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II

(Non-legislative acts)

REGULATIONS

COMMISSION DELEGATED REGULATION (EU) 2022/2387

of 30 August 2022

amending Delegated Regulation (EU) 2017/655 as regards the adaptation of the provisions on monitoring of gaseous pollutant emissions from in-service internal combustion engines installed in non-road mobile machinery to include engines with power of less than 56 kW and more than 560 kW

THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EU) 2016/1628 of the European Parliament and of the Council of 14 September 2016 on requirements relating to gaseous and particulate pollutant emission limits and type-approval for internal combustion engines for non-road mobile machinery, amending Regulations (EU) No 1024/2012 and (EU) No 167/2013, and amending and repealing Directive 97/68/EC ⁽¹⁾, and in particular Article 19(2) thereof,

Whereas:

- (1) The Commission has carried out additional in-service monitoring programmes in cooperation with manufacturers to assess the suitability of monitoring tests and data analyses for measuring the emissions from non-road mobile machinery, regarding engines other than sub-categories NRE-v-5 and NRE-v-6, in actual operation over their normal operating duty cycles. As a consequence, appropriate in-service monitoring provisions for those sub-categories should be laid down in Delegated Regulation (EU) 2017/655 ⁽²⁾.
- (2) Taking into account the disruption caused by the COVID-19 pandemic and its impact on the manufacturers' ability to perform in-service monitoring tests, in order to provide sufficient time to manufacturers to perform the tests and to the Commission to assess the test results and produce the report to the European Parliament and the Council as required under Regulation (EU) 2016/1628, it is necessary to modify the deadlines for submitting in-service monitoring test reports.
- (3) The COVID-19 pandemic has demonstrated that unexpected events outside the control of the manufacturer may make it impossible to conduct the monitoring of in-service engines as planned. Given the continued disruption caused by the COVID-19 pandemic, the approval authority should accept a reasonable adjustment of the original plan for monitoring each In-Service Monitoring Engine Group (ISM Group).

⁽¹⁾ OJ L 252, 16.9.2016, p. 53.

⁽²⁾ Commission Delegated Regulation (EU) 2017/655 of 19 December 2016 supplementing Regulation (EU) 2016/1628 of the European Parliament and of the Council with regard to monitoring of gaseous pollutant emissions from in-service internal combustion engines installed in non-road mobile machinery (OJ L 102, 13.4.2017, p. 334).

- (4) The amendments set out in this Regulation should not influence the monitoring of gaseous pollutant emissions from in-service internal combustion engines with power between 56 kW and 560 kW (sub-categories NRE-v-5 and NRE-v-6). For those sub-categories the changes introduced are limited to administrative adjustments that include their inclusion in an ISM Group, thus irrelevant for that monitoring. It is therefore appropriate that EU type-approvals of an engine type or engine family approved in accordance with Delegated Regulation (EU) 2017/655 before the day of entry into force of this Regulation remain valid.
- (5) Delegated Regulation (EU) 2017/655 should therefore be amended accordingly,

HAS ADOPTED THIS REGULATION:

Article 1

Amendments to Delegated Regulation (EU) 2017/655

Delegated Regulation (EU) 2017/655 is amended as follows:

- (1) In Article 2, paragraph 1 is replaced by the following:

'1. This Regulation applies to monitoring of the gaseous pollutant emissions from the following categories of in-service engines of emission Stage V installed in non-road mobile machinery regardless of when the EU type-approval for those engines was granted:

- (a) NRE and NRG (all sub-categories);
- (b) NRS-vi-1b, NRS-vr-1b, NRS-v-2a, NRS-v-2b and NRS-v-3;
- (c) IWP and IWA (all sub-categories);
- (d) RLL and RLR (all sub-categories);
- (e) ATS;
- (f) SMB;
- (g) NRSh (all sub-categories);
- (h) NRS-vi-1a and NRS-vr-1a.'

- (2) Article 3 is replaced by the following:

'Article 3

Procedures and requirements for monitoring of emissions of in-service engines

Gaseous pollutant emissions from in-service engines referred to in Article 19(1) of Regulation (EU) 2016/1628 shall be monitored as follows:

- (a) For those engines referred to in Article 2(1), points (a) to (f), monitoring shall be conducted in accordance with the Annex to this Regulation.
- (b) For those engines referred to in Article 2(1), points (g) and (h):
 - (i) the Annex to this Regulation shall not apply.
 - (ii) the aging procedure used to establish the deterioration factor (DF) for the engine type, or, where applicable the engine family, as required by section 4.3 of Annex III to Commission Delegated Regulation (EU) 2017/654 (*), including any automated element, shall be designed to allow the manufacturer to appropriately predict the in-use emission deterioration expected over the emission durability period (EDP) of those engines under typical use.

- (iii) the Commission shall, every 5 years, in cooperation with manufacturers, conduct a pilot programme involving the most recent engine types in order to ensure that the procedure to determine DFs set out in section 4 of Annex III to Delegated Regulation (EU) 2017/654 remains suitable and effective to control pollutant emissions over the useful life of engines.

(*) Commission Delegated Regulation (EU) 2017/654 of 19 December 2016 supplementing Regulation (EU) 2016/1628 of the European Parliament and of the Council with regard to technical and general requirements relating to emission limits and type-approval for internal combustion engines for non-road mobile machinery (OJ L 102, 13.4.2017, p. 1).;

- (3) in Article 3a, the following paragraph 3 is added:

‘3. EU type-approvals of an engine type or engine family approved in accordance with this Regulation before 26 December 2022 shall not be required to be revised or extended as a result of the testing carried out in accordance with the requirements of the Annex.’;

- (4) the Annex to Delegated Regulation (EU) 2017/655 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, 30 August 2022.

For the Commission
The President
Ursula VON DER LEYEN

ANNEX

The Annex to Delegated Regulation (EU) 2017/655 is amended as follows:

- (1) The following points 1.2.a and 1.2.b are inserted after point 1.2:

‘1.2.a. In-Service Monitoring Engine Group (ISM Group)

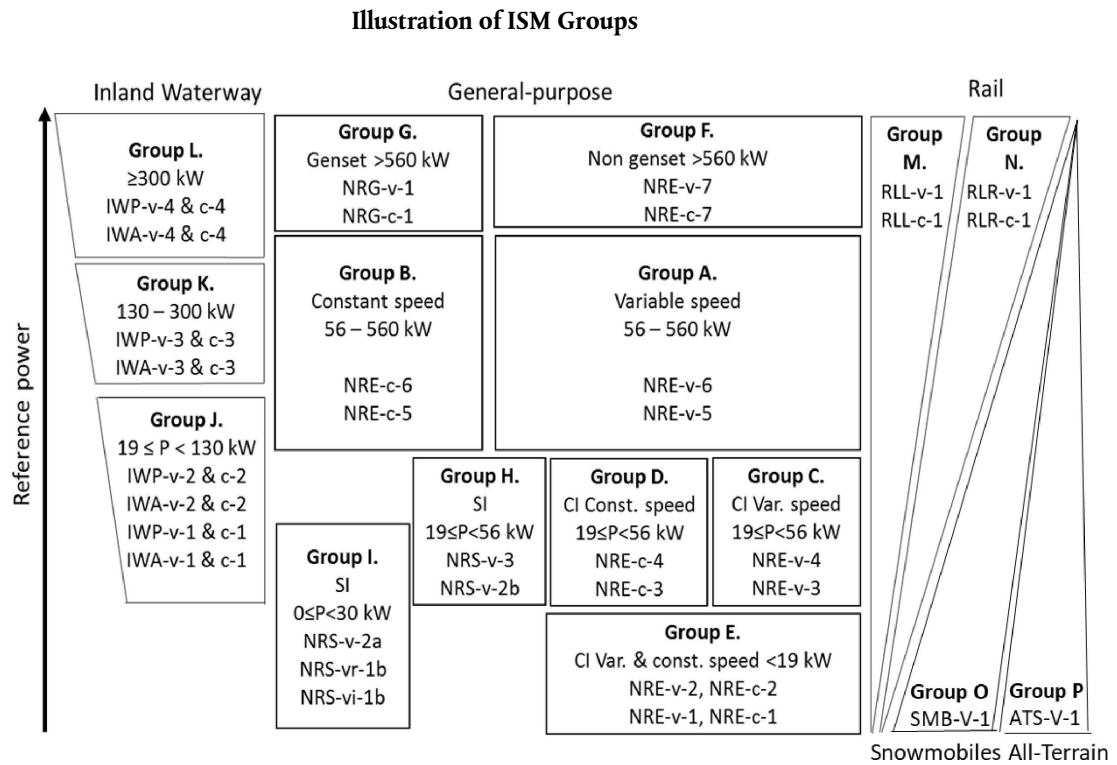
For the carrying out of in-service testing, all engine types and engine families produced by the manufacturer shall be grouped in accordance with its sub-category as set out in Table 1 and illustrated in Figure 1. One manufacturer may have one ISM Group for each possible type of ISM Group.

Table 1

ISM Groups

ISM Group	Engine (sub-)categories
A	NRE-v-5, NRE-v-6
B	NRE-c-5, NRE-c-6
C	NRE-v-3, NRE-v-4
D	NRE-c-3, NRE-c-4
E	NRE-v-1, NRE-c-1, NRE-v-2, NRE-c-2
F	NRE-v-7, NRE-c-7
G	NRG-v-1, NRG-c-1
H	NRS-v-2b, NRS-v-3
I	NRS-vr-1b, NRS-vi-1b, NRS-v-2a
J	IWP-v-1, IWP-c-1, IWA-v-1, IWA-c-1, IWP-v-2, IWP-c-2, IWA-v-2, IWA-c-2
K	IWP-v-3, IWP-c-3, IWA-v-3, IWA-c-3
L	IWP-v-4, IWP-c-4, IWA-v-4, IWA-c-4
M	RLL-v-1, RLL-c-1
N	RLR-v-1, RLR-c-1
O	SMB-v-1
P	ATS-v-1

Figure 1



1.2.b. The approval authority ensuring the compliance with this Regulation shall be either:

- a) the approval authority that granted the type-approval of the engine type or engine family, in case that the ISM Group contains a single type-approval;
- b) the approval authority that granted the type-approval of several engine types and/or engine families within the same ISM Group;
- c) in the case that the ISM Group contains engine types, and/or engine families, approved by different approval authorities, the approval authority designated by all approval authorities involved'

(2) in point 1.3, sub-point (b) is deleted:

(3) point 1.4 is replaced by the following:

'1.4. Engines with an Electronic Control Unit (ECU) and a communication interface intended to provide the necessary data as specified in Appendix 7, but with a missing interface or missing data, or where it is not possible to achieve clear identification and validation of the necessary signals, shall not be eligible for in-service monitoring test, and an alternative engine shall be selected.

The approval authority shall not accept the absence of an ECU or interface, or absent or invalid signals, or lack of conformity of the ECU torque signal, as a reason to reduce the number of engines to be tested under this Regulation.;

(4) point 2.1 is replaced by the following:

'2.1. The manufacturer shall submit the initial plan for monitoring each ISM Group to the approval authority within:

- (a) for ISM Group A, one month of the start of production of any engine type or engine family within the ISM Group;
- (b) for any other ISM Group, the later date of the following:
 - (i) 26 June 2023;
 - (ii) 1 month after the start of production of any engine type or engine family within the ISM Group.;

(5) in point 2.2., the introductory sentence is replaced by the following:

'2.2. The initial plan shall include the list of engine types and engine families in the ISM Group, together with the criteria used for and the justification of the selection of:';

(6) point 2.3 is replaced by the following:

'2.3. Manufacturers shall submit to the approval authority an updated plan for monitoring in-service engines whenever the list of engine families in the ISM Group changes or the list of particular engine(s) and non-road mobile machinery selected is completed or revised. The updated plan shall include a justification of the criteria used for the selection and the reasons for revising the previous list, if applicable. Where the number of engine families in the ISM Group or the annual production volume for the Union market changes, the plan with the number of tests to be executed in accordance with point 2.6, shall also be adjusted accordingly:';

(7) points 2.6 to 2.6.4 are replaced by the following:

'2.6. Criteria for selection of engines to be tested

The number of engines to be tested refers to the ISM group, and not to the engine sub-categories, engine families or engine types belonging to ISM group.

The manufacturer shall select engines that represent, in a balanced manner, the sub-categories, engine families and engine types belonging to the ISM group. This should not necessarily imply testing engines belonging to each engine sub-category, engine family or engine type.

For ISM groups containing both category IWP and IWA the engine selection shall include, to the extent possible, engines of both categories.

2.6.1. Testing scheme for ISM group A

The manufacturer shall choose one of the following testing schemes described in points 2.6.1.1 and in 2.6.1.2 for in-service monitoring.

2.6.1.1. Testing scheme based on the Emission Durability Period (EDP)

2.6.1.1.1. Testing 9 engines from the ISM group with an accumulated service of less than a % of the EDP, in accordance with Table 2. Test results shall be submitted to the approval authority by 26 December 2024.

2.6.1.1.2. Testing 9 engines from the ISM group with an accumulated service higher than b % of the EDP, in accordance with Table 2. Test reports shall be submitted to the approval authority by 26 December 2026.

2.6.1.1.3. When the manufacturer cannot fulfil the requirement under point 2.6.1.1 due to unavailability of engines with the required service accumulation of point 2.6.1.1.2, the approval authority may permit testing of engines under this point with an accumulated service between 2 times a % and b % of the EDP, subject to the manufacturer providing robust evidence that they have selected engines with the highest available service accumulation. As an alternative, the approval authority shall accept a change to the testing scheme based on a 4-year period set out in point 2.6.1.2. In that case, the total number of engines to be tested under point 2.6.1.2 shall be reduced by the number of engines already tested and reported in accordance with point 2.6.1.1.

Table 2

% of EDP values for ISM group defined in 2.6.1

Reference power of selected engine (kW)	a	b
$56 \leq P < 130$	20	55
$130 \leq P \leq 560$	30	70

2.6.1.2. Testing scheme based on a 4-year period

Every manufacturer shall test an average of nine engines per year from the ISM group during 4 consecutive years. The test reports shall be submitted to the approval authority every year for the tests that have been performed. The schedule for testing and submitting results shall be included in the initial plan, and in any subsequently updated plan, for monitoring in-service engines submitted by the manufacturer and approved by the approval authority.

2.6.1.2.1. The test results of the first nine engines shall be submitted not later than 24 months after the first engine was installed in non-road mobile machinery and not later than 30 months after starting the production of an approved engine type or engine family within the ISM group.

2.6.1.2.2. Where the manufacturer demonstrates to the approval authority that no engine has been installed in non-road mobile machinery 30 months after starting the production, the test results shall be submitted after the installation of the first engine, on a date agreed with the approval authority.

2.6.1.2.3. Small-volume manufacturers

The number of engines tested shall be adapted in case of small-volume manufacturers as follows:

- (a) manufacturers producing only two engine families within an ISM group shall submit an average of six engine test results per year;
- (b) manufacturers producing for the Union market more than 250 engines per year of an ISM group containing only one single engine family shall submit an average of three engine test results per year;
- (c) manufacturers producing for the Union market between 125 and 250 engines per year of an ISM group containing only one single engine family shall submit an average of two engine's test results per year;
- (d) manufacturers producing for the Union market fewer than 125 engines per year of an ISM group containing only one single engine family shall submit an average of one engine's test results per year.

The approval authority shall verify the declared production quantities are not exceeded during the 4-year period that the manufacturer conducts testing. If these quantities are exceeded at any point, the manufacturer shall test an average of nine engines per year for the remaining years of the 4-year period for which results have not been reported.

2.6.2. Testing scheme for ISM groups B, F, G, J, K, L, M and N

The manufacturer shall choose, for each group, one of the following testing schemes described in points 2.6.2.1 and in 2.6.2.2 for in-service monitoring.

2.6.2.1. Testing scheme based on the Emission Durability Period (EDP)

2.6.2.1.1. Testing x engines from the ISM group with an accumulated service of less than c % of the EDP, in accordance with Table 3. Test results shall be submitted to the approval authority by 26 December 2024.

2.6.2.1.2. Testing x engines from the ISM group with an accumulated service higher than d % of the EDP, in accordance with Table 3. Test results shall be submitted to the approval authority by 26 December 2026.

2.6.2.1.3. When the manufacturer cannot fulfil the requirements set out in points 2.6.2.1.1 and 2.6.2.1.2 due to unavailability of engines with the required service accumulation, the approval authority may permit testing of engines under this point with an accumulated service between 2 times c % and d % of the EDP, subject to the manufacturer providing robust evidence that they have selected engines with the highest available service accumulation. As an alternative, the approval authority shall accept a change to the testing scheme based on a 4-year period set out in point 2.6.2.2. In that case, the total number of engines to be tested under point 2.6.2.2 shall be reduced by the number of engines already tested and reported in accordance with points 2.6.2.1.1 and 2.6.2.1.2.

- 2.6.2.1.4. When the test report of a Stage IIIB engine family equivalent to category RLL is used to obtain a corresponding Stage V type-approval for that engine family in accordance with Article 7(2) of Implementing Regulation (EU) 2017/656 and the engine manufacturer cannot fulfil the requirements under points 2.6.2.1.1 and 2.6.2.1.2 due to unavailability of Stage V engines with the required service accumulation, the approval authority shall accept the selection of a Stage IIIB engine to comply with the requirements of points 2.6.2.1.1 and 2.6.2.1.2.

Table 3

% of EDP values for ISM groups defined in 2.6.2.1

Reference power of selected engine (kW)	c	d
$P < 56$	10	40
$56 \leq P < 130$	20	55
$P \geq 130$	30	70

Table 4

Number of engines to be tested for ISM groups defined in 2.6.2, 2.6.3.1 and 2.6.4.1

N	CA	x
1	-	1
$2 \leq N \leq 4$	-	2
> 4	≤ 50	2
$5 \leq N \leq 6$	> 50	3
≥ 7	> 50	4

Where:

- N = Total number of EU engine families produced by the manufacturer within the ISM group
- CA = Combined annual production for EU market for the remaining engine families produced by the manufacturer within an ISM group after discarding the four families with the highest annual production for EU market.
- x = Number of engines to be tested

- 2.6.2.2. Testing scheme based on a 4-year period

Testing an average of x engines from the ISM group per year during 4 consecutive years, in accordance with Table 4. Test reports shall be submitted to the approval authority every year for the tests that have been performed. The schedule for testing and submitting results shall be included in the initial plan, and in any subsequently updated plan, for monitoring in-service engines submitted by the manufacturer and approved by the approval authority.

- 2.6.2.2.1. The test results of the first x engines shall be submitted before the later date of the following:

- 26 December 2024;
- 12 months after the first engine was installed in non-road mobile machinery;
- 18 months after starting the production of an approved engine type or engine family within the ISM group.

2.6.2.2.2. When the manufacturer demonstrates to the approval authority that no engine has been installed in non-road mobile machinery 18 months after starting the production, the test results shall be submitted after the installation of the first engine, on a date agreed with the approval authority.

2.6.2.2.3. Small-volume manufacturers

The number of engines tested shall be adapted in case that the combined annual production across all engine families in an ISM group does not exceed 50 engines (small volume manufacturers), as follows:

- (a) manufacturers producing a total between 25 and 50 engines per year for the Union market across all families in a given ISM group shall submit either:
 - (i) one engine test results with an accumulated service between c % and d % of EDP as defined in Table 3 by 26 December 2025, or;
 - (ii) an average of one engine test results per year over 2 years, starting 12 months after the first engine was installed in non-road mobile machinery,
- (b) manufacturers producing a total of fewer than 25 engines per year for the EU market across all families in a given ISM group need not submit any engine test unless the production exceeds 35 engines in a two-year rolling period, in which case the manufacturer shall follow the same scheme as set out in sub-point (a).

The approval authority shall verify that the declared production quantities are not exceeded during the periods set out in the first paragraph, sub-point (a). If those quantities are exceeded at any point, the manufacturer shall change to one of the testing schemes set out in points 2.6.2.1. and 2.6.2.2. In that case, the total number of engines to be tested under those points shall be reduced by the number of engines already tested and reported in accordance with this point.

2.6.3. ISM groups C, D, E, H and I

The manufacturer shall choose, for each group, one of the testing schemes described in point 2.6.2 or the testing scheme based on age of equipment described in section 2.6.3.1 for in-service monitoring.

2.6.3.1. Testing scheme based on the age of non-road mobile machinery (see Figure 2 for reference)

2.6.3.1.1. Testing x engines from the ISM group with non-road mobile machinery production year not more than 2 years prior to the date of that test, (see Figure 2), in accordance with Table 4. Test results shall be submitted to the approval authority by 26 December 2024.

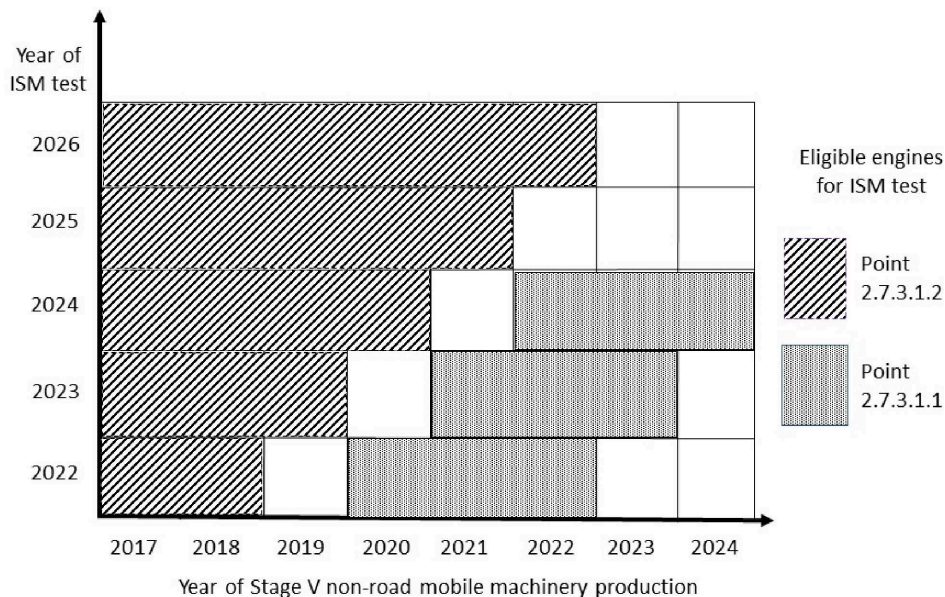
2.6.3.1.2. Testing x engines from the ISM group with non-road mobile machinery production year not less than 4 years prior to the date of that test, (see Figure 2), in accordance with Table 4. Test results shall be submitted to the approval authority by 26 December 2026.

2.6.3.1.2.1. Robust evidence shall be provided to the approval authority that each engine selected for testing under point 2.6.3.1.2 has been used each year in a manner and to an extent similar to that of the population of corresponding engines placed on the Union market. Suitable evidence may include characteristics demonstrating normal wear, records of use, records of maintenance and records of fuel consumed.

2.6.3.1.3. When the manufacturer cannot fulfil the requirements set out in points 2.6.3.1.1 and 2.6.3.1.2 due to unavailability of engines with the required non-road mobile machinery production year or insufficient evidence of use, the approval authority shall accept a change to the testing scheme based on a 4-year period set out in point 2.6.2.2. In that case, the total number of engines to be tested under point 2.6.2.2 shall be reduced by the number of engines already tested and reported in accordance with points 2.6.3.1.1 and 2.6.3.1.2.

Figure 2

Illustration of eligible engines for ISM test based on age of non-road mobile machinery



2.6.4. ISM groups O and P

The manufacturer shall choose, for each ISM group, one of the testing schemes described in point 2.6.2. In the case the testing scheme set out in point 2.6.2.1 is chosen, manufacturers shall have the possibility to apply, within the same ISM group, the testing scheme based on the odometer reading described in point 2.6.4.1.

In the case the manufacturer chooses the procedure set out in point 2.6.2.1, the required accumulated service shall be the one stated in Table 5 instead of the one stated in Table 3.

Table 5

% of EDP values for ISM groups O and P

Group	c	d
O	20	55
P	10	40

2.6.4.1. Testing scheme based on the odometer reading of non-road mobile machinery

2.6.4.1.1. Testing x engines from the ISM group with non-road mobile machinery odometer reading an accumulated service of less than c (km) in accordance with Table 4 and Table 6. Test results shall be submitted to the approval authority by 26 December 2024.

2.6.4.1.2. Testing x engines from the ISM group with non-road mobile machinery odometer reading an accumulated service of more than d (km) in accordance with Table 4 and Table 6. Test results shall be submitted to the approval authority by 26 December 2026.

Table 6

Accumulated service for ISM groups O and P

Group	Engine swept volume (cm ³)	c (km)	d (km)
O	Any	1 600	4 400
P	< 100	1 350	5 400
	≥ 100	2 700	10 800'

(8) The following points 2.6.5 and 2.6.6 are inserted after point 2.6.4.1.2:

'2.6.5. The manufacturer may conduct and report more tests than those established by the testing schemes set out in points 2.6.1, 2.6.2, 2.6.3 and 2.6.4.

2.6.6. Multiple testing of the same engine to provide data for the consecutive service accumulation stages in accordance with points 2.6.1, 2.6.2, 2.6.3 and 2.6.4 is recommended but not mandatory.;

(9) point 3.3.2 is replaced by the following:

'3.3.2. Temperature shall be equal or greater than 266 K (– 7 °C), except for ISM group O which shall be equal or greater than 253K (– 20 °C), and equal or less than the temperature determined by the following equation at the specified atmospheric pressure:

$$T = - 0,4514 * (101,3 - p_b) + 311$$

where:

— T is the ambient air temperature, K;

— p_b is the atmospheric pressure, kPa.'

(10) point 3.4.2 is replaced by the following:

'3.4.2. To demonstrate compliance with point 3.4, samples shall be taken and retained until at least, whichever is the shortest period of time form the following:

(a) 12 months following the completion of the test, or

(b) 1 month after the manufacturer submits the respective test report to the approval authority.'

(11) the following point 3.6. is inserted after point 3.5:

'3.6. Where testing is undertaken outside the Union, the manufacturer must provide evidence to the approval authority that the following conditions are representative of the test conditions to which the non-road mobile machinery would be subject if tested in the Union:

(a) non-road mobile machinery's operation;

(b) ambient conditions;

(c) lubricating oil, fuel and reagent; and

(d) operating conditions.;

(12) point 4.1.1 is deleted.

(13) point 4.2.2 is replaced by the following:

'4.2.2. The following additional requirements shall be fulfilled when applying combined data sampling:

(a) the different operating sequences shall be obtained using the same non-road mobile machinery and engine;

(b) the combined data sampling of tests performed at ambient temperature above 273,15 K shall contain a maximum of three operating sequences;

- (c) the combined data sampling of tests performed at ambient temperature equal or below 273,15 K shall contain a maximum of six operating sequences;
- (d) the maximum period elapsed between the first and last operating sequence shall be 72 hours;
- (e) combined data sampling shall not be used if an engine malfunction occurs, as set out in point 8 of Appendix 2;
- (f) to be eligible for combined data sampling each operating sequence of an in-service monitoring test shall contain the following minimum amount of work (kWh) or CO₂ mass (g/cycle):
 - (i) for engines in ISM Groups A and C, a minimum of one hot-start NRTC reference work or CO₂ reference mass;
 - (ii) for engines in ISM Group H, a minimum of one LSI-NRTC reference work or CO₂ reference mass;
 - (iii) for engines in all other ISM Groups, a minimum of one steady-state cycle reference work or CO₂ reference mass determined using the method set out in Appendix 9.
 - (iv) For engines where in-service monitoring testing is performed at 0 °C degrees or below, a minimum of three quarters reference work or CO₂ reference mass during the first operating sequence and a minimum of half a steady-state cycle reference work or CO₂ reference mass for the following operating sequences, determined using the method set out in Appendix 9'

In case of an in-service test of an engine type within an engine family, the reference value shall be that for the parent engine type;

- (g) prior to joining the operating sequences, all necessary pre-processing shall be completed individually for each sequence in accordance with the requirements set out in point 6.3;
- (h) the operating sequences in the combined data sampling shall be joined in a chronological order including all data not excluded by sub-point (f);
- (i) the combined data sampling shall be considered one ISM test;
- (j) the determination of working events set out in point 6.4 and calculations set out in point 8 shall be applied to the complete combined data sampling.;

(14) the following point 4.3 is inserted after point 4.2.2:

4.3. Temporary signal loss

Parameter recording shall reach a data completeness of not less than 98 %, meaning that a maximum of 2 % of data with no consecutive period of more than 30 seconds duration may be excluded from each operating sequence due to one or several episodes of unintended temporary signal loss in the original data recording. No signal loss shall be created during pre-processing, combination or post-processing of any operating sequence.;

(15) Points 5 to 5.2.2 are replaced by the following:

5. ECU data stream

5.1. Engines fitted with an ECU and a communication interface shall provide data stream information to the measurement instruments or data logger of the PEMS in accordance with the requirements set out in Appendix 7.

5.2. Prior to the in-service test, the availability of the measurement data requested by Appendix 7 shall be validated.'

(16) Points 5.3 to 5.4 are inserted after point 5.2:

5.3. The conformity of the ECU torque signal shall be validated during the in-service monitoring in accordance with the method set out in Appendix 6.

5.4. Where an engine fitted with an ECU and a communication interface does not permit fulfilling the requirements set out in points 5.1., 5.2 and 5.3., point 1.4. shall apply.;

(17) point 6.4 is replaced by the following:

'6.4. Manufacturers shall follow the procedures set out in Appendix 4 for the determination of working and non-working events for gaseous pollutant emissions calculation following an in-service monitoring test of engines installed on non-road mobile machinery using a PEMS.;

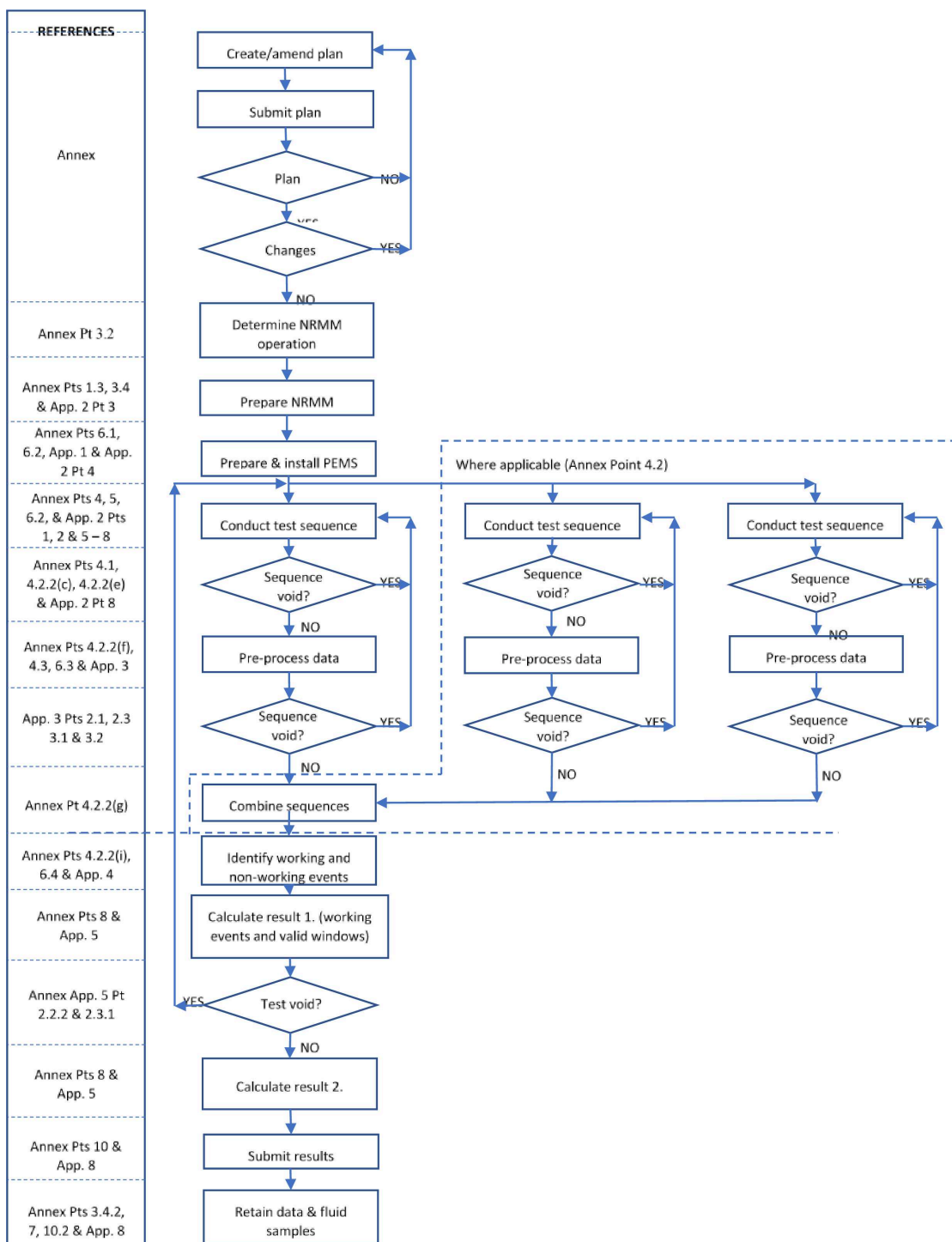
(18) the following points 6.5 and 6.6 are inserted after point 6.4:

'6.5. In accordance with point 4.2.2, where combined data sampling is used, the requirements of points 6.1 to 6.3 shall apply individually to each operating sequence prior to combining operating sequences. The determination of working and non-working events set out in point 6.4 and calculations set out in point 8. shall be applied to the complete combined data sampling.

6.6. Figure 3 outlines the complete sequence for conducting in-service monitoring including planning, PEMS preparation and installation, test procedures, data pre-processing, data calculations and validation.

Figure 3

Illustration of the complete sequence for conducting in-service monitoring



;

(19) points 7 and 8 are replaced by the following:

7. Test data availability

No data shall be modified or removed from the raw test data file(s) used for the completion of point 6. Those raw test data file(s) shall be retained at least for 10 years by the manufacturer and made available upon request to the approval authority and the Commission.

8. Calculations

Manufacturers shall follow the procedures set out in Appendix 5 for the gaseous pollutant emissions calculations for the in-service monitoring of engines installed on non-road mobile machinery using a PEMS.

8.1. In the case of engines with an ECU that were produced with a communication interface intended to permit the collection of the engine torque and speed data as specified in Table 1 of Appendix 7, the calculations shall be conducted and results reported for both the work-based method and the CO₂ mass-based method. In all other cases, the calculations shall be conducted and results reported for the CO₂ mass based method only.

8.2. In all cases, the calculations shall be conducted twice following the pre-processing of data in accordance with point 6.3 of this Annex:

- (a) firstly, using only working events determined in accordance with point 6.4 of this Annex and valid windows, and;
- (b) secondly, using all data not excluded by point 6.3 of this Annex, without applying point 6.4 of this Annex, and without exclusion of invalid windows as set out in points 2.2.2 and 2.3.1 of Appendix 5.;

(20) Appendix 1 is amended as follows:

(a) in point 1, point (b) is replaced by the following:

‘(b) an Exhaust Flow Meter (EFM) based on the averaging Pitot or equivalent principle, except where indirect exhaust flow measurement may be applied as permitted by note (3) to the table in point 1 of Appendix 2.;

(b) points 2 to 2.2.2 are replaced by the following:

‘2. Measurement instruments requirements

2.1. Measurement Instruments shall meet the requirements on calibration and performance checks set out in Section 8.1 of Annex VI to Commission Delegated Regulation (EU) 2017/654 (*) except as set out in points 2.1.1 and 2.1.2. Special attention shall be given to perform the following actions:

- (a) the vacuum-side leak verification of the PEMS as set out in Section 8.1.8.7 of Annex VI to Delegated Regulation (EU) 2017/654;
- (b) the response and updating-recording verification of the gas analyser as set out in Section 8.1.5 of Annex VI to Delegated Regulation (EU) 2017/654.

2.1.1. The minimum frequency for gas analyser linearity verification and NO₂-to-NO converter conversion verification set out in Tables 6.4 and 6.5 of Annex VI to Delegated Regulation (EU) 2017/654 may be increased to 3 months.

2.1.2. The minimum frequency of EFM performance and calibration checks, and the details of those checks, shall be those specified by the instrument manufacturer.

2.2. Measurement instruments shall meet the specifications set out in Section 9.4 of Annex VI to Delegated Regulation (EU) 2017/654.

(*) Commission Delegated Regulation (EU) 2017/654 of 19 December 2016 supplementing Regulation (EU) 2016/1628 of the European Parliament and of the Council with regard to technical and general requirements relating to emission limits and type-approval for internal combustion engines for non-road mobile machinery (OJ L 102, 13.4.2017, p. 1).;

(c) the following points 2.3 and 3 are inserted after point 2.2:

‘2.3. The analytical gases used for calibrating the measurement instruments shall meet the requirements set out in Section 9.5.1 of Annex VI to Delegated Regulation (EU) 2017/654.;

3. Transfer line and sampling probe requirements

3.1. The transfer line shall meet the requirements set out in Section 9.3.1.2 of Annex VI to Delegated Regulation (EU) 2017/654.

3.2. The sampling probe shall meet the requirements set out in Section 9.3.1.1 of Annex VI to Delegated Regulation (EU) 2017/654.;

(21) Appendix 2 is amended as follows:

(a) Points 1. to 4.1. are replaced by the following:

1. Test Parameters

1.1. The gaseous pollutant emissions to be measured and recorded during the in-service monitoring test are carbon monoxide (CO), total hydrocarbons (HC) and nitrogen oxides (NO_x). Additionally, carbon dioxide (CO₂) shall be measured to enable the calculation procedures described in Appendix 5.

1.2. Where the manufacturer demonstrates to the approval authority that it is not practical to combine the flow from multiple exhaust stacks, and there is similarity in the technical configuration and operation of the part of the engine exhausting into each stack, it shall be sufficient to measure the emissions and exhaust mass flow from one exhaust stack. In that case, when performing the calculations set out in Appendix 5 the instantaneous mass flow rate of emissions from the measured stack shall be multiplied by the total number of stacks to obtain the total instantaneous mass flow rate of emissions for the engine.

1.3. The parameters set out in the Table shall be measured and recorded at a data sampling period of 1 second or less during the in-service monitoring test:

Table

Test parameters

Parameter	Unit ⁽¹⁾	Source
HC concentration ⁽²⁾	ppm	Gas analyser
CO concentration ⁽²⁾	ppm	Gas analyser
NO _x concentration ⁽²⁾	ppm	Gas analyser
CO ₂ concentration ⁽²⁾	ppm	Gas analyser
Exhaust mass flow ⁽³⁾	kg/h	EFM
Exhaust temperature ⁽⁴⁾	K	EFM or ECU or Sensor
Ambient temperature ⁽⁵⁾	K	Sensor
Ambient pressure	kPa	Sensor
Relative humidity	%	Sensor
Engine torque ⁽⁶⁾ ⁽⁷⁾	Nm	ECU or Sensor
Engine speed ⁽⁷⁾	rpm	ECU or Sensor
Engine fuel flow ⁽⁷⁾	g/s	ECU or Sensor
Engine coolant temperature ⁽⁸⁾	K	ECU or Sensor
Engine intake air temperature	K	ECU or Sensor

Non-road mobile machinery latitude	degree	GPS (optional)
Non-road mobile machinery longitude	degree	GPS (optional)

(¹) Where the available data stream uses different units to those required by the table, that data stream shall be transformed into the required units during the data pre-processing set out in Appendix 3.

(²) Measured or corrected to a wet basis.

(³) Direct measurement of exhaust mass flow shall be used unless one of the following is applicable:

- (a) the exhaust system installed in the non-road mobile machinery results in dilution of the exhaust by air upstream of the location where an EFM could be installed. In that case the exhaust sample shall be taken upstream of the point of dilution;
- (b) the exhaust system installed in the non-road mobile machinery diverts a portion of the exhaust to another part of the non-road mobile machinery (e.g. for heating) upstream of the location where an EFM could be installed;
- (c) the engine to be tested is of a reference power greater than 560 kW or is installed in an inland waterway vessel or a railway vehicle and the manufacturer demonstrates to the approval authority that installation of an EFM is impractical due to either the size or location of the exhaust on the NRMM;
- (d) engines of category SMB and the manufacturer demonstrates to the approval authority that installation of an EFM is impractical due to location of the exhaust on the NRMM.

In those cases, where the manufacturer is able to provide robust evidence to the approval authority of the correlation between the fuel mass flow estimated by the ECU and the fuel mass flow measured on the engine dynamometer test bench, the EFM may be omitted and indirect exhaust flow measurements (from fuel and intake air flows or fuel flow and carbon balance) may be applied.

(⁴) In order to determine the duration of the take-off phase after a long non-working event for an engine equipped with an after-treatment device used for NO_x reduction, as set out in point 2.2.2 of Appendix 4, the exhaust gas temperature shall be measured during the operating sequence within 30 cm of the outlet of the after-treatment device used for NO_x reduction. Where installing a sensor within 30 cm would result in damage to the after-treatment the sensor shall be installed as close to this location as can be practically achieved.

(⁵) Use the ambient temperature sensor or an intake air temperature sensor. Use of an intake air temperature sensor shall comply with the requirements set out in the second paragraph of point 5.1.

(⁶) The recorded value shall be either (a) the net torque; or (b) the net torque calculated from the actual engine percent torque, the friction torque and the reference torque, in accordance with standards set out in point 2.1.1 of Appendix 7. The basis for the net torque shall be uncorrected net torque delivered by the engine inclusive of the equipment and auxiliaries to be included for an emissions test in accordance with Appendix 2 of Annex VI to Delegated Regulation (EU) 2017/654.

(⁷) Not required for engines tested under this Regulation that are not designed to have a communication interface capable to provide these data streams.

(⁸) In the case of air-cooled engines, the temperature at the reference point location identified in point 3.7.2.2.1 of PART C of Appendix 3 of Annex I to Implementing Regulation (EU) 2017/656 shall be recorded in place of the coolant temperature.

2. Test duration

2.1. The test duration, comprising all operating sequences, shall be long enough to obtain the following amount of working events:

- (a) for engines in ISM groups A and C, between five and seven times the reference work in kWh performed on the hot-start NRTC run during the type-approval test or to produce between five and seven times the CO₂ reference mass in g/cycle from the hot-start NRTC run of the type-approval test as specified in points 11.3.1. and 11.3.2. of the addendum to the EU type approval certificate of the engine type or the engine family set out in Annex IV to Implementing Regulation (EU) 2017/656;
- (b) for engines in ISM group H, between five and seven times the reference work in kWh performed on the LSI-NRTC during the type-approval test or to produce between five and seven times the CO₂ reference mass in g/cycle of the LSI-NRTC during the type-approval test as specified in points 11.3.1 and 11.3.2 of the addendum to the EU type approval certificate of the engine type or the engine family set out in Annex IV to Implementing Regulation (EU) 2017/656;
- (c) for engines in ISM groups E, I, O and P between three and five times the applicable reference work in kWh or CO₂ reference mass in g/cycle determined from the type-approval test result using the method set out in Appendix 9;

(d) for engines in ISM groups not listed in sub-points (a), (b) or (c), between five and seven times the applicable reference work in kWh or CO₂ reference mass in g/cycle determined from the type-approval test result using the method set out in Appendix 9.

2.2. All data collected during all operating sequences shall be assembled chronologically even if the maximum amount of work or CO₂ mass specified in point 2.1, sub-points (a) to (d) is exceeded. In that case, during the calculation set-out in Appendix 5 of this Regulation:

(a) when the amount of work or CO₂ reference mass in the working events exceeds that maximum, the calculation shall be truncated at the end of the time increment in which that occurs; and,

(b) the results reported for the ISM test in accordance with point 10 of this Annex to this Regulation shall be those of that truncated calculation.

3. **Preparation of the non-road mobile machinery**

The preparation of the non-road mobile machinery whose engine has been selected for testing in accordance with point 1.3 of this Annex shall comprise of at least the following:

(a) the check of the engine: any identified problems, once solved, shall be recorded and presented to the approval authority;

(b) the replacement of the oil, fuel and reagent, if any, where no documented evidence is available that the fluid in question complies with the specification listed in the type-approval information package applicable to the engine type, and it is practically and economically feasible to do so;

(c) engines fitted with an ECU and a communication interface shall comply with point 5 of this Annex.

4. **Installation of the PEMS**

4.1. Installation constraints

4.1.1. The installation of the PEMS shall not influence the non-road mobile machinery gaseous pollutant emissions or performance.

4.1.2. The installation shall comply with the locally applicable safety regulations and insurance requirements and shall follow the instructions issued by the PEMS, measurement instruments, transfer line and sampling probe manufacturer.

4.1.3. Where for engines of ISM groups M and N it is not possible to install the PEMS systems without exceeding the loading gauge applicable to the rail network, the use of point 3.2.2 of this Annex shall include testing of the railway vehicle whilst stationary using a representative test duty cycle determined by the manufacturer and agreed with the approval authority.

4.1.4. For engines of ISM groups E, I, O and P the engine may be removed from the non-road mobile machinery and the in-service monitoring test conducted on a dynamometer test bench. In that case, the following shall apply:

(a) the engine inclusive of the entire emission control system shall be removed from the non-road mobile machinery and installed on the dynamometer test bench without adjustment to the emission control system;

(b) it shall not be necessary to demonstrate to the Approval Authority that it is not possible to comply with point 3.2.1 of this Annex;

- (c) notwithstanding sub-points (a) and (b), the in-service monitoring test shall be conducted in accordance with this Regulation;
- (d) the procedure for removing engine from non-road mobile machinery and installing in test cell to replicate operation in the non-road mobile machinery shall be agreed with the approval authority prior to conducting the ISM test;
- (e) a representative test duty cycle shall be used as determined by the manufacturer and agreed with the approval authority in accordance with point 3.2.2 of this Annex;
- (f) the test duty cycle of sub-point (e) shall span a range of speed and load that represents the operation of the selected machine when used in the field. Methods to establish that range shall include, but are not limited to, logging operational data for one or more comparable machines operated in the field;
- (g) to establish data on the extent to which results obtained from use of a PEMS system differ from those obtained from the use of a test bench system, in-service monitoring measurements performed on the dynamometer test bench using the PEMS system may be supplemented by concurrent measurements using test bench instrumentation and an emission measurement system complying with the requirements of Section 9 of Annex VI to Delegated Regulation (EU) 2017/654, operated in accordance with the requirements of section 8 of that Annex;
- (h) the requirements of points 6, 7, 8 and 10 of this Annex shall additionally apply to any concurrent measurements in accordance with sub-point (g) and the test data and test report shall include these measurements.;

(b) point 4.6 is replaced by the following:

‘4.6. Data logger

Where ECU data is to be used, a data logger shall be connected with the engine ECU to record the available engine parameters listed in Table 1 of Appendix 7, and, where applicable, the engine parameters listed in Table 2 of Appendix 7.;

(c) point 5.1 is replaced by the following:

‘5.1. Ambient temperature measurement

The ambient temperature shall at a minimum be measured at the beginning of the operating sequence and at the end of the operating sequence. The measurement shall be made within a reasonable distance from the non-road mobile machinery. A sensor or ECU signal for engine intake air temperature may be used.

If intake air temperature is used to estimate the ambient temperature, the recorded ambient temperature shall be the intake air temperature adjusted by the applicable nominal offset between ambient and intake air temperature as specified by the manufacturer.;

(d) Points 6 to 8.2 are replaced by the following:

‘6. **In-service monitoring test data logging**

6.1. Before the operating sequence

Gaseous pollutant emissions data sampling, measurement of the exhaust parameters and recording of the engine and ambient data shall start prior to starting the engine.

6.2. During the operating sequence

Gaseous pollutant emissions data sampling, measurement of the exhaust parameters and recording of the engine and ambient data shall continue throughout the normal in-use operation of the engine.

The engine may be stopped and started, but the gaseous pollutant emissions data sampling, measurement of the exhaust parameters, recording of the engine and ambient data shall continue throughout the entire in-service monitoring operating sequence.

6.3. After the operating sequence

At the end of the in-service monitoring operating sequence, sufficient time shall be given to the measurement instruments and data logger to allow their response times to elapse. The engine may be shut down before or after data logging is stopped.

7. **Checking of gas analysers**

7.1. Periodic zero verification during the operating sequence

Where practical and safe to perform, zero verification of the gas analysers may be conducted every 2 hours during an operating sequence.

7.2. Periodic zero correction during the operating sequence

The results obtained with the checks performed in accordance with point 7.1 may be used to perform a zero drift correction during that operating sequence.

7.3. Drift verification after the operating sequence

The drift verification shall be performed only if no zero drift correction was made during the operating sequence in accordance with point 7.2.

7.3.1. No later than 30 minutes after the operating sequence is completed, the gas analysers shall be zeroed and spanned in order to verify their drift compared to the pre-test results.

7.3.2. The zero, span and linearity checks of the gas analysers shall be performed as set out in point 5.4.

8. **Engine or machine malfunction**

8.1. In the case that a malfunction occurs during an operating sequence that affects engine operation and either:

- (a) the non-road mobile machinery operator is clearly notified of that malfunction by the on-board diagnostics system via a malfunction visual warning, text message or other indicator; or,
- (b) the non-road mobile machinery is not fitted with a malfunction diagnostic or warning system, but the malfunction is clearly detected by aural or visual means;

the operating sequence shall be considered void.

8.2. Any malfunction shall be corrected before any further operating sequence is conducted on the engine.;

(22) in Appendix 3, points 2 to 6 are replaced by the following:

‘2. **Exclusion of data**

2.1. Temporary signal loss

2.1.1. Any episodes of temporary signal loss shall be identified.

2.1.2. A maximum of 2 % of data with no consecutive period more than 30 seconds duration may be excluded from each operating sequence due to one or several episodes of unintended temporary signal loss in the original data recording, in accordance with point 4.3 of the Annex.

2.1.3. In the case that the test sequence contains episodes of signal loss either greater than 2 % of data or for a consecutive period greater than 30 seconds, that entire sequence shall be considered void and a further test shall be run.

2.2. Periodic checks of measurement instruments

2.2.1. Any data points corresponding with checking of gas analysers in accordance with point 7 of Appendix 2 shall be identified and excluded from further processing of an operating sequence except as required to perform the drift correction in point 3 of this Appendix.

2.3. Ambient conditions

2.3.1. Any data points in an operating sequence corresponding with ambient conditions that do not comply with the requirements set out in point 3.3 of this Annex shall be identified.

2.3.2. If the proportion of data points identified at Point 2.3.1 of this Appendix exceeds 1 % that entire sequence shall be considered void and a further test shall be run.

2.3.3. In the case that ambient conditions are only measured at the start and the end of the test the entire test sequence shall be considered void if either measurement does not comply with the requirements set out in point 3.3 of the Annex.

2.4. Cold start data

Cold start gaseous pollutant emissions measured data shall be excluded prior to the gaseous pollutant emissions calculations.

2.4.1. Liquid-cooled engines

Valid measured data for gaseous pollutant emissions calculations shall start after the engine coolant temperature has reached 343 K (70 °C) for the first time or after the engine coolant temperature is stabilised within ± 2 K over a period of 5 minutes, or after the engine coolant temperature is stabilised within ± 5 K over a period of 5 minutes for tests performed at ambient temperature equal or below 273,15 K, whichever comes first; in any case, it shall start no later than 20 minutes after starting the engine.

2.4.2. Air-cooled engines

Valid measured data for gaseous pollutant emissions calculations shall start after the temperature measured at the reference point identified in point 3.7.2.2.1 of PART C of Appendix 3 of Annex I to Implementing Regulation (EU) 2017/656 is stabilised within ± 5 % over a period of 5 minutes; in any case, it shall start no later than 20 minutes after starting the engine.

3. **Drift correction**

3.1. Maximum drift allowed

Drifts of the zero response and the span response shall be less than 2 % of full scale on the lowest range used:

(a) if the difference between the pre-test and post-test results is less than 2 %, the measured concentrations may be used uncorrected or may be corrected for drift in accordance with point 3.2;

(b) if the difference between the pre-test and post-test results is equal to or greater than 2 %, the measured concentrations shall be drift corrected in accordance with point 3.2. If no correction is made, the test shall be considered void.

3.2. Drift correction

3.2.1. The drift corrected concentration value shall be calculated in accordance with the requirements set out in Sections 2.1 or 3.5 of Annex VII to Delegated Regulation (EU) 2017/654.

3.2.2. The difference between the uncorrected and the corrected brake-specific gaseous pollutant emission values shall be within $\pm 6\%$ of the uncorrected brake-specific gaseous pollutant emission values. If the drift is greater than 6% , the test shall be considered void.

3.2.2.1. Each brake-specific gaseous pollutant emission value shall be calculated from the integrated mass of gaseous pollutant emission of the test sequence divided by the total work performed during the test sequence. That calculation shall be performed prior to determination of working events in accordance with Appendix 4 or calculation of gaseous pollutant emissions in accordance with Appendix 5.

3.2.3. If drift correction is applied, only the drift-corrected gaseous pollutant emission results shall be used when reporting gaseous pollutant emissions.

4. Time alignment

To minimise the biasing effect of the time lag between the different signals on the calculations of the mass of the gaseous pollutant emissions, the data relevant for gaseous pollutant emissions calculations shall be time aligned, in accordance with the requirements set out in points 4.1 to 4.4.

4.1. Gas analysers data

The data from the gas analysers shall be properly aligned in accordance with the requirements set out in Section 8.1.5.3 of Annex VI to Delegated Regulation (EU) 2017/654.

4.2. Gas analysers and EFM data

The data from the gas analysers shall be properly aligned with the data of the EFM using the procedure set out in point 4.4.

4.3. PEMS and engine data

The data from the PEMS (gas analysers and EFM) shall be properly aligned with the data from the engine ECU using the procedure in point 4.4.

4.4. Procedure for improved time alignment of the PEMS data

The test parameters listed in the Table of Appendix 2 are split into three different categories:

Category 1: Gas analysers (HC, CO, CO₂, NO_x concentrations);

Category 2: EFM (Exhaust mass flow and exhaust temperature);

Category 3: Engine (Torque, speed, temperatures, fuel rate from ECU).

The time alignment of each category with the other two categories shall be verified by finding the highest correlation coefficient between two series of test parameters. All the test parameters in a category shall be shifted to maximise the correlation factor. The following test parameters shall be used to calculate the correlation coefficients:

- (a) Categories 1 and 2 (Gas analysers and EFM data) with Category 3 (Engine data): the exhaust mass flow from the EFM with torque from the ECU;
- (b) Category 1 with Category 2: the CO₂ concentration and the exhaust mass flow;
- (c) Category 1 with Category 3: the CO₂ concentration and the engine fuel flow.

- 4.4.1. In the case of engines not designed to have a communication interface to permit the collection of the ECU data as specified in Appendix 7 the correlation at point 4.4, sub-points (a) and (c) shall be omitted.
- 4.4.2. In the case of engines for which direct measurement of exhaust mass flow was omitted in accordance with note (3) to the Table of Appendix 2 the correlation at point 4.4, sub-point (a) shall be omitted.

5. Data consistency check

5.1. Gas analysers and EFM data

For engines designed to have a communication interface capable to provide fuel flow in accordance with Table 2 of Appendix 7 the consistency of the data (exhaust mass flow measured by the EFM and gas concentrations) shall be verified using a correlation between the measured engine fuel flow from the ECU and the engine fuel flow calculated in accordance with the procedure set out in Section 2.1.6.4 of Annex VII to Delegated Regulation (EU) 2017/654.

A linear regression shall be performed for the measured and calculated fuel rate values. The method of least squares shall be used, with the best fit equation having the form:

$$y = mx + b$$

Where:

- (a) y is the calculated fuel flow [g/s];
- (b) m is the slope of the regression line;
- (c) x is the measured fuel flow [g/s];
- (d) b is the y intercept of the regression line.

The slope (m) and the coefficient of determination (r^2) shall be calculated for each regression line. It is recommended to perform this analysis in the range from 15 % of the maximum value to the maximum value and at a frequency greater or equal to 1 Hz. For a test to be considered valid, the following two criteria shall be evaluated:

Table 1

Tolerances

Slope of the regression line, m	0,9 to 1,1 – Recommended
Coefficient of determination, r^2	Min. 0,90 – Mandatory

5.2. ECU torque data

Where ECU torque data is to be used in the calculations the consistency of the ECU torque data shall be verified by comparing the maximum ECU torque values at different (if appropriate) engine speeds with the corresponding values on the official engine full load torque curve and in accordance with Appendix 6.

5.3. Brake-Specific Fuel Consumption (BSFC)

Where ECU data is available the BSFC shall be checked using:

- (a) the fuel consumption calculated from the gaseous pollutant emissions data (gas analysers concentrations and exhaust mass flow data), in accordance with the procedure set out in Section 2.1.6.4 of Annex VII to Delegated Regulation (EU) 2017/654;
- (b) the work calculated using the data from the ECU (Engine torque and engine speed).

5.4. Ambient pressure

The ambient pressure value shall be checked against the altitude indicated by the GPS data, if available.

5.5. The approval authority may consider the test void if it is not satisfied with the results of the data consistency check.

6. **Dry-wet correction**

If the concentration is measured on a dry basis, it shall be converted to a wet basis in accordance with the procedure set out in Section 2 or 3 of Annex VII to Delegated Regulation (EU) 2017/654.

7. **NO_x correction for humidity and temperature**

The NO_x concentrations measured by the gas analysers shall not be corrected for ambient air temperature and humidity;

(23) in Appendix 4, points 2. and 3. are replaced by the following:

‘2. **Procedure to determine non-working events**

2.1. Non-working events are those where either:

(a) for engines not designed to have a communication interface capable to provide torque and speed data in accordance with Table 1 of Appendix 7, the instantaneous proxy power determined in accordance with the procedure set-out in Appendix 10, or;

(b) in all other cases, the instantaneous engine power,

is below 10 % of the engine reference power, as defined in Article 3, point (26) of Regulation (EU) 2016/1628 and listed in Annex I to that Regulation for each engine (sub-)category, for the engine type subject to ISM test.

2.1.1. For engines tested under this Regulation that are not designed to have a communication interface capable to provide torque and speed data in accordance with Table 1 of Appendix 7 the instantaneous proxy power shall be calculated using the procedure described in Appendix 10 prior to applying the procedure in this Appendix.

2.2. The following additional steps shall be conducted:

2.2.1. Non-working events shorter than D0 shall be considered as working events and merged with the surrounding working events (see Table 2 for the values of D0).

2.2.2. Working events shorter than D0 surrounded by non-working events of duration longer than D1 shall be considered non-working events and merged with the surrounding non-working events (see Table 2 for the values of D1)

2.2.3. The take-off phase following long non-working events (> D2) for engines equipped with an after-treatment device used for NO_x reduction and exhaust gas temperature measurement in accordance with note (4) to the Table of Appendix 2 shall also be considered as a non-working event until the exhaust gas temperature reaches 523 K. If the exhaust gas temperature does not reach 523 K within D3 minutes, all events after D3 shall be considered as working events (see Table 2 for the values of D2 and D3).

2.2.4. For all non-working events, the first D1 minutes of the event shall be considered as working event.

3. **‘Machine work’ marking algorithm to implement the requirements of point 2**

Point 2 shall be implemented in the sequence set out in points 3.1 to 3.4

3.1. Step 1: Detect and split into working events and non-working events.

(a) identify the working events and non-working events in accordance with point 2.1;

(b) calculate the duration of non-working events;

- (c) mark the non-working events shorter than D0 as working events;
 - (d) calculate the duration of the working events.
- 3.2. Step 2: Merge short working events ($\leq D0$) into non-working events.
- Mark as non-working events those working events shorter than D0 that are both preceded and followed by remaining non-working events of duration longer than D1.
- 3.3. Step 3: Exclude working events after long non-working events (take-off phase).
- Where point 2.2.3 is applicable, mark as non-working events those working events after long non-working events ($> D2$) until either;
- (a) the exhaust gas temperature reaches 523 K; or
 - (b) D3 minutes have elapsed;
- whatever happens first.
- 3.4. Step 4: Include non-working events after working events.
- Include D1 minutes of non-working event following any working event as part of that working event.

Table 2

Values for the parameters D0, D1, D2 and D3

Parameters	Value
D0	2 minutes
D1	2 minutes
D2	10 minutes
D3	4 minutes

;

(24) In Appendix 5, points 2.1 to 2.3.2 are replaced by the following:

2.1. Averaging window method

2.1.1. General requirements

Averaging window is the sub-set of the complete calculated data set during the in-service monitoring test whose work or CO₂ mass is equal to the engine work or CO₂ mass measured over the reference laboratory test cycle. The mass of the gaseous pollutant emissions and the conformity factors shall be calculated using the moving averaging window method, based on the reference work (procedure set out point 2.2) and the reference CO₂ mass (procedure set out in point 2.3) measured over the reference laboratory test cycle.

The engine power versus time and averaging window gaseous pollutant emissions, starting from the first averaging window.

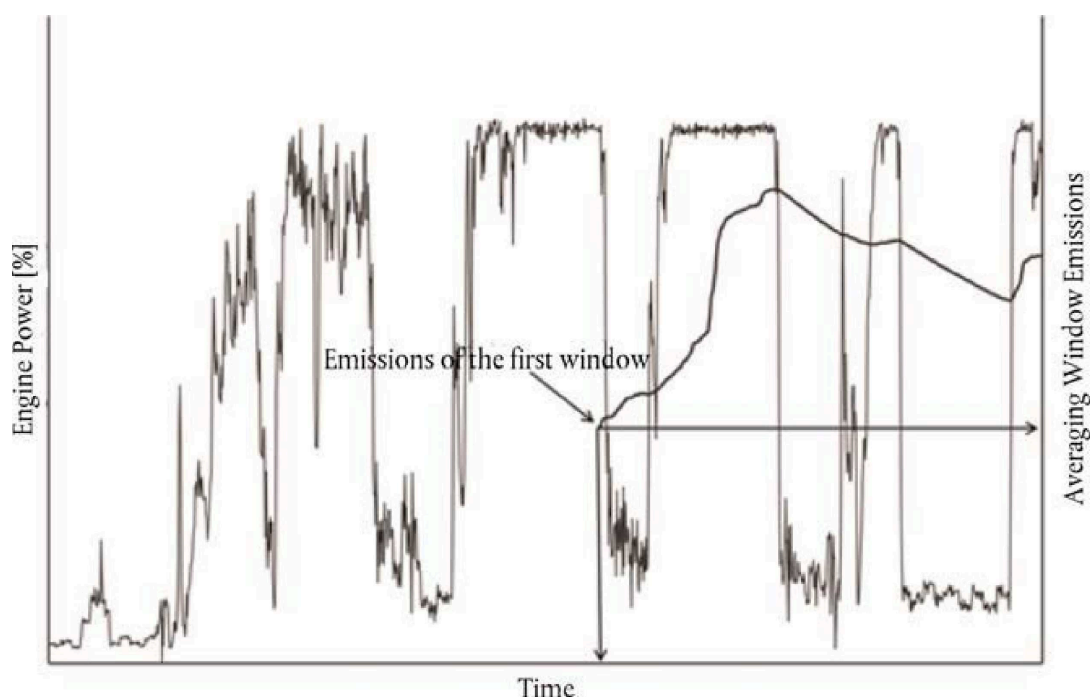
The calculations shall be conducted in accordance with the following sub-points:

- (a) any data excluded, under the terms of Appendix 4, shall not be considered for the calculations of the work or CO₂ mass and the gaseous pollutant emissions and conformity factors of the averaging windows, except as required by point 4(f) of this Appendix;
- (b) the moving averaging window calculations shall be conducted with a time increment Δt equal to the data sampling period. The start of the moving average window shall be incremented by that amount at each iteration;

- (c) the mass of the gaseous pollutant emissions for each averaging window (mg/averaging window) shall be obtained by integrating the mass of the instantaneous gaseous pollutant emissions in the averaging window;
- (d) in the case of engines with an ECU that were designed with a communication interface intended to permit the collection of the engine torque and speed data as specified in Table 1 of Appendix 7, the calculations shall be conducted and results reported for both the work based method and the CO₂ mass-based method. In all other cases the calculations shall be performed, and results reported, for only the CO₂ mass-based method.

Figure 4

Engine power versus time and averaging window gaseous pollutant emissions, starting from the first averaging window, versus time



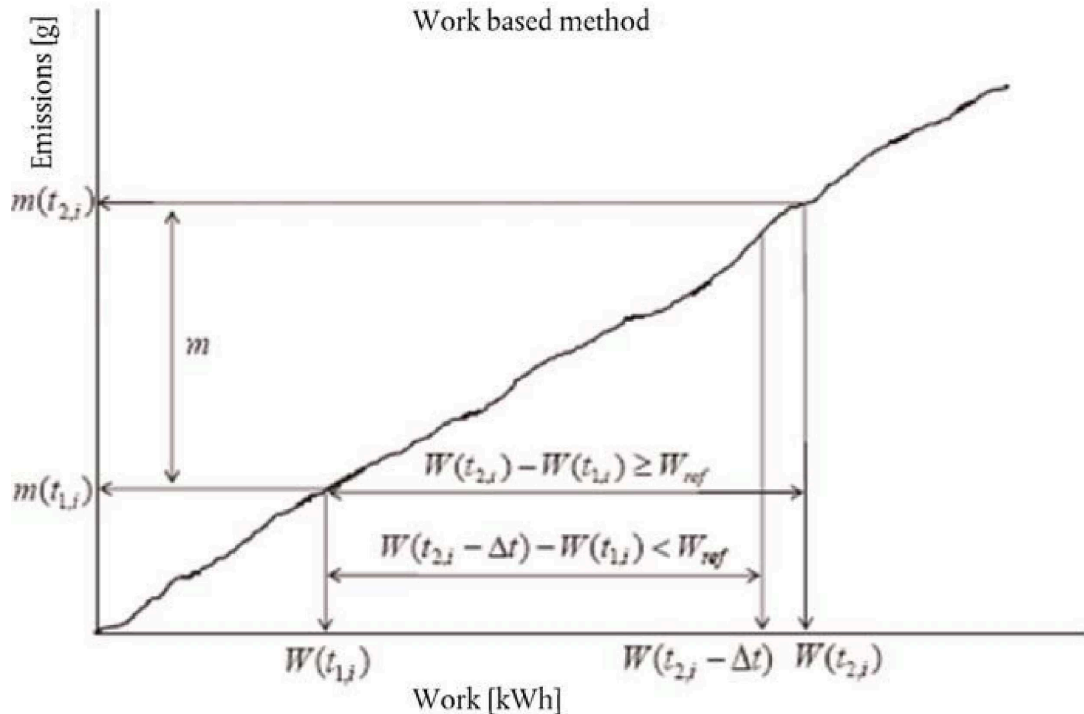
2.1.2. Reference values

The reference work and reference CO₂ mass of an engine type, or for all engine types within the same engine family, shall be determined as follows:

- (a) for engines in ISM groups A and C those values from the hot-start NRTC run of the type-approval test of the parent engine as specified in points 11.3.1 and 11.3.2 of the addendum to the EU type approval certificate of the engine type or the engine family, as set out in Annex IV to Implementing Regulation (EU) 2017/656;
- (b) for engines in ISM group H those values from the LSI-NRTC run of the type-approval test of the parent engine;
- (c) for engines in ISM groups not listed in sub-points (a) or (b) those values determined from the type-approval test result of the parent engine using the method set out in Appendix 9.

2.2. Work based method

Figure 5

Work-based method

The duration ($t_{2,i} - t_{1,i}$) of the i^{th} averaging window is determined by:

$$W(t_{2,i}) - W(t_{1,i}) \geq W_{ref}$$

Where:

- $W(t_{j,i})$ is the engine work measured between the start and time $t_{j,i}$, kWh,
- W_{ref} is the engine reference work determined according to point 2.1.2, kWh,
- $t_{2,i}$ shall be selected such that:

$$W(t_{2,i} - \Delta t) - W(t_{1,i}) < W_{ref} \leq W(t_{2,i}) - W(t_{1,i})$$

Where Δt is the data sampling period, equal to 1 second or less.

2.2.1. Calculations of the brake specific gaseous pollutant emissions

The brake-specific gaseous pollutant emissions e_{gas} (g/kWh) shall be calculated for each averaging window and each gaseous pollutant in the following way:

$$e_{gas} = \frac{m_i}{W(t_{2,i}) - W(t_{1,i})}$$

Where:

- m_i is the mass emission of the gaseous pollutant during the i^{th} averaging window, g/averaging window,
- $W(t_{2,i}) - W(t_{1,i})$ is the engine work during the i^{th} averaging window, kWh.

2.2.2. Selection of valid averaging windows

The valid averaging windows are the averaging windows whose average power exceeds the power threshold of 20 % of the reference power, as defined in Article 3, point (26), of Regulation (EU) 2016/1628 and listed in Annex I to that Regulation for each engine (sub-)category, for the engine type subject to ISM test, except for engines of category ATS where the reference power is the power at intermediate speed as defined in Section 5.2.5.4, point (f) of Annex VI to Delegated Regulation (EU) 2017/654. The percentage of valid averaging windows shall be equal or greater than 50 %.

- 2.2.2.1. If the percentage of valid windows is less than 50 %, the data evaluation shall be repeated using lower power thresholds. The power threshold shall be reduced from 20 % in steps of 1 % until the percentage of valid windows is equal to or greater than 50 %.
- 2.2.2.2. In any case, the lower power threshold shall not be lower than 10 %.
- 2.2.2.3. The test shall be considered void if the percentage of valid averaging windows is less than 50 % at a power threshold of 10 %.
- 2.2.3. Calculations of the conformity factors

The conformity factors shall be calculated for each individual valid averaging window and each individual gaseous pollutant in the following way:

$$CF = \frac{e_{gas}}{L}$$

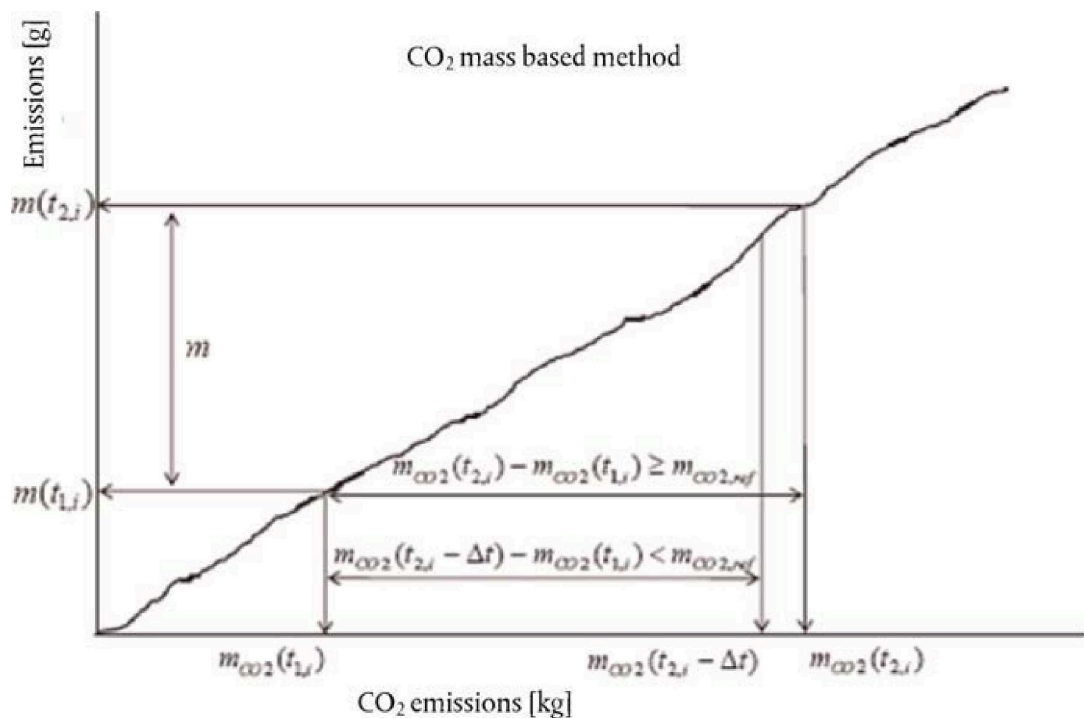
Where:

- e_{gas} is the brake-specific emission of the gaseous pollutant, g/kWh;
- L is the applicable limit, g/kWh.

2.3. CO₂ mass-based method

Figure 6

CO₂ mass-based method



The duration ($t_{2,i} - t_{1,i}$) of the i^{th} averaging window is determined by:

$$m_{CO_2}(t_{2,i}) - m_{CO_2}(t_{1,i}) \geq m_{CO_2,ref}$$

Where:

$m_{CO_2}(t_{1,i})$ is the CO₂ mass measured between the test start and time $t_{1,i}$, g;

$m_{CO_2,ref}$ is the reference CO₂ mass determined in Grams (g) in accordance with point 2.1.2,

— $t_{2,i}$ shall be selected such as:

$$m_{\text{CO}_2}(t_{2,i} - \Delta t) - m_{\text{CO}_2}(t_{1,i}) < m_{\text{CO}_2,ref} \leq m_{\text{CO}_2}(t_{2,i}) - m_{\text{CO}_2}(t_{1,i})$$

Where Δt is the data sampling period, equal to 1 second or less.

The CO₂ masses are calculated in the averaging windows by integrating the instantaneous gaseous pollutant emissions calculated in accordance with the requirements introduced in point 1.

2.3.1. Selection of valid averaging windows

The valid averaging windows shall be those whose duration does not exceed the maximum duration calculated from:

$$D_{max} = 3\,600 \cdot \frac{W_{ref}}{0,2 \cdot P_{max}}$$

Where:

- D_{max} is the maximum averaging window duration, s,
- P_{max} is the reference power, as defined in Article 3, point (26), of Regulation (EU) 2016/1628, kW, and listed in Annex I to that Regulation for each engine (sub-)category, for the engine type subject to ISM test, except for engines of category ATS where the reference power is the power at intermediate speed as defined in Section 5.2.5.4., point (f), of Annex VI to Delegated Regulation (EU) 2017/654.

The percentage of valid averaging windows shall be equal or greater than 50 %.

2.3.1.1. If the percentage of valid windows is less than 50 %, the data evaluation shall be repeated using longer window durations. This is achieved by decreasing the value of 0,2 in the formula given in point 2.3.1 by steps of 0,01 until the percentage of valid windows is equal to or greater than 50 %.

2.3.1.2. In any case, the lowest value in the above formula shall not be lower than 0,10.

2.3.1.3. The test shall be void if the percentage of valid windows is less than 50 % at a maximum window duration calculated in accordance with points 2.3.1., 2.3.1.1. and 2.3.1.2.

2.3.2. Calculations of the conformity factors

The conformity factors shall be calculated for each individual averaging window and each individual pollutant in the following way:

$$CF = \frac{CF_I}{CF_C}$$

With

$$CF_I = \frac{m_i}{m_{\text{CO}_2}(t_{2,i}) - m_{\text{CO}_2}(t_{1,i})} \text{ (in service ratio) and}$$

$$CF_C = \frac{m_L}{m_{\text{CO}_2,ref}} \text{ (certification ratio)}$$

Where:

— m_i is the mass emission of the gaseous pollutant during the i^{th} averaging window, g/averaging window,

$m_{\text{CO}_2}(t_{2,i}) - m_{\text{CO}_2}(t_{1,i})$ is the CO₂ mass during the i^{th} averaging window, g/averaging window,

$m_{\text{CO}_2,ref}$ is the reference engine CO₂ mass determined in accordance with point 2.1.2, sub-point (g),

— m_L is the mass emission of gaseous pollutant corresponding to the applicable limit on the reference test cycle, g.

m_L is determined as follows:

$$m_L = L \cdot W_{ref}$$

Where:

- L is the applicable limit, g/kWh
- W_{ref} is the engine reference work determined in accordance with point 2.1.2, kWh.;

(25) In Appendix 6, point 2, is replaced by the following:

‘2. Impossibility to check the conformity of the ECU torque signal

When the manufacturer demonstrates to the approval authority that it is not possible to check the ECU torque signal during the in-service monitoring test, the verification performed in accordance with the requirements of Appendix 3 of Annex VI to Delegated Regulation (EU) 2017/654 during the tests required for EU type-approval and stated in the EU type-approval certificate shall be accepted by the approval authority.

For engines in ISM groups other than A, C and H, the approval authority may accept a separate demonstration conducted in accordance with the requirements of Appendix 3 of Annex VI to Delegated Regulation (EU) 2017/654 but using the following mapping procedures of that Annex:

- (a) for engines in ISM group I, and variable speed engines in ISM groups E, F, G, J, K, L, M and N, Section 7.6.1;
- (b) for all other engines, Section 7.6.3.

Where mapping is performed at constant speed in accordance with sub-point (b), it shall be sufficient to measure and compare the readings of the torque measured by the dynamometer and the torque broadcast by the ECU at the single point of rated net power.;

(26) In Appendix 7, points 1 to 1.3 are replaced by the following:

‘1. Data to be provided

1.1. Where an ECU is used to provide engine torque, speed or coolant temperature that data at a minimum shall be provided in accordance with Table 1.

Table 1

Measurement data

Parameter	Unit ⁽¹⁾
Engine torque ⁽²⁾	Nm
Engine speed	rpm
Engine coolant temperature	K

⁽¹⁾ Where the available data stream uses different units to those required by the table, that data stream shall be transformed into the required units during the data pre-processing set out in Appendix 3.

⁽²⁾ The provided value shall be either (a) the net brake engine torque or (b) the net brake engine torque calculated from other appropriate torque values as defined in the corresponding protocol standard set out in point 2.1.1. The basis for the net torque shall be uncorrected net torque delivered by the engine inclusive of the equipment and auxiliaries to be included for an emissions test in accordance with Appendix 2 of Annex VI to Delegated Regulation (EU) 2017/654.

1.2. Where either ambient pressure or ambient temperature are not measured by external sensors, they shall be provided by the ECU in accordance with Table 2.

Table 2

Additional measurement data

Parameter	Unit ⁽¹⁾
Ambient temperature ⁽²⁾	K
Ambient pressure	kPa
Engine fuel flow	g/s

⁽¹⁾ Where the available data stream uses different units to those required by the table, that data stream shall be transformed into the required units during the data pre-processing set out in Appendix 3.

⁽²⁾ Use of an intake air temperature sensor shall comply with the requirements set out in the second paragraph of point 5.1 of Appendix 2.

1.3. Where exhaust mass flow is not measured directly, the engine fuel flow shall be provided in accordance with the Table of Appendix 2;

(27) In Appendix 7, point 2.1.1 is replaced by the following:

‘2.1.1. Access to data stream information shall be provided in accordance with at least one of the following series of standards:

- (a) ISO 27145 with ISO 15765-4 (CAN-based);
- (b) ISO 27145 with ISO 13400 (TCP/IP-based);
- (c) SAE J1939-73;
- (d) ISO 14229.’

(28) Appendix 8 is amended as follows:

(a) data entries 2 to 2.20 are replaced by the following:

‘2. **Engine information**

- 2.1. ISM Group
- 2.2. Category and sub-category of the engine type/engine family
- 2.3. Type approval number
- 2.4. Commercial name(s) (if applicable)
- 2.5. Engine family designation (if member of a family)
- 2.6. Reference work [kWh]
- 2.7. Reference CO₂ mass [g]
- 2.8. Engine type designation
- 2.9. Engine identification number
- 2.10. Engine production year and month
- 2.11. Engine rebuilt (yes/no)
- 2.12. Engine total swept volume [cm³]
- 2.13. Number of cylinders
- 2.14. Engine declared rated net power/rated speed [kW/rpm]
- 2.15. Engine maximum net power/power speed [kW/rpm]
- 2.16. Engine declared maximum torque/torque speed [Nm/rpm]

- 2.17. Idle speed [rpm]
- 2.18. Manufacturer supplied full-load torque curve available (yes/no)
- 2.19. Manufacturer supplied full-load torque curve reference number
- 2.20. Installed DeNO_x system (e.g., EGR, SCR) (where applicable)
- 2.21. Installed type of catalytic converter (where applicable)
- 2.22. Installed type of particulate after-treatment (where applicable)
- 2.23. After-treatment modified with respect to type approval (yes/no)
- 2.24. Installed ECU information (Software calibration number);

(b) data entries 9 to 9.11 are replaced by the following:

‘9. Averaging window ⁽¹⁾ conformity factors (determined in accordance with Appendices 3 to 5)

(Minimum, maximum and 90th cumulative percentile)

- 9.1. Work averaging window THC conformity factor [-] ⁽²⁾
- 9.2. Work averaging window CO conformity factor [-]
- 9.3. Work averaging window NOx conformity factor [-] ⁽³⁾ (where applicable)
- 9.4. Work averaging window THC + NOx conformity factor [-] ⁽⁴⁾ (where applicable)
- 9.5. CO₂ mass averaging window THC conformity factor [-] ⁽⁵⁾
- 9.6. CO₂ mass averaging window CO conformity factor [-]
- 9.7. CO₂ mass averaging window NOx conformity factor [-] ⁽⁶⁾ (where applicable)
- 9.8. CO₂ mass averaging window THC+NOx conformity factor [-] ⁽⁷⁾ (where applicable)
- 9.9. Work averaging window: minimum and maximum averaging window power [%]
- 9.10. CO₂ mass averaging window: minimum and maximum averaging window duration [s]
- 9.11. Work averaging window: percentage of valid averaging windows
- 9.12. CO₂ mass averaging window: percentage of valid averaging windows’;

⁽¹⁾ Averaging window is the sub-set of the complete calculated data set during the in-service monitoring test whose CO₂ mass or work is equal to the engine reference CO₂ mass or work measured over the applicable parent engine reference laboratory NRTC or NRSC

⁽²⁾ Only applicable for engine (sub-)categories which have separate limits for HC and NOx in accordance with Annex II of Regulation (EU) 2016/1628.

⁽³⁾ Only applicable for engine (sub-)categories which have separate limits for HC and NOx in accordance with Annex II of Regulation (EU) 2016/1628.

⁽⁴⁾ Only applicable for engine (sub-)categories which have a combined emission limit for HC + NOx in accordance with to Annex II of Regulation (EU) 2016/1628.

⁽⁵⁾ Only applicable for engine (sub-)categories which have separate limits for HC and NOx in accordance with Annex II of Regulation (EU) 2016/1628.

⁽⁶⁾ Only applicable for engine (sub-)categories which have separate limits for HC and NOx in accordance with Annex II of Regulation (EU) 2016/1628.

⁽⁷⁾ Only applicable for engine (sub-)categories which have a combined emission limit for HC + NOx in accordance with Annex II of Regulation (EU) 2016/1628.

(c) data entries 10 to 10.8 are replaced by the following:

10. Averaging window conformity factors (determined in accordance with Appendices 3 and 5 without the determination of working and non-working events in accordance with Appendix 4 and without the exclusion of invalid windows as set out in points 2.2.2 and 2.3.1 of Appendix 5)

(Minimum, maximum and 90th cumulative percentile)

- 10.1. Work averaging window THC conformity factor [-] ⁽⁸⁾
- 10.2. Work averaging window CO conformity factor [-]
- 10.3. Work averaging window NO_x conformity factor [-] ⁽⁹⁾ (where applicable)
- 10.4. Work averaging window THC+NO_x conformity factor [-] ⁽¹⁰⁾ (where applicable)
- 10.5. CO₂ mass averaging window THC conformity factor [-] ⁽¹¹⁾
- 10.6. CO₂ mass averaging window CO conformity factor [-]
- 10.7. CO₂ mass averaging window NO_x conformity factor [-] ⁽¹²⁾ (where applicable)
- 10.8. CO₂ mass averaging window THC+NO_x conformity factor [-] ⁽¹³⁾ (where applicable)
- 10.9. Work averaging window: minimum and maximum averaging window power [%]
- 10.10. CO₂ mass averaging window: minimum and maximum averaging window duration [s];

(d) data entries I-2 to I-2.20. are replaced by the following:

- I-2. Instantaneous calculated data
- I-2.1. THC mass [g/s]
- I-2.2. CO mass [g/s]
- I-2.3. NO_x mass [g/s] (where applicable)
- I-2.4. CO₂ mass [g/s]
- I-2.5. THC cumulated mass [g]
- I-2.6. CO cumulated mass [g]
- I-2.7. NO_x cumulated mass [g] (where applicable)
- I-2.8. CO₂ cumulated mass [g]
- I-2.9. Calculated fuel rate [g/s]

⁽⁸⁾ Only applicable for engine (sub-)categories which have separate limits for HC and NO_x in accordance with Annex II of Regulation (EU) 2016/1628.

⁽⁹⁾ Only applicable for engine (sub-)categories which have separate limits for HC and NO_x in accordance with Annex II of Regulation (EU) 2016/1628.

⁽¹⁰⁾ Only applicable for engine (sub-)categories which have a combined emission limit for HC + NO_x in accordance with Annex II of Regulation (EU) 2016/1628.

⁽¹¹⁾ Only applicable for engine (sub-)categories which have separate limits for HC and NO_x in accordance with Annex II of Regulation (EU) 2016/1628.

⁽¹²⁾ Only applicable for engine (sub-)categories which have separate limits for HC and NO_x in accordance with Annex II of Regulation (EU) 2016/1628.

⁽¹³⁾ Only applicable for engine (sub-)categories which have a combined emission limit for HC + NO_x in accordance with Annex II of Regulation (EU) 2016/1628.

- I-2.10. Engine power [kW]
- I-2.11. Engine work [kWh]
- I-2.12. Work averaging window duration [s]
- I-2.13. Work averaging window average engine power [%]
- I-2.14. Work averaging window THC conformity factor [-] ⁽¹⁴⁾
- I-2.15. Work averaging window CO conformity factor [-]
- I-2.16. Work averaging window NOx conformity factor [-] ⁽¹⁵⁾ (where applicable)
- I-2.17. Work averaging window THC+NOx conformity factor [-] ⁽¹⁶⁾ (where applicable)
- I-2.18. CO₂ mass averaging window duration [s]
- I-2.19. CO₂ mass averaging window THC conformity factor [-] ⁽¹⁷⁾
- I-2.20. CO₂ mass averaging window CO conformity factor [-]
- I-2.21. CO₂ mass averaging window NOx conformity factor [-] ⁽¹⁸⁾ (where applicable)
- I-2.22. CO₂ mass averaging window THC+NOx conformity factor [-] ⁽¹⁹⁾ (where applicable);

(29) The following Appendices 9 and 10 are added:

‘Appendix 9

Determination of reference work and reference CO₂ mass for engine types for which the applicable type-approval test cycle is solely a Non-Road Steady-State Cycle (NRSC)

1. General

The reference work and reference mass of CO₂ for ISM groups A and C are taken from hot-start NRTC run of the type-approval test of the parent engine, and for ISM group H from the LSI-NRTC type-approval test of the parent engine, as set out in point 2.1.2 of Appendix 5. This Appendix defines how to determine the reference work and reference mass of CO₂ for engine types in all ISM groups except A, C and H.

For the purpose of this Appendix the applicable laboratory test cycle shall be the discrete-mode NRSC or RMC NRSC for the corresponding engine (sub-)category set out in tables IV-1 and IV-2, and tables IV-5 to IV-10 of Annex IV to Regulation (EU) 2016/1628.

2. Determination of W_{ref} and $m_{CO_2,ref}$ from RMC NRSC

- 2.1. The reference work W_{ref} , kWh, is equal to the actual work W_{act} , kWh, as given by Section 2.4.1.1 of Annex VII to Delegated Regulation (EU) 2017/654 on technical and general requirements.

⁽¹⁴⁾ Only applicable for engine (sub-)categories which have separate limits for HC and NOx in accordance with Annex II of Regulation (EU) 2016/1628.

⁽¹⁵⁾ Only applicable for engine (sub-)categories which have separate limits for HC and NOx in accordance with Annex II of Regulation (EU) 2016/1628.

⁽¹⁶⁾ Only applicable for engine (sub-)categories which have a combined emission limit for HC + NOx in accordance with Annex II of Regulation (EU) 2016/1628.

⁽¹⁷⁾ Only applicable for engine (sub-)categories which have separate limits for HC and NOx in accordance with Annex II of Regulation (EU) 2016/1628.

⁽¹⁸⁾ Only applicable for engine (sub-)categories which have separate limits for HC and NOx in accordance with Annex II of Regulation (EU) 2016/1628.

⁽¹⁹⁾ Only applicable for engine (sub-)categories which have a combined emission limit for HC + NOx in accordance with Annex II of Regulation (EU) 2016/1628.

2.2. The reference mass of CO₂, $m_{CO_2,ref}$, g, is equal to the mass of CO₂ for the laboratory test cycle m_{CO_2} , g, calculated in accordance with one of Sections 2.1.2, 2.2.1, 3.5.1 or 3.6.1 of Annex VII to Delegated Regulation (EU) 2017/654 on technical and general requirements according to whether raw or dilute gaseous sampling is used and whether mass-based or molar-based calculation is applied.

3. Determination of W_{ref} and $m_{CO_2,ref}$ from discrete-mode NRSC

3.1. The reference work W_{ref} , kWh shall be calculated using equation 9-1.

$$W_{ref} = \sum_{i=1}^{N_{mode}} (P_i \cdot WF_i) \cdot \frac{t_{ref}}{3600} \quad (9-1)$$

Where:

- P_i is the engine power for mode i , kW, with $P_i = P_{m,i} + P_{AUX}$ (see Sections 6.3 and 7.7.1.3 of Annex VI to Delegated Regulation (EU) 2017/654 on technical and general requirements);
- WF_i is the weighting factor for the mode i [-];
- t_{ref} is the reference time, s, (see table);
- W_{ref} is the reference cycle work emitted by the parent engine on the reference laboratory test cycle, kWh;
- i is the mode number;
- N_{mode} is the total number of modes in the test cycle.

3.2. The reference mass of CO₂ $m_{CO_2,ref}$, kg, shall be determined from the mean CO₂ mass flow rate $q_{mCO_2,i}$ g/h, for each mode i calculated in accordance with Sections 2 or 3 of Annex VII to Delegated Regulation (EU) 2017/654 on technical and general requirements using equation 9-2.

$$m_{CO_2,ref} = \sum_{i=1}^{N_{mode}} (q_{mCO_2,i} \cdot WF_i) \cdot \frac{t_{ref}}{3600} \quad (9-2)$$

Where:

- $q_{mCO_2,i}$ is the mean CO₂ mass flow rate for mode i , g/h;
- WF_i is the weighting factor for the mode i [-];
- t_{ref} is the reference time, s, (see table);
- $m_{CO_2,ref}$ is the reference mass of CO₂ emitted by the parent engine on the reference laboratory test cycle, g;
- i is the mode number;
- N_{mode} is the total number of modes in the test cycle

3.3. Reference time t_{ref} is the total duration of the equivalent Ramped Modal Cycle (RMC) set out in Appendix 2 to Annex XVII to Delegated Regulation (EU) 2017/654 on technical and general requirements. Those values are set out in table.

Table

Reference time t_{ref} for each discrete-mode NRSC

NRSC	t_{ref} [s]
C1	1 800
C2	1 800
D2	1 200
E2	1 200

E3	1 200
F	1 200
G1	1 800
G2	1 800
H	1 200

Appendix 10

Determination of the instantaneous proxy power from CO₂ mass flow

1. General

'Proxy power' means a value obtained by simple linear interpolation for the sole purpose of the determination of valid events during in-service monitoring as described in Appendix 4. This methodology is for engines designed without a communication interface capable to provide torque and speed data in accordance with Table 1 of Appendix 7. The calculation is based upon the assumption that, for all engine types within an engine family:

- the ratio of work and CO₂ mass on the reference laboratory test cycle are similar;
- there is a linear relationship between power and CO₂ mass flow rate; and,
- an operating engine that produces no net power emits no CO₂.

2. Calculation of the instantaneous proxy power

2.1. For the sole purpose of the calculations in Appendix 4, an instantaneous power for the engine under ISM test shall be computed from the measured CO₂ mass flow at a time increment equal to the data sampling period. For this calculation a simplified engine-family-specific CO₂ ('Veline') constant shall be used.

2.2. The Veline constant shall be calculated from the applicable reference values set out in point 2.1.2 of Appendix 5.

The Veline constant, K_{veline} , is computed from the reference mass of CO₂ emitted by the parent engine at type-approval divided by the work performed by the parent engine at type-approval using equation 10-1.

$$K_{veline} = \frac{m_{CO_2,ref}}{W_{ref}} \quad (10-1)$$

Where:

- K_{veline} is the 'Veline' constant, g/kWh;
- $m_{CO_2,ref}$ is the reference mass of CO₂ emitted by the parent engine in the reference laboratory test cycle, g;
- W_{ref} is the reference work performed by the parent engine in the reference laboratory test cycle, kWh.

2.3. The instantaneous proxy power of the engine under ISM test is calculated from the instantaneous CO₂ mass flow using equation 10-2

$$P_{i,proxy} = 3600 \cdot \frac{\dot{m}_{CO_2,i}}{K_{veline}} \quad (10-2)$$

Where:

$P_{i,proxy}$ is the instantaneous proxy power, kW;

$\dot{m}_{CO_2,i}$ is the instantaneous mass flow of CO₂ emitted by the engine under test, g/s.'

COMMISSION REGULATION (EU) 2022/2388
of 7 December 2022
amending Regulation (EC) No 1881/2006 as regards maximum levels of perfluoroalkyl substances in certain foodstuffs

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

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

Having regard to Council Regulation (EEC) No 315/93 of 8 February 1993 laying down Community procedures for contaminants in food ⁽¹⁾, and in particular Article 2(3) thereof,

Whereas:

- (1) Commission Regulation (EC) No 1881/2006 ⁽²⁾ sets maximum levels for certain contaminants in foodstuffs.
- (2) Perfluorooctane sulfonic acid (PFOS), perfluorooctanoic acid (PFOA), perfluorononanoic acid (PFNA) and perfluorohexane sulfonic acid (PFHxS) are perfluoroalkyl substances (PFASs), which are, or were used in numerous commercial and industrial applications. Their widespread use, together with their persistency in the environment has resulted in a widespread environmental contamination. Contamination of food with these substances is mainly the result of bioaccumulation in aquatic and terrestrial food chains and the diet is the major source of PFASs exposure. However also the use of food contact materials containing PFASs is likely to contribute to human exposure to them.
- (3) On 9 July 2020, the European Food Safety Authority ('the Authority') adopted an opinion on the risk to human health related to the presence of perfluoroalkyl substances in food ⁽³⁾. The Authority concluded that PFOS, PFOA, PFNA and PFHxS can cause developmental effects and may have adverse effects on serum cholesterol, the liver and the immune system and birth weight. It considered the effects on the immune system as the most critical effect and it established a group tolerable weekly intake (TWI) of 4,4 ng/kg body weight per week for the sum of PFOS, PFOA, PFNA and PFHxS, which is also protective against the other effects of those substances. It concluded that the exposure of parts of the European population to those substances exceeds the TWI, which is of concern.
- (4) Maximum levels in food for those substances should therefore be set to ensure a high level of human health protection.
- (5) A reasonable period should be provided to allow for the food business operators to adapt to the maximum levels set out in this Regulation.
- (6) Taking into account that certain foodstuffs covered by this Regulation have a long shelf life, foodstuffs that were lawfully placed on the market before the date of application of this Regulation, should be allowed to remain on the market.
- (7) Regulation (EC) No 1881/2006 should therefore be amended accordingly.
- (8) The measures provided for in this Regulation are in accordance with the opinion of the Standing Committee on Plants, Animals, Food and Feed,

⁽¹⁾ OJ L 37, 13.2.1993, p. 1.

⁽²⁾ Commission Regulation (EC) No 1881/2006 of 19 December 2006 setting maximum levels for certain contaminants in foodstuffs (OJ L 364, 20.12.2006, p. 5).

⁽³⁾ EFSA Panel on Contaminants in the Food Chain (CONTAM); Scientific opinion on the risk to human health related to the presence of perfluoroalkyl substances in food. *EFSA Journal* 2020; 18(9):6223, <https://efsa.onlinelibrary.wiley.com/doi/full/10.2903/j.efsa.2020.6223>

HAS ADOPTED THIS REGULATION:

Article 1

The Annex to Regulation (EC) No 1881/2006 is amended in accordance with the Annex to this Regulation.

Article 2

Foodstuffs listed in the Annex, lawfully placed on the market before 1 January 2023, may remain on the market until their date of minimum durability or use-by date.

Article 3

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 1 January 2023.

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

Done at Brussels, 7 December 2022.

For the Commission
The President
Ursula VON DER LEYEN

ANNEX

In the Annex to Regulation (EC) No 1881/2006, the following section is added:

'Section 10: Perfluoroalkyl substances

Foodstuffs ⁽¹⁾		Maximum Levels µg/kg wet weight				
		PFOS *	PFOA *	PFNA *	PFHxS *	Sum of PFOS, PFOA, PFNA and PFHxS *. **
10.1	Eggs	1,0	0,30	0,70	0,30	1,7
10.2	Fishery products ²⁶ and bivalve molluscs ²⁶					
10.2.1	Fish meat ^{24, 25}					
10.2.1.1	Muscle meat of fish, except those listed under 10.2.1.2 and 10.2.1.3. Muscle meat of fish listed in 10.2.1.2 and 10.2.1.3, in case they are intended for the production of food for infants and young children.	2,0	0,20	0,50	0,20	2,0
10.2.1.2	Muscle meat of the following fish, in case they are not intended for the production of food for infants and young children: Baltic herring (<i>Clupea harengus membras</i>) Bonito (<i>Sarda</i> and <i>Orcynopsis</i> species) Burbot (<i>Lota lota</i>) European sprat (<i>Sprattus sprattus</i>) Flounder (<i>Platichthys flesus</i> and <i>Glyptocephalus cynoglossus</i>) Grey mullet (<i>Mugil cephalus</i>) Horse mackerel (<i>Trachurus trachurus</i>) Pike (<i>Esox</i> species) Plaice (<i>Pleuronectes</i> and <i>Lepidopsetta</i> species) Sardine and pilchard (<i>Sardina</i> species) Seabass (<i>Dicentrarchus</i> species) Sea catfish (<i>Silurus</i> and <i>Pangasius</i> species) Sea lamprey (<i>Petromyzon marinus</i>) Tench (<i>Tinca tinca</i>) Vendace (<i>Coregonus albula</i> and <i>Coregonus vandesius</i>) Silverly lightfish (<i>Phosichthys argenteus</i>) Wild salmon and wild trout (wild <i>Salmo</i> and <i>Oncorhynchus</i> species) Wolf fish (<i>Anarhichas</i> species)	7,0	1,0	2,5	0,20	8,0

10.2.1.3	Muscle meat of the following fish, in case they are not intended for the production of food for infants and young children: Anchovy (<i>Engraulis</i> species) Babel (<i>Barbus barbus</i>) Bream (<i>Abramis</i> species) Char (<i>Salvelinus</i> species) Eel (<i>Anguilla</i> species) Pike-perch (<i>Sander</i> species) Perch (<i>Perca fluviatilis</i>) Roach (<i>Rutilus rutilus</i>) Smelt (<i>Osmerus</i> species) Whitefish (<i>Coregonus</i> species)	35	8,0	8,0	1,5	45
10.2.2	Crustaceans ^{26,47} and bivalve molluscs ²⁶ . For crustaceans the maximum level shall apply to muscle meat from appendages and abdomen ⁴⁴ . In case of crabs and crab-like crustaceans (<i>Brachyura</i> and <i>Anomura</i>) muscle meat from appendages.	3,0	0,70	1,0	1,5	5,0
10.3	Meat and edible offal ⁶					
10.3.1	Meat of bovine animals, pig and poultry	0,30	0,80	0,20	0,20	1,3
10.3.2	Meat of sheep	1,0	0,20	0,20	0,20	1,6
10.3.3	Offal of bovine animals, sheep, pig and poultry	6,0	0,70	0,40	0,50	8,0
10.3.4	Meat of game animals, with the exception of bear meat	5,0	3,5	1,5	0,60	9,0
10.3.5	Offal of game animals, with the exception of bear offal	50	25	45	3,0	50

* The maximum level applies to the sum of linear and branched stereoisomers, whether they are chromatographically separated or not.

** For the sum of PFOS, PFOA, PFNA and PFHxS, lower bound concentrations are calculated on the assumption that all the values below the limit of quantification are zero.'

COMMISSION IMPLEMENTING REGULATION (EU) 2022/2389**of 7 December 2022****establishing rules for the uniform application of frequency rates for identity checks and physical checks on consignments of plants, plant products and other objects entering the Union****(Text with EEA relevance)**

THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EU) 2017/625 of the European Parliament and of the Council of 15 March 2017 on official controls and other official activities performed to ensure the application of food and feed law, rules on animal health and welfare, plant health and plant protection products, amending Regulations (EC) No 999/2001, (EC) No 396/2005, (EC) No 1069/2009, (EC) No 1107/2009, (EU) No 1151/2012, (EU) No 652/2014, (EU) 2016/429 and (EU) 2016/2031 of the European Parliament and of the Council, Council Regulations (EC) No 1/2005 and (EC) No 1099/2009 and Council Directives 98/58/EC, 1999/74/EC, 2007/43/EC, 2008/119/EC and 2008/120/EC, and repealing Regulations (EC) No 854/2004 and (EC) No 882/2004 of the European Parliament and of the Council, Council Directives 89/608/EEC, 89/662/EEC, 90/425/EEC, 91/496/EEC, 96/23/EC, 96/93/EC and 97/78/EC and Council Decision 92/438/EEC (Official Controls Regulation) ⁽¹⁾, and in particular points (a) and (c) of the first subparagraph of Article 54(3) thereof,

Whereas:

- (1) Regulation (EU) 2017/625 establishes rules on the performance of official controls by the competent authorities of the Member States on goods entering the Union in order to verify compliance with Union agri-food chain legislation.
- (2) The rules of Council Directive 2000/29/EC ⁽²⁾ on frequency rates for identity and physical checks of plants, plant products and other objects entering the Union are to cease to apply on 14 December 2022. Therefore, it is appropriate to establish new rules, taking into account the framework established by Regulation (EU) 2016/2031 of the European Parliament and of the Council ⁽³⁾ and Regulation (EU) 2017/625, to ensure continuity of the relevant provisions as of 14 December 2022.
- (3) The frequency rates for identity checks and physical checks should be established depending on the risk posed by each good or category of goods to plant health.
- (4) To ensure that the frequency rates of physical checks required pursuant to this Regulation are complied with in a uniform manner, a provision should be made in this Regulation to make use of the information management system for official controls (IMSOC) referred to in Article 131 of Regulation (EU) 2017/625 for the selection of consignments for physical checks.
- (5) The frequency rates established by this Regulation should be applicable for the goods referred to in Article 47(1), point (c), of Regulation (EU) 2017/625 entering the Union with the exception of goods in transit.
- (6) In order to ensure the highest possible level of phytosanitary protection, the basic frequency rate for identity checks and for physical checks on consignments of goods referred to in Article 47(1), point (c), of Regulation (EU) 2017/625 should be 100 %.

⁽¹⁾ OJ L 95, 7.4.2017, p. 1.

⁽²⁾ Council Directive 2000/29/EC of 8 May 2000 on protective measures against the introduction into the Community of organisms harmful to plants or plant products and against their spread within the Community (OJ L 169, 10.7.2000, p. 1).

⁽³⁾ Regulation (EU) 2016/2031 of the European Parliament and of the Council of 26 October 2016 on protective measures against pests of plants, amending Regulations (EU) No 228/2013, (EU) No 652/2014 and (EU) No 1143/2014 of the European Parliament and of the Council and repealing Council Directives 69/464/EEC, 74/647/EEC, 93/85/EEC, 98/57/EC, 2000/29/EC, 2006/91/EC and 2007/33/EC (OJ L 317, 23.11.2016, p. 4).

- (7) However, for reasons of a proportionate response to the respective phytosanitary risk, it should be possible to establish the frequency rate of the identity checks and physical checks of the consignments of certain plants, plant products and other objects at a level lower than 100 %.
- (8) The frequency rate of 100 % should nevertheless apply to the identity and physical checks of all plants intended for planting, and to any plant, plant product or other object, which is subject to a measure provided for in acts adopted in accordance with Article 28(1), Article 30(1) and Article 49(1) of Regulation (EU) 2016/2031, due to the increased phytosanitary risk of those commodities.
- (9) Since the conditions and criteria for establishing the type and frequency rates for identity and physical checks for plants, plant products and other goods, applicable under Commission Regulation (EC) No 1756/2004 ^(*), have proven to be effective, they should be set out accordingly in this Regulation. Those conditions and criteria include, in particular, selection of consignments for physical checks, the frequency rates for identity checks and physical checks and the criteria for the establishment and modification of the frequency rates for identity checks and physical checks of plants, plant products and other objects, or categories thereof.
- (10) Based on information collected by the Commission according to Article 125(1) of Regulation (EU) 2017/625, on the outcome of controls performed by Commission experts in third countries according to Article 120(1) of that Regulation and on information collected through the IMSOC, it should be possible to modify the frequency rates for physical checks on the basis of the criteria for the establishment and modification of the frequency rates for identity checks and physical checks of plants, plant products and other objects, or categories thereof established in this Regulation.
- (11) Member States should have the possibility to submit to the Commission an application to modify the frequency rate of identity checks and physical checks on consignments of a plant, plant product or other object, or a category thereof, to ensure the update of those frequency rates based on the newest developments in the field, and in order for the Commission to determine whether such modification would be appropriate.
- (12) Frequency rates should be reviewed annually having regard to the elements set out in points (i), (ii), (iv), (v) and (vi) of Article 54(3), point (a) of Regulation (EU) 2017/625, to ensure compliance with the provisions of that Regulation.
- (13) In the interest of the efficiency of official controls, the frequency rates determined in accordance with this Regulation should be communicated through the IMSOC.
- (14) The official controls, identity checks and physical checks should be carried out in such a way that it is not possible for the operator responsible for the consignment to predict whether any particular consignment will be subject to physical checks.
- (15) Since this Regulation lays down provisions in the areas covered by Regulation (EC) No 1756/2004, that Regulation should be repealed with effect from the date specified in this Regulation.
- (16) As the rules of Directive 2000/29/EC cease to apply on 14 December 2022, the rules laid down in this Regulation should apply from 14 December 2022. For this reason, this Regulation should enter into force on the first day following that of its publication in the *Official Journal of the European Union*, in order to ensure that date of application.
- (17) The measures provided for in this Regulation are in accordance with the opinion of the Standing Committee on Plants, Animals, Food and Feed,

^(*) Commission Regulation (EC) No 1756/2004 of 11 October 2004 specifying the detailed conditions for the evidence required and the criteria for the type and level of the reduction of the plant health checks of certain plants, plant products or other objects listed in Part B of Annex V to Council Directive 2000/29/EC (OJ L 313, 12.10.2004, p. 6).

HAS ADOPTED THIS REGULATION:

Article 1

Subject matter and scope

This Regulation lays down rules for the uniform application of the appropriate frequency rate, and the modifications of that rate, of identity checks and physical checks on consignments of goods referred to in Article 47(1), point (c), of Regulation (EU) 2017/625 entering the Union.

Article 2

Definition

For the purpose of this Regulation:

- (1) 'frequency rate' means the minimum percentage of consignments of goods referred to in Article 1, determined in accordance with this Regulation, of the number of consignments arrived at the border control post or control point during the calendar year, for which identity checks and physical checks shall be carried out by the competent authorities;
- (2) 'IMSOC' means the information management system for official controls referred to in Article 131 of Regulation (EU) 2017/625.

Article 3

Selection of consignments for physical checks

1. The competent authorities shall select consignments for physical checks in accordance with the following procedure:
 - (a) a random selection of a consignment shall be automatically generated by IMSOC;
 - (b) the competent authorities may decide to select the consignment in accordance with point (a) or to select a different consignment of the same category of goods and the same origin of goods.
2. For each consignment selected for physical checks in accordance with paragraph 1, the competent authorities shall perform identity checks as referred to in Article 3(1) of Commission Implementing Regulation (EU) 2019/2130 ⁽⁵⁾.

Article 4

Frequency rates for identity checks and physical checks

1. The competent authorities shall perform identity checks and physical checks on consignments of plants, plant products and other objects, at frequency rates determined in accordance with paragraphs 2 to 6.
2. The basic frequency rate for identity checks and for physical checks on consignments of goods referred to in Article 1 shall be 100 %.
3. By way of derogation from paragraph 2, the identity checks and physical checks of the consignments of certain plants, plant products and other objects, as listed in Annex I with their respective origin from all or certain third countries, shall be subject to the respective frequency rates specified in that Annex.

⁽⁵⁾ Commission Implementing Regulation (EU) 2019/2130 of 25 November 2019 establishing detailed rules on the operations to be carried out during and after documentary checks, identity checks and physical checks on animals and goods subject to official controls at border control posts (OJ L 321, 12.12.2019, p. 128).

4. The frequency rates according to paragraph 3 shall not apply to:
 - (a) plants intended for planting;
 - (b) any plant, plant product or other object which is subject to a measure provided for in acts adopted in accordance with Articles 28(1), 30(1) and 49(1) of Regulation (EU) 2016/2031.
5. The frequency rates according to paragraph 3 shall be determined in accordance with the criteria listed in Annex II.
6. Where imports of a plant, plant product or other object, or a category thereof, no longer comply with the criteria set out in Annex II, that plant, plant product or other object shall be removed from Annex I, as determined by the review stipulated in Article 6(2).

Article 5

Applications for the modification of frequency rates for identity checks and physical checks performed on certain plants, plant products and other objects

Member States may submit to the Commission an application to modify the frequency rate of identity checks and physical checks on consignments of a plant, plant product or other object, or a category thereof, entering the Union, in order for the Commission to determine whether such modification is appropriate. The application shall contain the information set out in Annex III.

Article 6

Modification of frequency rates for identity checks and physical checks performed on certain plants, plant products and other objects

1. Frequency rates set out in Annex I shall be modified with regard to the criteria set out in points (i), (ii), (iv), (v) and (vi) of Article 54(3), point (a), of Regulation (EU) 2017/625, the criteria set out in Annex II, and, where appropriate, with regard to the information set out in Annex III.
2. The frequency rates for identity checks and physical checks for plants, plant products and other objects, or categories thereof, shall be reviewed at least annually, in order to take into account new information collected through IMSOC or provided by Member States, and modified accordingly.
3. The Commission shall introduce, where applicable, into the IMSOC every modification made to the list of plants, plant products and other objects, or categories thereof, and to the frequency rates, as set out in Annex I.

Article 7

Repeals

Regulation (EC) No 1756/2004 is repealed with effect from 14 December 2022.

Article 8

Entry into force and date of application

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

It shall apply from 14 December 2022.

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

Done at Brussels, 7 December 2022.

For the Commission
The President
Ursula VON DER LEYEN

ANNEX I

Frequency rates of identity checks and physical checks of the consignments of certain plants, plant products and other objects, or categories thereof, as referred to in Article 4(3)

Plant, plant products or other object, or a category thereof	Country of origin	Minimum frequency rate of identity & physical checks [%]
CUT FLOWERS		
<i>Aster</i>	Zimbabwe	75
<i>Dianthus</i>	Colombia	3
<i>Dianthus</i>	Ecuador	15
<i>Dianthus</i>	Kenya	5
<i>Dianthus</i>	Türkiye	50
<i>Gypsophila</i>	Ecuador	5
<i>Gypsophila</i>	Kenya	10
<i>Phoenix</i>	Costa Rica	50
<i>Rosa</i>	Colombia	5
<i>Rosa</i>	Ecuador	1
<i>Rosa</i>	Ethiopia	5
<i>Rosa</i>	Kenya	10
<i>Rosa</i>	Tanzania	100
<i>Rosa</i>	Zambia	50
FRUITS		
<i>Actinidia</i>	All third countries	10
<i>Carica papaya</i>	All third countries	10
<i>Fragaria</i>	All third countries	5
<i>Persea americana</i>	All third countries	3
<i>Rubus</i>	All third countries	5
<i>Vitis</i>	All third countries	1
<i>Malus</i>	European third countries ⁽¹⁾	15
<i>Prunus</i>	European third countries ⁽¹⁾ ⁽²⁾	15
<i>Pyrus</i>	European third countries ⁽¹⁾	100
<i>Vaccinium</i>	European third countries ⁽¹⁾	50
<i>Citrus</i>	Egypt	50
<i>Citrus</i>	Israel	35
<i>Citrus</i>	Mexico	25
<i>Citrus</i>	Morocco	3
<i>Citrus</i>	Peru	10
<i>Citrus</i>	Türkiye	7
<i>Citrus</i>	USA	50

<i>Malus</i>	Argentina	35
<i>Malus</i>	Brazil	100
<i>Malus</i>	Chile	5
<i>Malus</i>	New Zealand	10
<i>Malus</i>	South Africa	15
<i>Mangifera</i>	Brazil	75
<i>Passiflora</i>	Colombia	5
<i>Passiflora</i>	Kenya	75
<i>Passiflora</i>	La Réunion	10
<i>Passiflora</i>	South Africa	75
<i>Passiflora</i>	Vietnam	15
<i>Passiflora</i>	Zimbabwe	100
<i>Prunus</i>	Argentina	100
<i>Prunus</i>	Chile	10
<i>Prunus</i>	Morocco	100
<i>Prunus persica</i>	South Africa	50
<i>Prunus</i> – other		10
<i>Prunus</i>	Türkiye	35
<i>Prunus</i>	USA	100
<i>Psidium</i>	Brazil	100
<i>Pyrus</i>	Argentina	25
<i>Pyrus</i>	Chile	15
<i>Pyrus</i>	China	100
<i>Pyrus</i>	South Africa	10
<i>Vaccinium</i>	Argentina	25
<i>Vaccinium</i>	Chile	10
<i>Vaccinium</i>	Peru	10

VEGETABLES

<i>Capsicum</i>	Israel	100
<i>Capsicum</i>	Morocco	100
<i>Solanum lycopersicum</i>	Canary Islands	25
<i>Solanum lycopersicum</i>	Morocco	1
<i>Solanum melongena</i>	Kenya	100
<i>Solanum melongena</i>	Türkiye	100
Root and tubercle vegetables, other than tubers of <i>Solanum tuberosum</i> L. ⁽³⁾	All third countries ⁽⁴⁾	5

WOOD

Conifer wood (excl. <i>Larix</i>)	Russia (only the following parts: Central Federal District (Tsentralny federalny okrug), Northwestern Federal District (Severo-Zapadny federalny okrug), Southern Federal District (Yuzhny federalny okrug), North Caucasian Federal District (Severo-Kavkazsky federalny okrug) and Volga Federal District (Privolzhsky federalny okrug))	1
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USED MACHINERY

Machinery and vehicles which have been operated for agricultural or forestry purposes	All third countries	10
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(¹) Albania, Andorra, Armenia, Azerbaijan, Belarus, Bosnia and Herzegovina, Canary Islands, Faeroe Islands, Georgia, Iceland, Liechtenstein, Moldova, Monaco, Montenegro, North Macedonia, Norway, Russia (only the following parts: Central Federal District (Tsentralny federalny okrug), Northwestern Federal District (Severo-Zapadny federalny okrug), Southern Federal District (Yuzhny federalny okrug), North Caucasian Federal District (Severo-Kavkazsky federalny okrug) and Volga Federal District (Privolzhsky federalny okrug)), San Marino, Serbia, Türkiye, Ukraine and United Kingdom.

(²) Other than Türkiye.

(³) Commission Implementing Regulation (EU) 2019/2072 of 28 November 2019 establishing uniform conditions for the implementation of Regulation (EU) 2016/2031 of the European Parliament and the Council, as regards protective measures against pests of plants, and repealing Commission Regulation (EC) No 690/2008 and amending Commission Implementing Regulation (EU) 2018/2019 (OJ L 319, 10.12.2019, p. 103).

(⁴) Other than Cameroon.

ANNEX II

Criteria for the establishment and modification of the frequency rates of plants, plant products and other objects, or categories thereof, as referred to in Article 4(5) and (6)

1. A new frequency rate may be established where:
 - (a) the average number of consignments entering the Union over the preceding three years is at least 200 per year;
 - (b) the minimum number of consignments of plants, plant products and other objects, or categories thereof, entering the Union, for which documentary checks, identity checks and physical checks have been carried out during the previous three years, is at least 600;
 - (c) the number of consignments of the plants, plant products and other objects, or categories thereof, which were found infested by Union quarantine pests is each year less than 1 % of the total number of consignments of said plants, plant products and other objects, or categories thereof, imported into the Union;
 2. Frequency rates may be modified taking into account:
 - (a) the estimated mobility index of the Union quarantine pests at the most mobile stage to which they could develop on the relevant plants, plant product or other objects, or categories thereof;
 - (b) the number of consignments of plants, plant products and other objects, or categories thereof, on which identity checks and physical checks have been carried out during the previous year;
 - (c) the total number, and the details of, non-compliances due to the presence of Union quarantine pests related to consignments imported pursuant to this Regulation;
 - (d) the total number of consignments of the goods concerned notified for other reasons than the presence of the Union quarantine pests and the details thereof; and
 - (e) any other factor relevant for the determination of the phytosanitary risk associated with the trade concerned.
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ANNEX III

Information required for submission of applications to the Commission as referred to in Article 5

The information referred to in Article 5 shall contain:

- (a) a description of the goods concerned;
- (b) the origin of the goods concerned;
- (c) the volume of import into the Member State of the goods concerned, expressed in number of consignments and weight or pieces or units;
- (d) the list of the Union quarantine pests liable to be carried on the product concerned;
- (e) the number of consignments of the goods concerned found non-compliant due to the presence of the Union quarantine pests referred to in point (d);
- (f) the estimated mobility index of the Union quarantine pests referred to in point (d) at the most mobile stage to which the organism could develop on the relevant plant, plant product or other object;
- (g) the number of consignments of the goods concerned intercepted for reasons other than the presence of the Union quarantine pests referred to in point (d);
- (h) the number of consignments of the goods concerned on which identity and physical plant health checks have been carried out.

As regards the information mentioned under points (c), (e), (g) and (h), the dossier shall provide data covering the period of at least three years preceding the year in which it is submitted.

COMMISSION IMPLEMENTING REGULATION (EU) 2022/2390**of 7 December 2022****amending the definitive countervailing duty imposed on imports of certain rainbow trout originating in Türkiye by Implementing Regulation (EU) 2021/823 following a partial interim review pursuant to Article 19 of Regulation (EU) 2016/1037 of the European Parliament and of the Council**

THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EU) 2016/1037 of the European Parliament and of the Council of 8 June 2016 on protection against subsidised imports from countries not members of the European Union ⁽¹⁾ ('the basic Regulation'), and in particular Article 19 thereof,

Whereas:

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

- (1) By Commission Implementing Regulation (EU) 2015/309 ⁽²⁾, the Commission imposed definitive countervailing duties on imports of certain rainbow trout originating in Türkiye ('the original investigation').
- (2) On 4 June 2018, following a partial interim review ('the first interim review') concerning subsidisation of all exporting producers in accordance with Article 19 of the basic Regulation, by Commission Implementing Regulation (EU) 2018/823 ⁽³⁾ ('the first interim review Regulation'), the Commission decided to maintain the measures as established in the original investigation.
- (3) On 15 May 2020, following a partial interim review ('the second interim review') in accordance with Article 19 of the basic Regulation, by Commission Implementing Regulation (EU) 2020/658 ⁽⁴⁾ ('the second interim review Regulation'), the Commission amended the level of the countervailing duty for one exporting producer.
- (4) On 25 May 2021, following an expiry review in accordance with Article 18 of the basic Regulation ('the expiry review'), the Commission extended the measures as established in the original investigation (and as amended by Commission Implementing Regulation (EU) 2020/658) for a further five years by Commission Implementing Regulation (EU) 2021/823 ⁽⁵⁾ ('the expiry review Regulation').
- (5) The definitive countervailing duties currently in force range from 1,5 % to 9,5 %.

⁽¹⁾ OJ L 176, 30.6.2016, p. 55.

⁽²⁾ Commission Implementing Regulation (EU) 2015/309 of 26 February 2015 imposing a definitive countervailing duty and collecting definitively the provisional duty imposed on imports of certain rainbow trout originating in Turkey (OJ L 56, 27.2.2015, p. 12).

⁽³⁾ Commission Implementing Regulation (EU) 2018/823 of 4 June 2018 terminating the partial interim review of the countervailing measures applicable to imports of certain rainbow trout originating in the Republic of Turkey (OJ L 139, 5.6.2018, p. 14).

⁽⁴⁾ Commission Implementing Regulation (EU) 2020/658 of 15 May 2020 amending Implementing Regulation (EU) 2015/309 imposing a definitive countervailing duty and collecting definitively the provisional duty on imports of certain rainbow trout originating in Turkey following an interim review pursuant to Article 19(4) of Regulation (EU) 2016/1037 of the European Parliament and of the Council (OJ L 155, 18.5.2020, p. 3).

⁽⁵⁾ Commission Implementing Regulation (EU) 2021/823 of 20 May 2021 imposing a definitive countervailing duty on imports of certain rainbow trout originating in Turkey following an expiry review pursuant to Article 18 of Regulation (EU) 2016/1037 of the European Parliament and of the Council (OJ L 183, 25.5.2021, p. 5).

1.2. Initiation of a review

- (6) The Commission decided on its own initiative to initiate a partial interim review, having sufficient evidence that the circumstances with regard to subsidisation on the basis of which the existing measures were imposed had changed, and that these changes were of a lasting nature.
- (7) More specifically, significant changes on the structure and the terms of implementation of the subsidies granted by the GOT to producers of rainbow trout have taken place since 2016. These changes appeared to have led to a decrease of the direct subsidies received by Turkish rainbow trout producers.
- (8) The Commission considered that there was sufficient evidence that the circumstances with regard to subsidisation had changed significantly, that the changes are of a lasting nature and therefore that the measures should be reviewed for all exporting producers.
- (9) Having determined, after informing the Member States, that sufficient evidence existed for the initiation of a partial interim review, the Commission announced the initiation of a review under Article 19 of the basic Regulation by a Notice published in the *Official Journal of the European Union* on 20 September 2021 ⁽⁶⁾ ('the Notice of Initiation').

1.3. Review investigation period

- (10) The investigation of subsidisation covered the period from 1 January 2020 to 31 December 2020 ('review investigation period' or 'RIP').

1.4. Interested parties

- (11) In the Notice of Initiation, interested parties were invited to contact the Commission in order to participate in the investigation. In addition, the Commission specifically informed the Union industry, the known exporting producers and the Government of Türkiye ('GOT') about the initiation of the investigation and invited them to participate.
- (12) All parties were invited to make their views known, submit information and provide supporting evidence within the time limits set out in the Notice of Initiation. Interested parties had also the opportunity to comment on the initiation of the investigation and to request a hearing with the Commission and/or the Hearing Officer in trade proceedings.

1.5. Sampling of exporters

- (13) In the Notice of Initiation, the Commission stated that it might sample exporting producers in accordance with Article 27 of the basic Regulation.
- (14) To decide whether sampling is necessary and, if so, to select a sample, the Commission asked all exporting producers in Türkiye to provide the information specified in the Notice of Initiation.
- (15) In addition, the Commission asked the Mission of the Republic of Türkiye to the European Union to identify and/or contact other exporting producers, if any, that could be interested in participating in the investigation.
- (16) Thirteen exporting producers and groups of exporting producers in Türkiye provided the requested information and agreed to be included in the sample. The total declared export volume to the Union by these companies of certain rainbow trout during the review investigation period accounted for 100 % of exports from Türkiye to the Union.
- (17) In accordance with Article 27(1) of the basic Regulation, the Commission selected a sample of three exporting producers or groups of exporting producers on the basis of the largest representative volume of exports to the Union which could reasonably be investigated within the time available. The sample accounted for more than 60 % of the declared export sales to the Union during the review investigation period.

⁽⁶⁾ OJ C 380, 20.9.2021, p. 15.

- (18) In accordance with Article 27(2) of the basic Regulation, all known exporting producers concerned, and the Turkish authorities were consulted on the selection of the sample.

1.6. Comments on the sample selection

- (19) The Commission received comments from the cooperating exporters Selina Balık İşleme Tesisi İthalat İhracat ve Ticaret A.Ş. ('Selina Balık') and Kılıç Deniz Ürünleri Üretimi İhracat İthalat ve Ticaret A.Ş. ('Kilic Deniz') requesting to be included in the sample.
- (20) The Commission dealt with these requests in a Note that was placed on the open file on 22 October 2021. As the Note explained, both requests were denied because the sample had been selected on the basis of the largest representative quantity of exports that could reasonably be investigated in the time available.
- (21) Selina Balık and Kilic Deniz were not among the largest exporting producers and thus adding these companies to the sample would also not have increased significantly the representativity of the sample, but could have prevented the timely completion of the investigation.
- (22) On 11 November 2021, the Danish Aquaculture Organisation ('the DAO') representing Union producers of rainbow trout sent a submission requesting that the Commission include in the sample smaller trout farmers from Türkiye, as the subsidy schemes had changed to benefit smaller farmers more than larger ones. The DAO noted in this respect that the changes to the direct subsidy schemes, in particular the imposition of production caps, have effectively increased the subsidisation of smaller farmers.
- (23) The DAO requested the Commission thus to change the sample selection methodology, away from the largest quantity of exports that could reasonably be investigated, and to instead select a statistically valid sample that in their view would accurately represent the diversity of Turkish trout producers. The DAO, however, did not propose any specific cooperating exporter that should be included in the sample.
- (24) The Commission rejected this request since the sampling information requested from the exporters did not contain information that would allow the Commission to select the a sample in that manner.
- (25) The changes in the direct subsidy schemes, as set out in section 4 below, were reflected in the calculation of the benefit.

1.7. Requests for an individual amount of countervailable subsidisation for companies not included in the sample ('individual examination')

- (26) The Commission received two requests for an individual amount of countervailable subsidisation following the initiation of the investigation under Article 27(3) of the basic Regulation. These requests were made in the form of a completed questionnaire reply.
- (27) The first request came from the company Selina Balık.
- (28) The Commission accepted their request for individual examination because it was already reviewing the company's situation in a parallel interim review concerning the same product. This interim review was initiated on 5 February 2021 ⁽⁷⁾. However, Selina Balık withdrew their request for review and the Commission then terminated it on 10 March 2022 ⁽⁸⁾.
- (29) Selina Balık had submitted a full questionnaire reply with the same review investigation period as the RIP (calendar year 2020) of this interim review. The company agreed that the information provided was to be used in the current review. The Commission had already largely checked the information submitted and only the remote cross-check had not been performed.
- (30) Therefore, full information was already available at the initiation of this investigation and it could not be considered too burdensome to investigate Selina Balık's situation for the purpose of the current review.

⁽⁷⁾ OJ C 40, 5.2.2021, p. 12.

⁽⁸⁾ OJ L 83, 10.3.2022, p. 60.

- (31) The second request came from the company Kilic Deniz.
- (32) The situation of Kilic Deniz was different from the one of Selina Balik. No questionnaire reply was available in advance and therefore collecting the necessary information and the analysis of the data provided would have been carried out completely during this investigation and in addition to the collection and analysis of data from the sampled exporting producers.
- (33) Therefore, the Commission considered that accepting this request would be unduly burdensome and would indeed prevent completion of the investigation in good time. This request for individual examination was therefore not accepted.
- (34) Following disclosure, Kilic Deniz submitted comments that their request for individual examination should have been accepted arguing that it was based on the same grounds as that of the company Selina Balik. Kilic Deniz also stated that the fact that Selina Balik had already submitted information in a parallel ongoing investigation should not be taken into consideration, as this would be discriminatory, and that for the current partial interim review the Commission received the questionnaire replies from Kılıç Deniz and Selina Balik at the same time.
- (35) As explained in recital (32), the Commission considered that the situation of both companies was different and it was therefore also justified to treat both companies differently.
- (36) The fact that there was a parallel review ongoing looking at the individual situation of Selina Balik that covered the same RIP as the current review enabled the Commission to be in the possession of the same dataset that would have been required in the current review already at an early stage.
- (37) As set out in recital (29) Selina Balik and their related companies had already submitted a questionnaire reply in their own interim review and a deficiency process on the data provided had been completed. The deficiency process involved significant resources as the questionnaire reply needed to be examined in detail and the deficient points were identified and resolved with the companies.
- (38) Since Selina Balik authorised the Commission to use the data submitted in the parallel interim review, the Commission was able to take those data fully into consideration in this review. The Commission therefore rejected the claim of discriminatory treatment.
- (39) Kilic Deniz further claimed that the Commission should have considered that their company had already experience in cooperating with anti-subsidy investigations, as it participated in the original investigation, in the second interim review and in the subsidy investigation regarding imports of sea bass and sea bream from Türkiye in 2015 which was terminated as the subsidy scheme concerned was withdrawn.
- (40) As regards this claim, the Commission noted that granting individual examination relates to the burden on the investigation, not the burden or experience of the company requesting this treatment.
- (41) Kilic Deniz also commented that they were the fourth largest exporting producer of Türkiye during the RIP and that it had more export sales to the European Union than Selina Balik, which should have been considered by the Commission in their choice for individual examination.
- (42) The Commission rejected this comment, as this is not a condition for the granting of individual examination, but rather whether a company should be included in the sample of exporters. As explained in recital (17) above, that sample had to be limited.
- (43) Kilic Deniz also requested that their amended duty of 1,5 % should be in force for five years from the date of the amendment, and therefore could not be changed by this review.
- (44) The Commission noted that Article 18(1) of the basic Regulation sets out that a definitive countervailing measure shall expire five years from its imposition. The duty levied on imports from Kilic Deniz was imposed on 28 February 2015 and so the five-year period starts from that date.

- (45) The second interim review Regulation that updated the individual duty rate of Kilic Deniz from 9,5 % to 1,5 % simply amended the table in Article 2 of the original Regulation and has no effect on the length of the measures that remain in force at a particular level. The request was therefore rejected.
- (46) Kilic Deniz also commented that their existing individual duty of 1,5 % resulting from the second interim review should be maintained regardless of the results of the current interim review, because the grounds for the initiation of both reviews were the same and the Commission has not shown that the changed circumstances with regard to Kilic Deniz in the current RIP were of a lasting nature to justify a change to its duty level.
- (47) The Commission also rejects this claim of Kilic Deniz that the grounds for review of this investigation match those of the review that led to the second interim review Regulation.
- (48) As set out in section 4 of their Notice of Initiation ⁽⁹⁾, the grounds for the second interim review are specific to Kilic Deniz and their level of benefit received. The current review was initiated based on changes that affected all producers in Türkiye.
- (49) In recitals (285) onwards, the Commission has carried out an analysis of the lasting nature of the changed circumstances in relation to the investigation period of the original Regulation.
- (50) Such analysis is carried out on a countrywide basis, which includes also the situation of the individual exporting producers that are subject to subsidies received from the GOT. The argument that the Commission did not consider the individual situation of Kilic Deniz was therefore rejected.
- (51) Kilic Deniz also alleged that the Commission is obliged to determine an individual margin of subsidy for each known exporting producer, as the Subsidies and Countervailing Measures Agreement of the WTO does not have a sampling provision.
- (52) The Commission rejects this allegation as sampling is clearly provided for in Article 27 of the basic Regulation.
- (53) During the investigation, the Commission also made clear to all interested parties that all cooperating non-sampled exporters would receive the average duty if not granted individual examination.

1.8. Replies to the questionnaires and non-cooperation

- (54) In order to obtain the information deemed necessary for its investigation, the Commission sent questionnaires to the three sampled exporting producers and the GOT. Questionnaire replies were received from the three sampled exporting producers and the GOT. Questionnaire replies were also received from the two exporting producers requesting individual examination.

1.9. Verification

- (55) The Commission sought and verified all the information deemed necessary for the determination of subsidisation.
- (56) Due to the outbreak of the COVID-19 pandemic and the consequent measures taken to deal with it ⁽¹⁰⁾, the Commission was however unable to carry out verification visits at the premises of all companies pursuant to Article 26 of the basic Regulation.
- (57) Instead, the Commission performed remote cross-checks ('RCCs') of the information provided by the following companies:

Exporting producers and related companies:

— Gumusdog'a group:

— Gümüşdoğa Su Ürünleri Üretim İhracat İthalat A.Ş.

— Akyol Su Ürünleri Üretim Taşımacılık Komisyon İthalat İhracat Pazarlama Sanayi Ticaret Ltd. Şti

⁽⁹⁾ OJ C 176, 22.5.2019, p. 24.

⁽¹⁰⁾ OJ C 86, 16.3.2020, p. 6.

- Yerdeniz Su Ürünleri Sanayi ve Ticaret Ltd. Şti.
 - Bengi Su Ürünleri Sanayi ve Ticaret Limited Şirketi
 - Hakan Yem Üretim Ticaret ve Sanayi Limited Şirketi
 - Ozpekler group:
 - Özpekler İnşaat Taahhüd Dayanıklı Tüketim Malları Su Ürünleri Sanayi ve Ticaret Limited Şirketi
 - Özpekler İthalat İhracat Su Ürünleri Sanayi ve Ticaret Ltd. Şti.
 - Fishark group:
 - Fishark Su Ürünleri Üretim ve Sanayi Ticaret A.Ş.
 - Fishark Gıda Sanayi Ticaret A.Ş.
 - Kemer Su Ürünleri Üretim ve Ticaret A.Ş.
 - Selina Balık group:
 - Selina Balık İşleme Tesisi İthalat İhracat Ticaret Anonim Şirketi
 - Selina Fish Su Ürünleri Ticaret Limited Şirketi
 - Ayhan Alp Alabalık Üretim ve Ticaret
- Government of Türkiye:
- Ministry of Trade, Republic of Türkiye
 - Ministry of Agriculture and Forestry, Republic of Türkiye

1.10. Subsequent procedure

- (58) On 25 August 2022 the Commission disclosed the essential facts and considerations on the basis of which it intended to amend the countervailing duties in force ('the final disclosure'). All parties were granted a period within which they could make comments on the disclosure.
- (59) The comments made by interested parties were considered by the Commission and taken into account where appropriate. The parties who so requested were granted a hearing.
- (60) Following the receipt of the comments by interested parties, the Commission adapted certain essential facts and considerations and an 'additional final disclosure' was sent to all interested parties on 23 September 2022. Parties were given a time period to comment.
- (61) The GOT requested consultations with the Commission services in accordance with Article 11(10) of the basic Regulation and these were held on 4 October 2022.
- (62) Following the comments received from interested parties on the additional final disclosure, the Commission corrected two errors as described in recitals (306) and (135) and the resulting changes in the calculations were disclosed to the relevant interested parties on 6 October 2022. Parties were given additional time to comment on these changes to their subsidy calculations.
- (63) Gumusdoga, Fishark Ozpekler and Selina Balık, in its comments to the second additional final disclosure reiterated their claims already raised in the previous two disclosures. Those claims are addressed in this regulation.
- (64) Gumusdoga in addition requested and the Commission accepted a minor update in its turnover, which was subject to the correction as described in recital (306).

2. PRODUCT UNDER REVIEW

- (65) The product under review is certain rainbow trout (*Oncorhynchus mykiss*):
- live weighing 1,2 kg or less each, or
 - fresh, chilled, frozen and/or smoked:

- in the form of whole fish (with heads on), whether or not gilled, whether or not gutted, weighing 1,2 kg or less each, or
 - with heads off, whether or not gilled, whether or not gutted, weighing 1 kg or less each, or
 - in the form of fillets weighing 400 g or less each,
- originating in the Republic of Türkiye ('the country concerned') and currently falling under CN codes ex 0301 91 90, ex 0302 11 80, ex 0303 14 90, ex 0304 42 90, ex 0304 82 90 and ex 0305 43 00 (TARIC codes 0301 91 90 11, 0302 11 80 11, 0303 14 90 11, 0304 42 90 10, 0304 82 90 10 and 0305 43 00 11).
- (66) During the investigation the Commission became aware of the imports into the EU of peppered smoked trout fillets originating in the Republic of Türkiye. Some of these fillets were imported as product under review on which duties were paid, and some were imported under a different tariff heading (CN code 1604 19 10) on which no duties have been levied.
- (67) Both the exporting producers in Türkiye and the Union industry confirmed that they considered that peppered smoked trout fillets were included in the product scope of this and previous investigations.
- (68) The investigation has also shown that the simple addition of pepper does not deprive the smoked fillet of its main basic characteristics. Based on this and the fact that there was an agreement between the exporters and the Union industry on the product scope, the Commission concluded that 'peppered smoked fillets' are indeed included in the product scope.
- (69) On this basis the Commission considers that peppered smoked trout fillets are part of the product under review as 'smoked'. For the avoidance of doubt, duties will be levied on imports of peppered smoked trout fillets if declared under customs code CN 1604 19 10 (TARIC 1604 19 10 11).

3. CHANGE OF NAME

- (70) The exporter Lezita Balık A.Ş, TARIC additional code B968, informed the Commission on 9 June 2021 that it had changed its name to Abaloğlu Balık ve Gıda Ürünleri Anonim Şirketi.
- (71) The company requested the Commission to confirm that the change of name does not affect the right of the company to benefit from the anti-subsidy duty rate applied to it under its previous name.
- (72) The Commission examined the information supplied and concluded that the change of name was properly registered with the relevant authorities ⁽¹¹⁾, and did not result in any new relationship with other groups of companies which were not investigated by the Commission.
- (73) The Commission noted that the company cooperated with this review by submitting a sampling form under their new name Abaloğlu Balık ve Gıda Ürünleri Anonim Şirketi.
- (74) Accordingly, this change of name does not affect the findings of this investigation and in particular the anti-subsidy duty rate applicable to the company.
- (75) The name change should take effect as of 7 July 2020, being the date on which the company had changed its name.

4. SUBSIDISATION

- (76) On the basis of the subsidies investigated in the previous expiry review, the following measures, which allegedly involve the granting of subsidy programmes, were investigated:
- Support of trout production
 - Income tax reductions

⁽¹¹⁾ The change of name was published in the Commercial Registry Journal dated 7 July 2020 numbered 10113.

- VAT and customs duty exemption on imported machinery
 - VAT exemption on domestically purchased machinery
 - Social Security Premium support programme
 - Preferential lending
 - Land allocation scheme
 - Preferential export insurance
 - Processed seafood
- (77) For the Social Security Premium support programme; the land allocation scheme and processed seafood, the Commission found that these schemes provided no benefit to the sampled exporting producer groups during the review investigation period and were therefore not further investigated.
- (78) On 11 November 2021 the DAO submitted comments on the subsidy schemes that the review would investigate.
- (79) The DAO submission noted that following subsidy schemes had changed or been updated since the last review:
- Investment grants for aquaculture
 - Processed seafood
 - rediscount credits
 - fish farming in soil ponds
 - support payments for agricultural publishing and consulting services
 - state supported insurance
 - state supported loans
 - support for agricultural investment
 - VAT exemptions on fish meal
 - Digital Agriculture Marketplace
 - COVID recovery support schemes
- (80) The Commission noted that schemes in Türkiye do indeed change from year to year. Should such a change in a scheme lead to a change in the level of benefit for the sampled companies, the Commission should ensure whether this change is a lasting change of circumstances. If so, the Commission will adjust the measures accordingly to take account of the change.
- (81) However as set out below, and also in the previous expiry review, some of the schemes listed by the DAO are either no longer in force, or do not provide a benefit to the sampled exporting producers.

4.1. Direct support to producers of trout

4.1.1. Description and legal basis

- (82) During the RIP, direct support to producers of trout was granted on the basis of Presidential Decree 2020/3190 ('Decree 3190')⁽¹²⁾. The procedures and principles regarding the implementation of the Decree were provided in Communiqué 2020/39 ('Communiqué 39') issued by the Ministry of Agriculture and Forestry⁽¹³⁾.
- (83) The direct support scheme covers the species rainbow trout (*Oncorhynchus mykiss*). The purpose of the scheme is to offset the costs of farming rainbow trout up to the production cap.

⁽¹²⁾ Presidential Decree No 3190, 'Decree regarding the Agricultural Supports to be Granted in 2020', published in the Official Gazette No 31295 dated 5.11.2020.

⁽¹³⁾ Communiqué 2020/39, published in the Official Gazette No 31321 dated 1.12.2020.

- (84) The Commission considers that the direct support scheme is designed to benefit the harvesting of trout. The sampled exporting producers both harvest their own farmed trout, and purchase trout from other farmers in Türkiye, and then process and export trout in various presentations to the European Union. These presentations, including gutted and filleted trout, make up the product under review.
- (85) The amount of support for the production of 'trout' (of any size) was set at 0,75 TL per kg up to a cap of 350 000 kg per year.
- (86) The amount of support for the production of 'over kilogram trout' was set at 1,5 TL per kg within the same cap of 350 000 kg per year. The Communique for 2020 defines 'over kilogram trout' as trout weighing over 1,25 kg each ⁽¹⁴⁾.
- (87) These rates of subsidisation for the production of trout are the same rates that were in force during 2019, the review investigation period of the expiry review.

4.1.2. Changes to the direct support scheme over time

- (88) Support of trout production is provided on the basis of Presidential Decrees and Communiques, which are issued yearly under Article 19 of the Agricultural Law No 5488. These Decrees and Communiques change the nature of the support each year:

Table 1

Direct support scheme for trout

Year	Support scheme	Support amount per kg
2016	Trout up to 250MT	0,65 TL
	Trout up to 500MT	0,325 TL
2017	Trout up to 250MT	0,75 TL
	Trout up to 500MT	0,375 TL
	Over kilogram trout (additional payment)	0,25 TL
2018	Trout up to 250MT	0,75 TL
	Trout up to 500MT	0,375 TL
	Over kilogram trout up to 250MT (additional payment)	0,25 TL
	Over kilogram trout up to 500MT (additional payment)	0,125 TL
2019	Trout up to 350MT	0,75 TL
	Over kilogram trout up to 350MT	1,5 TL
2020 (RIP)	Trout up to 350MT	0,75 TL
	Over kilogram trout up to 350MT	1,5 TL

- (89) During the original investigation, the scheme consisted of a support payment to trout farmers based on the quantity harvested of all trout regardless of any size, with the benefit per kilogram harvested paid in two separate rates based on the quantity harvested up to 500 tonnes per year.
- (90) For production year 2017, the GOT added a small payment of 0,25 TL per kilogram for trout harvested over 1 kilogram in weight, known as 'over kilogram trout'. This additional payment still applied to the product under review which can weigh up to 1,2 kilograms when harvested.

⁽¹⁴⁾ Communique 2020/39, Article 4(f): Above Kilogram Trout: trout which is weighing 1,25 (one kilogram two hundred fifty grams) kilogram and over per 1 piece when harvested.

- (91) After discussion with the Commission on the definition of ‘over kilogram trout’ during the first interim review (see recitals (40) to (45) of the first interim review Regulation), the GOT redefined ‘over kilogram trout’ in 2018 as trout weighing over 1,25 kilogram when harvested.
- (92) In 2019, the GOT removed the additional extra payment for ‘over kilogram trout’ and instead split the scheme into two, a payment of 0,75 TL per kilogram for ‘trout’ (of any size), and a payment of 1,5 TL per kilogram for ‘over kilogram trout’.
- (93) The GOT also lowered the cap from 500 tonnes to 350 tonnes per year, and limited the subsidy payments to one licence per region. The production cap of 350 tonnes applies to the production of all trout within the same farming licence.
- (94) In the current review investigation period, the Commission established that two out of three of the sampled companies were farming all sizes of trout in the same facilities and under the same farming licence, and receiving both rates as a result.
- (95) During the review investigation period, trout farmers could apply for the rate corresponding to ‘trout’ (of any size) or the rate for ‘over kilogram trout’, according to the weight of the harvested trout. Due to the higher support rate for ‘over kilogram trout’, the sampled exporting producers harvesting trout weighing above 1,25 kilograms applied in most cases for the rate for ‘over kilogram trout’.
- (96) As a result, there was a doubling of ‘over kilogram trout’ subsidised production in kg and the amount of subsidy paid to trout farmers in TL under this scheme from 2019 to 2020 and a clear shift to harvesting trout at the larger size.
- (97) Taking into account both ‘trout’ (of any size) and ‘over kilogram trout’ subsidy paid, the Commission found that subsidisation by the GOT had actually increased by 59 percentage points over the period considered:

Table 2

Changes in quantity and subsidy amounts 2017-2020

	2017	2018	2019	2020 RIP
‘all trout’ subsidised production (kg)	62 461 873	53 390 032	48 859 007	44 991 877
‘over kilogram trout’ subsidised production (kg)	6 075 006	14 175 924	15 261 470	30 102 632
Total subsidised production (kg)	68 536 879	67 565 956	64 120 477	75 094 509
Index	100	99	94	110
‘all trout’ subsidy (TL)	42 948 500	36 900 761	35 769 405	32 547 179
‘over kilogram trout’ subsidy (TL)	5 017 996	11 953 949	22 428 846	43 742 770
Total subsidy paid (TL)	47 966 496	48 854 710	58 198 251	76 289 949
Index	100	102	121	159

- (98) Therefore, the Commission considered that the adaptation of the scheme did not change in substance the underlying subsidisation and – if anything – did increase its level. There appeared to be neither a financial nor an economic rationale for it.

4.1.3. Conclusion on countervailability

- (99) The direct support payments to producers of trout amount to countervailable subsidies within the meaning of Article 3(1)(a)(i) and Article 3(2) of the basic Regulation, i.e. a direct transfer of funds from the GOT to the producers of trout.
- (100) The direct subsidies are specific and countervailable within the meaning of Article 4(2)(a) of the basic Regulation as the granting authority, and the legislation pursuant to which the granting authority operates, explicitly limits access to these grants to enterprises operating in the aquaculture sector. Enterprises involved in aquaculture are expressly cited and trout is clearly designated as one of the species which benefit from this subsidy scheme.
- (101) The Commission established that the sampled exporting producers benefited from this scheme at both the 0,75 TL ('trout' of any size) per kg and 1,5 TL ('over kilogram trout') per kg rates during the RIP.
- (102) In the original investigation there was no separate rate of subsidy for the harvesting of 'over kilogram trout' and so the issue did not arise. In subsequent reviews, including the expiry review, the Commission could not establish any benefit received for the harvesting of trout over 1,25 kg, since the sampled companies did not harvest 'over kilogram trout' ⁽¹⁵⁾.
- (103) In this investigation the Commission determined that two of the three sampled exporting producers farmed trout of all sizes under the same farming licence during the RIP, and therefore benefited from both rates of subsidisation.
- (104) The Commission noted that the trout are farmed in the same production facilities, being land-based ponds and cages in lakes, or at sea. Both smaller and larger trout are farmed in the same facilities, come to maturity in the same ponds, and are receiving the same food. Any trout below 1,25 kg is susceptible of becoming a trout above 1,25 kg. The only difference being that larger trout is harvested later to allow it growing to the required size.
- (105) In addition, as mentioned in recital (45) of the first interim review Regulation, 'Article 4(f) of the Communiqué No 2017/38 grants the subsidy to a fish farmer "when harvested". Even if Turkey intended to restrict the subsidy for trout over 1,25 kg in 2018, there is no legal criterion in the decree excluding the subsidy when the trout is sold in another form. According to the information received, it is a common practice in the industry to process some of the big harvested trout and to sell it as the product concerned, for instance in the form of fillets'.
- (106) Therefore, any benefit received for the farming of larger trout is automatically connected to the farming of smaller trout as well. No matter whether a trout benefited from one or the other rate, the direct support is provided to harvesting trout, which is the product under review (live or dead and processed into several forms). Any benefit to trout is also present when sold in the form of fillets, which are not distinguished on the basis of the size of the harvested trout.
- (107) Both rates of subsidisation are conditioned on the farming of trout. The farming license's production capacities refer to trout of all sizes and the benefit deriving from both rates of support is paid to the farmer in a single payment and booked into the general income account of the company.
- (108) The Commission therefore considered that in 2020 the disbursements paid to the trout farmers amounts to the total direct support received for the farming of trout, including the product under review.

⁽¹⁵⁾ Recital (41) of Implementing Regulation (EU) 2021/823.

4.1.4. Subsidy amount for own production

- (109) The benefit per company was the direct support amount received on the basis of the rates concerning both the production of 'trout' (of any size) and 'over kilogram trout' during the review investigation period. The companies provided information as to the amount of the support received, and from whom and for which specific production it was received.
- (110) The direct support amount received for production of trout of all sizes under both support rates was divided by the total harvested quantity of trout to determine the subsidy amount in TL per kilogram of trout.

4.1.5. Subsidy amount for purchased trout

- (111) The original investigation ⁽¹⁶⁾ found that the benefit of these subsidies remained also in the purchases of trout made by the sampled exporting producers from unrelated farmers in Türkiye for processing, as the product under review covers both the directly subsidised raw material, namely live trout, as well as the downstream products, such as fresh or frozen whole trout, fillets and smoked trout.
- (112) The benefit for the purchased trout was calculated in the original investigation on the basis of the total subsidy amount granted by the Turkish authorities divided by the total amount of trout production in Türkiye.
- (113) The Commission noted that in the expiry review ⁽¹⁷⁾ the finding that the sampled exporting producers received a benefit from the purchase of trout was confirmed. The benefit was calculated on the basis of the total subsidy amount conferred divided by the total amount of subsidised trout production in Türkiye.
- (114) However, the findings in the previous expiry review were based on overall country-wide information provided by the GOT and did not take into account the specific situation of the sampled exporting producers. In an expiry review, such detailed finding is not necessary, as an expiry review only needs to establish a likelihood of continuation or recurrence of subsidisation but no precise countervailing margins.
- (115) In this interim review, no interested party has disputed that the exporting producers continue benefitting from the subsidisation when purchasing trout from unrelated farmers. The GOT provided data regarding the level of subsidisation for 2020 for each trout farmer under both the 0,75 TL ('trout' of any size) and 1,5 TL (over kilogram trout) rates. This data was compared to the purchase listings of the three sampled exporting producers, and the Commission found as follows:
- (a) 5 % of purchases by quantity came from farmers that did not receive a subsidy, or where data could not be found;
 - (b) 49 % of purchases by quantity came from farmers where the production quantity was over the production cap of 350 tonnes per year and therefore some of their production was not subsidised; and
 - (c) 46 % of purchases by quantity came from farmers where the production quantity was under the production cap of 350 tonnes per year and therefore all of their production was considered to be subsidised.
- (116) For production in 2020, the subsidy per kilogram of trout of any size was calculated at 0,53 TL per kg if all production is taken into account, and 1,02 TL per kg if only subsidised production is taken into account.

4.2. Direct support to producers of trout – comments received regarding the subsidy of production

- (117) Following disclosure, the GOT, the sampled exporting producers, Selina Balik and Kilic Deniz all made comments on the Commission's findings regarding the direct support to producers of trout.

⁽¹⁶⁾ Recitals (61) to (63) of Commission Implementing Regulation (EU) No 1195/2014 of 29 October 2014 imposing a provisional countervailing duty on imports of certain rainbow trout originating in Turkey (OJ L 319, 6.11.2014, p. 1).

⁽¹⁷⁾ Recital (39) of Implementing Regulation (EU) 2021/823.

- (118) These parties mainly disputed the inclusion in the subsidy calculation of the benefit paid to the sampled producers and Selina Balik for the harvesting of 'over kilogram trout', as this benefit had not been included in the subsidy calculations of previous investigations. They also argued that 'over kilogram trout' is not part of the product under review, nor was it included in the questionnaire intended for exporting producers.
- (119) As set out above in Section 4.1.3, the Commission confirmed the change in circumstances regarding the payment of the benefit for the harvesting of trout, in particular since the original investigation but also since the RIP of the previous expiry review. Whereas in the past direct support was granted on the basis of kilograms of production with no distinction about the size of the trout, the GOT progressively moved to a system of disbursements on the basis of different support rates depending on the size of the harvested trout. Thus, circumstances in the RIP clearly showed that trout farmers in Türkiye benefited from both rates of subsidy paid under this scheme when growing and harvesting the product under review.
- (120) Selina Balik argued that the Commission was not authorised to expand the product scope of the present review by including 'over kilogram trout'.
- (121) The Commission notes that the product scope remained the same as in previous investigations, namely the production of trout, live or dead and in several processed forms. Whether the subsidy rate is contingent upon the specific size of the harvested trout does not change its nature and operation, in the sense of benefiting the production of trout, which is then sold in various forms. This claim was therefore rejected.
- (122) Parties also disputed the Commission's findings that 'over kilogram trout' may be further processed into fillets that are included in the scope of the product under review. These parties argued that the findings as set out in recital (45) of the first interim review Regulation to which the Commission referred in the final disclosure, were not disclosed to interested parties during the first interim review and therefore parties could not comment on them. They reiterated that, in any event, no benefit had been calculated for 'over kilogram trout' in any of the previous investigations.
- (123) Parties had ample time to provide comments on recital (45) of the first interim Regulation following final disclosure in the present review. This argument was therefore rejected.
- (124) The Commission further noted that the Whole Fish Equivalent ("WFE") ratios used in this case were the same than the ones used in the original investigation. They have always clearly allowed for an 'over kilogram trout' to be processed into the product under review, as follows, noting that one fish produces two fillets:

Presentation as product under review	Whole Fish Equivalent ratio	Weight limit for whole fish
Live fish up to 1,2 kg	1,00	1,2 kg
Gutted fish, head on up to 1,2 kg	0,85	1,4 kg
Gutted fish, head off up to 1 kg	0,75	1,3 kg
Fillets fresh, chilled or frozen up to 400 g	0,47	1,7 kg
Fillets smoked, up to 400 g	0,40	2 kg

- (125) This fact was clearly noted by the exporter Selina Balik, who states in their comments to the final disclosure that 'given the intrinsic nature of the product [under review] large trout can be processed into fillets which fall into the scope of the product [under review].'
- (126) The claim that no benefit was calculated for 'over kilogram trout' in previous investigations, and that no benefit should therefore be calculated in the present review, should be rejected as the circumstances have changed. In the expiry review both sampled exporters did not receive any benefit from the 1,5 TL per kilogram harvested subsidy rate. In the RIP of this review, they did.

- (127) Two sampled exporting producers further argued that they did not produce nor sell any fillets deriving from 'over kilogram trout' during the RIP and therefore asked the Commission to revise their direct subsidy calculation accordingly by excluding 'over kilogram trout'.
- (128) The Commission noted that no evidence was provided to support this claim. In contrast, the investigation established that both of these sampled exporting producers obtained disbursements under both rates within the direct subsidy scheme for trout the review investigation period. They therefore harvested trout of all sizes. Given the Whole Fish Equivalent ratios set out in the table in recital (119), harvested 'over kilogram trout' can be processed into forms such as fillets and gutted fish. This argument was therefore rejected.
- (129) Two of the sampled exporting producers also claimed that most of the 'over kilogram trout' was exported to Russia and Japan and therefore the subsidy received for 'over kilogram trout' should not be countervailed for export sales of the product under review to the Union.
- (130) The Commission rejected this argument. As previously explained, the Commission has considered that the disbursements received under both rates of subsidy for the harvesting of trout benefit all trout that are then sold. The subsidy amount per kilogram of trout of any size exported to Russia and Japan is therefore the same as the subsidy amount per kilogram of trout of any size exported to the European Union.
- (131) Finally, the sampled exporting producers contested the Commission's findings set out in recital (96), that any benefit received for the farming of 'over kilogram trout' is automatically connected to the farming of smaller trout as well, arguing that
- the production processes for 'over kilogram trout' are significantly longer than for smaller trout and incur higher costs;
 - 'over kilogram trout' and smaller trout are competing with each other;
 - farmers cannot produce 'over kilogram trout' and smaller trout at the same time at the same farm; and
 - 'over kilogram trout' are largely produced in the Black Sea rather than in inland ponds.
- (132) The Commission notes that the production process is longer for 'over kilogram trout', which is why the subsidy at the time of harvest is 1,5 TL per kilogram rather than the standard 0,75 TL per kilo. However, trout farmers benefit from the total disbursements made under both rates of subsidy.
- (133) The assertion that 'over kilogram trout' and smaller trout compete with each other does not appear to have relevance for the allocation of benefit from the direct subsidy scheme to the product under review. Competition would simply guide the farmer to making the choice of using their ponds to harvest a specific size of trout.
- (134) Farmers produce trout in whatever size under the same farming licence, and receive a single disbursement under both rates of subsidy.
- (135) Based on comments received from the company Selina Balik following the final disclosure and the additional final disclosure, the Commission corrected clerical errors in the company's total production figures in line with the findings of the RCC.
- (136) However, Selina Balik contested that the Commission for one of the two farming companies in this group had used a different direct subsidy benefit amount than declared in their questionnaire reply. In addition, Selina Balik requested the Commission to deduct the bank charges paid for the transactions from the direct subsidy benefit amount.
- (137) Both claims are rejected. Firstly, for all producers subject to this investigation (including Selina Balik), the Commission used the verified data concerning the disbursed subsidy amounts provided by the GOT. Selina Balik did not provide any information or evidence that would justify or explain the difference between the amount declared in the questionnaire reply and the amount provided by the GOT, therefore the Commission relied on the data provided by the GOT. The latter were verified by the Commission and matched in all other cases with the data reported by the sampled companies. They were therefore consistently used as a basis for the direct subsidy benefit

calculation. Secondly, Selina Balik failed to show that the bank charges incurred were paid directly to the GOT during the RIP. The Commission therefore considers that those charges were paid to third parties (e.g. the banks) and they did not cover any adjustment allowable under Article 7(1) of the basic Regulation.

- (138) Following the additional final disclosure the GOT reiterated that 'over kilogram trout' is not product under review; that its production process is different from the one of smaller trout; and that they fall under different HS and CN codes than smaller trout. These claims were again dismissed for the reasons set out in recital (113) onwards.
- (139) In particular, the Commission considers that disbursements made for the harvesting of 'over kilogram trout' are covered by the definition of the product under review. The product under review is trout, live or dead, processed under several forms, including fillets. If the benefits granted via direct support to 'over kilogram trout' would not be accounted for, the resulting countervailing duties would not cover the entire product under review (exports to the Union of processed trout).

4.3. Direct support to producers of trout – comments regarding the subsidy of purchased trout

4.3.1. Comments after final disclosure

- (140) Following final disclosure, the GOT, the sampled exporting producers, and the company Selina Balik disputed the calculation of the indirect benefit that the sampled exporting producers and Selina Balik received for the purchase of trout from other trout farmers in Türkiye.
- (141) These interested parties also claimed that the methodology to calculate the subsidy received for purchased trout differed from the methodology used in previous investigations, while there were no changed circumstances justifying such change in methodology. They argued that subsidies received for 'over kilogram trout' should be excluded from the calculation of the subsidy amount received in the current RIP.
- (142) Selina Balik in particular noted that there had always been farmers of trout who produced below the production cap, but this had not been used to calculate the benefit for purchased trout in previous investigations.
- (143) In previous investigations the Commission had considered that all farmers in Türkiye received the same amount of subsidy per kilogram of trout that were then purchased by the sampled exporting producers. Section 4.1.5 above explains why changed circumstances have led to a change in the Commission's methodology.
- (144) In particular interested parties noted that the Commission had been able to use farmer specific data that had been received from the GOT, but the Commission had calculated an average for the three sampled producers, and used that single figure in Turkish Lira per kilogram to calculate the benefit for trout purchased by the three sampled producers and Selina Balik.
- (145) The Commission was asked to calculate an individual figure for the four company groups based on the same dataset, instead of applying the average rate for all company groups. As the Commission had the necessary data available, the Commission accepted this claim.
- (146) Interested parties including Selina Balik also noted that the Commission's three way split of the purchases of the four company groups ('not found or not in receipt of subsidy', 'under the cap' or 'over the cap') and the calculations deriving from this split, had double counted some amounts of subsidy granted to trout farmers in Türkiye as a whole.
- (147) The Commission accepted this claim, and revised its methodology after final disclosure accordingly.

4.3.2. Purchased trout – methodology disclosed in additional final disclosure

- (148) The Commission based its analysis on the list of trout farmers provided by the GOT. From that list the Commission identified whether a farmer had subsidised production above or below the production cap of 350 tonnes. This list gives the total subsidised trout production and the subsidy received in 2020 per license and per license holder on a legal entity basis.
- (149) The total production and benefit for the whole of Türkiye was given by the GOT as 144 283 000 kilograms and 76 316 948 Turkish Lira.
- (150) First, the Commission identified the farmers 'below the cap', namely those farmers that received a subsidy for a quantity produced below 350 tonnes regardless of the number of farming licenses during the RIP. It then calculated the rate of 0,966 Turkish Lira per kilogram for farmers identified as below the cap by considering their production as fully subsidised and dividing the total amount of subsidy received (37 441 048 Turkish Lira) by the total subsidised production quantity of trout (38 753 671 kilograms).
- (151) Second, the below the cap subsidised production and benefit amount was subtracted from the total country-level production and benefit amount, resulting in 105 529 329 kilograms and subsidy of 38 875 901 TL. It resulted in an average subsidy of 0,368 TL per kilogram produced for all other farmers, namely those farmers that were previously identified as producing over the cap or not receiving any subsidy.
- (152) These two rates of subsidy, being 0,966 TL per kilogram and 0,368 TL per kilogram, were then applied to the individual suppliers of the sampled exporting company groups and Selina Balik, using the classification above, and an average rate of subsidy calculated for each company group.
- (153) After the additional final disclosure, the GOT claimed that the split of the subsidy paid to farmers 'below the cap' and the remaining farmers was incorrect, and provided another split of subsidy, without providing any evidence as to where this split came from or on what basis it had been calculated. The claim was therefore rejected.
- (154) Interested parties claimed that the disclosure regarding the indirect subsidy was insufficient and that the subsidies received per supplier should be disclosed to them. This claim was rejected due to the confidential nature of the information provided by the GOT. The Commission considered the revised methodology description above, together with additional information provided to the cooperating exporting producers, as sufficient information to ensure the rights of parties.
- (155) Two exporting producers asserted that the calculation of subsidy per kilogram of purchased trout was incorrect for them, as their purchases during the RIP were in fact mainly or totally trout under 1,2 kg. They suggested that the Commission should consider that their suppliers were therefore only subsidised under the 0,75 TL per kilogram rate and recalculate the benefit on their purchased trout accordingly.
- (156) This assertion was rejected, as the evidence clearly showed that production of trout in Türkiye is subsidised based on the total amounts disbursed under both rates of subsidy to the farmers. Regardless of the size of the trout purchased by the exporting producers, the rate of subsidy per kilogram that passes through the purchased trout is based on the situation of the supplying farmer and not based on what size of trout the exporting producer purchases from that farmer.. The fact that some exporting producers do not produce over kilogram trout, does not therefore mean that its suppliers (farmers) are not subsidised under both trout sizes. As further explained in recital (160) no comments or additional evidence was received from the GOT in this respect.
- (157) After disclosure, some exporting producers disputed the method used by the Commission, and took examples of some of their suppliers in an attempt to show that the method used did not correctly categorise the trout farmer concerned.
- (158) The Commission rejected these claims, as the examples were not considered sufficiently representative and did not show therefore that the Commission's methodology was inappropriate.

- (159) The Commission therefore considered that its methodology, which relies on a mathematical comparison of data provided by the GOT, to be the most appropriate and reasonable way of splitting trout farmers into the two categories necessary to correctly identify the subsidy of purchased trout.
- (160) The methodology was also disclosed to the GOT together with all the calculations at a farmer level, and the GOT did not provide any evidence justifying to adapt the methodology applied by the Commission.
- (161) The Commission also noted that even if it would accept these examples, it could not accept mere statements from exporting producers regarding the condition of their suppliers without any verification, or supporting statements from the supplier concerned.
- (162) Fishark further claimed that the total purchased quantity used in the calculation of the indirect subsidy was incorrect, as the Commission did not take into account the total purchased quantities returned to unrelated customers.
- (163) The Commission rejected this claim because during the remote cross checks the company clarified that the transactions recorded under 'Returned sales' referred to accounting corrections of wrongly-computed purchase values and therefore did not refer to physical returns of the product under review. Fishark did not comment on this finding following the receipt of the remote crosscheck report, and did not submit any further evidence before the final disclosure, therefore this claim was rejected.
- (164) Gumusdogra and Fishark claimed after the additional final disclosure that the Commission should reintroduce the category of farmers 'not found or not in receipt of subsidy' and allocate no benefit to purchases from these farmers.
- (165) The Commission rejected this claim on the grounds that all previous investigations have found that all purchased trout are subsidised to some degree, and that the latest methodology reflects that general statement.
- (166) Selina Balik claimed that the methodology for the calculation of the indirect subsidy is incorrect as it fails to take into account the nameplate capacity indicated in each farming licence. In particular, the Commission disregarded the fact that the production volumes that can be subsidised is limited not only by the 350 000 kilogram WFE cap, but also by the nameplate capacity indicated in the relevant farming licence of each farmer.
- (167) The Commission used the subsidised production method, due to the discrepancy between the reported countrywide nameplate capacity of 244 000 tonnes and actual production of 144 000 tonnes. The subsidised production was therefore considered to provide a more reasonable method to calculate the indirect subsidy rates to be allocated to the exporting producers. The detailed findings including the classification of the companies were submitted to the GOT and no comments as regards the accuracy, nor any alternative method was submitted in the GOT's comments to the disclosures. Therefore the Commission rejected any alternative methods proposed by the exporting producers.
- (168) On this basis, the calculations were as follows:

Table 3

Benefit per company for purchased trout 2020

Company group	Average subsidy rate TL per kilogram
Fishark	0,614
Gumusdogra	0,791
Ozpekler	0,728
Selina Balik	0,899

Table 4

Support for trout production

Company group	Subsidy amount
Fishark	3,47 %
Gumusdoga	2,10 %
Ozpekler	2,75 %
Selina Balik	2,54 %

4.4. Revenue foregone – support to investments made in the aquaculture sector*4.4.1. Description and legal basis*

(169) The Decree No 2012/3305 ⁽¹⁸⁾ and the implementing Communiqué No 2012/1 ⁽¹⁹⁾ provide the basis for State support to investments in the aquaculture sector ⁽²⁰⁾ and constitute the basis of the Investment Incentives Programme of Türkiye. It includes two incentive schemes:

- Regional investment incentives, including support for VAT exemption, customs duty exemptions, tax deduction, social security premium support (employer's share), interest support, land allocation, income tax withholding and social security premium support (employee's share); and
- General investment incentives, including support for VAT exemption, customs duty exemptions and income tax withholding.

(170) Companies who cannot meet the minimum investment amount criteria under the regional investment incentives scheme can benefit from the general investments incentives scheme, which is available for all six regions defined in Decree No 2012/3305. Based on the level of economic development of the six regions the aid intensity can vary.

(171) Both the Decree and the Communiqué are still valid, and the six regions have not been changed since the original investigation.

4.4.2. Conclusion

(172) During the RIP, Gumusdoga benefited from income tax reductions.

(173) All three sampled companies benefited from VAT and customs duty exemptions under the regional investment incentives.

(174) As confirmed in the original investigation ⁽²¹⁾ and the expiry review ⁽²²⁾, the support to investments is considered a subsidy within the meaning of Article 3(1)(a)(ii) and Article 3(2) of the basic Regulation, when the support takes the form of a tax incentive, that is when government revenue otherwise due is in fact forgone or not collected.

(175) The subsidy is specific and countervailable since the benefit of the subsidy is specifically limited to companies located in one of the regions listed. The access to the subsidy is further limited to certain enterprises operating in certain sectors. In addition, the subsidy does not meet the non-specificity requirements of Article 4(2)(b) of the basic Regulation, given the number and quality of the restrictions applicable to certain sectors, most notably those restricting the access to the subsidy to either certain types of enterprises or completely excluding certain sectors.

⁽¹⁸⁾ Published on 19 June 2012, Official Gazette No 28328.

⁽¹⁹⁾ Published on 20 June 2012, Official Gazette No 28329.

⁽²⁰⁾ Aquaculture production is expressly listed in Annex 2/A of Decree No 2012/3305 among the sectors which may benefit from incentives like value added tax (VAT) exemption, customs duty exemption, tax reduction, contributions to investment, social security premium support (employers' contribution, land allocation, interest rate support, income tax support and social security premium support (employees' contribution).

⁽²¹⁾ Recitals (45) to (48) of Implementing Regulation (EU) No 1195/2014.

⁽²²⁾ Recitals (63) to (65) of Implementing Regulation (EU) 2021/823.

(176) Aquaculture is expressly designated in Annex 2A of the Decree 2012/3305 as one of the activities which may benefit from this type of tax exemptions. Annex 4 to the Decree lists the sectors which may not benefit from any incentive under this scheme.

4.4.3. Calculation of the subsidy amount

(177) To establish the amount of the countervailable subsidy for tax exemptions, the benefit conferred on the recipients during the review investigation period was calculated as the difference between the total tax payable according to the normal tax rate and the total tax payable under the reduced tax rate.

(178) For the VAT and customs duty exemptions, the Commission identified those assets that had been purchased during the RIP and the amount of VAT or duty exempted. A cashflow benefit of two months was calculated using the short term interest rate for the RIP.

(179) Following disclosure, Gumusdoga and the GOT both requested that the Commission should not countervail VAT exemptions.

(180) The GOT claimed that the US investigation authorities did not find VAT exemptions in the investment incentive certificate scheme in Türkiye countervailable and referenced a decision of the United States, 'Countervailing Duty Investigation of Common Alloy Aluminium Sheet from the Republic of Turkey' ⁽²³⁾.

(181) The Commission notes that on page 17 of this document the US DOC notes that their determination is that this scheme provides no benefit, but that they were in process of gathering additional facts regarding the operation of the GOT's VAT system.

(182) The Commission also notes that the US DOC agrees with the Commission that the exempted customs duties do constitute a benefit under this scheme.

(183) The GOT argued that while the producers pay the input VAT on its purchases from suppliers, they collect output VAT on its sales to their customers; therefore the customers bear the ultimate tax burden and the VAT exemptions are thus not countervailable.

(184) Similarly, the company Gumusdoga claimed that it was able to offset its VAT payable against its VAT receivable and the only benefit in participating in the scheme was therefore to avoid up-front VAT payments and thus the administrative burden in offsetting VAT payables against VAT receivables. Therefore, they requested that no benefit should be calculated in line with previous investigations.

(185) Contrary to the comments of Gumusdoga, the Commission considered that these VAT and customs duty exemptions should be countervailed.

(186) For the reasons set out in recitals (148) to (150), the Commission, in line with the previous investigations, established that the VAT exemption scheme in Türkiye is a countervailable subsidy within the meaning of Article 3(1)(a)(ii) and Article 3(2) of the basic Regulation. The fact that from an accounting perspective, the VAT payables are offset against receivables, does not remove the benefit in terms of cash flow, stemming from the fact that the exporting producers do not have to disburse cash upfront, and then wait to receive a refund from the tax authorities based on the processing of their monthly VAT declarations, as is the case for companies not benefiting from the scheme.

(187) Following additional final disclosure, the GOT reiterated that the VAT exemption scheme in Türkiye is not a countervailable subsidy. For the reasons set out in the above recitals, this argument was rejected.

(188) With regard to the VAT exemptions that benefited the company Gumusdoga, the Commission calculated a time gain of two months. Following final disclosure the company asked for clarification on how the Commission determined the two months period, claiming that there was only one month period for offsetting the VAT payment. As recital (42) of the provisional Regulation stated, 'the benefits obtained during the investigation period consisted only of a time gain of two months until the companies were refunded their VAT by the tax authorities'. No comments regarding this statement were made in the original investigation and the Commission has no evidence on file that the VAT system in Türkiye has changed since that time.

⁽²³⁾ Decision Memorandum for the Preliminary Affirmative Determination in the Countervailing Duty Investigation of Common Alloy Aluminium Sheet from the Republic of Turkey Case number C-489-840 published 7 August 2020.

- (189) Following final disclosure, Gumusdoga submitted that the Commission should allocate the tax reductions to the various products referenced in the investment support certificates on which the tax reductions were based.
- (190) This argument was rejected as the income tax reductions are income to the company and are therefore allocated over total turnover of the group.
- (191) For the countervailable subsidy for VAT and customs duty exemptions, the benefit was calculated as a cashflow benefit for purchases during the review investigation period.

Table 5

Revenue foregone

Company	Subsidy amount
Fishark	0,00 %
Gumusdoga	1,77 %
Ozpekler	0,00 %
Selina Balik	0,00 %

4.5. Direct transfer of funds – supported insurance for the aquaculture sector*4.5.1. Description and legal basis*

- (192) According to the Agricultural Insurance Law No 5363 ⁽²⁴⁾ and the Decree No 2018/380 ⁽²⁵⁾ regarding risks, crops and regions to be covered by the Agricultural Insurance Pool and Premium Support Rates for the RIP, producers of aquaculture products may benefit from a reduced insurance premium covering losses of the fish stock and harvest of trout due to numerous possible diseases, natural disasters, accidents, etc. The support of the GOT amounts to 50 % of the insurance premium.

4.5.2. Conclusion

- (193) As confirmed in the original investigation ⁽²⁶⁾ and expiry review ⁽²⁷⁾, the benefit conferred by this scheme takes the form of a reduction in the financial costs incurred in the life insurance coverage of aquaculture livestock.
- (194) This scheme constitutes a subsidy within the meaning of Article 3(1)(a)(i) of the basic Regulation in the form of a direct grant by the GOT to trout producers and a financial contribution because the recipients of the subsidy benefit from a favourable insurance premium, which is well below the level of insurance premiums available on the market for the coverage of comparable risks.
- (195) The scheme confers a benefit within the meaning of Article 3(2) of the basic Regulation. The benefit is equal to the difference between the premiums offered in the context of a commercial insurance policy and the subsidised premium.
- (196) The support is specific as the granting authority and the legislation pursuant to which the granting authority operates explicitly limit access to this reduced premium to enterprises operating in the agriculture sector and even explicitly target risks incurred by aquaculture producers.

⁽²⁴⁾ Articles 12 and 13, Official Gazette No 25852 of 21 June 2005.

⁽²⁵⁾ Official Gazette No 30608 of 27 November 2018.

⁽²⁶⁾ Recitals (88) to (89) of Implementing Regulation (EU) No 1195/2014 confirmed by Recital (42) of Implementing Regulation (EU) 2015/309.

⁽²⁷⁾ Recital (70) of Implementing Regulation (EU) 2021/823.

4.6. Direct transfer of funds – other schemes

4.6.1. Description and legal basis

- (197) During the review investigation period the sampled exporting producer Gumusdoga received direct transfers of funds from the GOT which were booked into their accounts as revenue.
- (198) The Commission requested information regarding all of the entries for 2020 into this revenue account and the company provided details for each entry. Three entries were noted to be direct transfers of funds limited to exporters as follows:
- (199) Firstly the company received funds into an account 'Aegean Exporters' Association Support' which the company stated was related with the support regarding air transportation. This is regulated by the 'Presidential Decree on the Support of Air Cargo Transportation Expenses dated 16 May 2020 Number 2552' for May to July 2020 ⁽²⁸⁾.
- (200) Secondly the company received funds into an account 'Ministry of Economy Export Incentives' ('export incentive support'). The company stated that 'by the Decree numbered 2014/8 ⁽²⁹⁾ it is aimed to support to enable companies carrying out industrial and/or commercial activities in Turkey to acquire market access certificates and ensure their participation in the global supply chain'.
- (201) Thirdly the company received funds into an account 'Exhibition Support Income'. The company stated that this assistance is regulated by 'Decree on Supporting Participation to Fairs in Abroad' numbered 2017/4 published in the Official Journal dated 7 April 2017 numbered 30031. According to this Decree, exporters can claim reimbursement from the Directorate-General for Exports under the Ministry of Trade for participation in trade fairs held abroad which are qualified by the Ministry of Trade as eligible for support.

4.7. Conclusion

- (202) For the first grant, the Commission considers that this is export contingent, as it is a refund of export transportation costs. Furthermore, the exporter has to sign a commitment to export and to refund the grant if the exported goods are returned to Türkiye. In addition, the scheme is specific to the exporters belonging to certain sectors, among which aquaculture is listed.
- (203) For the second grant, the Commission considers that this is also export contingent, as it is refunding expenses made on export transactions in order to access foreign markets, such as certification and quality control costs.
- (204) For the third grant, the Commission considers that this is also export contingent as it is designed for export trade promotion via trade fairs abroad.
- (205) This scheme constitutes a subsidy within the meaning of Article 3(1)(a)(i) of the basic Regulation in the form of a direct grant by the GOT to Turkish exporters. The scheme confers a benefit within the meaning of Article 3(2) of the basic Regulation.
- (206) These grants are contingent upon export performance within the meaning of Article 4(4)(a) of the basic Regulation. Some of them are also specific within the meaning of Articles 4(2)(a) and 4(3) of the basic Regulation given that, from the documents provided by the cooperating exporting producer, they appear to be limited to certain industrial sectors, such as aquaculture. The Commission therefore considers that these grants are countervailable and specific.
- (207) The benefit is the amount of revenue received and booked in the review investigation period.
- (208) Following disclosure Gumusdoga disputed the Commission's decision regarding the countervailability of these three grants.

⁽²⁸⁾ <http://yuksekerilim.com.tr/tr/ihracat-yuklemelerinde-devlet-navlun-destegi-hk/> (accessed 22 August 2022).

⁽²⁹⁾ Published in the Official Gazette 4.9.2014 number 29109.

- (209) For the 'Aegean Exporters' Association Support' (the first grant), Gumusdoga claimed that the scheme is not related with the product under review, as the exports of products under HS Codes 0302, 0303, 0304 to the European Union are not included in the scope of the support.
- (210) The Commission rejected this claim as the support can cover products under other HS codes that are part of the product scope of the current investigation, namely HS codes 0301 and 0305. The company also did not provide sufficient information for the Commission to examine which product groups were covered by the support received during the RIP.
- (211) Gumusdoga also claimed that this first grant is not related to the export sales destined to the Union market.
- (212) The Commission does not dispute that this scheme is not exclusive to the product under review, which is why the benefit that the company received has been taken over the total export turnover of the group and then apportioned to the product under review.
- (213) For the export incentive support (the second grant), Gumusdoga claimed that only one out of eight applications included in the calculation of benefit pertain to the product under review and to the RIP. As a consequence, it requested the Commission to review the calculation of the benefit accordingly and discard the seven applications that do not pertain to the product under review and to the RIP.
- (214) The Commission rejects this claim as the benefit has been taken as the revenue booked in the review investigation period, and has been taken over total export turnover of the group and then apportioned to the product under review.
- (215) Gumusdoga also asked the Commission to disregard the benefit deriving from the 'Exhibition Support Income' (the third grant), as this scheme is not sector or company specific nor related to the product under review or the RIP.
- (216) The Commission rejects this claim as it is export contingent and the benefit received during the RIP has been taken over the total export turnover of the group and then apportioned to the product under review.

Table 6

Direct transfer of funds

Company	Subsidy amount
Fishark	0,00 %
Gumusdoga	0,21 %
Ozpekler	0,09 %
Selina Balik	0,08 %

4.8. Preferential loans

- (217) During the original investigation and expiry review, the Commission found that trout producers were benefitting from preferential loans, including:
- Low or zero interest Agricultural Loans
 - Low interest export loans by Eximbank directly or via other banks
- (218) The Commission examined preferential lending to the sampled exporting producers during 2020, including agricultural loans, export loans, and other loan schemes, including those organised by the GOT in 2020 as a response to the COVID pandemic.

4.9. Agricultural loans

4.9.1. Description and legal basis

- (219) Decree No 2020/2015 provides that Agricultural Credit Cooperatives ('ACCs') and T.C. Ziraat Bankasi A.S. ('Ziraat Bankasi') can grant low interest loans and business loans to aquaculture sector producers. The trout producers can receive discounts on the applicable interest rates ranging between 10 % and 80 %. The credit upper limit is 10 000 000 TL. The Decree covers 1 January 2020 until 31 December 2022.
- (220) ACCs are private law entities established by agricultural producers (i.e. natural persons or legal entities that are engaged in agricultural production) in Türkiye in order to support their financial business needs.
- (221) Ziraat Bankasi is the Agricultural Bank of the Republic of Türkiye, a fully State-owned bank. During the original investigation, its shares were owned by the Undersecretariat of Treasury. However, since 2018, its capital has been transferred to the Turkish Wealth Fund and as found in the expiry review it remains 100 % owned by the Turkish Wealth Fund ⁽³⁰⁾.
- (222) In accordance with Article 2 of the Law No 6741 on Establishment of Turkey Wealth Fund Management Company and Amendments in Certain Laws, the Turkish Wealth Fund is an institution affiliated to the Presidency ⁽³¹⁾.
- (223) Under Article 13(2) of the Decree of the Council of Ministers 2016/9429, the Chairman of the Board of Directors of the Fund is the President of the Republic. One of the Board Members can be assigned as the Deputy Chairman by the President of the Republic ⁽³²⁾.
- (224) As determined in the original investigation ⁽³³⁾, Ziraat Bankasi provides preferential loans to the aquaculture sector, to promote agricultural production and agribusiness. In this regard, the Council of Ministers annually determines the duration, procedures and principles of the programme and the Treasury transfers the remaining amount of the interest payment, corresponding to the discounted interest rate, to Ziraat Bankasi.
- (225) The original investigation therefore determined that Ziraat Bankasi was vested with governmental authority on the basis of Decree 2013/4271, which has been replaced with Decree 2020/2015 on the same basis.
- (226) Therefore, T.C. Ziraat Bankasi A.S. continues to be vested with governmental authority and the Commission continues to consider, as in previous investigations, that it is a public body.

4.9.2. Findings

- (227) During the RIP, the cooperating sampled exporting producers had outstanding low-interest loans from Ziraat Bankasi.
- (228) Following disclosure, Gumusdoga commented that the Commission should not consider agricultural loans from Ziraat Bankasi as countervailable, as they were linked to the purchase of an insurance policy linked to the production of other products and not the product under review.
- (229) This argument was rejected as the loan was made to the company and there was no evidence that similar loans were generally available to companies in Türkiye. Moreover, the loan was not contingent on production of other products, only to the purchase of an insurance policy on a particular farm.

⁽³⁰⁾ <https://www.ziraatbank.me/en/ziraat-bank-turkey-today> (accessed 24 June 2022).

⁽³¹⁾ <https://www.tvf.com.tr/uploads/file/law-no-6741.pdf> (accessed on 24 June 2022).

⁽³²⁾ <https://www.tvf.com.tr/uploads/file/decree.pdf> (accessed on 24 June 2022).

⁽³³⁾ Recital (67) of Implementing Regulation (EU) No 1195/2014.

4.10. Export credits

4.10.1. Description and legal basis

- (230) As determined in the original investigation ⁽³⁴⁾ and the expiry review ⁽³⁵⁾, Türkiye İhracat Kredi Bankası A.Ş ('Eximbank') was chartered by the GOT on 21 August 1987 by Decree No 87/11914, following the order of Law No 3332 ⁽³⁶⁾ on export credits and is a fully State-owned bank acting as the GOT's export incentive instrument in Türkiye's export strategy.
- (231) Eximbank has been mandated by the government to support foreign trade and Turkish contractors/investors operating overseas, in order to increase exports of Turkish businesses and to strengthen their international competitiveness.
- (232) The Commission continues to consider that Eximbank is vested with governmental authority and thus is a public body.
- (233) Law No 3332 as well as Resolution No 2013/4286 ⁽³⁷⁾ on setting up the Eximbank constitute the legal basis for the export credits provided via the Eximbank.
- (234) Eximbank provides financial support (either directly or via agent banks working on a commission basis), such as export contingent pre- or post-shipment export credits and export-oriented investment credits to exporters, with the intention of increasing the competitiveness of Turkish exporters in foreign markets.
- (235) Rediscount credits are also used by Eximbank to provide cash advances to exporters based on the discounting of bills and documents related to export sales ⁽³⁸⁾. The legal basis for these credits are the '*Implementation Principles and Circular on Export and Foreign Exchange Earning Services Rediscount Credits (Rediscount Programme)*' ⁽³⁹⁾ and Article 45 of the Central Bank Law.
- (236) The 2020 Annual Report of the Central Bank of Türkiye (TCMB) noted that the aim of rediscount credits was '*to facilitate export companies' access to credits at favourable costs and to reinforce the CBRT's reserves.*' ⁽⁴⁰⁾
- (237) The rediscount credits are funded by the Central Bank of Türkiye, but are channelled through the Turkish financial institutions (public as well as private banks) acting as agents of the TCMB. The interest rates are set by the TCMB, and the agent banks are remunerated via a commission charged to the recipients.

4.10.2. Findings

- (238) During the RIP, the cooperating sampled exporting producers had outstanding low-interest export credits provided either directly by Eximbank or via other public or private banks acting as agents of Eximbank. The companies also benefited from rediscount credits provided by Eximbank or via other public or private banks.

4.11. Other loan schemes

4.11.1. Description and legal basis

- (239) Some sampled exporting producers reported other loans taken out in 2020. The Commission identified three schemes used by the sampled exporting producers, and requested information from the Government of Türkiye on the following:

— Can Suyu – Life Water

⁽³⁴⁾ Recital (69) of Implementing Regulation (EU) No 1195/2014.

⁽³⁵⁾ Recital (79) of Implementing Regulation (EU) 2021/823.

⁽³⁶⁾ Published on 31 March 1987 in the Official Gazette No 19417 (bis).

⁽³⁷⁾ Published on 23 February 2013 in the Official Gazette No 28568.

⁽³⁸⁾ <https://www.eximbank.gov.tr/en/product-and-services/credits/short-term-export-credits/rediscount-credit-program> (accessed 24 June 2022).

⁽³⁹⁾ Issued on 4 October 2016 by the Directorate-General of Banking and Financial Institutions, and the Directorate of Foreign Exchange Legislation of the CBRT.

⁽⁴⁰⁾ <https://www3.tcmb.gov.tr/yillikrapor/2020/en/m-2-2.html> section 2.2.4 (accessed on 1 July 2022).

- Ise Devam – Continue to Business
 - IVME Credit – Movement Credit
- (240) The Can Suyu – Life Water scheme is a general loan programme which is open to all enterprises with the commitment to continue their operations and maintain (and not reduce) the number of Social Security Institution registered employees as of the end of February 2020. The programme is a business continuity loan from the Government of Türkiye to the Kredi Garanti Fonu and the five public banks that hold shares in it.
- (241) The Ise Devam – Continue to Business scheme is another general loan programme linked to the ongoing operations in the same way as the Can Suyu – Life Water scheme. The programme is a business continuity loan from the Government of Türkiye to the Kredi Garanti Fonu and the five public banks that hold shares in it.
- (242) The IVME Credit – Movement Credit scheme is a more specific scheme for certain sectors of the economy. The scheme was announced as part of the IVME (Acceleration) Financing Package on 23 May 2019 by the Ministry of Treasury and Finance, together with three public banks, Ziraat Bankasi, Halkbank and Vakifbank ⁽⁴¹⁾. The Acceleration Financing Package in turn is part of the GOT's long term economic policy for the country, set out in the New Economy Programme ('Yeni Ekonomi Programi').
- (243) The official announcement states that the programme is for 'supporting sectors which have high import dependency; foreign trade deficit; high contribution rate to employment and high exports or currency earnings'. According to the inaugural speech of the Minister of Treasury and Finance, the 'financing package adopts a product-oriented financing approach. Not only by evaluating on a sector-by-sector basis, but also by financing products with the potential to make a positive contribution to the foreign trade deficit. In this way, it will be aimed to increase the competitiveness of the relevant products in international markets and thus the export potential of strategic products will be revealed ⁽⁴²⁾'.
- (244) The main activities to be supported are 'manufacturing of raw materials and intermediate goods; machinery production and agriculture'. In the area of raw materials and imported goods, 4 main sectors were identified: chemical/medical (pharmaceutical) products, plastic and rubber products; artificial and synthetic yarns; and the paper and cardboard sectors ⁽⁴³⁾.
- (245) In the area of machinery production, a list of machine manufacturers within certain NACE codes has been established. The financing package includes loans provided to domestic machine manufacturers on the NACE code list that invest in new production or capacity increases, as well loans to domestic buyers investing in new machines produced by the same manufacturers. The package targets the following sectors:
- Electrical Machinery and Components, Computer, Electronics, Optical
 - Motor Vehicle Parts and Parts
 - Engine and Components
 - General Industrial Machinery and Components
 - Electrical Equipment ⁽⁴⁴⁾
- (246) Agriculture includes 'livestock and feed crop production' and these loans were granted to one sampled exporting producer during the RIP for aquaculture. The loan conditions are clearly preferential in terms of the interest rate offered.

4.11.2. Findings

- (247) For the two general loan schemes Can Suyu – Life Water and Ise Devam – Continue to Business based on the level of employment in companies in February 2020, the Commission finds no evidence that these loan schemes are specific, or countervailable.

⁽⁴¹⁾ <https://ms.hmb.gov.tr/uploads/2019/05/ivme-sunum.pdf> (accessed on 11 July 2022).

⁽⁴²⁾ <https://www.sondakika.com/ekonomi/haber-ivme-finansman-paketi-12078612/>

⁽⁴³⁾ <https://www.sondakika.com/ekonomi/haber-ivme-finansman-paketi-12078612/>

⁽⁴⁴⁾ <http://www.satso.org.tr/duyuru/5605/ivme-finansman-paketi.aspx>

- (248) However, for the IVME credit scheme, the Commission has found evidence that it is limited to specific sectors and specific activities (as set out above), and that the loan package is connected to the public banks Ziraat Bank, Halkbank and Vakifbank.
- (249) The Commission found that the sampled companies were only using IVME credit loans provided by Ziraat Bank and Halkbank. The Commission therefore has not investigated the status of Vakifbank in this investigation.
- (250) The Commission has confirmed in Section 4.5.1 above that Ziraat Bank is a public body and vested with governmental authority.
- (251) The Commission considered Türkiye Halk Bankası A.Ş. ('Halkbank') as a public body vested with government authority based on public information and also on the information that the bank itself provided as part of the reply to the government questionnaire which included copies of the 2019 and 2020 Annual Reports.
- (252) Halkbank was established by the GOT in 1933. Mustafa Kemal Atatürk, who stated, 'It is extremely essential to create an organization that will provide small business owners and large industrial enterprises with the loans they so desperately need, easily obtainable and inexpensively priced and to lower the cost of credit under normal circumstances' paved the way for the inception of Halkbank.
- (253) Halkbank is 77,9 % owned by the government through the Turkish Wealth Fund ⁽⁴⁵⁾. The Commission noted that all of the Members of the governing body of the Bank are or were Government officials or have served on other public bodies ⁽⁴⁶⁾.
- (254) For example, the Commission noted the presence on the Board of Maksut Serim, who in 2020 was a Senior Adviser to the President of the Republic of Türkiye, having been Chief Adviser to the Prime Minister of the Republic of Türkiye from 2003 to 2016.
- (255) The Commission also noted the presence on the Board of Sezai Uçarmak, who in 2020 was Deputy Minister at the Ministry of Trade.
- (256) The Commission further noted that the Articles of Association of Halkbank clearly state the specific objective of the Bank a provider of cheap access to financing to SMEs, tradesmen and artisans (Article 4(4)) with the involvement of the Council of Ministers of the Republic of Türkiye.
- (257) Article 4(5) deals with the possibility of less than 50 % of the shares of the Bank being publicly held: 'In case the percentage of publicly held shares of the Bank falls below 50 %, activities of the Bank regarding the offering of credit facilities to tradesmen and merchants as well as small and medium sized industrial enterprises shall continue in accordance with the methods and principles that shall be determined by the Council of Ministers'. ⁽⁴⁷⁾.
- (258) The bank was set up by the Government of Türkiye and has as its priority the needs of small and medium size enterprises ('SMEs'), tradesmen and artisans.
- (259) As Halkbank says itself, 'Since Halkbank's priority has always been providing this target audience with loans offered under the most favourable conditions, the bank deserves the distinguished place it has acquired in the hearts of the tradesmen, artisans, and SMEs.' ⁽⁴⁸⁾. In their 2020 and 2021 Annual Reports, Halkbank also refer on several occasions to their role as a public policy bank carrying out the priorities of the government.
- (260) According to the official Mission statement of Halkbank in its Annual reports, the bank's role is to 'support Turkey's development and growth within an awareness for social responsibility; and to be a people's bank that creates large value-added for all stakeholders'.

⁽⁴⁵⁾ <https://www.halkbank.com.tr/en/investor-relations/corporate-information/ownership-structure.html> (accessed on 8 August 2022).

⁽⁴⁶⁾ <https://www.halkbank.com.tr/en/investor-relations/financial-information/annual-reports.html> (accessed on 8 August 2022).

⁽⁴⁷⁾ <https://www.halkbank.com.tr/en/investor-relations/corporate-governance/articles-of-association.html> (accessed on 17 August 2022).

⁽⁴⁸⁾ <https://www.halkbank.com.tr/en/about-halkbank/discover/we-are-turkiyes-sme-and-tradesman-bank.html> (accessed on 16 August 2022).

- (261) This mission is carried out in practice as follows: ‘As we channelled our resources to the priorities of Turkey’s economy as part of our mission of “We are the People First, and Then a Bank,” we focused on conducting our business within an approach that respects people, society and the environment’.
- (262) For example on page 52 of the 2021 Report ‘the Bank ... extended TRY 12,1 billion in Ministry of Treasury and Finance interest-subsidized loans to 500 thousand tradesmen and artisans. Further, Halkbank continued to defer loan payments of tradesmen and artisans whose businesses suffered pandemic-driven losses pursuant to a Presidential Decree.’ ⁽⁴⁹⁾.
- (263) In relation to the IVME loans more specifically, General Manager Osman Arslan praised ‘the harmony and strong coordination between the institutions related to economic management to bring about successful results’, adding that ‘With our determination to achieve the targets in the New Economy Program, we will spend this year intensively in the field and make great efforts to offer the most appropriate solutions to the demands of our customers. Our loan disbursements in our innovative products such as Acceleration Financing Package, Employment-Oriented Business Loan, Economy Value Loan, Campaign Housing Loan, Campaign Consumer Loan, TLREF Indexed Loan and Domestic Production Vehicle Loan reached TL 30 billion in 2019’ ⁽⁵⁰⁾.
- (264) The conditions of the IVME credit involve a grace period, as well as a preferential rate which is established as a percentage surcharge (1-3 %, based on the loan duration) to the low risk state domestic debt securities (DIBS).
- (265) The interest rate for IVME loans is set out in the government’s instructions to the banks, and is set regardless of the capital cost structure of the bank, the circumstances of the borrower, or their credit worthiness. The banks are therefore considered to be acting on behalf of the government and carrying out the government’s instructions.
- (266) The Commission therefore considered that the IVME credit scheme is countervailable.

4.12. Loans – Conclusion

- (267) As confirmed in the original investigation ⁽⁵¹⁾ and the expiry review ⁽⁵²⁾, preferential financing is considered a subsidy within the meaning of Article 3(1)(a)(i) and Article 3(2) of the basic Regulation.
- (268) On the basis of the findings of the current investigation, the Commission concluded that the preferential financing schemes confer benefits to the recipients, as such financing is granted below market rates, namely under conditions which do not reflect market conditions for financing with a comparable maturity.
- (269) These preferential financing schemes are specific within the meaning of Article 4(2)(a) of the basic Regulation as far as the agricultural loans are concerned, as the granting authorities or the legislation pursuant to which the granting authorities operate explicitly limit access to certain enterprises.
- (270) The export-related credits are specific within the meaning of Article 4(4)(a) of the basic Regulation, as they are contingent upon export performance.
- (271) Following disclosure, the GOT and Gumusdoga disputed the countervailing of the benefit calculated for export related credits, contingent on export performance, where the loan was provided by a private bank.
- (272) This argument was also made in the context of the previous expiry review, in recital (87) and the Commission rejected this claim in recitals (88) and (89) ⁽⁵³⁾.

⁽⁴⁹⁾ <https://www.halkbank.com.tr/en/investor-relations/financial-information/annual-reports.html> (accessed on 8 August 2022).

⁽⁵⁰⁾ <https://www.hurriyet.com.tr/ekonomi/halkbanktan-1-7-milyar-lira-kar-41447902>

⁽⁵¹⁾ Recitals (75) to (78) of Implementing Regulation (EU) No 1195/2014.

⁽⁵²⁾ Recital (83) of Implementing Regulation (EU) 2021/823.

⁽⁵³⁾ Implementing Regulation (EU) 2021/823.

- (273) The Commission analysed the documentation provided by the company carefully for any evidence that these loans had been provided by private bank without any interference by the Eximbank or other public bodies, given that the company had borrowed these funds for the export of the product under review at rates well below those published for loans in Euros by the TCMB.
- (274) The documentation that the company provided did not include a loan agreement from the bank concerned or any evidence to show that the bank concerned had offered the company a particular interest rate for a particular reason.
- (275) No evidence was therefore found to show that these loans were provided on a market basis and the argument was rejected.
- (276) Moreover, the company Gumusdoga argued that the Commission was inconsistent in the methodology used to calculate the benefit on export related loans as some were not included in the calculation of the total benefit.
- (277) The Commission rejected this claim. The only reason for which certain export contingent loans issued by private banks were not included in the calculation of the total benefit is because those loans were issued in Turkish Lira.
- (278) Gumusdoga claimed that, due to its high creditworthiness, it is able to receive favourably low interest rates for its export contingent loans issued by private banks and therefore the Commission should not include the benefit derived from such loans to its calculations.
- (279) The Commission rejected this argument, as the benchmark interest rates used for the calculation of the benefit correspond to the average interest rate of all Turkish loans provided in a certain period of time and in a certain currency. This average included all types of creditworthiness.
- (280) This claim from Gumusdoga, that some export contingent loans were set at low interest rates due to their own specific conditions, was also made in the expiry review and rejected for the same reasons as above. Gumusdoga was unable to show that they received any export contingent loan at a low interest rate based on their credit rating, or based on negotiations with a bank.
- (281) The Commission considered that there is no link between the countervailability of a loan and the level of creditworthiness of a company. The benchmark interest rates were only used to determine the amount of the benefit deriving from the loans and not to determine whether a loan could be considered countervailable or not.
- (282) All the preferential financing schemes are therefore considered as countervailable subsidies.

4.12.1. *Calculation of the subsidy amount*

- (283) In line with Article 6(b) of the basic Regulation, the benefit on preferential financing was calculated as the difference between the amount of interest paid and the amount that would be paid for a comparable commercial loan. As a benchmark, the Commission again applied the weighted average interest rate of commercial loans on the Turkish domestic market, based on data sourced from the TCMB⁽⁵⁴⁾. This is the same benchmark used in the original investigation, and all previous reviews. The Commission allocated the benefit related to the export credits on the export sales while the agricultural loans were allocated on the total sales.
- (284) Following disclosure Gumusdoga queried the methodology used for the attribution of benefit for export contingent loans. In the disclosure, the Commission allocated benefit as follows:
- (a) Export contingent loans reported as 'not related to the product under review' had no benefit allocated to the product under review.

⁽⁵⁴⁾ <https://evds2.tcmb.gov.tr/index.php?/evds/portlet/K24NEG9DQ1s%3D/en> (accessed on 1 July 2022). Interest rate for commercial loans in TL (Excluding Corporate Overdraft Account and Corporate Credit Cards) for the loans received in TL and interest rate for commercial loans in EUR for the loans received in EUR.

- (b) Export contingent loans where there was no such report had all their benefit allocated to the export turnover of the product under review.
- (285) After disclosure Gumusdoga stated that all the loans coming under the heading (b) should in fact be allocated to total export turnover, as all these loans also were contingent on the export of other products. This claim relates to the same claim made by the same exporting producer in the expiry review Regulation ⁽⁵⁵⁾, recital (92).
- (286) In the expiry review the Commission was able to allocate the benefit from some export contingent loans to total export turnover, where there was evidence supporting doing so ⁽⁵⁶⁾. Given that some of these loans continued to be current in this review, the Commission was able to come to the same conclusion.
- (287) For those loans that were not examined in the expiry review, the Commission analysed the documentation that Gumusdoga provided with their questionnaire reply and subsequent submissions.
- (288) Where that documentation showed that the loan was contingent on the export of all products, the benefit was allocated over total export turnover of the group. Otherwise the benefit remained allocated over the export turnover of the product under review. Documentation provided by Gumusdoga after disclosure that could not be verified was not taken into account.
- (289) Following disclosure two sampled exporting producers noted clerical errors in the calculation of benefit, and these were corrected. The Commission also ensured that because the benchmark rate was published every Friday, the benchmark rate would apply for loans starting in the subsequent week, as was also applied in the expiry review Regulation, recital (93).
- (290) The subsidy amounts calculated for the sampled exporting producers regarding preferential lending are as follows:

Table 7

Financing

Company	Subsidy amount
Fishark	0,00 %
Gumusdoga	0,49 %
Ozpekler	0,36 %
Selina Balik	0,19 %

4.13. Final amount of countervailable subsidies

- (291) The Commission found that the aggregated amount of countervailable subsidies in accordance with the provisions of the basic Regulation were as follows:

Table 8

Total subsidy found

Company	Subsidy amount
Fishark	3,47 %
Gumusdoga	4,46 %
Ozpekler	3,19 %
Selina Balik	2,81 %

⁽⁵⁵⁾ Implementing Regulation (EU) 2021/823.

⁽⁵⁶⁾ Recitals (91) and (92) of Implementing Regulation (EU) 2021/823.

5. LASTING NATURE OF CHANGED CIRCUMSTANCES

- (292) The investigation confirmed the significant changes of the structure and the terms of implementation of the direct subsidies granted by the GOT to producers of trout as compared to the original investigation. In particular, as already established in the previous reviews mentioned in recitals (2) and (3), the GOT introduced a legislative change by Decree No 2016/8791 ⁽⁵⁷⁾ regarding the agricultural supports to be provided in 2016. Communiqué No 2016/33 ⁽⁵⁸⁾ regarding aquaculture support detailed the conditions for the subsidies to be granted.
- (293) In essence, and in contrast to the original investigation, in the case where a trout producer had more than one production licence (or 'fish farming unit') in the same potential zone in the sea, as defined by the Ministry, in the same reservoir (dam), or in the same reservoirs located in the same regions, which belonged to the same person or the same enterprise/company, those licences or fish farming units were regarded as one single licence or unit belonging to that company, and the direct subsidy was to be paid according to that interpretation.
- (294) This legislative change was maintained in the decrees of the following years and also in Decree 3190 for the RIP mentioned in recital (57). This suggests that the change in the structure and the implementation of the direct subsidies granted by the GOT has remained in place for several years and there is no indication that the GOT intends to make further changes.
- (295) In addition, an amendment in 2019 ⁽⁵⁹⁾ in the direct subsidy scheme limited the eligible quantity for direct subsidies to 350MT, i.e. lowered the cap in comparison to the original investigation period. The same cap was maintained in 2020 by Decree 3190. As mentioned above, the investigation did not show any indication that this practice would not continue.
- (296) The investigation also revealed as set out in recitals (57) to (72), that the GOT was increasingly subsidising trout farmers by splitting the support rates. Companies farming trout of all sizes under the same farming licence received benefits under both the 'trout' and 'over kilogram trout' subsidy rates.
- (297) The GOT's move from subsidising all trout at one rate of subsidy to subsidising both all trout and 'over kilogram trout' is considered to be of a lasting nature. The trend has been increasing rapidly during the last years, and the GOT gave no indication that this would not continue. This increase in benefits through the disbursements made under the 'over kilogram trout' support rates partly compensated for the decrease in benefits received for 'trout'. Overall, trout farmers continue receiving direct support from the GOT.
- (298) The Commission noted that the overall level of subsidy of the product under review in Turkish Lira per kilogram of exports to the EU had not dropped to the same extent as the countervailing duties calculated during the RIP. This is due to the drop in the value of the Turkish Lira against the Euro since the original investigation, and that the duty is calculated based on the subsidy in Turkish Lira per kilogram divided by the CIF value in Turkish Lira.
- (299) However, the Commission also noted that in parallel with the drop in the value of the Turkish Lira against the Euro, Türkiye also had periods of high inflation. Therefore, the value of the Turkish Lira in the country has also fallen, and the subsidy amounts paid out, which have remained constant in Turkish Lira, have dropped in real terms. The Commission therefore considered the reduction of the countervailing duty from the original investigation as a lasting change of circumstances.

⁽⁵⁷⁾ Turkish Decree No 2016/8791 on agricultural subsidies in 2016, dated 25 April 2016 (implemented retroactively as of 1 January 2016).

⁽⁵⁸⁾ The Communiqué named 'Communiqué on Aquaculture Support' numbered 2016/33 regarding the implementation of Decree No 2016/8791 was published in the Official Gazette on 3 August 2016.

⁽⁵⁹⁾ Presidential Decree 2019/1691 on the agricultural subsidies in 2019, dated 23 October 2019 (implemented retroactively as of 1 January 2019), published in the Official Gazette No 30928/24.10.2019.

- (300) In their submission of 11 November 2021, the DAO commented that there are constant and regular changes in the subsidy schemes in Türkiye and therefore any change in the subsidy amounts cannot be considered as lasting. Exports of trout from Türkiye still undercut the Union industry prices and still cause material injury to the Union industry. Therefore, the current review should be terminated and the level of the measures in force be maintained.
- (301) The DAO's arguments did not take into consideration the significant changes in the structure and implementation of the direct subsidy schemes as established during this investigation. The possible yearly variations in the subsidy rates did not have an impact on the conclusions that circumstances in the original investigation were substantially different and that the changes made were of a lasting nature. The arguments of DAO in this respect were therefore rejected.
- (302) The Commission therefore considered that there has been a change of circumstances and that these changes are lasting. The Commission received no comments on this after disclosure.

6. COUNTERVAILING MEASURES

- (303) On the basis of the conclusions reached by the Commission the anti-subsidy measures on imports of certain rainbow trout originating in the Republic of Türkiye should be amended to take account of the changed circumstances.
- (304) The anti-subsidy measures have been calculated as a percentage of the CIF value of the exports of the product under review to the European Union during the review investigation period.
- (305) Following additional disclosure, Gumusdogra asked the Commission to revise the calculation of the total turnover of the group of companies investigated to include turnover to related companies – outside this group of five companies having a direct link to their activities as regards the product under review – but which were part of the Gumusdogra group.
- (306) This request was accepted and the turnover to the companies concerned was added to the total turnover of the group.
- (307) Following disclosure, the three sampled exporting producers claimed that the Commission had incorrectly calculated the CIF value of the export sales of the product under review to the Union. They claimed that the Commission should consider the DAP invoice values as the CIF value of those sales, and claimed that the Commission had done so in previous investigations.
- (308) The Commission rejected these requests. The CIF value of the sales made to the Union was used (as set out in recital (297) above) to determine the percentage by which the import price should be increased to eliminate the effect of the subsidisation. This requires the CIF value since this is the value declared to Custom authorities on importation into the EU.
- (309) As is the Commission's standard practice, where this CIF value has not been reported, or where the delivery is at the CIF Union border, the invoice value is the basis for the determination of the CIF value. Where the invoice value includes costs after importation (for instance for sales on DAP and DDP basis) the Commission estimated the CIF value of those transactions using the evidence available. For the DDP sales and some DAP sales the CIF value was known, and was reported separately in the questionnaire replies, and was therefore used. All CIF values used have been included in the information submitted by the parties and were verified during RCC.
- (310) Given the high level of cooperation in this investigation, the Commission considered it appropriate to set the countrywide duty at the level of the highest individual duty of the sampled exporting producers.
- (311) The individual company countervailing duty rates specified in this Regulation are exclusively applicable to imports of the product under review originating in Türkiye and produced by the named legal entities.

- (312) Imports of the product under review produced by any other company not specifically mentioned in the operative part of this Regulation, including entities related to those specifically mentioned, should be subject to the duty rate applicable to 'all other companies'. They should not be subject to any of the individual countervailing duty rates.
- (313) A company may request the application of these individual countervailing duty rates if it changes subsequently the name of its entity. The request must be addressed to the Commission. The request must contain all the relevant information enabling to demonstrate that the change does not affect the right of the company to benefit from the duty rate which applies to it. If the change of name of the company does not affect its right to benefit from the duty rate which applies to it, the change of name will be published in the *Official Journal of the European Union*.
- (314) In view of Article 109 of Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council ⁽⁶⁰⁾, when an amount is to be reimbursed following a judgment of the Court of Justice of the European Union, the interest to be paid should be the rate applied by the European Central Bank to its principal refinancing operations, as published in the C series of the *Official Journal of the European Union* on the first calendar day of each month.
- (315) The measures provided for in this regulation are in accordance with the opinion of the Committee established by Article 25(1) of the basic Regulation,

HAS ADOPTED THIS REGULATION:

Article 1

1. In Article 1(1) of Implementing Regulation (EU) 2021/823 the text after the words 'currently falling under CN codes' is replaced by the following:

ex 0301 91 90, ex 0302 11 80, ex 0303 14 90, ex 0304 42 90, ex 0304 82 90, ex 0305 43 00 and ex 1604 19 10 (TARIC codes 0301 91 90 11, 0302 11 80 11, 0303 14 90 11, 0304 42 90 10, 0304 82 90 10, 0305 43 00 11 and 1604 19 10 11) and originating in Türkiye.

2. The table in Article 1(2) of Implementing Regulation (EU) 2021/823 is replaced with the table below:

Company	Countervailing duty (%)	TARIC additional code
Fishark Su Ürünleri Üretim ve Sanayi Ticaret A.Ş.	3,4	B985
Gümüşdogu Su Ürünleri Üretim İhracat İthalat AŞ	4,4	B964
Özpekler İnşaat Taahhüd Dayanıklı Tüketim Malları Su Ürünleri Sanayi ve Ticaret Limited Şirketi	3,1	B966
Companies listed in the Annex	4,0	
Selina Balık İşleme Tesisi İthalat İhracat Ticaret Anonim Şirketi	2,8	C889
All other companies	4,4	B999

3. The Annex to Implementing Regulation (EU) 2021/823 is replaced by the Annex to this Regulation.

⁽⁶⁰⁾ Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council of 18 July 2018 on the financial rules applicable to the general budget of the Union, amending Regulations (EU) No 1296/2013, (EU) No 1301/2013, (EU) No 1303/2013, (EU) No 1304/2013, (EU) No 1309/2013, (EU) No 1316/2013, (EU) No 223/2014, (EU) No 283/2014, and Decision No 541/2014/EU and repealing Regulation (EU, Euratom) No 966/2012 (OJ L 193, 30.7.2018, p. 1).

4. The TARIC additional code B968 previously attributed to Lezita Balik A.S. shall apply to Abalıođlu Balik ve Gıda Ürünleri Anonim Şirketi as of 7 July 2020 (the date on which the company changed its name). Any definitive duty paid on imports of products manufactured by Abalıođlu Balik ve Gıda Ürünleri Anonim Şirketi in excess of the countervailing duty established in Article 1(2) of Implementing Regulation (EU) 2021/823 as regards Lezita Balik A.S. shall be repaid or remitted in accordance with the applicable customs legislation.

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 December 2022.

For the Commission
The President
Ursula VON DER LEYEN

—

ANNEX

Cooperating Turkish exporting producers not sampled:

Name	TARIC additional code
Abahođlu Balık ve Gıda Ürünleri A.Ş.	B968
Alima Su Ürünleri ve Gıda Sanayi Ticaret A.Ş.	B974
Bađcı Balık Gıda ve Enerji Üretimi San ve Tic. A.Ş.	B977
Baypa Bayhan Su Urunleri San. Ve Tic. A.S.	C890
Ertug Balık Uretim Tesisi A.S. and More Su Urunleri A.S.	C891
Kemal Balıkçılık İhracat Ltd Şti.	B981
Kılıç Deniz Ürünleri Üretimi İhracat İthalat ve Ticaret A.Ş.	B965
Lazsom Su Urunleri Gıda Uretim Pazarlama Sanayi Ve Ticaret Limited Sirketi	C892
Liman Entegre Balıkçılık San ve Tic. Ltd Şti.	B982
Ömer Yavuz Balıkçılık Su Ürünleri San. Tic. Ltd Sti.	B984
Premier Kultur Balıkçılığı Yatırım Ve Pazarlama A.S	C893
Uluturhan Balıkçılık Turizm Ticaret Limited Şirketi	C894
Yavuzlar Otomotiv Balıkçılık San. Tic. Ltd Sti.	C895

DECISIONS

COUNCIL DECISION (EU) 2022/2391

of 25 November 2022

on the position to be taken on behalf of the European Union within the Council of Members of the International Olive Council, as regards the trade standard applying to olive oils and olive-pomace oils

THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to the proposal from the European Commission,

Whereas:

- (1) The International Agreement on Olive Oil and Table Olives, 2015 (the 'Agreement') was concluded on behalf of the Union by Council Decision (EU) 2019/848 ⁽¹⁾.
- (2) Pursuant to Article 7(1) of the Agreement, the Council of Members of the International Olive Council (the 'Council of Members') is to take decisions and adopt recommendations for the application of the provisions of the Agreement.
- (3) During its 116th session to be held between 28 November and 2 December 2022, the Council of Members is to adopt a decision amending the trade standard applying to olive oils and olive-pomace oils and a decision to update a method of analysis for waxes and fatty acid ethyl esters.
- (4) It is appropriate to establish the position to be taken on behalf of the Union within the Council of Members, as the decisions to be adopted will be binding on the Union as regards international trade with the other members of the International Olive Council (IOC) and will be capable of decisively influencing the content of Union law, namely on marketing standards concerning olive oil adopted by the Commission pursuant to Article 75 of Regulation (EU) No 1308/2013 of the European Parliament and of the Council ⁽²⁾.
- (5) The decisions to be adopted by the Council of Members concern the removal of Annex 1 of the trade standard and the simplification of the delta-7-stigmastenol decision trees, as well as the inclusion of revision 3 of the method on the determination of waxes and fatty acid ethyl esters. Those decisions have been extensively discussed between scientific and technical experts on olive oil of the Commission and of the Member States. Those decisions will contribute to the international harmonisation of olive oil standards and will establish a framework which will ensure fair competition in the trading of products of the olive oil sector. Those decisions should therefore be supported.
- (6) In case the adoption of those decisions within the Council of Members during its 116th session is postponed, as a result of some Members not being in a position to give their approval, the position to support the adoption of those decisions should be taken on behalf of the Union within the framework of a possible procedure for adoption by the Council of Members by exchange of correspondence, pursuant to Article 10(6) of the Agreement provided that such procedure is initiated before the next regular session of the Council of Members in June 2023.

⁽¹⁾ Council Decision (EU) 2019/848 of 17 May 2019 on the conclusion on behalf of the European Union of the International Agreement on Olive Oil and Table Olives, 2015 (OJ L 139, 27.5.2019, p. 1).

⁽²⁾ Regulation (EU) No 1308/2013 of the European Parliament and of the Council of 17 December 2013 establishing a common organisation of the markets in agricultural products and repealing Council Regulations (EEC) No 922/72, (EEC) No 234/79, (EC) No 1037/2001 and (EC) No 1234/2007 (OJ L 347, 20.12.2013, p. 671).

- (7) The revision of the trade standard applying to olive oils and olive pomace oils COI/T.15/NC No 3/Rev. 19 may require technical adaptations to other IOC methods or documents. These technical adaptations should be supported.
- (8) In order to preserve the interest of the Union, the Commission should however be allowed to request to postpone the adoption of the decisions amending trade standard or methods to a later session of the Council of Members, if the position to be taken on behalf of the Union is likely to be affected by new scientific or technical information presented before or during the 116th session,

HAS ADOPTED THIS DECISION:

Article 1

The position to be taken on the Union's behalf, within the Council of Members in its 116th session to be held between 28 November and 2 December 2022 or within the framework of a procedure for adoption of decisions by the Council of Members by an exchange of correspondence initiated before its next regular session in June 2023 as regards the revision of the trade standard applying to olive oils and olive-pomace oils COI/T.15/NC No 3/Rev. 19, shall be to support the decision to remove Annex 1 of the trade standard and simplify the delta-7-stigmastenol decision trees, and as regards the revision of the method COI/T.20/Do. No 28/REV 3 (Determination of the content of waxes and fatty acid ethyl esters by capillary gas chromatography), shall be to support the decision to include an alternative method of analysis and make some slight changes to the existing method.

Article 2

The position of the Union shall be to support technical adaptations to other IOC methods or documents if they result from the revision of the trade standard applying to olive oils and olive pomace oils COI/T.15/NC No 3/Rev. 19.

Article 3

Where the position referred to in Article 1 is likely to be affected by new scientific or technical information presented before or during the 116th session of the Council of Members, the Commission shall request that the adoption of the decision amending the trade standard applying to olive oils and olive-pomace oils and of the method of analysis for waxes and fatty acid ethyl esters be postponed until the position of the Union is established on the basis of that new information.

Article 4

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

Done at Brussels, 25 November 2022.

For the Council
The President
J. SÍKELA

ACTS ADOPTED BY BODIES CREATED BY INTERNATIONAL AGREEMENTS

DECISION No 1/2022 OF THE TRADE COMMITTEE

of 16 November 2022

modifying Appendix 1 to Annex XIII to the Trade Agreement between the European Union and its Member States, of the one part, and Colombia, Ecuador and Peru, of the other part [2022/2392]

THE TRADE COMMITTEE,

Having regard to the Trade Agreement between the European Union and its Member States, of the one part, and Colombia, Ecuador and Peru, of the other part, and in particular Article 13(1)(d) thereof,

Whereas:

- (1) On 21 November 2017 Colombia submitted to the Union its request to add a new geographical indication to Appendix 1 to Annex XIII to the Agreement pursuant to Article 209 of the Agreement. The Union completed the objection procedure and the examination of one new geographical indication of Colombia.
- (2) On 20 October 2022, pursuant to Article 257(2) of the Agreement, the Sub-Committee on Intellectual Property, in a session between the Union Party and Colombia, assessed the information in relation to the geographical indication and proposed to the Trade Committee to modify Appendix 1 to Annex XIII to the Agreement.
- (3) Appendix 1 to Annex XIII to the Agreement should therefore be modified.
- (4) The decision to modify Appendix 1 to Annex XIII to the Agreement may be adopted in a session of the Trade Committee between the Union Party and Colombia, pursuant to Article 14(3) of the Trade Agreement, as it relates exclusively to the bilateral relationship between them and does not affect the rights and obligations of another signatory Andean Country,

HAS DECIDED AS FOLLOWS:

Article 1

In the table under point (a) 'Geographical Indications of Colombia for agricultural and foodstuff products, wines, spirit drinks and aromatised wines' in Appendix 1 to Annex XIII to the Agreement, the entry in the Annex to this Decision is added.

Article 2

This Decision, done in duplicate, shall be signed by representatives of the Trade Committee who are authorized to act on behalf of the Parties for purposes of modifying the Agreement. This Decision shall be effective from the date of the later of these signatures.

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

Done at Quito, 16 November 2022.

For the Trade Committee

Head of EU delegation
Paolo GARZOTTI

Head of Colombia's delegation
Luis Felipe QUINTERO

ANNEX

(a) 'Geographical Indications of Colombia for agricultural and foodstuff products, wines, spirit drinks and aromatised wines'

BOCADILLO VELEÑO

Fruit paste

DECISION No 2/2022 OF THE TRADE COMMITTEE
of 16 November 2022

modifying Appendix 1 to Annex XIII to the Trade Agreement between the European Union and its Member States, of the one part, and Colombia, Ecuador and Peru, of the other part [2022/2393]

THE TRADE COMMITTEE,

Having regard to the Trade Agreement between the European Union and its Member States, of the one part, and Colombia, Ecuador and Peru, of the other part, and in particular Article 13(1)(d) thereof,

Whereas:

- (1) On 31 October 2017 Peru submitted to the Union its request to add new geographical indications to Appendix 1 to Annex XIII to the Agreement pursuant to Article 209 of the Agreement. The Union completed the objection procedure and the examination of six new geographical indications of Peru.
- (2) On 20 October 2022, pursuant to Article 257(2) of the Agreement, the Sub-Committee on Intellectual Property, in a session between the Union Party and Peru, assessed the information in relation to the geographical indications and proposed to the Trade Committee to modify Appendix 1 to Annex XIII to the Agreement accordingly.
- (3) Appendix 1 to Annex XIII to the Agreement should therefore be modified.
- (4) The decision to modify Appendix 1 to Annex XIII to the Agreement may be adopted in a session of the Trade Committee between the Union Party and Peru, pursuant to Article 14(3) of the Trade Agreement, as it relates exclusively to the bilateral relationship between them and does not affect the rights and obligations of another signatory Andean Country,

HAS DECIDED AS FOLLOWS:

Article 1

In the table under point (c) 'Geographical Indications of Peru for agricultural and foodstuff products, wines, spirit drinks and aromatised wines' in Appendix 1 to Annex XIII to the Agreement, the entries in the Annex to this Decision are added.

Article 2

This Decision, done in duplicate, shall be signed by representatives of the Trade Committee who are authorized to act on behalf of the Parties for purposes of modifying the Agreement. This Decision shall be effective from the date of the later of these signatures.

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

Done at Quito, 16 November 2022.

For the Trade Committee

Head of EU delegation
Paolo GARZOTTI

Head of Peru's delegation
Jose Luis CASTILLO

ANNEX

(c) 'Geographical Indications of Peru for agricultural and foodstuff products, wines, spirit drinks and aromatised wines'

ACEITUNA DE TACNA	Olive
CACAO AMAZONAS PERÚ	Cacao
CAFÉ MACHU PICCHU – HUADQUIÑA	Coffee
CAFÉ VILLA RICA	Coffee
LOCHE DE LAMBAYEQUE	Fruit
MACA JUNÍN-PASCO	Plant product

DECISION No 3/2022 OF THE TRADE COMMITTEE**of 16 November 2022****modifying Appendix 1 to Annex XIII to the Trade Agreement between the European Union and its Member States, of the one part, and Colombia, Ecuador and Peru, of the other part [2022/2394]**

THE TRADE COMMITTEE,

Having regard to the Trade Agreement between the European Union and its Member States, of the one part, and Colombia, Ecuador and Peru, of the other part, and in particular Article 13(1)(d) thereof,

Whereas:

- (1) On 28 November 2018 Ecuador submitted to the Union its request to add new geographical indications to Appendix 1 to Annex XIII to the Agreement pursuant to Article 209 of the Agreement. The Union completed the objection procedure and the examination of three new geographical indications of Ecuador.
- (2) On 20 October 2022, pursuant to Article 257(2) of the Agreement, the Sub-Committee on Intellectual Property, in a session between the Union Party and Ecuador, assessed the information in relation to the geographical indications and proposed to the Trade Committee to modify Appendix 1 to Annex XIII to the Agreement accordingly.
- (3) Appendix 1 to Annex XIII to the Agreement should therefore be modified.
- (4) The decision to modify Appendix 1 to Annex XIII to the Agreement may be adopted in a session of the Trade Committee between the Union Party and Ecuador pursuant to Article 14(3) of the Trade Agreement, as it relates exclusively to the bilateral relationship between them and does not affect the rights and obligations of another signatory Andean Country,

HAS DECIDED AS FOLLOWS:

Article 1

In the table under point (d) 'Geographical Indications of Ecuador for agricultural and foodstuff products, wines, spirit drinks and aromatised wines' in Appendix 1 to Annex XIII to the Agreement the entries in the Annex to this Decision are added.

Article 2

This Decision, done in duplicate, shall be signed by representatives of the Trade Committee who are authorized to act on behalf of the Parties for purposes of modifying the Agreement. This Decision shall be effective from the date of the later of these signatures.

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

Done at Quito, 16 November 2022.

*For the Trade Committee**Head of EU delegation*
Paolo GARZOTTI*Head of Ecuador's delegation*
Daniel LEGARDA

ANNEX

(d) 'Geographical Indications of Ecuador for agricultural and foodstuff products, wines, spirit drinks and aromatised wines'

CAFÉ DE GALAPAGOS	Coffee
MANÍ DE TRANSKUTUKÚ	Peanut
PITAHAYA AMAZÓNICA DE PALORA	Fruit

III

(Other acts)

EUROPEAN ECONOMIC AREA

EFTA SURVEILLANCE AUTHORITY DELEGATED DECISION No 196/22/COL

of 26 October 2022

concerning emergency measures in Norway in relation to outbreaks of highly pathogenic avian influenza pursuant to Article 259(1)(c) of Regulation (EU) 2016/429 and Articles 21, 39 and 55 of Delegated Regulation (EU) 2020/687 [2022/2395]

Corrected on 7 November 2022 by EFTA Surveillance Authority Delegated Decision No 201/22/COL

THE EFTA SURVEILLANCE AUTHORITY,

Having regard to the Agreement between the EFTA States on the Establishment of a Surveillance Authority and a Court of Justice, in particular Articles 1(2) and 3 of Protocol 1 thereof,

Having regard to the Act referred to at Point 13. of Part 1.1 of Chapter I of Annex I to the Agreement on the European Economic Area ('EEA Agreement'), Regulation (EU) 2016/429 of the European Parliament and of the Council of 9 March 2016 *on transmissible animal diseases and amending and repealing certain acts in the area of animal health* ('Regulation (EU) 2016/429'), ⁽¹⁾ as amended and as adapted to the EEA Agreement by the specific and the sectoral adaptations referred to in Annex I to that Agreement, and in particular Articles 257(1), 258(1), (2) and (3) and 259(1)(c) thereof,

Having regard to the Act referred to at Point 13e. of Part 1.1 of Chapter I of Annex I to the EEA Agreement, Commission Delegated Regulation (EU) 2020/687 of 17 December 2019 supplementing Regulation (EU) 2016/429 of the European Parliament and the Council *as regards rules for the prevention and control of certain listed diseases* ('Delegated Regulation (EU) 2020/687'), ⁽²⁾ as amended and as adapted to the EEA Agreement by the specific and the sectoral adaptations referred to in Annex I to that Agreement, and in particular Articles 21, 39 and 55 thereof,

Having regard to the Act referred to at Point 13a. of Part 1.1 of Chapter I of Annex I to the EEA Agreement, Commission Implementing Regulation (EU) 2018/1882 of 3 December 2018 *on the application of certain disease prevention and control rules to categories of listed diseases and establishing a list of species and groups of species posing a considerable risk for the spread of those listed diseases* ('Implementing Regulation (EU) 2018/1882'), ⁽³⁾ as adapted to the EEA Agreement by the specific and the sectoral adaptations referred to in Annex I to that Agreement, and in particular Articles 1 and 2 as well as the Annex thereof,

as adapted to the EEA Agreement by point 4(d) of Protocol 1 to the EEA Agreement,

⁽¹⁾ Incorporated into the EEA Agreement by Decision of the EEA Joint Committee No 179/2020 of 11 December 2020.

⁽²⁾ Incorporated into the EEA Agreement by Decision of the EEA Joint Committee No 3/2021 of 5 February 2021.

⁽³⁾ Incorporated into the EEA Agreement by Decision of the EEA Joint Committee No 179/2020 of 11 December 2020.

Whereas:

Highly pathogenic avian influenza ('HPAI') is an infectious viral disease in birds and may have a severe impact on the profitability of poultry farming causing disturbance to trade within the European Economic Area ('EEA'). HPAI viruses can infect migratory birds, which can then spread these viruses over long distances during their autumn and spring migrations. Therefore, the presence of HPAI viruses in wild birds poses a continuous threat for the direct and indirect introduction of these viruses into holdings where poultry or captive birds are kept. In the event of an outbreak of HPAI, there is a risk that the disease agent may spread to other holdings where poultry or captive birds are kept.

Regulation (EU) 2016/429, Delegated Regulation (EU) 2020/687 and Implementing Regulation (EU) 2018/1882 have applied from 21 April 2021.

Regulation (EU) 2016/429 establishes a new legislative framework for the prevention and control of diseases transmissible to animals or humans. HPAI is referred to in Article 9(1)(a)(i) of Regulation (EU) 2016/429 as a listed disease subject to the disease prevention and control rules laid down therein. The Annex to Implementing Regulation (EU) 2018/1882 lists HPAI as a category A, D and E disease as defined in Article 1 of that Regulation.

Article 259(1) of Regulation (EU) 2016/429 requires the EFTA Surveillance Authority ('the Authority') to review emergency measures taken by the Norwegian competent authorities pursuant to Article 257(1)(a) or 258 of the same Regulation in the event of an outbreak of a listed disease referred to in point (a) of Article 9(1), including HPAI ('Norwegian measures'). Article 259(1)(c) requires the Authority, where it considers it necessary to avoid unjustified disruptions in the movement of animals and products, to adopt emergency measures referred to in Article 257(1) approving Norwegian measures.

Delegated Regulation (EU) 2020/687 supplements the rules for the control of category A, B and C diseases laid down in Regulation (EU) 2016/429, including disease control measures for HPAI. Article 21 of that Regulation provides for the establishment of protection and surveillance zones in the event of an outbreak of a category A disease, including HPAI. This regionalisation is applied in particular to preserve the health status of birds in the remainder of the territory of Norway by preventing the introduction of the pathogenic agent and ensuring the early detection of the disease.

Norway notified a confirmed outbreak of HPAI in a holding of approximately 7 000 birds laying hatching eggs. (*) The Norwegian competent authorities have taken the necessary disease control measures required in accordance with Delegated Regulation (EU) 2020/687, including the establishment of protection and surveillance zones around this outbreak.

In order to prevent any unnecessary disturbance to trade within the EEA, it is necessary to rapidly describe the protection and surveillance zones established by Norway in relation to outbreaks of HPAI.

Accordingly, the protection and surveillance zones relating to HPAI in Norway, where the disease control measures as laid down in Delegated Regulation (EU) 2020/687 are applied, are listed in the Annex to this Decision approving the Norwegian measures pursuant to Article 259(1)(c) of Regulation (EU) 2016/429 and the duration of that regionalisation specified in that Annex.

The Authority has examined the disease control measures in collaboration with Norway, and it is satisfied that the boundaries of the protection and surveillance zones, established by the competent authorities of Norway, are at a sufficient distance to any holding where an outbreak of HPAI has been confirmed.

(*) Document No 1322915.

On 25 October 2022, the Authority, by its Delegated Decision No 195/22/COL (Document No 1322967), duly submitted the draft Decision to the EFTA Veterinary and Phytosanitary Committee in accordance with Articles 259(1) and 266(2) of Regulation (EU) 2016/429. On 26 October 2022, the EFTA Committee delivered a positive opinion on the draft Decision. Accordingly, the draft Decision is in accordance with the opinion of the Committee,

HAS ADOPTED THIS DECISION:

Article 1

The protection and surveillance zones established by Norway pursuant to Article 21 of Delegated Regulation (EU) 2020/687, and the duration of the measures to be applied in such protection zones pursuant to Article 39 and in such surveillance zones pursuant to Article 55 of that Delegated Regulation, following an outbreak of highly pathogenic avian influenza in poultry or captive birds are established and approved at EEA EFTA State level and listed in the Annex to this Decision.

Article 2

Norway shall ensure that:

- a) the protection zones established by its competent authorities, in accordance with Article 21(1)(a) of Delegated Regulation (EU) 2020/687, comprise at least the areas listed as protection zones in Part A of the Annex to this Decision;
- b) the measures to be applied in the protection zones, as provided for in Article 39 of Delegated Regulation (EU) 2020/687, are maintained until at least the dates for the protection zones set out in Part A of the Annex to this Decision.

Article 3

Norway shall ensure that:

- a) the surveillance zones established by its competent authorities, in accordance with Article 21(1)(b) of Delegated Regulation (EU) 2020/687, comprise at least the areas listed as surveillance zones in Part B of the Annex to this Decision;
- b) the measures to be applied in the surveillance zones, as provided for in Article 55 of Delegated Regulation (EU) 2020/687, are maintained until at least the dates for the surveillance zones set out in Part B of the Annex to this Decision.

Article 4

This Decision shall enter into force on the day of its signature.

Article 5

This Decision shall apply until the latest date mentioned in the Annex to this Decision on which disease control measures in any of the protection or surveillance zones cease to be applicable in accordance with Articles 39 or 55 of Delegated Regulation (EU) 2020/687, as relevant.

Article 6

This Decision is addressed to Norway.

Article 7

This Decision shall be authentic in the English language.

Done at Brussels, 26 October 2022.

For the EFTA Surveillance Authority, acting under Delegation Decision No 130/20/COL,

Árni Páll ÁRNASON
Responsible College Member

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

ANNEX

Part A**Protection zones in Norway as referred to in Articles 1 and 2**

Area comprising:	Date until applicable in accordance with Article 39 of Delegated Regulation (EU) 2020/687
The parts of the municipalities Klepp, Sandnes and Sola in the county of Rogaland that are contained within a circle of 3 kilometres radius, centred on GPS coordinates N: 58.80459 E: 5.61203	12.11.2022

Part B**Surveillance zones in Norway as referred to in Articles 1 and 3**

Area comprising:	Date until applicable in accordance with Article 55 of Delegated Regulation (EU) 2020/687
The parts of the municipalities Klepp, Sandnes, Sola and Time in the County of Rogaland, beyond the area described in the protection zone and within the circle of 10 kilometres radius, centred on GPS coordinates N: 58.80459 E: 5.61203	22.11.2022
The parts of the municipalities Klepp, Sandnes and Sola in the county of Rogaland that are contained within a circle of 3 kilometres radius, centred on GPS coordinates N: 58.80459 E: 5.61203	From 12.11.2022 until 22.11.2022

CORRIGENDA

Corrigendum to Commission Delegated Regulation (EU) 2022/2292 of 6 September 2022 supplementing Regulation (EU) 2017/625 of the European Parliament and of the Council with regard to requirements for the entry into the Union of consignments of food-producing animals and certain goods intended for human consumption

(Official Journal of the European Union L 304 of 24 November 2022)

On page 20, Article 21, point 1(c):

for: (c) sprouts and seeds intended for the production of sprouts and referred to by the following HS subheadings: 0704 90, 0706 90, 0708 10, 0708 20, 0708 90, 0712 34, 0712 35, 0712 50, 0712 60, 0713 10, 0713 33, 0712 34, 0713 39, 0713 40, 0713 90, 0910 99, 1201 10, 1201 90, 1207 50, 1207 99, 1209 10, 1209 21, 1209 91 or 1214 90 of Part Two of Annex I to Regulation (EEC) No 2658/87;.

read: (c) sprouts and seeds intended for the production of sprouts and referred to by the following HS subheadings: 0704 90, 0706 90, 0708 10, 0708 20, 0708 90, 0712 34, 0712 35, 0712 50, 0712 60, 0713 10, 0713 33, 0713 39, 0713 40, 0713 90, 0910 99, 1201 10, 1201 90, 1207 50, 1207 99, 1209 10, 1209 21, 1209 91 or 1214 90 of Part Two of Annex I to Regulation (EEC) No 2658/87;.

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