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Contents

[1] Text with EEA relevance.

EN

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

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

([1]) Text with EEA relevance.

II

(Non-legislative acts)

REGULATIONS

COUNCIL IMPLEMENTING REGULATION (EU) 2023/449

of 2 March 2023

implementing Regulation (EU) No 208/2014 concerning restrictive measures directed against certain persons, entities and bodies in view of the situation in Ukraine

THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to Council Regulation (EU) No 208/2014 of 5 March 2014 concerning restrictive measures directed against certain persons, entities and bodies in view of the situation in Ukraine [1], and in particular Article 14(1) thereof,

Having regard to the proposal from the High Representative of the Union for Foreign Affairs and Security Policy,

Whereas:

(1) On 5 March 2014, the Council adopted Regulation (EU) No 208/2014.

(2) On the basis of a review by the Council, the information in Annex I to Regulation (EU) No 208/2014 regarding the rights of defence and the right to effective judicial protection should be updated.

(3) Regulation (EU) No 208/2014 should therefore be amended accordingly,

HAS ADOPTED THIS REGULATION:

Article 1

Annex I to Regulation (EU) No 208/2014 is amended in accordance with the Annex to this Regulation.

Article 2

This Regulation shall enter into force on the date 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, 2 March 2023.

For the Council
The President
E. BUSCH

[1] OJ L 66, 6.3.2014, p. 1.

ANNEX

In Annex I to Regulation (EU) No 208/2014, Section B (Rights of defence and the right to effective judicial protection) is replaced by the following:

'B. **Rights of defence and the right to effective judicial protection**

The rights of defence and the right to effective judicial protection under the Code of Criminal Procedure of Ukraine

Article 42 of the Code of Criminal Procedure of Ukraine ("Code of Criminal Procedure") provides that every person who is suspected or accused in criminal proceedings enjoys rights of defence and the right to effective judicial protection. These include: the right to be informed of the criminal offence of which he has been suspected or accused; the right to be informed, expressly and promptly, of his rights under the Code of Criminal Procedure; the right to have, when first requested, access to a defence lawyer; the right to present petitions for procedural actions; and the right to challenge decisions, actions and omissions by the investigator, the public prosecutor and the investigating judge.

Article 303 of the Code of Criminal Procedure distinguishes between decisions and omissions that can be challenged during the pre-trial proceedings (first paragraph) and decisions, acts and omissions that can be considered in court during preparatory proceedings (second paragraph). Article 306 of the Code of Criminal Procedure provides that complaints against decisions, acts or omissions of the investigator or public prosecutor must be considered by an investigating judge of a local Court in the presence of the complainant or his defence lawyer or legal representative. Article 308 of the Code of Criminal Procedure provides that complaints regarding failure by the investigator or public prosecutor to respect reasonable time during the pre-trial investigation may be lodged with a superior public prosecutor and must be considered within three days of being lodged. In addition, Article 309 of the Code of Criminal Procedure specifies the decisions of investigating judges that may be challenged on appeal, and that other decisions may be subject to judicial review in the course of preparatory proceedings in Court. Moreover, a number of procedural investigating actions are only possible subject to a ruling by the investigating judge or a Court (e.g. seizure of property under Articles 167-175, and measures of detention under Articles 176-178, of the Code of Criminal Procedure).

Application of the rights of defence and the right to effective judicial protection of each of the listed persons

2. **Vitalii Yuriyovych Zakharchenko**

The criminal proceedings relating to the misappropriation of public funds or assets are still ongoing.

The information on the Council's file shows that the rights of defence and the right to effective judicial protection of Mr Zakharchenko, including the fundamental right to have his case heard within a reasonable time by an independent and impartial tribunal, were respected in the criminal proceedings on which the Council relied. This is demonstrated in particular by the decisions of the investigating judge of 19 April 2021 ordering detention in custody of Mr Zakharchenko, as well as the ruling of the Pecherskyi District Court of Kyiv City dated 10 August 2021 granting permission to carry out a special pre-trial investigation in criminal proceeding No 42016000000002929. Those decisions of the investigating judges confirm the status of suspect of Mr Zakharchenko and highlight that the suspect is hiding from the investigation to avoid criminal liability.

Moreover, the Council has information that the Ukrainian authorities took measures to search for Mr Zakharchenko. On 12 February 2020, the investigating body decided to put Mr Zakharchenko on the international wanted list and forwarded the request to the Department of International Police Cooperation of the National Police of Ukraine for entry into the Interpol database. Additionally, on 11 May 2021, Ukraine sent a request for international legal assistance to the Russian Federation to establish the whereabouts of Mr Zakharchenko, which was rejected by Russia on 31 August 2021.

The Council has information that on 9 February 2022 the pre-trial investigation in criminal proceeding No 42016000000002929 was completed and on 5 August 2022, following the fulfilment of the requirements of the Criminal Procedure Code of Ukraine, the Prosecutor General's Office sent an indictment to the Pecherskyi District Court of Kyiv City for the consideration of the merits of the case.

Based on the information provided by the Ukrainian authorities, Mr Zakharchenko has not involved a defence counsel in the criminal proceedings in Ukraine but an assigned defence counsel represented his interests. No violation of the rights of defence and the right to effective judicial protection can be ascertained in the circumstances where the defence is not exercising those rights.

In accordance with the case-law of the European Court of Human Rights, the Council considers that the periods during which Mr Zakharchenko has been avoiding investigation must be excluded from the calculation of the period relevant for the assessment of respect for the right to a trial within a reasonable time. The Council therefore considers that the circumstances described above attributed to Mr Zakharchenko have significantly contributed to the length of the investigation.

6. **Viktor Ivanovych Ratushniak**

The criminal proceedings relating to the misappropriation of public funds or assets are still ongoing.

The information on the Council's file shows that the rights of defence and the right to effective judicial protection of Mr Ratushniak, including the fundamental right to have his case heard within a reasonable time by an independent and impartial tribunal, were respected in the criminal proceedings on which the Council relied. This is demonstrated in particular by the decisions of the investigating judge of 19 April 2021 ordering detention in custody on Mr Ratushniak as well as the ruling of the Pecherskyi District Court of Kyiv City dated 10 August 2021 granting permission to carry out a special pre-trial investigation in criminal proceeding No 42016000000002929. Those decisions of the investigating judges confirm the status of suspect of Mr Ratushniak and highlight that the suspect is hiding from the investigation to avoid criminal liability.

The Council has information that the Ukrainian authorities took measures to search for Mr Ratushniak. On 12 February 2020, the investigating body decided to put Mr Ratushniak on the international wanted list and forwarded the request to the Department of International Police Cooperation of the National Police of Ukraine for entry into the Interpol database. Additionally, on 11 May 2021 Ukraine sent a request for international legal assistance to the Russian Federation to establish the whereabouts of Mr Ratushniak, which was rejected by Russia on 31 August 2021.

The Council has information that on 9 February 2022 the pre-trial investigation in criminal proceeding No 42016000000002929 was completed and, on 5 August 2022, following the fulfilment of the requirements of the Criminal Procedure Code of Ukraine, the Prosecutor General's Office sent an indictment to the Pecherskyi District Court of Kyiv City for the consideration of the merits of the case.

Based on the information provided by the Ukrainian authorities, Mr Ratushniak has not involved a defence counsel in the criminal proceedings in Ukraine but an assigned defence counsel represented his interests. No violation of the rights of defence and the right to effective judicial protection can be ascertained in the circumstances where the defence is not exercising those rights.

In accordance with the case-law of the European Court of Human Rights, the Council considers that the periods during which Mr Ratushniak has been avoiding investigation must be excluded from the calculation of the period relevant for the assessment of respect for the right to a trial within a reasonable time. The Council therefore considers that the circumstances described above attributed to Mr Ratushniak have significantly contributed to the length of the investigation.

12. **Serhiy Vitalyovych Kurchenko**

The criminal proceedings relating to the misappropriation of public funds or assets are still ongoing.

The information on the Council's file shows that the rights of defence and the right to effective judicial protection of Mr Kurchenko, including the fundamental right to have his case heard within a reasonable time by an independent and impartial tribunal, were respected in the criminal proceedings on which the Council relied. This is demonstrated in particular by the fact that the defence was notified about the completion of the pre-trial investigation in criminal proceeding No 42016000000003393 on 28 March 2019 and was provided access to the materials for familiarisation. On 11 October 2021, the National Anti-Corruption Bureau of Ukraine additionally informed the defence lawyers of Mr Kurchenko about the completion of the pre-trial investigation and the provision of access to the materials of the pre-trial investigation for familiarisation. The Council received

information that the National Anti-Corruption Bureau of Ukraine filed a motion to establish a term for the review by the defence party in order to address the delay of the defence party in reviewing the materials of the pre-trial investigation. The Council was informed that the High Anti-Corruption Court of Ukraine in its decision dated 27 June 2022 set a time limit until 1 December 2022 for the defence party to complete the familiarisation process, after which they are considered to have exercised their right to access the materials. On 7 December 2022, the Specialised Anti-Corruption Prosecutor's Office sent the indictment to the High Anti-Corruption Court of Ukraine for the consideration of the merits of the case.

In relation to criminal proceeding No 12014160020000076, in its decision of 18 September 2020, the Odessa Court of Appeal granted the appeal by the prosecutor and imposed a preventive measure of detention in custody on Mr Kurchenko. The Court also stated that Mr Kurchenko departed Ukraine in 2014 and that his location cannot be established. The Court concluded that Mr Kurchenko is hiding from the pre-trial investigation bodies in order to avoid criminal liability. On 20 December 2021, the Kyivskyi District Court of Odesa City granted permission to carry out a special pre-trial investigation in absentia. Furthermore, on 20 October 2021 the Kyivskyi District Court of Odesa City dismissed the appeal of the lawyers to cancel the resolution of the prosecutor on the suspension of the pre-trial investigation dated 27 July 2021.

The Council has information that the Ukrainian authorities took measures to search for Mr Kurchenko. On 13 May 2021, the Main Department of the National Police in Odessa Region forwarded the request to the Ukrainian Bureau of Interpol and Europol to publish a Red Notice concerning Mr Kurchenko, which is under consideration. The Council was informed that on 29 April 2020 the Ukrainian authorities sent a request for international legal assistance to the Russian Federation, which was returned on 28 July 2020 without execution.

The Council was informed that on 6 May 2022 the pre-trial investigation in criminal proceeding No 12014160020000076 was completed and on 1 August 2022 the Odessa Region Prosecutor's Office sent an indictment to the Prymorskyi District Court of Odesa City for the consideration of the merits of the case.

In accordance with the case-law of the European Court of Human Rights, the Council considers that the periods during which Mr Kurchenko has been avoiding investigation must be excluded from the calculation of the period relevant for the assessment of respect for the right to a trial within a reasonable time. The Council therefore considers that the circumstances described in the decision of the Odessa Court of Appeal attributed to Mr Kurchenko as well as the non-execution of the request for international legal assistance have significantly contributed to the length of the investigation.'.

COMMISSION DELEGATED REGULATION (EU) 2023/450

of 25 November 2022

supplementing Regulation (EU) 2021/23 of the European Parliament and of the Council with regard to regulatory technical standards specifying the order in which CCPs are to pay the recompense referred to in Article 20(1) of Regulation (EU) 2021/23, the maximum number of years during which those CCPs are to use a share of their annual profits for such payments to possessors of instruments recognising a claim on their future profits and the maximum share of those profits that is to be used for those payments

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EU) 2021/23 of the European Parliament and of the Council of 16 December 2020 on a framework for the recovery and resolution of central counterparties and amending Regulations (EU) No 1095/2010, (EU) No 648/2012, (EU) No 600/2014, (EU) No 806/2014 and (EU) 2015/2365 and Directives 2002/47/EC, 2004/25/EC, 2007/36/EC, 2014/59/EU and (EU) 2017/1132 ([1]), and in particular Article 20(2), third subparagraph thereof,

Whereas:

(1) It is necessary to ensure that non-defaulting clearing members eligible for the recompense referred to in Article 20(1) of Regulation (EU) 2021/23 are treated in a fair manner. Therefore, where there is a split between cash payments and instruments recognising a claim on future profits, the allocation between the cash payments and those instruments should be identical for all non-defaulting clearing members that have to be recompensed.

(2) According to Article 20(1) of Regulation (EU) 2021/23, the competent authority of a CCP may require a CCP to recompense the clearing members for their loss through the issuance of instruments recognising a claim on the future profits of that CCP. The issuance of such instruments, and the ensuing claims on the CCP's future profits, should however not jeopardise the viability of the CCP and its ability to meet its investment needs, nor diminish the attractiveness of the CCP for its shareholders and external investors over a long period. To diminish that risk, it is appropriate to lay down that the annual claims on the future profits of a CCP should not exceed 70 % of the CCP's annual profits, and that such instruments and claims should not exceed a period of more than 10 years.

(3) This Regulation is based on the draft regulatory technical standards submitted to the Commission by the European Securities and Markets Authority.

(4) The European Securities and Markets Authority conducted open public consultations on the draft regulatory technical standards on which this Regulation is based, analysed the potential related costs and benefits and requested the advice of the Securities and Markets Stakeholder Group established in accordance with Article 37 of Regulation (EU) No 1095/2010 of the European Parliament and of the Council ([2]),

([1]) OJ L 22, 22.1.2021, p. 1.

([2]) Regulation (EU) No 1095/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Securities and Markets Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/77/EC (OJ L 331, 15.12.2010, p. 84).

HAS ADOPTED THIS REGULATION:

Article 1

Order in which the recompense referred to in Article 20(1) of Regulation (EU) 2021/23 is to be paid

1. A CCP that has been required by its competent authority, in accordance with Article 20(1) of Regulation (EU) 2021/23, to recompense non-defaulting clearing members shall recompense those clearing members *pari passu*.

2. A CCP that has been required by its competent authority to recompense its non-defaulting clearing members both in cash and through the distribution of instruments recognising a claim on the CCP's future profits shall use exactly the same allocation scheme for all non-defaulting clearing members when determining which parts of that recompense shall be allocated in cash and non-cash recompense.

3. Any profit-transfer agreement that may impair the profit level shall be reintegrated in the CCP's profit amount.

Article 2

Maximum share of the CCP's annual profits that is to be used towards payments relating to instruments recognising a claim on future profits of the CCP

Annual recompense payments to be made by a CCP pursuant to instruments recognising a claim on its future profits and that have been issued to each affected non-defaulting clearing member shall not exceed 70 % of that CCP's annual profit for each financial year.

Article 3

Maximum number of years during which the possessor is entitled to receive payments from the CCP until the loss has been recouped

The number of years during which an instrument recognising a claim on future profits of the CCP entitles the possessor to receive payments from the CCP on an annual basis until the loss has been recouped shall not exceed 10 years.

Article 4

Entry into force

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, 25 November 2022.

For the Commission
The President
Ursula VON DER LEYEN

COMMISSION DELEGATED REGULATION (EU) 2023/451

of 25 November 2022

specifying the factors to be taken into consideration by the competent authority and the supervisory college when assessing the recovery plan of central counterparties

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EU) 2021/23 of the European Parliament and of the Council of 16 December 2020 on a framework for the recovery and resolution of central counterparties and amending Regulations (EU) No 1095/2010, (EU) No 648/2012, (EU) No 600/2014, (EU) No 806/2014 and (EU) 2015/2365 and Directives 2002/47/EC, 2004/25/EC, 2007/36/EC, 2014/59/EU and (EU) 2017/1132 ([1]), and in particular Article 10(12) thereof,

Whereas:

(1) When taking into consideration a CCP's capital structure and risk profile to assess the recovery plan of that CCP, competent authorities and supervisory colleges should consider whether the recovery plan is appropriate to ensure the adequacy of the CCP's financial resources, including where necessary to ensure a timely recapitalisation of the CCP, the replenishment of its pre-funded resources, and to address any funding and liquidity gap.

(2) When taking into consideration a CCP's default waterfall to assess the recovery plan of that CCP, competent authorities and supervisory colleges should consider whether the structure of that CCP's default waterfall and loss-allocation rules are adequate to sustain all envisaged default losses scenarios, and whether those loss-allocation are legally enforceable.

(3) When taking into consideration the complexity of a CCP's organisational structure to assess the recovery plan of that CCP, competent authorities and supervisory colleges should consider whether that CCP's ownership structure and governance arrangements are sufficiently clear and practicable to confirm the recovery plan's feasibility and ensure a smooth implementation of the recovery measures.

(4) When taking into consideration the substitutability of a CCP's activities to assess the recovery plan of that CCP, competent authorities and supervisory colleges should consider how that CCP's recovery plan envisages that part or all of the CCP's clearing services could be provided by other authorized Union CCPs or recognized third-country CCPs to mitigate the risk of disruption of services that are essential to the real economy and to financial stability.

(5) When taking into consideration a CCP's risk profile to assess the recovery plan of that CCP, competent authorities and supervisory colleges should consider the business features and the governance and legal risks of that CCP to assess whether that CCP is in a position to undertake the measures set out in the recovery plan in a swift and efficient manner, regardless of the CCP's specificities.

(6) When taking into consideration a CCP's preparedness to face stress that would endanger the CCP's viability with the aim of assessing the recovery plan of that CCP, competent authorities and supervisory colleges should consider the adequacy of scenarios and indicators included in the recovery plan in light of that CCP's specificities to ensure the credibility of the CCP's level of preparedness to face such stress.

([1]) OJ L 22, 22.1.2021, p. 1.

(7) When taking into consideration a CCP's business model to assess the recovery plan of that CCP, competent authorities and supervisory colleges should consider the suitability of the identification of critical functions in that recovery plan and how the recovery plan envisages to undertake a sale of assets or business lines to anticipate the effects of the activation of the recovery plan on clearing members, their clients and indirect clients, and outsourcing arrangements.

(8) When taking into consideration the impact of a CCP's recovery plan on certain entities in relation to communication, competent authorities and supervisory colleges should consider the adequacy of the CCP's communication and disclosure procedures to share information as transparently as possible and manage potentially negative market reactions to the CCP's difficulties.

(9) When taking into consideration the impact of a CCP's recovery plan on clearing members, competent authorities and supervisory colleges should consider how that CCP evaluates the complexity of its clearing membership to anticipate the impact of the recovery plan on clearing members' clients and indirect clients, and consider their contractual obligations in any recovery scenario.

(10) When taking into consideration the impact of a CCP's recovery plan on linked market infrastructures, competent authorities and supervisory colleges should consider whether the implementation of that CCP's recovery measures may affect the operations of a linked infrastructure to properly evaluate the impact of the resolution plan in terms of interoperability effects.

(11) When taking into consideration the impact of a CCP's recovery plan on financial markets served by the CCP, including trading venues, competent authorities and the supervisory colleges should consider any link with that CCP's trading venues to anticipate any material impact of the recovery measures on the ability of a trading venue to process trades or establish prices.

(12) When taking into consideration the impact of a CCP's recovery plan on the financial system of any Member State and the Union as a whole, competent authorities and the supervisory colleges should evaluate the impact of recovery measures on entities with material links to that CCP, clearing members and FMIs to consider any contagion risk that may stem from the activation of the recovery plan. They should also consider the appropriateness of the incentives introduced by the recovery plan to ensure that the recovery measures and loss allocation tools are likely to optimise the likelihood of a successful recovery, with a fair and proportionate allocation of costs among that CCP's shareholders, clearing members and their clients.

(13) This Regulation is based on the draft regulatory technical standards submitted to the Commission by the European Securities and Market Authority ('ESMA').

(14) ESMA developed the draft technical standards on which this Regulation is based in cooperation with the European System of Central Banks and the European Systemic Risk Board. ESMA conducted open public consultations on such draft regulatory technical standards, analysed the potential related costs and benefits and requested the advice of the Securities and Markets Stakeholder Group established in accordance with Article 37 of Regulation (EU) No 1095/2010 of the European Parliament and of the Council [2],

[2] Regulation (EU) No 1095/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Securities and Markets Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/77/EC (OJ L 331, 15.12.2010, p. 84).

HAS ADOPTED THIS REGULATION:

Article 1

Assessment of a CCP's capital structure and financial risk

When assessing the adequacy of a CCP's recovery plan in respect of that CCP's capital structure and financial risk, competent authorities and supervisory colleges shall consider all of the following factors:

(a) whether there are any inconsistencies between the CCP's capital structure and the recovery measures designed to ensure timely recapitalisation of the CCP should its capital level fall below the notification threshold or capital requirements;

(b) whether the recovery plan duly accounts for the additional amount of pre-funded dedicated own resources referred to in Article 9(14) of Regulation (EU) 2021/23;

(c) whether, considering the types of products cleared, the measures in the recovery plan are well designed, feasible, credible and suitable for the CCP to:

  (i) restore the CCP's matched book and capital;

  (ii) replenish pre-funded resources;

  (iii) maintain access to sufficient sources of liquidity;

  (iv) maintain or restore the financial viability and soundness of the CCP by undertaking certain recovery tools or measures, including loss allocation tools such as recovery cash calls, reduction in value of gains payable by the CCP to non-defaulting clearing members, position allocation and other liquidity actions;

(d) whether the measures in the recovery plan are duly tested to allow for allocation and price discovery;

(e) whether the measures in the recovery plan and the tools referred to in point (c)(iv) are sufficiently reliable and promptly available in case of both idiosyncratic and system-wide recovery events;

(f) whether the recovery plan sets out arrangements to address both funding gaps and temporary liquidity gaps, and specifies the liquidity arrangements available to the CCP;

(g) whether the measures in the recovery plan take into account the margin model and margin processes as well as the collateral framework, including a list of accepted collateral and collateral haircuts within the CCP, and in particular all of the following:

  (i) the maximum amount of margins collected by the CCP;

  (ii) where applicable, for each default fund of the CCP, the maximum default fund contributions required;

  (iii) an estimate of the largest amount in total that could fall due in payment obligations on a single day in the event of a default of one or two of the largest single clearing members and their affiliates in extreme but plausible market conditions;

  (iv) the possibility to transfer resources or liquidity across business lines;

(h) whether the recovery plan envisages to use standing central bank facilities and clearly identifies the assets that would be expected to qualify as collateral under the terms of the central bank facility.

Article 2

Assessment of a CCP's default waterfall

Competent authorities and supervisory colleges shall assess the adequacy of a CCP's recovery plan in respect of that CCP's default waterfall by considering all of the following factors:

(a) whether the default waterfall and different paths of loss propagation are clearly specified and whether the consequences of any losses are modelled in accordance with the rules allocating those losses, including arrangements between the CCP and its clearing members and the overall risk management framework of the CCP, such as the CCP rulebook;

(b) whether relevant legal risks have been assessed and addressed in ensuring the enforceability of the waterfall, including with regard to clearing members that are domiciled in third-country jurisdictions.

Article 3

Assessment of the organisational structure of a CCP

Competent authorities and supervisory colleges shall assess the adequacy of a CCP's recovery plan in respect of the level of complexity of the organisational structure by considering all of the following factors:

(a) whether the ownership structure of the CCP might affect the recovery plan;

(b) how the ownership structure of the CCP is reflected in incentive structures or decision processes of the CCP;

(c) how requirements on owners under the recovery plan might affect the recovery plan, including where contractual parental or group support agreements form part of the recovery plan, and assessing in particular:

  (i) the reliability and enforceability of such support;

  (ii) whether the recovery plan appropriately considers and addresses cases where such support agreements cannot be honoured;

(d) whether the links of the CCP to any same-group entity are sufficiently assessed to ensure that any risk of contagion that may arise in the event of any group company being subject to financial constraints or being in default is accounted for, and assessing how those links might impact the applicability of the measures in the recovery plan;

(e) whether the policies and procedures governing the approval of the recovery plan and the identification of the persons in the organisation responsible for drawing up and implementing the recovery plan are suitable, clear and practicable;

(f) whether the recovery plan is consistent with the corporate governance structure of the CCP and the CCP's decision processes and internal governance;

(g) whether the complexity of the CCP's internal organisation might be a hindrance to timely actions or whether processes are likely to run efficiently with clear decision-making chains and clearly defined responsibilities;

(h) whether the recovery plan is clear and practicable in procedures and action plans, including procedures for decision processes, detailed contact sheets from any person relevant to the recovery plan process, remote access abilities and accessibility to decision makers, and whether the recovery plan has procedures to access key persons both on and off-site;

(i) whether the recovery plan is effectively included, where required, in the operating rules of the CCP;

(j) whether the CCP has in place appropriate rules and procedures to test its recovery plan with its clearing members on a regular basis, and where possible, to identify their clients and indirect clients.

Article 4

Assessment of the substitutability of a CCP's activities

Competent authorities and supervisory colleges shall assess the adequacy of a CCP's recovery plan in respect of the substitutability of that CCP's activities by considering all of the following factors:

(a) whether the recovery plan has taken into account whether other CCPs authorised or recognised under Article 14 or Article 25 of Regulation (EU) No 648/2012 of the European Parliament and of the Council ([3]) provide some or all of the clearing services provided by the CCP;

([3]) Regulation (EU) No 648/2012 of the European Parliament and of the Council of 4 July 2012 on OTC derivatives, central counterparties and trade repositories (OJ L 201, 27.7.2012, p. 1).

(b) the extent to which the recovery plan provides details, using the information available to the CCP, on how clearing services provided by another CCP have been identified and whether such identified services by other CCPs are established services or newly established clearing services;

(c) where the recovery plan envisages the portability of transactions or the transfer of non-critical activities, partially or in full, to another service provider, and:

(i) whether that possibility is presented with an assessment of its viability, using the information available to the CCP;

(ii) how the recovery plan caters for the eventuality that the implementation of such portability of transactions or the transfer of non-critical activities would not be possible.

Article 5

Assessment of the risk profile of a CCP

1. Competent authorities and supervisory colleges shall assess the adequacy of a CCP's recovery plan in respect of the risk profile of that CCP by considering all of the following factors:

(a) whether the CCP's recovery plan overall encompasses and provides appropriate measures to address different types of risk, and plausible combinations thereof, which might require the use of the recovery tools referred to in Article 1, point (c)(iv);

(b) whether the risk of disruptions originating both at the CCP and in other entities and service providers to which the CCP is exposed, including clearing, investment, custody and payments, is assessed and mitigated in the recovery plan;

(c) whether the recovery plan takes into account the nature, size and complexity of the CCP's business and how those elements are reflected in the measures proposed by the CCP;

(d) whether the CCP can independently apply the recovery plan without interference from other entities in the same corporate group and, where possible, whether any spill-over effects on other group entities and financial interdependencies are clearly identified;

(e) whether the recovery plan takes into account environmental risks and the risk of cyber-attacks that could lead to a significant deterioration of the financial situation of the CCP and any other risks identified in stress-test exercises performed in accordance with Article 49(1) of Regulation (EU) No 648/2012 and Article 21(2) of Regulation (EU) No 1095/2010, where relevant for the recovery plan;

(f) whether the legal risks have been assessed in the recovery plan, and in particular whether all measures in the recovery plan are legal, valid, binding and enforceable;

(g) whether the arrangements, agreements and contracts, including the operating rules of the CCP and agreements with service providers, are clear, legal, valid, binding and enforceable and actionable to ensure that the risks of legal challenges and lawsuits are managed and minimised;

(h) whether legal opinions have been collected, where needed, to evidence the legal validity and enforceability of the recovery measures and agreements, in particular where the counterparty to the agreement is located in a third country;

(i) whether, where the board of the CCP has decided not to follow the advice of the risk committee when approving the CCP's recovery plan, the reason provided by the CCP both to the members of the risk committee and to its competent authority in accordance with Article 9(18) of Regulation (EU) 2021/23, is adequate.

2. For the purposes of paragraph 1, point (a), the types of risk to be considered shall include, depending on the CCP, operational, credit, liquidity, general business, custody, settlement, investment, market, systemic, environmental, and climate risks.

3. For the purposes of paragraph 1, point (c), the aspects referred to in that point may be assessed in the recovery plan by considering all of the following aspects of the CCP's business:

(a) the type of financial instruments cleared or to be cleared by the CCP;

(b) the financial instruments cleared or to be cleared by the CCP that are subject to the clearing obligation referred to in Article 4 of Regulation (EU) No 648/2012;

(c) the average values cleared by the CCP over one year, per type of product and by currency both in absolute terms, as well as relative terms to the CCP's capital, at the level of each clearing member and, where possible, of each client;

(d) whether the transactions cleared by the CCP are executed on an EU trading venue, on a third-country trading venue considered equivalent in accordance with Article 2a of Regulation (EU) No 648/2012, or an OTC;

(e) the Member States where the CCP provides, or intends to provide, services and other cross-border activities of the CCP.

Article 6

Assessment of the risk profile of the CCP in relation to the CCP preparedness

Competent authorities and supervisory colleges shall assess a CCP's recovery plan's adequacy in respect of the timeline, scenarios and indicators contained in the recovery plan. When performing that assessment, competent authorities and supervisory colleges shall consider all of the following factors:

(a) whether the planned application and designed strategy of the recovery plan:

(i) reflect the CCP's risk profile arising from its business model and product mix, including considerations as to its market liquidity, market concentration, the role of direct clearing members and their clients, settlement methodologies, currencies and clearing hours, as well as trading venues served;

(ii) take into account the CCP's specific structure and organisational set-up, including considerations as to its default waterfall segregation and risk-pooling possibilities across services;

(iii) take into account the CCP's dependencies on relevant entities, including related group entities and third parties;

(b) whether the framework of quantitative and qualitative indicators included in the recovery plan identifies the circumstances in which measures in the recovery plan are to be taken.

Article 7

Assessment of the risk profile of the CCP in relation to the business model

Competent authorities and supervisory colleges shall assess a CCP's recovery plan's adequacy in respect of the operational risk of the business model of that CCP by considering all of the following factors:

(a) whether the critical functions of the CCP are properly identified;

(b) whether the preparatory arrangements to facilitate the sale of assets or business lines, as envisaged in the recovery plan, are suitable for the CCP, taking into account all of the following:

(i) whether the processes for determining the value and marketability of the core business lines, operations and assets of the CCP are suitable for a rapid and trustworthy assessment;

(ii) whether the timeframe envisaged to prepare the sale is appropriate considering the type of instruments cleared and the scope of the sale;

(iii) whether the assessment of the potential impact of such a sale on the operations of the CCP is reflecting the specific operations of the CCP, i.e. the type of products cleared or margining methods applicable to products and account structures;

(iv) whether the impact of the preparatory arrangements of the business lines on clearing members and their clients and indirect clients, where possible to identify, are sufficiently assessed and whether any negative effects are mitigated;

(c) where the CCP clears several products, whether the CCP has considered the potential of splitting a sale between products, and whether any impediments have been identified as an effect of such a split or if any other effect on the recovery plan has been identified by such a split sale;

(d) whether the number and importance of different links with entities, including liquidity providers, settlement banks, platforms, custodians, investment agents, banks or service providers have been assessed in the recovery plan and how such links impact the recovery measures and the effectiveness of the recovery plan;

(e) whether the significance or materiality of each link has been assessed, including in terms of volumes cleared and the financial exposures under those arrangements;

(f) whether any outsourcing arrangements that cover part of the CCP's core business have been sufficiently assessed and whether any identified risks have been mitigated;

(g) how the legal enforceability of the recovery plan against service providers of outsourcing arrangements as referred to in point (f) has been assessed and whether any inability of the provider of such outsourced arrangements to comply with its obligations under the outsourcing arrangements has been satisfactorily assessed and how those risks have been mitigated in the recovery plan.

Article 8

Assessment of the overall impact on certain entities in relation to a CCP's communication and disclosure plan

Competent authorities and supervisory colleges shall assess the adequacy of a CCP's recovery plan in respect of that CCP's communication and disclosure plan by considering the overall impact that the implementation of the recovery plan would have on the entities or markets referred to in Article 10(3), point (b), of Regulation (EU) 2021/23, and in particular by considering all of the following factors:

(a) whether the CCP's communication and disclosure plan complies with Section A, point (3), of the Annex to Regulation (EU) 2021/23, and in particular whether the CCP's communication and disclosure plan:

  (i) envisages how information is to be shared as transparently as possible with the CCP's stakeholders, including clearing members and the financial market in general;

  (ii) provides clear guidance on how to manage expectations and envisages minimising potentially negative market reactions when disclosing information;

(b) whether the CCP's communication and disclosure plan contains clear procedures for how and when to share information with different entities, giving clear descriptions of how such procedures have taken into consideration legal requirements and other binding requirements.

Article 9

Assessment of the overall impact of a CCP's recovery plan on clearing members, their clients, and indirect clients

Competent authorities and supervisory colleges shall assess the recovery plan's adequacy in respect of its overall impact on the CCP's clearing members and, where that information is available to the CCP, on their clients and indirect clients, including where those clients and indirect clients have been designated as other systemically important institutions (O-SIIs), by considering all of the following factors:

(a) whether the recovery plan correctly reflects the complexity of the CCP's clearing membership, including all of the following:

  (i) the level of client clearing in the CCP;

  (ii) the number of clearing members established:

    (1) within the CCP's jurisdiction;

(2) in another Member State;

(3) in a third country;

(iii) the concentration of the membership;

(b) whether the recovery plan has taken into account the overall impact on clearing members and, where that information is available to the CCP, on their clients and indirect clients, of a possible disruption of the clearing services provided by the CCP, including potential impacts on access to clearing and other effects derived from the operating rules of the CCP;

(c) whether the recovery plan has taken into account the potential effect of the agreed measures to be taken under the recovery plan on clearing members and, where relevant, on their clients and indirect clients;

(d) whether, under the operating rules of the CCP, any financial or contractual obligation is agreed to by the clearing members and, where relevant, by their clients and indirect clients, including about how the amount of the obligation is calculated, whether any maximum or cap is applied, whether the amount is a pre-agreed sum or will be derived as a function of the member's or client's exposures and how such resources would be requested.

Article 10

Assessment of the overall impact of a CCP's recovery plan on linked FMIs

Competent authorities and supervisory colleges shall assess a CCP's recovery plan's adequacy in respect of its overall impact on any linked financial market infrastructures (FMIs), by considering all of the following factors:

(a) whether the recovery plan assesses the potential impact of applying the recovery measures on any interoperable CCP and on any other FMI linked to the CCP, by assessing the significance of the CCP's involvement in those entities;

(b) whether the recovery plan addresses any interoperability or cross-margining agreements with other CCPs and the scope of such arrangements, including volumes cleared and financial resources exchanged as part of those arrangements;

(c) whether the impact of the implementation of any of the measures under the recovery plan might affect access to other FMIs, and where impediments or limitations are identified, how they are mitigated;

(d) whether linked FMIs and stakeholders which would bear losses, incur costs or contribute to covering liquidity shortfalls in the event that the recovery plan was implemented, have been involved in the process of drawing up that plan in an effective and satisfactory manner in accordance with Article 9(16) of Regulation (EU) 2021/23.

Article 11

Assessment of the overall impact of a CCP's recovery plan on financial markets, including trading venues, served by the CCP

Competent authorities and supervisory colleges shall assess a CCP's recovery plan's adequacy in respect of its overall impact on financial markets, including trading venues, served by the CCP, by considering all of the following factors:

(a) whether the potential impact of applying the recovery measures on trading venues as well as any other sources of trading connected to the CCP has been assessed in the recovery plan, including an assessment of the significance of the CCP's involvement in those entities and whether the impact represents a threat to the stability of the entities concerned;

(b) whether the CCP provides, in addition to clearing services, any other or ancillary material or significant services linked to clearing, and whether any measure under the recovery plan might have an impact on the financial market served by the CCP, where the CCP provides such other or ancillary material or significant services.

Article 12

Assessment of the overall impact of a CCP's recovery plan on the financial system of any Member State and of the Union as a whole

Competent authorities and supervisory colleges shall assess the adequacy of a CCP's recovery plan in respect of the overall impact on the financial system of any Member State and of the Union as a whole by considering all of the following factors:

(a) whether the potential impact has been assessed of the recovery plan on:

(i) the financial stability of any Member State and of the Union as a whole arising as a result of possible contagion effects, including in terms of credit, liquidity or operational risks for clearing participants and interdependent FMIs;

(ii) on the financial system of any Member State and of the Union as a whole resulting from one or more entities linked to the CCP or the CCP itself being impacted by the recovery plan;

(b) whether, to assess the wider systemic risk impact of the recovery plan, the results from analyses performed occasionally by ESMA are considered and reflected upon, where relevant for the recovery plan, in the recovery plan and whether any relevant discoveries or concerns are mitigated, as far as possible, in that plan;

(c) whether material links with entities, including liquidity providers, settlement banks, platforms, custodians, investment agents, banks or service providers have been considered by assessing how the recovery plan might impact the operations of the linked entities, and whether the measures contained in the recovery plan are suitable and workable for the entities with material links identified or could have a material negative impact on the financial system of any Member State and of the Union as a whole;

(d) whether liquidity providers, where supervised by the CCP's competent authority or to the extent information on their liquidity exposures is available, give rise to concentrated liquidity exposures due to the multiple roles those liquidity providers may play for several CCPs, including as clearing member, payment bank, investment bank, custodian, or provider of liquidity back-stop arrangement.

Article 13

Incentives

Competent authorities and supervisory colleges shall assess a CCP's recovery plan's adequacy in respect of creating appropriate incentives for that CCP's owners, clearing members, and where possible their clients, as relevant, to control the amount of risk that those CCP's owners, clearing members and their clients bring to or incur in the system, to monitor the CCP's risk-taking and risk management activities and to contribute to the CCP's default management process by considering all of the following factors:

(a) whether the incentives increase the likelihood of a successful recovery and whether the recovery plan specifies the incentives for different stakeholders, providing examples, where relevant, of how voluntary or optional contributions, in addition to the agreed contributions under the operating rules of the CCP, could be encouraged in times of crisis;

(b) whether calls for resources, contributions or the allocations of costs associated with the recovery plan create the appropriate incentives for the CCP, its clearing members, their clients, and indirect clients insofar as those direct and indirect clients are known, shareholders and other entities within the same group, to act in a way that minimises risks and potential costs;

(c) whether the structure of the default management process incentivises participation in the default management of the clearing members and their clients by the use of recovery tools and by the resources to be provided to the CCP in a recovery, including penalties in the event of a failure to provide, where agreed, committed resources, including the provision of seconded personnel to assist in the recovery management or to engage in competitive bidding in an auction;

(d) whether the arrangements and measures for auctions of defaulted members' positions sufficiently incentivise non-defaulting clearing members to bid competitively and are well organised and whether those arrangements and measures create the incentives envisaged in the recovery plan;

(e) whether the link between clearing members' activity and their potential losses resulting from the recovery plan creates an appropriate incentive for making a successful recovery more likely, including whether the losses or a cap on potential losses are proportionate to a metric on the activity of the member, based on variation margin, initial margin, default fund contributions or other risk-based and activity-based metrics;

(f) whether the CCPs mechanisms to involve linked FMIs and stakeholders, which would bear losses, incur costs or contribute to covering liquidity shortfalls in the event that the recovery plan was implemented, in the process of drawing up of the recovery plan and participating in relevant risk-management discussions, are well-organized and create suitable incentives to ensure the balance between the interests of linked FMIs and stakeholders;

(g) whether the involvement of clearing members, and possibly their clients, or other entities linked to the CCP in the provision of services, to address the mitigation of losses in the event of recovery, embeds the right incentives to provide the CCP with suitable services, including acting as a repo counterparty and providing liquidity.

Article 14

Entry into force

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, 25 November 2022.

For the Commission
The President
Ursula VON DER LEYEN

COMMISSION IMPLEMENTING REGULATION (EU) 2023/452

of 24 February 2023

registering a geographical indication of a spirit drink under Article 30(2) of Regulation (EU) 2019/787 of the European Parliament and of the Council ('Grappa della Valle d'Aosta / Grappa de la Vallée d'Aoste')

THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EU) 2019/787 of the European Parliament and of the Council of 17 April 2019 on the definition, description, presentation and labelling of spirit drinks, the use of the names of spirit drinks in the presentation and labelling of other foodstuffs, the protection of geographical indications for spirit drinks, the use of ethyl alcohol and distillates of agricultural origin in alcoholic beverages, and repealing Regulation (EC) No 110/2008 ([1]), and in particular Article 30(2) thereof,

Whereas:

(1) Pursuant to Article 17(5) of Regulation (EC) No 110/2008 of the European Parliament and of the Council ([2]), the Commission has examined Italy's application of 30 August 2018 for the registration of the name 'Grappa della Valle d'Aosta / Grappa de la Vallée d'Aoste' as a geographical indication.

(2) Regulation (EU) 2019/787, which replaces Regulation (EC) No 110/2008, entered into force on 25 May 2019. Under Article 49(1) thereof, Chapter III of Regulation (EC) No 110/2008 on geographical indications is repealed with effect from 8 June 2019.

(3) After concluding that the application complied with Regulation (EC) No 110/2008, the Commission published the main specifications of the technical file in the *Official Journal of the European Union* ([3]) as required by Article 17(6) of that Regulation, in accordance with the first subparagraph of Article 50(4) of Regulation (EU) 2019/787.

(4) No notice of opposition has been received by the Commission under Article 27(1) of Regulation (EU) 2019/787.

(5) The name 'Grappa della Valle d'Aosta / Grappa de la Vallée d'Aoste' should therefore be registered as a geographical indication,

HAS ADOPTED THIS REGULATION:

Article 1

The geographical indication 'Grappa della Valle d'Aosta / Grappa de la Vallée d'Aoste' is hereby entered into the register. This Regulation grants the geographical indication 'Grappa della Valle d'Aosta / Grappa de la Vallée d'Aoste' the protection referred to in Article 21 of Regulation (EU) 2019/787 in accordance with Article 30(4) of that 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*.

([1]) OJ L 130, 17.5.2019, p. 1.

([2]) Regulation (EC) No 110/2008 of the European Parliament and of the Council of 15 January 2008 on the definition, description, presentation, labelling and the protection of geographical indications of spirit drinks and repealing Council Regulation (EEC) No 1576/89 (OJ L 39, 13.2.2008, p. 16).

([3]) OJ C 429, 11.11.2022, p. 29.

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

Done at Brussels, 24 February 2023.

For the Commission,
On behalf of the President,
Janusz WOJCIECHOWSKI
Member of the Commission

COMMISSION IMPLEMENTING REGULATION (EU) 2023/453

of 2 March 2023

extending the definitive anti-dumping duty imposed by Implementing Regulation (EU) 2017/141 on imports of certain stainless steel tube and pipe buttwelding fittings, whether or not finished, originating in the People's Republic of China to imports of certain stainless steel tube and pipe butt-welding fittings, whether or not finished, consigned from Malaysia, whether declared as originating in Malaysia or not

THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EU) 2016/1036 of the European Parliament and of the Council of 8 June 2016 on protection against dumped imports from countries not members of the European Union ([1]) ('the basic Regulation'), and in particular Article 13 thereof,

Whereas:

1. PROCEDURE

1.1. Existing measures

(1) In January 2017, the European Commission ('the Commission') imposed a definitive anti-dumping duty on imports of certain stainless steel tube and pipe butt-welding fittings ('SSTPF' or 'fittings') originating in the People's Republic of China ('the PRC' or 'China') and Taiwan by Commission Implementing Regulation (EU) 2017/141 ([2]), as amended by Commission Implementing Regulation (EU) 2017/659 ([3]). The anti-dumping duties in force range between 30,7 % and 64,9 % for imports originating in the PRC, and between 5,1 % to 12,1 % for imports originating in Taiwan. The investigation that led to these duties was initiated in October 2015 ('the original investigation') ([4]).

(2) In January 2022, the Commission initiated an expiry review of the existing measures in accordance with Article 11(2) of the basic Regulation by publishing a notice in the *Official Journal of the European Union* ([5]). This review is still on-going.

1.2. Request

(3) The Commission received a request pursuant to Articles 13(3) and 14(5) of the basic Regulation to investigate the possible circumvention of the anti-dumping measures imposed on imports of SSTPF originating in China by imports of SSTPF consigned from Malaysia, whether declared as originating in Malaysia or not, and to make such imports subject to registration ('the request').

(4) The request was lodged on 25 April 2022 by the Defence Committee of the Stainless steel butt-welding Fittings industry of the European Union ('the applicant').

(5) The request contained sufficient evidence of a change in the pattern of trade involving exports from China and Malaysia to the Union that had taken place following the imposition of measures on SSTPF originating in China.

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

([2]) Commission Implementing Regulation (EU) 2017/141 of 26 January 2017 imposing definitive anti-dumping duties on imports of certain stainless steel tube and pipe butt-welding fittings, whether or not finished, originating in the People's Republic of China and Taiwan (OJ L 22, 27.1.2017, p. 14).

([3]) Commission Implementing Regulation (EU) 2017/659 of 6 April 2017 amending Implementing Regulation (EU) 2017/141 imposing definitive anti-dumping duties on imports of certain stainless steel tube and pipe butt-welding fittings, whether or not finished, originating in the People's Republic of China and Taiwan (OJ L 94, 7.4.2017, p. 9).

([4]) Notice of initiation of an anti-dumping proceeding concerning imports of certain stainless steel tube and pipe butt-welding fittings, whether or not finished, originating in the People's Republic of China and Taiwan (OJ C 357, 29.10.2015, p. 5).

([5]) Notice of initiation of an expiry review of the anti-dumping measures applicable to imports of certain stainless steel tube and pipe butt-welding fittings, whether or not finished, originating in the People's Republic of China and Taiwan (OJ C 40, 26.1.2022, p. 1).

(6) Moreover, the request provided evidence showing that it is unlikely that this change stems from a practice, process or work for which there is sufficient due cause or economic justification other than the imposition of the duty. Indeed, the applicant claimed that genuine production of the product under investigation in Malaysia was limited to only two producers whose combined exports to the Union had been consistently much lower than the volumes of the product under investigation exported from Malaysia to the Union since the imposition of measures on the product concerned. According to the evidence provided by the applicant, the change appeared to stem from the transhipment of the product concerned originating in the PRC via Malaysia to the Union. The applicant submitted evidence putting in doubt the existence of actual production facilities of Chinese-owned companies in Malaysia. In addition, the applicant provided evidence that Chinese producers were openly proposing to change the origin of the product concerned from Chinese to Malaysian.

(7) Furthermore, the request contained sufficient evidence showing that the practice, process or work was undermining the remedial effects of the existing anti-dumping measures in terms of quantities and prices. Significant volumes of imports of the product under investigation appeared to have entered the Union market. In addition, there was sufficient evidence that such imports of SSTPF were made at injurious prices.

(8) Finally, the request contained sufficient evidence that SSTPF consigned from Malaysia were exported at dumped prices in relation to the normal value previously established for SSTPF originating in China.

1.3. **Product concerned and product under investigation**

(9) The product concerned by the possible circumvention is tube and pipe butt-welding fittings, of austenitic stainless steel grades, corresponding to AISI types 304, 304L, 316, 316L, 316Ti, 321 and 321H and their equivalent in the other norms, with a greatest external diameter not exceeding 406,4 mm and a wall thickness of 16 mm or less, with a roughness average (Ra) of the internal surface not less than 0,8 micrometres, not flanged, whether or not finished, classified on the date of entry into force of Implementing Regulation (EU) 2017/141 under CN codes ex 7307 23 10 and ex 7307 23 90 (TARIC codes 7307 23 10 15, 7307 23 10 25, 7307 23 90 15, 7307 23 90 25) and originating in the PRC ('the product concerned'). This is the product to which the measures that are currently in force apply.

(10) The product under investigation is the same as that defined in the previous recital, but consigned from Malaysia, whether declared as originating in Malaysia or not, currently falling under the same CN codes as the product concerned (TARIC codes 7307 23 10 35, 7307 23 10 40, 7307 23 90 35, 7307 23 90 40) ('the product under investigation').

(11) The investigation showed that SSTPF exported from China to the Union and SSTPF consigned from Malaysia, whether originating in Malaysia or not, have the same basic physical and chemical characteristics and have the same uses, and are therefore considered as like products within the meaning of Article 1(4) of the basic Regulation.

(12) Pantech Steel Industries Sdn. Bhd ('PSI'), one of the companies of the Pantech Group, contacted the Commission to make sure that one of their product types – high frequency long bends – is not included in the original product definition. Upon analysis of the provided description of the product and consultation with the applicant, the Commission confirmed that high frequency long bends were not included in the original product definition.

(13) Paul Meijering Metalen B.V. (PMM B.V.), a Union importer, disagreed with the product scope of the investigation. It submitted comments on this regard and also on initiation and requested a hearing with the Commission services. The hearing was held on 7 July 2022. At the hearing, the Commission explained that the purpose of this investigation was to determine whether there is circumvention via Malaysia. There was no legal basis to revise the scope of the measures in the context of this investigation. The product scope was established in the original investigation that showed that all fittings within the product definition are like products.

1.4. **Initiation**

(14) Having determined, after having informed the Member States, that sufficient evidence existed for the initiation of an investigation pursuant to Article 13(3) of the basic Regulation, the Commission initiated the investigation and made imports of SSTPF consigned from Malaysia, whether declared as originating in Malaysia or not, subject to registration, by Commission Implementing Regulation (EU) 2022/894 ([6]) ('the initiating Regulation') on 8 June 2022.

(15) The initiating Regulation stated that, should circumvention practices covered by Article 13 of the basic Regulation, other than the one mentioned in recital (7) thereof, be identified in the course of the investigation, the investigation may also cover these practices.

1.5. **Comments on initiation**

(16) PMM B.V. pointed out that there was a discrepancy between the exports from Malaysia to the Union for year 2017, and the corresponding imports into the Union from Malaysia in the request. It also disagreed with the applicant's allegation that the only explanation for the difference between exports from China to Malaysia and the exports from Malaysia to the Union was transhipment. Finally, it pointed to missing references in the request.

(17) At the hearing mentioned in recital (13), the Commission explained that it carried out its examination of the request in accordance with Article 13(3) of the basic Regulation and came to the conclusion that the requirements for initiation of an investigation were met, i.e. that there was sufficient evidence to initiate the investigation. According to Article 13(3) of the basic Regulation, a request shall contain such information as is reasonably available to the applicant. The legal standard of evidence required for the purpose of initiating an investigation ('sufficient' evidence) is different from that which is necessary for the purpose of final determination of the existence of circumvention.

(18) The difference in the statistics for 2017, or the allegations of transhipment based on the difference in statistics between the PRC and Malaysia, did not change the fact that the request showed a clear change in the pattern of trade between the PRC, Malaysia and the Union. The applicant also provided evidence of transhipment practices.

(19) The Commission however explained that the purpose of the investigation is to uncover whether the change in the pattern of trade, including that between China and Malaysia, is due to practices that constitute circumvention according to Article 13 of the basic Regulation, and not limited to transhipment.

(20) In view of the above, the request contained sufficient evidence regarding the factors set out in Article 13(1) of the basic Regulation to warrant the initiation of the investigation in accordance with Article 13(3).

1.6. **Investigation period and reporting period**

(21) The investigation period covered the period from 1 January 2014 to 31 December 2021 ('the investigation period' or 'IP'). Data were collected for the investigation period to investigate, inter alia, the alleged change in the pattern of trade following the imposition of measures on the product concerned, and the existence of a practice, process or work for which there was insufficient due cause or economic justification other than the imposition of the duty. More detailed data were collected for the period from 1 January 2021 to 31 December 2021 ('the reporting period' or 'RP') in order to examine if imports were undermining the remedial effect of the measures in force in terms of prices and/or quantities and the existence of dumping.

([6]) Commission Implementing Regulation (EU) 2022/894 of 7 June 2022 initiating an investigation concerning possible circumvention of the anti-dumping measures imposed by Implementing Regulation (EU) 2017/141 on imports of certain stainless steel tube and pipe butt- welding fittings, whether or not finished, originating in the People's Republic of China by imports of certain stainless steel tube and pipe butt-welding fittings, whether or not finished, consigned from Malaysia, whether declared as originating in Malaysia or not, and making such imports subject to registration (OJ L 155, 8.6.2022, p. 36).

1.7. **Investigation**

(22) The Commission officially informed the authorities of China and Malaysia, the known exporting producers in those countries, the Union industry and the known importers in the Union of the initiation of the investigation.

(23) In addition, the Commission asked the Mission of Malaysia to the European Union to provide it with the names and addresses of exporting producers and/or representative associations that could be interested in cooperating in the investigation in addition to the Malaysian exporting producers which had been identified in the request by the applicant. The mission of Malaysia provided a list to the Commission. The Commission contacted all companies at initiation.

(24) Exemption claim forms for the producers/exporters in Malaysia, questionnaires for the producers/exporters in China, and for importers in the Union were made available on DG TRADE's website.

(25) Four Malaysian exporting producers submitted exemption claim forms. These were:

— MAC Pipping Materials Sdn. Bhd ('MAC')

— Pantech Stainless And Alloy Industries Sdn. Bhd ('Pantech')

— SP United Industry Sdn. Bhd ('SPI')

— TP Inox Sdn. Bhd ('TP')

(26) In addition, four Malaysian companies, related to Pantech or SPI, submitted questionnaire replies.

(27) Moreover, questionnaire replies were submitted by 6 Union importers. One of those companies did not import SSTPF from Malaysia so its reply was not analysed further. The Commission used the questionnaire replies of importers to cross check the trade flows and names of suppliers from Malaysia.

(28) In the process of verification of information and statistics provided by the applicant and the cooperating Malaysian companies, the Commission held on spot consultations with Malaysian Authorities, namely with the Ministry of Trade and Industry, Royal Customs, Ministry of Finance and representatives of Klang and Penang Free Trade Zones.

(29) Furthermore, pursuant to Article 16 of the basic Regulation, the Commission carried out verification visits at the premises of the following companies:

Exporting producers in Malaysia

— MAC Pipping Materials Sdn. Bhd, Klang, Malaysia

— Pantech Stainless and Alloy Industries Sdn. Bhd, Jahor, Malaysia

— SP United Industry Sdn. Bhd, Nilai, Malaysia

— TP Inox Sdn. Bhd, Pulau Pinang, Malaysia

Traders, importers and raw material suppliers related to the exporting producers in Malaysia

— Kanzen Tetsu Sdn. Bhd, Klang, Malaysia

— Kentzu Steel Sdn. Bhd., Kuala Lumpur, Malaysia

— Pantech Corporation Sdn. Bhd, Jahor, Malaysia

— Pantech Galvanizing Sdn. Bhd, Jahor, Malaysia

(30) The Commission carried out remote crosschecks of the following companies:

Domestic traders related to producers in Malaysia

— Pantech (Kuantan) Sdn. Bhd, Kuantan, Malaysia

— Panaflo Controls Pte. Ltd, Singapore

(31) Interested parties were given the opportunity to make their views known in writing and to request a hearing within the time limit set in the initiating Regulation. All parties were informed that the non-submission of all relevant information or the submission of incomplete, false or misleading information might lead to the application of Article 18 of the basic Regulation and to findings being based on the facts available.

(32) A hearing was held on 7 July 2022 with the Union importer PMM B.V., as explained in recitals (13) and (16) to (19). Following disclosure, hearings with MAC and PMM B.V. were held on 8 and 12 December 2022 respectively.

2. RESULTS OF THE INVESTIGATION

2.1. General considerations

(33) In accordance with Article 13(1) of the basic Regulation, the following elements should be analysed in order to assess possible circumvention:

— whether there was a change in the pattern of trade between the PRC/Malaysia and the Union,

— if this change stemmed from a practice, process or work for which there was insufficient due cause or economic justification other than the imposition of the anti-dumping measures in force,

— if there is evidence of injury or the remedial effects of the anti-dumping measures in force were being undermined in terms of the prices and/or quantities of the product under investigation, and

— whether there is evidence of dumping in relation to the normal values previously established for the product concerned.

(34) The request alleged transhipment of the product concerned from Malaysia to the Union (see recital (6)).

(35) With regard to transhipment, the investigation did not find evidence that any of the four co-operating exporting producers, which accounted for the entirety of the exports to the Union in the RP (see recital (39) below), were involved in such practices. The Commission compared data reported by the four cooperating companies with statistics, which showed that they made up for the vast majority of exports of SSTPF to the Union for most of the investigation period and the totality of those exports in the reporting period. The investigation established that none of the four companies was involved in transhipment. Their purchases of SSTPF from the PRC were minimal and were sold domestically in Malaysia. Therefore, this allegation could not be confirmed by this investigation.

(36) However, as mentioned in recital (5), the request contained sufficient evidence of a change in the pattern of trade involving exports from China and Malaysia to the Union that had taken place following the imposition of measures on SSTPF originating in China. Concretely, the request provided evidence, based on official statistics, of an increase of imports of SSTPF from Malaysia in the Union and a parallel increase of imports of SSTPF from China into Malaysia ([7]), constituting a change in the pattern of trade as required by Article 13 of the basic Regulation. Moreover, as noted in recital (6), the request provided evidence showing that, based on what is known about the genuine production in Malaysia, it is unlikely that this change stems from a practice, process or work for which there is sufficient due cause or economic justification other than the imposition of the duty. According to the request, the change stemmed from transhipment, and this allegation was backed by sufficient evidence, concretely offers from Malaysian companies openly proposing to provide Chinese SSTPF changing the origin so as to avoid anti-dumping duties ([8]). Whilst, as noted in Recital (35), the investigation found no evidence that Malaysian companies actually acted on the alleged proposal to re-sell Chinese SSTPF, it confirmed that a change in the pattern of trade took place. In view of the evidence, in particular the known genuine production capacity in Malaysia, it was unlikely that such change occurred due to a practice, process or work for which there is sufficient due cause or economic justification. The Commission therefore continued the investigation.

([7]) Request, point 43, page 8 and point 55, page 12.
([8]) Request, point 62, page 14.

(37) The investigation concerned all practices covered by Article 13 of the basic Regulation (see recital (15)), therefore the Commission also analysed assembly operations of the companies in question on the basis of use of Chinese raw materials or semi-finished products.

(38) With regard to assembly operations, the Commission specifically analysed whether the criteria set out in Article 13(2) of the basic Regulation were met, in particular:

— whether the assembly/completion operation started or substantially increased since, or just prior to, the initiation of the anti-dumping investigation and whether the parts concerned are from the country subject to measures, and

— whether the parts constitute 60 % or more of the total value of the parts of the assembled product and whether the value added to the parts brought in, during the assembly or completion operation, was lower than 25 % of the manufacturing costs.

2.2. **Cooperation**

(39) As stated in recital (25), four exporting producers in Malaysia requested to be exempted from the measures, if extended to Malaysia. They co-operated during the entire proceeding by submitting exemption claim forms, by providing replies to deficiency letters and by agreeing to on-spot verifications. The level of cooperation from the Malaysian exporting producers was high, as their aggregated reported export volumes of SSTPF to the Union in their submitted exemption claim forms accounted for the entirety of the total Malaysian import volumes during the reporting period, as reported in the EUROSTAT import statistics.

2.3. **Change in the pattern of trade**

2.3.1. *Imports of SSTPF into the Union*

(40) Table 1 shows the development of imports of SSTPF from China and Malaysia into the Union in the investigation period.

Table 1

Union imports of SSTPF in the investigation period (tonnes)

	2014	2015	2016	2017	2018	2019	2020	RP
China	3 018	3 121	1 412	1 008	523	693	708	719
Index (base=2014)	*100*	*103*	*47*	*33*	*17*	*23*	*23*	*24*
Malaysia	297	314	382	502	1 120	1 414	1 290	1 626
Index (base=2014)	*100*	*106*	*129*	*169*	*377*	*476*	*434*	*547*

Source:
2014 and 2015: original investigation (without UK).
2016: Eurostat (imports at CN level were adjusted to TARIC level based on 2017 data).
2017 to RP: Eurostat (TARIC level).

(41) The total volume of the Union's imports of SSTPF from Malaysia increased more than five times in the investigation period, from 297 tonnes in 2014 to 1 626 tonnes in the RP.

(42) At the same time, the Union's imports from China decreased by 76 %, from 3 018 tonnes in 2014 to 719 tonnes in the RP.

(43) As the Commission did not find any evidence of transhipment by the four cooperating exporting producers, Malaysian import volumes of product under investigation from China were not analysed.

2.3.2. *Malaysian imports of parts (raw-materials and semi-finished products) from China*

(44) The main input materials for the production of SSTPF are welded pipes and tubes and seamless pipes and tubes. These input materials are then further processed to produce welded and seamless fittings accordingly. Additionally, seamless fittings in the form of caps are produced from plates. Furthermore, one of the cooperating companies was also using baffle plates for the production of welded fittings of large diameters. Finally, one of the cooperating companies was also importing during part of the IP semi-finished products (pipe connectors) for further processing.

(45) Table 2 shows the development of Malaysian imports of the parts used for the manufacture of SSTPF from China, based on the verified data of the cooperating companies. The Commission compared these figures with the Malaysian import statistics obtained from the Malaysian authorities and those available in the Global Trade Atlas (GTA) ([9]) database. However, the figures reported by the companies were found more reliable in the pattern of trade analysis than the import statistics. The raw materials in question can be imported into Malaysia under several 10-digit customs codes and they can be used also in downstream sectors other than manufacturing of SSTPF. At cooperating exporting producers' level, and given the high cooperation, the Commission could trace the final use of the parts and whether these were used for subsequent export of SSTPF to the Union. Consequently, the Commission decided to rely upon the verified information provided by the cooperating companies.

Table 2

Imports into Malaysia of raw materials from China in the investigation period (tonnes) ([10])

	2014	2015	2016	2017	2018	2019	2020	RP
China	[200 – 300]	[300 – 400]	[580 – 660]	[280 – 360]	[800 – 900]	[1 500 – 1 600]	[1 950 – 2 050]	[2 400 – 2 500]
Index (base=2014)	*100*	*134*	*241*	*120*	*336*	*625*	*801*	*977*

Source: Verified companies data.

(46) The figures in Table 2 present aggregated volumes of imports of all those raw-materials/semi-finished products imported from China by the cooperating Malaysian producers, which cover 100 % of Malaysian exports of SSTPF to the Union in the reporting period.

(47) Table 2 shows that Malaysian imports of raw materials/semi-finished products from China substantially increased throughout the investigation period, almost 10 times. This increase was especially visible in the period 2018-RP.

(48) The significant increase in import volumes of raw materials from China to Malaysia indicated an increasing demand for such input materials in Malaysia, which could, at least in part, be explained by the increase in the production and exports of SSTPF from Malaysia to the Union during the investigation period.

2.3.3. *Conclusion on the change in the pattern of trade*

(49) The increase of exports of SSTPF from Malaysia to the Union, together with the increase in Chinese exports of parts to Malaysia over the same period, constitute a change in the pattern of trade between China, Malaysia and the Union within the meaning of Article 13(1) of the basic anti-dumping Regulation.

([9]) https://connect.ihsmarkit.com/gta/home.

([10]) The figures are given in ranges as for the years 2014-2017 they refer to only two companies.

(50) Following disclosure, PMM B.V. indicated that antidumping measures against SSTPF originating in China were imposed in January 2017 while EU imports from Malaysia were already rising between 2014 and 2017.

(51) The company also observed that the increase of Malaysian imports of inputs from China in the IP was much higher than the increase of Malaysian exports of fittings to the Union. According to the PMM B.V. this means that Malaysian producers simply increased production of SSTPF, not necessarily having the Union market as a target.

(52) However, it should be noted that the investigation leading to the imposition of the original measures was initiated in October 2015. As the initiation of the antidumping proceeding may in itself have an effect on the behaviour of economic operators, and to have a complete picture and properly compare the trade flows before the initiation of the investigation with those after that and after the imposition of the duty, the Commission decided to start the IP of the current circumvention investigation from 1 January 2014. Indeed, a rise of imports from Malaysia was already visible between 2014 and 2017. However, rise in volume of those imports accelerated between 2017 and the RP, that is, after the imposition of the duty as provided for in Article 13(1) of the basic Regulation.

(53) Exactly the same pattern could be observed in the Malaysian imports of raw materials from China. The fact that the increase in imports of Chinese stainless steel pipes into Malaysia does not match 'one-to-one' with the increase of Malaysian exports of SSTPF to the Union does not change the finding that the latter increased more than five times in the IP, which, together with the almost tenfold increase of imports of inputs from the PRC into Malaysia, constitutes a change in the pattern of trade in the sense of Article 13(1) of the basic Regulation. Moreover, as pipes imported from China are not only used for the production of fittings, there was no 'one-to-one' match.

(54) Following disclosure, MAC also claimed that the Commission failed to analyse or qualify the change in the pattern of trade. In its view, the fact that imports of raw materials from the PRC into Malaysia increased almost 10 times, while Union imports of SSTPF from Malaysia only increased more than five times, implies that necessarily, only about half of the raw materials imported into Malaysia from China ended up in SSTPF exported to the Union. MAC further claimed that given that the two cooperating exporters already found to be genuine Malaysian producers imported only a very minor percentage of their raw materials from China but also increased their exports to the Union after imposition of the SSTPF duty, and given that the verified sales data of MAC confirmed that nearly 50 % by weight of MAC's SSTPF sales went to markets other than the Union, the weight of the Commission's 'change in the pattern of trade' finding would appear to fall principally on TP and in any event the finding is not adequately reasoned or based on consistent evidence.

(55) The claim was rejected. First, at country-wide level, based on official statistics and verified data from the cooperating companies, the investigation has established that, whilst imports of SSTPF from the PRC into the Union decreased significantly, there were significant increases of both imports of inputs from the PRC into Malaysia and Union imports of SSTPF from Malaysia in the investigation period. Such evidence clearly proves that increasing demand for such input materials in Malaysia could, at least in part, be explained by the increase in the production and exports of SSTPF from Malaysia to the Union during the investigation period (see recital (48)). Second, even following MAC's argument that only about half of the raw materials imported into Malaysia from China ended up in SSTPF exported to the Union, there would still be a change in the pattern of trade in the sense of Article 13(1) of the basic Regulation. Third, besides analysing the change in the pattern of trade at country-wide level, the Commission also analysed it at the level of MAC and TP only, based on their own data as verified, and there are also significant, parallel increases (see Table 3 below). The bulk of both increases falls principally on MAC, as TP only started operations in the second half of 2020 (see recital (89)). Further, most of MAC's exports to the Union in the investigation period were made from parts imported from the PRC, as the company imported almost 100 % of its raw materials from China (see recital (58)). Therefore, at country-wide level the investigation showed a clear change in the pattern of trade. Moreover, the investigation at a company level, based on verified data from the company, found MAC to be one of the main contributors to that change. MAC did not offer any different analysis, reasoning or qualification, nor suggested what other evidence the Commission should have used.

2.4. **Practice, process or work for which there is insufficient due cause or economic justification other than the imposition of the anti-dumping duty**

(56) The Commission first analysed whether the operations of the cooperating companies started or substantially increased since, or just prior to, the initiation of the anti-dumping investigation, and whether the parts concerned were from the country subject to measures.

(57) The cooperating companies imported raw materials and parts from China in the IP and thus possibly performed assembly/completion operations in Malaysia, before shipping the SSTPF to the Union.

(58) MAC and TP started their operations after the imposition of the measures on China in January 2017 (in 2018 and 2020 respectively). They imported almost 100 % of their raw materials from China ([11]).

(59) Furthermore, both companies' sales of the SSTPF to the Union and imports of raw materials from China significantly increased from the moment of the companies' set up, with a peak in the RP.

(60) Table 3 shows the trends on the basis of aggregated figures for both companies with regard to their exports of the SSTPF to the Union and their imports of raw-materials/semi-finished products from China in the period 2018-RP ([12]).

Table 3

MAC and TP export and import indicators (year 2018=100)

	2018	2019	2020	RP
Exports of SSTPF to EU	*100*	*527*	*654*	*813*
Imports of RM from China	*100*	*366*	*440*	*608*

Source: verified companies' data.

(61) The situation of the other two companies (Pantech and SPI) was completely different. Both companies were producers of SSTPF even before 2014. The applicants in their request identified both companies as genuine producers ([13]). Their exports to the Union increased after the imposition of measures, but the investigation confirmed that they were genuine producers (see Section 2.5 below on the value of parts test). Only seamless pipes, that constituted a minor percentage of their raw materials/parts, were imported from China over the IP, and subsequently used for production of SSTPF exported to the Union.

(62) Article 13(1) of the basic Regulation requires a link between the practice, process or work in question and the change of the pattern of trade, as the latter must 'stem' from the former. It is therefore the practice, process or work leading to the change of the pattern of trade, which needs to have a sufficient due cause or economic justification other than the imposition of the duty, in order not to be considered circumvention within the meaning of Article 13(1) of the basic Regulation.

(63) Even though there might have been other reasons to set up the company in Malaysia than the measures in place, i.e. to supply the Malaysian domestic market, other elements strongly point, as far as MAC and TP are concerned, to a change in the pattern of trade in connection with the imposition of the duties:

— the companies were established after imposition of the original measures;

([11]) In the first year (2018) of its activity and in the RP MAC had minor purchases of plates also from Malaysia.
([12]) Due to confidentiality reasons only an index is provided as the figures concern only two companies.
([13]) Request, point 60, page 12.

— the operation substantially increased since the two companies represented 8 % of Malaysian exports of SSTPF to the Union in 2018 and 47 % of these exports in the RP;

— their sales to the Union were higher than their combined domestic and third country sales, showing that they clearly targeted the Union market. One of these companies was solely selling to the Union.

(64) Moreover, TP is a wholly-owned subsidiary of the Chinese company Sinotube, which in turn is part of the Tsingshan Group, a Chinese steel giant producing a wide variety of steel products, including SSTPF.

(65) In light of all these elements, the Commission concluded that there was insufficient due cause or economic justification other than the imposition of the duty, for the processing operations of MAC and TP in the two production sites ([14]) in Malaysia. The change in the pattern of trade was a result of the fact that the operation started and then substantially increased after the original measures were imposed.

(66) Following disclosure, MAC claimed that there had been sufficient due cause and economic justification for its establishment in late 2017 and the growth of its production operations and international exports in the subsequent years.

(67) Concretely, MAC claimed that the rationale for the establishment of the company is essentially a business opportunity that had nothing to do with the imposition of the duties in the original investigation. It took over the business of a genuine producer (KT Fittings) and switched the focus of its operation to production from seamless pipes from China. According to its submission, MAC took over that business to carry out the level of processing sufficient to qualify for Malaysian origin under the Union's non-preferential rules of origin. Since KT Fittings was not subject to anti-dumping duties, by taking over its predecessor's machinery, production site and client list, the new management allegedly had justified reasons to believe that MAC's future sales would be free of any 'EU SSTPF duty'. The shift from production from welded pipes to seamless pipes was allegedly due this market being dominated by two other, vertically-integrated Malaysian producers (Pantech and SPI). In MAC's view, all this constituted due cause and economic justification under Article 13(1) of the basic Regulation, and the fact that MAC was established in 2017, after the initiation of the original investigation, was coincidental.

(68) Moreover, MAC argued that the disclosure raised no doubts about MAC's full production capability and actual production of fittings from its verified purchases of raw materials needed by any genuine producer of SSTPF. As regards both MAC's production capability and actual full line production from raw materials, there was no difference with the set-up of Pantech and SPI.

(69) MAC also claimed that there was no factual similarity between MAC and TP, and that the statement as regards MAC targeting the Union market was factually inaccurate. The 52 % by weight (or 54 % by value) of MAC's sales figure for the Union could not be deemed a 'targeting' of the Union market.

(70) Also PMM B.V. in its comments on disclosure highlighted the fact that MAC is a 'continuation' of the company KT Fittings and as such 'a genuine producer that produced fittings well before the investigation period'. An identical comment was submitted by Dacapo Stainless B.V. ('DS B.V.'), another Union importer.

(71) At the outset, the Commission recalled that it verified on-spot, among other factors, the actual production, production capacity and purchases of inputs of MAC, and that the established facts regarding those factors were not disputed. It follows from the above that, under Article 13(2) of the basic Regulation, the investigation established a difference between MAC and SPI and Pantech. As established in recitals (87), (98) and (99), 99,99 % of the parts used by MAC in their production of SSTPF were from the PRC, while for Pantech and SPI the share was below 10 % and 30 % respectively. Regarding the factual similarity between MAC and TP the investigation established that both companies were engaged in a similar practice in that they both imported most of the inputs from the PRC, added limited value to them, and exported the resulting fittings to the Union. Moreover, findings with regard to MAC are based on its actual activities not on what MAC could have hypothetically done with its machinery and production site.

([14]) Accounting in RP already for almost 40 % of Malaysian exports to the Union.

(72) As stated in recital (62), article 13(1) of the basic Regulation establishes a link between the practice, process or work in question and the change of the pattern of trade as the latter must 'stem' from the former. It is therefore the practice, process or work leading to the change of the pattern of trade, which needs to have a sufficient due cause or economic justification other than the imposition of the duty, in order not to be considered a circumvention within the meaning of Article 13(1) of the basic Regulation.

(73) There may be legitimate reasons, such as availability of trained workforce and assets, for establishing a company. However, what matters is not only its establishment but the way the company in question operates. In other words, if the activity of the company - its practice, process or work – is the reason for the change of the pattern of trade, the economic justification and due cause for that practice must be examined under Article 13(1).

(74) As explained in recital (87), the investigation found the practice in which MAC is involved to be an assembly operation within the meaning of Article 13(2) of the basic Regulation. The Company essentially bought Chinese seamless pipes, added little value to transform them into SSPTF and sold them on the Union market. Moreover, as discussed in recitals (57) to (60), this practice was found to be responsible for the change of the pattern of trade.

(75) Regarding the economic justification and due cause, it should be noted that, just like TP, MAC was established after the imposition of the duties. Moreover, as acknowledged in the submission, unlike its predecessor – KT Fittings – MAC focused its operation on the production from Chinese seamless pipes. Indeed, unlike in the case described in Commission Implementing Regulation (EU) 2017/2093 ([15]), referred to by MAC, the investigation found no business model based on sales to the Union of Malaysian SSTPF made virtually exclusively from Chinese parts which predates the imposition of the duties. Moreover, according to its submissions, MAC was established based on the expectation that it would achieve a level of processing sufficient to confer Malaysian non-preferential origin and that it would be able to source raw materials from the PRC by relying on previous relationships with a Chinese supplier. The rationale for MAC's operations was thus to be able to use almost exclusively Chinese parts, add little value and export to the Union products with Malaysian origin, without paying the anti-dumping duty on imports from the PRC. Indeed, as MAC stated in its comments on disclosure, obtaining Malaysian non-preferential origin was cause for the establishment of the company, and was advertised by them and required by their clients.

(76) Finally, the Commission was not provided with information regarding the operations of KT fittings prior to the establishment of MAC. However, neither the fact that MAC took over the machinery, personnel, management experience and client base of KT fittings nor the fact that it did not target the Union market exclusively, could change the conclusions of the investigation regarding MAC.

(77) Consequently, MAC failed to demonstrate that there was sufficient due cause or economic justification other than the imposition of the duty for its practice in question.

(78) Following disclosure, MAC claimed that its processing of Chinese pipes further gives rise to a change in the tariff headings of all the raw materials and thereby confers Malaysian origin for MAC's SSTPF under the EU's relevant 'specific' origin rules. According to MAC, EU rules of origin are to be taken into account in EU anti-circumvention investigations.

([15]) Commission Implementing Regulation (EU) 2017/2093 of 15 November 2017 terminating the investigation concerning possible circumvention of the anti-dumping measures imposed by Council Implementing Regulation (EU) No 1331/2011 on imports of certain seamless pipes and tubes of stainless steel originating in the People's Republic of China by imports consigned from India, whether declared as originating in India or not, and terminating the registration of such imports imposed by Commission Implementing Regulation (EU) 2017/272 (OJ L 299, 16.11.2017, p. 1).

(79) The legal basis for an anti-circumvention investigation is Article 13 of the basic Regulation, and not customs legislation regarding origin. Indeed, the Court of Justice of the European Union has held that the sole purpose of a Regulation extending an anti-dumping duty is to ensure the effectiveness of that duty and to prevent its circumvention ([16]). The case-law has clarified that the use of 'from' rather than 'originating in' in Article 13 of the basic Regulation implies that 'the EU legislature has deliberately chosen to distance itself from rules of origin under customs law and that, therefore, the concept of "from" […] possesses an autonomous and distinct meaning from that of the concept of "origin" under customs law' ([17]). This claim was therefore rejected.

(80) Following disclosure, PMM B.V. commented on certain findings of the investigation concerning TP. Concretely, the company indicated that TP started its operations almost six years after the initiation of the original investigation which allegedly does not qualify for circumvention as defined in Article 13(2) of the basic Regulation. Furthermore, PMM B.V. observed that in 2022 TP sold only 50 % of its fittings to the Union, so it was no longer targeting solely the Union market as found by the Commission in the RP.

(81) First, it should be stressed that neither PMM B.V. nor their legal representative were empowered to represent TP in this procedure, and that TP did not send any submission challenging the findings of the investigation following disclosure. Second, PMM B.V. referred in its submission to confidential correspondence with a 'director/general manager of TP' whom the Commission did not find listed on the board of directors in the financial statements of TP. Third, company specific post-RP data could not be taken into account as they could not be verified. Finally, TP started its operations in the second half of 2020 (see recital (89)), so the requirement of Article 13(2) of the basic Regulation was clearly met as the operation both started and substantially increased since the initiation of the original investigation, in 2015.

(82) PMM B.V. also claimed that both TP and MAC were not assembling but manufacturing, and therefore Article 13(2) of the basic Regulation was not applicable in their case, as it does not cover modifying and working raw materials to form another product, as in the case of SSTPF. To support that claim they also referred to recital (20) of the basic Regulation. In their view, the mention of 'mere assembly' in that recital means that the term must be interpreted narrowly.

(83) The Commission noted that the basic Regulation does not define the terms 'assembly operation' or 'completion operation'. However, the way Article 13(2) of the basic Regulation is constructed favours a broad interpretation of the term 'assembly operation' as, according to Article 13(2)(b), it explicitly is also meant to encapsulate 'completion operation'. It follows that 'assembly operation' within the meaning of article 13(2) is meant to cover not only operations that consist of assembling parts of a composite article, but may also involve further processing i.e. completion of a product. Indeed, when interpreting Article 13(2) of the basic Regulation, the Court of Justice has held that 'pursuant to settled case-law, in interpreting a provision of EU law, it is necessary to consider not only its wording, but also the context in which it occurs and the objectives pursued by the rules of which it is part' ([18]).

(84) Moreover, recital (20) of the basic Regulation reads 'Union legislation should contain provisions to deal with practices, including mere assembly of goods in the Union or a third country, which have as their main aim the circumvention of anti-dumping measures'. This wording rather suggests a broad interpretation of Article 13(2) so that all practices with the main aim of circumventing the duties, i.e. 'mere' assembly and other practices, are covered.

(85) The investigation showed that the operations carried out by MAC and TP met all the requirements of Article 13(2) of the basic Regulation for an assembly operation to constitute circumvention. PMM B.V. did not offer any evidence to the contrary. Consequently, the Commission rejected the claim.

([16]) Judgment of 12 September 2019, *Commission* v *Kolachi Raj Industrial*, C-709/17 P, EU:C:2019:717, para. 96 and the case-law cited.
([17]) Judgment of 12 September 2019, *Commission* v *Kolachi Raj Industrial*, C-709/17 P, EU:C:2019:717, para. 90.
([18]) Judgment of 12 September 2019, *Commission* v *Kolachi Raj Industrial*, C-709/17 P, ECLI:EU:C:2019:717, para. 82 and the case-law cited.

2.5. **Value of parts and value added**

(86) Article 13(2)(b) of the basic Regulation states that, as far as assembly or completion operations are concerned, a condition to establish circumvention is that the parts from the countries subject to measures constitute 60 % or more of the total value of the parts of the assembled product and that the added value to the parts brought in, during the assembly or completion operation, is less than 25 % of the manufacturing cost.

MAC and TP

(87) For MAC, in the RP 99,99 % of all parts used by the company were from China. The value added to the raw materials was below 15 % of the manufacturing cost.

(88) For TP, all the parts used by the company in the production of fittings in the RP were imported from China.

(89) TP started its operations in the second half of 2020. Its capacity utilisation as reported was below 5 % in 2020 and below 25 % in the RP. However, the company incorrectly allocated full depreciation of machinery and full rental cost (land and buildings) as the value added to the parts brought in to the extremely low production quantity.

(90) The Commission thus adjusted the two above-mentioned cost elements to reasonably reflect the value added in the context of the low capacity utilisation of the company during the RP.

(91) In addition, the Commission reduced the cost of production (and, in turn, the added value) by the verified income from sales of scrap generated in the production of SSTPF.

(92) Finally, an adjustment for the stock variation of work in progress was applied. This adjustment enabled to isolate the cost of production linked to the quantity of finished goods produced in the RP and to eliminate the cost of raw material and processing linked to the goods, which were not yet finished at the end of the RP. The company itself did not keep records of work in progress. The Commission was, however, able to estimate the stock variation of work in progress based on the verified stock movements of raw materials and finished goods. The respective inventory reports were collected during the on-spot verification.

(93) After the adjustments described in recitals (89) to (92), the added value established for TP was below 18 % of the cost of manufacturing.

(94) Following disclosure, PMM B.V. (again on behalf of an 'unknown' director/general manager of TP as explained in recital (81) above) requested detailed disclosure of the above added value calculation.

(95) However, the calculation in question was already disclosed to TP as part of its sensitive specific disclosure. TP did not submit any comments in this regard.

(96) The Commission therefore concluded that, for MAC and TP, the parts purchased from China constituted 60 % or more of the total value of the parts of assembled product, and that the value added to the parts brought in, during the assembly or completion operation, was less than 25 % of the manufacturing cost, as required by Article 13(2)(b) of the basic Regulation for these operations to constitute circumvention.

Pantech and SPI

(97) Both companies produced seamless fittings (standard ([19]) and caps) and welded fittings. There are three kinds of raw materials/parts used in this production: seamless pipes for production of standard seamless fittings, plates for production of caps and welded pipes for production of standard welded fittings.

([19]) In this case, 'standard' refers to seamless fittings produced from seamless pipes and tubes, such as elbows, tees and reducers.

(98) Pantech is vertically integrated in its production of welded fittings i.e. the company produced its own welded pipes. The plates the company used for production of caps were also own-produced (slicing of welded pipes) or mainly procured from local Malaysian producers ([20]). The company imported from China 100 % of the seamless pipes. However, production of seamless fitting was a small percentage of the activity of the company. Accordingly, the parts imported from China accounted in the RP for less than 10 % of all parts used in the total production of SSTPF.

(99) Similar to Pantech, SPI was also using in its production its own welded pipes (purchased from a related Malaysian producer). Plates were also procured domestically, while seamless pipes were 100 % imported from China. Taking into account the company's production structure, parts imported from China accounted in the RP for less than 30 % of all parts used in the total production of SSTPF.

(100) Therefore, the parts from the country subject to measures constitute much less than 60 % of the total value of parts for Pantech and SPI.

(101) Moreover, for both companies these operations already took place before the imposition of the measures and, in addition, did not only target specifically the Union market. Therefore, the operations carried out by Pantech and SPI did not constitute circumvention as provided for in Article 13(2) of the basic Regulation

2.6. **Undermining the remedial effect of the anti-dumping duty**

(102) In accordance with Article 13(1) of the basic Regulation, the Commission examined whether the imports of the product under investigation, both in terms of quantities and prices, undermined the remedial effects of the measures currently in force.

(103) The quantities of SSTPF that were exported into the Union by MAC and TP increased significantly in absolute volumes during the investigation period and represented around 6 % of the Union consumption during the RP. Consumption in the Union was estimated as over 12 000 tonnes resulting from adding all imports of SSTPF from all origins, amounting to over 4 000 tonnes, to the Union sales as provided by the applicant for the purpose of this investigation, amounting to over 8 000 tonnes.

(104) Regarding prices, the Commission compared the average non-injurious price as established in the original investigation, adjusted for inflation, with the weighted average export CIF prices determined on the basis of the information provided by MAC and TP, duly adjusted to include post clearance costs. This price comparison showed that both companies substantially (by more than 50 %) undersold the Union prices in the RP. Moreover, the current import prices of MAC and TP also undercut the Union prices provided by the applicant in the request for year 2021, and are also below the cost of production of the Union industry in the same year ([21]).

(105) The Commission therefore concluded that the existing measures were undermined in terms of quantities and prices by the imports from Malaysia by MAC and TP.

(106) Following disclosure, PMM B.V. indicated that the quantities exported by MAC and TP to the Union could not possibly undermine the remedial effect of the measures, as these quantities represented only 6 % of the Union consumption during the RP.

(107) Furthermore, PMM B.V. and DS B.V. challenged the Commission's undercutting and underselling findings with regard to MAC and TP export prices. They based their claims on a comparison of their purchase invoices from Malaysian exporters and Union producers. Moreover, they claimed that those prices could not be compared, as Malaysian fittings and those produced in the Union were of different standards and are not interchangeable.

([20]) Pantech imported minor quantities of plates from China in 2015 and 2018.
([21]) Request, Sections C.3.1 to C.3.3.

(108) Regarding quantities, PMM B.V. provided no argumentation why 6 % could not be considered to undermine the remedial effect of the measures, it merely stated 'in their view 6 % is not undermining in terms of volume because it is too little to speak of undermining'. In any case, the Commission considered that 6 % market share was not insignificant in terms of volume. On the contrary, this volume of imports that was found to be circumventing the measures was almost as high as the total market share of Taiwan in the original investigation. This was sufficient to conclude that such volumes were causing injury to the Union industry and resulted in the imposition of measures against Taiwan.

(109) Second, the Commission made its undercutting and underselling calculations on the basis of full sets of data verified at the premises of the companies which submitted questionnaires/exemption forms. The Union importers did not have access to these figures. The calculations were fully disclosed to the Malaysian exporters. None of them submitted any comments in this regard. Furthermore, none of the two Union importers challenging the Commission calculations provided questionnaire replies in the course of the investigation. Thus, the figures they submitted after disclosure could not be verified by the Commission.

(110) Finally, there is no legal basis to look at the definition of product scope and interchangeability of different product types under Article 13 of the basic Regulation. On the contrary, according to Article 13 of the basic Regulation, to establish circumvention the Commission must determine that the 'remedial effects of the duty are being undermined in terms of prices and/or quantities'. The duty referred to in Article 13 of the basic Regulation is the original anti-dumping duty. Such duty was established on the basis of the product scope in the original investigation ([22]). Therefore, the assessment of whether its effects are being undermined must be carried out based on the same scope.

2.7. **Evidence of dumping**

(111) In accordance with Article 13(1) of the basic Regulation, the Commission also examined whether there was evidence of dumping in relation to the normal values previously established for the like product.

(112) The Commission compared the average export prices of SSTPF from Malaysia in the RP, based on the verified data of MAC and TP, to the normal values established for China in the original anti-dumping investigation, adjusted for inflation.

(113) The comparison of normal values and export prices showed that the SSTPF exported by MAC and TP were exported at dumped prices during the reporting period.

(114) Following disclosure, PMM B.V. repeated its argumentation with regard to the lack of interchangeability of the Malaysian and Union-produced fittings regarding the dumping calculations.

(115) This claim was rejected on the same basis as that explained in recital (110). Indeed, according to Article 13 of the basic Regulation, to establish circumvention the Commission must determine that there is evidence of dumping in relation to the normal values previously established for the like or similar products. The normal value established in the original investigation was based on the original product scope, that included fittings of different standards.

3. **MEASURES**

(116) Based on the above findings, the Commission concluded that the anti-dumping duties imposed on imports of SSTPF originating in the PRC were being circumvented by imports of the product under investigation consigned from Malaysia by MAC and TP.

([22]) That established that products with different standards share the same specific characteristics and are interchangeable. See recitals (52) to (60) of Commission Implementing Regulation (EU) 2017/141 (OJ L 22, 27.1.2017, p. 14).

(117) Given that the level of cooperation was high, covering all the exports to the Union in the RP, that the Commission concluded that two of the companies are genuine Malaysian producers not involved in circumvention practices and therefore were granted exemptions, and that no other company in Malaysia requested an exemption, the Commission concluded that the findings on circumvention practices in respect of the two circumventing companies should be extended to all imports from Malaysia, with the exception of those from genuine Malaysian producers.

(118) Therefore, in accordance with Article 13(1) of the basic Regulation, the anti-dumping measures in force on imports of SSTPF originating in China should be extended to imports of the product under investigation.

(119) Pursuant to Article 13(1), second paragraph of the basic Regulation, it is appropriate to extend the duty established in Article 1(2) of Implementing Regulation (EU) 2017/141, as amended by Implementing Regulation (EU) 2017/659 for 'all other companies', which is a definitive anti-dumping duty of 64,9 % applicable to the net, free-at-Union-frontier price, before customs duty.

(120) Pursuant to Article 13(3) of the basic Regulation, which provides that any extended measure should apply to imports that entered the Union under registration imposed by the initiating Regulation, duties are to be collected on those registered imports of the product under investigation in accordance with the findings made in this investigation.

4. **REQUESTS FOR EXEMPTION**

(121) As described above, MAC and TP were found to be involved in circumvention practices. Therefore, an exemption could not be granted to these companies pursuant to Article 13(4) of the basic Regulation.

(122) The investigation established that the two other co-operating exporting producers, Pantech and SPI, were genuine producers of SSTPF in Malaysia, and not engaged in circumvention practices. These two exporting producers are vertically integrated, were well established on the market before imposition of the original measures, and imported only limited amounts of raw-materials from China.

(123) Therefore, Pantech and SPI should be exempted from the extension of measures.

(124) The application of exemptions should be conditional upon presentation to the customs authorities of the Member States of a valid commercial invoice, which must conform to the requirements set out in Article 1(3) of this regulation. Imports not accompanied by that invoice should be subject to the anti-dumping duty mentioned in recital (119).

(125) While presentation of this invoice is necessary for the customs authorities of the Member States to apply the exemptions, it is not the only element to be taken into account by the customs authorities. Indeed, even if presented with an invoice meeting all the requirements set out in Article 1(3) of this regulation, the customs authorities of Member States must carry out their usual checks and may, like in all other cases, require additional documents (shipping documents, etc.) for the purpose of verifying the accuracy of the particulars contained in the declaration and ensure that the subsequent application of the exemption is justified, in compliance with customs law.

5. **DISCLOSURE**

(126) On 30 November 2022, the Commission disclosed to all interested parties the essential facts and considerations leading to the above conclusions and invited them to comment.

(127) The measures provided for in this Regulation are in accordance with the opinion of the Committee established by Article 15(1) of the basic Regulation,

HAS ADOPTED THIS REGULATION:

Article 1

1. The definitive anti-dumping duty imposed by Implementing Regulation (EU) 2017/141, as amended by Implementing Regulation (EU) 2017/659, on imports of certain stainless steel tube and pipe butt-welding fittings, whether or not finished, originating in the People's Republic of China, is hereby extended to imports of tube and pipe butt-welding fittings, of austenitic stainless steel grades, corresponding to AISI types 304, 304L, 316, 316L, 316Ti, 321 and 321H and their equivalent in the other norms, with a greatest external diameter not exceeding 406,4 mm and a wall thickness of 16 mm or less, with a roughness average (Ra) of the internal surface not less than 0,8 micrometres, not flanged, whether or not finished, currently classified under CN codes ex 7307 23 10 and ex 7307 23 90 consigned from Malaysia, whether declared as originating in Malaysia or not (TARIC codes 7307 23 10 35, 7307 23 10 40, 7307 23 90 35, 7307 23 90 40).

2. The extension of the duty mentioned in paragraph 1 does not apply to the companies listed below:

Country	Company	TARIC additional code
Malaysia	Pantech Stainless And Alloy Industries Sdn. Bhd	A021
Malaysia	SPI United Sdn. Bhd	A022

3. The application of exemptions granted to the companies specifically mentioned in paragraph 2 of this Article or authorised by the Commission in accordance with Article 4(2) of this Regulation shall be conditional upon presentation to the customs authorities of the Member States of a valid commercial invoice, which shall conform to the requirements set out in the Annex to this Regulation. If no such invoice is presented, the anti-dumping duty as imposed by paragraph 1 of this Article shall apply.

4. The extended duty is the anti-dumping duty of 64,9 % applicable to 'all other companies' in the PRC (TARIC additional code C999).

5. The duty extended by paragraphs 1 and 4 of this Article shall be collected on imports registered in accordance with Article 2 of Implementing Regulation (EU) 2022/894.

6. Unless otherwise specified, the provisions in force concerning customs duties shall apply.

Article 2

Customs authorities are directed to discontinue the registration of imports established in accordance with Article 2 of Implementing Regulation (EU) 2022/894, which is hereby repealed.

Article 3

The exemption requests submitted by MAC Pipping Materials Sdn. Bhd and TP Inox Sdn. Bhd are rejected.

Article 4

1. Requests for exemption from the duty extended by Article 1 shall be made in writing in one of the official languages of the European Union and must be signed by a person authorised to represent the entity requesting the exemption. The request must be sent to the following address:

European Commission
Directorate-General for Trade
Directorate G Office:
CHAR 04/39
1049 Bruxelles/Brussel
BELGIQUE/BELGIË

2. In accordance with Article 13(4) of Regulation (EU) 2016/1036, the Commission may authorise, by decision, the exemption of imports from companies which do not circumvent the anti-dumping measures imposed by Implementing Regulation (EU) 2017/141, as amended by Implementing Regulation (EU) 2017/659, from the duty extended by Article 1.

Article 5

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, 2 March 2023.

For the Commission
The President
Ursula VON DER LEYEN

ANNEX

A declaration signed by an official of the entity issuing the commercial invoice, in the following format, must appear on the valid commercial invoice referred to in Article 1(3):

(1) the name and function of the official of the entity issuing the commercial invoice;

(2) the following declaration: 'I, the undersigned, certify that the (volume) of (product under investigation) sold for export to the European Union covered by this invoice was manufactured by (company name and address) (TARIC additional code) in (country concerned). I declare that the information provided in this invoice is complete and correct';

(3) date and signature.

COMMISSION IMPLEMENTING REGULATION (EU) 2023/454

of 2 March 2023

amending Regulation (EU) No 37/2010 as regards the classification of the substance toltrazuril with respect to its maximum residue limit in foodstuffs of animal origin

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EC) No 470/2009 of the European Parliament and of the Council of 6 May 2009 laying down Community procedures for the establishment of residue limits of pharmacologically active substances in foodstuffs of animal origin, repealing Council Regulation (EEC) No 2377/90 and amending Directive 2001/82/EC of the European Parliament and of the Council and Regulation (EC) No 726/2004 of the European Parliament and of the Council ([1]), and in particular Article 14, in conjunction with Article 17 thereof,

Whereas:

(1) In accordance with Regulation (EC) No 470/2009, the Commission is to establish, by way of a Regulation, maximum residue limits ('MRLs') for pharmacologically active substances intended for use in the Union in veterinary medicinal products for food-producing animals or in biocidal products used in animal husbandry.

(2) Table 1 of the Annex to Commission Regulation (EU) No 37/2010 ([2]) sets out the pharmacologically active substances and their classification regarding MRLs in foodstuffs of animal origin.

(3) Toltrazuril is already included in that table as an allowed substance for all mammalian food-producing species in relation to muscle, fat (skin and fat in natural proportions for porcine species), liver and kidney, but excluding animals producing milk for human consumption. Furthermore, that substance is also included as an allowed substance for poultry in relation to muscle, skin and fat, liver and kidney. However, the substance is not allowed for use in animals from which eggs are produced for human consumption.

(4) In accordance with Article 9(1), point (b), of Regulation (EC) No 470/2009, on 29 June 2021, the Kingdom of the Netherlands submitted a request for the extension of the existing entry for toltrazuril in poultry to chicken eggs to the European Medicines Agency ('Agency').

(5) On 9 December 2021, the Agency, through the opinion of the Committee for Medicinal Products for Veterinary Use, recommended the establishment of an MRL for toltrazuril in chicken eggs.

(6) In accordance with Article 5 of Regulation (EC) No 470/2009, the Agency is to consider using MRLs established for a pharmacologically active substance in a particular foodstuff for another foodstuff derived from the same species, or MRLs established for a pharmacologically active substance in one or more species for other species.

(7) The Agency concluded that the extrapolation of the MRLs for toltrazuril from chicken eggs to the eggs of other poultry species is appropriate.

([1]) OJ L 152, 16.6.2009, p. 11.

([2]) Commission Regulation (EU) No 37/2010 of 22 December 2009 on pharmacologically active substances and their classification regarding maximum residue limits in foodstuffs of animal origin (OJ L 15, 20.1.2010, p. 1).

(8) In view of the opinion of the Agency, the Commission considers it appropriate to establish the recommended MRL for toltrazuril in poultry eggs.

(9) Regulation (EU) No 37/2010 should therefore be amended accordingly.

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

HAS ADOPTED THIS REGULATION:

Article 1

The Annex to Regulation (EU) No 37/2010 is amended as set out in 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, 2 March 2023.

For the Commission
The President
Ursula VON DER LEYEN

ANNEX

In Table 1 of the Annex to Regulation (EU) No 37/2010, the entry for the substance 'toltrazuril' is replaced by the following:

Pharmacologically active Substance	Marker residue	Animal Species	MRL	Target Tissues	Other Provisions *(according to Article 14(7) of Regulation (EC) No 470/2009)*	Therapeutic Classification
'Toltrazuril	Toltrazuril sulfone	All mammalian food producing species	100 µg/kg 150 µg/kg 500 µg/kg 250 µg/kg	Muscle Fat Liver Kidney	For porcine species the fat MRL relates to "skin and fat in natural proportions". Not for use in animals from which milk is produced for human consumption.	Antiparasitic agents/A-gents acting against protozoa'
		Poultry	100 µg/kg 200 µg/kg 600 µg/kg 400 µg/kg 140 µg/kg	Muscle Skin and fat Liver Kidney Eggs	NO ENTRY	

COMMISSION IMPLEMENTING REGULATION (EU) 2023/455

of 2 March 2023

correcting Regulation (EC) No 1480/2004 laying down specific rules concerning goods arriving from the areas not under the effective control of the Government of Cyprus in the areas in which the Government exercises effective control

THE EUROPEAN COMMISSION,

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

Having regard to Council Regulation (EC) No 866/2004 of 29 April 2004 on a regime under Article 2 of Protocol 10 to the Act of Accession ([1]), and in particular Article 4(12) thereof,

After consulting the Line Regulation Committee,

Whereas:

(1) Commission Implementing Regulation (EU) 2022/1166 ([2]) amended Article 3(2) of Regulation (EC) No 1480/2004 ([3]) and Annex III thereto. The amendment inadvertently removed references to farm saved seed potatoes from those provisions, thus changing their scope.

(2) Regulation (EC) No 1480/2004 should therefore be corrected accordingly.

(3) In order to correct the error as soon as possible and to ensure legal certainty with regard to farm saved seed potatoes, this Regulation should enter into force as a matter of urgency,

HAS ADOPTED THIS REGULATION:

Article 1

Regulation (EC) No 1480/2004 is corrected as follows:

(1) in Article 3, paragraph 2 is replaced by the following:

'2. In the case of potatoes, the above experts shall verify that the potatoes in the consignment were grown directly from seed potatoes certified in one of the Member States or from seed potatoes certified in any other country for which the entry into the Union of potatoes intended for planting is not prohibited pursuant to Annex VI of Implementing Regulation (EU) 2019/2072 or from farm saved seed potatoes which were, under supervision of the experts, grown as the first offspring of the certified seed potatoes referred to in this paragraph.';

(2) in point 10 of Annex III, the fifth indent is replaced by the following:

'— in the case of potatoes, that the potatoes in the consignment were grown directly from seed potatoes certified in one of the Member States or from seed potatoes certified in any other country for which the entry into the Union of potatoes intended for planting is not prohibited pursuant to Annex VI to Implementing Regulation (EU) 2019/2072 or from farm saved seed potatoes which were, under supervision of the above experts, grown as the first offspring of the certified seed potatoes referred to above.'.

([1]) OJ L 161, 30.4.2004, p. 128.

([2]) Commission Implementing Regulation (EU) 2022/1166 of 6 July 2022 amending Regulation (EC) No 1480/2004 laying down specific rules concerning goods arriving from the areas not under the effective control of the Government of Cyprus in the areas in which the Government exercises effective control (OJ L 181, 7.7.2022, p. 11).

([3]) Commission Regulation (EC) No 1480/2004 of 10 August 2004 laying down specific rules concerning goods arriving from the areas not under the effective control of the Government of Cyprus in the areas in which the Government exercises effective control (OJ L 272, 20.8.2004, p. 3).

Article 2

This Regulation shall enter into force on the third 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 the Member States.

Done at Brussels, 2 March 2023.

For the Commission
The President
Ursula VON DER LEYEN

DECISIONS

COUNCIL DECISION (EU) 2023/456

of 21 February 2023

on the position to be adopted, on behalf of the European Union, within the EEA Joint Committee, as regards the amendment to Annex XI (Electronic communication, audiovisual services and information society) and Protocol 37 containing the list provided for in Article 101 of the EEA Agreement

(Text with EEA relevance)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 114, in conjunction with Article 218(9) thereof,

Having regard to Council Regulation (EC) No 2894/94 of 28 November 1994 concerning arrangements for implementing the Agreement on the European Economic Area ([1]), and in particular Article 1(3) thereof,

Having regard to the proposal from the European Commission,

Whereas:

(1) The Agreement on the European Economic Area ([2]) ('the EEA Agreement') entered into force on 1 January 1994.

(2) Pursuant to Article 98 of the EEA Agreement, it is possible for the EEA Joint Committee to decide to amend, inter alia, Annex XI (Electronic communication, audiovisual services and information society) and Protocol 37 containing the list provided for in Article 101 ('Protocol 37') of the EEA Agreement.

(3) Commission Decision of 11 June 2019 setting up the Radio Spectrum Policy Group ([3]) is to be incorporated into the EEA Agreement.

(4) Annex XI and Protocol 37 to the EEA Agreement should be amended accordingly.

(5) The position of the Union in the EEA Joint Committee should therefore be based on the attached draft decision,

HAS ADOPTED THIS DECISION:

Article 1

The position to be adopted on behalf of the Union within the EEA Joint Committee on the proposed amendment of Annex XI (Electronic communication, audiovisual services and information society) and Protocol 37 containing the list provided for in Article 101 of the EEA Agreement shall be based on the draft decision of the EEA Joint Committee attached to this Decision.

([1]) OJ L 305, 30.11.1994, p. 6.
([2]) OJ L 1, 3.1.1994, p. 3.
([3]) Commission Decision of 11 June 2019 setting up the Radio Spectrum Policy Group and repealing Decision 2002/622/EC (OJ C 196, 12.6.2019, p. 16).

Article 2

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

Done at Brussels, 21 February 2023.

For the Council
The President
J. ROSWALL

DRAFT

DECISION OF THE EEA JOINT COMMITTEE No […]

of …

amending Annex XI (Electronic communication, audiovisual services and information society) and Protocol 37 containing the list provided for in Article 101 of the EEA Agreement

THE EEA JOINT COMMITTEE,

Having regard to the Agreement on the European Economic Area ('the EEA Agreement'), and in particular Article 98 thereof,

Whereas:

(1) Commission Decision of 11 June 2019 setting up the Radio Spectrum Policy Group and repealing Decision 2002/622/EC ([1]) is to be incorporated into the EEA Agreement.

(2) Commission Decision of 11 June 2019 repeals Commission Decision 2002/622/EC ([2]), which is incorporated into the EEA Agreement and which is consequently to be repealed under the EEA Agreement.

(3) Annex XI and Protocol 37 to the EEA Agreement should therefore be amended accordingly,

HAS ADOPTED THIS DECISION:

Article 1

The text of point 5ch (Commission Decision 2002/622/EC) of Annex XI to the EEA Agreement is replaced by the following:

'**32019 D 0612(01)**: Commission Decision of 11 June 2019 setting up the Radio Spectrum Policy Group and repealing Decision 2002/622/EC (OJ C 196, 12.6.2019, p. 16).

The provisions of the Decision shall, for the purposes of the present Agreement, be read with the following adaptation:

(a) Article 2(4) shall not apply to the EFTA States.

Modalities for the association of the EFTA States in accordance with Article 101 of this Agreement:

The EFTA States shall participate fully in the Radio Spectrum Policy Group and shall within it have the same rights and obligations as EU Member States, except for the right to vote. Members from the EFTA States shall not be eligible for the Chairmanship of the Radio Spectrum Policy Group or its subgroups.'

Article 2

In point 16 of Protocol 37, the words 'Commission Decision 2002/622/EC' are replaced by the words 'Commission Decision of 11 June 2019'.

Article 3

The text of Commission Decision of 11 June 2019 in the Icelandic and Norwegian languages, to be published in the EEA Supplement to the *Official Journal of the European Union*, shall be authentic.

([1]) OJ C 196, 12.6.2019, p. 16.
([2]) OJ L 198, 27.7.2002, p. 49.

Article 4

This Decision shall enter into force on […], provided that all the notifications under Article 103(1) of the EEA Agreement have been made *.

Article 5

This Decision shall be published in the EEA Section of, and in the EEA Supplement to, the *Official Journal of the European Union*.

Done at Brussels,

For the EEA Joint Committee
The President

The Secretaries
To the EEA Joint Committee

(*) [No constitutional requirements indicated.] [Constitutional requirements indicated.]

COUNCIL DECISION (CFSP) 2023/457

of 2 March 2023

amending Decision 2014/119/CFSP concerning restrictive measures directed against certain persons, entities and bodies in view of the situation in Ukraine

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on European Union, and in particular Article 29 thereof,

Having regard to the proposal from the High Representative of the Union for Foreign Affairs and Security Policy,

Whereas:

(1) On 5 March 2014, the Council adopted Decision 2014/119/CFSP ([1]).

(2) On the basis of a review of Decision 2014/119/CFSP, the restrictive measures directed against certain persons, entities and bodies should be extended until 6 March 2024. Furthermore, the information in the Annex to Decision 2014/119/CFSP regarding the rights of defence and the right to effective judicial protection should be updated.

(3) Decision 2014/119/CFSP should therefore be amended accordingly,

HAS ADOPTED THIS DECISION:

Article 1

Decision 2014/119/CFSP is amended as follows:

(1) in Article 5, the second paragraph is replaced by the following:

'This Decision shall apply until 6 March 2024.';

(2) the Annex is amended in accordance with the Annex to this Decision.

Article 2

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

Done at Brussels, 2 March 2023.

For the Council
The President
E. BUSCH

([1]) Council Decision 2014/119/CFSP of 5 March 2014 concerning restrictive measures directed against certain persons, entities and bodies in view of the situation in Ukraine (OJ L 66, 6.3.2014, p. 26).

ANNEX

In the Annex to Decision 2014/119/CFSP, Section B (Rights of defence and the right to effective judicial protection) is replaced by the following:

'B. **Rights of defence and the right to effective judicial protection**

The rights of defence and the right to effective judicial protection under the Code of Criminal Procedure of Ukraine

Article 42 of the Code of Criminal Procedure of Ukraine ("Code of Criminal Procedure") provides that every person who is suspected or accused in criminal proceedings enjoys rights of defence and the right to effective judicial protection. These include: the right to be informed of the criminal offence of which he has been suspected or accused; the right to be informed, expressly and promptly, of his rights under the Code of Criminal Procedure; the right to have, when first requested, access to a defence lawyer; the right to present petitions for procedural actions; and the right to challenge decisions, actions and omissions by the investigator, the public prosecutor and the investigating judge.

Article 303 of the Code of Criminal Procedure distinguishes between decisions and omissions that can be challenged during the pre-trial proceedings (first paragraph) and decisions, acts and omissions that can be considered in court during preparatory proceedings (second paragraph). Article 306 of the Code of Criminal Procedure provides that complaints against decisions, acts or omissions of the investigator or public prosecutor must be considered by an investigating judge of a local Court in the presence of the complainant or his defence lawyer or legal representative. Article 308 of the Code of Criminal Procedure provides that complaints regarding failure by the investigator or public prosecutor to respect reasonable time during the pre-trial investigation may be lodged with a superior public prosecutor and must be considered within three days of being lodged. In addition, Article 309 of the Code of Criminal Procedure specifies the decisions of investigating judges that may be challenged on appeal, and that other decisions may be subject to judicial review in the course of preparatory proceedings in Court. Moreover, a number of procedural investigating actions are only possible subject to a ruling by the investigating judge or a Court (e.g. seizure of property under Articles 167-175, and measures of detention under Articles 176-178, of the Code of Criminal Procedure).

Application of the rights of defence and the right to effective judicial protection of each of the listed persons

2. **Vitalii Yuriyovych Zakharchenko**

The criminal proceedings relating to the misappropriation of public funds or assets are still ongoing.

The information on the Council's file shows that the rights of defence and the right to effective judicial protection of Mr Zakharchenko, including the fundamental right to have his case heard within a reasonable time by an independent and impartial tribunal, were respected in the criminal proceedings on which the Council relied. This is demonstrated in particular by the decisions of the investigating judge of 19 April 2021 ordering detention in custody of Mr Zakharchenko, as well as the ruling of the Pecherskyi District Court of Kyiv City dated 10 August 2021 granting permission to carry out a special pre-trial investigation in criminal proceeding No 42016000000002929. Those decisions of the investigating judges confirm the status of suspect of Mr Zakharchenko and highlight that the suspect is hiding from the investigation to avoid criminal liability.

Moreover, the Council has information that the Ukrainian authorities took measures to search for Mr Zakharchenko. On 12 February 2020, the investigating body decided to put Mr Zakharchenko on the international wanted list and forwarded the request to the Department of International Police Cooperation of the National Police of Ukraine for entry into the Interpol database. Additionally, on 11 May 2021, Ukraine sent a request for international legal assistance to the Russian Federation to establish the whereabouts of Mr Zakharchenko, which was rejected by Russia on 31 August 2021.

The Council has information that on 9 February 2022 the pre-trial investigation in criminal proceeding No 42016000000002929 was completed and on 5 August 2022, following the fulfilment of the requirements of the Criminal Procedure Code of Ukraine, the Prosecutor General's Office sent an indictment to the Pecherskyi District Court of Kyiv City for the consideration of the merits of the case.

Based on the information provided by the Ukrainian authorities, Mr Zakharchenko has not involved a defence counsel in the criminal proceedings in Ukraine but an assigned defence counsel represented his interests. No violation of the rights of defence and the right to effective judicial protection can be ascertained in the circumstances where the defence is not exercising those rights.

In accordance with the case-law of the European Court of Human Rights, the Council considers that the periods during which Mr Zakharchenko has been avoiding investigation must be excluded from the calculation of the period relevant for the assessment of respect for the right to a trial within a reasonable time. The Council therefore considers that the circumstances described above attributed to Mr Zakharchenko have significantly contributed to the length of the investigation.

6. **Viktor Ivanovych Ratushniak**

The criminal proceedings relating to the misappropriation of public funds or assets are still ongoing.

The information on the Council's file shows that the rights of defence and the right to effective judicial protection of Mr Ratushniak, including the fundamental right to have his case heard within a reasonable time by an independent and impartial tribunal, were respected in the criminal proceedings on which the Council relied. This is demonstrated in particular by the decisions of the investigating judge of 19 April 2021 ordering detention in custody on Mr Ratushniak as well as the ruling of the Pecherskyi District Court of Kyiv City dated 10 August 2021 granting permission to carry out a special pre-trial investigation in criminal proceeding No 42016000000002929. Those decisions of the investigating judges confirm the status of suspect of Mr Ratushniak and highlight that the suspect is hiding from the investigation to avoid criminal liability.

The Council has information that the Ukrainian authorities took measures to search for Mr Ratushniak. On 12 February 2020, the investigating body decided to put Mr Ratushniak on the international wanted list and forwarded the request to the Department of International Police Cooperation of the National Police of Ukraine for entry into the Interpol database. Additionally, on 11 May 2021 Ukraine sent a request for international legal assistance to the Russian Federation to establish the whereabouts of Mr Ratushniak, which was rejected by Russia on 31 August 2021.

The Council has information that on 9 February 2022 the pre-trial investigation in criminal proceeding No 42016000000002929 was completed and, on 5 August 2022, following the fulfilment of the requirements of the Criminal Procedure Code of Ukraine, the Prosecutor General's Office sent an indictment to the Pecherskyi District Court of Kyiv City for the consideration of the merits of the case.

Based on the information provided by the Ukrainian authorities, Mr Ratushniak has not involved a defence counsel in the criminal proceedings in Ukraine but an assigned defence counsel represented his interests. No violation of the rights of defence and the right to effective judicial protection can be ascertained in the circumstances where the defence is not exercising those rights.

In accordance with the case-law of the European Court of Human Rights, the Council considers that the periods during which Mr Ratushniak has been avoiding investigation must be excluded from the calculation of the period relevant for the assessment of respect for the right to a trial within a reasonable time. The Council therefore considers that the circumstances described above attributed to Mr Ratushniak have significantly contributed to the length of the investigation.

12. **Serhiy Vitalyovych Kurchenko**

The criminal proceedings relating to the misappropriation of public funds or assets are still ongoing.

The information on the Council's file shows that the rights of defence and the right to effective judicial protection of Mr Kurchenko, including the fundamental right to have his case heard within a reasonable time by an independent and impartial tribunal, were respected in the criminal proceedings on which the Council relied. This is demonstrated in particular by the fact that the defence was notified about the completion of the pre-trial investigation in criminal proceeding No 42016000000003393 on 28 March 2019 and was provided access to the materials for familiarisation. On 11 October 2021, the National Anti-Corruption Bureau of Ukraine additionally informed the defence lawyers of Mr Kurchenko about the completion of the pre-trial investigation

and the provision of access to the materials of the pre-trial investigation for familiarisation. The Council received information that the National Anti-Corruption Bureau of Ukraine filed a motion to establish a term for the review by the defence party in order to address the delay of the defence party in reviewing the materials of the pre-trial investigation. The Council was informed that the High Anti-Corruption Court of Ukraine in its decision dated 27 June 2022 set a time limit until 1 December 2022 for the defence party to complete the familiarisation process, after which they are considered to have exercised their right to access the materials. On 7 December 2022, the Specialised Anti-Corruption Prosecutor's Office sent the indictment to the High Anti-Corruption Court of Ukraine for the consideration of the merits of the case.

In relation to criminal proceeding No 12014160020000076, in its decision of 18 September 2020, the Odessa Court of Appeal granted the appeal by the prosecutor and imposed a preventive measure of detention in custody on Mr Kurchenko. The Court also stated that Mr Kurchenko departed Ukraine in 2014 and that his location cannot be established. The Court concluded that Mr Kurchenko is hiding from the pre-trial investigation bodies in order to avoid criminal liability. On 20 December 2021, the Kyivskyi District Court of Odesa City granted permission to carry out a special pre-trial investigation in absentia. Furthermore, on 20 October 2021 the Kyivskyi District Court of Odesa City dismissed the appeal of the lawyers to cancel the resolution of the prosecutor on the suspension of the pre-trial investigation dated 27 July 2021.

The Council has information that the Ukrainian authorities took measures to search for Mr Kurchenko. On 13 May 2021, the Main Department of the National Police in Odessa Region forwarded the request to the Ukrainian Bureau of Interpol and Europol to publish a Red Notice concerning Mr Kurchenko, which is under consideration. The Council was informed that on 29 April 2020 the Ukrainian authorities sent a request for international legal assistance to the Russian Federation, which was returned on 28 July 2020 without execution.

The Council was informed that on 6 May 2022 the pre-trial investigation in criminal proceeding No 12014160020000076 was completed and on 1 August 2022 the Odessa Region Prosecutor's Office sent an indictment to the Prymorskyi District Court of Odesa City for the consideration of the merits of the case.

In accordance with the case-law of the European Court of Human Rights, the Council considers that the periods during which Mr Kurchenko has been avoiding investigation must be excluded from the calculation of the period relevant for the assessment of respect for the right to a trial within a reasonable time. The Council therefore considers that the circumstances described in the decision of the Odessa Court of Appeal attributed to Mr Kurchenko as well as the non-execution of the request for international legal assistance have significantly contributed to the length of the investigation.'.

COMMISSION IMPLEMENTING DECISION (EU) 2023/458

of 1 March 2023

on the non-approval of certain active substances for use in biocidal products in accordance with Regulation (EU) No 528/2012 of the European Parliament and of the Council

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EU) No 528/2012 of the European Parliament and of the Council of 22 May 2012 concerning the making available on the market and use of biocidal products ([1]), and in particular Article 89(1), third subparagraph, thereof,

Whereas:

(1) Commission Delegated Regulation (EU) No 1062/2014 ([2]) establishes in its Annex II a list of active substance/product-type combinations included in the review programme of existing active substances in biocidal products.

(2) For a number of active substance/product-type combinations included in that list, all the participants have withdrawn or are considered to have withdrawn their support in a timely manner.

(3) In accordance with Article 14(1) of Delegated Regulation (EU) No 1062/2014, the European Chemicals Agency published an open invitation to take over the role of participant for those active substance/product-type combinations for which the role of participant had not previously been taken over. For those combinations no notification has been submitted to the European Chemicals Agency within the time limit provided for by Article 14(2) of Delegated Regulation (EU) No 1062/2014. Therefore, those active substance/product-type combinations, in accordance with Article 20, first paragraph, point (b), of Delegated Regulation (EU) No 1062/2014, should not be approved for use in biocidal products.

(4) The measures provided for in this Decision are in accordance with the opinion of the Standing Committee on Biocidal Products,

HAS ADOPTED THIS DECISION:

Article 1

The active substances listed in the Annex are not approved for the product-types indicated therein.

Article 2

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

([1]) OJ L 167, 27.6.2012, p. 1.

([2]) Commission Delegated Regulation (EU) No 1062/2014 of 4 August 2014 on the work programme for the systematic examination of all existing active substances contained in biocidal products referred to in Regulation (EU) No 528/2012 of the European Parliament and of the Council (OJ L 294, 10.10.2014, p. 1).

Done at Brussels, 1 March 2023.

For the Commission
The President
Ursula VON DER LEYEN

ANNEX

Active substance/product-type combinations not approved:

Entry Number in Annex II to Regulation (EU) No 1062/2014	Substance name	Rapporteur Member State	EC number	CAS number	Product-type(s)
1022	Dialuminium chloride pentahydroxide	NL	234-933-1	12042-91-0	2
691	Sodium N-(hydroxymethyl) glycinate	AT	274-357-8	70161-44-3	6
459	Reaction mass of titanium dioxide and silver chloride	SE	Not available	Not available	1, 2, 6, 7, 9, 10, 11
531	(benzyloxy)methanol	AT	238-588-8	14548-60-8	13
1016	Silver chloride	SE	232-033-3	7783-90-6	1
444	7a-ethyldihydro-1H,3H,5H-oxazolo[3,4-c]oxazole (EDHO)	PL	231-810-4	7747-35-5	6, 13
797	cis-1-(3-chloroallyl)-3,5,7-triaza-1-azoniaadamantane chloride (cis CTAC)	PL	426-020-3	51229-78-8	6, 13
368	Methenamine 3-chloroallylochloride (CTAC)	PL	223-805-0	4080-31-3	6, 12, 13

COMMISSION IMPLEMENTING DECISION (EU) 2023/459

of 2 March 2023

not approving 2,2-Dibromo-2-cyanoacetamide (DBNPA) as an existing active substance for use in biocidal products of product-type 4 in accordance with Regulation (EU) No 528/2012 of the European Parliament and of the Council

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EU) No 528/2012 of the European Parliament and of the Council of 22 May 2012 concerning the making available on the market and use of biocidal products ([1]), and in particular Article 89(1), third subparagraph, thereof,

Whereas:

(1) Commission Delegated Regulation (EU) No 1062/2014 ([2]) establishes a list of existing active substances to be evaluated for their possible approval for use in biocidal products. That list includes 2,2-Dibromo-2-cyanoacetamide (DBNPA) (EC No: 233-539-7; CAS No: 10222-01-2).

(2) DBNPA has been evaluated for use in biocidal products of product-type 4, food and feed area, as described in Annex V to Regulation (EU) No 528/2012.

(3) Denmark was designated as the rapporteur Member State and its evaluating competent authority submitted the assessment report together with its conclusions to the European Chemicals Agency ('the Agency') on 27 December 2016. After the submission of the assessment report, discussions took place in technical meetings organised by the Agency.

(4) In accordance with Article 75(1), point (a), of Regulation (EU) No 528/2012, the Biocidal Products Committee is responsible for preparing the opinion of the Agency regarding applications for approval of active substances. In accordance with Article 7(2) of Delegated Regulation (EU) No 1062/2014, the Biocidal Products Committee adopted the opinion of the Agency on 25 June 2019 ('the opinion of 25 June 2019') ([3]), having regard to the conclusions of the evaluating competent authority.

(5) According to the opinion of 25 June 2019, DBNPA has endocrine-disrupting properties that may cause adverse effects in humans and the environment (non-target organisms) on the basis of the criteria laid down in Commission Delegated Regulation (EU) 2017/2100 ([4]). DBNPA therefore meets the exclusion criteria set out in Article 5(1), point (d), of Regulation (EU) No 528/2012. The opinion of 25 June 2019 also considered that the risks to human health and the environment of using the representative biocidal product presented in the application for approval of DBNPA for product-type 4 were acceptable subject to appropriate risk mitigation measures, but also concluded that, given the exposure of humans and the environment to DBNPA, a risk related to endocrine-disrupting properties cannot be excluded.

([1]) OJ L 167, 27.6.2012, p. 1.

([2]) Commission Delegated Regulation (EU) No 1062/2014 of 4 August 2014 on the work programme for the systematic examination of all existing active substances contained in biocidal products referred to in Regulation (EU) No 528/2012 of the European Parliament and of the Council (OJ L 294, 10.10.2014, p. 1).

([3]) Biocidal Products Committee Opinion on the application for approval of the active substance: 2,2-Dibromo-2-cyanoacetamide (DBNPA), Product type: 4, ECHA/BPC/225/2019, adopted on 25 June 2019.

([4]) Commission Delegated Regulation (EU) 2017/2100 of 4 September 2017 setting out scientific criteria for the determination of endocrine-disrupting properties pursuant to Regulation (EU) No 528/2012 of the European Parliament and Council (OJ L 301, 17.11.2017, p. 1).

(6) Pursuant to Article 5(2) of Regulation (EU) No 528/2012, an active substance meeting the exclusion criteria may only be approved if it is shown that at least one of the conditions for derogation set out in that Article is met. When deciding whether an active substance may be approved on that basis, the availability of suitable and sufficient alternative substances or technologies is to be a key consideration.

(7) The Commission, with the support of the Agency, carried out a public consultation between 11 October 2019 and 10 December 2019 ('the public consultation') in order to gather information as to whether the conditions set out in Article 5(2) of Regulation (EU) No 528/2012 were satisfied.

(8) The opinion of 25 June 2019 and the contributions to the public consultation were discussed by the Commission with the Member States representatives in the meeting of the Standing Committee on Biocidal Products of February 2020. The Commission asked the Member States to indicate whether they consider that at least one of the conditions set out in Article 5(2) of Regulation (EU) No 528/2012 would be met in their respective territory, and to provide justification. It was concluded that there was a need to further analyse the information provided by the applicant during the consultation to assess whether the condition in Article 5(2), point (a), could be considered met. On 8 July 2020, pursuant to Article 75(1), point (g), of Regulation (EU) No 528/2012, the Commission requested the Agency ([5]) to revise its opinion and clarify whether a safe threshold may be derived in relation to the endocrine-disrupting properties of DBNPA, to assess the contribution of the use of DBNPA as a biocidal active substance to the average daily bromide consumption and to the environmental background, and to conclude whether the risks for human health and for the environment could be considered acceptable or not.

(9) The Biocidal Products Committee adopted the revised opinion of the Agency on 30 November 2021 ('the opinion of 30 November 2021') ([6]), having regard to the conclusions of the evaluating competent authority.

(10) According to the opinion of 30 November 2021, the risks associated with the exposure to DBNPA-derived bromide arising from the use of biocidal products containing DBNPA of product-type 4, including the risks resulting from its endocrine-disrupting effects, are considered acceptable for humans and the environment for the representative biocidal product presented in the application for approval, subject to appropriate risk mitigation measures. Therefore, without prejudice to the provisions of Article 5(2) of Regulation (EU) No 528/2012, biocidal products of product-type 4 containing DBNPA may be expected to satisfy the requirements laid down in Article 19(1), point (b), of that Regulation.

(11) The opinion of 30 November 2021 and the contributions to the public consultation were discussed by the Commission with the Member States representatives in the meetings of the Standing Committee on Biocidal Products of March 2022 and June 2022. The Commission again asked the Member States to indicate whether they consider that at least one of the conditions set out in Article 5(2) of Regulation (EU) No 528/2012 would be met in their respective territory, and to provide justification. No Member State indicated that those conditions would be met in its territory, in the light of the availability of alternatives, which is a key consideration in the context of Article 5(2) of Regulation (EU) No 528/2012.

(12) In fact, based on the information collected and the views expressed by Member States, suitable and sufficient alternative substances or technologies are available. The representative biocidal product presented by the applicant in the application for approval is a product used for the disinfection of food processing vessels by professional/industrial users (such as industrial mayonnaise or yogurt producing facilities, fermenters for beer or other fermented

([5]) Mandate requesting ECHA an opinion under Article 75(1)(g) of the BPR, 'Evaluation of the level of the risks for human health and for the environment of DBNPA used in biocidal products of product type 4'.

([6]) Biocidal Products Committee Opinion on the application for approval of the active substance: 2,2-Dibromo-2-cyanoacetamide (DBNPA), Product type: 4, ECHA/BPC/300/2021, adopted on 30 November 2021.

products). The opinion of 30 November 2021 lists several active substances as potential alternatives ([7]). 26 active substances are already approved for use in biocidal products of product-type 4, while another 37 active substances are still under examination within the work programme for the systematic examination of existing active substances pursuant to Article 89 of Regulation (EU) No 528/2012. Moreover, other active substances have been approved under Regulation (EU) No 528/2012 following the assessment of representative biocidal products similar to the representative biocidal product presented in the application for the approval of DBNPA ([8]). No evidence has been submitted by the applicant showing that any of those active substances could not be used for the same purpose as DBNPA. Lastly, several Member States representatives indicated during the discussions in the Standing Committee on Biocidal Products that no biocidal products containing DBNPA for product-type 4 were registered under their national rules or placed on their market despite the presence of food processing industries on their territory, and that alternative active substances and biocidal products were available on their territory for the same or similar use, like biocidal products containing peracetic acid or hydrogen peroxide.

(13) Furthermore, the representative biocidal product presented by the applicant cannot be considered as a product used in closed systems or under other conditions which aim at excluding contact with humans and release into the environment, as, according to the opinion of 30 November 2021, its use may lead to the presence of residues in disinfected bottles even after rinsing and may lead to releases into the environment via waste water. Although the opinion of 30 November 2021 concludes that the risks to humans and to the environment could be considered acceptable, in view of the positions expressed by Member States representatives in the Standing Committee on Biocidal Products, it is not concluded that the risks could be considered negligible. Considering in addition that suitable and sufficient alternative substances or technologies are available, the condition in Article 5(2), point (a), of Regulation (EU) No 528/2012 is therefore not met.

(14) No specific information or justification has been submitted by the applicant to demonstrate that DBNPA would be essential to prevent or control a serious danger to human health, animal health or the environment. Considering in addition that suitable and sufficient alternative substances or technologies are available, the condition in Article 5(2), point (b), of Regulation (EU) No 528/2012 is therefore not met.

(15) No information has been submitted by the applicant that demonstrates that the non-approval of DBNPA would have disproportionate negative impacts on society when compared to the risks to human health, animal health or the environment arising from the use of the substance. Considering in addition that suitable and sufficient alternative substances or technologies are available, the condition in Article 5(2), point (c), of Regulation (EU) No 528/2012 is therefore not met.

(16) Consequently, the applicant has not shown that any of the conditions in Article 5(2), first subparagraph, of Regulation (EU) No 528/2012 is met. It is therefore appropriate not to approve DBNPA for use in biocidal products of product-type 4.

(17) The measures provided for in this Decision are in accordance with the opinion of the Standing Committee on Biocidal Products,

([7]) Biocidal Products Committee Opinion on the application for approval of the active substance: 2,2-Dibromo-2-cyanoacetamide (DBNPA), Product type: 4, ECHA/BPC/300/2021, adopted on 30 November 2021, on page 16: 2-phenoxy ethanol, Active chlorine (generated from sodium chloride by electrolysis or released from hypochlorous acid), Active chlorine (released from calcium hypochlorite), Active chlorine (released from sodium hypochlorite), Bromoacetic acid, C(M)IT/MIT, Decanoic acid, Glutaraldehyde, Hydrogen peroxide, Iodine, L(+) lactic acid, Octanoic acid, Peracetic acid, Peracetic acid generated from tetraacetylethylenediamine (TAED) and sodium percarbonate, PHMB (1415;4.7), PHMB (1600;1.8), Polyvinyl-pyrrolidone iodine, Propan-1-ol, Propan-2-ol, Salicylic acid.

([8]) For instance: lactic acid, octanoic acid, decanoic acid, peracetic acid or glutaraldehyde.

HAS ADOPTED THIS DECISION:

Article 1

2,2-Dibromo-2-cyanoacetamide (DBNPA) (EC No: 233-539-7; CAS No: 10222-01-2) is not approved as an active substance for use in biocidal products of product-type 4.

Article 2

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

Done at Brussels, 2 March 2023.

For the Commission
The President
Ursula VON DER LEYEN

COMMISSION IMPLEMENTING DECISION (EU) 2023/460

of 2 March 2023

postponing the expiry date of the approval of imidacloprid for use in biocidal products of product-type 18 in accordance with Regulation (EU) No 528/2012 of the European Parliament and of the Council

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EU) No 528/2012 of the European Parliament and of the Council of 22 May 2012 concerning the making available on the market and use of biocidal products ([1]), and in particular Article 14(5) thereof,

After consulting the Standing Committee on Biocidal Products,

Whereas:

(1) Imidacloprid was included in Annex I to Directive 98/8/EC of the European Parliament and of the Council ([2]) as an active substance for use in biocidal products of product-type 18. Pursuant to Article 86 of Regulation (EU) No 528/2012, it is therefore considered approved under that Regulation subject to the conditions set out in Annex I to Directive 98/8/EC.

(2) The approval of imidacloprid for use in biocidal products of product-type 18 ('the approval') is to expire on 30 June 2023. On 23 and 24 December 2021, two applications were submitted in accordance with Article 13(1) of Regulation (EU) No 528/2012 for the renewal of the approval ('the applications').

(3) On 27 April 2022, the evaluating competent authority of Germany informed the Commission that it had decided, pursuant to Article 14(1) of Regulation (EU) No 528/2012, that a full evaluation of the applications was necessary. Pursuant to Article 8(1) of that Regulation, the evaluating competent authority is to perform a full evaluation of the application within 365 days of its validation.

(4) The evaluating competent authority may, as appropriate, require the applicant to provide sufficient data to carry out the evaluation, in accordance with Article 8(2) of Regulation (EU) No 528/2012. In that event, the 365-day period is suspended for a period that may not exceed 180 days in total unless a longer suspension is justified by the nature of the data requested or by exceptional circumstances.

(5) Within 270 days of receipt of a recommendation from the evaluating competent authority, the European Chemicals Agency is to prepare and submit to the Commission an opinion on renewal of the approval of the active substance in accordance with Article 14(3) of Regulation (EU) No 528/2012.

(6) Consequently, for reasons beyond the control of the applicants, the approval is likely to expire before a decision has been taken on its renewal. It is therefore appropriate to postpone the expiry date of the approval for a period of time sufficient to enable the examination of the applications. Taking into account the time-limits for evaluation by the evaluating competent authority and for preparation and submission by the European Chemicals Agency of its opinion, and the time needed to decide whether the approval of imidacloprid for use in biocidal products for product-type 18 may be renewed, the expiry date should be postponed to 31 December 2025.

(7) After the postponement of the expiry date of the approval, imidacloprid remains approved for use in biocidal products of product-type 18 subject to the conditions set out in Annex I to Directive 98/8/EC,

([1]) OJ L 167, 27.6.2012, p. 1.

([2]) Directive 98/8/EC of the European Parliament and of the Council of 16 February 1998 concerning the placing of biocidal products on the market (OJ L 123, 24.4.1998, p. 1).

HAS ADOPTED THIS DECISION:

Article 1

The expiry date of the approval of imidacloprid for use in biocidal products of product-type 18 set out in Annex I to Directive 98/8/EC is postponed to 31 December 2025.

Article 2

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

Done at Brussels, 2 March 2023.

For the Commission
The President
Ursula VON DER LEYEN

CORRIGENDA

Corrigendum to Council Regulation (EU) 2023/426 of 25 February 2023 amending Regulation (EU) No 269/2014 concerning restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine

(Official Journal of the European Union L 59 I of 25 February 2023)

1. On page 2, Article 1, point (2), in the introductory wording of Article 6b, paragraph 5a:

for: '5a. By way of derogation from Article 2, paragraph 1, the competent authorities of the Member States may, under such conditions as they deem appropriate, authorise the release of certain frozen funds or economic resources held by the entity listed under entry number 101 under the heading "Entities" in Annex I, or the making available of certain funds or economic resources to that entity, after having determined that:',

read: '5a. By way of derogation from Article 2, the competent authorities of the Member States may, under such conditions as they deem appropriate, authorise the release of certain frozen funds or economic resources belonging to the entity listed under entry number 101 under the heading "Entities" in Annex I, or the making available of certain funds or economic resources to that entity, after having determined that:'.

2. On page 3, Article 1, point (2), in Article 6b, paragraph 5b:

for: '5b. By way of derogation from Article 2, paragraph 1, the competent authorities of the Member States may, under such conditions as they deem appropriate, authorise the release of certain frozen funds or economic resources held by the entity listed under entry number 190 under the heading "Entities" in Annex I, or the making available of certain funds or economic resources to that entity, after having determined that such funds or economic resources are necessary for the termination by 26 August 2023 of operations, contracts or other agreements concluded with, or otherwise involving, that entity before 25 February 2023.',

read: '5b. By way of derogation from Article 2, the competent authorities of the Member States may, under such conditions as they deem appropriate, authorise the release of certain frozen funds or economic resources belonging to the entity listed under entry number 190 under the heading "Entities" in Annex I, or the making available of certain funds or economic resources to that entity, after having determined that such funds or economic resources are necessary for the termination by 26 August 2023 of operations, contracts or other agreements concluded with, or otherwise involving, that entity before 25 February 2023.'.

Corrigendum to Council Decision (CFSP) 2023/432 of 25 February 2023 amending Decision 2014/145/CFSP concerning restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine

(Official Journal of the European Union L 59 I of 25 February 2023)

(1) On page 438, in Article 1, point (1)(c), in the introductory wording of Article 2, paragraph 22:

for: ‘22. By way of derogation from paragraphs 1 and 2, the competent authorities of the Member States may, under such conditions as they deem appropriate, authorise the release of certain frozen funds or economic resources held by the entity listed under entry number 101 under the heading “Entities” in the Annex, or the making available of certain funds or economic resources to that entity, after having determined that:’,

read: ‘22. By way of derogation from paragraphs 1 and 2, the competent authorities of the Member States may, under such conditions as they deem appropriate, authorise the release of certain frozen funds or economic resources belonging to the entity listed under entry number 101 under the heading “Entities” in the Annex, or the making available of certain funds or economic resources to that entity, after having determined that:’.

(2) On page 438, in Article 1, point (1)(c), in Article 2, paragraph 23:

for: ‘23. By way of derogation from paragraphs 1 and 2, the competent authorities of the Member States may, under such conditions as they deem appropriate, authorise the release of certain frozen funds or economic resources held by the entity listed under entry number 190 under the heading “Entities” in the Annex, or the making available of certain funds or economic resources to that entity, after having determined that such funds or economic resources are necessary for the termination by 26 August 2023 of operations, contracts or other agreements concluded with, or otherwise involving, that entity before 25 February 2023.’,

read: ‘23. By way of derogation from paragraphs 1 and 2, the competent authorities of the Member States may, under such conditions as they deem appropriate, authorise the release of certain frozen funds or economic resources belonging to the entity listed under entry number 190 under the heading “Entities” in the Annex, or the making available of certain funds or economic resources to that entity, after having determined that such funds or economic resources are necessary for the termination by 26 August 2023 of operations, contracts or other agreements concluded with, or otherwise involving, that entity before 25 February 2023.’.

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