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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.

Corrigenda

II

(Non-legislative acts)

REGULATIONS

COMMISSION IMPLEMENTING REGULATION (EU) 2022/926

of 15 June 2022

imposing a definitive anti-dumping duty on imports of tubes and pipes of ductile cast iron (also known as spheroidal graphite cast iron) originating in India following an expiry review pursuant to Article 11(2) of Regulation (EU) 2016/1036 of the European Parliament and of the Council

THE EUROPEAN COMMISSION,

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

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

Whereas:

1. PROCEDURE

1.1. Previous investigations and measures in force

(1) By Regulation (EU) 2016/388 ([2]) ('the original Regulation'), the European Commission ('the Commission') imposed a definitive anti-dumping duty on imports of tubes and pipes of ductile cast iron (also known as spheroidal graphite cast iron), originating in India ('the original measures'). The investigation that led to the imposition of the original measures will hereinafter be referred to as 'the original investigation'.

(2) The anti-dumping duty imposed ranged from 0 % for Electrosteel Castings Ltd to 14,1 % for Jindal Saw Limited and 'all other companies'.

(3) By Regulation (EU) 2016/387 ([3]), the Commission also imposed a definitive countervailing duty on the same product. The countervailing duty imposed ranged from 8,7 % for Jindal Saw Limited to 9 % for Electrosteel Castings Ltd and 'all other companies'.

([1]) OJ L 176, 30.6.2016, p. 21.

([2]) Commission Implementing Regulation (EU) 2016/388 of 17 March 2016 imposing a definitive anti-dumping duty on imports of tubes and pipes of ductile cast iron (also known as spheroidal graphite cast iron), originating in India (OJ L 73, 18.3.2016, p. 53).

([3]) Commission Implementing Regulation (EU) 2016/387 of 17 March 2016 imposing a definitive countervailing duty on imports of tubes and pipes of ductile cast iron (also known as spheroidal graphite cast iron) originating in India (OJ L 73, 18.3.2016, p. 1).

(4) Following the judgments of the General Court in T-300/16 and T-301/16 ([4]), the Commission, corrected mistakes found by the General Courts when calculating the anti-dumping and countervailing duty for Jindal Saw Limited. By Regulations (EU) 2020/526 ([5]) and (EU) 2020/527 ([6]), the Commission re-imposed a new definitive anti-dumping and countervailing duty for Jindal Saw Limited, at the rate of 3 % and 6 % respectively.

(5) The anti-dumping duties currently in force are at rates ranging between 0 % for Electrosteel Castings Ltd, 3 % for Jindal Saw Limited and 14,1 % for 'all other companies'. The countervailing duties currently in force are 6 % for Jindal Saw Limited and 9 % for Electrosteel Castings Ltd and 'all other companies'.

1.2. **Request for an expiry review**

(6) Following the publication of a notice of impending expiry ([7]), the Commission received a request for a review pursuant to Article 11(2) of the basic Regulation.

(7) The request for expiry review was lodged on 21 December 2020 by Saint-Gobain PAM, Saint-Gobain PAM Deutschland GmbH and Saint-Gobain PAM España S.A. ('the applicants'), on behalf of Union producers representing more than 50 % of the total Union production of tubes and pipes of ductile cast iron. The request for review was based on the grounds that the expiry of the measures would be likely to result in continuation or recurrence of dumping and continuation or recurrence of injury to the Union industry.

1.3. **Initiation of an expiry review**

(8) Having determined that sufficient evidence existed for the initiation of an expiry review the Commission initiated, on 17 March 2021, an expiry review with regard to imports to the Union of tubes and pipes of ductile cast iron originating in India ('the country concerned') on the basis of Article 11(2) of the basic Regulation. It published a Notice of Initiation in the *Official Journal of the European Union* ([8]) ('the Notice of Initiation').

(9) On the same date, the Commission also initiated an expiry review of the countervailing measures with regards the imports of the same product ([9]).

1.4. **Review investigation period and period considered**

(10) The investigation of continuation or recurrence of dumping and injury covered the period from 1 January 2020 to 31 December 2020 ('the review investigation period'). The examination of trends relevant for the assessment of the likelihood of a continuation or recurrence of injury covered the period from 1 January 2017 to the end of the review investigation period ('the period considered').

([4]) Judgment of the General Court of 10 April 2019, Jindal Saw Ltd and Jindal Saw Italia SpA v European Commission, T-301/16, ECLI:EU:T:2019:234 and T-300/16, ECLI:EU:T:2019:235.

([5]) Commission Implementing Regulation (EU) 2020/526 of 15 April 2020 re-imposing a definitive countervailing duty on imports of tubes and pipes of ductile cast iron (also known as spheroidal graphite cast iron) originating in India as regards Jindal Saw Limited following the judgment of the General Court in T-300/16 (OJ L 118, 16.4.2020, p. 1).

([6]) Commission Implementing Regulation (EU) 2020/527 of 15 April 2020 re-imposing a definitive anti-dumping duty on on imports of tubes and pipes of ductile cast iron (also known as spheroidal graphite cast iron) originating in India as regards Jindal Saw Limited following the judgment of the General Court in T-301/16 (OJ L 118, 16.4.2020, p. 14).

([7]) Notice of the impending expiry of certain anti-dumping measures (OJ C 210, 24.6.2020, p. 29).

([8]) Notice of Initiation of an expiry review of the anti-dumping measures applicable to imports of tubes and pipes of ductile cast iron originating in India (OJ C 90, 17.3.2021, p. 19).

([9]) Notice of Initiation of an expiry review of the anti-subsidy measures applicable to imports of tubes and pipes of ductile cast iron originating in India (OJ C 90, 17.3.2021, p. 8).

1.5. **Interested parties**

(11) 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 Union producers, known producers in India and the authorities of India, known importers, users as well as associations known to be concerned about the initiation of the expiry review and invited them to participate.

(12) Interested parties had an opportunity to comment on the initiation of the expiry review and to request a hearing with the Commission and/or the Hearing Officer in trade proceedings. No interested party requested a hearing.

(a) ***Sampling***

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

Sampling of Union producers

(14) In the Notice of Initiation, the Commission stated that it had provisionally selected a sample of three Union producers. These Union producers are part of the same group of companies. The Commission selected the sample on the basis of volume of production and sales of the like product in the Union during the review investigation period, i.e. between 1 January 2020 and 31 December 2020. The definitive sample of Union producers accounted for [70-85] % of estimated total Union production and [70-85] % of estimated total Union sales volume of the like product, and it also ensured a good geographical spread.

(15) In accordance with Article 17(2) of the basic Regulation, the Commission invited interested parties to comment on the provisional sample, but did not receive any comments. The provisional sample was therefore confirmed and was considered representative of the Union industry.

Sampling of importers

(16) To decide whether sampling was necessary and, if so, to select a sample, the Commission asked unrelated importers to provide the information specified in the Notice of Initiation. However, as no unrelated importers came forward, sampling was not necessary.

Sampling of producers in India

(17) To decide whether sampling was necessary and, if so, to select a sample, the Commission asked all known producers in India to provide the information specified in the Notice of Initiation. In addition, the Commission asked the Government of India to identify and/or contact other producers, if any, that could be interested in participating in the investigation.

(18) As only three producers provided a sampling reply within the time limit provided for, the Commission decided that sampling was not necessary.

(b) ***Questionnaires***

(19) The Commission sent questionnaires to the group of three sampled Union producers and the three exporting producers that had provided a sampling reply. The same questionnaires had also been made available online ([10]) on the day of initiation.

(20) The Commission received questionnaire replies from the three sampled Union producers and from one of the exporting producers, Tata Metaliks Limited ('TML'). Though having submitted sampling replies, the other two exporting producers subsequently did not submit a questionnaire reply and, hence, did not cooperate to the investigation.

([10]) https://trade.ec.europa.eu/tdi/case_details.cfm?ref=ong&id=2521&sta=1&en=20&page=1&c_order=date&c_order_dir=Down

(c) ***Verification***

(21) In view of the outbreak of COVID-19 and the confinement measures put in place by various third countries, the Commission could not carry out verification visits pursuant to Article 16 of the basic Regulation at the premises of the exporting producer. The Commission instead cross-checked remotely all the information deemed necessary for its determinations in line with its Notice on the consequences of the COVID-19 outbreak on anti-dumping and anti-subsidy investigations ([11]). The Commission carried out a remote crosscheck of the following exporting producer:

— Tata Metaliks Limited

(22) The Commission sought and verified all the information deemed necessary for the investigation. Verification visits pursuant to Article 16 of the basic Regulation were carried out at the premises of the following Union producers and a related sales entity in Italy:

— Saint-Gobain PAM, Pont-à-Mousson, France

— Saint-Gobain PAM Deutschland GmbH, Saarbrücken, Germany

— Saint-Gobain PAM Italia S.P.A, Milano, Italy

1.6. **Subsequent procedure**

(23) On 18 March 2022, the Commission disclosed the essential facts and considerations on the basis of which it intended to maintain the anti-dumping duties in force. All parties were granted a period within which they could make comments on the disclosure.

(24) Only Tata Metaliks Limited submitted comments within the deadline. The comments were considered by the Commission and taken into account, where appropriate. No party requested a hearing.

1.7. **Comments on initiation**

(25) One user, i.e. Hydro Mat Benelux, and one exporting producer, i.e. Tata Metaliks Limited, submitted comments on initiation.

(26) The Commission noted that Tata Metaliks Limited submitted its comments on initiation were submitted on 17 February 2022, more than 9 months after the deadline of 37 days after the date of publication of the Notice of Initiation as defined in point 5.2 of the Notice of Initiation. Therefore, the Commission did not take into consideration this submission.

(27) The Commission noted that while submitting comments on the initiation, Hydro Mat Benelux did not fully cooperate with the investigation. In particular, the company did not fill in the questionnaire set for users which could have been used for cross-checking some of the statements listed below, i.e. for example the selling prices of the exporting producers or documents related to public procurement.

(28) First, Hydro Mat Benelux claimed that the proceeding should be terminated as the request was not lodged within 3 months prior to the date of expiry, mentioned in the Notice of impending expiry ([12]).

(29) The Commission clarified that the submission date mentioned in the Notice of Initiation did not correspond to the date on which the request was submitted. As it can be seen in the open version of the request for review available in the non-confidential file since 17 March 2021 and accessible by all interested parties, the request was duly submitted on 18 December 2020, that is within the time period provided for in Article 11(2) of the basic Regulation. Therefore, the claim was rejected.

([11]) Notice on the consequences of the COVID-19 outbreak on anti-dumping and anti-subsidy investigations (OJ C 86, 16.3.2020, p. 6).
([12]) OJ C 210, 24.6.2020, p. 29.

(30) Second, Hydro Mat Benelux claimed that there is an excessive use of confidentiality in the request. In particular, the Union industry indexed all the indicators concerning its economic performance. The party referred to Implementing Regulation (EU) 2020/1336 ([13]) where the Commission disclosed the microeconomic data of a single Union producer.

(31) The Commission noted that in Implementing Regulation (EU) 2020/1336 all micro indicators (sales prices and volumes, unit cost of production, labour costs, closing stocks, profitability, etc.) were provided in ranges or indexes.

(32) In addition, the Commission considered that the version of the expiry review request that was placed on the file for inspection by interested parties contained all the essential evidence and non-confidential summaries of data marked as confidential in order for interested parties to make meaningful comments and exercise their right of defence throughout the proceeding.

(33) In this respect, the Commission further recalled that Article 19 of the basic Regulation allows for the safeguarding of confidential information in circumstances where disclosure would be of significant competitive advantage to a competitor or would have a significant adverse effect upon a person supplying the information or upon a person from whom that person has acquired the information. Consequently, these claims were rejected.

(34) Third, the party claimed that the first half of 2020 did not reflect normal economic circumstances and considered that period was not representative for making a forward-looking assessment of the consequences of the expiry of the measures under discussion. The party claimed that the negative performance of the Union industry in the first half of 2020 was caused by the negative economic impacts due to COVID-19 and by the increase in cost of raw materials on world markets which could not be passed on to downstream consumers. Moreover, it claimed that for the period 2017-2019 the main indicators did not demonstrate vulnerability but rather a healthy Union industry, in particular when analysing the production, the production capacity, the inventories, the investments, the sales prices and the profitability.

(35) The Commission recalled that Article 11(2) of the basic Regulation requires that the expiry review request shall contain sufficient evidence that the expiry of the measures would likely result in a continuation or recurrence of injury. In the present case, the specific injury analysis in the expiry review request contained evidence pointing to a significant penetration of the Union market by Indian imports made at prices which substantially undercut and undersell the Union industry's prices. Accordingly, the Commission considered that the expiry review request contained sufficient evidence of continuation of injury and rejected the claim.

(36) Fourth, the party analysed the period 2017-2020 and argued that the available import data did not support the claim of likelihood of recurrence of injury. Moreover, the party claimed that the Indian export prices, the undercutting and underselling margins calculated by the applicant were not reliable as the export prices reflected the transfer price between related parties, i.e. the Indian producers and their related subsidiaries. Finally, the party claimed that the Indian producers have increased their production capacity in order to cope with the growing Indian domestic market and that the main Indian exporting producers did not plan to extend their production capacity.

(37) The Commission considered that none of the allegations disproved the conclusion that there was sufficient evidence for the initiation of an anti-dumping review investigation. Indeed, the expiry review request contained sufficient evidence that dumped imports had a materially injurious impact on the state of the Union industry. In particular, the applicants provided not only undercutting calculations at border level but also at the level of the delivery to customer premises showing an undercutting of no less than 14,9 %. The specific injury analysis of the expiry review request showed increased penetration of the Union market (both in absolute and relative terms) by imports from India made at prices which substantially undercut the Union industry's prices. This appears to have had a materially injurious impact upon the state of the Union industry, shown for example by decreases in sales and market share or by a deterioration of financial results. Therefore, the claim was rejected.

([13]) Commission Implementing Regulation (EU) 2020/1336 of 25 September 2020 imposing definitive anti-dumping duties on imports of certain polyvinyl alcohols originating in the People's Republic of China (OJ L 315, 29.9.2020, p. 1), recitals (442) and (460-471).

(38) Regarding the claim that the increase of the Indian production will be directed only to the Indian market, the party did not provide any evidence. Consequently, the claim was rejected.

(39) Fifth, the party claimed that general competitiveness issues should not justify a finding of continuation or recurrence of injury. The party listed various items such as the fact that the Union consumption fell since Eurozone crisis with a decrease of public spending, and thus had a negative impact on the Union industry's competitiveness, the competition of plastic pipes, the difficulty attracting employment, the maintenance of dominant position, the pressure of cheaper Chinese imports on tender process.

(40) This claim is addressed below in recital (155).

(41) After disclosure, Tata Metaliks Limited submitted that the data in the review request relating to the Union industry's data and the imports covered the period of July 2019 to June 2020. However, the Notice of Initiation defined the review investigation period to be January 2020 to December 2020. In the company's view, the applicants should have updated the expiry review request based on the review investigation period defined in the Notice of Initiation, and these data should have been made available to parties. By not circulating such updated review request to the parties, the Commission violated in its view Article 6.1.2 and Article 6.4 of the WTO's Anti-Dumping Agreement.

(42) First, it is the Commission common practice to base its findings on the most recent available data. Such data may not necessarily correspond to the period defined in the expiry review request since it may not have been available at the time when the request for review was lodged. The WTO's Anti-Dumping Agreement does not contain any provision requiring the Commission to base its findings on the same period as defined in the expiry review request. Second, all the parties had the possibility to comment on the findings and evidence that related to the review investigation period defined in the Notice of Initiation during the investigation. Therefore, the Commission considered that it did not breach any procedural rights or violated the WTO's Anti-Dumping Agreement and rejected the claim.

(43) Tata Metaliks Limited also referred to the fact that the Commission rejected its comments on initiation because they came after the deadline provided for in the Notice of Initiation (see recital (26)). In its view the deadline would only apply after reception of the revised data by the applicants that would relate to the review investigation period as defined in the Notice of Initiation. Tata Metaliks Limited also argued that it is 'a settled principle of natural justice' and 'a settled position of law across all jurisdictions' that submissions regarding questions of law can be raised beyond deadlines.

(44) As explained in the recital (42), the review investigation period related to the most recent period for which data was available, and this period does not always correspond to the preliminary assessment of the review request. Furthermore, the deadline in the Notice of Initiation related explicitly to the date of publication of the Notice, and not to any other date such as submission of any information by a party. The deadline in the Notice of Initiation does not distinguish between questions of law and of fact and applies equally to both. The Commission thus rejected the claim.

2. **PRODUCT CONCERNED AND LIKE PRODUCT**

2.1. **Product concerned**

(45) The product concerned is the same as in in the original investigation namely tubes and pipes of ductile cast iron (also known as spheroidal graphite cast iron) ('ductile pipes'), with the exclusion of tubes and pipes of ductile cast iron without internal and external coating ('bare pipes'), originating in India, currently falling within CN codes ex 7303 00 10 (TARIC code 7303 00 10 10) and ex 7303 00 90 (TARIC code 7303 00 90 10) ('the product concerned').

(46) Ductile pipes are used for drinking water supply, sewage disposal and irrigation of agricultural land. The transportation of water through ductile pipes may be based on pressure or solely on gravity. The pipes range between 60 mm and 2 000 mm and are 5,5, 6,7 or 8 meters long. They are normally lined with cement or other materials and externally zinc-coated, painted or tape wrapped. The main final users are public utility companies.

2.2. **Like product**

(47) As established in the original investigation, this expiry review investigation confirmed that the following products have the same basic physical, chemical and technical characteristics as well as the same basic uses:

— the product concerned;

— the product produced and sold on the domestic market of country concerned; and

— the product produced and sold in the Union by the Union industry.

(48) These products are therefore considered to be like products within the meaning of Article 1(4) of the basic Regulation.

3. **LIKELIHOOD OF CONTINUATION OR RECURRENCE OF DUMPING**

(49) In accordance with Article 11(2) of the basic Regulation, and as stated in the Notice of Initiation, the Commission examined whether the expiry of the existing measures would be likely to lead to a continuation or recurrence of dumping. The Commission first examined whether the dumping in the review investigation period ('RIP')) continued (Section 3.1) and second, whether there is a likelihood it will continue or recur should the measures lapse (Section 3.2).

3.1. **Continuation of dumping in the review investigation period**

3.1.1. *Evolution of the imports after the imposition of the measures*

(50) In the original investigation period ([14]), India exported to the Union [80 000 – 100 000] tonnes of the product concerned (based on EU27) ([15]). Between 2016 and 2018, after the imposition of the definitive measures in March 2016, imports decreased and fluctuated between 38 000 to 55 000 tonnes yearly. In 2019, the imports from India increased again to [64 000 – 75 000] tonnes.

(51) During the review investigation period, imports of the product concerned decreased to [44 000 – 52 000] tonnes. After the review investigation period, in 2021, the imports increased again to the level of 2019.

(52) Overall, imports of the product concerned from India remained in the review investigation period at important level and accounted for about [10 – 14] % of the Union market, compared to [15 – 20] % market share the Indian imports represented during the original investigation period.

3.1.2. *Cooperation of the Indian producers and basis for the findings*

(53) Three Indian producers initially agreed to cooperate. However, two of these companies/groups of companies later withdrew their cooperation (see Section 1.5). The only cooperating company, Tata Metaliks Limited, sold in the review investigation period most of its production on the domestic market. Its total declared export volume to the Union was insignificant, corresponding to [< 1 %] of the total import volumes of the product concerned from India to the Union ([16]). In view of the very low quantities that Tata Metaliks Limited exported to the Union, the Commission did not considered that the exports of Tata Metaliks Limited could constitute a reliable basis to determine whether imports from India into the Union continued to be dumped.

(54) Since the overall exports of the product concerned in the review investigation period remained relatively high (see recital (51), the Commission based its findings on the continuation of dumping on the imports from India to the Union on best facts available in accordance with Article 18 of the basic Regulation. In this respect, it based its findings on statistical import data as recorded by Eurostat.

([14]) 1 October 2013 to 30 September 2014.
([15]) The figures in the original investigation were shown in ranges or indexes because of confidentiality.
([16]) The exported quantities represented in the RIP less than [< 1 %] in terms of turnover of the product concerned.

3.1.3. *Normal value*

(55) To determine the normal value, the Commission first examined the data submitted by the only cooperating producer, Tata Metaliks Limited. In the RIP, the company sold important quantities of the product concerned on the domestic market. Tata Metaliks Limited recorded the domestic prices in its accounting system on linear metres basis. For dumping determinations, Tata Metaliks Limited converted the prices using a conversion ratio from metres to kg. The investigation revealed that the method did not correctly reflect the actual weight of the product, and the resulting prices per kg were therefore not representative of the actual sales prices. Therefore, the Commission decided not to use the information submitted by Tata Metaliks Limited to determine the normal value, and to rely instead on facts available in accordance with Article 18 of the basic Regulation.

(56) After disclosure, Tata Metaliks Limited submitted that the methodology it adopted for converting the unit of measurement for the domestic sales from length to weight was not incorrect. It thus requested the Commission to take into account its data to determine the normal value.

(57) The Commission noted that apart from the general claim, Tata Metaliks Limited did not put forward any specific argument on the accurateness of the data submitted by the company. Contrary to the claim by Tata Metaliks Limited, the Commission found during the remote cross-check (see recital (21) above) significant discrepancies between the reported and real weight of the sold products. Therefore, the Commission maintained its view that the data of Tata Metaliks Limited to determine the normal value could not be used.

(58) In the absence of cooperation of any other producer in India, the Commission thus established the normal value on facts available, and in particular on the information in the review request. That information included prices offered, agreed and paid for multiple quantities, diameters and types of the product concerned in several different States and municipalities.

3.1.4. *Export price*

(59) Given that the Commission considered that the low export quantities of Tata Metaliks Limited (see recital (53)) were not representative of the overall exports of the product concerned to the Union market and in the absence of cooperation of any other producers in India, the Commission established the export price based on CIF Eurostat data adjusted to ex-works level.

(60) After disclosure Tata Metaliks Limited submitted that the methodology applied by the Commission was unfair and incorrect as Tata Metaliks Limited will be penalized for any dumping by the exporting producers whereas those producers would continue to get the benefit of individual anti-dumping rates assigned to them.

(61) The Commission recalled that since Tata Metaliks Limited exported during the review investigation period very limited quantities to the Union, the Commission could not use its data to determine the export price. In the absence of cooperation of any other exporting producer, it had no choice but to rely on the statistical data. Moreover, in any event and as further detailed in recitals (193), under the current review the Commission solely concludes on whether the measures are necessary or not. The duty rates established in the original investigation will not be therefore amended. The Commission thus rejected the claim.

3.1.5. *Comparison*

(62) The Commission compared the normal value and the export price on an ex-works basis determined as mentioned above in Sections 3.1.3 and 3.1.4.

(63) On this basis, the dumping margin expressed as a percentage of the CIF Union frontier price, duty unpaid, was 12 % during the review investigation period.

3.1.6. *Conclusion*

(64) The Commission therefore concluded that during the review investigation period, the Indian producers continued to export the product concerned to the Union at dumped prices.

3.2. **Likelihood of continuation of dumping should the measures lapse**

(65) Further to the finding of the existence of continued dumping during the review investigation period, the Commission investigated in accordance with Article 11(2) of the basic Regulation the likelihood of continuation of dumping, should the measures lapse. The Commission analysed in particular the following elements: the production capacity and spare capacity in India, prices from India to third countries and attractiveness of the Union market in terms of the size of the market and prices.

3.2.1. *Production capacity, spare capacity in India and prices from India to third countries*

(66) In the review investigation period, the total estimated production of the Indian producers of the product concerned was around 2 million tonnes yearly. The estimated production capacity amounted to around 2,5 million tonnes. Hence, the spare capacity represented around 500 000 tonnes yearly, which exceeds the consumption of the product concerned on the Union market in the review investigation period, which amounted to [388 000 to 454 000] tonnes.

(67) Based on the evidence submitted by the applicant and confirmed by the information from the cooperating producer, Tata Metaliks Limited, a number of the Indian producers including Tata Metaliks Limited ([17]) plan to invest in further capacity increases ([18]). The total additional capacities to be installed in next few years are estimated at around 1,5 million of tonnes.

(68) The expected grow in capacities correspond to the estimated growth of the demand on the Indian market. However, the major known producers also plan to focus on the export markets ([19]). For instance, the company ESL Steel Limited (part of the Vedanta Group) explicitly mentioned, in a feasibility study, that its new facility was located near to a port, which enhances its export chance. The report mentioned in particular a big potential of exports to the Eastern Europe ([20]). Plans to expand to the Union market in the future were also mentioned by the cooperating company, Tata Metaliks Limited during the remote cross-check of its questionnaire reply.

(69) Moreover, according to one of the major players, the company Srikalahasthi Pipes Limited ('SPL'), in the medium and long term (7 to 10 years), because the wastewater and water projects will be finalized, there will be an excess of the supply over demand on the Indian market. Consequently, this will represent further incentive of the Indian producers to focus more and more on export markets.

(70) Based on the above, the Commission concluded that the Indian producers have significant spare capacity, which they could use to produce the product concerned to export to the Union market if measures lapse, and that this spare capacity is expected to further grow.

(71) Concerning the prices from India to third countries, the Commission examined those on the basis of the export statistics in Global Trade Atlas ('GTA') at the level of CN code, i.e. 7303 00 30. Based on these statistics, the Commission established that Union market remains attractive in terms of its size and prices as it is by far the most important export market for Indian producers of ductile pipes, accounting for 40 % of their total exports. Moreover, exports to the Union are 25 times higher than exports to India's second largest export market, which is Qatar. The latter accounts only for 2 % of the total Indian exports. Finally, import prices of the Indian exporting producers to the Union market were slightly higher than those to other countries during the review investigation period. Consequently, should the measures be allowed to lapse, the exporting producers would have an incentive to increase their exports to the Union even further.

([17]) https://www.tatametaliks.com/tata-metalik-ir-20-21/focus-on-downstream.html#:~:text = Tata%20Metaliks%20had%20foreseen%20the,in%20H1 %20FY%202022 %2D23

([18]) The intention to invest in capacity increase were made public by the major producers of the product concerned in India such as Vedanda.

([19]) Review request, Annex 17.

([20]) Review request, Annex 17.

3.2.2. *Attractiveness of the Union market and prices on the Union market*

(72) The market of ductile pipes in the Union is important ([388 000 – 454 000] tonnes, see recital (66)). The applicants expect the market to be further growing within the next 5 years ([21]).

(73) In the RIP, the average price per tonne on the Union market was EUR [1 020 – 1 200]. In the same period, the price on the Indian domestic market was EUR 595 per tonne (ex works). Therefore, the prices on the Union market were around two times higher compared to the prices of the imports from India.

(74) Therefore, in terms of the size and the prices, the Union market remained an attractive market for the Indian producers. This is further supported by the fact that during the review investigation period, the market share of the Indian exporting producer remained important (see Table 2) and that, as explained in recital (71) above, the Union market constituted 40 % of the total exports from India of the product concerned.

3.3. **Conclusion on the likelihood of continuation of dumping**

(75) The investigation showed that the Indian exports continued to enter the Union market at dumped prices during the review investigation period.

(76) The Commission also found evidence on the basis of Article 18 basic Regulation that dumping will likely continue should the measures lapse. The spare capacity in India was significant in comparison with the Union consumption during the review investigation period. Moreover, the attractiveness of the Union market in terms of size and prices supported the likelihood that Indian exports and spare capacity would be directed towards the Union market, should the measures lapse. Consequently, the Commission concluded that there is a strong likelihood that the expiry of the anti-dumping measures would result in a significant increase of dumped imports of the product concerned from India to the Union.

(77) In the light of the above, the Commission concluded that the expiry of the anti-dumping measures would be likely to lead to a continuation of dumping.

4. **INJURY**

4.1. **Definition of the Union industry and Union production**

(78) Within the Union, five companies produce the product concerned. Three of these companies are part of the same group. Based on the available information from the request, there are no other Union producers of the product concerned in the Union. Therefore, they constitute the 'Union industry' within the meaning of Article 4(1) of the basic Regulation.

(79) As the data relating to the injury assessment was primarily derived from the same group of producers, as mentioned in recital (14), the figures for the injury analysis are given in ranges or in an indexed form for reasons of confidentiality.

(80) The total Union production during the review investigation period was established at [372 000 – 436 000] tonnes. The Commission established the figure on the basis of all the available information concerning the Union industry, such as macro data provided by the applicant and data collected from the sampled Union producers during the investigation.

4.2. **Union consumption**

(81) The Commission established the Union consumption on the basis of the volume of the total Union industry's sales in the Union, the captive production on the basis of the data collected from the sampled Union producers and estimates for the remaining Union producers provided by the applicant, plus the total of imports from all countries to the Union as reported by Eurostat (Comext database).

([21]) Review request, Section 5.1.6.

(82) Union consumption developed as follows:

Table 1

Union consumption (in 1 000 tonnes)

	2017	2018	2019	Review Investigation Period
Total Union Consumption	[376 – 440]	[389 – 455]	[420 – 492]	[388 – 454]
Index (2017 = 100)	*100*	*103*	*111*	*103*
Captive market	[15 – 17]	[13 – 16]	[10 – 12]	[2 – 3]
Index	*100*	*91*	*68*	*18*
Free market	[361 – 423]	[375 – 439]	[410 – 479]	[385 – 450]
Index (2017 = 100)	*100*	*103*	*113*	*106*

Source: Eurostat Comext

(83) The Union consumption fluctuated during the period considered. Overall, it increased slightly by 3 % in 2018, increased by 8 % in 2019 and decreased by 8 % in 2020. As a result, the consumption increased by 3 % during the period considered.

(84) The use of ductile iron pipes is by nature linked to infrastructure investment with regard to water treatment, the water supply and water treatment companies, whether public or privately-owned, account for most of the demand for the ductile iron pipes in the Union. Ductile pipes are mainly used in large infrastructure projects. Moreover, the evolution of the Union consumption did not show a major impact due to the COVID-19 pandemic as the improvement of water networks has a constant priority for the public authorities. Therefore, the evolution of the Union consumption reflects the evolution of the infrastructure investment.

(85) The Union industry reported captive use of the product concerned, which represented less than 5 % of total Union consumption in 2017 and decreased over the period considered representing less than 1 % in the review investigation period. The Commission therefore considered that the captive use did not have a meaningful impact on the injury analysis.

4.3. **Imports from India**

4.3.1. *Volume and market share of the imports from India*

(86) The Commission established the volume of imports on the basis of Eurostat (Comext database). The market share of the imports was established on the Union consumption, as set out in recital (81).

(87) Imports of the product concerned into the Union from India developed as follows:

Table 2

Import volume (in 1 000 tonnes) and market share

	2017	2018	2019	Review Investigation Period
Volume of imports from India	[45 – 52]	[38 – 45]	[64 – 75]	[44 – 52]
Index (2017 = 100)	*100*	*86*	*143*	*98*

Market share (in %)	11/15	9/13	14/18	10/14
Index (2017 = 100)	*100*	*83*	*128*	*95*

Source: Eurostat Comext

(88) During the period considered, the Indian import volumes fluctuated significantly: in 2018, the imports decreased by 14 %, in 2019 increased by 68 % and finally during the review investigation period decreased by 31 %.

4.3.2. *Prices of the imports from India*

(89) The Commission established the weighted average prices of imports on the basis of Eurostat Comext statistics.

(90) The weighted average price of imports into the Union from India developed as follows:

Table 3

Import prices (EUR/tonne)

	2017	2018	2019	Review Investigation Period
India	553	562	586	585
Index (2017 = 100)	*100*	*101*	*105*	*105*

Source: Eurostat Comext

(91) In 2017-2018, the import prices were rather stable. As from, in 2019 the import prices increased by 5 % and remained stable during the review investigation period.

4.3.3. *Price undercutting*

(92) As mentioned in recital (53), only one Indian producer cooperated with the investigation. This producer declared a negligible quantity exported to the Union, which corresponded to less than 1 % of the total import volumes of the product concerned from India to the Union. Therefore, the Commission considered that this export volume was not representative of the exports of the product concerned to the Union and decided to establish the price undercutting based on facts available.

(93) The Commission compared the weighted average CIF Indian import prices, adjusted for post importation costs, to the weighted average price of the Union industry. The Indian import prices undercut the prices of the Union industry by around [30- 45] % during the review investigation period.

4.3.4. *Imports from third countries other than India*

(94) During the review investigation period, the volume and the market share of imports from third countries other than India amounted respectively to [8 700-20 200] tonnes and [2-4] % of the Union consumption. Over the period considered, the weighted average price of imports from third countries was at comparable level to prices of the sampled Union producers in 2017-2018 and around 25 % lower for the period 2019-2020 (see Table 8). While the volume of imports from third countries slightly increased, i.e. by 2 %, the origin of the imported ductile pipes was not stable over the period considered. For example, in 2017, the main imports from third countries came from China, Russia and Switzerland, while in the review investigation period the main importers were Turkey and United Arab Emirates.

(95) The aggregated volume of imports into the Union as well as the market share and price trends for imports of tubes and pipes of ductile cast iron from other third countries developed as follows:

Table 4

Import volume and market share from other third countries

Country		2017	2018	2019	Review Investigation Period
China	Volume (tonne)	[2 900 – 3 400]	[1 400 – 1 700]	[3 900 – 4 600]	[200 – 400]
	Index	*100*	*50*	*133*	*10*
	Market share (in %)	[0 – 1]	[0 – 1]	[0 – 2]	[0 – 1]
	Index (2017 = 100)	*100*	*48*	*119*	*9*
	Average price (EUR/tonne)	701	933	738	833
	Index (2017 = 100)	*100*	*133*	*105*	*118*
Russia	Volume (tonne)	[2 000 – 2 500]	[1 400 – 1 600]	[2 900 – 3 600]	[1 200 – 1 600]
	Index (2017 = 100)	*100*	*67*	*147*	*63*
	Market share (in %)	[0 – 1]	[0 – 1]	[0 – 1]	[0 – 1]
	Index (2017 = 100)	*100*	*65*	*132*	*61*
	Average price (EUR/tonne)	568	697	735	698
	Index (2017 = 100)	*100*	*122*	*129*	*122*
Switzerland	Volume (tonne)	[3 400 – 4 400]	[1 800 – 2 200]	[1 600 – 2 000]	[800 – 1 000]
	Index (2017 = 100)	*100*	*52*	*47*	*23*
	Market share (in %)	[0 – 1]	[0 – 1]	[0 – 1]	[0 – 1]
	Index (2017 = 100)	*100*	*51*	*42*	*23*
	Average price (EUR/tonne)	1 604	1 656	1 714	1 817
	Index (2017 = 100)	*100*	*103*	*106*	*113*
Turkey	Volume (tonne)	[10 – 20]	[10 – 20]	[3 100 – 3 650]	[4 200 – 5 000]
	Index (2017 = 100)	*100*	*115*	*25 750*	*35 070*

	Market share (in %)	[0 – 1]	[0 – 1]	[0- 1]	[1 – 2]
	Index (2017 = 100)	*100*	*111*	*23 065*	*34 035*
	Average price (EUR/tonne)	1 136	1 750	838	1 007
	Index (2017 = 100)	*100*	*153*	*73*	*88*
UAE	Volume (tonne)	[460 – 590]	[3 700 – 4 400]	[4 800 – 5 600]	[6 400 – 7 600]
	Index (2017 = 100)	*100*	*766*	*988*	*1 322*
	Market share (in %)	[0 – 1]	[0 – 1]	[1 – 2]	[1 – 2]
	Index (2017 = 100)	*100*	*741*	*884*	*1 282*
	Average price (EUR/tonne)	712	786	722	705
	Index (2017 = 100)	*100*	*110*	*101*	*99*
Other third countries	Volume (tonne)	[10 -20]	[150 – 200]	[10 -50]	[150 – 300]
	Index (2017 = 100)	*100*	*994*	*200*	*1 457*
	Market share (in %)	[0 – 1]	[0 – 1]	[0 – 1]	[0 – 1]
	Index (2017 = 100)	*100*	*962*	*179*	*1 414*
	Average price	508	1 422	1 980	897
	Index (2017 = 100)	*100*	*279*	*389*	*176*
Total of all third countries excl. India	Volume (tonne)	[8 700 – 11 200]	[8 800 – 10 500]	[16 000 – 19 600]	[13 500 – 15 800]
	Index (2017 = 100)	*100*	*94*	*180*	*145*
	Market share (in %)	[1 – 3]	[1 – 3]	[3 – 5]	[3 – 5]
	Index (2017 = 100)	*100*	*91*	*161*	*141*
	Average price (EUR/tonne)	1 033	1 004	856	879
	Index (2017 = 100)	*100*	*97*	*82*	*85*

Source: Eurostat Comext database

4.4. **Economic situation of the Union industry**

4.4.1. *General remarks*

(96) The assessment of the economic situation of the Union industry included an evaluation of all economic indicators having a bearing on the state of the Union industry during the period considered.

(97) As mentioned in recital (13), sampling was used for the assessment of the economic situation of the Union industry.

(98) For the injury determination, the Commission distinguished between macroeconomic and microeconomic injury indicators. The Commission evaluated the macroeconomic indicators on the basis of data related to all Union producers, contained in the expiry review request. The Commission evaluated the microeconomic indicators on the basis of data contained in the questionnaire replies from the sampled Union producers. The data related to the sampled Union producers. Both sets of data were found to be representative of the economic situation of the Union industry.

(99) 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.

(100) 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

(101) The total Union production, production capacity and capacity utilisation developed over the period considered as follows:

Table 5

Production, production capacity and capacity utilisation

	2017	2018	2019	Review Investigation Period
Production volume (in 1 000 tonne)	[408 – 478]	[452 – 530]	[436 – 510]	[372 – 436]
Index (2017 = 100)	*100*	*110*	*106*	*91*
Production capacity (in 1 000 tonne)	[824 – 965]	[824 – 965]	[824 – 965]	[743 – 870]
Index (2017 = 100)	*100*	*100*	*100*	*90*
Capacity utilisation (in %)	[47 – 51]	[52 – 56]	[50 – 54]	[48 – 51]
Index (2017 = 100)	*100*	*110*	*106*	*101*

Source: Data submitted by the Union industry and verified questionnaire replies of the sampled Union producers

(102) The Union production decreased by 9 % over the period considered after an increase of 10 % in 2018.

(103) The production capacity followed a similar trend as it decreased by 10 % over the period considered.

(104) The capacity utilisation remained stable as the decrease of the production capacity followed the decrease of the Union production.

(105) Following final disclosure, Tata Metaliks Limited claimed that the imports from India could not have been a reason for the Union industry to reduce its production capacity but rather the decline in demand as compared to 2019.

(106) The Union industry's decision to reduce its production capacity was made before the COVID-19 crisis and thus the decision had no link with the decrease of the consumption between 2019 and the review investigation period. Therefore, the claim was rejected.

4.4.2.2. Sales volume and market share

(107) The Union industry's sales volume and market share developed over the period considered as follows:

Table 6

Sales volume and market share of Union producers

	2017	2018	2019	Review Investigation Period
Sales volume on the Union market (in 1 000 tonnes)	[321 – 376]	[341 – 399]	[338 – 396]	[329 – 386]
Index	*100*	*106*	*105*	*102*
Market share (in %)	[82- 88]	[84 – 90]	[77 – 83]	[81 – 87]
Index	*100*	*102*	*94*	*99*
Captive market sales (in 1 000 tonnes)	[15 – 17]	[13 – 16]	[10 – 12]	[2 – 3]
Index	*100*	*91*	*68*	*18*
Market share of captive market sales (in %)	[3 – 4]	[3 – 4]	[2 – 3]	[0 – 1]
Index	*100*	*88*	*61*	*18*

Source: Data provided by the Union industry and verified questionnaire replies of the sampled Union producers

(108) The sales volume of the like product by the Union industry over the period considered and the market share did not follow the increase of the Union consumption, except for 2019. In particular, in 2019 the Union industry did not benefit from the increase in consumption, contrary to the imports from India.

(109) Following final disclosure, Tata Metaliks Limited claimed that the market share of the Union industry remained high at around 85 % and increased in the review investigation period in comparison with previous years. The volume of the Union sales was also consistently above the year 2017. The volume in the review investigation period could have been higher without the impact of the COVID-19 crisis. The party considered that the Commission's conclusion did not reflect the factual situation.

(110) The Commission concluded that the Union industry did not benefit from a high market share. As explained in recital (133), the sampled Union producers were lossmaking during the entire period considered, due to the substantial price pressure from the Indian imports (see recital (151)). Also, as explained in recital (108) the Union market share did not follow the increase of the Union consumption and, unlike imports from India, Union sales did not benefit from the increase in the consumption in 2019. Therefore, the claim was rejected.

4.4.2.3. Growth

(111) During the period considered, the Union consumption increased by 3 % whereas the volume of sales to unrelated customers in the Union increased by 2 %. Consequently, despite the increase in consumption, the market share of the Union industry slightly decreased over the period considered.

4.4.2.4. Employment and productivity

(112) Employment and productivity developed over the period considered as follows:

Table 7

Employment and productivity

	2017	2018	2019	Review Investigation Period
Number of employees	[1 820 – 2 540]	[1 820 – 2 540]	[1 810 – 2 530]	[1 700 – 2 390]
Index	*100*	*100*	*99*	*93*
Productivity (tonne/employee)	[162 – 226]	[179 – 250]	[173 – 242]	[157 – 220]
Index	*100*	*110*	*107*	*97*

Source: Data provided by the Union industry and verified questionnaire replies of the sampled Union producers

(113) The number of employees of the Union industry engaged in the production of the product concerned remained stable during the period 2017-2018 and decreased by around 6 % during the period 2019-2020.

(114) The productivity of the Union industry's workforce, measured as output (tonnes) per employee, increased by 10 % over the period 2017-2018 and decreased by 13 % during the period 2018-2020. This can be explained as the combined effect of:

— A production stoppage at the production site of one main Union producer, leading to the lower production from December 2019 to February 2020, and;

— Less production by the Union producers during the second quarter of 2020, as a result of the COVID-19 pandemic which was not matched with the number of employees that were laid off.

4.4.2.5. Magnitude of dumping and recovery from past dumping

(115) As explained in recital (92), there was limited cooperation from exporting producers from India.

(116) The injury indicators show that, notwithstanding the anti-dumping measures in force since 2016, which resulted in some relief and improved performance initially, the economic situation of the Union industry remained injurious. Thus, no recovery from the past dumping could be established.

(117) The dumping was significantly above the de minimis level. The impact of the magnitude of dumping on the Union industry was substantial, given the volume and prices of imports from India.

(118) Continuous unfair pricing by exporters from India made it also impossible for the Union industry to recover from the past dumping practices.

(119) Following final disclosure, Tata Metaliks Limited claimed that there is no absolute increase in the volume of Indian imports and these imports had only around 15 % market share. Moreover, the interested party pointed out that the Union industry's economic performance improved after the imposition of the initial measures and decreased thereafter. Therefore, the Indian imports did not cause injury to the Union industry.

(120) The Commission observed that the interested party did not substantiate its claim that the Union industry's economic performance improved after the imposition of the initial measures. As mentioned in recital (133), the profitability of the sampled Union producers was negative during the entire period considered. Therefore, the claim was rejected.

4.4.3. *Microeconomic indicators*

4.4.3.1. Prices and factors affecting prices

(121) 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 8

Sales prices in the Union and unit cost

	2017	2018	2019	Review Investigation Period
Average unit sales price in the Union on the total market (EUR/tonne)	[950 – 1 110]	[960 – 1 130]	[1 020 – 1 190]	[1 020- 1 200]
Index	*100*	*101*	*107*	*107*
Unit cost of production (EUR/tonne)	[1 000 – 1 100]	[900 – 1 100]	[1 000 – 1 100]	[1 000 – 1 200]
Index	*100*	*97*	*101*	*105*

Source: verified questionnaire replies of the sampled Union producers

(122) The Union industry's average unit selling price to unrelated customers in the Union increased by 7 % over the period considered reflecting the increase of the unit cost of production (5 %).

(123) Following final disclosure, Tata Metaliks Limited claimed that the alleged decrease in the landed prices showed that the imports are not causing any price suppression or depression.

(124) The Commission observed that the interested party did not substantiate its claim how the landed prices, which have undercut the Union prices by around 40 %, during the period considered did not cause any price suppression or depression to the Union producers. Therefore, the claim was rejected.

4.4.3.2. Labour costs

(125) The average labour costs of the sampled Union producers developed over the period considered as follows:

Table 9

Average labour costs per employee (EUR/employee)

	2017	2018	2019	Review Investigation Period
Average labour costs per employee	[56 000 – 66 000]	[57 000 – 66 000]	[57 000 – 67 000]	[53 000 – 62 000]

Index (2017 = 100)	*100*	*100*	*101*	*94*

Source: verified questionnaire replies of the sampled Union producers

(126) The average labour costs per employee remained stable until 2019 and dropped by 6 % over the period considered. Within the review investigation period, the average labour costs per employee decreased as the French State financed the unemployment due to COVID-19 shut-down.

(127) Following final disclosure, Tata Metaliks Limited noted that there is no injury to the Union industry under this parameter.

(128) The Commission recalled that as explained in recital (126) above the decrease in average labour costs per employee was due to extraordinary funding received from the French State in the review investigation period. Consequently, this claim was rejected.

4.4.3.3. Inventories

(129) Stock levels of the sampled Union producers developed over the period considered as follows:

Table 10

Inventories

	2017	2018	2019	Review Investigation Period
Closing stocks (in 1 000 tonnes)	[87 – 102]	[77 – 90]	[84 – 98]	[68 – 79]
Index (2017 = 100)	100	88	95	77
Closing stocks as a percentage of production in %)	[20 – 25]	[15 – 17]	[18 – 20]	[18 – 20]
Index (2017 = 100)	100	79	89	85

(130) The level of closing stocks of the sampled Union producers remained stable in relation with the production.

(131) Following final disclosure, Tata Metaliks Limited claimed that the inventory decreased significantly during the review investigation period, showing that the Union industry focussed on reducing its production. The interested party claimed that the inventory should have increased instead in case of being impacted by imports from India.

(132) As seen in recital (102), the decrease in the inventory observed during the review investigation period by the party was accompanied by the decrease in the Union production. Moreover, the Commission did not find any correlation between the decrease in the inventory observed mainly during the review investigation period and the imports from India as the impact of the imports from India was observed not only during the review investigation period but through the entire period considered. Therefore, the claim was rejected.

4.4.3.4. Profitability, cash flow, investments, return on investments and ability to raise capital

(133) Profitability, cash flow, investments and return on investments of the sampled Union producers developed over the period considered as follows:

Table 11

Profitability, cash flow, investments and return on investments

	2017	2018	2019	Review Investigation Period
Profitability of sales in the Union to unrelated customers (in % of sales)	[- 5 – - 9]	[- 1 – - 5]	[- 1 – - 5]	[- 3 – - 7]
Index (2017 = 100)	*- 100*	*- 33*	*- 36*	*- 69*
Cash flow (million EUR)	[- 31 – - 37]	[- 46 – - 54]	[- 73 – - 85]	[- 43 – - 51]
Index (2017 = 100)	*100*	*- 145*	*- 231*	*- 138*
Investments (million EUR)	[20 – 24]	[30 – 36]	[33 – 39]	[15 – 18]
Index (2017 = 100)	*100*	*149*	*161*	*73*
Return on investments (in %)	[- 6 – - 8]	[- 7 —- 9]	[- 10 – - 12]	[- 5 – - 7]
Index (2017 = 100)	*- 100*	*- 131*	*- 194*	*- 106*

Source: verified questionnaire replies of the sampled Union producers

(134) The Commission established the profitability of the sampled Union producers by expressing the pre-tax net profit of the sales of the like product to unrelated customers in the Union as a percentage of the turnover of those sales. The profitability of the sampled producers was negative during the period considered, going from around -5/-9 % in 2017 to -3/-7 % in the review investigation period.

(135) The net cash flow is the ability of the Union producers to self-finance their activities. The trend in net cash flow developed remained negative over the entire period considered with the exception of 2018.

(136) The investments (mainly focused on upgrades of the production equipment, increase of quality, productivity and flexibility in the production process) increased in over the period 2017-2019 and decreased to its lowest in 2020.

(137) The return on investments is the profit in percentage of the net book value of investments. It developed a similar trend as profitability, sharply decreased in 2019 and then improved marginally in 2020. It remained negative and deteriorated by 53 % during the period considered.

4.5. **Conclusion on injury**

(138) Despite the anti-dumping measures in force, Indian imports of ductile pipes remained substantial with stable market shares between [9 % and 18 %] during the period considered. During the review investigation period the market share was between [10-14] %. At the same time, the import prices showed a decreasing trend and undercut the Union prices by [30-45] % during the review investigation period, despite the existence of the anti-dumping and countervailing measures.

(139) The development of the macroeconomic indicators, in particular, production and sales volume, employment and productivity showed stable or slightly decreasing trends. The market share of the Union industry decreased in the review investigation period reaching a similar level than in 2017. The increase of market share in 2018 despite the relatively stable sales volume was due to the decreasing consumption during the same period. Although the Union industry largely managed to maintain its sales volume and market share, this was at the expense of its profitability and other financial indicators as explained in the following recital.

(140) Even though the average unit sales price of the Union producers increased by 7 % during the period considered, which was higher than the increase by 5 % of the cost of production, the Union industry still did not manage to achieve sustainable profit margins. Due to the price pressure of the Indian imports, the Union industry could not increase its sales prices to cover the average cost of production and was therefore loss making throughout the period considered (with the exception of 2018 where it was close to breakeven). Thus, the Indian imports also

exercised significant price suppression on the Union producers' sales during the review investigation period. Other financial indicators (cash flow, return on investment) followed a similar trend as the profitability, and showed negative or low values during the period considered. Investments, though showing some increase in 2017 and 2018, were at a generally low levels as well.

(141) Given the above, the Commission concluded that the Union industry suffered material injury.

(142) Following final disclosure, Tata Metaliks Limited claimed that the decline in the Union industry's financial performance was due to factors other than allegedly dumped imports.

(143) The Commission observed that the party did not bring forward new elements which could revert its conclusion. Therefore, the claim was rejected.

(144) Tata Metaliks Limited also claimed that there was no correlation between the evolution of the imports and the level of losses reported by the Union industry, and thus there was no causal link between the imports and the Union industry's financial performance.

(145) As mentioned in recital (93), the Commission found that the import prices from India undercut significantly the Union industry prices. Moreover, the Commission observed that the party did not bring forward any evidence demonstrating that other factors impacted the Union industry. Therefore, the claim was rejected.

(146) Furthermore, Tata Metaliks Limited claimed that it was not able to examine the correlation between the price undercutting and the economic performance of the Union industry as the Commission did not disclose price undercutting calculations for the period considered.

(147) The Commission noted that the information necessary to establish the existence of a price undercutting was provided to the party. Regarding the review investigation period, the findings with regard to price undercutting were set out in recitals (92) and (93) above. For the years 2017, 2018 and 2019, recital (91) provided the unit prices for Indian imports and recital (121) the weighted average unit sales prices of the sampled Union producers to unrelated customers. Therefore, the party had all the information, on the basis of which the Commission concluded the existence of undercutting. Therefore, the claim was rejected.

(148) Finally, the party claimed that the import volumes decreased between 2019 and the review investigation period. Therefore, the party concluded that there was no volume effect.

(149) The Commission observed that the imports from India in the review investigation period moved back to the levels of 2017. Moreover, the main impact of the imports from India was found at the level of the low prices, which resulted in significant pressure on the Union market prices. Therefore, the claim was rejected.

5. **CAUSATION**

(150) In accordance with Article 3(6) of the basic Regulation, the Commission examined whether the dumped imports from India caused material injury to the Union industry. In accordance with Article 3(7) of the basic Regulation, the Commission also examined whether other known factors could at the same time have injured the Union industry. The Commission ensured that any possible injury caused by factors other than the dumped imports from India was not attributed to the dumped imports. These factors are:

5.1. **Effects of the dumped imports**

(151) First, the Commission examined whether there was a causal link between the dumped imports and the injury suffered by the Union industry.

(152) Indian imports of ductile pipes remained substantial with market shares above 10 % during the entire period considered and at low price levels during the review investigation period, despite the anti-dumping measures in force. Due to the substantial price pressure from the Indian imports, the Union industry could not pass on to their clients the increase in their costs of production which led to losses during the entire period considered. The Commission therefore concluded that the volume and price levels of the imports under investigation cause material injury.

5.2. **Effects of other factors**

(153) The volumes imported from other third countries represented only between [2- 4] % of the market share in the review investigation period. As shown in the table 4, during the review investigation period, the average import price from third countries was 50 % higher than the average import price from India.

(154) As indicated in recital (40), one party claimed that general competitiveness issues should justify a finding of discontinuation or non-recurrence of injury. The party listed various factors such as the decrease of the Union consumption of ductile pipes that fell since the Euro crisis which resulted in a decrease of public spending, difficulties in attracting staff, the maintenance of the dominant position, the pressure of cheaper Chinese imports on the bidding process for public procurement. Moreover, the party claimed that the plastic pipes are the first competitor of the Union industry as they are less expensive and thus attract a significant part of public tenders.

(155) Contrary to the party's claim, the Union consumption and the market share of the Union industry increased, while employment remained stable during the period considered. Moreover, there is no evidence that the plastic pipes gained market shares during the period considered against ductile pipes. It should be noted that plastic pipes are not in competition for the large pipe diameters. Consequently, these factors did not contribute to the injury found. In addition, Chinese imports were made at significantly higher prices than Indian imports, and in far lower volumes. Finally, the party failed to specify how the dominant position if any, could have caused injury. Therefore, these claims were rejected.

(156) Regarding the export performance of the Union industry, the volumes of exports developed over the period considered as follows:

Table 12

Export performance of the Union industry

	2017	2018	2019	Review Investigation Period
Export volume (in 1 000 tonne)	[119 – 140]	[147 – 172]	[102 – 119]	[66 – 77]
Index (2017 = 100)	*100*	*122*	*85*	*55*
Average price (EUR/tonne)	[760 – 890]	[750 – 880]	[840 – 980]	[890 – 1 040]
Index (2017 = 100)	*100*	*99*	*110*	*117*

Source: the applicant for volume and verified questionnaire replies for values

(157) During the period considered, the volumes dropped by half. Although the prices of the exports increased by 17 %, this was not sufficient to cover the costs of production over the entire period considered as illustrated in table 8 above. Therefore, the exports did not attenuate the causal link between the dumped exports from India and the injury found.

(158) Possible other factors, such as COVID-19 crisis, were also examined, but none of them could attenuate the causal link between the dumped imports and the material injury suffered by the Union industry. The Commission distinguished and separated the effects of all known factors on the situation of the Union industry from the injurious effects of the dumped imports.

(159) Following final disclosure, Tata Metaliks Limited claimed that the COVID-19 crisis impacted negatively the economic situation of the Union industry in the first semester of 2020. The party stated that the initial lockdowns imposed for public health measures forced many construction projects to a halt.

(160) As described above, the Union market for ductile pipes during the review investigation period was not significantly impacted by the lockdowns due to COVID-19 crisis. The total Union consumption of that year was similar to the year 2018. Therefore, the claim was rejected.

(161) In light of the above considerations, the Commission concluded that the dumped imports from India caused material injury to the Union industry and that other factors, considered individually or collectively, did not attenuate the causal link between the dumped imports and the material injury. The injury is clear in particular in the evolution of production, capacity utilisation, sales volume in the Union market, market share, productivity, profitability and return on investments.

6. LIKELIHOOD OF CONTINUATION OF INJURY IF THE MEASURES WERE REPEALED

(162) The Commission concluded in recital (141) that the Union industry suffered material injury during the review investigation period. Therefore, the Commission assessed, in accordance with Article 11(2) of the basic Regulation, whether there would be a likelihood of continuation of injury caused by the dumped imports from India if the measures were allowed to lapse.

(163) In this respect the following elements were analysed by the Commission: the production capacity and spare capacity in India, relationship between prices in the Union and the Indian prices; the attractiveness of the Union market and the impact of potential imports from India on the Union industry's situation should the measures lapse.

6.1. The production capacity, spare capacity in India and the attractiveness of the Union market

(164) As already described in recitals (66) to (71), the spare capacity available in India represented around 500 000 tonnes yearly, which exceeds the consumption of the product concerned on the Union market, which amounted in the review investigation period to [388 000 to 454 000] tonnes. Moreover, Indian producers planned to invest in new production capacity. Thus, for the next years there will be an excess of the supply over demand on the Indian market. Consequently, this will represent further incentive of the Indian producers to focus more and more on export markets.

(165) The available and future spare capacity of the Indian exporting producers could be used to produce the product concerned to export to the Union market if measures were allowed to lapse.

(166) Following final disclosure, Tata Metaliks Limited claimed that there was no evidence that the alleged spare production capacity in India will be necessarily used for production of ductile pipes and exported as a result of excess of supply over demand in India. Moreover, the Commission did not examine the attractiveness of other export markets and did not analyse any post review investigation period data. Finally, the party claimed that the any determination regarding likelihood of continuation of dumping and injury has to be based on positive evidence ([22]). Therefore, the party concluded that the conclusion on likelihood was incorrect.

(167) The Commission observed that the party confirmed the existence of spare capacity in India. In addition, as explained in recitals (66) to (70) above, the Commission established the spare capacity in question specifically for the product concerned. Also, as explained in the same recitals, the Commission established that in the long run the demand on the Indian market will subside while the party itself acknowledged that it had plans to expand its sales to the Union market. Furthermore, as described below in Section 6.2, the Union market was considered attractive for Indian producers, and it could, therefore, be concluded that available spare capacities in India would, at least partially, be used to increase exports to the Union market. Therefore, the claim was rejected.

(168) Regarding the positive evidence required under the case-law mentioned, the Commission considered that it complied with all requirements of the existing jurisprudence and its assessment and conclusion of the likelihood of continuation of dumping and injury were based on positive evidence, collected during the investigation. Consequently, the claim was rejected.

(169) In view of the above, the Commission concluded that the expiry of the measures would in all likelihood result in a significant increase of dumped imports from India at prices undercutting the Union industry prices, and therefore further aggravating the injury suffered by the Union industry. As a consequence, the viability of the Union industry would be at serious risk.

([22]) United States – Sunset reviews of Anti-dumping Measures on Oil Country Tubular Goods From Argentina (WT/DS/268/AB/R).

6.2. **Attractiveness of the Union market**

(170) The Union market is attractive in terms of its size and prices. As mentioned in recital (71), it is by far the most important export market for Indian producers of ductile pipes, accounting for 40 % of their total exports. Exports to the Union are 25 times higher than exports to its second largest export market, which is Qatar accounting for 2 % of Indian exports of ductile pipes. Also, Indian import prices to the Union market were slightly higher than those other countries during the review investigation period, which made the Union market slightly more lucrative than other markets.

(171) Despite the existing measures, Indian exporting producers sold to the Union a substantial volume of ductile pipes during the period considered and still had considerable market share during the review investigation period (close to [10- 14] %). These were sold at a price which, even including the anti-dumping duties, significantly undercut the Union industry sales prices on the Union market.

(172) The Union market is hence considered attractive for Indian producers, and it can be concluded that available spare capacities in India would at least partially, be used to increase exports to the Union market. In this respect, it is recalled that the market share of Indian imports was at high levels [17–19] % in the investigation period of the original investigation, i.e. prior to the imposition of the anti-dumping duties.

6.3. **Conclusion on likelihood of a continuation and/or recurrence of injury**

(173) On this basis, and noting the past and current injurious situation of the Union industry, the absence of measures would in all likelihood result in a significant increase of dumped imports from India at injurious prices, leading to even higher losses for the Union producers. Therefore, the Commission concluded that should the measures be allowed to lapse, this would in all likelihood result in a significant increase of dumped imports from India at injurious prices and material injury would be likely to continue.

7. **UNION INTEREST**

(174) In accordance with Article 21 of the basic Regulation, the Commission examined whether maintaining the existing anti-dumping measures would be against the interest of the Union as whole. The determination of the Union interest was based on an appreciation of all the various interests involved, including those of the Union industry, importers, users and the public policy interests with respect to the product concerned as embodied in the Directive 2009/125/EC of the European Parliament and of the Council ([23]) ('EcoDesign Directive') and its product-specific Regulations. In line with the third sentence of Article 21(1) of the basic Regulation, special consideration was given to the need to protect the industry from the negative effects of injurious dumping.

(175) All interested parties were given the opportunity to make their view known pursuant to Article 21(2) of the basic Regulation.

7.1. **Interest of the Union industry**

(176) The Union industry is located in three Member States (France, Germany and Spain), and employs directly over 2 200 employees in relation to the product concerned.

(177) The anti-dumping measures in force did not prevent the dumped imports from India from entering the Union market and the Union industry suffered material injury during the review investigation period.

([23]) Directive 2009/125/EC of the European Parliament and of the Council of 21 October 2009 establishing a framework for the setting of Ecodesign requirements for energy-related products (OJ L 285, 31.10.2009, p. 10). The EcoDesign Directive is implemented through product-specific Regulations directly applicable in all Union countries. The EcoDesign Regulation covers the new EcoDesign requirements with regard to small, medium and large power transformers. Tier 1 of the EcoDesign Regulation entered into force on 1 July 2015, and Tier 2 on 1 July 2021. The Tier 2 requirements are more stringent than those for Tier 1. Although the full effects cannot yet be assessed on such a short period of time since the entry into force of Tier 2, it is generally believed that these Tier 2 requirements will require the highest quality types of GOES to design and manufacture transformers in a cost-efficient manner and within the required space limitations.

(178) On the basis of the above, the Commission established that there is a strong likelihood of continuation of injury caused by imports from this country should the measures expire. The influx of substantial volumes of dumped imports from India would cause further injury to the Union industry.

(179) Following final disclosure, Tata Metaliks Limited claimed the Union industry has been protected for over 6 years while having a market share of 85 %. Thus, it is unlikely for the Union industry to be impacted if the existing measures are repealed. In the event the Union it is, it may request the Commission to start a new investigation.

(180) Contrary to the claim made by the interested party, the Commission established that the Union industry is still suffering from material injury caused by the dumped imports from India, based on the analysis of all relevant injury indicators including the development of Union Industry's market share. The Commission concluded that the injury is likely to continue and deteriorate should the measures be allowed to lapse. Consequently, the claim was rejected.

(181) The Commission thus concluded that the maintenance of the anti-dumping measures against India is in the interest of the Union industry.

7.2. **Interest of unrelated importers, traders and users**

(182) The Commission contacted all known unrelated importers, traders and users. None of them replied to the Commission's questionnaire.

(183) The Commission did not receive any comments indicating that the maintenance of the measures would have a significant negative impact on the importers and users, outweighing the positive impact of the measures on the Union industry.

7.3. **Conclusion on Union interest**

(184) On the basis of the above, the Commission concluded that there were no compelling reasons of the Union interest against the maintenance of the existing measures on imports of the product concerned originating in India.

8. **ANTI-DUMPING MEASURES**

(185) On the basis of the conclusions reached by the Commission on continuation of dumping, continuation of injury and Union interest, the anti-dumping measures on imports of tubes and pipes of ductile cast iron from India should be maintained.

(186) After disclosure Tata Metaliks Limited argued that a continuation of the measures should be considered as an exception and not the norm. It referred in particular to Article 11(1) of the basic anti-dumping Regulation which states that an anti-dumping measure shall only remain in force as long as it is necessary and shall expire upon 5 years from its imposition. Since the duties have been extended pending this review, it argued that by the time this review would likely conclude, the duties would already have been in force for more than 7 years. For this reason, it requested the Commission to terminate the investigation.

(187) The Commission recalled that in accordance with Article 11(2) of the basic Regulation 'A definitive anti-dumping measure shall expire 5 years from its imposition or 5 years from the date of the conclusion of the most recent review which has covered both dumping and injury, *unless it is determined in a review that the expiry would be likely to lead to a continuation or recurrence of dumping and injury*'. The decision to continue the measures is based on a thorough assessment of all the facts found during the expiry review investigation in accordance with Article 11(2) of the basic Regulation. Therefore, the continuation of the measures was neither automatic nor constituted a 'norm'. The Commission thus rejected the claim that the measures should be terminated.

(188) To minimise the risks of circumvention due to the high 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'.

(189) 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.

(190) 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.

(191) The individual company anti-dumping duty rates specified in this Regulation are exclusively applicable to imports of the product concerned originating in India 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.

(192) After disclosure, Tata Metaliks Limited requested the Commission to assign it an individual dumping margin. In the alternative, it considered the Commission should at least consider extending the individual anti-dumping rates assigned to the other cooperative producers of the product concerned from India in the original investigation to it in light of its cooperation with the Commission in this expiry review investigation.

(193) The Commission recalled that the objective of an expiry review investigation under Article 11(2) of the basic Regulation is solely to determine whether the existing measures are still necessary. This type of a review investigation does not allow for establishing individual duty rates for companies that did not cooperate in the original investigation. An individual anti-dumping duty rate can only be determined following a review investigation pursuant to Article 11(3) or 11(4) of the basic Regulation. The request was therefore rejected.

(194) 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 ([24]). 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*.

(195) In view of Article 109 of Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council ([25]) 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.

(196) The measures provided for in this regulation are in accordance with the opinion of the Committee established by Article 15(1) of Regulation (EU) 2016/1036,

HAS ADOPTED THIS REGULATION:

Article 1

1. A definitive anti-dumping duty is hereby imposed on imports of tubes and pipes of ductile cast iron (also known as spheroidal graphite cast iron), with the exclusion of tubes and pipes of ductile cast iron without internal and external coating ('bare pipes'), currently falling under CN codes ex 7303 00 10 (TARIC code 7303 00 10 10) and ex 7303 00 90 (TARIC code 7303 00 90 10) and originating in India.

([24]) European Commission, Directorate-General for Trade, Directorate H, Rue de la Loi 170, 1040 Brussels, Belgium.

([25]) 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).

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:

Company	Definitive anti-dumping duty	TARIC additional code
Jindal Saw Limited	3 %	C054
Electrosteel Castings Ltd	0 %	C055
All other companies	14,1 %	C999

3. The application of the individual anti-dumping 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 tubes and pipes of ductile cast iron (also known as spheroidal graphite cast iron) sold for export to the European Union covered by this invoice was manufactured by (company name and address) (TARIC additional code) in India. 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

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 June 2022.

For the Commission
The President
Ursula VON DER LEYEN

COMMISSION IMPLEMENTING REGULATION (EU) 2022/927

of 15 June 2022

imposing a definitive countervailing duty on imports of tubes and pipes of ductile cast iron (also known as spheroidal graphite cast iron) originating in India following an expiry review pursuant to Article 18 of Regulation (EU) 2016/1037 of the European Parliament and of the Council

THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EU) 2016/1037 of the European Parliament and of the Council of 8 June 2016 on protection against subsidised imports from countries not members of the European Union ('the basic Regulation') ([1]), and in particular Article 18 thereof,

Whereas:

1. PROCEDURE

1.1. Previous investigations and measures in force

(1) By Regulation (EU) 2016/387 ([2]) ('the original Regulation'), the European Commission ('the Commission') imposed a countervailing duty on imports of tubes and pipes of ductile cast iron (also known as spheroidal graphite cast iron), originating in India ('the original measures'). The investigation that led to the imposition of the original measures will hereinafter be referred to as 'the original investigation'.

(2) The countervailing duty imposed ranged from 8,7 % for Jindal Saw Limited to 9 % for Electrosteel Castings Ltd and 'all other companies'.

(3) By Regulation (EU) 2016/388 ([3]), the Commission also imposed a definitive anti-dumping duty on the same product. The anti-dumping duty imposed ranged from 0 % for Electrosteel Castings Ltd to 14,1 % for Jindal Saw Limited and 'all other companies'.

(4) Following the judgments of the General Court in T-300/16 and T-301/16 ([4]), the Commission corrected mistakes found by the General Court when calculating the anti-dumping and countervailing duty for Jindal Saw Limited. By Regulations (EU) 2020/526 ([5]) and (EU) 2020/527 ([6]), the Commission re-imposed a new definitive anti-dumping and countervailing duty for Jindal Saw Limited, at the rates of 3 % and 6 % respectively.

(5) The countervailing duties currently in force are 6 % for Jindal Saw Limited and 9 % for Electrosteel Castings Ltd and 'all other companies'. The anti-dumping duties currently in force are at rates ranging between 0 % for Electrosteel Castings Ltd, 3 % for Jindal and 14,1 % for 'all other companies'.

([1]) OJ L 176, 30.6.2016, p. 55.

([2]) Commission Implementing Regulation (EU) 2016/387 of 17 March 2016 imposing a definitive countervailing duty on imports of tubes and pipes of ductile cast iron (also known as spheroidal graphite cast iron), originating in India (OJ L 73, 18.3.2016, p. 1).

([3]) Commission Implementing Regulation (EU) 2016/388 of 17 March 2016 imposing a definitive anti-dumping duty on imports of tubes and pipes of ductile cast iron (also known as spheroidal graphite cast iron) originating in India (OJ L 73, 18.3.2016, p. 53).

([4]) Judgment of the General Court of 10 April 2019, Jindal Saw Ltd and Jindal Saw Italia SpA v European Commission, T-301/16, ECLI:EU:T:2019:234 and T-300/16, ECLI:EU:T:2019:235.

([5]) Commission Implementing Regulation (EU) 2020/526 of 15 April 2020 re-imposing a definitive countervailing duty on imports of tubes and pipes of ductile cast iron (also known as spheroidal graphite cast iron) originating in India as regards Jindal Saw Limited following the judgment of the General Court in T-300/16 (OJ L 118, 16.4.2020, p. 1).

([6]) Commission Implementing Regulation (EU) 2020/527 of 15 April 2020 re-imposing a definitive anti-dumping duty on imports of tubes and pipes of ductile cast iron (also known as spheroidal graphite cast iron) originating in India as regards Jindal Saw Limited following the judgment of the General Court in T-301/16 (OJ L 118, 16.4.2020, p. 14).

1.2. **Request for an expiry review**

(6) Following the publication of a notice of impending expiry ([7]), the Commission received a request for a review pursuant to Article 18 of the basic Regulation.

(7) The request for expiry review was lodged on 21 December 2020 by Saint-Gobain PAM, Saint-Gobain PAM Deutschland GmbH and Saint-Gobain PAM España S.A. ('the applicants'), on behalf of Union producers representing more than 50 % of the total Union production of tubes and pipes of ductile cast iron. The request for review was based on the grounds that the expiry of the measures would be likely to result in continuation or recurrence of subsidisation and continuation or recurrence of injury to the Union industry.

(8) In accordance with Article 10(7) the basic Regulation, the Commission notified the Government of India ('GOI') prior to the initiation of the proceeding that it had received a properly documented review request. The Commission invited India for consultations with the aim of clarifying the situation as regards the contents of the review request and arriving at a mutually agreed solution. The GOI accepted the offer of consultations that were subsequently held on 10 March 2021. During the consultations, no mutually agreed solution could be arrived at.

1.3. **Initiation of an expiry review**

(9) Having determined, after consulting the Committee established by Article 15(1) of Regulation (EU) 2016/1036 of the European Parliament and of the Council ([8]), that sufficient evidence existed for the initiation of an expiry review the Commission initiated, on 17 March 2021, an expiry review with regard to imports to the Union of tubes and pipes of ductile cast iron originating in India ('the country concerned') on the basis of Article 18(2) of the basic Regulation. It published a Notice of Initiation in the *Official Journal of the European Union* ([9]) ('the Notice of Initiation').

(10) On the same date, the Commission initiated an expiry review of the anti-dumping measures with regards the imports of the same product ([10]).

1.4. **Review investigation period and period considered**

(11) The investigation of continuation or recurrence of subsidisation and injury covered the period from 1 January 2020 to 31 December 2020 ('the review investigation period'). The examination of trends relevant for the assessment of the likelihood of a continuation or recurrence of injury covered the period from 1 January 2017 to the end of the review investigation period ('the period considered').

1.5. **Interested parties**

(12) 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 Union producers, known producers in India and the authorities of India, known importers, users as well as associations known to be concerned about the initiation of the expiry review and invited them to participate.

(13) Interested parties had an opportunity to comment on the initiation of the expiry review and to request a hearing with the Commission and/or the Hearing Officer in trade proceedings. No interested party requested a hearing.

([7]) Notice of the impending expiry of certain anti-subsidy measures, OJ C 210, 24.6.2020, p. 28.

([8]) 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 (OJ L 176, 30.6.2016, p. 21).

([9]) Notice of Initiation of an expiry review of the anti-subsidy measures applicable to imports of tubes and pipes of ductile cast iron originating in India (OJ C 90, 17.3.2021, p. 8).

([10]) Notice of Initiation of an expiry review of the anti-dumping measures applicable to imports of tubes and pipes of ductile cast iron originating in India (OJ C 90, 17.3.2021, p. 19).

(a) ***Sampling***

(14) In the Notice of Initiation, the Commission stated that it might sample the interested parties in accordance with Article 27 of the basic Regulation.

Sampling of Union producers

(15) In the Notice of Initiation, the Commission stated that it had provisionally selected a sample of three Union producers. These Union producers are part of the same group of companies. The Commission selected the sample on the basis of volume of production and sales of the like product in the Union during the review investigation period, i.e. between 1 January 2020 and 31 December 2020. The definitive sample of Union producers accounted for [70-85] % of estimated total Union production and [70-85] % of estimated total Union sales volume of the like product, and it also ensured a good geographical spread.

(16) In accordance with Article 27(2) of the basic Regulation, the Commission invited interested parties to comment on the provisional sample, but did not receive any comments. The provisional sample was therefore confirmed and was considered representative of the Union industry.

Sampling of importers

(17) To decide whether sampling was necessary and, if so, to select a sample, the Commission asked unrelated importers to provide the information specified in the Notice of Initiation. However, as no unrelated importers came forward, sampling was not necessary.

Sampling of producers in India

(18) To decide whether sampling was necessary and, if so, to select a sample, the Commission asked all known producers in India to provide the information specified in the Notice of Initiation. In addition, the Commission asked the Government of India to identify and/or contact other producers, if any, that could be interested in participating in the investigation.

(19) As only three producers provided a sampling reply within the time limit provided for, the Commission decided that sampling was not necessary.

(b) ***Questionnaires***

(20) The Commission sent questionnaires to the GOI, the group of the three sampled Union producers and the three exporting producers that had provided a sampling reply. The same questionnaires had also been made available online ([11]) on the day of initiation.

(21) The Commission received questionnaire replies from the three Union producers, the GOI and from only one of the producers in India, Tata Metaliks Limited ('TML'). Though having submitted sampling replies, the other two producers in India subsequently did not submit a questionnaire reply and, hence, did not cooperate with the investigation.

(c) ***Verification***

(22) In view of the outbreak of COVID-19 and the confinement measures put in place by various third countries, the Commission could not carry out verification visits pursuant to Article 26 of the basic Regulation at the premises of the exporting producer and at the premises of the GOI. The Commission instead cross-checked remotely all the information deemed necessary for its determinations in line with its Notice on the consequences of the COVID-19 outbreak on anti-dumping and anti-subsidy investigations ([12]). The Commission carried out a remote crosscheck of the following exporting producer:

— Tata Metaliks Limited

([11]) https://trade.ec.europa.eu/tdi/case_details.cfm?ref=ong&id=2521&sta=1&en=20&page=1&c_order=date&c_order_dir=Down.

([12]) 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 and verified all the information deemed necessary for the investigation. Verification visits pursuant to Article 16 of the basic Regulation were carried out at the premises of the following Union producers and a related sales entity in Italy:

— Saint-Gobain PAM, Pont-à-Mousson, France

— Saint-Gobain PAM Deutschland GmbH, Saarbrücken, Germany

— Saint-Gobain PAM Italia S.P.A, Milano, Italy

(d) ***Subsequent procedure***

(24) On 18 March 2022, the Commission disclosed the essential facts and considerations on the basis of which it intended to maintain the anti-dumping duties in force. All parties were granted a period within which they could make comments on the disclosure.

(25) Only Tata Metaliks Limited submitted comments within the deadline. The comments made by Tata Metaliks Limited were considered by the Commission and taken into account, where appropriate. Also the GOI submitted comments, but these were submitted more than 10 days after the deadline for comments had expired.

(26) In order to complete the investigation within the mandatory deadlines, point 7 of the Notice of Initiation stipulates that the Commission will not accept submissions from interested parties after the deadline to provide comments on the final disclosure. Accordingly, the Commission could not take into account the comments of the GOI. It noted nevertheless that its submission did not bring forward any new elements that the Commission had not considered during the investigation. No party requested a hearing.

1.6. **Comments on initiation**

(27) One user, i.e. Hydro Mat Benelux, and one exporting producer, i.e. Tata Metaliks Limited, submitted comments on initiation.

(28) The Commission noted that Tata Metaliks Limited submitted its comments on initiation on 17 February 2022, more than nine months after the deadline of 37 days after the date of publication of the Notice of Initiation as defined in point 5.2 of the Notice of Initiation. Therefore, the Commission did not take into consideration this submission.

(29) The Commission noted that while submitting comments on the initiation, Hydro Mat Benelux did not fully cooperate with the investigation. In particular, the company did not fill in the questionnaire set for users which could have been used for cross-checking some of the statements listed below, i.e. for example the selling prices of the exporting producers or documents related to public procurement.

(30) First, Hydro Mat Benelux claimed that the proceeding should be terminated as the request was not lodged within three months prior to the date of expiry, mentioned in the Notice of impending expiry ([13]).

(31) The Commission clarified that the submission date mentioned in the Notice of Initiation did not correspond to the date on which the request was submitted. As it can be seen in the open version of the request for review, available in the non-confidential file since 17 March 2021 and accessible by all interested parties, the request was duly submitted on 18 December 2020, that is within the time period provided for in Article 18(4) of the basic Regulation. Therefore, the claim was rejected.

(32) Second, Hydro Mat Benelux claimed that there is an excessive use of confidentiality in the request. In particular, the Union industry indexed all the indicators concerning its economic performance. The party referred to Implementing Regulation (EU) 2020/1336 ([14]) where the Commission disclosed the microeconomic data of a single Union producer.

([13]) OJ C 210, 24.6.2020, p. 28.

([14]) Commission Implementing Regulation (EU) 2020/1336 of 25 September 2020 imposing definitive anti-dumping duties on imports of certain polyvinyl alcohols originating in the People's Republic of China (OJ L 315, 29.9.2020, p. 1), recitals (442) and (460-471).

(33) The Commission noted that in the Implementing Regulation (EU) 2020/1336 all micro indicators (sales prices and volumes, unit cost of production, labour costs, closing stocks, profitability, etc.) were provided in ranges or indexes.

(34) In addition, the Commission considered that the version of the expiry review request that was placed on the file for inspection by interested parties contained all the essential evidence and non-confidential summaries of data marked as confidential in order for interested parties to make meaningful comments and exercise their right of defence throughout the proceeding.

(35) In this respect, the Commission further recalled that Article 29 of the basic Regulation allows for the safeguarding of confidential information in circumstances where disclosure would be of significant competitive advantage to a competitor or would have a significant adverse effect upon a person supplying the information or upon a person from whom that person has acquired the information. Consequently, these claims were rejected.

(36) Third, Hydro Mat Benelux claimed that the first half of 2020 did not reflect normal economic circumstances and considered that period was not representative for making a forward-looking assessment of the consequences of the expiry of the measures under discussion. Hydro Mat Benelux claimed that the negative performance of the Union industry in the first half of 2020 was caused by the negative economic impacts due to COVID-19 and by the increase in cost of raw materials on world markets which could not be passed on to downstream consumers. Moreover, it claimed that for the period 2017-2019 the main indicators did not demonstrate vulnerability but rather a healthy Union industry, in particular when analysing the production, the production capacity, the inventories, the investments, the sales prices and the profitability.

(37) The Commission recalled that Article 18 of the basic Regulation requires that the expiry review request shall contain sufficient evidence that the expiry of the measures would likely result in a continuation or recurrence of injury. In the present case, the specific injury analysis in the expiry review request contained evidence pointing to a significant penetration of the Union market by Indian imports made at prices that substantially undercut and undersell the Union industry's prices. Accordingly, the Commission considered that the expiry review request contained sufficient evidence of continuation of injury and rejected the claim.

(38) Fourth, Hydro Mat Benelux analysed the period 2017-2020 and argued that the available import data did not support the claim of likelihood of recurrence of injury. Moreover, Hydro Mat Benelux claimed that the Indian export prices, the undercutting and underselling margins calculated by the applicant were not reliable as the export prices reflected the transfer price between related parties, i.e. the Indian producers and their related subsidiaries. Finally, Hydro Mat Benelux claimed that the Indian producers have increased their production capacity in order to cope with the growing Indian domestic market and that the main Indian exporting producers did not plan to extend their production capacity.

(39) The Commission considered that none of the allegations disproved the conclusion that there was sufficient evidence for the initiation of an anti-subsidy review investigation. Indeed, the expiry review request contained sufficient evidence that subsidised imports had a materially injurious impact on the state of the Union industry. In particular, the applicants provided not only undercutting calculations at Union border level but also at the level of the delivery to customer premises showing an undercutting of no less than 14,9 %. The specific injury analysis of the expiry review request showed increased penetration of the Union market (both in absolute and relative terms) by imports from India made at prices that substantially undercut the Union industry's prices. This appears to have caused injury to the Union industry, shown for example by decreases in sales and market share and by a deterioration of financial results. Therefore, the claim was rejected.

(40) Regarding the claim that the increase of the Indian production will be directed only to the Indian market, Hydro Mat Benelux did not provide any evidence. Consequently, the claim was rejected.

(41) Fifth, Hydro Mat Benelux claimed that general competitiveness issues should not justify a finding of continuation or recurrence of injury. Hydro Mat Benelux listed various items such as the fact that Union consumption fell since Eurozone crisis with a decrease of public spending, and thus had a negative impact on the Union industry's competitiveness, the competition of plastic pipes, the difficulty attracting employment, the maintenance of dominant position, the pressure of cheaper Chinese imports on tender process.

(42) This claim is addressed below in recital (256).

(43) After disclosure, Tata Metaliks Limited submitted that the data in the review request relating to the Union industry's data and the imports covered the period of July 2019 to June 2020. However, the Notice of Initiation defined the review investigation period to be January 2020 to December 2020. In the company's view, the applicants should have updated the expiry review request based on the review investigation period defined in the Notice of Initiation, and these data should have been made available to parties. By not circulating such updated review request to the parties, the Commission violated in its view Article 12.1.2 and Article 12.1.3 of the WTO Agreement on Subsidies and Countervailing Measures ('SCM Agreement').

(44) First, it is the Commission's common practice to base its findings on the most recent available data. Such data may not necessarily correspond to the period defined in the expiry review request since it may not have been available at the time when the request for review was lodged. The SCM Agreement does not contain any provision requiring the Commission to base its findings on the same period as defined in the expiry review request. Second, all the parties had the possibility to comment on the findings and evidence that related to the review investigation period defined in the Notice of Initiation during the investigation. Therefore, the Commission considered that it did not breach any procedural rights or violated the SCM Agreement and rejected the claim.

(45) Tata Metaliks Limited also referred to the fact that the Commission rejected its comments on initiation because they came after the deadline provided for in the Notice of Initiation (see recital (28). In its view the deadline would only apply after reception of the revised data by the applicants that would relate to the review investigation period as defined in the Notice of Initiation. Tata Metaliks Limited also argued that it is 'a settled principle of natural justice' and 'a settled position of law across all jurisdictions' that submissions regarding questions of law can be raised beyond deadlines.

(46) As explained in the recital (44), the review investigation period related to the most recent period for which data was available, and this period does not always correspond to the preliminary assessment of the review request. Furthermore, the deadline in the Notice of Initiation related explicitly to the date of publication of the Notice, and not to any other date such as submission of any information by a party. The deadline in the Notice of Initiation does not distinguish between questions of law and of fact and applies equally to both. The Commission thus rejected the claim.

2. **PRODUCT CONCERNED AND LIKE PRODUCT**

2.1. **Product concerned**

(47) The product concerned is the same as in in the original investigation namely tubes and pipes of ductile cast iron (also known as spheroidal graphite cast iron) ('ductile pipes'), with the exclusion of tubes and pipes of ductile cast iron without internal and external coating ('bare pipes'), originating in India, currently falling under CN codes ex 7303 00 10 (TARIC code 7303 00 10 10) and ex 7303 00 90 (TARIC code 7303 00 90 10) ('the product concerned').

(48) Ductile pipes are used for drinking water supply, sewage disposal and irrigation of agricultural land. The transportation of water through ductile pipes may be based on pressure or solely on gravity. The pipes range between 60 mm and 2 000 mm and are 5,5, 6,7 or 8 meters long. They are normally lined with cement or other materials and externally zinc-coated, painted or tape wrapped. The main final users are public utility companies.

2.2. **Like product**

(49) As established in the original investigation, this expiry review investigation confirmed that the following products have the same basic physical, chemical and technical characteristics as well as the same basic uses:

— the product concerned;

— the product produced and sold on the domestic market of country concerned; and

— the product produced and sold in the Union by the Union industry.

(50) These products are therefore considered to be like products within the meaning of Article 1(4) of the basic Regulation.

3. LIKELIHOOD OF CONTINUATION OR RECURRENCE OF SUBSIDISATION

(51) In accordance with Article 18 of the basic Regulation, and as stated in the Notice of Initiation, the Commission examined whether the expiry of the existing measures would be likely to lead to a continuation or recurrence of subsidisation.

3.1. Evolution of the imports after the imposition of the measures

(52) In the original investigation period ([15]), India exported to the Union [80 000 – 100 000] tonnes of the product concerned (based on EU27) ([16]). Between 2016 and 2018, after the imposition of the definitive measures in March 2016, imports decreased and fluctuated between 38 000 to 55 000 tonnes yearly. In 2019, the imports from India increased again to [64 000 – 75 000] tonnes.

(53) During the review investigation period, imports of the product concerned decreased to [44 000 – 52 000] tonnes. After the review investigation period, in 2021, the imports increased again to the level of 2019.

(54) Overall, imports of the product concerned from India remained in the review investigation period at important levels and accounted for about [10 – 14] % of the Union market, compared to [15 – 20] % market share the Indian imports represented during the original investigation period.

3.2. Basis for the findings

(55) Only one company, Tata Metaliks Limited, cooperated with the investigation (see Section 1.5). The company benefitted from the three export schemes countervailed in the original investigation, mostly for its export to third countries. However, the company sold in the review investigation period most of its production on the domestic market ([17]). The Indian exporting producers that exported to the Union in significant quantities did not cooperate. Therefore, the Commission decided not to limit itself to use of the information submitted by Tata Metaliks Limited to determine the level of subsidisation of exporting producers of ductile pipes in India, and to rely instead on facts available in accordance with Article 28 of the basic Regulation.

(56) In view of the above, the Commission used for its analysis all facts available to it, and in particular:

— The request for an expiry review pursuant to Article 28 of the basic Regulation;

— Findings of the original investigation;

— Information provided by the GOI;

— Information provided by Tata Metaliks Limited;

— Findings in the Commission Implementing Regulation (EU) 2022/433 ([18]).

3.3. Subsidy schemes examined in the current investigation

(57) The Commission examined whether there was continuation of subsidisation by analysing whether the subsidies countervailed in the original investigation continued to confer benefit to the Indian industry of ductile pipes and tubes. In case of subsidy schemes that ended, the Commission also examined whether these schemes had been replaced by other similar schemes and whether new schemes were created.

([15]) 1 October 2013 to 30 September 2014.
([16]) The figures in the original investigation were shown in ranges or indexes because of confidentiality.
([17]) The exported quantities represented in the review investigation period less than 0,1 % in terms of turnover of the product concerned.
([18]) Commission Implementing Regulation (EU) 2022/433 of 15 March 2022, imposing definitive countervailing duties on imports of stainless steel cold-rolled flat products originating in India and Indonesia and amending Implementing Regulation (EU) 2021/2012 imposing a definitive anti-dumping duty and definitively collecting the provisional duty imposed on imports of stainless steel cold-rolled flat products originating in India and Indonesia (OJ L 88, 16.3.2022, p. 24), recitals (190)-(205).

(58) The Commission decided that, in view of the findings of this Section, which confirmed the existence of continued subsidisation with respect to the subsidies countervailed in the original investigation, there was no need to investigate all other subsidies alleged to exist by the applicant. Once the Commission establishes that there is evidence of continued subsidisation above *de minimis* pursuant to Article 18 of the basic Regulation, it is not necessary to establish the exact amount of subsidisation in an expiry review investigation.

(59) In the original investigation, the Commission countervailed the following schemes:

(1) Government revenue foregone or not collected that is otherwise due:

— Duty Exemptions and Remission Schemes

(a) Focus Product Scheme, replaced by a scheme named 'Merchandise Exports from India Scheme' ('MEIS') in the period 2015-2020;

(b) Export Promotion of Capital Goods Scheme ('EPCGS');

(c) Duty Drawback Scheme ('DDS')

(2) Provision of goods or services for less than adequate remuneration

— Provision of iron ore for less than adequate remuneration

3.3.1. *Focus Product Scheme ('FPS') replaced by Merchandise Exports from India Scheme in 2015-2020*

3.3.1.1. Findings of the original investigation

(60) In the original investigation, the Commission concluded that the Focus Product Scheme in place during the original investigation period provided for subsidies within the meaning of Article 3(1)(a)(ii) of the basic Regulation. This scheme was based on the Foreign Trade Policy ('FTP') plan for 2009-2014.

(61) The subsidy rates established in the original investigation for the FPS scheme varied from 3,11 % to 4,35 %.

(62) After the original investigation period, the scheme was however ended and it was replaced by a new scheme named 'Merchandise Exports from India Scheme' ('MEIS'). The MEIS replaced a number of pre-existing schemes including the FPS. The MEIS provided for similar conditions as the FPS countervailed in the initial investigation. Hence, in the original investigation, the Commission considered that the findings with regard to FPS would also apply to MEIS.

3.3.1.2. Continuation of the subsidy scheme

(63) The MEIS scheme continued to be in place in the review investigation period. The existence of the scheme was also confirmed by GOI in the questionnaire reply as well as by the cooperating exporting producers Tata Metaliks Limited that also benefitted from the scheme.

(a) ***Legal basis***

(64) The MEIS is based on the Foreign Trade (Development and Regulation) Act 1992 (No 22 of 1992) which entered into force on 7 August 1992 ('Foreign Trade Act'). The Foreign Trade Act authorises the GOI to issue notifications regarding the export and import policy. These are summarised in FTP documents, which are normally issued by the Ministry of Commerce every five years and updated regularly.

(65) The MEIS is described in the five-year Foreign Trade Policy plan for 2015-20 ('FTP 2015-2020'). The procedures governing FTP 2015-2020 are further detailed in a "Handbook of Procedures, 2015-2020" ('HOP 2015-2020').

(66) The detailed description of the MEIS is contained in chapter 3 of FTP 2015-2020 and in chapter 3 of HOP 2015-2020.

(b) ***Eligibility***

(67) Any manufacturer-exporter or merchant-exporter is eligible for this scheme.

(c) ***Practical implementation***

(68) Eligible companies can benefit from the MEIS by exporting specific products to specific countries, which are categorised into Group A ('Traditional Markets' including all Union Member States), Group B ('Emerging and Focus Markets') and Group C ('Other Markets'). The countries falling under each group and the list of products with corresponding reward rates are listed in Appendix 3B of the updated HOP.

(69) The benefit takes the form of a duty credit equivalent to a percentage of the FOB value of the export. The MEIS rate in the review investigation period amounted to 3 %.

(70) Pursuant to paragraph 3.06 of the FTP 2015-20, certain types of exports are excluded from the scheme, e.g. exports of imported goods or transhipped goods, deemed exports, service exports and export turnover of units operating under special economic zones/export operating units.

(71) The duty credits under the MEIS are freely transferable and valid for a period of 18 months from the date of issue while the duty credit scrips issued on or after 1 January 2016 shall be valid for a period of 24 months from the date of issue as per paragraph 3.13 of the updated HOP 2015-2020.

(72) They can be used for: (i) payment of custom duties on imports of inputs or goods including capital goods, (ii) payment of excise duties on domestic procurement of inputs or goods including capital goods and payment, (iii) payment of service tax on procurement of services. Scrips can also be sold on the market.

(73) An application for claiming benefits under the MEIS must be filed online on the Directorate-General of Foreign Trade website. Relevant documentation (shipping bills, bank realisation certificate and proof of landing) must be linked with the online application. The relevant Regional Authority of the GOI issues the duty credit after scrutiny of the documents. As long as the exporter provides the relevant documentation, the Regional Authority has no discretion over the granting of the duty credits.

(d) ***Financial contribution and benefit***

(74) In accordance with Article 3(2) and Article 5 of the basic Regulation, the Commission established that the benefit is conferred on the recipient at the time when an export transaction is made under this scheme. At this moment, the GOI issues a duty credit, which is booked by the exporting producer as an account receivable which can be offset by the exporting producer at any moment. This constitutes a financial contribution within the meaning of Article 3(1)(a)(ii) of the basic Regulation. Once the customs authorities issue an export shipping bill, the GOI has no discretion as to whether or not to grant the subsidy. In the light of the above, the Commission considered appropriate to assess the benefit under the MEIS as being the sum of the amounts earned on export transactions made under this scheme during the IP.

(e) ***Specificity***

(75) The MEIS is contingent in law upon export performance, and therefore deemed to be specific within the meaning of Article 4(2)(a) and 4(2)(b) of the basic Regulation.

(f) ***Conclusion on the MEIS***

(76) The Commission concluded that the MEIS provided subsidies within the meaning of Article 3(1)(a)(ii) and Article 3(2) of the basic Regulation. The MEIS duty credit is a financial contribution by the GOI, since the credit will eventually be used to offset import duties paid on capital goods, thus decreasing the GOI's duty revenue, which would be otherwise due. In addition, the MEIS duty credit confers a benefit upon the exporter who is not subject to the payment of those import duties. For a company, which sells the MEIS scrips on the market the scheme provides for a direct financial contribution.

(77) The Commission noted that the MEIS expired after the review investigation period, on 1 January 2021. However, until the end of 2021, the companies may still apply for the MEIS scrips for the export transactions made in 2020. Furthermore, the companies are still able to use the MEIS scrip obtained in 2021 to balance import duties due, until 15 September 2023. Thus, benefits under this scheme were received during the review investigation period and will continue even after the imposition of measures.

(78) The Commission further noted that in August 2021, the GOI published guidelines of a new scheme named Remission of Duties and Taxes on Exported Products Scheme ('RoDTEP'), which replaces the MEIS. The RoDTEP scheme is mentioned to be a mechanism for reimbursement of taxes/duties/levies, at the central, state and local level, which are currently not being refunded under any other mechanism, but which are incurred in the process of manufacture and distribution of exported products ([19]). The GOI announced reimbursement rates for the different sectors. These rates are subject to revision at any point of time. Although the rates for the iron industry and the product concerned were not announced at the time of the investigation, the sector requested to be included in the scheme, as also confirmed by the cooperating producer, Tata Metaliks Limited, and a rate for the industry was still being discussed. ([20])

3.3.1.3. Conclusion

(79) Given that the legal situation has not substantially changed, the Commission considered that in the review investigation period, the MEIS continued to confer a benefit to the ductile pipes industry. The Commission made the same findings in the Implementing Regulation (EU) 2022/433.

(80) Due to the lack of cooperation, it was not possible to calculate the precise level of subsidisation of this scheme during the review investigation period. The Commission resorted to facts available according to Article 28 of the basic Regulation for this purpose. The subsidy rate in the original investigation period with regard to the FPS countervailed in the original investigation and replaced by the MEIS (that was found to confer similar benefits) varied between 3,11 % to 4,35 % (see recital (61).

(81) Since the MEIS rate amounted to 3 % FOB compared to 5 % FOB under the FPS in the original investigation period, the benefit received by ductile pipe industry under the MEIS decreased in the RIP accordingly. In the Implementing Regulation (EU) 2022/433, the benefits found for the stainless steel cold-rolled producers were 1,87 % and 1,92 % for the MEIS rate of 2 %. The Commission considered that benefits to the ductile pipes producers under the MEIS would thus similarly amount to slightly below 3 % and therefore, would not be negligible.

(82) After disclosure, Tata Metaliks Limited submitted that the MEIS provided for reimbursement of (a) indirect taxes linked to the production and distribution of the exported products, and (b) cumulative indirect taxes on inputs consumed in the production of exported products. It argued that under the SCM Agreement, the refund of these categories of taxes are not countervailable. It also claimed that even if the MEIS was found countervailable, this program was terminated on 31 December 2020.

(83) The Commission rejected these claims. As explained in recitals (60)- (81), companies in India are reimbursed a fixed percentage of the FOB value of the exports in form of a duty scrip. The conditions of the scheme do not impose that the value of the duty scrip have to correspond to the amount of taxes that companies paid, nor are those amounts verified. With regard to the likelihood of the continuation of the subsidy scheme, as mentioned in recital (77), companies are still able to use the MEIS scrip obtained in 2021 to balance import duties due, until 15 September 2023. Thus, benefits under this scheme will continue well beyond the review investigation period.

(84) Tata Metaliks Limited also claimed that the RoDTEP did not provide benefits at the time of its submission (on 31 March 2022) and the Commission cannot thus consider the fact that the benefit was being discussed as the likely (future) subsidisation of the product concerned.

([19]) RoDtep Scheme guidelines: https://fieo.org/uploads/files/file/Notification%20No_%2019%20English.pdf and https://commerce.gov.in/press-releases/centre-notifies-rodtep-scheme-guidelines-and-rates/

([20]) https://www.livemint.com/industry/govt-should-include-iron-and-steel-in-rodtep-to-make-exports-competitive-eepc-11640938763351.html

(85) In relation to the RoDTEP scheme, the Commission noted that Tata Metaliks Limited itself considered during the remote cross-check that a new rate for the ductile pipes industry is to be negotiated. The fact that the rate was not decided at the moment of its submission did not put into question the strong likelihood that the new rate will be established and the subsidisation under this new scheme will continue beyond 2023. The Commission thus rejected this claim.

3.3.2. *Export Promotion of Capital Goods Scheme*

3.3.2.1. Findings of the original investigation

(86) In the original investigation, the Commission established that the scheme named Export Promotion of Capital Goods ('EPCGS') provided a countervailable subsidy, and constituted a financial contribution by the GOI. This scheme was still applicable during the review investigation period.

(a) ***Legal basis***

(87) The detailed description of the EPCGS is contained in chapter 5 of the FTP 2015-2020 and in chapter 5 of HOP 2015-2020.

(b) ***Eligibility***

(88) Manufacturer-exporters, merchant-exporters 'tied to' supporting manufacturers and service providers are eligible for this measure.

(c) ***Practical implementation***

(89) Under the condition of an export obligation, a company is allowed to import capital goods (new and second-hand capital goods up to 10 years old) at a reduced duty rate. To this end, the GOI issues, upon application and payment of a fee, an EPCGS licence. The scheme provides for a reduced import duty rate applicable to all capital goods imported under the scheme. In order to meet the export obligation, the imported capital goods must be used to produce a certain amount of goods deemed for export during a certain period. Under the FTP 2015-2020 the capital goods can be imported with a 0 % duty rate under the EPCGS. The export obligation, which amounts to six times the duty saved, must be fulfilled within a period of maximum six years.

(90) The EPCGS licence holder can also source the capital goods indigenously. In such case, the indigenous manufacturer of capital goods may avail itself of the benefit for duty free import of components required to manufacture such capital goods. Alternatively, the indigenous manufacturer can claim the benefit of deemed export in respect of supply of capital goods to an EPCGS licence holder.

(d) ***Conclusion on the EPCGS***

(91) The EPCGS provides subsidies within the meaning of Article 3(1)(a)(ii) and Article 3(2) of the basic Regulation. The duty reduction constitutes a financial contribution by the GOI, since this concession decreases the GOI's duty revenue, which would be otherwise due. In addition, the duty reduction confers a benefit upon the exporter, because the duties saved upon importation improve the company's liquidity.

(92) Furthermore, the EPCGS is contingent in law upon export performance, since such licences cannot be obtained without a commitment to export. Therefore, it is deemed to be specific and countervailable under Article 4(4), first subparagraph, point (a) of the basic Regulation.

(93) The EPCGS cannot be considered a permissible duty drawback system or substitution drawback system within the meaning of Article 3(1)(a)(ii) of the basic Regulation. Capital goods are not covered by the scope of such permissible systems, as set out in Annex I point (I), of the basic Regulation, because they are not consumed in the production of the exported products.

(94) In the original investigation, the amount of countervailable subsidies was calculated, in accordance with Article 7(3) of the basic Regulation, based on the unpaid customs duty on imported capital goods spread across a period, which reflects the normal depreciation period of such capital goods in the industry concerned. The amount so calculated, which is attributable to the IP, was adjusted by adding interest during this period in order to reflect the full time value of the money. The commercial interest rate during the investigation period in India was considered appropriate for this purpose. In accordance with Article 7(1)(a) of the basic Regulation, fees incurred by the companies to obtain the subsidy were deducted from the total subsidy amount where claimed.

(95) In accordance with Article 7(2) and 7(3) of the basic Regulation, this subsidy amount was allocated over the appropriate export turnover during the original investigation period as the appropriate denominator because the subsidy is contingent upon export performance and was not granted by reference to the quantities manufactured, produced, exported or transported.

(96) The subsidy rate established in the original investigation period with regard to this scheme varied between 0,03 % and 0,38 %.

3.3.2.2. Continuation of the subsidy scheme

(97) In the review request and corresponding annexes, the applicant provided evidence that producers of ductile pipes in India continued to benefit from the scheme. The existence of the scheme was also confirmed by the GOI in the questionnaire reply. Moreover, the Commission established that Tata Metaliks Limited used the scheme to import capital goods used in the manufacturing of the product concerned. The benefit of the scheme could be allocated to the product concerned during the review investigation period.

(98) Accordingly, the Commission concluded that there is sufficient evidence showing that the exporting producers continued benefitting in the review investigation period from the subsidies under the EPCGS scheme.

(99) Due to the lack of cooperation, it was not possible to calculate the precise level of subsidisation of this scheme during the review investigation period. The Commission resorted to facts available according to Article 28 of the basic Regulation for this purpose. The subsidy rate established in the original investigation period with regard to this scheme varied between 0,03 % and 0,38 % (see recital (96)).

(100) Based on the above the Commission concluded that the level of subsidisation conferred by this scheme in the review investigation period was not negligible, and in any event not below the levels found in the original investigation.

(101) Following disclosure, Tata Metaliks Limited argued that the EPCGS scheme constituted a permissible subsidy since it provided for the exemption of taxes of exported products when destined for domestic consumption, and thus could not be countervailed.

(102) As recalled in recital (93), capital goods are not covered by the scope of such permissible systems, as set out in Annex I point (l), of the basic Regulation, because they are not consumed in the production of the exported products. The Commission thus rejected this claim.

3.3.3. *Duty Drawback Scheme*

3.3.3.1. Findings of the original investigation

(103) In the original investigation, the Commission found that exporting producers of the product concerned benefitted from a Duty Drawback Scheme providing for a reimbursement of a certain percentage of a FOB value of exports ('the DDS rate'). The DDS rate for the product concerned in the original investigation period was 1,9 % of the FOB value. The DDS scheme was still applicable during the review investigation period.

(a) ***Legal basis***

(104) The legal basis applicable during the review investigation period was the Custom & Central Excise Duties Drawback Rules 1995 ('the 1995 DDS Rules'), as amended in 2006 and then replaced by Customs and Central Excise Duties Drawback Rules, 2017 ('the 2017 Rules') which entered into force on 1 October 2017. The method of calculation of this duty drawback scheme is described under Rule 3(2) of the 1995 DDS Rules. Rule 12(1)(a)(ii) of the said DDS Rules governs the Declaration that the exporting producers need to file in order to benefit from the scheme. These Rules have remained identical in the 2017 DDS Rules and correspond to Rule 3(2) and Rule 13(1)(a)(ii) respectively.

(105) In addition, Circular No 24/2001 contains specific instructions how to implement the Rule 3(2) and the Declaration that exporters need to produce under the Rule 12(1)(a)(ii).

(106) The Rule 4 of the 1995 DDS Rules stipulates that the Central Government may revise amount or rates determined under the Rule 3. The GOI has made a number of modifications, the last ones revising the rates being Notification No 95/2018 – CUSTOMS and Notification No 07/2020 – CUSTOMS.

(107) The DDS rate for the product concerned in the original investigation period was 1,9 % of the FOB value.

(b) ***Eligibility***

(108) Any manufacturer-exporter or merchant-exporter is eligible for this scheme.

(c) ***Practical implementation***

(109) Under this scheme, any company exporting eligible products is entitled to receive an amount corresponding to a percentage of the declared FOB value of the exported product. Rule 3(2) of Custom & Central Excise Duties Drawback Rules specifies how the amount of the subsidy is to be calculated. The refundable amount is based on industry-wide average values of relevant customs duties paid on imported raw materials and an average industry consumption ratio collected from what the GOI considers as being representative manufacturers of the eligible export products (so called 'All Industry Rate' or the 'AIR'). The GOI then expresses the amount to be refunded as a percentage of the average export value of the eligible exported products.

(110) The GOI uses this percentage to calculate the amount of the duty drawback all eligible exporters are entitled to receive. The rate for this scheme is determined by the GOI on a product-by-product basis.

(111) According to GOI, duty drawback can also be determined based on the actual duty incidence, in case of products, which are not eligible for the "AIR", or in case of companies, which find that the "AIR" rebates less than 80 % of the actual duty/tax incidence.

(112) In order to be eligible to benefit from this scheme, a company must export. When shipment details are entered in the customs server, it is indicated that the export is taking place under the DDS and the DDS amount is fixed irrevocably. After the shipping and after the company has filed the Export General Manifest and the customs office has satisfactorily compared that document with the shipping bill data, all conditions are fulfilled to authorise the payment of the drawback amount by either direct payment on the exporter's bank account or by draft.

(113) The exporter also has to produce evidence of realisation of export proceeds by means of a Bank Realisation Certificate ('BRC'). This document can be provided after the drawback amount has been paid. The GOI recovers the paid amount if the exporter fails to submit the BRC within a given deadline.

(114) The drawback amount can be used for any purpose and, in accordance with Indian accounting standards, the amount can be booked on an accrual basis as income in the commercial accounts, upon fulfilment of the export obligation.

(d) ***Conclusion on the DDS***

(115) In the original investigation, the Commission found that the DDS provides subsidies within the meaning of Article 3(1)(a)(I) and Article 3(2) of the basic Regulation. The so-called duty drawback amount is a financial contribution by the GOI as it takes form of a direct transfer of funds by the GOI. There are no restrictions as to the use of these funds. In addition, the duty drawback amount confers a benefit upon the exporter, because it improves its liquidity.

(116) The rate of duty drawback for exports is determined by the GOI on a product-by-product basis. However, although the subsidy is referred to as a duty drawback, the scheme does not have all the characteristics of a permissible duty drawback system or substitution drawback system within the meaning of Article 3(1)(a)(ii) of the basic Regulation. Neither does the scheme conform to the rules laid down in Annex I item (I), Annex II (definition and rules for drawback) and Annex III (definition and rules for substitution drawback) of the basic Regulation. The cash payment to the exporter is not necessarily linked to actual payments of import duties on raw materials, and is not a duty credit to offset import duties on past or future imports of raw materials. In addition, there is no system or procedure in place to confirm which inputs are consumed in the production of the exported products and in what amounts. In addition, the GOI did not carry out a further examination based on actual inputs involved, although this would need to be carried out in the absence of an effectively applied verification system (Annex II(5) and Annex III(II)(3) to the basic Regulation).

(117) The payment by the GOI subsequent to exports made by exporters is contingent upon export performance and therefore this scheme is deemed to be specific and countervailable under Article 4(4)(a) of the basic Regulation.

(118) In view of the above, the Commission concluded that the DDS is countervailable.

(e) ***Calculation of the subsidy amount***

(119) In accordance with Article 3(2) and Article 5 of the basic Regulation, the Commission calculated in the original investigation the amount of countervailable subsidies in terms of the benefit conferred on the recipient (which is the amount received as the duty drawback), which was found to exist during the original investigation period. In this regard, the Commission established that the benefit is conferred on the recipient at the time when an export transaction is made under this scheme. At this moment, the GOI is liable to the payment of the drawback amount, which constitutes a financial contribution within the meaning of Article 3(1)(a)(I) of the basic Regulation. Once the customs authorities issue an export shipping bill which shows, inter alia, the amount of drawback which is to be granted for that export transaction, the GOI has no discretion as to whether or not to grant the subsidy.

(120) In view of the non-cooperation of the main exporting producers, as mentioned in recital (55), the Commission was unable to verify whether they actually pay import duties for the raw materials used in the production of the product concerned. Had this claim been made and confirmed, despite the absence of a system or procedure to confirm which inputs are consumed in the production of the exported products and in what amounts, the Commission would have carried out a verification of the custom duties paid for the calculation of the excess remission in accordance with Annex II (5) to the basic Regulation.

(121) In the light of the above, the Commission considered appropriate to assess the benefit under the DDS as being the sum of the drawback amounts earned on export transactions made under this scheme during the original investigation period.

(122) In accordance with Article 7(2) of the basic Regulation, the Commission allocated these subsidy amounts over the total export turnover of the company during the original investigation period as appropriate denominator, because the subsidy is contingent upon export performance and it was not granted by reference to the quantities manufactured, produced, exported or transported.

(123) The subsidy rates established with regard to this scheme during the original investigation period varied between 1,37 % and 1,66 %.

3.3.3.2. Continuation of the subsidy scheme

(124) In the review request and corresponding annexes, the applicant provided evidence that the ductile pipe industry continued to benefit from the DDS during the review investigation period. Furthermore, the GOI confirmed the continuation of the DDS in the questionnaire reply. In addition, the cooperating producer, Tata Metaliks Limited also benefitted from the scheme during the review investigation period, mostly for its exports to third countries.

(125) In their questionnaire replies, both Tata Metaliks Limited and GOI submitted that the DDS was not a countervailable subsidy. The GOI further argued that in order to constitute a subsidy, the drawback of indirect taxes or import charges must be in excess of the amount of such taxes or charges actually levied on inputs that are consumed in the production of the exported product. Even in such cases, only the excess drawback could be in the GOI's view countervailed. To support the claim, GOI referred to Panel Report, European Union – Countervailing Measures on Certain Polyethylene Terephthalate from Pakistan, WT/DS486/R.

(126) The GOI further submitted that the eligibility within the scheme was not contingent upon export performance nor limited to any sector, industry and/or region. In its view, the drawback neutralizes Custom and Central Excise duties paid calculated on average quantities of relevant inputs (imported and domestic), that are observed as ordinarily used in the manufacture of the class of goods exported. The differing manner of sourcing of inputs by individual exporters is factored and evened out in averages. Hence, the GOI considered that the DDS was a tax/duty rebate and not a subsidy.

(127) As detailed in recitals (115)-(118), the Commission considered in the original investigation that the DDS did not have all the characteristics of a permissible duty drawback system or substitution drawback system within the meaning of Article 3(1)(a)(ii) of the basic Regulation. Contrary to the statements of the GOI, benefits received by the companies under the DDS do not have any direct link with duties due on imports of raw materials used by the company in the exported products. An exporting company receives cash payments, which are linked only with the FOB value of its exports. Companies are not required to import any raw materials at all.

(128) Therefore, and as the mechanism of the scheme does not provide for company by company assessment of what are the taxes/charges paid for the consumed production inputs, the Commission cannot consider the entire amount of the duty drawback under the DDS as a mere compensation for duties/charges paid by companies on raw material consumed in the production of the product concerned. Finally, in view of the non-cooperation of the main exporting producers, the Commission was unable to verify case specific links between the benefit under DDS and the potential duties paid on import of raw materials used in the production of the product concerned.

(129) Therefore, the Commission concluded that in the review investigation period, the DDS continued to provide benefit to the exporting producers of ductile pipes in India. Furthermore, in the absence of cooperation of an exporting producer with a representative volume of export to the Union in the review investigation period, the Commission had no company-specific information on which the amount of subsidy conferred during the review investigation period would be calculated. However, for the finding of the continued subsidisation reached in the current expiry review, the Commission did not consider it necessary to calculate such amounts. Moreover, although since the original investigation period the duty drawback rate for the product concerned slightly decreased (from 1,9 % to 1,8 % and then to 1,6 % in the review investigation period), the DDS's rules have remained unchanged. Even if the decrease (of 16 %) of the DDS rate translated into a proportional decrease of the levels of subsidisation compared to the levels found in the original investigation (of 1,37 % to 1,66 %), the Commission considered that this level of subsidisation under the scheme was still non-negligible.

(130) Therefore, the Commission concluded that in the review investigation period, the DDS scheme continued to provide subsidies to ductile pipes producers.

(131) After disclosure, Tata Metaliks Limited argued that there is an adequate linkage between the drawback rates and the duties paid on materials consumed in the production of the product concerned. It mentioned in particular that in order to receive the duty drawback, exporters must submit the shipping bill, mentioning the duty drawback claim applicable to the product. It is only after verification that the Indian Customs generate a shipping bill mentioning the drawback amount. Therefore, in its view, the duty drawback did not constitute an excess remission.

(132) As already explained in detail in recital (109), the Commission considered that the duty drawback claim relates to a fix percentage of an amount to be refunded. It noted that such an amount did not necessarily correspond to an amount of duties that a company would pay for inputs consumed in the production. Furthermore, as noted in recital (128), non-cooperation of the exporting producers made it impossible to verify whether they actually pay import duties for the raw materials used in the production of the product concerned. The Commission therefore rejected the claim.

3.3.4. *Provision of iron ore for less than adequate remuneration*

3.3.4.1. Findings of the original investigation

(133) In the original investigation, the Commission considered that by a set of measures, the GOI entrusted the iron ore mining companies to provide iron ore at less than adequate remuneration. This provision of goods constituted a financial benefit for the recipients and was found specific, and thus, countervailable ([21]).

(134) First, as of March 2007 the GOI imposed export taxes on iron ore, initially at a rate of 300 INR per tonne (corresponding to a percentage between 12 % and 15 %). In March 2011 the rate was increased to 20 %, and in December 2011 it was further increased to 30 %. Such export restraint through export taxes aimed at protecting and promoting downstream industries by providing domestic downstream industries with cheap raw materials and inputs.

(135) Second, in May 2008 the Ministry of Railways introduced a "Dual-Freight Policy" ('DFP'), a freight charge difference between the transportation of iron ore for domestic consumption and for export. Knowing that the railway freights accounts for a very significant part of the total cost of the iron ore, the average difference between the transportation of iron ore for domestic consumption and for export was threefold.

(136) Those two measures, therefore, aimed at discouraging exports of iron ore, thereby constituting a system of "targeted export restrains", was basically established in 2007/2008 and further expanded in March and December 2011 with the increases in the rate of the export tax on iron ore.

(137) In order to determine whether the first element was met, i.e. whether there was entrustment or direction to the iron ore mining companies by the GOI, the Commission analysed whether the GOI's support to the ductile pipes industry (in particular through the price distortions found on iron ore) was effectively an "objective" of a government policy (as opposed to merely a "side-effect" of the exercise of general regulatory powers). The Commission noted that a number of documents supported its conclusion that the GOI explicitly pursued as a policy objective the support of the ductile pipes industry. In particular, the 2005 Dang Report explicitly contained the policy objective of benefiting Indian steel producers ("*assured access to indigenous iron ore supplies at a discount to world prices*") as well as the indication that this advantage had to be preserved and encouraged. The Commission observed that, pursuant to the policy objectives set out in that Report, the GOI took certain measures to support its ductile pipes industry specifically.

(138) Various official documents showed the link between the policy objectives to support the ductile pipes industry and the related measures successfully taken by the GOI to achieve those objectives, such as in particular, the report of the Working Group on Steel Industry for the 12th five-year plan, issued in November 2011.

(139) The Commission thus found that, by imposing such targeted export restraints (in particular through export taxes and the dual freight policy), the GOI put Indian iron ore mining companies into an economically irrational situation, which induced them into selling their goods for a lower price than they could obtain in the absence of this policy. Indeed, the measures taken by the GOI restricted the freedom of action of the iron ore mining companies by limiting in practice their business decision as to where to sell their product and at what price, thereby directing them to provide iron ore domestically for less than adequate remuneration.

([21]) The original regulation, recitals (131) – (278).

(140) The Commission also found that the GOI "expected" the iron ore mining companies not to dramatically reduce domestic output (in view of the export restrictive measures in place) but to maintain a stable supply of domestic iron ore. Indeed, the Commission observed that it was easy to foresee *ex-ante* that the iron ore mining companies would not frustrate significant initial investments and high fixed costs by lowering the production output just in order to avoid oversupply and subsequent downward pressure on domestic prices pursuant to the GOI's measures. In other words, when applying the target export restraints, the GOI knew how the iron ore producers will respond to the measures and what consequences will result from them. In view of their business operations and cost structure, while these producers may lower their domestic production a bit to respond to the export restraint, they would not shut it down or adapt it to a very low level and, indeed, the data showed those intended effects. In the period 2012-2013 the export sales decreased by more than 60 % compared with 2011-2012 and continued to decrease significantly, reaching a drop by 84 % in 2014-2015 in comparison with 2011-2012. At the same time production decreased only by 24 % between 2011-2012 and 2014-2015. In this sense, the Commission found that the input producers were entrusted or directed by the government to provide goods to the domestic users of iron ore, i.e. steel manufacturers, including the ductile pipes producers, for less than adequate remuneration. The iron ore mining companies were given the responsibility to create an artificial, compartmentalised, low-priced domestic market in India and, in this respect, they acted as a proxy for the GOI to carry out its policy of providing iron ore for less than adequate remuneration to the ductile pipes industry.

(141) Finally, the Commission also found evidence showing that the GOI itself acknowledged the success of its targeted export restraints policy, showing that the result was intended and not merely a side effect of regulatory measures.

(142) In conclusion, the Commission found that the GOI had entrusted the mining companies to carry out its policy to create a compartmentalised domestic market and to provide iron ore to the domestic iron and steel industry for less than adequate remuneration. Far from a simple measure to increase revenue, the export tax and the DFP clearly amounted to the affirmative actions taken by the GOI to induce iron ore mining companies to carry out the stated policy objective to support the iron and steel industries, and in particular, the ductile pipes industry.

(143) The Commission then assessed the second element, i.e. whether the iron ore mining companies in India are "private bodies" entrusted by the GOI within the meaning of Article 3(1)(a)(iv) of the Basic CVD Regulation. In this respect, the Commission found that the two Indian exporting producers were purchasing the overwhelming majority of the iron ore from private undertakings, except for a small quantity of iron ore purchased from the National Mineral Development Corporation ('NMDC'), a State-owned company. Regardless of the publicly-owned nature of the NMDC (and its potential characterisation as a "public body"), the Commission considered all those suppliers as "private bodies" entrusted or directed by the GOI within the meaning of Article 3(1)(a)(iv) of the Basic CVD Regulation to provide iron ore for less than adequate remuneration.

(144) In the next step, the Commission verified the third element, i.e. whether the iron ore mining companies had actually carried out the above-mentioned governmental policy to provide iron ore for less than adequate remuneration. In this respect, the Commission noted that the targeted export restraints achieved the goal pursued by the GOI of discouraging exports and keeping iron ore available for the domestic downstream industry at lower prices. Notwithstanding a reduction in production of iron ore due to the closedown of some mines in view of environmental reasons, the Indian market showed a constant and irrational overcapacity compared to the sum of domestic consumption and exports minus imports. This led to an excess supply of iron ore on the domestic market as acknowledged and sought by the GOI, in view of the natural impossibilities for the mining companies to quickly adapt their production to the export restraints.

(145) The Commission further analysed the impact of the excess supply of iron ore due to the GOI's export restraints on the domestic price of iron ore in India. Taking the import price of iron ore in China (China being the biggest imported of iron ore) as well as an adjusted FOB Australian price (to remove the costs of international freight) as the closest possible proxies for an undistorted Indian domestic price, the Commission found that the GOI's interventions on iron ore (which led to a drastic reduction of exports of iron ore and to an excess supply in India) also had an impact on the domestic prices of iron ore. First, since 2008 domestic prices of iron ore in India were constantly lower than international prices, and second, while international prices showed a significant increase over the years 2008 to 2011, corresponding to the two points in time when the export restraints were introduced (2007/2008) and enhanced (2011), the trend of domestic prices of iron ore in India was rather flat, as if it was separated and unaffected by the situation in the rest of the world. Hence, according to the Commission, the GOI's targeted export

restraints achieved the objective of making iron ore available to domestic industries at lower prices by keeping the domestic Indian price stable, although the iron ore prices were increasing significantly on the world market. The Commission concluded that there was no reason why the Indian prices should not have followed the trends of international prices, but for the system of targeted export restraints set up by the GOI. Indian producers of iron ore would have benefited from more profitable sales at the higher international prices absent the targeted export restraints. Instead, they were induced to continue production and provide iron ore locally at lower prices in order to implement the GOI's policy objectives.

(146) Finally, the Commission examined the last two elements, i.e. whether the function of proving iron ore for less than adequate remuneration would normally be vested in the GOI, and whether such a practice, in no real sense, differed from practices normally followed by the GOI. The Commission found that the provision of iron ore located in Indian soil to the Indian steel industry was a function that is normally vested in the GOI, since the GOI decided through its regulations how to provide raw materials located within India in the exercise of its sovereignty over its natural resources. As regards the "in no real sense differs" criterion, the Commission noted that this criterion requires an affirmative finding that the provision of goods by the entrusted private bodies does not, in any real sense, differ from the hypothesis that the government had provided such goods itself. In this respect, the Commission found that there was no difference, in any real sense, between directly intervening in the market with providing iron ore under a system of constantly changing government prices or by entrusting the responsibility to provide iron ore for less than adequate remuneration to iron ore mining companies.

(147) In sum, the Commission concluded that with the targeted export restraints the GOI induced the domestic iron ore mining companies to sell iron ore locally and entrusted or directed them to provide this raw material in India for less than adequate remuneration. The measures at issue achieved the desired effect to distort the domestic market of iron ore in India and to depress the price to an artificially low level to the advantage of the downstream industry. The function to provide iron ore for less than adequate remuneration is normally vested in the government and the government practice does not, in any real sense, differ from practices normally followed by governments. The Commission thus concluded that the GOI provided an indirect financial contribution within the meaning of Article 3(1)(a)(iv) and (iii) of the Basic CVD Regulation, as interpreted and applied in line with the relevant WTO standard under Article 1.1(a)(iv) and (iii) of the SCM Agreement.

3.3.4.2. Continuation of the subsidy scheme

(148) Both Tata Metaliks Limited and GOI submitted that one of the two targeted export restraints identified by the Commission in the original investigation, the DFP, was discontinued on 10 May 2016. They submitted that since that date, the transport of iron ore both for domestic consumption and for export are subject to the same conditions and costs.

(149) The Commission assessed all the evidence contained in the review request and the corresponding annexes on the continuation of the measure, as well as the evidence found during the investigation. The investigation revealed that, despite the discontinuation of the DFP in May 2016, through entrustment of the iron ore mining companies, in the review investigation period, the GOI continued providing iron ore for less than adequate remuneration to the Indian producers of the product concerned.

(150) First, in the review investigation period, the export tax of 30 % on high-grade iron ore was still in force. The GOI confirmed that the last change in export taxes was done via a notification No 15/2016-Customs dated 1 March 2016 by which low grade iron ores (having iron content below 58 %) were exempted from export duty (the low grade iron ore is not used by the ductile pipes companies).

(151) Second, the Commission noted that on 15 January 2021, the GOI adopted a new policy on iron ore traffic ([22]). The policy (called 'Iron Ore Policy, 2021') sets up prioritisation related to loading and unloading of the iron ore based on different customer categories where the domestic transport of the iron ore has priority over the transport for export. As explicitly mentioned, the purpose of the new policy is to "*promote of domestic manufacture of steel*". Therefore, similar to the previous DFP, this new policy also clearly constitutes an additional measure in favour of the domestic steel industry implemented by GOI showing its deliberate objective a lower iron ore price for its benefit.

([22]) Website of Indian Railways, https://indianrailways.gov.in/railwayboard/uploads/directorate/traffic_tran/downloads/2021/Policy-Iron-Ore-Traffic-220121.pdf.

(152) Third, in addition to this new Iron Ore Policy 2021, a number of other policy papers demonstrated in the Commission's view that the GOI continued the efforts to provide the domestic industry with cheaper raw material since the original investigation and in the review investigation period.

(153) For instance, the policy objective to support the domestic steel industry was confirmed by the 2017 National Steel Policy, which still applies today ([23]). This Policy stresses the importance of domestically available iron ore at competitive prices:

"Availability of raw materials at competitive rates is imperative for the growth of the steel industry" ([24]).

"India's *competitive advantage in steel production is driven, to a large extent, from* the *indigenous availability of high grade iron ore and non-coking coal – the two critical inputs of steel production*" ([25]).

"Mission: *(…) Cost-efficient production and domestic availability of iron ore, coking coal and natural gas*" ([26]).

"(…) Availability *of raw materials will be ensured by facilitating auction of non-coking coal exclusively for steel/sponge iron sector and increasing the iron ore availability in the domestic market*" ([27]).

(154) The 2015-2020 Foreign Trade Policy Statement confirms India's policy of ensuring cheap downstream iron ore domestically in order to export cheap upstream products:

> *"The recent lifting of the ban on iron ore mining in some States will unshackle iron ore mining activity. At the same time India is embarking upon a programme of manufacturing for which iron ore would be required at home*" ([28]).

(155) The 2019 National Minerals Policy also recognises the importance of having cheap minerals for downstream industries: *"Securing access to sufficient, reliable, affordable, and sustainable supplies of minerals is increasingly becoming an important factor for functioning of downstream industries and the overall economy*" ([29]).

(156) Therefore, the facts available to the Commission and the new elements on file showed that the findings of the original investigation are still valid, and that by a set of measures, including a system of export restraints the GOI continued in the review investigation period entrusting the iron ore mining companies to provide iron ore at less than adequate remuneration. The Commission thus concluded that in the review investigation period, the GOI continued to provide an indirect financial contribution within the meaning of Article 3(1)(a)(iv) and (iii) of the basic Regulation, as interpreted and applied in line with the relevant WTO standard under Article 1.1(a)(iv) and (iii) of the SCM Agreement.

(157) Due to the lack of cooperation, it was not possible to calculate the precise level of subsidisation of this scheme during the review investigation period, and the Commission resorted to facts available according to Article 28 of the basic Regulation, and in particular the review request containing evidence that prices of iron ore in India remained in the review investigation period below the international prices.

(158) On this basis, the Commission concluded that the level of subsidisation conferred by this scheme in the review investigation period was not negligible, and in any event not below the levels found in the original investigation.

(159) After disclosure, Tata Metaliks Limited submitted that under WTO law, export taxes cannot not be countervailed. Furthermore, it considered that the objective of the new Iron Ore Policy 2020 was only to facilitate the speedy and efficient transport of iron ore across the country, and that this policy did not provide for any financial benefit. It therefore considered that the Commission's conclusions with regard to the scheme were incorrect.

([23]) See National Steel Policy 2017, Annex 9 of the Review request.
([24]) See National Steel Policy 2017, Annex 9 of the Review request, p. 24.
([25]) See National Steel Policy 2017, Annex 9 of the Review request, p. 20.
([26]) See National Steel Policy 2017, Annex 9 of the Review request, p. 22.
([27]) See National Steel Policy 2017, Annex 9 of the Review request, p. 29.
([28]) See Foreign Trade Policy 2015-2020, p. 43-44, Annex 9 of the Review request.
([29]) See 2019 National Mineral Policy, p. 9, Annex 9 of the Review Request.

(160) The Commission reiterated that, as referred to in recital (151), the new policy on iron ore had the objective to promote of domestic manufacture of steel. In its view, the new policy clearly constituted an additional measure in favour of the domestic steel industry implemented by GOI. Although the measure did not provide for a direct financial subsidy, the fact that the domestic transport of the iron ore has priority over the transport for export clearly showed that there was a deliberate objective to benefit the Indian ductile pipes industry.

(161) In view of the findings detailed above in recitals (148)-(158), the Commission maintained that despite the discontinuation of the DFP in May 2016, the export taxes together with new iron ore policy constituted a system of "targeted export restrains" by which the GOI continued to provide an indirect financial contribution within the meaning of Article 3(1)(a)(iv) and (iii) of the basic Regulation, as interpreted and applied in line with the relevant WTO standard under Article 1.1(a)(iv) and (iii) of the SCM Agreement.

3.4. **Conclusion on the continuation of subsidisation**

(162) In light of the above considerations, the Commission concluded that the industry of ductile pipes and tubes producers in India continued to benefit from countervailable subsidies during the review investigation period. Despite the decrease of the MEIS and the DDS rates, the investigation did not reveal any indication that the level of subsidisation has substantially decreased as compared to the original investigation. The evidence in the review request and provided by the cooperating Indian producer rather confirmed that the benefits under those subsidies would still be significant, in any event substantially above *de minimis*.

(163) The Commission therefore concluded that during the review investigation period, the Indian exporting producers continued to export the product concerned to the Union at subsidised prices.

3.5. **Likelihood of continuation of subsidisation should the measures lapse**

(164) Further to the finding of the existence of continued subsidisation during the review investigation period, in accordance with Article 18 of the basic Regulation, the Commission investigated the likelihood of continuation of subsidisation, should the measures lapse.

(165) As set out in recital (162), it was established that during the review investigation period Indian exporters of the product concerned continued to benefit from countervailable subsidisation by the Indian authorities.

(166) The subsidy programmes give recurring benefits and there is no indication that these benefits will be phased out in the foreseeable future, even if the schemes themselves change slightly. Moreover, each exporter is eligible to several of the subsidies.

(167) It was also examined whether exports to the Union would be made in significant volumes should the measures be lifted. The Commission analysed in particular the following elements: the production capacity and spare capacity in India, prices from India to third countries and attractiveness of the Union market in terms of the size of the market and prices.

3.5.1. *Production capacity, spare capacity in India and prices from India to third countries*

(168) In the review investigation period, the total estimated production of the Indian producers of the product concerned was around 2 million tonnes yearly. The estimated production capacity amounted to around 2,5 million tonnes. Hence the spare capacity represented around 500 000 tonnes yearly, which exceeds the consumption of the product concerned on the Union market in the review investigation period, which amounted to [388 000 to 454 000] tonnes.

(169) Based on the evidence submitted by the applicant and confirmed by the information from the cooperating producer, Tata Metaliks Limited, a number of the Indian producers including Tata Metaliks Limited ([30]) plan to invest in further capacity increases ([31]). The total additional capacities to be installed in next few years are estimated at around 1,5 million of tonnes.

(170) The expected growth in capacities correspond to the estimated growth of the demand on the Indian market. However, the major known producers also plan to focus on the export markets ([32]). For instance, the company ESL Steel Limited (part of the Vedanta Group) explicitly mentioned, in a feasibility study, that its new facility was located near to a port, which enhances its export chance. The report mentioned in particular a big potential of exports to Eastern Europe ([33]). Plans to expand to the Union market in the future were also mentioned by the cooperating company, Tata Metaliks Limited during the remote cross-check of its questionnaire reply.

(171) Moreover, according to one of the major players, the company Srikalahasthi Pipes Limited, in the medium and long term (7 to 10 years), because the wastewater and water projects will be finalized, there will be an excess of the supply over demand on the Indian market. Consequently, this will represent further incentive of the Indian producers to focus more and more on export markets.

(172) Based on the above, the Commission concluded that the Indian exporting producers have significant spare capacity, which they could use to produce the product concerned to export to the Union market if measures were allowed to lapse, and that this spare capacity is expected to further grow.

(173) Concerning the prices from India to third countries, the Commission examined those on the basis of the export statistics in Global Trade Atlas ('GTA') at the level of CN code, i.e. 7303 00 30. Based on these statistics, the Commission established that Union market remains attractive in terms of its size and prices as it is by far the most important export market for Indian producers of ductile pipes, accounting for 40 % of their total exports. Moreover, exports to the Union are 25 times higher than exports to India's second largest export market, which is Qatar. The latter accounts only for 2 % of the total Indian exports. Finally, import prices of the Indian exporting producers to the Union market were slightly higher than those to other countries during the review investigation period. Consequently, should the measures be allowed to lapse, the exporting producers would have an incentive to increase their exports to the Union even further.

3.5.2. *Attractiveness of the Union market and prices on the Union market*

(174) The market of ductile pipes in the Union is important [388 000 to 454 000] tonnes, see recital (168). The applicants expect the market to be further growing within the next five years ([34]).

(175) In the review investigation period, the average price per tonne on the Union market was EUR [1 020 – 1 200]. In the same period, the price on the Indian domestic market was EUR 595 per tonne (ex-works). Therefore, the prices on the Union market were around two times higher compared to the prices of the imports from India.

(176) Therefore, in terms of the size and prices, the Union market remained an attractive market for the Indian exporting producers. This is further supported by the fact that during the review investigation period, the market share of the Indian exporting producers in the review investigation period remained important (see Table 2), and that, as explained in recital (173) above, the Union market constituted 40 % of the total exports from India of the product concerned.

([30]) The relevant circular is published on the website of Indian Railways, https://indianrailways.gov.in/railwayboard/uploads/directorate/traffic_comm/Freight_Rate_2016/RC_16_16.pdf.
https://www.tatametaliks.com/tata-metalik-ir-20-21/focus-on-downstream.html#:~:text=Tata%20Metaliks%20had%20foreseen%20the,in%20H1%20FY%202022%2D23.

([31]) The intention to invest in capacity increase were made public by the major producers of the product concerned in India such as Vedanda.

([32]) Review request, Annex 17.

([33]) Review request, Annex 17.

([34]) Review request, Section 5.1.6.

3.6. **Overall conclusion on the likelihood of continuation of subsidisation**

(177) The investigation showed that the Indian imports continued to enter the Union market at subsidised prices during the review investigation period.

(178) The Commission also found evidence that subsidisation will likely continue should the measures lapse. The spare capacity in India was significant in comparison with the Union consumption during the review investigation period. Moreover, the attractiveness of the Union market in terms of size and prices supported the likelihood that Indian exports and spare capacity would be directed towards the Union market, should the measures be allowed to lapse. Consequently, the Commission concluded that there was a strong likelihood that the expiry of the countervailing measures would likely result in a redirection of subsidised imports of the product concerned to the Union market. In the light of the above, the Commission concluded that the expiry of the countervailing measures would be likely to lead to a continuation of subsidisation.

4. **INJURY**

4.1. **Definition of the Union industry and Union production**

(179) Within the Union, five companies produce the product concerned. Three of these companies are part of the same group. Based on the available information from the request, there are no other Union producers of the product concerned in the Union. Therefore, they constitute the 'Union industry' within the meaning of Article 9(1) of the basic Regulation.

(180) As the data relating to the injury assessment was primarily derived from the same group of producers, as mentioned in recital (15), the figures for the injury analysis are given in ranges or in an indexed form for reasons of confidentiality.

(181) The total Union production during the review investigation period was established at [372 000 – 436 000] tonnes. The Commission established the figure on the basis of all the available information concerning the Union industry, such as macro data provided by the applicants and data collected from the sampled Union producers during the investigation.

4.2. **Union consumption**

(182) The Commission established the Union consumption on the basis of the volume of the total Union industry's sales in the Union, the captive production on the basis of the data collected from the sampled Union producers and estimates for the remaining Union producers provided by the applicants, plus the total of imports from all countries to the Union as reported by Eurostat (Comext database).

(183) Union consumption developed as follows:

Table 1

Union consumption (in 1 000 tonnes)

	2017	2018	2019	Review Investigation Period
Total Union Consumption	[376 – 440]	[389 – 455]	[420 – 492]	[388 – 454]
Index (2017=100)	*100*	*103*	*111*	*103*
Captive market	[15 – 17]	[13 – 16]	[10 – 12]	[2 – 3]
Index	*100*	*91*	*68*	*18*
Free market	[361 – 423]	[375 – 439]	[410 – 479]	[385 – 450]
Index (2017=100)	*100*	*103*	*113*	*106*

Source: Eurostat Comext

(184) The Union consumption fluctuated during the period considered. Overall, it increased slightly by 3 % in 2018, increased by 8 % in 2019 and decreased by 8 % in 2020. As a result, the consumption increased by 3 % during the period considered.

(185) The use of ductile iron pipes is by nature linked to infrastructure investment with regard to water treatment, the water supply and water treatment companies, whether public or privately-owned, account for most of the demand for the ductile iron pipes in the Union. Ductile pipes are mainly used in large infrastructure projects. Moreover, the evolution of the Union consumption did not show a major impact due to the COVID-19 pandemic as the improvement of water networks have a constant priority for the public authorities. Therefore, the evolution of the Union consumption reflects the evolution of the infrastructure investment.

(186) The Union industry reported captive use of the product concerned which represented less than 5 % of total Union consumption in 2017 and decreased over the period considered to representing less than 1 % in the review investigation period. Therefore, the Commission considered that the captive use did not have any meaningful impact on the injury analysis.

4.3. **Imports from India**

4.3.1. *Volume and market share of the imports from India*

(187) The Commission established the volume of imports on the basis of Eurostat (Comext database). The market share of the imports was established on the Union consumption, as set out in recital (182).

(188) Imports of the product concerned into the Union from India concerned developed as follows:

Table 2

Import volume (in 1 000 tonnes) and market share

	2017	2018	2019	Review Investigation Period
Volume of imports from India	[45 – 52]	[38 – 45]	[64 – 75]	[44 – 52]
Index (2017=100)	*100*	*86*	*143*	*98*
Market share (in %)	[11 – 15]	[9 – 13]	[14 – 18]	[10 – 14]
Index (2017=100)	*100*	*83*	*128*	*95*

Source: Eurostat Comext

(189) During the period considered, the Indian import volumes and the market share fluctuated significantly: in 2018, the volume of imports decreased by 14 %, in 2019 increased by 68 % and finally during the review investigation period decreased by 31 %.

4.3.2. *Prices of the imports from India*

(190) The Commission established the weighted average prices of imports on the basis of Eurostat Comext statistics.

(191) The weighted average price of imports into the Union from India developed as follows:

Table 3

Import prices (EUR/tonne)

	2017	2018	2019	Review Investigation Period
India	553	562	586	585
Index (2017=100)	*100*	*101*	*105*	*105*

Source: Eurostat Comext

(192) In 2017-2018, the import prices were rather stable. As from, in 2019 the import prices increased by 5 % and remained stable during the review investigation period.

4.3.3. *Price undercutting*

(193) As mentioned in recital (55), only one Indian producer cooperated with the investigation. This producer declared a negligible quantity exported to the Union, which corresponded to less than 1 % of the total import volumes of the product concerned from India to the Union. Therefore, the Commission considered that this export volume was not representative of the exports of the product concerned to the Union and decided to establish the price undercutting based on facts available.

(194) The Commission compared the weighted average CIF Indian import prices, adjusted for post importation costs, to the weighted average price of the Union industry. The Indian import prices undercut the prices of the Union industry by around [30 – 45] % during the review investigation period.

4.3.4. *Imports from third countries other than India*

(195) During the review investigation period, the volume and the market share of imports from third countries other than India amounted respectively to [8 700 – 20 200] tonnes and [2 – 4] % of the Union consumption. Over the period considered, the weighted average price of imports from third countries was at comparable levels to prices of the sampled Union producers in 2017-2018, and around 25 % lower for the period 2019-2020 (see Table 8). While the volume of imports from third countries slightly increased, i.e. by 2 %, the origin of the imported ductile pipes was not stable over the period considered. For example, in 2017, the main imports from third countries came from China, Russia and Switzerland, while in the review investigation period the main importers were Turkey and United Arab Emirates.

(196) The aggregated volume of imports into the Union as well as the market share and price trends for imports of tubes and pipes of ductile cast iron from other third countries developed as follows:

Table 4

Import volume and market share from other third countries

Country		2017	2018	2019	Review Investigation Period
China	Volume (tonne)	[2 900 – 3 400]	[1 400 – 1 700]	[3 900 – 4 600]	[200 – 400]
	Index	*100*	*50*	*133*	*10*
	Market share (in %)	[0 – 1]	[0 – 1]	[0 – 2]	[0 – 1]

	Index (2017=100)	*100*	*48*	*119*	*9*
	Average price (EUR/tonne)	701	933	738	833
	Index (2017=100)	*100*	*133*	*105*	*118*
Russia	Volume (tonne)	[2 000 – 2 500]	[1 400 – 1 600]	[2 900 – 3 600]	[1 200 – 1 600]
	Index (2017=100)	*100*	*67*	*147*	*63*
	Market share (in %)	[0 – 1]	[0 – 1]	[0 – 1]	[0 – 1]
	Index (2017=100)	*100*	*65*	*132*	*61*
	Average price (EUR/tonne)	568	697	735	698
	Index (2017=100)	*100*	*122*	*129*	*122*
Switzerland	Volume (tonne)	[3 400 – 4 400]	[1 800 – 2 200]	[1 600 – 2 000]	[800 – 1 000]
	Index (2017=100)	*100*	*52*	*47*	*23*
	Market share (in %)	[0 – 1]	[0 – 1]	[0 – 1]	[0 – 1]
	Index (2017=100)	*100*	*51*	*42*	*23*
	Average price (EUR/tonne)	1 604	1 656	1 714	1 817
	Index (2017=100)	*100*	*103*	*106*	*113*
Turkey	Volume (tonne)	[10 – 20]	[10 – 20]	[3 100 – 3 650]	[4 200 – 5 000]
	Index (2017=100)	*100*	*115*	*25 750*	*35 070*
	Market share (in %)	[0 – 1]	[0 – 1]	[0 – 1]	[1 – 2]
	Index (2017=100)	*100*	*111*	*23 065*	*34 035*
	Average price (EUR/tonne)	1 136	1 750	838	1 007
	Index (2017=100)	*100*	*153*	*73*	*88*
UAE	Volume (tonne)	[460 – 590]	[3 700 – 4 400]	[4 800 – 5 600]	[6 400 – 7 600]
	Index (2017=100)	*100*	*766*	*988*	*1 322*
	Market share (in %)	[0- 1]	[0 – 1]	[1 – 2]	[1 – 2]
	Index (2017=100)	*100*	*741*	*884*	*1 282*
	Average price (EUR/tonne)	712	786	722	705
	Index (2017=100)	*100*	*110*	*101*	*99*

Other third countries	Volume (tonne)	[10 -20]	[150 – 200]	[10 -50]	[150 – 300]
	Index (2017=100)	*100*	*994*	*200*	*1 457*
	Market share (in %)	[0 – 1]	[0 – 1]	[0 – 1]	[0 – 1]
	Index (2017=100)	*100*	*962*	*179*	*1 414*
	Average price	508	1 422	1 980	897
	Index (2017=100)	*100*	*279*	*389*	*176*
Total of all third countries excl. India	Volume (tonne)	[8 700 – 11 200]	[8 800 – 10 500]	[16 000 – 19 600]	[13 500 – 15 800]
	Index (2017=100)	*100*	*94*	*180*	*145*
	Market share (in %)	[1 – 3]	[1 – 3]	[3 – 5]	[3 – 5]
	Index (2017=100)	*100*	*91*	*161*	*141*
	Average price (EUR/tonne)	1 033	1 004	856	879
	Index (2017=100)	*100*	*97*	*82*	*85*

Source: Eurostat Comext database

4.4. **Economic situation of the Union industry**

4.4.1. *General remarks*

(197) The assessment of the economic situation of the Union industry included an evaluation of all economic indicators having a bearing on the state of the Union industry during the period considered.

(198) As mentioned in recital (15), sampling was used for the assessment of the economic situation of the Union industry.

(199) For the injury determination, the Commission distinguished between macroeconomic and microeconomic injury indicators. The Commission evaluated the macroeconomic indicators on the basis of data related to all Union producers, contained in the expiry review request. The Commission evaluated the microeconomic indicators on the basis of data contained in the questionnaire replies from the sampled Union producers. The data related to the sampled Union producers. Both sets of data were found to be representative of the economic situation of the Union industry.

(200) The macroeconomic indicators are: production, production capacity, capacity utilisation, sales volume, market share, growth, employment, productivity, magnitude of the amount of countervailable subsidies, and recovery from past dumping or subsidisation.

(201) 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

(202) The total Union production, production capacity and capacity utilisation developed over the period considered as follows:

Table 5

Production, production capacity and capacity utilisation

	2017	2018	2019	Review Investigation Period
Production volume (in 1 000 tonnes)	[408 – 478]	[452 – 530]	[436 – 510]	[372 – 436]
Index (2017=100)	*100*	*110*	*106*	*91*
Production capacity (in 1 000 tonnes)	[824 – 965]	[824 – 965]	[824 – 965]	[743 – 870]
Index (2017=100)	*100*	*100*	*100*	*90*
Capacity utilisation (in %)	[47 – 51]	[52 – 56]	[50 – 54]	[48 – 51]
Index (2017=100)	*100*	*110*	*106*	*101*

Source: data provided by the Union industry and verified questionnaire replies of the sampled Union producers

(203) The Union production decreased by 9 % over the period considered after an increase of 10 % in 2018.

(204) The production capacity followed a similar trend as it decreased by 10 % over the period considered.

(205) The capacity utilisation remained stable as the decrease of the production capacity followed the decrease of the Union production.

(206) Following final disclosure, Tata Metaliks Limited claimed that the imports from India could not have been a reason for the Union industry to reduce its production capacity but rather the decline in demand as compared to 2019.

(207) The Union industry's decision to reduce its production capacity was made before the COVID-19 crisis and thus the decision had no link with the decrease of the consumption between 2019 and the review investigation period. Therefore, the claim was rejected.

4.4.2.2. Sales volume and market share

(208) The Union industry's sales volume and market share developed over the period considered as follows:

Table 6

Sales volume and market share of Union producers

	2017	2018	2019	Review Investigation Period
Sales volume on the Union market (in 1 000 tonnes)	[321 -376]	[341 – 399]	[338 – 396]	[329 – 386]
Index	*100*	*106*	*105*	*102*
Market share (in %)	[82- 88]	[84 – 90]	[77 – 83]	[81 – 87]
Index	*100*	*102*	*94*	*99*

Captive market sales in 1 000 tonnes)	[15 – 17]	[13 – 16]	[10 – 12]	[2 – 3]
Index	*100*	*91*	*68*	*18*
Market share of captive market sales (in %)	[3 – 4]	[3 – 4]	[2 – 3]	[0 – 1]
Index	*100*	*88*	*61*	*18*

Source: Data provided by the Union industry and verified questionnaire replies of the sampled Union producers

(209) The sales volume of the like product by the Union industry over the period considered and the market share did not follow the increase of the Union consumption. In particular, in 2019 the Union industry did not benefit from the increase in consumption, contrary to the imports from India.

(210) Following final disclosure, Tata Metaliks Limited claimed that the market share of the Union industry remained high at around 85 % and increased in the review investigation period in comparison with previous years. The volume of the Union sales was also consistently above the year 2017. The volume in the review investigation period could have been higher without the impact of the COVID-19 crisis. The party considered that the Commission's conclusion did not reflect the factual situation.

(211) The Commission concluded that the Union industry did not benefit from a high market share. As explained in recital (234), the sampled Union producers were lossmaking during the entire period considered, due to the substantial price pressure from the Indian imports (see recital (245)). Also, as explained in recital (209) the Union market share did not follow the increase of the Union consumption and, unlike imports from India, Union sales did not benefit from the increase in the consumption in 2019. Therefore, the claim was rejected.

4.4.2.3. Growth

(212) During the period considered, the Union consumption increased by 3 % whereas the volume of sales to unrelated customers in the Union increased by 2 %. Consequently, despite the increase in consumption, the market share of the Union industry slightly decreased over the period considered.

4.4.2.4. Employment and productivity

(213) Employment and productivity developed over the period considered as follows:

Table 7

Employment and productivity

	2017	2018	2019	Review Investigation Period
Number of employees	[1 820 – 2 540]	[1 820 – 2 540]	[1 810 – 2 530]	[1 700 – 2 390]
Index	*100*	*100*	*99*	*93*
Productivity (tonne/employee)	[162 – 226]	[179 – 250]	[173 – 242]	[157 – 220]
Index	*100*	*110*	*107*	*97*

Source: Data provided by the Union industry and verified questionnaire replies of the sampled Union producers

(214) The number of employees of the Union industry engaged in the production of the product concerned remained stable during the period 2017-2018 and decreased by around 6 % during the period 2019-2020.

(215) The productivity of the Union industry's workforce, measured as output (tonnes) per employee, increased by 10 % over the period 2017-2018 and decreased by 13 % during the period 2018-2020. This can be explained as the combined effect of:

— A production stoppage at the production site of one main Union producer, leading to the lower production from December 2019 to February 2020, and;

— Less production by the Union producers during the second quarter of 2020, as a result of the COVID-19 pandemic which was not matched with the number of employees that were laid off.

4.4.2.5. Magnitude of the amount of subsidisation and recovery from past subsidy

(216) As explained in recital (193), there was limited cooperation from exporting producers from India.

(217) The injury indicators show that, notwithstanding the anti-subsidy measures in force since 2016, which resulted in some relief and improved performance initially, the economic situation of the Union industry remained injurious. Thus, no recovery from the past subsidization could be established.

(218) The amount of subsidisation was significantly above the de minimis level. The impact of the magnitude of the actual amount of subsidisation on the Union industry was substantial, given the volume and prices of imports from India.

(219) Continuous unfair pricing by exporters from India made it also impossible for the Union industry to recover from the past subsidised practices.

(220) Following final disclosure, Tata Metaliks Limited claimed that there is no absolute increase in the volume of Indian imports and these imports had only around 15 % market share. Moreover, the interested party pointed out that the Union industry's economic performance improved after the imposition of the initial measures and decreased thereafter. Therefore, the Indian imports did not cause injury to the Union industry.

(221) The Commission observed that the interested party did not substantiate its claim that the Union industry's economic performance improved after the imposition of the initial measures. As mentioned in recital (234), the profitability of the sampled Union producers was negative during the entire period considered. Therefore, the claim was rejected.

4.4.3. *Microeconomic indicators*

4.4.3.1. Prices and factors affecting prices

(222) 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 8

Sales prices in the Union and unit cost

	2017	2018	2019	Review Investigation Period
Average unit sales price in the Union on the total market (EUR/tonne)	[950 – 1 110]	[960 – 1 130]	[1 020 – 1 190]	[1 020 – 1 200]
Index	*100*	*101*	*107*	*107*
Unit cost of production (EUR/tonne)	[1 000 – 1 100]	[900 – 1 100]	[1 000 – 1 100]	[1 000 – 1 200]
Index	*100*	*97*	*101*	*105*

Source: verified questionnaire replies of the sampled Union producers

(223) The Union industry's average unit selling price to unrelated customers in the Union increased by 7 % over the period considered reflecting the increase of the unit cost of production (5 %).

(224) Following final disclosure, Tata Metaliks Limited claimed that the alleged decrease in the landed prices showed that the imports are not causing any price suppression or depression.

(225) The Commission observed that the interested party did not substantiate its claim how the landed prices, which have undercut the Union prices by around 40 %, during the period considered did not cause any price suppression or depression to the Union producers. Therefore, the claim was rejected.

4.4.3.2. Labour costs

(226) The average labour costs of the sampled Union producers developed over the period considered as follows:

Table 9

Average labour costs per employee (EUR/employee)

	2017	2018	2019	Review Investigation Period
Average labour costs per employee	[56 000 – 66 000]	[57 000 – 66 000]	[57 000 – 67 000]	[53 000 – 62 000]
Index (2017=100)	*100*	*100*	*101*	*94*

Source: verified questionnaire replies of the sampled Union producers

(227) The average labour costs per employee remained stable until 2019 and dropped by 6 % over the period considered. Within the review investigation period, the average labour costs per employee decreased as the French State financed the unemployment due to COVID-19 shut-down.

(228) Following final disclosure, Tata Metaliks Limited noted that there is no injury to the Union industry under this parameter.

(229) The Commission recalled that as explained in recital (227) above the decrease in average labour costs per employee was due to extraordinary funding received from the French State in the review investigation period. Consequently, this claim was rejected.

4.4.3.3. Inventories

(230) Stock levels of the sampled Union producers developed over the period considered as follows:

Table 10

Inventories

	2017	2018	2019	Review Investigation Period
Closing stocks (in 1 000 tonnes)	[87 – 102]	[77 – 90]	[84 – 98]	[68 – 79]
Index (2017=100)	*100*	*88*	*95*	*77*
Closing stocks as a percentage of production in %)	[20 – 25]	[15 – 17]	[18 – 20]	[18 – 20]
Index (2017=100)	*100*	*79*	*89*	*85*

(231) The level of closing stocks of the sampled Union producers remained stable in relation with the production.

(232) Following final disclosure, Tata Metaliks Limited claimed that the inventory decreased significantly during the review investigation period, showing that the Union industry focussed on reducing its production. The interested party claimed that the inventory should have increased instead in case of being impacted by imports from India.

(233) As seen in recital (203), the decrease in the inventory observed during the review investigation period by the party was accompanied by the decrease in the Union production. Moreover, the Commission did not find any correlation between the decrease in the inventory observed mainly during the review investigation period and the imports from India as the impact of the imports from India was observed not only during the review investigation period but through the entire period considered. Therefore, the claim was rejected.

4.4.3.4. Profitability, cash flow, investments, return on investments and ability to raise capital

(234) Profitability, cash flow, investments and return on investments of the sampled Union producers developed over the period considered as follows:

Table 11

Profitability, cash flow, investments and return on investments

	2017	2018	2019	Review Investigation Period
Profitability of sales in the Union to unrelated customers (in % of sales)	[- 5 – - 9]	[- 1 – - 5]	[- 1 – - 5]	[- 3 – - 7]
Index (2017=100)	*- 100*	*- 33*	*- 36*	*- 69*
Cash flow (million EUR)	[- 31 – - 37]	[- 46 – - 54]	[- 73 – - 85]	[- 43 – - 51]
Index (2017=100)	*- 100*	*- 145*	*- 231*	*- 138*
Investment (million EUR)	[20 – 24]	[30 – 36]	[33 – 39]	[15 – 18]
Index (2017=100)	*100*	*149*	*161*	*73*
Return on investments (in %)	[- 6 – - 8]	[- 7 —- 9]	[- 10 —- 12]	[- 5 – - 7]
Index (2017=100)	*- 100*	*- 131*	*- 194*	*- 106*

Source: verified questionnaire replies of the sampled Union producers

(235) The Commission established the profitability of the sampled Union producers by expressing the pre-tax net profit of the sales of the like product to unrelated customers in the Union as a percentage of the turnover of those sales. The profitability of the sampled producers was negative during the period considered, going from around [-5 – -9] % in 2017 to [-3 – -7] % in the review investigation period.

(236) The net cash flow is the ability of the Union producers to self-finance their activities. The trend in net cash flow developed remained negative over the entire period considered with the exception of 2018.

(237) The investments (mainly focused on upgrades of the production equipment, increase of quality, productivity and flexibility in the production process) increased in over the period 2017-2019 and decreased to its lowest in 2020.

(238) The return on investments is the profit in percentage of the net book value of investments. It developed a similar trend as profitability, sharply decreased in 2019 and then improved marginally in 2020. It remained negative and deteriorated by 53 % during the period considered.

4.5. **Conclusion on injury**

(239) Despite the countervailing measures in force, Indian imports of ductile pipes remained substantial with stable market shares between around [9 – 18 %] % during the period considered. During the review investigation period, the market share was [10 – 14] %. At the same time, the import prices showed a decreasing trend and undercut the Union prices on average by [30 – 45] % during the review investigation period, despite the existence of the countervailing and anti-dumping measures.

(240) The development of the macroeconomic indicators, in particular production and sales volume, employment and productivity, showed stable or slightly decreasing trends. The market share of the Union industry decreased in the review investigation period reaching a similar level than in 2017. The increase of market share in 2018, despite relatively stable sales volumes, was due to the decreasing consumption during the same period. Although the Union industry largely managed to maintain its sales volume and market share, this was at the expense of its profitability and other financial indicators as explained in the following recital.

(241) Even though the average unit sales price of the Union producers increased by 7 % during the period considered, which was higher than the increase by 5 % of the cost of production, the Union industry still did not manage to achieve sustainable profit margins. Due to the price pressure of the Indian imports, the Union industry could not increase its sales prices to cover the average cost of production and was therefore loss making throughout the period considered (with the exception of 2018 where it was close to breakeven). Thus, the Indian imports also exercised significant price suppression on the Union producers' sales during the review investigation period. Other financial indicators (cash flow, return on investment) followed a similar trend as the profitability, and showed negative or low values during the period considered. Investments, though showing some increase in 2017 and 2018, were at generally low levels as well.

(242) Given the above, the Commission concluded that the Union industry suffered material injury.

5. **CAUSATION**

(243) In accordance with Article 8(5) of the basic Regulation, the Commission examined whether the subsidised imports from India of the product concerned caused material injury to the Union industry. In accordance with Article 8(6) of the basic Regulation, the Commission also examined whether other known factors could at the same time have injured the Union industry. The Commission ensured that any possible injury caused by factors other than the subsidised imports from India of the product concerned was not attributed to the subsidised imports.

5.1. **Effects of the subsidised imports**

(244) First, the Commission examined whether there was a causal link between the subsidized imports and the injury suffered by the Union industry.

(245) Indian imports of ductile pipes remained substantial with market shares above 10 % during the entire period considered and at low price levels during the review investigation period, despite the countervailing and anti-dumping measures in force. Due to the substantial price pressure from the Indian imports, the Union industry could not pass on to their clients their costs of production which led to losses during the entire period considered. The Commission therefore concluded that the volume and price levels of the imports under investigation caused material injury.

(246) Following final disclosure, Tata Metaliks Limited claimed that the decline in the Union industry's financial performance was due to factors other than allegedly subsidised imports.

(247) The Commission observed that the party did not bring forward new elements which could revert its conclusion. Therefore, the claim was rejected.

(248) Tata Metaliks Limited also claimed that there was no correlation between the evolution of the imports and the level of losses reported by the Union industry, and thus there was no causal link between the imports and the Union industry's financial performance.

(249) As mentioned in recital (194), the Commission found that the import prices from India undercut significantly the Union industry prices. Moreover, the Commission observed that the party did not bring forward any evidence demonstrating that other factors impacted the Union industry. Therefore, the claim was rejected.

(250) Furthermore, Tata Metaliks Limited claimed that it was not able to examine the correlation between the price undercutting and the economic performance of the Union industry as the Commission did not disclose price undercutting calculations for the period considered.

(251) The Commission noted that the information necessary to establish the existence of a price undercutting was provided to the party. Regarding the review investigation period, the findings with regard to price undercutting were set out in recitals (193) and (194) above. For the years 2017, 2018 and 2019, recital (191) provided the unit prices for Indian imports and recital (222) the weighted average unit sales prices of the sampled Union producers to unrelated customers. Therefore, the party had all the information, on the basis of which the Commission concluded the existence of undercutting. Therefore, the claim was rejected.

(252) Finally, the party claimed that the import volumes decreased between 2019 and the review investigation period. Therefore, the party concluded that there was no volume effect.

(253) The Commission observed that the imports from India in the review investigation period moved back to the levels of 2017. Moreover, the main impact of the imports from India was found at the level of the low prices, which resulted in significant pressure on the Union market prices. Therefore, the claim was rejected.

5.2. **Effects of other factors**

(254) The volumes imported from other third countries represented only between 2 %- 4 % of the market share in the review investigation period. As shown in the table 4, during the review investigation period, the average import price from third countries was 50 % higher than the average import price from India.

(255) As indicated in recital (42), one party claimed that general competitiveness issues should justify a finding of discontinuation or non-recurrence of injury. The party listed various factors, such as the decrease of the Union consumption of ductile pipes that fell since the Euro crisis which resulted in a decrease of public spending, difficulties in attracting staff, the maintenance of the dominant position, the pressure of cheaper Chinese imports on the bidding process for public procurement. Moreover, the party claimed that the plastic pipes are the first competitor of the Union industry as they are less expensive and thus attract a significant part of public tenders.

(256) Contrary to the party's claim, the Union consumption and the market share of the Union industry increased, while employment remained stable during the period considered. Moreover, there is no evidence that the plastic pipes gained market shares during the period considered against ductile pipes. It should be also noted that plastic pipes are not in competition for the large pipe diameters. Consequently, these factors did not contribute to the injury found. In addition, Chinese imports were made at significantly higher prices than Indian imports, and in far lower volumes. Finally, the party failed to specify how the dominant position, if any, could have caused injury. Therefore, these claims were rejected.

(257) Regarding the export performance of the Union industry, the volumes of exports developed over the period considered as follows:

Table 12

Export performance of the Union industry

	2017	2018	2019	Review Investigation Period
Export volume (in 1 000 tonnes)	[119 – 140]	[147 – 172]	[102 – 119]	[66 – 77]
Index (2017=100)	*100*	*122*	*85*	*55*
Average price (EUR/tonne)	[760 – 890]	[750 – 880]	[840 – 980]	[890 – 1 040]
Index (2017=100)	*100*	*99*	*110*	*117*

Source: the applicant for volume and verified questionnaire replies for values

(258) During the period considered, the volumes dropped by half. Although the prices of the exports increased by 17 %, this was not sufficient to cover the costs of production over the entire period considered as illustrated in table 8 above. Therefore, the exports did not attenuate the causal link between the exports subsidized from India and the injury found.

(259) Possible other factors, such as the COVID-19 crisis, were also examined, but none of them could attenuate the causal link between the subsidised imports and the material injury suffered by the Union industry. The Commission distinguished and separated the effects of all known factors on the situation of the Union industry from the injurious effects of the subsidised imports.

(260) Following final disclosure, Tata Metaliks Limited claimed that the COVID-19 crisis impacted negatively the economic situation of the Union industry in the first semester of 2020. The party stated that the initial lockdowns imposed for public health measures forced many construction projects to a halt.

(261) As described above, the Union market for ductile pipes during the review investigation period was not significantly impacted by the lockdowns due to COVID-19 crisis. The total Union consumption of that year was similar to the year 2018. Therefore, the claim was rejected.

(262) In light of the above considerations, the Commission concluded that the subsidised imports from India caused material injury to the Union industry and that other factors, considered individually or collectively, did not attenuate the causal link between the subsidised imports and the material injury. The injury is clear in particular in the evolution of production, capacity utilisation, sales volume in the Union market, market share, productivity, profitability and return on investments.

6. LIKELIHOOD OF CONTINUATION OF INJURY IF THE MEASURES WERE REPEALED

(263) The Commission concluded in recital (242) that the Union industry suffered material injury during the review investigation period. Therefore, the Commission assessed, in accordance with Article 18(2) of the basic Regulation, whether there would be a likelihood of continuation of injury caused by the subsidized imports from India if the measures were allowed to lapse.

(264) In this respect the following elements were analysed by the Commission: the production capacity and spare capacity in India, relationship between prices in the Union and the Indian prices; the attractiveness of the Union market and the impact of potential imports from India on the Union industry's situation should the measures lapse.

6.1. **The production capacity, spare capacity in India and the attractiveness of the Union market**

(265) As already described in recitals (168) to (172), the spare capacity available in India represented around 500 000 tonnes yearly, which exceeds the consumption of the product concerned on the Union market, which amounted in the review investigation period to [388 000 to 454 000] tonnes. Moreover, Indian producers planned to invest in new production capacity. Thus, for the next years there will be an excess of the supply over demand on the Indian market. Consequently, this will represent further incentive of the Indian producers to focus more and more on export markets.

(266) The available and future spare capacity of the Indian exporting producers could be used to produce the product concerned to export to the Union market if measures were allowed to lapse.

(267) Following final disclosure, Tata Metaliks Limited claimed that there was no evidence that the alleged spare production capacity in India will be necessarily used for production of ductile pipes and exported as a result of excess of supply over demand in India. Moreover, the Commission did not examine the attractiveness of other export markets and did not analyse any post review investigation period data. Finally, the party claimed that the any determination regarding likelihood of continuation of subsidy and injury has to be based on positive evidence ([35]). Therefore, the party concluded that the conclusion on likelihood was incorrect.

(268) The Commission observed that the party confirmed the existence of spare capacity in India. In addition, as explained in recitals (168) to (172) above, the Commission established the spare capacity in question specifically for the product concerned. Also, as explained in the same recitals, the Commission established that in the long run the demand on the Indian market will subside while the party itself acknowledged that it had plans to expand its sales to the Union market. Furthermore, as described below in Section 6.2, the Union market was considered attractive for Indian producers, and it could, therefore, be concluded that available spare capacities in India would, at least partially, be used to increase exports to the Union market. Therefore, the claim was rejected.

(269) Regarding the positive evidence required under the case-law mentioned, the Commission considered that it complied with all requirements of the existing jurisprudence and its assessment and conclusion of the likelihood of continuation of subsidisation and injury were based on positive evidence, collected during the investigation. Consequently, the claim was rejected.

(270) In view of the above, the Commission concluded that the expiry of the measures would in all likelihood result in a significant increase of subsidized imports from India at prices undercutting the Union industry prices, and therefore further aggravating the injury suffered by the Union industry. As a consequence, the viability of the Union industry would be at serious risk.

6.2. **Attractiveness of the Union market**

(271) The Union market is attractive in terms of its size and prices. As mentioned in recital (176), it is by far the most important export market for Indian producers of ductile pipes, accounting for 40 % of their total exports. Exports to the Union are 25 times higher than exports to its second largest export market, which is Qatar accounting for 2 % of Indian exports of ductile pipes. Also, Indian import prices to the Union market were slightly higher than those other countries during the review investigation period.

(272) Despite the existing measures, Indian exporting producers sold to the Union a substantial volume of ductile pipes during the period considered and still had considerable market share during the review investigation period ([10 – 14] %). These were sold at a price which, even including the countervailing duties, significantly undercut the Union industry sales prices on the Union market.

([35]) United States – Sunset reviews of Anti-dumping Measures on Oil Country Tubular Goods From Argentina (WT/DS/268/AB/R).

(273) The Union market is hence considered attractive for Indian producers, and it can be concluded that available spare capacities in India would, at least partially, be used to increase exports to the Union market. In this respect, it is recalled that the market share of India imports was at high levels [17 – 19] % in the investigation period of the original investigation, i.e. prior to the imposition of countervailing duties.

6.3. **Conclusion on likelihood of a continuation and/or recurrence of injury**

(274) On this basis, and noting the past and current injurious situation of the Union industry, the absence of measures would in all likelihood result in a significant increase of subsidized imports from India of the product concerned at injurious prices, leading to even higher losses for the Union producers. Therefore, the Commission concluded that, should the measures be allowed to lapse, this would in all likelihood result in a significant increase of subsidised imports from India at injurious prices and material injury would be likely to continue.

7. **UNION INTEREST**

(275) In accordance with Article 31 of the basic Regulation, the Commission examined whether maintaining the existing anti-subsidy measures would be against the interest of the Union as whole. The determination of the Union interest was based on an appreciation of all the various interests involved, including those of the Union industry, importers, users and the public policy interests with respect to the product concerned as embodied in the Directive 2009/125/EC of the European Parliament and of the Council ([36]) ('EcoDesign Directive') and its product-specific Regulations. In line with the third sentence of Article 31(1) of the basic Regulation, special consideration was given to the need to protect the industry from the negative effects of injurious subsidization.

(276) All interested parties were given the opportunity to make their view known pursuant to Article 31(2) of the basic Regulation.

7.1. **Interest of the Union industry**

(277) The Union industry is located in three Member States (France, Germany and Spain), and employs directly over 2 200 employees in relation to the product concerned.

(278) The anti-subsidy measures in force did not prevent subsidised imports from India from entering the Union market and the Union industry suffered material injury during the review investigation period.

(279) On the basis of the above, the Commission established that there is a strong likelihood of continuation of injury caused by imports from this country should the measures expire. The influx of substantial volumes of subsidized imports from India would cause further injury to the Union industry.

(280) Following final disclosure, Tata Metaliks Limited claimed the Union industry has been protected for over six years while having a market share of 85 %. Thus, it is unlikely for the Union industry to be impacted if the existing measures are repealed. In the event the Union it is, it may request the Commission to start a new investigation.

([36]) Directive 2009/125/EC of the European Parliament and of the Council of 21 October 2009 establishing a framework for the setting of Ecodesign requirements for energy-related products (OJ L 285, 31.10.2009, p. 10). The EcoDesign Directive is implemented through product-specific Regulations directly applicable in all Union countries. The EcoDesign Regulation covers the new EcoDesign requirements with regard to small, medium and large power transformers. Tier 1 of the EcoDesign Regulation entered into force on 1 July 2015, and Tier 2 on 1 July 2021. The Tier 2 requirements are more stringent than those for Tier 1. Although the full effects cannot yet be assessed on such a short period of time since the entry into force of Tier 2, it is generally believed that these Tier 2 requirements will require the highest quality types of GOES to design and manufacture transformers in a cost-efficient manner and within the required space limitations.

(281) Contrary to the claim made by the interested party, the Commission established that the Union industry is still suffering from material injury caused by the subsidised imports from India, based on the analysis of all relevant injury indicators including the development of Union Industry's market share. The Commission concluded that the injury is likely to continue and deteriorate should the measures be allowed to lapse. Consequently, the claim was rejected.

(282) The Commission thus concluded that the maintenance of the anti-subsidy measures against India is in the interest of the Union industry.

7.2. **Interest of unrelated importers, traders and users**

(283) The Commission contacted all known unrelated importers, traders and users. None of them replied to the Commission's questionnaire.

(284) The Commission did not receive any comments indicating that the maintenance of the measures would have a significant negative impact on the importers and users, outweighing the positive impact of the measures on the Union industry.

7.3. **Conclusion on Union interest**

(285) On the basis of the above, the Commission concluded that there were no compelling reasons of the Union interest against the maintenance of the existing measures on imports of the product concerned originating in India.

8. **ANTI-SUBSIDY MEASURES**

(286) On the basis of the conclusions reached by the Commission on continuation of subsidy, continuation of injury and Union interest, the anti-subsidy measures on imports of tubes and pipes of ductile cast iron (also known as spheroidal graphite cast iron) from India should be maintained.

(287) After disclosure, Tata Metaliks Limited argued that a continuation of the measures should be considered as an exception and not the norm. It referred in particular to Article 18(1) of the basic Regulation and Article 21.3 of the ASCM Agreement, which state that a measure shall only remain in force as long as it is necessary and shall expire upon five years from its imposition. Since the duties have been extended pending this review, it argued that by the time this review would likely conclude, the duties would already have been in force for more than seven years. For this reason, it requested the Commission to terminate the investigation.

(288) The Commission recalled that the decision to continue the measures was based on a thorough assessment of all the facts found during the expiry review investigation in accordance with Article 18(2) of the basic Regulation. Therefore the continuation of the measures was neither automatic nor constituted a 'norm'. It thus rejected the claim that the measures should be terminated.

(289) To minimise the risks of circumvention due to the high difference in duty rates, special measures are needed to ensure the application of the individual countervailing duties. The companies with individual countervailing 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 countervailing duty applicable to 'all other companies'.

(290) While presentation of this invoice is necessary for the customs authorities of the Member States to apply the individual rates of countervailing 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.

(291) 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 23(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 countrywide duty.

(292) The individual company countervailing duty rates specified in this Regulation are exclusively applicable to imports of the product concerned originating in India 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 countervailing duty rates.

(293) After disclosure, Tata Metaliks Limited requested the Commission to assign it an individual countervailing margin. In the alternative, it considered the Commission should at least consider extending the individual countervailing rates assigned to the other cooperative producers of the product concerned from India in the original investigation to it in light of its cooperation with the Commission in this expiry review investigation.

(294) The Commission recalled that the objective of an expiry review investigation under Article 18(2) of the basic Regulation is solely to determine whether the existing measures are still necessary and does not allow for establishing individual duty rates for companies that did not cooperate in the original investigation. Such claims can only be addressed under review investigations pursuant to Article 19(3) or 19(4) of the basic Regulation. The request was therefore rejected.

(295) A company may request the application of these individual countervailing duty rates if it changes subsequently the name of its entity. The request must be addressed to the Commission ([37]). 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*.

(296) In view of Article 109 of Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council ([38]) 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.

(297) The measures provided for in this regulation are in accordance with the opinion of the Committee established by Article 15(1) Regulation (EU) 2016/1036,

HAS ADOPTED THIS REGULATION:

Article 1

1. A definitive anti-subsidy duty is hereby imposed on imports of tubes and pipes of ductile cast iron (also known as spheroidal graphite cast iron), with the exclusion of tubes and pipes of ductile cast iron without internal and external coating ('bare pipes'), currently falling under CN codes ex 7303 00 10 (TARIC code 7303 00 10 10) and ex 7303 00 90 (TARIC code 7303 00 90 10) and originating in India.

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

([38]) 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).

2. The rates of the definitive countervailing 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:

Company	Countervailing duty	TARIC additional code
Jindal Saw Limited	6,0 %	C054
Electrosteel Castings Ltd	9,0 %	C055
All other companies	9,0 %	C999

3. The application of the individual countervailing 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 tubes and pipes of ductile cast iron (also known as spheroidal graphite cast iron) sold for export to the European Union covered by this invoice was manufactured by (company name and address) (TARIC additional code) in India. 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

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 June 2022.

For the Commission
The President
Ursula VON DER LEYEN

COMMISSION IMPLEMENTING REGULATION (EU) 2022/928

of 15 June 2022

amending Annexes V and XIV to Implementing Regulation (EU) 2021/404 as regards the entries for Canada, the United Kingdom and the United States 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 Articles 230(1) and 232(1) and (3) 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) Canada notified the Commission of two outbreaks of highly pathogenic avian influenza in poultry: one outbreak is located in the province of British Columbia, Canada and another in the province of Ontario, Canada, and they were confirmed on 18 May 2022 by laboratory analysis (RT-PCR).

(6) In addition, Canada notified the Commission of one outbreak of highly pathogenic avian influenza in poultry located in the province of British Columbia, Canada, and it was confirmed on 22 May 2022 by laboratory analysis (RT-PCR).

(7) Moreover, Canada notified the Commission of one outbreak of highly pathogenic avian influenza in poultry located in the province of Saskatchewan, Canada, and it was confirmed on 26 May 2022 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).

(8) The United Kingdom notified the Commission of one outbreak of highly pathogenic avian influenza near Ludlow, Ludlow, Shropshire, United Kingdom, and it was confirmed on 1 June 2022 by laboratory analysis (RT-PCR).

(9) In addition, the United Kingdom notified the Commission of another outbreak of highly pathogenic avian influenza near Ludlow, Ludlow, Shropshire, United Kingdom, and it was confirmed on 7 June 2022 by laboratory analysis (RT-PCR).

(10) The United States notified the Commission of one outbreak of highly pathogenic avian influenza in poultry located in the state of Pennsylvania, United States, and it was confirmed on 2 June 2022 by laboratory analysis (RT-PCR).

(11) Following those outbreaks of highly pathogenic avian influenza, the veterinary authorities of Canada, the United Kingdom and the United States 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.

(12) Canada, the United Kingdom and the United States have submitted information to the Commission on the epidemiological situation on their territory and the measures they have 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 and in order to protect the animal health status of the Union, 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 Canada, the United Kingdom and the United States due to the recent outbreaks of highly pathogenic avian influenza should no longer be authorised.

(13) Moreover, the United Kingdom has submitted updated information on the epidemiological situation on its territory in relation to five outbreaks of highly pathogenic avian influenzain poultry establishments: two outbreaks near North Somercotes, East Lindsey, Lincolnshire England, United Kingdom, and they were confirmed on 28 December 2021 and 5 January 2022, two outbreaks near Louth, East Lindsey, Lincolnshire, England, United Kingdom, and they were confirmed on 31 December 2021 and 10 January 2022 and one outbreak near Lazonby, Eden, Cumbria, England, United Kingdom, and it was confirmed on 4 January 2022. The United Kingdom has also submitted information on the measures it has taken to prevent the further spread of that disease. In particular, following these outbreaks of highly pathogenic avian influenza, the United Kingdom has implemented a stamping out policy in order to control and limit the spread of that disease. In addition, the United Kingdom has completed the requisite cleaning and disinfection measures following the implementation of the stamping out policy on the infected poultry establishments on its territory.

(14) The Commission has evaluated the information submitted by the United Kingdom and concluded that the highly pathogenic avian influenzaoutbreaks near North Somercotes, East Lindsey, Lincolnshire England, United Kingdom, near Louth, East Lindsey, Lincolnshire, England, United Kingdom and near Lazonby, Eden, Cumbria, England, United Kingdom in poultry establishments have been cleared and that there is no longer any risk associated with the entry into the Union of poultry commodities from the zones of the United Kingdom from which the entry into the Union of poultry commodities were suspended due to these outbreaks.

(15) Annexes V and XIV to Implementing Regulation (EU) 2021/404 should be therefore amended to take account of the current epidemiological situation as regards highly pathogenic avian influenza in Canada, the United Kingdom and the United States. Regulation (EU) 2021/404 should therefore be amended accordingly.

(16) Taking into account the current epidemiological situation in Canada, the United Kingdom and the United States as regards highly pathogenic avian influenza and the serious risk of its introduction into the Union, the amendments to be made to Implementing Regulation (EU) 2021/404 by this Regulation should take effect as a matter of urgency.

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

HAS ADOPTED THIS REGULATION:

Article 1

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 June 2022.

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) Part 1 is amended as follows:

(i) in the entry for Canada, the following rows for the zones CA-2.64 to CA-2.67 are added after the rows for the zone CA-2.63:

'**CA** Canada	CA-2.64	Breeding poultry other than ratites and productive poultry other than ratites	BPP	N, P1		18.5.2022	
		Breeding ratites and productive ratites	BPR	N, P1		18.5.2022	
		Poultry intended for slaughter other than ratites	SP	N, P1		18.5.2022	
		Ratites intended for slaughter	SR	N, P1		18.5.2022	
		Day-old chicks other than ratites	DOC	N, P1		18.5.2022	
		Day-old chicks of ratites	DOR	N, P1		18.5.2022	
		Less than 20 heads of poultry other than ratites	POU-LT20	N, P1		18.5.2022	
		Hatching eggs of poultry other than ratites	HEP	N, P1		18.5.2022	
		Hatching eggs of ratites	HER	N, P1		18.5.2022	
		Less than 20 hatching eggs of poultry other than ratites	HE-LT20	N, P1		18.5.2022	
	CA-2.65	Breeding poultry other than ratites and productive poultry other than ratites	BPP	N, P1		18.5.2022	
		Breeding ratites and productive ratites	BPR	N, P1		18.5.2022	
		Poultry intended for slaughter other than ratites	SP	N, P1		18.5.2022	
		Ratites intended for slaughter	SR	N, P1		18.5.2022	
		Day-old chicks other than ratites	DOC	N, P1		18.5.2022	
		Day-old chicks of ratites	DOR	N, P1		18.5.2022	

		Less than 20 heads of poultry other than ratites	POU-LT20	N, P1		18.5.2022	
		Hatching eggs of poultry other than ratites	HEP	N, P1		18.5.2022	
		Hatching eggs of ratites	HER	N, P1		18.5.2022	
		Less than 20 hatching eggs of poultry other than ratites	HE-LT20	N, P1		18.5.2022	
	CA-2.66	Breeding poultry other than ratites and productive poultry other than ratites	BPP	N, P1		22.5.2022	
		Breeding ratites and productive ratites	BPR	N, P1		22.5.2022	
		Poultry intended for slaughter other than ratites	SP	N, P1		22.5.2022	
		Ratites intended for slaughter	SR	N, P1		22.5.2022	
		Day-old chicks other than ratites	DOC	N, P1		22.5.2022	
		Day-old chicks of ratites	DOR	N, P1		22.5.2022	
		Less than 20 heads of poultry other than ratites	POU-LT20	N, P1		22.5.2022	
		Hatching eggs of poultry other than ratites	HEP	N, P1		22.5.2022	
		Hatching eggs of ratites	HER	N, P1		22.5.2022	
		Less than 20 hatching eggs of poultry other than ratites	HE-LT20	N, P1		22.5.2022	
	CA-2.67	Breeding poultry other than ratites and productive poultry other than ratites	BPP	N, P1		26.5.2022	
		Breeding ratites and productive ratites	BPR	N, P1		26.5.2022	
		Poultry intended for slaughter other than ratites	SP	N, P1		26.5.2022	
		Ratites intended for slaughter	SR	N, P1		26.5.2022	
		Day-old chicks other than ratites	DOC	N, P1		26.5.2022	

		Day-old chicks of ratites	DOR	N, P1		26.5.2022	
		Less than 20 heads of poultry other than ratites	POU-LT20	N, P1		26.5.2022	
		Hatching eggs of poultry other than ratites	HEP	N, P1		26.5.2022	
		Hatching eggs of ratites	HER	N, P1		26.5.2022	
		Less than 20 hatching eggs of poultry other than ratites	HE-LT20	N, P1		26.5.2022'	

(ii) in the entry for the United Kingdom, the rows for the zone GB-2.79 are replaced by the following:

'**GB** United Kingdom	GB-2.79	Breeding poultry other than ratites and productive poultry other than ratites	BPP	N, P1		28.12.2021	8.6.2022
		Breeding ratites and productive ratites	BPR	N, P1		28.12.2021	8.6.2022
		Poultry intended for slaughter other than ratites	SP	N, P1		28.12.2021	8.6.2022
		Ratites intended for slaughter	SR	N, P1		28.12.2021	8.6.2022
		Day-old chicks other than ratites	DOC	N, P1		28.12.2021	8.6.2022
		Day-old chicks of ratites	DOR	N, P1		28.12.2021	8.6.2022
		Less than 20 heads of poultry other than ratites	POU-LT20	N, P1		28.12.2021	8.6.2022
		Hatching eggs of poultry other than ratites	HEP	N, P1		28.12.2021	8.6.2022
		Hatching eggs of ratites	HER	N, P1		28.12.2021	8.6.2022
		Less than 20 hatching eggs of poultry other than ratites	HE-LT20	N, P1		28.12.2021	8.6.2022'

(iii) in the entry for the United Kingdom, the rows for zone GB-2.82 are replaced by the following:

'**GB** United Kingdom	GB-2.82	Breeding poultry other than ratites and productive poultry other than ratites	BPP	N, P1		31.12.2021	8.6.2022
		Breeding ratites and productive ratites	BPR	N, P1		31.12.2021	8.6.2022
		Poultry intended for slaughter other than ratites	SP	N, P1		31.12.2021	8.6.2022
		Ratites intended for slaughter	SR	N, P1		31.12.2021	8.6.2022
		Day-old chicks other than ratites	DOC	N, P1		31.12.2021	8.6.2022
		Day-old chicks of ratites	DOR	N, P1		31.12.2021	8.6.2022
		Less than 20 heads of poultry other than ratites	POU-LT20	N, P1		31.12.2021	8.6.2022
		Hatching eggs of poultry other than ratites	HEP	N, P1		31.12.2021	8.6.2022
		Hatching eggs of ratites	HER	N, P1		31.12.2021	8.6.2022
		Less than 20 hatching eggs of poultry other than ratites	HE-LT20	N, P1		31.12.2021	8.6.2022'

(iv) in the entry for the United Kingdom, the rows for zones GB-2.85 and GB-2.86 are replaced by the following:

'**GB** United Kingdom	GB-2.85	Breeding poultry other than ratites and productive poultry other than ratites	BPP	N, P1		4.1.2022	7.6.2022
		Breeding ratites and productive ratites	BPR	N, P1		4.1.2022	7.6.2022
		Poultry intended for slaughter other than ratites	SP	N, P1		4.1.2022	7.6.2022
		Ratites intended for slaughter	SR	N, P1		4.1.2022	7.6.2022
		Day-old chicks other than ratites	DOC	N, P1		4.1.2022	7.6.2022
		Day-old chicks of ratites	DOR	N, P1		4.1.2022	7.6.2022
		Less than 20 heads of poultry other than ratites	POU-LT20	N, P1		4.1.2022	7.6.2022

		Hatching eggs of poultry other than ratites	HEP	N, P1		4.1.2022	7.6.2022
		Hatching eggs of ratites	HER	N, P1		4.1.2022	7.6.2022
		Less than 20 hatching eggs of poultry other than ratites	HE-LT20	N, P1		4.1.2022	7.6.2022
	GB-2.86	Breeding poultry other than ratites and productive poultry other than ratites	BPP	N, P1		5.1.2022	8.6.2022
		Breeding ratites and productive ratites	BPR	N, P1		5.1.2022	8.6.2022
		Poultry intended for slaughter other than ratites	SP	N, P1		5.1.2022	8.6.2022
		Ratites intended for slaughter	SR	N, P1		5.1.2022	8.6.2022
		Day-old chicks other than ratites	DOC	N, P1		5.1.2022	8.6.2022
		Day-old chicks of ratites	DOR	N, P1		5.1.2022	8.6.2022
		Less than 20 heads of poultry other than ratites	POU-LT20	N, P1		5.1.2022	8.6.2022
		Hatching eggs of poultry other than ratites	HEP	N, P1		5.1.2022	8.6.2022
		Hatching eggs of ratites	HER	N, P1		5.1.2022	8.6.2022
		Less than 20 hatching eggs of poultry other than ratites	HE-LT20	N, P1		5.1.2022	8.6.2022’

(v) in the entry for the United Kingdom, the rows for zone GB-2.88 are replaced by the following:

‘**GB** United Kingdom	GB-2.88	Breeding poultry other than ratites and productive poultry other than ratites	BPP	N, P1		10.1.2022	8.6.2022
		Breeding ratites and productive ratites	BPR	N, P1		10.1.2022	8.6.2022
		Poultry intended for slaughter other than ratites	SP	N, P1		10.1.2022	8.6.2022
		Ratites intended for slaughter	SR	N, P1		10.1.2022	8.6.2022

		Day-old chicks other than ratites	DOC	N, P1		10.1.2022	8.6.2022
		Day-old chicks of ratites	DOR	N, P1		10.1.2022	8.6.2022
		Less than 20 heads of poultry other than ratites	POU-LT20	N, P1		10.1.2022	8.6.2022
		Hatching eggs of poultry other than ratites	HEP	N, P1		10.1.2022	8.6.2022
		Hatching eggs of ratites	HER	N, P1		10.1.2022	8.6.2022
		Less than 20 hatching eggs of poultry other than ratites	HE-LT20	N, P1		10.1.2022	8.6.2022’

(vi) in the entry for the United Kingdom, the following rows for the zone GB-2.123 and GB-2.124 are added after the rows for the zone GB-2.122:

‘**GB** United Kingdom	GB-2.123	Breeding poultry other than ratites and productive poultry other than ratites	BPP	N, P1		1.6.2022	
		Breeding ratites and productive ratites	BPR	N, P1		1.6.2022	
		Poultry intended for slaughter other than ratites	SP	N, P1		1.6.2022	
		Ratites intended for slaughter	SR	N, P1		1.6.2022	
		Day-old chicks other than ratites	DOC	N, P1		1.6.2022	
		Day-old chicks of ratites	DOR	N, P1		1.6.2022	
		Less than 20 heads of poultry other than ratites	POU-LT20	N, P1		1.6.2022	
		Hatching eggs of poultry other than ratites	HEP	N, P1		1.6.2022	
		Hatching eggs of ratites	HER	N, P1		1.6.2022	
		Less than 20 hatching eggs of poultry other than ratites	HE-LT20	N, P1		1.6.2022	
	GB-2.124	Breeding poultry other than ratites and productive poultry other than ratites	BPP	N, P1		7.6.2022	

		Breeding ratites and productive ratites	BPR	N, P1		7.6.2022	
		Poultry intended for slaughter other than ratites	SP	N, P1		7.6.2022	
		Ratites intended for slaughter	SR	N, P1		7.6.2022	
		Day-old chicks other than ratites	DOC	N, P1		7.6.2022	
		Day-old chicks of ratites	DOR	N, P1		7.6.2022	
		Less than 20 heads of poultry other than ratites	POU-LT20	N, P1		7.6.2022	
		Hatching eggs of poultry other than ratites	HEP	N, P1		7.6.2022	
		Hatching eggs of ratites	HER	N, P1		7.6.2022	
		Less than 20 hatching eggs of poultry other than ratites	HE-LT20	N, P1		7.6.2022’	

(vii) in the entry for the United States, the following rows for the zone US-2.224 are added after the rows for the zone US-2.223:

‘**US** United States	US-2.224	Breeding poultry other than ratites and productive poultry other than ratites	BPP	N, P1		2.6.2022	
		Breeding ratites and productive ratites	BPR	N, P1		2.6.2022	
		Poultry intended for slaughter other than ratites	SP	N, P1		2.6.2022	
		Ratites intended for slaughter	SR	N, P1		2.6.2022	
		Day-old chicks other than ratites	DOC	N, P1		2.6.2022	
		Day-old chicks of ratites	DOR	N, P1		2.6.2022	
		Less than 20 heads of poultry other than ratites	POU-LT20	N, P1		2.6.2022	
		Hatching eggs of poultry other than ratites	HEP	N, P1		2.6.2022	
		Hatching eggs of ratites	HER	N, P1		2.6.2022	
		Less than 20 hatching eggs of poultry other than ratites	HE-LT20	N, P1		2.6.2022’	

(b) Part 2 is amended as follows:

(i) in the entry for Canada, the following descriptions of the zones CA-2.64 to CA-2.67 are added after the description of the zone CA-2.63:

'Canada	CA-2.64	British Columbia: BC-IP9: Latitude 49.04 Longitude -122.38 BC-IP11: Latitude 49.04 Longitude -122.39 The municipalities involved are: 3km PZ: Aldergrove, Aberdeen and West Abbotsford 10km SZ: Langley Township, Bradner, Townline Hill, Abbotsford and South Poplar
	CA-2.65	Ontario - Latitude 44.3 Longitude -79.25 The municipalities involved are: 3km PZ: Brighton Beach, Balfour Beach and Orchard Grove 10km SZ: Stroud, Innisfil, Nantyr, Alcona, Georgina, Filey Beach, Baldwin, Keswick, Brown Hill, Ravenshoe, Beverley Isles, Deerhurst, Fennell and Gilford Beach
	CA-2.66	British Columbia - Latitude 49.65 Longitude -120.41 The municipalities involved are: 3km PZ: Bankeir 10km SZ: Jellicoe
	CA-2.67	Saskatchewan - Latitude 50.51 Longitude -103.71 The municipalities involved are: 3km PZ: Dingley 10km SZ: Indian Head and Sintaluta'

(ii) in the entry for the United Kingdom, the following descriptions of the zones GB-2.123 and GB-2.124 are added after the description of the zone GB-2.122:

'United Kingdom	GB-2.123	Near Ludlow, Ludlow, Shropshire, England, United Kingdom: The area contained with a circle of a radius of 10km, centred on WGS84 dec, coordinates N52.32 and W2.72.
	GB-2.124	Near Ludlow, Ludlow, Shropshire, England, United Kingdom: The area contained with a circle of a radius of 10km, centred on WGS84 dec, coordinates N52.35 and W2.63.'

(iii) in the entry for the United States, the following description of the zone US-2.224 is added after the description of the zone US-2.223:

'United States	US-2.224	State of Pennsylvania - Berks 10 Berks County: A circular zone of a 10 km radius starting with North point (GPS coordinates: 76.1349705°W 40.5745889°N).'

(2) in Annex XIV, Part 1 is amended as follows:

(i) in the entry for Canada, the following rows for the zones CA-2.64 to CA-2.67 are added after the rows for the zone CA-2.63:

'**CA** Canada	CA-2.64	Fresh meat of poultry other than ratites	POU	N, P1		18.5.2022	
		Fresh meat of ratites	RAT	N, P1		18.5.2022	
		Fresh meat of game birds	GBM	P1		18.5.2022	
	CA-2.65	Fresh meat of poultry other than ratites	POU	N, P1		18.5.2022	
		Fresh meat of ratites	RAT	N, P1		18.5.2022	
		Fresh meat of game birds	GBM	P1		18.5.2022	
	CA-2.66	Fresh meat of poultry other than ratites	POU	N, P1		22.5.2022	
		Fresh meat of ratites	RAT	N, P1		22.5.2022	
		Fresh meat of game birds	GBM	P1		22.5.2022	
	CA-2.67	Fresh meat of poultry other than ratites	POU	N, P1		26.5.2022	
		Fresh meat of ratites	RAT	N, P1		26.5.2022	
		Fresh meat of game birds	GBM	P1		26.5.2022'	

(ii) in the entry for the United Kingdom, the rows for the zone GB-2.79 are replaced by the following:

'**GB** United Kingdom	GB-2.79	Fresh meat of poultry other than ratites	POU	N, P1		28.12.2021	8.6.2022
		Fresh meat of ratites	RAT	N, P1		28.12.2021	8.6.2022
		Fresh meat of game birds	GBM	P1		28.12.2021	8.6.2022'

(iii) in the entry for the United Kingdom, the rows for the zone GB-2.82 are replaced by the following:

‘**GB** United Kingdom	GB-2.82	Fresh meat of poultry other than ratites	POU	N, P1		31.12.2021	8.6.2022
		Fresh meat of ratites	RAT	N, P1		31.12.2021	8.6.2022
		Fresh meat of game birds	GBM	P1		31.12.2021	8.6.2022’

(iv) in the entry for the United Kingdom, the rows for the zones GB-2.85 and GB-2.86 are replaced by the following:

‘**GB** United Kingdom	GB-2.85	Fresh meat of poultry other than ratites	POU	N, P1		4.1.2022	7.6.2022
		Fresh meat of ratites	RAT	N, P1		4.1.2022	7.6.2022
		Fresh meat of game birds	GBM	P1		4.1.2022	7.6.2022
	GB-2.86	Fresh meat of poultry other than ratites	POU	N, P1		5.1.2022	8.6.2022
		Fresh meat of ratites	RAT	N, P1		5.1.2022	8.6.2022
		Fresh meat of game birds	GBM	P1		5.1.2022	8.6.2022’

(v) in the entry for the United Kingdom, the rows for the zone GB-2.88 are replaced by the following:

‘**GB** United Kingdom	GB-2.88	Fresh meat of poultry other than ratites	POU	N, P1		10.1.2022	8.6.2022
		Fresh meat of ratites	RAT	N, P1		10.1.2022	8.6.2022
		Fresh meat of game birds	GBM	P1		10.1.2022	8.6.2022’

(vi) in the entry for the United Kingdom, the following rows for the zones GB-2.123 and GB-2.124 are added after the rows for the zone GB-2.122:

‘**GB** United Kingdom	GB-2.123	Fresh meat of poultry other than ratites	POU	N, P1		1.6.2022	
		Fresh meat of ratites	RAT	N, P1		1.6.2022	
		Fresh meat of game birds	GBM	P1		1.6.2022	
	GB-2.124	Fresh meat of poultry other than ratites	POU	N, P1		7.6.2022	
		Fresh meat of ratites	RAT	N, P1		7.6.2022	
		Fresh meat of game birds	GBM	P1		7.6.2022’	

(vii) in the entry for the United States, the following rows for the zone US-2.224 is added after the rows for the zone US-2.223:

‘**US** United States	US-2.224	Fresh meat of poultry other than ratites	POU	N, P1		2.6.2022	
		Fresh meat of ratites	RAT	N, P1		2.6.2022	
		Fresh meat of game birds	GBM	P1		2.6.2022’	

III

(Other acts)

EUROPEAN ECONOMIC AREA

EFTA SURVEILLANCE AUTHORITY DECISION No 292/21/COL

of 15 December 2021

amending the procedural and substantive rules in the field of State aid by introducing new Guidelines on State aid to promote risk finance investments [2022/929]

THE EFTA SURVEILLANCE AUTHORITY ('ESA'),

Having regard to the Agreement on the European Economic Area ('the EEA Agreement'), in particular to Articles 61 to 63 and Protocol 26,

Having regard to the Agreement between the EFTA States on the Establishment of a Surveillance Authority and a Court of Justice ('the Surveillance and Court Agreement'), in particular to Article 24 and Article 5(2)(b),

Having regard to Protocol 3 to the Surveillance and Court Agreement ('Protocol 3'), in particular to Article 1(1) of Part I,

Whereas:

Under Article 24 of the Surveillance and Court Agreement, ESA is to give effect to the provisions of the EEA Agreement concerning State aid.

Under Article 5(2)(b) of the Surveillance and Court Agreement, ESA is to issue notices or guidelines on matters dealt with in the EEA Agreement, if that Agreement or the Surveillance and Court Agreement expressly so provides or if ESA considers it necessary.

Under Article 1(1) of Part I of Protocol 3, ESA is to keep under constant review all systems of aid existing in the EFTA States ([1]) and propose any appropriate measures required by the progressive development or by the functioning of the EEA Agreement.

On 6 December 2021, the European Commission adopted Guidelines on State aid to promote risk finance investments ('the Guidelines') ([2]).

The Guidelines are also of relevance for the European Economic Area ('EEA').

Uniform application of the EEA State aid rules is to be ensured throughout the EEA in line with the objective of homogeneity established in Article 1 of the EEA Agreement.

According to Section General Paragraph II of Annex XV to the EEA Agreement, ESA, after consultation with the European Commission, is to adopt acts corresponding to those adopted by the European Commission.

([1]) Article 1(b) of the Surveillance and Court Agreement states that 'the term "EFTA States" means the Republic of Iceland and the Kingdom of Norway and, under the conditions laid down by Article 1(2) of the Protocol Adjusting the Agreement between the EFTA States on the Establishment of a Surveillance Authority and a Court of Justice, the Principality of Liechtenstein'.

([2]) OJ C 508, 16.12.2021, p. 1.

The Guidelines may refer to certain European Union policy instruments and to certain European Union legal acts that have not been incorporated into the EEA Agreement. With a view to ensuring uniform application of State aid provisions and equal conditions of competition throughout the EEA, ESA will generally apply the same points of reference as the European Commission when assessing the compatibility of aid with the functioning of the EEA Agreement.

Having consulted the European Commission,

Having consulted the EFTA States,

HAS ADOPTED THIS DECISION:

Article 1

1. The substantive rules in the field of State aid are amended by introducing new Guidelines for State aid to promote risk finance investment. The Guidelines are annexed to this Decision and form an integral part of it.

2. The Guidelines replace the existing guidelines on State aid to promote risk finance investments ([3]) with effect from 1 January 2022.

Article 2

ESA applies the Guidelines with the following adaptations where applicable, including, but not limited to, the following:

(a) if there is a reference to 'Member State(s)', ESA reads it as a reference to 'EFTA State(s)' ([4]), or where appropriate 'EEA State(s)';

(b) if there is a reference to the 'European Commission', ESA reads it as a reference to the 'EFTA Surveillance Authority';

(c) if there is a reference to 'the Treaty' or 'TFEU', ESA reads it as a reference to 'the EEA Agreement';

(d) if there is a reference to Article 49 TFEU or sections of that Article, ESA reads it as a reference to Article 31 of the EEA Agreement and the corresponding sections of that Article;

(e) if there is a reference to Article 63 TFEU or sections of that Article, ESA reads it as a reference to Article 40 of the EEA Agreement and the corresponding sections of that Article;

(f) if there is a reference to Article 107 TFEU or sections of that Article, ESA reads it as a reference to Article 61 of the EEA Agreement and the corresponding sections of that Article;

(g) if there is a reference to Article 108 TFEU or sections of that Article, ESA reads it as a reference to Article 1 of Part I of Protocol 3 of the Surveillance and Court Agreement and the corresponding sections of that Article;

(h) if there is a reference to Council Regulation (EU) 2015/1589 ([5]), ESA reads it as a reference to Part II of Protocol 3 of the Surveillance and Court Agreement;

([3]) EFTA Surveillance Authority Decision No 117/14/COL of 12 March 2014 amending, for the ninety-fourth time the procedural and substantive rules in the field of State aid by adopting new Guidelines to promote risk finance investments and by prolonging the existing Guidelines on State aid to promote risk capital investments in small and medium-sized enterprises (OJ L 354, 11.12.2014, p. 62), and EEA Supplement No 74, 11.12.2014, p. 1, amended by EFTA Surveillance Authority Decision No 302/14/COL of 16 July 2014 amending for the ninety-ninth time the procedural and substantive rules in the field of State aid by modifying certain State aid Guidelines [2015/95] (OJ L 15, 22.1.2015, p. 103), and EEA Supplement No 4, 22.1.2015, p. 1, and amended by EFTA Surveillance Authority Decision No 90/20/COL of 15 July 2020 amending, for the one hundred and seventh time, the procedural and substantive rules in the field of State aid, by amending and prolonging certain State aid guidelines [2020/1576] (OJ L 359, 29.10.2020, p. 16) and EEA Supplement No 68, 29.10.2020, p. 4.

([4]) The 'EFTA States' refers to Iceland, Liechtenstein and Norway.

([5]) Council Regulation (EU) 2015/1589 of 13 July 2015 laying down detailed rules for the application of Article 108 of the Treaty on the Functioning of the European Union (OJ L 248, 24.9.2015, p. 9).

(i) if there is a reference to Commission Regulation (EC) No 794/2004 ([6]), ESA reads it as a reference to EFTA Surveillance Authority Decision 195/04/COL;

(j) if there is a reference to the wording '(in-)compatible with the internal market', ESA reads it as '(in-)compatible with the functioning of the EEA Agreement';

(k) if there is a reference to the wording 'within (or outside) the Union', ESA reads it as 'within (or outside) the EEA';

(l) if there is a reference to 'intra-Union trade', ESA reads it as a reference to 'intra-EEA trade';

(m) if the Guidelines set out that they will be applied to 'all sectors of economic activity', ESA applies them to 'all sectors of economic activity or parts of sectors of economic activity falling within the scope of the EEA Agreement';

(n) if there is a reference to Commission Communications, Notices or Guidelines, ESA reads it as a reference to the corresponding ESA Guidelines;

(o) if there is a reference to 'Nomenclature of Territorial Units for Statistics' or 'NUTS' ([7]), ESA reads it as a reference to 'statistical region'.

Article 3

ESA shall apply the Guidelines with the additional following adaptations:

(a) footnote 36 is replaced by:

'Commission Regulation (EU) No 1407/2013 of 18 December 2013 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to de minimis aid (OJ L 352, 24.12.2013, p. 1), as incorporated at point 1ea of Annex XV of the EEA Agreement by Joint Committee Decision No 98/2014 (OJ L 310, 30.10.2014, p. 65), and EEA Supplement No 63, 30.10.2014, p. 56.';

(b) paragraph 180 is replaced by:

'EFTA States must publish the following information on a comprehensive State aid website, at national or regional level:

(a) the full text of the individual aid granting decision or the approved aid scheme and its implementing provisions, or a link to it;

(b) information on each individual aid award exceeding EUR 100 000, as set out in the Annex to these Guidelines.';

(c) paragraph 197 is replaced by:

'ESA considers that the implementation of these Guidelines will lead to certain changes in the assessment principles for risk finance aid in the EEA. For those reasons, ESA proposes the following appropriate measures to EFTA States pursuant to Article 1(1) of Part 1 of Protocol 3 of the Surveillance and Court Agreement:

(a) the EFTA States should amend, where necessary, their existing risk finance aid schemes, in order to bring them into line with these Guidelines, by 30 June 2022;

(b) the EFTA States are invited to give their explicit unconditional agreement to the proposed measures by 28 February 2022. In the absence of any reply, ESA will assume that the EFTA State in question does not agree with the proposed measures.'.

([6]) Commission Regulation (EC) No 794/2004 of 21 April 2004 implementing Council Regulation (EU) 2015/1589 laying down detailed rules for the application of Article 108 of the Treaty on the Functioning of the European Union (OJ L 140, 30.4.2004, p. 1).

([7]) Regulation (EC) No 1059/2003 of 26 May 2003 of the European Parliament and of the Council on the establishment of a common classification of territorial units for statistics (NUTS) (OJ L 154, 21.6.2003, p. 1).

Done in Brussels, 15 December 2021.

For the EFTA Surveillance Authority

Bente ANGELL-HANSEN
President
Responsible College Member

Högni S. KRISTJÁNSSON
College Member

Stefan BARRIGA
College Member

Melpo-Menie JOSÉPHIDÈS
Countersigning as Director,
Legal and Executive Affairs

COMMUNICATION FROM THE COMMISSION

Guidelines on State aid to promote risk finance investments

Table of Contents

1. INTRODUCTION

1. On the basis of Article 107(3), point (c), of the Treaty on the Functioning of the European Union, State aid designed to facilitate the development of certain economic activities may be considered to be compatible with the internal market, where such aid does not adversely affect trading conditions to an extent contrary to the common interest. The Commission has historically acknowledged the importance to the economies of Member States of the risk finance market and the need to improve access to risk finance for small and medium sized enterprises ('SMEs'), small middle-capitalisation firms ('mid-caps') and innovative mid-caps ([1]), and the consequent need to have a set of guidelines to ensure a consistent approach in assessing risk finance aid measures. In that vein, the Commission adopted the 2006 Risk Capital Guidelines ([2]) which were subsequently replaced by the 2014 Risk Finance

([1]) The exact definitions of SMEs, small mid-caps and innovative mid-caps for the purpose of these Guidelines are set out in Section 2.3, in paragraph 35.

([2]) Community guidelines on State aid to promote risk capital investments in small and medium-sized enterprises (OJ C 194, 18.8.2006, p. 2).

Guidelines ([3]) as part of the State aid Modernisation package ([4]). The 2014 Risk Finance Guidelines will expire at the end of 2021. However, Member States may continue to see a need to provide risk finance aid, and guidance on how to support risk finance in full compliance with State aid rules remains necessary.

2. In this regard, SMEs are the backbone of Member States' economies, both in terms of employment and of economic dynamism and growth, and are therefore also central to the Union's economic development and resilience as a whole. As acknowledged in the SME Strategy for a sustainable and digital Europe ([5]), the Union's 25 million SMEs employ around 100 million people, account for more than half of the Union's gross domestic product (GDP) and play a key role in adding value in every sector of the economy. They bring innovative solutions to address challenges like climate change, inefficient use of resources and loss of social cohesion, and they help spread this innovation supporting the green and digital transition and strengthening the Union's resilience or technological sovereignty. However, to be able to grow and unleash their full potential, SMEs need financing. This is especially true in innovation-oriented, high-tech, high risk sectors. Therefore, an efficient risk finance market for SMEs is crucial for entrepreneurial companies to be able to access the necessary funding at each stage of their development.

3. Despite their growth prospects, start-ups and SMEs often face difficulties in gaining access to finance, particularly in the early stages of their development ([6]) and when they need additional funding to expand. At the heart of those difficulties lies a problem of *asymmetric information*: start-ups and SMEs, especially when they are young or in new or high-tech sectors, are often unable to demonstrate their credit-worthiness or the soundness of their business plans to investors and banks. In such circumstances, the type of active screening and research that investors undertake for providing finance to larger or more established companies may not be worthwhile in the case of transactions involving SMEs and start-ups because the screening costs are too high relative to the value of the investment. Therefore, irrespective of the quality of their project, the innovativeness of their technology and growth potential, start-ups and SMEs will likely not be able to access the necessary finance as long as they lack a proven track record and sufficient collateral. That problem may be particularly pronounced as regards investments into innovative green, high-tech, digital, or aerospace-based technologies or into social innovations driven by social entrepreneurs ([7]). As a result of that asymmetric information, business finance markets may fail to provide the necessary equity or debt finance to newly-created and potentially innovative and high-growth start-ups and SMEs, resulting in a persistent capital market failure preventing supply from meeting demand at a price acceptable to both sides, which negatively affects SMEs' growth prospects and undermines the Single Market's productivity growth and overall resilience of the Union's economy. In certain circumstances, small mid-caps and innovative mid-caps face the same market failure.

4. The consequences of a company not receiving finance may go beyond that individual entity, due in particular to *growth externalities*. Many successful sectors witness productivity growth not because companies present in the market gain in productivity, but because the more efficient and technologically advanced companies grow at the expense of the less efficient ones (or ones with obsolete products). Moreover, the economic sectors involved and the overall economy benefit from positive growth externalities linked to the accumulation of knowledge possessed by firms (organizational capital) or by workers (human capital), as well as from the introduction of new

([3]) Communication from the Commission – Guidelines on State aid to promote risk finance investments (OJ C 19, 22.1.2014, p. 4).

([4]) Between 2012 and 2014, the Commission carried out an ambitious State aid modernisation programme based on three main objectives, for more details see Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on EU State aid Modernisation (SAM), COM(2012) 209 final of 8.5.2012:
(a) fostering sustainable, smart and inclusive growth in a competitive internal market;
(b) focusing the Commission's *ex ante* scrutiny on cases with the biggest impact on the internal market while strengthening the cooperation with Member States in State aid enforcement; and
(c) streamlining the rules to ensure faster decision making.

([5]) Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions 'An SME Strategy for a sustainable and digital Europe', COM(2020) 103 final of 10.3.2020.

([6]) See the 'Evaluation support study on the EU rules on State aid for access to finance for SMEs', European Union (2020), available on-line:
https://ec.europa.eu/competition/state_aid/modernisation/risk_finance_study.zip

([7]) Such innovations include for instance changing social practices in support of the green or digital transitions, or making ICT careers more accessible to women.

goods, in the form of surplus to consumers and/or firms. To the extent that these processes are disturbed by the fact that potentially successful companies may not be able to obtain finance, the wider consequences for productivity growth are likely to be negative. Allowing a wider base of companies to enter the market and scale-up by removing undue obstacles to financing may then spur growth.

5. Therefore, the existence of a financing gap affecting start-ups, SMEs, small mid-caps and innovative mid-caps may justify the deployment of public support measures by Member States in order to facilitate the development of risk finance in their domestic markets. Properly targeted State aid to support the provision of risk finance can be an effective means to alleviate the identified market failure or another relevant obstacle in access to finance and to leverage private resources. In the current context, Member States may also make use of it to foster recovery from the economic crisis caused by the COVID-19 pandemic.

6. Besides being indispensable for domestic economies of Member States, improved access to finance can positively contribute to some of the Union's central policy objectives. Access to finance constitutes a powerful tool to support the Green Deal ([8]) and make Europe fit for the digital age ([9]), as well as to ensure recovery from the economic crisis caused by the COVID-19 pandemic and build a Union that is more resilient also against future crises.

7. The green transition is a core objective of the Union. According to the most recent projections ([10]), achieving the current climate and energy targets for 2030 could require up to EUR 417 billion of additional annual investment, a challenge for which leveraging significant private investment will be key. Promoting sustainable finance requires the right signals to direct financial and capital flows to green investment. To that end, in 2018 the Commission launched the Sustainable Finance Plan ([11]), which has been followed recently by a new Sustainable Finance Package ([12]). One element to promote green finance is improved disclosure on climate and environmental data so that investors are fully informed about the sustainability of their investments. Within that context, a key step has been the adoption of Regulation (EU) 2020/852 of the European Parliament and of the Council ([13]), which classifies environmentally sustainable activities (commonly referred to as the 'EU Taxonomy').

8. Concerning the digital transition, the 2030 Digital Compass Communication ([14]) underlines the need to support the Union's development of critical digital technologies in a way that fosters its productivity growth and economic development in full coherence with its societal values and objectives. National spending by Member States is crucial to enable a massive scale-up of investments, alongside relevant Union funds and private investments, in order to achieve that objective.

([8]) Communication from the Commission to the European Parliament, the European Council, the Council, the European Economic and Social Committee and the Committee of the Regions 'The European Green Deal', COM(2019) 640 final of 11.12.2019.

([9]) Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions 'Shaping Europe's digital future', COM(2020) 67 final of 19.2.2020.

([10]) Proposal for a Directive of the European Parliament and of the Council amending Directive (EU) 2018/2001 of the European Parliament and of the Council, Regulation (EU) 2018/1999 of the European Parliament and of the Council and Directive 98/70/EC of the European Parliament and of the Council as regards the promotion of energy from renewable sources, and repealing Council Directive (EU) 2015/652, COM(2021) 557 final of 14.7.2021.

([11]) Communication from the Commission to the European Parliament, the European Council, the Council, the European Central Bank, the European Economic and Social Committee and the Committee of the Regions 'Action Plan: Financing Sustainable Growth', COM(2018) 97 final of 8.3.2018.

([12]) Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions 'EU taxonomy, corporate sustainability reporting, sustainability preferences and fiduciary duties: Directing finance towards the European Green Deal', COM(2021) 188 final of 21.4.2021.

([13]) Regulation (EU) 2020/852 of the European Parliament and of the Council of 18 June 2020 on the establishment of a framework to facilitate sustainable investment, and amending Regulation (EU) 2019/2088 (OJ L 198, 22.6.2020, p. 13).

([14]) Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions '2030 Digital Compass: the European way for the Digital Decade', COM(2021) 118 final of 9.3.2021.

9. As for the crisis caused by the COVID-19 pandemic, recovery is an urgent priority, using the momentum to make progress on the digital and green transition, which will make the economy more resilient and more competitive. The Recovery and Resilience Facility ('RRF') ([15]) is the first and most important part of the EU Recovery Package adopted in response to the crisis, making EUR 672,5 billion available for Member States in the form of loans and grants as financial support for the crucial first years of the recovery, upon approval of their draft recovery and resilience plans. In this context, the Commission has identified flagship areas ([16]) which it encourages Member States to include in their recovery and resilience plans, given their relevance across Member States, the very large investments required, and their potential to create jobs and growth and reap the benefits from the green and digital transitions.

10. Moreover, as the updated Industrial Strategy ([17]) underlined, the Union needs to learn from the COVID-19 pandemic and its impact on the global value chains; improving its single market resilience and addressing strategic dependencies while safeguarding an open, competitive, and trade-based EU economy is at the core of these efforts.

11. Given the importance of effective access to finance for the Union's core objectives, there is a need to further boost efforts building on Union policies aimed at improving such access, such as the Capital Markets Union ('CMU') and the use of the Union's budget.

12. In this regard, the Commission adopted the first CMU action plan ([18]) in 2015 in order to mobilise capital in the Union and channel it to all companies. One of its main objectives was to improve the access of SMEs to finance, in particular to non-banking finance. Since then, the Union has made significant progress, largely delivering on the individual actions announced in the 2015 CMU action plan and its 2017 mid-term review. Many of those actions were aimed at improving access to funding for all undertakings irrespective of size or age, but some of them were aimed, to a great extent, at facilitating access to capital markets specifically for SMEs and small mid-caps ([19]). A new CMU action plan ([20]) was launched in 2020 to deepen the Union's CMU over the coming years in

([15]) Regulation (EU) 2021/241 of the European Parliament and of the Council of 12 February 2021 establishing the Recovery and Resilience Facility (OJ L 57, 18.2.2021, p. 17).

([16]) Communication from the Commission to the European Parliament, the European Council, the Council, the European Central Bank, the European Economic and Social Committee, the Committee of the Regions and the European Investment Bank 'Annual Sustainable Growth Strategy 2021', COM(2020) 575 final of 17.9.2020 identifies seven flagship areas: power up – the frontloading of future-proof clean technologies and acceleration of the development and use of renewables; renovate – the improvement of energy efficiency of public and private buildings; recharge and refuel – the promotion of future-proof clean technologies to accelerate the use of sustainable, accessible and smart transport, charging and refuelling stations and extension of public transport; connect – the fast rollout of rapid broadband services to all regions and households, including fibre and 5G networks; modernise – the digitalisation of public administration and services, including judicial and healthcare systems; scale-up – the increase in European industrial data cloud capacities and the development of the most powerful, cutting edge, and sustainable processors; reskill and upskill – the adaptation of education systems to support digital skills and educational and vocational training for all ages.

([17]) Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions 'Updating the 2020 New Industrial Strategy: Building a stronger Single Market for Europe's recovery', COM(2021) 350 final of 5.5.2021.

([18]) Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions 'Action Plan on Building a Capital Markets Union', COM(2015) 468 final of 30.9.2015.

([19]) For instance, Regulation (EU) No 345/2013 of the European Parliament and of the Council of 17 April 2013 on European venture capital funds (OJ L 115, 25.4.2013, p. 1); Regulation (EU) 2017/1129 of the European Parliament and of the Council of 14 June 2017 on the prospectus to be published when securities are offered to the public or admitted to trading on a regulated market, and repealing Directive 2003/71/EC (OJ L 168, 30.6.2017, p. 12); Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU (OJ L 173, 12.6.2014, p. 349) as regards the development of SME Growth Markets; Directive 2011/61/EU of the European Parliament and of the Council of 8 June 2011 on Alternative Investment Fund Managers and amending Directives 2003/41/EC and 2009/65/EC and Regulations (EC) No 1060/2009 and (EU) No 1095/2010 (OJ L 174, 1.7.2011, p. 1).

([20]) Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee Of The Regions 'A Capital Markets Union for people and businesses-new action plan', COM(2020) 590 final of 24.9.2020.

order to continue developing the capital markets and ensure access to market financing, in particular for small and medium-sized businesses. In this context, in accordance with Article 33(9) of Directive 2014/65/EU of the European Parliament and of the Council ([21]), the Commission has also set up a Technical Expert Stakeholder Group on SMEs which was mandated to assess the barriers to SMEs tapping public markets.

13. In view of the importance of improving access to finance for SMEs, the Commission complements the Union's legislation and policy actions with the Union budget, in order to address structural market failures that limit the growth of start-ups and SMEs. To that end, the use of financial instruments ([22]) was enhanced under the 2014-2020 Multiannual Financial Framework ('MFF'). In particular, the Union funding programmes established by Regulation (EU) No 1287/2013 of the European Parliament and of the Council ('Competitiveness of Enterprises and small and medium-sized enterprises' ('COSME')) ([23]) and Regulation (EU) No 1291/2013 of the European Parliament and of the Council ([24]) ('Horizon 2020') contributed to improving the use of public resources through risk-sharing funding mechanisms to the benefit of SMEs in their start-up, growth and transfer phases, as well as small mid-caps and innovative mid-caps, with a particular emphasis on actions designed to provide seamless support from innovation to market, including the commercial implementation of research and development ('R&D') results ([25]). Furthermore, the European Innovation Council ('EIC') has supported start-ups and SMEs since 2018, under the Horizon 2020 programme, and will continue to do so, as well as to support small mid-caps, under the Union's research and innovation funding programme Horizon Europe ([26]), with the aim of enhancing performance of the Union's venture capital market. The launch of the European Scale-up Action for Risk capital ('ESCALAR') ([27]), as a pilot programme by the Commission and the European Investment Fund ('EIF'), as well as work on the creation of a private-public fund ([28]) to help finance initial public offerings of SMEs, reveals the importance attached to facilitating start-up and SME growth as well as the need to further complete the range of existing public support measures at all funding stages. The EIF also activated a 'fund of funds' in 2020, with the ISEP (InnovFin Space Equity Pilot) initiative, engaging four private Venture Capital investors to increase equity investment in European aerospace and defence companies. This model is being pursued further by the CASSINI initiative and in particular its planned Growth Fund ([29]). In addition, the Union's

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

([22]) Financial instruments cover non-grant financial instruments, which may take the form of debt instruments (loans, guarantees) or equity instruments (pure equity, quasi-equity investments or other risk-sharing instruments).

([23]) Regulation (EU) No 1287/2013 of the European Parliament and of the Council of 11 December 2013 establishing a Programme for the Competitiveness of Enterprises and small and medium-sized enterprises (COSME) (2014-2020) and repealing Decision No 1639/2006/EC (OJ L 347, 20.12.2013, p. 33).

([24]) Regulation (EU) No 1291/2013 of the European Parliament and of the Council of 11 December 2013 establishing Horizon 2020 – the Framework Programme for Research and Innovation (2014-2020) and repealing Decision No 1982/2006/EC (OJ L 347, 20.12.2013, p. 104).

([25]) Furthermore, in order to provide better access to loan finance, a specific Risk Sharing Instrument (RSI) was created jointly by the Commission, the European Investment Fund and the European Investment Bank, under the Seventh Framework Programme for Research (FP7), see http://www.eif.org/what_we_do/guarantees/RSI/index.htm. The RSI provided partial guarantees to financial intermediaries through a risk-sharing mechanism, thus reducing their financial risks and encouraging them to provide lending to SMEs undertaking R&D or innovation activities.

([26]) Regulation (EU) 2021/695 of the European Parliament and of the Council of 28 April 2021 establishing Horizon Europe – the Framework Programme for Research and Innovation, laying down its rules for participation and dissemination, and repealing Regulations (EU) No 1290/2013 and (EU) No 1291/2013 (OJ L 170, 12.5.2021, p. 1).

([27]) The European Scale-up Action for Risk capital (ESCALAR) is a pilot programme launched by the European Commission and managed by the EIF, using resources of the Investment Plan for Europe to address the financing gap experienced by high-growth European companies (scale-ups). ESCALAR was launched on 4 April 2020 and is intended to substantially increase fund resources, thus allowing larger investment tickets and creating greater capacity for investments in scale-ups.

([28]) In her Political Guidelines for the next European Commission 2019-2024, then Candidate President Von der Leyen announced the creation of a private-public fund specialising in IPOs of SMEs with a view to providing public support in the form of funding to ease high-potential SMEs' access to public markets.

([29]) The CASSINI initiative, first announced in the 'SME Strategy for a sustainable and digital Europe', COM(2020) 103 final of 10.3.2020, is a collection of concrete actions whose aims include easing access to risk capital for space-based SMEs to fund their expansion. The CASSINI Growth fund will function as a fund of funds similarly to ISEP, by investing in venture capital funds that commit to act as 'thematic funds', i.e. to invest in the space sector while still deciding autonomously in which specific firms they want to invest in. The CASSINI Growth fund will tackle a shortage of capital in the expansion stage, which is well known to adversely affect new space SMEs in the Union.

cohesion policy has been contributing increasingly to the financing of SMEs, including via provision of risk capital, since early 2000, reaching EUR 10 billion of support at the end of 2013 and an additional EUR 15 billion of commitments by 23 Member States as of end 2020. Financial instruments under cohesion policy supported about 365 000 SMEs across Europe in the course of 2020 alone. Finally, the new InvestEU Programme ([30]), which will bring together 14 different financial instruments currently available to support investment in the Union, as well as funds contributed from shared management to the Member State compartment, has a specific window dedicated to the funding of small businesses while InvestEU's three other windows can also fund SMEs within their scope.

14. Both the Commission's experience in the risk finance aid area (under the 2014 Risk Finance Guidelines as well as the General Block Exemption Regulation ([31])), and the abovementioned initiatives (see paragraphs 12 and 13) at the Union level aimed at improving access to finance, demonstrate that access to finance continues to be a priority both for the Union and for its Member States. Against this background, it is therefore crucial that the Commission continues to provide guidance to Member States on how it will assess the compatibility of risk finance measures with the internal market. This is also demonstrated by the evaluation that the 2014 Risk Finance Guidelines underwent in 2019 and 2020: the so-called Fitness Check ([32]). The results of the Fitness Check show that as a rule, the Risk Finance Guidelines remain relevant and fit for purpose. Further clarification and simplification of the rules is, however, necessary. These revised Risk Finance Guidelines will facilitate the deployment of adequately targeted risk finance State aid by Member States, taking into account the positive contribution of such aid to the Commission priorities outlined above (see paragraphs 6 to 9), in addition to the positive effects of the aid in ensuring access to finance.

15. Following the adoption in 2016 of the Notice on the notion of aid ([33]) and having regard, in particular, to Section 4.2 thereof ([34]), these Guidelines no longer address whether or not a public support measure constitutes State aid, but focus on the conditions under which a State aid measure may be found compatible with the internal market.

16. For these reasons, the Commission has decided to make certain changes to the 2014 Risk Finance Guidelines, to clarify the rules and bring administrative simplification in order to facilitate the deployment of State aid in support of risk finance.

2. SCOPE OF THE GUIDELINES AND DEFINITIONS

2.1. *Scope of these Guidelines*

17. The Commission will apply the principles set out in these Guidelines to risk finance measures which do not satisfy all the conditions laid down in Section 3 of the General Block Exemption Regulation ('Aid for access to finance for SMEs'). The Member State concerned must notify those measures (see Section 2.2) in accordance with Article 108(3) of the Treaty and the Commission will carry out a substantive compatibility assessment as set out in Section 3 of these Guidelines.

([30]) Regulation (EU) 2021/523 of the European Parliament and of the Council of 24 March 2021 establishing the InvestEU Programme and amending Regulation (EU) 2015/1017 (OJ L 107, 26.3.2021, p. 30). The intention of the InvestEU Programme is to encourage public and private investor participation in financing and investment operations by providing guarantees from the Union budget to address failures and sub-optimal investment situations. It builds on the success of the European Fund for Strategic Investments (EFSI) which was launched in 2015 to close the investment gap in the Union in the aftermath of the financial and economic crisis.

([31]) Commission Regulation (EU) No 651/2014 of 17 June 2014 declaring certain categories of aid compatible with the internal market in application of Articles 107 and 108 of the Treaty (OJ L 187, 26.6.2014, p. 1).

([32]) On-line available on: https://ec.europa.eu/competition/state_aid/modernisation/fitness_check_en.html

([33]) Commission Notice on the notion of State aid as referred to in Article 107(1) of the Treaty on the Functioning of the European Union (OJ C 262, 19.7.2016, p. 1).

([34]) In that notice, the Commission clarifies its understanding of how the notion of State aid laid down in Article 107(1) of the Treaty should be interpreted. Section 4.2 ('The market economy operator (MEO) test') of that notice provides guidance as regards when a public support measure does not constitute State aid due to the fact that it is carried out under normal market conditions.

18. However, Member States may also choose to design risk finance measures in such a way that the measures do not entail State aid under Article 107(1) of the Treaty, for instance because they comply with the market economy operator test ([35]) or because they fulfil the conditions of the applicable *de minimis* Regulation ([36]). Such cases do not need to be notified to the Commission.

19. These Guidelines do not address the compatibility with the internal market of State aid measures which meet the criteria laid down in other State aid guidelines, frameworks or regulations. The Commission will pay particular attention to the need to prevent the use of these Guidelines to pursue policy objectives which are addressed principally by other State aid frameworks, guidelines and regulations.

20. These Guidelines are without prejudice to the assessment under State aid rules of other types of financial instruments than those covered herein, such as instruments providing for the securitisation of existing loans.

21. The Commission will only apply the principles set out in these Guidelines to risk finance schemes. They will not be applied in respect of *ad hoc* measures providing risk finance aid to individual undertakings, except in the case of measures aimed at supporting a specific alternative trading platform.

22. It is important to recall that risk finance aid measures have to be deployed through financial intermediaries or alternative trading platforms, except for fiscal incentives on direct investments in eligible undertakings. Therefore, a measure whereby the Member State or public entity makes direct investments in companies without the involvement of such intermediary vehicles does not fall under the scope of the risk finance State aid rules in the General Block Exemption Regulation or these Guidelines.

23. In light of their more established track record and higher collateralisation, the Commission considers that as a rule, large enterprises do not face the same difficulties in accessing finance as start-ups and SMEs do and thus aid to such enterprises should not be covered by these Guidelines. Exceptionally, a risk finance measure in favour of large undertakings may be considered compatible on the basis of these Guidelines where it is targeted at small mid-caps, in accordance with Section 3.2.2.1, point (a), or innovative mid-caps that carry out research and development ('R&D') and innovation projects, in accordance with Section 3.2.2.1, point (b).

24. The Commission will not apply the principles in these Guidelines to risk finance aid to companies listed on the official list of a regulated market, since the fact that they are listed on a regulated market demonstrates their ability to attract private financing.

25. Risk finance aid measures without any participation from independent private investors will not be considered compatible under these Guidelines. In such cases, the Member State should consider alternative policy options which may be more appropriate to achieve the same objectives and results, such as regional investment aid or start-up aid permitted under the General Block Exemption Regulation.

26. Risk finance aid measures where no appreciable risk is undertaken by the independent private investors, or where the benefits flow entirely to the private investors, will not be considered compatible on the basis of these Guidelines. Sharing the risks and rewards is a necessary condition under these Guidelines to limit the financial exposure of, and to ensure a fair return to, the State.

27. With the exception of risk finance aid in the form of replacement capital subject to the conditions laid down in Article 21 of the General Block Exemption Regulation, risk finance aid covered by these Guidelines may not be used to support buy-outs.

([35]) See footnote 34.

([36]) Commission Regulation (EU) No 1407/2013 of 18 December 2013 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to *de minimis* aid (OJ L 352, 24.12.2013, p. 1); Commission Regulation (EU) No 1408/2013 of 18 December 2013 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to *de minimis* aid in the agricultural sector (OJ L 352, 24.12.2013, p. 9); Commission Regulation (EU) No 717/2014 of 27 June 2014 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to *de minimis* aid in the fishery and aquaculture sector (OJ L 190, 28.6.2014, p. 45).

28. Risk finance aid will not be considered compatible with the internal market under these Guidelines if awarded to:

(a) undertakings in difficulty, as defined by the Guidelines on State aid for rescuing and restructuring non-financial undertakings in difficulty ([37]); however, for the purposes of these Guidelines, SMEs that have been operating in any market for no longer than the eligibility period fixed in Article 21 of the General Block Exemption Regulation that qualify for risk finance investments following due diligence by the selected financial intermediary will not be considered as undertakings in difficulty, unless they are subject to insolvency proceedings or fulfil the criteria under their domestic law for being placed in collective insolvency proceedings at the request of their creditors;

(b) undertakings which are subject to an outstanding recovery order following a previous Commission decision declaring an aid granted by the same Member State illegal and incompatible with the internal market.

29. The Commission will not apply the principles in these Guidelines to aid to export-related activities towards third countries or Member States, namely aid directly linked to the quantities exported, to the establishment and operation of a distribution network or to other current costs linked to the export activity, as well as aid contingent upon the use of domestic over imported goods.

30. Risk finance measures often involve complex constructions creating incentives for one set of economic operators (investors) to provide risk finance to another set of operators (eligible undertakings). Depending on the design of the measure, and even if the intention of the public authorities may be only to provide benefits to the latter group, undertakings at either or both levels may benefit from State aid. Moreover, risk finance measures usually involve one or more financial intermediaries which may have a status separate from that of the investors and the final beneficiaries in which investments are made. In such cases it is also necessary to reflect on whether the financial intermediary can be considered to benefit from State aid. Any aid to the financial intermediary should be limited by passing on the advantage to the final beneficiaries as set out in these Guidelines. The fact that financial intermediaries may increase their assets and their managers may achieve a higher turnover through their commissions is considered to constitute only a secondary economic effect of the aid measure and not an advantage procured by the aid to the financial intermediaries or managers. However, if the risk finance measure is designed in such a way as to channel its secondary effects towards identifiable financial intermediaries or towards identifiable groups of financial intermediaries, those financial intermediaries will be considered to benefit from an indirect advantage.

2.2. *Notifiable risk finance aid*

31. Member States must notify, pursuant to Article 108(3) of the Treaty, risk finance measures which: (i) constitute State aid within the meaning of Article 107(1) of the Treaty (in particular measures that do not comply with the market economy operator test ([38]) and fall outside the scope of the *de minimis* Regulations ([39])), and (ii) do not satisfy all the conditions laid down in Section 3 of the General Block Exemption Regulation ('Aid for access to finance for SMEs'). The Commission will assess the compatibility of those measures with the internal market under Article 107(3), point (c), of the Treaty. These Guidelines focus on those risk finance measures which are most likely to be found compatible under Article 107(3), point (c), of the Treaty, subject to a number of conditions which will be explained in greater detail in Section 3 of these Guidelines. Such measures fall into one of two categories.

32. The first category covers risk finance measures which target undertakings that do not fulfil all the **eligibility requirements** for risk finance aid as laid down in Section 3 of the General Block Exemption Regulation. That category encompasses, in particular, measures targeting the following undertakings:

(a) small mid-caps;

(b) innovative mid-caps;

(c) SMEs receiving the initial risk finance investment while they have been operating in any market for longer than the eligibility period fixed in Article 21 of the General Block Exemption Regulation;

([37]) Communication from the Commission – Guidelines on State aid for rescuing and restructuring non-financial undertakings in difficulty (OJ C 249, 31.7.2014, p. 1).
([38]) See footnote 34.
([39]) See footnote 36.

(d) start-ups and SMEs requiring an overall risk finance investment of an amount exceeding the cap fixed in the General Block Exemption Regulation;

(e) alternative trading platforms not fulfilling the conditions of the General Block Exemption Regulation.

33. The second category consists of measures whose **design parameters** differ from those set out in Section 3 of the General Block Exemption Regulation. That category encompasses, in particular, the following cases:

(a) financial instruments with independent private investor participation below the ratios provided for in the General Block Exemption Regulation;

(b) financial instruments with design parameters above the ceilings provided for in the General Block Exemption Regulation;

(c) financial instruments other than guarantees where financial intermediaries, investors or fund managers are selected by giving preference to protection against potential losses (downside protection) over prioritised returns from profits (upside incentives);

(d) fiscal incentives to corporate investors, including financial intermediaries or their managers acting as co-investors.

34. Unless otherwise specified in these Guidelines, all compatibility conditions applicable to risk finance aid under Section 3 of the General Block Exemption Regulation will guide the Commission's assessment of the categories of notifiable measures.

2.3. *Definitions*

35. For the purposes of these Guidelines:

(1) 'alternative trading platform' means a multilateral trading facility as defined in Article 4(1), point (22), of Directive 2014/65/EU where at least 50 % of the financial instruments admitted to trading are issued by SMEs;

(2) 'buy-out' means the purchase of at least a controlling percentage of a company's equity from the current shareholders to take over its assets and operations;

(3) 'downside protection' means a reduced exposure to losses in the event of underperformance of the underlying transaction compared to the public investors;

(4) 'eligible undertakings' means start-ups, SMEs, small mid-caps and innovative mid-caps;

(5) 'entrusted entity' means the European Investment Bank, the European Investment Fund, an international financial institution in which a Member State is a shareholder, a financial institution established in a Member State aiming at the achievement of public interest under the control of a public authority, a public law body, or a private law body with a public service mission; the entrusted entity can be selected or directly appointed in accordance with Directive 2014/24/EU of the European Parliament and of the Council ([40]) or in accordance with Article 38(4), point (b)(iii), of Regulation (EU) No 1303/2013 of the European Parliament and of the Council ([41]) or in accordance with Article 59(3), point (c) of Regulation (EU) 2021/1060 of the European Parliament and of the Council ([42]);

(6) 'equity investment' means the provision of capital to an undertaking, invested directly or indirectly in return for the ownership of a corresponding share of that undertaking;

([40]) Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on public procurement and repealing Directive 2004/18/EC (OJ L 94, 28.3.2014, p. 65).

([41]) Regulation (EU) No 1303/2013 of the European Parliament and of the Council of 17 December 2013 laying down common provisions on the European Regional Development Fund, the European Social Fund, the Cohesion Fund, the European Agricultural Fund for Rural Development and the European Maritime and Fisheries Fund and laying down general provisions on the European Regional Development Fund, the European Social Fund, the Cohesion Fund and the European Maritime and Fisheries Fund and repealing Council Regulation (EC) No 1083/2006 (OJ L 347, 20.12.2013, p. 320).

([42]) Regulation (EU) 2021/1060 of the European Parliament and of the Council of 24 June 2021 laying down common provisions on the European Regional Development Fund, the European Social Fund Plus, the Cohesion Fund, the Just Transition Fund and the European Maritime, Fisheries and Aquaculture Fund and financial rules for those and for the Asylum, Migration and Integration Fund, the Internal Security Fund and the Instrument for Financial Support for Border Management and Visa Policy (OJ L 231, 30.6.2021, p. 159).

(7) 'evaluation plan' means a document covering one or more aid schemes and containing at least the following minimum elements:

(a) the objectives to be evaluated;

(b) the evaluation questions;

(c) the result indicators;

(d) the envisaged methodology to conduct the evaluation;

(e) the data collection requirements;

(f) the proposed timing of the evaluation including the date of submission of the interim and the final evaluation reports;

(g) the description of the independent body that will carry out the evaluation or the criteria that will be used for its selection;

(h) the arrangements for making the evaluation publicly available;

(8) 'exit' means the liquidation of holdings by a financial intermediary or investor, including trade sale, write-offs, repayment of shares or loans, sale to another financial intermediary or another investor, sale to a financial institution and sale by public offering, including an initial public offering ('IPO');

(9) 'fair rate of return' means the expected internal rate of return equivalent to a risk-adjusted discount rate reflecting the level of risk of the investment and the nature and volume of the capital to be invested by the private investors;

(10) 'final beneficiary' means an eligible undertaking that has received investment under a risk finance State aid measure;

(11) 'financial intermediary' means any financial institution, regardless of its form and ownership, including funds of funds, private investment funds, public investment funds, banks, micro-finance institutions and guarantee societies;

(12) 'first commercial sale' means the first sale by an undertaking on a product or service market, excluding limited sales to test the market;

(13) 'first loss piece' means the most junior risk tranche that carries the highest risk of losses, comprising the expected losses of the target portfolio;

(14) 'follow-on investment' means additional investment in a company subsequent to one or more previous risk finance investment rounds;

(15) 'fund of funds' means a fund which invests in or contributes resources to other funds rather than directly in companies or in financial assets such as shares or bonds;

(16) 'guarantee' means a written commitment to assume responsibility for all or part of a third party's newly originated risk finance loan transactions such as debt or lease instruments, as well as quasi-equity instruments;

(17) 'guarantee cap' means the maximum exposure of a public investor expressed as a percentage of the total investments made in a guaranteed portfolio;

(18) 'guarantee rate' means the percentage of loss coverage by a public investor of each and every transaction eligible under the risk finance State aid measure;

(19) 'independent private investor' means an independent private investor within the meaning of Article 2 of the General Block Exemption Regulation;

(20) 'innovative mid-cap' means a mid-cap that meets one of the following conditions: fulfils the criteria to be considered an 'innovative enterprise' within the meaning of Article 2 of the General Block Exemption Regulation; has recently been awarded a Seal of Excellence quality label by the European Innovation Council in accordance with the Horizon 2020 work programme 2018-2020 ([43]) or with Article 2(23) and Article 15(2) of Regulation (EU) 2021/695; or has recently received an investment from the European Innovation Council Fund, such as an investment in the context of the Accelerator Programme as referred to in Article 48 of Regulation (EU) 2021/695; and either has participated to any CASSINI ([44]) action (CASSINI Business Accelerator or Matchmaking), or has received investment from CASSINI Seed and Growth Funding Facility, or has been awarded a CASSINI Prize, meeting the evaluation thresholds set therein, or has been supported by space-related projects funded by Horizon Europe which has resulted in the creation of a start-up;

(21) 'leverage of private resources' means the degree to which public investment attracts additional investment from private sources;

(22) 'loan instrument' means an agreement which obliges the lender to make available to the borrower an agreed amount of money for an agreed period of time and under which the borrower is obliged to repay the amount within the agreed period; it may take the form of a loan, or another funding instrument, including a lease, which provides the lender with a predominant component of minimum yield;

(23) 'mid-cap' means an undertaking that is not an SME and whose number of employees does not exceed 1 500, calculated in accordance with Articles 3 to 6 of Annex I to the General Block Exemption Regulation. For the purpose of the application of this definition, several entities will be considered as one undertaking if any of the conditions listed in Article 3(3) of Annex I to the General Block Exemption Regulation is fulfilled;

(24) 'natural person' means a person other than a legal entity who is not an undertaking within the meaning of Article 107(1) of the Treaty;

(25) 'new loan' means a newly initiated loan instrument designed to finance new investments or working capital, to the exclusion of refinancing of: (i) existing loans or of (ii) other forms of financing;

(26) 'quasi-equity investment' means a type of financing that ranks between equity and debt, having a higher risk than senior debt and a lower risk than common equity and whose return for the holder is predominantly based on the profits or losses of the underlying target undertaking and which is unsecured in the event of default; quasi-equity investments may be structured as debt, unsecured and subordinated, including mezzanine debt, and in some cases convertible into equity, or as preferred equity;

(27) 'replacement capital' means the purchase of existing shares in a company from an earlier investor or shareholder;

(28) 'risk finance investment' means equity and quasi-equity investments, loans (including leases) and guarantees, or a combination thereof, to eligible undertakings for the purposes of making new investments, to the exclusion of entirely private investments provided on market terms and outside the scope of the relevant State aid measure;

(29) 'small and medium-size enterprise ('SME') means an undertaking fulfilling the criteria laid down in Annex I to the General Block Exemption Regulation;

([43]) Commission Implementing Decision C(2017) 7124 of 27.10.2017 on the adoption of the work programme for 2018-2020 within the framework of the Specific Programme Implementing Horizon 2020 – the Framework Programme for Research and Innovation (2014-2020) and on the financing of the work programme for 2018).

([44]) The objectives of the CASSINI initiative include: 1) increasing the number of space-based start-ups developing innovative solutions using Union space technologies, 2) their success rate in establishing companies, and 3) easing access for space-based SMEs to risk capital. The CASSINI actions cover the full entrepreneurial cycle and they are geared, by design, towards selection of the most innovative and competitive business ideas (i.e. external contractors apply market-driven criteria to provide mentoring and acceleration, and venture capitalists managing space thematic funds will decide autonomously in picking the ventures they want to invest in). See also footnote 29.

(30) 'small mid-cap' means an undertaking that is not an SME and whose number of employees does not exceed 499, calculated in accordance with Articles 3 to 6 of Annex I to the General Block Exemption Regulation, and the annual turnover of which does not exceed EUR 100 million or the annual balance sheet of which does not exceed EUR 86 million. For the purpose of the application of this definition, several entities will be considered as one undertaking if any of the conditions listed in Article 3(3) of Annex I to the General Block Exemption Regulation is fulfilled;

(31) 'start-up' means any unlisted small enterprise up to five years following its registration, that fulfils the following conditions: (a) it has not taken over the activity of another enterprise; (b) it has not yet distributed profits; (c) it has not been formed through a merger ([45]). For eligible undertakings that are not subject to registration, the five year eligibility period is considered to start from either the moment when the enterprise starts its economic activity or the moment it becomes liable to tax with regard to its economic activity, whichever is earlier;

(32) 'total financing' means the overall investment amount made into an eligible undertaking via one or more risk finance investments, including follow-on investments, under any risk finance State aid measure, to the exclusion of entirely private investments provided on market terms and outside the scope of the risk finance State aid measure;

(33) 'upside-incentive' means preferential or prioritised returns from profits compared to the public investors.

3. COMPATIBILITY ASSESSMENT OF RISK FINANCE AID

36. On the basis of Article 107(3), point (c), of the Treaty, State aid to facilitate the development of certain economic activities within the Union may be considered to be compatible with the internal market, where such aid does not adversely affect trading conditions to an extent contrary to the common interest.

37. In this Section, the Commission clarifies how it will assess the compatibility of risk finance aid measures which are subject to the notification obligation pursuant to Article 108(3) of the Treaty. More specifically, to assess whether a risk finance aid measure can be considered to be compatible with the internal market, the Commission will determine whether the aid measure:

(a) facilitates the development of a certain economic activity (**first condition**); and

(b) does not adversely affect trading conditions to an extent contrary to the common interest (**second condition**).

38. When determining whether the first condition is fulfilled, namely that the aid facilitates the development of an economic activity, the Commission will consider the following aspects:

(a) identification of the supported economic activity (see Section 3.1.1),

(b) *incentive effect*: the aid must change the behaviour of the undertakings concerned in such a way that such undertakings engage in additional activities which they would not carry out without the aid or would carry out in a more restrictive or different manner or location (see Section 3.1.2).

39. When considering whether the second condition is fulfilled, namely that the aid does not adversely affect trading conditions to an extent contrary to the common interest, the Commission will consider the following aspects:

(a) *need for State intervention*: the aid measure must bring about a material improvement that the market cannot deliver itself, for example by remedying a market failure or another relevant obstacle to the provision of risk finance including for instance regional inequalities in access to finance (see Section 3.2.2),

(b) *appropriateness of the aid measure*: the proposed aid measure must be an appropriate policy instrument to meet its objective (see Section 3.2.3),

([45]) By way of derogation from point (c), enterprises formed through a merger between undertakings eligible for aid under these Guidelines shall also be considered eligible undertakings up to five years from the date of registration of the oldest enterprise participating in the merger.

(c) *proportionality of the aid (aid limited to the minimum)*: the amount and intensity of the aid must be limited to the minimum needed to induce the additional investment or activity by the undertakings concerned (see Section 3.2.4),

(d) *avoidance of undue negative effects of the aid on competition and trade*: any negative effects must be limited and not outweigh the positive effects of the aid (see Section 3.2.5),

(e) *transparency of the aid*: Member States, the Commission, economic operators, and the public, must have easy access to all relevant acts and pertinent information about the aid awarded thereunder (see Section 3.2.6).

40. The overall balance (see Section 3.2.5.3) of certain categories of aid schemes may further be made subject to a requirement of *ex post* evaluation as described in Section 4. In such cases, the Commission may limit the duration of the schemes, with a possibility to re-notify their subsequent prolongation.

41. If a State aid measure, the conditions attached to it (including its financing method where the financing method forms an integral part of the State aid measure), or the activity it finances entails a violation of a relevant provision of Union law, the aid cannot be considered compatible with the internal market ([46]). Such violations include but are not limited to:

(a) making the aid subject to the obligation to use nationally produced goods or national services;

(b) making the aid subject to the obligation for financial intermediaries, their managers or final beneficiaries to have their headquarters in the territory of the Member State concerned, or to move them to the territory of that Member State, in violation of Article 49 of the Treaty pertaining to the freedom of establishment ([47]);

(c) imposing conditions which violate Article 63 of the Treaty pertaining to the free movement of capital.

3.1. *First condition: aid facilitates the development of an economic activity*

3.1.1. **Identification of the supported economic activity**

42. In most cases, risk finance aid measures cover companies from a wide range of economic sectors. Those measures help to ensure that certain SMEs and mid-caps have access to the necessary amount and form of finance to perform or further develop their respective economic activities. The Commission will therefore identify the type of companies (SMEs, small mid-caps or innovative mid-caps) and the sectors covered by the risk finance aid measure.

3.1.2. **Incentive effect**

43. Risk finance aid can only be found compatible with the internal market if it has an incentive effect. The Commission considers that aid without an incentive effect does not facilitate the development of the economic activity concerned.

44. An incentive effect occurs where the aid induces the aid beneficiary to change its behaviour by undertaking activities which it would not carry out without the aid or would carry out in a more restrictive manner due to the existence of a market failure. At the level of the eligible undertakings, an incentive effect is present where the aid enables the final beneficiary to raise finance that would not otherwise be available in terms of form, amount or timing.

([46]) See the Court judgments of 19 September 2000, *Germany v Commission*, C-156/98, EU:C:2000:467, paragraph 78; of 22 December 2008, *Régie Networks v Rhone Alpes Bourgogne*, C-333/07, EU:C:2008:764, paragraphs 94 to 116; of 15 April 2008, *Nuova Agricast*, Case C-390/06 EU:C:2008:224, paragraphs 50 and 51; and of 22 September 2020, *Austria v Commission*, Case C-594/18 P, EU:C:2020:742, paragraph 44.

([47]) This is without prejudice to the requirement for financial intermediaries or their managers to have the necessary licence to carry out investment and management activities in the Member State concerned or for final beneficiaries to have an establishment and carry out economic activities in its territory.

45. Risk finance measures must incentivise market investors to provide funding to potentially viable eligible undertakings above the levels of funding provided in the absence of such incentives or to assume extra risk, or both. A risk finance measure is considered to have an incentive effect if it mobilises investments from market sources so that the total financing provided to the eligible undertakings exceeds the budget of the measure. Hence, a key element in selecting the financial intermediaries and fund managers should be their ability to mobilise additional private investment.

46. If funded debt instruments are used to refinance existing loans, they are not considered to have an incentive effect and any aid element in such instruments cannot be regarded as compatible under these Guidelines.

47. The assessment of the incentive effect is closely linked to the assessment of the need for State intervention discussed in Section 3.2.2. Furthermore, the suitability of a measure to leverage private resources ultimately depends on the design of that measure as regards the balance of risks and rewards between public and private finance-providers, which is also closely related to the question as to whether the design of the risk finance State aid measure is appropriate (see Section 3.2.3). Therefore, once the need for State intervention has been properly identified and the measure has an appropriate design, it can be assumed that an incentive effect is present.

3.2. ***Second condition: Avoidance of adverse effects on trading conditions to an extent contrary to the common interest***

48. Article 107(3), point (c), of the Treaty allows the Commission to consider aid to facilitate the development of certain economic activities or of certain economic areas compatible, but only '*where such aid does not adversely affect trading conditions to an extent contrary to the common interest*'.

49. The assessment of the negative effects on the internal market involves complex economic and social assessments. The Commission will explain in this Section how it intends to exercise its discretion in that respect.

50. By its very nature, any State aid measure results in distortions of competition and has an effect on trade between Member States. However, in order to establish if the distortive effects of the aid are limited to the minimum, the Commission will verify whether the aid is necessary (see Section 3.2.2), appropriate (see Section 3.2.3), and proportionate (see Section 3.2.4). To enable it to carry out that verification, the Commission requires that Member States submit evidence in the form of an *ex ante* assessment as described in Section 3.2.1.

51. The Commission will then assess the negative effects of the risk finance aid in question on competition and trading conditions. More specifically, aid in the field of risk finance can lead to the crowding out of private investors, have distortive effects at the level of financial intermediaries, cause specific product market distortions and have delocalisation effects. The Commission will examine such negative effects of the aid on competition and trade and weigh them against the positive effects of the aid (see Section 3.2.5). If the positive effects outweigh the negative effects, the Commission will consider the aid compatible.

52. Finally, the Commission will ensure that the aid complies with its transparency requirements (see Section 3.2.6).

3.2.1. **Basic elements of the ex ante assessment to be submitted by the Member State concerned to the Commission**

53. State aid can only be justified if it can bring about a material development that the market cannot deliver itself, for example by remedying a market failure or another relevant obstacle to the provision of risk finance or investment.

54. State aid may be **necessary** to increase the provision of risk finance in a situation where the market, on its own, fails to deliver an efficient outcome or does not deliver in a timely manner. The Commission considers that there is no general market failure as regards access to finance for start-ups, SMEs or mid-caps, but only a failure related to certain groups of start-ups, SMEs and some types of mid-caps, depending, in particular, on the specific economic context of the Member State concerned, as well as their field of activity (e.g. in some sectors risks may be overestimated).

55. Section 3 of the General Block Exemption Regulation sets out the conditions under which risk finance measures are presumed to address a market failure through appropriate and proportionate means, while having an incentive effect and minimising any distortions of competition. Measures that comply with those conditions do not have to be notified and are deemed compatible with the internal market.

56. Risk finance measures that do not meet the conditions laid down in Section 3 of the General Block Exemption Regulation need to be notified so that the Commission can, among other things, assess whether a market failure or another relevant obstacle to the provision of risk finance exists. Therefore, Member States are required to prove that a specific market failure or other relevant obstacle exists beyond the legal presumption on which the General Block Exemption Regulation is based. In addition, the proposed risk finance measure must meet the compatibility criteria set out in these Guidelines. For those purposes, the Member State should submit to the Commission an in-depth *ex ante* assessment or, where appropriate, a series of assessments.

57. The in-depth *ex ante* assessment must be based on objective and up-to-date evidence and on available best practices and methodologies (such as desk research, interviews, online surveys or appropriate quantitative methods). To the extent possible, the evidence then needs to be triangulated and used in a mutually reinforcing way to support the conclusions from the *ex ante* assessment. The *ex ante* assessment must date from less than three years preceding the notification of the risk finance measure and should preferably be conducted by an independent expert. The *ex ante* assessment should also take into account lessons learnt from similar instruments and past *ex ante* assessments carried out by the Member State. In the drafting of the ex-ante assessment, the Member States can use the existing body of evidence, to the extent it is relevant, to prove the market failure when undertaking the *ex ante* assessment. The *ex ante* assessment should focus on the specific type of risk finance (for example, equity or subordinated debt) for which an aid measure is proposed.

58. The proposed risk finance aid measure should be **appropriate** to achieve the intended objective of the aid. Therefore, the *ex ante* assessment must analyse the existing and, if possible, the envisaged actions targeting the same identified market failure or other relevant obstacle to the provision of risk finance, taking into account the effectiveness and efficiency of other policy tools. The Member State must demonstrate that the identified market failure or other relevant obstacle cannot be adequately addressed by other policy tools that do not entail State aid or by measures falling within the scope of the General Block Exemption Regulation.

59. State aid must be **proportionate** in relation to the market failure or to the other relevant obstacle which it is intended to address in order to achieve the relevant policy objectives. Aid to increase the provision of risk finance should therefore be limited to the strict minimum necessary to address the market failure or the other relevant obstacle identified in the *ex ante* assessment, without generating undue advantages for its beneficiaries. For risk finance investments exceeding the cap fixed per eligible undertaking in Article 21 of the General Block Exemption Regulation, the *ex ante* assessment needs to demonstrate the proportionality of the aid measure in greater detail, as set out in paragraphs 64 and 65 of these Guidelines.

60. Where the risk finance measure is financed partially from the European Regional Development Fund, European Social Fund or the Cohesion Fund, the Member State may re-use (parts of) the *ex ante* assessment prepared in accordance with Article 37(2) of Regulation (EU) No 1303/2013 or Article 58(3) of Regulation (EU) 2021/1060. The Commission will then assess whether the evidence provided meets the requirements in these Guidelines. Where the risk finance measure is used, partially or entirely, to support undertakings that have recently been awarded a Seal of Excellence quality label by the EIC ([48]), to co-invest with the EIC Fund, or to provide follow-on investment with respect to the Accelerator Programme ([49]), or for undertakings that either have participated to any CASSINI action (CASSINI Business Accelerator or Matchmaking) meeting the evaluation thresholds set therein or have received investment from CASSINI Seed and Growth Funding Facility, or have been awarded a CASSINI Prize, or have been supported by space-related projects funded by Horizon Europe which has resulted in the creation of a start-up, the Commission will accept that the quality label and other evidence from the due diligence procedure carried out by the EIC respectively from the competitive selection processes embedded in CASSINI actions are used as part of the *ex ante* assessment.

([48]) In accordance with the Horizon 2020 work programme 2018-2020 (see footnote 24) or with Articles 2(23) and 15(2) of Regulation (EU) 2021/695 (see footnote 26).

([49]) In accordance with Article 48 of Regulation (EU) 2021/695 (see footnote 26).

61. For risk finance measures that fall outside the scope of the General Block Exemption Regulation, the *ex ante* assessment must describe the nature of the market failure or other relevant obstacle and demonstrate its presence in as far as it affects one or more of the following:

(a) specific categories of target undertakings that do not fulfil all the eligibility requirements under the General Block Exemption Regulation (see paragraph 32, points (a) to (d));

(b) alternative trading platforms not fulfilling the conditions of the General Block Exemption Regulation (see paragraph 32, point (e));

(c) financial instruments with design parameters deviating from those described in the General Block Exemption Regulation (see paragraph 33, points (a), (b) and (c));

(d) fiscal incentives to corporate investors, including financial intermediaries or their managers acting as co-investors (see paragraph 33, point (d)).

62. The *ex ante* assessment should identify the type of undertakings affected, in particular, in terms of age or development stage, economic sector, and geographic area of activity and demonstrate that such undertakings are affected by the presence of a specific market failure or another relevant obstacle.

63. For risk finance measures that concern financial instruments with independent private investor participation below the ratios provided for in Article 21 of the General Block Exemption Regulation (see paragraph 33, point (a) of these Guidelines), the *ex ante* assessment should furthermore provide a sufficiently detailed assessment of the level and structure of supply of private funding for the type of eligible undertaking in the relevant geographic area and demonstrate that the identified market failure or other relevant obstacle cannot be addressed with measures which fulfil all the requirements set out in the General Block Exemption Regulation concerning private participation.

64. In addition, for risk finance investments of an amount exceeding the cap fixed per eligible undertaking in Article 21 the General Block Exemption Regulation (see paragraph 32, point (e) of these Guidelines) the *ex ante* assessment should also quantify the funding gap (that is to say, the level of currently unmet demand for finance from eligible undertakings) due to the identified market failure or other relevant obstacle. The assessment must demonstrate that the funding gap at the level of the eligible undertakings exceeds the cap fixed in the General Block Exemption Regulation. Such quantification should be based on available best practices and methodologies allowing for the estimation of the extent to which there is an unmet demand for finance, from the targeted undertakings.

65. For the quantification of the funding gap, both the structural and cyclical (that is to say, crisis-related) problems leading to suboptimal levels of private funding must be analysed. In particular, the *ex ante* assessment must provide a comprehensive analysis of the supply side by assessing sources of financing available to the eligible undertakings, taking into account the number of existing financial intermediaries that operate in the target geographic area regardless of the Member State where the intermediary is incorporated, their public or private nature, and the investment volumes targeted to the relevant market segment. The assessment of the demand side should take into account the number of potentially eligible undertakings and average values of required financing. That analysis should be based on data covering the five years preceding the notification of the risk finance measure and, where possible, triangulate findings by comparing alternative data sources.

66. For schemes targeting exclusively start-ups and SMEs before first commercial sale, the Commission will apply the requirements regarding the *ex ante* assessment in a proportionate manner, particularly in terms of the evidence requested.

3.2.2. **Need for State intervention**

67. State aid should be targeted towards situations where it can bring about a material development that the market cannot deliver on its own. In order to assess whether State aid is effective in reaching the intended outcome, it is first necessary to identify the problem to be addressed. Member States should explain how the aid measure can effectively mitigate the identified obstacle, and in particular any market failure that hinders the provision of sufficient risk finance by the market on its own.

68. The risk finance measure can only be justified if it is targeted at the specific market failure or other relevant obstacle demonstrated in the *ex ante* assessment. The Commission considers that such market failures or obstacles may exist in particular, but not exclusively, for SMEs in their early stages which, despite their growth prospects, are unable to demonstrate their creditworthiness or the soundness of their business plans to investors. The scope of such market failure or obstacle, both in terms of the affected companies and their capital requirement, may vary depending on the sector in which they operate. Sectors that may be particularly affected by such market failures and obstacles are high-tech, innovative green or digital technologies. Due to information asymmetries, the market may find it difficult to assess the risk/return profile of such start-ups and SMEs and their ability to generate risk-adjusted returns. The difficulties those SMEs experience in sharing information about the quality of their projects, their perceived riskiness and weak creditworthiness lead to high transaction and agency costs and may exacerbate investor risk-aversion. Small mid-caps and innovative mid-caps may face similar difficulties and therefore be affected by the same market failure or obstacle.

69. Therefore, the risk finance measure must be designed in such a way as to address the specific market failure or other relevant obstacle identified in the *ex ante* assessment, in particular as regards the eligible undertakings in the targeted development stage, geographic area, and, if applicable, economic sector.

70. To ensure that the financial intermediaries involved in the measure target the identified market failures, a due diligence process must take place to ensure a commercially sound investment strategy focusing on the identified policy objective and respecting the defined eligibility requirements and funding restrictions. In particular, Member States must select financial intermediaries which can demonstrate that their proposed investment strategy is commercially sound and includes an appropriate risk diversification policy aimed at achieving economic viability and efficient scale in terms of size and territorial scope of the investments.

3.2.2.1. Measures targeted at categories of undertakings outside the scope of the General Block Exemption Regulation

71. As regards aid for access to finance, the scope of the General Block Exemption Regulation is restricted to SMEs. However, certain undertakings which are not covered by the definition of SME, in terms of headcount, or financial thresholds, or both, may face similar financing constraints.

(a) *Small mid-caps*

72. Extending the scope of eligible undertakings under a risk finance measure to include small mid-caps alongside SMEs may be justified in so far as it provides an incentive to private investors to invest in a more diversified portfolio with enhanced entry and exit possibilities. Including small mid-caps in the portfolio is likely to decrease the riskiness at a portfolio level and hence to increase the return on the investments. Therefore, it may be a particularly effective way to attract institutional investors to the riskier early stage companies.

73. For those reasons, and provided the *ex ante* assessment contains adequate economic evidence to that effect, support to small mid-caps may be justified. In its assessment, the Commission will take into account the labour- and capital-intensity of the targeted undertakings, as well as other criteria reflecting specific financing constraints affecting small mid-caps (for example, sufficient collateral for a large loan or the need for significant external capital for development and deployment).

(b) *Innovative mid-caps*

74. In certain circumstances, mid-caps could also face financing constraints comparable to those affecting SMEs. That may, for example, be the case for mid-caps carrying out R&D and innovation activities alongside initial investment in production facilities, including market replication, and whose track record does not enable potential investors to make relevant assumptions as regards the future market prospects of the results of such activities, as these markets are being developed or contain an advanced technological element of which the risk is difficult to assess (e.g. aerospace and defence). In such cases, risk finance State aid may be necessary for innovative mid-caps to

increase their production capacities to a sustainable scale where they are able to attract private financing on their own. In addition, the observation in Section 3.2.2.1., point (a), is also valid for innovative mid-caps: including them in an investment portfolio can be an effective way for a financial intermediary to offer a more diversified set of investment opportunities appealing to a wider range of potential investors.

(c) *SMEs receiving the initial risk finance investment while they have been operating in any market for longer than the eligibility period fixed in the General Block Exemption Regulation*

75. Certain types of undertakings may be regarded as still being in their expansion/early growth stages if, even though they have been in existence for a considerable amount of time, they have not yet sufficiently proven their potential to generate returns or do not have a sufficiently robust track record and collateral. This may be the case in high-risk sectors, such as the biotech, aerospace, defence, cultural and creative industries, and potentially more generally for innovative SMEs, including those that focus on green or digital technologies or SMEs that pursue social innovation ([50]). Moreover, undertakings that have sufficient internal equity to finance their initial activities may require external financing only at a later stage, for instance to increase their capacity from a small-scale to a larger scale business. This may require a higher amount of investment than they can meet from their own resources.

76. Therefore, it may be possible to allow measures whereby the initial investment is carried out after the eligibility period fixed in Article 21 of the General Block Exemption Regulation. In such circumstances, the Commission may require that the measure clearly defines the eligible categories of undertakings, in the light of evidence provided in the *ex ante* assessment regarding the existence of a specific market failure affecting such undertakings.

(d) *Start-ups and SMEs requiring a risk finance investment of an amount exceeding the cap fixed in the General Block Exemption Regulation*

77. Article 21 of the General Block Exemption Regulation sets a maximum total amount of risk finance per eligible undertaking, including follow-on investments. However, in certain industries where the upfront research or investment costs are relatively high, for example in aerospace, defence, life sciences or green technology or energy, that amount may not be sufficient to achieve all the necessary investment rounds and set the start-up or SME on a sustainable growth path. It may therefore be justified, under certain conditions, to allow for a higher amount of overall investment to eligible undertakings.

78. More specifically, risk finance measures may provide support above the maximum total amount specified in the General Block Exemption Regulation provided the envisaged amount of funding reflects the size and nature of the funding gap identified and quantified in the *ex ante* assessment with respect to the target sectors or territories. In such cases, the Commission will take into account the capital-intensive nature of the targeted sectors and/or the higher costs of investments in certain geographic areas.

(e) *Alternative trading platforms not fulfilling the conditions of the General Block Exemption Regulation*

79. The Commission recognises that alternative trading platforms are an important part of the SME financing market because they both attract fresh capital into SMEs and facilitate the exit of earlier investors ([51]). The General Block Exemption Regulation recognises their importance by facilitating their activity either through fiscal incentives

([50]) See footnote 7 for examples of social innovation. The innovative character of an SME is to be appraised in the light of the definition set out in Article 2 of the General Block Exemption Regulation.

([51]) The Commission recognises the growing importance of crowd-funding platforms in attracting funding for start-up companies. Therefore, if there is an established market failure and in case a crowd-funding platform has an operator which is a separate legal entity, the Commission may apply, by analogy, the rules applicable to alternative trading platforms. This applies equally to fiscal incentives to invest via such crowd-funding platforms. On 10 November 2020, Regulation (EU) 2020/1503 of the European Parliament and of the Council of 7 October 2020 on European crowdfunding service providers for business, and amending Regulation (EU) 2017/1129 and Directive (EU) 2019/1937 (OJ L 347, 20.10.2020, p. 1), entered into force. It is the expectation that it will increase the availability of crowd-funding as an innovative form of finance.

targeted at natural persons investing in companies listed on those platforms, or by allowing for start-up aid to the platform operator, subject to the condition that the platform operator qualifies as a small enterprise and up to certain thresholds.

80. However, operators of alternative trading platforms may not necessarily be small enterprises when they are established. Equally, the maximum amount of aid permissible as start-up aid under the General Block Exemption Regulation may not be sufficient to support the establishment of the platform. Moreover, in order to attract sufficient resources for the establishment and the roll-out of new platforms, it may be necessary to provide fiscal incentives to corporate investors. Finally, the platform may not only list SMEs, but also undertakings which exceed the thresholds in the definition of SMEs.

81. Therefore, it may be justified, under certain conditions, to allow fiscal incentives to corporate investors, to support platform operators that are not small enterprises, to allow investments for the establishment of alternative trading platforms the amount of which exceeds the limits provided for start-up aid under the General Block Exemption Regulation, or to allow aid to alternative trading platforms where the majority of the financial instruments admitted to trading are issued by SMEs. In such cases, the *ex ante* assessment must demonstrate the existence of a specific market failure or other relevant obstacle affecting such platforms in the relevant geographic market.

3.2.2.2. Measures with design parameters not complying with the General Block Exemption Regulation

(a) *Financial instruments with independent private investor participation below the ratios provided for in the General Block Exemption Regulation*

82. The market failures or other relevant obstacles affecting enterprises in particular regions or Member States may be more pronounced due to the relative underdevelopment of the SME finance market within such areas in comparison to other regions in the same Member State, other Member States or globally. This may particularly be the case in Member States without a well-established presence of formal venture capital investors, private equity funds or business angels. In the case of measures aimed at overcoming such structural barriers, the Commission may accept an independent private investor participation below the ratios provided for in Article 21 of the General Block Exemption Regulation subject to the condition in paragraph 25 of these Guidelines.

83. Moreover, the Commission may also accept risk finance measures with independent private investor participation below the ratios set out in Article 21 of the General Block Exemption Regulation in the event of a more pronounced market failure or another relevant obstacle as demonstrated by the Member State, in particular, where such measures specifically target SMEs before their first commercial sale or at the proof-of-concept stage, provided that an appreciable part of the risks of the investment are effectively borne by the participating private investors.

(b) *Financial instruments with design parameters above the ceilings provided for in the General Block Exemption Regulation*

84. The benefit of the General Block Exemption Regulation is reserved for measures whereby non-*pari passu* loss-sharing between public and private investors is so designed as to limit the first loss assumed by the public investor. Similarly, in the case of guarantees, the block exemption sets limits on the guarantee rate and the total losses assumed by the public investor.

85. However, in certain circumstances, by taking a riskier financing position, public funding may allow private investors or lenders to provide additional financing. In assessing measures with financial design parameters exceeding the ceilings in the General Block Exemption Regulation, the Commission will take into account a number of factors as outlined in Section 3.2.3.2 of these Guidelines.

(c) *Financial instruments other than guarantees where investors, financial intermediaries and their managers are selected by giving preference to downside protection over asymmetric profit-sharing*

86. In accordance with Article 21 of the General Block Exemption Regulation, the selection of financial intermediaries, as well as investors or fund managers, must be based on an open, transparent and non-discriminatory process setting out clearly the policy objectives pursued by the measure and the type of financial parameters designed to achieve such objectives. This means that the financial intermediaries or their managers have to be selected via a procedure compliant with Directive 2014/24/EU. If that Directive is not applicable, the selection procedure must be such as to ensure the widest possible choice amongst qualified financial intermediaries or fund managers. In particular, such a procedure must enable the Member State concerned to compare the terms and conditions negotiated between the financial intermediaries or the fund managers and potential private investors so as to ensure that the risk finance measure attract private investors with the minimum State aid possible, or the minimum divergence from *pari passu* conditions, in the light of a realistic investment strategy.

87. Pursuant to Article 21 of the General Block Exemption Regulation, the applicable criteria for the selection of managers must include a requirement whereby, for instruments other than guarantees, '*profit-sharing shall be given preference over downside protection*' in order to limit a bias towards excessive risk-taking by the manager selecting the undertakings in which the investment is made. This is meant to ensure that whatever the form of the financial instrument set out by the measure, any preferential treatment granted to private investors or lenders has to be weighed against the public interest which consists of ensuring the revolving nature of the public capital committed and the long-term financial sustainability of the measure.

88. In certain cases, however, it may prove necessary to give preference to downside protection, namely where the measure targets start-ups or certain sectors in which the default rate of SMEs is high. This may be the case for measures targeting sectors faced with important technological barriers, or sectors where the companies have a high dependence on single projects requiring large upfront investment and entailing high risk-exposure, such as the aerospace and defence ecosystem, and the cultural and creative industries. A preference for downside protection mechanisms may also be justified for measures operating via a fund of funds and aimed at attracting private investors at that level or for measures targeting SMEs before their first commercial sale or at the proof-of-concept stage.

(d) *Fiscal incentives to corporate investors including financial intermediaries or their managers acting as co-investors*

89. While the General Block Exemption Regulation covers fiscal incentives granted to independent private investors who are natural persons within the meaning of Article 2 thereof providing risk finance directly or indirectly to eligible start-ups and SMEs, Member States may find it appropriate to put in place measures applying similar incentives to independent private investors who are corporate investors. The difference lies in the fact that corporate investors are undertakings within the meaning of Article 107 of the Treaty. The measure must therefore be subject to specific restrictions (as set out in Sections 3.2.3.3 and 3.2.4.2) in order to ensure that aid at the level of the corporate investors remains proportionate and has a real incentive effect.

90. Financial intermediaries and their managers may benefit from a fiscal incentive only insofar as they act as co-investors or co-lenders. No fiscal incentive can be granted in respect of the services rendered by the financial intermediary or its managers for the implementation of the measure.

3.2.3. **Appropriateness of the aid measure**

91. The proposed aid measure must be an appropriate policy instrument to achieve the intended objective of the aid, that is to say, there must not be a better placed and less distortive policy instrument or aid instrument capable of achieving the same outcome.

3.2.3.1. Appropriateness compared to other policy instruments and other aid instruments

92. In order to address the identified market failure or other relevant obstacle and to contribute to the achievement of the policy objectives pursued by the measure, the proposed risk finance measure must be an appropriate instrument. The choice of the specific form of the risk finance measure must be duly justified based on the evidence provided by the Member State in the *ex ante* assessment.

93. As a first step, the Commission will consider whether and to what extent the risk finance measure can be considered as an appropriate instrument compared to other policy instruments aimed at encouraging the provision of risk finance to eligible undertakings. State aid is not the only policy instrument available to Member States to facilitate the provision of risk finance to eligible undertakings. Member States can use other complementary policy tools both on the supply and demand side, such as regulatory measures to facilitate the functioning of financial markets, measures to improve the business environment, advisory services for investment-readiness or public investments that comply with the market economy operator test.

94. As a second step, the Commission will consider whether the proposed measure is more appropriate than alternative State aid instruments addressing the same market failure or other relevant obstacle. In that respect, financial instruments are generally considered to be less distortive than direct grants and therefore constitute a more appropriate instrument. However, State aid to facilitate the provision of risk finance can be granted in various forms, such as selective fiscal instruments or sub-commercial financial instruments, including a range of equity, debt or guarantee instruments with different risk-return characteristics, as well as various delivery modes and funding structures, the appropriateness of which depends on the nature of the targeted undertakings and the funding gap. Therefore, the Commission will assess whether the design of the measure provides for an efficient funding structure, taking into account the investment strategy of the fund, so as to ensure sustainable operations.

95. In that respect, the Commission will look positively at measures which involve sufficiently large funds in terms of portfolio size, geographic coverage, in particular if they operate across several Member States, and diversification of the portfolio, as such funds may be more efficient and therefore more attractive for private investors, compared to smaller funds. Certain fund of funds structures may meet those conditions provided that the overall management costs resulting from the different levels of intermediation are offset by substantial efficiency gains.

3.2.3.2. Conditions for determining the appropriateness of financial instruments

96. To determine the appropriateness of financial instruments whose design parameters fall outside the scope of the General Block Exemption Regulation, the Commission will consider the conditions set out in paragraphs 97 to 121 of these Guidelines.

97. Firstly, the measure must mobilise additional funding from market participants. Minimum independent private investment ratios below those set out in Article 21 of the General Block Exemption Regulation may only be justified in the light of a more pronounced market failure or another relevant obstacle established in the *ex ante* assessment (see Section 3.2.1). In that regard, the *ex ante* assessment should, furthermore, provide a sufficiently detailed assessment of the level and structure of the supply of private funding for the type of eligible undertaking in the relevant geographic area (see paragraph 63). Furthermore, it must be demonstrated that the measure leverages additional private resources that would not have otherwise been provided or would have been provided in different forms or amounts or on different terms.

98. In the case of risk finance measures targeting specifically start-ups and SMEs that have not been operating in any market ([52]), the Commission may accept that the level of independent private participation is lower than the required ratios. Alternatively, for such investment targets, the Commission may accept that the private participation is non-independent in nature, that is to say, provided, for instance, by the owner of the beneficiary undertaking. In duly justified cases, the Commission may also accept levels of private participation lower than

([52]) This includes all start-ups and SMEs that have not yet made their first commercial sale (as defined in paragraph 35 point 12 of these Guidelines).

those established in the General Block Exemption Regulation in respect of eligible undertakings that have been operating on a market for no longer than the eligibility period fixed in Article 21 of the General Block Exemption Regulation, in the light of the economic evidence provided in the *ex ante* assessment regarding the relevant market failure or other relevant obstacle.

99. A risk finance measure targeting eligible undertakings that have been operating on any market for longer than the eligibility period fixed in Article 21 of the General Block Exemption Regulation at the time of the first risk finance investment must contain adequate restrictions, whether in terms of time limits or other objective criteria of a qualitative nature, relating to the development stage of the target undertakings. For such investment targets the Commission would normally require a minimum private participation ratio of 60 %.

100. Secondly, together with the proposed level of private participation, the Commission will also take into account the balance of risks and rewards between the public and private investors. In that regard, the Commission will consider positively measures whereby the losses are shared *pari passu* between the investors, and private investors only receive upside incentives. The Commission will take due account that loss-sharing on a non-*pari passu* basis may however be required in view of more severe market failures In principle, the closer the risk and reward sharing is to actual commercial practices, the more likely it is that the Commission will accept a lower level of private participation.

101. Thirdly, the Commission will consider the level of the funding structure at which the measure aims to leverage private investment. At the level of the fund of funds, the ability to attract private funding may depend on a more extensive use of downside protection mechanisms. Conversely, an excessive reliance on such mechanisms may distort the selection of eligible undertakings and lead to inefficient outcomes where private investors intervene at the level of the investment into the undertakings and on a transaction-by-transaction basis.

102. In assessing the appropriateness of the specific design of the measure, the Commission may take into account the importance of the residual risk retained by the selected private investors relative to the expected and unexpected losses assumed by the public investor, as well as the balance of expected returns between the public investor and the private investors. Thus a different risk and reward profile could be accepted if it maximises the amount of private investment, without undermining the genuine profit-driven character of the investment decisions.

103. Fourthly, the exact nature of incentives must be determined through an open, transparent and non-discriminatory process for selecting financial intermediaries, as well as fund managers or investors. By the same token, the managers of the fund of funds should be required to legally commit as part of their investment mandate to determine, via a competitive process for the selection of eligible financial intermediaries, fund managers or investors, the preferential conditions which could apply at the level of the sub-funds.

104. To prove the necessity of the specific financial conditions underpinning the design of the measure, Member States may be required to produce evidence demonstrating that, in the process of selecting private investors, all participants in the process were seeking conditions that would not be covered by the General Block Exemption Regulation, or that the tender was inconclusive.

105. Fifthly, the financial intermediary or the fund manager may co-invest alongside the Member State, so long as the terms and conditions of such a co-investment are such as to exclude any potential conflict of interests. The financial intermediary must take at least 10 % of the first loss piece. Such co-investment could contribute to ensuring that investment decisions are aligned with the relevant policy targets. The ability of the manager to provide investment from its own resources can be one of the selection criteria.

106. Sixthly, risk finance measures making use of debt instruments must provide for a mechanism ensuring that the financial intermediary passes on the advantage it receives from the State to the final beneficiary undertakings, for instance in the form of lower interest rates, reduced collateral requirements or a combination of the two. The financial intermediary may also pass on the advantage by investing in undertakings that, although potentially

viable according to the financial intermediary's internal rating criteria, would be in a risk class where the intermediary would not invest in the absence of the risk finance measure. The pass-on mechanism must include adequate monitoring arrangements, as well as a claw-back mechanism ([53]) or an equivalent contractual mechanism.

107. Finally, to ensure that financial intermediaries involved in the risk finance measure deliver the relevant objectives, the investment strategy of the financial intermediary must be aligned with the objectives of the measure. As part of the selection process, financial intermediaries must demonstrate how their proposed investment strategy may contribute to the achievement of the objectives and targets. Furthermore, the Member State must ensure that the investment strategy of the intermediaries remains at all times aligned with the agreed targets, for instance via appropriate monitoring and reporting mechanisms and the participation of representatives of the public investors in the representation bodies of the financial intermediary, such as the supervisory board or the advisory board. An appropriate governance structure must ensure that material changes to the investment strategy require the prior consent of the Member State. For the avoidance of doubt, the Member State may not participate directly in individual investment and divestment decisions.

108. Member States can deploy a range of financial instruments as part of the risk finance measure, such as equity and quasi-equity investment instruments, loan instruments or guarantees on a non-*pari passu* basis. Paragraphs 109 to 121 set out the elements that the Commission will take into account in its assessment of such specific financial instruments.

(a) *Equity investments*

109. Equity investment instruments may take the form of equity or quasi-equity investments into an undertaking, by which the investor buys (part of) the ownership of that undertaking ([54]).

110. Equity instruments can have various asymmetric features, providing a differentiated treatment of investors as some may participate to a larger extent in the risks and rewards than others. To mitigate private investors' risks, the measure may offer upside protection (the public investor giving up a part of the return) or protection against a part of the losses (limiting the losses for the private investor), or a combination of the two.

111. The Commission considers that upside incentives create a better alignment of interests between public and private investors. Conversely, downside protection whereby the public investor may be exposed to the risk of poor performance may lead to misalignment of interests and adverse selection by financial intermediaries or investors.

112. The Commission considers that equity instruments with capped return ([55]), call option ([56]) and asymmetric income cash split ([57]) offer good incentives, especially in situations characterised by a less severe market failure.

113. Equity instruments with non-*pari passu* loss-sharing features going beyond the limits set out in the General Block Exemption Regulation may only be justified for measures addressing severe market failures, for instance in high-tech sectors, or other relevant obstacles identified in the *ex ante* assessment, such as measures targeting predominantly start-ups and SMEs before their first commercial sale or at the proof-of-concept stage. To prevent extensive downside risk protection, the first loss piece borne by the public investor must be capped.

([53]) A claw-back mechanism or equivalent contractual mechanism means an arrangement under which an intermediary must return an advantage obtained from the State that it failed to pass on to the final beneficiary as required.

([54]) For the avoidance of doubt and in line with Article 21 of the General Block Exemption Regulation, for equity and quasi-equity investments, no more than 30 % of the financial intermediary's aggregate capital contributions and uncalled committed capital may be used for liquidity management purposes.

([55]) Capped return for the public investor at a certain pre-defined hurdle rate: if the pre-defined rate of return is exceeded, all returns above are distributed to the private investors only.

([56]) Call options on public shares: private investors are given the right to exercise a call option to buy out the public investment share at a pre-agreed strike price.

([57]) Asymmetric income cash split: cash is drawn from both public and private investors on a *pari passu* basis, but returns are shared, whenever they arise, in an asymmetric way. Private investors receive a larger share of the distribution proceeds than they should receive pro rata their respective holdings, up to the pre-defined hurdle rate.

(b) *Funded debt instruments: loans*

114. A risk finance measure may cover the provision of loans at the level of either the financial intermediaries or the final beneficiaries.

115. Funded debt instruments may take different forms, including subordinated loans and portfolio risk-sharing loans. Subordinated loans may be granted to financial intermediaries to strengthen their capital structure, with a view to providing additional financing to eligible undertakings. Portfolio risk-sharing loans are designed to provide loans to financial intermediaries who commit to co-finance a portfolio of new loans or leases to eligible undertakings up to a certain co-financing rate in combination with credit risk-sharing of the portfolio on a loan-by-loan (or lease-by-lease) basis. In both cases, the financial intermediary acts as a co-investor in the eligible undertakings but enjoys preferential treatment compared to the public investor or lender as the instrument mitigates its own exposure to credit risks resulting from the underlying loan portfolio.

116. In general, where the risk mitigation characteristics of the instrument lead the public investor or lender to assume, with respect to the underlying loan portfolio, a first loss position exceeding the cap set out by the General Block Exemption Regulation, the measure may only be justified in case of measures targeting exclusively start-ups and SMEs before their first commercial sale or at the proof-of-concept stage or in the event of a severe market failure or other relevant obstacle which must be clearly identified in the *ex ante* assessment. The Commission will consider positively measures which provide for an explicit cap on the first losses assumed by the public investor, notably where such a cap does not exceed 35 %.

117. Portfolio risk sharing loan instruments should ensure a substantial co-investment rate by the selected financial intermediary. This is presumed to be the case if that rate is not lower than 30 % of the value of the underlying loan portfolio.

(c) *Unfunded debt instruments: guarantees*

118. A risk finance measure may cover the provision of guarantees or counter-guarantees to the financial intermediaries, or guarantees to the final beneficiaries, or a combination of the two. Eligible transactions covered by the guarantee must be newly originated eligible risk finance loan transactions, including lease instruments, as well as quasi-equity investment instruments, but not equity instruments.

119. Guarantees should be provided on a portfolio basis. Financial intermediaries may select the transactions they wish to include in the portfolio covered by the guarantee, so long as the included transactions meet the eligibility criteria as defined by the risk finance measure. Guarantees should be offered at a rate ensuring an appropriate level of risk and reward sharing with the financial intermediaries. In particular, in duly justified cases and subject to the results of the *ex ante* assessment, the guarantee rate may be higher than the maximum rate provided for in Article 21 of the General Block Exemption Regulation, but must not exceed 90 %. This could be the case for guarantees on loans or quasi-equity investments in start-ups or in SMEs before their first commercial sale or at the proof-of-concept stage.

120. In the case of capped guarantees, the cap rate should, in principle, only cover the expected losses. Should it also cover the unexpected losses, the latter should be priced at a level that reflects the additional risk coverage. In general, the cap rate should not exceed 35 %. Uncapped guarantees (guarantees with a guarantee rate, but with no cap rate) may be provided in duly justified cases and be priced to reflect the additional risk coverage provided by the guarantee.

121. The duration of the guarantee should be limited in time, normally up to a maximum of ten years, without prejudice to the maturity of individual debt instruments covered by the guarantee, which can be longer. The guarantee must be reduced if the financial intermediary does not include a minimum amount of investment in the portfolio during a specific period. Commitment fees must be required for unused amounts. Methods such as the use of commitment fees, trigger events or milestones can be used in order to incentivise the intermediaries to achieve the agreed volumes.

3.2.3.3. Conditions for determining the appropriateness of fiscal incentives

122. As pointed out in Section 3.2.2.2, point (d), Section 3 of the General Block Exemption Regulation is limited to fiscal incentives targeted at investors who are natural persons. Therefore, measures using fiscal incentives to encourage corporate investors to provide finance to eligible undertakings, either directly or indirectly through the acquisition of shares in a dedicated fund or other types of investment vehicles that invest into such undertakings, are subject to notification to the Commission.

123. As a general rule, Member States have to base their fiscal aid measures on the findings of a market failure or other relevant obstacle in the *ex ante* assessment, and therefore target their instrument towards a well-defined category of eligible undertakings.

124. Fiscal incentives to corporate investors may take the form of income tax reliefs and/or tax reliefs on capital gains and dividends, including tax credits and deferrals. In its case practice, the Commission has generally considered as appropriate income tax reliefs that contain specific limits on the percentage of the invested amount that the investor can claim for the purposes of the tax relief, as well as on the tax break amount which can be deducted from the investor's tax liabilities. Moreover, capital gains tax liability on disposal of shares can be deferred if reinvested in eligible investments within a certain period, while losses arising upon disposal of such shares may be deducted from profits accruing from other shares subject to the same tax.

125. In general, the Commission considers that fiscal incentives to corporate investors appropriate if the Member State can produce evidence demonstrating that the selection of the eligible undertakings is based on a well-structured set of investment requirements, made public through appropriate publicity, and setting out the characteristics of the eligible undertakings which are subject to a market failure or other relevant obstacle.

126. Without prejudice to the possibility of prolonging a measure, fiscal schemes must have a maximum duration of ten years. If the Member State proposes to extend a measure to a total duration of more than ten years (including predecessor schemes, if any), it must carry out a new *ex ante* assessment, together with an evaluation of the effectiveness of the scheme during the entire period of its implementation.

127. In its analysis, the Commission will take into account the specific characteristics of the relevant national fiscal system and the fiscal incentives that already exist in the Member State, as well as the interplay between those incentives.

128. The fiscal advantage must be open to all investors fulfilling the applicable criteria, without discrimination as to their place of establishment. Member States should therefore ensure adequate publicity regarding the scope and the technical parameters of the measure. They should include the relevant ceilings and caps determining the maximum advantage that each individual investor may draw from the measure, as well as the amount of the maximum investment which can be made in individual eligible undertakings.

3.2.3.4. Conditions for measures supporting alternative trading platforms

129. As regards aid measures supporting alternative trading platforms beyond the limits set out in the General Block Exemption Regulation, the operator of the platform must provide a business plan demonstrating that the aided platform can become self-sustainable in less than ten years. Moreover, plausible counterfactual scenarios must be provided in the notification, comparing the situations with which the tradable undertakings would be confronted if the platform did not exist, in terms of access to the necessary finance.

130. The Commission will look favourably at alternative trading platforms set up by and operating across several Member States, because they may be particularly efficient and attractive to private investors, in particular to institutional investors.

131. For existing platforms, the proposed business strategy of the platform must show that, due to a persistent shortage of listings, and therefore a shortage of liquidity, the platform concerned needs to be supported in the short-term, despite its long-term viability. The Commission will consider positively aid for the setting up of an alternative trading platform in Member States where no such platform exists. Where the alternative trading platform to be supported is a sub-platform or subsidiary of an existing stock exchange, the Commission will pay particular attention to the assessment regarding the lack of finance that such a sub-platform would face.

3.2.4. **Proportionality of the aid**

132. State aid must be proportionate to the market failure or other relevant obstacle which it is intended to address in order to achieve the relevant policy objectives. It must be designed in a cost-efficient manner, in accordance with the principles of sound financial management. Therefore, for any risk finance aid measure to be considered proportionate, the aid must be limited to the strict minimum necessary to attract funding from the market to overcome the market failure or the other relevant obstacle, without generating undue advantages.

133. As a general rule, at the level of the final beneficiaries, risk finance aid is considered to be proportionate if the risk finance investment per eligible beneficiary does not exceed the cap fixed in Article 21 of the General Block Exemption Regulation and complies with the conditions set out in this Section. For risk finance measures where the risk finance investment per eligible beneficiary exceeds the cap fixed in the General Block Exemption Regulation, the higher risk finance investment per beneficiary must, furthermore, be commensurate to the size of the funding gap quantified in the *ex ante* assessment (see paragraph 64).

134. At the level of the investors, aid must be limited to the minimum necessary to attract private capital in order to achieve the minimum leverage of private resources and address the market failure or other relevant obstacle.

3.2.4.1. Conditions for financial instruments

135. Financial intermediaries have to select the eligible final beneficiaries on the basis of a commercially sound investment strategy (see paragraph 70) and a viable business plan that justifies the amount of risk finance that is to be provided. Those elements are a further safeguard to ensure that the aid is necessary and proportionate.

136. The measure must ensure a balance between the preferential conditions offered by a financial instrument in order to maximise the leverage of private resources while addressing the identified market failure or other relevant obstacle and the need for the instrument to generate sufficient financial returns to remain operationally viable.

137. The exact nature and value of the incentives must be determined through an open, transparent and non-discriminatory selection process in the context of which financial intermediaries, as well as fund managers or investors, are called to present competing bids.

Fair rate of return

138. The Commission considers that where any asymmetric risk-adjusted returns or loss-sharing is established through such a process, the financial instrument is to be regarded as proportionate and to reflect a fair rate of return. Where the fund managers are selected through an open, transparent, and non-discriminatory process requiring the applicants to present their investor base as part of the selection process, the private investors are considered to be duly selected.

139. In the case of co-investment by a public fund with private investors participating on a deal-by-deal basis, the latter should be selected through a separate competitive process in respect of each transaction, which is the preferred way of establishing the fair rate of return.

140. Where private investors are not selected through a proper selection process (for instance because the selection procedure has proven to be ineffective or inconclusive) the fair rate of return must be established by an independent expert on the basis of an analysis of market benchmarks and market risk on the basis of a generally accepted, standard methodology such as the discounted cash flow valuation methodology in order to avoid over-compensation of investors. On that basis, the independent expert must calculate a minimum level of fair rate of return and add to that an appropriate margin to reflect the risks.

141. In the situations described in paragraph 140, there must be appropriate rules in place for the appointment of the independent expert. As a minimum, the expert must be licensed to provide such advice, be registered with the relevant professional associations, comply with deontological and professional rules issued by those associations, be independent and be liable for the accuracy of its expertise. In principle, independent experts are to be selected via an open, transparent and non-discriminatory selection process. The services of the same independent expert may not be used twice by the same aid granting authority within a period of three years for the determination of the fair rate of return in the context of risk finance aid measures.

142. In light of the above, the design of the measure may contain various asymmetric profit-sharing or asymmetrically timed public and private investments, as long as the expected risk-adjusted returns for the private investors are limited to the fair rate of return.

Selection and remuneration of the financial intermediaries or their managers

143. As a general principle, the Commission considers that economic alignment of interests between the Member State and the financial intermediaries or their managers, as appropriate, can minimise the aid. The interests must be aligned both as regards the achievement of the specific policy targets and the financial performance of the public investment into the instrument.

144. The financial intermediary or the fund manager may co-invest alongside the Member State, as long as the terms and conditions of such a co-investment are such as to exclude any possible conflict of interests. Such co-investment could incentivise the manager to align its investment decisions with the set policy targets. The ability of the fund manager to provide investment from its own resources can be one of the selection criteria.

145. The remuneration of the financial intermediaries or the fund managers, depending on the type of risk finance measure, must include an annual management fee, as well as performance-based incentives, such as carried interest.

146. The performance-based component of the remuneration must be significant and designed to reward the financial performance, as well as the attainment of the specific policy targets set in advance. Policy-related incentives must be balanced with the financial performance incentives which are required to ensure an efficient selection of eligible undertakings in which investments will be made. In addition, the Commission will take into account possible penalties provided for in the funding agreement between the Member State and the financial intermediary, which apply if the defined policy targets are not met.

147. The level of performance-based remuneration should be justified based on the relevant market practice. The managers must be remunerated not only for the successful disbursement and the amount of private capital raised, but also for the successful returns on investment, such as income receipts and capital receipts above a certain minimum rate of return or hurdle rate.

148. The total management fees must not exceed operational and management costs necessary for the execution of the financial instrument concerned, plus a reasonable profit, in line with market practice. The fees must not include investment costs.

149. As financial intermediaries or their managers, as appropriate, must be selected through an open, transparent and non-discriminatory process, the overall fee structure can be evaluated as part of the scoring of that selection process and the maximum remuneration can be established as a result of such selection.

150. In case of direct appointment of an entrusted entity, the Commission considers that the annual management fee should always reflect comparable market practice and in principle not exceed 3 % of the capital to be contributed to that entity, excluding the performance-based incentives.

3.2.4.2. Conditions for fiscal incentives

151. The total investment for each beneficiary undertaking must not exceed the maximum amount fixed by Article 21 of the General Block Exemption Regulation unless a higher amount can be justified on the basis of the market failure identified in the *ex ante* assessment and a fiscal instrument is the most appropriate tool (see Section 3.2.3.3).

152. Irrespective of the type of tax relief, eligible shares must be full-risk, ordinary shares, newly issued by an eligible undertaking as defined in the *ex ante* assessment, and they must be held for at least three years. The relief can only be available to investors who are independent from the company invested in.

153. In the case of income tax relief, investors providing finance to eligible undertakings may receive relief of up to a reasonable percentage of the amount invested, provided the maximum income tax liability of the investor, as established prior to the fiscal measure, is not exceeded. The Commission considers it reasonable to cap the tax relief at 30 % of the invested amount. Losses arising upon disposal of the shares may be set against income tax.

154. In the case of tax relief on dividends, any dividend received in respect of qualifying shares may be fully exempt from income tax.

155. Similarly, in the case of capital gains tax relief, any profit on the sale of qualifying shares may be fully exempt from capital gains tax. Moreover, capital gains tax liability on disposal of qualifying shares may be deferred if reinvested in new qualifying shares within one year.

3.2.4.3. Conditions for alternative trading platforms

156. In order to allow a proper analysis of the proportionality of the aid to the operator of an alternative trading platform, State aid can be granted in order to cover up to 50 % of the investment costs incurred for the establishment of such a platform.

157. In the case of fiscal incentives to corporate investors, the Commission will assess the proportionality of the measure against the conditions set out for fiscal incentives in Section 3.2.4.2.

3.2.4.4. Cumulation

158. Risk finance aid may be cumulated with any other State aid measure with identifiable eligible costs.

159. Risk finance aid may be cumulated with other State aid measures without identifiable eligible costs, or with *de minimis* aid, up to the highest relevant total financing ceiling fixed in the specific circumstances of each case by a block exemption regulation or a decision adopted by the Commission.

160. Union funding centrally managed by the institutions, agencies, joint undertakings or other bodies of the Union that is not directly or indirectly under the control of the Member States does not constitute State aid. Where such Union funding is combined with State aid, the total amount of public funding granted in relation to the same investment must not exceed the most favourable funding rate laid down in the applicable rules of Union law.

3.2.5. **Avoiding undue negative effects of risk finance aid on competition and trade**

161. For the aid to be compatible, the negative effects of the aid measure in terms of distortions of competition and impact on trade between Member States must be limited and must not outweigh the positive effects of the aid to an extent that would be contrary to the common interest.

3.2.5.1. Positive effects to be taken into account

162. As explained in Section 1, start-ups and SMEs continue to play a crucial role in Member States' economies, both in terms of creating jobs and of stimulating economic dynamism and growth. SMEs employ around 100 million people in the Union and account for more than half of the Union's GDP. They are also essential to the Union's competitiveness and prosperity, economic and technological sovereignty, and resilience to external shocks. However, to be able to fulfil their role, and to deliver those positive effects, SMEs need financing. Therefore, an efficient risk finance market for SMEs is crucial for entrepreneurial companies to be able to access the necessary funding at each stage of their development. Where there is a market failure or another relevant obstacle to the efficient operation of such finance, risk finance aid may be needed to improve the provision of risk finance to viable SMEs from their early-development up to their growth stages (and, in certain circumstances, to small mid-caps and innovative mid-caps) so as to develop a competitive risk finance market in the longer run. Against this background, the main positive effect that risk finance aid aims to bring about is to improve access to finance for the undertakings concerned.

163. In addition, when assessing the positive effects of risk finance aid to be weighed against its negative effects on competition and trade, the Commission may take into account, where relevant, the circumstance that the aid produces other positive effects, in addition to its contribution to the provision of risk finance. That may be the case where it is established that, in addition to enabling companies to grow or to develop new activities, and generating economic growth, the risk finance investment contributes substantially in particular to the digital transition or transition towards environmentally sustainable activities, including low carbon, climate neutral or climate-resilient activities, to resilient value chains, or to the development of assisted areas. In the assessment of the positive effects to be taken into account, the Commission will where applicable pay particular attention to the criteria for environmentally sustainable economic activities set out in Article 3 of Regulation (EU) 2020/852, including the 'Do no significant harm' principle, or other comparable methodologies ([58]).

164. To allow the Commission to duly assess the expected positive effects of the aid in terms of development of the activities concerned, the Member State should set out a clear and specific objective (or a series of objectives) addressing the market failure or other relevant obstacle identified by the *ex ante* assessment. The size and duration of the measure should be adequate for those objectives. Furthermore, the Member State must also define relevant performance indicators, based on the results of the *ex ante* assessment, to allow the Commission to measure the expected effects of the aid with regard to the objectives pursued. The performance indicators may include:

(a) the required or envisaged private sector investment;

(b) the expected number of final beneficiaries to be invested in, including the number of start-ups and new SMEs;

(c) the estimated number of new undertakings to be created during the implementation of the risk finance measure and as a result of the risk finance investments;

(d) the number of jobs to be created in the final beneficiary undertakings between the date of the first risk finance investment under the risk finance measure and the exit;

(e) where appropriate, the proportion of investments to be made in conformity with the market economy operator test;

(f) milestones and deadlines within which certain predefined amounts or percentage of the budget are to be invested;

(g) returns or yield expected to be generated from the investments;

(h) where appropriate, patent applications to be made by the final beneficiaries, during the implementation of the risk finance measure;

(i) where appropriate, strengthening resilience of critical supply chains (e.g. health, electronics, aerospace, dual use and defence sectors), and furthering technological development.

165. The indicators referred to in paragraph 164 are relevant to demonstrate that the risk finance aid is expected to deliver the positive effects in line with the objectives that have been set. In particular, the indicators allow assessment of the effectiveness of the measure and the validity of the investment strategies drawn up by the financial intermediary in the context of the selection process.

166. Where a risk finance measure is used, partially or entirely, to support undertakings that have recently been acknowledged/awarded for innovativeness in accordance with the criteria set in CASSINI activities or have been awarded a Seal of Excellence quality label by the EIC, or to co-invest with the EIC Fund or to provide follow-on investment with respect to the Accelerator Programme ([59]), the Commission may accept that the Member State uses the same Key Performance Indicators as respectively CASSINI or the EIC do.

3.2.5.2. Negative effects to be taken into account

167. The State aid measure must be designed in such a way that it limits distortions of competition and trade within the internal market. In the case of risk finance measures, the potential negative effects have to be assessed at each level where aid may be present: the investors, the financial intermediaries and their managers, and the final beneficiaries.

([58]) For measures which are identical to measures within Recovery and Resilience Plans as approved by the Council, this condition is considered fulfilled, since their compliance with the 'Do no significant harm' principle has already been verified.

([59]) In accordance with Article 48 of Regulation (EU) 2021/695 (see footnote 26).

168. To enable the Commission to assess the likely negative effects of the measure on competition and trade, the Member State may submit any study or other relevant evidence at its disposal, such as *ex-post* evaluations carried out for similar schemes, in terms of the eligible undertakings, funding structures, design parameters and geographic area.

169. At the level of the market for the provision of risk finance, State aid may result in the crowding out of private investors. This might reduce the incentives for private investors to provide funding to eligible undertakings and encourage them to wait until the State provides aid for such investments. That risk becomes more relevant, the higher the amount of the total financing provided to the final beneficiaries, the larger the size of those beneficiary undertakings and the more advanced their development stage, as private financing becomes progressively available in those circumstances. Moreover, State aid should not replace the normal business risk of investments that investors would have undertaken even in the absence of State aid. However, to the extent that the market failure or the other relevant obstacle has been properly defined, it is less likely that the risk finance measure will result in such crowding out.

170. At the level of financial intermediaries, aid may have distortive effects in terms of increasing or maintaining an intermediary's market power, for example in the market of a particular region. Even where aid does not strengthen the financial intermediary's market power directly, it may do so indirectly, by discouraging the expansion of existing competitors, inducing their exit or discouraging the entry of new competitors.

171. Risk finance measures must be targeted at growth-oriented undertakings which are unable to attract an adequate level of financing from private resources but may become viable with risk finance State aid. However, where a measure provides for the setting up of a public fund, but the investment strategy of that fund does not demonstrate sufficiently the potential viability of the eligible undertakings, the measure is unlikely to meet the balancing test (see Section 3.2.5.3), as in such a case the risk finance investment may amount to a grant.

172. The conditions relating to commercial management and profit-oriented decision-making set out in Article 21 of the General Block Exemption Regulation are essential to ensure that the selection of the final beneficiary undertakings is based on a commercial logic. Therefore, the Commission will take those conditions into account when assessing risk finance measures under these Guidelines, including where the measure involves public financial intermediaries.

173. Investment funds of a small scale, with limited regional focus and without adequate governance arrangements will be analysed with a view to avoiding the risk of maintaining inefficient market structures. Regional risk finance schemes may not always have sufficient scale and scope due to a lack of diversification linked to the possibly low number of eligible undertakings as investment targets, which could reduce the efficiency of such funds and result in the granting of aid to less viable companies. In such cases, investments could potentially distort competition and provide undue advantages to certain undertakings.

174. At the level of the final beneficiaries the measure could have distortive effects on the product markets where those undertakings compete. For instance, the measure may distort competition if it targets companies in underperforming sectors. A substantial capacity expansion induced by State aid in an underperforming market might, in particular, unduly distort competition, as the creation or maintenance of overcapacity could lead to a squeeze on profit margins, a reduction of competitors' investments or even their exit from the market. It may also prevent companies from entering the market. This results in inefficient market structures which are also harmful to consumers in the long run. Where the market in the targeted sectors is growing, there is normally less reason to fear that the aid will negatively affect dynamic incentives or will unduly impede exit or entry. The Commission considers that the risk of such distortions is substantial when the risk finance measure is sector-specific, or gives preference to certain sectors over others. In such cases, the Commission will analyse the level of production capacities in the given sector, in the light of the potential demand. In order to enable the Commission to carry out such an assessment, the Member State must indicate in its notification whether the risk finance measure is sector-specific, or gives preference to certain sectors over others.

175. The Commission will also assess any potential negative delocalisation effects as they might affect competition and trade between Member States. In that regard, the Commission will analyse whether regional funds are likely to incentivise delocalisation within the internal market. Where the financial intermediary's activities are focused on a non-assisted region bordering assisted regions, or a region with higher regional aid intensity than the target region, the risk of such distortion is more pronounced. A regional risk finance measure focusing only on certain sectors might also have negative delocalisation effects.

176. Finally, as part of the assessment of negative effects on competition and trade, the Commission may take into account, where relevant, negative externalities of the aided activity where such externalities adversely affect competition and trade between Member States to an extent contrary to the common interest by creating or aggravating market inefficiencies ([60]).

3.2.5.3. Balancing of the positive effects against the negative effects of the aid

177. As a final step of its analysis, the Commission will balance the identified negative effects of the aid measure in terms of distortions of competition and impact on trade between Member States against the positive effects of the aid, and will conclude that the aid measure is compatible with the internal market only if the positive effects outweigh the negative ones.

178. The overall balance of certain categories of aid schemes may further be made subject to a requirement of *ex post* evaluation as described in Section 4. In such cases, the Commission may limit the duration of the schemes, with a possibility to re-notify their prolongation afterwards.

3.2.6. **Transparency**

179. As a further safeguard against undue distortions of competition, Member States, the Commission, economic operators, and the public must have easy access to all relevant acts and to pertinent information about the aid awarded thereunder.

180. Member States must publish the following information in the Commission's transparency award module ([61]) or on a comprehensive State aid website, at national or regional level:

(a) the full text of the individual aid granting decision or the approved aid scheme and its implementing provisions, or a link to it;

(b) information on each individual aid award exceeding EUR 100 000, as set out in the Annex to these Guidelines.

181. Member States must organise their comprehensive State aid websites, as referred to in paragraph 180, in such a way as to allow easy access to the information. Information must be published in a non-proprietary spreadsheet data format, which allows data to be effectively searched, extracted, downloaded and easily published on the internet, for instance in CSV or XML format. The general public must be allowed to access the website without any restrictions, including prior user registration.

182. For schemes in the form of fiscal incentives, the conditions set out in paragraph 180, point (b), will be considered to be fulfilled if Member States publish the required information on individual aid amounts in the following ranges (in EUR million):

0,1-0,5;

0,5-1;

1-2;

2-5;

([60]) This could also be the case where the aid distorts the operation of economic instruments put in place to internalise such negative externalities (e.g. by affecting price signals given by the Union Emissions Trading System or a similar instrument).

([61]) 'State aid Transparency Public Search', available at the following website: https://webgate.ec.europa.eu/competition/transparency/public?lang=en

5-10;

10-30;

30-60;

60-100;

100-250;

250 and over.

183. The information referred to in paragraph 180, point (b), must be published within six months from the date of award of the aid or, for aid in the form of fiscal incentives, within one year from the date the tax declaration is due ([62]). For aid that is unlawful but subsequently found to be compatible, Member States must publish the information within six months from the date of the Commission's decision declaring the aid compatible. To enable the enforcement of State aid rules under the Treaty, the information must be available for at least ten years from the date on which the aid is granted.

184. The Commission will publish on its website the link to the State aid websites referred to in paragraph 180.

4. **EVALUATION**

185. To further ensure that distortion of competition and trade is limited, the Commission may require that certain aid schemes are subject to an *ex post* evaluation. Evaluations will be required for schemes where the potential distortion of competition and trade is particularly high, that is to say, that may risk significantly restricting or distorting competition if implementation is not reviewed in due time.

186. *Ex post* evaluation may be required for the following aid schemes:

(a) schemes with large aid budgets;

(b) schemes with a regional focus;

(c) schemes with a narrow sectoral focus;

(d) schemes which are modified, where the modification affects the eligibility criteria, the amount of investment or the financial design parameters;

(e) schemes containing novel characteristics;

(f) schemes in respect of which the Commission so requests, in the light of the scheme's potential negative effects on competition and trade.

187. In any case, *ex post* evaluation will be required for schemes with a State aid budget or accounted expenditure over EUR 150 million in any given year or EUR 750 million over their total duration, that is to say, the combined duration of the scheme and any predecessor scheme covering a similar objective and geographical area, starting from 1 January 2022. Given the objectives of the evaluation, and to avoid putting a disproportionate burden on Member States, *ex post* evaluations will only be required for aid schemes whose total duration exceeds three years, starting from 1 January 2022.

188. The *ex post* evaluation requirement may be waived for aid schemes that are an immediate successor of a scheme covering a similar objective and geographical area that has been subject to an evaluation, delivered a final evaluation report in compliance with the evaluation plan approved by the Commission and has not generated any negative findings. Where the final evaluation report of a scheme does not comply with the approved evaluation plan, that scheme must be suspended with immediate effect.

([62]) If there is no formal requirement for an annual declaration, 31 December of the year for which the aid was granted will be considered as the granting date for encoding purposes.

189. The aim of the evaluation should be to verify whether the assumptions and conditions underlying the compatibility of the scheme have been achieved, in particular the necessity and the effectiveness of the aid measure in the light of its objectives. It should also assess the impact of the risk finance measure on competition and trade.

190. For aid schemes in respect of which an evaluation must be carried out (see paragraphs 186 and 187), the total duration of which exceeds three years, starting from 1 January 2022, Member States must notify a draft evaluation plan, which will form an integral part of the Commission's assessment of the scheme, as follows:

(a) together with the aid scheme, if its State aid budget exceeds EUR 150 million in any given year or EUR 750 million over its total duration;

(b) within 30 working days following a significant change that increases the budget of the scheme to over EUR 150 million in any given year or EUR 750 million over the total duration of the scheme;

(c) within 30 working days following the recording in official accounts of expenditure in excess of EUR 150 million in any year;

(d) following a request by the Commission, and in any case prior to the approval of the scheme, if the scheme falls within one of the categories listed in paragraph 186, irrespective of the State aid budget of the scheme.

191. The draft evaluation plan must be in accordance with the common methodological principles provided by the Commission ([63]). Member States must publish the evaluation plan approved by the Commission.

192. The *ex post* evaluation must be carried out by an expert independent from the aid granting authority on the basis of the evaluation plan. Each evaluation must include at least one interim and one final evaluation report. Member States must publish both reports.

193. The final evaluation report must be submitted to the Commission in due time to assess any prolongation of the aid scheme and at the latest nine months before its expiry. That period may be reduced for schemes triggering the evaluation requirement in their last two years of implementation. The precise scope and arrangements for each evaluation will be set out in the decision approving the aid scheme. The notification of any subsequent aid measure with a similar objective must describe how the results of the evaluation have been taken into account.

5. FINAL PROVISIONS

5.1. *Applicability*

194. The Commission will apply the principles set out in these Guidelines for the compatibility assessment of all notifiable risk finance aid awarded or intended to be awarded from 1 January 2022.

195. Risk finance aid unlawfully awarded before 1 January 2022 will be assessed in accordance with the rules in force at the date on which the aid was awarded.

196. In order to preserve the legitimate expectations of private investors, in the case of risk finance schemes that provide for public funding to support risk finance, the date of the commitment of the public funding to the financial intermediaries, which is the date of signature of the funding agreement, determines the applicability of the rules to the risk finance measure.

([63]) Commission staff working document, Common methodology for State aid evaluation, SWD(2014) 179 final of 28.5.2014.

5.2. *Appropriate measures*

197. The Commission considers that the implementation of these Guidelines will lead to certain changes in the assessment principles for risk finance aid in the Union. For those reasons, the Commission proposes the following appropriate measures to Member States pursuant to Article 108(1) of the Treaty:

(a) Member States should amend, where necessary, their existing risk finance aid schemes, in order to bring them into line with these Guidelines, within six months after the date of the publication of the Guidelines;

(b) Member States are invited to give their explicit unconditional agreement to the proposed measures within two months from the date of publication of these Guidelines. In the absence of any reply, the Commission will assume that the Member State in question does not agree with the proposed measures.

198. In order to preserve the legitimate expectations of private investors, Member States do not have to take appropriate measures with respect to risk finance aid schemes in favour of SMEs where the commitment of the public funding to the financial intermediaries, which is the date of signature of the funding agreement, was made before the date of publication of these Guidelines and all the conditions provided for in the funding agreement remain unchanged. Those financial intermediaries may continue to operate and invest in accordance with their original investment strategy until the end of the duration set out in the funding agreement.

5.3. *Reporting and monitoring*

199. In accordance with Council Regulation (EU) 2015/1589 ([64]), and Commission Regulation (EC) No 794/2004 ([65]), Member States must submit annual reports to the Commission.

200. Member States must maintain detailed records regarding all aid measures. Such records must contain all information necessary to establish that the conditions regarding eligibility and maximum investment amounts have been fulfilled. Those records must be maintained for ten years from the date of award of the aid and must be provided to the Commission upon request. In the case of aid measures that provide fiscal incentives, under which fiscal aid is granted automatically, such as those based on tax declarations of the beneficiaries, and where there is no *ex ante* verification that all compatibility conditions are met for each beneficiary, Member States must regularly verify, at least *ex post* and on a sample basis, that all compatibility conditions are met, and draw the necessary conclusions. Member States must maintain detailed records of the verifications for at least ten years from the date of the controls.

5.4. *Revision*

201. The Commission may decide to review or change these Guidelines at any time if this should be necessary for reasons associated with the competition policy of the Union or in order to take account of other Union policies and international commitments, developments in the markets, or for any other justified reason.

([64]) Council Regulation (EU) 2015/1589 of 13 July 2015 laying down detailed rules for the application of Article 108 of the Treaty on the Functioning of the European Union (OJ L 248, 24.9.2015, p. 9).

([65]) Commission Regulation (EC) No 794/2004 of 21 April 2004 implementing Council Regulation (EU) 2015/1589 laying down detailed rules for the application of Article 108 of the Treaty on the Functioning of the European Union (OJ L 140, 30.4.2004, p. 1).

ANNEX

Transparency information

The information on individual awards referred to in paragraph 180, point (b) is the following:

— Identity of the individual aid beneficiary ([1]):
  — Name
  — Aid beneficiary's identifier
— Type of aid beneficiary undertaking at the time of application:
  — SME
  — Large enterprise
— Region in which the aid beneficiary is located, at NUTS level II or below
— The main sector or activity of the aid beneficiary for the given aid, identified by the NACE group (three-digit numerical code) ([2])
— Aid element expressed in full in the national currency
— Where different from the aid element, the nominal amount of aid, expressed as full amount in national currency ([3])
— Aid instrument ([4]):
  — Grant/interest rate subsidy/debt write-off
  — Loan/repayable advances/reimbursable grant
  — Guarantee
  — Tax advantage or tax exemption
  — Risk finance
  — Other (please specify)
— Date of award and date of publication
— Objective of the aid
— Identity of the granting authority or authorities
— Where applicable, name of the entrusted entity, and the names of the selected financial intermediaries
— Reference of the aid measure ([5])

([1]) With the exception of business secrets and other confidential information in duly justified cases and subject to the Commission's agreement (Commission communication C(2003) 4582 of 1 December 2003 on professional secrecy in State aid decisions (OJ C 297, 9.12.2003, p. 6).

([2]) Regulation (EC) No 1893/2006 of the European Parliament and of the Council of 20 December 2006 establishing the statistical classification of economic activities NACE Revision 2 and amending Council Regulation (EEC) No 3037/90 as well as certain EC Regulations on specific statistical domains (OJ L 393, 30.12.2006, p. 1).

([3]) Gross grant equivalent, or where applicable, the amount of the investment. For operating aid, the annual amount of aid per beneficiary can be provided. For fiscal schemes this amount can be provided by the ranges set out in paragraph 182. The amount to be published is the maximum allowed tax benefit and not the amount deducted each year (e.g. in the context of a tax credit, the maximum allowed tax credit shall be published rather than the actual amount which might depend on the taxable revenues and vary each year).

([4]) If the aid is granted through multiple aid instruments, the aid amount shall be provided by instrument.

([5]) As provided by the Commission under the notification procedure referred to in Section 2.2.

CORRIGENDA

Corrigendum to Regulation (EU) 2019/1009 of the European Parliament and of the Council of 5 June 2019 laying down rules on the making available on the market of EU fertilising products and amending Regulations (EC) No 1069/2009 and (EC) No 1107/2009 and repealing Regulation (EC) No 2003/2003

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On page 87, Annex IV, Part I, Section 1 (APPLICABILITY OF INTERNAL PRODUCTION CONTROL (MODULE A)):

Point 1.1(d) is deleted.

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