) or minimum descent height (MDH)' means a specified altitude or height in a 2D instrument approach operation or circling approach operation below which descent must not be made without the required visual reference;';

(u) point (83) is deleted;

(v) the following point (85a) is inserted:

'(85a) 'obstacle clearance altitude (OCA) or obstacle clearance height (OCH)' means the lowest altitude or the lowest height above the elevation of the relevant runway threshold or the aerodrome elevation, as applicable, used in establishing compliance with the appropriate obstacle clearance criteria;';

(w) the following point (91a) is inserted:

'(91a) 'operational credit' means a credit for operations with an advanced aircraft enabling lower aerodrome operating minima than would normally be established by the operator for a basic aircraft, based upon the performance of advanced aircraft systems utilising the available external infrastructure. Lower operating minima may include a lower decision height/altitude or minimum descent height/altitude, reduced visibility requirements or reduced ground facilities or a combination of these;';

(x) point (92) is replaced by the following:

'(92) 'operator proficiency check' means a check conducted by the operator and completed by the pilot or the technical crew member to demonstrate competence in carrying out normal, abnormal and emergency procedures;';

(y) the following points (120c), (120d) and (120e) are inserted:

'(120c) 'training to proficiency' means training designed to achieve end-state performance objectives, providing sufficient assurance that the trained individual is capable of consistently carrying out specific tasks safely and effectively;

(120d) 'Type A instrument approach operation' means an instrument approach operation with an MDH or a DH at or above 250 ft;

(120e) 'Type B instrument approach operation' means an operation with a DH below 250 ft. Type B instrument approach operations are categorised as:

(a) Category I (CAT I): a DH not lower than 200 ft and with either a visibility not less than 800 m or an RVR not less than 550 m;

(b) Category II (CAT II): a DH lower than 200 ft but not lower than 100 ft, and an RVR not less than 300 m;

(c) Category III (CAT III): a DH lower than 100 ft or no DH, and an RVR less than 300 m or no RVR limitation;';

(z) the following point (124a) is inserted:

'(124a) 'visibility (VIS)' means visibility for aeronautical purposes, which is the greater of:

(a) the greatest distance at which a black object of suitable dimensions, situated near the ground, can be seen and recognised when observed against a bright background; and

(b) the greatest distance at which lights in the vicinity of 1 000 candelas can be seen and identified against an unlit background;';

(aa) points (125) and (126) are replaced by the following:

'(125) 'visual approach operation' means an approach operation by an IFR flight when either a part or all parts of an IAP is (are) not completed and the approach operation is executed with visual reference to terrain;

(126) 'weather-permissible aerodrome' means an adequate aerodrome where, for the anticipated time of use, meteorological reports, or forecasts, or any combination thereof, indicate that the meteorological conditions will be at or above the required aerodrome operating minima, and the runway surface condition reports indicate that a safe landing will be possible;'.

(2) in Annex II, Appendix II is replaced by the following:

*'Appendix II*

| **OPERATIONS SPECIFICATIONS**<br>**(subject to the approved conditions in the operations manual)** | | | | |
|---|---|---|---|---|
| Issuing authority contact details<br>Telephone ([1]): _____; Fax: _____;<br>Email: _____ | | | | |
| AOC ([2]): Operator name ([3]): Date ([4]): Signature: | | | | |
| Dba trading name<br>Operations specifications #: | | | | |
| Aircraft model ([5]):<br>Registration marks ([6]): | | | | |
| Types of operations: Commercial air transport<br>☐ Passengers ☐ Cargo ☐ Others ([7]): _____ | | | | |
| Area of operation ([8]): | | | | |
| Special limitations ([9]): | | | | |
| Specific approvals: | Yes | No | Specification ([10]) | Remarks |
| Dangerous goods: | ☐ | ☐ | | |
| Low-visibility operations | | | | |
| Take-off | ☐ | ☐ | RVR ([11]):.. m | |
| Approach and landing | ☐ | ☐ | CAT ([12])…. DA/H: ft, RVR:.. m | |
| Operational credits | ☐ | ☐ | CAT ([13])…..DA/H: ft, RVR:... m | |
| RVSM ([14]) ☐ N/A | ☐ | ☐ | | |
| ETOPS ([15]) ☐ N/A | ☐ | ☐ | Maximum diversion time ([16]): min. | |
| Complex navigation specifications for PBN operations ([17]) | ☐ | ☐ | | ([18]) |
| Minimum navigation performance specification | ☐ | ☐ | | |
| Operations of single-engined turbine aeroplane at night or in IMC (SET-IMC) | ☐ | ☐ | ([19]) | |
| Helicopter operations with the aid of night vision imaging systems | ☐ | ☐ | | |
| Helicopter hoist operations | ☐ | ☐ | | |
| Helicopter emergency medical service operations | ☐ | ☐ | | |
| Helicopter offshore operations | ☐ | ☐ | | |
| Cabin crew training ([20]) | ☐ | ☐ | | |

| | | | | |
|---|---|---|---|---|
| Issue of CC attestation ([21]) | ☐ | ☐ | | |
| Use of type B EFB applications | ☐ | ☐ | ([22]) | |
| Continuing airworthiness | ☐ | ☐ | ([23]) | |
| Others ([24]) | | | | |

([1]) Telephone contact details of the competent authority, including the country code. Email to be provided as well as fax if available.
([2]) Insertion of associated air operator certificate (AOC) number.
([3]) Insertion of the operator's registered name and the operator's trading name, if different. Insert 'Dba' before the trading name (for 'Doing business as').
([4]) Issue date of the operations specifications (dd-mm-yyyy) and signature of the competent authority representative.
([5]) Insertion of ICAO designation of the aircraft make, model and series, or master series, if a series has been designated (e.g. Boeing-737-3K2 or Boeing-777-232).
([6]) The registration marks are listed either in the operations specifications or in the operations manual. In the latter case, the related operations specifications must make a reference to the related page in the operations manual. In case not all specific approvals apply to the aircraft model, the registration marks of the aircraft may be entered in the remark column to the related specific approval.
([7]) Other type of transportation to be specified (e.g. emergency medical service).
([8]) Listing of geographical area(s) of authorised operation (by geographical coordinates or specific routes, flight information region or national or regional boundaries).
([9]) Listing of applicable special limitations (e.g. VFR only, Day only, etc.).
([10]) List in this column the most permissive criteria for each approval or the approval type (with appropriate criteria).
([11]) Insertion of approved minimum take-off RVR in metres. One line per approval may be used if different approvals are granted.
([12]) Insertion of applicable precision approach category: CAT II or CAT III. Insertion of minimum RVR in metres and DH in feet. One line is used per listed approach category.
([13]) Insertion of applicable operational credit: SA CAT I, SA CAT II, EFVS, etc. Insertion of minimum RVR in metres and DH in feet. One line is used per listed operational credit.
([14]) The Not Applicable (N/A) box may be checked only if the aircraft maximum ceiling is below FL290.
([15]) Extended range operations (ETOPS) currently applies only to two-engined aircraft. Therefore, the Not Applicable (N/A) box may be checked if the aircraft model has less or more than two engines.
([16]) The threshold distance may also be listed (in NM), as well as the engine type.
([17]) Performance-based navigation (PBN): one line is used for each complex PBN specific approval (e.g. RNP AR APCH), with appropriate limitations listed in the 'Specifications' or 'Remarks' columns, or in both. Procedure-specific approvals of specific RNP AR APCH procedures may be listed in the operations specifications or in the operations manual. In the latter case, the related operations specifications must have a reference to the related page in the operations manual.
([18]) Specify if the specific approval is limited to certain runway ends or aerodromes, or both.
([19]) Insertion of the particular airframe or engine combination.
([20]) Approval to conduct the training course and examination to be completed by applicants for a cabin crew attestation as specified in Annex V (Part-CC) to Regulation (EU) No 1178/2011.
([21]) Approval to issue cabin crew attestations as specified in Annex V (Part-CC) to Regulation (EU) No 1178/2011.
([22]) Insertion of the list of type B EFB applications together with the reference of the EFB hardware (for portable EFBs). This list is contained either in the operations specifications or in the operations manual. In the latter case, the related operations specifications must make a reference to the related page in the operations manual.
([23]) The name of the person or organisation responsible for ensuring that the continuing airworthiness of the aircraft is maintained and a reference to the regulation that requires the work, i.e. Subpart G of Annex I (Part-M) to Regulation (EU) No 1321/2014.
([24]) Other approvals or data may be entered here, using one line (or one multi-line block) per authorisation (e.g. short landing operations, steep approach operations, reduced required landing distance, helicopter operations to or from a public interest site, helicopter operations over a hostile environment located outside a congested area, helicopter operations without a safe forced landing capability, operations with increased bank angles, maximum distance from an adequate aerodrome for two-engined aeroplanes without an ETOPS approval).
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(3) Annex III is amended as follows:

(a) point ORO.FC.100 is amended as follows:

(i) the following point (f) is inserted:

'(f) Specific requirements for helicopter operations

If the helicopter is operated with a crew of two pilots, each pilot shall either:

(1) hold a certificate of satisfactory completion of a multi-crew cooperation (MCC) course in helicopters in accordance with Regulation (EU) No 1178/2011; or

(2) have at least 500 hours of flight time as a pilot in multi-pilot operations.';

(ii) point (d) is replaced by the following:

'(d) The flight crew member may be relieved in flight of his or her duties at the controls by another suitably qualified flight crew member.';

(b) point ORO.FC.105 is replaced by the following:

'**ORO.FC.105 Designation as pilot-in-command/commander**

(a) In accordance with point 8.6 of Annex V to Regulation (EU) 2018/1139, one pilot amongst the flight crew, qualified as pilot-in-command in accordance with Annex I (Part-FCL) to Regulation (EU) No 1178/2011, shall be designated by the operator as pilot-in-command or, for commercial air transport operations, as commander.

(b) The operator shall only designate a flight crew member to act as pilot-in-command/commander if all of the following apply:

(1) the flight crew member has the minimum level of experience specified in the operations manual;

(2) the flight crew member has adequate knowledge of the route or area to be flown and of the aerodromes, including alternate aerodromes, facilities and procedures to be used;

(3) in the case of multi-crew operations, the flight crew member has completed an operator's command course if upgrading from co-pilot to pilot-in-command/commander.

(c) In the case of commercial operations of aeroplanes and helicopters, the pilot-in-command/commander or the pilot to whom the conduct of the flight may be delegated shall have had initial familiarisation training on the route or area to be flown and on the aerodromes, facilities and procedures to be used and shall maintain this knowledge as follows:

(1) The validity of the aerodrome knowledge shall be maintained by operating at least once on the aerodrome within a 12 calendar months' period.

(2) The route or area knowledge shall be maintained by operating at least once to the route or area within a 36 months' period. In addition, refresher training is required regarding route or area knowledge if not operating on a route or area for 12 months within the 36-month period.

(d) Notwithstanding point (c), in the case of operations under VFR by day with performance class B and C aeroplanes and helicopters, familiarisation training on the route and aerodromes may be replaced by area familiarisation training.';

(c) point ORO.FC.125 is replaced by the following:

'**ORO.FC.125 Differences training, familiarisation, equipment and procedure training**

(a) Flight crew members shall complete differences training or familiarisation when required by Annex I (Part-FCL) to Regulation (EU) No 1178/2011.

(b) Flight crew members shall complete equipment and procedure training when changing equipment or changing procedures requiring additional knowledge on types or variants currently operated.

(c) The operations manual shall specify when such differences training or familiarisation or equipment and procedure training is required.';

(d) in point ORO.FC.130, point (a) is replaced by the following:

'(a) Each flight crew member shall complete annual recurrent flight and ground training relevant to the type or variant, and associated equipment of aircraft on which he or she operates, including training on the location and use of all emergency and safety equipment carried on board the aircraft.';

(e) point ORO.FC.140 is replaced by the following:

'**ORO.FC.140 Operation on more than one type or variant**

(a) Flight crew members that operate more than one type or variant of aircraft shall comply with the requirements prescribed in this Subpart for each type or variant, unless credits related to the training, checking, and recent experience requirements are defined in the mandatory part of the operational suitability data established in accordance with Regulation (EU) No 748/2012 for the relevant types or variants.

(b) The operator may define groups of single-engined helicopter types. An operator proficiency check on one type shall be valid for all the other types within the group if both of the following conditions are met:

(1) the group either includes only single-engined turbine helicopters operated under VFR or it includes only single-engined piston helicopters operated under VFR;

(2) for CAT operations, at least two operator proficiency checks per type shall be conducted within a 3-year cycle.

(c) For specialised operations, elements of the aircraft/FSTD training and operator proficiency check that cover the relevant aspects associated with the specialised task and are not related to the type or group of types may be credited towards the other groups or types, based on a risk assessment performed by the operator.

(d) For operations on more than one helicopter type or variant that are used for conducting sufficiently similar operations, if line checks rotate between types or variants, each line check shall revalidate the line check for the other helicopter types or variants.

(e) Appropriate procedures and any operational restrictions shall be specified in the operations manual for any operation on more than one type or variant.';

(f) point ORO.FC.145 is amended as follows:

(i) points (c) and (d) are replaced by the following:

'(c) In the case of CAT operations, training and checking programmes, including syllabi and the use of the means to deliver the programme such as individual flight simulation training devices (FSTDs) and other training solutions, shall be approved by the competent authority.

(d) The FSTD used to meet the requirements of this Subpart shall be qualified in accordance with Regulation (EU) No 1178/2011 and it shall replicate the aircraft used by the operator, as far as practicable. Differences between the FSTD and the aircraft shall be described and addressed through a briefing or training, as appropriate.';

(ii) the following points (f) and (g) are added:

'(f) The operator shall monitor the validity of each recurrent training and checking.

(g) The validity periods required in this Subpart shall be counted from the end of the month in which the recency, training or check was completed.';

(g) point ORO.FC.146 is amended as follows:

(i) point (b) is replaced by the following:

'(b) In the case of flight and flight simulation training, checking and assessment, the personnel that provide the training and conduct the checking or assessment shall be qualified in accordance with Annex I (Part-FCL) to Regulation (EU) No 1178/2011. Additionally, the personnel providing training and conducting checking towards specialised operations shall be suitably qualified for the relevant operation.';

(ii) point (d) is replaced by the following:

'(d) Notwithstanding point (b), the line evaluation of competence may be conducted by a suitably qualified commander nominated by the operator that is standardised in EBT concepts and the assessment of competencies (line evaluator).';

(iii) the following points (e), (f), (g) and (h) are added:

'(e) Notwithstanding point (b), the aircraft/FSTD training and the operator proficiency check may be conducted by a suitably qualified commander holding a FI/TRI/SFI certificate and nominated by the operator for any of the following operations:

(1) CAT operations of helicopters meeting the criteria defined in point ORO.FC.005(b)(2);

(2) CAT operations of other than complex motor-powered helicopters by day and over routes navigated by reference to visual landmarks;

(3) CAT operations of performance class B aeroplanes that do not meet the criteria defined in point ORO.FC.005(b)(1).

(f) Notwithstanding point (b), the aircraft/FSTD training and the demonstration of competence/operator proficiency check may be conducted by a suitably qualified pilot-in-command/commander nominated by the operator for any of the following operations:

(1) specialised operations;

(2) CAT operations of aeroplanes meeting the criteria defined in point ORO.FC.005(b)(2).

(g) Notwithstanding point (b), the line check may be conducted by a suitably qualified commander nominated by the operator.

(h) The operator shall inform the competent authority about the persons nominated under points (e) to (g).';

(h) in point ORO.FC.200, point (d) is replaced by the following:

'(d) Specific requirements for helicopter operations

For all operations of helicopters with an MOPSC of more than 19 and for operations under IFR of helicopters with an MOPSC of more than 9, the minimum flight crew shall be two pilots.';

(i) point ORO.FC.202 is amended as follows:

(i) the introductory wording is replaced by the following:

'In order to be able to fly under IFR or at night with a minimum flight crew of one pilot, the following shall be complied with:';

(ii) point (b) is replaced by the following:

'(b) INTENTIONALLY LEFT BLANK';

(j) point ORO.FC.220 is amended as follows:

(i) point (b) is replaced by the following:

'(b) Once an operator conversion course has been commenced, the flight crew member shall not be assigned to flying duties on another type or class of aircraft until the course is completed or terminated. Crew members operating only performance class B aeroplanes may be assigned to flights on other types of performance class B aeroplanes during conversion courses to the extent necessary to maintain the operation. Crew members may be assigned to flights on single-engined helicopters during an operator conversion course on a single-engined helicopter, provided that the training is unaffected.';

(ii) the following point (f) is added:

'(f) If operational circumstances, such as applying for a new AOC or adding a new aircraft type or class to the fleet, do not allow the operator to comply with the requirements in (d), the operator may develop a specific conversion course, to be used temporarily for a limited number of pilots.';

(k) point ORO.FC.230 is replaced by the following:

'**ORO.FC.230 Recurrent training and checking**

(a) Each flight crew member shall complete recurrent training and checking relevant to the type or variant, and associated equipment of aircraft on which they operate.

(b) *Operator proficiency check*

(1) Each flight crew member shall complete operator proficiency checks as part of the normal crew complement.

(2) When the flight crew member will be required to operate under IFR, the operator proficiency check shall be conducted without external visual reference, as appropriate.

(3) The validity period of the operator proficiency check shall be 6 calendar months. For operations under VFR by day of performance class B aeroplanes that are conducted during seasons not longer than 8 consecutive months, one operator proficiency check shall be sufficient. The proficiency check shall be undertaken before commencing CAT operations.

(c) *Line check*

Each flight crew member shall complete a line check on the aircraft. The validity period of the line check shall be 12 calendar months.

(d) *Emergency and safety equipment training and checking*

Each flight crew member shall complete recurrent training and checking on the location and use of all emergency and safety equipment carried on board the aircraft. The validity period of an emergency and safety equipment training and checking shall be 12 calendar months.

(e) *CRM training*

(1) Elements of CRM shall be integrated into all appropriate phases of the recurrent training.

(2) Each flight crew member shall undergo specific modular CRM training. All major topics of CRM training shall be covered by distributing modular training sessions as evenly as possible over each 3-year period.

(f) Each flight crew member shall undergo ground training and flight training in an FSTD or an aircraft, or a combination of FSTD and aircraft training, at least every 12 calendar months.';

(l) point ORO.FC.235 is replaced by the following:

'**ORO.FC.235 Pilot qualification to operate in either pilot's seat — aeroplanes**

(a) Commanders of aeroplanes whose duties require them to operate in either pilot's seat and carry out the duties of a co-pilot, or commanders required to conduct training or checking duties shall complete additional training and checking to ensure that they are proficient in conducting the relevant normal, abnormal and emergency procedures from either seat. Such training and checking shall be specified in the operations manual. The checking may be conducted together with the operator proficiency check prescribed in ORO.FC.230(b) or in the EBT programme prescribed in ORO.FC.231.

(b) The additional training and checking shall include at least the following:

(1) an engine failure during take-off;

(2) a one-engine-inoperative approach and go-around; and

(3) a one-engine-inoperative landing.

(c) The validity period shall be 12 calendar months. For operators with an approved EBT programme, the validity is determined by the assessment and training topics in accordance with ORO.FC.232.

(d) When operating in the co-pilot's seat, the checks required by ORO.FC.230 or the assessment and training required by ORO.FC.231 for operating in the commander's seat shall, in addition, be valid and current.

(e) The pilot relieving the commander shall have demonstrated, concurrent with the operator proficiency checks prescribed in ORO.FC.230(b) or the assessment and training required by ORO.FC.231, practice of drills and procedures that would not normally be his or her responsibility. Where the differences between left- and right-hand seats are not significant, practice may be conducted in either seat.

(f) The pilot, other than the commander, occupying the commander's seat shall demonstrate practice of drills and procedures, concurrent with the operator proficiency checks prescribed in ORO.FC.230(b) or the assessment and training required by ORO.FC.231, which are the commander's responsibility acting as pilot monitoring. Where the differences between left- and right-hand seats are not significant, practice may be conducted in either seat.';

(m) the following point ORO.FC.236 is inserted:

'**ORO.FC.236 Pilot qualification to operate in either pilot's seat — helicopters**

(a) Helicopter pilots whose duties require them to operate in either pilot's seat shall complete additional training and checking to ensure that they are proficient in conducting the relevant normal, abnormal and emergency procedures from either seat. The validity period of this qualification shall be 12 calendar months.

(b) Current FIs or TRIs on the relevant type are considered to fulfil the requirement of point (a) if they have had a FI or TRI activity in the last 6 months on that type and on the helicopter.';

(n) point ORO.FC.240 is amended as follows:

(i) point (b) is replaced by the following:

'(b) INTENTIONALLY LEFT BLANK';

(ii) point (c) is replaced by the following:

'(c) Point (a) shall not apply to operations of performance class B aeroplanes if they are limited to single-pilot classes of reciprocating engine aeroplanes under VFR by day.';

(o) point ORO.FC.A.245 is amended as follows:

(i) point (a) is replaced by the following:

'(a) The aeroplane operator having appropriate experience may substitute one or more of the following training and checking requirements for flight crew by an alternative training and qualification programme (ATQP), approved by the competent authority:

(1) set out in point SPA.LVO.120 on flight crew training and qualifications;

(2) set out in point ORO.FC.220 on conversion training and checking;

(3) set out in point ORO.FC.125 on differences training, familiarisation, equipment and procedure training;

(4) set out in point ORO.FC.205 on command course;

(5) set out in point ORO.FC.230 on recurrent training and checking; and

(6) set out in point ORO.FC.240 on operation on more than one type or variant.';

(ii) points (d) and (e) are replaced by the following:

'(d) In addition to the checks required by points ORO.FC.230 and FCL.060 of Annex I (Part-FCL) to Regulation (EU) No 1178/2011, each flight crew member shall complete a line oriented evaluation (LOE) conducted in an FSTD. The validity period of an LOE shall be 12 calendar months. The LOE is completed when both of the following conditions are met:

(1) the syllabus of the LOE is completed; and

(2) the flight crew member has demonstrated an acceptable level of performance.

(e) After 2 years of operating with an approved ATQP, the operator may, with the approval of the competent authority, extend the validity periods of the checks referred to in point ORO.FC.230 as follows:

(1) Operator proficiency check to 12 calendar months.

(2) Line check to 24 calendar months.

(3) Emergency and safety equipment checking to 24 calendar months.';

(iii) the following points (f) and (g) are added:

'(f) Each flight crew member shall undergo specific modular CRM training. All major topics of CRM training shall be covered by distributing modular training sessions as evenly as possible over each 3-year period.

(g) The ATQP programme shall include 48 hours on an FSTD for each flight crew member, distributed evenly over a 3-year programme. The operator may reduce the number of FSTD hours, but no lower than 36 hours, provided that it demonstrates that the level of safety that is achieved is equivalent to that of the programme the ATQP may substitute in accordance with point (a).';

(p) in point ORO.FC.H.250, point (a)(1) is replaced by the following:

'(a) Holders of a CPL(H) (helicopter) shall only act as commanders in CAT operations on a single-pilot helicopter if:

(1) when operating under IFR, they have a minimum of 700 hours total flight time on helicopters, including 300 hours as pilot-in-command. The total flight time on helicopters shall include 100 hours under IFR. Up to 50 hours instrument time performed on an FFS(H) level B or FTD level 3 qualification or higher qualified for instrument training, may be credited towards the 100 hours. The 300 hours as pilot-in-command may be substituted by hours operating as co-pilot within an established multi-pilot crew system prescribed in the operations manual on the basis of 2 hours of flight time as co-pilot for 1 hour flight time as pilot-in command;';

(q) the following points ORO.FC.320 and ORO.FC.325 are added before point ORO.FC.330:

'**ORO.FC.320 Operator conversion training and checking**

The operator conversion course shall include an operator proficiency check.

**ORO.FC.325 Equipment and procedure training and checking**

If a flight crew member undergoes equipment and procedure training that requires training on a suitable FSTD or the aircraft, with regard to standard operating procedures related to a specialised operation, the flight crew member shall undergo an operator proficiency check.';

(r) point ORO.FC.330 is replaced by the following:

'**ORO.FC.330 Recurrent training and checking — operator proficiency check**

(a) Each flight crew member shall complete recurrent training and operator proficiency checks. In the case of specialised operations, the recurrent training and checking shall cover the relevant aspects associated with the specialised tasks described in the operations manual.

(b) Appropriate consideration shall be given when operations are undertaken under IFR or at night.

(c) The validity period of the operator proficiency check shall be 12 calendar months.';

(s) Appendix I is replaced by the following:

'*Appendix I*

**DECLARATION**

**in accordance with Commission Regulation (EU) No 965/2012 on air operations**

**Operator**
Name:
Place in which the operator has its principal place of business or, if the operator has no principal place of business, place in which the operator is established or residing and place from which the operations are directed:
Name and contact details of the accountable manager:

**Aircraft operation**

Starting date of operation and applicability date of the change:

Information on aircraft, operation and continuing airworthiness management organisation ([1]):

Type(s) of aircraft, registration(s) and main base:

| Aircraft MSN ([2]) | Aircraft type | Aircraft registration ([3]) | Main base | Type(s) of operation ([4]) | Organisation responsible for the continuing airworthiness management ([5]) |
|---|---|---|---|---|---|
| | | | | | |
| | | | | | |
| | | | | | |
| | | | | | |

The operator shall obtain a prior approval ([6]) or specific approval ([7]) for certain operations before conducting such operations.

Where applicable, details of approvals held. Attach the list of specific approvals. Include:
— specific approvals granted by a third country, if applicable;
— name of operations conducted with operational credits (e.g. EFVS 200, SA CAT I, etc.).

Where applicable, details of specialised operations authorisation held (attach authorisation(s), if applicable).

Where applicable, list of alternative means of compliance (AltMoC) with references to the associated AMC they replace (attach AltMoC).

Statements

☐ The operator complies, and continues to comply, with the essential requirements set out in Annex V to Regulation (EU) 2018/1139 of the European Parliament and of the Council and with the requirements of Regulation (EU) No 965/2012.

☐ The management system documentation, including the operations manual, shall comply with the requirements of Annex III (Part-ORO), Annex V (Part-SPA), Annex VI (Part-NCC) or Annex VIII (Part-SPO) to Commission Regulation (EU) No 965/2012 and all flights shall be made in accordance with the provisions of the operations manual as required by point ORO.GEN.110(b) of Part-ORO.

☐ All operated aircraft shall hold:
— a valid certificate of airworthiness in accordance with Commission Regulation (EU) No 748/2012 or, for aircraft registered in a third country, in accordance with ICAO Annex 8; and
— when used for SPO activities, a valid lease agreement as per ORO.SPO.100.

| |
|---|
| ☐ All flight crew members shall hold a licence in accordance with Annex I to Commission Regulation (EU) No 1178/2011 as required by point ORO.FC.100(c) of Part-ORO, and cabin crew members shall, where applicable, be trained in accordance with Subpart CC of Part-ORO. |
| ☐ (If applicable)<br>The operator shall implement and demonstrate conformity to a recognised industry standard.<br>Reference of the standard:<br>Certification body:<br>Date of the last conformity audit: |
| ☐ The operator shall notify to the competent authority any changes in circumstances affecting its compliance with the essential requirements set out in Annex V to Regulation (EU) 2018/1139 and with the requirements of Commission Regulation (EU) No 965/2012 as declared to the competent authority through this declaration, and any changes to the information and lists of AltMoC included in and annexed to this declaration, as required by point ORO.GEN.120(a) of Part-ORO. |
| ☐ The operator shall confirm that the information disclosed in this declaration is correct. |
| Date, name, and signature of the accountable manager' |

([1]) If there is not enough space to list the required information in the declaration, the information shall be listed in a separate annex. The annex shall be dated and signed.

([2]) Manufacturer serial number.

([3]) If the aircraft is also registered with an AOC holder, specify the AOC number of the AOC holder.

([4]) 'Type(s) of operation' refers to the type of operations conducted with this aircraft, e.g. non-commercial operations or specialised operations, e.g. aerial photography flights, aerial advertising flights, news media flights, television and movie flights, parachute operations, skydiving, maintenance check flights.

([5]) Information about the organisation responsible for the continuing airworthiness management shall include the name of the organisation, its address, and the approval reference.

([6]) (a) operations with any defective instrument or piece of equipment or item or function, under a minimum equipment list (MEL) (points ORO.MLR.105 (b), (f), and (j), NCC.IDE.A.105, NCC.IDE.H.105, SPO.IDE.A.105, and SPO.IDE.H.105).

(b) Operations requiring prior authorisation or approval, including all of the following:
- for specialised operations, wet lease-in and dry lease-in of aircraft registered in a third country (point ORO. SPO.100 (c));
- high-risk commercial specialised operations (point ORO.SPO.110);
- non-commercial operations with aircraft with an MOPSC of more than 19, which are performed without an operating cabin crew member (point ORO.CC.100 (d));
- use of IFR operating minima that are lower than those published by the State (points NCC.OP.110 and SPO. OP.110);
- refuelling with engine(s) and/or rotors turning (point NCC.OP.157);
- specialised operations (SPO) without oxygen above 10 000 ft (point SPO.OP.195).

([7]) Operations in accordance with Annex V (Part-SPA) to Regulation (EU) No 965/2012, including Subparts B 'Performance-based navigation (PBN) operations', C 'Operations with specified minimum navigation performance (MNPS)', D 'Operations in airspace with reduced vertical separation minima (RVSM)', E 'Low-visibility operations (LVOs) and operations with operational credits', G 'Transport of dangerous goods', K 'Helicopter offshore operations' and N 'Helicopter point-in-space approaches and departures with reduced VFR minima'.

(4) Annex IV is amended as follows:

(a) point CAT.GEN.MPA.100 is replaced by the following:

'**CAT.GEN.MPA.100 Crew responsibilities**

(a) The crew member shall be responsible for the proper execution of his or her duties that are:

(1) related to the safety of the aircraft and its occupants; and

(2) specified in the instructions and procedures in the operations manual.

(b) The crew member shall:

(1) report to the commander any fault, failure, malfunction or defect which the crew member believes may affect the airworthiness or safe operation of the aircraft including emergency systems, if not already reported by another crew member;

(2) report to the commander any incident that endangered, or could have endangered, the safety of the operation, if not already reported by another crew member;

(3) comply with the relevant requirements of the operator's occurrence reporting schemes;

(4) comply with all flight and duty time limitations (FTL) and rest requirements applicable to their activities;

(5) when undertaking duties for more than one operator:

(i) maintain his or her individual records regarding flight and duty times and rest periods as referred to in the applicable FTL requirements;

(ii) provide each operator with the data needed to schedule activities in accordance with the applicable FTL requirements; and

(iii) provide each operator with the data needed regarding operations on more than one type or variant.

(c) The crew member shall not perform duties on an aircraft:

(1) when under the influence of psychoactive substances or when unfit due to injury, fatigue, medication, sickness or other similar causes;

(2) until a reasonable time period has elapsed after deep water diving or following blood donation;

(3) if applicable medical requirements are not fulfilled;

(4) if he or she is in any doubt of being able to accomplish his or her assigned duties; or

(5) if he or she knows or suspects that he or she is suffering from fatigue as referred to in Annex V, point 7.5, to Regulation (EU) 2018/1139 or feels otherwise unfit, to the extent that the flight may be endangered.';

(b) the following point CAT.OP.MPA.101 is inserted:

'**CAT.OP.MPA.101 Altimeter check and settings**

(a) The operator shall establish procedures for altimeter checking before each departure.

(b) The operator shall establish procedures for altimeter settings for all phases of flight, which shall take into account the procedures established by the State of the aerodrome or the State of the airspace, if applicable.';

(c) point CAT.OP.MPA.107 is replaced by the following:

'**CAT.OP.MPA.107 Adequate aerodrome**

The operator shall consider an aerodrome as adequate if, at the expected time of use, the aerodrome is available and equipped with necessary ancillary services such as air traffic services (ATS), sufficient lighting, communications, meteorological reports, navigation aids and emergency services.';

(d) point CAT.OP.MPA.110 is replaced by the following:

'**CAT.OP.MPA.110 Aerodrome operating minima**

(a) The operator shall establish aerodrome operating minima for each departure, destination or alternate aerodrome that is planned to be used in order to ensure separation of the aircraft from terrain and obstacles and to mitigate the risk of loss of visual references during the visual flight segment of instrument approach operations.

(b) The method used to establish aerodrome operating minima shall take all the following elements into account:

(1) the type, performance, and handling characteristics of the aircraft;

(2) the equipment available on the aircraft for the purpose of navigation, acquisition of visual references, and/or control of the flight path during take-off, approach, landing, and the missed approach;

(3) any conditions or limitations stated in the aircraft flight manual (AFM);

(4) the relevant operational experience of the operator;

(5) the dimensions and characteristics of the runways/final approach and take-off areas (FATOs) that may be selected for use;

(6) the adequacy and performance of the available visual and non-visual aids and infrastructure;

(7) the obstacle clearance altitude/height (OCA/H) for the instrument approach procedures (IAPs);

(8) the obstacles in the climb-out areas and necessary clearance margins;

(9) the composition of the flight crew, their competence and experience;

(10) the IAP;

(11) the aerodrome characteristics and the available air navigation services (ANS);

(12) any minima that may be promulgated by the State of the aerodrome;

(13) the conditions prescribed in the operations specifications including any specific approvals for low-visibility operations (LVOs) or operations with operational credits.

(14) any non-standard characteristics of the aerodrome, the IAP or the environment

(c) The operator shall specify a method of determining aerodrome operating minima in the operations manual.

(d) The method used by the operator to establish aerodrome operating minima and any change to that method shall be approved by the competent authority.';

(e) point CAT.OP.MPA.115 is replaced by the following:

'**CAT.OP.MPA.115 Approach flight technique — aeroplanes**

(a) All approach operations shall be flown as stabilised approach operations unless otherwise approved by the competent authority for a particular approach to a particular runway.

(b) The continuous descent final approach (CDFA) technique shall be used for approach operations using non-precision approach (NPA) procedures except for such particular runways for which the competent authority has approved another flight technique.';

(f) points CAT.OP.MPA.245 and CAT.OP.MPA.246 are replaced by the following:

'**CAT.OP.MPA.245 Meteorological conditions — all aircraft**

(a) On IFR flights, the commander shall only:

(1) commence the flight; or

(2) continue beyond the point from which a revised ATS flight plan applies in the event of in-flight re-planning,

when information is available indicating that the expected meteorological conditions, at the time of arrival, at the destination and/or required alternate aerodrome(s) are at or above the planning minima.

(b) On IFR flights, the commander shall only continue towards the planned destination aerodrome when the latest information available indicates that, at the expected time of arrival, the meteorological conditions at the destination, or at least one destination alternate aerodrome, are at or above the applicable aerodrome operating minima.

(c) On VFR flights, the commander shall only commence the flight when the appropriate meteorological reports and/or forecasts indicate that the meteorological conditions along the part of the route to be flown under VFR will, at the appropriate time, be at or above the VFR limits.

**CAT.OP.MPA.246 Meteorological conditions — aeroplanes**

In addition to CAT.OP.MPA.245, on IFR flights with aeroplanes, the commander shall only continue beyond:

(a) the decision point when using the reduced contingency fuel/energy (RCF) procedure; or

(b) point of no return when using the isolated aerodrome procedure,

when information is available indicating that the expected meteorological conditions, at the time of arrival, at the destination and/or required alternate aerodrome(s) are at or above the applicable aerodrome operating minima.';

(g) in point CAT.OP.MPA.247, point (a) is replaced by the following:

'(a) On VFR flights overwater out of sight of land with helicopters, the commander shall only commence take-off when the appropriate meteorological reports and/or forecasts indicate that the ceiling will be above 600 ft by day or 1 200 ft by night.';

(h) point CAT.OP.MPA.265 is replaced by the following:

'**CAT.OP.MPA.265 Take-off conditions**

Before commencing take-off, the commander shall be satisfied that:

(a) the meteorological conditions at the aerodrome or operating site and the condition of the runway/FATO intended to be used will not prevent a safe take-off and departure; and

(b) the selected aerodrome operating minima are consistent with all of the following:

(1) the operative ground equipment;

(2) the operative aircraft systems;

(3) the aircraft performance;

(4) flight crew qualifications.';

(i) point CAT.OP.MPA.300 is replaced by the following:

'**CAT.OP.MPA.300 Approach and landing conditions**

Before commencing an approach operation, the commander shall be satisfied that:

(a) the meteorological conditions at the aerodrome or operating site and the condition of the runway/FATO intended to be used will not prevent a safe approach, landing or go-around, considering the performance information contained in the operations manual; and

(b) the selected aerodrome operating minima are consistent with all of the following:

(1) the operative ground equipment;

(2) the operative aircraft systems;

(3) the aircraft performance;

(4) flight crew qualifications.';

(j) point CAT.OP.MPA.305 is replaced by the following:

'**CAT.OP.MPA.305 Commencement and continuation of approach**

(a) For aeroplanes, if the reported visibility (VIS) or controlling RVR for the runway to be used for landing is less than the applicable minimum, then an instrument approach operation shall not be continued:

(1) past a point at which the aeroplane is 1 000 ft above the aerodrome elevation; or

(2) into the final approach segment (FAS) if the DH or MDH is higher than 1 000 ft.

(b) For helicopters, if the reported RVR is less than 550 m and the controlling RVR for the runway to be used for landing is less than the applicable minimum, then an instrument approach operation shall not be continued:

(1) past a point at which the helicopter is 1 000 ft above the aerodrome elevation; or

(2) into the FAS if the DH or MDH is higher than 1 000 ft.

(c) If the required visual reference is not established, then a missed approach shall be executed at or before the DA/H or the MDA/H.

(d) If the required visual reference is not maintained after DA/H or MDA/H, then a go-around shall be executed promptly.

(e) Notwithstanding point (a), in the case where no RVR is reported, and the reported VIS is less than the applicable minimum, but the converted meteorological visibility (CMV) is equal or greater than the applicable minimum, then the instrument approach can be continued to the DA/H or MDA/H.';

(k) point CAT.OP.MPA.310 is replaced by the following:

'**CAT.OP.MPA.310 Operating procedures — threshold crossing height — aeroplanes**

The operator shall establish operational procedures designed to ensure that an aeroplane conducting 3D instrument approach operations crosses the threshold of the runway by a safe margin, with the aeroplane in the landing configuration and attitude.';

(l) the following point CAT.OP.MPA.312 is inserted:

'**CAT.OP.MPA.312EFVS 200 operations**

(a) An operator that intends to conduct EFVS 200 operations shall ensure that:

(1) the aircraft is certified for the intended operations;

(2) only runways, FATO and instrument approach procedures (IAPs) suitable for EFVS operations are used;

(3) the flight crew members are competent to conduct the intended operation, and a training and checking programme for the flight crew members and relevant personnel involved in the flight preparation is established;

(4) operating procedures are established;

(5) any relevant information is documented in the minimum equipment list (MEL);

(6) any relevant information is documented in the maintenance programme;

(7) safety assessments are carried out and performance indicators are established to monitor the level of safety of the operation; and

(8) the aerodrome operating minima take into account the capability of the system used.

(b) The operator shall not conduct EFVS 200 operations when conducting LVOs.

(c) Notwithstanding point (a)(1), the operator may use EVSs meeting the minimum criteria to conduct EFVS 200 operations, provided that this is approved by the competent authority.'.

(5) Annex V is amended as follows:

(a) the title of Subpart E is replaced by the following: 'Low-visibility operations (LVOs) and operations with operational credits';

(b) point SPA.LVO.100 is replaced by the following:

'**SPA.LVO.100 Low-visibility operations and operations with operational credits**

The operator shall conduct the following operations only if they are approved by the competent authority:

(a) take-off operations with visibility conditions of less than 400 m RVR;

(b) instrument approach operations in low-visibility conditions; and

(c) operations with operational credits, except for EFVS 200 operations, which shall not be subject to a specific approval.';

(c) point SPA.LVO.105 is replaced by the following:

'**SPA.LVO.105 Specific approval criteria**

To obtain a specific approval as required by SPA.LVO.100, the operator shall demonstrate that:

(a) for low-visibility approach operations, LVTO operations in an RVR less than 125 m, and operations with operational credits, the aircraft has been certified for the intended operations;

(b) the flight crew members are competent to conduct the intended operation and a training and checking programme for the flight crew members and relevant personnel involved in the flight preparation has been established, in accordance with SPA.LVO.120;

(c) operating procedures for the intended operations have been established;

(d) any relevant changes to the minimum equipment list (MEL) have been made;

(e) any relevant changes to the maintenance programme have been made;

(f) procedures have been established to ensure the suitability of aerodromes, including instrument flight procedures, for the intended operations, in accordance with SPA.LVO.110; and

(g) for the intended operations, a safety assessment has been carried out, and performance indicators have been established to monitor the level of safety.';

(d) point SPA.LVO.110 is replaced by the following:

'**SPA.LVO.110 Aerodrome-related requirements, including instrument flight procedures**

The operator shall ensure that only aerodromes, including instrument flight procedures, suitable for the intended operations are used for LVOs and operations with operational credits.';

(e) point SPA.LVO.115 is deleted;

(f) point SPA.LVO.120 is replaced by the following:

'**SPA.LVO.120 Flight crew competence**

(a) The operator shall ensure that the flight crew is competent to conduct the intended operations.

(b) The operator shall ensure that each flight crew member successfully completes training and checking for all types of LVOs and operations with operational credits for which an approval has been granted. Such training and checking shall:

(1) include initial and recurrent training and checking;

(2) include normal, abnormal and emergency procedures;

(3) be tailored to the type of technologies used in the intended operations; and

(4) take into account the human factor risks associated with the intended operations.

(c) The operator shall keep records of the training and qualifications of the flight crew members.

(d) The training and checking shall be conducted by appropriately qualified personnel. In the case of flight and flight simulation training and checking, the personnel providing the training and conducting the checks shall be qualified in accordance with Annex I (Part-FCL) to Regulation (EU) No 1178/2011.';

(g) in point SPA.NVIS.120, point (a) is replaced by the following:

'(a) Operations shall not be conducted below the weather minima for the type of night operations being conducted.';

(h) in point SPA.HOFO.120, point (a) is replaced by the following:

'(a) Onshore destination alternate aerodrome. Notwithstanding points CAT.OP.MPA.192, NCC.OP.152 and SPO.OP.151, the pilot-in command/commander does not need to specify a destination alternate aerodrome in the operational flight plan when conducting flights from an offshore location to a land destination aerodrome provided that sufficient operational contingency is in place to ensure a safe return from offshore.';

(i) point SPA.HOFO.125 is replaced by the following:

'**SPA.HOFO.125 Offshore standard approach procedures (OSAPs)**

(a) An operator shall establish procedures to ensure that offshore standard approach procedures (OSAPs) are followed only if:

(1) the helicopter is capable of providing navigation and real-time obstacle environment information for obstacle clearance; and

(2) either:

(i) the minimum descent height (MDH) is determined from a radio altimeter or a device that provides equivalent performance; or

(ii) the minimum descent altitude (MDA) is applied and it includes an adequate margin.

(b) If the operator follows OSAPs to rigs or vessels in transit, the flight shall be conducted in multi-pilot operations.

(c) The decision range shall provide adequate obstacle clearance in the missed approach from any destination for which an OSAP is planned.

(d) The approach shall only be continued beyond decision range or below the minimum descent altitude/height (MDA/H) when visual reference to the destination has been established.

(e) For single-pilot operations, appropriate increments shall be added to the MDA/H and decision range.

(f) When an OSAP is followed to a non-moving offshore location (i.e. fixed installation or moored vessel) and a reliable GNSS position for the location is available in the navigation system, the GNSS/area navigation system shall be used to enhance the safety of the OSAP.

(g) The operator shall include OSAPs in its initial and recurrent training and checking programmes.';

(j) the following Subpart N is added:

'SUBPART N

***HELICOPTER POINT-IN-SPACE APPROACHES AND DEPARTURES WITH REDUCED VFR MINIMA (PINS-VFR)***

**SPA.PINS-VFR.100 Helicopter point-in-space (PinS) approaches and departures with reduced VFR minima**

(a) The operator shall only use reduced VFR operating minima if the operator has been granted an approval by the competent authority.

(b) Reduced VFR operating minima shall apply only to a helicopter flight that includes a segment flown under IFR, and only in one of the following cases:

(1) the segment of the flight flown under VFR takes place immediately after a helicopter PinS approach with the intention of landing at a nearby heliport or operating site;

(2) the segment of the flight flown under VFR takes place immediately after a helicopter PinS approach with the intention of conducting hoist operations at a nearby HEC or HHO site;

(3) the segment of the flight flown under VFR is a departure with the intention of transitioning to IFR at a nearby initial departure fix.

(c) The operator shall define operating procedures that are applicable when flying with reduced VFR operating minima.

(d) The operator shall ensure that the flight crew members are experienced and trained to operate with reduced VFR operating minima.'.

(6) Annex VI is amended as follows:

(a) the following point NCC.OP.101 is inserted:

'**NCC.OP.101 Altimeter check and settings**

(a) The operator shall establish procedures for altimeter checking before each departure.

(b) The operator shall establish procedures for altimeter settings for all phases of flight, which shall take into account the procedures established by the State of the aerodrome or the State of the airspace, if applicable.';

(b) point NCC.OP.110 is replaced by the following:

'**NCC.OP.110 Aerodrome operating minima — general**

(a) The operator shall establish aerodrome operating minima for each departure, destination or alternate aerodrome that is planned to be used in order to ensure separation of the aircraft from terrain and obstacles and to mitigate the risk of loss of visual references during the visual flight segment of instrument approach operations.

(b) The method used to establish aerodrome operating minima shall take all the following elements into account:

(1) the type, performance, and handling characteristics of the aircraft;

(2) the equipment available on the aircraft for the purpose of navigation, acquisition of visual references, and/or control of the flight path during take-off, approach, landing, and missed approach;

(3) any conditions or limitations stated in the aircraft flight manual (AFM);

(4) the dimensions and characteristics of the runways/final approach and take-off areas (FATOs) that may be selected for use;

(5) the adequacy and performance of the available visual and non-visual aids and infrastructure;

(6) the obstacle clearance altitude/height (OCA/H) for the instrument approach procedures (IAPs);

(7) the obstacles in the climb-out areas and necessary clearance margins;

(8) any non-standard characteristics of the aerodrome, the IAP or the environment;

(9) the composition of the flight crew, their competence and experience;

(10) the IAP;

(11) the aerodrome characteristics and the available air navigation services (ANS);

(12) any minima that may be promulgated by the State of the aerodrome;

(13) the conditions prescribed in any specific approvals for low-visibility operations (LVOs) or operations with operational credits; and

(14) the relevant operational experience of the operator.

(c) The operator shall specify a method of determining aerodrome operating minima in the operations manual.';

(c) point NCC.OP.111 is deleted;

(d) point NCC.OP.112 is replaced by the following:

'**NCC.OP.112 Aerodrome operating minima — circling operations with aeroplanes**

(a) The MDH for a circling approach operation with aeroplanes shall not be lower than the highest of:

(1) the published circling OCH for the aeroplane category;

(2) the minimum circling height derived from Table 1; or

(3) the DH/MDH of the preceding IAP.

(b) The minimum visibility for a circling approach operation with aeroplanes shall be the highest of:

(1) the circling visibility for the aeroplane category, if published; or

(2) the minimum visibility derived from Table 1.

*Table 1*

**MDH and minimum visibility for circling per aeroplane category**

| | Aeroplane category | | | |
|---|---|---|---|---|
| | A | B | C | D |
| MDH (ft) | 400 | 500 | 600 | 700 |
| Minimum VIS (m) | 1 500 | 1 600 | 2 400 | 3 600'; |

(e) in point NCC.OP.145, point (b) is replaced by the following:

'(b) Before commencing a flight, the pilot-in-command shall be familiar with all available meteorological information appropriate to the intended flight. Preparation for a flight away from the vicinity of the place of departure, and for every flight under IFR, shall include:

(1) a study of the available current meteorological reports and forecasts; and

(2) the planning of an alternative course of action to provide for the eventuality that the flight cannot be completed as planned, because of meteorological conditions.';

(f) the following points NCC.OP.147 and NCC.OP.148 are inserted:

'**NCC.OP.147 Destination alternate aerodromes planning minima — aeroplanes**

An aerodrome shall not be specified as a destination alternate aerodrome unless the available current meteorological information indicates, for the period from 1 hour before until 1 hour after the estimated time of arrival, or from the actual time of departure to 1 hour after the estimated time of arrival, whichever is the shorter period,

(a) for an alternate aerodrome with an available instrument approach operation with DH less than 250 ft,

(1) a ceiling of at least 200 ft above the DH or MDH associated with the instrument approach operation; and

(2) a visibility of at least the higher of 1 500 m and 800 m above the instrument approach operation RVR/VIS minima; or

(b) for an alternate aerodrome with an instrument approach operation with DH or MDH 250 ft or more,

(1) a ceiling of at least 400 ft above the DH or MDH associated with the instrument approach operation; and

(2) a visibility of at least 3 000 m; or

(c) for an alternate aerodrome without an instrument approach procedure,

(1) a ceiling of at least the higher of 2 000 ft and the minimum safe IFR height; and

(2) a visibility of at least 5 000 m.;

**NCC.OP.148 Destination alternate aerodrome planning minima — helicopters**

The operator shall only select an aerodrome as a destination alternate aerodrome if the available current meteorological information indicates, for the period from 1 hour before until 1 hour after the estimated time of arrival, or from the actual time of departure to 1 hour after the estimated time of arrival, whichever is the shorter period:,

(a) for an alternate aerodrome with an instrument approach procedure (IAP):

(1) a ceiling of at least 200 ft above the DH or MDH associated with the IAP; and

(2) a visibility of at least 1 500 m by day or 3 000 m by night; or

(b) for an alternate aerodrome without an IAP:

(1) a ceiling of at least 2 000 ft or the minimum safe IFR height — whichever is greater; and

(2) a visibility of at least 1 500 m by day or 3 000 m by night.';

(g) in point NCC.OP.150, point (a) is replaced by the following:

'(a) For IFR flights, the pilot-in-command shall specify at least one weather-permissible take-off alternate aerodrome in the flight plan if the meteorological conditions at the aerodrome of departure are at or below the applicable aerodrome operating minima or if it would not be possible to return to the aerodrome of departure for other reasons.';

(h) in point NCC.OP.180, points (a) and (b) are replaced by the following:

'(a) The pilot-in-command shall only commence or continue a VFR flight if the latest available meteorological information indicates that the meteorological conditions along the route and at the intended destination at the estimated time of use will be at or above the applicable VFR operating minima.

(b) The pilot-in-command shall only commence or continue an IFR flight towards the planned destination aerodrome if the latest available meteorological information indicates that, at the estimated time of arrival, the meteorological conditions at the destination or at least one destination alternate aerodrome are at or above the applicable aerodrome operating minima.';

(i) point NCC.OP.195 is replaced by the following:

'**NCC.OP.195 Take-off conditions — aeroplanes and helicopters**

Before commencing take-off, the pilot-in-command shall be satisfied that:

(a) the meteorological conditions at the aerodrome or the operating site and the condition of the runway/FATO intended to be used will not prevent a safe take-off and departure; and

(b) the selected aerodrome operating minima are consistent with all of the following:

(1) the operative ground equipment;

(2) the operative aircraft systems;

(3) the aircraft performance;

(4) flight crew qualifications.';

(j) point NCC.OP.225 is replaced by the following:

'**NCC.OP.225 Approach and landing conditions — aeroplanes and helicopters**

Before commencing an approach operation, the pilot-in-command shall be satisfied that:

(a) the meteorological conditions at the aerodrome or the operating site and the condition of the runway/FATO intended to be used will not prevent a safe approach, landing or go-around, considering the performance information contained in the operations manual; and

(b) the selected aerodrome operating minima are consistent with all of the following:

(1) the operative ground equipment;

(2) the operative aircraft systems;

(3) the aircraft performance; and

(4) flight crew qualifications.';

(k) point NCC.OP.230 is replaced by the following:

'**NCC.OP.230 Commencement and continuation of approach**

(a) For aeroplanes, if the reported visibility (VIS) or controlling RVR for the runway to be used for landing is less than the applicable minimum, then an instrument approach operation shall not be continued:

(1) past a point at which the aeroplane is 1 000 ft above the aerodrome elevation; or

(2) into the final approach segment (FAS) if the DH or MDH is higher than 1 000 ft.

(b) For helicopters, if the reported RVR is less than 550 m and the controlling RVR for the runway to be used for landing is less than the applicable minimum, then an instrument approach operation shall not be continued:

(1) past a point at which the helicopter is 1 000 ft above the aerodrome elevation; or

(2) into the FAS if the DH or MDH is higher than 1 000 ft.

(c) If the required visual reference is not established, a missed approach shall be executed at or before the DA/H or the MDA/H.

(d) If the required visual reference is not maintained after DA/H or MDA/H, a go-around shall be executed promptly.

(e) Notwithstanding point (a), in the case where no RVR is reported, and the reported VIS is less than the applicable minimum, but the converted meteorological visibility (CMV) is equal or greater than the applicable minimum, then the instrument approach can be continued to the DA/H or MDA/H.

(f) Notwithstanding points (a) and (b), if there is no intention to land, the instrument approach may be continued to the DA/H or the MDA/H. A missed approach shall be executed at or before the DA/H or the MDA/H.';

(l) the following point NCC.OP.235 is added:

'**NCC.OP.235 EFVS 200 operations**

(a) An operator that intends to conduct EFVS 200 operations with operational credits and without a specific approval shall ensure that:

(1) the aircraft is certified for the intended operations;

(2) only runways, FATOs and IAPs suitable for EFVS operations are used;

(3) the flight crew members are competent to conduct the intended operation, and a training and checking programme for the flight crew members and relevant personnel involved in the flight preparation is established;

(4) operating procedures are established;

(5) any relevant information is documented in the minimum equipment list (MEL);

(6) any relevant information is documented in the maintenance programme;

(7) safety assessments are carried out and performance indicators are established to monitor the level of safety of the operation; and

(8) the aerodrome operating minima take into account the capability of the system used.

(b) The operator shall not conduct EFVS 200 operations when conducting LVOs.

(c) Notwithstanding point (a)(1), the operator may use EVSs meeting the minimum criteria to conduct EFVS 200 operations, provided that this is approved by the competent authority.'.

(7) Annex VII is amended as follows:

(a) the following point NCO.OP.101 is inserted

'**NCO.OP.101 Altimeter check and settings**

(a) The pilot-in-command shall check the proper operation of the altimeter before each departure.

(b) The pilot-in-command shall use appropriate altimeter settings for all phases of flight, taking into account any procedure prescribed by the State of the aerodrome or the State of the airspace.';

(b) point NCO.OP.105 is deleted;

(c) points NCO.OP.110, NCO.OP.111 and NCO.OP.112 are replaced by the following:

'**NCO.OP.110 Aerodrome operating minima — aeroplanes and helicopters**

(a) For instrument flight rules (IFR) flights, the pilot-in-command shall establish aerodrome operating minima for each departure, destination or alternate aerodrome that is planned to be used in order to ensure separation of the aircraft from terrain and obstacles and to mitigate the risk of loss of visual references during the visual flight segment of instrument approach operations.

(b) The aerodrome operating minima shall take the following elements into account, if relevant:

(1) the type, performance, and handling characteristics of the aircraft;

(2) the equipment available on the aircraft for the purpose of navigation, acquisition of visual references, and/or control of the flight path during take-off, approach, landing, and missed approach;

(3) any conditions or limitations stated in the aircraft flight manual (AFM);

(4) the dimensions and characteristics of the runways/final approach and take-off areas (FATOs) that may be selected for use;

(5) the adequacy and performance of the available visual and non-visual aids and infrastructure;

(6) the obstacle clearance altitude/height (OCA/H) for the instrument approach procedures (IAPs), if established;

(7) the obstacles in the climb-out areas and clearance margins;

(8) the competence and relevant operational experience of the pilot-in-command;

(9) the IAP, if established;

(10) the aerodrome characteristics and the type of air navigation services (ANS) available, if any;

(11) any minima that may be promulgated by the State of the aerodrome;

(12) the conditions prescribed in any specific approvals for low-visibility operations (LVOs) or operations with operational credits.;

**NCO.OP.111 Aerodrome operating minima — 2D and 3D approach operations**

(a) The decision height (DH) to be used for a 3D approach operation or a 2D approach operation flown with the continuous descent final approach (CDFA) technique shall not be lower than the highest of:

(1) the obstacle clearance height (OCH) for the category of aircraft;

(2) the published approach procedure DH or minimum descent height (MDH), where applicable;

(3) the system minimum specified in Table 1;

(4) the minimum DH specified in the AFM or equivalent document, if stated.

(b) The MDH for a 2D approach operation flown without the CDFA technique shall not be lower than the highest of:

(1) the OCH for the category of aircraft;

(2) the published approach procedure MDH, where applicable;

(3) the system minimum specified in Table 1; or

(4) the minimum MDH specified in the AFM, if stated.

*Table 1*

**System minima**

| Facility | Lowest DH/MDH (ft) |
|---|---|
| ILS/MLS/ GLS | 200 |
| GNSS/SBAS (LPV) | 200 |
| Precision approach radar (PAR) | 200 |
| GNSS/SBAS (LP) | 250 |
| GNSS (LNAV) | 250 |
| GNSS/Baro-VNAV (LNAV/VNAV) | 250 |
| Helicopter point-in-space approach | 250 |
| LOC with or without DME | 250 |
| SRA (terminating at ½ NM) | 250 |
| SRA (terminating at 1 NM) | 300 |
| SRA (terminating at 2 NM or more) | 350 |
| VOR | 300 |
| VOR/DME | 250 |
| NDB | 350 |
| NDB/DME | 300 |
| VDF | 350’; |

**NCO.OP.112 Aerodrome operating minima — circling operations with aeroplanes**

(a) The MDH for a circling approach operation with aeroplanes shall not be lower than the highest of:

(1) the published circling OCH for the aeroplane category;

(2) the minimum circling height derived from Table 1; or

(3) the DH/MDH of the preceding IAP.

(b) The minimum visibility for a circling approach operation with aeroplanes shall be the highest of:

(1) the circling visibility for the aeroplane category, if published; or

(2) the minimum visibility derived from Table 1’.

*Table 1*

**MDH and minimum visibility for circling per aeroplane category**

| | Aeroplane category | | | |
|---|---|---|---|---|
| | A | B | C | D |
| MDH (ft) | 400 | 500 | 600 | 700 |
| Minimum VIS (m) | 1 500 | 1 500 | 2 400 | 3 600’; |

(d) in point NCO.OP.135, point (b) is replaced by the following:

‘(b) Before commencing a flight, the pilot-in-command shall be familiar with all available meteorological information appropriate to the intended flight. Preparation for a flight away from the vicinity of the place of departure, and for every flight under IFR, shall include:

(1) a study of the available current meteorological reports and forecasts; and

(2) the planning of an alternative course of action to provide for the eventuality that the flight cannot be completed as planned, because of meteorological conditions.’;

(e) points NCO.OP.140, NCO.OP.141 and NCO.OP.142 are replaced by the following:

‘**NCO.OP.140 Destination alternate aerodromes — aeroplanes**

For IFR flights, the pilot-in-command shall specify at least one destination alternate aerodrome in the flight plan, unless the available current meteorological information for the destination indicates, for the period from 1 hour before until 1 hour after the estimated time of arrival, or from the actual time of departure to 1 hour after the estimated time of arrival, whichever is the shorter period, a ceiling of at least 1 000 ft above the DH/MDH for an available instrument approach procedure (IAP) and a visibility of at least 5 000 m.

**NCO.OP.141 Destination alternate aerodromes — helicopters**

For IFR flights, the pilot-in-command shall specify at least one destination alternate aerodrome in the flight plan, unless the available current meteorological information for the destination indicates, for the period from 1 hour before until 1 hour after the estimated time of arrival, or from the actual time of departure to 1 hour after the estimated time of arrival, whichever is the shorter period, a ceiling of at least 1 000 ft above the DH/MDH for an available IAP and a visibility of at least 3 000 m.

**NCO.OP.142 Destination alternate aerodromes — instrument approach operations**

The pilot-in-command shall only select an aerodrome as a destination alternate aerodrome if either:

(a) an IAP that does not rely on GNSS is available either at the destination aerodrome or at a destination alternate aerodrome, or

(b) all of the following conditions are met:

(1) the onboard GNSS equipment is SBAS-capable;

(2) the destination aerodrome, any destination alternate aerodrome, and the route between them are within SBAS service area;

(3) ABAS is predicted to be available in the event of the unexpected unavailability of SBAS;

(4) an IAP is selected (either at destination or destination alternate aerodrome) that does not rely on the availability of SBAS;

(5) an appropriate contingency action allows the flight to be completed safely in the event of unavailability of GNSS.’

(f) the following points NCO.OP.143 and NCO.OP.144 are inserted:

'**NCO.OP.143 Destination alternate aerodromes planning minima — aeroplanes**

An aerodrome shall not be specified as a destination alternate aerodrome unless the available current meteorological information indicates, for the period from 1 hour before until 1 hour after the estimated time of arrival, or from the actual time of departure to 1 hour after the estimated time of arrival, whichever is the shorter period:

(a) for an alternate aerodrome with an available instrument approach operation with DH less than 250 ft,

(1) a ceiling of at least 200 ft above the decision height (DH) or minimum descent height (MDH) associated with the instrument approach operation; and

(2) a visibility of at least 1 500 m; or

(b) for an alternate aerodrome with an instrument approach operation with DH or MDH 250 ft or more,

(1) a ceiling of at least 400 ft above the DH or MDH associated with the instrument approach operation; and

(2) a visibility of at least 3 000 m; or

(c) for an alternate aerodrome without an IAP,

(1) a ceiling of at least the higher of 2 000 ft and the minimum safe IFR height; and

(2) a visibility of at least 5 000 m.

**NCO.OP.144 Destination alternate aerodromes planning minima — helicopters**

An aerodrome shall not be specified as a destination alternate aerodrome unless the available current meteorological information indicates, for the period from 1 hour before until 1 hour after the estimated time of arrival, or from the actual time of departure to 1 hour after the estimated time of arrival, whichever is the shorter period,

(a) for an alternate aerodrome with an IAP:

(1) a ceiling of at least 200 ft above the DH or MDH associated with the IAP; and

(2) a visibility of at least 1 500 m by day or 3 000 m by night; or

(b) for an alternate aerodrome without an IAP:

(1) a ceiling of at least the higher of 2 000 ft and the minimum safe IFR height; and

(2) a visibility of at least 1 500 m by day or 3 000 m by night.'

(g) in point NCO.OP.160, points (a) and (b) are replaced by the following:

'(a) The pilot-in-command shall only commence or continue a VFR flight if the latest available meteorological information indicates that the meteorological conditions along the route and at the intended destination at the estimated time of use will be at or above the applicable VFR operating minima.

(b) The pilot-in-command shall only commence or continue an IFR flight towards the planned destination aerodrome if the latest available meteorological information indicates that, at the estimated time of arrival, the meteorological conditions at the destination or at least one destination alternate aerodrome are at or above the applicable aerodrome operating minima.';

(h) point NCO.OP.175 is replaced by the following:

'**NCO.OP.175 Take-off conditions — aeroplanes and helicopters**

Before commencing take-off, the pilot-in-command shall be satisfied that:

(a) according to the information available, the meteorological conditions at the aerodrome or the operating site and the condition of the runway/FATO intended to be used will not prevent a safe take-off and departure; and

(b) the selected aerodrome operating minima are consistent with all of the following:

(1) the operative ground equipment;

(2) the operative aircraft systems;

(3) the aircraft performance;

(4) flight crew qualifications.';

(i) points NCO.OP.205 and NCO.OP.206 are replaced by the following:

'**NCO.OP.205 Approach and landing conditions — aeroplanes**

Before commencing an approach to land, the pilot-in-command shall be satisfied that:

(a) according to the information available, the meteorological conditions at the aerodrome or the operating site, and the condition of the runway intended to be used will not prevent a safe approach, landing, or missed approach; and

(b) the selected aerodrome operating minima are consistent with all of the following:

(1) the operative ground equipment;

(2) the operative aircraft systems;

(3) the aircraft performance, and

(4) flight crew qualifications.

**NCO.OP.206 Approach and landing conditions — helicopters**

Before commencing an approach to land, the pilot-in-command shall be satisfied that:

(a) according to the information available, the meteorological conditions at the aerodrome or the operating site and the condition of the final approach and take-off area (FATO) intended to be used will not prevent a safe approach, landing or missed approach; and

(b) the selected aerodrome operating minima are consistent with all of the following:

(1) the operative ground equipment;

(2) the operative aircraft systems;

(3) the aircraft performance;

(4) flight crew qualifications.'

(j) point NCO.OP.210 is replaced by the following:

'**NCO.OP.210 Commencement and continuation of approach — aeroplanes and helicopters**

(a) If the controlling RVR for the runway to be used for landing is less than 550 m (or any lower value established in accordance with an approval under SPA.LVO), then an instrument approach operation shall not be continued:

(1) past a point at which the aircraft is 1 000 ft above the aerodrome elevation; or

(2) into the final approach segment if the DH or MDH is higher than 1 000 ft.

(b) If the required visual reference is not established, a missed approach shall be executed at or before the DA/H or the MDA/H.

(c) If the required visual reference is not maintained after DA/H or MDA/H, a go-around shall be executed promptly.'.

(8) Annex VIII is amended as follows:

(a) the following point SPO.OP.101 is inserted:

'**SPO.OP.101 Altimeter check and settings**

(a) The operator shall establish procedures for altimeter checking before each departure.

(b) The operator shall establish procedures for altimeter settings for all phases of flight, which shall take into account the procedures established by the State of the aerodrome or the State of the airspace, if applicable.';

(b) point SPO.OP.110 is replaced by the following:

'**SPO.OP.110 Aerodrome operating minima — aeroplanes and helicopters**

(a) The operator shall establish aerodrome operating minima for each departure, destination or alternate aerodrome that is planned to be used in order to ensure separation of the aircraft from terrain and obstacles and to mitigate the risk of loss of visual references during the visual flight segment of instrument approach operations.

(b) The method used to establish aerodrome operating minima shall take all the following elements into account:

(1) the type, performance, and handling characteristics of the aircraft;

(2) the equipment available on the aircraft for the purpose of navigation, acquisition of visual references, and/or control of the flight path during take-off, approach, landing, and missed approach;

(3) any conditions or limitations stated in the aircraft flight manual (AFM);

(4) the dimensions and characteristics of the runways/final approach and take-off areas (FATOs) that may be selected for use;

(5) the adequacy and performance of the available visual and non-visual aids and infrastructure;

(6) the obstacle clearance altitude/height (OCA/H) for the instrument approach procedures (IAPs);

(7) the obstacles in the climb-out areas and the necessary clearance margins;

(8) any non-standard characteristics of the aerodrome, the IAP or the local environment;

(9) the composition of the flight crew, their competence and experience;

(10) the IAP;

(11) the aerodrome characteristics and the available air navigation services (ANS);

(12) any minima that may be promulgated by the State of the aerodrome;

(13) the conditions prescribed in any specific approvals for low-visibility operations (LVOs) or operations with operational credits; and

(14) the relevant operational experience of the operator.

(c) The operator shall specify a method of determining aerodrome operating minima in the operations manual.';

(c) point SPO.OP.111 is deleted;

(d) point SPO.OP.112 is replaced by the following:

'**SPO.OP.112 Aerodrome operating minima — circling operations with aeroplanes**

(a) The minimum descent height (MDH) for a circling approach operation with aeroplanes shall not be lower than the highest of:

(1) the published circling OCH for the aeroplane category;

(2) the minimum circling height derived from Table 1; or

(3) the decision height (DH)/MDH of the preceding IAP.

(b) The minimum visibility for a circling approach operation with aeroplanes shall be the highest of:

(1) the circling visibility for the aeroplane category, if published; or

(2) the minimum visibility derived from Table 1.

*Table 1*

**MDH and minimum visibility for circling per aeroplane category**

| | Aeroplane category | | | |
|---|---|---|---|---|
| | A | B | C | D |
| MDH (ft) | 400 | 500 | 600 | 700 |
| Minimum VIS (m) | 1 500 | 1 600 | 2 400 | 3 600’; |

(e) in point SPO.OP.140, point (b) is replaced by the following:

‘(b) Before commencing a flight, the pilot-in-command shall be familiar with all available meteorological information appropriate to the intended flight. Preparation for a flight away from the vicinity of the place of departure, and for every flight under IFR, shall include:

(1) a study of the available current meteorological reports and forecasts; and

(2) the planning of an alternative course of action to provide for the eventuality that the flight cannot be completed as planned, because of meteorological conditions.’;

(f) the following points SPO.OP.143 and SPO.OP.144 are inserted:

‘**SPO.OP.143 Destination alternate aerodromes planning minima — aeroplanes**

An aerodrome shall not be specified as a destination alternate aerodrome unless the available current meteorological information indicates, for the period from 1 hour before until 1 hour after the estimated time of arrival, or from the actual time of departure to 1 hour after the estimated time of arrival, whichever is the shorter period,

(a) for an alternate aerodrome with an available instrument approach operation with DH less than 250 ft,

(1) a ceiling of at least 200 ft above the DH or MDH associated with the instrument approach operation; and

(2) a visibility of at least the higher of 1 500 m and 800 m above the instrument approach operation RVR/VIS minima; or

(b) for an alternate aerodrome with an instrument approach operation with DH or MDH 250 ft or more,

(1) a ceiling of at least 400 ft above the DH or MDH associated with the instrument approach operation; and

(2) a visibility of at least 3 000 m; or

(c) for an alternate aerodrome without an instrument approach procedure,

(1) a ceiling of at least the higher of 2 000 ft and the minimum safe IFR height; and

(2) a visibility of at least 5 000 m.

**SPO.OP.144 Destination alternate aerodrome planning minima — helicopters**

The operator shall only select an aerodrome as a destination alternate aerodrome if the available current meteorological information indicates, for the period from 1 hour before until 1 hour after the estimated time of arrival, or from the actual time of departure to 1 hour after the estimated time of arrival, whichever is the shorter period,

(a) for an alternate aerodrome with an IAP:

(1) a ceiling of at least 200 ft above the DH or MDH associated with the IAP; and

(2) a visibility of at least 1 500 m by day or 3 000 m by night; or

(b) for an alternate aerodrome without an IAP:

(1) a ceiling of at least 2 000 ft or the minimum safe IFR height, whichever is greater; and

(2) a visibility of at least 1 500 m by day or 3 000 m by night.';

(g) in point SPO.OP.145, point (a) is replaced by the following:

'(a) For IFR flights, the pilot-in-command shall specify at least one weather-permissible take-off alternate aerodrome in the flight plan if the meteorological conditions at the aerodrome of departure are at or below the applicable aerodrome operating minima or if it would not be possible to return to the aerodrome of departure for other reasons.';

(h) in point SPO.OP.170, points (a) and (b) are replaced by the following:

'(a) The pilot-in-command shall only commence or continue a VFR flight if the latest available meteorological information indicates that the meteorological conditions along the route and at the intended destination at the estimated time of use will be at or above the applicable VFR operating minima.

(b) The pilot-in-command shall only commence or continue an IFR flight towards the planned destination aerodrome if the latest available meteorological information indicates that, at the estimated time of arrival, the meteorological conditions at the destination or at least one destination alternate aerodrome are at or above the applicable aerodrome operating minima.';

(i) point SPO.OP.180 is replaced by the following:

'**SPO.OP.180 Take-off conditions — aeroplanes and helicopters**

Before commencing take-off, the pilot-in-command shall be satisfied that:

(a) the meteorological conditions at the aerodrome or the operating site and the condition of the runway/FATO intended to be used will not prevent a safe take-off and departure; and

(b) the selected aerodrome operating minima are consistent with all of the following:

(1) the operative ground equipment;

(2) the operative aircraft systems;

(3) the aircraft performance;

(4) flight crew qualifications.';

(j) point SPO.OP.210 is replaced by the following:

'**SPO.OP.210 Approach and landing conditions — aeroplanes and helicopters**

Before commencing an approach operation, the pilot-in-command shall be satisfied that:

(a) the meteorological conditions at the aerodrome or the operating site and the condition of the runway/FATO intended to be used will not prevent a safe approach, landing or go-around, considering the performance information contained in the operations manual; and

(b) the selected aerodrome operating minima are consistent with all of the following:

(1) the operative ground equipment;

(2) the operative aircraft systems;

(3) the aircraft performance;

(4) flight crew qualifications.';

(k) point SPO.OP.215 is replaced by the following:

'**SPO.OP.215 Commencement and continuation of approach**

(a) For aeroplanes, if the reported visibility (VIS) or controlling RVR for the runway to be used for landing is less than the applicable minimum, then an instrument approach operation shall not be continued:

(1) past a point at which the aeroplane is 1 000 ft above the aerodrome elevation; or

(2) into the final approach segment (FAS) if the DH or MDH is higher than 1 000 ft.

(b) For helicopters, if the reported RVR is less than 550 m and the controlling RVR for the runway to be used for landing is less than the applicable minimum, then an instrument approach operation shall not be continued:

(1) past a point at which the helicopter is 1 000 ft above the aerodrome elevation; or

(2) into the FAS if the DH or MDH is higher than 1 000 ft.

(c) If the required visual reference is not established, a missed approach shall be executed at or before the DA/H or the MDA/H.

(d) If the required visual reference is not maintained after DA/H or MDA/H, a go-around shall be executed promptly.

(e) Notwithstanding point (a), in the case where no RVR is reported, and the reported VIS is lower, but the converted meteorological visibility (CMV) is greater than the applicable minimum, then the instrument approach can be continued to the DA/H or MDA/H.

(f) Notwithstanding points (a) and (b), if there is no intention to land, the instrument approach may be continued to the DA/H or the MDA/H. A missed approach shall be executed at or before the DA/H or the MDA/H.';

(l) The following point SPO.OP.235 is added:

'**SPO.OP.235 EFVS 200 operations**

(a) An operator that intends to conduct EFVS 200 operations with operational credits and without a specific approval shall ensure that:

(1) the aircraft is certified for the intended operations;

(2) only runways, FATOs and IAPs suitable for EFVS operations are used;

(3) the flight crew are competent to conduct the intended operation and a training and checking programme for the flight crew members and relevant personnel involved in the flight preparation is established;

(4) operating procedures are established;

(5) any relevant information is documented in the minimum equipment list (MEL);

(6) any relevant information is documented in the maintenance programme;

(7) safety assessments are carried out and performance indicators are established to monitor the level of safety of the operation; and

(8) the aerodrome operating minima take into account the capability of the system used.

(b) The operator shall not conduct EFVS 200 operations when conducting LVOs.

(c) Notwithstanding point (a)(1), the operator may use EVSs meeting the minimum criteria to conduct EFVS 200 operations, provided that this is approved by the competent authority.'

# COMMISSION IMPLEMENTING REGULATION (EU) 2021/2238

## of 15 December 2021

## amending Implementing Regulation (EU) 2019/773 as regards the phasing out of specific cases for rear end signal

**(Text with EEA relevance)**

THE EUROPEAN COMMISSION,

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

Having regard to Directive (EU) 2016/797 of the European Parliament and of the Council of 11 May 2016 on the interoperability of the rail system within the European Union ([1]), and in particular Article 5(11) thereof,

Whereas:

(1) Point 4.2.2.1.3.2 of the Annex to Commission Implementing Regulation (EU) 2019/773 ([2]) sets out deadlines after which national authorities in all Member States without exception must accept all freight trains equipped with a rear end signal in the form of two reflective plates, and must cease to require any other type of rear end signal for freight trains.

(2) Point 4.2.2.1.3.2 outlines the specific cases of several Members States, including Belgium, France, Portugal and Spain, which were authorised to apply notified national rules that require freight trains to be equipped with two steady red lights as a condition to run on sections of their network. Those specific cases should be phased out.

(3) To ensure that Member States are taking all necessary measures to enable full harmonisation of rear end signals on freight trains at Union level by 1 January 2026, they should report periodically on the implementation of the proposed mitigation measures and take urgent action if deviations from the envisaged plan are identified.

(4) Belgium, France, Portugal and Spain submitted reports to the Commission on their use of reflective plates, identifying serious obstacles to the planned elimination by 1 January 2022 of national rules along the rail freight corridors specified in accordance with Regulation (EU) No 913/2010 of the European Parliament and of the Council ([3]).

(5) The European Union Agency for Railways submitted, on 29 June 2021, the recommendation 'REC TSI OPE 422132' proposing the amendment of point 4.2.2.1.3.2 of the Annex to Implementing Regulation (EU) 2019/773. The Commission, on the basis of this recommendation and taking into account the findings in the reports delivered by Member States, reviewed the dates of harmonisation of reflective plates in the Union. The Commission also concluded that at this moment a revision of the specification set under Appendix E of Commission Regulation (EU) No 321/2013 ([4]) is not required. The Commission gave due consideration to safety and capacity concerns, as well as the cost impact of the transition to harmonisation of the use of reflective plates.

(6) As a result of the findings in the reports delivered by Belgium, France, Portugal and Spain, and of the review of those findings by the Commission, the deadline of 1 January 2022 for accepting freight trains equipped with two reflective plates along the rail freight corridors specified in accordance with Regulation (EU) No 913/2010 should be postponed for those Member States.

([1]) OJ L 138, 26.5.2016, p. 44.

([2]) Commission Implementing Regulation (EU) 2019/773 of 16 May 2019 on the technical specification for interoperability relating to the operation and traffic management subsystem of the rail system within the European Union and repealing Decision 2012/757/EU (OJ L 139I, 27.5.2019, p. 5).

([3]) Regulation (EU) No 913/2010 of the European Parliament and of the Council of 22 September 2010 concerning a European rail network for competitive freight (OJ L 276, 20.10.2010, p. 22).

([4]) Commission Regulation (EU) No 321/2013 of 13 March 2013 concerning the technical specification for interoperability relating to the subsystem 'rolling stock – freight wagons' of the rail system in the European Union and repealing Decision 2006/861/EC (OJ L 104, 12.4.2013, p. 1).

(7) This decision is without prejudice of the ongoing work at the European Union Agency for Railways with a view to further harmonisation of the rear end signal and of the possible future review of Appendix E of Regulation (EU) No 321/2013, which the Commission may adopt bearing in mind the effect on safety, capacity and cost.

(8) The measures provided for in this Regulation are in accordance with the opinion of the Committee established in accordance with Article 51(1) of Directive (EU) 2016/797,

HAS ADOPTED THIS REGULATION:

*Article 1*

In point 4.2.2.1.3.2 of the Annex to Regulation (EU) 2019/773, the paragraph 'Phasing out' is replaced by the following:

'*Phasing out:*

The following deadlines shall apply for accepting freight trains equipped with two reflective plates:

(1) From 1 January 2022, along the rail freight corridors specified in accordance with Regulation (EU) No 913/2010, with the following exceptions on the lines where steady red lights are an operational requirement for ensuring safety:

(a) 1 January 2026 for Belgium and France;

(b) 1 January 2025 for Portugal and Spain.

(2) From 1 January 2026, in the whole European Union rail network.

Member States concerned by the exceptions under (1) (a) and (b) shall provide, by 1 March 2022 at the latest, the Commission with a detailed action plan and precise targets ensuring the elimination of the requirement for red lights as rear end signals. Every 6 months thereafter, those Member States shall provide the Commission with a report on progress made on the use of reflective plates on their network with the aim of Union-level harmonisation of rear end signals by 1 January 2026. Stakeholders shall provide all necessary input to allow Member States to fulfil their reporting duty.

The Commission shall report to the committee referred to in Article 51 of Directive (EU) 2016/797 on the implementation progress of section 4.2.2.1.'

*Article 2*

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

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

Done at Brussels, 15 December 2021.

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

# 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

THE EUROPEAN COMMISSION,

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

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

Whereas:

### 1. PROCEDURE

#### 1.1. Initiation

(1) On 21 October 2020, the European Commission ('the Commission') initiated an anti-dumping investigation with regard to imports of certain steel wind towers ('SWT' or 'the product under investigation') originating in the People's Republic of China ('the country concerned' or 'China' or 'the PRC') on the basis of Article 5 of Regulation (EU) 2016/1036 of the European Parliament and of the Council ('the basic Regulation'). It published a Notice of Initiation in the Official Journal of the European Union [2] ('the Notice of Initiation').

(2) The Commission initiated the investigation following a complaint lodged on 9 September 2020 by the European Wind Tower Association ('the complainant' or 'EWTA'). The complaint was made on behalf of the Union industry of steel wind towers in the sense of Article 5(4) of the basic Regulation. The complaint contained evidence of dumping and of resulting material injury that was sufficient to justify the initiation of the investigation.

#### 1.2. Interested parties and comments on initiation

(3) In the Notice of Initiation, the Commission invited interested parties to contact it in order to participate in the investigation. In addition, the Commission specifically informed the complainant, other known Union producers, the known exporting producers, the Chinese authorities and known users/importers about the initiation of the investigation and invited them to participate.

(4) Interested parties had an opportunity to comment on the initiation of the investigation and to request a hearing with the Commission and/or the Hearing Officer in trade proceedings. The Commission held hearings with three users in March 2021.

(5) In its comments on the initiation, the Chinese industry organisation China Chamber of Commerce for Import & Export of Machinery & Electronic Products ('CCCME') claimed that the complainant failed to provide a meaningful summary of the confidential information used in the complaint, in particular with regard to Annexes 2.1 to 2.4 of the complaint. According to the CCCME, the excessive use of confidential data prevented the party from understanding the situation in the investigation period. The party reiterated those claims in its comments and hearing after the provisional stage.

(6) The Commission noted that in the respective annexes, the complainant marked as confidential only company-specific information, such as turnover, profit, production and sales volume of each company that provided its data for the preparation of the complaint. The aggregated figures of each indicator were submitted in the open version of the complaint. Contrary to CCCME's claims, the information contained in the open version of the complaint was thus sufficient for the CCCME to submit detailed comments on the calculation of the injury margin in the

[1] OJ L 176, 30.6.2016, p. 21.

[2] Notice of initiation of an anti-dumping proceeding concerning imports of steel wind towers originating in the People's Republic of China, OJ C 351, 21.10.2020, p. 8.

complaint. EWTA itself also submitted, in reaction to CCCME's comments, that it was contrary to the interest of the Union producers to give detailed information about their individual performances, even indexed, during the period considered ([3]). Consequently, the Commission rejected the claim.

1.3. **Sampling**

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

1.3.1. *Sampling of Union producers*

(8) In its Notice of Initiation, the Commission stated that it had provisionally selected a sample of Union producers. The Commission selected the sample on the basis of production and Union sales volumes reported by the Union producers in the context of the pre-initiation standing analysis, taking also into account their geographical location. This sample consisted of three Union producers, located in two different Member States, which accounted for around 38 % of the estimated Union sales and production volume of the like product at initiation stage. The Commission invited interested parties to comment on the provisional sample. No party made any comments.

(9) The provisional sample consisting of three Union producers was thus considered to be representative of the Union industry and was confirmed as the final sample.

(10) CCCME and the association for wind energy in Europe 'WindEurope' questioned the representativeness of the complainants well after the deadline to comment on the sample of Union producers had past. The comments made by both parties could not alter the decision about the sample of Union producers and were dismissed.

1.3.2. *Sampling of importers*

(11) Upon initiation, one party alleged to be an unrelated importer provided the information specified in the Notice of Initiation and agreed to be included in the sample. That party turned out to be part of a group which main interests are equivalent to those of a user of SWT. Consequently, the Commission decided that sampling was not necessary. No comments were made to this decision.

1.3.3. *Sampling of exporting producers in China*

(12) To decide whether sampling was necessary and, if so, to select a sample, the Commission asked all known exporting producers in the PRC to provide the information specified in the Notice of Initiation. In addition, the Commission asked the Mission of the People's Republic of China to the European Union to identify and/or contact other exporting producers, if any, that could be interested in participating in the investigation.

(13) Seven producers in the country concerned provided the requested information and agreed to be included in the sample. Only six of them exported steel wind towers to the Union during the investigation period. In accordance with Article 17(1) of the basic Regulation, the Commission selected a sample of three exporting producers on the basis of the largest representative volume of exports to the Union which could reasonably be investigated within the time available. The provisional sample consisted of the companies Chengxi Shipyard Co., Ltd. ('Chengxi Shipyard'), CS WIND China Co., Ltd. ('CS Wind'), and Suzhou Titan New Energy Technology Co., Ltd. ('Suzhou Titan'). In accordance with Article 17(2) of the basic Regulation, all known exporting producers concerned and the authorities of the country concerned were consulted on the selection of the sample.

(14) One cooperating exporting producer commented on the selection of the provisional sample. The company Penglai Dajin Offshore Heavy Industry Co., Ltd. ('Penglai Dajin') requested to be included in the sample and claimed that the provisional sample was not representative for several reasons. First, the company argued that the sample was not geographically representative, as all sampled companies were located in Jiangsu province. Second, Penglai Dajin pointed out that one of the sampled companies is a State-owned enterprise and another one is a subsidiary of a

([3]) t21.003247.

foreign company. Third, the company claimed that, unlike some of the sampled exporting producers with a complicated group structure, it could reasonably be investigated within the time available. Finally, Penglai Dajin submitted that two of the sampled exporting producers were not representative of its production since they produced only large diameter steel towers.

(15) The Commission noted that, in line with the provisions of Article 17 of the basic Regulation, the provisional sample included companies with the largest representative volume of production, sales or exports, which could reasonably be investigated within the time available. In addition, Penglai Dajin did not bring forward any compelling reasons as to why it should replace any of the provisionally sampled exporting producers. Consequently, the Commission rejected the request by Penglai Dajin and confirmed the sample.

(16) Shortly thereafter, one of the sampled exporting producers, the company CS Wind, withdrew its cooperation. The Commission took note of this decision and informed the company of its intention to determine any potential anti-dumping duties for this company pursuant to the provisions of Article 18 of the basic Regulation. In addition, the Commission informed the Mission of the People's Republic of China about the situation.

(17) Subsequently, the Commission supplemented the sample of exporting producers by adding to it the company Penglai Dajin, which was the next company of those that cooperated in terms of volume of exports and could reasonably be investigated taking into account the time limits.

### 1.4. **Individual examination**

(18) Initially, four exporting producers in the PRC that returned the sampling form requested individual examination under Article 17(3) of the basic Regulation. On the day of initiation, the Commission made the questionnaires available online ([4]). When announcing the sample, the Commission informed the exporting producers which were not sampled, that they were required to provide a questionnaire reply if they wished to be examined individually. However, none of the companies submitted a questionnaire reply. Therefore, no individual examination was granted.

### 1.5. **Replies to questionnaires**

(19) 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').

(20) The Commission made questionnaires for Union producers, unrelated importers, users, and exporting producers available online ([5]) on the day of initiation. The interested parties were made aware of the location of the questionnaires in the Notice of Initiation as well as when the Commission announced the sample or its decision to abandon sampling.

(21) Questionnaire replies were received from the three sampled exporting producers, three sampled Union producers and two users. No reply was received from the GOC. Subsequently, the Commission informed the GOC of its intention to apply Article 18 of the basic Regulation with regard to any potential findings of the existence of significant distortions.

(22) In view of the ongoing COVID-19 pandemic and the confinement measures put in place by various Member States as well as by various third countries, the Commission could not carry out verification visits pursuant to Article 16 of the basic Regulation. The Commission instead cross-checked remotely the information sent by parties in line with its Notice on the consequences of the COVID-19 outbreak on anti-dumping and anti-subsidy investigations ([6]).

([4]) Available at https://trade.ec.europa.eu/tdi/case_details.cfm?id=2488.
([5]) Available at https://trade.ec.europa.eu/tdi/case_details.cfm?id=2488.
([6]) Notice on the consequences of the COVID-19 outbreak on anti-dumping and anti-subsidy investigations (OJ C 86, 16.3.2020, p. 6).

(23) The Commission sought all the information deemed necessary for the determination of dumping, resulting injury and Union interest. In this respect, the Commission carried out remote crosschecks ('RCC') of the following companies/parties:

Union producers and their association

— GRI Renewable Industries S.L., Madrid, Spain

— Welcon A/S, Give, Denmark

— Windar Renovables S.L, Avilés, Spain

— EWTA, Brussels, Belgium

Users

— GE Wind Energy GmbH, Salzbergen, Germany ('GE')

— Vestas Wind Systems A/S, Aarhus N, Denmark and related companies ('Vestas')

Exporting producers in the PRC

— Chengxi Shipyard Co., Ltd., Jiangyin City and its related domestic producer CSSC Guangxi Shipbuilding & Offshore Engineering Co., Ltd., Qinzhou City

— Penglai Dajin Offshore Heavy Industry Co., Ltd., Penglai and its related domestic producer Liaoning Dajin Heavy Industry Corporation, Fuxin

— Suzhou Titan New Energy Technology Co., Ltd., Taicang City and its related domestic producers Baotou Titan Wind Power Energy Equipment Co., Ltd., Baotou Rare Earth High-tech Zone and Heze Titan New Energy Equipment Co.,Ltd., Heze City

### 1.6. **Investigation period and period considered**

(24) The investigation of dumping and injury covered the period from 1 July 2019 to 30 June 2020 ('the investigation period' or 'the IP'). The examination of trends relevant for the assessment of injury covered the period from 1 January 2017 to the end of the investigation period ('the period considered').

### 1.7. **Non-imposition of provisional measures**

(25) Pursuant to Article 7(1) of the basic Regulation, the deadline for the imposition of provisional measures was 18 June 2021. On 21 May 2021, in accordance with Article 19a(2) of the basic Regulation, the Commission informed the interested parties of its intention not to impose provisional measures.

(26) On 18 June 2021, the Commission confirmed its decision not to impose provisional measures and gave the interested parties the opportunity to submit additional information and/or to be heard. CCCME requested a hearing and submitted comments. The comments and claims presented during the hearing and in its submission are properly addressed in the respective sections of this regulation.

(27) Since no provisional anti-dumping measures were imposed, no registration of imports was performed.

### 1.8. **Subsequent procedure**

(28) The Commission continued to seek and verify all the information it deemed necessary for its final findings. When reaching its definitive findings, the Commission considered the comments submitted by interested parties.

(29) The Commission informed all interested parties of the essential facts and considerations on the basis of which it intended to impose a definitive anti-dumping duty on imports of steel wind towers originating in China ('final disclosure'). All parties were granted a period within which they could make comments on the final disclosure.

(30) Parties who so requested were also granted an opportunity to be heard. On 23 September 2021, a hearing with EWTA took place. On 27 September 2021, hearings took place with CCCME and Suzhou Titan.

(31) After final disclosure and during the above mentioned hearing with the Commission services, CCCME repeated its allegation summarized in recital (5) above that EWTA would have made excessive use of confidential information. This would not only relate to the information provided in the complaint, but also to the information as provided to interested parties upon final disclosure. With regard to the latter, CCCME and Suzhou Titan found in particular that the disclosure of the underselling calculations provided to the exporting producers lacked sufficient detail on the side of the target price computation. Chengxi Shipyard made similar comments after final disclosure. The Commission reviewed the disclosed data and, although the exact target prices per product type of the Union industry could not be provided for confidentiality reasons, it provided the three sampled exporting producers with additional disclosure on the undercutting and underselling calculations on the same day.

(32) Notwithstanding the above, CCCME and Suzhou Titan requested the intervention of the Hearing Officer in view of (i) the fact that they considered that the Commission should better check certain Union industry data (this is addressed in recital (307)), (ii) that they would like to have the Hearing Officer's view on the source the Commission had used for establishing Chinese import prices of SWT's (addressed in recitals (317)-(318)), (iii) the discrepancies found when comparing three submissions from the complainant with each other (addressed in recital (306) and (307)), and (iv) the significant differences between dumping and injury margins (addressed in recital (292)-(295). A hearing with the Hearing Officer took place on 14 October 2021, during which the Commission clarified these issues. The Hearing Officer concluded that there was no breach of the rights of defence.

(33) After final disclosure, EWTA claimed that procedural problems in the investigation damaged the complainants' right of defence and ability to assess and address the submissions from Chinese exporters and users. According to EWTA, throughout the investigation, Chinese exporters and other interested parties had made excessive use of confidential information while also consistently failing to provide meaningful summaries of their confidential submissions. This would have made it impossible for the complainants to assess and make meaningful comments on the relevant data and allegations in breach of their right to due process.

(34) The Commission dismissed the claim, as it was not further substantiated. Moreover, the Commission noted that all information provided in sensitive format was likewise submitted for the open file wherever its release would not have impaired the confidentiality interests of the submitting party.

(35) The comments submitted by the interested parties were considered and taken into account where appropriate in this Regulation.

(36) After final disclosure, several parties argued that the Commission should suspend the measures pursuant to Article 14(4) of the basic Regulation. The complainants and several Union producers opposed any suspension of measures. The Commission acknowledged receipt of the information provided by these parties and reminded them that, should the Commission consider it appropriate, the Commission may decide to suspend measures where market conditions have temporarily changed to an extent that injury would be unlikely to resume as a result of the suspension, and when it is in the Union interest to do so.

## 2. **PRODUCT CONCERNED AND LIKE PRODUCT**

### 2.1. **Product concerned**

(37) Upon review of the product description in the notice of initiation, and in order to avoid any misunderstanding for national customs authorities, the Commission found it appropriate to slightly amend the description of the product as it was published in the notice of initiation. The changes did not require an amendment of the notice and did not affect interested parties in the proceeding. The changes are expressed below in italics.

(38) The product concerned is certain utility scale wind towers *of steel*, whether or not tapered, and sections thereof ([7]), whether assembled or not, whether or not including an embedded tower foundation section, whether or not joined with nacelles or rotor blades, and that are designed to support the nacelle and rotor blades for use in wind turbines that have electrical power generation capacities – either in onshore or offshore applications – equal to or in excess of 1,00 megawatt ('MW') and with a minimum height of 50 meters measured from the base of the tower to the bottom of the nacelle (i.e. where the top of the tower and nacelle are joined) when fully assembled ('SWT'), originating in the PRC, currently falling under CN codes ex 7308 20 00 (TARIC code 7308 20 00 11), and ex 7308 90 98 (TARIC code 7308 90 98 11) and, *when imported as part of a wind turbine*, currently falling under CN codes ex 8502 31 00 (TARIC codes 8502 31 00 11 and 8502 31 00 85) ('the product concerned').

### 2.2. **Like product**

(39) The investigation showed that the following products have the same basic physical and technical characteristics as well as the same basic uses:

— the product concerned;

— the product produced and sold on the domestic market of the PRC; and

— the product produced and sold in the Union by the Union industry.

(40) The Commission decided that those products are therefore like products within the meaning of Article 1(4) of the basic Regulation.

### 2.3. **Claims regarding the product scope**

(41) Vestas requested the exclusion of larger steel wind towers on the grounds that the Union industry has capacity mainly for smaller towers ([8]).

(42) The Commission found the grounds for the request unfounded because, overall, the Union industry has production capacity for all required sizes of SWT, even if not all Union SWT producers manufacture the same dimensions. The Commission also found that all steel wind towers, no matter their size or point of importation, share the same features in terms of their basic physical and technical characteristics, their end-uses and interchangeability. The Commission therefore rejected the exclusion request.

(43) CCCME submitted that because of the diversity within the product scope, the product produced and sold on the domestic market of the PRC and the product produced and sold in the Union by the Union industry could not be considered as like products. Following final disclosure, CCCME asked for a narrowing of the product scope on the grounds of existing differentiated regulations and subsidies in the Union for tall versus short towers and the expected increase in height of SWT. CCCME provided no evidence on what models of towers should be excluded or the technical characteristics of the towers that should in its view be excluded.

(44) The above claim is rejected. The Commission noted that within a product group, it is natural that different models or types exist. When calculating undercutting, underselling, and dumping, such diversity of the product and any resulting differences in cost of production and prices are fully taken into account by the Product Control Number ('PCN'). As mentioned in section 2.2, the Commission found that all steel wind towers share the same features in terms of their basic physical and technical characteristics, their end-uses and interchangeability, which are the relevant factors for the determination of the product concerned.

([7]) A wind tower section consists of steel *structures and* steel plates rolled into cylindrical or conical shapes and welded together (or otherwise attached) to form a steel shell, whether or not coated, end-finished or painted, irrespective of treatment or method of manufacture, and with or without flanges, doors, or internal or external components (e.g., flooring/decking, ladders, lifts, electrical junction boxes, electrical cabling, conduit, cable harness for nacelle generator, interior lighting, tool and storage lockers) attached to the wind tower section.

([8]) Reference No. t21.001369.

## 3. DUMPING

### 3.1. Procedure for the determination of the normal value under Article 2(6a) of the basic Regulation

(45) In view of the sufficient evidence available at the initiation of the investigation pointing to the existence of significant distortions within the meaning of point (b) of Article 2(6a) of the basic Regulation with regard to the PRC, the Commission considered it appropriate to initiate the investigation having regard to Article 2(6a) of the basic Regulation.

(46) Consequently, in order to collect the necessary data for the possible application of Article 2(6a) of the basic Regulation, in the Notice of Initiation the Commission invited all exporting producers in the PRC to provide information regarding the inputs used for producing SWT. Five exporting producers submitted the relevant information.

(47) 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 within the deadline. Subsequently, 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.

(48) The exporting producers Chengxi Shipyard and Suzhou Titan, as well as the industry organisation CCCME, commented on the application of Article 2(6a) of the basic Regulation in their submissions on the first note on the sources for the determination of the normal value of 1 December 2020. They reiterated their claims in their submissions on the second note on the sources for the determination of the normal value of 8 April 2021. Those comments are duly addressed in section 3.2.1 of this Regulation.

(49) In the Notice of Initiation, the Commission also specified that, in view of the evidence available, it may need to select an appropriate representative country pursuant to Article 2(6a)(a) of the basic Regulation for the purpose of determining the normal value based on undistorted prices or benchmarks.

(50) On 1 December 2020, the Commission informed the interested parties by a note ('the First Note') ([9]) 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 the product concerned. In addition, based on the criteria guiding the choice of undistorted prices or benchmarks, the Commission identified a number of possible representative countries, namely Mexico, South Africa and Turkey. The Commission received comments on the First Note from the two sampled exporting producers Chengxi Shipyard ([10]) and Suzhou Titan ([11]), CCCME ([12]), and the user Vestas ([13]). The comments were addressed in the second note on the sources for the determination of the normal value and are also summarised in section 3.2.2 of this Regulation.

(51) On 8 April 2021, the Commission informed the interested parties by a second note ('the Second Note') ([14]) on the relevant sources it intended to use for the determination of the normal value that it had identified Mexico as the most appropriate representative country. It also informed interested parties that it would establish selling, general and administrative costs ('SG&A') and profits based on available information for the companies Arcosa Industries de México, S. de R.L. de C.V. and Speco Wind Power, S.A. de C.V., producers in the representative country. The Commission received comments on the Second Note from Chengxi Shipyard ([15]), Suzhou Titan ([16]), and CCCME ([17]). The comments are addressed in section 3.2.2 of this Regulation.

([9]) Reference No. t20.007979.
([10]) Reference No. t20.008738.
([11]) Reference No. t20.008722.
([12]) Reference No. t20.008655.
([13]) Reference No. t21.002365.
([14]) Reference No. t21.003189.
([15]) Reference No. t21.003476.
([16]) Reference No. t21.003443.
([17]) Reference No. t21.003444.

### 3.2. **Normal value**

#### 3.2.1. *Existence of significant distortions*

(52) In recent investigations concerning the steel sector in the PRC ([18]) - steel being the main factor of production for wind towers - the Commission found that significant distortions in the sense of Article 2(6a)(b) of the basic Regulation were present. The Commission concluded in this investigation that, based on the evidence available, the application of Article 2(6a) of the basic Regulation was also appropriate.

(53) 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. ([19]) 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 basic Regulation ([20]), 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 ([21]). 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 ([22]). 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 ([23]). 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 ([24]), 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 ([25]).

([18]) 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 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.

([19]) See Commission Implementing Regulation (EU) 2021/635 recitals 149-150, Commission Implementing Regulation (EU) 2020/508 recitals 158-159.

([20]) See Commission Implementing Regulation (EU) 2021/635 recitals 115-118 and Commission Implementing Regulation (EU) 2020/508 recitals 122-127.

([21]) See Commission Implementing Regulation (EU) 2021/635 recitals 119-122 and Commission 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 wire rod producers and the suppliers of their inputs.

([22]) See Commission Implementing Regulation (EU) 2021/635 recitals 123-129 and Commission Implementing Regulation (EU) 2020/508 recitals 133-138.

([23]) See Commission Implementing Regulation (EU) 2021/635 recitals 130-133 and Commission Implementing Regulation (EU) 2020/508 recitals 139-142.

([24]) See Commission Implementing Regulation (EU) 2021/635 recitals 134-135 and Commission Implementing Regulation (EU) 2020/508 recitals 143-144.

([25]) See Commission Implementing Regulation (EU) 2021/635 recitals 136-145 and Commission Implementing Regulation (EU) 2020/508 recitals 145-154.

(54) The complaint contained information on the distortions in the steel sector, and notably on the 13th Five-Year Plan ('FYP') for Steel and the preferential treatment of the enterprises active in the steel industry. Furthermore, the complaint provided an extensive list of state-owned enterprises ('SOE') producing SWT, including the following Chinese original equipment manufacturers ('OEM'): China Shipbuilding Industry Corporation, Dongfang Electric Corporation, Xinjiang Goldwind (not a SOE, but with significant state ownership), Shanghai Electric (listed in Hong Kong and Shanghai, and 63 % state owned), Dalian Huarui Heavy Industry, Taiyuan Heavy Machinery Group Co Ltd, Guodian United Power Technology Company Limited, XEMC Windpower (with a majority stake by the Province of Hunan and the remaining shares traded at the Shanghai stock exchange), China Datang Corporation, and the insolvent company Baoding Tianwei Baobian Electric Co. The complaint also mentioned Envision Energy, which is a private company, but was still granted a 50 million RMB credit line by a state-owned bank.

(55) Furthermore, next to the OEMs mentioned above, the complaint also listed the following Chinese wind tower producers: Chengxi Shipyard Co., Ltd., a holding subsidiary of China State Shipbuilding Corporation and China CSSC Holdings Limited (both SOEs); Beijing JINGCHENG New Energy Co., Ltd. a subsidiary of state-owned Beijing JINGCHENG Machinery Electric Holding Co., Ltd.; Zhonghang Hongbo Windpower Equipment Co.,Ltd. which is one of the strategic partners of AVIC, China's biggest state-owned aerospace and defence company; China Gezhouba Group Corporation (a SOE); Harbin Hongguang Boiler Group Co., Ltd. (a state-level high-tech enterprise); Jiangsu Baolong Electromechanical Manufacturing Co., Ltd, being one of the key leading enterprises of Liyang, who merged two former SOEs; and HuaDian Heavy Industries Co., Ltd., with a majority stake owned by the China State-owned Assets Supervision & Administration Commission.

(56) Additionally, the complaint mentioned the investigation of the US Department of Commerce into two Chinese Companies (CS Wind and Titan Wind) ([26]), which identified at least the following public policies in direct benefit of the production sector: Policy Lending to the Renewable Energy Industry, Export Buyer's Credits, Two Free, Three Half Program for Foreign Invested Enterprises, Income Tax Benefits for Foreign Invested Enterprises Based on Geographic Location, Enterprise Income Tax Law, Research and Development Program, Import Tariff and VAT Exemptions for Use of Imported Equipment, Provision of Hot-Rolled Steel, Provision of Electricity for LTAR, Support Funds for Construction of Project Infrastructure Provided by Administration Commission of Lianyungang Economic and Technological Development Zone ('LETDZ'), the Award for Good Performance in Paying Taxes, Award for Taicang City to Support Public Listing of Enterprises, Awards for Taicang City to Promote Development of Industrial Economy for the Three-year Period of 2010 to 2012, Special Funds for Development of Science and Technology, and the Award to Titan Baotou for Rare Earth High and New Technology Industrial Development Zone for Excellent Construction Projects.

(57) In the present investigation, the Commission examined 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 country report concerning the PRC ('the Report') ([27]), 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 concerned. 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.

(58) Concerning the degree of ownership by the GOC in the sense of Article 2(6a)(b), first indent of the basic Regulation, there is no detailed data as to the exact share of SOEs and privately owned wind tower producers; however, some large Chinese wind tower producers, including Chengxi Shipyard and Fuchuan Yifan are SOEs.

([26]) See Utility Scale Wind Towers From the People's Republic of China: Final Affirmative Countervailing Duty Determination, 77 FR 75978 (December 26, 2012) and Issues and Decision Memorandum for the Final Results of the Expedited First Sunset Review of the Countervailing Duty Order on Utility Scale Wind Towers from the People's Republic of China, https://enforcement.trade.gov/frn/summary/prc/2018-10555-1.pdf.

([27]) Commission Staff Working Document on Significant Distortions in the Economy of the People's Republic of China for the purposes of Trade Defence Investigations, 20 December 2017, SWD(2017) 483 final/2.

(59) In the steel sector, which is the main factor of production of the wind towers, a substantial degree of ownership by the GOC persists. 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 ([28]). 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 toaround ten large-scale enterprises by 2025 ([29]). This intention was repeated by the GOC in April 2019, announcing a release of guidelines on steel industry consolidation ([30]). Such consolidation may entail forced mergers of profitable private companies with underperforming SOEs ([31]).

(60) In addition, in the steel sector, many of the largest producers are specifically referred to in the 'Steel Industry Adjustment and Upgrading plan for 2016-2020'. For instance, the Chinese State-owned Shanxi Taiyuan Iron & Steel Co. Ltd. ("TISCO") mentions on its website that it is "*a super iron and steel giant*", which "*developed into an extraordinary large-scale iron and steel complex, which is integrated with business of iron mining, iron and steel production, processing, delivery and trading*" ([32]). Baosteel is another major Chinese State-owned enterprise that engages in steel manufacturing and is part of the recently consolidated China Baowu Steel Group Co. Ltd. (formerly Baosteel Group and Wuhan Iron & Steel). ([33])

(61) With certain level of government intervention in the wind tower industry and a high share of SOEs in the wind towers and steel sector, even privately owned producers are prevented from operating under market conditions. Indeed, both public and privately owned enterprises in the wind towers sector are also subject to policy supervision and guidance as set out in recitals (67) to (74) below.

(62) 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, the following examples illustrate the above trend of an increasing level of intervention by the GOC through state presence inside the economic operators in wind towers sector. Many wind tower producers explicitly emphasise party building activities on their websites, have party members in the company management and underline their affiliation to the CCP. The investigation revealed party building activities in a number of wind towers producers, including the sampled exporting producer Chengxi Shipyard. According to the Articles of association of CSSC holding limited, which holds 100 % of Chengxi Shipyard's shares, the role of the party committee is as follows: "*Supervise and ensure the effective implementation of the Party and State policies in the company* […], *Sticking to the principle of cadres managed by the Party, in combination with the operational management principle of members of the Board of Directors selected in accordance with law, as well as with the principle of operational managers applying human rights in accordance with law, the Party organization ensures pre-arrangements and puts forward opinions and suggestions as regards the candidates to the Board of Directors or to Managing Director level, or, after completing comprehensive research, provides opinions and suggestions to Board of Directors and the General Manager on existing candidates,* […], *Research and discuss matters related to the company's reform, development and stability and to major operations and management* […]" ([34]).

(63) Also, in case of CS Wind, the investigation established that there were efforts to increase the number of party members in the company: "*The foreign-funded enterprise CS Wind Power Equipment (Lianyungang) Co., Ltd. has more than 150 employees and used to have only 5 party members. Through the "integration of the Party and the masses", the company's Party members have now reached more than 70*". ([35])

([28]) 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.

([29]) Available at: www.gov.cn/zhengce/content/2016-02/04/content_5039353.htm (last viewed 6 May 2021); https://policycn.com/policy_ticker/higher-expectations-for-large-scale-steel-enterprise/?iframe=1&secret=c8uthafuthefra4e (last viewed 6 May 2021), and www.xinhuanet.com/english/2019-04/23/c_138001574.htm (last viewed 6 May 2021).

([30]) Available at http://www.xinhuanet.com/english/2019-04/23/c_138001574.htm (last viewed 6 May 2021) and http://www.jjckb.cn/2019-04/23/c_137999653.htm (last viewed 6 May 2021).

([31]) 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 (last viewed 6 May 2021).

([32]) TISCO, 'Company profile', http://en.tisco.com.cn/CompanyProfile/20151027095855836705.html (last viewed 2 March 2020).

([33]) Baowu, 'Company profile', http://www.baowugroup.com/en/contents/5273/102759.html (last viewed 6 May 2021).

([34]) http://csscholdings.cssc.net.cn/component_business_scope/index.php?typeid=3

([35]) http://inews.ifeng.com/50078799/news.shtml?&back

(64) Fuchuan Yifan describes the role of the Party Committee in the following way: "Party members and various departments' essential staff closely cooperate, give full play to the function of pioneer role model, actively consolidate the effective strengths of each department, encourage staff towards vanguard and excellence, consider breakthrough projects as starting points, focus on cohesion, overcome difficulties, showcase talents and skills so as to ensure an active role as regards the company's cost reduction and efficiency gains, income increase and fund-raising etc. and also to ensure that each project is duly completed in terms of quality and quantity" ([36]).

(65) Furthermore, party building activities were found in the sampled exporting producer Penglai Dajin and Shanghai Taisheng Wind Power Equipment.

(66) In addition, during the investigation the Commission established the existence of personal connections between wind towers producers and the CCP. The investigation showed presence of CCP members among the senior management in a number of companies manufacturing wind towers, including Chengxi Shipyard (the Chairman of the Board of Director and the General Director are both CCP members and at the same time hold the functions of the Secretary and Deputy Secretary of the Party Committee, respectively), Suzhou Titan (at least one member of the Board of Directors is a CCP member), Fuchuan Yifan (the Chairman of the Board of Directors and the Vice Chairman of the Board of Directors are both CCP members and at the same time hold the functions of the Secretary and Deputy Secretary of the Party Committee, respectively), and Shanghai Taisheng Wind Power Equipment (the Chairman of the Supervisory Board is a CCP member).

(67) 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 wind towers sector.

(68) The steel industry, which is the main component of wind towers, is regarded as a key industry by the GOC ([37]). 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'. This Plan states that the steel industry is *"an important, fundamental sector of the Chinese economy, a national cornerstone"* ([38]). The main tasks and objectives set out in this Plan cover all aspects of the development of the industry ([39]).

(69) The 13th Five-Year Plan on Economic and Social Development ([40]) envisages support to enterprises producing high-end steel product types ([41]). It also focuses on achieving product quality, durability and reliability by supporting companies using technologies related to clean steel production, precision rolling and quality improvement ([42]).

(70) The 'Catalogue for Guiding Industry Restructuring (2011 Version) (2013 Amendment)' ([43]) ('the Catalogue') lists steel as encouraged industry.

(71) The GOC further guides the development of the sector in accordance with a broad range of policy tools and directives related to, *inter alia* market composition and restructuring, raw materials, investment, capacity elimination, product range, relocation, upgrading, etc. Through these and other means, the GOC directs and controls virtually every aspect in the development and functioning of the sector ([44]). The current problem of overcapacity is arguably the clearest illustration of the implications of the GOC's policies and the resulting distortions.

([36]) See an article on Fujian China News' website, released in November 2019, Title: Fujian Yifan: Party building as an engine to give the enterprise a new momentum, available at http://www.fj.chinanews.com/news/fj_hz/2019/2019-11-29/455057.html

([37]) Report, Part III, Chapter 14, p. 346 ff.

([38]) Introduction to The Plan for Adjusting and Upgrading the Steel Industry.

([39]) Report, Chapter 14, p. 347.

([40]) The 13th Five-Year Plan for Economic and Social Development of the People's Republic of China (2016-2020), available at https://en.ndrc.gov.cn/newsrelease_8232/201612/P020191101481868235378.pdf (last viewed 2 March 2020).

([41]) Report – Chapter 14, p. 349.

([42]) Report – Chapter 14, p. 352.

([43]) Catalogue for Guiding Industry Restructuring (2011 Version) (2013 Amendment) issued by Order No 9 of the National Development and Reform Commission on 27 March 2011, and amended in accordance with the Decision of the National Development and Reform Commission on Amending the Relevant Clauses of the Catalogue for Guiding Industry Restructuring (2011 Version) issued by Order No 21 of the National Development and Reform Commission on 16 February 2013.

([44]) Report – Chapter 14, pp. 375 – 376.

(72) Wind energy is also supported on a provincial and municipal level, for example the Lianyungang Municipality's 13th FYP for maritime economic development explicitly refers to the development of this industry. The plan envisages to "Build a wind power equipment industry chain". Encourage and guide the transformation and upgrading of a number of leading wind power enterprises such as Guodian Power, Zhongfu Lianzhong, Tianshun Tower, and CSWind Power, gradually upgrade their development, design and manufacturing technologies, and promote megawatt blade projects" ([45]).

(73) As evidenced above, the GOC further guides the development of the sector in accordance with a broad range of policy tools and directives. Through these and other means, the GOC directs and controls virtually every aspect in the development and functioning of the sector.

(74) 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 steel as the main raw material used in the manufacturing of the wind towers. Such measures impede market forces from operating freely.

(75) 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 wind towers sector referred to above in recital (53) would not affect the manufacturers of SWT.

(76) The wind towers 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 (53). Those distortion affect the sector both directly (when producing SWT 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) ([46]).

(77) Moreover, no evidence was submitted in the present investigation demonstrating that the wind towers 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 (53). Therefore, the substantial government intervention in the financial system leads to the market conditions being severely affected at all levels.

(78) Finally, the Commission recalls that in order to produce wind towers, a number of inputs are needed. According to evidence on the file, all the sampled exporting producers sourced the large majority of their inputs in the PRC. Furthermore, the PRC is one of the major producers of steel - the key raw material in the wind towers production process. When the producers of wind towers purchase/contract these inputs, the prices they pay (and which are recorded as their costs) are clearly exposed to the same systemic distortions mentioned above. 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.

(79) As a consequence, not only the domestic sales prices of wind towers 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 A and B 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. No evidence or argument to the contrary has been adduced by the GOC or the exporting producers in the present investigation.

(80) As indicated in recitals (21) and (47) respectively, 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 complainant, 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. Concerning GOC's comments following the final disclosure, see recitals (116) to (123) below.

([45]) https://oeoc.jou.edu.cn/info/1121/1017.htm.

([46]) See Commission Implementing Regulation (EU) 2021/635 recitals 134-135 and Commission Implementing Regulation (EU) 2020/508 recitals 143-144.

(81) Comments concerning the application of Article 2(6a) of the basic Regulation were received on initiation from CCCME. Subsequently, comments were received from CCCME, Suzhou Titan, and Chengxi Shipyard in response to the First Note and from CCCME, Suzhou Titan, and Chengxi Shipyard in response to the Second Note.

(82) In its comments on initiation, CCCME first submitted the following comments with regard to the determination of the normal value in the complaint:

(a) The complainant provided inconsistent information on the share of steel plates in the cost of production of SWT. In several parts of the complaint, it claimed that steel plates accounted for more than 40 % of the cost of production but in the normal value calculation itself, the complainant reached approximately 60 % of the cost of production;

(b) The complainant used an undistorted cost of steel plates of 869 EUR/tonne in the normal value construction although its own cost of that raw material was on average only 625 EUR/tonne;

(c) The profit margin of 14 % used in the normal value construction was not feasible in a competitive market and a reasonable profit of 6 % should have been used instead;

(d) The unit cost of other raw materials should also be corrected since they were in some cases up to three times higher than the costs of the complainant. On this point, CCCME did not provide any detailed information and did not identify which raw materials were affected.

(83) In addition, CCCME suggested that following the deficiencies of the normal value construction listed in recital (82), an alternative methodology of the construction of the normal value should be used. CCCME submitted that the target price of the Union industry should be used as a basis. The labour cost used to establish the target price should be replaced by the labour cost in Turkey, the representative country proposed by the complainant, which was more than ten times lower than the labour cost of the Union industry. A target profit of 10 %, as used by the complainant for the determination of the target price, should be added to arrive at the alternative normal value. CCCME pointed out that such normal value would result in a much lower dumping margin than the average margin of 55 % calculated by the complainant without providing an actual calculation.

(84) CCCME repeated the comments and claims described in recitals (82) and (83) also in the hearing and the submission after the provisional stage.

(85) With regard to the alleged deficiencies listed in recital (82), the Commission considered that CCCME must have misunderstood the data included in the complaint and the methodology used for the determination of the normal value under Article 2(6a) of the basic Regulation:

(a) Where the complainant stated that steel plates accounted for more than 40 % of the cost of production of SWT, it referred to the cost of a SWT assembled with all internal parts. Those parts, according to the complaint, represented 17 % of the SWT's cost of production ([47]). The complainant, however, based the dumping margin calculation on white towers, i.e. towers without the internal parts thus also excluding the labour cost of assembly. Therefore, the Commission considered that the higher share of steel plates on the cost of production in the normal value calculation could be reasonably explained.

(b) The cost of raw materials incurred by the Union industry is not as such determinative for the construction of the normal value. Consistent with Commission practice, it is the cost incurred by the exporting producer or, where the normal value is constructed under Article 2(6a) of the basic Regulation, the cost in the representative country that matters. The Commission considered that the complainant provided sufficient evidence (i.e. screenshots of official Turkish import statistics ([48])) supporting the unit price of steel plates used in the construction of the normal value.

([47]) See p. 19 of the complaint.
([48]) See Annex R7 (p. 149 of the Annexes) to the complaint.

(c) The complainant based the profit level used in the normal value construction on the financial information of three SWT producers in Turkey ([49]). Therefore, the Commission considered that the profit used by the complainant was sufficiently substantiated.

(d) CCCME suggested that the benchmarks, which were considerably higher than the cost of the Union producers, should be corrected. As explained under point (b) of this recital, the methodology under Article 2(6a) of the basic Regulation relies on the establishment of undistorted prices or benchmarks, and the resulting costs need not necessarily be the same as the costs of the Union producers.

(86) With regard to the alternative methodology suggested by CCCME as described in recital (83), the Commission noted that such construction of the normal value would be inconsistent with the provisions of Article 2(6a) of the basic Regulation. Moreover, CCCME's approach appeared to be inconsistent. Where the cost of certain materials in Turkey exceeded the cost incurred by the Union industry, CCCME proposed to use the lower cost of the Union industry as a benchmark. Yet, where the cost in Turkey was lower, in particular the labour cost, CCCME suggested to use the Turkish cost as a benchmark. Moreover, as explained in recital (85), the complainant had correctly relied on costs in a representative country for the construction of the normal value.

(87) Based on the reasons elaborated in recitals (85) and (86), the Commission rejected the claims by CCCME referred to in recitals (82), (83) and (84).

(88) As further explained below, the Commission concluded in the present investigation that based on the evidence available and in view of the lack of cooperation of the GOC, the application of Article 2(6a) of the basic Regulation was appropriate.

(89) In its submission on initiation, CCCME further asserted that the complaint heavily relied on the Report, which, according to CCCME, was written with the purpose of facilitating the lodging of complaints for the European industry. This purpose means that the report could not have been written in an objective manner. CCCME added that because of its purpose, the Report fails to meet the standards of impartial and objective evidence and evidence of sufficient probative value. CCCME further claimed that the Report deliberately omits factual circumstances, elements, and conclusions and is not objective.

(90) Furthermore, CCCME claimed that the Report was published in 2017, including contents and references from 2016 and the years before. However, the current investigation was initiated on 21 October 2020, with the period of investigation on the dumping side covering the period from July 2019 to June 2020. Therefore, according to CCCME, the Report does not reflect the potential distortions during the IP. In particular, CCCME claimed that the Steel chapter of the Report covered the period up to 2017 and the complaint did not show that those distortions would still be present in the subsequent years, including the IP.

(91) The Commission noted that the Report is a comprehensive document based on extensive objective evidence, including legislation, regulations and other official policy documents published by the GOC, third party reports from international organisations, academic studies and articles by scholars, and other reliable independent sources. Since it was made publicly available in December 2017, any interested party had ample opportunity to rebut, supplement or comment on it and the evidence on which it is based. So far no evidence was provided by any party proving that the sources used in the Report would be wrong.

(92) With regard to the IP, the Commission observed that whereas the Report was published in 2017, it was broadly based on the Chinese 13th Five Year Plans, which were applicable from 2016 until 2020, therefore covering the IP.

(93) In addition, CCCME commented that the concept of significant distortions runs against the WTO law because such concept does not exist under Article 2.2 of the WTO Anti-Dumping Agreement ('ADA'). Article 2.2 ADA limits the conditions in which normal value can be constructed to "*no sales in the ordinary course of trade in the domestic market of the exporting country*", or "*because of the particular market situation or the low volume of the sales in the domestic market of the exporting country*". Significant distortions are not listed in Article 2.2 ADA. Furthermore, CCCME claimed that Article 2.2 ADA does not allow for the construction of the normal value based on a representative country or international benchmarks, as envisaged in Article 2(6a) of the basic Regulation, since it only permits using "*the cost of production in the country of origin plus a reasonable amount for administrative, selling and general costs and profits*" when constructing normal value.

([49]) See p. 29 of the complaint.

(94) The Commission considered that the provisions of Article 2(6a) are fully consistent with the Union's WTO obligations. As explicitly clarified by the WTO Appellate Body in DS473 European Union – Anti-Dumping Measures on Biodiesel from Argentina, WTO law permits the use of data from a third country, duly adjusted when such adjustment is necessary and substantiated. The existence of significant distortions renders costs and prices in the exporting country inappropriate for the construction of normal value. In these circumstances, this provision envisages the construction of costs of production and sale on the basis of undistorted prices or benchmarks, including those in an appropriate representative country with a similar level of development as the exporting country. Therefore, the Commission rejected this claim.

(95) CCCME added that Article 2(6a) of the basic Regulation appeared to violate Article 2.2.1.1 ADA, as according to Article 2(6a) of the basic Regulation, the Commission is entitled to disregard the cost of production and sales in the exporting country and directly use such data in a third country. This is contrary to the provisions of Article 2.2.1.1. ADA which stipulates that: "*costs shall normally be calculated on the basis of records kept by the exporter or producer under investigation, provide that such record are in accordance with the generally accepted accounting principles of the exporting country and reasonably reflect the costs associated with the production and sales of the product under consideration*". To support its claim, CCCME referred to the WTO jurisprudence, in particular, the DS473 European Union – Anti-Dumping Measures on Biodiesel from Argentina ('DS473'), which established that investigating authorities must use the product costs actually incurred by producers or exporters for the calculation of constructed normal values, and the Panel Report in DS494 European Union – Cost Adjustment Methodologies II (Russia) ('DS494').

(96) The Commission recalled that neither of the quoted WTO cases concerned Article 2(6a) of the basic Regulation and the conditions for its application. Furthermore, the underlying factual situations in those cases are different from the underlying situation and criteria giving rise to the application of the methodology under this provision of the basic Regulation. As for the WTO dispute EU – Cost Adjustment Methodologies II, the Commission recalled that both the EU and Russia appealed the findings of the Panel, which are therefore not final and, according to standing WTO case-law, have no legal status since they have not been endorsed by the WTO Members. In any event, the Panel Report specifically considered the provisions of Article 2(6a) of the basic Regulation to be outside the scope of the dispute. The Panel found that these provisions are of a different essence and have different legal implications from the provisions under Article 2(5) of the basic Regulation, which were the object of that dispute and that the Article 2(6a) provisions did not replace the provisions under Article 2(5) when they were introduced. ([50]) These findings therefore have no significance for assessing the compatibility of Article 2(6a) of the basic Regulation with the relevant WTO rules. For these reasons, this claim was rejected.

(97) CCCME reiterated the above claims in its comments to the First Note. Suzhou Titan also endorsed all of the above comments by CCCME in its comments to the First Note.

(98) Moreover, CCCME claimed in its comments to the First Note that the wind tower industry is market oriented, as the majority of producers are privately owned, a number of raw materials are imported from abroad and the purchase prices of internals ([51]) are negotiated with European wind turbine OEM producers directly.

(99) The Commission noted that once it is determined that due to the existence significant distortions for the exporting country in accordance with Article 2(6a)(b) of the basic Regulation it is not appropriate to use domestic prices and costs in the exporting country, the normal value is constructed by reference to undistorted prices or benchmarks in an appropriate representative country for each exporting producer according to Article 2(6a)(a) of the basic Regulation. The same provision of the basic Regulation also allows the use of domestic costs if they are positively

([50]) Panel Report, *EU – Cost Adjustment Methodologies II (Russia),* WT/DS494/R, paragraphs 7.76, 7.80 and 7.81.

([51]) Internals in case of wind towers mean additional features of a wind tower, such as stairs, electrical cables, ventilators, elevator, lights and light switches.

established not to be distorted. Therefore, the exporting producers had the possibility to provide evidence that their individual administrative/operational costs and/or other input costs of were actually undistorted. However, as laid out in recitals (52) to (79) above, the Commission has established the existence of distortions in the wind tower industry and there was no evidence as to the factors of production of individual exporting producers being undistorted. Therefore, these claims were rejected.

(100) In addition, CCCME claimed in its comments to the Second Note that Article 2(6a) of the basic Regulation requires the Commission to perform an individual examination of the distortions of every exporting producer. According to CCCME, the Commission is obliged to make a case-by-case analysis and find out (a) whether the alleged significant distortions apply to each sampled exporter; (b) whether each input and factor of production reported by this specific exporter has been "distorted" and therefore should be replaced by data from another source; and (c) explain why data from another source, concerning each input or factor of production, are considered "undistorted" by the Commission.

(101) Suzhou Titan reiterated the above claims in its comments to the Second Note.

(102) As explained in recital (99) above, if the existence of significant distortions is established, then the provisions of Article 2(6a) apply, *a priori*, to all exporting producers in the PRC and concern all costs relating to their factors of production. At the same time, that provision provides for the use of domestic costs which are positively established not to be affected by significant distortions.

(103) With regard to the argument that the Commission should prove that the costs from the representative country are undistorted, the Commission uses only costs which are not subject to distortions in an appropriate representative country in accordance with Article 2(6a)(a) of the basic Regulation. The Commission published two notes to the file on the factors of production giving the parties ample opportunity to comment, including by pointing to any possible abnormalities or other considerations potentially affecting the factors of production in the representative country or countries. In this context, interested parties have not questioned the level of different factors of production in the appropriate representative country set out in the First and Second Note. Therefore these claims were dismissed.

(104) Following the First Note, Chengxi Shipyard also submitted a set of comments concerning the significant distortions. First, Chengxi Shipyard claimed that Article 2(6a) of the basic Regulation is incompatible with WTO law and past WTO DSB rulings. Chengxi Shipyard claimed that Section 15 of China's Protocol of Accession to the WTO exceptionally permitted importing WTO members to use a methodology that is not based on a strict comparison with domestic prices or costs of the industry under investigation in China, but that this derogation expired 15 years after the date of accession, that is on 11 December 2016. From that date, the Commission is obliged to use the standard methodology in establishing the normal value of the exporting country producers, that is to use only domestic prices and costs of the exporting country, unless other provisions of the WTO agreements including the ADA permit otherwise.

(105) Chengxi Shipyard added furthermore that there are no provisions in the WTO law that would allow not using the standard methodology in case of China. Chengxi Shipyard added that the conditions of Article 2 ADA, in particular Article 2.2.1 ADA are not compatible with the conditions of Article 2(6a) of the basic Regulation. Chengxi Shipyard clarified that the methodology prescribed by Article 2 ADA does not permit the use of information other than that in the exporting country in order to establish the normal value. If in exceptional circumstances the normal value needs to be constructed, the data relating to the cost of production and SG&A and profits have to be obtained from the sources in the country of export. To support the above claims, Chengxi Shipyard quoted the ruling of the EU-Biodiesel (Argentina) WTO dispute which required the Commission to use the costs reported in the producer/exporter's records in accordance with Article 2.2.1.1 ADA.

(106) This claim was already discussed in recitals (94) to (96) above. With regard to the argument concerning China's Accession Protocol, the Commission recalls that in anti-dumping proceedings concerning products from China, the parts of Section 15 of China's Accession Protocol to the WTO that have not expired continue to apply when determining normal value, both with respect to the market economy standard and with respect to the use of a methodology that is not based on a strict comparison with Chinese prices or costs. Those arguments were therefore rejected.

(107) In addition, Chengxi Shipyard claimed that the alleged distortions are not well evidenced and, even if they existed, they do not affect all aspects of Chengxi Shipyard's costs. Thus, not the entirety of the costs needs to be adjusted or established on a different basis. Chengxi Shipyard claimed that the main supporting evidence in the complaint was the Report, however, since there is no specific chapter devoted to the wind towers, the findings of the Report cannot be automatically treated as applicable to the wind towers industry.

(108) With regard to the argument that the Report does not include a specific chapter on wind towers, the Commission noted that the existence of the significant distortions giving rise to the application of Article 2(6a) of the basic Regulation is not linked to the existence of a specific sectoral chapter covering the product under investigation. The Report describes different types of distortions present in the PRC which are cross-cutting, affecting the entire Chinese economy and therefore also the prices and/or the raw materials and costs of production of the product under investigation. As explained in recitals (58) to (79) above, the wind tower industry is subject to a number of governmental interventions described in the Report (coverage by the Five-Year Plans and other documents, raw material distortions, financial distortions etc.), which are explicitly listed and referenced in this Regulation. Furthermore, the Report is not the only source of evidence used by the Commission for its determination, as there are additional probationary elements used for this purpose. Recitals (58) to (74) above have also detailed a number of distortions existing in the wind towers sector and/or affecting the raw materials and inputs beyond the significant distortions already described in the Report. The market circumstances and the underlying policies and plans giving rise to the significant distortions are still applicable to the wind towers sector and that of its costs of production. No party submitted any evidence to the contrary. Therefore, this argument was dismissed.

(109) Furthermore, Chengxi Shipyard commented that the six criteria required to prove the existence of significant distortions were either absent in the complaint, or were not applicable to Chengxi Shipyard. Among the criteria from Article 2(6a)(b) of the basic Regulation, the criteria under the first, fourth, fifth and sixth indent were not mentioned and substantiated with evidence in the complaint. With regard to the second indent, Chengxi Shipyard analysed one by one the Chinese wind tower (OEM) producers as listed by the complainant (see recital (54)) and came to the conclusion that the information is either not properly substantiated or is outdated. Chengxi Shipyard added that even if all that information was correct, there was no way of establishing the exact proportion of the state owned wind tower producers vs. the privately owned enterprises. It observed that the largest wind tower producers, including Titan Wind, Shanghai Taisheng, Dajin Heavy Industry, Tianneng Heavy Industries and CS Wind are all privately owned.

(110) On the element listed under the third indent of Article 2(6a)(b), Chengxi Shipyard commented that the US investigation into utility scale wind towers originating in *inter alia* the People's Republic of China showed the subsidisation of two specific companies, which cannot be extrapolated to the other wind towers producers. Even if the Commission finds that significant distortions exist in certain aspects of Chengxi Shipyard's costs, the other aspects of costs not having been proved to be significantly distorted should nonetheless be used in the construction of the normal value. Since, according to Chengxi Shipyard, the above six elements were not properly substantiated in the complaint, there is no evidence that the steel wind tower market itself is distorted.

(111) Finally, Chengxi Shipyard commented that even if the Commission finds that significant distortions exist in certain aspects of Chengxi Shipyard's costs, the other aspects of costs, not having been proved to be significantly distorted, should nonetheless be used in the construction of the normal value.

(112) In response to the claims on sufficient evidence at initiation stage, the Commission recalls that section 3 of the Notice of Initiation referred to a number of elements in the Chinese wind towers market to substantiate that the market was affected by distortions across the wind towers value chain in the PRC. The Commission considered that the evidence listed in the Notice of Initiation was sufficient to warrant initiation of an investigation on the basis of Article 2(6a) of the basic Regulation. The determination on the actual existence of significant distortions and the consequent use of the methodology prescribed by Article 2(6a)(a) of the basic Regulation only occurs at the time of the provisional and/or final disclosure. In this case, even though certain information concerning distortions provided by the complainant was found to be outdated, the Commission deemed the evidence submitted by the complainant on the significant distortions sufficient to initiate the investigation on this basis. The Notice of Initiation clearly specified this at section 3 in accordance with the obligation stated in Article 2(6a)(e) of the basic Regulation. The claim by Chengxi Shipyard was hence rejected.

(113) Finally, Chengxi Shipyard recalled that Article 2(6a)(b) of the basic Regulation specifies that: "Significant distortions are those distortions which occur when reported prices or costs, including the costs of raw materials and energy, are not the result of free market forces because they are affected by substantial government intervention" (emphasis added). Chengxi Shipyard argued that the government intervention into the wind tower industry in China is not substantial, as it has as purpose building-up of renewable energy capacity both in the PRC and in the rest of the world. Chengxi Shipyard proposes a definition of "substantial" to refer to an intervention of the government which is arbitrary. However, when the intervention is aimed at correcting a market failure, it should not be seen as "substantial". According to Chengxi Shipyard, pollution generated by non-renewable energy is a negative externality and there is no way third parties can stop or reduce this pollution through the market, as there is no 'market for pollution' in which those third parties could pay the factory to reduce its pollution. It is in this situation that the state must step in to correct for the failure of the market by taxing pollution or subsidising renewable energy to reduce its cost and ensure that firms adopt non-polluting renewable energy. Therefore, according to Chengxi Shipyard, subsidisation of the production of renewable energy sources is not a substantial intervention, as it serves a greater good of limiting the global pollution. Therefore it does not constitute a significant distortion in accordance with Article 2(6a)c of the basic Regulation.

(114) Concerning Chengxi Shipyard's comment on the concept of "substantial government intervention", the Commission noted that for the purpose of establishing the presence of significant distortions, it is not relevant whether the goal of the subsidies is to contribute to a positive social, environmental or economic outcome, as this would be arbitrary. Rather, the importance of subsidies is measured as them being substantial, i.e. of large value. The word "substantial" in this context should be interpreted in accordance with the standard definition, meaning "large in size, value, or importance". Therefore, this claim was rejected.

(115) Upon final disclosure, several interested parties submitted comments concerning the application of Article 2(6a) of the basic Regulation.

(116) The GOC submitted, first, that the Report is flawed and decisions based on it lack a factual and legal basis. More specifically, the GOC claimed that it doubts that the Report can represent the official position of the Commission. On the factual side, the Report is, according to the GOC, misrepresentative, one-sided and out of touch with reality. Moreover, the fact that the Commission has issued country reports for a few selected countries raises concerns about Most Favoured Nation ('MFN') treatment. Further, relying by the Commission on the evidence in the Report is, in the GOC's view, not in line with the spirit of fair and just law, as it effectively amounts to judging the case before trial.

(117) Second, the GOC argued that constructing normal value in accordance with Article 2(6a) of the basic Regulation is inconsistent with the ADA, in particular with Article 2.2. of the ADA which provides and exhaustive list of situations where the normal value can be constructed, the "significant distortions" not being listed among such situations. Moreover, using data from an appropriate representative country is, according to the GOC, inconsistent with GATT Article 6.1(b) and Article 2.2.1.1. of the ADA which require using the cost of production in the country of origin when constructing normal value.

(118) Third, the GOC claimed that the Commission's investigating practices under Article 2(6a) of the basic Regulation are inconsistent with WTO rules insofar as the Commission, in violation of Article 2.2.1.1. of the ADA, disregarded records of the Chinese producer without determining whether those records are in accordance with the generally accepted accounting principles in China. In this connection, the GOC recalled that the Appellate Body in DS473 and the panel in DS494 asserted that according to Article 2.2.1.1 of the ADA, as long as the records kept by the exporter or producer under investigation correspond – within acceptable limits – in an accurate and reliable manner, to all the actual costs incurred by the particular producer or exporter for the product under consideration, they can be deemed to "*reasonably reflect the costs associated with the production and sale of the product under consideration*" and the investigating authority should use such records to determine the cost of production of the investigated producers.

(119) Fourth, the GOC submitted that the Commission should be consistent and fully examine whether there are so-called market distortions in the representative country. Readily accepting the representative country's data without such evaluation represents "*double standards*". The same applies, in the GOC's view, to evaluating the price and costs of the EU industry.

(120) With regard to the first point on the status of the Report under the EU legislation, the Commission recalled that Article 2(6a)(c) of the basic Regulation does not prescribe a specific format for the reports on significant distortions, neither does that provision define a channel for publication. The Commission recalled that the report is a fact-based technical document used only in the context of trade defence investigations. The report was therefore appropriately issued as a Commission staff working document as it is purely descriptive and does not express any political views, preferences or judgements. That does not affect its content, namely the objective sources of information concerning the existence of significant distortions in the Chinese economy relevant for the purpose of the application of Article 2(6a)(c) of the basic Regulation. As to the remarks on the Report being factually flawed and one-sided, those were addressed in recital (91) above. In response to GOC's claim concerning the violation of the MFN clause, the Commission recalled that, as provided for by Article 2(6a)(c) of the basic Regulation, a country report shall be produced for any country only where the Commission has well-founded indications of the possible existence of significant distortions in a specific country or sector in that country. Upon the entry into force of the new provisions of Article 2(6a) of the basic Regulation in December 2017, the Commission had such indications of significant distortions for China. The Commission also published a report on distortions in Russia in October 2020 ([52]), and, where appropriate, other reports may follow. Furthermore, the Commission recalled that the reports are not mandatory for the application of Article 2(6a). Article 2(6a)(c) describes the conditions for the Commission to issue country reports, and according to Article 2(6a)(d) the complainants are not obliged to use the report nor is the existence of a country report a condition to initiate an investigation under Article 2(6a) following Article 2(6a)(e). According to Article 2(6a)(e), sufficient evidence proving significant distortions in any country brought by complainants fulfilling the criteria of Article 2(6a)(b) is sufficient to initiate the investigation on that basis. Therefore, the rules concerning country-specific significant distortions apply to all countries without any distinction, and irrespective of the existence of a country report. As a result, by definition the rules concerning country distortions do not violate the most favoured nation treatment.

(121) Concerning the second and third arguments on the alleged incompatibility of Article 2(6a) of the basic Regulation with the WTO law, in particular the provisions of Article 2.2. and 2.2.1.1. ADA, as well as the findings in DS473 and DS494, these arguments were already addressed in recitals (94) and (96) above.

(122) With regard to the fourth point requesting the Commission to ascertain that third-country data used in the Commission proceedings are not affected by market distortions, the Commission recalled that, in accordance with Article 2(6a)(a) of the basic Regulation, it proceeds to construct the normal value on the basis of chosen data other than domestic prices and costs in the exporting country only where it establishes that such data is the most appropriate to reflect undistorted prices and costs. In this process, the Commission is bound to use only undistorted data. In that respect, interested parties are invited to comment on proposed sources for the determination of the normal value in the early stages of the investigation. The Commission's ultimate decision as to which undistorted data should be used to calculate the normal value takes full account of those comments. As to the GOC's request for the Commission to evaluate possible distortions in the EU's internal market, the Commission failed to see the relevance of this point in the context of assessing the existence of significant distortions in accordance with Article 2(6a) of the basic Regulation.

(123) Consequently, the Commission rejected the GOC's arguments.

(124) CCCME reiterated its arguments laid out in recitals (89) and (90) above concerning the Report, calling the Commission's argumentation in recital (91) circular. However, CCCME did not adduce any further evidence concerning the Report, except for claiming that the five year plans in China are merely guiding documents expressing policy views for the future. As such, in CCCME's view, the plans are not binding, given also that they are not adopted in the same manner as laws or decrees. Moreover, CCCME pointed out that similar documents can be also found in Europe, including among the Commission's policy documents.

([52]) Commission Staff Working Document SWD(2020) 242 final, 22.10.2020, available at https://trade.ec.europa.eu/doclib/docs/2020/october/tradoc_158997.pdf.

(125) Further, concerning the WTO compatibility of Article 2(6a) of the basic Regulation with WTO law, CCCME submitted that the concept of "significant distortions" included in Article 2(6a) of the Basic Regulation does not appear in any rule of the WTO ADA or the GATT 1994. In particular, the concept of "significant distortions" does not fall within any of the categories provided by Article 2.2 of the WTO ADA. Concerning the use of data from a third country, CCCME submitted that even though according to the Appellate Body in DS473 the use of data from a source outside the exporting country is not prohibited, the Commission seems to ignore the fact that the Appellate Body also emphasized that "*this, however, does not mean that an investigating authority may simply substitute the cost from outside the country of origin for the cost of production in the country of origin*", as well as that "*when relying on any out-of-country information to determine the 'cost of production in the country of origin' under Article 2.2 of the Anti-dumping Agreement, an investigating authority has to ensure that such information is used to arrive at the 'cost of production in the country of origin' and this may require the investigation authority to adapt that information.*" This Commission's approach therefore appears, in CCCME's view, to be inconsistent with the EU's obligation under Article 2.2 of the WTO ADA.

(126) Moreover, CCCME argued that Article 2(6a) of the basic Regulation also appears to violate Article 2.2.1.1 of the WTO ADA insofar as the Commission appears to repeat the same mistakes as in DS473 as its findings and reasoning in the present investigation seems to be very similar to the one in the biodiesel case. The Commission found that the prices of steel, as the main raw material in the wind tower production, are distorted in China, and the prices of steel paid by wind tower producers are exposed to systemic distortions. Thus, according to CCCME, based on the Appellate Body's finding the EU – Biodiesel (Argentina) case, the Commission may also violate Article 2.2.1.1 of the WTO ADA.

(127) In addition, CCCME recalled that the third sub-paragraph of Article 2(6a)(a) of the basic Regulation clearly provides that the assessment on the issue of significant distortions shall be done for each exporter and producer separately, with the only exception of the application of sampling. Consequently, CCCME disagreed with the Commission's statement in recital (102) that "*once the existence of significant distortion is established, the provisions of Article 2(6a) apply, a priori, to all exporting producers in China and concerns all costs relating to their factors of productions*" and required the Commission to improve its practice in this respect.

(128) With respect to CCCME's claim concerning the non-binding character of the Chinese planning documents, the Commission recalled that the Chinese system of planning sets out priorities and prescribes the goals the central and local governments must focus on. Relevant plans exist on all levels of government and cover virtually all economic sectors and the authorities at each administrative level monitor the implementation of the plans by the corresponding lower level of government. As described in detail in the Report, the objectives set by the planning instruments are in fact of binding nature, with the planning system resulting in resources being allocated to sectors designated as strategic or otherwise politically important by the government, rather than being allocated in line with market forces. ([53])

(129) As to CCCME's arguments on compatibility of Article 2(6a) of the basic Regulation with ADA and the DSB findings, these were already addressed in recitals (94) and (96), including the explanation that DS473 did not concern the application of Article 2(6a) of the basic Regulation. Concerning the claim that the concept of "significant distortions" included in Article 2(6a) of the Basic Regulation does not appear in any rule of the WTO ADA or the GATT 1994, the Commission recalled that the basic Regulation, including Article 2(6a), is an act of secondary EU law as provided in Article 288 of the Treaty on the Functioning of the European Union. There is no requirement under EU law that its sources, including secondary law such as regulations, be based on international law or be linked to obligations stemming from international law such as the ADA or China's Accession Protocol to the WTO.

(130) With respect to the claim concerning individual assessment of significant distortions for each exporter, CCCME merely expressed its disagreement with the Commission's position, without bringing new arguments. The Commission therefore confirmed its position stated in recitals (99) and (102) above.

([53]) Report – Chapter 4, p. 41-42, 83.

(131) Chengxi Shipyard reiterated its arguments concerning the incompatibility of Article 2(6a) of the basic Regulation with WTO law described in recital (104) above, pointing out that the Commission response in recitals (94) and (96) is very general and does not explain explicitly explain the legal basis in the WTO Agreements in support of application of Article 2(6a) of the basic Regulation, derogating from the general discipline clearly set out in the WTO agreement and DSB ruling in DS473. Thus, Chengxi Shipyard inferred from the Commission's statement that it justifies the compatibility of Article 2(6a) with the WTO agreements on the ground of the remaining part of Section 15 of China's Protocol of Accession to the WTO, pointing out that absent clear reasoning about why the Commission takes this view, the Commission's disclosure does not meet the legal standards of adequate statement of reasons justifying its decision of applying Article 2(6a) of the basic Regulation.

(132) Moreover, Chengxi Shipyard claimed that it was not proven that the company is subject to significant distortions, mainly for three grounds: *(i)* the company business decisions are not directly influenced by the CCP, a finding which holds despite the Chairman of the Board of Director and the General Director of Chengxi Shipyard being CCP members and holding the functions of the Secretary and Deputy Secretary of the Party Committee at the company level, *(ii)* state shareholding, or state representatives present in the Board of Directors, do not indicate that the company's business decisions are not responsive to the market demand and supply signal, or its operations are not market-oriented, *(iii)* existence of state intervention does not equal to significant distortion and the Commission failed to demonstrate that the alleged cross-cutting interventions by the GOC lead to significant distortions to the factors of production and consequently affect the cost and price of Chengxi Shipyard's operation.

(133) As to Chengxi Shipyard arguments on WTO compatibility of Article 2(6a) of the basic Regulation, the Commission reiterates its view that the provisions of Article 2(6a) are fully consistent with the Union's WTO obligations. The reasons for the Commission's position are clearly indicated in recital (94) above. Similarly, the Commission stated already in recital (106) that in anti-dumping proceedings concerning products from China, the parts of Section 15 of China's Accession Protocol to the WTO that have not expired continue to apply when determining normal value, both with respect to the market economy standard and with respect to the use of a methodology that is not based on a strict comparison with Chinese prices or costs. Chengxi Shipyard appears to conflate the obligation to state the reasons for the substantive application of Article 2(6a) of the basic Regulation with a purported obligation to explain the WTO legal basis supporting the application of Article 2(6a) of the basic Regulation, which is not relevant in addition to being incorrect (see also recital (129) above). Consequently, Chengxi Shipyard's argument that the Commission's disclosure does not meet the legal standards of adequate statement of reasons was rejected.

(134) Chengxi Shipyard's claims on lack of evidence that the company is subject to significant distortions were already addressed in detail in recital (108) above. In addition, the Commission recalled that the existence of significant distortions giving rise to the application of Article 2(6a) of the basic Regulation is not linked to the existence of one specific factual element or information regarding a specific market covering the product concerned. In that respect, as evidenced in recitals (52) to (79), the Commission has established in this investigation the existence of significant distortions in the wind tower industry and related inputs sectors. The use of domestic costs in the construction of the normal value is allowed by Article 2(6a)(a) only if these costs are positively established not to be distorted in the course of the investigation. In that respect, however, Chengxi Shipyard did not submit any positive evidence of its factors of production being undistorted. Therefore, Chengxi Shipyard's claim was rejected.

(135) In view of the above, the evidence available showed that prices or costs of the product concerned, including the costs of raw materials, energy and labour, were not the result of free market forces because they were 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 discussed in the following section.

3.2.2. *Representative country*

3.2.2.1. General remarks

(136) 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 the PRC. For this purpose, the Commission used countries with a gross national income per capita ('GNI p.c.') similar to the PRC on the basis of the country classification database of the World Bank ([54]);

— Production of the product concerned in that country;

— 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.

(137) As explained in recitals (50) and (51), 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 and also addressed the comments received by the parties on these elements and on the relevant sources. In the Second Note, the Commission informed interested parties of its intention to consider Mexico 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.

3.2.2.2. A level of economic development similar to the PRC

(138) In the First Note, the Commission identified Brazil, Malaysia, Mexico, Turkey, and South Africa as countries with a similar level of economic development as the PRC, and in which the production of the product concerned was known to take place. All those countries were classified by the World Bank as 'upper-middle income' countries on a gross national income ('GNI') basis, similarly to the PRC.

(139) In its comments on the First Note, Chengxi Shipyard claimed that GNI p.c. was not an appropriate indicator to assess the level of economic development of a country. Instead, the Commission should have had based its findings on the gross domestic product per capita in purchasing power parity ('GDP p.c. in PPP'). In this respect, the company submitted that India would be a more suitable representative country since in terms of GDP p.c. in PPP in 2019, India was closer to the PRC than Turkey, the country proposed in the complaint. In addition, India was more similar to the PRC when comparing GDP p.c. in PPP per employed person thus taking into account the productivity in the three countries. Vestas also claimed that India was a suitable representative country at the same level of development as the PRC.

(140) In the Second Note, the Commission noted in this respect that the basic Regulation established that the representative country should have a similar level of development as the exporting country. It, however, did not contain any further requirement for the selection of the appropriate representative country. The Commission decided that the appropriate source for this information was the World Bank database. This database allowed the Commission to have a sufficient number of potentially appropriate representative countries with a similar level of development to choose the most suitable source of undistorted costs and prices. Furthermore, it is a ranking based on an objective criterion and used consistently in all anti-dumping cases where the determination of the normal value is based on the provisions of Article 2(6a) of the basic Regulation, which ensures uniformity and equal treatment throughout different proceedings.

(141) Furthermore, GNI is used by the World Bank in its classification of economies into income groupings as it follows the methodology of the operational lending policy of the World Bank. Since it recognises all income that goes into a national economy, regardless of its origin, it adequately reflects the total economic activity of a country. In any event, Chengxi Shipyard did not elaborate as to how and why GDP p.c. in PPP rather than GNI p.c. would be more appropriate to reflect the similar level of development than the source used by the Commission, nor did it substantiate or submit evidence for its claim in any other way.

([54]) World Bank Open Data – Upper Middle Income, available at https://data.worldbank.org/income-level/upper-middle-income (last viewed 12 April 2021).

(142) Since India was not included in the same category of the World Bank classification during the investigation period, it could not be considered to meet the criterion laid down in Article 2(6a)(a) first indent of the basic Regulation. Thus, the Commission rejected the claim.

(143) In its comments on the Second Note, Chengxi Shipyard reiterated its views that GNI p.c. was not a suitable indicator of economic development. First, the company argued that GNI included income from foreign activities, which were irrelevant for the assessment of economic development. Second, the company submitted that an indicator, whether GNI or GDP, expressed in USD for the purpose of comparison of the various countries was unsuitable for the assessment of the economic development. Such assessment would be distorted by the price levels in countries with otherwise similar volume of output, as well as by the fluctuation of exchange rates. The company also acknowledged that the effects of changes in price levels (inflation) and exchange rate fluctuations were partially mitigated by the Atlas method used by the World Bank when producing the Country and Lending Groups classification. Finally, the company submitted that taking into account the above-mentioned comments, India was more similar to the PRC than Turkey in terms of economic development.

(144) In its comments on final disclosure, Chengxi Shipyard reiterated its view that GDP p.c. in PPP would be a suitable indicator to assess the economic similarity between countries in terms of economic development level and thus India could be an appropriate representative country.

(145) The Commission explained that while the representative country should have a level of development similar to the exporting country, there was no obligation to select a representative country that was the closest to the exporting country in terms of economic development whether measured in GNI p.c. or GDP p.c. in PPP. In addition, the Commission noted that both GNI p.c. and GDP p.c. in PPP, as well as several others, are recognised indicators for measuring the economic development of countries. In this respect, the Commission underlined that the country classification produced by the World Bank provided a pool of potential representative countries, which was regularly updated and created on the basis of objective criteria and a consistent methodology. Finally, the Commission reiterated that the World Bank's country classification was an appropriate source of information ensuring uniformity and equal treatment throughout different proceedings. Since India was not classified as an upper-middle income country during the investigation period and following the above considerations, the Commission rejected the claim by Chengxi Shipyard.

(146) In the comments on the Second Note, CCCME and Suzhou Titan argued that India should be considered as a potential representative country although it was not classified as an upper-middle income country by the World Bank. In this respect, the parties referred to the expiry review of anti-dumping measures imposed on imports of sulphanilic acid originating in the PRC where the Commission used India as a representative country. CCCME reiterated those claims in its comments and hearing after the provisional stage.

(147) The Commission noted that in the quoted expiry review, the investigation established that sulphanilic acid was only produced in four economies around the world (India, the PRC, the Union, and the United States of America). Since there was no production of sulphanilic acid in any upper-middle income country, the Commission decided to use India to source corresponding undistorted prices or benchmarks in accordance with Article 2(6a)(a) of the basic Regulation. The situation was different in the present case. The Commission was able to identify a sufficient number of producers in countries with a similar level of economic development as the PRC. Therefore, there was no need to search beyond the group of upper-middle income countries to source undistorted prices or benchmarks. Consequently, the Commission rejected the claim.

3.2.2.3. Production of the product under investigation

(148) In the complaint, the complainant identified production of the product under investigation in Turkey.

(149) The Commission analysed other countries at the same level of development as the PRC and identified SWT producers in four more countries, namely in Brazil, Malaysia, Mexico, and South Africa.

(150) In the First Note, the Commission informed the interested parties of those findings.

(151) In its comments on the First Note, Chengxi Shipyard identified five SWT producers in India. As explained in recitals (140) to (142) and (145), India was found not to be at the same level of development as the PRC and thus not suitable as a representative country. Therefore, the Commission did not analyse either the activities of the alleged SWT producers in India or the availability and quality of their financial information.

3.2.2.4. Availability of relevant public data in the representative country

(152) The Commission examined the availability and quality of the relevant public data in the five potential representative countries where production of the product under investigation was identified. This analysis focused on the availability and quality of financial information and on the availability and quality of data on the factors of production.

(153) With regard to the financial information used to determine the SG&A and profit for the construction of the normal value, the Commission carried out an analysis of the available information. In particular, it examined whether the financial information was of a recent period, whether the financial information was audited or not, whether it was available in individual or consolidated form, and whether the companies were profitable.

(154) With regard to the data on the factors of production, the Commission examined the availability of the import data, the share of imports originating in the PRC and in countries not member to the WTO, and the existence of distortions that could have affected the price of the factors of production. The analysis focused on the most important factors of production.

(a) Financial information

(155) In the First Note, the Commission found that the potentially suitable financial information of the SWT producers was publicly available only in Mexico, South Africa, and Turkey. The Commission further found that the financial information of all identified SWT producers in Brazil and Malaysia and some of the SWT producers in Turkey was either not available for the investigation period, i.e. was outdated, or the companies were lossmaking. In this respect, the Commission further analysed the availability and quality of the financial information of the SWT producers in Mexico, South Africa, and Turkey taking into account the comments on the First Note by the interested parties listed in recital (50).

(156) In its comments on the First Note, CCCME and Suzhou Titan claimed that the Commission should not exclude data of a lossmaking company if such situation is reasonable and undistorted. Alternatively, in a representative country where financial statements of several companies were available, the Commission should take into account both profitable and lossmaking companies when determining the average SG&A and profit in the representative country.

(157) The Commission noted that the financial data of all lossmaking producers identified in the potential representative countries in the First Note were also outdated. Thus, the Commission considered that the claim became moot. In any event, the Commission noted that lossmaking companies did not show a "reasonable" level of profit in accordance with Article 2(6a)(a), last subparagraph of the basic Regulation. Therefore, this claim was also dismissed on a substantive basis.

(158) In its comments on the First Note, Chengxi Shipyard found the financial data of the Mexican producer Arcosa Industries de México, S. de R.L. de C.V. and of the South African producer GRI Wind Steel South Africa (Pty.) Ltd. unsuitable for the determination of SG&A and profit because the data was only available in consolidated financial statements. According to Chengxi Shipyard, this issue did not concern the producers in Turkey and India.

(159) The Commission first noted that India was not found to be a suitable potential representative country. In addition, the fact that the financial data of certain producers was available in a consolidated form did not *per se* disqualify this data from being used as a source of undistorted SG&A and profit. On the contrary, the available financial statements must be analysed on a case-by-case basis.

(160) In this respect, in the Second Note the Commission explained that it identified two producers of wind towers in Mexico. The individual local financial information of Speco Wind Power, S.A. de C.V. ('Speco') was obtained from Global Financials by Dun&Bradstreet ('D&B') ([55]) and provided to the interested parties in Annex III of the First Note. The company produced wind towers solely and was profitable in 2019. The local financial information enabled the identification not only of the SG&A expenses but also of financial expenses, and other expenses and income. The consolidated financial statements of Arcosa Industries de México, S. de R.L. de C.V. ('Arcosa') were found online ([56]). The consolidated group was active in three business areas: construction, energy equipment, and transportation. Under the umbrella of the Energy Equipment Group ('EEG'), the consolidated group produced and sold wind towers, utility structures, and storage and distribution tanks ([57]). The EEG employed 55 % of the group's employees ([58]) and generated 48 % of the group's non-consolidated revenue and cost ([59]). The revenue generated from sales of wind towers and utility structures represents 75 % of EEG's revenue ([60]). The SG&A (including depreciation and amortisation) incurred by the EEG and at consolidated level in 2019 amounted to around 13 % (expressed as a percentage of the costs of sales) ([61]). Both the EEG and the consolidated group generated a profit at the level of around 10 % ([62]). The above analysis showed that the segment covering predominantly the production and sales of SWT considerably contributed to the overall activities of the company and achieved a performance that was similar to the performance of the entire company. These figures were thus considered reasonable within the meaning of Article 2(6a)(a), last subparagraph of the basic Regulation.

(161) In the Second Note, the Commission further noted that in South Africa, it identified one producer of wind towers, the company GRI Wind Steel South Africa (Pty.) Ltd. The financial statements of this company were available in a consolidated and integrated form at the level of its shareholder Hulisani ([63]). The annual integrated report, however, did not provide sufficient details on the wind towers producer within the group. The report merely stated that the SWT producer was profitable in the financial year March 2019 – February 2020 ([64]). Thus, the Commission was not able to assess its performance and contribution to the consolidated financial results. Therefore, the Commission found that the consolidated financial statements of Hulisani were not suitable for the determination of SG&A and profit in the present investigation.

(162) Finally, in the Second Note, the Commission analysed the six SWT producers identified in Turkey. Only two producers had their financial data publicly available. The individual local financial statements of ATES Çelik Insaat Taahhut Proje Muhendislik Sanayi ve Ticaret A.Ş. were available in Global Financials by D&B and provided to the interested parties in Annex III of the First Note. The company was profitable in 2019. The local statements enabled the identification not only of the SG&A expenses but also of financial income and expense. The individual local financial statements of Çimtaş Çelik İmalat Montaj ve Tesisat A.Ş. ('Çimtaş Çelik') available in Global Financials by D&B were outdated. Nevertheless, the consolidated financial statements at the level of its shareholder ENKA were available online ([65]) as audited and/or non-audited for all quarters covering the investigation period. Yet, it was noted that the consolidated financial statements did not provide sufficient details about the performance of the SWT producer, nor its contribution to the performance of the consolidated group. Çimtaş Çelik belonged to the Construction segment ([66]). Although the Construction segment contributed to total consolidated revenue with almost 60 % ([67]), it was unclear how the performance of this segment reflected the performance of the SWT producer. The financial statements did not provide any details on the composition of the segment. The nature of activities covered by that segment may have been quite diverse. In fact, the SWT producer was only one of 39

([55]) Available at https://www.dnb.com/ie/products/finance-credit-risk/global-financials.html (last viewed 16 April 2021).
([56]) Annual report 2019 available at https://s2.q4cdn.com/158938184/files/doc_financials/2019/ar/NC10009566-ARCOSA-INC._10K_E-bookproof_2020_V1-(002).pdf (last viewed 16 April 2021).
([57]) Idem, p. 15.
([58]) Idem, p. 19.
([59]) Idem, p. 43 and 44.
([60]) Idem, p. 47.
([61]) Idem, p. 47 and 60.
([62]) Idem, p. 47 and 60.
([63]) Available at https://hulisani.co.za/wp-content/uploads/2020/06/Hulisani-Integrated-Report-2020.pdf (last viewed 6 March 2021).
([64]) Idem, p. 70.
([65]) Available at https://www.enka.com/investor-relations/financial-data/ (last viewed 6 March 2021).
([66]) Consolidated financial statements for the year ended 31 December 2019 (p. 21) available at https://www.enka.com/investor-relations/financial-data/ (last viewed 6 March 2021).
([67]) Idem p. 45.

consolidated group companies ([68]) classified under the Construction segment. Therefore, the Commission found that the consolidated financial statements of ENKA were not suitable for the determination of SG&A and profit in the present investigation.

(163) In its comments on the Second Note, Chengxi Shipyard claimed that the financial information of the two SWT producers in Mexico contained serious shortcomings. The company argued that even if the EEG segment of Arcosa generated 48 % of the consolidated revenue, much less than a half of it originated in the sales of SWT since the EEG also included the production and sales of utility structures. Moreover, the company pointed out that Arcosa produced SWT not only in Mexico but also in the United States of America ('US'), and that it was not possible to determine the share of revenue and SG&A that could be attributed to sales on the domestic, Mexican market. With regard to Speco, the company submitted that it was not possible to determine the share of revenue and SG&A generated from sales on the Mexican market.

(164) The Commission noted that the company did not provide any evidence supporting its claims concerning the contribution of SWT sales to the revenue generated by the EEG segment. The Commission acknowledged that Arcosa produced SWT in both Mexico and the US. Nevertheless, since the production capacity (measured by area) located in Mexico was considerable (40 % ([69])), the Commission found that the fact that part of the SWT production was carried out in the US did not render the financial information unsuitable. The Commission considered that it was appropriate to use the information on the total SG&A and revenue of both Mexican SWT producers since the publicly available financial information would rarely, if ever, provide a further breakdown of revenue and SG&A by market (domestic and export), in particular under operating segments reporting. In any event, the company did not propose any suitable alternative SWT producer in Mexico to determine SG&A and profit. Consequently, the Commission rejected the claims of Chengxi Shipyard and confirmed the use of financial information of both Mexican SWT producers for the determination of SG&A and profit.

(165) Following final disclosure, Chengxi Shipyard reiterated that the financial information of Arcosa was not an appropriate source of undistorted SG&A and profit. The company argued that, in particular, the location of Arcosa's SWT production in Mexico and in the US, and the fact that the EEG segment included also the production of utility structures and distribution tanks rendered the information unsuitable. In addition, the company noted that the increase in Arcosa's revenue in 2019 was driven not only by the increased SWT production but also by other factors. Finally, the company pointed out that Arcosa's financial information for 2020 was already available at the time of final disclosure.

(166) As set out in recital (160) and (164), the Commission concluded that, although part of the SWT production was carried out in another country than the representative country, it was still appropriate to use the company's data. In the absence of new arguments, the Commission confirmed its rejection of this claim. The Commission also confirmed that because of the high share of the SWT and utility structures sub-segment in the EEG group's revenue, the financial results of that group were representative of the SWT production, since the increase in revenue was partially driven by the higher production volumes of SWT. Finally, the Commission found that, in view of the governmental measures that have been leading to a slowdown in new wind power capacity installations in Mexico, as discussed in recitals (196) to (199), it was more prudent to base the undistorted SG&A and profit on financial statements for 2019 only.

(167) Following final disclosure, Suzhou Titan argued that the financial information of Arcosa was not a suitable source of undistorted SG&A and profit due to Arcosa's SWT production outside Mexico. In addition, the company pointed out that the revenue of the Mexican subsidiary originated to a large extent from intra-group operations and the profitability of that subsidiary was only 2,4 %.

([68]) Idem, p. 20-21.

([69]) Annual report 2019 (p. 14) available at https://s2.q4cdn.com/158938184/files/doc_financials/2019/ar/NC10009566-ARCOSA-INC._10K_E-bookproof_2020_V1-(002).pdf (last viewed 6 March 2021).

(168) In addition to its conclusion on the SWT production of Arcosa outside of Mexico, as set out in recital (166), the Commission found that because of the high share of intra-group revenue on total revenue of the Mexican subsidiary, it was more appropriate to use Arcosa's consolidated and combined financial statements where the intra-group transactions were eliminated ([70]). It must also be noted that, in this case, the level of profitability calculated by Suzhou Titan is irrelevant. The company expressed the operating profit as a percentage of the revenues while for the construction of the normal value, it must be expressed as a percentage of the cost of goods sold, the value of which could not be determined from the financial information of Arcosa with regard to its operations in Mexico.

(169) Based on the reasons described in recitals (166) and (168), the Commission rejected the claims of Chengxi Shipyard and Suzhou Titan presented in recitals (165) and (167).

(b) Distortions concerning factors of production

(170) In the First Note, the Commission concluded that according to the OECD Inventory on export restrictions on Industrial Raw Materials ([71]), exports of steel scrap (HS codes 7204 41 and 7204 49) were subject to a licensing requirement in South Africa and to a licensing requirement and an export tax in Malaysia until 2017 (most recent information available).

(171) In this respect, in the Second Note the Commission excluded South Africa based on the fact that the financial information of the SWT producer in South Africa was not suitable for the determination of the SG&A and profit as explained in recital (161). Moreover, the Commission found that the publicly available financial information of the SWT producer in Malaysia was significantly outdated. Since the Commission did not obtain any additional information on the production in Malaysia, the country was also excluded from further considerations. Therefore, the export restrictions identified in the First Note were found irrelevant in the present case.

(172) In their comments on the First Note, the interested parties claimed that neither Mexico, nor South Africa or Turkey were suitable representative countries because of various measures existing in those countries that allegedly distorted the market of the factors of production and/or the renewable energies market. Those claims are explained in detail in recitals (173), (179), (181), (184) and (189).

(173) In their comments on the First Note, CCME, Chengxi Shipyard, and Suzhou Titan claimed that South Africa was not a suitable representative country due to the safeguard measures on steel put in place by the country that might have distorted the import prices of steel products used in the SWT production. In addition, Chengxi Shipyard submitted that such safeguard measures were also in force in Mexico and Turkey, while in case of Turkey, the party actually only pointed to the suspension of concessions in relation to the Union in reaction to the steel safeguard measures introduced by the Union.

(174) In the Second Note, the Commission noted that South Africa was already found not suitable based on the lack of publicly available financial information of any SWT producers. Thus, the Commission considered the claims concerning South Africa moot.

(175) With regard to Turkey, the Commission noted that the party did not provide any evidence supporting its claim concerning the existence of steel safeguard measures. In fact, the Commission found that Turkey initiated a steel safeguard investigation in April 2018 ([72]) but terminated the investigation without imposing measures in May 2019 ([73]). In respect of the suspension of concessions, the party did not provide any evidence as to why and to what extent the additional tariff on imports of certain steel products originating in the Union would distort the Turkish steel market and render the import statistics an inappropriate source of undistorted benchmarks.

([70]) See Notes to Consolidated and Combined Financial Statements (Note 1, p. 65) of Annual report 2019, available at https://s2.q4cdn.com/158938184/files/doc_financials/2019/ar/NC10009566-ARCOSA-INC._10K_E-bookproof_2020_V1-(002).pdf (last viewed 4 October 2021).

([71]) Available at https://qdd.oecd.org/subject.aspx?Subject=ExportRestrictions_IndustrialRawMaterials (last viewed 30 November 2020).

([72]) Available at https://docs.wto.org/dol2fe/Pages/FE_Search/FE_S_S009-DP.aspx?language=E&CatalogueIdList=247074,246544,245272,244985,243640,241597,240044,239544,238039,237441&CurrentCatalogueIdIndex=3&FullTextHash=&HasEnglishRecord=True&HasFrenchRecord=True&HasSpanishRecord=True (last viewed 16 March 2021).

([73]) Available in the Official Gazette of 7 May 2019 (p. 17) at https://www.resmigazete.gov.tr/eskiler/2019/05/20190507.pdf (last viewed 16 March 2021).

(176) With regard to Mexico, the Commission noted in the Second Note that Chengxi Shipyard based its allegations on an article published by Metal Bulletin stating that according to a decree of 25 March 2019, Mexico "reinstated a 15 % safeguard duty on imports of certain steel products from countries with which it does not have free trade agreements". The Commission found than on 25 March 2019, Mexico published a decree amending the import tariffs laid down by the General Import and Export Tax Law ([74]). By this decree, Mexico increased the applied MFN duty on certain steel products, including steel plates (HS codes 7208 51 and 7208 52) from 0 % to 15 % for a limited duration of 180 days. The increase of the applied MFN duty was, according to the decree, based on Article II of General Agreement on Tariffs and Trade ('GATT').

(177) In addition, the tariffs were not imposed following a safeguard investigation and did not exceed the level of the bound tariffs of 35 %, to which Mexico committed under the WTO rules ([75]). Therefore, the Commission considered that the existence of these measures did not justify excluding Mexico from the analysis of potential representative countries.

(178) Consequently, the allegations concerning the existence of steel safeguards in Mexico and Turkey were rejected.

(179) In their comments on the First Note, CCME and Suzhou Titan considered that Mexico was not a suitable representative country since it imposed anti-dumping measures on the imports of SWT originating in China.

(180) In the Second Note, the Commission noted that the parties did not submit specific evidence of how and to what extent the imposition of anti-dumping measures on the product under investigation by Mexico would affect its representativeness and why it would no longer have to be considered appropriate because of this circumstance. Therefore, the Commission considered these arguments unsubstantiated and dismissed them.

(181) In the comments on the First Note, Chengxi Shipyard claimed that the electricity markets in Mexico and South Africa were distorted since they were dominated by State-owned enterprises. On the other hand, the interested party claimed that the electricity markets in Turkey and India did not suffer from such distortions. The party provided evidence showing that in South Africa 95 % of the electricity was supplied by the State-owned company ESKOM.

(182) In the Second Note, the Commission examined the claim and found that the Mexican State-owned electricity producer Comisión Federal de Electricidad ('CFE') participated on the total electricity generation in Mexico with less than 80 % ([76]). According to the information provided by Chengxi Shipyard, the share of the state-owned enterprises on the electricity generation in India was slightly more than 80 %, i.e. similar to the situation in Mexico. According to the interested party, the electricity market in India was sufficiently liberalised. Furthermore, the Commission found that the state-owned electricity generator EÜAŞ owned slightly more than 20 % of the generation capacity in Turkey ([77]). The Commission considered that the mere fact that a market is dominated by State-owned enterprises without any further indication and evidence that the actual pricing of the underlying input did not follow market forces was not *per se* sufficient to exclude this country as not representative. In these cases, there must be evidence on file that the actual pricing of that input was potentially affected by other considerations such as preferential policies for certain industries or other substantial government intervention such that it is not the result of free market forces. In any event, the Commission considered the fact that electricity represented only a small share (approximately 1 %) on the total cost of SWT production. Therefore, even if there was evidence that the pricing of this input was distorted this would not *per se* constitute a reason for rejecting Mexico (or any other country) as a potential representative country altogether in the present case. At most, the potential distortions of the electricity sector in Mexico would be an issue to be examined in the context of using another benchmark for such a factor.

([74]) Available in the Official Journal of the Federation at http://dof.gob.mx/nota_detalle.php?codigo=5555007&fecha=25/03/2019 (last viewed 16 March 2021).

([75]) The information on the bound tariffs can be retrieved via the WTO Tariff Download Facility at http://tariffdata.wto.org/ReportersAndProducts.aspx (last viewed 16 March 2021).

([76]) CFE Annual report 2019 (p. 82) at https://www.cfe.mx/finanzas/reportes-financieros/Reportes%20Anuales%20Documentos/Informe%20Anual%202019.pdf?csf=1&e=t8GHzG (last viewed 16 March 2021).

([77]) EÜAŞ Annual report 2019 (p. 18) at https://www.euas.gov.tr/tr-TR/yillik-raporlar (last viewed 16 March 2021).

(183) Therefore, the Commission rejected the claims concerning Mexico and Turkey, while it found South Africa already unsuitable based on the lack of financial information available.

(184) In its comments on the First Note, Vestas argued that Turkey imposed a local content requirement ('LCR') on renewable energy projects and/or guaranteed higher feed-in tariffs subject to the required local content.

(185) In the Second Note, the Commission examined the allegations concerning the LCR in Turkey given its relevance as a restriction for the most important factor of production, i.e. the steel plates, as well as for the other factors of production, and ultimately also for the profitability of the Turkish SWT producers.

(186) The Commission found that the LCR translated into the conditions of the Turkish wind energy market in a twofold way:

(a) Wind energy generators were guaranteed feed-in tariffs. Investors that met the LCR were entitled to a higher feed-in tariff ([78]). The tariff applicable during the investigation period was 7,00 USD cents/kWh. The tariff could be increased by 0,60 USD cent/kWh in case that the steel wind tower was produced locally. In total, the feed-in tariff could be topped up to 11,00 USD cents/kWh if not only the SWT but also the blades, generator and electronics, and all mechanical equipment were produced locally;

(b) Between 2017 and the end of the investigation period, the Turkish Government initiated three tenders for wind farms under a new investment model for renewables, so called Renewable Energy Designated Areas ('YEKA') ([79]). The bidders awarded a contract under the YEKA tenders were obliged to meet LCR concerning the origin of inputs used in the production of turbines, SWT and blades, as well as with regard to the nationality of the employees.

(187) In the Second Note, the Commission considered that the LCR applicable to SWT could only be met by sourcing steel plates, the most important raw material, domestically. Thus, the import prices of steel plates may not have reflected the prices of those types of steel plates that were actually used in the production of SWT. In addition, the obligation to source on the domestic market reduced the competition on the market of inputs for SWT production, which may have led to distorted domestic prices of those inputs. Subsequently, prices of inputs were most likely higher due to a situation of reduced competition and were likely to distort the cost of production and therefore also the SGA and profitability of the SWT producers in Turkey.

(188) Consequently, the Commission considered that the wind energy market including the production of wind towers might have been distorted by the application of the LCR in Turkey and thus not suitable for the determination of undistorted prices and costs, in particular for the most important input.

(189) In the comments on the First Note, Vestas also claimed that Turkey was not an appropriate representative country due to a limited availability of certain raw materials (heavy plates) that may have led to higher prices of those materials and due to absence of capacity for production of large SWT.

(190) Since the party did not provide any evidence supporting those claims and the Commission already concluded that the Turkish market might have been distorted due to the LCR, the Commission did not make any conclusions concerning those claims.

(191) In the comments on the Second Note, CCCME and Suzhou Titan argued that Turkey should remain a potential representative country. In particular, they claimed that only a small fraction of steel plates imported under a specific goods code was intended for SWT production and thus was potentially distorted. The parties submitted that to establish whether the LCR affected the import price, the Commission should compare the import price of steel plates in Turkey with their import price in other countries. CCCME reiterated in its comments and hearing after the provisional stage that Turkey should continue to be considered a potential representative party.

([78]) Available at https://tyrkiet.um.dk/~/media/tyrkiet/pdf%20files/wind%20energy%20in%20turkey%202020.pdf?la=en (last viewed 16 March 2021).

([79]) See p. 18-20, available at https://www.shura.org.tr/wp-content/uploads/2019/01/SHURA_Opportunities-to-strengthen-the-YEKA-auction-model-for-enhancing-the-regulatory-framework-of-Turkeys-power-system.pdf (last viewed 16 March 2021).

(192) The Commission noted that the import price of steel plates in other countries was not representative of the price that would prevail in Turkey under market conditions unaffected by the LCR. Furthermore, the LCR did not only affect the price of steel plates for SWT production. The LCR prevented competition from imported steel plates for SWT production. Such market situation might have shaped production decisions of steel plates' producers thus influencing the price of steel plates for other uses too. In addition, the SG&A and profitability of Turkish SWT producers was also potentially distorted since the LCR did not only concern the inputs but also labour. Consequently, the Commission rejected the claim.

(193) In addition to the above comments on trade restrictions by interested parties, in the Second Note, the Commission examined the existence of trade restrictions in Mexico concerning the inputs used in the SWT production. For this purpose, the Commission consulted the OECD Inventory on export restrictions on Industrial Raw Materials ([80]) and the Market Access Map repository ([81]). No trade restrictions imposed by Mexico on the main inputs were found.

(194) In the comments on the Second Note, CCCME and Suzhou Titan argued that the import price of steel plates in Mexico was significantly distorted due to the imposition of a 15 % import duty on March 2019. CCCME repeated this claim in its hearing and comments after the provisional stage.

(195) The Commission examined the claim. As explained in recitals (176) and (177), the Commission assessed the increase of the import duty applicable to steel plates in the Second Note and found that Mexico increased the applicable MFN duty from 0 % to a level (15 %) that did not exceed the bound MFN duty, to which Mexico committed in the WTO. Therefore, the application of an import duty could not be considered a distortion or a violation of Mexico's obligations in the present case. Therefore, the Commission rejected the claim.

(196) In the comments on the Second Note, Chengxi Shipyard argued that Mexico was not a suitable representative country because its market of renewable energy was significantly distorted. In this respect, the party referred to the following measures adopted by the Mexican government:

— The fourth renewable energy auction was first postponed (December 2018) and later cancelled (February 2019);

— In October 2019, clean energy certificates were extended to generators of renewable energy that started their operation before August 2014, which went against the goal to encourage new investments into renewable energy;

— CFE, a State-owned electricity generator and owner of the transmission grid, increased transmission fees for the generators of renewable energy in June 2020;

— Centro Nacional de Control de Energía, a public body charged with operational control of the transmission network and the wholesale electricity market, put on hold testing and connecting to the grid of new wind and solar power projects in April 2020;

— The Ministry of Energy in Mexico published a resolution giving the government more control over who could generate power, where those facilities could be located and how much electricity they could produce.

(197) The Commission examined the claim. First, it must be noted that the regulation of a certain sector of economy through laws and regulations does not necessarily constitute a distortion of the market. In the present case, the interested party did not provide any evidence as to why, how and to what extent the governmental policies listed in recital (196) affected the (import) prices of the factors of production used in SWT manufacturing, as well as the SG&A and profit of the SWT producers in Mexico during the investigation period. It is likely that some of the measures may have discouraged (higher transmission tariffs, suspension of testing and connecting to the grid of new renewable energy projects) or even prevented (cancellation of the fourth renewable energy auction) future investments and therefore, indirectly affected the profitability of the Mexican SWT producers in a period following the investigation period. Nevertheless, the Commission considered that the restrictions, if ever, only took full effect

([80]) Available at https://qdd.oecd.org/subject.aspx?Subject=ExportRestrictions_IndustrialRawMaterials (last viewed 16 March 2021).
([81]) Available at https://www.macmap.org/en/query/regulatory-requirement (last viewed 16 March 2021).

after the investigation period. In this respect, Mexico's new wind power installations achieved a record high with 1,6 GW of additional capacity in 2019 ([82]). Although the cancellation of the fourth auction stopped future investments into the wind energy sector, the Commission considered that the performance of the Mexican SWT producers was furthered by construction of wind parks commissioned under the third renewable energy auction, which envisaged that the new projects would become operational between January 2020 and January 2022 ([83]). In addition, in 2020, Mexico installed a new wind power capacity of approximately 0,6 GW ([84]). It was a performance similar to 2018 (0,7 GW of additional wind power capacity ([85])), a year that was not affected by uncertainty resulting from the change in governmental policies. Consequently, the Commission rejected the claim.

(198) Following final disclosure, Chengxi Shipyard recalled its submission on the Second Note, in which it outlined a number of governmental measures enacted in Mexico that allegedly distorted the renewable energy market. Furthermore, the company pointed to data on new wind power capacity installed in Mexico in 2018 – 2020 and predictions for 2021 – 2022 published by International Energy Agency ([86]), which show a decline in new installations after 2019. Lastly, the company claimed that the Commission did not recognise the chilling effect of these governmental measures.

(199) The Commission reiterated its findings described in recital (197). The Commission did not doubt that some of the measures may have discouraged or prevented new investments into renewable energy generation, including wind towers, after the investigation period. Nevertheless, to determine the undistorted SG&A expenses and the benchmark for undistorted profit, the Commission used the 2019 financial information of two SWT producers in Mexico. The Commission considered that this information was not yet affected by the governmental measures since most of the measures were only implemented in 2020. In addition, the company did not provide any evidence as to how and to what extent the governmental measures in question influenced the undistorted costs and benchmarks of the factors of production. Finally, any developments in Mexico after the investigation period were irrelevant for the selection of the representative country. Consequently, the Commission confirmed the rejection of this claim.

#### 3.2.2.5. Level of social and environmental protection

(200) Having established that Mexico was the only available 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.

#### 3.2.2.6. Conclusion

(201) In view of the above analysis, Mexico 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.

(202) Following final disclosure, Chengxi Shipyard continued arguing in line with their comments described in recitals (144) and (198) that India was the only suitable representative country.

(203) In addition to the fact that India was not classified as upper-middle income country by the World Bank, the Commission considered that the company failed to analyse the availability and quality of public data in India. For example, the Commission found that none of the SWT producers in India listed by Chengxi Shipyard in its comments on the First Note (see recital (151)) had publicly available financial statements. Moreover, India, similarly to Turkey, introduced LCR for wind energy projects in 2019 ([87]), resulting in possible distortions in the production of SWT.

([82]) Available at https://www.iea.org/reports/renewables-2020/wind (last viewed 1 June 2021).
([83]) See p. 10, available at http://aures2project.eu/wp-content/uploads/2019/12/AURES_II_case_study_ Mexico.pdf (last viewed 1 June 2021).
([84]) Available at https://www.iea.org/reports/renewables-2020/wind (last viewed 1 June 2021). Compare to https://gwec.net/north-and-latin-america-increased-wind-power-installations-by-62-in-2020/ (last viewed 1 June 2021).
([85]) Available at https://www.iea.org/reports/renewables-2020/wind (last viewed 1 June 2021).
([86]) Available at https://www.iea.org/reports/renewables-2020/wind (last viewed 6 October 2021).
([87]) Available at https://www.sciencedirect.com/science/article/pii/S2211467X2030122X (last viewed 4 October 2021).

3.2.2.7. Sources used to establish undistorted costs

(204) In the First Note, the Commission listed the factors of production such as materials, energy and labour used in the production of the product concerned 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.

(205) In their comments on the First Note, CCCME and Suzhou Titan submitted that the Commission should be open to use other publicly available sources of data, such as the domestic sales price in a third country or other international prices. In this respect, Chengxi Shipyard argued that the Commission should use Chinese import statistics as prices of third country suppliers were less likely to be distorted by the policies of the GOC. If not, import statistics from the national customs authorities of the representative country should be used, as, according to the party, they were more reliable then information form a third party processor.

(206) In the Second Note, the Commission noted that it is open to use other sources of undistorted prices where the import statistics could not be used as a reliable source of benchmarks. Since the parties did not provide any reasons as to why the Commission should deviate from its practice to use the import statistics provided by Global Trade Atlas ('GTA'), the claim was rejected.

(207) With regard to the claim that the Commission should use import prices into China, the Commission considered in the Second Note that if the significant distortions on the domestic market of the PRC within the meaning of point (b) of Article 2(6a) of the basic Regulation were confirmed, the statistics concerning import prices to the PRC were not a better proxy than import prices into potential representative countries. It was very likely that imports into the PRC – if available in meaningful quantities at all – would have also been affected by the significant distortions as they would have been at similar conditions as the ones prevailing in the distorted market in China.

(208) Chengxi Shipyard did not provide any evidence showing that GTA was less reliable than the official customs statistics of a potential representative country. The import statistics provided by GTA were based on the official national customs statistics of the various countries concerned, which provided their official data to GTA on the basis of their bilateral agreements. A number of public administrations have a longstanding practice of using GTA to access customs statistics and this database is also extensively used by private operators for a number of different purposes and in different contexts. Therefore, the Commission considered the statistics in GTA reliable and rejected those claims.

(209) In their comments on the First Note, CCCME, Chengxi Shipyard, and Suzhou Titan noted that in the First Note the Commission listed the commodity codes of the factors of production at 6-digit level. In this respect, Chengxi Shipyard submitted that import statistics based on a 6-digit code included materials other than the specific factor of production. Therefore, to improve the accuracy of the data, the parties suggested using import statistics at a higher level of detail of the applicable codes. CCCME and Suzhou Titan further argued that the Commission should use only those statistics that represent imports of precisely those types of flanges used in the manufacturing of the product under investigation. CCCME repeated its comments on the use of import statistics at the level of 6-digit codes in its hearing and comments after the provisional stage.

(210) In the Second Note, the Commission noted that in the early stages of the investigation it used the Harmonized Commodity Description and Coding System at a 6-digit level. At a later stage of the investigation and where practicable, the Commission used more specific codes in the representative country possibly matching the specific inputs of the exporters, as shown in Table 1 below.

(211) In their comments on the First Note, CCCME and Suzhou Titan submitted that the import prices did not reflect the domestic prices since they could have been influenced by the quantity delivered and the distance to the country of origin. This claim was also repeated in the comments by the parties on the Second Note and in the hearing and comments by CCCME after the provisional stage. CCCME, Chengxi Shipyard and Suzhou Titan further claimed that the Commission should exclude from the calculation imports of small quantities at very high prices. In addition, Chengxi Shipyard argued that the Commission should not exclude from the calculation imports from China (to the representative country) where the import quantities were not significant and were done at prices similar to the import prices from other countries of origin and thus no distortions existed.

(212) In the Second Note, the Commission considered that the domestic prices in a representative country were equally influenced by the quantity delivered and the distance between the supplier and the user. In addition, the quantity delivered was reflected in the calculation of the undistorted price since the Commission calculated a weighted average. This also meant that small quantities imported at high prices did not need to be excluded as they did not influence the final average undistorted price. The distance was taken into account too as the Commission used the import prices at the border of the representative country (CIF value) as a starting point. The CIF prices were further adjusted for import duties and domestic transport cost to establish an undistorted price of a factor of production at the gate of the factory. Finally, the Commission noted that conclusions about the significant distortions in the PRC were not based on the level of the import price of materials originating in the PRC, but on the existence of market-distorting governmental policies. Consequently, all the above claims by the parties concerning the calculation of undistorted prices were rejected.

(213) In their comments on the First Note, CCCME and Suzhou Titan further claimed that where the import statistics included ocean freight and insurance, those costs should be deducted since the sampled cooperating exporting producers sourced their inputs on the domestic market and did not incur such costs. CCCME repeated this claim in its hearing and comments after the provisional stage.

(214) In this respect, in the Second Note the Commission clarified that under the methodology based on Article 2(6a) of the basic Regulation, it would replace the prices of inputs paid by the exporting producers with representative prices publicly available in the representative country chosen. In case of factors of production for which the import price is used as a proxy, all costs of bringing the material from the country of origin to the gate of a factory in the representative country needed to be taken into account to be at the same level of competition as other domestic producers. Thus, the inclusion of ocean freight and insurance, and import duties for that matter, was crucial for the determination of an undistorted price in the representative country. Consequently, the claim was rejected.

(215) Furthermore, in the Second Note, the Commission stated that to construct the normal value in accordance with Article 2(6a)(a) of the basic Regulation, it would use GTA ([88]) to establish the undistorted cost of most of the factors of production, notably the raw materials and by-products. In addition, the Commission stated that it would use the information published by the Department of Statistics of the International Labour Organisation ('ILOSTAT') and Organisation for Economic Co-operation and Development ('OECD') for the undistorted costs of labour ([89]), by CFE or information from market intelligence for the undistorted cost of electricity ([90]), and by Comisión Reguladora de Energía ('CRE') for the undistorted cost of natural gas ([91]).

(216) In the Second Note, the Commission also informed the interested parties that since water, steam and compressed air represented a negligible share on total cost of production ([92]), the Commission would not seek to determine undistorted prices of those energy sources. The Commission intended to group those negligible items under 'consumables'.

(217) In the comments on the Second Note, CCCME and Suzhou Titan submitted that the import data of Mexico were highly deficient as they were reported in GTA at free-on-board ('FOB') value. Therefore, the Commission had to construct the CIF value using the CIF to FOB coefficient available in the OECD International Transport and Insurance Costs of Merchandise Trade ([93]) ('ITIC') database. In this respect, CCCME, Chengxi Shipyard and Suzhou Titan criticised that the Commission used a single, average CIF to FOB coefficient for all factors of production and all relevant countries of origin. CCCME repeated this claim in its hearing and comments after the provisional stage.

([88]) Available at http://www.gtis.com/gta/secure/default.cfm (last viewed 28 May 2021).
([89]) Available at https://ilostat.ilo.org/data/ and at https://www.oecd-ilibrary.org/sites/3c92e215-en/index.html?itemId=/content/component/3c92e215-en (last viewed 27 May 2021).
([90]) Available at https://app.cfe.mx/Aplicaciones/CCFE/Tarifas/TarifasCREIndustria/Industria.aspx and at https://www.globalpetrolprices.com/Mexico/electricity_prices/ (last viewed 27 May 2021).
([91]) Available at https://www.cre.gob.mx/IPGN/index.html (last viewed 27 May 2021).
([92]) Although not all the exporting producers used all three inputs, the Commission estimated based on the data provided by the exporting producers that those inputs aggregated would represent less than 1% of the cost of production.
([93]) Available at https://stats.oecd.org/Index.aspx?DataSetCode=CIF_FOB_ITIC (last viewed 31 May 2021).

(218) The Commission first noted that the fact that Mexico recorded and reported its import statistics at FOB value did not render the data any less reliable. In addition, the Commission used an independent source of information for the conversion of FOB import values into CIF import values. In this respect, the Commission examined the claim by the three interested parties concerning the use of a single CIF to FOB coefficient and concluded that indeed, it was more appropriate to differentiate the coefficient by factor of production and country of origin. Where the information for certain countries of origin was not available, the Commission used an average coefficient reported in the OECD ITIC database for that particular factor of production.

(219) In their comments on the Second Note, CCCME, Chengxi Shipyard and Suzhou Titan submitted that the Commission incorrectly applied an import duty of 25 % to imports of steel plates originating in the US as this retaliatory duty was discontinued before the start of the investigation period. CCCME repeated this claim in its hearing and comments after the provisional stage.

(220) The Commission examined the claim. It found that in June 2018, Mexico imposed a duty of 25 % on the imports of certain steel products, including the steel plates, in response to the US Section 232 steel and aluminium tariff ([94]). In May 2019, Mexico terminated the retaliatory measures ([95]) following an agreement ([96]) reached with the US concerning the Section 232 steel and aluminium tariffs. Subsequently, the Commission accepted the claim and adapted the import duty used in the calculation of undistorted cost of steel plates accordingly.

(221) In the submission on the Second Note, Suzhou Titan, and Chengxi Shipyard made comments concerning the commodity code the Commission intended to use to determine the undistorted costs of certain factors of production, in particular the steel plates, paint, welding wire, and bolts. Chengxi Shipyard argued that the Commission should only use the commodity code 8311 30 01 to establish the undistorted cost of welding wire for welding by flame, since only that commodity code covered welding wire of iron and steel. The company further submitted that the Commission should exclude commodity codes for bolts used in aircraft and motor vehicles, and stainless steel bolts when determining their undistorted cost. Suzhou Titan requested that the Commission apply the commodity codes concerning steel plates of thickness exceeding 10 mm (HS 7208 51) individually based on the steel grade of the plates actually used by the company. Similarly, the company requested the Commission to apply the two commodity codes concerning epoxy zinc rich paint (HS 3208 90 and 3209 90) individually depending on the actual type of paint used by the company.

(222) The Commission found that it was indeed more appropriate to exclude welding wire made of metals other than iron or steel from the commodity codes used for the determination of the undistorted cost. The Commission applied this principle not only to welding wire for welding by flame (HS 8311 30) but also to welding wire for electric arc welding (HS 8311 20). Similarly, the Commission excluded the bolts used in aircraft and in motor vehicles as well as stainless steel bolts from the commodity codes used to establish the undistorted cost of bolts.

(223) With regard to the commodity codes taken into account for the calculation of the undistorted cost of steel plates of thickness exceeding 10 mm, the Commission noted that the two commodity codes further distinguished such plates by the steel grade used. The steel grades referred to in the commodity codes, however, followed standards not used in the Union. Nevertheless, the company reported the steel grade of steel plates according to the standards applicable in the Union. The company did not provide any evidence as to which steel grades listed in the commodity codes corresponded to the steel grades used by the company.

(224) With regard to the epoxy zinc rich paint, the Commission found that the company provided sufficient evidence supporting its request to only apply one of the commodity codes for such paint in the construction of the company's normal value.

([94]) Decree of 5 June 2018 available at http://dof.gob.mx/nota_detalle.php?codigo=5525036&fecha=05/06/2018 (last viewed 31 May 2021).

([95]) Decree of 20 May 2019 available at https://www.dof.gob.mx/nota_detalle.php?codigo=5560685&fecha=20/05/2019 (last viewed 31 May 2021).

([96]) Joint Statement by the United States and Mexico on Section 232 Duties on Steel and Aluminum available at https://ustr.gov/sites/default/files/Joint_Statement_by_the_United_States_and_Mexico.pdf (last viewed 31 May 2021).

(225) Consequently, the Commission accepted the claims concerning the commodity codes for welding wire, bolts, and epoxy zinc rich paint, but rejected the claim concerning the commodity codes for steel plate of thickness exceeding 10 mm. Where appropriate, the Commission limited the commodity codes used in the calculation of the undistorted cost of certain factors of production to those identified by the parties.

(226) Following final disclosure, Chengxi Shipyard submitted that the Commission used incorrect commodity codes with regard to two factors of production. The company argued that the Commission changed the HS code used to establish the undistorted cost of those two factors of production without informing the company: the Commission used HS code 7308 90 ([97]) instead of HS code 7326 90 ([98]) reported by the company.

(227) During the remote cross-check, the Commission discussed with the company the HS code proposed by the company for a factor of production similar to the two factors of production in question. The company agreed that it would be more appropriate to use HS code 7308 90 since that factor of production concerned steel structures ([99]). Based on this discussion with the company and the details of the material's description provided by the company during the remote cross-check, the Commission considered it more appropriate to use a commodity code covering steel structures and parts of steel structures to establish the undistorted cost of the two factors of production in question than to use the HS code reported by the company. The company was informed about this decision in the final disclosure. Furthermore, the company did not provide any reasoning why the reported HS code would be more accurate than the corrected HS code. Consequently, the Commission rejected the claim.

(228) Following final disclosure, Suzhou Titan recalled that the Commission rejected the reported cost of a number of factors of production in the company-specific disclosure, which the company claimed were not subject to significant distortions since they were imported. The reasons for the Commission's rejection were twofold: (1) the company provided supporting evidence for only a limited number of the respective import transactions and (2) the imported raw materials were not used in the projects exported to the Union during the investigation period. The company submitted that the Commission did not request evidence for all import transactions. In addition, it reiterated its methodology used to allocate the cost of production per product type, which was accepted by the Commission during the RCC, as well as the fact that the Commission was able to reconcile the cost of production with the company's accounting (trial balance). Therefore, according to the company, the Commission should have accepted the allocation of the actual costs of the imported factors of production to projects delivered to the Union.

(229) The Commission did not request supporting documents for further import transactions since it was clear from the information submitted by the company on the purchase of raw materials ([100]) that the imported materials were not used in the projects delivered to the Union during the IP. This was particularly relevant for the present investigation where the exporting producers purchased the various inputs for each project individually in line with the drawings and technical specifications provided by the customer. The Commission accepted the company's allocation method as it provided a sufficiently accurate picture of the types of raw materials and their quantities used per product type. However, it could not ignore that the allegedly undistorted materials were not used in the product types exported to the Union. The fact that the Commission reconciled the total cost of production with the financial accounting of the company is, in this case, irrelevant as the financial accounting, especially the trial balance, did not provide any information on the cost of production per product type. The Commission, subsequently, rejected the claim.

([97]) Structures (excluding prefabricated buildings of heading 9406) and parts of structures (for example, bridges and bridge-sections, lock-gates, towers, lattice masts, roofs, roofing frame-works, doors and windows and their frames and thresholds for doors, shutters, balustrades, pillars and columns), of iron or steel; plates, rods, angles, shapes, sections, tubes and the like, prepared for use in structures, of iron or steel; Other.

([98]) Other articles of iron and steel; Other.

([99]) Sensitive version of the RCC report (p. 19) shared with the company, Reference No. t21.005413.

([100]) Table F.3 – Materials Purchase of the questionnaire for exporting producers.

3.2.3. *Undistorted costs and benchmarks*

3.2.3.1. Factors of production

(230) Considering all the information submitted by the interested parties and collected during the RCCs, 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 steel wind towers**

| Factor of Production | Commodity Code in Mexico | Undistorted value (CNY) | Unit of measurement |
|---|---|---|---|
| **Raw materials** | | | |
| **Steel plates of a thickness exceeding 10 mm**<br>Flat-rolled products of iron or non-alloy steel, of a width of 600 mm or more, hot-rolled, not clad, plated or coated; other, not in coils, not further worked than hot-rolled; Of a thickness exceeding 10 mm;<br>— Of a thickness exceeding 10 mm, other than those of subheadings 7208 51 02 and 7208 51 03;<br>— Steel sheets and plates of a thickness exceeding 10 mm, SHT-80, SHT-110, AR-400, SMM-400 or A-516 grade | 7208 51 01<br>7208 51 02 | 6,54 | KG |
| **Steel plated of a thickness of 4.75 mm or more but not exceeding 10 mm**<br>Flat-rolled products of iron or non-alloy steel, of a width of 600 mm or more, hot-rolled, not clad, plated or coated; Other, not in coils, not further worked than hot-rolled; Of a thickness of 4.75 mm or more but not exceeding 10 mm | 7208 52 01 | 6,44 | KG |
| **Steel plates of a thickness of less than 3 mm**<br>Flat-rolled products of iron or non-alloy steel, of a width of 600 mm or more, hot-rolled, not clad, plated or coated; Other, in coils, not further worked than hot-rolled, pickled; Of a thickness of less than 3 mm | 7208 27 01 | 6,36 | KG |
| **Flanges**<br>Articles of iron or steel; Tube or pipe fittings (for example, couplings, elbows, sleeves), of iron or steel; Other; Flanges | 7307 91 01 | 52,93 | KG |
| **Epoxy zinc-rich paint**, dispersed or dissolved in a non-aqueous medium | 3208 90 99 | 50,49 | KG |
| **Epoxy zinc-rich paint**, dispersed or dissolved in an aqueous medium | 3209 90 99 | 22,53 | KG |
| **Polyurethane paint**<br>Paints and varnishes (including enamels and lacquers) based on synthetic polymers or chemically modified natural polymers, dispersed or dissolved in a non-aqueous medium; Based on acrylic or vinyl polymers | 3208 20 01 | 71,77 | KG |
| **Polyurethane paint**<br>Paints and varnishes (including enamels and lacquers) based on synthetic polymers or chemically modified natural polymers, dispersed or dissolved in a non-aqueous medium; Based on polyesters | 3208 10 01 | 39,70 | KG |

| | | | |
|---|---|---|---|
| **Paint thinner**<br>Organic composite solvents and thinners, not elsewhere specified or included; prepared paint or varnish removers (Paint thinner) | 3814 00 01 | 17,55 | KG |
| **Welding wire for welding by flame**<br>Wire, rods, tubes, plates, electrodes and similar products, of base metal or of metal carbides, coated or cored with flux material, of a kind used for soldering, brazing, welding or deposition of metal or of metal carbides; wire and rods, of agglomerated base metal powder, used for metal spraying; Coated rods and cored wire, of base metal, for soldering, brazing or welding by flame; Of iron other than cast iron, or steel | 8311 30 01 | 131,54 | KG |
| **Welding wire for electric arc welding**<br>Wire, rods, tubes, plates, electrodes and similar products, of base metal or of metal carbides, coated or cored with flux material, of a kind used for soldering, brazing, welding or deposition of metal or of metal carbides; wire and rods, of agglomerated base metal powder, used for metal spraying; Cored wire of base metal, for electric arc welding; Of steel | 8311 20 04 | 25,45 | KG |
| **Welding/Soldering flux**<br>Fluxes And Other Auxiliary Preparations For Soldering, Brazing Or Welding, Nesoi- Prepared Cores Or Coatings For Welding Electrodes Or Rods<br>— Welding fluxes, used in the submerged arc process, in the form of granules or pellets, based on silicate and metallic oxides;<br>— Others | 3810 90 01<br>3810 90 99 | 25,45 | KG |
| **Aluminium ladder**<br>Aluminium structures (excluding prefabricated buildings of heading 9406) and parts of structures (for example, bridges and bridge-sections, towers, lattice masts, roofs, roofing frameworks, doors and windows and their frames and thresholds for doors, balustrades, pillars and columns); aluminium plates, rods, profiles, tubes and the like, prepared for use in structures; Other | 7610 90 99 | 81,50 | KG |
| **Door frame**<br>Doors, Windows And Frames And Thresholds For Doors, Of Iron Or Steel<br>— Doors, Windows and their Frames;<br>— Other | 7308 30 01<br>7308 30 99 | 30,09 | KG |

| | | | |
|---|---|---|---|
| **Steel grill**<br>Other Grill, Netting And Fencing Welded At The Intersection Of Galvanized Steel | 7314 31 01 | 19,42 | KG |
| **Anti-drop device**<br>Mountings, Fittings And Similar Articles, And Parts Thereof, Of Base Metal; Other | 8302 49 99 | 82,56 | KG |
| **Various steel parts**<br>Structures (excluding prefabricated buildings of heading 9406) and parts of structures (for example, bridges and bridge-sections, lock-gates, towers, lattice masts, roofs, roofing frameworks, doors and windows and their frames and thresholds for doors, shutters, balustrades, pillars and columns), of iron or steel; plates, rods, angles, shapes, sections, tubes and the like, prepared for use in structures, of iron or steel; Other; Other | 7308 90 99 | 22,19 | KG |
| **Electric cables for a voltage exceeding 1 000 V**<br>Insulated (including enamelled or anodised) wire, cable (including coaxial cable) and other insulated electric conductors, whether or not fitted with connectors; optical fibre cables, made up of individually sheathed fibres, whether or not assembled with electric conductors or fitted with connectors; Other electric conductors, for a voltage exceeding 1 000 V<br>— Of copper, aluminium or their alloys;<br>— Other | 8544 60 01<br>8544 60 99 | 57,80 | KG |
| **Electric cables for a voltage not exceeding 1 000 V**<br>Insulated (including enamelled or anodised) wire, cable (including coaxial cable) and other insulated electric conductors, whether or not fitted with connectors; optical fibre cables, made up of individually sheathed fibres, whether or not assembled with electric conductors or fitted with connectors; Other electric conductors, for a voltage not exceeding 1 000 V; Others | 8544 49 01<br>8544 49 02<br>8544 49 03<br>8544 49 04<br>8544 49 05<br>8544 49 06<br>8544 49 99 | 47,29 | KG |
| **Screws and bolts**<br>Screws, bolts, nuts, coach screws, screw hooks, rivets, cotters, cotter pins, washers (including spring washers) and similar articles, of iron or steel; Other screws and bolts, whether or not with their nuts or washers (except those used in aircrafts and automotives, and those made of stainless steel) | 7318 15 02<br>7318 15 04<br>7318 15 05<br>7318 15 06<br>7318 15 07<br>7318 15 08<br>7318 15 09 | 28,84 | KG |
| **Various steel structures**<br>Structures (excluding prefabricated buildings of heading 9406) and parts of structures (for example, bridges and bridge-sections, lock-gates, towers, lattice masts, roofs, roofing frameworks, doors and windows and their frames and thresholds for doors, shutters, balustrades, pillars and columns), of iron or steel; plates, rods, angles, shapes, sections, tubes and the like, prepared for use in structures, of iron or steel; Other; | 7308 90 01<br>7308 90 02<br>7308 90 99 | 20,91 | KG |

| | | | |
|---|---|---|---|
| — Railings; balconies; stairs;<br>— Unassembled or disassembled structures consisting of frameworks, posts and their base plates, brackets, connecting boards, brace rods and struts for their assembly, whether or not with nuts, and other parts;<br>— Other | | | |

**By-product**

| | | | |
|---|---|---|---|
| **Steel scrap in the form of turnings and shavings**<br>Ferrous waste and scrap; remelting scrap ingots of iron or steel; Other waste and scrap; Turnings, shavings, chips, milling waste, sawdust, filings, trimmings and stampings, whether or not in bundles | 7204 41 01 | 2,02 | KG |

**Energy**

| | | | |
|---|---|---|---|
| Electricity | n/a | 0,98 | kWh |
| Natural gas | n/a | 0,71 | M3 |
| Carbon dioxide | 2811 21 01<br>2811 21 02 | 1,35 | KG |
| Oxygen | 2804 40 01 | 1,29<br>1,70 | KG<br>M3 |

**Labour**

| | | | |
|---|---|---|---|
| Labour | n/a | 16,25 | Hours |

(231) The Commission included in the determination of the normal value a value for manufacturing overhead costs in order to cover costs not included in the factors of production referred to above. The methodology is duly explained in section 3.2.3.2.

**Raw materials, by-products and certain energy types**

(232) In order to establish the undistorted price of raw materials, by-products, and certain energy types (carbon dioxide and oxygen) as delivered at the gate of a producer in the representative country, the Commission used as a basis the import prices to the representative country as reported in GTA to which import duties were added. To arrive at a value at the gate of factory in the representative country, the weighted average of such duty-paid import value for each factor of production was increased by the domestic transport costs. As mentioned in recitals (217) and (218), Mexico records its import statistics at FOB value. Therefore, in the present case, also ocean freight and insurance were added to the import price determined from GTA before the import duties could be reflected in the benchmarks.

(233) 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. ([101]) The Commission decided to exclude imports from the PRC into the representative country as it concluded in recital (135) that it was 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.

([101]) Article 2(7) of the basic Regulation considers that domestic prices in those countries cannot be used for the purpose of determining normal value.

With the exception of the inputs mentioned in recital (234), the exclusion of imports from PRC and of some non-WTO Members did not have a significant impact, as the remaining imports still represented 60 – 100 % of total import volumes into the representative country.

(234) During the IP, Mexico imported large quantities of certain raw materials (aluminium ladder, flanges, welding wire, and bolts) from the PRC and/or countries not members to the WTO. Those imports represented 45 to 90 % of total imports of the four factors of production. Since there was no indication on file that the import prices from countries other than the PRC did not constitute an appropriate benchmark, and in the absence of comments by interested parties on this point, the Commission concluded that they could be used as a benchmark for undistorted cost of those raw materials.

(235) For a number of factors of production the actual costs incurred by the sampled cooperating exporting producers represented a negligible share of total cost of production in the investigation period. As the value used for those raw materials 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 (239).

(236) With regard to the ocean freight and insurance, the Commission used the OECD ITIC database to determine their value. The Commission used the CIF to FOB coefficient applicable to each individual combination of a factor of production as defined by their HS code at 4-digit level, the highest level of detail available, and a country of origin. Values reported in the database for 2016, the most recent year available, were taken into account. Where no coefficient was available for a certain country of origin, the Commission used an average coefficient determined for the particular factor of production.

(237) With regard to import duties, the Commission noted that Mexico imported relevant raw materials from more than 50 countries with a varying level of import duty rates. The Commission added to the CIF value the import duties applicable to imports of all raw materials treated as individual factors of production taking into account their country of origin.

(238) The Commission expressed the domestic transport cost incurred by each sampled cooperating exporting producer for the purchase 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, in the context of this investigation, the ratio between the exporting producer's raw material and the reported domestic transport costs could be reasonably used as an indication to estimate the undistorted costs of raw materials when delivered to the factory in the representative country.

**Consumables**

(239) The cooperating sampled exporting producers reported the use of around 120 different raw materials and energy types in the production of the product under investigation. The investigation showed that a majority of those factors of production represented a negligible share on the total cost of production, as well as per product type. The Commission grouped those factors of production under consumables. The cost actually incurred by the sampled cooperating exporting producers was expressed as a percentage of the actual cost of direct materials and the percentage was applied to the undistorted cost of direct materials.

**Labour**

(240) ILOSTAT ([102]) publishes information on monthly wages and average weekly working hours in sectors of economic activity *inter alia* in Mexico. The Commission used that information of 2019 to determine the average hourly wage in the manufacturing sector. To arrive at the total labour cost, the Commission relied on the data published by OECD in Taxing Wages 2020 ([103]), which covered the period of 2019. To the hourly wage in manufacturing, the Commission added employer's contributions to sickness and maternity insurance, social services, injury insurance, retirement insurance, discharge and old age insurance, and housing fund.

([102]) Available at https://ilostat.ilo.org/data/ (last viewed 27 May 2021).

([103]) Available at https://www.oecd-ilibrary.org/sites/3c92e215-en/index.html?itemId=/content/component/ 3c92e215-en (last viewed 27 May 2021).

**Electricity**

(241) As explained in recital (182), the Commission found that there was no evidence that the electricity price in Mexico was distorted by government intervention. Therefore, the undistorted cost of electricity was based on the information from Mexico.

(242) In the Second Note, the Commission informed the parties that it intended to use the electricity tariffs applicable to industrial users as published by CFE ([104]). CFE published the electricity tariffs applicable to several types of businesses and industrial users by month and by municipality. In the view of the large amount of data that would be necessary to process as well as the insignificant share of electricity on the cost of production (around 1 %), the Commission decided to rely on the average price of electricity in Mexico established in the Doing Business survey by the World Bank for 2019 and 2020 ([105]).

(243) Following final disclosure, Chengxi Shipyard and Suzhou Titan submitted that the Doing Business survey was not an appropriate source for the undistorted cost of electricity and that the Commission should have used the tariffs charged by CFE for Industrial Demand in Transmission and Industrial Demand in Sub-transmission instead. In particular, the companies pointed out that the methodology used by Doing Business did not reflect the conditions under which the SWT producers use electricity. The tariff calculated by Doing Business was applicable to a warehouse located in the largest business city of the country, being connected to the grid for the first time and operating eight hours per day on a surface area of approximately 2 200 $m^2$ (building and land) with a monthly consumption much smaller than the one of the Chinese SWT producers. On the other hand, according to Chengxi Shipyard, the SWT producers were often located in suburban industrial areas, had large scale production facilities, and ran continuously. In addition, Suzhou Titan provided a calculation of the undistorted cost of electricity based on two tariffs (Industrial Demand in Transmission and Industrial Demand in Sub-transmission) charged by CFE in the municipalities where the Mexican SWT producers were located.

(244) The Commission noted that CFE used 13 different tariffs for its industrial customers. Although some of those tariffs could be easily discarded, such as tariffs for companies active in agriculture or aquaculture, many more remained to be considered. The Commission found that the sampled exporting producers did not provide any evidence that would make it possible to determine which tariff should have been used. The benchmark published by Doing Business was applicable to a model industrial customer. Therefore, the Commission found that benchmark reasonable although the model business used by Doing Business did not operate under the exact same conditions as the Chinese SWT producers. Consequently, the Commission rejected the claim.

**Natural gas**

(245) The price of natural gas in Mexico in the investigation period was available in the online statistical database maintained by the energy regulator CRE ([106]). The Commission used the prices reported for all months covering the investigation period. The prices were reported per gigajoule. Therefore, a conversion to cubic meters was necessary. To determine the conversion ratio, the Commission used the information published online by the Canadian natural gas distributor Forbis BC ([107]).

3.2.3.2. Manufacturing overhead costs, SG&A and profits

(246) 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.

(247) The manufacturing overheads were established individually for each sampled exporting producer. The manufacturing overheads reported by the companies were expressed as a share of the costs of manufacturing actually incurred by the exporting producers. This percentage was applied to the undistorted costs of manufacturing.

([104]) Available at https://app.cfe.mx/Aplicaciones/CCFE/Tarifas/TarifasCREIndustria/Industria.aspx (last viewed 28 March 2021).
([105]) Available at https://www.doingbusiness.org/en/doingbusiness (last viewed 27 May 2021).
([106]) Available at https://www.cre.gob.mx/IPGN/index.html (last viewed 27 May 2021).
([107]) Available at https://www.fortisbc.com/about-us/corporate-information/facilities-operations-and-energy-information/how-gas-is-measured (last viewed 27 May 2021).

(248) For establishing an undistorted and reasonable amount for SG&A and profit, the Commission relied on the financial information of two SWT producers in Mexico. With regard to Arcosa Industries de México, S. de R.L. de C.V., the Commission used the financial statements included in in the consolidated annual report 2019, in particular the data reported for the EEG segment ([108]). With regard to Speco Wind Power, S.A. de C.V., the Commission used the individual financial information for 2019 as available in Global Financials by D&B ([109]).

(249) Following final disclosure, Chengxi Shipyard claimed that the Commission should not have disregarded its SG&A since it was not proven that it was distorted. Further, the company argued that should Arcosa's financial statements still be used, the values of the respective cost items and of profit should be reduced to 75 %, since that was the share of SWT and the utility structures sub-segment in the EEG group's revenue.

(250) In recital (88), the Commission made conclusions on the existence of significant distortions that rendered the use of Article 2(6a) of the basic Regulation appropriate. Findings were made not only with regard to the raw materials used in the SWT production, but also with regard to the product under investigation and horizontal issues common for all sectors of the Chinese economy. Therefore, the Commission considered it appropriate to replace the SG&A and profit of the sampled exporting producers with undistorted benchmarks. In addition, the Commission noted that the adjustment of Arcosa's financial information to the level generated by the sub-segment, which was closest to the product under investigation, was impossible to carry out since the financial information of Arcosa only provided information on the share of the SWT and utility structures sub-segment in the EEG group's revenue but not in costs of goods sold and other, indirect costs, which fed into the SG&A. Consequently, the claims of Chengxi Shipyard were rejected.

(251) Chengxi Shipyard further argued, that under its accounting practices, it included in the manufacturing overheads certain cost items, which should actually fall under SG&A. The company provided a list of those cost items and requested the Commission to exclude them from the reported manufacturing overheads to prevent a double counting of those cost items, as they were allegedly included in the SG&A benchmark.

(252) The Commission noted that the company itself reported the cost items in question under manufacturing overheads throughout the whole investigation (in its initial questionnaire reply, in the deficiency reply and in a revised version of data submitted during the remote cross-check). It only requested that certain cost items should be excluded from manufacturing overheads and moved to SG&A in its comments on final disclosure. Moreover, in the submitted profit and loss information ([110]), which was part of the questionnaire reply, the company separately reported SG&A composed of cost items other than those included in its manufacturing overheads. More importantly, the division of costs between manufacturing overheads and SG&A reported by the company throughout the investigation was in line with its financial accounting, where the cost items in question were booked at manufacturing overheads accounts. Therefore, the Commission rejected the claim.

(253) Following final disclosure, Suzhou Titan claimed that the Commission misinterpreted whether the individual SG&A items in Speco's financial information concerned income or expense, which resulted in an inflated SG&A. According to the company, the SG&A should have amounted to approximately 15 million MXN instead of the 42 million MXN calculated by the Commission.

(254) The Commission examined the claim and confirmed that the value of SG&A was calculated correctly. The value of SG&A can be easily cross-checked by comparing the gross profit (approximately 105 million MXN) and the profit before taxes (approximately 63 million MXN). The difference between them (42 million MXN, not 15 million MXN) represented the value of SG&A. Thus, the Commission rejected the claim.

3.2.4. *Calculation*

(255) 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.

([108]) Annual report 2019 (p. 47) available at https://s2.q4cdn.com/158938184/files/doc_financials/2019/ar/NC10009566-ARCOSA-INC._10K_E-bookproof_2020_V1-(002).pdf (last viewed 27 May 2021).

([109]) Available at https://www.dnb.com/ie/products/finance-credit-risk/global-financials.html (last viewed 27 May 2021).

([110]) Table G of the questionnaire for exporting producers.

(256) First, the Commission established the undistorted manufacturing costs. The Commission applied the undistorted unit costs to the actual consumption of the individual factors of production of each sampled cooperating exporting producer. The Commission multiplied the unit consumption quantities by the undistorted costs per unit observed in the representative country, as described in section 3.2.3 above.

(257) Once the undistorted manufacturing cost was established, the Commission applied the manufacturing overheads, SG&A, and profit as noted in recitals (246) to (248).

(258) The Commission added manufacturing overheads for each sampled exporting producer, as explained in recital (247), in the range of 3 to 10 % of the manufacturing costs to the undistorted manufacturing cost in order to arrive at the undistorted costs of production.

(259) To the costs of production established as described in the previous recital, the Commission applied SG&A and profit determined based on the financial information of the two SWT producers in Mexico. The weighted average SG&A expressed as a percentage of the costs of goods sold ('COGS') and applied to the undistorted costs of production, amounted to 13,6 %. The weighted average profit expressed as a percentage of the COGS and applied to the undistorted costs of production, amounted to 10,8 %.

(260) Finally, where applicable, the Commission deducted the undistorted value of by-product. The Commission multiplied the quantities of by-product generated per unit of the product under investigation by the undistorted unit price of by-product observed in the representative country, as described in section 3.2.3 above.

(261) 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.

(262) Following final disclosure, Chengxi Shipyard and Suzhou Titan submitted that the Commission should have deducted the undistorted value of the sold by-product (steel scrap) from the cost of manufacturing and not from the normal value. Chengxi Shipyard argued that it was in line with its accounting practices to offset the revenue from the sales of scrap against the cost of manufacturing. Suzhou Titan recalled that in previous investigations ([111]), the Commission deducted the undistorted value of by-product from the cost of manufacturing.

(263) With regard to the claim of Chengxi Shipyard, the Commission noted that indeed the company allocated the revenue generated by sales of steel scrap to each and every project in its cost accounting. In its financial accounting, though, the revenue from sales of steel scrap was not booked as main operating revenue and it certainly did not reduce the value of the cost of manufacturing. On the contrary, the revenue was recorded under 'Other operating revenue'.

(264) With regard to Suzhou Titan's argument, the Commission noted that in the quoted previous investigation, the by-product was reused in the producers' own production while in the present case, the steel scrap was sold. Therefore, in this investigation, the benchmark for steel scrap stood for the undistorted sales price, which naturally covers not only the cost of manufacturing, but also the manufacturing overheads, SG&A and profit.

(265) Consequently, the Commission rejected the claims of Chengxi Shipyard and Suzhou Titan described in recital (262).

(266) In addition to its comments on the methodology used to reflect the effect of by-product on the normal value, Chengxi Shipyard pointed out that the Commission omitted the deduction of by-product in the company's normal value calculation.

(267) The Commission examined the claim and confirmed that indeed, due to a clerical error, the undistorted value of by-product was not deducted from the normal value. The Commission corrected the error and reflected the changes also in the calculation of the dumping margin for other cooperating companies and the residual dumping margin. The Commission sent the company an additional final disclosure and gave it the opportunity to comment. The company had no further comments regarding this issue.

([111]) Recitals (188) to (190) of Commission Implementing Regulation (EU) 2020/1428 of 12 October 2020 imposing a provisional anti-dumping duty on imports of aluminium extrusions originating in the People's Republic of China, (OJ L 336, 13.10.2020, p. 8).

(268) Following final disclosure, Chengxi Shipyard submitted that the Commission should not have carried over to the constructed normal value the cost of consumables and the manufacturing overheads as a percentage of the cost of manufacturing. According to the company, those two cost categories were not connected to the value of other input materials. Instead, the Commission should have identified a suitable benchmark in the representative country.

(269) The Commission clarified that the described methodology was applied because the financial data available in the representative country did not contain information on manufacturing overheads. The interested parties were informed of this fact via two Notes on the sources for the determination of the normal value. The company had thus ample opportunities to propose a suitable benchmark to replace the distorted manufacturing overheads.

(270) With regard to consumables, the Commission noted that in fact the cost of consumables was expressed as a percentage of cost of direct materials, not as a percentage of the cost of manufacturing. In this respect, it decided to apply this methodology considering the limited impact of consumables in the cost of production in their totality and per product type, and due to the inability of some of the sampled exporting producers to report the consumption of certain factors of production in standard units of measurement. Units such as sets or bottles, which were incompatible with the units used in the import statistics, were reported instead. Although, in general, those companies made an effort and converted the consumption of the more important factors of production to standard units (mostly to kilograms), this deficiency could not be eliminated for all affected factors of production. This prevented the Commission from finding a suitable benchmark in the representative country and thus contributed to the need to reflect the cost of consumables in the normal value as a percentage of the undistorted cost of direct materials.

(271) Based on the reasons elaborated in recitals (269) and (270), the Commission rejected the claims of Chengxi Shipyard described in recital (268).

(272) Chengxi Shipyard similarly claimed that the method used by the Commission to add the domestic transportation cost to the undistorted cost of the factors of production was incorrect. Instead of increasing the undistorted costs by a single percentage determined on the basis of the company's data, the Commission should have calculated the individual transportation cost for each factor of production. In particular, the company claimed that the unit transportation cost was more linked to the weight than to the value of a material. Thus using a single percentage inflated the transport cost for more valuable factors of production.

(273) The Commission recalled that the exporting producers were required to report the actual or estimated transport cost related to each factor of production. However, the company did not provide the required information. Consequently, the Commission rejected the claim.

### 3.3. **Export price**

(274) In its comments on the initiation, CCCME claimed that the sources of information on the export price were doubtful since, in particular, the price of a 3-section SWT used in the complaint was higher than the price of a 4-section tower.

(275) The Commission noted that in the present case, the complainant could not make use of the official import statistics in order to determine the export price of the exporting producers in the PRC. First, the product under investigation falls under CN codes that cover a wider range of products. Second, the import statistics record the quantities in kilograms. Therefore, it was not possible to determine the import price of the various types of towers (depending on the number of sections). As explained in the complaint ([112]), the complainant provided sworn affidavits issued by the Union producers as sufficient evidence of the winning price offered by the Chinese exporting producers in tenders, in which the Union producers took part but lost. Under the circumstances of the present case and taking into account the specific nature of the product under investigation, the Commission considered the sworn affidavits as a sufficiently reliable source. The fact that the price of a 3-section SWT was higher than the price of a 4-section SWT may have resulted from the source of information the complainant used. In addition, CCCME did not provide

([112]) See Annex R4 to the complaint.

any evidence to show that such situation was impossible to occur, in particular since not only the number of sections but also their dimensions (diameter, length and thickness) influenced the cost of production and hence the sales price. Subsequently, the Commission rejected the claim.

(276) The sampled exporting producers exported to the Union directly to independent customers.

(277) Therefore, the export price was the price actually paid or payable for the product concerned when sold for export to the Union, in accordance with Article 2(8) of the basic Regulation.

### 3.4. **Comparison**

(278) The Commission compared the normal value and the export price of the sampled exporting producers on an ex-works basis.

(279) Where justified by the need to ensure a fair comparison, the Commission adjusted the export price for differences affecting prices and price comparability, in accordance with Article 2(10) of the basic Regulation. Adjustments were made for handling and loading, transport in the country concerned, credit cost, and, where applicable, the export price was adjusted for the value of supplies provided by the customer under a tolling agreement pursuant to Article 2(10)(k) of the basic Regulation.

(280) In its comments on the final disclosure, Chengxi Shipyard submitted that the SG&A data of the Mexican SWT producers did not provide sufficiently detailed information. Therefore, according to the company, the SG&A used in the calculation of the normal value was likely to include expenses, which should be deducted from the export price for the purpose of comparison. Subsequently, the company requested the SG&A benchmark to be adjusted to reflect the allowances deducted from the export price.

(281) The Commission considered that the company did not provide any evidence that the expenses deducted from the export price for the purpose of comparison were included in the SG&A of the two SWT producers in Mexico. Subsequently, the Commission rejected the claim.

(282) Chengxi Shipyard further claimed that the comparison of normal value and export price should have been done per piece, i.e. per SWT section, rather than per kilogram as done by the Commission. The company pointed out that most injury indicators were also expressed in pieces instead of weight. Further, it argued that the price of SWT per kilogram provided a distorted picture since each section may contain various internals, which influenced its weight but were disassociated with the pricing of SWT. Finally, Chengxi Shipyard noted the discrepancies between the weight of individual sections reported in its EUSALUR (Union sales to unrelated customers) and COM PCN (cost of production per product type) tables. The company claimed that those discrepancies stemmed from a correction requested by the Commission during the remote cross-check.

(283) The Commission considered that the injury indicators were disconnected from the dumping margin calculation. Moreover, the company did not provide any evidence as to the claim that the inclusion of internals did not influence the price of SWT. With regard to the discrepancies in weight of individual product types (sections) in the sales and cost of production tables, the Commission indeed observed during the remote cross-check that certain parts listed on sales invoices were not reported in the value and quantity (weight) of the respective sales transactions. Since the company confirmed that those parts were supplied as accessories to the particular SWT section and included in the reported cost of production, the Commission asked the company to include them in the quantity and value of the affected sales transactions, to which the company agreed. The company claimed that in the cost of production data, they aligned the weight with the weight originally reported in the sales table. At this point of the investigation, it was not possible to verify which weight per product type (SWT section) was correct and should, therefore, be used in the calculation. Therefore, the Commission rejected the claims.

(284) Following final disclosure, Suzhou Titan argued that the Commission overlooked the differences between on-shore and off-shore SWT. Although the Commission decided not to extend the anti-dumping measures to imports to the continental shelf and exclusive economic zones of the Member States, the company claimed that off-shore towers are also used in wind farms located in the territorial waters of a country. Therefore, the company claimed that in case off-shore SWT were included in the calculations, the differences in physical characteristics between on-shore and off-shore SWT should be reflected in the comparison.

(285) As far as it concerns Suzhou Titan, the Commission noted that the company neither exported nor produced off-shore SWT. In general, only one of the three sampled exporting producers produced and exported to the Union a limited number of sections for off-shore installations. Those were included in the dumping margin calculations. As the definition of products types was very detailed, there was no overlap with sections of on-shore SWT when comparing the normal value and the export price per product type. Thus, the Commission considered that the differences between on-shore and off-shore towers were not overlooked in the determination of dumping and subsequently rejected the claim.

### 3.5. **Dumping margin**

(286) For the sampled cooperating exporting producers, the Commission compared the weighted average normal value of each type of the like product with the weighted average export price of the corresponding type of the product concerned, in accordance with Article 2(11) and (12) of the basic Regulation.

(287) For the cooperating exporting producers outside the sample, the Commission calculated the weighted average dumping margin, in accordance with Article 9(6) of the basic Regulation. Therefore, that margin was established on the basis of the margins of the sampled exporting producers, disregarding the margins established in the circumstances referred to in Article 18 of the basic Regulation.

(288) On this basis, the definitive dumping margin of the cooperating exporting producers outside the sample is 81,9 %.

(289) For all other exporting producers in the PRC, the Commission established the dumping margin on the basis of the facts available, in accordance with Article 18 of the basic Regulation. To this end, the Commission determined the level of cooperation of the exporting producers. The level of cooperation is the volume of exports of the cooperating exporting producers to the Union expressed as proportion of the total imports from the PRC to the Union in the IP that were measured in the number of towers and established on the basis of the estimate provided by the Union industry as explained in recitals (308) to (313).

(290) The level of cooperation in this case is low because the imports of the cooperating exporting producers constituted around 30 % of the total exports to the Union during the IP. On this basis, the Commission considered it appropriate to establish the residual dumping margin at the level of the weighted average dumping margin determined for the product types most exported by Chengxi Shipyard, the sampled exporting producer with the highest individual dumping margin. These product types represented more than 50 % of this company's exports of the PUI to the Union during IP.

(291) The definitive dumping margins, expressed as a percentage of the CIF Union frontier price, duty unpaid, are as follows:

| Company | Definitive dumping margin |
|---|---|
| Chengxi Shipyard | 126,8 % |
| Penglai Dajin | 49,7 % |
| Suzhou Titan | 60,7 % |
| Other cooperating companies | 81,9 % |
| All other companies | 143,2 % |

(292) Following final disclosure, CCCME argued that the dumping margins established by the Commission were not credible. In particular, the industry organisation pointed out, on the example of the dumping margin determined for other cooperating companies, that based on the Commission's calculation, the normal value of the Chinese exporters should be approximately 80 % higher than their export price in a situation where the Chinese export prices were approximately at the same level as the cost of production of the Union producers. To arrive at this conclusion, CCCME deducted the target profit (9,1 %) from the injury margin (11,2 %) thus claiming that the Chinese export price was only by 2 % higher than the Union producer's cost of production.

(293) The Commission noted that the difference between the dumping and injury margins is irrelevant when assessing the credibility of the dumping margin calculation. Dumping margins were based on the information provided by the companies (consumption of factors of production, certain costs, export prices) and undistorted costs and benchmarks established in the representative country. The exporting producers had the opportunity to comment on their individual dumping margin calculation. Should factual errors be identified, the Commission would have corrected them. In addition, all parties were informed about the sources and values of undistorted costs and benchmarks in the representative country and were given the opportunity to comment on the sources themselves as well as on potential errors in the calculation. Based on the interested parties' comments, the Commission made changes or corrections where appropriate.

(294) Moreover, CCCME compared categories that cannot be practically compared. For example, CCCME disregarded that the Chinese landed export prices included SG&A, profit, handling and loading, ocean freight and insurance, import duties, and post-importation cost and therefore, could not be compared to the Union costs of production. Furthermore, CCCME failed to take into account the fact that the Chinese export price compared to the Union target price for the purpose of the injury margin calculation was a landed price, while the Chinese export price used for the dumping margin calculation was an ex-works price.

(295) Finally, based on the reasons presented in recitals (293) and (294), the Commission rejected the claim by CCCME.

## 4. INJURY

### 4.1. Definition of the Union industry and Union production

(296) During the investigation period, the like product was manufactured by 19 known producers in the Union ([113]). These producers constitute the "Union industry" within the meaning of Article 4(1) of the basic Regulation.

(297) The total Union production during the investigation period was established at 2 443 towers.

(298) As indicated in recital (8), it was estimated that the three Union producers selected in the sample represented 38 % of the total Union production of the like product. They accounted for 38 % of the Union sales volumes established at initiation stage.

### 4.2. Union consumption

(299) The three CN codes under which SWT or sections thereof may be imported also include significant volumes of other products. Therefore, in the absence of more accurate data concerning imports of SWT for the period considered, the Commission established Union consumption on the basis of EWTA data ([114]).

(300) EWTA calculated consumption starting from wind installations in MW as published by WindEurope ([115]). EWTA calculated the number of towers by dividing the MW installed yearly by the average size(s) of the wind turbine generators installed according to WindEurope's reports. Union consumption in 2017 is based on 2018 installations as reported by WindEurope, Union consumption in 2018 is based on 2019 installations as reported by WindEurope and Union consumption in 2019 is based on 2020 installations as reported by WindEurope. Union consumption in the investigation period is based on 2020 installations as reported by WindEurope (for the first half of the investigation period) and extrapolations based on EWTA's market intelligence (for the second half of the

([113]) The complaint identified 23 Union producers, but some became insolvent and/or had no production during the investigation period.
([114]) t21.004376.
([115]) WindEurope is also registered as an interested party in this proceeding.

investigation period). The 1-year time adjustment is needed because of the lead time between the time producers sell SWT to their clients and the time wind turbines are installed, which, according to information on file ([116]), is 12 months on average, although it can be longer ([117]).

(301) On that basis, consumption of SWT developed during the period considered as follows:

*Table 2*

**Consumption on the Union market (towers)**

| | 2017 | 2018 | 2019 | IP |
|---|---|---|---|---|
| Union consumption | 2 707 | 3 200 | 2 851 | 3 087 |
| *Index* | 100 | *118* | *105* | *114* |

*Source:* EWTA

(302) Overall consumption increased from 2 707 towers in 2017 to 3 087 in the investigation period. Demand was particularly strong in 2018, driven by the rise in installations in 2019 in Spain, Sweden and offshore ([118]).

(303) Following final disclosure, GE claimed that basing Union consumption figures on the number of installations in the Union during the subsequent year made little sense as it would be impossible to accurately recalculate a purchase date from the year of installation. In support of this claim, GE referred to the fact that the lead time can be longer than one year, as the Commission had found, but it did not comment on the appropriateness of using a 12 months average lead time as had been proposed by EWTA and found reasonable by the Commission based on the information provided by interested parties in this investigation.

(304) The Commission first noted that GE neither proposed an alternative lead time to establish consumption on the basis of WindEurope installation data, nor a different basis to calculate consumption. In fact, GE itself acknowledged that timelines between purchasing and installing steel wind towers vary significantly depending on the windfarm project, its size and location, while timelines between customs clearing steel wind towers (or these leaving the Union producers' factories) and installing them also fluctuate. As to the reasonableness of an average lead time of one year between sales (consumption) and installation, EWTA's reasoning was supported by statements provided by other interested parties in the course of the investigation ([119]). Finally, the consumption trend established when applying the one year adjustment is not contradicted by other information on file. The claim was therefore rejected.

(305) Following final disclosure, CCCME asked for a reconciliation of the relevant dataset used with publicly available sources. The Commission dismissed the claim. The absence of accurate publicly available statistical data with regard to steel wind towers is the exact reason for resorting to the methodology outlined in recital (300) above. With regard to imports, Eurostat does not use the same units of measurement as WindEurope's dataset. Moreover, the CN-codes under which steel wind towers are classified also include significant volumes of other products. The submitted open versions of EWTA's datasets were made available to interested parties in t21.003247, saved on 12/04/2021 (WindEurope and Eurostat's datasets) and in t21.004376, dated 07/06/2021 (WindEurope's dataset).

([116]) Inter alia, page 7 of the "injury submission" and page 28 of the body of the questionnaire reply in t20.008818 (Vestas).

([117]) For details about timelines, see pages 6, 8 and 9 of t20.007935 (WindEurope). The deadline for the installation of onshore projects can be up to four years and for offshore projects up to six years.

([118]) "Wind energy in Europe in 2019 - Trends and statistics", WindEurope, February 2020, page 11. The report can be downloaded via https://windeurope.org/intelligence-platform/product/wind-energy-in-europe-in-2019-trends-and-statistics/

([119]) On page 7 of its "injury submission" available in t20.008818, Vestas wrote: "Wind turbines are sold with a delivery (commissioning) date of typically around 1 year after a firm order has been signed."

(306) After final disclosure, CCCME also questioned the significant differences in consumption figures, ([120]) as reported in the complaint ([121]), in EWTA's reply to the macro data questionnaire of 9 April 2021 ([122]) and EWTA's revised submission of 7 June 2021 ([123]). The Commission clarified that the reasons for the changes had been duly explained by EWTA in the last two of the said submissions and reiterated that the underlying datasets had been made available to interested parties. To some extent, the difference between EWTA's initial reply to the macro data questionnaire and the complaint data is explained by the fact that the United Kingdom, which is an important SWT market, was not anymore accounted for in the macro data questionnaire reply due to its formal departure from the Union on 1 January 2021. Additionally, in its submission of 7 June 2021, EWTA explained the changed figures with regard to some of the indicators as compared to the submission of 9 April 2021 by new insights, notably with regard to total annual consumption (the one year adjustment referred to above) and the share of exports in the Union industry sales volumes.

(307) The Commission had remotely cross-checked the reply to the macro data questionnaire on 26 March 2021. Following final disclosure, CCCME suggested that the Commission should have conducted another RCC as the verified questionnaire reply of EWTA had in the meantime been superseded by the updated reply of 7 June 2021. The Commission clarified that the dataset on which the 7 June 2021 submission was based was broadly identical to the dataset on which the 9 April 2021 submission had been based. Only for the second half of the investigation period, new overall consumption figures were established by EWTA, in line with the revised approach to account for a 1-year delay between consumption and installation. The consumption data for the first half of 2020 had to be based on the installed energy output (MW) during the first half of 2021. After having received the updated EWTA submission, the Commission duly checked how EWTA had estimated the MW figure for the first half of 2021 and it concluded that the extrapolation methodology to arrive at that figure, which was the basis for the SWT consumption figure in the second half of the investigation period, was reasonable. It had therefore concluded that there was no need to conduct a second RCC related to the macro data provided by EWTA. The Commission also noted that prior to the final disclosure, no party had provided comments on the updated EWTA submission of 7 June 2021, also not after parties had been informed on 18 June 2021 on the non-imposition of provisional measures and explicitly invited to comment on submissions made by other interested parties ([124]). Neither CCCME nor any other party commented on EWTA's submission of 7 June 2021 by that deadline and the Commission therefore rejected the allegation that this new submission could have affected CCCME's rights of defence.

### 4.3. **Imports from China**

#### 4.3.1. *Volume and market share of the imports from China*

(308) The product under investigation represents a limited part of the import volumes under the CN codes covered by the investigation. In the absence of more accurate import data for the period considered or other meaningful data, table 3 reflects EWTA's best estimates of imports from the country concerned. EWTA's methodology consisted of deducting Union producers' sales from Union consumption to establish imports in a year. Then EWTA resorted to Eurostat to calculate the average representativity of each relevant import source, including China as follows:

*Table 3*

**Average representativity of import sources**

| | 2017 | 2018 | 2019 | IP |
|---|---|---|---|---|
| China | 81 % | 77 % | 85 % | 79 % |
| Vietnam | 4 % | 8 % | 5 % | 7 % |
| Republic of Korea | 10 % | 5 % | 4 % | 3 % |

([120]) CCCME questioned the difference in numbers in the three submissions not only with regard to consumption, but also with regard to several other indicators. The explanation provided by the Commission in this recital also covers the differences between the three submissions for indicators other than consumption.
([121]) t20.005691.
([122]) t21.003247.
([123]) t21.004376.
([124]) t21.004624.

| | 2017 | 2018 | 2019 | IP |
|---|---|---|---|---|
| Turkey | 4 % | 9 % | 5 % | 10 % |
| Others, namely Malaysia and Indonesia | 1% | 1% | 1% | 1% |

*Source:* EWTA

(309) EWTA calculated the above percentages starting from Eurostat imports values for China, Turkey, Vietnam and the Republic of Korea for CN codes 7308 20 00 and 8502 31 00. EWTA computed a simple average of the representativity of each source in CN code 7308 20 00 and the representativity of each source in CN code 8502 31 00 to come up with the overall average representativity shown in table 3.

(310) For each of the periods, imports of SWT from third countries other than China, Turkey, Vietnam and the Republic of Korea are estimated at 1 % of the total imports. Such "other countries" are, according to EWTA, namely Malaysia and Indonesia.

(311) Where Eurostat data showed imports under CN codes 7308 20 00 and 8502 31 00 from countries other than the ones mentioned in the table above, EWTA disregarded those, relying on their market knowledge, according to which, worldwide, there is SWT production only in a selected number of countries. Out of them, only the countries named in the table above would have exported SWT to the Union during the period considered.

(312) After final disclosure, CCCME alleged that the above methodology was based on EWTA's subjective assessment and market knowledge but failed to substantiate this. The Commission considered that the calculation of import volumes as explained above is reasonable in view of the available data as it combines the use of an undisputed reliable statistical source (Eurostat) and EWTA's market knowledge for the volume share of exporting countries with the overall volume of imports established using WindEurope's published installed capacity data and the Union sales volumes as reported by the Union producers of the like product. The contributions made in the course of the investigation by users as a whole did not reveal any source of imports other than the selected number of countries in table 3, while they confirmed that Chinese producers were, by far, their main suppliers from third countries. The Commission consequently rejected CCCME's claim.

(313) On that basis, imports from China developed as follows:

*Table 4*

**Import volume and market share**

| | 2017 | 2018 | 2019 | IP |
|---|---|---|---|---|
| Volume of imports from China (towers) | 690 | 992 | 791 | 1 063 |
| *Index* | *100* | *144* | *115* | *154* |
| Market share | 25 % | 31 % | 28 % | 34 % |
| *Index* | *100* | *122* | *109* | *135* |

*Source:* EWTA

(314) Imports from China fluctuated over the period considered. It is noted that SWT are typically sold as part of larger projects, with a timespan often exceeding one year, so the evolution of sales, including imports, often reflects shifts in demand that took place a year or more before the sale took place. Overall, imports from China increased by 54 %. Their market share grew from 25 % in 2017 to 34 % in the investigation period, which entails a 35 % increase over the period considered.

(315) Following final disclosure, GE noted that the Commission incorrectly calculated the Union consumption of steel wind towers and, thus, incorrectly established the market shares of Chinese producers. The claim is rejected on the grounds explained in recital (304).

4.3.2. *Prices of the imports from China and price undercutting*

(316) The product under investigation represents a limited part of the imports reported under the CN codes covered by the investigation. In the absence of reliable statistical data for the period considered or other meaningful data, the Commission therefore established the average prices of Chinese imports on the basis of data as submitted by sampled exporting producers.

(317) After final disclosure, CCCME and Suzhou Titan contested that it was appropriate to establish average Chinese import prices on the basis of the remotely cross-checked prices of the sampled exporting producers. In particular, CCCME considered that these prices would represent not more than 22 % of Chinese imports and that they therefore could not be considered as representative. Alternatively, it considered that the Commission should resort to Eurostat data and it provided a table comprising, for the four years of the period considered, a volume of imports in tonnes and a EUR/tonne unit price of those imports according to "CCCME's own calculations, based on Eurostat data".

(318) CCCME did not provide the exact data source for the mentioned figures and therefore the Commission was unable to assess if the resulting figures were more representative. The Commission however recalled that the product under investigation represents only a limited part of the imported volumes reported in Eurostat under the CN codes covered by the investigation. Therefore, it concluded that an average price and average price evolution on the basis of a product mix which includes significant volumes of products not concerned is clearly less representative than an average price and average price evolution of only the product concerned from the three sampled exporting producers, which at the same time are the largest exporting producers that have come forward in the proceeding. CCCME's and Titan's claims were therefore rejected.

(319) In view of the above, the Commission found that the average price of SWT imports from China developed as follows:

*Table 5*

**Import prices (China)**

| | 2017 | 2018 | 2019 | IP |
|---|---|---|---|---|
| EUR/tonne | 1 131 | 1 271 | 1 130 | 1 151 |
| *Index* | 100 | *112* | *100* | *102* |

*Source:* Sampled exporting producers

(320) The average prices of imports from China fluctuated over the period considered. Overall, they increased by 2 %, although they dropped significantly between 2018 and 2019 and then recovered.

(321) Prices in tables 5 and 9 of this Regulation are at full scope level, and show significant price differences between the Union industry prices and the dumped imports. The investigation has shown that users purchase SWT either under tolling agreements ([125]) or under full scope purchase orders. Unlike in tolling agreements, under full scope purchase orders, users purchase from SWT producers complete SWTs, including all raw materials, such as steel plates and so-called 'internals' (e.g. a lift). Under tolling agreements, all or part of the input materials are provided by the user to the producer. In that case, the producer only invoices the labour required to transform the input materials to an SWT plus any other materials that the user did not previously provide.

(322) The Commission determined the price undercutting during the investigation period by comparing for full scope purchase transactions:

(a) the weighted average prices per product type of the imports from the sampled Chinese producers to the first independent customer on the Union market, established on a CIF basis, with appropriate adjustments for post-importation costs; and

([125]) For an example, see page 5 of t21.001734 (Vestas).

(b) the corresponding weighted average sales prices per product type of the sampled Union producers charged to unrelated customers on the Union market, adjusted to an ex-works level.

(323) The price comparison was made on a type-by-type basis for transactions at the same level of trade, duly adjusted where necessary, and after deduction of rebates and discounts when applicable. The result of the comparison was expressed as a percentage of the sampled Union producers' theoretical turnover during the investigation period.

(324) On the basis of the above, the dumped imports of the sampled exporting producers showed weighted average undercutting margins between 2,7 % and 5,1 %. The product under investigation is very price-sensitive. Users generally purchase SWT through bidding processes and/or requests for quotations. Offers of several suppliers are then confronted and competition is largely based on price. In such a context, the undercutting margins found are considered significant.

(325) As indicated above, the Commission applied its standard practice by comparing the Union border CIF price of the exporting producers to the ex-works price of the Union producers because it considered that comparing the prices at these respective levels ensured an objective assessment for the purpose of calculating undercutting.

(326) Following final disclosure, Suzhou Titan submitted with regard to the undercutting (and underselling) calculations that the post importation costs added to the CIF price of Chinese imports should be increased by the transport and insurance cost to the installation site, whereas the Union industry price should be taken at ex-works level. The reason it invoked for such adjustment to the import price for undercutting and underselling calculations was the high level of transport costs involved and that each section of a steel wind tower, after importation into the Union, has its own single destination. Several parties submitted that the appropriate point of comparison for the undercutting (and underselling) margins calculation should be the delivered EU landed price at the installation site, both for the Chinese and Union producers, as the final sales price by the user accounts for high transport costs, which is strongly affected by the destination of the wind farm project, and that the competition between Union producers and exporting producers takes place at that level. EWTA submitted that the Union industry's prices for the undercutting (and underselling) calculations should be increased by the transport and insurance costs to bring them to the CIF level at the same port of entry as Chinese import prices.

(327) The Commission deemed all above claims conceptually flawed. The Union producers' ex works prices compete with the export prices from the country concerned at CIF EU entry port level. Adding transport and insurance cost to the installation site on either the Union side or the exports side, but not both, would not be appropriate to examine price effects of imports.

(328) For the above reasons, the Commission rejected the above claims submitted by EWTA, GE and Suzhou Titan.

(329) Following final disclosure, Chengxi Shipyard submitted several claims on the undercutting and underselling margin calculations.

(330) First, it claimed that undercutting margins should be calculated on a per piece basis rather than on a per kg basis, pointing to pieces (towers) being the calculation basis for (most) injury indicators. This claim was rejected, since the Commission considered that the calculation of undercutting (and underselling) margins is disconnected from the establishment of the injury indicators (see also recitals (282) and (283)). Moreover, whether the Commission used towers or kg is irrelevant insofar as the Commission used the same values on both sides of the comparison.

(331) Second, Chengxi Shipyard claimed that, notwithstanding the additional information provided by the Commission with an additional disclosure of, inter alia, the target prices per product model of the Union industry in ranges, the final disclosure remained inadequate. Without disclosing the sales quantities, values and the exact target prices of the Union industry, the Commission had not enabled the company to check the accuracy of the injury calculations. The company considered that specific Union industry data should be provided because they are the result of the consolidation of data of three sampled Union producers.

(332) The Commission disagreed with the claim made by the company, because the target price in ranges contained all information needed to calculate the minimum and maximum underselling margin per product model and therefore allowed the exporting producers to identify potential calculation mistakes. Moreover, concerning the request to disclose quantities, values and the exact target prices the Commission recalled that the provisions of Article 19(4) of the basic Regulation oblige the Commission to take into account the legitimate interests of the parties concerned that their business secrets will not be disclosed. In this specific case, the sales price or the target price of the Union

industry is not always the result of the consolidated data of the three sampled producers, e.g. in several instances one of the three sampled Union producers had not sold the product model used for the comparison and therefore the price per model of product of the Union industry is not anymore an average of the prices of three sampled companies. The claim was thus rejected.

(333) Third, Chengxi Shipyard's claimed that the SWT were not in direct competition with the Union industry's product and would not have caused any injury, first, because half of its sales were not used in its injury margin calculation, and second, because some of them had a negative margin.

(334) The fact that more than 45 % of the imports from Chengxi Shipyard have not been taken into consideration is due to the methodology of the price comparison of the imports with the sales of the like product of the sampled Union producers. The Commission recalled that all imported product types compete with all product types produced by the Union producers. The fact that, for example, a product type imported from China is delivered without an internal (e.g. a lift or climbing assistance system or the temperature control system), or with a different length per section, and that therefore there is no matching for the purpose of calculating undercutting or underselling, is not an indication that such products do not compete with the like products manufactured by the Union industry, but simply confirms that each sale is customised according to the customer's technical specifications and requirements. The claim was thus rejected.

(335) Fourth, Chengxi Shipyard claimed that the undercutting (and underselling) margins analysis was incomplete and asymmetrical in respect of the dumping calculation because all Chengxi Shipyard's export sales were used in the dumping margin determination but not for the undercutting (and underselling) calculation. The Commission recalled that there is no requirement in the basic Regulation to use the same export sales in the dumping and injury calculations. The context of both calculations is different and the underlying dataset may also differ, bearing in mind that in the injury calculations the comparison is made between price information of exporters, on the one hand, and Union producers, on the other hand. The claim was thus rejected

(336) Finally, Chengxi Shipyard claimed that the Commission should have calculated the post-importation costs as a certain amount per quantity (per tonne or per piece of SWT) rather than a percentage of the CIF value in order to be consistent with the same cost adjustment made for calculating the export price and because the quantity is more relevant to the quantification of post importation costs. First, the Commission had to recall that the company has not substantiated or provided supporting evidence of its claim that a certain amount of post-importation cost per quantity is more appropriate. Second, the Commission sourced directly the data from the questionnaire replies of the importers/users and noticed that most of the clearance costs reported in the supporting document are based on lump sum amounts disconnected with the quantities or the weight of the goods imported. Finally, in the supporting documents that had been checked the reference to the weight or the number of unit imported were missing. The claim was thus rejected.

### 4.4. **Economic situation of the Union industry**

#### 4.4.1. *General remarks*

(337) In accordance with Article 3(5) of the basic Regulation, the examination of the impact of the dumped imports on the Union industry included an assessment of all economic indicators having a bearing on the state of the Union industry during the period considered.

(338) As mentioned in recital (9), sampling was used for the determination of the possible injury suffered by the Union industry.

(339) For the injury determination, the Commission distinguished between macroeconomic and microeconomic injury indicators. The Commission assessed the macroeconomic indicators on the basis of data from the questionnaire reply submitted by EWTA relating to all Union producers, cross-checked where necessary with the questionnaire replies from the three sampled Union producers. The Commission assessed the microeconomic indicators based on data contained in the questionnaire replies from the three sampled Union producers. Both sets of data were cross-checked remotely and found to be representative of the economic situation of the Union industry.

(340) 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.

(341) 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

(342) The total Union production, production capacity and capacity utilisation developed over the period considered as follows:

*Table 6*

**Production, production capacity and capacity utilisation**

| | 2017 | 2018 | 2019 | IP |
|---|---|---|---|---|
| Production volume (towers) | 2 704 | 2 516 | 2 647 | 2 443 |
| *Index* | *100* | *93* | *98* | *90* |
| Production capacity (towers) | 4 859 | 4 664 | 4 936 | 4 952 |
| *Index* | *100* | *96* | *102* | *102* |
| Capacity utilisation | 56 % | 54 % | 54 % | 49 % |
| *Index* | *100* | *97* | *96* | *89* |

*Source*: EWTA and sampled Union producers

(343) During the period considered, production dropped by 10 %. Production capacity was practically stable over the period considered, as it increased by a mere 2 %. Capacity utilisation fell from 56 % in 2017 to 49 % in the investigation period.

(344) Siemens Gamesa Renewable Energy GmbH & Co KG ('SGRE'), a user of SWT that submitted comments, considered that the mere number of SWT produced is not representative because their size increased over time. The party reiterated that comment following final disclosure and submitted that the Commission should use as unit of measurement megawatts ('MW') and gigawatts ('GW'), i.e. parameters that are used industry wide as an indication of the capacity installed and which also form the basis for the measurement of the output requirements for the renewable energy targets as contained in the Green Deal. The Commission dismissed the claim, as the steel wind towers market does not use MW or GW as a unit of measurement.

4.4.2.2. Sales volume and market share

(345) The Union industry's sales volume and market share in the Union developed over the period considered as follows:

*Table 7*

**Sales volume and market share**

| | 2017 | 2018 | 2019 | IP |
|---|---|---|---|---|
| Union industry EU sales to unrelated customers (towers) | 1 859 | 1 895 | 1 924 | 1 737 |
| *Index* | *100* | *102* | *104* | *93* |
| Market share | 69 % | 59 % | 68 % | 56 % |
| *Index* | *100* | *86* | *98* | *82* |

*Source*: EWTA and sampled Union producers

(346) The Union industry's sales volume dropped by 7 % over the period considered. The Union industry's market share fell from 69 % in 2017 to 56 % in the investigation period, which entails a decrease by 18 % overall.

(347) Following final disclosure, GE noted that the Commission calculated incorrectly the Union consumption of steel wind towers and, thus, established incorrectly the market shares of Union producers. The claim was rejected on the grounds explained in recital (304).

4.4.2.3. Growth

(348) The Union industry's sales volume and market share in the Union fell over the period considered by 7 % and 18 % respectively. The Union industry was thus unable to benefit from the increase in Union consumption (+14 % over the period considered, as shown in table 2).

4.4.2.4. Employment and productivity

(349) Employment and productivity developed over the period considered as follows:

*Table 8*

**Employment and productivity**

| | 2017 | 2018 | 2019 | IP |
|---|---|---|---|---|
| Number of employees | 3 803 | 3 817 | 3 936 | 3 614 |
| *Index* | *100* | *100* | *103* | *95* |
| Productivity (towers per employee) | 0,71 | 0,66 | 0,67 | 0,68 |
| *Index* | *100* | *93* | *95* | *95* |

*Source:* EWTA and sampled Union producers

(350) The level of Union industry employment related to the production of SWT dropped by 5 % over the period considered.

(351) Productivity fell from 0,71 towers in 2017 to 0,68 towers per employee in the investigation period. It should be noted that the product mix affects the number of towers per employee. Moreover, on average, SWT grow in size year after year. Therefore, the productivity drop by 5 % shown above is most likely fully offset by the fact that towers became larger during the period considered.

4.4.2.5. Magnitude of the dumping margin and recovery from past dumping

(352) The impact of the magnitude of the actual margins of dumping on the Union industry was substantial, given the volume and prices of imports from the country concerned.

(353) This is the first anti-dumping investigation regarding the product concerned. Therefore, no data were available to assess the effects of possible past dumping.

4.4.3. *Microeconomic indicators*

4.4.3.1. Prices and factors affecting prices

(354) The weighted average unit sales prices of the sampled Union producers to unrelated customers in the Union developed over the period considered as follows:

*Table 9*

**Sales prices and cost of production in the Union**

| | 2017 | 2018 | 2019 | IP |
|---|---|---|---|---|
| Average unit sales price to unrelated customers (EUR/tonne – full scope sales only) | 1 265 | 1 377 | 1 459 | 1 419 |
| *Index* | *100* | *109* | *115* | *112* |
| Unit cost of production (EUR/tonne – full scope sales only) | 1 191 | 1 385 | 1 538 | 1 439 |
| *Index* | *100* | *116* | *129* | *121* |

*Source:* Sampled Union producers

(355) Over the period considered, the average unit sales prices of full scope orders for Union-origin SWT increased by 12 %, while the unit cost of production increased to a larger extent, i.e. by 21 %.

4.4.3.2. Labour costs

(356) The average labour costs of the sampled Union producers developed over the period considered as follows:

*Table 10*

**Average labour costs per employee**

| | 2017 | 2018 | 2019 | IP |
|---|---|---|---|---|
| (EUR) | 45 411 | 45 427 | 48 121 | 48 593 |
| *Index* | *100* | *100* | *106* | *107* |

*Source:* Sampled Union producers

(357) During the period considered, the average labour costs per employee increased by 7 % following the general inflation and labour cost trends. Annual labour costs growth rates, for the whole EU economy, were up to 3% and more in 2018 and 2019 and up to more than 4% in 2020. ([126])

4.4.3.3. Inventories

(358) Stock levels of the sampled Union producers developed over the period considered as follows:

*Table 11*

**Inventories**

| | 2017 | 2018 | 2019 | IP |
|---|---|---|---|---|
| Closing stocks (sections) | 0 | [30-40] | [30-40] | 0 |
| *Index* | *0* | *100* | *100* | *0* |

*Source:* Sampled Union producers

([126]) https://ec.europa.eu/eurostat/documents/2995521/11563131/3-16062021-AP-EN.pdf/72b7ff6f-1830-8182-a6ae-0d8bb61aaf24?t=1623831696586#:~:text=In%20the%20fourth%20quarter%20of,salaries%20and%20non%2Dwage%20costs.

(359) The Commission found that inventories were not a meaningful injury indicator with regard to the production of SWT. Producers produce SWT based on orders and usually keep no physical inventories. The very minor closing stock quantities reported in table 11 concern SWT produced but not yet sold. ([127])

4.4.3.4. Profitability, cash flow, investments, return on investments and ability to raise capital

(360) Profitability, cash flow, investments and return on investments of the sampled Union producers developed as follows over the period considered:

*Table 12*

**Profitability, cash flow, investments and return on investments**

| | 2017 | 2018 | 2019 | IP |
|---|---|---|---|---|
| Profitability of sales in the Union to unrelated customers (% of sales turnover) | 3,6 % | 1,1 % | - 4,5 % | - 1,4 % |
| *Index* | *100* | *31* | *- 126* | *- 40* |
| Cash flow (EUR) | 12 444 710 | - 377 687 | - 17 013 650 | - 5 531 711 |
| *Index* | *100* | *- 3* | *- 137* | *- 44* |
| Investments (EUR) | 36 715 248 | 15 482 383 | 5 275 427 | 3 488 463 |
| *Index* | *100* | *42* | *14* | *10* |
| Return on investments | 16,5 % | - 4,5 % | - 18,9 % | - 4,6 % |
| *Index* | *100* | *- 27* | *- 115* | *- 28* |

*Source:* Sampled Union producers

(361) The profitability of the Union industry shrank from +3,6 % in 2017 to – 1,4 % in the investigation period. The net cash flow was negatively affected by falling profits and was negative between 2018 and the investigation period. The ability to raise capital was hindered by the drop in profits. The level of yearly investments followed a steady downwards trend and dropped by 90 % in the period considered.

(362) With regard to cash flow, SGRE noted that GRI had reported in its questionnaire reply that its ability to raise capital had not been affected by injurious dumping and that investments were self-financed or financed through bank credits. In the same vein, it argued that Windar had reported that its ability to raise capital had not been affected as no dividend was distributed and profits had been used to reinforce the balance structure, whereas investment had been financed by either own cash flow or long term bank credits. The investigation showed however that, as shown in the table above, the profits of sampled Union producers shrank and potentially hindered their investments. Moreover, the fact that Windar was not able to pay out dividends to its shareholders, which was the result of fallen profits, and that Windar had to resort to bank credits in order to make investments, as mentioned above, showed that they were already in a fragile financial situation. Bank credits naturally came at additional costs in the form of payable interests which also will have been higher than in a situation where Windar had been financially sounder.

(363) Following final disclosure, SGRE stated that the fact that a company resorts to bank credits for the purpose of making investments does not mean that it is in a fragile situation. The Commission agreed that the mere fact that Windar relied on bank credits for the purpose of making investments cannot, in the abstract, be seen as evidence of injury. However, the Commission considered that this fact has to be seen in combination with other factors, as it did in recital (362). SGRE's statements did not change that conclusion.

([127]) Page 5 of t21.000376 (EWTA).

(364) SGRE referred to the US ITC investigation against Spanish steel wind towers. It suggested that if Spanish producers such as Windar would sell their SWT exports to the US at prices below their domestic prices, it would consider its cost of production and profitability on the domestic market sufficient. However, for many reasons the Commission failed to see the rationale behind this allegation which, moreover, is based on allegations in a complaint ('petition') under investigation by third country authorities. In addition, this allegation is flawed because price discrimination (if any and if proven) can have many causes, so even if Windar's domestic (EU) prices were higher than its export prices to the US, that does not necessarily mean that the domestic prices were (sufficiently) profitable. The Commission also underlined that it established the data for the micro-indicators on the basis of a sample of three Union producers. The suggestion was thus firmly rejected.

### 4.5. **Conclusion on injury**

(365) The above assessment of economic macro- and micro-indicators shows that the Union industry was suffering material injury in the investigation period, as it lost significant market share and its sales prices increase was insufficient to pass on the strong increase in its costs of production, resulting in a collapse of its profitability, which negatively affected investments, return on investments and cash flow.

(366) The fact that a few indicators (production capacity, stocks) did not deteriorate does not undermine the finding of injury.

(367) Some parties (CCCME, SGRE, GE) submitted that in the last part of the reference period used in the complaint, some indicators improved. The investigation found that during the investigation period this is only the case for the financial indicators, as the strong drop in cost of production between 2019 and the investigation period indeed had a positive effect on the financial situation of the Union industry. However, the Union industry was still making significant losses in the investigation period. Thus, even if that indicator improved between 2019 and the investigation period, it does not undermine the finding of injury with regard to it.

(368) On the basis of the above, the Commission concluded that the Union industry suffered material injury within the meaning of Article 3(5) of the basic Regulation.

## 5. **CAUSATION**

### 5.1. **Effects of the dumped imports**

(369) Over the period considered, the Union industry lost sales to Chinese imports. The import volumes from China increased strongly (by 54 %) and their market share increased by nine percentage points, from 25 % in 2017 to 34 % in the investigation period. In the same period, and despite the 14 % increase in consumption, the Union industry's sales volume dropped by 7 % over and its market share fell from 69 % in 2017 to 56 % in the investigation period.

(370) In terms of prices, Chinese import prices were significantly below the Union industry sales prices and also below the Union industry cost of production throughout the period considered, leading to price suppression. The price pressure exerted by the high and increasing import volumes from China at such prices over the period considered is a clear explanation for the Union industry's inability to reflect the cost increases in its sales prices and the resulting losses.

(371) On the basis of the above, the Commission concluded that the imports from China caused material injury to the Union industry. Such injury had both volume and price effects.

(372) Both SGRE and GE stated that there was no correlation between the complainants' declining profits and the alleged dumped imports as profits declined sharply as from 2018 and Chinese import prices increased. CCCME stated that Chinese imports could not have caused injury to Union producers as the quantities of Chinese imports dropped while their prices increased.

(373) The Commission disagreed. Overall, Chinese import prices increased by 2 % over the period considered, as shown in Table 5. However, they remained below the Union industry's prices and its cost of production throughout the period considered. In addition, Chinese import prices decreased between 2018 and 2019. With regard to the volumes of imports from China, the investigation showed that they increased by 54 % between 2017 and the investigation period and still by 7 % since 2018.

### 5.2. **Effects of other factors**

#### 5.2.1. *Imports from third countries*

(374) The volume of imports from other third countries developed over the period considered as follows:

*Table 13*

**Imports from third countries**

| Country | | 2017 | 2018 | 2019 | IP |
|---|---|---|---|---|---|
| Turkey | Volume (towers) | 34 | 121 | 48 | 134 |
| | *Index* | *100* | *356* | *141* | *393* |
| | Market share | 1,3 % | 3,8 % | 1,7 % | 4,3 % |
| | *Index* | *100* | *301* | *134* | *344* |
| | Average price (EUR/tonne) | 1 844 | 1 830 | 1 646 | 1 691 |
| | *Index* | *100* | *99* | *89* | *92* |
| Vietnam | Volume (towers) | 31 | 109 | 44 | 98 |
| | *Index* | *100* | *351* | *142* | *315* |
| | Market share | 1,2 % | 3,4 % | 1,5 % | 3,2 % |
| | *Index* | *100* | *297* | *135* | *277* |
| | Average price (EUR/tonne) | 1 712 | 1 681 | 1 592 | 1 475 |
| | *Index* | *100* | *98* | *93* | *86* |
| Republic of Korea | Volume (towers) | 85 | 69 | 34 | 41 |
| | *Index* | *100* | *81* | *40* | *49* |
| | Market share | 3,1 % | 2,1 % | 1,2 % | 1,3 % |
| | *Index* | *100* | *68* | *38* | *43* |
| | Average price (EUR/tonne) | 2 111 | 1 997 | 2 140 | 2 381 |
| | *Index* | *100* | *95* | *101* | *113* |

| | | | | | |
|---|---|---|---|---|---|
| Others (Indonesia, Malaysia) | Volume (towers) | 8 | 13 | 9 | 14 |
| | *Index* | *100* | *163* | *113* | *175* |
| | Market share | 0,3 % | 0,4 % | 0,3 % | 0,4 % |
| | *Index* | *100* | *137* | *107* | *153* |
| | Average price (EUR/tonne) | 1 712 | 4 184 | 2 238 | 2 896 |
| | *Index* | *100* | *244* | *131* | *169* |
| All third countries above | Volume (towers) | 158 | 312 | 136 | 287 |
| | *Index* | *100* | *197* | *86* | *181* |
| | Market share | 5,9 % | 9,8 % | 4,8 % | 9,3 % |
| | *Index* | *100* | *167* | *82* | *159* |
| | Average price (EUR/tonne) | 1 931 | 1 876 | 1 776 | 1 783 |
| | *Index* | *100* | *97* | *92* | *92* |

*Source:* EWTA (towers, market shares) and Eurostat (average price)

(375) During the period considered, imports from third countries other than China were limited. Their combined market share went from 5,9 % in 2017 to 9,3 % in the investigation period. The Commission noted that average prices of imports from third countries other than China were assessed based on Eurostat data for CN codes 7308 20 00 and 7308 90 98. These CN codes cover imports of a much larger range of goods than only SWT but they represent the best information available in the present investigation. As these prices were consistently and significantly higher than the prices of imports from China, it may reasonably be concluded that the underlying imports of SWT did not undercut Union industry sales prices.

(376) Volumes in the above table are best estimates as provided by EWTA. EWTA's methodology is described in section 4.3.1.

(377) Upon request, some users submitted data to the Commission with their import volumes and prices from third countries other than China. However, given the limited number of users, the limited import sources used by each of them and the different methodologies used for their reporting, and the scarcity of data, such information was not found to be reliable nor could be meaningfully disclosed.

(378) Table 13 shows average prices according to Eurostat data for Combined Nomenclature codes 7308 20 00 and 7308 90 98 together. WindEurope asked the Commission to assess injury on the grounds of data for the first code only, in line with the US ITC ([128]). The Commission found the request unfounded as the investigation revealed imports under 7308 90 98 during the investigation period. No co-operating parties reported imports under code 8502 31 00. In addition, the Commission noted the same as in recital (375) with regard to the accuracy of the underlying data.

(379) No party suggested that imports from third countries other than China might have caused injury to Union producers. Moreover, the Commission noted that such imports represented less than a third of the imports from China over the period considered.

([128]) Page 14 of t20.007935.

(380) In light of the above, the Commission concluded that imports from third countries other than China did not cause injury to the Union industry during the period considered.

5.2.2. *Export performance of the Union industry*

(381) The volume and prices of exports of the Union industry to unrelated parties developed over the period considered as follows:

*Table 14*

**Export sales**

| | 2017 | 2018 | 2019 | IP |
|---|---|---|---|---|
| Export volume (towers) | 743 | 421 | 357 | 371 |
| *Index* | *100* | *57* | *48* | *50* |
| Average price (EUR/towers – only full scope orders) | 311 479 | n.a. * | 559 982 | 643 024 |
| *Index* | *100* | - | *180* | *206* |

*Source:* EWTA (volumes) and sampled Union producers (average prices)

* No full scope export sales in sample

(382) During the period considered export volumes by Union producers halved. The sampled producers were not in a position to provide a EUR/tonne price for those sales, therefore the prices reported above are per SWT and they thus also reflect the increase in average size over the period considered. The average prices reported above are moreover significantly affected by differences in product mix. Thus, it was not possible to draw any meaningful conclusion as to the impact of export to third countries. At most, as exports at its peak in 2017 represented 28 % of Union sales in 2017, the fall in export sales may have contributed to the injury suffered to some extent but, in any event, it did not attenuate the causal link with the dumped imports.

5.2.3. *Offshore demand*

(383) Vestas referred to the volatility of offshore demand as a source of injury and, like GE, blamed injury on the underutilisation of offshore production facilities in the Union. GE noted that prior to 2017 Union producers had made strong investments in developing expensive production facilities with a view to serving offshore demand that, in the end, had to be used for producing onshore SWT or remained idle. For SGRE and GE, the drop in profitability of the Union SWT industry derived from a decline in demand for offshore SWT.

(384) The above claims are contradicted by WindEurope's publication "Offshore wind in Europe – Key trends and statistics 2020", released in February 2021. Figure 1 therein shows that the cumulative installed offshore wind capacity in the Union increased between 2017 and 2018 at a strong pace by about 16 % and continued to grow even stronger by 20 % p.a. in 2019 and 2020. Whereas it amounted to about 8,8 GW in 2017, in 2020 the installed offshore wind capacity in EU27 amounted to about 14,6 GW ([129]). WindEurope predicted rather a positive outlook for offshore installations ([130]). The Commission also noted that the investigation did not show that Union producers were systematically using facilities meant for offshore SWT for producing onshore SWT – GE itself acknowledged that the facilities meant for offshore SWT of certain Union producers were fully booked ([131]).

([129]) Following a double-check, some of the figures in this sentence and the preceding sentence have been slightly revised between final disclosure and publication of this Regulation, but these changes do not materially change the analysis and the conclusions.

([130]) "Wind energy in Europe – 2020 statistics and the outlook for 2021-2025", WindEurope, February 2021, pages 9 and 31-32.

([131]) Page 3 of t21.000509.

(385) After final disclosure, GE interpreted WindEurope's published figures differently. It concluded from the mentioned chart that demand for offshore wind installations declined between 2017 and 2018, then "slightly recovered" between 2018 and 2019 and declined again from 2019 to 2020. On that basis, it concluded that the Union's offshore market contracted over the period considered. However, whereas the Commission had adjusted the figures to include only Member States of the Union, i.e. it had excluded the reported volumes concerning the United Kingdom, it appeared that GE had failed to do so and thus that it based its conclusions on a wrong dataset. Indeed, if the United Kingdom is excluded from the mentioned chart, there is no drop in demand for offshore wind installations between 2019 and 2020 but rather a strong increase by around 20 %. Overall, as mentioned, the cumulative installed offshore wind capacity in the Union significantly increased from 8,8 GW to 14,6 GW over the period considered, i.e. by 66 %.

(386) As to GE's comments related to underutilisation of offshore production facilities, they are contradicted by the party's comments clarifying that the fully booked facilities referred in recital (384) were those of only one Union producer. The Commission is reassured that the investigation did not show that Union producers were systematically using facilities meant for offshore SWT for producing onshore SWT.

(387) For all the above reasons, the Commission rejected the repeated claim that a decline in the offshore demand would have negatively impacted the profitability of the Union industry and contributed to the injury.

5.2.4. *Raw material prices*

(388) Steel plates account for a major share (around 40 % ([132])) of the cost of production of SWT. In the view of CCCME, SGRE and GE, it was the imposition of a number of trade defence measures against imports of steel, including the currently applicable safeguard measures, into the Union that depressed the profitability of the Union industry rather than Chinese imports. CCCME repeated this comment after final disclosure, adding that in view of the other trade defence measures in place, the increase in cost of production was so substantial that it cannot be offset by increasing prices. More generally, following final disclosure SGRE stated that the Commission's analysis should have involved a closer assessment of whether the 21 % increase in the cost of production did not attenuate the causal link between the allegedly dumped imports and any injury alleged to exist on the part of the Union SWT industry.

(389) The Commission found the claims unfounded. No party substantiated, let alone quantified with data, the effect of any particular trade defence measure on SWT producers' overall production cost by taking account of the Union industry's past and subsequent sourcing of steel products subject to trade defence measures, if any. Moreover, the Commission has pointed, in the final disclosure document as well as in section 4.4.3.1, at the raw material cost development over the period considered, also in comparison to the sales price development. The Commission underlined that in a level playing field, Union producers are able to reflect (raw material) cost increases in their sales prices. However, Union SWT producers were unable to increase their prices (not even to cover their costs) due to the price pressure exerted by the Chinese imports. Therefore, the increase in overall production cost, whether or not triggered by any trade defence measures, could not attenuate the causal link established between dumped imports from China and the material injury suffered by the Union industry.

5.2.5. *Production facilities issues*

(390) SGRE suggested that the opening of new and more modern SWT production facilities in the Union had caused injury to Union producers as it resulted in the closure of other (older) SWT production facilities in the Union. Following final disclosure, the party stated that the internal competition resulting from the opening of GRI Sevilla in Spain in 2017, of Haizea Bilbao in Spain in 2018 and of Windar France in 2020 had not been sufficiently addressed by the Commission. According to SGRE, the opening of Windar France (favourably located at the coast) had made Windar's facility in Olazagutía, Spain (unfavourably located 100 km in-land) redundant and resulted in its closure in 2019. No further information was provided to substantiate this claim. Absent of any other submissions with regard to the issue, the investigation could not establish that the opening of new production facilities in the Union had, *per se*, an injurious effect on existing ones.

([132]) Page 6 of t21.000376 (EWTA) and page 17 of t21.008141 (GE), inter alia.

(391) Vestas and SGRE blamed injury on poorly placed manufacturing facilities of Union producers but failed to substantiate these allegations. The investigation showed that the Union market for SWT, with an annual consumption of around 3 000 units in the investigation period, is not a high volume market and therefore producers cannot limit their sales to nearby sites only. However, each of the sampled Union producers sold SWT also to destinations in their own Member State, or in proximity to it in the investigation period. The claims are dismissed.

5.2.6. *Competition of wind power with other energy sources*

(392) For some parties, the fact that in the Union new wind power electricity generation projects compete directly with producers of other energy sources, in particular solar panels (mostly produced outside of the Union), increased the pressure to produce steel wind towers for increasingly lower prices. So did the increased reliance on auctioning of new renewable capacity since 2017 prescribed by the relevant guidelines for the period 2014-2020 ([133]). The Commission found that the alleged competition with other energy sources does not exist in many projects (see also recital (447)). As to auctioning, according to the available statistical data, prices of towers declined more between 2009 and 2016 than after 2016. The argument was therefore rejected.

(393) Vestas, WindEurope and SGRE stated that any reduced prices or profitability for SWT were a logic consequence of the substantial competition and price pressure in the wind sector as a whole. In this context, Vestas, SGRE, WindEurope and CCCME referred to some developments in the Union wind energy sector (namely an ever-increasing pressure to reduce the number of electricity cost discrimination schemes, inconsistent national policies, a lack of visibility on forward volumes and lower profitability of wind farm projects due to the changes to the form and level of subsidization of renewables in the Union (with a shift from feed-in-tariffs to feed-in-premiums)) which, in their view, pushed a number of European users into losses in 2018 and 2019. The Commission acknowledged these issues but found the overall claim unfounded. Increased competition at end user level under normal circumstances does not result in injury at their suppliers' level. The reason that Union industry prices of SWT were dragged down was the wide and increasing availability of low prized imports from China. Had the competition at that level been at a level playing field, then prices and profitability of SWT producers would not have been depressed to the same extent. Therefore, the increased price pressure for the user industry could not attenuate the causal link established between dumped imports from China and the material injury suffered by Union SWT producers.

5.2.7. *Non-steel towers*

(394) SGRE stated that internal competition from non-steel towers constitutes a potential distinct cause of injury to the Union industry. Following final disclosure, the party insisted that Wood Mackenzie's publication "Global wind turbine technology trends 2019" showed a 10 % increase in hybrid towers, and a 16 % decrease in steel towers over the period 2017-2024, while WindEurope forecasted a decrease in the SWT market value in the coming years. The Commission acknowledged the matter. However the number of non-steel towers in the Union in the period considered was low ([134]) and these towers are not suitable for many projects. Non-steel towers could thus not attenuate the causal link established between dumped imports from China and the material injury suffered by Union SWT producers.

5.2.8. *Other factors*

(395) CCCME stated that significant investments made by Union SWT producers, in particular in 2017, put pressure on Union SWT producers' profit during the subsequent years when demand contracted. First, demand did not contract after 2017. Second, in 2017, the Union SWT producers generated a cash-flow that represented more than a third of the investments made in that year. Together with accumulated profits and cash-flow generated in the years prior to 2017 when no injurious dumping took place, Union producers had sufficient funds to finance these investments. The investigation showed, however, that investments of sampled Union SWT producers were justified replacements, changes required by market demand and necessary equipment upgrades aimed at serving users.

([133]) Communication from the Commission — Guidelines on State aid for environmental protection and energy 2014-2020, OJ C 200, 28.6.2014, p. 1–55

([134]) EWTA estimated that concrete and hybrid towers account for circa 6% of total towers used in wind turbines consumed in the EU27 over the reference period, with no significant increase throughout the years. It also noted that all concrete and hybrid towers mount a steel tower section at their top, to which the nacelle is attached (t21.004376).

(396) SGRE pointed at GRI's increased depreciation as a cause of injury. The investigation found that GRI's depreciation was in line with the applicable national and international accounting standards. Moreover, the investigation could not establish that any changes in GRI's depreciation affected the causal link established between dumped imports from China and the material injury suffered by the Union industry overall.

(397) Vestas blamed injury on the weakening of the Chinese currency, which improved the competitiveness of Chinese SWT. The Commission found, however, that this claim was flawed. Chinese SWT producers were found to invoice exports to the Union either in USD or in EUR. The USD was in fact relatively strong during the investigation period, in a range between 1,07 and 1,14 per EUR/USD. By contrast, EUR/USD stood at over 1,18 in August 2020 and over 1,22 in January 2021. Therefore, currency fluctuations could not cause the material injury suffered by the Union industry.

(398) After final disclosure, CCCME claimed that the decrease in consumption in 2019, which covers half of the investigation period, was a causal factor to the injury. In this respect, it also pointed at the relatively low level of installed capacity in Germany in 2019 and in particular in 2020. The Commission rejected the claim, as the Union consumption in 2019 was still 5 % higher as compared to 2017 and the drop in consumption in 2019 was of a temporary nature and followed by a strong increase by 8 % in the investigation period.

(399) CCCME also claimed after final disclosure that the Commission should have addressed the impact of the Covid-19 pandemic on the injury, as it had caused a significant economic downturn and heavily impacted global supply chains. The Commission noted that the investigation period ended in the middle of 2020 and that there were no signs that demand for SWT shrank or raw material sourcing problems started to occur during the last four months of the investigation period, when the pandemic landed in the Union. CCCME's claim was therefore rejected.

### 5.3. **Conclusion on causation**

(400) On the basis of the above, the Commission concluded that the dumped imports from the country concerned caused material injury to the Union industry and that the other factors, considered individually or collectively, did not attenuate the causal link between the dumped imports and the material injury.

## 6. **LEVEL OF MEASURES**

(401) To determine the level of the measures, the Commission examined whether a duty lower than the margin of dumping would be sufficient to remove the injury caused by dumped imports to the Union industry.

### 6.1. **Injury margin**

(402) The injury would be removed if the Union Industry were able to obtain a target profit by selling at a target price in the sense of Articles 7(2c) and 7(2d) of the basic Regulation.

(403) In accordance with Article 7(2c) of the basic Regulation, for establishing the target profit, the Commission took into account the following factors: the level of profitability before the increase of imports from the country concerned, the level of profitability needed to cover full costs and investments, research and development (R&D) and innovation, and the level of profitability to be expected under normal conditions of competition. Such profit margin should not be lower than 6 %.

(404) The complainants stated that 10 % was a reasonable target profit as it was allegedly attained by certain complainants during the period covered by the complaint ([135]). Several users claimed that the level of profit put forth by the complainants was, however, unreasonably high.

([135]) t21.000144 (EWTA).

(405) Article 7(2c) of the basic Regulation sets the minimum target profit at 6 %. The investigation showed that during the whole period considered, imports from China had a large market share in the Union and the profitability of the Union industry was below 6 %. The Commission therefore assessed the profitability of the Union industry during the six years prior to the period considered and it found that in the years 2015 and 2016, that is, the two years prior to the reference period, its profitability was at 8,4 % and 9,8 % respectively ([136]). The Commission has no information with regard to the level and prices of imports prior to the period considered. However, the profit levels achieved in those two years suggest that the industry's sales prices were in any event not depressed by Chinese imports, even if such imports had been present on the Union market in significant volumes in 2015 and 2016. The Commission therefore considered that a target profit of 9,1 %, which is the average profit achieved by the Union industry in these two years, is reasonable as during the period considered the Union industry's profitability was already affected by the high level of imports from China. This target profit was added to the Union industry's actual cost of production to establish the non-injurious price.

(406) Following final disclosure, Suzhou Titan deemed that the adjustment of 0,5 % of the CIF value made by the Commission to cover the post-importation cost as too low in light of the transportation cost born by users and the (higher) adjustment made by the Commission in other investigations. The Commission dismissed the claim. The adjustment made is based on the data provided by the co-operating users and remotely cross-checked by the Commission, and is thus case-specific.

(407) Following final disclosure, CCCME stated that the target profit should be 6 %, as the profitability of the Union industry over the past couple of years was below 6 % and it would not be representative for the current market circumstances to rely on 2015 and 2016 data. The Commission rejected the claim. For the reasons set out above, the profitability during the period considered cannot be used as a benchmark while the profitability during the two years before that conforms to the requirements of Article 7(2c).

(408) In its comments to the final disclosure, GE found the methodology described above flawed. GE stated that Union industry's prices were not depressed during the period considered and deemed it unnecessary for the Commission to refer back to the years prior to the period considered because, in its view, the surge of imports of SWT from China occurred only in 2019. The Commission found such claim unfounded in light of table 4 of this Regulation, which clearly shows a 44 % increase in Chinese imports between 2017 and 2018 and a market share of Chinese imports of not less than 25 % in 2017, still the lowest rate in the period considered. GE also submitted, based on data in the complaint, that the levels of Chinese imports were comparable in 2016, 2017 and 2018. However, the findings of this investigation (see table 4) as disclosed to interested parties yield import figures in the period considered which are very different from those in the complaint, whereas the Commission does not possess import figures of only SWT prior to that period. Therefore, as mentioned, the level of imports from China in 2015 and 2016 is not known but the profitability achieved by the Union industry in those years suggests its sales prices were not depressed by Chinese imports as explained in recital (405). GE requested a target profit of 6 % "since this would almost double the level of profit achieved by the Union (industry) at the beginning of the period considered and would constitute a 7,4 % increase from the level of the investigation period" ([137]). This reasoning does not take into consideration at all the relevant provisions in the basic Regulation. The Commission therefore rejected the claim.

(409) None of the sampled producers made a claim under Article 7(2c) of the basic Regulation for investments foregone or R&D and innovation costs. Also no claims were made pursuant to Article 7(2d) of the basic Regulation, i.e. concerning the future costs that the Union industry will incur resulting from Multilateral Environmental Agreements, and protocols thereunder, to which the Union is a party, and of ILO Conventions listed in Annex Ia to the basic Regulation, during the period of the application of the measure pursuant to Article 11(2).

(410) The Commission then determined the injury elimination level on the basis of a type-by-type comparison of the weighted average import price of each sampled exporting producer in the country concerned, as established for the price undercutting calculations, with the weighted average non-injurious price of the like product sold by the sampled Union producers on the Union market during the investigation period. Any difference resulting from this comparison was expressed as a percentage of the weighted average import CIF value.

([136]) This is the weighted average profit of the sampled Union producers.
([137]) t21.006703, p. 7.

(411) Suzhou Titan, GE and EWTA made the same comments with regard to the level of price comparison to be used for the underselling calculations as the ones made for the undercutting calculations (addressed in recitals (326)-(328)). The claims are rejected for the same reasons as spelt out in those recitals, applying *mutatis mutandis*.

(412) GE and Vestas claimed that the undercutting margin should be considered as the injury margin. The Commission rejected the claim as such approach would result in a duty level that would not remove the injury caused by dumped imports to the Union industry, contrary to the applicable rules.

(413) Following final disclosure, Suzhou Titan cast doubts about the credibility of the margins determined in the way explained in recital (410) given the level of matching between its sales and Union sales disclosed. The party asked for a distinction between onshore and offshore steel wind towers in the calculations, for a more comprehensive and complete consideration on its exports in them, while stating that PCNs with negative underselling margins could not have caused injury. The Commission dismissed the claims. The Commission clarified that calculations were based only on onshore steel wind towers. The PCN matching is overall substantial and allows for a clear picture in terms of injury margin. The fact that few PCNs show negative underselling margins does not have an impact on the injury margin calculation or alter the conclusions on injury.

(414) CCCME requested the Commission to disclose the matching level should certain PCN parameters not have been removed / relaxed. The Commission considered it irrelevant to disclose a scenario that had not been retained for the purpose of the calculations.

(415) The exporting producer Chengxi Shipyard claimed that underselling margins should be calculated on a per piece rather than on a per kg basis. The claim was rejected for the same reasons as spelt out in recital (329), applying *mutatis mutandis*.

(416) The injury elimination levels for 'other cooperating companies' and for 'all other companies' were established in the same manner as the dumping margins for these companies (see recitals (287) and (290)). On this basis, with regard to the residual injury margin, the Commission considered it appropriate to establish it at the level of the weighted average injury margin determined for the product types most exported by Suzhou Titan, the sampled exporting producer with the highest individual injury margin. These product types represented more than 50 % of this company's exports of the product under investigation to the Union during the investigation period.

| Company | Definitive dumping margin (%) | Definitive injury margin (%) |
|---|---|---|
| Chengxi Shipyard | 127,8 | 7,5 |
| Penglai Dajin | 49,7 | 7,2 |
| Suzhou Titan | 60,7 | 14,4 |
| Other cooperating companies | 83,2 | 11,2 |
| All other companies | 144,2 | 19,2 |

(417) Following final disclosure, EWTA claimed that the proposed duties were insufficient to remove the injury caused by dumped imports to the Union industry; these duties would not restore a level playing field and a fair price level on the Union market and they would not improve the Union industry's profitability. They would fail to meet the requirements of Article 9(4) of the basic Regulation according to which the lesser duty should be applied when adequate to remove the injury to the Union industry.

(418) EWTA added, with reference to Article 7(2) and (2a) of the basic Regulation, that EU primary legislation warranted the imposition of tariffs at the dumping margin level and that if the Commission deviated from the requirements under Article 7(2) and apply a lesser duty pursuant to Article 7(2a) then the Commission should examine whether a duty lower than the margin of dumping would be sufficient to remove injury and take into account the existence of distortions of raw materials with regard to the product concerned.

(419) According to EWTA, the basic Regulation institutes a provision at Article 7(2) which aims at providing the maximum protection of EU's interests. EWTA argued that the Commission should conduct the necessary examinations in order to deviate from Article 7(2) and verify whether the conditions are fulfilled to set the level of duties at a lower level. In connection with the above point, in EWTA's view, the Commission does not have any margin of discretion and there does not appear to be any other EU primary legal basis allowing the Commission to deviate from these provisions of the basic Regulation, let alone to delegate to the complainant the obligation or task to investigate and prove this point. In this context, EWTA noted that for their part, the complaint provided reasonable facts and arguments and clearly requested the Commission to set the duties at the dumping margin level on account of the serious distortions with regard to the key raw material in question, which the Commission had itself already established on several recent occasions. In this context, EWTA referred to section 2.7.2. of the complaint, which showed the evolution of the significant price differential for steel plates between the Union and the People's Republic of China, which must be understood as falling within the meaning of Article 7(2a) of the basic Regulation covering the point that "price of a raw material is significantly lower as compared to prices in the representative international markets". Moreover, EWTA noted that since the Commission had already established the existence of the distortions for the raw materials in question, as well as in other key inputs such as energy and labour, it should be straightforward to integrate these aspects to waive Article 7(2a) and enforce duties on the basis of Article 7(2). In light of the foregoing, EWTA maintained their request to impose the duties at the dumping margin level in line with Article 7(2) of the basic Regulation and claimed to find an efficient, effective and constructive legal way of ensuring that this requirement of the basic Regulation is fulfilled.

(420) The Commission noted that the general rule to calculate a duty level is laid down in Article 7(2) of the basic Regulation, which is to give priority to the injury margin whenever that is lower than the dumping margin ('the lesser duty rule'). Normally, such injury margin will, by definition, remove the injury suffered by the Union industry, as it is calculated by adding to the actual cost of production incurred by the Union industry a target profit, as established in accordance with Article 7(2c) of the basic Regulation.

(421) An exception to the general rule is, as EWTA rightly pointed out, laid down in Article 7(2a) of the basic Regulation, which foresees to take into account whether there are distortions on raw materials with regard to the product concerned.

(422) The fourth subparagraph of Article 7(2a) of the basic Regulation states that the investigation shall cover any distortion on raw materials identified in the second subparagraph of this paragraph, for the existence of which the Commission has sufficient evidence pursuant to Article 5. Article 5 of the basic Regulation sets out the provisions regarding the initiation of proceedings. At initiation, the complaint did not provide any evidence of the existence of any of the measures listed in the second subparagraph of Article 7(2a) of the basic Regulation in the PRC, and the Commission did not have any evidence of the existence of such measures either. Consequently, the Commission's investigation could not cover such distortions. EWTA's claim was therefore rejected.

### 6.2. **Conclusion on the level of the measures**

(423) Following the above assessment, definitive anti-dumping duties should be set as below in accordance with Article 9(4) of the basic Regulation:

| Company | Definitive anti-dumping duty |
|---|---|
| Chengxi Shipyard | 7,5 % |
| Penglai Dajin | 7,2 % |
| Suzhou Titan | 14,4 % |
| Other cooperating companies | 11,2 % |
| All other companies | 19,2 % |

## 7. **UNION INTEREST**

### 7.1. **Interest of the Union industry**

(424) No SWT producer in the Union opposed to measures. Measures are expected to restore a level playing field and a fair price level on the Union market and improve the Union industry's profitability.

(425) The Union industry underwent restructuring in the period considered and is constantly attentive to improving its efficiency in terms of cost efficiency and innovation and better serve customers. Nevertheless, the complainant submitted that in 2018-2019, four Union SWT producers had to initiate insolvency proceedings ([138]).

(426) If there were no measures, some other Union producers might have to follow suit, reduce their SWT activities or even dismantle them, and cut jobs ([139]). This might leave users with even more limited sources of supply, delay lead times and negatively affect competition in the market. The loss of know-how in the Union is not desirable in a context of the Union's targets for onshore and offshore wind installations for the coming years. The capacity utilisation rate in table 6 above shows that, contrary to what some parties claimed, the Union industry can meet demand in the Union and still has spare capacities.

(427) Protecting SWT producers in the Union would strengthen the renewable value chain in the Union and a sustainable business model based on security of supply and fair competition. An increase in demand of the wind energy installations is expected in the coming years. Consequently, WindEurope expects that the market value for wind towers will grow by 2,4 % per year until 2029 to reach €4 billion ([140]).

(428) In the absence of measures, the situation of the Union industry is very likely to further deteriorate. There is substantial excess capacity of SWT production in China. Such capacity exceeds 23 000 towers per annum, i.e. 100 % of the world's demand ([141]), in a context where Chinese SWT producers face trade defence measures in several parts of the world, such as USA ([142]), Australia ([143]) or Mexico ([144]), making an further increase of Chinese imports to the Union very likely.

(429) Following final disclosure, EWTA and several Union producers complained about the lengthiness of the procedure to impose definitive measures and the disclosed level of the duties, which they considered too low to sufficiently protect the Union industry. The Commission dismissed such comments. The time-line of the investigation has been in full compliance with the relevant legal provisions and the Commission has taken due care before reaching its conclusions. Furthermore, the Commission calculated the anti-dumping duties to be imposed by using datasets submitted by the relevant parties as cross-checked and by applying all the relevant provisions of the basic Regulation.

(430) In light of the above, the Commission concluded that the imposition of anti-dumping duties would be in the interest of the Union industry.

### 7.2. **Interest of unrelated importers**

(431) The Commission found that the SWT business is essentially a disintermediated one as users purchase SWT directly from SWT producers. Users in the Union normally take care of importation of SWT.

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([138]) Complaint, p. 44.

([139]) Following final disclosure, one Union producer (Windar) noted the loss of 73 jobs following the closure of one factory in Spain during the period considered.

([140]) Page 7 of t20.007935 (WindEurope).

([141]) Source of estimates: complaint and section I.3 of the questionnaire replies of sampled Union producers.

([142]) Investigations 701-TA-486 and 731-TA-1195-1196 (Review) of the United States International Trade Commission, ended on 5 February 2019, https://usitc.gov/investigations/701731/2018/utility_scale_wind_towers_china_and_vietnam/full_review.htm.

([143]) "ADRP Report No. 100, Wind Towers exported from the People's Republic of China and the Republic of Korea", April 2020, Anti-dumping Review Panel, Australian Government & Minister's Decision published on 9 July 2020, https://www.industry.gov.au/data-and-publications/anti-dumping-review-panel-past-reviews/wind-towers-exported-from-the-peoples-republic-of-china-and-the-republic-of-korea.

([144]) "Resolución final de la investigación antidumping sobre las importaciones de torres de viento originarias de la República Popular China, independientemente del país de procedencia", 21.09.2020, Estados Unidos Mexicanos.- ECONOMÍA.- Secretaría de Economía. http://www.dof.gob.mx/nota_detalle.php?codigo=5601838&fecha=05/10/2020.

(432) No companies taking care of only importation of SWT cooperated in the investigation. A company in Hong Kong related to the Chinese group Envision (a wind turbine developer) filled in a questionnaire intended for unrelated importers in the Union and deemed measures unnecessary to ensure fair competition in the SWT market. The investigation showed that the respondent is part of a group which main interests are equivalent to those of a user of SWT.

(433) In light of the above, the Commission concluded that there is no evidence that the imposition of anti-dumping duties would impact importers.

### 7.3. **Interest of users**

(434) Typically, the product under investigation is sold directly by SWT producers to wind turbine producers, which are users in this proceeding to the extent they assemble the SWT with a full wind turbine.

(435) The users GE and Vestas, which together accounted for at least 50 % of Union consumption during the investigation period, submitted questionnaire replies and some further information upon request. In addition, the users SGRE and Nordex submitted certain information about their purchases upon request. These four companies are amongst the top ten biggest wind energy wind turbine manufacturers ([145]).

(436) CCCME considered that users were a successful example of globalisation and international cooperation by integrating components from all over the world, including Chinese SWT. CCCME stated that measures on Chinese-origin SWT would affect the supply chain and delay wind projects as users have complex long qualification processes for suppliers. The Commission disagreed as measures will restore the level playing field and not close the door for imports from China. Moreover, the user industry is in its supply chain not depending on China for the supply of SWT, as it sources from many other qualified suppliers in the Union and elsewhere. The issue is further addressed in recital (443) below.

(437) The association WindEurope and several wind turbine manufacturers voiced the concerns of users. Several users stated that they could not absorb anti-dumping duties on SWT because they were paying anti-dumping and anti-subsidy duties on other various raw materials used in wind turbines and because SWT costs are a significant share of the costs of a wind turbine. Some users noted the losses made by several of them in the Union in the recent past. SGRE noted that users were announcing low profits for 2021 ([146]). Some alleged that measures would increase SWT prices (including Union-origin ones), negatively affect the users' profits and some of their activities, freeze hiring and close their less competitive manufacturing facilities in certain parts in the Union. In this respect, WindEurope stated that in 2019 the European wind industry represented over 300 000 jobs, of which over 50 000 were direct jobs provided by wind turbine manufacturers, while it generated significant revenue and contributed to the EU GDP. Several users stated that imports were necessary and feared a lack of capacity and (an exacerbation of) supply problems in the Union, namely for larger sizes ([147]). SGRE alleged higher costs for users due to the need to source from sub-optimal suppliers in respect of specific locations. GE stated that capacity should be analysed separately for onshore versus offshore towers and alleged that the complainants were operating at almost full capacity for the production of onshore SWT and that, on several occasions, they had been unable to meet GE's needs with respect to specification requirements or within the necessary lead times (and sometimes not at all). According to GE, GRI was pushing Union SWT demand to its production facilities in Turkey and India. SGRE noted that GRI's questionnaire reply showed that the company had to purchase SWT to meet demand. Some of the claims, namely those concerning higher costs for users and supply matters, were reiterated following final disclosure. All the claims in this recital are addressed in the following recitals.

(438) As a preliminary remark, the Commission noted that most of the users' general statements as to the impact of the duty were made in view of the allegations in the complaint, with calculated dumping margins of more than 50 % and injury margins of up to 20 %. In other words, they did not take account of the level of the duties as per the current investigation.

([145]) Page 1 of t20.007935 (WindEurope).
([146]) Comments following final disclosure, available on page 6 of t21.006735.
([147]) Following final disclosure, SGRE stated that the Union industry was not equipped to cater for the ever-increasing demand for large-scale SWTs. The party said that, at present, there was no capacity in the Union to meet the "XXL-tower dimension" demands.

(439) Parties differed in the quantification of SWT costs within wind turbine costs, with percentages varying in the range 20 % ([148]) – 30 %. No evidence on the case file suggested that users are unable to pass on cost increases on SWT caused by the proposed duty, if any, to project developers or other parties. Moreover, with regard to the reference period, the investigation showed no losses for the cooperating users GE and Vestas. For products incorporating the product under investigation, in its questionnaire reply GE reported a profit in the range 5 % - 10 % in 2019 and the investigation period ([149]). In those periods, Vestas made profits in the same range, while foreseeing higher profits in the coming years ([150]). It is noted that the profitability of users has to be seen in a broader context, as the sales of wind turbines incorporating SWT are made within a wider project ([151]) and often coupled with service and maintenance contracts ([152]) for several years. Within Vestas, in 2020 the performance of the service division was very strong, with a 10 percent increase in revenue year-over-year and a record EBIT margin of 28 % ([153]). As to Nordex and SGRE, between 2017 and 2019 the margin for services was also significantly higher than their EBIT (positive) for wind turbine orders ([154]). The fact that in 2021 ([155]) some users experienced lower profits ([156]) cannot change the fact that most users performed very well during a period when the cost of wind energy fell ([157]) and the existence of certain cyclicality in their earnings, depending on the phase of the projects they deal with. In its comments to the final disclosure, CCCME pointed at a clear expectation of a strong recovery for the post-investigation period, most notably in terms of consumption and production ([158]).

(440) Since users provided very partial data about the weight of SWT costs within their projects, the Commission was unable to make a meaningful quantification as to what extent measures would increase the overall costs of projects. Estimates point at a low percentage which would depend on the contract scope. EWTA submitted that the increase in SWT purchase cost due to the duty would translate into an annual increase of a project cost by 0,5 % of that amount ([159]). Thus, if the imposition of anti-dumping measures would e.g. result in an overall increase by 10 % of SWT prices for users that would pass on most of that price increase to their customers, that would, according to EWTA, result in an annual increase of a project cost by 0,05 %. It should also be noted that neither GE, nor Vestas, nor Nordex, nor SGRE rely exclusively on Chinese imports of SWT.

(441) Following final disclosure, SGRE stated that even if duties may have a relatively small impact on the cost of SWTs expressed in percentages, in absolute amounts the impact would be sizeable given the need for users to optimize production facilities as a result of competitive pressure and the need to contribute to the energy competitiveness of wind energy in terms of the levelised cost of energy, i.e. the average net present cost of electricity generation for a generating plant over its lifetime. The party did not quantify the alleged "sizeable" impact. The Commission dismissed the claim. In light of the considerations in recitals (438) and (440) above, measures on imports of Chinese SWT are not expected to have a major impact on the profits of co-operating users, their R&D activities or the manufacturing operations of certain parts of wind turbines by users.

([148]) On page 7 of t20.007935, WindEurope noted that, on a global average basis, towers constitute over 20 % of the cost of a wind turbine (be it onshore or offshore).

([149]) t21.001706.

([150]) "Vestas Annual Report 2020 – Continued leadership in a challenging year", company announcement no. 01/2021 from Vestas Wind Systems A/S, https://www.vestas.com/~/media/vestas/investor/investor%20pdf/financial%20reports/2020/q4/210210_01_company_announcement.pdf.

([151]) On page 2 of t20.007935, WindEurope writes that users can take on project management; engineering, procurement, construction and installation; operations and maintenance; and post-construction energy aggregation and trading services.

([152]) "Wind energy and Economic recovery in Europe", WindEurope, 2020, page 37, third graph. Available in t20.007935. On page 14 of t20.007935 WindEurope stated that operations and maintenance are an increasingly important driver of revenue growth.

([153]) "Vestas Annual Report 2020", page 36, https://nozebra.ipapercms.dk/Vestas/investor-relations/annual-report-2020/?page=36.

([154]) "Wind energy and Economic recovery in Europe", WindEurope, 2020, page 37, graph "EBIT margin development by business segments". Available in t20.007935.

([155]) See t21.006735 (SGRE). In t21.006703, page 17, GE stated that it will report a negative profit for the period 2021-2022.

([156]) For some miscellaneous reasons, see for instance WindEurope's comments following final disclosure available in t21.006721.

([157]) WindEurope's comments following final disclosure available in t21.006721 note that "the cost of wind energy in Europe has fallen by almost 50% over the last 10 years".

([158]) Page 33 of t21.006724.

([159]) Estimate based on (20 % x 50 %) x 20 years. EWTA considered that SWT represented 20 % of a wind turbine, which itself would account for 50 % of the CAPEX of a project. Onshore SWT would typically have an economic life of 20 years.

(442) As noted by WindEurope, users generate significant added-value in the Union. This is also the case, as component manufacturers, of SWT producers in the Union ([160]). The 300 000 and/or 50 000 jobs mentioned by WindEurope should however not be compared with the Union employment figures in table 8 of this Regulation. In fact, the 300 000 employment figure also includes the jobs of component manufacturers, including SWT producers in the Union, and those of on- and offshore service providers. That figure also includes jobs in entities in non-EU countries such as the UK, Turkey, Norway and Switzerland and 140 000 indirect jobs of different kinds. The users that reported overall job data failed to quantify the jobs that could be at stake within their entities, should measures be imposed on PRC-origin SWT. Other users mentioned in recital (435) did not provide any job data. In light of the foregoing, the Commission considers that measures will rather support jobs in the wind sector in the Union overall as jobs in this area are forecasted to grow ([161]).

(443) Regarding users' comments about supply problems, the investigation showed that users work rather with a limited base of SWT suppliers on the grounds that it takes a long period time to find (alternative) qualified wind tower suppliers. However, the base of Union suppliers is large, like the range of sizes that they can produce. With regard to the latter, as mentioned in recital (42), the Commission found that the Union industry has the production capacity for all required sizes of SWT. The files disclosing injury calculations show that, like Chinese producers, in the Union sampled Union producers were selling sections with a diameter over 5 meters. In addition, following final disclosure, the user SGRE noted in particular the emergence of new, more modern production facilities in the Union capable of producing larger size SWT in 2017, 2018 and 2020. ([162]) Companies' announcements by Union producers refer to dimensions over those sold by sampled Union producers during the investigation period ([163]). There is indeed significant supply in the Union: production capacity of Union SWT producers is higher than Union consumption and significant SWT capacities are available in the Union (see table 6) serving all required locations and both onshore and offshore markets. CCCME acknowledged an increase in the Union industry's capacity in the recent years. Although the market circumstances were difficult due to the large presence of low prized Chinese SWT, the Union industry increased capacity over the period considered as per customers' request ([164]) and committed to further increase its capacity, if market conditions allow. If measures are imposed, imports from China will still be possible (albeit at corrected price levels) and imports from other origins remain available ([165]).

(444) In view of the foregoing, the Commission dismissed the claims summarised in recital (437).

(445) Following final disclosure, SGRE alleged that Chinese producers only address demand in Denmark, Sweden and Finland, as they lack competitiveness in southern Member States. The Commission noted that the Union is a Single Market. In addition, the investigation showed that the sales of Chinese SWT did not occur only in northern Member States. The Commission found SGRE's allegation groundless.

(446) Several parties submitted that wind turbine technology and solar panel technology (mostly produced outside of the Union) sometimes compete heads on in terms of price per kWh electricity. That competition increased the pressure to produce SWT for increasingly lower prices. They therefore submitted that even if imposing measures could save or create jobs in the SWT manufacturing industry, that benefit would likely be outweighed by loss of jobs in other parts of the wind turbine industry due to lower demand (orders lost to the solar panel industry due to increased prices of SWT and, consequently, wind turbines).

([160]) "Wind energy and Economic recovery in Europe", WindEurope, 2020, figure 10 in page 20. Available in t20.007935.

([161]) "Global renewables Outlook, Energy transformation, European Union", IRENA, 2020, https://www.irena.org/-/media/Files/IRENA/Agency/Publication/2020/Apr/IRENA_GRO_R04_European_Union.pdf?la=en&hash=D206134796E3C72CF086657266295C45574B58BC (page 7).

([162]) t21.006735

([163]) In https://www.welcon.dk/capabilities/facilities/, the sampled Union producer Welcon reports capabilities for sections of up to 45 meters high and 9 meters diameter (webpage last accessed on 11 October 2021).

([164]) Page 4 of t21.000376.

([165]) On page 4 of t21.000509 GE acknowledged to be importing from China, where several suppliers are certified by GE, and from Turkey and South Korea.

(447) This claim was rejected. In most cases a site is suitable and developed either exclusively for wind energy generation or exclusively for solar energy generation, because of its location (e.g. offshore, a location capturing a maximum of sunshine or wind, etc.) or demands of the commissioner / population. Moreover, the above claim presupposes that the imposition of measures will result in an overall increase of wind turbine purchase costs, but as explained in recitals (438) to (441), the measures on imports of Chinese SWT are not expected to have a major impact on users, also given the availability of supply sources explained in recital (443).

### 7.4. **Interest of suppliers**

(448) The steel association Eurofer stated that there is a clear Union interest in having measures on SWT to avoid that injury suffered by quarto plate producers, protected by anti-dumping measures, is moved down into the Union steel value chain. The party highlighted the importance of the Union SWT industry for Union steel suppliers and in the context of the renewable energy plans in the Union. According to market intelligence ([166]), renewable energies will require 8 to 10 times more steel per MW produced than fossil energies, while the number of wind turbines installed will rise in the coming years.

(449) CCCME stated that measures would deter Chinese investments in the Union consisting of purchases of (insolvent) local SWT producers, thus negatively affecting European machine suppliers. The Commission disagreed. Machinery producers in the Union are expected to benefit from an improvement in the situation of SWT producers in the Union.

(450) The Commission expects that measures will benefit upstream industries in the Union, namely suppliers of raw materials (e.g. Union steel mills) and relevant machinery producers in the Union.

### 7.5. **Environmental interests**

(451) CCCME deemed that measures would increase production costs for the Union wind energy industry. SGRE and CCCME alleged that measures would have a detrimental impact on the attainment of the Union renewable energy and CO2 reduction targets and thus would not be in the Union interest. GE considered that measures will impede Member States achieving renewable energy targets, that wind projects will no longer be economical if investment thresholds are not met (e.g. a schedule delay/the share of debt financing cannot be obtained) and prevent the development of some projects. Following final disclosure, WindEurope feared under-investment in state-of-the-art manufacturing and research & development and that the European industry would lose the global race for technology leadership in wind energy. The Commission considered that anti-dumping measures on Chinese SWT are not expected to undermine the achievement of the Union renewable energy and CO2 reduction targets nor cancel wind projects. To the contrary, the measures are expected to contribute to the wind energy deployment across the Union by creating a level playing field where all economic operators, including Chinese producers, can compete under fair conditions.

(452) GE stated that measures would lead to higher energy prices for consumers and contradict the Commission's objective that electricity from renewable sources should be deployed at the lowest possible cost to consumers and taxpayers. The Commission found no evidence that measures on SWT would lead to significant increases in energy prices for consumers in the Union. No party provided data allowing to quantify such an increase, if any. As to taxpayers, the forecasted increases in wind energy installations in the Union ([167]) are expected to benefit communities hosting projects through taxes and other returns ([168]).

([166]) The piece of market intelligence is available in the case file, document reference t20.008013, Annex 2 – Raising Black Swans To Become Golden Eagles, Laplace Conseil, October 2020.

([167]) In a "low scenario" WindEurope foresees the installation of 15 GW every year between 2021 and 2025. The GW forecasted to be installed are higher in the "realistic expectations scenario". For details on the scenarios, see "Wind energy in Europe – 2020 statistics and the outlook for 2021-2025", WindEurope, February 2021.

([168]) See chapter 5 ("Benefits to communities) of the publication "Wind energy and Economic recovery in Europe", WindEurope, 2020. The chapter and the whole publication are available in t20.007935.

(453) Bearing in mind the funding made available for the wind energy sector by the Union and Member States, in GE's view, measures would be contrary to the Union's own interests and endanger the sustainability of its wind energy sector. The Commission disagreed. As component manufacturers, SWT producers in the Union generate significant added value within the wind energy industry ([169]). Measures are expected to support SWT producers in the Union and bring them growth, job stability, revenues and investments. Users should benefit from a broad base of competitive, reliable and financially sound SWT producers in the Union and from convenient lead-times that Union producers are able to offer thanks to their proximity

### 7.6. **Other factors**

(454) CCCME stated that Union SWT producers aimed at strengthening their near-monopoly position on the market shortly before an expected increase in demand, as to solely profit from these expected developments. The Commission considered that this claim was unsupported and unfounded. The number of SWT producers in the Union on its own contradicts any monopolistic position in the market. Figure 24 in a recent publication by WindEurope ([170]) shows a high number of facilities manufacturing towers (higher than the number of facilities manufacturing other wind components).

(455) Furthermore, in its questionnaire reply, GE pointed at potential Union workforce reductions for intermediary parties involved in port operations and those involved in transportation and installation of finished wind turbines. Given the forecasted increases in wind energy installations in the Union (see footnote 167), the Commission found the claim unsubstantiated.

### 7.7. **Conclusion on Union interest**

(456) On the basis of the above, the Commission concluded that that there were no compelling reasons that it was not in the Union interest to impose definitive anti-dumping measures on imports of steel wind towers and their sections originating in China.

## 8. **DEFINITIVE ANTI-DUMPING MEASURES**

### 8.1. **Preliminary comment**

(457) Section 4 of the notice of initiation indicated that the complainant had provided evidence that the product under investigation was being brought in significant quantities offshore, i.e. to an artificial island, a fixed or floating installation or any other structure in the continental shelf of a Member State or the exclusive economic zone (' CS/EEZ') declared by a Member State pursuant to the United Nations Convention on the Law of the Sea ('UNCLOS')).

(458) Accordingly, the Commission, pursuant to Article 14a of the basic Regulation, also examined whether measures, if any, should also be imposed in the CS/EEZ. The investigation showed that none of the sampled Chinese exporting producers reported sales to continental shelf or EEZ. The Commission did not obtain any indication of CS/EEZ sales of any significance by the Chinese SWT producers.

(459) Therefore, as there is no evidence that the dumped product was brought in significant quantities to the CS/EEZ, no anti-dumping measures are imposed in the CS/EEZ.

(460) Following final disclosure, the complainant and several Union producers stated that the absence of anti-dumping measures in the CS/EEZ left the door open to certain dumping practices by Chinese producers. The Commission dismissed the comments. As the requirements of Article 14a of the basic Regulation are not met, as explained, the Commission cannot impose anti-dumping measures in the CS/EEZ in the framework of the current investigation.

### 8.2. **Definitive measures**

(461) In view of the conclusions reached with regard to dumping, injury, causation and Union interest, and in accordance with Article 9(4) of the basic Regulation, definitive anti-dumping measures should be imposed in order to prevent further injury being caused to the Union industry by the dumped imports of the product concerned. For the reasons set out in section 6, and in particular recitals (417) to (422), of this Regulation, anti-dumping duties should be set in accordance with the lesser duty rule.

([169]) "Wind energy and Economic recovery in Europe", WindEurope, 2020, figure 10 in page 20. Available in t20.007935.
([170]) "Wind energy and Economic recovery in Europe", WindEurope, 2020, page 41. Available in t20.007935.

(462) On the basis of the above, the rates at which such duties will be imposed are set as follows:

| Company | Definitive anti-dumping duty |
|---|---|
| Chengxi Shipyard | 7,5 % |
| Penglai Dajin | 7,2 % |
| Suzhou Titan | 14,4 % |
| Other cooperating companies | 11,2 % |
| All other companies | 19,2 % |

(463) The individual company anti-dumping duty rates specified in this Regulation were established on the basis of the findings of this investigation. Therefore, they reflect the situation found during this investigation with respect to these companies. These duty rates are exclusively applicable to imports of the product concerned originating in the country concerned and produced by the named legal entities. Imports of the product concerned produced by any other company not specifically mentioned in the operative part of this Regulation, including entities related to those specifically mentioned, should be subject to the duty rate applicable to 'all other companies'. They should not be subject to any of the individual anti-dumping duty rates.

(464) 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 ([171]). 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*.

(465) To minimise the risks of circumvention due to the difference in duty rates, special measures are needed to ensure the application of the individual anti-dumping duties. The companies with individual anti-dumping duties must present a valid commercial invoice to the customs authorities of the Member States. The invoice must conform to the requirements set out in Article 1(3) of this regulation. Imports not accompanied by that invoice should be subject to the anti-dumping duty applicable to 'all other companies'.

(466) 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.

(467) 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.

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

([171]) European Commission, Directorate-General for Trade, Directorate H, Wetstraat 170 Rue de la Loi, 1040 Brussels, Belgium.

(469) The product under investigation, when joined with other parts so that the whole constitutes of a wind turbine, currently falls under CN code 8502 31 00. In order to ensure that the anti-dumping duties are applied only on the SWT, it is necessary to provide that the value for the SWT must be entered in the declaration for release for free circulation. The value of the SWT should be indicated specifically for 8502 31 00 11 and 8502 31 00 85.

(470) Statistics of SWT are frequently expressed in number of items (pieces). However, such supplementary unit is not systematically defined for SWT specified in the Combined Nomenclature laid down in Annex I to Council Regulation (EEC) No 2658/87 ([172]). It is therefore necessary to provide that not only the weight in kg or tonnes but also the number of items for all the imports of the product concerned must be entered in the declaration for release for free circulation.

## 9. **FINAL PROVISIONS**

(471) In view of Article 109 of Regulation 2018/1046 ([173]), 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.

(472) The measures provided for in this Regulation are in accordance with the opinion of the Committee established by Article 15(1) of the basic Regulation,

HAS ADOPTED THIS REGULATION:

*Article 1*

1. A definitive anti-dumping duty is imposed on imports of certain utility scale wind towers of steel, whether or not tapered, and sections thereof, whether assembled or not, whether or not including an embedded tower foundation section, whether or not joined with nacelles or rotor blades, and that are designed to support the nacelle and rotor blades for use in wind turbines that have electrical power generation capacities – either in onshore or offshore applications – equal to or in excess of 1,00 megawatt and with a minimum height of 50 meters measured from the base of the tower to the bottom of the nacelle (i.e. where the top of the tower and nacelle are joined) when fully assembled, originating in the PRC, currently falling under CN codes ex 7308 20 00 (TARIC code 7308 20 00 11), ex 7308 90 98 (TARIC code 7308 90 98 11) and, when imported as part of a wind turbine, currently falling under CN code ex 8502 31 00 (TARIC codes 8502 31 00 11 and 8502 31 00 85).

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 | Definitive anti-dumping duty rate | TARIC additional code |
|---|---|---|---|
| China | Chengxi Shipyard Co., Ltd. | 7,5 % | C726 |
| | Penglai Dajin Offshore Heavy Industry Co., Ltd. | 7,2 % | C727 |
| | Suzhou Titan New Energy Technology Co., Ltd. | 14,4 % | C728 |
| | Other cooperating companies, listed in Annex | 11,2 % | See Annex |
| | All other companies | 19,2 % | C999 |

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

([173]) Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council of 28 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).

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 concerned) sold for export to the European Union covered by this invoice was manufactured by (company name and address) (TARIC additional code) in [country concerned]. I declare that the information provided in this invoice is complete and correct'*. If no such invoice is presented, the duty applicable to all other companies shall apply.

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

*Article 2*

Where a declaration for release for free circulation is presented in respect of wind turbines referred to in Article 1(1), originating in the PRC, the net, free-at-Union-frontier price, before duty, of the wind towers referred to in Article 1(1) shall be entered in the relevant field of that declaration.

The anti-dumping duties referred in Article 1(2) shall apply only to the net, free-at-Union-frontier price, before duty, of the wind towers referred to in Article 1(1).

A valid commercial invoice shall be presented to the Member States' customs authorities. It shall contain information sufficiently detailed to allow the Member States' customs authorities to assess the accuracy of the declared net, free-at-Union-frontier price, before duty, of the wind towers referred to in Article 1(1).

Member States shall, on a monthly basis, inform the Commission of the net, free-at-Union-frontier price, before duty, declared for the wind towers referred to in Article 1(1) imported as part of a wind turbine referred to in Article 1(1).

*Article 3*

Where a declaration for release for free circulation is presented in respect of the products referred to in Article 1(1), irrespective of their origin, the number of items of the products imported shall be entered in the relevant field of that declaration, provided this indication is compatible with Annex I to Council Regulation (EEC) No 2658/87 ([174]).

Member States shall, on a monthly basis, inform the Commission of the number of items imported under TARIC codes 7308 20 00 11, 7308 90 98 11, 8502 31 00 11 and 8502 31 00 85.

*Article 4*

Article 1(2) may be amended to add new exporting producers from 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 China during the period of investigation (1 July 2019 to 30 June 2020);

(b) it is not related to an exporter or producer subject to the measures imposed by this Regulation; and

(c) it has either actually exported the product concerned or has entered into an irrevocable contractual obligation to export a significant quantity to the Union after the end of the period of investigation.

*Article 5*

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

([174]) Annex I 'Combined Nomenclature' to Council Regulation (EEC) No 2658/87 on the tariff and statistical nomenclature and on the Common Customs Tariff (OJ L 256, 7.9.1987, p. 1).

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

Done at Brussels, 15 December 2021.

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

*ANNEX*

**Cooperating exporting producers not sampled**

| Country | Name | TARIC additional code |
|---|---|---|
| PRC | Fujian Fuchuan Yifan New Energy Equipment Manufacturing Co., Ltd. | C729 |
| PRC | Shanghai Taisheng Wind Power Equipment Co., Ltd. | C730 |

# COMMISSION IMPLEMENTING REGULATION (EU) 2021/2240

## of 15 December 2021

## amending Annexes V and XIV to Implementing Regulation (EU) 2021/404 as regards the entries for the United Kingdom in the lists of third countries authorised for the entry into the Union of consignments of poultry, germinal products of poultry and fresh meat of poultry and game birds

**(Text with EEA relevance)**

THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EU) 2016/429 of the European Parliament and of the Council of 9 March 2016 on transmissible animal diseases and amending and repealing certain acts in the area of animal health ('Animal Health Law') ([1]), and in particular Article 230(1) thereof,

Whereas:

(1) Regulation (EU) 2016/429 requires that consignments of animals, germinal products and products of animal origin must come from a third country or territory, or zone or compartment thereof, listed in accordance with Article 230(1) of that Regulation in order to enter the Union.

(2) Commission Delegated Regulation (EU) 2020/692 ([2]) lays down the animal health requirements with which consignments of certain species and categories of animals, germinal products and products of animal origin from third countries or territories, or zones thereof, or compartments thereof, in the case of aquaculture animals, must comply with in order to enter the Union.

(3) Commission Implementing Regulation (EU) 2021/404 ([3]) establishes the lists of third countries, or territories, or zones or compartments thereof, from which the entry into the Union of the species and categories of animals, germinal products and products of animal origin falling within the scope of Delegated Regulation (EU) 2020/692 is permitted.

(4) More particularly, Annexes V and XIV to Implementing Regulation (EU) 2021/404 set out the lists of third countries, or territories, or zones thereof authorised for the entry into the Union, respectively, of consignments of poultry, germinal products of poultry, and of fresh meat from poultry and game birds.

(5) The United Kingdom notified the Commission of outbreaks of highly pathogenic avian influenza in poultry. The outbreaks are located near Poulton le Fylde, Wyre in England, near Gaerwen, Isle of Anglesey in Wales, near Clitheroe, Ribble Valley, Lancashire in England and near Thirsk, Hambleton, North Yorkshire in England and were confirmed on 26 November 2021 by laboratory analysis (RT-PCR).

(6) The United Kingdom notified the Commission of an outbreak of highly pathogenic avian influenza in poultry. The outbreak is located in a new establishment near Thirsk, Hambleton, North Yorkshire in England and was confirmed on 28 November 2021 by laboratory analysis (RT-PCR).

([1]) OJ L 84, 31.3.2016, p. 1.

([2]) Commission Delegated Regulation (EU) 2020/692 of 30 January 2020 supplementing Regulation (EU) 2016/429 of the European Parliament and of the Council as regards rules for entry into the Union, and the movement and handling after entry of consignments of certain animals, germinal products and products of animal origin (OJ L 174, 3.6.2020, p. 379).

([3]) Commission Implementing Regulation (EU) 2021/404 of 24 March 2021 laying down the lists of third countries, territories or zones thereof from which the entry into the Union of animals, germinal products and products of animal origin is permitted in accordance with Regulation (EU) 2016/429 of the European Parliament and of the Council (OJ L 114, 31.3.2021, p. 1).

(7) The veterinary authorities of the United Kingdom established a 10 km control zone around the affected establishments and implemented a stamping-out policy in order to control the presence of highly pathogenic avian influenza and limit the spread of that disease.

(8) The United Kingdom has submitted information to the Commission on the epidemiological situation on its territory and the measures it has taken to prevent the further spread of highly pathogenic avian influenza. That information has been evaluated by the Commission. On the basis of that evaluation, the entry into the Union of consignments of poultry, germinal products of poultry, and fresh meat from poultry and game birds from the areas under restrictions established by the veterinary authorities of the United Kingdom due to the recent outbreaks of highly pathogenic avian influenza should no longer be authorised.

(9) Annexes V and XIV to Implementing Regulation (EU) 2021/404 should be therefore amended accordingly.

(10) Taking into account the current epidemiological situation in the United Kingdom as regards highly pathogenic avian influenza, the amendments to be made to Implementing Regulation (EU) 2021/404 by this Regulation should take effect as a matter of urgency.

(11) 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*

Annexes V and XIV to Implementing Regulation (EU) 2021/404 are amended in accordance with 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, 15 December 2021.

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

*ANNEX*

Annexes V and XIV to Implementing Regulation (EU) 2021/404 are amended as follows:

(1) Annex V is amended as follows:

(a) in Part 1, in the entry for the United Kingdom, the following rows for zones GB-2.35, GB-2.36, GB-2.37, GB-2.38 and GB-2.39 are inserted after the row for zone GB-2.34:

| | | | | | | | |
|---|---|---|---|---|---|---|---|
| ‘**GB** United Kingdom | GB-2.35 | Breeding poultry other than ratites and productive poultry other than ratites | BPP | N, P1 | | 26.11.2021 | |
| | | Breeding ratites and productive ratites | BPR | N, P1 | | 26.11.2021 | |
| | | Poultry intended for slaughter other than ratites | SP | N, P1 | | 26.11.2021 | |
| | | Ratites intended for slaughter | SR | N, P1 | | 26.11.2021 | |
| | | Day-old chicks other than ratites | DOC | N, P1 | | 26.11.2021 | |
| | | Day-old chicks of ratites | DOR | N, P1 | | 26.11.2021 | |
| | | Less than 20 heads of poultry other than ratites | POU-LT20 | N, P1 | | 26.11.2021 | |
| | | Hatching eggs of poultry other than ratites | HEP | N, P1 | | 26.11.2021 | |
| | | Hatching eggs of ratites | HER | N, P1 | | 26.11.2021 | |
| | | Less than 20 heads of poultry other than ratites | HE-LT20 | N, P1 | | 26.11.2021 | |
| | GB-2.36 | Breeding poultry other than ratites and productive poultry other than ratites | BPP | N, P1 | | 26.11.2021 | |
| | | Breeding ratites and productive ratites | BPR | N, P1 | | 26.11.2021 | |
| | | Poultry intended for slaughter other than ratites | SP | N, P1 | | 26.11.2021 | |
| | | Ratites intended for slaughter | SR | N, P1 | | 26.11.2021 | |
| | | Day-old chicks other than ratites | DOC | N, P1 | | 26.11.2021 | |
| | | Day-old chicks of ratites | DOR | N, P1 | | 26.11.2021 | |
| | | Less than 20 heads of poultry other than ratites | POU-LT20 | N, P1 | | 26.11.2021 | |
| | | Hatching eggs of poultry other than ratites | HEP | N, P1 | | 26.11.2021 | |
| | | Hatching eggs of ratites | HER | N, P1 | | 26.11.2021 | |
| | | Less than 20 heads of poultry other than ratites | HE-LT20 | N, P1 | | 26.11.2021 | |
| | GB-2.37 | Breeding poultry other than ratites and productive poultry other than ratites | BPP | N, P1 | | 26.11.2021 | |
| | | Breeding ratites and productive ratites | BPR | N, P1 | | 26.11.2021 | |

| | | | | | | | |
|---|---|---|---|---|---|---|---|
| | | Poultry intended for slaughter other than ratites | SP | N, P1 | | 26.11.2021 | |
| | | Ratites intended for slaughter | SR | N, P1 | | 26.11.2021 | |
| | | Day-old chicks other than ratites | DOC | N, P1 | | 26.11.2021 | |
| | | Day-old chicks of ratites | DOR | N, P1 | | 26.11.2021 | |
| | | Less than 20 heads of poultry other than ratites | POU-LT20 | N, P1 | | 26.11.2021 | |
| | | Hatching eggs of poultry other than ratites | HEP | N, P1 | | 26.11.2021 | |
| | | Hatching eggs of ratites | HER | N, P1 | | 26.11.2021 | |
| | | Less than 20 heads of poultry other than ratites | HE-LT20 | N, P1 | | 26.11.2021 | |
| | GB-2.38 | Breeding poultry other than ratites and productive poultry other than ratites | BPP | N, P1 | | 26.11.2021 | |
| | | Breeding ratites and productive ratites | BPR | N, P1 | | 26.11.2021 | |
| | | Poultry intended for slaughter other than ratites | SP | N, P1 | | 26.11.2021 | |
| | | Ratites intended for slaughter | SR | N, P1 | | 26.11.2021 | |
| | | Day-old chicks other than ratites | DOC | N, P1 | | 26.11.2021 | |
| | | Day-old chicks of ratites | DOR | N, P1 | | 26.11.2021 | |
| | | Less than 20 heads of poultry other than ratites | POU-LT20 | N, P1 | | 26.11.2021 | |
| | | Hatching eggs of poultry other than ratites | HEP | N, P1 | | 26.11.2021 | |
| | | Hatching eggs of ratites | HER | N, P1 | | 26.11.2021 | |
| | | Less than 20 heads of poultry other than ratites | HE-LT20 | N, P1 | | 26.11.2021 | |
| | GB-2.39 | Breeding poultry other than ratites and productive poultry other than ratites | BPP | N, P1 | | 28.11.2021 | |
| | | Breeding ratites and productive ratites | BPR | N, P1 | | 28.11.2021 | |
| | | Poultry intended for slaughter other than ratites | SP | N, P1 | | 28.11.2021 | |
| | | Ratites intended for slaughter | SR | N, P1 | | 28.11.2021 | |
| | | Day-old chicks other than ratites | DOC | N, P1 | | 28.11.2021 | |
| | | Day-old chicks of ratites | DOR | N, P1 | | 28.11.2021 | |
| | | Less than 20 heads of poultry other than ratites | POU-LT20 | N, P1 | | 28.11.2021 | |

| | | | | | | | |
|---|---|---|---|---|---|---|---|
| | | Hatching eggs of poultry other than ratites | HEP | N, P1 | | 28.11.2021 | |
| | | Hatching eggs of ratites | HER | N, P1 | | 28.11.2021 | |
| | | Less than 20 heads of poultry other than ratites | HE-LT20 | N, P1 | | 28.11.2021’ | |

(b) in Part 2, in the entry for the United Kingdom, the following descriptions of the zones GB-2.35, GB-2.36, GB-2.37, GB-2.38 and GB-2.39 are inserted after the description of the zone GB-2.34:

| | | |
|---|---|---|
| ‘United Kingdom | GB-2.35 | Near Poulton le Fylde, Wyre, Lancashire, England:<br>The area contained within a circle of a radius of 10km, centred on WGS84 dec, coordinates N53.93 and W2.95 |
| | GB-2.36 | Near Gaerwen, Isle of Anglesey, Wales:<br>The area contained within a circle of a radius of 10km, centred on WGS84 dec, coordinates N53.22 and W4.30 |
| | GB-2.37 | Near Clitheroe, Ribble Valley, Lancashire, England:<br>The area contained within a circle of a radius of 10km, centred on WGS84 dec, coordinates N53.88 and W2.42 |
| | GB-2.38 | Near Thirsk, Hambleton, North Yorkshire, England:<br>The area contained within a circle of a radius of 10km, centred on WGS84 dec, coordinates N54.25 and W1.40 |
| | GB-2.39 | Near Thirsk, Hambleton, North Yorkshire, England:<br>The area contained within a circle of a radius of 10km, centred on WGS84 dec, coordinates N54.22 and W1.43’ |

(2) in Annex XIV, in Part 1, in the entry for the United Kingdom, the following rows for zones GB-2.35, GB-2.36, GB-2.37, GB.2-38 and GB-2.39 are inserted after the row for zone GB-2.34:

| | | | | | | | |
|---|---|---|---|---|---|---|---|
| ‘**GB**<br>United Kingdom | GB-2.35 | Fresh meat of poultry other than ratites | POU | N, P1 | | 26.11.2021 | |
| | | Fresh meat of ratites | RAT | N, P1 | | 26.11.2021 | |
| | | Fresh meat of game birds | GBM | N, P1 | | 26.11.2021 | |
| | GB-2.36 | Fresh meat of poultry other than ratites | POU | N, P1 | | 26.11.2021 | |
| | | Fresh meat of ratites | RAT | N, P1 | | 26.11.2021 | |
| | | Fresh meat of game birds | GBM | N, P1 | | 26.11.2021 | |
| | GB-2.37 | Fresh meat of poultry other than ratites | POU | N, P1 | | 26.11.2021 | |
| | | Fresh meat of ratites | RAT | N, P1 | | 26.11.2021 | |
| | | Fresh meat of game birds | GBM | N, P1 | | 26.11.2021 | |

| | | | | | | | |
|---|---|---|---|---|---|---|---|
| | GB-2.38 | Fresh meat of poultry other than ratites | POU | N, P1 | | 26.11.2021 | |
| | | Fresh meat of ratites | RAT | N, P1 | | 26.11.2021 | |
| | | Fresh meat of game birds | GBM | N, P1 | | 26.11.2021 | |
| | GB-2.39 | Fresh meat of poultry other than ratites | POU | N, P1 | | 28.11.2021 | |
| | | Fresh meat of ratites | RAT | N, P1 | | 28.11.2021 | |
| | | Fresh meat of game birds | GBM | N, P1 | | 28.11.2021’ | |

# DECISIONS

## COUNCIL DECISION (EU) 2021/2241

**of 13 December 2021**

**on the composition and the mandate of the European Research Area and Innovation Committee (ERAC)**

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 179(1) and Article 240(3) thereof,

Whereas:

(1) Council Resolution of 14 January 1974 ([1]) established a Scientific and Technical Research Committee (Crest). That Resolution was replaced by Council Resolution of 28 September 1995 ([2]), which was then amended and completed, first by Council Resolution of 28 May 2010 ([3]), which changed the name of Crest to the 'European Research Area Committee', then by Council Resolution of 30 May 2013 ([4]) which changed that name to the 'European Research Area and Innovation Committee'('ERAC'), and then by the Council conclusions of 1 December 2015 on the review of the European Research Area (ERA) advisory structure.

(2) On 1 December 2020, the Council adopted conclusions on a new European Research Area ('new ERA'), defining it as a researchers-centred, value-based, excellence as well as impact-driven area, in which researchers, knowledge and technology are supported and can circulate freely.

(3) On 26 November 2021, the Council adopted conclusions on the future governance of the new ERA, in which it highlighted that the new ERA and its priorities require the comprehensive redesign of the current ERA governance, and confirmed ERAC as the high-level strategic policy joint advisory committee, which is to provide early advice to the Council, the Commission and the Member States on strategic research and innovation (R&I) policy issues.

(4) The Council agreed to revise ERAC's mandate, in order to reflect the governance of the new ERA and to limit the membership of ERAC to representatives from the Member States and from the Commission who have a high executive level of responsibility for R&I policies. The Council also acknowledged the added value of the co-chairing of ERAC by such representatives of the Member States and of the Commission.

(5) ERAC's mandate should therefore be revised,

HAS ADOPTED THIS DECISION:

*Article 1*

1. The revised mandate of the European Research Area and Innovation Committee is hereby adopted.

2. The text of the revised mandate is set out in the Annex.

([1]) Council Resolution of 14 January 1974 on the coordination of national policies and the definition of projects of interest to the Community in the field of science and technology (OJ C 7, 29.1.1974, p. 2).
([2]) Council Resolution of 28 September 1995 on Crest (OJ C 264, 11.10.1995, p. 4).
([3]) Council Resolution of 28 May 2010 on developments in the governance of the European Research Area (ERA) – see document ST 10255/10 at http://register.consilium.europa.eu.
([4]) Council Resolution of 30 May 2013 on the advisory work for the European Research Area – see document ST 10331/13 at http://register.consilium.europa.eu.

*Article 2*

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

Done at Brussels, 13 December 2021.

*For the Council*
*The President*
J. BORRELL FONTELLES

*ANNEX*

**Mandate of the European Research Area and Innovation Committee (ERAC)**

TASKS OF THE COMMITTEE

*Article 1*

1. The European Research Area and Innovation Committee ('the Committee') is a high-level strategic policy joint advisory committee, providing early advice to the Council, the Commission and the Member States on strategic research and innovation (R&I) policy issues.

2. The Committee's tasks shall include the following:

(a) to advise on strategic policy orientation and future trends that require the refinement of Union and national, including regional, R&I policies, including on the current and the next Union R&I Framework Programme and other relevant R&I-driven Union initiatives;

(b) to initiate updates of the ERA policy agenda, by providing early strategic advice informed, among other things, by consideration of the progress made in ongoing ERA actions;

(c) to reflect and provide advice on new policy demands which fulfil the ERA policy agenda criteria, throughout the implementation of the ERA policy agenda;

(d) to interact with governance and coordination structures at a similar level in other relevant policy areas, such as higher education and industry.

*Article 2*

The Committee shall provide its advice, and deliver opinions and reports, at the request of the Council or the Commission or on its own initiative.

COMPOSITION

*Article 3*

1. The members of the Committee shall be the Member States and the Commission ('members').

2. Each member shall appoint up to two representatives to the Committee who shall have a high executive level of responsibility for R&I policies.

3. A member who is unable to attend a Committee meeting may appoint a replacement for that meeting or delegate his or her functions to another member. The co-Chairs and the Secretariat of the Committee shall be informed thereof in writing before the meeting.

CHAIRPERSONS AND SECRETARIAT

*Article 4*

1. The Committee shall be co-chaired by a Member State representative and a Commission representative.

2. The Committee shall, by a majority of its members, elect a co-Chair from among the representatives of the Member States. The term of office of such co-Chair shall be for a period of three years, renewable once.

3. The Member State whose representative is appointed as co-Chair of the Committee and the Commission shall have one additional representative on the Committee for the co-Chair's period of office.

4. The co-Chairs shall have no voting rights.

*Article 5*

In the event of one of the co-Chairs being unable to fulfil the duties as co-Chair, that co-Chair shall appoint a replacement in agreement with the other co-Chair.

*Article 6*

The General Secretariat of the Council shall provide the Committee's secretariat services.

PROCEEDINGS

*Article 7*

If a vote is requested, opinions and reports shall be adopted by simple majority of the members. Each member shall have one vote. The Committee shall report on minority or dissenting views expressed in the course of the discussion.

*Article 8*

Only members may speak during the Committee meetings. However, in exceptional circumstances, the co-Chairs may agree otherwise.

*Article 9*

Representatives of countries associated to the R&I Union Framework Programme, as well as of relevant third countries, external experts and stakeholders may be invited to relevant Committee meetings, as appropriate, for specific agenda items and in accordance with the Council's Rules of Procedure.

*Article 10*

The Committee may, in duly justified cases, entrust *ad hoc* temporary Task Forces with specific tasks.

*Article 11*

1. The Committee shall be convened twice a year. If the situation so requires, the co-Chairs shall also convene a special Committee meeting.

2. Committee meetings shall normally be held in Brussels, but may be hosted by the country holding the rotating Presidency of the Council of the European Union in accordance with the Council's Rules of Procedure.

*Article 12*

1. The Committee shall have a Steering Board. The Steering Board shall consist of the ERAC co-Chairs and one representative of each of the Member States of the incumbent and the subsequent Trio Presidencies of the Council of the European Union.

2. The Steering Board shall select and prepare topics for the strategic discussions of the Committee, supported, as necessary, by the *ad hoc* Task Forces of the Committee.

*Article 13*

The Commission shall inform the Committee of the work of the ERA Forum on a regular basis.

*Article 14*

The Committee shall adopt its own Procedural Arrangements in accordance with the Council's Rules of Procedure.

# COUNCIL DECISION (EU) 2021/2242

## of 13 December 2021

## amending Decision 2009/908/EU laying down measures for the implementation of the European Council Decision on the exercise of the Presidency of the Council, and on the chairmanship of preparatory bodies of the Council

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on European Union,

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

Having regard to European Council Decision 2009/881/EU of 1 December 2009 on the exercise of the Presidency of the Council ([1]), and in particular Article 4 thereof,

Whereas:

(1) By Decision 2009/908/EU ([2]), the Council laid down measures for the implementation of Decision 2009/881/EU. The preparatory bodies of the Council which are not chaired by the 6-monthly Presidency are listed in Annex III to Decision 2009/908/EU, as provided for in Article 2, third subparagraph, of Decision 2009/881/EU.

(2) In light of the advisory nature as well as of the experience and the type of tasks carried out by the European Research Area and Innovation Committee, that committee should be added to the list of preparatory bodies that are not chaired by the 6-monthly Presidency.

(3) Decision 2009/908/EU should therefore be amended accordingly,

HAS ADOPTED THIS DECISION:

*Article 1*

In Annex III to Decision 2009/908/EU, the following preparatory body is added to the list entitled 'Elected chairs':

'European Research Area and Innovation Committee'.

*Article 2*

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

It shall be published in the *Official Journal of the European Union*.

Done at Brussels, 13 December 2021.

*For the Council*
*The President*
J. BORRELL FONTELLES

([1]) OJ L 315, 2.12.2009, p. 50.
([2]) Council Decision 2009/908/EU of 1 December 2009 laying down measures for the implementation of the European Council Decision on the exercise of the Presidency of the Council, and on the chairmanship of preparatory bodies of the Council (OJ L 322, 9.12.2009, p. 28).

# COMMISSION DECISION (EU) 2021/2243

## of 15 December 2021

## laying down internal rules concerning the provision of information to data subjects and the restriction of certain of their rights in the context of the processing of personal data for the purposes of the security of information and communication systems of the Commission

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 249(1) thereof,

Whereas:

(1) While carrying out its tasks, the Commission is bound to respect the rights of natural persons in relation to the processing of personal data recognised by Article 8(1) of the Charter of Fundamental Rights of the European and by Article 16(1) of the Treaty on the Functioning of the European Union. It also has to respect the rights provided for in Regulation (EU) 2018/1725 of the European Parliament and of the Council ([1]). At the same time, the Commission must handle IT security incidents in accordance with the rules laid down in Article 15 of Decision (EU, Euratom) 2017/46 ([2]).

(2) In order to ensure IT security, meaning the preservation of confidentiality, integrity and availability of communication and information systems and the data sets that they process, as regards people, assets and information, the Commission, notably through its Directorate-General for Informatics, has taken measures as provided for in Decision (EU, Euratom) 2017/46 and in Decision C(2017) 8841 final ([3]). Those measures include monitoring the IT security risks and the IT security measures implemented, requesting system owners to take specific IT security measures in order to mitigate IT security risks to the Commission's communication and information systems, and managing IT security incidents.

(3) The Directorate-General for Informatics provides IT security operations and services to the Commission and needs to process several categories of personal data in order to:

— communicate alerts and warnings relating to IT security events and incidents;

— respond to and contain IT security events and incidents;

— facilitate tools and operations through security audits, security assessments and vulnerability management;

— increase the awareness of Commission staff in the field of cybersecurity;

— monitor, detect and prevent the occurrence of IT security events and incidents;

— review privileged user accounts.

(4) IT security incidents that could undermine the security of the Commission's information and communication systems can occur in any processing operation carried out by the Commission. They can involve any category of personal data processed by the Commission.

([1]) 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 EU 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).

([2]) Commission Decision (EU, Euratom) 2017/46 of 10 January 2017 on the security of communication and information systems in the European Commission (OJ L 6, 11.1.2017, p. 40).

([3]) Commission Decision (C(2017) 8841) of 13 December 2017 laying down implementing rules for Articles 3, 5, 7, 8, 9, 10, 11, 12, 14, 15 of Commission Decision (EU, Euratom) 2017/46 on the security of communications and information systems in the Commission.

(5) In certain circumstances, it may prove necessary to reconcile the rights of data subjects under Regulation (EU) 2018/1725 with the Commission's need to effectively carry out its tasks of ensuring the IT security of persons, assets and information in the Commission under Decision (EU, Euratom) 2017/46, and in full respect for the fundamental rights and freedoms of other data subjects. To that effect, Article 25(1) of Regulation (EU) 2018/1725 authorises the Commission to restrict the application of Articles 14 to 17, 19, 20 and 35 of that Regulation, and the principle of transparency laid down in Article 4(1)(a), thereof, insofar as its provisions correspond to the rights and obligations provided for in Articles 14 to 17, 19 and 20 of that Regulation.

(6) This Decision should apply to all processing operations carried out by the Commission as data controller in the performance of its tasks to ensure IT security of persons, assets and information in the Commission pursuant to Decision (EU, Euratom) 2017/46. Therefore, it should concern the data subjects of the categories of personal data covered by all those processing operations, i.e. individuals who interact with any of the Commission information and communication systems.

(7) Personal data are stored in a secured electronic environment to prevent unlawful access by persons outside the Commission. Different data retention periods apply to different processing operations, depending on the type of personal data involved. The retention of files in the Commission is regulated by the Common Commission-Level Retention List (SEC(2019) 900), a regulatory document in the form of a retention schedule that sets out the retention periods for different types of Commission files to limit data retention to what is necessary.

(8) The Commission could have to restrict the application of the rights of data subjects in order to safeguard its internal security pursuant to Article 25(1)(d), of Regulation (EU) 2018/1725 (i.e. to preserve confidentiality, integrity and availability of its communication and information systems and the data sets that they process, its assets and information). In particular, the Commission could have to do so when:

— communicating alerts and warnings relating to IT security events and incidents;

— responding to and containing IT security events and incidents; facilitating tools and operations through security audits, security assessments and vulnerability management;

— increasing the awareness of Commission staff in the field of cybersecurity;

— monitoring, detecting and preventing the occurrence of IT security events and incidents;

— reviewing privileged user accounts.

(9) For the purpose of handling IT security incidents, as referred to in Article 15 of Decision (EU, Euratom) 2017/46, the Directorate-General for Informatics may exchange information with the Cyber Attack Response Team of the Directorate-General responsible for Human Resources and Security.

(10) To comply with Articles 14, 15 and 16 of Regulation (EU) 2018/1725, the Commission should inform all individuals of the activities that involve processing their personal data and that affect their rights. It should do so in a transparent and coherent manner by publishing a data protection notice on the Commission's website. Where relevant, it should apply additional safeguards to inform data subjects individually in an appropriate format.

(11) Complying with Articles 14, 15 and 16 of Regulation (EU) 2018/1725, could reveal the existence of IT security measures, vulnerabilities or incidents taken under Article 15 of Decision (EU, Euratom) 2017/46. Revealing those IT security measures, vulnerabilities and incidents increases the risk that the exposed IT security measure would then be circumvented, that the exposed vulnerability would then be abused, and that an ongoing IT security incident analysis could be undermined because artefacts might be manipulated accidentally or intentionally by a user or malicious actor. This could seriously impair the Commission's capability to ensure its IT security and in particular to handle IT security incidents effectively in the future.

(12) Under Article 25(1)(h), of Regulation (EU) 2018/1725, the Commission is also authorised to restrict the application of data subjects' rights in order to protect the rights and freedoms of other individuals related to IT security incidents that could undermine IT security operations.

(13) The Commission may need to restrict the provision of information to data subjects and the application of other rights of data subjects in relation to personal data received from non-EU countries or international organisations, in order to fulfil its duty of cooperation with those countries or organisations. This is part of the Commission's duty to safeguard an important objective of EU general public interest, as referred to in Article 25(1)(c) of Regulation (EU) 2018/1725. However, in some circumstances the interest of the data subject's fundamental rights may override the interest of international cooperation.

(14) The Commission has therefore identified the grounds listed in Article 25(1)(c), (d) and (h) of Regulation (EU) 2018/1725 as grounds for restrictions that may be necessary to apply to data processing operations carried out by the Directorate-General for Informatics related to providing IT security operations and services to the Commission.

(15) Any restriction, applied under this Decision should be necessary and proportionate taking into account the risks to the rights and freedoms of data subjects.

(16) The Commission should handle all restrictions in a transparent manner and register each application of restrictions in the corresponding record system.

(17) Under Article 25(8) of Regulation (EU) 2018/1725, data controllers may defer, omit or deny the provision of information based on the reasons for the application of a restriction to the data subject if providing that information would in any way undermine the effect of the restriction. In particular, this applies to the restrictions of the obligations provided for in Articles 16 and 35 of Regulation (EU) 2018/1725. The Commission should regularly review the restrictions imposed in order to ensure that the data subject's rights to be informed in accordance with Articles 16 and 35 of Regulation (EU) 2018/1725 are restricted only as long as such restrictions are necessary to enable the Commission to ensure its IT security and in particular to handle IT security incidents.

(18) Where the Commission restricts the application of the rights of data subjects other than those referred to in Articles 16 and 35 of Regulation (EU) 2018/1725, the data controller should assess on a case-by-case basis whether the communication of the restriction would undermine its purpose.

(19) The Commission's Data Protection Officer should carry out an independent review of the application of restrictions, with a view to ensuring compliance with this Decision.

(20) In order to allow the Commission to immediately restrict the application of certain rights and obligations in accordance with Article 25 of Regulation (EU) 2018/1725, this Decision should enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

(21) The European Data Protection Supervisor issued an opinion on 16 September 2021,

HAS ADOPTED THIS DECISION:

*Article 1*

**Subject-matter and scope**

1. This Decision lays down the rules that the Commission must follow to inform data subjects of the processing of their personal data in accordance with Articles 14, 15 and 16 of Regulation (EU) 2018/1725 when carrying out its tasks pursuant to Decision (EU, Euratom) 2017/46.

It also lays down the conditions under which the Commission may restrict the application of Articles 4, 14 to 17, 19, 20 and 35 of Regulation (EU) 2018/1725, in accordance with Article 25(1)(c), (d) and (h), of that Regulation, when carrying out its tasks pursuant to Decision (EU, Euratom) 2017/46.

2. This Decision applies to the processing of personal data either by or on behalf of the Commission for the purpose of, or in relation to activities carried out to ensure the IT security of persons, assets and information in the Commission pursuant to Decision (EU, Euratom) 2017/46.

*Article 2*

**Applicable exceptions and restrictions**

1. Where the Commission exercises its duties with respect to data subjects' rights under Regulation (EU) 2018/1725, it shall consider whether any of the exceptions laid down in that Regulation apply.

2. Subject to Articles 3 to 7 of this Decision, where the exercise of the rights and obligations provided for in Articles 14 to 17, 19, 20 and 35 of Regulation (EU) 2018/1725 in relation to personal data processed by the Commission which would undermine the purpose of providing IT security operations and services, inter alia, by revealing the Commission's investigative tools, vulnerabilities and methods, or would adversely affect the rights and freedoms and the security of other data subjects, in particular for the processing of personal data in order to:

— communicate alerts and warnings relating to IT security events and incidents;

— respond to and contain IT security events and incidents;

— facilitate tools and operations through security audits, security assessments and vulnerability management;

— increase the awareness of Commission staff in the field of cybersecurity;

— monitor, detect and prevent the occurrence of IT security events and incidents;

— review privileged user accounts.

the Commission may restrict the application of:

(a) Articles 14 to 17, 19, 20 and 35 of Regulation (EU) 2018/1725;

(b) the principle of transparency laid down in Article 4(1)(a), of Regulation (EU) 2018/1725, in so far as its provisions correspond to the rights and obligations provided for in Articles 14 to 17, 19 and 20 of Regulation (EU) 2018/1725.

The Commission may do so in line with Article 25(1)(c), (d) and (h) of Regulation (EU) 2018/1725.

3. Subject to Articles 3 to 7, the Commission may restrict the rights and obligations referred to in paragraph 2 of this Article:

(a) where the exercise of those rights and obligations in respect of the personal data obtained from another EU institution, body, agency or office could be restricted by that other EU institution, body, agency or office on the basis of legal acts provided for in Article 25 of Regulation (EU) 2018/1725, or pursuant to Chapter IX of that Regulation, in accordance with Regulation (EU) 2016/794 of the European Parliament and of the Council ([4]) or in accordance with Council Regulation (EU) 2017/1939 ([5]);

(b) where the exercise of those rights and obligations in respect of the personal data obtained from the competent authority of a Member State could be restricted by competent authorities of that Member State on the basis of legislative measures referred to in Article 23 of Regulation (EU) 2016/679 of the European Parliament and of the Council ([6]), or under national measures transposing Article 13(3), Article 15(3) or Article 16(3) of Directive (EU) 2016/680 of the European Parliament and of the Council ([7]);

([4]) Regulation (EU) 2016/794 of the European Parliament and of the Council of 11 May 2016 on the EU 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).

([5]) Council Regulation (EU) 2017/1939 of 12 October 2017 implementing enhanced cooperation on the establishment of the European Public Prosecutor's Office ('the EPPO') (OJ L 283, 31.10.2017, p. 1).

([6]) 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).

([7]) Directive (EU) 2016/680 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 by competent authorities for the purposes of the prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, and on the free movement of such data, and repealing Council Framework Decision 2008/977/JHA (OJ L 119, 4.5.2016, p. 89).

(c) where the exercise of those rights and obligations would undermine the Commission's cooperation with non-EU countries or international organisations on common cybersecurity threats.

Before applying restrictions in the circumstances referred to in the first subparagraph, (a) and (b), the Commission shall consult the relevant EU institutions, bodies, agencies, offices or Member State authorities concerning the potential grounds for imposing restrictions and the necessity and proportionality of the restrictions concerned, unless this would undermine the activities of the Commission and unless it is clear to the Commission that the application of a restriction is provided for by one of the acts referred to in those points or that consultation would undermine the purpose of its activities under Decision (EU, Euratom) 2017/46.

The first subparagraph, (c), shall not apply where the interests or fundamental rights and freedoms of the data subject override the interest of the Commission to cooperate with non-EU countries or international organisations.

4. Paragraphs 1, 2 and 3 shall be without prejudice to the application of other Commission Decisions laying down internal rules governing the provision of information to data subjects and the restriction of application of certain rights under Article 25 of Regulation (EU) 2018/1725.

5. Any restriction of the rights and obligations, referred to in paragraph 2 shall be necessary and proportionate to the risks to the rights and freedoms of data subjects.

6. A necessity and proportionality test shall be carried out on a case-by-case basis before restrictions are applied and restrictions shall be limited to what is strictly necessary to achieve the intended purpose.

*Article 3*

**Provision of information to data subjects**

1. The Commission shall publish on its website a data protection notice that informs all data subjects of its activities that involve processing their personal data for the purpose of fulfilling its tasks pursuant to Decision (EU, Euratom) 2017/46, including a description of the categories of personal data involved. Where it is possible to do so without compromising IT security, the Commission shall ensure that the data subjects are informed individually in an appropriate format.

2. Where the Commission restricts, wholly or partly, the provision of information to data subjects, whose personal data it processes for the purpose of fulfilling its tasks pursuant to Decision (EU, Euratom) 2017/46 it shall record and register the reasons for the restriction in accordance with Article 6 of this Decision.

*Article 4*

**Right of access by the data subject, right to erasure and right to restrict data processing**

1. Where the Commission restricts, wholly or partly, the right of access to personal data by data subjects, the right to erasure, or the right to restrict data processing, as referred to in Articles 17, 19 and 20 of Regulation (EU) 2018/1725, it shall inform the data subject concerned, in its reply to the request for access, erasure or restriction of data processing:

(a) of the restriction applied and of the principal reasons for doing so;

(b) of how to lodge a complaint with the European Data Protection Supervisor or how to seek judicial remedy in the Court of Justice of the European Union.

2. The Commission may defer, omit or deny the provision of information on the reasons for the restriction referred to in paragraph 1 for as long as this would undermine the purpose of the restriction.

3. The Commission shall record and register the reasons for the restriction in accordance with Article 6.

4. Where the right of access is wholly or partly restricted, data subjects may exercise their right of access by contacting the European Data Protection Supervisor, in accordance with Article 25(6), (7) and (8) of Regulation (EU) 2018/1725.

*Article 5*

**Communication of a personal data breach to data subjects**

Where the Commission restricts the communication of a personal data breach to the data subject, as referred to in Article 35 of Regulation (EU) 2018/1725, it shall record and register the reasons for the restriction in accordance with Article 6 of this Decision. The Commission shall communicate the record to the EDPS at the time of the notification of the personal data breach.

*Article 6*

**Recording and registering of restrictions**

1. The Commission shall record the reasons for any restriction applied pursuant to this Decision including a reference to the legal ground(s) applied for the restriction and an assessment of the necessity and proportionality of the restriction, taking into account the relevant elements set out in Article 25(2) of Regulation (EU) 2018/1725.

2. The record shall state how the exercise of a right by the data subject would undermine the purpose of providing IT security operations and services to the Commission in line with Decision (EU, Euratom) 2017/46, or of restrictions applied pursuant to Article 2(2) or (3) of this Decision, or would adversely affect the rights and freedoms of other data subjects.

3. The Commission shall register these records and any documents containing underlying factual and legal elements. They shall be made available to the European Data Protection Supervisor on request.

*Article 7*

**Duration of restrictions**

1. The restrictions referred to in Articles 3, 4 and 5 shall continue to apply as long as the reasons for them remain valid.

2. When the reasons for a restriction referred to in Articles 3, 4 and 5 are no longer valid, the Commission shall:

(a) lift the restriction;

(b) inform the data subject of the principal reasons for the restriction;

(c) inform the data subject of how they can lodge a complaint with the European Data Protection Supervisor at any time or seek judicial remedy in the Court of Justice of the European Union.

*Article 8*

**Safeguards and storage periods**

1. The Commission shall review the application of the restrictions referred to in Articles 3, 4 and 5 6 months after their adoption, and at the closure of the individual IT security operation. Thereafter, the Commission shall review and monitor the need to maintain any restriction on an annual basis.

The review shall include an assessment of the necessity and proportionality of the restriction, taking into account the relevant elements set out in Article 25(2) of Regulation (EU) 2018/1725.

2. The Commission has adopted technical and organisational measures to avoid any accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to, personal data transmitted, stored or otherwise processed such as access rights management, backup policy and any other measure in line with the Decision (EU, Euratom) 2017/46.

3. The Commission shall record the applicable retention periods in line with the Common Commission-Level Retention List and shall make available to the data subjects the relevant retention periods for these processing activities in its data protection notice.

*Article 9*

**Review by the Data Protection Officer of the Commission**

1. The Commission's Data Protection Officer shall be informed, without undue delay, whenever data subjects' rights are restricted in accordance with this Decision. Upon request, the Data Protection Officer shall be given access to the record and any documents containing underlying factual and legal elements.

2. The Data Protection Officer may request a review of the restrictions and shall be informed of the outcome of the requested review.

3. The Commission shall document the involvement of the Data Protection Officer whenever data subjects' rights are restricted in accordance with this Decision.

*Article 10*

**Entry into force**

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

Done at Brussels, 15 December 2021.

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

**CORRIGENDA**

# Corrigendum to Commission Implementing Regulation (EU) 2021/2050 of 24 November 2021 concerning the authorisation of the preparation of *Bacillus velezensis* CECT 5940 as a feed additive for turkeys for fattening, turkeys reared for breeding, minor poultry species for fattening and reared for breeding and ornamental birds (except for reproduction) (holder of authorisation: Evonik Operations GmbH)

*(Official Journal of the European Union L 420 of 25 November 2021)*

On page 18, in the fourth column of the table:

*for:* 'Viable spores of *Bacillus velezensis* ECT 5940',

*read:* 'Viable spores of *Bacillus velezensis* CECT 5940'.

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