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[1] Text with EEA relevance.

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([1]) Text with EEA relevance.

II

(Non-legislative acts)

INTERNATIONAL AGREEMENTS

Notice concerning the entry into force of the Partnership Agreement on Relations and Cooperation between the European Union and its Member States, of the one part, and New Zealand, of the other part

The Partnership Agreement on Relations and Cooperation between the European Union and its Member States, of the one part, and New Zealand, of the other part, signed at Brussels on 5 October 2016 ([1]), will enter into force on 21 July 2022, the procedure provided for in Article 58(1) of the Agreement having been completed on 21 June 2022.

([1]) OJ L 321, 29.11.2016, p. 3 and OJ L 171, 28.6.2022, p. 1.

REGULATIONS

COMMISSION DELEGATED REGULATION (EU) 2022/1171

of 22 March 2022

amending Annexes II, III and IV to Regulation (EU) 2019/1009 of the European Parliament and of the Council for the purpose of adding recovered high purity materials as a component material category in EU fertilising products

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

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

Having regard 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 ([1]), and in particular Article 42(1) thereof,

Whereas:

(1) Regulation (EU) 2019/1009 lays down rules on the making available on the market of EU fertilising products. EU fertilising products contain component materials of one or more of the categories listed in Annex II to that Regulation.

(2) In accordance with Article 42(1) of Regulation (EU) 2019/1009, the Commission is empowered to adopt delegated acts in accordance with Article 44 for the purpose of adapting Annex II to technical progress.. Pursuant to Article 42(3) of Regulation (EU) 2019/1009 read in conjunction with Article 6 of Directive 2008/98/EC of the European Parliament and of the Council ([2]), the Commission may include in the component material categories materials that cease to be waste following a recovery operation if such materials are to be used for specific purposes, have an existing market or demand and their use do not lead to overall adverse environmental or human health impacts.

(3) The Commission's Joint Research Centre ('JRC') has identified certain high purity materials which could be recovered from waste and used as component materials in EU fertilising products ([3]).

(4) The high purity materials identified by the JRC are ammonium salts, sulphate salts, phosphate salts, elemental sulphur, calcium carbonate and calcium oxide. All those materials are covered by Regulation (EC) No 2003/2003 of the European Parliament and of the Council ([4]), have a significant market demand and have proven their high agronomic value during a long history of use in the field.

(5) As a first measure to ensure both safety and agronomic efficiency, a minimum purity requirement of high purity materials should be laid down. According to the information available in JRC's assessment report, a 95 % purity, expressed in terms of the dry matter of the material, will ensure high agronomic efficiency with low risks to the environment, health and safety. While, for some materials, this high purity is set at more ambitious levels than those required by Regulation (EC) No 2003/2003, it is estimated that such a higher purity is achievable based on existing practices.

([1]) OJ L 170, 25.6.2019, p. 1.
([2]) Directive 2008/98/EC of the European Parliament and of the Council of 19 November 2008 on waste and repealing certain Directives (OJ L 312, 22.11.2008, p. 3).
([3]) Huygens D, Saveyn HGM, Technical proposals for by-products and high purity materials as component materials for EU Fertilising Products, JRC128459, Publications Office of the European Union, Luxembourg, 2022.
([4]) Regulation (EC) No 2003/2003 of the European Parliament and of the Council of 13 October 2003 relating to fertilisers (OJ L 304, 21.11.2003, p. 1).

(6) In addition, it is appropriate to specify that high purity materials are recovered from waste following two types of processes: processes that isolate salts or other elements through (a combination of) advanced purification methods, such as crystallisation, centrifugation or liquid-liquid extraction, often applied in (petro-)chemical industries; and gas purification or emission control processes designed to remove nutrients from off-gases.

(7) Therefore, the content of certain impurities, pathogens or contaminants which are specific to those materials, or the content of organic carbon should be limited, based on the JRC assessment report. Such criteria should apply in addition to the safety criteria laid down in Annex I to Regulation (EU) 2019/1009 for the corresponding product function category and without prejudice to Regulation (EU) 2019/1021 of the European Parliament and of the Council ([5]).

(8) Consequently, additional limit values should be laid down for the contaminants total chromium and thallium. Some of the high purity materials may contain such contaminants as a result of the input materials and the processes they are obtained from. The proposed limit values for those contaminants should ensure that the use of EU fertilising products containing high purity materials with such contaminants does not lead to their accumulation in soil. In addition, requirements on the content of pathogens should be introduced for all EU fertilising products containing or consisting of high purity materials given the broad variety of processes they could be obtained from and the waste streams allowed as input materials. The limit values for both the contaminants and the pathogens should be determined as concentration in the final product, similar to the requirements set out in Annex I to Regulation (EU) 2019/1009. This is justified by the fact that the safety criteria introduced in reply to any particular risks identified concern, as a rule, the final product and not a component material. This should also facilitate the market surveillance of such products, as tests are to be carried out only on the final product.

(9) Furthermore, additional safety criteria should be laid down to limit the content of 16 polycyclic aromatic hydrocarbons (PAH_{16}) ([6]) and of polychlorinated dibenzo-p-dioxins and dibenzofurans (PCDD/PCDF) ([7]). Regulation (EU) 2019/1021 lays down release reductions for PAH_{16} and PCDD/PCDF as unintentionally produced substances during manufacturing processes, but does not introduce a limit value in such cases. Given the high risks generated by the presence of such pollutants in fertilising products, it is considered appropriate to introduce more stringent requirements than those laid down in that Regulation. Such limit values should be laid down at component material level and not as concentration in the final product, to ensure coherence with Regulation (EU) 2019/1021.

(10) These limit values may not be relevant for all high purity materials to be included as a new component material category. Therefore, manufacturers should have the possibility to presume the conformity of the fertilising product with a given requirement without verification, such as testing, whenever the compliance with the said requirement follows certainly and uncontestably from the nature or the recovery process of the respective high purity material or of the manufacturing process of the EU fertilising product.

(11) As an additional safety measure, the high purity materials should be registered based on Regulation (EC) No 1907/2006 of the European Parliament and of the Council ([8]), in the extensive conditions already laid down in Regulation (EU) 2019/1009 for chemical substances in other component material categories. This should ensure that the manufacturers take into account the use as a fertilising product when performing the risk assessment under that Regulation and that the registration is done also for low tonnage materials.

([5]) Regulation (EU) 2019/1021 of the European Parliament and of the Council of 20 June 2019 on persistent organic pollutants (OJ L 169, 25.6.2019, p. 45).

([6]) Sum of naphthalene, acenaphthylene, acenaphthene, fluorene, phenanthrene, anthracene, fluoranthene, pyrene, benzo[a]anthracene, chrysene, benzo[b]fluoranthene, benzo[k]fluoranthene, benzo[a]pyrene, indeno[1,2,3-cd]pyrene, dibenzo[a,h]anthracene and benzo [ghi]perylene.

([7]) Sum of 2,3,7,8-TCDD, 1,2,3,7,8-PeCDD; 1,2,3,4,7,8-HxCDD; 1,2,3,6,7,8-HxCDD; 1,2,3,7,8,9-HxCDD; 1,2,3,4,6,7,8-HpCDD; OCDD; 2,3,7,8-TCDF; 1,2,3,7,8-PeCDF; 2,3,4,7,8-PeCDF; 1,2,3,4,7,8-HxCDF; 1,2,3,6,7,8-HxCDF; 1,2,3,7,8,9-HxCDF; 2,3,4,6,7,8-HxCDF; 1,2,3,4,6,7,8-HpCDF; 1,2,3,4,7,8,9-HpCDF; and OCDF.

([8]) Regulation (EC) No 1907/2006 of the European Parliament and of the Council of 18 December 2006 concerning the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH), establishing a European Chemicals Agency, amending Directive 1999/45/EC and repealing Council Regulation (EEC) No 793/93 and Commission Regulation (EC) No 1488/94 as well as Council Directive 76/769/EEC and Commission Directives 91/155/EEC, 93/67/EEC, 93/105/EC and 2000/21/EC (OJ L 396, 30.12.2006, p. 1).

(12) Furthermore, some of the high purity materials may be available on local markets in quantities that exceed demand. To ensure that market demand for high purity materials exists and that their long-term storage under suboptimal conditions does not lead to adverse environmental impacts, it is appropriate to limit the period of time during which they can be used as component materials for EU fertilising products after they have been generated. Manufacturers should be required to sign the EU declaration of conformity for the EU fertilising product containing the said material within that period.

(13) Based on the above, the Commission concludes that high purity materials if recovered following the recovery rules suggested in JRC's assessment report, ensure agronomic efficiency within the meaning of Article 42(1), first subparagraph, point (b)(ii), of Regulation (EU) 2019/1009. Furthermore, they comply with the criteria laid down in Article 6 of Directive 2008/98/EC. Finally, if compliant with the other requirements in Regulation (EU) 2019/1009 in general and in Annex I to that Regulation in particular, they would not present a risk to human, animal or plant health, to safety or to the environment within the meaning of Article 42(1), first subparagraph, point (b)(i), of Regulation (EU) 2019/1009. Such materials would also have a useful purpose as they would replace other raw materials used in the production of EU fertilising products. Therefore, recovered high purity materials should be included in Annex II to Regulation (EU) 2019/1009.

(14) Furthermore, given the fact that high purity materials are recovered waste within the meaning of Directive 2008/98/EC, they should be excluded from component material categories 1 and 11 of Annex II to Regulation (EU) 2019/1009 pursuant to Article 42(1), third subparagraph, of that Regulation.

(15) Some of the high purity materials may contain selenium which can be toxic if present in high concentration. Some may also contain chloride, which may raise concerns regarding the salinity in soil. Whenever those substances are present in concentrations exceeding a certain limit, their content should be indicated on the label so that the users of the fertilising product are properly informed. Annex III to Regulation (EU) 2019/1009 should be amended accordingly.

(16) It is important to ensure that when fertilising products contain high purity materials, they are subject to an appropriate conformity assessment procedure including a quality system assessed and approved by a notified body. Therefore, it is necessary to amend Annex IV to Regulation (EU) 2019/1009 to provide for a conformity assessment appropriate for such fertilising products.

(17) Given that the requirements set out in Annexes II and III to Regulation (EU) 2019/1009 and the conformity assessment procedures set out in Annex IV to that Regulation are to apply as of 16 July 2022, it is necessary to defer the application of this Regulation to the same date,

HAS ADOPTED THIS REGULATION:

Article 1

Regulation (EU) 2019/1009 is amended as follows:

(1) Annex II is amended in accordance with Annex I to this Regulation;

(2) Annex III is amended in accordance with Annex II to this Regulation;

(3) Annex IV is amended in accordance with Annex III to this Regulation.

Article 2

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

It shall apply from 16 July 2022.

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

Done at Brussels, 22 March 2022.

For the Commission
The President
Ursula VON DER LEYEN

ANNEX I

Annex II to Regulation (EU) 2019/1009 is amended as follows:

(1) in Part I, the following point is added:

'CMC 15: Recovered high purity materials';

(2) Part II is amended as follows:

(a) in CMC 1, point 1 is amended as follows:

(i) at the end of sub-point (j),the word 'or' is deleted;

(ii) in sub-point (k), '.' is replaced by ', or';

(iii) the following sub-point (l) is added:

'(l) ammonium salts, sulphate salts, phosphate salts, elemental sulphur, calcium carbonate or calcium oxide, which are recovered from waste within the meaning of Article 3, point 1, of Directive 2008/98/EC.';

(b) in CMC 11, point 1 is amended as follows:

(i) at the end of sub-point (f), the word 'or' is deleted;

(ii) in sub-point (g), '.' is replaced by ', or';

(iii) the following sub-point (h) is added:

'(h) ammonium salts, sulphate salts, phosphate salts, elemental sulphur, calcium carbonate or calcium oxide, which are recovered from waste within the meaning of Article 3, point 1, of Directive 2008/98/EC.';

(c) the following CMC 15 is added:

'CMC 15: RECOVERED HIGH PURITY MATERIALS

(1) An EU fertilising product may contain a recovered high purity material, which is ammonium salt, sulphate salt, phosphate salt, elemental sulphur, calcium carbonate or calcium oxide, or mixtures thereof, of a purity of at least 95 % dry matter of the material.

(2) The high purity material shall be recovered from waste generated from:

(a) a production process that uses as input materials substances and mixtures other than animal by-products or derived products within the scope of Regulation (EC) No 1069/2009 ([1]), or

(b) a gas purification or emission control process designed to remove nutrients from off-gases derived from one or more of the following input materials and facilities:

(i) substances and mixtures, other than waste within the meaning of Article 3, point 1, of Directive 2008/98/EC;

(ii) plants or plant parts;

(iii) bio-waste within the meaning of Article 3, point 4, of Directive 2008/98/EC, resulting from separate bio-waste collection at source;

(iv) urban and domestic waste waters within the meaning of Article 2, points 1 and 2, respectively, of Directive 91/271/EEC ([2]);

(v) sludge within the meaning of Article 2, point (a), of Directive 86/278/EEC ([3]), which displays no hazardous properties listed in Annex III to Directive 2008/98/EC;

(vi) waste within the meaning of Article 3, point 1, of Directive 2008/98/EC, and fuels input to a waste co-incineration plant as defined in Directive 2010/75/EU of the European Parliament and of the Council ([4]) and operated according to the conditions of that Directive, on condition that these inputs display no hazardous properties listed in Annex III to Directive 2008/98/EC;

(vii) Category 2 or Category 3 materials or derived products thereof, in accordance with the conditions set out in Article 32(1) and (2) and in the measures referred to in Article 32(3) of Regulation (EC) No 1069/2009, provided that the off-gases are derived from a composting or digestion process in accordance with CMCs 3 and 5, respectively, in Annex II to this Regulation;

(viii) manure within the meaning of Article 3, point 20, of Regulation (EC) No 1069/2009 or derived products thereof; or

(ix) livestock housing facilities.

The input materials referred to in points (i) to (vi) shall not contain animal by-products or derived products within the scope of Regulation (EC) No 1069/2009.

(3) The high purity material shall have an organic carbon (C_{org}) content of no more than 0,5 % dry matter of the material.

(4) The high purity material shall contain no more than:

(a) 6 mg/kg dry matter of polycyclic aromatic hydrocarbons (PAH_{16}) ([5]);

(b) 20 ng WHO toxicity equivalents ([6])/kg dry matter of the polychlorinated dibenzo-para-dioxins and dibenzofurans (PCDD/PCDF) ([7]).

(5) An EU fertilising product containing or consisting of high purity materials shall contain no more than:

(a) 400 mg/kg dry matter of total chromium (Cr); and

(b) 2 mg/kg dry matter of thallium (Tl).

(6) Where compliance with a given requirement laid down in points 4 and 5 (such as absence of a given contaminant) follows certainly and uncontestably from the nature or the recovery process of the high purity material or the manufacturing process of the EU fertilising product, that compliance may be presumed in the conformity assessment procedure without verification (such as testing), under the responsibility of the manufacturer.

(7) Where for the product function category of an EU fertilising product containing or consisting of high purity materials referred to in point 2(b) no requirements regarding *Salmonella* spp., *Escherichia coli* or *Enterococcaceae* have been laid down in Annex I, those pathogens in the EU fertilising product shall not exceed the limits set out in the following table:

Micro-organisms to be tested	Sampling plans			Limit
	n	c	m	M
Salmonella spp.	5	0	0	Absence in 25 g or 25 ml
Escherichia coli or *Enterococcaceae*	5	5	0	1 000 in 1 g or 1 ml

Where:

n = number of samples to be tested,

c = number of samples where the number of bacteria expressed in colony forming units (CFU) is between m and M,

m = threshold value for the number of bacteria expressed in CFU that is considered satisfactory,

M = maximum value of the number of bacteria expressed in CFU.

(8) The compliance of an EU fertilising product containing or consisting of high purity materials referred to in point 2(b) with requirements in point (7), or with the requirements for *Salmonella* spp., *Escherichia coli* or *Enterococcaceae* set out in Annex I for the corresponding PFC of the EU fertilising product shall be verified via testing, in accordance with point 5.1.3.1 in Module D1 – quality assurance of the production process in Part II of Annex IV.

The requirements in point (7) and the requirements for *Salmonella* spp., *Escherichia* coli or *Enterococcaceae* set out in Annex I for the corresponding PFC of an EU fertilising product consisting only of high purity materials referred to in point 2(b) shall not apply, when the high purity materials or all of the biogenic input materials used have undergone one of the following processes:

(a) pressure sterilisation through the heating to a core temperature of more than 133 °C for at least 20 minutes at an absolute pressure of at least 3 bars, whereby the pressure must be produced by the evacuation of all air in the sterilisation chamber and the replacement of the air by steam ('saturated steam');

(b) processing in a pasteurisation or hygienisation unit that reaches a temperature of 70 °C for at least one hour.

The requirements in point (7) and the requirements for *Salmonella* spp., *Escherichia* coli or *Enterococcaceae* set out in Annex I for the corresponding PFC of an EU fertilising product consisting only of high purity materials referred to in point 2(b) shall not apply, where the off-gases derive from an incineration process as defined in Directive 2010/75/EU.

(9) High purity materials that are stored in a way that does not protect them against precipitation and direct sunlight may be added to an EU fertilising product only if they have been manufactured maximum 36 months before signing the EU declaration of conformity for the respective EU fertilising product.

(10) The high purity material shall have been registered pursuant to Regulation (EC) No 1907/2006, with a dossier containing:

(a) the information provided for by Annexes VI, VII and VIII to Regulation (EC) No 1907/2006, and

(b) a chemical safety report pursuant to Article 14 of Regulation (EC) No 1907/2006 covering the use as a fertilising product,

unless explicitly covered by one of the registration obligation exemptions provided for by Annex IV to Regulation (EC) No 1907/2006 or by points 6, 7, 8, or 9 of Annex V to that Regulation.

([1]) Regulation (EC) No 1069/2009 of the European Parliament and of the Council of 21 October 2009 laying down health rules as regards animal by-products and derived products not intended for human consumption and repealing Regulation (EC) No 1774/2002 (Animal by-products Regulation) (OJ L 300, 14.11.2009, p. 1).

([2]) Council Directive 91/271/EEC of 21 May 1991 concerning urban waste-water treatment (OJ L 135, 30.5.1991, p. 40).

([3]) Council Directive 86/278/EEC of 12 June 1986 on the protection of the environment, and in particular of the soil, when sewage sludge is used in agriculture (OJ L 181, 4.7.1986, p. 6).

([4]) Directive 2010/75/EU of the European Parliament and of the Council of 24 November 2010 on industrial emissions (integrated pollution prevention and control) (OJ L 334, 17.12.2010, p. 17).

([5]) Sum of naphthalene, acenaphthylene, acenaphthene, fluorene, phenanthrene, anthracene, fluoranthene, pyrene, benzo[a]anthracene, chrysene, benzo[b]fluoranthene, benzo[k]fluoranthene, benzo[a]pyrene, indeno [1,2,3-cd]pyrene, dibenzo[a,h]anthracene and benzo[ghi]perylene.

([6]) van den Berg M., L.S. Birnbaum, M. Denison, M. De Vito, W. Farland, et al. (2006) The 2005 World Health Organization Re-evaluation of Human and Mammalian Toxic Equivalency Factors for Dioxins and Dioxin-like Compounds. Toxicological sciences: an official journal of the Society of Toxicology 93:223-241. doi:10.1093/toxsci/kfl055.

([7]) Sum of 2,3,7,8-TCDD, 1,2,3,7,8-PeCDD; 1,2,3,4,7,8-HxCDD; 1,2,3,6,7,8-HxCDD; 1,2,3,7,8,9-HxCDD; 1,2,3,4,6,7,8-HpCDD; OCDD; 2,3,7,8-TCDF; 1,2,3,7,8-PeCDF; 2,3,4,7,8-PeCDF; 1,2,3,4,7,8-HxCDF; 1,2,3,6,7,8-HxCDF; 1,2,3,7,8,9-HxCDF; 2,3,4,6,7,8-HxCDF; 1,2,3,4,6,7,8-HpCDF; 1,2,3,4,7,8,9-HpCDF; and OCDF.'.

ANNEX II

In Part I of Annex III to Regulation (EU) 2019/1009, the following point 7b is inserted:

'7b. Where the EU fertilising product contains or consists of high purity materials referred to in Part II, CMC 15, of Annex II and:

(a) has a selenium (Se) content exceeding 10 mg/kg dry matter, the selenium content shall be indicated;

(b) has a chloride (Cl-) content exceeding 30 g/kg dry matter, the chloride content shall be indicated, unless the EU fertilising product is produced through a manufacturing process where chloride containing substances or mixtures have been used with the intention of producing or including alkali metal salts or alkaline earth metal salts, and information on these salts is provided in accordance with Annex III.

When the content of selenium or chloride is indicated in accordance with point (a) and (b), it shall be clearly separated from nutrient declaration and it may be expressed as a range of values

Where the fact that such an EU fertilising product contains selenium or chloride below the limit values in points (a) and (b) follows certainly and uncontestably from the nature or recovery operation of the high purity material or the production process of the EU fertilising product containing such a material, as applicable, the label may contain no information on these parameters, without verification (such as testing), at the responsibility of the manufacturer.'.

ANNEX III

In Part II of Annex IV to Regulation (EU) 2019/1009, Module D1 (Quality assurance of the production process) is amended as follows:

(1) in point 2.2, sub-point (d) is replaced by the following:

'(d) drawings, schemes, descriptions and explanations necessary for the understanding of the manufacturing process of the EU fertilising product, and, in relation to materials belonging to CMCs 3, 5, 12, 13, 14 or 15 as defined in Annex II, a written description and a diagram of the production or recovery process, where each treatment, storage vessel and area is clearly identified,';

(2) in point 5.1.1.1, the introductory wording is replaced by the following:

'5.1.1.1. For materials belonging to CMCs 3, 5, 12, 13, 14 and 15, as defined in Annex II, senior management of the manufacturer's organisation shall:';

(3) point 5.1.2.1 is replaced by the following:

'5.1.2.1. For materials belonging to CMCs 3, 5, 12, 13, 14 and 15, as defined in Annex II, the quality system shall ensure compliance with the requirements specified in that Annex.';

(4) point 5.1.3.1 is amended as follows:

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

'5.1.3.1. For materials belonging to CMCs 3, 5, 12, 13, 14 and 15, as defined in Annex II, the examinations and tests shall comprise the following elements:';

(b) sub-points (b) and (c) are replaced by the following:

'(b) Qualified staff shall carry out a visual inspection of each consignment of input materials and verify compatibility with the specifications of input materials laid down in CMCs 3, 5, 12, 13, 14 and 15 in Annex II [OR: as defined in Annex II].

(c) The manufacturer shall refuse any consignment of any given input material where visual inspection raises suspicion of any of the following:

— the presence of hazardous or damaging substances for the process or for the quality of the final EU fertilising product,

— incompatibility with the specifications laid down in CMCs 3, 5, 12, 13, 14 and 15 in Annex II [OR: as defined in Annex II], in particular by presence of plastics leading to exceedance of the limit value for macroscopic impurities.';

(c) sub-point (e) is replaced by the following:

'(e) Samples shall be taken on output materials, to verify that they comply with the specifications laid down in CMCs 3, 5, 12, 13, 14 and 15, as defined in Annex II, and that the properties of the output material do not jeopardise the EU fertilising product's compliance with the relevant requirements laid down in Annex I';

(d) in sub-point (fa), the introductory wording is replaced by the following:

'(fa) For materials belonging to CMCs 12, 13, 14 and 15, the output material samples shall be taken with at least the following default frequency, or sooner than scheduled in the case of any significant change that may affect the quality of the EU fertilising product:';

(e) sub-point (fb) is replaced by the following:

'(fb) For materials belonging to CMCs 12, 13, 14 and 15, each batch or portion of production shall be assigned a unique code for quality management purposes. At least one sample per 3 000 tonnes of these materials or one sample per two months, whichever occurs sooner, shall be stored in good condition for a period of at least two years.';

(f) sub-point (g)(iv) is replaced by the following:

'(iv) for materials belonging to CMCs 12, 13, 14 and 15, measure retainer samples referred to in sub-point (fb) and take the necessary corrective actions to prevent possible further transport and use of that material.';

(5) in point 5.1.4.1, the introductory wording is replaced by the following:

'5.1.4.1. For materials belonging to CMCs 3, 5, 12, 13, 14 and 15, as defined in Annex II, the quality records shall demonstrate effective control of input materials, production, storage and compliance of input- and output materials with the relevant requirements of this Regulation. Each document shall be legible and available at its relevant place(s) of use, and any obsolete version shall be promptly removed from all places where it is used, or at least identified as obsolete. The quality management documentation shall at least contain the following information:';

(6) in point 5.1.5.1, the introductory wording is replaced by the following:

'5.1.5.1. For materials belonging to CMCs 3, 5, 12, 13, 14 and 15, as defined in Annex II, the manufacturer shall establish an annual internal audit program in order to verify the compliance of the quality system with the following components:';

(7) in point 6.3.2, the introductory wording is replaced by the following:

'6.3.2. For materials belonging to CMCs 3, 5, 12, 13, 14 and 15, as defined in Annex II, the notified body shall take and analyse output material samples during each audit, and those audits shall be carried out with the following frequency:'.

COMMISSION DELEGATED REGULATION (EU) 2022/1172

of 4 May 2022

supplementing Regulation (EU) 2021/2116 of the European Parliament and of the Council with regard to the integrated administration and control system in the common agricultural policy and the application and calculation of administrative penalties for conditionality

THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EU) 2021/2116 of the European Parliament and of the Council of 2 December 2021 on the financing, management and monitoring of the common agricultural policy and repealing Regulation (EU) No 1306/2013 ([1]), and in particular Article 74, Article 85(7) and Article 105 thereof,

Whereas:

(1) Regulation (EU) 2021/2116 lays down the basic rules concerning, inter alia, the integrated administration and control system ('integrated system') and the application and calculation of administrative penalties for conditionality. In order to ensure the smooth functioning of the new legal framework, certain rules have to be adopted to supplement the provisions laid down by that Regulation in the areas concerned.

(2) The rules on the integrated system and the application and calculation of administrative penalties for conditionality should ensure an efficient control system of the rules to be applied by Member States and beneficiaries in the framework of the common agricultural policy (CAP) and should therefore be laid down in one delegated act. These new rules should replace the relevant provisions of Commission Delegated Regulation (EU) No 640/2014 ([2]).

(3) In particular, rules should be established to supplement certain non-essential elements of Regulation (EU) 2021/2116 in relation to the functioning of the integrated system referred to in Article 65 of that Regulation, rules on the quality assessments referred to in Articles 68(3), 69(6) and 70(2) of that Regulation, rules on the identification system for agricultural parcels referred to in Article 68 of that Regulation and detailed rules on the application and calculation of administrative penalties for conditionality referred to in Article 85 of that Regulation.

(4) The identification system for agricultural parcels is to provide valuable, comprehensive and reliable information relevant for reporting on policy performance, contributing to the efficient implementation of the area-based interventions as well as supporting beneficiaries in submitting correct aid applications. To ensure these objectives are met, rules are necessary to clarify the technical requirements that Member States need to follow and how the information available is to be structured and updated.

(5) In order to allow Member States to identify pro-actively possible weaknesses in the integrated system and to take appropriate remedial action when required, rules should be provided on the annual quality assessment of the identification system for agricultural parcels, of the geo-spatial application system and of the area monitoring system. Experience regarding the quality assessment of the identification system for agricultural parcels pursuant to Delegated Regulation (EU) No 640/2014 has shown that the development of technical guidance by the Commission is particularly helpful. Such technical guidance helps Member States apply an adapted methodology to carry out their assessments. Given the importance of the quality assessments for a properly functioning integrated system providing reliable and verifiable data in the annual performance reporting, the Commission should assist Member States in a similar manner to carry out the quality assessments provided for under Regulation (EU) 2021/2116.

([1]) OJ L 435, 6.12.2021, p. 187.

([2]) Commission Delegated Regulation (EU) No 640/2014 of 11 March 2014 supplementing Regulation (EU) No 1306/2013 of the European Parliament and of the Council with regard to the integrated administration and control system and conditions for refusal or withdrawal of payments and administrative penalties applicable to direct payments, rural development support and cross compliance (OJ L 181, 20.6.2014, p. 48).

(6) The quality assessments are to assess if the integrated system delivers on its purpose to provide reliable and comprehensive information relevant for the annual performance reporting, as required by Article 66(2) of Regulation (EU) 2021/2116, in particular the correct number of hectares for the output and the correct share of areas for result indicators of area-based interventions. This will require combining relevant results from the quality assessment of the area monitoring system and the geo-spatial application system in an effort to avoid overestimating this impact due to areas where both measurement errors and incorrect decisions on eligibility conditions occurred. For this purpose, the verification of the declared area in the quality assessment of the geo-spatial application system should be based on the same sample of parcels as the ones in the quality assessment of the area monitoring system.

(7) In addition, the quality assessment related to the area monitoring system is to ensure that results are comparable across Member States, irrespective of the possibility to defer in time the deployment of a fully operational implementation of the area monitoring system. This quality assessment should therefore cover all area-based interventions and the relevant eligibility conditions irrespective of the Member State's decision to have a fully operational area monitoring system only as from 1 January 2024, as referred to in Article 70(1) of Regulation (EU) 2021/2116. The quality assessment of the area monitoring system should provide diagnostic information both at the level of interventions and at the level of eligibility conditions, based on which the Member States should take appropriate remedial actions, where necessary.

(8) For the sake of clarity and in order to establish a harmonised basis for the calculation and application of administrative penalties for conditionality, it is necessary to lay down common definitions and general principles regarding non-compliance.

(9) Regulation (EU) 2021/2116 provides that administrative penalties for conditionality are to be established having regard to the principle of proportionality. Therefore, reductions and exclusions should be graded according to the seriousness of the non-compliance and should go as far as the total exclusion of the beneficiary from all the payments and support referred to in Article 83(1), points (a), (b) and (c), of that Regulation in case of intentional non-compliance. In order to give legal certainty to beneficiaries, a time limit for the application of administrative penalties should be established.

(10) Article 85(1) of Regulation (EU) 2021/2116 provides that the calculation of the administrative penalty for conditionality is to be done on the basis of the payments granted or to be granted to the beneficiary concerned in respect of aid applications or payments claims that have been submitted or will be submitted in the course of the calendar year in which the non-compliance occurred. Therefore, in order to ensure the link between the farmer's behaviour and the penalty and to guarantee equal treatment amongst farmers, it is appropriate to provide that where the same non-compliance is occurring continuously throughout several calendar years, an administrative penalty is to be applied and calculated for each calendar year in which it can be determined that the non-compliance occurred.

(11) In order to guarantee that the administrative penalties can be effectively applied and imputed, it is appropriate to provide that where, in the calendar year of the finding, the penalty exceeds the total amount of the payments granted or to be granted to the beneficiary or the beneficiary does not submit an aid application, the penalty is to be applied or imputed by means of recovery.

(12) Pursuant to Article 85(3) of Regulation (EU) 2021/2116, regardless of whether a non-compliance is detected through area monitoring system or other means, no administrative penalties are to be imposed where the non-intentional non-compliance has no or only insignificant consequences for the achievement of the objective of the standard or requirement concerned. Due to the minor character of the non-compliances that have no or only insignificant consequences for the achievement of the objective of the standard or requirement concerned and in order to reduce the administrative burden, such non-compliances should not be considered for the purpose of determining the reoccurrence or persistence of a non-compliance.

(13) Pursuant to Article 85(4) of Regulation (EU) 2021/2116, if a Member State uses the area monitoring system to detect cases of non-compliance, it may decide to apply lower percentage of reduction. It is appropriate to fix a minimum percentage of reduction.

(14) Rules on the calculation of administrative penalties for several non-compliances in the same calendar year of occurrence should be laid down.

(15) To ensure the smooth transition from the arrangements provided for in Regulation (EU) No 1306/2013 of the European Parliament and of the Council ([3]), it is considered appropriate to lay down transitional rules regarding the application of Article 104(1), second subparagraph, point (a)(iv), of Regulation (EU) 2021/2116, in order to avoid excessive administrative costs and burdens related to conditionality and cross-compliance checks applied to beneficiaries who receive area-based payments under both a CAP Strategic Plan pursuant to Regulation (EU) 2021/2115 of the European Parliament and of the Council ([4]) and a rural development programme implemented under Regulation (EU) No 1305/2013 of the European Parliament and of the Council ([5]) until 31 December 2025. To that end, area-related checks on conditionality should be deemed to cover also the checks on cross-compliance referred to in Article 96 of Regulation (EU) No 1306/2013. This is justified by the fact that, for area-based payments, conditionality rules are generally stricter than cross-compliance rules as regards both obligations and penalties. It can therefore be presumed that cross-compliance rules are respected, if the beneficiary complies with the obligations laid down in the rules on conditionality. However, if the checks on conditionality reveal non-compliances, the Member State can no longer presume that cross-compliance is complied with and should consequently carry out the checks referred to in Article 96 of Regulation (EU) No 1306/2013 and, in that context, apply the rules on calculation and application of administrative penalties in accordance with the provisions laid down in that Regulation.

(16) In the interest of clarity and legal certainty, Delegated Regulation (EU) No 640/2014 should be repealed. However, that Regulation should continue to apply to aid applications for direct payments lodged before 1 January 2023, to payment claims made in relation to support measures implemented under Regulation (EU) No 1305/2013 and to the control system and administrative penalties as regards rules on cross-compliance.

(17) Having regard to Article 104(1), second subparagraph, and Article 106 of Regulation (EU) 2021/2116, this Regulation should apply to interventions starting as from 1 January 2023 and implemented under Regulation (EU) 2021/2115.

(18) Finally, in view of Point 31 of the Inter-institutional Agreement of 13 April 2016 on Better Law-Making, the Commission considers that there is a substantive link between the empowerments in Regulation (EU) 2021/2116 regarding the rules on the integrated system and the application and calculation of administrative penalties for conditionality, and there is an interconnection between them. It is, therefore, appropriate to lay down those rules in the same delegated act,

HAS ADOPTED THIS REGULATION:

CHAPTER I

SCOPE

Article 1

Scope

This Regulation lays down provisions supplementing certain non-essential elements of Regulation (EU) 2021/2116 in relation to:

(a) the quality assessment of identification system for agricultural parcels referred to in Article 68(3), of geo-spatial application system referred to in Article 69(6) and of area monitoring system referred to in Article 70(2) of that Regulation;

([3]) Regulation (EU) No 1306/2013 of the European Parliament and of the Council of 17 December 2013 on the financing, management and monitoring of the common agricultural policy and repealing Council Regulations (EEC) No 352/78, (EC) No 165/94, (EC) No 2799/98, (EC) No 814/2000, (EC) No 1290/2005 and (EC) No 485/2008 (OJ L 347, 20.12.2013, p. 549).

([4]) Regulation (EU) 2021/2115 of the European Parliament and of the Council of 2 December 2021 establishing rules on support for strategic plans to be drawn up by Member States under the Common agricultural policy (CAP Strategic Plans) and financed by the European Agricultural Guarantee Fund (EAGF) and by the European Agricultural Fund for Rural Development (EAFRD) and repealing Regulation (EU) No 1305/2013 of the European Parliament and of the Council and Regulation (EU) No 1307/2013 of the European Parliament and of the Council (OJ L 435, 6.12.2021, p. 1).

([5]) Regulation (EU) No 1305/2013 of the European Parliament and of the Council of 17 December 2013 on support for rural development by the European Agricultural Fund for Rural Development (EAFRD) and repealing Council Regulation (EC) No 1698/2005 (OJ L 347, 20.12.2013, p. 487).

(b) the identification system for agricultural parcels referred to in Article 68 of that Regulation;

(c) the application and calculation of administrative penalties for conditionality referred to in Article 85 of that Regulation.

CHAPTER II

INTEGRATED SYSTEM

Article 2

Identification system for agricultural parcels

1. The identification system for agricultural parcels referred to in Article 68 of Regulation (EU) 2021/2116 shall operate at reference parcel level and include information allowing the exchange of data with the geo-spatial aid application referred to in Article 69 of that Regulation and the area monitoring system referred to in Article 70 of that Regulation.

2. For the purposes of this Regulation, 'reference parcel' means a geographically delimited area retaining a unique identification as registered in the identification system for agricultural parcels referred to in Article 68 of Regulation (EU) 2021/2116. A reference parcel shall contain a unit of land representing agricultural area, as referred to in Article 4(3) of Regulation (EU) 2021/2115. Where appropriate, a reference parcel shall also contain non-agricultural areas considered eligible by Member States for receiving the support for area-based interventions referred to in Article 65(2) and (3) of Regulation (EU) 2021/2116.

3. The reference parcels shall serve as basis to support beneficiaries in submitting geo-spatial applications for area-based interventions referred to in Article 65(2) and (3) of Regulation (EU) 2021/2116.

4. Member States shall delimit the reference parcels in such a way as to ensure that each parcel is stable in time, measurable, enables the unique and unambiguous localisation of each agricultural parcel and unit of land of non-agricultural areas considered eligible by the Member States for receiving the support for the area-based interventions referred to in Article 65(2) and (3) of Regulation (EU) 2021/2116 declared annually.

5. Member States shall ensure the update of information for all reference parcels in the identification system at least once every 3 years. In addition, Member States shall each year take into account all information available from the geo-spatial application, the area monitoring system or any other reliable source.

6. Member States shall ensure that the identification system for agricultural parcels contains the necessary information to extract data relevant for the correct reporting on indicators referred to in Article 66(2) of Regulation (EU) 2021/2116.

7. In the identification system, for each reference parcel Member States shall at least:

(a) determine a maximum eligible area for the purpose of the area-based interventions under the integrated system. In order to determine the maximum eligible area Member States shall deduct ineligible elements from the parcel by delineation, where possible. Member States shall define beforehand the criteria and procedures used to assess, quantify and where appropriate delineate the eligible and ineligible parts of the parcel. In determining the maximum eligible area, Member States may set a reasonable margin for correct quantification, to take account of the outline and condition of the parcel;

(b) identify the agricultural area, as referred to in Article 4(3) of Regulation (EU) 2021/2115. Where applicable, Member States shall ensure the distinction of agricultural area in arable land, permanent crops and permanent grassland, including when they form agroforestry systems on that area, as determined in accordance with Article 4(3) of that Regulation by delineation;

(c) as regards permanent grassland with scattered ineligible features and when Member States decide to apply a fixed reduction coefficients to determine the area considered eligible, as provided for in Article 4(4), point (b), third subparagraph of Regulation (EU) 2021/2115, register all relevant information;

(d) include features and/or commitments that are relevant for the eligibility of area-based interventions and for conditionality requirements, and are stable in time. This information shall be recorded as attributes or layers in the identification system for agricultural parcels and at least the following shall be indicated:

(i) the location of peatland or wetland area, where relevant, in accordance with GAEC standard 2 listed in Annex III to Regulation (EU) 2021/2115;

(ii) the type and location of landscape features on the parcel relevant for conditionality or interventions referred to in Article 65(2) and (3) of Regulation (EU) 2021/2116;

(e) where applicable, locate and determine the size of the landscape features under GAEC standard 8 listed in Annex III to Regulation (EU) 2021/2115 relevant for the minimum share of agricultural area devoted to non-productive areas or features.

(f) determine whether parcels are located in areas facing natural or other area-specific constraints as referred to in Article 71 of Regulation (EU) 2021/2115, or whether area-specific disadvantages resulting from certain mandatory requirements apply as referred to in Article 72 of that Regulation,

(g) determine whether parcels are located in Natura 2000 areas, in areas covered by Directive 2000/60/EC of the European Parliament and of the Council ([6]), whether they are located on agricultural land authorised for cotton production pursuant to Article 37(1) of Regulation (EU) 2021/2115, on areas forming part of established local practices referred to in Article 4(3), point (c), second subparagraph, point (i), of that Regulation, on areas covered with permanent grasslands designated as environmentally sensitive pursuant to GAEC standard 9 listed in Annex III to Regulation (EU) 2021/2115, or in areas covered by Council Directive 92/43/EEC ([7]) or Directive 2009/147/EC of the European Parliament and of the Council ([8]).

8. For forestry related interventions supported under Articles 70 and 72 of Regulation (EU) 2021/2115, Member States may establish appropriate alternative systems to uniquely identify the land subject to support where that land is covered by forest.

9. The geographic information system shall operate on the basis of a national coordinate reference system as defined in Directive 2007/2/EC of the European Parliament and of the Council ([9]) which permits standardised measurement and unique identification of agricultural parcels throughout the Member State concerned. Where different coordinate reference systems are used, they shall be mutually exclusive and each of them shall ensure the consistency between items of information which refer to the same location.

Article 3

Quality assessment of the identification system for agricultural parcels

1. Member States shall annually carry out the quality assessment referred to in Article 68(3) of Regulation (EU) 2021/2116 for the purpose of the basic income support for sustainability. That quality assessment shall cover the following elements:

(a) the correct quantification of the maximum eligible area;

(b) the proportion and distribution of reference parcels where the maximum eligible area takes ineligible areas into account or where it does not take agricultural area into account;

(c) the occurrence of reference parcels with critical defects;

(d) the correct classification of agricultural area as arable land, permanent grassland or permanent crop in each reference parcel;

(e) the ratio of area declarations per reference parcel;

([6]) Directive 2000/60/EC of the European Parliament and of the Council of 23 October 2000 establishing a framework for Community action in the field of water policy (OJ L 327, 22.12.2000, p. 1).

([7]) Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora (OJ L 206, 22.7.1992, p. 7).

([8]) Directive 2009/147/EC of the European Parliament and of the Council of 30 November 2009 on the conservation of wild birds (OJ L 20, 26.1.2010, p. 7).

([9]) Directive 2007/2/EC of the European Parliament and of the Council of 14 March 2007 establishing an Infrastructure for Spatial Information in the European Community (INSPIRE) (OJ L 108, 25.4.2007, p. 1).

(f) the categorisation of reference parcels where the maximum eligible area takes ineligible areas into account, where it does not take agricultural area into account or reveals a critical defect;

(g) the percentage of reference parcels which have been subject to change, accumulated over the regular update cycle.

Member States shall also ensure that all requests for the update of the identification system for agricultural parcels are carried out in a way that it is possible to trace whether they resulted from the area monitoring system, action of the beneficiary or from any other source.

2. Member States shall perform the assessment referred to in paragraph 1 on the basis of a sample of reference parcels. They shall use data allowing to assess the actual situation on the ground.

3. In case the results of the quality assessment reveal deficiencies, Member State shall propose adequate remedial actions.

Article 4

Quality assessment of the geo-spatial application system

1. The annual quality assessment referred to in Article 69(6) of Regulation (EU) 2021/2116 shall assess the reliability of information in the geo-spatial application and the correctness of the information used for the reporting on the indicators referred to in Article 7 of Regulation (EU) 2021/2115. In particular, the quality assessment shall assess the completeness and correctness of the information pre-filled in the geo-spatial application, the completeness and correctness of the guiding alerts provided to the beneficiaries during the application process and the traceability of all changes registered in the geo-spatial applications after its submission.

2. The quality assessment shall comprise the following:

(a) verification that the information used by the Member State to pre-fill the geo-spatial application was complete, correct and up-to-date;

(b) verification by the Member State that the area declared by the beneficiary for an area-based intervention was correctly established in relation to the applicable eligibility conditions;

(c) verification that, to the extent possible, all eligibility conditions of interventions and, where relevant conditionality requirements, were taken into account for the issuing of guiding alerts by the Member State to beneficiaries during the application process;

(d) verification that all amendments of the geo-spatial application after its submission were registered by the Member State in a way that it is possible to trace if they resulted from an area monitoring system warning, an action of the beneficiary or from any other source.

3. The quality assessment provided for in paragraph 2, points (a), (c) and (d), shall be carried out by means of IT testing and reperformance of the application process on a representative sample of aid applications.

4. For the verification under paragraph 2, point (b), the quality assessment shall be carried out by means of visits *in situ* or analysis of imagery of the same calendar year and of at least the same quality as required for the quality assessment referred to in Article 68(3) of Regulation (EU) 2021/2116. That verification shall be performed by measurement of the area declared in respect to an intervention on the sample selected for the quality assessment of the area monitoring system referred to in Article 5 of this Regulation.

5. Member States shall ensure that all area-based interventions managed by the integrated system are included in the samples referred to in paragraphs 3 and 4 and verified in the quality assessment process.

6. In case the results of the quality assessment reveal deficiencies, Member State shall propose adequate remedial actions.

Article 5

Quality assessment of the area monitoring system

1. The annual quality assessment referred to in Article 70(2) of Regulation (EU) 2021/2116 shall assess the reliability of the implementation of the area monitoring system, provide diagnostic information on the sources of incorrect decisions at the level of interventions and eligibility conditions and in particular assess the correctness of the information provided for the reporting on the indicators referred to in Article 7 of Regulation (EU) 2021/2115.

2. The quality assessment shall be carried out by means of visits *in situ* or analysis of imagery of the same calendar year and where relevant, with at least the same quality as required for the quality assessment referred to in Article 68(3) of Regulation (EU) 2021/2116. *In situ* visits can be carried out at any time during the year and shall, to the extent possible, cover all eligibility conditions relevant for a given beneficiary during the same visit. The imagery used by the Member States for the quality assessment shall be able to provide conclusive and reliable results in respect to the actual situation on the ground. Where Member States use geo-tagged photos for observation, tracking and assessment of agricultural activities as data with at least equivalent value to Copernicus Sentinels satellite data, Member States may carry out the quality assessment of the decisions based on geo-tagged photos by means of non-automated analysis of the geo-tagged photos, provided they offer conclusive and reliable results.

3. At the level of interventions, the quality assessment shall comprise of the following:

(a) quantification of errors due to incorrect decisions on eligibility conditions on parcels under an area-based intervention, irrespective whether the relevant decision was stemming from the area monitoring system or not. The result shall be expressed in hectares;

(b) quantification of the number of parcels where the area monitoring system found a non-compliance with eligibility conditions and of the number of parcels not meeting the eligibility conditions after the latest date for amendments of aid applications.

4. The reports due by 15 February 2025 and 15 February 2027 shall also comprise verification that all eligibility conditions of area-based interventions that are considered monitorable, were subject to area monitoring system in years 2024 and 2026, respectively. Remedial actions may be necessary following the assessment of the results of these reports.

5. The quality assessment shall be carried out by checking all eligibility conditions of all the interventions applied for on a representative sample of parcels.

6. For simplification purposes and given that the sample of the quality assessment of the area monitoring system provides adequate level of assurance in respect to the fulfilment of eligibility conditions per intervention, Member State may decide to take the quality assessments referred in Articles 4 and 5 of this Regulation into account in respect to the obligation to set up a control system laid down in Article 72 of Regulation (EU) 2021/2116.

7. Member States shall ensure that all area-based interventions managed by the integrated system are included in the sample of parcels and verified in the quality assessment process, irrespective of the possibility to set up the area monitoring system gradually, referred to in Article 70(1) of Regulation (EU) 2021/2116.

8. In case the results of the quantifications referred to in paragraph 3, points (a) and (b), reveal deficiencies, Member State shall propose adequate remedial actions.

9. Remedial actions for non-monitored or non-conclusively monitored eligibility conditions may include the performance of in situ visits. In cases where remedial actions are necessary following the results of the quality assessment for the calendar year concerned, additional details may have to be included in the quality assessment report of the following year as regards the deficiencies to be remedied.

CHAPTER III

APPLICATION AND CALCULATION OF ADMINISTRATIVE PENALTIES FOR CONDITIONALITY

Article 6

Definitions

For the purposes of this Chapter, the definitions in Title IV, Chapter IV of Regulation (EU) 2021/2116 shall apply.

The following definitions shall also apply:

(a) 'non-compliance' means: non-compliance with the statutory management requirements under Union legislation referred to in Article 12(4) of Regulation (EU) 2021/2115, or with the standards for good agricultural and environmental condition of land set by the Member States in accordance with Article 13 of that Regulation;

(b) 'standards' means any of the standards as set by the Member States in accordance with Article 13 of Regulation (EU) 2021/2115;

(c) 'year of the finding' means the calendar year in which the administrative or on-the-spot check was carried out;

(d) 'areas of conditionality' means any of the three different areas referred to in Article 12(1) of Regulation (EU) 2021/2115.

Article 7

General principles concerning non-compliances

1. For the purpose of determining the reoccurrence of a non-compliance, non-compliances with the rules of cross-compliance determined in accordance with Delegated Regulation (EU) No 640/2014 shall be taken into account.

2. The 'extent' of a non-compliance shall be determined taking account, in particular, whether the non-compliance has a far-reaching impact or whether it is limited to the farm itself.

3. The 'severity' of a non-compliance shall depend, in particular, on the importance of the consequences of the non-compliance taking account of the aims of the requirement or standard concerned.

4. Whether a non-compliance is of 'permanence' shall depend, in particular, on the length of time for which the effect lasts or the potential for terminating those effects by reasonable means.

5. For the purposes of this Chapter, non-compliances shall be deemed to be 'determined' if they are established as a consequence of any kind of controls carried out in accordance with Regulation (EU) 2021/2116 or after having been brought to the attention of the competent control authority or, where applicable, the paying agency, in whatever other way.

Article 8

General principles of administrative penalties

1. The administrative penalty provided for in Article 84(1) of Regulation (EU) 2021/2116 shall only be imposed if a non-compliance is found within 3 consecutive calendar years calculated from and including the year where the non-compliance occurred.

2. Where the same non-compliance is occurring continuously throughout several calendar years, an administrative penalty shall be applied for each calendar year in which the non-compliance occurred. The administrative penalties shall be calculated on the basis of the payments granted or to be granted to the beneficiary concerned in respect of aid applications or payments claims that have been submitted or will be submitted in the course of the calendar years in which the non-compliance occurred.

3. Where in the calendar year of the finding the beneficiary does not submit an aid application or the administrative penalty exceeds the total amount of the payments granted or to be granted to the beneficiary in respect of aid applications that the beneficiary has submitted or will submit in the course of the calendar year of the finding, the administrative penalty shall be recovered in accordance with Article 30 of Commission Implementing Regulation (EU) 2022/128 ([10]).

Article 9

Percentages of reductions in the case of non-intentional non-compliance

1. For determined non-intentional non-compliances the paying agency may decide, on the basis of the assessment of the non-compliance provided by the competent control authority taking into account the criteria referred to in Article 85(1), second subparagraph, of Regulation (EU) 2021/2116, to decrease the percentage laid down in Article 85(2) of that Regulation to up to 1 %.

2. Where a determined non-intentional non-compliance has grave consequences for the achievement of the objective of the standard or requirement concerned or constitutes a direct risk to public or animal health, the paying agency may decide, on the basis of the assessment of the non-compliance provided by the competent control authority taking into account the criteria referred to in Article 85(1), second subparagraph, of Regulation (EU) 2021/2116, to increase the percentage referred to in Article 85(5) of that Regulation to up to 10 %.

3. Where a determined non-intentional non-compliance with the same requirement or standard persists within 3 consecutive calendar years, the percentage of reduction laid down in Article 85(6), first subparagraph, of Regulation (EU) 2021/2116 shall apply only where the beneficiary has been informed of the previous determined non-compliance. Where the same non-compliance further persists without justified reason by the beneficiary it shall be considered to be a case of intentional non-compliance.

4. Where a determined non-compliance has no or only insignificant consequences for the achievement of the objective of the standard or requirement concerned and no administrative penalty is imposed in accordance with Article 85(3), first subparagraph, of Regulation (EU) 2021/2116, the non-compliance shall not be considered for the purpose of determining the reoccurrence or persistence of a non-compliance.

5. Where a Member State uses the area monitoring system referred to in Article 66(1), point (c), of Regulation (EU) 2021/2116 to detect cases of non-compliance, the reduction to be imposed for determined non-intentional non-compliances may be lower than the reduction provided for in paragraph 1 of this Article, but at least 0,5 % of the total amount resulting from the payments and support referred to in Article 83(1), points (a), (b) and (c), of that Regulation.

Article 10

Percentages of reductions in the case of intentional non-compliance

The percentage reduction for a determined intentional non-compliance shall be at least 15 % of the total amount resulting from the payments and support referred to in Article 83(1), points (a), (b) and (c), of Regulation (EU) 2021/2116. On the basis of the assessment of the non-compliance provided by the competent control authority taking into account the criteria referred to in Article 85(1), second subparagraph, of that Regulation the paying agency may decide to increase that percentage to up to 100 %.

([10]) Commission Implementing Regulation (EU) 2022/128 of 21 December 2021 laying down rules for the application of Regulation (EU) 2021/2116 of the European Parliament and of the Council on paying agencies and other bodies, financial management, clearance of accounts, checks, securities and transparency (OJ L 20, 31.1.2022, p. 131).

Article 11

Calculation of reductions for several non-compliances in the same calendar year of occurrence

1. Where a determined non-compliance with a standard also constitutes a non-compliance with a requirement, the non-compliance shall be considered to be one single non-compliance. For the purpose of the calculation of reductions, the non-compliance shall be considered as part of the area of conditionality of the requirement.

2. Where more than one determined non-recurring non-intentional non-compliances have occurred in the same calendar year, the procedure for the fixing of the reduction shall be applied individually to each non-compliance and the resulting percentages shall be added together. However the total reduction shall not exceed:

(a) 5 % of the total amount resulting from the payments and support referred to in Article 83(1), points (a), (b) and (c), of Regulation (EU) 2021/2116 where none of the non-compliances has grave consequences for the achievement of the objective of the standard or requirement concerned or constitutes a direct risk to public or animal health; or,

(b) 10 % of the total amount resulting from the payments and support referred to in Article 83(1), points (a), (b) and (c), of Regulation (EU) 2021/2116 where at least one non-compliance has grave consequences for the achievement of the objective of the standard or requirement concerned or constitutes a direct risk to public or animal health.

3. Where more than one determined recurring non-intentional non-compliance has occurred in the same calendar year, the procedure for the fixing of the reduction shall be applied individually to each non-compliance and the resulting percentages of reductions shall be added together. However, the reduction shall not exceed 20 % of the total amount resulting from the payments and support referred to in Article 83(1), points (a), (b) and (c), of Regulation (EU) 2021/2116.

4. Where more than one determined intentional non-compliance have occurred in the same calendar year the procedure for the fixing of the reduction shall be applied individually to each non-compliance and the resulting percentages of reductions shall be added together. However, the reduction shall not exceed 100 % of the total amount resulting from the payments and support referred to in Article 83(1), points (a), (b) and (c), of Regulation (EU) 2021/2116.

5. Where multiple instances of non-intentional, recurring and intentional non-compliance have occurred in the same calendar year, the resulting percentages of reductions, and where relevant after the application of paragraphs 2, 3 and 4 of this Article, shall be added together. However, the reduction shall not exceed 100 % of the total amount resulting from the payments and support referred to in Article 83(1), points (a), (b) and (c), of Regulation (EU) 2021/2116.

CHAPTER IV

TRANSITIONAL AND FINAL PROVISIONS

Article 12

Transitional provisions

By way of derogation from Article 104(1), second subparagraph, point (a)(iv), of Regulation (EU) 2021/2116, checks on compliance with the rules on conditionality, as referred to in Article 83 of that Regulation, shall be carried out on areas supported on the basis of Articles 28, 29 and 30 of Regulation (EU) No 1305/2013 through rural development programmes implemented until 31 December 2025 under that Regulation, when the beneficiary concerned receive area-based payments also under the CAP Strategic Plan pursuant to Regulation (EU) 2021/2115.

The conditionality checks referred to in the first paragraph shall be deemed to cover the checks on cross-compliance referred to in Article 96 of Regulation (EU) No 1306/2013, unless they reveal non-compliances with conditionality rules. If the rules on conditionality are not complied with, the Member State shall carry out checks in accordance with that Article to area-based measures in the rural development programmes and, where irregularities are found, apply the rules on calculation and application of administrative penalties laid down in Regulation (EU) No 1306/2013.

Article 13

Repeal

Delegated Regulation (EU) No 640/2014 is repealed with effect from 1 January 2023.

However, it shall continue to apply to:

(a) aid applications for direct payments lodged before 1 January 2023;

(b) payment claims made in relation to support measures implemented under Regulation (EU) No 1305/2013;

(c) the control system and administrative penalties as regards rules on cross-compliance.

Article 14

Entry into force and application

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

It shall apply from 1 January 2023.

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

Done at Brussels, 4 May 2022.

For the Commission
The President
Ursula VON DER LEYEN

COMMISSION IMPLEMENTING REGULATION (EU) 2022/1173

of 31 May 2022

laying down rules for the application of Regulation (EU) 2021/2116 of the European Parliament and of the Council with regard to the integrated administration and control system in the common agricultural policy

THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EU) 2021/2116 of the European Parliament and of the Council of 2 December 2021 on the financing, management and monitoring of the common agricultural policy and repealing Regulation (EU) No 1306/2013 ([1]), and in particular Article 26, first paragraph, point (c), Article 60(4), first subparagraph, point (b), Article 75 and Article 92 thereof,

Whereas:

(1) Regulation (EU) 2021/2116 lays down the basic rules concerning, *inter alia*, the obligations on Member States to protect the financial interests of the Union and to report on policy performance. In order to ensure the smooth functioning of the new legal framework, certain rules have to be adopted in relation to the assessment reports on quality of three elements (the identification system for agricultural parcels, the geo-spatial application system and the area monitoring system) of the integrated administration and control system ('integrated system') and the related remedial actions, the requirements for aid applications and the area monitoring system, the framework governing the acquisition of satellite data for the purpose of the area monitoring system and on checks of the approved interbranch organisations with regard to crop-specific payment for cotton. The new rules should replace the relevant provisions of Commission Implementing Regulation (EU) No 809/2014 ([2]).

(2) The quality assessment reports of the identification system for agricultural parcels, of the geo-spatial application system and of the area monitoring system should be comprehensive to allow assessing reliability of the information generated by these elements of the integrated system. The content of these reports should also allow to conclude whether sufficient assurance is provided on the quality of the information used in relation to Member State's obligation of performance reporting in respect to the output and result indicators of area-based interventions managed under the integrated system. Therefore, these reports should in particular contain information on the work carried out under the quality assessment, the deficiencies detected as well as diagnostic information on the potential root causes of these deficiencies. More specifically, the reports should include information on the data and imagery used for the quality assessments as well as their testing results. Experience regarding the exchanges of information between the Member States and the Commission in relation to the quality assessment of the identification system for agricultural parcels has shown that the use of dedicated electronic information systems is particularly helpful. In order to facilitate the work of the Member States and their communication with the Commission, such information systems should continue to be used and further developed, where necessary, for the reports of the three quality assessments provided for in Regulation (EU) 2021/2116.

(3) In order to deliver on their purpose of providing reliable data for the annual performance report, the results of the three quality assessments, and notably the ones of the geo-spatial application system and of the area monitoring system, should be combined to estimate the area error of the reported data on output and result indicators stemming from deficiencies of the systems. Rules should be established on the remedial actions that may be needed to address the deficiencies in a defined timeframe. In addition, the reports prepared in relation to years 2024 and 2026 should allow verifying that the area monitoring system is properly established in all Member States and that the gradual implementation of the area monitoring system has been successful covering all eligibility conditions and interventions that can be monitored. For this purpose, the reports should contain a list of all eligibility criteria for all area-based interventions under the integrated system together with information regarding the data sources used for the analysis.

([1]) OJ L 435, 6.12.2021, p. 187.

([2]) Commission Implementing Regulation (EU) No 809/2014 of 17 July 2014 laying down rules for the application of Regulation (EU) No 1306/2013 of the European Parliament and of the Council with regard to the integrated administration and control system, rural development measures and cross compliance (OJ L 227, 31.7.2014, p. 69).

(4) Member States should put in place a reliable and modern system to manage aid applications, allowing for communication by electronic means and operating in an annual cycle. Member States should take into account simplification for beneficiaries and national administration, for example by providing that one application can cover several interventions or several beneficiaries applying jointly or that one application per holding is considered in a given year in case of transfer of that holding. Member States should take the required measures to ensure the proper management of interventions where more than one paying agency is responsible for the same beneficiary.

(5) Member States should harvest the benefits of digitisation by using, as a rule, the electronic means for all communication with beneficiaries. Moreover, to boost simplification, Member States should, to the extent possible, retrieve the information necessary for managing interventions from data sources at the disposal of public administration.

(6) In order to facilitate the process of submitting aid applications, Member States should provide pre-filled forms, containing all information relevant for beneficiaries and the most recently updated. Member States should prevent irregularities by allowing for amendments to the pre-filled forms and providing guiding alerts helping the beneficiary to identify potential non-compliances and apply correctly. Member States should take into account the modifications introduced by beneficiaries for the update of the information in the databases of the national administration. For the sake of equal treatment of beneficiaries, if a Member State decides to apply the automatic claim system, such system should ensure the same level of detail as required for the aid application under this Regulation.

(7) Aid applications under the integrated system should provide, to the extent possible, all information that is necessary for the proper and reliable management of the interventions covered and for the correct reporting on output and result indicators. For proper management of interventions, beneficiaries should remain responsible for the aid application submitted, so that all related rights and responsibilities can be clearly assumed.

(8) The prevention of irregularities should be put in place by allowing the possibility of amending or withdrawing aid applications within a certain deadline. When all beneficiaries for a given intervention are covered by administrative checks and/or with the use of the area monitoring system, the deterrent effect of sanctions is not necessary. Therefore, the amendments or withdrawals should be allowed at any time prior to a deadline, which is necessary for the proper administration of interventions. However, amendments or withdrawals should not be allowed in respect to non-compliances related to non-monitorable eligibility conditions revealed from sources other than the area monitoring system and administrative checks. In other situations, the possibility to make amendments or withdrawals should not be allowed when the beneficiary has been informed of a planned on-the-spot check or such check, when unannounced, has already detected irregularities. In addition, in order to support reliability of information necessary for the interventions under Article 34(2) of Regulation (EU) 2021/2115 of the European Parliament and of the Council ([3]) for bovine animals, sheep and goats, the deadline to make amendments should be set in a way to allow changes in the aid application and updates in the computer database for animals prior to the date fixed by the Member State for the identification and registration requirement to be met.

(9) Member States should ensure that the geo-spatial application includes the necessary information to manage area-based interventions under the integrated system and, to the extent necessary, area-based interventions in the wine sector and for requirements under conditionality. A non-exhaustive list of the elements of the geo-spatial application should be provided to offer useful guidance to Member States. In respect to the information on the use of plant protection products to be provided by the beneficiary when relevant for an intervention under the integrated system for which common agricultural policy (CAP) support is applied for, Member States may decide to use this information with regard to the obligation of registration of the use of these products as referred to in Regulation (EC) No 1107/2009 of the European Parliament and of the Council ([4]).

([3]) Regulation (EU) 2021/2115 of the European Parliament and of the Council of 2 December 2021 establishing rules on support for strategic plans to be drawn up by Member States under the common agricultural policy (CAP Strategic Plans) and financed by the European Agricultural Guarantee Fund (EAGF) and by the European Agricultural Fund for Rural Development (EAFRD) and repealing Regulations (EU) No 1305/2013 and (EU) No 1307/2013 (OJ L 435, 6.12.2021, p. 1).

([4]) Regulation (EC) No 1107/2009 of the European Parliament and of the Council of 21 October 2009 concerning the placing of plant protection products on the market and repealing Council Directives 79/117/EEC and 91/414/EEC (OJ L 309, 24.11.2009, p. 1).

(10) For proper management of animal-based interventions, certain rules on the content of the relevant aid applications should be laid down. To ensure transparency and equal treatment of beneficiaries, it should also be clarified that when automatic claim system is used, all animals that the beneficiary owns and are potentially eligible to receive aid under a given intervention are to be considered declared for that intervention.

(11) Regulation (EU) 2021/2116 introduced the area monitoring system as a mandatory element of the integrated system. In order to ensure this obligation is properly implemented in a uniform manner, the area monitoring system should have the same scope in all Member States, thus covering all beneficiaries and all area-based interventions managed under the integrated system and all monitorable conditions. Automation of the data analysis under the area monitoring system should be prioritised in order to support the cross-cutting objective of modernisation of the CAP. For these reasons, the number of eligibility conditions that can be considered monitorable with Copernicus Sentinels satellites data or other data with at least equivalent value, should be gradually enlarged. For this purpose, Member States should ensure that in 2023 and 2024, all eligibility conditions that can be considered monitorable by automatic processing of Copernicus Sentinels satellites data, are subject to the area monitoring system. However, Member States may decide whether these monitorable eligibility conditions are actually addressed via the processing of Copernicus Sentinels satellite data or of other data with at least equivalent value. Where eligibility conditions cannot be considered monitorable via Copernicus Sentinels satellite data, Member States may decide to address these via the processing of other data with at least equivalent value or else consider them as being non-monitorable. From 2025 onwards, Member States should ensure that all eligibility conditions that can be considered monitorable by automatic processing of either Copernicus Sentinels satellites data or else geotagged photos are subject to the area monitoring system. However, considering the effort and investments needed to include the geotagged photos as data with at least equivalent value for the area monitoring system, Member States should be granted a period of time to carry out the necessary preparatory work. For this reason, Member States need to ensure that eligibility conditions that can be considered monitorable by geotagged photos should be covered in a gradual manner throughout the programming period. These efforts should ensure a constant rate of progress from 2025 onwards. Member States should decide which eligibility conditions that can be considered monitorable by geotagged photos become subject to the area monitoring system each year. In addition, to further facilitate Member States in the integration of this new technology in the area monitoring system, Member States should as a minimum, subject a percentage of interventions for which eligibility conditions can be considered monitorable only by geotagged photos to the area monitoring system before 1 January 2027. Member States should have the flexibility to decide which interventions, having at least one eligibility condition that will be monitored by geotagged photos under the area monitoring system, are included in the percentage. However, in their decision, Member States should ensure all area-based interventions are subject to area monitoring system as required by Article 70 of Regulation (EU) 2021/2116.

(12) In addition, common set of requirements should also be set to ensure that areas claimed under an intervention are free from ineligible land, ineligible land use and changes in the category of agricultural area that could impact the analysis of intervention-specific eligibility conditions using the area monitoring system. Throughout the claim year, these requirements should be assessed in respect to the eligibility conditions of interventions included in a given aid application so as to enable a meaningful subsequent analysis by the area monitoring system. Land use should be assessed within a delineated area in order to conclude whether based on a given aid application and the intervention concerned, the expected spatial or temporal behaviour has occurred. When developing the area monitoring system, Member States should fully benefit of its potential by using the information available for updating the identification system for agricultural parcels and communicating with beneficiaries in view of allowing amendments to aid applications. When the Member State needs to inform the beneficiary of non-compliances following the results of the area monitoring system in cases of presence of ineligible areas or ineligible land use, the information on the non-compliance should be communicated as early as it is detected in order for the beneficiary to be given the possibility to amend the aid application as soon as possible and the analysis of the area monitoring system to occur once again in a meaningful and timely manner. It should also be clarified how the possibility of gradual implementation of the system applies in practice, by specifying the interventions to be covered in 2023.

(13) For the area monitoring system to be able to cover all eligibility conditions of all area-based interventions managed under the integrated system, which can be monitored with Copernicus Sentinels satellites data or other data with at least equivalent value, it is necessary to expand the types of data and provide the standards ensuring their equivalence to satellite data. In order to avoid gaps in the modernisation efforts of Member States, geotagged photos should be considered as data with at least equivalent value for the purpose of the area monitoring system.

(14) Specific rules need to be laid down for an objective and efficient procedure under which the acquisition of satellite data for the purpose of the area monitoring system is to be carried out.

(15) For proper management of the interventions with regard to cotton, certain rules should be provided on the content of checks that Member States carry out on the approved interbranch organisations.

(16) In the interest of clarity and legal certainty, Implementing Regulation (EU) No 809/2014 should be repealed. However, that Regulation should continue to apply to aid applications for direct payments lodged before 1 January 2023 and to payment claims made in relation to support measures implemented under Regulation (EU) No 1305/2013 of the European Parliament and of the Council ([5]).

(17) The measures provided for in this Regulation are in accordance with the opinion of the Committee on the Agricultural Funds, the Common Agricultural Policy Committee and the Committee for the Common Organisation of the Agricultural Markets,

HAS ADOPTED THIS REGULATION:

Article 1

Scope

This Regulation lays down rules for the application of Regulation (EU) 2021/2116 with regard to integrated administration and control system ('integrated system') referred to in Article 65 of Regulation (EU) 2021/2116 in relation to:

(a) the form and, content of and arrangements for transmitting or making available to the Commission of:

  (i) the assessment reports on the quality of the identification system for agricultural parcels, of the geo-spatial application system and of the area monitoring system;

  (ii) the remedial actions referred to in Articles 68, 69 and 70 of Regulation (EU) 2021/2116;

(b) basic features of, and rules on the aid application system under Article 69 of Regulation (EU) 2021/2116, and the area monitoring system referred to in Article 70 of that Regulation, including parameters of the gradual increase of the number of interventions under the area monitoring system;

(c) the procedure under which the acquisition of satellite data referred to in Article 24 of Regulation (EU) 2021/2116 shall be carried out in order to meet the objectives assigned;

(d) the framework governing the acquisition, enhancing and use of satellite data, and the applicable deadlines; and

(e) a system for checks of the approved interbranch organisations with regard to crop-specific payment for cotton as referred to in Title III, Chapter II, Section 3, subsection 2, of Regulation (EU) 2021/2115.

Article 2

Quality assessment reports

1. Member States shall provide the quality assessment referred to in Articles 68(3), 69(6) and 70(2) of Regulation (EU) 2021/2116 to the Commission in the form of reports submitted through electronic information systems enabling the exchanges of information, documents and supporting data.

([5]) Regulation (EU) No 1305/2013 of the European Parliament and of the Council of 17 December 2013 on support for rural development by the European Agricultural Fund for Rural Development (EAFRD) and repealing Council Regulation (EC) No 1698/2005 (OJ L 347, 20.12.2013, p. 487).

2. The reports referred to in paragraph 1 shall provide information on the underlying work in the framework of the quality assessments, in particular in respect to the results of the *in situ* visits and/or the analysis of imagery providing for reliable and conclusive information in respect to the actual situation on the ground, and quantify the deficiencies detected by the respective quality assessment. The results of the quality assessments referred to in paragraph 1 shall be combined to quantify the error in the number of hectares or share of areas reported in the annual performance report.

3. In case the results of the quality assessments reveal deficiencies according to the quality assessments referred to in paragraph 1, Member State shall clearly indicate the remedial actions addressing those deficiencies in the quality assessment report. If the Commission considers that the progress in implementation of the remedial actions proposed in the previous year is insufficient, it may request the Member State to submit an action plan in accordance with Article 42 of Regulation (EU) 2021/2116.

4. For recurrent deficiencies revealed in the quality assessment referred to in paragraph 1, the Commission shall request an action plan in accordance with Article 42(1) of Regulation (EU) 2021/2116 if the same deficiencies are revealed without any improvement in the second consecutive year and are considered serious in accordance with Article 2, point (d), of that Regulation.

5. The quality assessment report of the area monitoring system submitted in relation to year 2024 and 2026 shall list all eligibility conditions for all interventions subject to the area monitoring system with information regarding the data sources used for the analysis.

Article 3

General rules for aid application system

1. Member States shall set up an electronic system for aid applications, which shall be submitted by the beneficiaries annually and contain all necessary information allowing Member States to verify the eligibility conditions for support at least for the interventions referred to in Article 65(2) and (3) of Regulation (EU) 2021/2116 as well as conditions and requirements relevant to conditionality and payment entitlements, where necessary. The system shall allow clear and unambiguous identification of beneficiaries, in particular where the automatic claim system referred to in Article 65(4), point (f), of that Regulation is used. The system shall include the geo-spatial application system and, where applicable, the animal-based application system as referred to in Article 66(1), point (b), of that Regulation.

2. The aid applications shall be submitted within a deadline set by the Member State and relate to the calendar year of submission.

3. Member States may provide for a single aid application covering several interventions referred to in Article 65(2) and (3) of Regulation (EU) 2021/2116, payment entitlements and conditionality.

4. Member States may decide that a group of beneficiaries can jointly submit an aid application, provided equal treatment of all beneficiaries is ensured.

5. Where a holding is transferred from one beneficiary to another, Member States shall consider only one aid application for that holding in the year of the transfer.

6. For animal-based interventions under Articles 31, 34 and 70 of Regulation (EU) 2021/2115, where an animal is transferred from one beneficiary to another, Member States may consider more than one aid application for that animal in the year of the transfer provided that they can ensure non-discrimination among the beneficiaries concerned, the efficiency of the checks, a fair application of eventual penalties, and the respect of the annuality of the integrated system.

7. For the proper administration of interventions within a Member State and where more than one paying agency is responsible for managing the aid application of the same beneficiary, Member State concerned shall take all the appropriate measures to ensure that the necessary information is made available to all paying agencies involved.

Article 4

Simplification of procedures related to the aid application system

1. Member States shall establish electronic means of communication between the beneficiary and the authorities ensuring that transmitted data is reliable in view of the proper management of the interventions under the integrated administration and control system. Where supporting documents cannot be transmitted electronically, Member States shall set the same time limits for their transmission by non-electronic means.

2. Member States may provide for simplified procedures where data is already available to the authorities, in particular where the situation has not changed since the last submission of an aid application. Member States may decide to use data derived from data sources at the disposal of national authorities for the purpose of aid applications. Member States shall ensure that those data sources offer the level of assurance necessary for the proper management of the data in order to guarantee the reliability, integrity and security of that data.

3. Where appropriate, Member States may request the information required in any supporting documents to be submitted together with the aid application directly from the source of information.

Article 5

Requirements pertaining to the aid application system

1. Member States shall provide to the beneficiaries, through electronic means, pre-filled forms as referred to in Article 69(3) of Regulation (EU) 2021/2116.

2. For area-based interventions referred to in Article 65(2) and (3) of Regulation (EU) 2021/2116, the pre-filled forms shall contain the most recently updated corresponding graphic material, provided through an interface based on geographic information system in order to facilitate the geospatial declaration of areas for the purpose of these interventions and of conditionality.

3. The pre-filled forms referred to in paragraph 1 shall indicate:

(a) the unique identification of all agricultural parcels and units of land containing non-agricultural areas considered eligible by the Member State of the holding;

(b) the surface and location of the declared areas of these parcels and corresponding eligible area determined for payment for the previous year for the purpose of area-based interventions;

(c) information relevant for conditionality.

4. Information stemming from the area monitoring system may also be provided to beneficiaries, where relevant for the aid application.

5. For animal-based interventions concerning bovine animals or sheep and goats, Member State shall rely on an updated computer database defined in Article 2, point (25), of Commission Delegated Regulation (EU) 2019/2035 ([6]), in order to provide the pre-filled forms with the most recent information from that database, which has to be up-to-date in accordance with the deadlines provided for in Commission Implementing Regulation (EU) 2021/520 ([7]).

6. Member States shall provide the beneficiaries with the possibility to correct the pre-filled forms within a deadline to be established by the Member State in accordance with the conditions for the deadline to submit aid applications laid down in Article 3 and for amendment or withdrawal of aid applications laid down in Article 7.

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

([7]) Commission Implementing Regulation (EU) 2021/520 of 24 March 2021 laying down rules for the application of Regulation (EU) 2016/429 of the European Parliament and of the Council with regard to the traceability of certain kept terrestrial animals (OJ L 104, 25.3.2021, p. 39).

7. Modifications provided by the beneficiaries in the pre-filled forms shall be taken into account for the update of the identification system for agricultural parcels, the application of the area monitoring system and the computer database referred to in paragraph 5, where relevant.

8. In view of facilitating the submission by the beneficiaries, the aid application system shall provide for guiding alerts during the application process.

9. Member States applying the automatic claim system referred to in Article 65(4), point (f), of Regulation (EU) 2021/2116 shall ensure an equivalent level of detail as set out in this Regulation.

Article 6

Content of aid applications

1. Aid application means application for support under any of the interventions governed by the integrated system or, where relevant an application for support or a payment claim.

2. The aid application shall at least contain:

(a) the identity of the beneficiary;

(b) details of the intervention(s) applied for;

(c) where appropriate, any supporting documents needed to establish the eligibility conditions and other relevant requirements for the intervention concerned;

(d) information relevant to conditionality.

The beneficiary shall remain responsible for the aid application and the correctness of the information transmitted. This shall also be the case when a Member State applies an automatic claim system.

3. Member States shall ensure that the aid application contains all information necessary to extract data relevant for the correct reporting on output and result indicators referred to in Article 66(2) of Regulation (EU) 2021/2116 in respect to the interventions covered by the aid application.

Article 7

Amendments or withdrawals of aid applications

1. Aid applications may be amended or totally or partially withdrawn by the beneficiary under the following conditions:

(a) for interventions subject to the area monitoring system, at any time prior to a deadline to be set by the Member State, which shall be no later than 15 calendar days before the date when the payment of first instalment or the advances to be made in accordance with Article 44 of Regulation (EU) 2021/2116. However, amendments or withdrawals shall not be allowed in respect to non-compliances related to non-monitorable eligibility conditions revealed by means other than the area monitoring system or administrative checks or once the beneficiary has been informed of the Member State's intention to carry out an on-the-spot-check;

(b) for animal-based interventions under Article 34 of Regulation (EU) 2021/2115 concerning bovine animals or sheep and goats, at any time prior to a deadline to be set by the Member State, which shall be no later than 15 calendar days before the date when the payment of first instalment or the advances to be made in accordance with Article 44 of Regulation (EU) 2021/2116. However, in respect to the eligibility condition to identify and register the animals, amendments or withdrawals shall be allowed only prior to the date fixed by the Member State in accordance with Article 34(2), second sentence, of Regulation (EU) 2021/2115 and in case the deadline referred to in the first sentence of this point has not passed. In addition, amendments or withdrawals shall not be allowed once the beneficiary has been informed of the Member State's intention to carry out an on-the-spot check or the beneficiary becomes aware of a non-compliance as a result of an unannounced on-the-spot check. Nevertheless, amendments or withdrawals shall be authorised in respect to the part not affected by the non-compliance detected by the on-the-spot check;

(c) for other interventions, at any time prior to a deadline to be set by the Member State, which shall be no later than 15 calendar days before the date when the payment of first instalment or the advances to be made in accordance with Article 44 of Regulation (EU) 2021/2116. However, amendments or withdrawals shall not be allowed once the beneficiary has been informed of the Member State's intention to carry out an on-the-spot check or the beneficiary becomes aware of a non-compliance as a result of an unannounced on-the-spot check. Nevertheless, amendments or withdrawals shall be authorised in respect to the part not affected by the non-compliance detected by the on-the-spot check.

2. In case of non-compliances with eligibility conditions detected by the administrative checks or the area monitoring system, Member States shall inform the beneficiaries allowing for the possibility to amend or withdraw the aid application in respect to the part affected by the non-compliance in accordance with paragraph 1, points (a), (b) and (c). However, for animal-based interventions under Article 34 of Regulation (EU) 2021/2115 concerning bovine animals or sheep and goats, in case of non-compliances in respect to the eligibility condition to identify and register the animals, amendments or withdrawals shall be allowed only prior to the date fixed by the Member State for these requirements to be met as referred to in paragraph 2 of that Article. In order to facilitate the process for the beneficiary, Member States may proceed to the necessary corrections of the aid application in respect to the part affected by the non-compliance. However, in this case, Member States shall ensure that the beneficiary is aware of the changes introduced by the Member State and has the possibility to react in case of disagreement.

3. For the animal-based interventions under Article 34 of Regulation (EU) 2021/2115 concerning bovine animals or sheep and goats, Member States may provide that the notifications to the computer database, referred to in Article 5(5) of this Regulation, of an animal that has left the holding may substitute a withdrawal of the animal in writing.

4. For Member States applying an automatic claim system referred to in Article 65(4), point (f), of Regulation (EU) 2021/2116 for animal-based interventions, beneficiaries may only withdraw their claim in respect of all animals relevant for the intervention that are registered in the computer database.

5. Amendments or withdrawals shall be made with the use of the official communication channels established by the Member State.

6. Member States shall inform the beneficiaries of the latest date to amend or withdraw the aid application. Member States shall ensure equal treatment towards beneficiaries who are subject to an automatic claim system referred to in Article 65(4), point (f), of Regulation (EU) 2021/2116.

Article 8

Geo-spatial application

1. The geo-spatial application shall be used for all area-based interventions under the integrated system and for the relevant information in relation to conditionality, also in case of the beneficiaries who are subject to conditionality but are not applying for support under the area-based interventions.

2. The geo-spatial application may also be used for the area-based interventions in the wine sector as laid down in Title III, Chapter III, Section 4, of Regulation (EU) 2021/2115.

3. Without prejudice to Article 6, the geo-spatial application shall contain at least the following information:

(a) unambiguous identification of agricultural parcels and units of land containing non-agricultural areas considered eligible by the Member State of the holding;

(b) clear delineation of the area declared for aid under each intervention on the agricultural parcels and units of land containing non-agricultural areas considered eligible by the Member State, in particular if the area claimed is smaller than the total area of the agricultural parcel;

(c) the type, location and, where relevant, size of landscape features relevant for conditionality or interventions;

(d) crop on agricultural parcels, where relevant;

(e) where relevant, whether the parcel is subject to organic farming, and in particular for the conversion or maintenance of organic farming practices and methods as laid down in Regulation (EU) 2018/848 of the European Parliament and of the Council ([8]), relevant for support granted for interventions referred to in Articles 31 and 70 of Regulation (EU) 2021/2115 or conditionality;

(f) where relevant, information on the use of plant protection products for parcels under interventions for sustainable and reduced use of pesticides under Articles 31 and 70 of Regulation (EU) 2021/2115. Member States may decide to use this information in respect to the requirement of record-keeping of plant protection products laid down in Article 67(1) of Regulation (EC) No 1107/2009;

(g) the identification of the payment entitlements in accordance with the identification and registration system provided for in Article 73 of Regulation (EU) 2021/2116 for the purpose of the basic income support for sustainability;

(h) for areas claimed for the crop-specific payment for cotton, the variety of cotton seed used and, where applicable, the identification of the approved interbranch organisation of which the beneficiary is a member;

(i) for areas used for the production of hemp, the variety of seed used, an indication of the quantities of the seeds used, expressed in kilograms per hectare, and the official labels used on the packaging of the seeds in accordance with Council Directive 2002/57/EC ([9]), and in particular Article 12 thereof, or any other document recognised as equivalent by the Member State. Where the labels also have to be submitted to other national authorities, Member States may provide for those labels to be returned to the beneficiaries. The labels returned shall be marked as used for an application.

Article 9

Applications for animal-based interventions

1. Without prejudice to Article 6, applications for animal-based interventions shall contain at least the following:

(a) the number of animals or, as relevant, the number of livestock units, of each type, in respect of which an animal-based intervention is applied for;

(b) where relevant, information on the location where the animals will be held in the calendar year covered by the aid application;

(c) where the support concerns the bovine animals or sheep and goats, updated information relevant for the intervention on the animals in relation to the system for the identification and registration of animals, in accordance with Article 34(2) of Regulation (EU) 2021/2115.

2. Member States applying an automatic claim system according to Article 65(4), point (f), of Regulation (EU) 2021/2116 shall ensure equivalent level of detail as set out in paragraph 1 of this Article based on the information available in the official computerised database, which shall be up-to-date for all animals, in accordance with Article 34(2) of Regulation (EU) 2021/2115. Under the automatic claim system, all animals of the beneficiary relevant for an intervention shall be considered as included in the claim.

Article 10

Area monitoring system

1. The area monitoring system shall apply to all aid applications for area-based interventions under the integrated system submitted in each Member State and shall be used to observe, track and assess agricultural activities and practices on hectares under these area-based interventions and at least for the purpose of annual performance reporting.

([8]) Regulation (EU) 2018/848 of the European Parliament and of the Council of 30 May 2018 on organic production and labelling of organic products and repealing Council Regulation (EC) No 834/2007 (OJ L 150, 14.6.2018, p. 1).

([9]) Council Directive 2002/57/EC of 13 June 2002 on the marketing of seed of oil and fibre plants (OJ L 193, 20.7.2002, p. 74).

2. Member States shall ensure that for all area-based interventions the eligibility conditions, which can be monitored with Copernicus Sentinels satellites data or other data with at least equivalent value, are subject to the area monitoring system and shall communicate this information to the beneficiaries concerned.

3. For the purpose of the area monitoring system, an eligibility condition shall be considered monitorable when it can be monitored by Copernicus Sentinels satellites data. In order to address eligibility conditions considered monitorable, Member States may decide to use Copernicus Sentinels satellites data or any other data with at least equivalent value as provided for in Article 11. However, as from 1 January 2025, an eligibility condition shall be considered monitorable when it can be monitored by Copernicus Sentinels satellites data or geotagged photos referred to in Article 11. In order to address eligibility conditions considered monitorable as from 1 January 2025, Member States may decide to use Copernicus Sentinels satellites data, geotagged photos or any other data with at least equivalent value.

4. For the eligibility conditions that can be monitored with geotagged photos, Member States may decide to gradually include them under the area monitoring system. Member States shall ensure that at least 70 % of interventions with eligibility conditions that can be monitored only with geotagged photos will be subject to the area monitoring system at the latest before 1 January 2027. Member States shall decide which eligibility conditions that can be monitored by geotagged photos become subject to the area monitoring system each year.

5. For the analysis of monitorable eligibility conditions under the area monitoring system, Member States may choose to combine Copernicus Sentinels satellites data and/or other types of data with at least equivalent value in accordance with the criteria specified in Article 11 to cover the full population of aid applications concerned. Member States may also decide to perform a cascaded analysis of Sentinel satellite data and/or other types of data with at least equivalent value for the purpose of reducing the number of non-conclusively monitored cases. For eligibility conditions that can be monitored only by geotagged photos, in case of absence of input by the beneficiary, the Member State shall consider that this eligibility condition has not been met.

6. Member States shall ensure that hectares, which do not meet the relevant eligibility conditions at the latest date allowed for amendments of aid applications in accordance with Article 7, are excluded from the annual performance reporting.

7. In order to allow the reliable observation, tracking and assessment of agricultural activities and practices, the area monitoring system shall, at the level of agricultural parcel or units of land containing non-agricultural areas considered eligible by the Member State, ensure the detection of:

(a) presence of ineligible area, in particular due to permanent structures;

(b) presence of ineligible land use;

(c) change in the category of agricultural area whether it is arable land, permanent crop or permanent grassland.

Where relevant, Member States shall use the information referred to in this paragraph for the purpose of updating the identification system for agricultural parcels.

8. Member States shall communicate to beneficiaries the information on hectares where the relevant eligibility conditions are not met and on detected presence of ineligible area, ineligible land use or change in the category of agricultural area so that beneficiaries can make amendments to aid applications, referred to in Article 7, or provide additional evidence. Member States may also decide to communicate to beneficiaries any other provisional result including non-conclusively monitored cases allowing the beneficiaries, where necessary, to amend their applications in accordance with Article 7(1).

9. By way of derogation from paragraph 1 and in order to allow for a gradual increase of the number of interventions subject to area monitoring system, in 2023 the system shall provide information at least on the following:

(a) all relevant eligibility conditions for basic income support for sustainability, referred to in Article 21 of Regulation (EU) 2021/2115;

(b) all relevant eligibility conditions for interventions for natural or other area specific constraints, referred to in Article 71 of Regulation (EU) 2021/2115.

Article 11

Data with at least equivalent value for the area monitoring system

For the purpose of the area monitoring system, Member States may decide to use other data with at least equivalent value if they are in digital form, allow automatic processing of data, are systematically available for the beneficiaries concerned or categories of areas in the Member State, not discriminatory and suitable for determining compliance with a particular eligibility condition or obligation on the area subject to the relevant condition. In that context, geo-tagged photos shall be considered as other data with at least equivalent value, as referred to in Article 65(4), point (b), of Regulation (EU) 2021/2116.

Article 12

Acquisition of satellite data

1. For the purposes of Article 24 of Regulation (EU) 2021/2116, each Member State shall inform the Commission before 1 November of the calendar year preceding the year of the performance of the quality assessment of the area monitoring system, about its specification on the acquisition of the satellite data in respect to:

(a) the population of parcels per intervention from which the quality assessment sample will be selected;

(b) the timetable for obtaining the satellite data for the eligibility conditions of the intervention on the selected parcels.

2. For the purposes of paragraph 1, point (a), Member States shall draw the population of parcels for the quality assessment sample based on the aid applications of the year preceding the calendar year of the quality assessment. The population of the parcels for which satellite data is requested may be updated in the calendar year of the quality assessment for parcels that, following the aid applications of the calendar year concerned, are not relevant anymore for a given intervention or for parcels under interventions for which aid was not applied for the previous year.

3. The Commission shall finalise the agreement with the Member State concerned on the information referred to in paragraph 1, points (a) and (b), before 15 January following the communication of information referred to in paragraph 1.

4. The competent authorities or bodies representing them referred to in Article 24 of Regulation (EU) 2021/2116 must observe the provisions on copyright set out in the contracts with the suppliers.

5. If the total requests received by Member States exceed the budget available for the application of Article 24 of Regulation (EU) 2021/2116, the Commission shall decide on a limitation of the satellite data to be provided, aiming at the most efficient use of the available resources. In addition, where Member States add parcels during the calendar year to the population for the quality assessment of the area monitoring system, the Commission may not be able to acquire all relevant imagery.

Article 13

Checks of the approved interbranch organisations for crop-specific payment for cotton

Member States shall carry out administrative checks on the approved interbranch organisations for crop specific payment for cotton in accordance with this article.

Where appropriate to verify the eligibility for an increase of aid provided for in Article 40(2) of Regulation (EU) 2021/2115, Member States shall cross-check the declaration of the beneficiary in the geo-spatial application to be a member of an approved interbranch organisation with the information transmitted by the organisation concerned.

At least once every 5 years, Member States shall verify the compliance with the criteria for the approval of interbranch organisations and the list of their members.

Article 14

Repeal

Implementing Regulation (EU) No 809/2014 is repealed with effect from 1 January 2023.

However, it shall continue to apply to:

(a) aid applications for direct payments lodged before 1 January 2023;

(b) payment claims made in relation to support measures implemented under Regulation (EU) No 1305/ 2013;

(c) the control system and administrative penalties as regards rules on cross-compliance.

Article 15

Entry into force and application

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

It shall apply to aid applications relating to interventions implemented in accordance with Regulation (EU) 2021/2115 as from 1 January 2023.

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

Done at Brussels, 31 May 2022.

For the Commission
The President
Ursula VON DER LEYEN

COMMISSION IMPLEMENTING REGULATION (EU) 2022/1174

of 7 July 2022

amending Implementing Regulation (EU) 2015/1998 as regards certain detailed measures for the implementation of the common basic standards on aviation security

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EC) No 300/2008 of the European Parliament and of the Council of 11 March 2008 on common rules in the field of civil aviation security and repealing Regulation (EC) No 2320/2002 ([1]), and in particular Article 4(3) thereof,

Whereas:

(1) Experience gained with the implementation of Commission Implementing Regulation (EU) 2015/1998 ([2]) has shown the need for minor amendments to the implementing modalities of certain common basic standards.

(2) Certain detailed aviation security measures should be clarified, harmonised or simplified in order to improve legal clarity, standardise the common interpretation of the legislation and further ensure the best implementation of the common basic standards on aviation security. Furthermore, certain amendments have become necessary in accordance with the evolution of the threat and risk picture, recent developments in terms of airport and airline operations, technology and international policy. Those amendments regard to airport security, safe and secure carriage of firearms on board, training of personnel, air cargo and mail security, known suppliers of airport supplies, background check, explosive detection dogs (EDD), and detection standards for walk-through metal detection equipment (WTMD).

(3) Implementing Regulation (EU) 2015/1998 should therefore be amended accordingly.

(4) As a reasonable period is necessary to allow flight and cabin crew members implementing in-flight security measures to undergo the training established in point (38) of the Annex to this Regulation, the application of this point should be deferred to 1 January 2023.

(5) The measures provided for in this Regulation are in accordance with the opinion of the Committee established by Article 19 of Regulation (EC) No 300/2008,

HAS ADOPTED THIS REGULATION:

Article 1

The Annex to Implementing Regulation (EU) 2015/1998 is amended in accordance with the Annex to this Regulation.

Article 2

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

([1]) OJ L 97, 9.4.2008, p. 72.

([2]) Commission Implementing Regulation (EU) 2015/1998 of 5 November 2015 laying down detailed measures for the implementation of the common basic standards on aviation security (OJ L 299, 14.11.2015, p. 1).

It shall apply from 1 July 2022. However, points (32) and (38) of the Annex shall apply from 1 January 2023.

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

Done at Brussels, 7 July 2022.

For the Commission
The President
Ursula VON DER LEYEN

ANNEX

The Annex to Implementing Regulation (EU) 2015/1998 is amended as follows:

(1) in point 1.1.2.2 the following paragraph is added:

'Persons carrying out a security search in areas different than those used by disembarking passengers not screened to the common basic standards, must be trained in accordance with point 11.2.3.1, 11.2.3.2, 11.2.3.3, 11.2.3.4 or 11.2.3.5.';

(2) point 1.4.4.2 is replaced by the following:

'1.4.4.2. Examined vehicles that temporarily leave critical parts may be exempted from examination on their return provided that they have been under constant observation by authorised persons sufficient to reasonably ensure that no prohibited articles have been introduced into the vehicles.';

(3) the following point 1.4.4.3 is added:

'1.4.4.3. Exemptions and special examination procedures shall also be subject to the additional provisions laid down in Commission Implementing Decision C(2015) 8005.';

(4) the following point 1.5.5 is added:

'1.5.5. Procedures shall be established in order to deal with unidentified baggage and suspicious objects in accordance with a security risk assessment carried out or approved by the relevant national authorities.';

(5) in point 3.1.1.3, the following sentence is added:

'The search may not start until the aircraft has reached its final parking position.';

(6) point 3.1.3 is replaced by the following:

'3.1.3. **Information on the aircraft security search**

The following information on the aircraft security search performed of a departing flight shall be recorded and kept at a point not on the aircraft for the duration of the flight or for 24 hours, whichever is longer:

(a) flight number;

(b) origin of the previous flight;

(c) date and time that the aircraft security search was completed;

(d) the name and signature of the person responsible for the performance of the aircraft security search.

Recording of the information listed in the first paragraph may be held in electronic format.';

(7) in point 5.4.2, the following paragraph is added:

'An air carrier shall ensure that the carriage of firearms in hold baggage is allowed only after an authorised and duly qualified person has determined that they are not loaded. Such firearms shall be stowed in a place not accessible to any person during the flight.';

(8) in point 6.1.1, point (c) is deleted;

(9) the following point 6.1.3 is added:

'6.1.3. A regulated agent who rejects a consignment due to high-risk reasons shall ensure that the consignment and the accompanying documentation are marked as high risk cargo and mail before the consignment is returned to the person representing the entity delivering it. Such consignment shall not be loaded on to an aircraft unless it is treated by another regulated agent in accordance with point 6.7.';

(10) in point 6.3.1.2 (a), the fourth paragraph is replaced by the following:

'The signed declaration shall clearly state the location of the site or sites to which it refers and be retained by the appropriate authority concerned;';

(11) point 6.3.2.1 is replaced by the following:

'6.3.2.1. When accepting any consignments, a regulated agent shall establish whether the entity from which it receives the consignments is a regulated agent or a known consignor or neither of those.';

(12) in point 6.3.2.3, point (a) is replaced by the following:

'(a) screened in accordance with point 6.2 or 6.7, as appropriate; or';

(13) point 6.3.2.6 is amended as follows:

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

'(d) the security status of the consignment, stating one of the following:

— 'SPX', meaning secure for passenger, all-cargo and all-mail aircraft;

— 'SHR', meaning secure for passenger, all-cargo and all-mail aircraft in accordance with high risk requirements;';

(b) in point (e), point (ii) is deleted;

(14) in point 6.3.2.9, the first paragraph is replaced by the following:

'A regulated agent shall ensure that all staff are recruited in accordance with the requirements of Chapter 11 and appropriately trained in accordance with the relevant job specifications. For the purposes of training, staff with unsupervised access to identifiable air cargo or identifiable air mail to which the required security controls have been applied shall be considered as staff implementing security controls. Persons previously trained in accordance with point 11.2.7 shall have their competences upgraded to those referred to in point 11.2.3.9 by 1 January 2023 at the latest.';

(15) in point 6.4.2.1, first paragraph, point (b) is replaced by the following:

'(b) all staff implementing security controls and all staff with unsupervised access to identifiable air cargo or identifiable air mail to which the required security controls have been applied are recruited in accordance with the requirements of Chapter 11 and have received security training in accordance with point 11.2.3.9. Persons previously trained in accordance with point 11.2.7 shall have their competences upgraded to those referred to in point 11.2.3.9 by 1 January 2023 at the latest; and';

(16) point 6.5 is replaced by the following:

'6.5. APPROVED HAULIERS

No provisions in this Regulation.';

(17) point 6.6.1.1 is replaced by the following:

'6.6.1.1. In order to ensure that consignments to which the required security controls have been applied are protected from unauthorised interference during transportation, all the following requirements shall apply:

(a) the consignments shall be packed or sealed by the regulated agent or known consignor so as to ensure that any tampering would be evident; where this is not possible, alternative protection measures that ensure the integrity of the consignment shall be taken;

(b) the cargo load compartment of the vehicle in which the consignments are to be transported shall be locked or sealed or curtain sided vehicles shall be secured with TIR cords so as to ensure that any tampering would be evident, or the load area of flatbed vehicles shall be kept under observation;

(c) the haulier declaration as contained in Attachment 6-E shall be agreed by the haulier who has entered into the transport agreement with the regulated agent or known consignor, unless the haulier is itself approved as a regulated agent.

The signed declaration shall be retained by the regulated agent or known consignor on whose behalf the transport is carried out. On request, a copy of the signed declaration shall also be made available to the regulated agent or air carrier receiving the consignment or to the appropriate authority concerned.

As an alternative to point (c) of the first paragraph, the haulier may provide evidence to the regulated agent or known consignor for whom it provides transport that it has been certified or approved by an appropriate authority.

This evidence shall include the requirements contained in Attachment 6-E and copies shall be retained by the regulated agent or known consignor concerned. On request, a copy shall also be made available to the regulated agent or air carrier receiving the consignment or to another appropriate authority.';

(18) point 6.8.3.1 is amended as follows:

(a) in the first paragraph, point (c) is deleted;

(b) the second paragraph is deleted;

(19) the following point 6.8.3.10 is added:

'6.8.3.10. Security controls for cargo and mail arriving from a third country shall also be subject to the additional provisions laid down in Commission Implementing Decision C(2015) 8005.';

(20) in point 6.8.5.4, the second paragraph is deleted;

(21) in Attachment 6-A, second paragraph, fourth indent, point (a) is replaced by the following:

'(a) minor planned changes to its security programme, such as company name, company address, person responsible for security or contact details, change of person requiring access to the 'Union database on supply chain security', promptly and at least within 7 working days before the planned change; and';

(22) in Attachment 6-C, Part 3, table, point 3.4 is replaced by the following:

'3.4. Do staff with unsupervised access to identifiable air cargo/air mail and staff implementing security controls receive security training in accordance with point 11.2.3.9 before being given unsupervised access to identifiable air cargo/air mail?';

(23) Attachment 6-D is deleted;

(24) in Attachment 6-E, second paragraph, the first indent is replaced by the following:

'— All staff who performs transport of cargo and mail will have received general security awareness training in accordance with point 11.2.7. Additionally, if such staff is also granted unsupervised access to cargo and mail to which the required security controls have been applied it will have received security training in accordance with point 11.2.3.9;';

(25) in point 8.1.1.1, the introductory wording is replaced by the following:

'In-flight supplies shall be screened by or on behalf of an air carrier, a regulated supplier or an airport operator before being taken into a security restricted area, unless:';

(26) in point 8.1.3.2(a), the fourth paragraph is replaced by the following:

'The signed declaration shall clearly state the location of the site or sites to which it refers and be retained by the appropriate authority concerned;';

(27) in point 8.1.4.2, point (a) is replaced by the following:

'(a) the 'Declaration of commitments – known supplier of in-flight supplies' as contained in Attachment 8-B. This declaration shall clearly state the location of the site or sites to which it refers and be signed by the legal representative; and';

(28) in point 8.1.5.1, point (b) is replaced by the following:

'(b) ensure that persons with access to in-flight supplies receive general security awareness training in accordance with point 11.2.7 before being given access to those supplies. In addition, ensure that persons implementing screening of in-flight supplies receive training in accordance with point 11.2.3.3 and persons implementing other security controls in respect of in-flight supplies receive training in accordance with point 11.2.3.10; and';

(29) in Attachment 8-B, second paragraph, first indent, point (b) is replaced by the following:

'(b) ensure that persons with access to in-flight supplies receive general security awareness training in accordance with point 11.2.7 before being given access to those supplies. In addition, ensure that persons implementing security controls other than screening in respect of in-flight supplies receive training in accordance with point 11.2.3.10; and';

(30) in point 9.1.1.1, the introductory wording is replaced by the following:

'Airport supplies shall be screened by or on behalf of an airport operator or a regulated supplier before being taken into a security restricted area, unless:';

(31) in point 9.1.3.2, point (a) is replaced by the following:

'(a) the 'Declaration of commitments – known supplier of airport supplies' as contained in Attachment 9-A. This declaration shall clearly state the location of the site or sites to which it refers and be signed by the legal representative; and';

(32) point 9.1.3.3 is replaced by the following:

'9.1.3.3 All known suppliers must be designated on the basis of validations of:

(a) the relevance and completeness of the security programme in respect of point 9.1.4; and

(b) the implementation of the security programme without deficiencies.

As a legal proof of the designation, the appropriate authority may require airport operators to enter the necessary details of the known suppliers they designate into the "Union database on supply chain security" not later than the next working day. When making the database entry, the airport operator shall give each designated site a unique alphanumeric identifier in the standard format.

Access into the security restricted areas of airport supplies may only be granted after having established the status of the supplier. This shall be done by verifying in the "Union database on supply chain security", if applicable, or by using an alternative mechanism delivering the same objective.

If the appropriate authority or the airport operator is no longer satisfied that the known supplier complies with the requirements of point 9.1.4, the airport operator shall withdraw the status of known supplier without delay.';

(33) in point 9.1.4.1, point (b) is replaced by the following:

'(b) ensure that persons with access to airport supplies receive general security awareness training in accordance with point 11.2.7 before being given access to those supplies. In addition, ensure that persons implementing screening of airport supplies receive training in accordance with point 11.2.3.3 and persons implementing other security controls in respect of airport supplies receive training in accordance with point 11.2.3.10; and';

(34) in Attachment 9-A, second paragraph, first indent, point (b) is replaced by the following:

'(b) ensure that persons with access to airport supplies receive general security awareness training in accordance with point 11.2.7 before being given access to these supplies. In addition, ensure that persons implementing security controls other than screening in respect of airport supplies receive training in accordance with point 11.2.3.10; and';

(35) point 11.1.1 is replaced by the following:

'11.1.1. The following personnel shall have successfully completed an enhanced background check:

(a) persons being recruited to implement, or to be responsible for the implementation of screening, access control or other security controls in a security restricted area;

(b) persons with general responsibility at national or local level for ensuring that a security programme and its implementation meet all legal provisions (security managers);

(c) instructors, as referred to in Chapter 11.5;

(d) EU aviation security validators, as referred to in Chapter 11.6.

Point (b) of the first paragraph shall apply from 1 January 2023. Before that date, such persons shall have completed an enhanced or a standard background check either in accordance with point 1.2.3.1 or as determined by the appropriate authority in accordance with applicable national rules.';

(36) in point 11.1.5, the following paragraph is added:

'An enhanced background check shall be fully completed before the person undergoes the training referred to in points 11.2.3.1 to 11.2.3.5.';

(37) in point 11.2.3.9, the introductory wording is replaced by the following:

'Training of persons with unsupervised access to identifiable air cargo and mail to which the required security controls have been applied and persons implementing security controls for air cargo and mail other than screening shall result in all of the following competences:';

(38) the following point 11.2.3.11 is added:

'11.2.3.11. Training of flight and cabin crew members implementing in-flight security measures shall result in all of the following competences:

(a) knowledge of previous acts of unlawful interference with civil aviation, terrorist acts and current threats;

(b) awareness of the relevant legal requirements and knowledge of elements contributing to the establishment of a robust and resilient security culture in the workplace and in the aviation domain, including, inter alia, insider threat and radicalisation;

(c) knowledge of the objectives and organisation of aviation security, including the obligations and responsibilities of flight and cabin crew members;

(d) knowledge of how to protect and prevent unauthorised access to aircraft;

(e) knowledge of procedures for sealing aircraft, if applicable for the person to be trained;

(f) ability to identify prohibited articles;

(g) knowledge of how prohibited articles may be concealed;

(h) ability to implement aircraft security searches to a standard sufficient to reasonably ensure the detection of concealed prohibited articles;

(i) knowledge of the configuration of the type or types of aircraft on which the duties are performed;

(j) ability to protect flight deck during the flight;

(k) knowledge of procedures relevant to carriage of potentially disruptive passengers on board an aircraft, if applicable for the person to be trained;

(l) knowledge of handling persons authorised to carry firearms on board, if applicable for the person to be trained;

(m) knowledge of reporting procedures;

(n) ability to respond appropriately to security related incidents and emergencies on board an aircraft.';

(39) point 12.0.3.2 is replaced by the following:

'12.0.3.2. The "EU Stamp" marking shall be affixed by manufacturers on security equipment approved by the Commission and visible on one side or on-screen.';

(40) point 12.1.2.1 is replaced by the following:

'12.1.2.1. There shall be four standards for WTMD. Detailed requirements on those standards are laid down in Commission Implementing Decision C(2015) 8005.';

(41) the following point 12.1.2.4 is added:

'12.1.2.4. All WTMD installed as of 1 July 2023 shall meet standard 1.1 or standard 2.1.';

(42) point 12.2.4 is deleted;

(43) in point 12.5.1.1, the seventh paragraph is deleted;

(44) point 12.6.3 is deleted;

(45) point 12.7.3 is deleted;

(46) point 12.9.1.7 is replaced by the following:

'12.9.1.7 An EDD team shall be approved by or on behalf of the appropriate authority in accordance with Attachments 12-E and 12-F to Commission Implementing Decision C(2015) 8005. The appropriate authority may allow the deployment and use of EDD teams trained and/or approved by the appropriate authority of another Member State, provided it has formally agreed with the approving authority on the respective roles and responsibilities in ensuring that all the requirements in Chapter 12.9 of this Annex are fulfilled, in accordance with Attachment 12-P to this Annex. In the absence of such agreement, full responsibility for the fulfilment of all requirements in Chapter 12.9 of this Annex remains with the appropriate authority of the Member State where the EDD team is deployed and used.';

(47) point 12.9.3.2 is replaced by the following:

'12.9.3.2 The content of training courses shall be specified or approved by the appropriate authority. The theoretical training of the handler shall include the provisions laid down in Chapter 11.2 for the screening of the specific area or areas where the EDD team is approved.';

(48) the following Attachment 12-P is added:

'**ATTACHMENT 12-P**

LETTER OF UNDERSTANDING BETWEEN APPROPRIATE AUTHORITIES SUPPORTING THE DEPLOYMENT OF EDD TEAMS

This letter of understanding is established between the following parties:

The appropriate authority receiving support for the deployment of EDD teams:

.....

The appropriate authority or authorities providing support for the deployment of EDD teams:

.....

For the identification of the following roles (*) to ensure that the deployment of EDD teams meets EU requirements:

Appropriate authority in charge of specifying or approving the content of training courses:

.....

Appropriate authority in charge of approving EDD teams:

.....

Appropriate authority in charge of the external quality control:

.....

For the following period of validity:

Date:

Signatures:

(*) Should there be a need, this letter of understanding may be supplemented with additional details and amended as needed in order to specify the roles of the appropriate authorities, and to determine its scope of application.'.

COMMISSION IMPLEMENTING REGULATION (EU) 2022/1175

of 7 July 2022

making imports of certain pneumatic tyres, new or retreaded, of rubber, of a kind used for buses or lorries and with a load index exceeding 121 originating in the People's Republic of China subject to registration following the re-opening of the investigation in order to implement the judgments of 4 May 2022 in joined cases T-30/19 and T-72/19, with regard to Implementing Regulation (EU) 2018/1579 and Implementing Regulation (EU) 2018/1690

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 anti-dumping Regulation'), and in particular Article 14 thereof,

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 [2] ('the basic anti-subsidy Regulation'), and in particular Article 24 thereof,

Whereas:

1. PROCEDURE

1.1. Adoption of measures

(1) On 4 May 2018, the Commission ('the Commission') adopted Regulation (EU) 2018/683 [3] imposing a provisional anti-dumping duty on imports of certain pneumatic tyres, new or retreaded, of rubber, of a kind used for buses or lorries, with a load index exceeding 121 originating in the People's Republic of China ('the provisional Regulation').

(2) On 18 October 2018, the Commission adopted Implementing Regulation (EU) 2018/1579 [4] imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of certain pneumatic tyres, new or retreaded, of rubber, of a kind used for buses or lorries, with a load index exceeding 121 originating in the People's Republic of China.

(3) On 9 November 2018, the Commission adopted Implementing Regulation (EU) 2018/1690 [5] imposing definitive countervailing duties on imports of certain pneumatic tyres, new or retreaded, of rubber, of a kind used for buses or lorries and with a load index exceeding 121 originating in the People's Republic of China and amending Implementing Regulation (EU) 2018/1579.

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

[2] OJ L 176, 30.6.2016, p. 55.

[3] Commission Regulation (EU) 2018/683 of 4 May 2018 imposing a provisional anti-dumping duty on imports of certain pneumatic tyres, new or retreaded, of rubber, of a kind used for buses or lorries, with a load index exceeding 121 originating in the People's Republic of China, and amending Implementing Regulation (EU) 2018/163 (OJ L 116, 7.5.2018, p. 8).

[4] Commission Implementing Regulation (EU) 2018/1579 of 18 October 2018 imposing a definitive antidumping duty and collecting definitively the provisional duty imposed on imports of certain pneumatic tyres, new or retreaded, of rubber, of a kind used for buses or lorries, with a load index exceeding 121 originating in the People's Republic of China and repealing Implementing Regulation (EU) 2018/163 (OJ L 263, 22.10.2018, p. 3).

[5] Commission Implementing Regulation (EU) 2018/1690 of 9 November 2018 imposing definitive countervailing duties on imports of certain pneumatic tyres, new or retreaded, of rubber, of a kind used for buses or lorries and with a load index exceeding 121 originating in the People's Republic of China and amending Commission Implementing Regulation (EU) 2018/1579 imposing a definitive antidumping duty and collecting definitively the provisional duty imposed on imports of certain pneumatic tyres, new or retreaded, of rubber, of a kind used for buses or lorries, with a load index exceeding 121 originating in the People's Republic of China and repealing Implementing Regulation (EU) 2018/163 (OJ L 283, 12.11.2018, p. 1).

1.2. **The Judgments of the General Court of the European Union**

(4) China Rubber Industry Association (CRIA) and China Chamber of Commerce of Metals, Minerals & Chemicals Importers & Exporters ('CCCMC') brought annulment actions before the General Court challenging the legality of the regulations at issue.

(5) CRIA and CCCMC raised several claims challenging the regulations at issue and the General Court ruled on two of those: (i) the Commission's failure to carry out a fair price comparison in the calculation of the price undercutting and of the injury margins, and (ii) certain complaints alleging, in essence, inconsistencies and breach of the rights of the defence regarding injury indicators and the weighting of data from the sample of Union producers.

(6) On 4 May 2022, the General Court issued its judgment in cases T-30/19 and T-72/19, annulling both Implementing Regulation (EU) 2018/1579 (anti-dumping) and Implementing Regulation (EU) 2018/1690 (anti-subsidy).

(7) Regarding the calculation of the undercutting margins, the General Court found that the Commission conducted an unfair comparison when it made an adjustment to the export price – the deduction of the related importer's SG&A and a notional profit – when sales were made through a related trader in the Union. The Court noted that Union producers also made some sales via related entities, and their sales prices were not adjusted. The General Court concluded that the calculation of the price undercutting margins carried out by the Commission in the contested regulations was vitiated by an error of law and a manifest error of assessment and that, as a result, that calculation infringed Article 3(2) and (3) of the basic anti-dumping Regulation and Article 8(1) and (2) of the basic anti-subsidy Regulation. Furthermore, the General Court found that the errors had an impact on the overall injury and causality findings as well as on the injury margins, and that it was not possible to determine precisely to what extent the definitive anti-dumping and countervailing duties at issue remained well founded in part. Therefore, the regulations imposing those duties upon the applicants were annulled.

(8) In relation to the second point, the General Court found that the Commission did not carry out an objective examination (as required by Article 3(2) of the basic anti-dumping regulation and Article 8(1) of the basic anti-subsidy regulation) because, by not revising the calculations of all microeconomic indicators other than profitability, and not setting out the revised figures in the contested regulation, the Commission did not use all relevant data available to it. In addition, the General Court found a breach of the applicants' right of defence. In particular, the General Court disagreed that some information not disclosed to parties could be considered confidential, and it found that all the data at issue was 'linked to findings of fact in the contested regulation'. Therefore, they were 'essential facts and considerations' that should have been disclosed to parties.

(9) In light of the above, the General Court annulled the anti-dumping regulation at issue insofar as the companies represented by CRIA and CCCMC (listed in Annex I) were concerned.

(10) In addition, the General Court annulled the anti-subsidy regulation at issue insofar as the companies represented by CRIA and CCCMC (listed in Annex II) were concerned.

2. **GROUND FOR REGISTRATION**

(11) The Commission analysed whether it is appropriate to make the imports of the product concerned subject to registration. In that context, the Commission took the following considerations into account.

(12) Article 266 TFEU provides that the Institutions must take the necessary measures to comply with the Courts' judgments. In case of annulment of an act adopted by the Institutions in the context of an administrative procedure, such as anti-dumping or anti-subsidy investigations, compliance with the General Court's judgment consists in the replacement of the annulled act by a new act, in which the illegality identified by the Court is eliminated ([6]).

([6]) Joined cases 97, 193, 99 and 215/86 Asteris AE and others and Hellenic Republic v Commission [1988] ECR 2181, paragraphs 27 and 28; and Case T-440/20 Jindal Saw v European Commission, EU:T:2022:318.

(13) According to the case-law of the Court of Justice, the procedure for replacing the annulled act may be resumed at the very point at which the illegality occurred ([7]). That implies in particular that in a situation where an act concluding an administrative procedure is annulled, that annulment does not necessarily affect the preparatory acts, such as the initiation of the anti-dumping procedure. In a situation where for instance a Regulation imposing definitive anti-dumping measures is annulled, that means that subsequent to the annulment, the anti-dumping proceeding is still open, because the act concluding the anti-dumping proceeding has disappeared from the Union legal order ([8]), except if the illegality occurred at the stage of initiation.

(14) As explained in the re-opening Notice, and since the illegality did not occur at the stage of initiation but at the stage of the investigation, the Commission decided to re-open the anti-dumping and anti-subsidy investigations in so far as they concern the companies listed in Section 1.2 above, and resumed them at the point at which the irregularity occurred.

(15) According to the case-law of the Court of Justice, the resumption of the administrative procedure and the eventual re-imposition of duties cannot be seen as contrary to the rule of non-retroactivity ([9]). The re-opening Notice informed interested parties, including importers, that any future liability, if warranted, would emanate from the findings of the re-examination.

(16) Based on its new findings and the outcome of the re-opened investigations, which is unknown at this stage, the Commission may adopt regulations revising, where warranted, the applicable duty rates. Those revised rates, if any, will take effect as from the date on which the regulations at issue entered into force.

(17) For this purpose, the Commission requested national customs authorities to await the outcome of the re-examination before deciding on any repayment claim concerning the anti-dumping and/or countervailing duties annulled by the General Court. Customs authorities are thus directed to put on hold any claims for reimbursements of the annulled duties until the outcome of the re-examination is published in the *Official Journal of the European Union*.

(18) Furthermore, should the re-opening investigations lead to the re-imposition of measures, duties should also be collected for the period during which the re-opening investigations are carried out.

(19) In this respect, the Commission notes that registration is a tool provided in Articles 14(5) of the basic anti-dumping Regulation and Article 24(5) of the basic anti-subsidy Regulation so that measures may subsequently be applied against imports from the date of the registration ([10]). In the present case, the Commission deems it appropriate to register imports concerning the companies listed in Section 1.2 above with a view to facilitating the collection of anti-dumping and countervailing duties once their levels are revised in line with the General Court ruling ([11]).

(20) In line with the jurisprudence of the Court of Justice ([12]), contrary to registration taking place during the period before the adoption of provisional measures, the conditions of Article 10(4) of the basic anti-dumping Regulation and Article 16(4) of the basic anti-subsidy Regulation are not applicable to the case at hand. Indeed, the purpose of registration in the context of Court implementation is not to allow the possible retroactive collection of trade

([7]) Case C-415/96 Spain v Commission [1998] ECR I-6993, paragraph 31; Case C-458/98 P Industrie des Poudres Sphériques v Council [2000] I-8147, paragraphs 80 to 85; Case T-301/01 Alitalia v Commission [2008] II-1753, paragraphs 99 and 142; joined cases T-267/08 and T-279/08 Région Nord-Pas de Calais v Commission [2011] II-0000, paragraph 83.

([8]) Case C-415/96 Spain v Commission [1998] ECR I-6993, paragraph 31; Case C-458/98 P Industrie des Poudres Sphériques v Council [2000] I-8147, paragraphs 80 to 85.

([9]) Case C-256/16 Deichmann SE v Hauptzollamt Duisburg, Judgment of the Court of 15 March 2018, paragraph 79 and Case-612/16 C & J Clark International Ltd v Commissioners for Her Majesty's Revenue & Customs, judgment of 19 June 2019, paragraph 5.

([10]) Case T-440/20 Jindal Saw v European Commission, EU:T:2022:318 paragraphs 154 – 159.

([11]) Please note that, in relation to the exporting producer Zhongce Rubber Group Co., Ltd, this applies only to the countervailing duty liability at issue. The General Court did not annul the anti-dumping regulation vis-à-vis this company and, therefore, anti-dumping duties are still to be collected in relation to Zhongce Rubber Group Co.

([12]) Case C-256/16 Deichmann SE v Hauptzollamt Duisburg, paragraph 79 and Case C-612/16, C & J Clark International Ltd v Commissioners for Her Majesty's Revenue & Customs, judgment of 19 June 2019, paragraph 58.

defence measures as envisaged in those provisions. The purpose is rather to safeguard the effectiveness of the measures in place, without undue interruption from the date of entry into force of the regulations at issue until the re-imposition of the corrected duties, by ensuring that the collection of measures in the correct amount is possible in the future.

(21) In light of the above considerations, the Commission considered that there were grounds for registration pursuant to Article 14(5) of the basic anti-dumping Regulation and Article 24(5) of the basic anti-subsidy Regulation.

3. **REGISTRATION**

(22) On the basis of the above, imports of the product concerned produced by the companies listed in Section 1.2 above must be made subject to registration ([13]).

(23) As indicated in the re-opening Notice, the final liability for payment of anti-dumping and countervailing duties, if any, from the date of entry into force of the anti-dumping and anti-subsidy Regulations at issue will emanate from the findings of the re-examination.

(24) No duties higher than the duties established in the Regulations at issue may be collected for the period between the publication of the notice of re-opening and the date of entry into force of the results of the re-opening investigations,

HAS ADOPTED THIS REGULATION:

Article 1

1. The Customs authorities shall, pursuant to Article 14(5) of Regulation (EU) 2016/1036 take the appropriate steps to register the imports of certain pneumatic tyres, new or retreaded, of rubber, of a kind used for buses or lorries, with a load index exceeding 121, currently falling under CN codes 4011 20 90 and ex 4012 12 00 (TARIC code 4012 12 00 10), originating in the People's Republic of China and produced by the companies listed in Annex I to this Regulation.

2. The Customs authorities shall, pursuant to Article 24(5) of Regulation (EU) 2016/1037, take the appropriate steps to register the imports of certain pneumatic tyres, new or retreaded, of rubber, of a kind used for buses or lorries, with a load index exceeding 121, currently falling under CN codes 4011 20 90 and ex 4012 12 00 (TARIC code 4012 12 00 10), originating in the People's Republic of China and produced by the companies listed in Annex II to this Regulation.

3. Registration shall expire nine months after the date of entry into force of this Regulation.

4. The rates of the anti-dumping and countervailing duties that can be collected on certain pneumatic tyres, new or retreaded, of rubber, of a kind used for buses or lorries, with a load index exceeding 121, currently falling within CN codes 4011 20 90 and ex 4012 12 00 (TARIC code 4012 12 00 10) and produced by the companies listed in Annex I and Annex II to this Regulation between the re-opening of the investigations and the date of entry into force of the results of the re-opening investigations shall not exceed those imposed by Implementing Regulations (EU) 2018/1579 and (EU) 2018/1690.

5. The national customs authorities shall await the publication of the relevant Commission Implementing Regulation re-imposing the duties before deciding on the claim for repayment and remission of anti-dumping and/or countervailing duties insofar as imports of the companies listed in Annex I and Annex II to this Regulation are concerned.

([13]) Please note that, in relation to the exporting producer Zhongce Rubber Group Co., Ltd, this applies only to the countervailing duty liability at issue. The General Court did not annul the anti-dumping regulation vis-à-vis this company and, therefore, anti-dumping duties are still to be collected in relation to Zhongce Rubber Group Co.

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, 7 July 2022.

For the Commission
The President
Ursula VON DER LEYEN

ANNEX I

List of companies affected by the annulment of Implementing Regulation (EU) 2018/1579 (anti-dumping):

Company name	Additional TARIC code
Chaoyang Long March Tyre Co., Ltd	C338
Triangle Tyre Co., Ltd	C375
Shandong Wanda Boto Tyre Co., Ltd	C366
Qingdao Doublestar Tire Industrial Co., Ltd	C347
Ningxia Shenzhou Tire Co., Ltd	C345
Guizhou Tyre Co., Ltd	C340
Aeolus Tyre Co., Ltd	C877 ([1])
Shandong Huasheng Rubber Co., Ltd	C360
Chongqing Hankook Tire Co., Ltd	C334
Prinx Chengshan (Shandong) Tire Co., Ltd	C346
Jiangsu Hankook Tire Co., Ltd	C334
Shandong Linglong Tire Co., Ltd	C363
Shandong Jinyu Tire Co., Ltd	C362
Sailun Group Co., Ltd	C351
Shandong Kaixuan Rubber Co., Ltd	C353
Weifang Yuelong Rubber Co., Ltd	C875 ([2])
Weifang Shunfuchang Rubber And Plastic Products Co., Ltd	C377
Shandong Hengyu Science & Technology Co., Ltd	C358
Jiangsu General Science Technology Co., Ltd	C341
Double Coin Group (Jiang Su) Tyre Co., Ltd	C878 ([3])
Hefei Wanli Tire Co., Ltd	C876 ([4])
Giti Tire (Anhui) Company Ltd	C332
Giti Tire (Fujian) Company Ltd	C332
Giti Tire (Hualin) Company Ltd	C332
Giti Tire (Yinchuan) Company Ltd	C332
Qingdao GRT Rubber Co., Ltd	C350

([1]) In the regulations at issue, TARIC additional code C333 identifies the following exporting producers:

Aeolus Tyre Co., Ltd;
Aeolus Tyre (Taiyuan) Co., Ltd;
Qingdao Yellow Sea Rubber Co., Ltd;
Pirelli Tyre Co., Ltd
A new TARIC additional code is assigned to Aeolus Tyre Co., Ltd for the registration.

([2]) In the regulations at issue, Weifang Yuelong Rubber Co., Ltd is linked to TARIC additional code C999.

([3]) In the regulations at issue, TARIC additional code C371 identifies the following exporting producers:

Shanghai Huayi Group Corp. Ltd
Double Coin Group (Jiang Su) Tyre Co., Ltd.
A new TARIC additional code is assigned to Double Coin Group (Jiang Su) Tyre Co., Ltd for the registration.

([4]) In the regulations at issue, Hefei Wanli Tire Co. Ltd is linked to TARIC additional code C999.

ANNEX II

List of companies affected by the annulment of Implementing Regulation (EU) 2018/1690 (anti-subsidy):

Company name	Additional TARIC code
Chaoyang Long March Tyre Co., Ltd	C338
Triangle Tyre Co., Ltd	C375
Shandong Wanda Boto Tyre Co., Ltd	C366
Qingdao Doublestar Tire Industrial Co., Ltd	C347
Ningxia Shenzhou Tire Co., Ltd	C345
Guizhou Tyre Co., Ltd	C340
Aeolus Tyre Co., Ltd	C877 ([1])
Shandong Huasheng Rubber Co., Ltd	C360
Chongqing Hankook Tire Co., Ltd	C334
Prinx Chengshan (Shandong) Tire Co., Ltd	C346
Jiangsu Hankook Tire Co., Ltd	C334
Shandong Linglong Tire Co., Ltd	C363
Shandong Jinyu Tire Co., Ltd	C362
Sailun Jinyu Group Co., Ltd	C351
Shandong Kaixuan Rubber Co., Ltd	C353
Weifang Yuelong Rubber Co., Ltd	C875 ([2])
Weifang Shunfuchang Rubber And Plastic Products Co., Ltd	C377
Shandong Hengyu Science & Technology Co., Ltd	C358
Jiangsu General Science Technology Co., Ltd	C341
Double Coin Group (Jiang Su) Tyre Co., Ltd	C878 ([3])
Hefei Wanli Tire Co., Ltd	C876 ([4])
Giti Tire (Anhui) Company Ltd	C332
Giti Tire (Fujian) Company Ltd	C332
Giti Tire (Hualin) Company Ltd	C332
Giti Tire (Yinchuan) Company Ltd	C332
Qingdao GRT Rubber Co., Ltd	C350
Zhongce Rubber Group Co., Ltd	C379

([1]) In the regulations at issue, TARIC additional code C333 identifies the following exporting producers:

Aeolus Tyre Co., Ltd;
Aeolus Tyre (Taiyuan) Co., Ltd;
Qingdao Yellow Sea Rubber Co., Ltd;
Pirelli Tyre Co., Ltd
A new TARIC additional code is assigned to Aeolus Tyre Co., Ltd for the registration.

([2]) In the regulations at issue, Weifang Yuelong Rubber Co., Ltd is linked to TARIC additional code C999.
([3]) In the regulations at issue, TARIC additional code C371 identifies the following exporting producers:

Shanghai Huayi Group Corp. Ltd
Double Coin Group (Jiang Su) Tyre Co., Ltd
A new TARIC additional code is assigned to Double Coin Group (Jiang Su) Tyre Co. Ltd for the registration.
([4]) In the regulations at issue, Hefei Wanli Tire Co., Ltd is linked to TARIC additional code C999.

COMMISSION REGULATION (EU) 2022/1176

of 7 July 2022

amending Regulation (EC) No 1223/2009 of the European Parliament and of the Council as regards the use of certain UV filters in cosmetic products

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EC) No 1223/2009 of the European Parliament and of the Council of 30 November 2009 on cosmetic products ([1]), and in particular Article 31(1) thereof,

Whereas:

(1) The substances 2-Hydroxy-4-methoxybenzophenone/Oxybenzone (CAS no 131-57-7), which has been assigned the name Benzophenone-3 under the International Nomenclature of Cosmetic Ingredients (INCI), and 2-Cyano-3,3-diphenyl acrylic acid, 2-ethylhexyl ester/Octocrylene (CAS no 6197-30-4), which has been assigned the name Octocrylene under the INCI, are currently allowed as UV filters in cosmetic products and listed in entries 4 and 10, respectively, of Annex VI to Regulation (EC) No 1223/2009.

(2) In light of concerns related to potential endocrine disrupting properties of Benzophenone-3 and Octocrylene, when used as UV filters in cosmetic products, a call for data was launched in 2019. Stakeholders submitted scientific evidence to demonstrate the safety of Benzophenone-3 and Octocrylene as UV filters in cosmetic products. The Commission requested the Scientific Committee for Consumer Safety (SCCS) to carry out a safety assessment of both substances in view of the information provided.

(3) Based on the safety assessment and considering the concerns related to potential endocrine disrupting properties of Benzophenone-3, the SCCS concluded in its opinion of 30-31 March 2021 ([2]) that Benzophenone-3 is not safe for the consumer when used as a UV filter up to the current maximum concentration of 6 % in sunscreen products, either in the form of body cream, sunscreen propellant spray or pump spray.

(4) The SCCS further concluded that Benzophenone-3 is safe for the consumer when used as a UV filter up to a maximum concentration of 6 % in face cream, hand cream, and lipsticks, and that the use of Benzophenone-3 up to 0,5 % in cosmetic products to protect the cosmetic formulation is safe for the consumer.

(5) The SCCS also found that the use of Benzophenone-3 as a UV filter is safe for the consumer up to a maximum concentration of 2,2 % in body creams, in propellant sprays and in pump sprays, if there is no additional use of Benzophenone-3 at 0,5 % in the same formulation for protecting the cosmetic formulation. It further concluded that, where Benzophenone-3 is also used at 0,5 % in the same formulation, the levels of Benzophenone-3 used as a UV filter should not exceed 1,7 % in body creams, in propellant sprays and in pump sprays.

(6) With regard to the substance Octocrylene, the SCCS concluded, based on the safety assessment and considering the concerns related to its potential endocrine disrupting properties, in its opinion of 30-31 March 2021 ([3]) that Octocrylene is safe as a UV-filter at concentrations up to 10 % in cosmetic products when used individually.

([1]) OJ L 342, 22.12.2009, p. 59.

([2]) SCCS (Scientific Committee on Consumer Safety), Opinion on Benzophenone-3 (CAS No 131-57-7, EC No 205-031-5), preliminary version of 15 December 2020, final version of 30-31 March 2021, SCCS/1625/20 https://ec.europa.eu/health/sites/default/files/scientific_committees/consumer_safety/docs/sccs_o_247.pdf

([3]) SCCS (Scientific Committee on Consumer Safety), Opinion on Octocrylene (CAS No 6197-30-4, EC No 228-250-8), preliminary version of 15 January 2021, final version of 30-31 March 2021, SCCS/1627/21 https://ec.europa.eu/health/sites/default/files/scientific_committees/consumer_safety/docs/sccs_o_249.pdf

(7) The SCCS also found that the use of Octocrylene is safe for a combined use of sunscreen cream or lotion, sunscreen pump spray, face cream, hand cream and lipstick at a concentration up to 10 %, but that the use of Octocrylene at concentrations of 10 % or above in sunscreen propellant spray is not safe for the combined use. The SCCS considered the use of Octocrylene in such products safe when its concentration does not exceed 9 %, when used together with face cream, hand cream, or lipstick containing 10 % Octocrylene.

(8) In light of the SCCS opinions, it can be concluded that there is potential risk to human health arising from the use of Benzophenone-3 and Octocrylene as UV filters in cosmetic products in the concentrations currently allowed. Therefore, the use of Benzophenone-3 and Octocrylene should be restricted to the maximum concentrations proposed by the SCCS.

(9) Regulation (EC) No 1223/2009 should therefore be amended accordingly.

(10) The industry should be allowed reasonable periods of time to adapt to the new requirements, including by making the necessary adjustments to product formulations in order to ensure that only cosmetic products complying with the new requirements are placed on the market. The industry should also be allowed a reasonable period of time to withdraw cosmetic products which do not comply with those requirements.

(11) The measures provided for in this Regulation are in accordance with the opinion of the Standing Committee on Cosmetic Products,

HAS ADOPTED THIS REGULATION:

Article 1

Annex VI to Regulation (EC) No 1223/2009 is amended in accordance with the Annex to this Regulation.

Article 2

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

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

Done at Brussels, 7 July 2022.

For the Commission
The President
Ursula VON DER LEYEN

ANNEX

In Annex VI to Regulation (EC) No 1223/2009, entries 4 and 10 are replaced by the following:

Reference number	Substance identification				Conditions			Wordings of conditions of use and warnings
	Chemical name/INN	Name of Common Ingredients Glossary	CAS number	EC number	Product type, body parts	Maximum concentration in ready use preparation	Other	
a	b	c	d	e	f	g	h	i
‘4	2-Hydroxy-4-methoxy-benzophenone/ Oxybenzone (*)	Benzophenone-3	131-57-7	205-031-5	a) Face products, hand products, and lip products, excluding propellant and pump spray products	a) 6 %	For a) and b) Not more than 0,5 % to protect product formulation	For a) and b): Contains Benzophenone-3 (**)
					b) Body products, including propellant and pump spray products	b) 2,2 %	a) If used at 0,5 % to protect product formulation, the levels used as UV filter must not exceed 5,5 %.	
					c) Other products	c) 0,5 %	b) If used at 0,5 % to protect product formulation, the levels used as UV filter must not exceed 1,7 %.	
10	2-Cyano-3,3-diphenyl acrylic acid, 2- ethylhexyl ester/ Octocrylene (*) (***)	Octocrylene	6197-30-4	228-250-8	a) Propellant spray products	a) 9 %		
					b) Other products	b) 10 %		

(*) However, cosmetic products containing that substance and complying with the restrictions set out in Regulation (EC) No 1223/2009 as applicable on 27 July 2022 may be placed on the Union market until 28 January 2023 and be made available on the Union market until 28 July 2023.

(**) Not required if concentration is 0,5 % or less and when it is used only for product protection purposes.

(***) Benzophenone as an impurity and/or degradation product of Octocrylene shall be kept at trace level.’

COMMISSION IMPLEMENTING REGULATION (EU) 2022/1177

of 7 July 2022

amending Implementing Regulation (EU) 2020/683 by introducing and updating, in the templates for the information document and certificate of conformity in paper format, the entries as regards certain safety systems, and adjusting the numbering system for the approval certificates for a type of vehicle, system, component or separate technical unit

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EU) 2018/858 of the European Parliament and of the Council of 30 May 2018 on the approval and market surveillance of motor vehicles and their trailers, and of systems, components and separate technical units intended for such vehicles, amending Regulations (EC) No 715/2007 and (EC) No 595/2009 and repealing Directive 2007/46/EC ([1]), and in particular Articles 24(4), 28(3), 36(4) and 38(3) thereof,

Whereas:

(1) Commission Implementing Regulation (EU) 2020/683 ([2]) provides for a standardised format of the documents used for the type-approval of motor vehicles and their trailers, and of systems, components and separate technical units intended for such vehicles by laying down the templates for the information document, the EU individual vehicle approval certificates and the certificates of conformity in paper format.

(2) The templates for the information documents, contained in Annexes I and II to Implementing Regulation (EU) 2020/683, should be modified to take into account the new requirements introduced by Regulation (EU) 2019/2144 of the European Parliament and of the Council ([3]) and the regulatory acts adopted pursuant to it.

(3) To allow for a consistent approach with regard to the numbering of the approval certificates, it is further necessary to amend the numbering system set out in Annex IV to Implementing Regulation (EU) 2020/683 to reflect the regulatory development under Regulation (EU) 2019/2144.

(4) It is also appropriate to amend Annex V to Implementing Regulation (EU) 2020/683 setting out the model for the EU type-approval mark for components and separate technical units by updating the reference to Regulation (EU) 2019/2144.

(5) Regulation (EU) 2019/2144 requires new vehicles to be equipped with advanced safety systems, including the emergency lane-keeping assistance, intelligent speed assistance, driver drowsiness and attention warning systems, and the event data recorder. It is appropriate to require that the certificate of conformity indicates which systems are fitted in the vehicle. It is therefore necessary to add the relevant entries to the templates for the certificate of conformity in paper format set out in Annex VIII to Implementing Regulation (EU) 2020/683.

(6) Implementing Regulation (EU) 2020/683 should therefore be amended accordingly.

([1]) OJ L 151, 14.6.2018, p. 1.

([2]) Commission Implementing Regulation (EU) 2020/683 of 15 April 2020 implementing Regulation (EU) 2018/858 of the European Parliament and of the Council with regards to the administrative requirements for the approval and market surveillance of motor vehicles and their trailers, and of systems, components and separate technical units intended for such vehicles (OJ L 163, 26.5.2020, p. 1).

([3]) Regulation (EU) 2019/2144 of the European Parliament and of the Council of 27 November 2019 on type-approval requirements for motor vehicles and their trailers, and systems, components and separate technical units intended for such vehicles, as regards their general safety and the protection of vehicle occupants and vulnerable road users (OJ L 325, 16.12.2019, p. 1).

(7) In order to provide approval authorities, market surveillance authorities and registration authorities of the Member States, and the manufacturers with sufficient time to implement the amendments to the certificate of conformity in paper format in their respective systems, the date of application of Annex V should be deferred.

(8) The measures provided for in this Regulation are in accordance with the opinion of the Technical Committee – Motor Vehicles,

HAS ADOPTED THIS REGULATION:

Article 1

Amendments to Implementing Regulation (EU) 2020/683

Implementing Regulation (EU) 2020/683 is amended as follows:

(1) Annex I is amended in accordance with Annex I to this Regulation;

(2) Annex II is amended in accordance with Annex II to this Regulation;

(3) Annex IV is amended in accordance with Annex III to this Regulation;

(4) Annex V is amended in accordance with Annex IV to this Regulation;

(5) Annex VIII is amended in accordance with Annex V to this Regulation.

Article 2

Entry into force and application

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

Annex V shall apply from 1 January 2024.

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

Done at Brussels, 7 July 2022.

For the Commission
The President
Ursula VON DER LEYEN

ANNEX I

Annex I to Regulation (EU) 2020/683 is amended as follows:

(1) the explanatory notes are amended as follows:

(a) explanatory note ([12]) is replaced by the following:

'([12]) In accordance with the definitions in Annex XIII, Part 2, Section A, points 1.24 (wheelbase) and 1.25 (axle spacing) to Commission Implementing Regulation (EU) 2021/535 of 31 March 2021 laying down rules for the application of Regulation (EU) 2019/2144 of the European Parliament and of the Council as regards uniform procedures and technical specifications for the type-approval of vehicles, and of systems, components and separate technical units intended for such vehicles, as regards their general construction characteristics and safety (OJ L 117, 6.4.2021, p. 1). In the case of a centre-axle trailer, the axis of the coupling shall be considered as the foremost axle.';

(b) explanatory note ([14]) is replaced by the following:

'([14]) Commission Implementing Regulation (EU) 2021/535 of 31 March 2021 laying down rules for the application of Regulation (EU) 2019/2144 of the European Parliament and of the Council as regards uniform procedures and technical specifications for the type-approval of vehicles, and of systems, components and separate technical units intended for such vehicles, as regards their general construction characteristics and safety (OJ L 117, 6.4.2021, p. 1)';

(c) explanatory note ([18]) is replaced by the following:

'([18]) Term No 6.1, and for vehicles other than those of category M1: Implementing Regulation (EU) 2021/535, Annex XIII, Part 2, Section F. In the case of trailers, the lengths shall be specified as mentioned in term No 6.1.2 of Standard ISO 612:1978'.

(d) explanatory notes ([20]) and ([21]) are replaced by the following:

'([20]) Term No 6.2 and for vehicles other than those of category M1: Implementing Regulation (EU) 2021/535, Annex XIII, Part 2, Section F.

([21]) Term No 6.3 and for vehicles other than those of category M1: Implementing Regulation (EU) 2021/535, Annex XIII, Part 2, Section F.';

(e) explanatory note ([30]) is replaced by the following:

'([30]) As defined in point 1.3. of Implementing Regulation (EU) 2021/535, Annex XIII, Part 2, Section A.';

(f) explanatory note ([122]) is replaced by the following:

'([122]) Commission Implementing Regulation (EU) 2021/646 of 19 April 2021 laying down rules for the application of Regulation (EU) 2019/2144 of the European Parliament and of the Council as regards uniform procedures and technical specifications for the type-approval of motor vehicles with regard to their emergency lane-keeping systems (OJ L 133, 20.4.2021, p. 31)';

(g) explanatory note ([123]) is replaced by the following:

'([123]) Commission Delegated Regulation (EU) 2021/1243 of 19 April 2021 supplementing Regulation (EU) 2019/2144 of the European Parliament and of the Council by laying down detailed rules concerning the alcohol interlock installation facilitation in motor vehicles and amending Annex II to that Regulation (OJ L 272, 30.7.2021, p. 11)';

(h) explanatory note ([124]) is replaced by the following:

'([124]) UN Regulation No 13 of the Economic Commission for Europe of the United Nations (UN/ECE) – Uniform provisions concerning the approval of vehicles of categories M, N and O with regard to braking [2016/194] (OJ L 42, 18.2.2016, p. 1).';

(i) explanatory note ([157]) is replaced by the following:

'([157]) Entries 4 and 4.1 shall be completed in accordance with the definitions laid down in points 1.24 (wheelbase) and 1.25 (axle spacing), respectively, of Implementing Regulation (EU) 2021/535, Annex XIII, Part 2, Section A.';

(j) explanatory note ([174]) is replaced by the following:

'([174]) For the term coupling point numbered "0" see Implementing Regulation (EU) 2021/535, Annex II, Part 2, Section A, point 1.3.1.2.';

(k) explanatory notes ([31]), ([55]), ([79]), ([89]), ([90]) and ([91]) are deleted;

(l) the following new explanatory note ([181]) is added:

'([181]) Systems approved in accordance with the requirements set out in the regulatory acts listed in Annex II to Regulation (EU) 2018/858. The acronyms correspond to the systems referred to in points 6.7.; 7.4., 8.12, 10.1.1., 12.2.4., 12.6.5., 12.8., 12.11., 12.12., 12.13., 12.16., 12.17. and 17.';

(2) point 2.2.1.3. is replaced by the following:

'2.2.1.3. Semi-trailer reference wheelbase (as required by Implementing Regulation (EU) 2021/535, Annex XIII, Part 2, Section E, point 3.2.:';

(3) point 2.6.2. is replaced by the following:

'2.6.2. Mass of the optional equipment (see definition in Implementing Regulation (EU) 2021/535, Annex XIII, Part 2, Section A. point 1.4.:';

(4) the following points 2.11.4.1. and 2.11.4.2. are inserted:

'2.11.4.1. Maximum ratio of the coupling overhang ([34]) to the wheel base: ...

2.11.4.2. Maximum V-value: ..... kN.';

(5) point 2.13. is replaced by the following:

'2.13. Rear swing-out (Implementing Regulation (EU) 2021/535, Annex XIII, Part 2, Section C, point 8 and Section D, point 7 respectively):';

(6) point 2.14.1. is replaced by the following:

'2.14.1. Engine power/technically permissible maximum laden mass of the combination ratio (Implementing Regulation (EU) 2021/535, Annex XIII, Part 2, Section C, point (6): ..... kW/kg.';

(7) point 3.2.18.1. is replaced by the following:

'3.2.18.1. The number of the type-approval certificate(s): ...';

(8) point 4.11.2. is replaced by the following:

'4.11.2. Information as referred to in Implementing Regulation (EU) 2021/535, Annex IX, Part 2, point 7.6. (manufacturer's declared value):';

(9) the following points 4.11.4., 4.11.5. and 4.11.6. are inserted:

'4.11.4. Information as referred to in Implementing Regulation (EU) 2021/535, Annex IX, Part 2, point 6.1.1.: ...

4.11.5. Information as referred to in Implementing Regulation (EU) 2021/535, Annex IX, Part 2, point 6.1.2.: ...

4.11.6. Information on the GSI in the vehicle's user manual: ...';

(10) the following points 6.7., 6.7.1. and 6.7.2. are inserted:

‘6.7. Tyre pressure monitoring system (TPMS)

6.7.1. Presence: yes/no ([4])

6.7.2. Detailed description of the tyre pressure monitoring system: ...’;

(11) the following points 7.4. to 7.6.3. are inserted:

‘7.4. Emergency lane-keeping system (ELKS)

7.4.1. Presence: yes/no ([4])

7.4.2. Technical description and drawing of the system: …

7.4.3. Means to manually deactivate the ELKS

7.4.4. Description of the automatic deactivation (if fitted): …

7.4.5. Description of the automatic suppression (if fitted): …

7.5. Lane Departure Warning System (LDWS)

7.5.1. Presence: yes/no ([4])

7.5.2 Speed range of the LDWS: …

7.5.3. Technical description and drawing of the LDWS: …

7.6. Corrective Directional Control Function (CDCF)

7.6.1. Presence: yes/no ([4])

7.6.2. Speed range of the CDCF: …

7.6.3. Technical description and drawing of the system (in particular if the system uses steering or braking): ...’;

(12) point 8.6. is replaced by the following:

‘8.6. Calculation and curves in accordance with Regulation No 13 of the Economic Commission for Europe of the United Nations (UN/ECE) ([124]), Annex 10 or Annex 14, if applicable, or with UN Regulation 13-H of the Economic Commission for Europe of the United Nations (UN/ECE) ([125]), Annex 5 respectively: ...’;

(13) point 8.9. is replaced by the following:

‘8.9. Brief description of the braking system as referred to in UN Regulation No 13, Annex 2, paragraph 12 or in UN Regulation 13-H, Annex 1, paragraph 14 respectively: ...’;

(14) the following points 8.12., 8.12.1. and 8.12.2. are inserted:

‘8.12. Advanced emergency braking system (AEBS)

8.12.1. Presence: yes/no ([4])

8.12.2. Detailed description of the AEBS: ...’;

(15) points 9.14. to 9.14.4. are replaced by the following:

‘9.14. Spaces for mounting front and rear registration plates (give ranges where appropriate, drawings may be used where applicable): …

9.14.1. Height above road surface, lower and upper edges: ...

9.14.2. Lateral location, left and right edges: ...

9.14.3. Number of standard registration plate spaces: ...

9.14.4. Number of optional or alternative registration plate spaces: ...';

(16) the following points are inserted after point 9.14.5.:

'9.14.5.1. Front registration plate space: ...

9.14.5.2. Rear registration plate space: ...

9.14.5.3. Second rear registration plate space (in case of vehicles of category O_2, O_3 and O_4): ...

9.14.5.4. Optional or alternative registration plate spaces: ...';

(17) points 9.14.6. and 9.14.7. are replaced by the following:

'9.14.6. Inclinations of the plates to the vertical: ...

9.14.7. Angles of visibility from upper, lower, left and right edges: ...';

(18) point 9.16.2. is replaced by the following:

'9.16.2. Detailed drawings of the wheel guards and their position on the vehicle showing the dimensions specified in Implementing Regulation (EU) 2021/535, Annex V, Part 2, Figure 1 and taking account of the extremes of tyre/wheel combinations: …';

(19) points 9.17.4. and 9.17.4.1. are replaced by the following:

'9.17.4. Manufacturer's declaration of compliance with the requirements set out in Implementing Regulation (EU) 2021/535, Annex II, Part 2: ...

9.17.4.1. The meaning of characters in the vehicle descriptor section (VDS) of the vehicle identification number (VIN) and, if applicable, the vehicle indicator section (VIS) thereof, to comply with the requirements of Section 5.3. of ISO Standard 3779:2009 shall be explained: ...';

(20) the following point 9.17.4.3. is inserted:

'9.17.4.3. Statutory plate for vehicle built-in multi stage: yes/no ([4])';

(21) point 9.20.2. is replaced by the following:

'9.20.2. Detailed drawings of the spray suppression system and its position on the vehicle showing the dimensions specified in the figures in the Appendix to Implementing Regulation (EU) 2021/535, Annex VIII, Part 2 and taking account of the extremes of tyre/wheel combinations: ...';

(22) point 9.25.1. is replaced by the following:

'9.25.1. Detailed technical description (including photographs and drawings, as well as description of the materials) of the vehicle parts referred to in Implementing Regulation (EU) 2021/535, Annex XIII, Part 2, Section D, point 1.4: ...';

(23) the following point 10.1.1. is inserted:

'10.1.1. Emergency stop signal (ESS): yes/no ([4])';

(24) the following points 12.2.4., 12.2.4.1. and 12.2.4.2 are inserted:

'12.2.4. Alcohol interlock installation facilitation (AIF)

12.2.4.1. Manufacturer's declaration of compliance, in accordance with Annex I to Delegated Regulation (EU) 2021/1243([123]): …';

12.2.4.2. Installation document as regards alcohol interlock installation facilitation';

(25) the following points 12.6.5. to 12.6.5.5 are inserted:

'12.6.5. Intelligent speed assistance (ISA) system

12.6.5.1. Presence: yes/no ([4])

12.6.5.2. Speed limit information function (SLIF)

12.6.5.2.1. Detailed description of the SLIF interface: ...

12.6.5.2.2. Perceived speed limit determination methodology and technology: ...

12.6.5.3. Speed limit warning function (SLWF)

12.6.5.3.1. Detailed description of the SLWF feedback mechanisms: ...

12.6.5.3.2. Detailed description of the SLWF visual warning, if applicable: ...

12.6.5.4. Detailed description of the speed control function (SCF): ...

12.6.5.5. Type-approval number of the ISA system as separate technical unit, if applicable: ...';

(26) the following points 12.11. to 12.17.3. are inserted:

'12.11. Driver drowsiness and attention warning (DDAW) system

12.11.1. Presence: yes/no ([4])

12.11.2. Detailed description of the DDAW system: ...

12.11.3. Detailed description of the visual warning of the DDAW system: ...

12.12. Advanced driver distraction warning (ADDW) system

12.12.1. Presence: yes/no ([4])

12.12.2. Detailed description of the ADDW system: ...

12.12.3. Detailed description of the technical means of distraction avoidance, if applicable: ...

12.13. Blind spot information system (BSIS)

12.13.1. Presence: yes/no ([4])

12.13.2. Detailed description of the blind spot information system: ...

12.13.3. Type-approval number of the BSIS approved as separate technical unit, if applicable: ...

12.14. Cyber security

12.14.1. General construction characteristics of the vehicle type, including:

(a) the vehicle systems which are relevant to the cybersecurity of the vehicle type;

(b) the components of those systems that are relevant to cybersecurity;

(c) the interactions of those systems with other systems within the vehicle type and external interfaces

12.14.2. Schematic representation of the vehicle type: …

12.14.3. The number of the certificate of compliance for cybersecurity management system: ...

12.14.4. Documents for the vehicle type to be approved describing the outcome of its risk assessment and the identified risks: ...

12.14.5. Documents for the vehicle type to be approved describing the mitigations that have been implemented on the systems listed, or to the vehicle type, and how they address the stated risks: ...

12.14.6. Documents for the vehicle type to be approved describing protection of dedicated environments for aftermarket software, services, applications or data: ...

12.14.7. Documents for the vehicle type to be approved describing what tests have been used to verify the cybersecurity of the vehicle type and its systems and the outcome of those tests: ...

12.14.8. Description of the consideration of the supply chain with respect to cybersecurity: ...

12.15. Software update

12.15.1. General construction characteristics of the vehicle type: ...

12.15.2. The number of the Certificate of Compliance for Software Update Management System: ...

12.15.3. Security measures

12.15.3.1. Documents for the vehicle type to be approved describing that the update process will be performed securely: …

12.15.3.2. Documents for the vehicle type to be approved describing that the RXSWINs on a vehicle are protected against unauthorized manipulation: …

12.15.4. Software updates over the air

12.15.4.1. Documents for the vehicle type to be approved describing that the update process will be performed safely: …

12.14.4.2. Description of the means of informing vehicle users about an update before and after its execution: …

12.15.5. Manufacturer's declaration of compliance with the requirements for Software Update Management System: …

12.16. Event data recorder (EDR)

12.16.1. Presence: yes/no ([4])

12.16.2. Drawing(s) or photographs showing the location and method of attachment of the EDR in the vehicle: ....

12.16.3. Description of the triggering parameter: ...

12.16.4. Description of any other relevant parameter (storing capacity, resistance to high deceleration and mechanical stress of a severe impact, etc.): ...

12.16.5 The data elements and data format stored in the EDR:

Data element	Recording interval/time (relative to time zero)	Data sample rate (samples per second)	Minimum range	Accuracy	Resolution

12.16.6. Instructions for retrieving data from the EDR: ...

12.16.6.1. Description of the method to report information required under Article 4(3)(b) of Commission Delegated Regulation (EU) 2022/545 (*): manual/automated ([4])

12.16.7. Compliance to UN Regulation No 160 technical requirements:

12.16.7.1 UN Regulation No 160 approval number: …

12.16.8. Type-approval number of the EDR approved as separate technical unit, if applicable (to be completed if approval under UN Regulation No 160 is not obtained and referred to in point 12.16.7.1.): ...

12.17. Driver availability monitoring (DAM) system

12.17.1. Presence: yes/no ([4])

12.17.2. Methods to detect driver availability: …

12.17.3. Written description and/or drawing of the information given to the driver: …

_____

(*) OJ L 107, 6.4.2022, p. 18';

(27) The following points 17. to 17.11. are added:

'17. AUTOMATED DRIVING SYSTEM (ADS): yes/no ([4])

17.1. General ADS description: …

17.1.1. Operational Design Domain/Boundary conditions: …

17.1.2. Basic Performance (e.g. Object and Event Detection and Response (OEDR), planning, etc.)): …

17.2. Description of the functions of the ADS:

17.2.1. Main ADS Functions (functional architecture): …

17.2.1.1. Vehicle-internal functions: …

17.2.1.2. Vehicle-external functions (e.g. backend, off-board infrastructure needed, operational measures needed): …

17.3. Overview major components of the ADS

17.3.1. Control units: …

17.3.2. Sensors and installation of the sensors on the vehicle: …

17.3.3. Actuators: …

17.3.4. Maps and positioning: …

17.3.5. Other hardware: …

17.4. ADS layout and schematics

17.4.1. Schematic system layout (e.g. block diagram): …

17.4.2. List and schematic overview of interconnections: …

17.5. Specifications

17.5.1. Specifications in normal operation: …

17.5.2. Specifications in emergency operation: …

17.5.3. Acceptance criteria: …

17.5.4. Demonstration of compliance: …

17.6. Safety concept

17.6.1. Manufacturer statement that the vehicle is free from unreasonable risks: …

17.6.2. Outline of the software architecture (e.g. block diagram): …

17.6.3. Means by which the realization of ADS logic is determined: …

17.6.4. General explanation of the main design provisions built into the ADS so as to generate safe operation under fault conditions, under operational disturbances and the occurrence of conditions that would exceed the ODD: …

17.6.5. General description of failure handling main principles, fall-back level strategy including risk mitigation strategy (minimum risk manoeuvre): …

17.6.6. Conditions for triggering a request to the on-board operator or the remote intervention operator: …

17.6.7. Human machine interaction concept with vehicle occupants, on-board operator and remote intervention operator including protection against simple unauthorized activation/operation and interventions: …

17.7. Verification and validation by the manufacturer of the performance requirements including the OEDR, the HMI, the respect of traffic rules and the conclusion that the system is designed in such a way that it is free from unreasonable risks for the driver, vehicle occupants and other road users: …

17.7.1. Description of the adopted approach: …

17.7.2. Selection of nominal, critical and failure scenarios: …

17.7.3. Description of the used methods and tools (software, laboratory, others) and summary of the credibility assessment: …

17.7.4. Description of the results: …

17.7.5. Uncertainty of the results: …

17.7.6. Interpretation of the results: …

17.7.7. Manufacturer's declaration:

The manufacturer(s) …… affirm(s) that the ADS is free of unreasonable safety risks to the vehicle occupants and other road users.

17.8. ADS data elements

17.8.1. Type of data stored: …

17.8.2. Storage location: …

17.8.3. Recorded occurrences and data elements: …

17.8.4. Means to ensure data security and data protection: …

17.8.5. Means to access the data: …

17.9. Cyber security and software update

17.9.1. Cyber security type-approval number: …

17.9.2. Number of the Certificate of Compliance for cyber security: …

17.9.3. Software update type approval number: …

17.9.4. Number of the Certificate of Compliance for software update: …

17.9.4.1 Information on how to read the R_xSWIN or software version(s) in case the R_xSWIN is not held on the vehicle.

17.9.4.2 If applicable, list the relevant parameters that will allow the identification of those vehicles that can be updated with the software represented by the R_xSWIN under item 17.9.4.1.

17.10. Operating manual (to be annexed to the information document)

17.10.1. Functional description of the ADS and expected role of the owner, transport service operator, on board operator, remote intervention operator, etc.: …

17.10.2. Technical measures for safe operation (e.g. description of the necessary off board infrastructure, timing, frequency and template of maintenance operations): …

17.10.3. Operational and environment restrictions: …

17.10.4. Operational measures (e.g. if on-board operator or remote intervention operator needed): …

17.10.5. Instructions in case of failures and ADS request (safety measures by vehicle occupants, transport service operator, on board operator and remote intervention operator and public authorities to be taken in the event of malfunctioning of the operation): …

17.11. Means to enable a periodical technical inspection: …'.

ANNEX II

Annex II to Regulation (EU) 2020/683 is amended as follows:

(1) Part I (A. Categories M and N) is amended as follows:

(a) point 2.6.2. is replaced by the following:

'2.6.2. Mass of the optional equipment (see definition in Implementing Regulation (EU) 2021/535, Annex XIII, Part 2, Section A, point 1.4.):';

(b) point 4.11.2. is replaced by the following:

'4.11.2. Information as referred to in Implementing Regulation (EU) 2021/535, Annex IX, Part 2, point 7.6. (manufacturer's declared value):'

(c) the following points 6.7. and 6.7.1. are inserted:

'6.7. Tyre pressure monitoring system (TPMS)

6.7.1. Presence: yes/no ([4])';

(d) the following points 7.4., 7.4.1., 7.5., 7.5.1., 7.6. and 7.6.1. are inserted:

'7.4. Emergency lane-keeping system (ELKS)

7.4.1. Presence: yes/no ([4])

7.5. Lane Departure Warning System (LDWS)

7.5.1. Presence: yes/no ([4])

7.6. Corrective Directional Control Function (CDCF)

7.6.1. Presence: yes/no ([4])';

(e) the following points 8.12. and 8.12.1. are inserted:

'8.12. Advanced emergency braking system (AEBS)

8.12.1. Presence: yes/no ([4])';

(f) point 9.17.4.1. is replaced by the following:

'9.17.4.1. The meaning of characters in the vehicle descriptor section (VDS) of the vehicle identification number (VIN) and, if applicable, the vehicle indicator section (VIS) thereof, to comply with the requirements of Section 5.3. of ISO Standard 3779:2009 shall be explained:';

(g) the following points 12.2.4. and 12.2.4.1. are inserted:

'12.2.4. Alcohol interlock installation facilitation (AIF)

12.2.4.1. Manufacturer's declaration of compliance, in accordance with Annex I to Commission Delegated Regulation (EU) 2021/1243([123]): …';

(h) the following points 12.6.5. and 12.6.5.1. are inserted:

'12.6.5. Intelligent speed assistance system (ISA)

12.6.5.1. Presence: yes/no ([4])';

(i) the following points 12.11., 12.11.1, 12.12, 12.12.1, 12.13, 12.13.1, 12.16, 12.16.1., 12.17. and 12.17.1. are inserted:

'12.11. Driver drowsiness and attention warning (DDAW) system

12.11.1. Presence: yes/no ([4])

12.12. Advanced driver distraction warning (ADDW) system

12.12.1. Presence: yes/no ([4])

12.13. Blind spot information system (BSIS)

12.13.1. Presence: yes/no ([4])

12.16. Event data recorder (EDR)

12.16.1. Presence: yes/no ([4])

12.17. Driver availability monitoring (DAM) system

12.17.1. Presence: yes/no ([4])';

(j) the following point 17. is inserted:

'17. AUTOMATED DRIVING SYSTEM (ADS): yes/no ([4])';

(2) Part I (B. Category O) is amended as follows:

(a) point 2.6.2. is replaced by the following:

'2.6.2. Mass of the optional equipment (see definition in Implementing Regulation (EU) 2021/535, Annex XIII, Part 2, Section A, point 1.4.):';

(b) the following points 6.7. and 6.7.1. are inserted:

'6.7. Tyre pressure monitoring system (TPMS)

6.7.1. Presence: yes/no ([4])';

(c) point 9.17.4.1. is replaced by the following:

'9.17.4.1. The meaning of characters in the vehicle descriptor section (VDS) of the vehicle identification number (VIN) and, if applicable, the vehicle indicator section (VIS) thereof, to comply with the requirements of Section 5.3. of ISO Standard 3779:2009 shall be explained: ...';

(d) The following points 12, 12.7.1., 16. and 16.1. are added:

'12. MISCELLANEOUS

12.7.1. Vehicle equipped with a 24 GHz short-range radar equipment: yes/no ([4])

16. ACCESS TO VEHICLE REPAIR AND MAINTENANCE INFORMATION

16.1. Address of principal website for access to vehicle repair and maintenance information: ...'.

ANNEX III

Annex IV to Regulation (EU) 2020/683 is amended as follows:

(1) in point 2.2., point (c) is replaced by the following:

'(c) the number of the Commission Regulation adopted pursuant to Regulation (EU) 2019/2144 and laying down the applicable requirements.

For the purposes of point (c), where a (base) Regulation contains separate annexes with requirements and technical prescriptions to be applied for different subject matters covering vehicle systems, components and separate technical units, the reference in Section 2 shall be followed by a roman numeral denoting the Annex number to that Regulation.';

(2) in point 3.1., point (c) is replaced by the following:

'(c) in accordance with Annex XI to Implementing Regulation (EU) 2021/535([14]):

e2*2021/535/XI*2021/535*00003*00'

(3) in point 3.1., point (d) is replaced by the following:

'(d) in accordance with Implementing Regulation (EU) 2021/646([122]):

e2*2021/646*2021/646*00003*00'

(4) in point 4, the second paragraph is replaced by the following:

'However, this Annex applies to EU type-approvals granted in accordance with Regulation (EU) 2019/2144 on the basis of requirements laid down in the UN Regulations listed in Annex II to Regulation (EU) 2018/858, in which case the following numbering system shall apply:';

(5) point 4.2. is replaced by the following:

'4.2. Section 2: The number of Regulation (EU) 2019/2144 (i.e. '2019/2144')';

(6) in the example in point 4.6.1, the type-approval certificate number. is replaced by the following:

'e1*2019/2144*13-HR00/16*00001*00';

(7) in the example in point 4.6.2., the type-approval certificate number is replaced by the following:

'e25*2019/2144*46R04/01*00123*05'.

ANNEX IV

In Annex V to Regulation (EU) 2020/683, point 4, second paragraph, is replaced by the following:

'However, this Annex applies to EU type-approvals of components and separate technical units granted in accordance with Regulation (EU) 2019/2144 on the basis of the requirements laid down in the UN Regulations listed in Annex I to that Regulation, in which case the following shall apply:'.

ANNEX V

In Annex VIII to Regulation (EU) 2020/683, the Appendix is amended as follows:

(1) part I (Complete and completed vehicles) is amended as follows:

(a) in Part 2 (vehicle category M_1) the following points 54, 55 and 56 are added:

'54. Vehicle fitted with: TPMS/ELKS/AEBS/ESS/AIF/ISA/DDAW/ADDW/EDR/DAM/ADS/eCall ([4]) ([181])

55. Vehicle certified in accordance with UN Regulation No 155: yes/no ([4])

56. Vehicle certified in accordance with UN Regulation No 156: yes/no ([4])';

(b) in Part 2 (vehicle category M_2) the following points 54, 55 and 56 are added:

'54. Vehicle fitted with: TPMS/AEBS/ESS/AIF/ISA/DDAW/ADDW/BSIS/EDR/DAM/ADS/Platooning ([4]) ([181])

55. Vehicle certified in accordance with UN Regulation No 155: yes/no ([4])

56. Vehicle certified in accordance with UN Regulation No 156: yes/no ([4])';

(c) in Part 2 (vehicle category M_3) the following points 54, 55 and 56 are added:

'54. Vehicle fitted with: TPMS/ESS/AIF/AEBS/ISA/DDAW/ADDW/BSIS/EDR/DAM/ADS/Platooning ([4]) ([181])

55. Vehicle certified in accordance with UN Regulation No 155: yes/no ([4])

56. Vehicle certified in accordance with UN Regulation No 156: yes/no ([4])';

(d) in Part 2 (vehicle category N_1), the following points 54, 55 and 56 are added:

'54. Vehicle fitted with: TPMS/ELKS/AEBS/ESS/AIF/ISA/DDAW/ADDW/EDR/DAM/ADS/eCall ([4]) ([181])

55. Vehicle certified in accordance with UN Regulation No 155: yes/no ([4])

56. Vehicle certified in accordance with UN Regulation No 156: yes/no ([4])';

(e) in Part 2 (vehicle category N_2), the following points 54, 55 and 56 are added:

'54. Vehicle fitted with: TPMS/ESS/AIF/AEBS/ISA/DDAW/ADDW/BSIS/EDR/DAM/ADS/Platooning ([4]) ([181])

55. Vehicle certified in accordance with UN Regulation No 155: yes/no ([4])

56. Vehicle certified in accordance with UN Regulation No 156: yes/no ([4])';

(f) in Part 2 (vehicle category N_3), the following points 54, 55 and 56 are added:

'54. Vehicle fitted with: TPMS/ESS/AIF/AEBS/ISA/DDAW/ADDW/BSIS/EDR/DAM/ADS/Platooning ([4]) ([181])

55. Vehicle certified in accordance with UN Regulation No 155: yes/no ([4])

56. Vehicle certified in accordance with UN Regulation No 156: yes/no ([4])';

(g) in Part 2 (vehicle categories O_3 and O_4), the following points 54, 55 and 56 are added:

'54. Vehicle fitted with: TPMS ([181])';

55. Vehicle certified in accordance with UN Regulation No 155: yes/no ([4])

56. Vehicle certified in accordance with UN Regulation No 156: yes/no ([4])';

(2) part II (Incomplete vehicles) is amended as follows:

(a) in Part 2 (vehicle category M_1) the following points 54, 55 and 56 are added:

'54. Vehicle fitted with advanced vehicle systems: TPMS/ELKS/AEBS/ESS/AIF/ISA/DDAW/ADDW/EDR/DAM/ADS/eCall ([4]) ([181])';

55. Vehicle certified in accordance with UN Regulation No 155: yes/no ([4])

56. Vehicle certified in accordance with UN Regulation No 156: yes/no ([4])';

(b) in Part 2 (vehicle category M_2) the following point 54, 55 and 56 are added:

'54. Vehicle fitted with advanced vehicle systems: TPMS/ESS/AIF/AEBS/ISA/DDAW/ADDW/BSIS/EDR/DAM/ADS/Platooning ([4]) ([181])';

55. Vehicle certified in accordance with UN Regulation No 155: yes/no ([4])

56. Vehicle certified in accordance with UN Regulation No 156: yes/no ([4])';

(c) in Part 2 (vehicle category M_3) the following points 54, 55 and 56 are added:

'54. Vehicle fitted with advanced vehicle systems: TPMS/ESS/AIF/AEBS/ISA/DDAW/ADDW/BSIS/EDR/DAM/ADS/Platooning ([4]) ([181])';

55. Vehicle certified in accordance with UN Regulation No 155: yes/no ([4])

56. Vehicle certified in accordance with UN Regulation No 156: yes/no ([4])';

(d) in Part 2 (vehicle category N_1), the following points 54, 55 and 56 are added:

'54. Vehicle fitted with advanced vehicle systems: TPMS/ELKS/AEBS/ESS/AIF/ISA/DDAW/ADDW/EDR/DAM/ADS/eCall ([4]) ([181])';

55. Vehicle certified in accordance with UN Regulation No 155: yes/no ([4])

56. Vehicle certified in accordance with UN Regulation No 156: yes/no ([4])';

(e) in Part 2 (vehicle category N_2), the following points 54, 55 and 56 are added:

'54. Vehicle fitted with advanced vehicle systems: TPMS/ESS/AIF/AEBS/ISA/DDAW/ADDW/BSIS/EDR/DAM/ADS/Platooning ([4]) ([181])';

55. Vehicle certified in accordance with UN Regulation No 155: yes/no ([4])

56. Vehicle certified in accordance with UN Regulation No 156: yes/no ([4])';

(f) in Part 2 (vehicle category N_3), the following points 54, 55 and 56 are added:

'54. Vehicle fitted with advanced vehicle systems: TPMS/ESS/AIF/AEBS/ISA/DDAW/ADDW/BSIS/EDR/DAM/ADS/Platooning ([4]) ([181])';

55. Vehicle certified in accordance with UN Regulation No 155: yes/no ([4])

56. Vehicle certified in accordance with UN Regulation No 156: yes/no ([4])';

(g) in Part 2 (vehicle categories O_3 and O_4), the following points 54, 55 and 56 are added:

'54. Vehicle fitted with: TPMS ([181]).

55. Vehicle certified in accordance with UN Regulation No 155: yes/no ([4])

56. Vehicle certified in accordance with UN Regulation No 156: yes/no ([4])'.

DECISIONS

COMMISSION IMPLEMENTING DECISION (EU) 2022/1178

of 7 July 2022

not to prolong the suspension of the definitive anti-dumping duties imposed by Implementing Regulation (EU) 2021/1784 on imports of aluminium flat-rolled products originating in the People's Republic of China

THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EU) 2016/1036 of the European Parliament and of the Council of 8 June 2016 on protection against dumped imports from countries not members of the European Union ([1]) ('the basic Regulation'), and in particular Article 14(4) thereof,

After consulting the Advisory Committee,

Whereas:

1. PROCEDURE

(1) On 14 August 2020, the European Commission ('the Commission') initiated an anti-dumping investigation ('the investigation') with regard to imports of aluminium flat-rolled products ('AFRPs' or 'the product concerned') originating in the People's Republic of China ('the PRC', 'China' or the 'country concerned') ([2]) on the basis of Article 5 of the basic Regulation.

(2) On 12 April 2021, the Commission imposed a provisional anti-dumping duty by Commission Implementing Regulation (EU) 2021/582 ([3]) ('the provisional Regulation').

(3) On 11 October 2021, by Commission Implementing Regulation (EU) 2021/1784 ([4]) ('the definitive Regulation'), the Commission imposed a definitive anti-dumping duty on the product concerned. The rates of the anti-dumping duty range from 14,3 % to 24,6 %.

(4) On the same date, by Commission Implementing Decision (EU) 2021/1788 ([5]) ('the suspension Decision'), the Commission suspended the definitive anti-dumping duty on the product concerned for a period of 9 months, i.e. until 11 July 2022.

(5) On 9 March 2022, at its own initiative, the Commission sent questionnaires to the European Aluminium Association ('EA'), to the sampled Union producers and to all other interested parties. The purpose of the questionnaire was to provide information allowing the Commission to assess whether to prolong the suspension or not. Comments were received from the three sampled Union producers and their association (EA), from 14 users, including the European Association of Automotive Suppliers (CLEPA) and from 6 importers and their association (EURANIMI). The sampled Union producers and EA were also requested to provide information as regards certain injury indicators for the most recent period after the period analysed in the suspension Decision (the so-called 'period of analysis' (hereinafter 'PoA') of 8 months, that is from 1 July 2021 until 28 February 2022). They provided the requested information relating to certain indicators. Replies were submitted at the end of March 2022.

([1]) OJ L 176, 30.6.2016, p. 21.
([2]) OJ C 268, 14.8.2020, p. 5.
([3]) Commission Implementing Regulation (EU) 2021/582 of 9 April 2021 imposing a provisional duty on imports of aluminium flat-rolled products originating in the People's Republic of China (OJ L 124, 12.4.2021, p. 40).
([4]) Commission Implementing Regulation (EU) 2021/1784 of 8 October 2021 imposing a definitive anti-dumping duty on imports of aluminium flat-rolled products originating in the People's Republic of China (OJ L 359, 11.10.2021, p. 6).
([5]) Commission Implementing Decision (EU) 2021/1788 of 8 October 2021 suspending the definitive anti-dumping duties imposed by Implementing Regulation (EU) 2021/1784 on imports of aluminium flat-rolled products originating in the People's Republic of China (OJ L 359, 11.10.2021, p. 105).

(6) In their replies several users requested to prolong the suspension. In addition, on 25 April 2022, EA filed a formal request for an immediate end of the suspension.

(7) On 24 May 2022, the Commission disclosed its intention not to prolong the suspension of the measures and asked parties to provide comments by 2 June 2022. Seven interested parties provided submissions within the set deadline: TDK Hungary Components Kft. ('TDK Hungary'), Euranimi, Valeo Group ('Valeo'), TitanX Holding ('TitanX'), Airoldi Metalli S.p.a. ('Airoldi'), SATMA and Lodec Metall-Handel ('Lodec'). TDK Foil Italy SpA ('TDK Italy') provided comments after the deadline, which were therefore not taken into account.

(8) After disclosure, Airoldi claimed that its rights of defence were violated because the Commission used EA's data, in particular about market developments and capacity, which were not available to other parties. The Commission, however, observed that EA's data was based on information provided by all of its members and that EA provided non-confidential version of this data. Consequently, all parties could exercise their rights of defence and could comment on the provided data. The Commission thus rejected the claim.

(9) Some interested parties proposed amendments of the measures, such as the exclusion of certain products of the scope of the measure or the introduction of a quota of duty free imports. The Commission recalled that, pursuant to Article 14(4) of the basic Regulation, it can only decide either to prolong the suspension for a period not exceeding 1 year or not to prolong the suspension. Accordingly, the Commission could not review the measures imposed by the definitive Regulation. There is a specific procedure provided in Article 11(3) of the basic Regulation for interim reviews. These claims were therefore rejected.

2. EXAMINATION OF THE MARKET CONDITIONS AND OPERATORS ON THE UNION MARKET DURING THE POA

(10) Article 14(4) of the basic Regulation provides that, in the Union interest, anti-dumping measures may be suspended where market conditions have temporarily changed to an extent that injury would be unlikely to resume as a result of such a suspension.

(11) On 12 October 2021, the measures were suspended because the Commission established that there was a temporary imbalance between supply and demand in the post-COVID-19 recovery period and the economic situation of the Union industry had developed favourably in the 1st semester of 2021, in comparison with the investigation period ('IP', 1 July 2019 until 30 June 2020) and with 2017 (the best year of the period considered during the original investigation). The expectation was that the positive trends of the economic situation of the Union industry would continue during the 9 months' period of suspension, and that therefore injury was unlikely to resume as a result of the suspension. However, the changed market conditions were considered temporary in nature.

(12) Article 14(4) provides that the suspension may be extended for a further period, not exceeding 1 year. To decide on whether to extend the suspension or not, the Commission analysed the prevailing market conditions during the PoA as well as the economic situation of the Union industry and the views of importers and users.

2.1. **Market conditions**

(13) During the PoA, Union consumption decreased significantly, that is by 13,5 %, in comparison with the 1st semester of 2021 ([6]). Demand peaked in the 1st semester of 2021, when it increased by 27 % in comparison with the IP and declined significantly during the PoA.

(14) After disclosure, Valeo claimed that the disclosure document did not provide the source for the consumption figures or explanations and that those figures contradicted the data submitted by EA for the PoA. The Commission noted that the general disclosure document already indicated that data was provided by EA. The Commission calculated the consumption for the PoA by adding the total imports to the sales volume of the Union industry. For a proper comparison with the 1st semester 2021, the consumption figures presented at recital 12were recalculated from the data submitted by EA on a semester basis ([7]). The Commission thus had relied on the data submitted by EA for the PoA and, therefore, rejected this claim.

([6]) From 1 331 005 tonnes in the 1st semester of 2021 to 1 150 832 tonnes in the PoA.

([7]) That is by dividing by 8 (number of months covered by the PoA) and multiplying by 6.

(15) After disclosure, Euranimi, Airoldi and Lodec argued that the finding of a decrease in demand contradicted the projection that the global demand of aluminium will increase by 40 % by 2030 according to a report by CRU International. However, the Commission noted that the study in question was not limited to AFRPs only, but concerned all types of aluminium products. Besides, Europe (not only the EU but also other European countries) represents only a small fraction of the entire growth (14 %) that is forecasted. Finally, this projection did not contradict the Commission's findings, which concerned the PoA and short-term growth perspectives, whereas the study concerned growth prospects in the next 8 years. Consequently, the claim was rejected.

(16) In the first months of 2022 the following trends could be observed: according to a CRU Report ([8]), demand for rolled aluminium products in Europe remained satisfactory, driven by stockpiling following the war in Ukraine and by the construction sector, which has sustained its activity. Demand from the automotive sector, on the contrary, was weak, due to continuing shortages of semi-conductors and a shortage of wiring harnesses originating from Ukraine. This situation is expected to last for some more months. As for the construction industry, the same report also mentions the risk of fewer projects due to high inflation.

(17) On the supply side, the Union industry increased its capacity after the IP (+ 20 %), but the capacity utilisation did not increase and remained around 80 %. There is therefore room for the Union industry to increase production.

(18) Prices for the main raw materials (aluminium, magnesium) and energy increased significantly during the entire period since the IP, mainly because of the post-COVID recovery. These increases were exacerbated by the unprovoked and unjustified military aggression of Russia against Ukraine. This trend is likely to continue in the coming months. This will have an impact on the price of AFRPs and consequently curb the overall demand for these products.

(19) Regarding metal imports from Russia, including primary aluminium, the Union industry has reduced its imports from 22 % in 2015 to around 11 % in 2021. Also, the export tax of 15 % imposed by Russia on primary aluminium expired on 31 December 2021 ([9]) as initially planned. According to the Union industry, there is no shortage of primary or semi-finished aluminium, in spite of the sanctions against Russia, which, even though they do not concern directly aluminium products, have a strong negative impact on trade with Russia in general.

(20) In view of the above, it appears that demand peaked in the 1st semester of 2021. This is shown by the orders intake which, as explained in recital 33 below, decreased by 12 % during the PoA when compared with the 1st semester of 2021. In addition, the lead times were back to normal in the PoA: 5-7 weeks according to a CRU Report of April 2022, and 6-8 weeks according to EA ([10]). This is significantly shorter compared to the 1st semester 2021, in which the lead time was sometimes as long as 6 to 10 months. The reduction in lead times was also confirmed by many users.

(21) On this basis, the Commission concluded that during the PoA the imbalance between supply and demand, that characterized the first semester of 2021, was significantly reduced. Whilst the future remains uncertain, the peak in demand in the post-COVID period of recovery seems to be over, as illustrated by the significant drop in orders intake and lead-times. There is some uncertainty, however, regarding future demand from the two main downstream sectors, i.e. the automotive and construction sectors.

2.2. **Situation of the Union industry**

(22) Sales volumes in the EU decreased by 12,8 % in the PoA in comparison with the 1st semester 2021, from 1 056 668 tonnes to 921 701 tonnes. In comparison with the IP, sales volumes increased by 36 % and by 17 % in comparison with 2017.

([8]) CRU Aluminium products Monitor, April 2022 report.
([9]) https://steelnews.biz/russia-lifts-aluminium-alloys-export-tax/
([10]) In the suspension decision (rec. 30) the normal lead time was defined as 4-12 weeks.

(23) After disclosure, Valeo claimed that the data submitted by EA in the PoA contradicted the sales and production trends set out in the disclosure document. As explained in recital 14 above, to allow a proper comparison with the 1st semester 2021, the Commission recalculated the data submitted by EA on a semester basis and applied a similar methodology for the other periods of comparison (2017 and IP). Therefore, this claim was rejected.

(24) Prices of AFRPs in the Union steadily increased from an average of EUR/tonne 2 703 during the IP, to EUR/tonne 2 879 in the in the first semester of 2021, and then at a faster pace to EUR/tonne 3 555 in the PoA. That is an increase by 23 % between the 1st semester of 2021 and the PoA. This was the result of the increase of demand in a post-COVID context and the increase in the prices of the raw materials (primary aluminium, magnesium) and energy.

(25) The users, including Euranimi, Lodec and Airoldi Metalli, pointed in their initial submissions, as well as after disclosure, to the steep increase of the conversion fee (+ 100 % and up to + 160 %, according to these users). The Commission's estimates indicated that the conversion fee ([11]) increased by 8 % between the post-IP period (2nd semester of 2020 and 1st semester of 2021) and the PoA. Depending on the specific sale (which company or group of companies, whether this sale is part of a long-term contract or not, which product type, etc.) and the time periods considered, the conversion fee can greatly vary, but overall there appeared to be a general understanding among all interested parties that this conversion fee indeed increased. This increase could be explained in part by the increase in production costs other than the cost of primary aluminium (prices of energy and raw materials such as alloying elements increased), and in part by the increased profit of the Union producers.

(26) Regarding market share, in the year following the IP, an increase in sales by the Union industry led to an increase in the Union market share (from 64,8 % in the IP to 79,4 % during the first semester of 2021). This level of market share has been maintained during the PoA (80,1 %), as a decrease in sales volumes was accompanied by a decrease in consumption, as set out in recital 13 above.

(27) During the PoA, production volume slightly decreased by 2 % in comparison with the first semester of 2021. Compared with the IP, production increased by 22 % and by 9 % in comparison with 2017.

(28) Capacity decreased slightly by 1,3 % during the PoA in comparison with the 1st semester of 2021. Compared with the IP, capacity increased significantly by 20,8 % and by 23 % in comparison with 2017. Moreover, the available capacity was no longer impacted by:

(i) the effects of previous downsizing of active capacity pointed out in recitals 29 and 36 of the suspension Decision during the COVID-19 pandemic, which were no longer observed during the PoA; and

(ii) the temporary shortage of semi-finished and primary aluminium experienced during the post IP period (see recitals 29 and 31 of the suspension Decision). As indicated in recital 18, even though prices of primary aluminium, magnesium and energy have increased significantly, they remain available and would not impact actual capacity.

(29) Capacity utilisation remained relatively stable, at 80,8 % in the PoA, as compared to 81,5 % during the first semester of 2021 and 91,3 % in 2017. Orders intake for the sampled companies for the product concerned decreased by 12 % during the PoA as compared to the first semester of 2021, and was slightly lower (by 2 %) than during the IP. The level of orders was lower than in the IP and even lower than in 2017 ([12]). This shows that the Union industry will not be fully booked in the coming months.

([11]) The conversion fee is – roughly – the difference between the sales prices and the LME (3-months) prices of primary aluminium. To establish the sales prices, the Commission used the information provided by the sampled Union producers. See Table 2 below. To establish LME (3-months) prices, the Commission used as a source Fastmarket. The data were extracted on a daily basis and used to compute averages for the two periods: July 2020 to June 2021 and July 2021 to February 2022 (PoA). These averages were converted from USD to EUR using the official exchange rates (averages for the corresponding periods). The average LME prices were respectively for the two periods of 1 710 and 2 431 EUR.

([12]) However, 2017 data provided by EA included some out of scope products.

(30) After disclosure, Valeo argued that the decrease in capacity is consistent with the lack of supply and that the Union industry never reached 100 % capacity utilisation. It thus has no spare capacity with 80,8 % utilisation rate in the PoA. Finally, Valeo argued that the findings of the Commission contradicted the user's claims that the Union industry lacks capacity. First, contrary to Valeo's claim, the Commission established that the capacity increased by 20,8 % in the PoA in comparison with the IP and by 23 % in comparison with 2017. Second, the argument that 80,8 % capacity utilisation rate does not leave room for spare capacity contradicted the Commission's findings in the definitive Regulation ([13]) that the Union industry operated at 91,3 % capacity utilisation in 2017. Moreover, Valeo did not contest the Commission's findings that the actual/active capacity no longer differed from the declared capacity. Consequently, these claims were rejected.

(31) After disclosure, Euranimi, Airoldi and Lodec claimed that the Union industry did not invest sufficiently in new capacity in the last decades. None of the parties, however, provided any evidence supporting this claim and that it concerned specifically AFRPs. By contrast, in the definitive Regulation ([14]) the Commission established that capacity increased by 2 % during the period considered and by 20 % in the PoA. Consequently, this claim was rejected.

(32) Euranimi and Airoldi also argued that many Union producers were forced to idle rolling capacities due to the lack of primary aluminium. This shortage would allegedly be in part explained by the decrease in the production of primary aluminium in the EU by more than 30 % since 2000. The shortage would be further limiting the capacity of the Union industry to supply AFRPs. However, EA explained that there is no shortage of primary aluminium and that the Union industry is able to supply itself from third countries. This was confirmed by the fact that imports of primary aluminium into the EU increased in January-April 2022 as compared to January-April 2021. In addition, the Commission noted that global primary aluminium stocks amounted in the second quarter of 2022 to levels of [9,2-10,7] billion tons ([15]), which was lower than the levels of 2020-2021 ([10,1-11,4 billion tons on average), but comparable to the pre-COVID 2019 levels [9,1-10,5] billion tons on average). The stock of European producers ([310 000-330 000] tons) in the first quarter of 2022 was also in line with the past 3-year average ([320 000-340 000] tons for 2019-2021). The Commission concluded that, while there are still tensions on several raw materials markets, including for primary aluminium, this is a global phenomenon not specifically related to the Union market and that primary aluminium supplies were available for the Union industry, albeit generally at increasing prices. The claim that this market situation would limit the ability of the Union industry to produce, especially as compared to its Chinese competitors, was therefore rejected.

(33) Profitability improved and reached 2,8 % in the PoA. Profitability was – 1,8 % in the IP and 1,9 % in the first semester of 2021, but the profitability in the PoA remained below the 3,1 % profit achieved in the reference year 2017, and was far below the minimum profit margin of 6 % provided for in Article 7(2c) of the basic Regulation, used for the purpose of the underselling calculations in the definitive Regulation.

(34) To sum up, some indicators declined during the PoA compared to the 1st semester of 2021 (sales volumes, production), whereas other indicators improved (prices, profitability). Overall, the Commission concluded that the Union industry did not suffer material injury during the PoA.

2.3. **Situation of the users**

(35) The users argued in favour of the prolongation of the suspension, on the grounds that the conditions of the suspension are still valid.

(36) The Commission noted, however, that the temporary situation that prevailed at the moment of the suspension has evolved as indicated in recitals 13-23 above.

(37) Several users also argued that the conditions for suspension were fulfilled with regard to the specific aluminium flat rolled products that they respectively use, since there is allegedly still lack of supply for those products. They reiterated their claim after disclosure and argued that suspension should be extended for the products in question. However, these products only concerned a minority of total imports and Article 14(4) of the basic Regulation provides for suspension of measures imposed on imports of the product concerned as a whole, and not part thereof.

([13]) Recital 439 thereof.
([14]) Recital 438 thereof.
([15]) The source of the data for stocks of primary aluminium is the CRU Aluminium Monitor of June 2022 (Inventories).

(38) The users also argued that there is still a shortage of supply in the EU in general and in particular for the specific aluminium flat rolled product that they use and that the end of the suspension will further aggravate this shortage by reducing supplies originating in China.

(39) The Commission, however, noted the Union industry still has important spare capacity, which as explained in recital 28, already matches the actual/active capacity. There had been a significant extension of capacity by the Union industry since the original IP. The Union industry is by far the main supplier of the product concerned to the users. The Commission also noted that alternative sources of supplies exist, such as Turkey and other third countries. Furthermore, many users confirmed that the lead times are significantly shorter compared to the 1st semester of 2021, as explained in recital 20. Finally, as indicated in recital 37, Article 14(4) does not allow for only a partial suspension. The Commission further noted that the exclusion requests were already addressed in the definitive Regulation ([16]).

(40) Following disclosure, Valeo claimed that the orders intake was not shown in the open version of the Union industry's submissions and should be verified by the Commission. Also, the decrease in orders intake contradicted the fact that demand during the PoA was higher than the first semester of 2021 and the IP. The Commission observed that the orders intake concerned confidential data, company specific and not subject to summary. However, the Commission provided sufficient data in the disclosure to enable the parties to exercise their rights of defence and to comment on the trend described. Also, to the extent possible, the Commission cross-checked the accuracy of the information provided. Finally, contrary to what Valeo claimed, as explained in recital 13 above, consumption decreased by 13,5 % during the PoA in comparison with the first semester of 2021. Consequently, the decrease in orders intake by 12 % is in line with the decrease in demand. The claim was thus rejected.

(41) Regarding the decrease in lead times, Valeo argued following disclosure that this has to be weighed against the fact that many users are unable to purchase AFRPs and that the Union industry rejected many orders so that they could supply the limited quantities they have capacity for within the prescribed lead times. The Commission observed, firstly, that this claim was not backed by any evidence. Secondly, it contradicts the assertions previously made by virtually all users, backed by independent sources ([17]), that the increased lead times were an indication of imbalance between supply and demand on the Union market. Accordingly, the fact that in the PoA lead times decreased to normal levels was an element pointing to an improvement of the balance between supply and demand. Consequently, this claim was rejected.

(42) After disclosure, users questioned the Commission's findings regarding the availability of supply on the Union market of specific product types and the possibility of sourcing those product types from other third countries.

(43) Regarding the issue of supply of aluminium heat exchangers AFRPs ('AHEX'), the Commission observed that both users who commented on the disclosure, that is TitanX and Valeo, already sourced significant quantities from the Union industry. In addition, part of the correspondence between Valeo and Union producers, as provided by Valeo, concerned negotiations about future supplies from Union producers, for the period beyond 2023. Most of this correspondence appeared to concern issues of negotiating new prices and not necessarily capacity issues, or a lack thereof.

(44) Valeo also argued that one of its biggest suppliers refused to supply it with already agreed quantities and had recently had a fire which destroyed its new mill. However, the supplier in question provided evidence that it is rather Valeo who did not comply with its contractual obligations and cancelled already agreed volumes. Given that this concerns a specific contractual dispute between the two companies, the Commission could not draw any conclusion about the general issue of supply of AHEX on the Union market. Regarding the fire, the press article quoted did not indicate that the mill was entirely destroyed. Rather, it stated that the mill will start operating with a few months' delay (instead of 2nd half of 2022, it will start in 2023). Besides, as stated in the same article, this will affect only new volumes but not the already committed existing volumes. Consequently, the claim was rejected.

(45) TitanX argued that its largest supplier increased its prices and that it was not able to find additional suppliers in the Union. However, it did not claim that it had issues of supplies from its largest supplier, and TitanX failed to provide evidence regarding refusals to supply from other suppliers in the Union. Consequently, the claim was rejected.

([16]) All product exclusion requests were dealt with in Section 2.2 of the definitive regulation. For all but AFRPs used for the production of coated coils and aluminium composite panels (Section 2.2.2 of the same regulation), the Commission concluded that there is sufficient production capacity on the Union market and, consequently, rejected the product exclusion requests.

([17]) See recital 36 and footnote 6 of the suspension Decision.

(46) Regarding imports from third countries of AHEX, the Commission observed that imports from Turkey of AHEX used to have an important share of total consumption of that product type, while imports of all types of AFRPs from Turkey represented only 2,2 % market share during the PoA, down from [5,9-6,3] % during the IP. There is no evidence on the file that Turkey cannot increase its exports to previous levels. In this respect, the email correspondence provided by Valeo and a Turkish supplier did not point to any issues of supply by the latter.

(47) Finally, AHEX are used in the automobile sector. As indicated in recital 71 below, this sector experienced bottlenecks and a temporary decrease in demand, which necessarily resulted in a decrease in demand also for AHEX. This was confirmed by the evidence provided by EA that during the PoA there was a decrease in orders of AHEX, below the already contracted quantities, by the users Valeo, Mahle and Marelli, due to that contraction in demand ([18]).

(48) In view of the above considerations, the Commission rejected the claims regarding current lack of supply of AHEX.

(49) Regarding AFRPs for use in the production of aluminium electrolytic capacitors, after disclosure SATMA and TDK Hungary argued that there are no producers in the Union of this product type, Turkey cannot be a source of supply as this product type is not produced there, while Japanese producers ceased production in 2021. However, SATMA did not provide any supporting evidence that Japan, which has always been a major source of supply of this product type, ceased production. The Commission also noted that there was an on-going project to restart production in the Union. Finally, this product type represented a very small fraction of the total Union consumption of AFRPs and, as explained in recital 39 above, under Article 14(4) it is not possible to suspend measures only for specific product types. Therefore, the Commission rejected the claim.

(50) The users also reported on the likely financial difficulties of a number of downstream companies or production units if the duties were to be re-instated. They warned about the possible closure of production sites in the EU.

(51) In this respect, the Commission referred to its findings in recitals 532-548 of the definitive Regulation, where it concluded that the imposition of the measures would not be against the interests of the users because the impact on the financial situation of the users would be limited. Moreover, during the suspension period, users had time to adapt their production units to other sources of supply.

(52) Furthermore, as indicated in recital 75 of the suspension Decision, the Commission considered that the 9-month period of suspension gave users, especially those that requested the exclusion of certain products, an additional period to (re-) validate Union producers. The redirection of users towards supplies from the Union industry appears to be confirmed by the fact that the Union industry gained market share during the peak in demand in the 1st semester of 2021 and kept the same market share in the PoA.

2.4. **Situation of the importers and traders**

(53) EURANIMI, the European association of mill-independent importers and distributors of aluminium and/or stainless steel and 6 of their members provided their comments on the market developments and the suspension. They were in favour of the continuation of the suspension.

(54) They pointed mainly to the current situation of acute shortage of aluminium as well as to the risk for the downstream manufacturers, which could be at a risk of losing competitiveness. The Commission already addressed this claim in recital 51.

3. **LIKELIHOOD OF RESUMPTION OF INJURY AS A RESULT OF A PROLONGATION OF THE SUSPENSION**

(55) As mentioned in recital 34, the Union industry appears to be in a situation where several positive trends have stagnated or reversed. Some indicators declined during the PoA compared to the 1st semester of 2021 (sales volumes, production), while others improved (prices, profitability). Overall, the Commission concluded that the Union industry did not suffer material injury during the PoA. The Commission assessed whether injury would be unlikely to resume as a result of the prolongation of the suspension. Two factors were analysed in particular: the evolution of Chinese imports and the most recent market developments.

([18]) t21.006374.

3.1. **Evolution of imports from China**

(56) The market share of the imports from China dropped from 8 % in the IP to 2,2 % in the 1st semester of 2021, but subsequently increased by 49 % to reach 3,2 % in the PoA. The analysis of imports from the PRC in the months of February and March 2022 showed, however, a rapid increase, which resulted in a market share in the months of February and March of over 6,0 %, close to the market share in the IP.

Table 1

Imports from China during the PoA (in tonnes)

	POA								Post POA	
Volume of imports from the country concerned	July 2021	Aug. 2021	Sept. 2021	Oct. 2021	Nov. 2021	Dec. 2021	Jan.- 2022	Feb. 2022	March 2022	April 2022
	2 905	3 224	4 852	5 639	6 134	4 292	9 300	12 818	13 832	14 027
Index	*100*	*111*	*167*	*194*	*211*	*148*	*320*	*441*	*476*	*482*

Source: Eurostat (PoA) and Surveillance database (Post-PoA).

(57) The volumes developed as follows: imports from China decreased significantly post-IP from 171 240 tonnes during the IP to 56 470 tonnes in the year following the IP. Subsequently imports increased again during the PoA to 73 752 tonnes (average for the 8 months, annualised), yet remained below the levels of the IP and the 2017 levels (around 100 000 tonnes for the latter). At the beginning of 2022, imports continued to increase (11 000 tonnes on a monthly basis for January and February 2022 – that is 132 000 tonnes on an annual basis – and 14 027 tonnes for April 2022 – more than 168 000 tonnes on an annual basis).

(58) Prices of imports from China increased significantly, in a context of increase in the prices of inputs as well as higher transport costs. Contrary to what was claimed by some interested parties following disclosure, this price increase could not be considered in isolation and it needed to be put in perspective and compared with other prices and costs, such as the Union sales prices.

(59) The level of undercutting observed during the IP was 17,3 %. The price gap between the Chinese import prices and the sales prices of the Union industry gradually increased throughout the PoA as illustrated by Table 2 below. Import prices were therefore lower than the Union industry prices (at the level of 4-5 %) in January-February 2022.

(60) The above showed that imports from China did not immediately pick-up after the IP but gradually increased during the PoA and even further in the months after the PoA, almost reaching the monthly average volumes of the IP in the context of declining consumption compared to the 1st semester of 2021. The Commission noted that the general situation of the manufacturing sector in China was characterised by uncertainties linked to the COVID-19 outbreaks, the zero COVID policy and its consequence on the Chinese economy. March and April 2022 were therefore characterised by a general contraction in Chinese factory activity. Industrial output, orders, employment were on the decline, while backlogs and delivery times rose further. However, despite these issues imports from China of the product concerned steadily increased during the PoA, especially in January-April 2022. At the same time, prices decreased and the gap with the Union industry sales prices was widening, as shown in Table 2 below. Consequently, despite COVID-related contractions in Chinese manufacturing, imports from China were recovering during the POA, and after a period of further adjustment, imports from China to the EU increased even further.

Table 2

Price comparison during the PoA (in EUR/tonne)

	POA								Post POA	
	July 2021	Aug. 2021	Sept. 2021	Oct. 2021	Nov. 2021	Dec. 2021	Jan.- 2022	Feb. 2022	March 2022	April 2022
Imports prices from the country concerned	3 051	3 135	3 334	3 453	3 398	3 592	3 753	3 871	3 799	3 967
Index	*100*	*103*	*109*	*113*	*111*	*118*	*123*	*127*	*125*	*130*
Sales prices in the Union	3 065	3 137	3 335	3 507	3 686	3 705	3 915	4 077	-	-
Index	*100*	*102*	*109*	*114*	*120*	*121*	*128*	*133*		

Source: Eurostat (PoA), Surveillance database (Post-PoA), sampled Union producers.

(61) Following disclosure, Airoldi first claimed that the Commission's analysis of imports from China was incorrect since, according to the import data provided in its submission, Chinese imports did not increase, while Chinese import prices increased. Second, Airoldi claimed that the import trend should be analysed in proportion to 2021 and that imports increases in February and March 2022 should not be taken into account, since they were affected by the extraordinary events of the Ukrainian crisis. Third, concerning prices, Airoldi claimed that Chinese prices are in line with EU sales prices and that the Commission's analysis should adjust the imports from China with the transport costs.

(62) Concerning the first claim, the Commission noted that Airoldi's claim was wrong as it was based on the much broader CN level (8 digits), while the Commission's analysis was based on statistics at TARIC level (10 digits), which only included the product concerned.

(63) Concerning the periods that were compared, the Commission recalled that both the year after the IP (1 July 2020-30 June 2021) and the PoA, fell, partially, within the year 2021. Therefore, any comparison of the evolution between the first half of 2021 and the PoA does not allow to establish an average for the entire 2021, since the two semesters of 2021 belong to different reference periods. Consequently, any comparison between the PoA and 2021 of the import trends would be meaningless and not reliable. As per the exclusion of the months of January and February 2022, Airoldi did not provide any explanation or justification concerning the impact of the Ukrainian crisis, beyond arguing that it was extraordinary.

(64) Concerning the prices, contrary to what Airoldi claimed, as explained in recital 60, the gap between import prices from China and the Union prices widened during the PoA. Finally, concerning the transport adjustments, the Commission recalled that the import statistics are collected at CIF level, thus capturing a substantial part of the transport costs in the price. Consequently, these claims were rejected.

(65) Following disclosure, EURANIMI claimed that the recent surge of imports from China was linked to the anticipation that the suspension would end and that these imports were made under similar price conditions as those of the European producers. The Commission noted that several factors were influencing the level of imports from China and that the suspension of the measures possibly was one of these factors. As regards the level of prices, the Commission noted that, when comparing average sales prices of the sampled Union producers and average import prices from China, the latter were lower during the whole PoA.

(66) Following disclosure, Lodec claimed that the level of market share reached by Chinese imports coupled with the lower prices did not represent a threat to the Union industry since, allegedly, this would be the result of a free market where the Chinese exporting producers are more competitive. Similarly, SATMA claimed that the Commission failed to prove the existence of injury caused to the Union industry by imports from aluminium foils used for the production of aluminium capacitors, as there is allegedly no production in the Union.

(67) The Commission observed that a causation analysis was carried out in the definitive Regulation. The Commission had been able to conclude that the product concerned had been a cause of injury to the Union industry during the original IP. There was no evidence to suggest that if the conditions that had led the Commission to temporarily suspend the collection of the definitive measures were no longer present, that that causal relationship between the imported products and the Union sales had ceased, or that those causation findings would otherwise have been invalidated in the meantime. Moreover, Lodec ought to have brought forward those claims at the stage of the original investigation imposing the definitive measures. Finally, that causation analysis had been carried out for the product as a whole, and there was no obligation to carry out the analysis on the basis of a specific product type. Therefore, the claims were rejected.

(68) Lodec and EURANIMI claimed that, for certain product types, the cessation of imports from Russia would create additional shortages in the Union market, which should be addressed by the Commission with some mitigating measures. However, the Commission noted that imports of the product concerned from Russia represented a negligible part of Union consumption, with a market share below 0,5 % during the Post-IP and the POA. Consequently, variations on the volume of imports from Russia were not considered have any substantial impact. The claim was therefore rejected.

3.2. **Recent market developments**

(69) The future is uncertain, with different factors impacting the market. Stockpiling will not last as it was a temporary response to the uncertainties linked to the invasion of Ukraine Furthermore, increases in raw material and energy prices, which have been strongly impacted by the post-COVID-19 recovery and, since February 2022, by the unprovoked and unjustified military aggression of Russia against Ukraine, are also key variables to take into account.

(70) As far as demand in the construction sector is concerned, although it remains strong, there are indications that due to the increase in raw material prices and possible increases in interest rates, new projects may be hampered and demand may therefore be tempered ([19]).

(71) As for the production in the automotive industry, it will possibly reach normal levels again in the near future. However, in the short term the automotive industry's demand has been negatively affected by shortage of wiring harnesses from Ukraine and a worldwide chip shortage ([20]). The latter is expected to continue at least for some time in 2022 ([21]).

(72) According to the EA's forecasts, the overall market will decline in the next months. EA forecasted a drop in sales of 3,8 % for the 1st semester of 2022, as compared to the PoA and a drop in production of 5,7 %. This was based on a combination of a drop in consumption from the automotive industry and a significant increase of imports from China. The Commission noted that Eurofer estimated that the automotive sector will grow in 2022 but will stagnate in 2023 ([22]). However, Eurofer conditions its forecast for 2022 on a number of unknown variables: the future magnitude of the current downside risks stemming from continuing semi-conductors shortages; potential decrease in demand in view of growing economic uncertainties in case of a prolonged war in Ukraine; stagnant consumer disposable income (in the EU) and high energy and raw materials inflation; and the growth demand in EU major export markets (UK, USA, China and Turkey), which is currently subdued. Consequently, demand for the automotive sector remains uncertain.

(73) The Commission also analysed whether the unprovoked and unjustified military aggression of Russia against Ukraine and the sanctions on Russia impacted the supply chain of the Union industry. At the moment, none of the sanctions and other measures prevent exports of aluminium products from Russia to the EU. In addition, the Union industry also has other sources of supply than Russia. Consequently, the Commission did not find any tangible

([19]) CRU Report March 2022.

([20]) According to ACEA, registration of new cars declined by 12,3 % in the 1st quarter 2022 https://www.acea.auto/pc-registrations/passenger-car-registrations-12-3-first-quarter-of-2022-20-5-in-march/

([21]) https://www.autocar.co.uk/car-news/business-tech%2C-development-and-manufacturing/latest-updates-semiconductor-chip-crisis; https://www.bbc.com/news/business-60313571

([22]) https://www.eurofer.eu/assets/publications/economic-market-outlook/economic-and-steel-market-outlook-2022-2023-first-quarter-2/EUROFER_ECONOMIC_REPORT_Q2_2022-23_final.pdf

evidence that the sanctions on Russia impacted the supply chain of the Union industry to the extent that it would be relevant for the analysis of the impact of lifting the suspension. However, sanctions excluding some banks from using the SWIFT payment system may present challenges, as may the fact that some freight companies have ceased all container shipping to and from Russia. Furthermore, the application of sanctions to certain Russian individuals with stakes in this sector may have an impact. Therefore, this situation adds to the uncertainty of how the market situation may develop in the short to medium term.

3.3. **Conclusion on whether injury is unlikely to resume**

(74) After the improvement of the Union industry's performance in the 1st semester of 2021 in comparison with the IP, its economic situation remained rather stable during the PoA, although some injury indicators deteriorated. Thus, while the Union industry market share remained stable, sales volumes declined significantly by 12,8 %, while production and capacity slightly decreased, by 2 % and 1,3 % respectively. Profitability improved and reached 2,8 % in the PoA, which is however still lower than the reference year 2017 and is far below the minimum profit of 6 % used for the purpose of the underselling calculations.

(75) In particular, the prospects for the Union industry after the PoA are not that positive. The orders intake of the product concerned decreased by 12 % in the PoA in comparison with the 1st semester of 2021 and by 2 % in comparison with the IP (at which point the Union industry was found to be in an injurious situation). Consequently, in contrast to the findings set out in recital 49 of the suspension Decision, the Union industry is no longer fully booked for the coming months and its future level of activity is not assured. Consumption reached its peak in the 1st semester of 2021 and then decreased by 13,5 % during the PoA. This was confirmed by the drop in orders intake and also by the significant reduction of the lead times. During the next months, demand is not expected to pick up given the uncertainties of demand in the car manufacturing and construction sector, coupled with the expected further increase in costs of the main inputs. Finally, in the context of an improving balance between supply and demand, the Union industry would have less bargaining power in the price setting, and its economic performance would thereby be negatively impacted.

(76) At the same time, Chinese imports constantly and significantly increased during the PoA, and even further in the 2 months following the PoA, at prices that are lower than the Union industry's average prices. In particular, the price gap between the Chinese import prices and the sales prices of the Union industry gradually increased throughout the PoA. This occurred despite the increase in international transport costs and bottlenecks in deliveries pointed to by users, and the COVID-related difficulties generally affecting Chinese manufacturers. This recent and significant trend of a rapid increase in Chinese imports is likely to continue in the future and result in the same situation that was observed during the original IP, should the measures continue to be suspended. Coupled with the expected further increase in costs and uncertainties in demand, the further increase of imports from China at lower prices would clearly have a negative impact on the Union industry's economic performance.

(77) In view of the above analysis, the Commission concluded that it was no longer the case that injury to the Union industry was unlikely to resume in case the current suspension of the anti-dumping duties were to be prolonged.

4. **CONCLUSION**

(78) Following an examination of the market developments during the PoA, the likely developments in the near future, the situation of the Union industry, and the views of importers and users, the Commission concluded that the conditions to prolong the suspension of the measures are no longer fulfilled. In this respect, the Commission recalled that suspending the collection of anti-dumping duties is an exceptional measure in view of the general rule provided in the Basic Regulation.

(79) Therefore, absent any of the necessary elements, and considering the views of all parties, the Commission decided not to prolong the suspension of the anti-dumping duties on imports of AFRPs originating in China. Consequently, the duties should be re-instated when the application of the suspension Decision ends (as of 12 July 2022),

HAS ADOPTED THIS DECISION:

Article 1

The suspension of the definitive anti-dumping duties on imports of aluminium flat-rolled products originating in the People's Republic of China imposed by Article 1 of Implementing Decision (EU) 2021/1788 is not further prolonged.

Article 2

The definitive anti-dumping duty imposed by Article 1 of Implementing Regulation (EU) 2021/1784 on imports of aluminium flat-rolled products originating in the People's Republic of China is hereby reinstated as of 12 July 2022.

Article 3

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

Done at Brussels, 7 July 2022.

For the Commission
The President
Ursula VON DER LEYEN

POLITICAL AND SECURITY COMMITTEE DECISION (CFSP) 2022/1179

of 7 July 2022

on the appointment of the EU Force Commander for the European Union military operation to contribute to the deterrence, prevention and repression of acts of piracy and armed robbery off the Somali coast (Atalanta) and repealing Decision (CFSP) 2022/217 (ATALANTA/4/2022)

THE POLITICAL AND SECURITY COMMITTEE,

Having regard to the Treaty on European Union, and in particular Article 38 thereof,

Having regard to Council Joint Action 2008/851/CFSP of 10 November 2008 on a European Union military operation to contribute to the deterrence, prevention and repression of acts of piracy and armed robbery off the Somali coast ([1]), and in particular Article 6(1) thereof,

Whereas:

(1) Pursuant to Article 6(1) of Joint Action 2008/851/CFSP, the Council authorised the Political and Security Committee (PSC) to take the relevant decisions on the appointment of the EU Force Commander for the European Union military operation to contribute to the deterrence, prevention and repression of acts of piracy and armed robbery off the Somali coast (Atalanta) (the 'EU Force Commander').

(2) On 15 February 2022, the PSC adopted Decision (CFSP) 2022/217 ([2]), appointing Rear Admiral Fabrizio BONDI as the EU Force Commander.

(3) On 30 June 2022, the EU Operation Commander recommended the appointment of Rear Admiral Riccardo MARCHIÓ as the new EU Force Commander as soon as possible.

(4) On 30 June 2022, the EU Military Committee agreed to that recommendation.

(5) Decision (CFSP) 2022/217 should therefore be repealed,

HAS ADOPTED THIS DECISION:

Article 1

Rear Admiral Riccardo MARCHIÓ is hereby appointed EU Force Commander for the European Union military operation to contribute to the deterrence, prevention and repression of acts of piracy and armed robbery off the Somali coast (Atalanta) as from 7 July 2022.

Article 2

Decision (CFSP) 2022/217 is hereby repealed.

Article 3

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

([1]) OJ L 301, 12.11.2008, p. 33.

([2]) Political and Security Committee Decision (CFSP) 2022/217 of 15 February 2022 on the appointment of the EU Force Commander for the European Union military operation to contribute to the deterrence, prevention and repression of acts of piracy and armed robbery off the Somali coast (Atalanta) and repealing Decision (CFSP) 2022/41 (ATALANTA/3/2022) (OJ L 37, 18.2.2022, p. 39).

Done at Brussels, 7 July 2022.

For the Political and Security Committee
The Chairperson
D. PRONK

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