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⁽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.

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II

(Non-legislative acts)

REGULATIONS

COMMISSION IMPLEMENTING REGULATION (EU) 2023/1441

of 10 July 2023

on detailed arrangements for the conduct of proceedings by the Commission pursuant to Regulation (EU) 2022/2560 of the European Parliament and of the Council on foreign subsidies distorting the internal market

THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EU) 2022/2560 of the European Parliament and of the Council of 14 December 2022 on foreign subsidies distorting the internal market ⁽¹⁾, and in particular Article 47(1) thereof,

After consulting the Foreign Subsidies Advisory Committee,

Whereas:

- (1) Pursuant to Article 1 of Regulation (EU) 2022/2560, that Regulation allows to investigate foreign subsidies that distort the internal market and to remedy such distortions. It is necessary to lay down the specific rules and procedures concerning amongst others the submission of notifications pursuant to Article 21 and Article 29 of Regulation (EU) 2022/2560, the conduct of interviews and provision of oral statements under Article 13, Article 14 and Article 15 of Regulation (EU) 2022/2560, the submission of commitments under Article 25 and Article 31 of Regulation (EU) 2022/2560, and the details of disclosure and rights of defence of the undertaking under investigation under Article 42 of Regulation (EU) 2022/2560.
- (2) Pursuant to Article 20 of Regulation (EU) 2022/2560 persons and undertakings are required to notify certain large concentrations involving substantial foreign financial contributions before the concentration is put into effect. Article 29 of Regulation (EU) 2022/2560 requires the notification of foreign financial contributions in the context of public procurement procedures above certain thresholds before the contract is awarded. Failure to comply with the obligation to notify, among others, renders the person or undertaking liable to fines and periodic penalty payments. It is therefore necessary to precisely define the parties responsible for submitting the notification and the content of the information to be provided in the notification.
- (3) It is for persons or undertakings referred to in Articles 21(3) and 29(5) of Regulation (EU) 2022/2560 to make a full and accurate disclosure to the Commission of the facts and circumstances which are relevant for taking a decision on the notified concentration or foreign financial contributions in the context of a public procurement procedure.
- (4) In order to simplify the notifications and the Commission's assessment, standardised forms should be set out in the Annexes to this Regulation. They may be replaced by electronic forms containing the same information requirements.

⁽¹⁾ OJ L 330, 23.12.2022, p. 1.

- (5) In accordance with Article 10(3) of Regulation (EU) 2022/2560, in cases where, as a result of the preliminary review, the Commission has sufficient indications that an undertaking has been granted a foreign subsidy that distorts the internal market, the Commission should open an in-depth investigation procedure in order to enable it to gather further information to assess the existence of a foreign subsidy and the actual or potential distortive effects of the foreign subsidy. It is necessary to set out the rules on time-limits within which the undertaking under investigation and other persons, including Member States and the third country that granted the foreign subsidy, can submit their comments on the Commission's decision to initiate an in-depth investigation, in accordance with Article 40(1) Regulation (EU) 2022/2560.
- (6) Pursuant to Article 13(7) of Regulation (EU) 2022/2560, the Commission, in conducting investigations, may interview any natural or legal person who agrees to be interviewed for the purpose of collecting information relating to the subject matter of the investigation. In observing the need to ensure legal fairness and transparency, before taking interviews from natural or legal persons who consent to be interviewed, the Commission should inform those persons of the legal basis of the interview. The persons interviewed should also be informed of the purpose of the interview and should be given an opportunity to comment on the documented interview. The Commission should set a time-limit within which the person interviewed may communicate to it any comments on the documented interview.
- (7) Pursuant to Article 14(2), point (c) and Article 15 of Regulation (EU) 2022/2560, the Commission, in conducting inspections within or outside of the Union, may ask any representative or member of staff of an undertaking or association of undertakings for explanations of facts or documents relating to the subject-matter and purpose of the inspection and to document the answers. The documented oral statements should be made available to the authorised representative of the undertaking or association of undertakings. In case of explanations provided by a non-authorised member of staff, the undertaking or association of undertakings should be given an opportunity to comment on the documented explanations.
- (8) Pursuant to Article 13(5) of Regulation (EU) 2022/2560, Member States are obliged to provide the Commission with all the necessary information to carry out investigations under that Regulation. To ensure all such information is available to the Commission in the context of public procurement procedures, this obligation should also apply to contracting authorities or contracting entities in charge of the relevant public procurement procedure.
- (9) In order to enable the Commission to carry out a proper assessment, for the purposes of adopting a decision with commitments offered by the undertaking under investigation with a view to remedying a distortion in the internal market, the procedure for proposing commitments pursuant to Article 11(3) of Regulation (EU) 2022/2560 and time limits for proposing commitments under Articles 25 and 31 of Regulation (EU) 2022/2560 should be laid down.
- (10) In the interest of ensuring transparency, the Commission may, where appropriate, impose reporting and transparency obligations pursuant to Article 7(5) and Article 8 of Regulation (EU) 2022/2560 in acts closing an in-depth investigation pursuant to Article 11 of Regulation (EU) 2022/2560. These obligations should allow the Commission to detect potential distortions on the internal market or to monitor the implementation of its acts adopted under Regulation (EU) 2022/2560. It is therefore necessary that the form, content and procedural details of these obligations are clarified.
- (11) Pursuant to Article 42(1) of Regulation (EU) 2022/2560, in accordance with the principle of respect for the rights of defence, the undertaking under investigation should be given the opportunity, before the Commission adopts a decision pursuant to Articles 11, 12, 17, 18, 25(3), 26, 31 or 33 of Regulation (EU) 2022/2560, to submit its observations on all of the grounds on which the Commission intends to adopt its decision. In accordance with Article 42(4) of Regulation (EU) 2022/2560, it is necessary to lay down rules on the extent to which an undertaking under investigation should be granted access to the file of the Commission. While the undertaking under investigation should always have the right to obtain from the Commission the non-confidential versions of all documents mentioned in the grounds, access to all documents on the Commission's file, without any redactions

should be provided to a limited number of specified external legal or economic counsel or external technical experts, on behalf of the undertaking under investigation, under terms to be set out in a Commission decision. This access should be limited in certain situations, including when the disclosure of certain documents would harm their provider or where other interests prevail.

- (12) Pursuant to Article 42(4) of Regulation (EU) 2022/2560, when granting access to the file, the Commission should ensure the protection of business secrets and other confidential information. It is therefore necessary to set out detailed rules that will enable the Commission to ask persons and undertakings that submit or have submitted information, including documents, to identify business secrets or confidential information in their submissions or with regard to information in a summary notice or a decision, as well as enable the Commission to decide on the treatment of certain information in case of disagreement on confidentiality.
- (13) Since notifications set in motion the legal time limits laid down in Regulation (EU) 2022/2560, the conditions governing such time limits and the time when notifications become effective should also be determined. In particular, the beginning and end of time limits and the circumstances suspending the running of such limits should be determined.
- (14) Transmission of documents to and from the Commission should in principle take place through digital means, considering developments in information and communication technology and the environmental benefit of such transmissions. In particular, this should apply, pursuant to Article 47(1) points (a), (b) and (h) of Regulation (EU) 2022/2560, to notifications, responses to requests for information, observations on the grounds on which the Commission intends to adopt its decision addressed to the undertaking under investigation, as well as commitments offered by the notifying parties.
- (15) In the interest of transparency and legal certainty, this Regulation should enter into force prior to the start of application of Regulation (EU) 2022/2560.

HAS ADOPTED THIS REGULATION:

CHAPTER I

SCOPE AND DEFINITIONS

Article 1

Subject matter and scope

In accordance with Article 47(1) of Regulation (EU) 2022/2560, this Regulation lays down detailed arrangements in relation to:

- (1) the form, content and procedural details of notifications of concentrations;
- (2) the form, content and procedural details of notifications of foreign financial contributions and declaration of no foreign financial contribution in the context of public procurement procedures;
- (3) procedural details for oral statements pursuant to Article 13(7), Article 14(2), point (c) and Article 15 of Regulation (EU) 2022/2560;
- (4) detailed rules on disclosure, access to file and confidential information pursuant to Article 42 and Article 43 of Regulation (EU) 2022/2560;
- (5) the form, content and procedural details of transparency requirements;
- (6) detailed rules on the calculation of time limits;
- (7) the procedural details and time limits for proposing commitments under Article 25 and 31 of Regulation (EU) 2022/2560.

Article 2

Definitions

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

- (1) 'Notifying parties' for the purpose of notifications of concentrations means persons or undertakings required to submit a notification pursuant to Article 21(3) of Regulation (EU) 2022/2560.
- (2) 'Other persons involved' for the purpose of notifications of concentrations mean persons involved in the proposed concentration other than the notifying parties, such as the seller and the undertaking or part of the undertaking that is the target of the concentration.
- (3) 'Notifying parties' for the purpose of notifications and declarations regarding foreign financial contributions in public procurement' means all economic operators, groups of economic operators, main subcontractors and main suppliers covered by the notification obligation in accordance with Article 29(5) of Regulation (EU) 2022/2560.
- (4) 'Working days' means all days other than Saturdays, Sundays, and Commission holidays as published in the *Official Journal of the European Union*.

CHAPTER II

NOTIFICATIONS

Article 3

Persons entitled to submit notifications and declarations

1. Notifications of concentrations pursuant to Article 21 of Regulation (EU) 2022/2560 shall be submitted by the notifying parties as referred in Article 2, point (1). Each notifying party shall be responsible for the correctness of the information provided by it.
2. Notifications and declarations in public procurement procedures shall be submitted to the contracting authority or contracting entity by the economic operator, or, in the case of groups of economic operators, main subcontractors and main suppliers, the main contractor or main concessionaire, referred to in Article 29(6) of Regulation (EU) 2022/2560 on its behalf and on behalf of any and all notifying parties as referred to in Article 2, point (3). Each notifying party shall only be responsible for the correctness of information linked to the foreign financial contributions that have been granted to it.
3. Where notifications or declarations are signed by authorised external representatives of persons or of undertakings, such representatives shall produce written proof that they are authorised to act.

Article 4

Prior notification of concentrations

1. Notifications of concentrations pursuant to Article 21 of Regulation (EU) 2022/2560 shall be submitted using the form for notifying concentrations set out in Annex I. Joint notifications pursuant to Article 21(3) of Regulation (EU) 2022/2560 shall be submitted on a single form.
2. The form for notifying concentrations and all relevant supporting documents shall be submitted to the Commission in accordance with Article 25.
3. Notifications shall be submitted in one of the official languages of the Union. Unless the Commission and the notifying parties agree otherwise, the language of the notification shall also be the language of the proceedings, as well as that of any subsequent administrative proceedings before the Commission under Regulation (EU) 2022/2560 relating to the same concentration. Supporting documents shall be submitted in their original language. Where the original language of a document is not one of the official languages of the Union, a translation into the language of the proceedings shall be attached.

4. The Commission may, upon written request, dispense a requesting notifying party with the obligation to provide any information in the notification form set out in Annex I, including documents, or with any other requirement in the notification form related to this information.
5. The Commission shall without delay acknowledge in writing to the notifying parties receipt of the notification and of any reply to a letter sent by the Commission pursuant to Article 6(2) and (3).

Article 5

Notifications and declarations of foreign financial contributions in the context of public procurement procedures

1. Notifications of foreign financial contributions in the context of public procurement procedures shall be submitted using the form set out in Annex II on one form containing information regarding all of the notifying parties related to one tender or request to participate, to the contracting authority or contracting entity in charge of the relevant public procurement procedure in line with Article 29(1) of Regulation (EU) 2022/2560.
2. Where, in public procurement procedures meeting the thresholds in Articles 28(1)(a) and 28(2) of Regulation (EU) 2022/2560, no notifiable foreign financial contributions in the last 3 years have been granted by a third country to the notifying parties, those parties must submit, instead of a notification, a declaration. The declaration must be submitted in the manner prescribed by heading 7 of the Introduction and Section 7 of Annex II on one form, to the contracting authority or contracting entity in charge of the relevant public procurement procedure. In accordance with Articles 4(3) and 29(1) of Regulation (EU) 2022/2560, foreign financial contributions the total amount of which per third country is lower than the amount of *de minimis* aid as defined in Article 3(2), first subparagraph, of Regulation (EU) No 1407/2013 over the consecutive period of three years preceding the declaration do not have to be reported in the declaration.
3. The notification, including all relevant supporting documents, or the declaration shall be transferred by the contracting authority or contracting entity to the Commission in accordance with Article 26.
4. Notifications and declarations shall be submitted to the contracting authority or contracting entity in one of the official languages of the Union. Unless the Commission and the notifying parties agree otherwise, the language of the notification or declaration shall also be the language of the proceeding, as well as that of any subsequent administrative proceedings before the Commission under Regulation (EU) 2022/2560 relating to the same public procurement procedure. Supporting documents shall be submitted in their original language. Where the original language of any document is not one of the official languages of the Union, a translation into the language of the proceedings shall be attached.
5. The Commission may, upon written request by the notifying parties, and informing the contracting authority or contracting entity in charge of the public procurement procedure, dispense a requesting notifying party with the obligation to provide any information in the notification form set out in Annex II, including documents, or with any other requirement in the notification form related to that information.
6. The Commission shall without delay acknowledge the receipt of the notification or declaration and of any reply to a letter sent by the Commission pursuant to Article 7(1) and (3), in writing to the contracting authority or contracting entity in charge of the public procurement procedure, with a copy of the acknowledgment sent to the notifying parties or their authorised external representatives.

Article 6

Effective date of notification in concentrations

1. Pursuant to Article 24(1) of Regulation (EU) 2022/2560, the effective date of a notification shall be the date on which the Commission receives a complete notification.

2. Where the Commission finds that the information, including documents, contained in the notification is incomplete, the Commission shall inform the notifying parties or their authorised external representatives in writing without delay. In such cases, the notification shall become effective on the date on which the complete information is received by the Commission.

3. After notification, the notifying parties shall communicate to the Commission without delay any relevant information, including material changes in the facts, which the notifying parties would have had to notify if they had known or ought to have known that information at the time of notification. Where that information could have a significant effect on the Commission's assessment of the notified concentration, the Commission may consider the notification to become effective only on the date on which it receives the information concerned. The Commission shall inform the notifying parties or their representatives of this in writing without delay.

4. For the purposes of this Article, the provision of incorrect or misleading information shall be considered as rendering the notification incomplete.

Article 7

Effective date of notifications and declarations of foreign financial contributions in the context of public procurement procedures

1. In open public procurement procedures within the meaning of Article 27 of Directive 2014/24/EU of the European Parliament and of the Council ⁽²⁾, notifications and declarations shall become effective on the date on which they are received by the Commission. In multi-stage public procurement procedures, a notification or declaration submitted at the stage of the submission of the request to participate as well as the updated notification or updated declaration submitted at the stage of the submission of the final tender according to Article 29(1), last sentence, of Regulation (EU) 2022/2560, shall become effective on the date on which they are received by the Commission. However, where the Commission finds that the information, including documents, contained in the received notification or declaration is incomplete, the Commission shall inform the notifying parties or their authorised external representatives in writing without delay. In such cases, the notification or declaration shall become effective on the date on which the complete information pursuant to Article 29(4) of Regulation (EU) 2022/2560 is received by the Commission.

2. Where the relevant contracting authority or contracting entity exercises its rights pursuant to Article 56(3) of Directive 2014/24/EU or Article 76(4) of Directive 2014/25/EU of the European Parliament and of the Council ⁽³⁾, to ask for clarifications of the notification, declaration, updated notification or updated declaration according to Article 29(1), last sentence, and Article 29(3) of Regulation (EU) 2022/2560, and decides to reject the tender or request to participate for lack of clarifications where not duly provided, the notification or declaration shall be considered not to have been made nor transferred to the Commission.

3. After the submission of a notification, declaration, updated notification or updated declaration, the notifying parties shall communicate to the Commission without delay any relevant new information, including changes in the facts, which the notifying parties would have had to notify if they had known or ought to have known that information at the time of the submission of the complete notification or declaration or updated notification or updated declaration. Where that information could have a significant effect on the Commission's assessment, the Commission may consider the notification, declaration, updated notification or updated declaration to become effective only on the date on which it receives the relevant information. The Commission shall inform the notifying parties of notifications in the context of public procurement procedures or their external representatives, as well as the relevant contracting authority or contracting entity of the date of effectiveness in writing and without delay.

⁽²⁾ Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on public procurement and repealing Directive 2004/18/EC (OJ L 94, 28.3.2014, p. 65).

⁽³⁾ Directive 2014/25/EU of the European Parliament and of the Council of 26 February 2014 on procurement by entities operating in the water, energy, transport and postal services sectors and repealing Directive 2004/17/EC (OJ L 94, 28.3.2014, p. 243).

4. For the purposes of this Article, and without prejudice to Articles 17, 29 and 33 of Regulation (EU) 2022/2560, the provision of incorrect or misleading information shall be considered as rendering the notification incomplete.

CHAPTER III

INVESTIGATION BY THE COMMISSION

Article 8

Time limit for submission of comments following an opening of an in-depth investigation

1. When the Commission opens an in-depth investigation pursuant to Article 10(3) of Regulation (EU) 2022/2560, the time limit within which the undertaking under investigation, any other natural or legal person, Member States and the third country that granted the foreign subsidy may submit their comments in writing shall be fixed by the Commission and shall normally not exceed one month from the date on which the undertaking under investigation has been informed about the decision, or from the date of publication of the summary notice of the decision in the *Official Journal of the European Union* in all other cases. Comments shall be submitted in accordance with Articles 25 and 26.
2. In duly justified cases, the Commission may extend the limit set out in paragraph 1.
3. Where the submission includes confidential information, the submitting person shall provide a non-confidential version of the submission at the same time as the confidential version.

Article 9

Interviews

1. Where the Commission interviews a person in accordance with Article 13(7) of Regulation (EU) 2022/2560, the Commission shall, at the beginning of the interview, state the legal basis and the purpose of the interview, and inform the person interviewed that it will document the interview.
2. An interview conducted pursuant to Article 13(7) of Regulation (EU) 2022/2560 may be documented in any form.
3. A copy of the documented form of the interview shall be made available to the person interviewed for comments within a time limit set by the Commission.

Article 10

Oral statements during inspections

1. Where officials or other accompanying persons authorised by the Commission ask authorised external representatives or members of staff of an undertaking or association of undertakings for explanations pursuant to Article 14(2), point (c) or Article 15 of Regulation (EU) 2022/2560, those explanations may be documented in any form.
2. A copy of any documentation made pursuant to paragraph 1 shall be made available to the undertaking or association of undertakings concerned after the inspection.
3. Where a member of staff of an undertaking or association of undertakings who is not or was not authorised by the undertaking or by the association of undertakings to provide explanations on behalf of the undertaking or association of undertakings has provided explanations to the Commission, the Commission shall set a time limit within which the undertaking or the association of undertakings may communicate to the Commission any change to the explanations provided by such member of staff. The changes shall be added to the explanations as documented pursuant to paragraph 1.

*Article 11***Information from the contracting authorities and contracting entities in charge of public procurement procedures**

1. The obligation of the Member States pursuant to Article 13(5) of Regulation (EU) 2022/2560 to provide the Commission, upon its request with all necessary information to carry out investigations under Regulation (EU) 2022/2560 extends, in particular, to the contracting authorities and contracting entities in charge of the relevant public procurement procedures that have information relevant to the investigation.
2. The relevant contracting authority or contracting entity shall transfer to the Commission with the notification the copies of the documents used in the preparation of the procurement documents, including, if available, any research and the internal budget for the procurement, as well as the copies of any other documents the relevant contracting authority or contracting entity may consider crucial for the investigation. Where the notifying parties submit information under Section 4 of Annex II, the relevant contracting authority or contracting entity shall also forward the copies of all of the submitted tenders relating to the public procurement procedure in question. Where the tenders have not yet been submitted or are not available at the time of the notification, the copies shall be transferred to the Commission as soon as they become available. Where the relevant contracting authority or contracting entity does not or is not able to transfer to the Commission the copies of all the documents relevant for the investigation, the Commission shall request it to transfer the copies of the specific documents relevant to the Commission's investigation.

*Article 12****Submission of information on unduly advantageous tender***

1. To the extent not already provided by the notifying parties in their notification submitted pursuant to Article 29 of Regulation (EU) 2022/2560, justifications and related supporting documents listed in the form set out in Annex II, related to the assessment of the unduly advantageous nature of a tender, shall be submitted to the Commission according to the time limits and format specified in Article 8 and may be submitted during the preliminary review.
2. Where the notifying parties decide to make use of the possibility to submit justifications, they shall accompany this submission with all the related supporting documents listed in the form set out in Annex II in order to substantiate their claim.
3. When providing supporting documents, the undertaking under investigation shall identify any information that it considers to be confidential, shall duly justify such confidentiality claim, and shall provide a separate non-confidential version.

CHAPTER IV

COMMITMENTS, TRANSPARENCY AND REPORTING*Article 13***Time limits for the submission of commitments under notified concentrations**

1. With respect to concentrations notified to the Commission pursuant to Article 21 of Regulation (EU) 2022/2560, commitments offered for the purposes of a decision to be adopted pursuant to Article 25(3), point (a) of Regulation (EU) 2022/2560 shall be submitted to the Commission at the latest 65 working days from the date on which the in-depth investigation was initiated pursuant to Article 25(2) of Regulation (EU) 2022/2560.
2. Where, pursuant to Article 24(4) of Regulation (EU) 2022/2560 the time limit for the adoption of a decision pursuant to Article 25(3) of Regulation (EU) 2022/2560 is extended, the time limit of 65 working days for the submission of commitments shall automatically be extended by the same number of working days.

3. In exceptional circumstances, the Commission may consider commitments even though they have been offered after the expiry of the relevant time limit for their submission set out in this Article. In deciding whether to consider commitments offered in such circumstances, the Commission shall have particular regard to the need to comply with the committee procedure referred to in Article 48(2) of Regulation (EU) 2022/2560.

Article 14

Time limits for the submission of commitments in investigations in the context of public procurement procedures

1. With respect to foreign financial contributions notified to the Commission in the context of public procurement procedures pursuant to Article 29(1) of Regulation (EU) 2022/2560, commitments offered by the economic operators concerned pursuant to Article 31(1) of Regulation (EU) 2022/2560 shall be submitted to the Commission within not more than 50 working days from the date on which the in-depth investigation was initiated. Depending on their scope, and after consultation with the contracting authority or contracting entity, the commitments received by the Commission may be considered to constitute a duly justified exceptional case for extending the time limit for adopting a decision to close the in-depth investigation within the meaning of Article 30(5) of Regulation (EU) 2022/2560.

2. In exceptional circumstances, the Commission may consider commitments offered after the expiry of the time limit laid down in paragraph 1. In deciding whether to consider commitments offered in such circumstances, the Commission shall have particular regard to the need to comply with the committee procedure referred to in Article 48(2) of Regulation (EU) 2022/2560.

Article 15

Procedure for the submission of commitments

1. The commitments offered by the undertaking under investigation shall be submitted to the Commission in accordance with Article 25 for a decision under Article 25(3), point (a) of Regulation (EU) 2022/2560 or Article 26 for a decision under Article 31(1) of Regulation (EU) 2022/2560.

2. When offering commitments, the undertaking under investigation shall at the same time identify any information which it considers to be confidential, shall duly justify such confidentiality claim, and shall provide a separate non-confidential version of the commitments.

3. In proceedings under Chapters 3 and 4 of Regulation (EU) 2022/2560, commitments shall be signed by the notifying parties, as well as by any other persons involved on whom the commitments impose obligations.

Article 16

Transparency and reporting

Where appropriate, the Commission may, by decision made following an in-depth investigation pursuant to Article 11 of Regulation (EU) 2022/2560, impose transparency and reporting obligations on an undertaking pursuant to Article 7(5) and Article 8 of Regulation (EU) 2022/2560. Such obligations may concern the provision of information relating to any of the following situations:

- (a) foreign financial contributions received during a specified period of time starting on the day following the date of adoption of the decision imposing that obligation;
- (b) the participation in concentrations or public procurement procedures (where the undertaking under investigation submits a tender in an open procedure or a request to participate in a multi-stage public procurement procedure) during a specified period of time starting on the day following the date of adoption of the decision imposing that obligation;

- (c) the implementation of a decision with commitments adopted pursuant to Article 11(3), Article 25(3), point (a) or Article 31(1) of Regulation (EU) 2022/2560, of a decision with redressive measures adopted pursuant to Article 11(2) of Regulation (EU) 2022/2560, of a decision prohibiting a concentration adopted pursuant to Article 25(3), point (c) of Regulation (EU) 2022/2560, or of a decision prohibiting the award of the contract adopted pursuant to Article 31(2) of Regulation (EU) 2022/2560.

CHAPTER V

SUBMISSION OF OBSERVATIONS

Article 17

Submission of observations

1. When the Commission, pursuant to Article 42(1) of Regulation (EU) 2022/2560, informs the undertaking under investigation of the grounds on which it intends to adopt its decision, the Commission shall set a time limit of no less than 10 working days within which that undertaking may submit its observations in writing. The Commission shall not be obliged to take account of written submissions received after the expiry of that time limit.
2. The undertaking under investigation shall submit any observations in writing as well as any relevant documents attesting to the facts set out in those observations to the Commission in accordance with Article 25 and Article 26.
3. Where the Commission, pursuant to Article 42(2) of Regulation (EU) 2022/2560, adopts a provisional decision on interim measures, the Commission shall set a time limit within which the undertaking under investigation may submit its observations on that decision in writing. Once the undertaking under investigation has submitted its observations, the Commission shall take a final decision on the interim measures repealing, amending or confirming the provisional decision. Where the undertaking under investigation has not submitted observations in writing within the time limit set by the Commission, the provisional decision shall become final with the expiry of that time limit.
4. Where appropriate and upon reasoned request made by the undertaking under investigation before the expiry of the original time limit, the Commission may, extend time limits set in accordance with paragraphs 1 and 3.

CHAPTER VI

USE OF INFORMATION AND TREATMENT OF CONFIDENTIAL INFORMATION

Article 18

Use of information by the Commission

1. Pursuant to Article 43(1) of Regulation (EU) 2022/2560 a provider of information may agree that the Commission be entitled to use information acquired pursuant to that Regulation for purposes other than those for which the information was originally acquired by the Commission.
2. If the information provider provides a waiver to the Commission pursuant to Article 43(1) Regulation (EU) 2022/2560, the information provider shall indicate which specific information it allows being used for purposes other than those for which the information was acquired and provide reasons why that information would be relevant for those other purposes, including in the application of other Union acts.

3. If the Commission requests the information provider to provide a waiver pursuant to Article 43(1) Regulation (EU) 2022/2560 the Commission shall specify the information covered by that request and the purposes for which it intends to use that information. The use of that information by the Commission shall not go beyond the purposes indicated by the Commission and agreed by the provider.

Article 19

Identification and protection of confidential information

1. Unless otherwise provided for in Article 20 of this Regulation and Article 42 of Regulation (EU) 2022/2560 and without prejudice to paragraph 6, the Commission shall not disclose nor give access to information, including documents, in so far as it contains business secrets or other confidential information.

2. When requesting information pursuant to Article 13 of Regulation (EU) 2022/2560, interviewing a person pursuant to Article 13(7) of Regulation (EU) 2022/2560, or asking for oral explanations during inspections in accordance with Article 14 and Article 15 of Regulation (EU) 2022/2560, the Commission shall inform such persons, undertakings or associations of undertakings that by providing information to the Commission, they agree that access to that information may be granted pursuant to Article 20. Where the Commission otherwise receives information from information providers, it shall inform these information providers that access to the information they provide may be granted pursuant to Article 20.

3. Without prejudice to Article 8 and Article 15, the Commission may require, within a specified time limit, information providers that provide documents or other information pursuant to Regulation (EU) 2022/2560:

- (a) to identify the documents or parts of documents, or other information, which they consider to contain business secrets or other confidential information;
- (b) to identify the persons in relation to which these documents or other information are considered to be confidential;
- (c) to substantiate their claims for business secrets and other confidential information for each document or part of document, or other information;
- (d) to provide the Commission with a non-confidential version of the documents or parts of documents, or other information, in which the business secrets and other confidential information are redacted in a clear and intelligible manner;
- (e) to provide a concise, non-confidential and clear description of each piece of redacted information.

4. The Commission shall require an undertaking under investigation to identify, within a specified time limit, the parts of a summary notice pursuant to Article 40 of Regulation (EU) 2022/2560 or of a decision pursuant to Article 11, Article 25 and Article 31 of Regulation (EU) 2022/2560, that it considers to contain business secrets or other confidential information before the summary notice or the decision is published. Where business secrets or other confidential information are identified, the undertaking under investigation shall justify that identification within the time limit set by the Commission.

5. Where an information provider or undertaking under investigation fails to identify the information that it considers to be confidential in accordance with the requirements laid down in paragraphs 3 and 4, the Commission may assume that the information concerned does not contain confidential information.

6. If the Commission considers that certain information that is claimed confidential by an information provider or by the undertaking under investigation may be disclosed, either because this information does not constitute a business secret or other confidential information, or because there is an overriding interest in its disclosure, it shall inform the information provider or the undertaking under investigation of its intention to disclose such information. Should the information provider or the undertaking under investigation object within 5 working days after it has been informed of the Commission's intentions, the Commission may adopt a decision specifying the date after which the information will be disclosed or, in the case of paragraph 4, published in the summary notice or decision. This date shall not be less than 5 working days from the date of notification of the Commission's decision. The decision shall be notified to the natural or legal person concerned.

7. This Article shall not prevent the Commission from using and disclosing to the extent necessary information showing the existence of a distortive foreign subsidy.

CHAPTER VII

ACCESS TO FILE

Article 20

Access to the file of the Commission and use of documents

1. After the Commission informs the undertaking under investigation of the grounds on which the Commission intends to adopt a decision, the undertaking under investigation may request access to the Commission's file pursuant to Article 42(4) of Regulation (EU) 2022/2560.

2. The right of access to the file of the Commission shall not extend to:

- (a) internal documents of the Commission;
- (b) internal documents of the authorities of Member States or third countries, including competition authorities and contracting authorities or contracting entities;
- (c) correspondence between the Commission and the authorities of Member States or third countries, including competition authorities and contracting authorities or contracting entities;
- (d) correspondence between the authorities of Member States and between Member States and third countries.

3. When providing access to the file, the Commission shall provide the undertaking under investigation with a non-confidential version of all documents mentioned in the grounds on which the Commission intends to adopt a decision.

4. Without prejudice to paragraphs 2 and 5 the Commission shall also provide access to all documents on its file, without any redactions for confidentiality, under terms of disclosure to be set out in a Commission's decision. The terms of disclosure shall be determined in accordance with the following:

- (a) Access to documents under this paragraph shall only be granted to a limited number of specified external legal and economic counsel and external technical experts engaged by the undertaking under investigation and whose names have been communicated to the Commission in advance.
- (b) Specified external legal and economic counsel and external technical experts must be undertakings, employees of undertakings or in a situation comparable to that of employees of undertakings. All of them shall be bound by the terms of disclosure.
- (c) Persons listed as specified external legal and economic counsel and external technical experts shall not at the date of the Commission's decision setting out the terms of disclosure be in an employment relationship with or as part of the management of the undertaking under investigation or in a situation comparable to that of an employee or a manager of the undertaking under investigation. Should the specified external legal or economic counsel, or external technical expert subsequently enter into such a relationship with the undertaking under investigation, either during the investigation or during the 3 years following the end of the Commission's investigation, the specified external legal or economic counsel or external technical expert and the undertaking under investigation shall without delay inform the Commission about the terms of such relationship. The specified external legal or economic counsel or external

technical expert shall also provide the Commission with an assurance that they no longer have access to information or documents on the file accessed pursuant to this paragraph, which were not made available to the undertaking under investigation by the Commission. They shall also provide assurances to the Commission that they will continue to comply with the requirements referred to in points (d) and (e) of this paragraph.

- (d) Specified external legal and economic counsel and external technical experts shall not disclose any of the documents provided or their content to any natural or legal person that is not bound by the terms of disclosure
- (e) Specified external legal and economic counsel and external technical experts shall not use any of the documents provided or their content other than for the purposes referred to in paragraph 10 below.

5. The Commission shall specify, in the terms of disclosure, the technical means of the disclosure and its duration. Disclosure may be made by electronic means to the specified legal and economic counsel and technical experts or (for some or all documents) only at the Commission's premises. In exceptional circumstances, the Commission may decide not to grant access under the terms of disclosure referred to in paragraph 4 to certain documents or to grant access to partly redacted documents if it determines that the harm that the information provider would likely suffer from disclosure under the terms of disclosure would, on balance, outweigh the importance of the disclosure for the exercise of the rights of defence. Without prejudice to paragraph 2, the Commission will perform a similar assessment on the importance of disclosure when it considers whether it needs to disclose or partly disclose correspondence between the Commission and public authorities of the Member States or of third countries and other types of sensitive documents provided by the public authorities of Member States or of third countries. Prior to the disclosure of such correspondence or documents, the Commission shall consult the authorities of the Member State or of the third country.

6. The specified external legal and economic counsel and external technical experts referred to in paragraph 4, letter (a) may, within one week of receiving access to the file under the terms of disclosure, make a reasoned request to the Commission for access to a non-confidential version of any document on the Commission's file not already provided to the undertaking under investigation under paragraph 3, with a view of making that document available to the undertaking under investigation. Or they may make a reasoned request for an extension of the terms of disclosure to additional specified external legal and economic counsel or external technical experts. Such additional access to non-confidential version of documents or extension to additional individuals may only be granted exceptionally, and provided that it is shown that it is essential for the proper exercise of the rights of defence of the undertaking under investigation.

7. For the purposes of applying paragraphs 5 or 6, the Commission may request that the information provider that submitted the relevant documents provide a non-confidential version of the documents pursuant to Article 19(3).

8. If the Commission considers that any of the requests under paragraph 6 is well-founded in view of the need to ensure that the undertaking under investigation is in a position to exercise its rights of defence effectively, the Commission shall either make a non-confidential version of the document available to the undertaking under investigation or adopt a decision extending the terms of disclosure for the documents in question.

9. At any time during the procedure, the Commission may instead of – or in combination with – the method of granting access to file pursuant to paragraph 4 above, give access to some or all documents redacted pursuant to Article 19(3) in order to avoid a disproportionate delay or administrative burden.

10. Information obtained through access to the file shall only be used for the purposes of the relevant proceedings for the application of Regulation (EU) 2022/2560.

CHAPTER VIII

TIME LIMITS

*Article 21***Time limits**

1. Time limits provided for in, or set by the Commission pursuant to, Regulation (EU) 2022/2560 or this Regulation shall be calculated in accordance with Regulation (EEC, Euratom) No 1182/71 of the Council (*), and the specific rules set out in paragraph 2 of this Article and Article 22. In case of conflict, the provisions of this Regulation shall prevail.
2. Time limits shall begin on the working day following the event to which the relevant provision of Regulation (EU) 2022/2560 or this Regulation refers.

*Article 22***Expiry of time limits**

1. A time limit calculated in working days shall expire at the end of its last working day.
2. A time limit set by the Commission in terms of a calendar date shall expire at the end of that day.

*Article 23***Suspension of time limits in concentrations**

1. The Commission may suspend the time limits referred to in Article 24(1), points (a) and (b) of Regulation (EU) 2022/2560, pursuant to Article 24(5) of Regulation (EU) 2022/2560, or, on any of the following grounds:
 - (a) information which the Commission has requested pursuant to Article 13(2) Regulation (EU) 2022/2560 from the notifying parties or any other persons involved is not provided or not provided in full within the time limit fixed by the Commission;
 - (b) information which the Commission has requested pursuant to Article 13(3) Regulation (EU) 2022/2560 from other undertakings or associations of undertakings is not provided or not provided in full within the time limit fixed by the Commission owing to circumstances for which one of the notifying parties or any other persons involved is responsible;
 - (c) one of the notifying parties or any other persons involved has refused to submit to an inspection to be conducted by the Commission on the basis of Article 14(1) and ordered by decision pursuant to Article 14(3) of Regulation (EU) 2022/2560 or to cooperate in the carrying out of such an inspection in accordance with Article 14(2) of Regulation (EU) 2022/2560;
 - (d) the notifying parties have failed to inform the Commission of relevant information, including changes in the facts of the kind referred to in Article 6(3).
2. Where the Commission, pursuant to paragraph 1, suspends a time limit referred to in Article 24(1), points (a) and (b) of Regulation (EU) 2022/2560, the time limit shall be suspended in the cases referred to in:
 - (a) points (a) and (b) of paragraph 1, for the period between the expiry of the time limit set in the request for information, and the receipt of the complete and correct information required, or the moment when the Commission informs the notifying parties or any other persons involved that, in light of the results of its ongoing review or market developments, the information requested is no longer necessary;

(*) Regulation (EEC, Euratom) No 1182/71 of the Council of 3 June 1971 determining the rules applicable to periods, dates and time limits (OJ L 124, 8.6.1971, p. 1).

- (b) point (c) of paragraph 1, for the period between the unsuccessful attempt to carry out the inspection and the actual completion of the inspection ordered by decision, or the moment when the Commission informs the notifying parties or any other persons involved that, in light of the results of its ongoing investigation or market developments, the inspection ordered is no longer necessary;
- (c) point (d) of paragraph 1, for the period between the time the Commission should have been informed of relevant information, including changes in the facts, and the receipt of the complete and correct information, or the moment when the Commission informs the notifying parties that, in light of the results of its ongoing investigation or market developments, the information is no longer necessary.
3. The suspension of the time limit shall begin on the working day following the date on which the event causing the suspension occurred. It shall expire at the end of the day on which the reason for suspension is removed. Where such a day is not a working day, the suspension of the time limit shall expire at the end of the next working day.
4. The Commission shall process within a reasonable time all the data it has received in the framework of its investigation that could allow it to deem that information requested or an inspection ordered is no longer necessary, within the meaning of paragraph 2, points (a), (b) and (c).

Article 24

Suspension of time limits during preliminary reviews in the context of public procurement procedures

Where the Commission suspends the time limit for the preliminary review pursuant to Article 30(6) of Regulation (EU) 2022/2560, that suspension shall begin on the working day following the expiry of the time limit of 20 working days. It shall expire at the end of the day on which the complete updated notification has been submitted to the Commission. Where such a day is not a working day, the suspension of the time limit shall expire at the end of the next working day.

CHAPTER IX

TRANSMISSION AND SIGNATURE OF DOCUMENTS

Article 25

Transmission and signature of documents in concentrations

1. Transmission of documents to and from the Commission pursuant to Regulation (EU) 2022/2560 and this Regulation shall take place through digital means, except where the Commission exceptionally allows for the use of the means identified in paragraphs (6) and (7).
2. Where a signature is required, documents submitted to the Commission through digital means shall be signed using at least one Qualified Electronic Signature (QES) complying with the requirements set out in Regulation (EU) No 910/2014 of the European Parliament and of the Council ⁽⁵⁾.
3. Technical specifications regarding the means of transmission and signature may be published in the *Official Journal of the European Union* and made available on the website of the Commission's Directorate-General for Competition.

⁽⁵⁾ Regulation (EU) No 910/2014 of the European Parliament and of the Council of 23 July 2014 on electronic identification and trust services for electronic transactions in the internal market and repealing Directive 1999/93/EC (OJ L 257, 28.8.2014, p. 73).

4. With the exception of the form included in Annex I, all documents transmitted through digital means to the Commission on a working day shall be deemed to have been received on the day they were sent, provided that an acknowledgement of receipt shows in its timestamp that they were received that day. The form included in Annex I transmitted through digital means to the Commission on a working day shall be deemed to have been received on the day it were sent, provided that an acknowledgement of receipt shows in its timestamp that it were received that day before or during the opening hours indicated on DG Competition's website. The form included in Annex I transmitted through digital means to the Commission on a working day after the opening hours indicated on DG Competition's website shall be deemed to have been received on the next working day. All documents transmitted electronically to the Commission outside a working day shall be deemed to have been received on the next working day.

5. Documents transmitted electronically to the Commission shall not be deemed to have been received if the documents or parts thereof:

- (a) are inoperable or unusable (corrupted);
- (b) contain viruses, malware or other threats;
- (c) contain electronic signatures the validity of which cannot be verified by the Commission.

The Commission shall inform the sender without delay if one of the circumstances referred to in (a), (b) or (c) occurs.

6. Documents transmitted to the Commission by registered post shall be deemed to have been received on the day of their arrival at the address indicated on the website of the Commission's Directorate-General for Competition.

7. Documents transmitted to the Commission by means of hand delivery shall be deemed to have been received on the day of their arrival at the address published on the website of the Commission's Directorate-General for Competition, as long as this is confirmed in an acknowledgment of receipt by the Commission.

Article 26

Transmission and signature of documents in the context of public procurement procedures (notifications and ex officio)

1. Transmission of documents in the context of public procurement procedures to and from the Commission pursuant to Regulation (EU) 2022/2560 and this Regulation shall take place through digital means, except where the Commission exceptionally allows for the use of the means identified in paragraphs (5) and (6).

2. In proceedings on foreign subsidies in the context of public procurement procedures, the use of a Qualified Electronic Signature (QES) complying with the requirements set out in Regulation (EU) No 910/2014 shall not be mandatory. The notification or declaration shall be signed by all notifying parties under obligation to notify in the context of notifications in public procurement.

3. Technical specifications regarding the means of transmission and signature may be published in the *Official Journal of the European Union* and made available on the website of the Commission's Directorate-General for Internal Market, Industry, Entrepreneurship and SMEs.

4. When signing the documents and transmitting them to the Commission in the context of public procurement procedures, Article 25(4) and (5) shall apply by analogy.

5. Documents transmitted to the Commission by registered post shall be deemed to have been received on the day of their arrival at the address indicated on the website of the Commission's Directorate-General for Internal Market, Industry, Entrepreneurship and SMEs.

6. Documents transmitted to the Commission by means of hand delivery shall be deemed to have been received on the day of their arrival at the address published on the website of the Commission's Directorate-General for Internal Market, Industry, Entrepreneurship and SMEs, as long as this is confirmed in an acknowledgment of receipt by the Commission.

CHAPTER X

FINAL PROVISIONS*Article 27***Entry into force**

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, 10 July 2023.

For the Commission
The President
Ursula VON DER LEYEN

ANNEX I

Form FS-CO relating to the notification of a concentration pursuant to Regulation (EU) 2022/2560**Table of Contents**

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INTRODUCTION

1. The purpose of the Form FS-CO

- (1) This Form FS-CO specifies the information that must be provided by the notifying party(ies) when submitting a notification to the Commission of a proposed concentration in the context of the foreign subsidies control system of the Union. The foreign subsidies control system of the Union is laid down in Regulation (EU) 2022/2560 of the European Parliament and of the Council ⁽¹⁾ and in Commission Implementing Regulation (EU) 2023/1441 on detailed arrangements for the conduct of proceedings by the Commission pursuant to Regulation (EU) 2022/2560 of the European Parliament and of the Council on foreign subsidies distorting the internal market (the 'Implementing Regulation') ⁽²⁾, to which this Form FS-CO is annexed.

2. Types of information required by the Form FS-CO

- (2) The Form FS-CO requires the following information:

- (a) Basic information which is in principle necessary for the assessment of all concentrations (Sections 1 to 4).

⁽¹⁾ OJ L 330, 23.12.2022, p. 1.

⁽²⁾ OJ L 177, 12.7.2023, p. 1.

- (b) Information on foreign financial contributions received by the parties pursuant to Article 20(3), point (b) of Regulation (EU) 2022/2560 (Section 5). In particular, pursuant to Section 5 of the Form FS-CO, detailed information is requested on each of the foreign financial contributions equal to or in excess of EUR 1 million granted to the parties to the concentration in the three years prior to the conclusion of the agreement, the announcement of the public bid or the acquisition of a controlling interest that may fall into *any of the categories of Article 5(1), points (a) to (d)* of Regulation (EU) 2022/2560. In relation to other foreign financial contributions, the Form FS-CO requires an overview of the various types of financial contributions equal to or in excess of EUR 1 million granted to the notifying party(ies) in the three years prior to the conclusion of the agreement, the announcement of the public bid or the acquisition of a controlling interest in accordance with the instructions provided in Table 1. The Commission may on a case-by-case basis request more detailed information on any of the types of financial contributions included in response to the questions in Section 5 and in Table 1, or on any other foreign financial contributions received by the party(ies) to the concentration. In any case, all foreign financial contributions granted to the parties to the concentration in the three years prior to the conclusion of the agreement, the announcement of the public bid or the acquisition of a controlling interest must be taken into account for the purposes of determining whether the notification threshold under Article 20(3)(b) of Regulation (EU) 2022/2560 is met, regardless of whether any information is requested about them under Section 5.
 - (c) Information necessary for assessing whether the foreign financial contributions in the concentration may distort the internal market within the meaning of Articles 4 or 5 of Regulation (EU) 2022/2560 (both in relation to the acquisition process as well as the activities that the parties to the concentration will carry out) (Section 6).
 - (d) Information on possible positive effects of the foreign subsidies (Section 7).
 - (e) Supporting documentation (Section 8).
- (3) The information required in Sections 1 to 6 and Section 8 must in principle be provided in order for a notification to be considered complete. By contrast, it is for the notifying party(ies) to decide whether to provide the information required under Section 7, which deals with information on possible positive effects of the foreign subsidies on the development of the relevant subsidised economic activity on the internal market as well as other positive effects in relation to the relevant policy objectives.
- (4) All of the information requested in the Form FS-CO is without prejudice to the possibility for the Commission to request further information in a request for information.

3. Information that is not reasonably available

- (5) Where specific pieces of information required by this Form FS-CO are not reasonably available to the notifying party(ies) in part or in whole, the notifying party(ies) may request that the Commission dispenses with the obligation to provide the relevant information or with any other requirement in the Form FS-CO related to that information. The request should be submitted in accordance with the instructions in recitals (9)–(11) of this Introduction.

4. Information that is not necessary for the Commission's examination of the case

- (6) Pursuant to Article 4(4) of the Implementing Regulation, the Commission may dispense with the obligation to provide particular information in the notification, including documents, or with any other requirements in the Form FS-CO related to this information, where the Commission considers that compliance with those obligations or requirements is not necessary for its examination of the case.
- (7) The notifying party(ies) may request that the Commission dispenses with the obligation to provide the relevant information or with any other requirement in the Form FS-CO related to this information. This request should be submitted in accordance with the instructions for waiver requests laid down in recitals (9)–(11) of this Introduction.

5. Pre-notification contacts and waiver requests

- (8) The notifying party(ies) is encouraged to engage in pre-notification discussions in sufficient time prior to the notification, preferably on the basis of a draft notification. The possibility to engage in pre-notification contacts is a service offered by the Commission to the notifying party(ies) on a voluntary basis in order to prepare the preliminary review of a foreign subsidy in the context of a concentration. As such, while not mandatory, pre-notification contacts can be extremely valuable to both the notifying party(ies) and the Commission in determining, among other things, the precise amount of information required in a notification, in particular as regards the information to be provided under Section 5 and in Table 1, and to ensure that the notification is complete. Moreover, pre-notification contacts may result in a reduction in the information required.
- (9) In the course of pre-notification contacts, the notifying party(ies) may request waivers to submit certain information required by this form. The Commission will consider waiver requests, provided that one of the following conditions is fulfilled:
- (a) The notifying party(ies) gives adequate reasons why the relevant information is not reasonably available. Where appropriate and to the extent possible, the notifying party(ies) should provide best estimates for the missing data, identifying the sources for these estimates or indicate where any of the requested information that is unavailable could be obtained by the Commission.
 - (b) The notifying party(ies) gives adequate reasons why the relevant information is not necessary for the examination of the case.
- (10) Waiver requests should be made during pre-notification in writing, preferably in the draft notification itself (at the beginning of the relevant Section or sub-Section). The Commission will deal with waiver requests during pre-notification in the context of the review of the draft notification.
- (11) The fact that the Commission may have accepted that particular information requested by this Form FS-CO may be omitted from a notification does not in any way prevent the Commission from requesting that information at any time during the proceedings, in particular through a request for information pursuant to Article 13 of Regulation (EU) 2022/2560.

6. The requirement for a correct and complete notification

- (12) As explained in recitals (2)–(4) of this Introduction, the information requested in Sections 1 to 6 and Section 8 must in principle be provided in all cases for the notification to be considered complete. All the required information must be provided in the appropriate sections and must be correct and complete.
- (13) In particular, the following should be noted:
- (a) The time period of 25 working days laid down in Article 24(1), points (a) and (b) of Regulation (EU) 2022/2560 shall begin on the working day following that of the receipt of the complete notification. This is to ensure that the Commission is able to assess the notified concentration within the strict time limits laid down in Regulation (EU) 2022/2560.
 - (b) The notifying party(ies) should verify, in the course of preparing the notification, that contact names and numbers, and in particular email addresses, provided to the Commission are accurate, relevant and up-to-date.
 - (c) Requested contact details must be provided in the format prescribed by the Commission's Directorate-General for Competition ('DG Competition') on its website. For a proper investigatory process, it is essential that the contact details are accurate. To this end, email addresses provided must be personalised and attributed to specific contact persons and consequently, general company mailboxes (e.g., info@, hello@) must be avoided. The Commission may declare the notification incomplete on the basis of inappropriate contact details.
 - (d) Supporting documentation under Section 8 must be provided together with a summary table following the format prescribed by DG Competition on its website.

- (e) In accordance with Article 6(4) of the Implementing Regulation, incorrect or misleading information in, or provided together with, the notification will be considered as rendering the notification incomplete for the purposes of determining the effective date of notification.
- (f) Under Article 26(2) of Regulation (EU) 2022/2560, the undertaking who, either intentionally or negligently, provides incorrect or misleading information, may be liable to fines of up to 1 % of their aggregate turnover. In addition, pursuant to Article 18(1)(b) of Regulation (EU) 2022/2560 the Commission may revoke its decision on a concentration where it was based on incomplete, incorrect or misleading information.

7. How to notify

- (14) Notifications shall be submitted in one of the official languages of the Union. The names of the notifying parties shall also be submitted in their original language. The information required by this Form FS-CO must be set out using the sections and sub-sections and, where relevant, annexing supporting documentation. The notification submitted must include a signed attestation as provided in Section 9. Where information provided in two different sections partly (or wholly) overlaps, cross-references may be used.
- (15) The notification must be signed by persons authorised by law to act on behalf of each notifying party or by one or more of the notifying party's(ies) authorised representatives. The corresponding power(s) of attorney (or written proof that they are authorised to act) must be attached to the notification. Technical specifications and instructions regarding notifications (including signatures) can be found on DG Competition's website.
- (16) In completing Sections 5, 6 and 7 of this Form FS-CO, the notifying party(ies) is invited to consider whether, in the interest of clarity, those sections are best presented in numerical order, or whether they can be grouped together for each individual foreign financial contribution (or group of foreign financial contributions).
- (17) For the sake of clarity, certain information may be put in annexes. However, it is essential that all key substantive pieces of information are presented in the body of the notification. Any annexes submitted must only be used to supplement the information supplied in the main body of the notification itself, and it must be clearly indicated in the body where supplemental information is provided in an annex.
- (18) Supporting documents are to be submitted in their original language; where this is not an official language of the Union, a translation into the language of the proceeding shall be attached (Article 4(3) of the Implementing Regulation).

8. Confidentiality and Personal Data

- (19) Article 339 of the Treaty on the Functioning of the European Union ("TFEU") and Article 43(2) of Regulation (EU) 2022/2560 require that the Commission, its officials and other servants do not disclose information covered by the obligation of professional secrecy that they have acquired through the application of Regulation (EU) 2022/2560. The same principle must also apply to protect confidentiality between notifying parties.
- (20) If the notifying party(ies) believe that their interests would be harmed if any of the information they are asked to supply were to be published or otherwise disclosed to other parties, they should submit this information separately with each page clearly marked 'Confidential'. The notifying party(ies) should also give reasons why this information should not be disclosed or published.
- (21) In the case of mergers or acquisitions of joint control, or in other cases where the notification is completed by more than one party, business secrets may be submitted under separate cover, and referred to in the notification as an annex. In order for a notification to be considered complete, all such annexes must be included in the notification.

(22) Any personal data submitted in or with a notification will be processed in compliance with Regulation (EU) 2018/1725 of the European Parliament and of the Council ⁽³⁾.

9. Definitions and instructions for the purposes of this Form FS-CO

(23) For the purposes of this Annex, the following definitions apply:

- (a) 'Notifying party(ies)': in accordance with Article 21(3) of Regulation (EU) 2022/2560, in the case of a merger, this term refers to all the parties to the merger or, in the case of an acquisition of control, to all the undertakings or persons acquiring sole or joint control of the whole or parts of one or more undertakings.
- (b) 'Target(s)': refers to all undertakings or parts of an undertaking in which a controlling interest is being acquired (including a joint venture) or which is the subject of a public bid. This term does not include the seller(s).
- (c) 'Party/parties to the concentration': the notifying party(ies) as defined in (a) and the target as defined in (b).

(24) Unless otherwise specified:

- (a) The term 'notifying party(ies)' includes, (i) all the undertakings that are solely or jointly, directly or indirectly, controlled by the 'notifying party(ies)' in accordance with Article 20(5) and 20(6) of Regulation (EU) 2022/2560, (ii) all the undertakings or persons that solely or jointly, directly or indirectly, control the 'notifying party(ies)', and (iii) the undertakings controlled by the undertakings referred in point (ii).
- (b) The term 'target(s)' includes all the undertakings that are solely or jointly, directly or indirectly controlled by the 'target(s)' in accordance with Article 20(5) and 20(6) of Regulation (EU) 2022/2560. Conversely, this term does not include undertakings and persons that will no longer control, solely or jointly, directly or indirectly, the 'target(s)' once the concentration has been implemented (e.g. the sellers in the case of an acquisition of control).

(25) Any financial data requested must be provided in euro at the average exchange rates prevailing for the years or other periods in question.

SECTION 1

Description of the concentration

1.1. Provide an executive summary of the concentration, specifying the parties to the concentration, the acquisition process (e.g. whether the notifying party(ies) was (were) selected following a competitive process), the nature of the concentration (e.g. merger, acquisition of joint or sole control, or creation of a joint venture), the strategic and economic rationale of the concentration, and the activities of the parties to the concentration.

SECTION 2

Information about the parties

2.1. Information on the parties to the concentration.

For each party to the concentration provide:

2.1.1. the name of the undertaking (the name of the undertaking shall also be submitted in its original language);

2.1.2. its role in the concentration (merging party/acquiring party/target/newly created joint venture);

⁽³⁾ Regulation (EU) 2018/1725 of the European Parliament and of the Council of 23 October 2018 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data, and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC (OJ L 295, 21.11.2018, p. 39). See also a privacy statement relating to competition investigations at https://ec.europa.eu/competition-policy/index/privacy-policy-competition-investigations_en.

- 2.1.3. the name, address, telephone number and email address of, and position held by, the appropriate contact person; the address given must be an address for service to which documents and, in particular, Commission decisions and other procedural documents may be notified, and the contact person given must be deemed to be authorised to accept service;
- 2.1.4. if one or more authorised external representatives of the undertaking are appointed, the representative or representatives to which documents and, in particular, Commission decisions and other procedural documents may be notified:
 - 2.1.4.1. the name, address, telephone number and email address of, and position held by, each representative; and
 - 2.1.4.2. the written proof that each representative is authorised to act for the party to the concentration in question (based on the model Power of Attorney available on DG Competition's website).
- 2.2. Nature of each party's business.

For each party to the concentration, describe the nature of the undertaking's business.

SECTION 3

Details of the concentration, ownership and control

The information sought in this section may be illustrated by the use of organisation charts or diagrams to show the structure of ownership and control of the parties to the concentration before and after completion of the concentration.

- 3.1. Describe the nature of the concentration being notified by reference to the relevant criteria of Regulation (EU) 2022/2560:
 - 3.1.1. Identify the undertakings or persons that ultimately solely or jointly control the notifying party(ies), directly or indirectly, and describe the structure of ownership and control of the parties to the concentration before the completion of the concentration.
 - 3.1.2. Explain whether the proposed concentration is:
 - (i) a merger within the meaning of Article 20(1), point (a) of Regulation (EU) 2022/2560;
 - (ii) an acquisition of sole or joint control within the meaning of Article 20(1), point (b) of Regulation (EU) 2022/2560; or
 - (iii) the creation of a joint venture within the meaning of Article 20(2) of Regulation (EU) 2022/2560.
 - 3.1.3. Explain how the concentration will be implemented (for example by conclusion of an agreement, by the launch of a public bid, etc.).
 - 3.1.4. By reference to Article 21 of Regulation (EU) 2022/2560 explain which of the following have taken place at the time of notification:
 - (i) An agreement has been concluded.
 - (ii) A controlling interest has been acquired.
 - (iii) A public bid or the intention to launch a public bid has been announced; or
 - (iv) The notifying party(ies) and the sellers (as the case may be) have demonstrated a good faith intention to conclude an agreement.
 - 3.1.5. Indicate the expected date of any major events designed to bring about the completion of the concentration.
 - 3.1.6. Explain the structure of ownership and control of the target or the undertaking resulting from the concentration.

- 3.2. Describe the economic rationale of the concentration.
- 3.3. State the value of the transaction (the purchase price or the value of all the assets involved, as applicable); specify whether this is paid in the form of equity, cash, or other assets. Also indicate the enterprise value of the target and explain how this enterprise value has been calculated ⁽⁴⁾.
- 3.4. List all the sources of finance (debt, equity, cash, assets, etc.) used to fund the transaction.
- 3.5. If all or part of the acquisition is financed through debt:
 - 3.5.1. indicate the lender for each debt instrument;
 - 3.5.2. indicate all guarantees and collateral associated to each debt instrument.
- 3.6. If all or part of the acquisition is financed through equity:
 - 3.6.1. indicate the identity of the undertakings subscribing/purchasing the shares;
 - 3.6.2. indicate any conditions attached to the equity financing.
- 3.7. Confirm whether the notifying party(ies) has made any acquisitions of control during the last three years which have been notified to the European Commission under Regulation (EU) 2022/2560 or under Council Regulation (EC) No 139/2004 on the control of concentrations between undertakings ⁽⁵⁾.
- 3.8. Provide a list of acquisitions of control made during the last three years by the notifying party(ies) which have been notified under merger control rules to a national competition authority in the Union.

SECTION 4

Notification thresholds

- 4.1. Provide the turnover in the Union for the preceding financial year ⁽⁶⁾ for each of the undertakings identified in Article 20(3), point (a) of Regulation (EU) 2022/2560 as relevant ⁽⁷⁾:
 - 4.1.1. In the case of a merger: for each of the merging undertakings;
 - 4.1.2. In the case of an acquisition of control: the target, including the joint venture in cases of acquisition of joint control.

Turnover data must be provided by filling in the Commission's template table available on DG Competition's website.

This turnover data should be calculated in accordance with Article 22(1) of Regulation (EU) 2022/2560. In accordance with Article 22(2) of Regulation (EU) 2022/2560, where the concentration consists of the acquisition of parts, whether or not constituted as legal entities, of one or more undertakings, out of the seller's turnover, only the turnover relating to the parts which are the object of the concentration shall be taken into account.

⁽⁴⁾ For the purposes of this Form FS-CO, enterprise value measures a company's total value, and should include in its calculation the market capitalization of the target but also short-term and long-term debt and any cash or cash equivalents on the target's balance sheet.

⁽⁵⁾ Council Regulation (EC) No 139/2004 of 20 January 2004 on the control of concentrations between undertakings (OJ L 24, 29.1.2004, p. 1).

⁽⁶⁾ On the calculation of turnover, see Article 22 of Regulation (EU) 2022/2560.

⁽⁷⁾ According to Article 20(3), point (a) of Regulation (EU) 2022/2560, it is necessary that at least one of the merging undertakings, the acquired undertaking or the joint venture is 'established in the Union'. 'Established in the Union' must be understood in accordance with the case law of the Court of Justice and includes the incorporation of a subsidiary in the Union, as well as a permanent business establishment in the Union (see judgments in cases C-230/14 Weltimmo, paragraphs 29, 30; C-39/13, C-40/13 and C-41/13 SCA Group Holding and Others, paragraphs 24, 25, 26, 27; and C-196/87 Steymann, paragraph 16).

4.2. Have the undertakings identified in Article 20(3)(b) of Regulation (EU) 2022/2560 been granted combined aggregate financial contributions of more than EUR 50 million from third countries in the three years prior to the conclusion of the agreement ⁽⁸⁾, the announcement of the public bid, or the acquisition of a controlling interest?

yes no

SECTION 5

Foreign financial contributions

5.1. Indicate whether each of the notifying party(ies) or the target have been individually granted in the three years prior to the conclusion of the agreement, the announcement of the public bid, or the acquisition of a controlling interest, any foreign financial contributions equal to or in excess of EUR 1 million that may fall into *any of the categories of Article 5(1), points (a) to (d)* of Regulation (EU) 2022/2560:

5.1.1. In order to determine whether a foreign financial contribution has been granted to an undertaking that was ailing within the meaning of Article 5(1)(a) of Regulation (EU) 2022/2560, please indicate whether any of the following conditions were met at any point of time in the three years prior to the conclusion of the agreement, the announcement of the public bid, or the acquisition of a controlling interest:

5.1.1.1. Is the undertaking a limited liability company, where more than half of its subscribed share capital has disappeared as a result of accumulated losses?

Notifying party(ies)	<input type="checkbox"/> yes	<input type="checkbox"/> no
Target	<input type="checkbox"/> yes	<input type="checkbox"/> no

5.1.1.2. Is the undertaking a company where at least some members have unlimited liability for the debt of the company, and where more than half of its capital as shown in the company accounts has disappeared as a result of accumulated losses?

Notifying party(ies)	<input type="checkbox"/> yes	<input type="checkbox"/> no
Target	<input type="checkbox"/> yes	<input type="checkbox"/> no

5.1.1.3. Is the undertaking subject to collective insolvency proceedings or does it fulfil the criteria under its domestic law for being placed in collective insolvency proceedings at the request of its creditors?

Notifying party(ies)	<input type="checkbox"/> yes	<input type="checkbox"/> no
Target	<input type="checkbox"/> yes	<input type="checkbox"/> no

5.1.1.4. In case the undertaking in question is not an SME ⁽⁹⁾:

5.1.1.4.1. has the undertaking's book debt to equity ratio been greater than 7.5 for the past two years?

and

⁽⁸⁾ A foreign financial contribution should be considered granted from the moment the beneficiary obtains an entitlement to receive the foreign financial contribution. The actual disbursement of the foreign financial contribution is not a necessary condition for a foreign financial contribution to fall within the scope of Regulation (EU) 2022/2560.

⁽⁹⁾ Small and medium-sized enterprises or SMEs are defined in Annex I of Commission Regulation (EU) No 651/2014 of 17 June 2014 declaring certain categories of aid compatible with the internal market in application of Articles 107 and 108 of the Treaty (OJ L 187, 26.6.2014, p. 1).

5.1.1.4.2. has the undertaking's EBITDA ⁽¹⁰⁾ interest coverage ratio been below 1.0 for the past two years?

Notifying party(ies)	<input type="checkbox"/> yes	<input type="checkbox"/> no
Target	<input type="checkbox"/> yes	<input type="checkbox"/> no

5.1.1.5. If the reply to any of the questions in sections 5.1.1.1 to 5.1.1.4 was 'yes' in relation to any of the parties to the concentration, please indicate whether during the period in which the undertaking in question was ailing, it received any foreign financial contributions that may have contributed to restore its long-term viability (including any temporary liquidity assistance designed to support that restoration of viability) or to keep that party afloat for the short time needed to work out a restructuring or liquidation plan.

Notifying party(ies)	<input type="checkbox"/> yes	<input type="checkbox"/> no
Target	<input type="checkbox"/> yes	<input type="checkbox"/> no

5.1.1.6. If the reply to any of the questions in sections 5.1.1.1 to 5.1.1.4 was 'yes' in relation to any of the parties to the concentration, indicate if there is a restructuring plan capable of leading to the long-term viability of that party and if this restructuring plan includes a significant own contribution by the notifying party, the target or any other party to the concentration and provide details of that plan.

5.1.1.7. If the reply to any of the questions in sections 5.1.1.1 to 5.1.1.4 was 'yes', please substantiate the answer, including references in the answer to the supporting documents that are to be provided in annexes (such documents may include, but are not limited to, the notifying party's or target's latest profit and loss account statements with balance sheets, or court decisions opening collective insolvency proceedings on the company, or documents providing evidence that the criteria for being placed under insolvency proceedings at the request of creditors under national company law are met, etc.).

5.1.2. A foreign financial contribution in the form of an unlimited guarantee for the debts or liabilities of the undertaking, namely without any limitation as to the amount or the duration of such guarantee (Article 5(1)(b)).

Notifying party(ies)	<input type="checkbox"/> yes	<input type="checkbox"/> no
Target	<input type="checkbox"/> yes	<input type="checkbox"/> no

5.1.3. An export financing measure that is not in line with the OECD Arrangement on officially supported export credits (Article 5(1)(c)).

Notifying party(ies)	<input type="checkbox"/> yes	<input type="checkbox"/> no
Target	<input type="checkbox"/> yes	<input type="checkbox"/> no

5.1.4. A foreign financial contribution directly facilitating a concentration (Article 5(1)(d)).

Notifying party(ies)	<input type="checkbox"/> yes	<input type="checkbox"/> no
Target	<input type="checkbox"/> yes	<input type="checkbox"/> no

⁽¹⁰⁾ Earnings before interest, tax, depreciation and amortisation.

- 5.2. For each foreign financial contribution equal to or in excess of EUR 1 million individually granted to each of the parties to the concentration in the three years prior to the conclusion of the agreement, the announcement of the public bid, or the acquisition of a controlling interest that may fall into *any of the categories of Article 5(1), points (a) to (d)* of Regulation (EU) 2022/2560, provide the following information and provide supporting documents:
 - 5.2.1. Form of the financial contribution (e.g. loan, tax exemption, capital injection, fiscal incentive, contributions in kind, etc.).
 - 5.2.2. Third country granting the financial contribution. Specify also the granting public authority or entity.
 - 5.2.3. Amount of each financial contribution.
 - 5.2.4. Purpose and economic rationale for granting the financial contribution to the party.
 - 5.2.5. Whether there are any conditions attached to the financial contributions as well as its use.
 - 5.2.6. Describe the main elements and characteristics of those financial contributions (e.g. interest rates and duration in the case of a loan).
 - 5.2.7. Explain whether the financial contribution confers a benefit within the meaning of Article 3 of Regulation (EU) 2022/2560 to the undertaking to which the foreign financial contribution has been granted or to any other party to the concentration ⁽¹⁾. Please explain why, with reference to the supporting documents provided under Section 8.
 - 5.2.8. Explain whether the financial contribution is limited in law or in fact, within the meaning of Article 3 of Regulation (EU) 2022/2560, to certain undertakings or industries ⁽²⁾. Please explain why, with reference to the supporting documents provided under Section 8.
- 5.3. Provide an overview of the foreign financial contributions equal to or in excess of EUR 1 million granted to the notifying party(ies) in the three years prior to the conclusion of the agreement, the announcement of the public bid, or the acquisition of a controlling interest and that do *not* fall into *any of the categories of Article 5(1), points (a) to (e)* of Regulation (EU) 2022/2560 following the template and instructions provided in Table 1.

SECTION 6

Impact on the internal market of the foreign financial contributions in the concentration

- 6.1. Does the concentration occur in the context of a structured bidding process? If so:
 - 6.1.1. Provide a detailed description of the bidding process.
 - 6.1.2. Provide a description of the profile of each of the other candidates of which you are aware (e.g. whether these are private equity companies or industrial undertakings).
- 6.2. Please explain what are the different business lines or activities of the target, explaining categories of products and/or services offered in each of them and to what customers. Explain whether the notifying party(ies) are active in the same or related activities or business lines and describe them.
- 6.3. For each of the business lines or activities described under Section 6.2 for the target and the notifying party(ies), please indicate:

⁽¹⁾ A financial contribution should be considered to confer a benefit on an undertaking if it could not have been obtained under normal market conditions. For more details on how to assess the existence of a benefit, see recital (13) of Regulation (EU) 2022/2560.

⁽²⁾ The benefit should be conferred on one or more undertakings or industries. The specificity of the foreign subsidy could be established by law or in fact.

- 6.3.1. the turnover achieved at worldwide level and Union level for that business line or activity;
- 6.3.2. the percentage that the turnover achieved in the Union represents in relation to the overall turnover of the undertaking for that business line or activity.
- 6.4. For each of the financial contributions for which additional information has been provided pursuant to Section 5.2 above, please explain whether and how the financial contribution may improve the competitive position in the internal market of the parties to the concentration. When replying to this section, please make reference to the nature, amount and use or purpose of the financial contribution.
- 6.5. Indicate if the concentration triggered merger control notifications in the Union (at Union or national level) and, if so, indicate the status of each of these proceedings at the time of this notification.
- 6.6. Indicate if the concentration triggered other regulatory filings in the Union (such as foreign direct investment screening filings at national level) and, if so, please indicate the status of these proceedings at the time of the notification.

Contact details

- 6.7. Provide the contact details of the five largest competitors of the target active in the Union.
- 6.8. If the concentration triggered merger control filings in the Union (at Union level or national level), provide all the contact details of the competitors provided in the context of this/these merger control filing(s).

SECTION 7

Possible positive effects

- 7.1. If applicable, list and substantiate any possible positive effects on the development of the relevant subsidised economic activity on the internal market. Please also list and substantiate any other positive effects of the foreign subsidy such as broader positive effects in relation to the relevant policy objectives, in particular those of the Union, and specify when and where those effects have or are expected to take place. Please provide a description of each of those positive effects.

SECTION 8

Supporting documentation

Please provide the following for each party to the concentration:

- 8.1. Copies of all the supporting documents relating to the financial contributions that may fall into any of the categories of Article 5(1), points (a) to (d) of Regulation (EU) 2022/2560 pursuant to Section 5.1.
- 8.2. Copies of the following documents prepared by or for or received by any member of the board of management, the board of directors or the supervisory board:
 - (a) Analyses, reports, studies, surveys, presentations and any comparable documents discussing the purpose, use and economic rationale of the foreign financial contributions that may fall into any of the categories of Article 5(1), points (a) to (d) of Regulation (EU) 2022/2560. Provide the same documents prepared by or for or received by the entity granting the foreign financial contribution to the extent that they are in your possession or that they are publicly available.
 - (b) Analyses, reports, studies, surveys, presentations and any comparable documents for the purpose of assessing or analysing the concentration with respect to its rationale (including documents where the transaction is discussed in relation to potential alternative acquisitions).

- (c) In case any external advisors assisted the notifying party in a due diligence carried out on the target for the purposes of the concentration, provide summaries, conclusions or reports prepared by those advisors as part of that due diligence, as well as any documents where the value of the transaction is assessed or discussed.
- 8.3. An indication of the internet address, if any, at which the most recent annual accounts or reports of the parties to the concentration are available, or if no such internet address exists, copies of the most recent annual accounts and reports of the parties to the concentration.

SECTION 9

Attestation

The notification must conclude with the following attestation which is to be signed by or on behalf of all the notifying parties:

‘The notifying party or parties confirm that, to the best of their knowledge and belief, the information given in this notification is true, correct, and complete, that true and complete copies of documents required by the Form FS-CO have been supplied, that all estimates are identified as such and are their best estimates of the underlying facts, and that all the opinions expressed are sincere.

They are aware of the provisions of Article 26 of Regulation (EU) 2022/2560 concerning fines and periodic penalty payments.’

Date:

[signatory 1] Name: Organisation: Position: Address: Phone number: Email: (‘e-signed’/signature]	[signatory 2 if applicable] Name: Organisation: Position: Address: Phone number: Email: (‘e-signed’/signature]
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Table 1

Instructions to provide information concerning foreign financial contributions that do not fall into any of the categories of Article 5(1), points (a) to (e) (Section 5.3)

1. Provide an overview of the foreign financial contributions equal to or in excess of EUR 1 million granted by each third country to the notifying party(ies) in the three years prior to the conclusion of the agreement, the announcement of the public bid, or the acquisition of a controlling interest and that do **not** fall into any of the categories of Article 5(1), points (a) to (e) of Regulation (EU) 2022/2560 following the template and instructions below.
 - A. *Information to be included in the Table*
2. Group the different financial contributions **per third country and per type**, such as direct grant, loan/financing instrument/repayable advances, tax advantage, guarantee, risk capital instrument, equity intervention, debt write-off, contributions provided for the non-economic activities of an undertaking (see recital 16 of Regulation (EU) 2022/2560), or other.
3. Include only those countries where the estimated aggregate amount of all financial contributions granted in the three years prior to the conclusion of the agreement, the announcement of the public bid, or the acquisition of a controlling interest (calculated according to point (5)) is EUR 45 million or more.

4. For each type of financial contribution, provide a brief description of the purpose of the financial contributions and the granting entities.
5. Quantify the estimated aggregate amount of financial contributions granted **by each third country** in the three years prior to the conclusion of the agreement, the announcement of the public bid, or the acquisition of a controlling interest in the form of **ranges**, as specified in the notes to the Table below. **For the calculation of this amount**, the following considerations are relevant:
 - (a) Take into account foreign financial contributions falling into the categories of Article 5(1) of Regulation (EU) 2022/2560, and on which information has been provided under Sections 5.1 and 5.2.
 - (b) Do **not** take into account foreign financial contributions excluded according to points 6 and 7 below.

B. *Exceptions*

6. You do **not** need to include in the Table information on the following foreign financial contributions:
 - (a) Deferrals of payment of taxes or of social security contributions, tax amnesties and tax holidays as well as normal depreciation and loss-carry forward rules that are of general application. If these measures are limited, for example, to certain sectors, regions or (types of) undertakings, they have to be included.
 - (b) Application of tax reliefs for avoidance of double taxation in line with the provisions of bilateral or multilateral agreements for avoidance of double taxation, as well as unilateral tax reliefs for avoidance of double taxation applied under national tax legislation to the extent they follow the same logic and conditions as the provisions of bilateral or multilateral agreements.
 - (c) Provision/purchase of goods/services (except financial services) at market terms in the ordinary course of business, for example the provision/purchase of goods or services carried out following a competitive, transparent and non-discriminatory tender procedure.
 - (d) Foreign financial contributions below the individual amount of EUR 1 million.
7. In the case of acquisitions of control or creations of joint ventures by an investment fund or by a legal entity controlled by or via an investment fund, you do not need to include foreign financial contributions granted to other investment funds managed by the same investment company but with a majority of different investors measured according to their entitlement to profit (or granted to portfolio companies controlled by these other funds) provided you can demonstrate that the following conditions are cumulatively met:
 - (a) The fund which controls the acquiring entity must be subject to Directive 2011/61/EU of the European Parliament and of the Council on Alternative Investment Fund Managers ⁽¹³⁾ or to an equivalent third country legislation in terms of prudential, organisational and conduct rules, including requirements aimed to protect investors; and
 - (b) The economic and commercial transactions between the fund which controls the acquiring entity and other investment funds (and the companies controlled by these funds) managed by the same investment company are non-existent or limited. In this regard, you must provide the Commission with evidence of any of such economic and commercial transactions which may have taken place in the three years prior to the conclusion of the agreement, the announcement of the public bid, or the acquisition of a controlling interest. Economic and commercial transactions include but are not limited to the sale of assets (including ownership in companies), loans, credit lines, or guarantees.

⁽¹³⁾ Directive 2011/61/EU of the European Parliament and of the Council of 8 June 2011 on Alternative Investment Fund Managers and amending Directives 2003/41/EC and 2009/65/EC and Regulations (EC) No 1060/2009 and (EU) No 1095/2010 (OJ L 174, 1.7.2011, p. 1).

Party X		
Third-country	Type of financial contribution (*)	Brief description of the purpose of the financial contribution and the granting entity (**)
Country A	Type 1	
	Type 2	
	Type 3	
	Type 4	
	...	
Estimated aggregate financial contributions granted by A: EUR [...] (***)		
Country B	Type 1	
	Type 2	
	Type 3	
	Type 4	
	...	
Estimated aggregate financial contributions granted by B: EUR [...] (***)		
Country C		
...		

Note: please provide a separate table for each of the notifying parties. Third countries and, where possible, types of contributions, should be ordered by total amount of foreign financial contribution, from the highest to the lowest.

(*) Identify the financial contributions grouping them by type: such as direct grant, loan/financing instrument/repayable advances, tax advantage, guarantee, risk capital instrument, equity intervention, debt write-off, contributions provided for the non-economic activities of an undertaking (see recital 16 of Regulation 2022/2560), or other.

(**) General description of the purpose of the financial contributions included in each type and of the granting entity(ies). For instance, 'tax exemption for the production of product A and R & D activities', 'several loans with State-owned banks for purpose X', 'several financing measures with State investment agencies to cover operating expenses/for R & D activities', 'public capital injection in Company X'.

(***) Use the following ranges: 'EUR 45-100 million', 'EUR > 100-500 million', 'EUR > 500-1 000 million', 'more than EUR 1 000 million'.

C. Further information

- The foreign financial contributions that may be relevant for the assessment of each concentration may depend on a number of factors such as the sectors or activities involved, the type of financial contributions or other specificities of the case. In light of these specificities, the Commission may request additional information where it considers such information necessary for its assessment.

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ANNEX II

Form FS-PP relating to the notification of financial contributions in the context of public procurement procedures pursuant to Regulation (EU) 2022/2560**Table of Contents**

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INTRODUCTION

1. The purpose of the Form FS-PP

- (1) This Form FS-PP specifies the information that must be provided by the notifying party(ies) when submitting a notification or declaration to the Commission of foreign financial contributions in the context of a public procurement procedure covered by the foreign subsidies control system of the Union. The foreign subsidies control system of the Union is laid down in Regulation (EU) 2022/2560 of the European Parliament and of the Council ⁽¹⁾ and in Commission Implementing Regulation (EU) 2023/1441 on detailed arrangements for the conduct of proceedings by the Commission pursuant to Regulation (EU) 2022/2560 of the European Parliament and of the Council on foreign subsidies distorting the internal market (the 'Implementing Regulation') ⁽²⁾, to which this Form FS-PP is annexed.

2. Definitions and instructions for the purposes of this Form FS-PP

- (2) For the purposes of this Annex, the following definitions apply:
- (a) 'Notifying party(ies)' mean(s), in accordance with Article 29(5) of Regulation (EU) 2022/2560, all the economic operators, groups of economic operators, main subcontractors and main suppliers covered by the notification obligation in line with Article 29(1) of Regulation (EU) 2022/2560;

⁽¹⁾ OJ L 330, 23.12.2022, p. 1.

⁽²⁾ OJ L 177, 12.7.2023, p. 1.

(b) 'Main contractor', within the meaning of Directives 2014/24/EU ⁽³⁾ and 2014/25/EU ⁽⁴⁾ of the European Parliament and of the Council, or 'main concessionaire', within the meaning of Directive 2014/23/EU of the European Parliament and of the Council ⁽⁵⁾, is the economic operator ensuring the submission of the notification or declaration on behalf of all notifying parties.

- (3) Unless otherwise specified, the term 'notifying party(ies)' includes all its subsidiary companies without commercial autonomy and all its holding companies within the meaning of Article 28(1)(b) of Regulation (EU) 2022/2560.
- (4) Any financial data requested must be provided in euro at the average exchange rates prevailing for the years or other periods in question.

3. Types of information required by the Form FS-PP

- (5) Where at least one of the notifying parties has received a notifiable foreign financial contribution in line with Articles 28(1) and (2) and Article 29(1) of Regulation (EU) 2022/2560, the notifying party(ies) shall, and shall only, submit a notification. The notification is submitted in one form, based on the elements outlined below.
- (6) Conversely, where none of the notifying parties have received a notifiable foreign financial contribution in line with Articles 28(1) and (2) and Article 29(1) of Regulation (EU) 2022/2560, the notifying party(ies) shall, and shall only, submit a declaration. The declaration is submitted in one form, based on the elements outlined below.
- (7) The Commission may, on a case-by-case basis, request more detailed information on any of the types of financial contributions included in response to the questions in Section 3 and in Table 1, or on any other foreign financial contributions received by the notifying party(ies). In any case, all foreign financial contribution granted to the notifying party(ies) in the three years prior to the notification must be taken into account for the purposes of determining whether the notification threshold under Article 28(1)(b) of Regulation (EU) 2022/2560 is met, regardless of whether any information is requested about them under Section 3.
- (8) The Form FS-PP requires the following information:
- (a) NOTIFICATIONS OF FOREIGN FINANCIAL CONTRIBUTIONS
- (i) In the case of a notification of foreign financial contributions under Chapter 4 of Regulation (EU) 2022/2560, all sections and their respective fields normally need to be filled in, with the exception of Section 7 (Declaration).
- (ii) Section 1 must contain a summary description of the public procurement procedure.
- (iii) Section 2 must contain information about the notifying party(ies).
- (iv) Section 3 must contain detailed information on the foreign financial contribution(s). In particular, pursuant to Section 3, detailed information is requested on each of the foreign financial contributions equal to or in excess of EUR 1 million granted to the notifying parties in the three years prior to the notification that may fall into *any of the categories of Article 5(1), points (a) to (c) and (e)* of Regulation (EU) 2022/2560. In relation to other foreign financial contributions, the Form FS-PP requires the notifying party(ies) to provide an overview of the various types of financial contributions granted to the notifying party(ies) in accordance with the instructions provided in Table 1.

⁽³⁾ Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on public procurement and repealing Directive 2004/18/EC (OJ L 94, 28.3.2014, p. 65).

⁽⁴⁾ Directive 2014/25/EU of the European Parliament and of the Council of 26 February 2014 on procurement by entities operating in the water, energy, transport and postal services sectors and repealing Directive 2004/17/EC (OJ L 94, 28.3.2014, p. 243).

⁽⁵⁾ Directive 2014/23/EU of the European Parliament and of the Council of 26 February 2014 on the award of concession contracts Text with EEA relevance (OJ L 94, 28.3.2014, p. 1).

- (v) Section 4 may contain an explanation of how the tender is not unduly advantageous.
 - (vi) Section 5 may, if applicable, list and substantiate any possible positive effects of the subsidies on the development of the relevant subsidised economic activity as well as other positive effects in relation to the relevant policy objectives.
 - (vii) Section 6 lists the included supporting documents.
 - (viii) Section 8 must contain a signed attestation that the provided information is true, correct, and complete, and that the notifying party(ies) is/are aware of the provisions on fines.
- (b) DECLARATION OF NO NOTIFIABLE FOREIGN FINANCIAL CONTRIBUTIONS:
- (i) If no notifiable foreign financial contributions have been granted to the notifying party(ies) in the last three years, only Sections 1, 2, and 8 of the Form FS-PP must be filled in, as well as the specific Section 7, while the remaining sections must be left blank.
 - (ii) All of the information requested in the Form FS-PP is without prejudice of the possibility for the Commission to ask for further information in a request for information.

4. Information that is not reasonably available

- (9) Where specific pieces of information required by this Form FS-PP are not reasonably available to the notifying party(ies) in part or in whole, the notifying party(ies) may request that the Commission dispenses with the obligation to provide the relevant information or with any other requirement in the Form FS-PP related to that information. The request should be submitted in accordance with the instructions in recitals (13)-(15) of this Introduction.

5. Information that is not necessary for the Commission's examination of the case

- (10) Pursuant to Article 5(5) of the Implementing Regulation, the Commission may dispense with the obligation to provide particular information in the notification, including documents, or with any other requirements in the Form FS-PP related to this information, where the Commission considers that compliance with those obligations or requirements is not necessary for its examination of the case.
- (11) The notifying party(ies) may request that the Commission dispenses with the obligation to provide the relevant information or with any other requirement in the Form FS-PP related to this information. This request should be submitted in accordance with the instructions for waiver requests laid down under recitals (13)-(15) of the Introduction of this Form FS-PP.

6. Pre-notification contacts and waiver requests

- (12) The notifying party(ies) is/are encouraged to engage in pre-notification discussions in sufficient time prior to the notification, preferably on the basis of a draft Form FS-PP. The possibility to engage in pre-notification contacts is a service offered by the Commission to the notifying party(ies) on a voluntary basis, in order to prepare the preliminary review of foreign subsidies in the context of a published public procurement. As such, while not mandatory, pre-notification contacts can be valuable to both the notifying party(ies) and the Commission in determining, among other things, the precise amount of information required in a notification, in particular as regards the information to be provided under Section 3 and in Table 1, and to ensure that the notification is complete. Moreover, pre-notification contacts may result in a significant reduction of the information required. Where there is more than one notifying party (as a single economic operator) or group of notifying parties (as members of the same consortium), with each notifying party or group aiming to submit a different tender in the same public procurement procedure, the pre-notification discussions must be held with each notifying party or groups thereof separately and in full confidentiality, to ensure fair competition in the public procurement procedure at stake.

- (13) In the course of pre-notification contacts, the notifying party(ies) may request waivers to submit certain information required by this form. The Commission will consider waiver requests, provided that one of the following conditions is fulfilled:
- (a) The notifying party(ies) give(s) adequate reasons why the relevant information is not reasonably available. Where appropriate and to the extent possible, the notifying party(ies) should provide best estimates for the missing data, identifying the sources for these estimates or indicate where any of the requested information that is unavailable to the notifying party(ies) could be obtained from by the Commission.
 - (b) The notifying party(ies) give(s) adequate reasons why the relevant information is not necessary for the examination of the case.
- (14) Waiver requests should be made during pre-notification in writing, preferably in the draft Notification itself (at the beginning of the relevant section or sub-section). The Commission will deal with waiver requests during pre-notification in the context of the review of the draft notification.
- (15) The fact that the Commission may have accepted that any particular information requested by this Form FS-PP may be omitted from a notification, does not in any way prevent the Commission from requesting that information at any time during the proceedings, in particular through a request for information pursuant to Article 13 of Regulation (EU) 2022/2560.

7. The requirement for a correct and complete notification or declaration

- (16) The information requested in Sections 1 to 3, 6 and 8 must be provided in the case of a notification of foreign financial contributions and is therefore a requirement for a complete notification. All the required information must be supplied in the appropriate sections of the Form FS-PP and it must be correct and complete.
- (17) In the case of a declaration that no notifiable foreign financial contributions were received, the information requested in Sections 1, 2, 7 and 8 must be provided, and is therefore a requirement for a complete declaration. All the required information must be supplied in the appropriate section of the Form FS-PP and it must be correct and complete.
- (18) In particular it should be noted that:
- (a) The time period of 20 working days laid down in Article 30, paragraphs (2) and (6) of Regulation (EU) 2022/2560 shall begin on the working day following that of the receipt of the complete notification. This is to ensure that the Commission is able to assess the notified foreign financial contributions within the strict time limits laid down in Regulation (EU) 2022/2560.
 - (b) The notifying party(ies) must verify, in the course of preparing their notification, that contact names and numbers, and in particular email addresses, provided to the Commission are accurate, relevant and up-to-date.
 - (c) A declaration may be submitted only where all of the notifying parties are declaring that no notifiable foreign financial contributions in the last three years have been granted to them. Where at least one of the notifying parties has been granted notifiable foreign financial contributions, the submission shall be considered a notification for the purposes of this Implementing Regulation.
 - (d) Requested contact details of the notifying parties must be provided in the format prescribed by the Commission's Directorate-General for Internal Market, Industry, Entrepreneurship and SMEs (DG GROW) on its website ⁽⁹⁾. For a proper review process, it is essential that the contact details are accurate. To this end, email addresses provided should not be personalised and attributed to specific contact persons, rather functional company mailboxes of the team in charge of notification should be used. The Commission may declare the notification incomplete on the basis of inappropriate contact details.

⁽⁹⁾ Please see: <https://single-market-economy.ec.europa.eu/single-market/public-procurement/foreign-subsidies-regulation> and follow the instructions there.

- (e) Supporting documentation under Section 6 must be provided together with a summary table following the format prescribed by DG GROW on its website.
- (f) In accordance with Article 7(4) of the Implementing Regulation, incorrect or misleading information in, or provided together with, the notification will be considered as rendering the notification incomplete for the purposes of determining the effective date of notification.
- (g) Under Article 29(4) of Regulation (EU) 2022/2560, where a notification accompanying a tender or request to participate remains incomplete despite a request made by the Commission to complete it, the Commission should adopt a decision requesting the contracting authority or contracting entity to adopt a decision rejecting such an irregular tender or request to participate.
- (h) Under Article 33(2) of Regulation (EU) 2022/2560, the economic operators concerned who, either intentionally or negligently, provides incorrect or misleading information, may be liable to fines of up to 1 % of their aggregate turnover. In addition, pursuant to Article 18(1)(b) of Regulation (EU) 2022/2560, the Commission may revoke its decision where it was based on incomplete, incorrect or misleading information.

8. How to notify?

- (19) Notifications shall be submitted in one of the official languages of the Union. The names of the notifying parties shall also be submitted in their original language. The information required by this Form FS-PP must be set out using the sections and sub-sections and, where relevant, annexing supporting documentation. The notification submitted must include an attestation as provided in Section 8. Where information provided in two different sections partly (or wholly) overlaps, cross-references may be used.
- (20) The notification must be signed by persons authorised by law to act on behalf of each notifying party or by one or more of the notifying party's(ies)' authorised representatives. The corresponding power(s) of attorney (or written proof that they are authorised to act) must be attached to the notification. Technical specifications and instructions regarding notifications can be found on the website of the Commission's Directorate-General for Internal Market, Industry, Entrepreneurship and SMEs.
- (21) In completing Section 3 of this Form FS-PP, the notifying party(ies) is/are invited to consider whether, for purposes of clarity, the information in that section is best presented in numerical order, or whether the information can be grouped together for each individual foreign financial contribution (or group of foreign financial contributions).
- (22) For the sake of clarity, certain information may be put in annexes. However, it is essential that all key substantive pieces of information are presented in the body of the notification. Any annexes submitted must only be used to supplement the information supplied in the main body of the notification itself and it must be clearly indicated in the body where supplemental information is provided in an annex.
- (23) Supporting documents are to be submitted in their original language; where this is not an official language of the Union, a translation into the language of the proceeding shall be attached (Article 5(4) of the Implementing Regulation).

9. Confidentiality and Personal Data

- (24) Article 339 of the Treaty on the Functioning of the European Union and Article ('TFEU') 43(2) of Regulation (EU) 2022/2560 require that the Commission, its officials and other servants do not disclose information covered by the obligation of professional secrecy that they have acquired through the application of the Regulation. The same principle must also apply to protect confidentiality between notifying parties.

- (25) If the notifying party(ies) believe(s) that their interests would be harmed if any of the information they are asked to supply were to be published or otherwise disclosed to other parties, including the other economic operators they submit the notification with and the relevant contracting authority or contracting entity, they should submit this information to the relevant contracting authority or contracting entity separately with each page clearly marked 'Confidential'. For this purpose, a separate encrypted archive of documents may be submitted and the key provided to the Commission separately. The notifying parties should also give reasons why this information should not be disclosed or published.
- (26) In cases where the notification is completed by more than one notifying party, business secrets may be submitted under separate cover, and referred to in the notification as an annex. In order for a notification to be considered complete, all such annexes must be included in the notification.
- (27) Any personal data submitted in or with a notification will be processed in compliance with Regulation (EU) 2018/1725 of the European Parliament and of the Council ⁽⁷⁾.

SECTION 1

Description of the public procurement

- 1.1. Provide a link to the published document calling for competition in this procedure on Tenders Electronic Daily (TED) as well as any other platforms, and a summary of the public procurement procedure.
- 1.2. Where the European Single Procurement Document (ESPD) is used by the notifying party(ies), the obligation to provide a summary of the public procurement procedure should be fulfilled by a filled-in Part I of Annex 2 of Commission Implementing Regulation (EU) 2016/7 ⁽⁸⁾.
- 1.3. Where the notifying party(ies) submit(s) their information through the ESPD, Section 1 of this Form FS-PP should be directly imported from the ESPD into the Form FS-PP using a digital service provided by the Commission. In the absence of such a service, the contracting authority or contracting entity should forward to the Commission the notification along with the filled-in Part I of Annex 2 of the ESPD.
- 1.4. Where the notifying party(ies) do(es) not submit their information through the ESPD, this section must be filled in with the information required in Part I of Annex 2 of the ESPD.
- 1.5. Where the notifying party(ies) submit(s) their information through the ESPD only partially, the missing elements from Part I of Annex 2 of the ESPD part must be provided in this section.

SECTION 2

Information about the notifying party(ies)

- 2.1. Where the ESPD is used by the notifying party(ies), the obligation to provide information about the notifying party(ies) can be fulfilled by providing Part II of Annex 2 of Implementing Regulation (EU) 2016/7 establishing the standard form for the ESPD. The ESPD is filled in for all the economic operators participating in the tender or requests to participate as well as subcontractors whose capacities are relied upon for fulfilling the selection criteria. Subcontractors that are not 'main subcontractors' in the meaning of Article 29(5) of Regulation

⁽⁷⁾ Regulation (EU) 2018/1725 of the European Parliament and of the Council of 23 October 2018 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data, and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC (OJ L 295, 21.11.2018, p. 39). See also a privacy statement relating to competition investigations at https://ec.europa.eu/competition-policy/index/privacy-policy-competition-investigations_en.

⁽⁸⁾ Commission Implementing Regulation (EU) 2016/7 of 5 January 2016 establishing the standard form for the European Single Procurement Document (OJ L 3, 6.1.2016, p. 16).

(EU) 2022/2560 do not have to fill in this section of the form. Subcontractors that are ‘main subcontractors’ in the meaning of Article 29(5) of Regulation (EU) 2022/2560, but the capacities of which are not relied on in line with Article 63 of Directive 2014/24/EU or Article 79 of Directive 2014/25/EU, have to fill in this section manually.

- 2.2. Where the notifying party(ies) submit(s) their information through the ESPD, this part of the Form FS-PP shall be directly imported from the ESPD into this Form FS-PP using a digital service provided by the Commission. In the absence of such a service, the contracting authority or contracting entity must forward to the Commission this notification along with the filled-in Part II of Annex 2 of the submitted ESPD.
- 2.3. Where the notifying party(ies) do(es) not submit their information through the ESPD, this section must be filled in with the information required in Part II of Annex 2 of the ESPD.
- 2.4. Where the notifying party(ies) submit(s) their information through the ESPD only partially, the missing elements from Part II of Annex 2 of the ESPD part must be provided in this section.
- 2.5. Please introduce your email address or unique identifier used for the EU Login account which will serve for communication.

SECTION 3

Foreign financial contributions

- 3.1. The assessment of whether there is a distortion caused by foreign subsidies in a public procurement procedure is done by assessing the indicators of distortion ⁽⁹⁾ and whether the tender is unduly advantageous in relation to the works, supplies or services concerned ⁽¹⁰⁾. In this Section, the notifying party(ies) should only report foreign financial contributions falling into the scope of Article 5(1), points (a) to (c) and (e) of Regulation (EU) 2022/2560, which are amongst the most likely to distort the internal market. For foreign financial contributions not falling into these categories, please refer to point 3.3. of this Section and Table 1. For public procurement procedures meeting the thresholds in Articles 28(1)(a) and 28(2) of Regulation (EU) 2022/2560, in which foreign financial contributions notifiable in line with Article 28(1)(b) of Regulation (EU) 2022/2560, have been granted to the notifying party(ies) in the three years prior to the notification, please indicate whether each of the notifying parties have been individually granted ⁽¹¹⁾ foreign financial contributions equal to or in excess of EUR 1 million in the three years prior to the notification that may fall into any of the categories of Article 5(1), points (a) to (c) and (e) of Regulation (EU) 2022/2560:
 - 3.1.1. In order to allow to determine whether a foreign financial contribution has been granted to an undertaking that was ailing within the meaning of Article 5(1)(a) of Regulation (EU) 2022/2560, please indicate whether any of the following conditions were met at any point of time in the three years prior to the notification.
 - 3.1.1.1. Is the notifying party a limited liability company, where more than half of its subscribed share capital has disappeared as a result of accumulated losses?
 yes no

⁽⁹⁾ Article 4 of Regulation (EU) 2022/2560.

⁽¹⁰⁾ Article 27 of Regulation (EU) 2022/2560.

⁽¹¹⁾ A financial contribution should be considered granted from the moment the beneficiary obtains a legal entitlement to receive the financial contribution. The actual disbursement of the financial contribution is not a necessary condition for bringing a financial contribution within the scope of Regulation (EU) 2022/2560.

3.1.1.2. Is the notifying party a company where at least some members have unlimited liability for the debt of the company, and where more than half of its capital as shown in the company accounts has disappeared as a result of accumulated losses?

yes no

3.1.1.3. Is the notifying party subject to collective insolvency proceedings or does it fulfil the criteria under its domestic law for being placed in collective insolvency proceedings at the request of its creditors?

yes no

3.1.1.4. In the case the notifying party in question is not an SME ⁽¹²⁾:

3.1.1.4.1. has the notifying party's book debt to equity ratio been greater than 7,5 for the past two years

and

3.1.1.4.2. has the notifying party's EBITDA interest coverage ⁽¹³⁾ ratio been below 1,0 for the past two years?

yes no

3.1.1.5. If the reply to any of the questions in sections 3.1.1.1 to 3.1.1.4 was 'yes' in relation to any of the notifying parties, please indicate whether during the period in which the undertaking in question was ailing, it received any foreign financial contributions that may have contributed to restore its long-term viability (including any temporary liquidity assistance designed to support that restoration of viability) or to keep that party afloat for the short time needed to work out a restructuring or liquidation plan.

Notifying party(ies) yes no

3.1.1.6. If the reply to any of the questions in sections 3.1.1.1 to 3.1.1.4 was 'yes' in relation to any of the notifying parties, indicate if there is a restructuring plan capable of leading to the long-term viability of that party and if this restructuring plan includes a significant own contribution by the notifying party and provide details of that plan.

3.1.1.7. If the reply to any of the questions in points 3.1.1.1 to 3.1.1.4 was 'yes', please substantiate the answer, including references in the answer to the supporting evidence or documents that are to be provided in annexes (such documents may include, but are not limited to, the notifying party's latest profit and loss account statements with balance sheets, or court decision opening collective insolvency proceedings on the company or documents providing evidence that the criteria for being placed under insolvency proceedings at the request of creditors under national company law are met, etc.).

3.1.2. A foreign financial contribution in the form of an unlimited guarantee for the debts or liabilities of the undertaking, namely without any limitation as to the amount or the duration of such guarantee (Article 5(1)(b)).

yes no

3.1.3. An export financing measure that is not in line with the OECD Arrangement on officially supported export credits (Article 5(1)(c)).

yes no

⁽¹²⁾ Small and medium-sized enterprises or SMEs are defined in Annex I of Commission Regulation (EU) No 651/2014 of 17 June 2014 declaring certain categories of aid compatible with the internal market in application of Articles 107 and 108 of the Treaty (OJ L 187 26.6.2014, p. 1).

⁽¹³⁾ Earnings before interest, tax, depreciation and amortisation. This ratio is calculated as EBITDA/Interest payments.

3.1.4. A foreign financial contribution enabling an undertaking to submit an unduly advantageous tender on the basis of which the undertaking could be awarded the relevant contract (Article 5(1)(e)).

yes no

3.2. For each foreign financial contribution equal to or in excess of EUR 1 million granted to the notifying parties in the three years prior to the notification that may fall into any of the categories of Article 5(1), points (a) to (c) and (e) of Regulation (EU) 2022/2560, provide the following information and provide supporting documents:

3.2.1. Form of the financial contribution (e.g. loan, tax exemption, capital injection, fiscal incentive, contributions in kind, etc.).

3.2.2. Third country granting the financial contribution. Specify also the granting public authority or entity.

3.2.3. Amount of each financial contribution.

3.2.4. Purpose and economic rationale for granting the financial contribution to the party

3.2.5. Whether there are any conditions attached to the financial contributions as well as its use.

3.2.6. Describe the main elements and characteristics of those financial contributions (e.g. interest rates and duration in the case of a loan).

3.2.7. Explain whether the financial contribution confers a benefit within the meaning of Article 3 of Regulation (EU) 2022/2560 to the undertaking to which the foreign financial contribution has been granted. Please explain why, with reference to the supporting documents provided under Section 6.

3.2.8. Explain whether the financial contribution is limited in law or in fact, within the meaning of Article 3 of Regulation (EU) 2022/2560, to certain undertakings or industries ⁽¹⁴⁾. Please explain why, with reference to the supporting documents provided under Section 6.

3.2.9. Explain if the financial contribution is granted only for operating costs ⁽¹⁵⁾ exclusively linked with the public procurement at stake.

3.3. Provide an overview of the foreign financial contributions equal to or in excess of EUR 1 million granted to the notifying parties in the three years prior to the notification that do not fall into any of the categories of Article 5(1), points (a) to (e) of Regulation (EU) 2022/2560 following the template and instructions provided in Table 1.

SECTION 4

Justification for absence of unduly advantageous tender

4.1. For any of the foreign financial contributions enabling an undertaking to submit an unduly advantageous tender on the basis of which the undertaking could be awarded the relevant contract (Article 5(1)(e) of Regulation (EU) 2022/2560), are there any elements which can be adduced to demonstrate that the tender is not unduly advantageous directly or indirectly due to the financial contribution(s) received, including the elements referred to in Article 69(2) of Directive 2014/24/EU or Article 84(2) of Directive 2014/25/EU?

4.2. The elements may in particular refer to:

4.2.1. *the economics of the manufacturing process, of the services provided or of the construction method;*

⁽¹⁴⁾ The benefit should be conferred on one or more undertakings or industries. The specificity of the foreign subsidy could be established by law or in fact.

⁽¹⁵⁾ For instance personnel costs, materials, energy, maintenance, rent, administration.

- 4.2.2. *the technical solutions chosen or any exceptionally favourable conditions available to the tenderer for the supply of the products or services or for the execution of the work;*
- 4.2.3. *the originality of the work, supplies or services proposed by the tenderer;*
- 4.2.4. *compliance with applicable obligations in the fields of environmental, social and labour law;*
- 4.2.5. *compliance with obligations regarding subcontracting.*

SECTION 5

Possible positive effects

- 5.1. If applicable, list and substantiate any possible positive effects on the development of the relevant subsidised economic activity on the internal market. Please also list and substantiate any other positive effects of the foreign subsidies, such as broader positive effects in relation to the relevant policy objectives, in particular those of the Union, and specify when and where those effects have or are expected to take place. Please provide a description of each of those positive effects.

SECTION 6

Supporting documentation

Please provide the following for each notifying party:

- 6.1. Copies of all the supporting official documents relating to the financial contributions that may fall into any of the categories of Article 5(1), points (a) to (c) and (e) of Regulation (EU) 2022/2560 pursuant to Section 3.1.
- 6.2. Copies of the following documents prepared by or for or received by any member of the board of management, the board of directors or the supervisory board: analyses, reports, studies surveys, presentations and any comparable documents discussing the purpose, use and economic rationale of the foreign financial contributions that may fall into any of the categories of Article 5(1), points (a) to (c) and (e) of Regulation (EU) 2022/2560. Provide the same documents prepared by or for or received by the entity granting the foreign financial contribution to the extent that they are in your possession or that they are publicly available.
- 6.3. An indication of the internet address, if any, at which the most recent annual accounts or reports of the notifying party(ies) are available, or if no such internet address exists, copies of the most recent annual accounts and reports.
- 6.4. Where the notifying party(ies) provide(s) justifications of the absence of an undue advantage of the tender by filling in Section 4 of this form, they also need to provide documentation for the period covering the three years preceding the notification, substantiating the adduced elements. Such documentation may include, inter alia, as relevant:
 - (a) tax declarations for the period under review, including copies of company tax returns and VAT returns,
 - (b) business plans and market research underlying the decision to participate in the public procurement procedure.

SECTION 7

Declaration

- 7.1. In line with the Introduction, recital 6, for public procurement procedures meeting the thresholds in Articles 28(1)(a) and 28(2) of Regulation (EU) 2022/2560, in which no foreign financial contributions, notifiable in line with Article 28(1)(b) of Regulation (EU) 2022/2560, have been granted to the notifying party(ies) in the last three years, Sections 1, 2 and 8 of this Form must be filled out, as well as this Section, containing the following statement:

'None of the notifying parties have received foreign financial contributions notifiable under Chapter 4 of Regulation (EU) 2022/2560.'

- 7.2. In accordance with the obligation in Article 29(1) of Regulation (EU) 2022/2560, the notifying party(ies) must list all foreign financial contributions received. This obligation covers all foreign financial contributions non-notifiable in accordance with Article 28(1), point (b), of Regulation (EU) 2022/2560 received in the last three years preceding the declaration.
- 7.3. However, non-notifiable foreign financial contributions, which are of a value below EUR 1 million but above the value indicated in Section 7.4 below in the last three years preceding the declaration can be declared as aggregate without indicating their values, using Table 2. When requested by the Commission, such foreign financial contributions must be reported individually.
- 7.4. In line with Article 4(3) of Regulation (EU) 2022/2560, foreign financial contributions of which the total amount per third country is lower than the amount of *de minimis* aid as defined in Article 3(2), first subparagraph, of Commission Regulation (EU) No 1407/2013 ⁽⁶⁾ over the consecutive period of three years preceding the declaration do not have to be reported in the declaration.

SECTION 8

Attestation

- 8.1. The notification must conclude with the following attestation which is to be signed by each notifying party:
- 8.2. *'The notifying party(ies) confirm(s) that, to the best of their knowledge and belief, the information given in this notification or declaration and is true, correct, and complete, that true and complete copies of documents required by this Form FS-PP have been supplied, that all estimates are identified as such and are their best estimates of the underlying facts, and that all the opinions expressed are sincere.'*
- 8.3. *'They are aware of the provisions of Article 33 of Regulation (EU) 2022/2560 concerning fines and periodic penalty payments.'*

Date:

[signatory 1] Name: Organisation: Position: Address: Phone number: Email: ('e-signed'/signature)	[signatory 2 if applicable, repeat as many times as there are notifying parties] Name: Organisation: Position: Address: Phone number: Email: ('e-signed'/signature)
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Table 1

Instructions to provide information concerning foreign financial contributions that do not fall into any of the categories of Article 5(1), points (a) to (e) (Section 3.3)

1. This Table is used to provide an overview of the foreign financial contributions equal to or in excess of EUR 1 million granted by each third country to the notifying parties in the three years prior to the notification and that do **not** fall into any of the categories of Article 5(1), points (a) to (e) of Regulation (EU) 2022/2560 following the template and instructions below. Point A clarifies which information needs to be included in the table, and Point B clarifies which information is not to be included.

⁽⁶⁾ Commission Regulation (EU) No 1407/2013 of 18 December 2013 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to *de minimis* aid (OJ L 352, 24.12.2013, p. 1).

A. Information to be included in the Table

2. Group the different financial contributions per third country and **per type**, such as direct grant, loan/financing instrument/repayable advances, tax advantage, guarantee, risk capital instrument, equity intervention, debt write-off, contributions provided for the non-economic activities of an undertaking (see recital 16 of Regulation (EU) 2022/2560), or other.
3. Include only those countries where the estimated aggregate amount of all financial contributions per country granted in the three years prior to the notification (calculated according to point (5)) is EUR 4 million or more.
4. For each type of financial contribution, provide a brief description of the purpose of the financial contributions and the granting entities.
5. Quantify the estimated aggregate amount of financial contributions granted **by each third country** in the three years prior to the notification in the form of **ranges**, as specified in the notes to the Table below. For the calculation of this amount, the following considerations are relevant:
 - (a) Take into account foreign financial contributions falling into the categories of Article 5(1) of Regulation (EU) 2022/2560 and on which information has been provided under Sections 3.1 and 3.2.
 - (b) Do **not** take into account foreign financial contributions excluded according to points 6 and 7 below.

B. Exceptions

6. You do **not** need to include in the Table a description of the following foreign financial contributions:
 - (a) Deferrals of payment of taxes and/or of social security contributions, tax amnesties and tax holidays as well as normal depreciation and loss-carry forward rules that are of general application. If these measures are limited, for example, to certain sectors, regions or (types of) undertakings, they have to be included.
 - (b) Application of tax reliefs for avoidance of double taxation in line with the provisions of bilateral or multilateral agreements for avoidance of double taxation as well as unilateral tax reliefs for avoidance of double taxation applied under national tax legislation to the extent they follow the same logic as the provisions of bilateral or multilateral agreements.
 - (c) Provision/purchase of goods/services (except financial services) at market terms in the ordinary course of business, for example the provision/purchase of goods or services carried out following a competitive, transparent and non-discriminatory tender procedure.
 - (d) Foreign financial contributions below the individual amount of EUR 1 million.

Third-country	Type of financial contribution (*)	Brief description of the purpose of the financial contribution and the granting entity (**)
Country A	Type 1	
	Type 2	
	Type 3	
	Type 4	
	...	

Total estimated financial contributions granted by A: EUR [...] (***)

Country B	Type 1	
	Type 2	
	Type 3	
	Type 4	
	...	

Total estimated financial contributions granted by B: EUR [...] (***)

Country C		
...		

Note: please provide a separate table for each of the notifying parties. Third countries and, where possible, types of contributions, should be ordered by total amount of foreign financial contribution, from the highest to the lowest.

- (*) Identify the financial contributions grouping them by type: such as direct grant, loan/financing instrument/repayable advances, tax advantage, guarantee, risk capital instrument, equity intervention, debt write-off, contributions provided for the non-economic activities of an undertaking (see recital 16 of Regulation 2022/2560), or other.
- (**) General description of the purpose of the financial contributions included in each type and of the granting entity(ies). For instance, 'tax exemption for the production of product A and R & D activities', 'several loans with State-owned banks for purpose X', 'several financing measures with State investment agencies to cover operating expenses for R & D activities', 'public capital injection in Company X'.
- (***) Use the following ranges: 'EUR 45-100 million', 'EUR > 100-500 million', 'EUR > 500-1 000 million', 'more than EUR 1 000 million'.

C. Further information

7. The foreign financial contributions that may be relevant for the assessment of each public procurement may depend on a number of factors such as the sectors or activities involved, the type of financial contributions or other specificities of the case. In light of these specificities, the Commission may request additional information where it considers such information necessary for its assessment.

Table 2

For reporting of foreign financial contributions which are of a value below EUR 1 million and above the value indicated in Section 7.4

Third-country	Brief description of the financial contributions
Country A	
Country B	
Country C	
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COMMISSION REGULATION (EU) 2023/1442**of 11 July 2023****amending Annex I to Regulation (EU) No 10/2011 on plastic materials and articles intended to come into contact with food, as regards changes to substance authorisations and addition of new substances****(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 1935/2004 of the European Parliament and of the Council of 27 October 2004 on materials and articles intended to come into contact with food and repealing Directives 80/590/EEC and 89/109/EEC ⁽¹⁾, and in particular Article 5(1), second subparagraph, points (a), (d), (e), (h), and (i), Article 11(3) and Article 12(6) thereof,

Whereas:

- (1) Commission Regulation (EU) No 10/2011 ⁽²⁾ lays down specific rules as regards plastic materials and articles intended to come into contact with food. In particular, Annex I to Regulation (EU) No 10/2011 establishes a Union list of authorised substances that may be intentionally used in the manufacture of plastic materials and articles intended to come into contact with food.
- (2) Since the last amendment to Regulation (EU) No 10/2011, the European Food Safety Authority ('the Authority') has published further scientific opinions on new substances that may be used in food contact materials ('FCM') as well as on the use of already authorised substances. In addition, certain ambiguities related to the application of that Regulation were identified. In order to ensure that Regulation (EU) No 10/2011 takes into account scientific and technical progress, in particular the most recent findings of the Authority, and in order to remove any doubt as regards its correct application, that Regulation should be amended.
- (3) The substance 'wood flour and fibers, untreated' (FCM No 96, 'wood') is presently authorised as an additive in plastic food contact materials on the basis of an evaluation by the Scientific Committee on Food which concluded that wood flour and fibres are an inert material. However, in its opinion ⁽³⁾ of November 2019 the Authority could not validate the grounds for that conclusion. It stated that wood cannot be considered inert *per se*, due to the many low molecular weight substances it contains. Moreover, the opinion indicates no conditions under which the use of wood in plastics may be considered safe, and notes that due to the chemical differences in the composition of plant materials the safety of migrants from these materials must be evaluated on a case-by-case basis, considering beyond species also origin, processing, treatment for compatibilisation with the host polymer and assessment of the low molecular weight constituents migrate into food. As the present authorisation of wood does not take into account those aspects and thus cannot sufficiently account for the safe use of that substance in plastic, and the Authority did not provide for other restrictions that would nevertheless ensure the safe use of this substance in plastic, the authorisation should be revoked.

⁽¹⁾ OJ L 338, 13.11.2004, p. 4.

⁽²⁾ Commission Regulation (EU) No 10/2011 of 14 January 2011 on plastic materials and articles intended to come into contact with food (OJ L 12, 15.1.2011, p. 1).

⁽³⁾ EFSA Journal 2019;17(11):5902.

- (4) Following a request by the Commission, the Authority adopted on 29 April 2020 a scientific opinion ⁽⁴⁾ reviewing the 451 substances listed in Annex I to Regulation (EU) No 10/2011, for which no specific migration limit ('SML') is set pursuant to Article 11(1) of that Regulation. It considered that 284 of those substances needed to be re-evaluated in order to determine whether a specific migration limit is required and classified them in three priority groups. Three substances were placed into the 'high priority group'. Of these three substances, styrene (FCM No 193) is known to be widely used and is already subject to a re-evaluation, while on the substance lauric acid, vinyl ester (FCM No 436) a user provided the Authority with additional data which showed its re-evaluation would be of a lower priority. However, no user of the third substance, salicylic acid (FCM No 121), contacted either the Commission or the Authority after it was placed in the high priority list and after the Commission services consulted the stakeholders over a potential revocation of its authorisation. The Authority however cannot evaluate the use of a substance without a known user as it is to take account of the intended conditions of use of the material or article in which the substance would be used, and only a user can provide such information. Moreover, if provided, such information would to a large extent determine the scope of any future authorisation which would be likely more limited than the present wide authorisation. Consequently, as no specific use or user of salicylic acid is known, and given the uncertainty over the conditions of use under which the use of this substance would comply with Regulation (EC) No 1935/2004, it is appropriate to revoke the present authorisation of salicylic acid.
- (5) Based on opinions of the Authority adopted in 2005 ⁽⁵⁾, five substances from a group commonly known as 'phthalates', namely FCM No 157 ('DBP'), FCM No 159 ('BBP'), FCM No 283 ('DEHP'), FCM No 728 ('DINP') and FCM No 729 ('DIDP'), are authorised as additives for use as plasticisers and technical support agents in plastic FCM, subject to specific restrictions of use and migration limits.
- (6) Following an opinion in 2017 by the European Chemicals Agency ('ECHA') on restriction proposals for some of these phthalates ⁽⁶⁾, the Commission requested the Authority to re-assess the risk to public health from phthalates that are authorised to be used in plastic FCM. The Authority consequently adopted a scientific opinion on 18 September 2019 ⁽⁷⁾, confirming the individual TDIs set out in its 2005 opinions for all five phthalates but only on a temporary basis (t-TDI), because of a number of limitations and uncertainties related to the assessment, which should be addressed in the future.
- (7) Based on a common mechanism of action underlying the reproductive effects of DBP, BBP and DEHP, the Authority also established a new group t-TDI, taking into account their relative potencies. The Authority further considered it appropriate to include DINP in the group t-TDI as a conservative approach based on its transient effects on foetal testosterone levels, whilst accounting for the higher potency of DINP on the liver. The authority set the group t-TDI for DBP, BBP, DEHP and DINP at 50 micrograms per kilogram of bodyweight ($\mu\text{g}/\text{kg}$ bw) expressed as DEHP equivalent strength. The Authority did not include DIDP in the group t-TDI and set an individual t-TDI of 150 $\mu\text{g}/\text{kg}$ bw based on effects on the liver, consistent with its findings from 2005.
- (8) In order to further characterise the risk, the Authority carried out a dietary exposure assessment as part of the same opinion. Whilst it was unable to specifically determine the contribution from plastic FCM, it estimated dietary exposure for all five phthalates, which represent the worst-case estimates of exposure from FCM sources. Based on an aggregated dietary exposure assessment for DBP, BBP, DEHP and DINP, it concluded that dietary exposure contributes up to 14 % of the group t-TDI of 50 $\mu\text{g}/\text{kg}$ bw for the average consumer and up to 23 % of the group t-TDI for high consumers. The estimates for DIDP indicate that dietary exposure is far below the t-TDI of 150 $\mu\text{g}/\text{kg}$ bw for both average and high consumers.

⁽⁴⁾ EFSA Journal 2020;18(6):6124.

⁽⁵⁾ EFSA Journal 2005; 3(9) :242; EFSA Journal 2005; 3(9):241; EFSA Journal 2005; 3(9):243; EFSA Journal 2005; 3(9):244, 1-18; EFSA Journal 2005; 3(9):245.

⁽⁶⁾ ECHA Committee for Risk Assessment (RAC) and Committee for Socioeconomic Analysis (SEAC) Opinion on an Annex XV dossier proposing restrictions on four phthalates (DEHP, BBP, DBP, DIBP); ECHA/RAC/RES-O-0000001412-86-140/F and ECHA/SEAC/RES-O-0000001412-86-154/F respectively. Available online <https://echa.europa.eu/documents/10162/a265bf86-5fbd-496b-87b4-63ff238de2f7>.

⁽⁷⁾ EFSA Journal 2019;17(12):5838.

- (9) Additionally, the Authority considered consumers' exposure to other phthalates, notably to 1,2-bis(2-methylpropyl) benzene-1,2-dicarboxylate (diisobutyl phthalate or 'DIBP'; FCM No 1085; CAS number 84-69-5), which is not authorised as an additive for plastic FCM, but may be present in smaller amounts therein as an impurity or as a consequence of its use as a technical support agent in the manufacturing process of certain types of plastic. The Authority noted that DIBP substantially adds to the overall exposure and risk to consumers from phthalates and that such exposure together with its potency with regard to reproductive effects should also be taken into account by the risk manager. The Authority further noted that consumers' exposure to phthalates arises from sources other than the diet. Significant contribution to total phthalate exposure comes from their presence in consumer articles and construction materials and subsequent dermal contact with them, as well as from inhalation of air and dust in the indoor environment.
- (10) In order to take into account the group t-TDI for DBP, BBP and DEHP and the Authority's considerations as regards DIBP, and, in particular, to ensure that exposure to these phthalates from plastic FCM does not exceed the group t-TDI, a new total specific migration limit (SML(T)) should be established. However, for the sake of clarity and simplification, in particular in establishing compliance or when carrying out official controls in cases where one of these phthalates has been used alone, individual SMLs should be maintained for the authorised phthalates in addition to the SML(T)s.
- (11) Although the Authority also included DINP in the group t-TDI, an SML(T) was previously established for DINP together with DIDP because they are mixtures that overlap chemically and could not be distinguished analytically in the case of co-occurrence. Although there have been advances in analytical methods since the establishment of that SML(T), further validation work is still required before DINP and DIDP can be routinely differentiated by competent authorities when undertaking official controls. It is therefore appropriate to maintain a separate SML(T) for the sum of DINP and DIDP and to prohibit the use of DINP together with DBP, BBP and DEHP as well as with DIBP where that may be used as a technical support agent, in order to avoid any potential co-exposure from the same plastic FCM.
- (12) Taking into account that the aggregated exposure from both FCMs and sources other than FCMs is expected to be in the order of the t-TDI, and that accumulation may occur in the food manufacturing chain due to migration from food processing equipment as well as from food packaging, and taking into account the significant level of uncertainty regarding the present exposure estimates, it is appropriate to account for the exposure by means of an allocation factor of 20 % for DBP, BBP, DEHP and DINP in plastic FCM. Taking into account the need to also maintain the SML(T) for DINP and DIDP, it is appropriate to use that allocation factor for all five phthalates when setting the SML(T) and the individual SMLs.
- (13) The substance diethyl[[3,5-bis(1,1-dimethylethyl)-4-hydroxyphenyl]methyl] phosphonate (FCM No 1007) is presently authorised for use up to 0,2 % (w/w) based on the final polymer weight in the polymerisation process to manufacture poly(ethylene terephthalate) ('PET'). Following an application for the extension of use of this substance, on 26 January 2022, the Authority adopted a favourable scientific opinion ⁽⁸⁾ on its use up to 0,1 % w/w based on the final polymer weight in the polymerisation process to manufacture poly(ethylene 2,5-furandicarboxylate) ('PEF'). The Authority concluded that, when used in this amount, migration of the substance was not detected due to its incorporation in the polyester chain. Because of that incorporation, there is also no reason to assume that, when used in PEF at a use level of 0,2 % w/w, migration of the substance would be substantially higher. As the safe use of the substance thus stems from its full incorporation into the polymer, and for the sake of consistency and simplicity, it is appropriate to extend the existing authorisation for the use level of this substance in PET at 0,2 % w/w also to the manufacture of PEF.

⁽⁸⁾ doi: 10.2903/j.efsa.2022.7172

- (14) Commission Regulation (EU) 2019/1338⁽⁹⁾ authorised the substance Poly((R)-3-hydroxybutyrate-co-(R)-3-hydroxyhexanoate) ('PHBH', FCM No 1059). However, it appears the specification of the permitted use of that substance requires clarification. On the one hand, since PHBH is a macromolecule obtained from microbial fermentation and Regulation (EU) No 10/2011 requires that it is specified that a macromolecule is obtained from such fermentation, the reference to this production method should be added to the specification of PHBH. In addition, the authorisation allows for a short heating up phase, without specifying a maximum temperature. This absence of a maximum temperature could allow for heating at temperatures beyond those foreseen in the opinion of the Authority on which basis the substance was authorised, which refers to 'hot-fill' conditions, defined by Regulation (EU) No 10/2011 as a temperature not exceeding 100 °C at the moment of filling. In addition, the opinion indicates that a plastic manufactured with the substance has a melting point in the range of 120–150 °C. Moreover, absence of a maximum temperature implies that it is not clear which testing conditions should be used to verify compliance with Regulation (EU) No 10/2011 as regards the specification concerning the 'short heating up phase'. The specification should therefore be clarified by indicating a condition of use as that does not exceed the temperature conditions foreseen in the opinion.
- (15) The Authority adopted a favourable scientific opinion⁽¹⁰⁾ on the use of the substance 'phosphorous acid, triphenyl ester, polymer with alpha-hydro-omega-hydroxypoly[oxy(methyl-1,2-ethanediyl)], C10–16 alkyl esters' (FCM No 1076) as an additive at up to 0,025 % w/w in acrylonitrile-butadiene-styrene (ABS) copolymers. The Authority concluded that the use of the substance is not of safety concern for the consumer if it is used as an additive at up to 0,025 % w/w in ABS materials and articles for single and repeated use in contact with aqueous, acidic, alcoholic and oil-in-water emulsion foods, for long-term storage at room temperature and below, and if its migration does not exceed 0,05 mg/kg food. As the migration tests were carried out in order to cover uses in contact with all types of foods, it is appropriate to authorise the use of this additive in the manufacture of ABS materials and articles in contact with all foods for all uses at room temperature and below and to set out a migration limit in accordance with the opinion of the Authority.
- (16) On 19 September 2019, the Authority adopted a favourable scientific opinion⁽¹¹⁾ on the use of the substance tris(2-ethylhexyl) benzene-1,2,4-tricarboxylate ester (FCM No 1078, CAS number 3319-31-1), as an additive (plasticiser) in poly(vinyl chloride) ('PVC') FCM. In that opinion, the Authority concluded that overall the use of FCM No 1078 does not raise a safety concern when used in the manufacture of soft PVC. Therefore it is appropriate to authorise this substance accordingly. However, the conclusion of the Authority is conditional to the migration of the substance not exceeding 5 mg/kg food. In addition, the Authority indicated that due to the additional contribution from other sources that may add to the exposure from plastic FCMs, the application of an allocation factor should be considered. In view of the absence of directly measured exposure data for this substance for the overall population from all sources, it is appropriate to apply an allocation factor of 20 % until appropriate scientific data is provided. Moreover, in its opinion, the Authority stated that its evaluation does not cover the use of this substance in contact with 'infant foods'. Therefore, it has not been demonstrated that the use of this substance in contact with 'infant foods' would meet the requirements of Article 3 of Regulation (EC) No 1935/2004. Therefore, the authorisation of this substance should be subject to a limit on its migration of 1 mg/kg food and a restriction that prevents its in contact with foods intended for infants. For the sake of clarity and consistency with similar restrictions, it is appropriate to refer to the definition of 'infant' laid down in Article 2(2)(a) of Regulation (EU) No 609/2013 of the European Parliament and of the Council⁽¹²⁾.

⁽⁹⁾ Commission Regulation (EU) 2019/1338 of 8 August 2019 amending Regulation (EU) No 10/2011 on plastic materials and articles intended to come into contact with food (OJ L 209, 9.8.2019, p. 5).

⁽¹⁰⁾ *EFSA Journal* 2021;19(8):6786.

⁽¹¹⁾ *EFSA Journal* 2019; 17(10):5864; the Authority refers in its opinion to 'trimellitic acid, tris(2-ethylhexyl) ester', whereas this Regulation refers to its IUPAC name 'tris(2-ethylhexyl) benzene-1,2,4-tricarboxylate'.

⁽¹²⁾ Regulation (EU) No 609/2013 of the European Parliament and of the Council of 12 June 2013 on food intended for infants and young children, food for special medical purposes, and total diet replacement for weight control and repealing Council Directive 92/52/EEC, Commission Directives 96/8/EC, 1999/21/EC, 2006/125/EC and 2006/141/EC, Directive 2009/39/EC of the European Parliament and of the Council and Commission Regulations (EC) No 41/2009 and (EC) No 953/2009 (OJ L 181, 29.6.2013, p. 35).

- (17) Furthermore, since group restriction 32 in table 2 of Annex I to Regulation (EU) No 10/2011 sets out a SML(T)s for plasticisers and that the substance FCM No 1078 is also a plasticiser, it is appropriate to apply this group restriction also to that substance. In addition, to clear any doubt over the nature of this group restriction, it is appropriate to indicate that it concerns plasticisers.
- (18) Following an application for authorisation of the use of the substance (triethanolamine-perchlorate, sodium salt) dimer (FCM No 1080), as an additive in rigid PVC for repeated use bottles intended for contact with water, the Authority adopted on 29 April 2020 a favourable scientific opinion ⁽¹³⁾ on that use. The Authority concluded that its use would be safe if in contact with water and acidic aqueous foods, such as fruit juices, as, in both water and acidic aqueous foods, the substance (triethanolamine-perchlorate, sodium salt) dimer fully dissociates into triethanolamine and perchlorate. Those two substances are already included in the Union list of authorised substances, triethanolamine as FCM No 793 with a migration limit of 0,05 mg/kg, and perchlorate as FCM No 822 with a migration limit of 0,002 mg/kg. The Authority concluded that those limits should also apply to FCM No 1080 because, if the substance is used in plastic in contact with water and acidic aqueous foods, its safety is fully controlled by the migration limits established for those two substances due to its dissociation. The Authority furthermore confirmed that the migration of FCM No 822 should be expressed as perchlorate ⁽¹⁴⁾. It is therefore appropriate to establish two group restrictions in table 2 of Annex I to Regulation (EU) No 10/2011, encompassing the FCM substance No 1080 together with FCM substance No 793 in one group, and with FCM substance No 822 expressed as perchlorate in the other group. It is therefore appropriate to amend substances FCM No 793 and 822 accordingly, and to include the substance (triethanolamine-perchlorate, sodium salt) dimer (FCM No 1080) as an additive in the Union list of authorised substances, with the restriction that it should only be used in contact with foods included in the food category with reference number 01.01.A in table 2 of Annex III which represents water and the acidic aqueous foods considered by the Authority.
- (19) Following an application for the authorisation of the use of the substance N, N-bis(2-hydroxyethyl)stearylamine partially esterified with saturated C16/C18 fatty acids (FCM No 1081), as an additive, in plastic FCM in contact with dry foods, acidic foods and alcoholic beverages with storage up to six months at ambient temperature, the Authority adopted a partially favourable scientific opinion ⁽¹⁵⁾ on that use. As part of its evaluation, the Authority considered the migration data provided by the applicant for testing for storage conditions above six months at room temperature and below. The Authority concluded that N,N-bis(2-hydroxyethyl)stearylamine is not a safety concern for the consumer when used at up to 2 % (w/w) in all polymers intended for contact only with dry foods, provided that the migration of the sum of N,N-bis(2-hydroxyethyl)stearylamine and its mono- and di-ester, calculated as N,N-bis(2-hydroxyethyl)stearylamine, does not exceed, the SML(T) for FCM substances No 19 and 20, in which according to the Authority the migration of the mono- and di-ester of N,N-bis(2-hydroxyethyl)stearylamine was also to be included. Therefore, it is appropriate to authorise the use of this substance at up to 2 % (w/w) for manufacturing plastic FCM intended to be in contact only with dry foods at room temperature, and it should be included in the group restriction laid down for the substances with FCM No 19 and 20.
- (20) However, the Authority also considered that the data provided did not enable the safety assessment of the substance with FCM No 1081 when in contact with acidic foods and alcoholic beverages, and indicated that migration would be high in particular in contact with fatty foods. Therefore, it is appropriate to mitigate the foreseeable risk that consumers would use a plastic containing this substance in contact with foods other than dry foods. To that purpose, this substance should only be used in applications for use by food business operators to package food. In addition, the Authority noted that migration may increase with a lower degree of esterification and may exceed migration limits in case of a higher thickness of the plastic material in which it is applied, and that also other parameters, such as the polarity of the polymer, could be relevant. Therefore, it is appropriate to indicate in a note on the verification of compliance that there is a risk that migration limits may be exceeded based on the thickness of the material, the polarity of the polymer and the degree of esterification of the substance itself.

⁽¹³⁾ EFSA Journal 2020;18(5):6046.

⁽¹⁴⁾ Scientific panel on FCM, Enzymes, and processing aids (CEP), Minutes of the 19th meeting of the working group on FCM 2018-2021, 30 September 2020, point 7(1).

⁽¹⁵⁾ EFSA Journal 2020;18(3):6047.

- (21) The Authority adopted a favourable scientific opinion ⁽¹⁶⁾ on the use of the substance phosphoric acid, mixed esters with 2-hydroxyethyl methacrylate (FCM No 1082) in polymethylmethacrylate-based composites intended for repeated contact with all food types. The Authority concluded that the substance is not a safety concern for the consumer if used as a co-monomer at up to 0,35 % w/w, and provided that its migration does not exceed 0,05 mg/kg food expressed as the sum of the mono-, di- and triesters of phosphoric acid and the mono-, di-, tri- and tetraesters of diphosphoric acid. Although the Authority referred to the use of this substance in 'composites', that term may cover also materials which are not polymers and, therefore, which are not plastic within the meaning of Regulation (EU) No 10/2011. Consequently it is appropriate to authorise the use of this starting substance in the manufacture of polymethylmethacrylate up to 0,35 % w/w and to lay down a migration limit according to the opinion of the Authority.
- (22) The Authority adopted a favourable scientific opinion ⁽¹⁷⁾ on the use of the starting substance benzophenone-3,3',4,4'-tetracarboxylic dianhydride ('BTDA') (FCM No 1083). The Authority concluded that the use of the substance BTDA is not a safety concern for the consumer if it is applied at up to 43 % as a co-monomer in the production of polyimides for repeated use contact with acidic and fatty foods at temperatures up to 250 °C, provided that the migration of BTDA does not exceed 0,05 mg/kg. As the specific migration tests on which basis the Authority concluded favourably on the use of this substance were carried out under repeated use conditions with acetic acid (simulant B) and olive oil (simulant D2), and the Authority observed that it would not raise a concern even if used in non-repeated use applications, it is appropriate to authorise the use of this starting substance for the use in the manufacture of polyimides at up to 43 % w/w polymer in contact with foods for which only simulants B and/or D2 are laid down in table 2 of Annex III to Regulation (EU) No 10/2011 at temperatures up to 250 °C, and if this use is subject to a migration limit of 0,05 mg/kg food.
- (23) In order to allow operators to adapt to the changes to certain existing authorisations set out in this Regulation, it is appropriate to provide that plastic materials and articles complying with Regulation (EU) No 10/2011, as applicable before the date of the entry into force of this Regulation, are allowed to be first placed on the market for a transition period of 18 months after the entry into force of this Regulation and remain on the market until the exhaustion of stocks. However, the production of final plastic materials and articles typically involves the supply of several products and substances from intermediate manufacturing stages by other operators. For the sake of consumer safety, the transition to full compliance with this Regulation should be achieved as efficiently as possible, and with minimum delay. Therefore, operators manufacturing intermediate products and substances that do not yet comply with this Regulation, should be required to inform the users of these products already within nine months following the entry into force of this Regulation that these products, as provided, cannot be used to manufacture plastic materials and articles to be placed on the market after the transition period of 18 months ends.
- (24) This Regulation revokes the authorisations for the substances 'wood flour and fibers, untreated' (FCM No 96) and salicylic acid (FCM No 121) because it cannot be established that those authorisations, as they currently stand, are in accordance with Regulation (EU) No 1935/2004 given that information about specific substances or specific uses of those substances would be required to ensure that those authorisations do not go beyond what is safe. However, in order to ensure a smooth transition to potential more limited authorisations in case operators that have been manufacturing or using these substances before the entry into force of this Regulation consider that some specific uses comply with Regulation (EU) No 1935/2004, it is appropriate to allow the placing on the market of plastic materials and articles manufactured with those substances provided that an application for authorisation of those specific uses is submitted within a proportionate period after the entry into force of this Regulation. With regards to untreated wood flour and fibres, since the Authority in its opinion on wood considered that wood like materials need to be evaluated on a case-by-case basis, specific to the species, such an application should be specific to a certain wood species.

⁽¹⁶⁾ *EFSA Journal* 2020;18(5):6120.

⁽¹⁷⁾ *EFSA Journal* 2020;18(7):6183.

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

HAS ADOPTED THIS REGULATION:

Article 1

Amendments to Annex I to Regulation (EU) No 10/2011

Annex I to Regulation (EU) No 10/2011 is amended in accordance with the Annex to this Regulation.

Article 2

Transitional measures

1. Plastic materials and articles complying with Regulation (EU) No 10/2011 as applicable before the entry into force of this Regulation, which were first placed on the market before 1 February 2025 may remain on the market until the exhaustion of stocks.
2. In case a product from an intermediate stage of the manufacturing of plastic materials and articles or a substance intended for the manufacturing of such a product, material or article, which complies with Regulation (EU) No 10/2011 as applicable before the entry into force of this Regulation and which is first placed on the market after 1 May 2024 does not comply with this Regulation, the declaration of compliance available for that substance or product shall indicate that it does not comply with the present rules, and that it can only be used in the manufacture of plastic materials and articles to be placed on the market before 1 February 2025.
3. Plastic materials and articles manufactured with salicylic acid (FCM No 121) or manufactured with untreated wood flour or fibres from a specific wood species may continue to be first placed on the market after 1 February 2025 provided that the following conditions are fulfilled:
 - (a) an application for the authorisation of that substance or of that untreated wood flour or fibre from a specific wood species has been submitted to the competent authority in accordance with Article 9 of Regulation (EC) No 1935/2004 before 1 August 2024;
 - (b) the use of that substance or of that untreated flour or fibre from a specific wood species to manufacture a plastic material and article, and the use thereof, is limited to the intended conditions of use described in the application;
 - (c) the information provided to the Authority in accordance with Article 9(1)(b) of Regulation (EC) No 1935/2004 includes a statement that the application is an application in accordance with this paragraph; and
 - (d) the Authority has considered the application valid.
4. Plastic materials and articles manufactured with the substance or the untreated wood flour or fibre subject to an application may then continue to be used until the applicant withdraws its application or until the Commission adopts a decision granting or refusing the authorisation for the use of that substance or wood flour or fibre pursuant to Article 11(1) of Regulation (EC) No 1935/2004.

Article 3

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

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

Done at Brussels, 11 July 2023.

For the Commission
The President
Ursula VON DER LEYEN

ANNEX

Annex I to Regulation (EU) No 10/2011 is amended as follows:

(1) point 1, Table 1 is amended as follows:

(a) entry 96 on wood flour and fibers, untreated, and entry 121 on salicylic acid are deleted;

(b) entry 157 on phthalic acid, dibutyl ester is replaced by the following:

'157	74880	000008-4-74-2	phthalic acid, dibutyl ester ('DBP')	yes	no	no	0,12	(32) (36)	Only to be used as: (a) plasticiser in repeated use materials and articles contacting non-fatty foods; (b) technical support agent in polyolefins in concentrations up to 0,05 % (w/w) in the final product.	(7)'
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(c) entry 159 on phthalic acid, benzyl butyl ester is replaced by the following:

'159	74560	000008-5-68-7	phthalic acid, benzyl butyl ester ('BBP')	yes	no	no	6	(32) (36)	Only to be used as: (a) plasticiser in repeated use materials and articles; (b) plasticiser in single-use materials and articles contacting non-fatty foods except for infant formula and follow-on formula ('); (c) technical support agent in concentrations up to 0,1 % (w/w) in the final product.	(7)'
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(d) entry 283 on phthalic acid, bis(2-ethylhexyl) ester is replaced by the following:

'283	74640	000011-7-81-7	phthalic acid, bis (2-ethylhexyl) ester ('DEHP')	yes	no	no	0,6	(32) (36)	Only to be used as: (a) plasticiser in repeated use materials and articles contacting non-fatty foods; (b) technical support agent in concentrations up to 0,1 % (w/w) in the final product.	(7)'
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(e) entry 728 on phthalic acid, diesters with primary, saturated C₈-C₁₀ branched alcohols, more than 60 % C₉ is replaced by the following:

'728	75100	006851-5-48-0-002855-3-12-0	phthalic acid, diesters with primary, saturated C ₈ -C ₁₀ branched alcohols, more than 60 % C ₉ ('DINP')	yes	no	no		(26) (32)	Only to be used as: (a) plasticiser in repeated use materials and articles; (b) plasticiser in single-use materials and articles contacting non-fatty foods except for infant formula and follow-on formula (') (c) technical support agent in concentrations up to 0,1 % (w/w) in the final product. Not to be used in combination with FCM substances 157, 159, 283, or 1085.	(7)'
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(f) entry 793 on triethanolamine is replaced by the following:

'793	94000	000010-2-71-6	triethanolamine	yes	no	no		(37)'		
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(g) entry 822 on perchloric acid, salts (perchlorate) is replaced by the following:

'822	71983	14797-7-3-0	Perchloric acid, salts (perchlorate)	yes	no	no		(38)'		
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(h) entry 1007 on diethyl[[3,5-bis(1,1-dimethylethyl)-4-hydroxyphenyl]methyl]phosphonate is replaced by the following:

'1007		976-56-7	diethyl[[3,5-bis(1,1-dimethylethyl)-4-hydroxyphenyl]methyl]phosphonate	no	yes	no			Only to be used up to 0,2 % (w/w) based on the final polymer weight in the polymerisation process to manufacture poly(ethylene terephthalate) (PET) and poly(ethylene 2,5-furandicarboxylate) (PEF)	
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(i) entry 1059 on poly((R)-3-hydroxybutyrate-co-(R)-3-hydroxyhexanoate) is replaced by the following:

'1059		147398--31-0	Poly((R)-3-hydroxybutyrate-co-(R)-3-hydroxyhexanoate) ('PHBH')	no	yes	no		(35)	The substance is a macromolecule obtained from microbial fermentation. Only to be used at temperature conditions not exceeding the conditions defined in point 2.1.4(d) of Annex V. The migration of all oligomers with a molecular weight below 1 000 Da shall not exceed 5,0 mg/kg food.	(23)
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(j) entry 1076 on Phosphorous acid, triphenyl ester, polymer with alpha-hydro-omega-hydroxypoly[oxy (methyl-1,2-ethanediyl)], C10-16 alkyl ester is replaced by the following:

'1076		122793-7-46-3	Phosphorous acid, triphenyl ester, polymer with alpha-hydro-omega-hydroxypoly[oxy (methyl-1,2-ethanediyl)], C10-16 alkyl esters	yes	no	no	0,05		To be used only: a) as an additive at up to 0,2 % w/w in high impact polystyrene materials and articles intended for contact with food at room temperature and below, including hot-fill and/or heating up to 100 °C for up to 2 hours. It shall not be used in contact with foods for which simulatant C and/or D1 is assigned in Annex III.	
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									b) as an additive at up to 0,025 % w/w in acrylonitrile-butadiene-styrene (ABS) materials for use at room temperature and below'
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(k) the following entries are inserted at the end of Table 1 in numerical order:

'1078		3319-3-1-1	tris(2-ethylhexyl) benzene-1,2,4-tricarboxylate	yes	no	no	1	(32)	Only to be used as plasticiser to manufacture soft poly(vinyl chloride) Not to be used in contact with foods intended for infants (')	
1080		156157-97-0	(triethanolamine-perchlorate, sodium salt) dimer	yes	no	no		(37) (38)	Only to be used in rigid poly(vinyl chloride) in contact with foods included in the food category with reference number 01.01.A in table 2 of Annex III	
1081		-	N, N-bis (2-hydroxyethyl) stearylamine partially esterified with saturated C16/C18 fatty acids	yes	no	no		(7)	Only to be used at up to 2 % (w/w) in plastic materials and articles intended for the packaging by food business operators of dry foods for which simulant E is assigned in table 2 of Annex III.	(30)
1082		52628--03-2	Phosphoric acid, mixed esters with 2-hydroxyethyl methacrylate	no	yes	no	0,05		Only to be used at up to 0,35 % (w/w) to manufacture polymethylmethacrylate. SML expressed as the sum of the mono-, di- and triesters of phosphoric acid and the mono-, di-, tri- and tetraesters of diphosphoric acid	

1083		2421-2-8-5	Benzophenone-3,3',4,4'-tetracarboxylic dianhydride ('BTDA')	no	yes	no	0,05		Only to be used at up to 43 % (w/w) as a co-monomer in the production of polyimides for use in contact with foods for which only simulants B and/or D2 are laid down in table 2 of Annex III at temperatures up to 250 °C.'
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'() Infant, infant formula and follow-on formula as defined in Article 2(2) of Regulation (EU) No 609/2013 of the European Parliament and of the Council of 12 June 2013 on food intended for infants and young children, food for special medical purposes, and total diet replacement for weight control and repealing Council Directive 92/52/EEC, Commission Directives 96/8/EC, 1999/21/EC, 2006/125/EC and 2006/141/EC, Directive 2009/39/EC of the European Parliament and of the Council and Commission Regulations (EC) No 41/2009 and (EC) No 953/2009 (OJ L 181, 29.6.2013, p. 35).'

(2) in point 2, Table 2 is amended as follows:

(a) entry 7 is replaced by the following:

'7	19 20 1081	1,2	expressed as tertiary amine'
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(b) entry 26 is replaced by the following:

'26	728 729	1,8	expressed as the sum of the substances'
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(c) entry 32 is replaced by the following:

'32	8 72 73 138 140 157 159 207 242 283 532 670 728 729 775 783 797 798 810 815 1078 1085*	60	expressed as the sum of the substances (plasticisers) * Diisobutyl phthalate, FCM No 1085, with synonyms 1,2-bis(2-methylpropyl) benzene-1,2-dicarboxylate or 'DIBP' and CAS number 84-69-5 is not listed as an authorised substance in Table 1. However, it may co-occur with other phthalates as a consequence of its use as an aid to polymerisation and is included in group restrictions with the assignment FCM No 1085.'
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(d) the following entries are added:

'36	157 159 283 1085*	0,6	sum of phthalic acid, dibutyl ester (DBP), diisobutyl phthalate (DIBP), phthalic acid, benzyl butyl ester (BBP) and phthalic acid, bis(2-ethylhexyl) ester (DEHP) expressed as DEHP equivalents using the following equation: DBP*5 + DIBP*4 + BBP*0,1 + DEHP*1. * See remark on FCM No 1085 in row 32
37	793 1080	0,05	expressed as the sum of triethanolamine and the hydrochloride adduct expressed as triethanolamine
38	822 1080	0,002	expressed as perchlorate – note 4 of table 3 applies'

(3) in point 3, Table 3, the following entry is added:

'(30)	There is a risk that migration limits may be exceeded; migration increases with the thickness of the plastic in which the substance is contained, and with a decreasing polarity of the polymer and a decreasing degree of esterification of the substance itself
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COMMISSION IMPLEMENTING REGULATION (EU) 2023/1443**of 11 July 2023****concerning the renewal of the authorisation of a preparation of *Lactiplantibacillus plantarum* DSM 19457 as a feed additive for all animal species and amending Implementing Regulation (EU) No 1065/2012****(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 1831/2003 of the European Parliament and of the Council of 22 September 2003 on additives for use in animal nutrition ⁽¹⁾, and in particular Article 9(2) thereof,

Whereas:

- (1) Regulation (EC) No 1831/2003 provides for the authorisation of additives for use in animal nutrition and for the grounds and procedures for granting and renewing such authorisation.
- (2) The preparation of *Lactiplantibacillus plantarum* DSM 19457 (previously taxonomically identified as *Lactobacillus plantarum* DSM 19457) was authorised for a period of 10 years as a feed additive for all animal species by Commission Implementing Regulation (EU) No 1065/2012 ⁽²⁾.
- (3) In accordance with Article 14(1) of Regulation (EC) No 1831/2003, an application was submitted for the renewal of the authorisation of the preparation of *Lactiplantibacillus plantarum* DSM 19457 as a feed additive for all animal species, requesting the additive to be classified in the additive category 'technological additives' and in the functional group 'silage additives'. That application was accompanied by the particulars and documents required under Article 14(2) of that Regulation.
- (4) The European Food Safety Authority ('the Authority') concluded in its opinion of 22 November 2022 ⁽³⁾ that the applicant has provided evidence that the preparation of *Lactiplantibacillus plantarum* DSM 19457 remains safe for all animal species, the consumers and the environment under the conditions of use currently authorised. The Authority also concluded that the additive is not irritant to skin or eyes but that, owing to its proteinaceous nature, it should be considered a respiratory sensitiser. The Authority could not conclude, in the absence of data, on the skin sensitisation potential of the additive.
- (5) In accordance with Article 5(4), point (c), of Commission Regulation (EC) No 378/2005 ⁽⁴⁾, the Reference Laboratory set up by Regulation (EC) No 1831/2003 considered that the conclusions and recommendations reached in the previous assessment are valid and applicable for the current application.

⁽¹⁾ OJ L 268, 18.10.2003, p. 29.

⁽²⁾ Commission Implementing Regulation (EU) No 1065/2012 of 13 November 2012 concerning the authorisation of preparations of *Lactobacillus plantarum* (DSM 23375, CNCM I-3235, DSM 19457, DSM 16565, DSM 16568, LMG 21295, CNCM MA 18/5U, NCIMB 30094, VTT E-78076, ATCC PTSA-6139, DSM 18112, DSM 18113, DSM 18114, ATCC 55943 and ATCC 55944) as feed additives for all animal species (OJ L 314, 14.11.2012, p. 15).

⁽³⁾ EFSA Journal 2023;21(1):7697.

⁽⁴⁾ Commission Regulation (EC) No 378/2005 of 4 March 2005 on detailed rules for the implementation of Regulation (EC) No 1831/2003 of the European Parliament and of the Council as regards the duties and tasks of the Community Reference Laboratory concerning applications for authorisations of feed additives (OJ L 59, 5.3.2005, p. 8).

- (6) The assessment of the preparation of *Lactiplantibacillus plantarum* DSM 19457 shows that the conditions for authorisation, as provided for in Article 5 of Regulation (EC) No 1831/2003, are satisfied. Accordingly, the authorisation of that preparation should be renewed.
- (7) The Commission considers that appropriate protective measures should be taken to prevent adverse effects on the health of the users of the additive. Those protective measures should be without prejudice to other worker safety requirements under Union law.
- (8) As a consequence of the renewal of the authorisation of the preparation of *Lactiplantibacillus plantarum* DSM 19457 as a feed additive, Implementing Regulation (EU) No 1065/2012 should be amended accordingly.
- (9) Since safety reasons do not require the immediate application of the modifications to the conditions of authorisation of the preparation of *Lactiplantibacillus plantarum* DSM 19457, it is appropriate to provide for a transitional period for interested parties to prepare themselves to meet the new requirements resulting from the renewal of the authorisation.
- (10) The measures provided for in this Regulation are in accordance with the opinion of the Standing Committee on Plants, Animals, Food and Feed,

HAS ADOPTED THIS REGULATION:

Article 1

Renewal of the authorisation

The authorisation of the preparation specified in the Annex, belonging to the additive category 'technological additives' and to the functional group 'silage additives', is renewed subject to the conditions laid down in that Annex.

Article 2

Amendment to Implementing Regulation (EU) No 1065/2012

In the Annex to Implementing Regulation (EU) No 1065/2012, entry 1k20718 on '*Lactobacillus plantarum* (DSM 19457)' is deleted.

Article 3

Transitional measures

The preparation specified in the Annex and feed containing it, which are produced and labelled before 1 August 2024 in accordance with the rules applicable before 1 August 2023 may continue to be placed on the market and used until the existing stocks are exhausted.

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, 11 July 2023.

For the Commission
The President
Ursula VON DER LEYEN

ANNEX

Identification number of the additive	Additive	Composition, chemical formula, description, analytical method	Species or category of animal	Maximum age	Minimum content	Maximum content	Other provisions	End of period of authorisation
					CFU/kg of fresh material			
Category: technological additives. Functional group: silage additives								
1k20718	<i>Lactiplantibacillus plantarum</i> DSM 19457	<p><i>Additive composition</i> Preparation of <i>Lactiplantibacillus plantarum</i> DSM 19457 containing a minimum of 1×10^{10} CFU/g additive Solid form</p> <p><i>Characterisation of the active substance</i> Viable cells of <i>Lactiplantibacillus plantarum</i> DSM 19457</p> <p><i>Analytical method</i> ⁽¹⁾ Enumeration in the feed additive of <i>Lactiplantibacillus plantarum</i> DSM 19457: — Spread plate method using MRS Agar (EN 15787)</p> <p>Identification of <i>Lactiplantibacillus plantarum</i> DSM 19457: — Pulsed Field Gel Electrophoresis (PFGE) or DNA sequencing methods</p>	All animal species	—		—	<ol style="list-style-type: none"> In the directions for use of the additive and premixtures, the storage conditions shall be indicated. Minimum dose of the additive when used without combination with other micro-organism as silage additive: 5×10^7 CFU/kg fresh material. For users of the additive and premixtures, feed business operators shall establish operational procedures and organisational measures to address potential risks resulting from their use. Where those risks cannot be eliminated by such procedures and measures, the additive and premixtures shall be used with personal skin and breathing protective equipment. 	1 August 2033

⁽¹⁾ Details of the analytical methods are available at the following address of the Reference Laboratory: https://joint-research-centre.ec.europa.eu/eurl-fa-eurl-feed-additives/eurl-fa-authorisation/eurl-fa-evaluation-reports_en

COMMISSION IMPLEMENTING REGULATION (EU) 2023/1444**of 11 July 2023****imposing a provisional anti-dumping duty on imports of steel bulb flats originating in the People's Republic of China and Türkiye**

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 7 thereof,

After consulting the Member States,

Whereas:

1. PROCEDURE**1.1. Initiation**

- (1) On 14 November 2022, the European Commission ('the Commission') initiated an anti-dumping investigation with regard to imports of steel bulb flats originating in the People's Republic of China ('China' or 'the PRC') and Türkiye ('the countries concerned') on the basis of Article 5 of the basic Regulation. The Commission published a Notice of Initiation in the *Official Journal of the European Union* ⁽²⁾ ('the Notice of Initiation').
- (2) The Commission initiated the investigation following a complaint lodged on 30 September 2022 by Laminados Losal S.A.U. ('the complainant'). The complaint was made on behalf of the Union industry of steel bulb flats in the sense of Article 5(4) of the basic Regulation. The complaint contained evidence of dumping and of resulting material injury that was sufficient to justify the initiation of the investigation.

1.2. Registration

- (3) Pursuant to Article 14(5a) of the basic Regulation, the Commission should register imports subject to an anti-dumping investigation during the period of pre-disclosure, unless it has sufficient evidence within the meaning of Article 5 that the requirements either under point (c) or (d) of Article 10(4) of the basic Regulation are not met.
- (4) The complainant did not request registration and the Commission found that the requirements under point (d) of Article 10(4) of the basic Regulation were not met. In addition to the level of imports which caused injury during the investigation period, there was no further substantial rise in imports thereafter.
- (5) For the reasons set out in section 4.3.1 below, the Commission decided to cumulate the imports from the countries concerned for the purpose of the analysis described in the recitals above. An analysis of the data extracted from the Surveillance Database and the data supplied by the cooperating exporting producers in the countries concerned, showed that the cumulative volume of imports from the countries concerned decreased by 2 % in the first four full months (i.e. December 2022 to March 2023) after the initiation of the investigation as compared to the same months during the investigation period. The average monthly imports from the countries concerned during the first four months after the initiation of the investigation decreased by 15 % as compared to the average monthly imports during the investigation period. Therefore, the Commission did not make the imports of steel bulb flats subject to registration under Article 14(5a) of the basic Regulation during the period of pre-disclosure.

⁽¹⁾ OJ L 176, 30.6.2016, p. 21.

⁽²⁾ Notice of initiation of an anti-dumping proceeding concerning imports of bulb flat originating in the People's Republic of China and Türkiye (OJ C 431, 14.11.2022, p. 11).

1.3. Interested parties

- (6) In the Notice of Initiation, the Commission invited interested parties to contact it in order to participate in the investigation. In addition, the Commission specifically informed the complainant, the known exporting producers, the authorities of the PRC and Türkiye, known importers, suppliers and users, traders, as well as associations known to be concerned about the initiation of the investigation and invited them to participate.
- (7) Interested parties had an opportunity to comment on the initiation of the investigation and to request a hearing with the Commission and/or the Hearing Officer in trade proceedings.

1.4. Comments on initiation

- (8) Following initiation, comments were received from the Government of Türkiye, the Turkish exporting producer Özkan Demir Çelik Sanayi A.Ş. ('Özkan Demir'), the Union user Fincantieri S.p.A ('Fincantieri') and the unrelated importer Baglietto s.r.l. ('Baglietto').
- (9) The Government of Türkiye and Fincantieri both claimed, among other things, that the complaint relied too much on confidential information, especially with respect to the level of detail concerning the microeconomic indicators of the Union industry, as well as certain annexes to the complaint. Both parties claimed that the non-confidential version was therefore insufficient to allow parties to provide meaningful comments on the injury indicators and allegations set out in the complaint.
- (10) Article 19 of the basic Regulation allows for the safeguarding of confidential information in circumstances where disclosure would be of significant competitive advantage to a competitor or would have a significantly adverse effect upon a person supplying the information or upon a person from whom that person has acquired the information. Since the complaint relates to the information of one Union producer only, or the information of that Union producer in combination with publicly available information and statistics, the complainant provided the relevant figures in meaningful ranges for reasons of confidentiality. In the same vein, the complainant provided a non-confidential version of the annexes or a meaningful summary of the information provided. The Commission therefore considered that the non-confidential version of the complaint available in the file for inspection by interested parties contained all the essential evidence and non-confidential summaries of the confidential data which allow interested parties to properly exercise their rights of defence. Therefore, this claim was rejected.
- (11) The Government of Türkiye and Fincantieri both opposed the inclusion in the injury analysis of the data for Laminorul S.A. ('Laminorul'), a Romanian steel bulb flats producer, which went bankrupt and ceased production during the period considered. According to the information available to the Commission, following its bankruptcy, Laminorul was acquired by another company, but has not restarted its production of steel bulb flats. According to the Government of Türkiye and Fincantieri, the data available for Laminorul should not have been included in the figures presented in the complaint, since that company went bankrupt and no longer produces steel bulb flats. Laminorul should therefore not have been considered part of the Union industry in the complaint.
- (12) The Commission considered, however, that Laminorul was still part of the Union industry during the period considered, albeit not throughout the entire period. For that reason, the complainant was correct in including Laminorul's data in the complaint and showed an accurate reflection of the situation of the Union industry for the relevant periods. In addition, the data presented in the complaint showed that most indicators showed similar trends, with and without including Laminorul in the analysis. In any case, the Commission has indicated the effect of Laminorul's data on the Union industry's injury situation in its analysis for the period considered in this Regulation, where possible.
- (13) The Government of Türkiye and Özkan Demir provided comments on several individual injury indicators presented in the complaint, claiming that some of the indicators did not point to an injurious situation of the Union industry, or that that injury might have been caused by other factors than the imports from the countries concerned.

- (14) In this respect, the Commission recalled the wording of Article 5(2) of the basic Regulation, which states that the complaint shall contain the information on changes in the quantity of the allegedly dumped imports, the effect of those imports on prices of the like product on the Union market and the consequent impact of the imports on the Union industry, as demonstrated by relevant (not necessarily all) factors. The complaint contained this information, which pointed to the existence of injury and a causal link with imports from the countries concerned. Accordingly, the Commission considered that the complaint contained sufficient evidence tending to show injury and a causal link, and therefore rejected the claim.
- (15) Other specific comments on injury, causation and Union interest, which were not directly linked to the initiation, are dealt with in the relevant sections below (Sections 4, 5 and 7).

1.5. Sampling

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

Sampling of Union producers

- (17) Given the limited number of Union producers of steel bulb flats, the Commission announced in the Notice of Initiation that it would make questionnaires available to the only two known Union producers. Of these two producers, only Laminados Losal, S.A.U. (the complainant) provided a questionnaire reply. The second Union producer, Olifer s.p.l., ('Olifer') accounting for [15-25] % of Union production, did not come forward during the investigation. Thus, the Commission did not have recourse to sampling but used the data of the complainant and estimated the data for Olifer and Laminorul where relevant as explained in recital 147.

Sampling of importers

- (18) To decide whether sampling was necessary and, if so, to select a sample, the Commission asked unrelated importers to provide the information specified in the Notice of Initiation.
- (19) Only one unrelated importer provided the requested information and agreed to be included in the sample. The Commission therefore decided that sampling was not necessary.

Sampling of exporting producers in the PRC

- (20) To decide whether sampling was necessary and, if so, to select a sample, the Commission asked all exporting producers in the PRC to provide the information specified in the Notice of Initiation. In addition, the Commission asked the Mission of the People's Republic of China to the European Union to identify and/or contact other exporting producers, if any, that could be interested in participating in the investigation.
- (21) One exporting producer in the PRC, Changshu Longteng Special Steel Co., Ltd. provided the requested information and agreed to be included in the sample. Accordingly, the Commission decided that sampling was not necessary.

Sampling of exporting producers in Türkiye

- (22) To decide whether sampling was necessary and, if so, to select a sample, the Commission asked all exporting producers in Türkiye to provide the information specified in the Notice of Initiation. In addition, the Commission asked the Mission of Türkiye to the European Union to identify and/or contact other exporting producers, if any, that could be interested in participating in the investigation.
- (23) One exporting producer in Türkiye, Özkan Demir, provided the requested information and agreed to be included in the sample. Accordingly, the Commission decided that sampling was not necessary.

1.6. Questionnaire replies and verification visits

- (24) The Commission sent a questionnaire concerning the existence of significant distortions in China within the meaning of Article 2(6a)(b) of the basic Regulation to the Government of the People's Republic of China ('GOC'). No reply was received. Consequently, the Commission informed the Mission of the People's Republic of China to the European Union about its intention to apply facts available in accordance with Article 18 of the basic Regulation. No comments were received.
- (25) The Commission published online ^(?) the questionnaires for the exporting producers, the unrelated importers and the Union producers.
- (26) The Commission sought and verified all the information deemed necessary for a provisional determination of dumping, resulting injury and Union interest. Verification visits pursuant to Article 16 of the basic Regulation were carried out at the premises of the following companies:
- Union producer
- Laminados Losal S.A.U., Gernika, Spain
- User
- Fincantieri S.p.A, Monfalcone and Trieste, Italy
- Exporting producer in Türkiye
- Özkan Demir Çelik Sanayi A.Ş, Aliağa/İzmir, Türkiye
- (27) In view of the outbreak of COVID-19 and the confinement measures put in place the Commission carried out a remote crosscheck of the following Chinese exporting producer:
- Changshu Longteng Special Steel Co., Ltd., the PRC

1.7. Investigation period and period considered

- (28) The investigation of dumping and injury covered the period from 1 October 2021 to 30 September 2022 ('the investigation period'). The examination of trends relevant for the assessment of injury covered the period from 1 January 2019 to the end of the investigation period ('the period considered').

2. PRODUCT UNDER INVESTIGATION, PRODUCT CONCERNED AND LIKE PRODUCT

2.1. Product under investigation

- (29) The product under investigation is non-alloy steel bulb flats in the range up to 204 mm width ('steel bulb flats'). Steel bulb flats are mainly used in the shipbuilding industry for the construction of the steel framework of passengers' cruises, ferries, military vessels, and merchant vessels. Steel bulb flats can also be used in the construction of offshore platforms and tram rails, but in the Union this application of steel bulb flats concerns only marginal quantities ('the product under investigation').

2.2. Product concerned

- (30) The product concerned is the product under investigation originating in the People's Republic of China and Türkiye, currently falling under CN code ex 7216 50 91 (TARIC code 7216 50 91 10) ('the product concerned').

^(?) <https://tron.trade.ec.europa.eu/investigations/case-view?caseId=2640>

2.3. Like product

- (31) The investigation showed that the following products have the same basic physical, chemical and technical characteristics as well as the same basic uses:
- the product concerned when exported to the Union;
 - the product under investigation produced and sold on the domestic market of the PRC and Türkiye and
 - the product under investigation produced and sold in the Union by the Union industry.
- (32) The Commission decided at this stage that those products are therefore like products within the meaning of Article 1(4) of the basic Regulation.

2.4. Claims regarding product scope

- (33) No claims regarding product scope were received.

3. DUMPING

3.1. China

3.1.1. Procedure for the determination of the normal value under Article 2(6a) of the basic Regulation

- (34) In view of the sufficient evidence available at the initiation of the investigation pointing to the existence of significant distortions within the meaning of point (b) of Article 2(6a) of the basic Regulation with regard to China, the Commission considered it appropriate to initiate the investigation with regard to the exporting producers from this country having regard to Article 2(6a) of the basic Regulation.
- (35) Consequently, in order to collect the necessary data for the eventual application of Article 2(6a) of the basic Regulation, in the Notice of Initiation the Commission invited all exporting producers in China to provide information regarding the inputs used for producing steel bulb flats. One exporting producer, Changshu Longteng Special Steel Co, Ltd., submitted the relevant information. In addition, in order to obtain information it deemed necessary for its investigation with regard to the alleged significant distortions, the Commission sent a questionnaire to the GOC.
- (36) Moreover, in point 5.3.2 of the Notice of Initiation, the Commission invited all interested parties to make their views known, submit information and provide supporting evidence regarding the application of Article 2(6a) of the basic Regulation within 37 days of the date of publication of the Notice of Initiation in the *Official Journal of the European Union*. No questionnaire reply was received from the GOC and no submission on the application of Article 2(6a) of the basic Regulation was received within the deadline. Subsequently, the Commission informed the GOC that it would use facts available within the meaning of Article 18 of the basic Regulation for the determination of the existence of the significant distortions in China. The Commission invited the GOC to submit its comment on the application of Article 18. No comments were received.
- (37) In point 5.3.2 of the Notice of Initiation, the Commission also specified that, in view of the evidence available, a possible appropriate representative third country was Türkiye pursuant to Article 2(6a)(a) of the basic Regulation for the purpose of determining the normal value based on undistorted prices or benchmarks. The Commission further stated that it would examine other possibly appropriate representative countries in accordance with the criteria set out in 2(6a)(a) first indent of the basic Regulation.
- (38) On 24 January 2023, the Commission informed by a note ('the First Note') interested parties on the relevant sources it intended to use for the determination of the normal value. In that note, the Commission provided a list of all factors of production such as raw materials, labour and energy used in the production of steel bulb flats, based on data provided by Changshu Longteng Special Steel Co., Ltd. submission, the sole exporting producer of the product concerned located in the PRC that cooperated. In addition, based on the criteria guiding the choice of undistorted prices or benchmarks, the Commission identified Türkiye as an appropriate representative country. The Commission received comments from exporting producer Changshu Longteng Special Steel Co., Ltd. on the First Note.

- (39) On 3 April 2023, and after having analysed the comments received and the additional information provided by Changshu Longteng Special Steel Co., Ltd., the Commission informed by a second note ('the Second Note') interested parties on the relevant sources it intended to use for the determination of the normal value, with Türkiye as the representative country. It also informed interested parties that it would establish selling, general and administrative costs ('SG&A') and profits based on a data from a producer in the representative country, namely Kocaer Çelik Sanayi. The Commission invited interested parties to comment and received comments from Changshu Longteng Special Steel Co., Ltd.
- (40) After having analysed the comments and information received on the Second Note, the Commission provisionally concluded that Türkiye was an appropriate choice as representative country from which undistorted prices and costs would be sourced for the determination of the normal value. The underlying reasons for that choice are further described in detail in Section 3.4 below.

3.1.2. Normal value

- (41) According to Article 2(1) of the basic Regulation, *'the normal value shall normally be based on the prices paid or payable, in the ordinary course of trade, by independent customers in the exporting country'*.
- (42) However, according to Article 2(6a)(a) of the basic Regulation, *'in case it is determined [...] that it is not appropriate to use domestic prices and costs in the exporting country due to the existence in that country of significant distortions within the meaning of point (b), the normal value shall be constructed exclusively on the basis of costs of production and sale reflecting undistorted prices or benchmarks'*, and *'shall include an undistorted and reasonable amount of administrative, selling and general costs and for profits'*.
- (43) As further explained below, the Commission concluded in the present investigation that, based on the evidence available, and in view of the lack of cooperation of the GOC and the exporting producers, the application of Article 2(6a) of the basic Regulation was appropriate.

3.1.2.1. Existence of significant distortions

- (44) In recent investigations concerning the steel sector in the PRC ⁽⁴⁾, the Commission found that significant distortions in the sense of Article 2(6a)(b) of the basic Regulation were present.
- (45) In those investigations, the Commission found that there is substantial government intervention in the PRC resulting in a distortion of the effective allocation of resources in line with market principles ⁽⁵⁾. In particular, the Commission concluded that in the steel sector – steel being the main raw material to produce the product under investigation, not

⁽⁴⁾ Commission Implementing Regulation (EU) 2022/2068 of 26 October 2022 imposing a definitive anti-dumping duty on imports of certain cold-rolled flat steel products originating in the People's Republic of China and the Russian Federation following an expiry review pursuant to Article 11(2) of Regulation (EU) 2016/1036 of the European Parliament and of the Council (OJ L 277, 27.10.2022, p. 149); Commission Implementing Regulation (EU) 2022/191 of 16 February 2022 imposing a definitive anti-dumping duty on imports of certain iron or steel fasteners originating in the People's Republic of China (OJ L 36, 17.2.2022, p. 1); Commission Implementing Regulation (EU) 2022/95 of 24 January 2022 imposing a definitive anti-dumping duty on imports of certain tube and pipe fittings, of iron or steel, originating in the People's Republic of China, as extended to imports of certain tube and pipe fittings, of iron or steel consigned from Taiwan, Indonesia, Sri Lanka and the Philippines, whether declared as originating in these countries or not, following an expiry review pursuant to Article 11(2) of Regulation (EU) 2016/1036 of the European Parliament and of the Council (OJ L 16, 25.1.2022, p. 36); Commission Implementing Regulation (EU) 2021/2239 of 15 December 2021 imposing a definitive anti-dumping duty on imports of certain utility scale steel wind towers originating in the People's Republic of China (OJ L 450, 16.12.2021, p. 59); Commission Implementing Regulation (EU) 2021/635 of 16 April 2021 imposing a definitive anti-dumping duty on imports of certain welded pipes and tubes of iron or non-alloyed steel originating in Belarus, the People's Republic of China and Russia following an expiry review pursuant to Article 11(2) of Regulation (EU) 2016/1036 of the European Parliament and of the Council (OJ L 132, 19.4.2021, p. 145).

⁽⁵⁾ See Implementing Regulation (EU) 2022/2068 recital 80; Implementing Regulation (EU) 2022/191 recital 208, Implementing Regulation (EU) 2022/95 recital 59, Implementing Regulation (EU) 2021/2239 recitals 67-74, Implementing Regulation (EU) 2021/635 recitals 149-150.

only does a substantial degree of ownership by the GOC persist in the sense of Article 2(6a)(b), first indent of the basic Regulation ⁽⁶⁾, but the GOC is also in a position to interfere with prices and costs through State presence in firms in the sense of Article 2(6a)(b), second indent of the basic Regulation ⁽⁷⁾. The Commission further found that the State's presence and intervention in the financial markets, as well as in the provision of raw materials and inputs have an additional distorting effect on the market. Indeed, overall, the system of planning in the PRC results in resources being concentrated in sectors designated as strategic or otherwise politically important by the GOC, rather than being allocated in line with market forces ⁽⁸⁾. Moreover, the Commission concluded that the Chinese bankruptcy and property laws do not work properly in the sense of Article 2(6a)(b), fourth indent of the basic Regulation, thus generating distortions in particular when maintaining insolvent firms afloat and when allocating land use rights in the PRC ⁽⁹⁾. In the same vein, the Commission found distortions of wage costs in the steel sector in the sense of Article 2(6a)(b), fifth indent of the basic Regulation ⁽¹⁰⁾, as well as distortions in the financial markets in the sense of Article 2(6a)(b), sixth indent of the basic Regulation, in particular concerning access to capital for corporate actors in the PRC ⁽¹¹⁾.

- (46) Like in previous investigations concerning the steel sector in the PRC, the Commission examined in the present investigation whether it was appropriate or not to use domestic prices and costs in the PRC, due to the existence of significant distortions within the meaning of point (b) of Article 2(6a) of the basic Regulation. The Commission did so on the basis of the evidence available on the file, including the evidence contained in the complaint, as well as the Commission Staff Working Document on Significant Distortions in the Economy of the PRC for the Purposes of Trade Defence Investigations ⁽¹²⁾ ('Report'), which relies on publicly available sources. That analysis covered the examination of the substantial government interventions in the PRC's economy in general, but also the specific market situation in the relevant sector including steel bulb flats. The Commission further supplemented these evidentiary elements with its own research on the various criteria relevant to confirm the existence of significant distortions in the PRC, as also found by its previous investigations in this respect.

⁽⁶⁾ See Implementing Regulation (EU) 2022/2068 recital 64; Implementing Regulation (EU) 2022/191 recital 192, Implementing Regulation (EU) 2022/95 recital 46, Implementing Regulation (EU) 2021/2239 recitals 67-74, Implementing Regulation (EU) 2021/635 recitals 115-118.

⁽⁷⁾ See Implementing Regulation (EU) 2022/2068 recital 66; Implementing Regulation (EU) 2022/191 recitals 193-4, Implementing Regulation (EU) 2022/95 recital 47, Implementing Regulation (EU) 2021/2239 recitals 67-74, Implementing Regulation (EU) 2021/635 recitals 119-122. While the right to appoint and to remove key management personnel in SOEs by the relevant State authorities, as provided for in the Chinese legislation, can be considered to reflect the corresponding ownership rights, CCP cells in enterprises, state owned and private alike, represent another important channel through which the State can interfere with business decisions. According to the PRC's company law, a CCP organisation is to be established in every company (with at least three CCP members as specified in the CCP Constitution) and the company shall provide the necessary conditions for the activities of the party organisation. In the past, this requirement appears not to have always been followed or strictly enforced. However, since at least 2016 the CCP has reinforced its claims to control business decisions in SOEs as a matter of political principle. The CCP is also reported to exercise pressure on private companies to put 'patriotism' first and to follow party discipline. In 2017, it was reported that party cells existed in 70 % of some 1,86 million privately owned companies, with growing pressure for the CCP organisations to have a final say over the business decisions within their respective companies. These rules are of general application throughout the Chinese economy, across all sectors, including to the producers of the product under investigation and the suppliers of their inputs.

⁽⁸⁾ See Implementing Regulation (EU) 2022/2068 recital 68; Implementing Regulation (EU) 2022/191 recitals 195-201, Implementing Regulation (EU) 2022/95 recitals 48-52, Implementing Regulation (EU) 2021/2239 recitals 67-74, Implementing Regulation (EU) 2021/635 recitals 123-129.

⁽⁹⁾ See Implementing Regulation (EU) 2022/2068 recital 74; Implementing Regulation (EU) 2022/191 recital 202, Implementing Regulation (EU) 2022/95 recital 53, Implementing Regulation (EU) 2021/2239 recitals 67-74, Implementing Regulation (EU) 2021/635 recitals 130-133.

⁽¹⁰⁾ See Implementing Regulation (EU) 2022/2068 recital 75; Implementing Regulation (EU) 2022/191 recital 203, Implementing Regulation (EU) 2022/95 recital 54, Implementing Regulation (EU) 2021/2239 recitals 67-74, Implementing Regulation (EU) 2021/635 recitals 134-135.

⁽¹¹⁾ See Implementing Regulation (EU) 2022/2068 recital 76; Implementing Regulation (EU) 2022/191 recital 204, Implementing Regulation (EU) 2022/95 recital 55, Implementing Regulation (EU) 2021/2239 recitals 67-74, Implementing Regulation (EU) 2021/635 recitals 136-145.

⁽¹²⁾ Commission staff working document SWD (2017) 483 final/2, 20. 12. 2017, available at: [https://ec.europa.eu/transparency/documents-register/detail?ref=SWD\(2017\)483&lang=en](https://ec.europa.eu/transparency/documents-register/detail?ref=SWD(2017)483&lang=en)

- (47) The complaint alleged that the Chinese economy as a whole is widely influenced and affected by various all-encompassing interventions by the GOC or other public authorities on various levels of government and the market, in view of which domestic prices and costs of the Chinese steel industry cannot be used in the present investigation.
- (48) More specifically, the complaint pointed out that against the background of the 'socialist market economy' doctrine enshrined in the PRC Constitution, the omnipresence of the Chinese Communist Party ('CCP') and its influence over the economy by means of strategic planning initiatives – such as the 13th and 14th Five Year Plans ('FYP') – the GOC's interventionism takes various forms, namely administrative, financial and regulatory.
- (49) The complaint provided examples of elements pointing to existence of distortions, as listed in the first to sixth dash of Article 2(6a)(b) of the basic Regulation. In particular, referring to previous Commission investigations in the steel sector, to the Report, as well as to additional sources, the complainant submitted that:
- The Chinese State engages in an interventionist economic policy in pursuance of goals that coincide with the political agenda set by the CCP rather than reflect the prevailing economic conditions in a free market. With the high level of government intervention in the steel industry, reflected in the 13th FYP for Adjusting and Upgrading the Steel Industry, and a high share of State-owned enterprises ('SOEs') in the sector, even privately owned steel producers are prevented from operating under market conditions. As such the steel market, and thus the steel bulb flats sector, are to a significant extent served by enterprises which operate under the ownership, control and policy supervision of the Chinese authorities;
 - The steel industry is regarded as a fundamental sector of the Chinese economy, a national cornerstone by the GOC, and as such is a particularly supported industry. The current problem of overcapacity is arguably the clearest illustration of the implications of the GOC's policies for the industry and the resulting distortions;
 - Almost half of all companies in the Chinese Steel sector are SOEs and four of the ten world's largest steel producers fall under this category, giving these SOEs a dominant role in the steel market. As a result, there is significant state intervention on the cost of raw materials in the steel sector, more specifically for the steel shipbuilding and steel bulb flats sector, creating distortions in the prices of steel. The 13th FYP outlined steel shipbuilding as a strategic sector to be supported by the GOC. Considering that a majority of steel bulb flats products are used and manufactured for the steel shipbuilding sector, the steel bulb flats sector can be considered strategic for the GOC and thus receive support from the state. The complaint further points out that the two most important Shipyards in China, namely China State Shipbuilding Corporation and China Shipbuilding Industry Corporation, are SOEs. Both of them are under the supervision of the State-owned Asset Supervision and Administration Commission ('SASAC') and are thus affected by public measures and policies favouring domestic producers;
 - The Chinese financial system is characterised by the strong position of State-owned banks, which, when granting access to finance, take into consideration criteria other than economic viability of a project. Indeed, their lending policy needs to be aligned with the GOC industrial policy objectives rather than primarily assessing the economic environment and merits of a given project.
 - As stated in previous investigations of the Commission on steel, there is substantial government intervention in the Chinese market, resulting in distortions of wages in the steel sector, as well as shortcomings in Chinese bankruptcy and property law.
- (50) The GOC did not comment or provide evidence supporting or rebutting the existing evidence on the case file, including the Report and the additional evidence provided by the complainant, on the existence of significant distortions and/or appropriateness of the application of Article 2(6a) of the basic Regulation in the case at hand.
- (51) Specifically in the sector of the product under investigation, which is a subsector of the steel sector, a substantial degree of ownership by the GOC persists in the sense of Article 2(6a)(b), first indent of the basic Regulation. Since there was no cooperation from Chinese exporters of the product under investigation, the exact ratio of the private and State-owned producers could not be determined.

- (52) However, the investigation confirmed that the two largest producers in the steel sector, namely Angang Steel Group ('Ansteel') and China Baowu Steel Group ('Baowu') are either fully State-owned or the State holds a controlling stake. Moreover, some key steel bulb flats producing companies such as Hebei Jitai Special Steel Group Co., Ltd., Suqian Nangang Jinxin Rolling Co., Ltd and Hebei Jingye Group Co. Ltd., are subject to government interference. The company Hebei Jitai Special Steel Group Co., Ltd., a fully owned subsidiary of the private company Tangshan Baigong Industry Development co. ⁽¹³⁾, declares among its objectives to '*contribute to the development of the company, the progress of the times, and the motherland.*' ⁽¹⁴⁾. Furthermore, Suqian Nangang Jinxin Rolling Co., Ltd. is held and controlled by Nanjing Steel, an SOE under Nanjing SASAC. ⁽¹⁵⁾ In the case of Hebei Jingye Group Co. Ltd., various CCP building activities have been organized under the leadership of the Group's Party Committee deputy secretary. ⁽¹⁶⁾
- (53) In addition, given that CCP interventions into operational decision making have become the norm also in private companies ⁽¹⁷⁾, with CCP claiming leadership over virtually every aspect of the country's economy, the influence of the State by means of CCP structures within companies effectively results in economic operators being under control and policy supervision of the government, given how far the State and Party structures have grown together in the PRC.
- (54) This is apparent also at the level of the China Iron and Steel Association ('CISA'). According to Article 3 of its Articles of Association, CISA '*adheres to the overall leadership of the Communist Party of China*' and '*accepts the business guidance, supervision and management by the entities in charge of registration and management, by entities in charge of party building, as well as by the relevant administrative departments in charge of industry management*' ⁽¹⁸⁾.
- (55) Both public and privately owned enterprises in the steel sector are subject to policy supervision and guidance. The latest Chinese policy documents concerning the steel sector confirm the continued importance which GOC attributes to the sector, including the intention to intervene in the sector in order to shape it in line with the government policies. This is exemplified by the Ministry of Industry and Information Technology's draft Guiding Opinion on Fostering a High Quality Development of Steel Industry, which calls for further consolidation of the industrial foundation and significant improvement in the modernization level of the industrial chain ⁽¹⁹⁾, by the 14th FYP on Developing the Raw Material Industry according to which the sector will '*adhere to the combination of market leadership and government promotion*' and will '*cultivate a group of leading companies with ecological leadership and core competitiveness*' ⁽²⁰⁾, or by the 14th FYP on Developing Scrap Steel Industry whose key objectives is to '*continuously increase the application ratio of scrap steel, and by the end of the 14th FYP, the comprehensive scrap ratio of national steel*
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- ⁽¹³⁾ Hebei Jitai Special Steel Group Co., Ltd. (n.d.). Baidu, available at: <https://baike.baidu.com/item/%E6%B2%B3%E5%8C%97%E5%90%89%E6%B3%B0%E7%89%B9%E9%92%A2%E9%9B%86%E5%9B%A2%E6%9C%89%E9%99%90%E5%85%AC%E5%8F%B8/4599958> (accessed on 3 April 2023).
- ⁽¹⁴⁾ Study the century-old party history and move forward with your head held high – Tangshan Baigong Industrial Development Co., Ltd. visited Li Dazhao Memorial Hall. (2021, 17 June). Tsuniversal, available at: <https://www.tsuniversal.com/news/74.html> (accessed on 3 April 2023).
- ⁽¹⁵⁾ Suqian Nangang Jinxin Rolling Co., Ltd. (n.d.). QCC, available at: <https://www.qcc.com/firm/e466e01d6e0994f2d8c8736a6d7e4da7.html> (accessed on 3 April 2023).
- ⁽¹⁶⁾ The party committee of Jingye Group commended the advanced party branches and exemplary party members in 2022. (2023, 3 March). Jingye Group, available at: <http://www.hbjyjt.com/content/?2085.html> (accessed on 3 April 2023).
- ⁽¹⁷⁾ See for example Art. 33 of the CCP Constitution, Article 19 of the Chinese Company Law or the Guidelines on stepping up the United Front work in the private sector for the new era issued by the General Office of the CCP's Central Committee in 2020.
- ⁽¹⁸⁾ available at: <http://www.chinaisa.org.cn/gxportal/xfgl/portal/content.html?articleId=5b2ddec5eba936fba45d7bd801b09f6ff30d867762906011672eaeda213c54ac&columnId=0227750914a0f2a722c5b71b220e0aa19ceb0ee2cd7a7e325a35f6591cdbg66a> (accessed on 3 April 2023).
- ⁽¹⁹⁾ See: https://www.miit.gov.cn/jgsj/ycls/gzdt/art/2020/art_8fc2875eb24744f591bfd946c126561f.html (accessed on 3 April 2023). https://www.miit.gov.cn/jgsj/ycls/gzdt/art/2020/art_8fc2875eb24744f591bfd946c126561f.html (accessed on 3 April 2023). https://www.miit.gov.cn/jgsj/ycls/gzdt/art/2020/art_8fc2875eb24744f591bfd946c126561f.html (accessed on 3 April 2023). https://www.miit.gov.cn/jgsj/ycls/gzdt/art/2020/art_8fc2875eb24744f591bfd946c126561f.html (accessed on 3 April 2023).
- ⁽²⁰⁾ See Section IV, Subsection 3 of the 14th FYP on Developing the Raw Materials Industry

making will reach 30 %.' ⁽²¹⁾ Concerning more specifically the product under investigation, Shandong and Jiangsu provinces have issued their respective 14th FYP on developing shipbuilding and marine engineering equipment, explicitly promoting the shipbuilding sector and the related steel production, such as steel bulb flats. ⁽²²⁾

- (56) Similar examples of the intention by the Chinese authorities to supervise and guide the developments of the steel sector can be seen also in other provinces, such as in Hebei which plans to 'steadily implement the group development of organizations, accelerate the reform of mixed ownership of state-owned enterprises, focus on promoting the cross-regional merger and reorganization of private iron and steel enterprises, and strive to establish 1-2 world-class large groups, 3-5 large groups with domestic influence as the support' and to 'further expand the recycling and circulation channels of scrap steel, strengthen the screening and classification of scrap steel.' ⁽²³⁾ The influence of the State can also be found on the municipal level, such as in the Hebei Tangshan Municipality 2022 Iron and steel 1+3 action plan, in which different municipal entities are tasked to 'foster alliances and reorganization of enterprises with similar products in the region', such as the two large steel groups Shougang (Jingtang, Qiangang) and Tangsteel New District, 'seek and guide financial institutions to provide iron and steel enterprises with low-interest loans to allow them to switch to new industries, and at the same time [...] provide subsidies in the form of interest rate discounts' as well as 'support optimization of the products' structure' by granting 'new national-level champion manufacturing enterprises and champion products [...] with RMB 1 million and RMB 500 000 respectively, and new provincial-level champion manufacturing enterprises and champion products [with] RMB 300 000 AND RMB 100 000 respectively' ⁽²⁴⁾.
- (57) Similarly, the Henan Implementation Plan for the Transformation and Upgrade of the Steel Industry during the 14th FYP foresees the 'construction of specific steel production bases' that is to 'build 6 large specific steel production bases in Anyang, Jiyuan, Pingdingshan, Xinyang, Shangqiu, Zhoukou, etc., and ensure expansion, intensification and specialization of the industry. Among them, by 2025, the pig iron production capacity in Anyang will be controlled below 14 million tons, and the production capacity of crude steel will be controlled below 15 million tons.' ⁽²⁵⁾
- (58) The investigation has further confirmed that the GOC is interfering with prices and costs through State presence in firms in the sense of Article 2(6a)(b), second indent of the basic Regulation, establishing the existence of personal connections between producers of steel bulb flats and the CCP. For example, the Chairman of the Board of Directors of the cooperating exporting producer Changshu Longteng Special Steel Co., Ltd. holds in parallel the position of Secretary of the enterprise's Party Committee. ⁽²⁶⁾ Moreover, the company signed a strategic agreement with SOE Jiangsu Huaneng, a wholly-owned subsidiary of Huaneng, an SOE under central SASAC ⁽²⁷⁾ and signed an agreement of intention to deepen cooperation with the Jiangsu Branch of the Export-Import Bank of China, pointing towards financial support by the State. ⁽²⁸⁾ The interference of the Municipal CCP committee into the work of

⁽²¹⁾ See Section II, Subsection 1 of the 14th FYP on Developing Scrap Steel Industry

⁽²²⁾ See Shandong Province 14th FYP on developing shipbuilding and marine engineering equipment, available at: http://gxt.shandong.gov.cn/art/2022/3/29/art_103885_10301690.html (Accessed 04 April 2023) and 14th Five-Year Plan for the Development of Ship and Marine Engineering Equipment Industry in Jiangsu Province, available at: https://gxt.jiangsu.gov.cn/art/2022/3/22/art_6197_10385582.html (Accessed 04 April 2023).

⁽²³⁾ See the Hebei Province's Three Year Action Plan on Cluster Development in the Steel Industry Chain, Chapter I, Section 3; available at: <https://huanbao.bjx.com.cn/news/20200717/1089773.shtml> (accessed on 3 April 2023).

⁽²⁴⁾ Tangshan Municipal People's Government issued the '1+3' Action Plan for Tangshan Steel Industry. (2022, 6 June). China Iron and Steel Association, available at: <http://www.chinaisa.org.cn/gxportal/xfgl/portal/content.html?articleId=e2bb5519aa49b566863081d57aea9dfdd59e1a4f482bb7acd243e3ae7657c70b&columnId=3683d857cc4577e4cb75f76522b7b82cda039ef70be46ee37f9385ed3198f68a> (accessed on 3 April 2023).

⁽²⁵⁾ See the Henan Implementation Plan for the Transformation and Upgrade of the Steel Industry during the 14th FYP, Chapter II, Section 3; available at: <https://huanbao.bjx.com.cn/news/20211210/1192881.shtml> (accessed on 3 April 2023)

⁽²⁶⁾ Liming, C. (2018, December 2). Interview with Ji Bingyuan, Chairman, General Manager and Party Secretary of Longteng Special Steel.

⁽²⁷⁾ Longteng Special Steel and Huaneng Jiangsu reached a strategic cooperation. (2021, 22 June). Sina Finance App. <https://finance.sina.com.cn/money/future/indu/2021-06-22/doc-ikqcfmca2450921.shtml> (accessed on 3 April 2023).

⁽²⁸⁾ Export-Import Bank of China Jiangsu Branch signed 'Deepening Cooperation Agreement' with Changshu Municipal People's Government. (2021, 26 March). JSCHINA, available at: https://jsnews.jschina.com.cn/xhh/news/202103/t20210326_2753645.shtml (accessed on 3 April 2023)

Longteng is also apparent from the following article published on Changshu Municipality's website: *'the Party Committee of the Transportation Bureau will further deepen the pairing work. Thanks to the leadership of the Party building, it will ensure a closer and deeper cooperation with the paired enterprises, so as to better transform the political advantages of Party building in terms of mutual support and mutual promotion into development advantages and practical actions to serve the masses. Together, we will achieve new results, new progress, and new victories in the New Era's Long March.'* ⁽²⁹⁾ Similarly, the Chairman of the Board of both Suqian Nangang Jinxin Rolling Co., Ltd. and its mother company Nanjing Steel does also hold at the same time the position of Secretary of the Party Committee. ⁽³⁰⁾

- (59) Further, policies discriminating in favour of domestic producers or otherwise influencing the market in the sense of Article 2(6a)(b), third indent of the basic Regulation are in place in the sector of the product under investigation. The investigation identified policy documents showing that the industry benefits from governmental guidance and intervention into the product under investigation as part of the steel sector.
- (60) The steel industry keeps being regarded as a key industry by the GOC ⁽³¹⁾. This is confirmed in the numerous plans, directives and other documents focused on steel, which are issued at national, regional and municipal level. Under the 14th FYP, the GOC earmarked the steel industry for transformation and upgrade, as well as optimization and structural adjustment ⁽³²⁾. Similarly, the 14th FYP on Developing the Raw Materials Industry, applicable also to the steel industry, lists the sector as the *'bedrock of the real economy'* and *'a key field that shapes China's international competitive edge'* and sets a number of objectives and working methods which would drive the development of the steel sector in the time period 2021-2025, such a technological upgrade, improving the structure of the sector (not least by means of further corporate concentrations) or digital transformation. ⁽³³⁾
- (61) The important raw material used for the production of the product under investigation is iron ore. Iron ore is also mentioned in the 14th FYP on Developing the Raw Materials Industry, in which the State plans to *'rationally develop domestic mineral resources. Strengthen the exploration of iron ore [...], implement preferential tax policies, encourage the adoption of advanced technology and equipment to reduce the generation of mining solid waste.'* ⁽³⁴⁾ In provinces, such as Hebei, the authorities foresee the following for the sector: *'new project investment discount subsidy; explore and guide financial institutions to provide low-interest loans for iron and steel enterprises to switch to new industries, and at the same time, the government will provide discount subsidies.'* ⁽³⁵⁾ In sum, the GOC has measures in place to induce operators to comply with the public policy objectives of supporting encouraged industries, including the production of the main raw materials used in the manufacturing of steel bulb flats. Such measures impede market forces from operating freely.
- (62) The present investigation has not revealed any evidence that the discriminatory application or inadequate enforcement of bankruptcy and property laws according to Article 2(6a)(b), fourth indent of the basic Regulation in the steel sector, referred to above in recital 45, would not affect the manufacturers of the product under investigation.

⁽²⁹⁾ *The Party Committee of the Transport Bureau and Longteng Special Steel held a signing ceremony for party building.* (2020, 5 August). Changshu Government, available at: <http://www.changshu.gov.cn/zgcs/c100297/202008/03d86105d1b24c0093db89f968f834f7.shtml> (accessed on 3 April 2023).

⁽³⁰⁾ Huang Yixin. (n.d.). Aiqicha Baidu, available at: <https://aiqicha.baidu.com/person?personId=4736c00788016f6251d98eb690072596> (accessed on 3 April 2023).

⁽³¹⁾ Report, Part III, Chapter 14, p. 346 ff.

⁽³²⁾ See the People's Republic of China 14th Five-Year Plan for National Economic and Social Development and Long-Range Objectives for 2035, Part III, Article VIII, available at: <https://cset.georgetown.edu/publication/china-14th-five-year-plan/> (accessed on 3 April 2023).

⁽³³⁾ See in particular Sections I and II of the 14th FYP on Developing the Raw Materials Industry.

⁽³⁴⁾ See the 14th FYP on Developing the Raw Materials Industry, p. 22.

⁽³⁵⁾ See the Hebei Tangshan Municipality Iron and Steel 1+3 Action Plan 2022, Chapter 4, Section 2; available at: <http://www.chinaisa.org.cn/gxportal/xfgl/portal/content.html?articleId=e2bb5519aa49b566863081d57aea9dfdd59e1a4f482bb7acd243e3ae7657c70b&columnId=3683d857cc4577e4cb75f76522b7b82cda039ef70be46ee37f9385ed3198f68a> (accessed on 3 April 2023).

- (63) The steel sector, as referred to above in recital 45, is also affected by the distortions of wage costs in the sense of Article 2(6a)(b), fifth indent of the basic Regulation. No evidence was submitted to the effect that the steel sector, including the producers of steel bulb flats, would not be subject to the Chinese labour law system. Those distortions affect the sector both directly (when producing steel bulb flats or the main inputs), as well as indirectly (when having access to inputs from companies subject to the same labour system in the PRC) ⁽³⁶⁾.
- (64) Moreover, no evidence was submitted in the present investigation demonstrating that the steel sector, as referred to above in recital 45, is not affected by the government intervention in the financial system in the sense of Article 2(6a)(b), sixth indent of the basic Regulation. Therefore, the substantial government intervention in the financial system leads to the market conditions being severely affected at all levels.
- (65) Finally, the Commission recalls that in order to produce steel bulb flats, a number of inputs is needed. When the producers of steel bulb flats purchase/contract these inputs, the prices they pay (and which are recorded as their costs) are clearly exposed to the same systemic distortions mentioned before. For instance, suppliers of inputs employ labour that is subject to the distortions. They may borrow money that is subject to the distortions on the financial sector/capital allocation. In addition, they are subject to the planning system that applies across all levels of government and sectors.
- (66) As a consequence, not only the domestic sales prices of steel bulb flats are not appropriate for use within the meaning of Article 2(6a)(a) of the basic Regulation, but all the input costs (including raw materials, energy, land, financing, labour, etc.) are also affected because their price formation is affected by substantial government intervention, as described in Parts I and II of the Report. Indeed, the government interventions described in relation to the allocation of capital, land, labour, energy and raw materials are present throughout the PRC. This means, for instance, that an input that, in itself, was produced in the PRC by combining a range of factors of production, is exposed to significant distortions. The same applies for the input to the input and so forth.
- (67) No evidence or argument to the contrary has been adduced by the GOC in the present investigation. However, in its submission of 6 February 2023, Changshu Longteng Special Steel Co., Ltd. argued that allegations on significant distortions should not become a pre-determined conclusion and that the Commission should first verify the alleged distortions and decide whether they are significant before it can search for normal value data from alternative sources. In the company's view, however, the Commission has prematurely started seeking for alternative normal value sources at an early stage of the investigation.
- (68) This argument cannot be accepted. As indicated in the Notice of Initiation, the Commission considered at the initiation stage that there was sufficient evidence pursuant to Article 5(9) of the basic Regulation tending to show that, due to significant distortions affecting prices and costs, the use of domestic prices and costs in the PRC would be inappropriate, thus warranting the initiation of an investigation on the basis of Article 2(6a) of the basic Regulation. The Commission recalled in this context that according to Article 2(6a)(e) of the basic Regulation, parties to the investigation shall be informed promptly after initiation about the relevant sources that the Commission intends to use for the purpose of determining normal value. Longteng's argument that the Commission ought to seek for alternative sources of normal value only following a determination on the existence of significant distortions seems therefore be based on a misreading of the basic Regulation. In any event, far from reaching any predetermined conclusions concerning significant distortions as claimed by Longteng, in the course of the present investigation, the Commission has been collecting further information to complement the available sources in order to verify the allegations made at initiation stage and, ultimately, to determine whether significant distortions in the sense of Article 2(6a) of the basic Regulation are present in the steel bulb flats sector. While such determinations will be made only at definitive stage of the investigation, the provisional results of the Commission's investigation are laid out in recitals 44 to 67 above and interested parties have the opportunity to further comment on them.

⁽³⁶⁾ See Implementing Regulation (EU) 2021/635, recitals 134-135 and Implementing Regulation (EU) 2020/508, recitals 143-144.

3.1.2.2. Representative country

General remarks

- (69) The choice of the representative country was based on the following criteria pursuant to Article 2(6a) of the basic Regulation:
- A level of economic development similar to the PRC. For this purpose, the Commission used countries with a gross national income per capita similar to the PRC on the basis of the database of the World Bank ⁽³⁷⁾;
 - Production of the product under investigation in that country;
 - Availability of relevant public data in the representative country;
 - Where there is more than one possible representative country, preference was given, where appropriate, to the country with an adequate level of social and environmental protection.
- (70) As explained in recitals 38 and 39, the Commission issued two notes for the file on the sources for the determination of the normal value: the First Note on production factors of 24 January 2023 and the Second Note on the production factors of 3 April 2023. These notes described the facts and evidence underlying the relevant criteria, and also addressed the comments received by the parties on these elements and on the relevant sources. In the second note on production factors, the Commission informed interested parties of its intention to consider Türkiye as an appropriate representative country in the present case if the existence of significant distortions pursuant to Article 2(6a) of the basic Regulation would be confirmed.

A level of economic development similar to China

- (71) In the First Note on production factors, the Commission identified Türkiye and Russia as countries with a similar level of economic development as China according to the World Bank, i.e. they are all classified by the World Bank as 'upper-middle income' countries on a gross national income basis where production of the product under investigation was known to take place. No comments were received concerning the countries identified in that note.
- (72) In the Second Note, following comments received from the cooperating exporting producer Changshu Longteng Special Steel Co, Ltd. on the First Note, the Commission indicated that Malaysia was considered for establishing the following factors of production: nitrogen, oxygen and limestone. No comments were received concerning the countries identified in that note.

Availability of relevant public data in the representative country

- (73) In the First Note, the Commission indicated that for the countries identified as countries where the product under investigation is being produced, namely Russia and Türkiye, the availability of public data needed to be further verified in particular with regard to the public financial data from producers of the product under investigation.
- (74) With regard to Russia, the financial statements of the only company that was identified in the First Note as a producer, namely 'JSC Omutninsk Metallurgical Plant', were not readily available. The Commission therefore concluded that it could not use the data of this company in the proceeding.
- (75) Moreover, Russian import statistics data was available for up until January 2022, and thus covering only one third of the investigation period.
- (76) As a result, the Commission concluded that Russia could not be considered as an appropriate representative country for this investigation.

⁽³⁷⁾ World Bank Open Data – Upper Middle Income, <https://data.worldbank.org/income-level/upper-middle-income>.

- (77) Concerning Türkiye, the Commission identified readily available financial statements for only one producer of the product under investigation which was, however, lossmaking in 2021. Although the financial statements of the cooperating exporting producer in Türkiye, Özkan Demir, were readily available within the meaning of Article 2(6a) of the basic Regulation, the company was lossmaking in 2021 and thus could not be used to construct the normal value. Therefore, in addition to that company the Commission identified readily available financial statements for producers of a product in the same general category and/or sector in potential representative countries which showed a reasonable level of profitability for a period partially overlapping with the IP. Those producers were either identified in the complaint or in the list of producers that produce products falling under CN code 7216 50 91 'Bulb flat', which includes both the product under investigation 'non-alloy steel bulb flat in the range up to 204 mm width' as defined in the Notice of Initiation and all other types of steel bulb flats products. The Commission also cross-checked the list of producers with those provided by the Turkish authorities at pre-initiation stage.
- (78) In light of the above considerations, the Commission considered Türkiye as an appropriate choice for a representative country.
- (79) In their comments on the First Note, Changshu Longteng Special Steel Co., Ltd. pointed out that some of the Turkish producers listed were not satisfactory as for four out of five producers, only consolidated financial statements were available and thus could not reflect the actual SG&A and profit margins of a steel bulb flats producer. Moreover, the SG&A and profit, calculated on the basis of available data of these five producers, were unreasonably high, according to Changshu Longteng Special Steel Co., Ltd. Finally, Changshu Longteng Special Steel Co., Ltd. claimed that the Commission should disregard Türkiye for establishing the benchmark of some raw materials (i.e. limestone and oxygen).
- (80) In light of the above considerations, the Commission re-examined the SG&A and profits reported by four out of the five identified steel producers in Türkiye and considered it unreasonably high. Therefore, the Commission disregarded these companies and decided to use the SG&A and profit margins reported by only one of the Turkish producers, that is Kocaer Çelik Sanayi for 2022 financial data (i.e. for the period partially overlapping with the IP). Following the Second Note, Changshu Longteng Special Steel Co., Ltd. argued that Kocaer Çelik Sanayi, incurred extremely high financial expenses for which details could not be found. Moreover, Changshu Longteng Special Steel Co., Ltd. claimed that they did not face such high financial expenses.
- (81) The Commission selected a company with readily available financial statements showing a reasonable amount of SG&A and profits margins for steel producing industry, and applied the SG&A and profit of Kocaer Çelik Sanayi in Türkiye. The SG&A expressed as a percentage of the costs of goods sold ('COGS') and applied to the undistorted costs of production, amounted to 10,98 %. The profit expressed as a percentage of the COGS and applied to the undistorted costs of production, amounted to 8,8 %. The Commission used consolidated data, as this was the only data that was publicly available. Moreover, the Commission did not consider these percentages unreasonably high, but rather in line with the cost and profits incurred in this type of industry. Moreover, these percentages are in line with the ones used in previous investigations concerning the steel industry, like for example with regard to steel wind towers ⁽³⁸⁾ and organic coated steel ⁽³⁹⁾. The Commission did not have at its disposal any information pointing to the contrary.
- (82) Therefore, in the absence of any other comments or the submission of any other readily available data, the Commission provisionally concluded that the sources it proposed to use for SG&A and profit are undistorted and reasonable within the meaning of Article 2(6a)(a) last paragraph of the basic Regulation.

⁽³⁸⁾ OJ L 450, 16.12.2021, p. 59.

⁽³⁹⁾ Commission Implementing Regulation (EU) 2019/687 of 2 May 2019 imposing a definitive anti-dumping duty on imports of certain organic coated steel products originating in the People's Republic of China following an expiry review pursuant to Article 11(2) of Regulation (EU) 2016/1036 of the European Parliament and of the Council (OJ L 116, 3.5.2019, p. 5).

Level of social and environmental protection

- (83) Having established that Türkiye was the only available appropriate representative country, based on all of the above elements, there was no need to carry out an assessment of the level of social and environmental protection in accordance with the last sentence of Article 2(6a)(a) first indent of the basic Regulation.

Conclusion

- (84) In view of the above analysis, Türkiye met the criteria laid down in Article 2(6a)(a), first indent of the basic Regulation in order to be considered as an appropriate representative country.

Sources used to establish undistorted costs

- (85) In the First Note, the Commission listed the factors of production such as raw materials, energy and labour used in the production of the product under investigation by the exporting producer.
- (86) In order to construct the normal value in accordance with Article 2(6a)(a) of the basic Regulation, the Commission used Global Trade Atlas ⁽⁴⁰⁾ ('GTA') and Metal Bulletin ⁽⁴¹⁾ to establish the undistorted cost of most of the factors of production, notably the raw materials. In addition, the Commission stated that it would use the Turkish Statistical Institute for establishing undistorted costs of labour ⁽⁴²⁾ and energy ⁽⁴³⁾ and Directorate-General of Izmir Metropolitan Municipality's statistics for undistorted cost of water ⁽⁴⁴⁾.
- (87) The Commission invited the interested parties to comment and propose publicly available information on undistorted values for each of the factors of production mentioned in that note.
- (88) In its comments on the First Note, Changshu Longteng Special Steel Co., Ltd claimed that the import prices of ferrochromium in Türkiye varied based on the ratio of weight of carbon and chromium. The Commission verified the actual ratio of weight of carbon and chromium used by the Changshu Longteng Special Steel Co., Ltd. In this regard, to establish the corresponding cost of ferrochromium the Commission decided to use the Metal Bulletin's independent industry benchmarks for the global metal and mining industry (Fastmarkets' prices) which reflects different ratios of weight of carbon and chromium.
- (89) Following the First Note, Changshu Longteng Special Steel Co., Ltd. also claimed that the average Turkish prices of certain raw materials (i.e. oxygen and limestone) could not be used due to low volume of imports. In addition, on the basis of the questionnaire reply of Changshu Longteng Special Steel Co., Ltd, the Commission identified an additional factor of production, i.e. nitrogen, which was also imported in non-representative quantities into Türkiye during the investigation period.

⁽⁴⁰⁾ <https://www.gtis.com/gta>

⁽⁴¹⁾ <https://xml.metalbulletin.com/mb-index.html>

⁽⁴²⁾ [https://data.tuik.gov.tr/Bulten/In\\$dex?p=Labour-Cost-Statistics-2020-37495](https://data.tuik.gov.tr/Bulten/In$dex?p=Labour-Cost-Statistics-2020-37495)

⁽⁴³⁾ <https://data.tuik.gov.tr/Bulten/Index?p=Electricity-and-Natural-Gas-Prices-Period-I-January-June,-202245567>

⁽⁴⁴⁾ <https://www.izsu.gov.tr/YuklenenDosyalar/AtikSuTarifeleri>

- (90) Consequently, the Commission examined the volume of imports into Thailand, Malaysia, Brazil and Mexico since these countries are with similar level of economic development as China and have been previously considered as representative countries in several recent previous investigations in the steel sector such as steel road wheels ⁽⁴⁵⁾, stainless steel hot-rolled flat products ⁽⁴⁶⁾, steel wind towers ⁽⁴⁷⁾, organic coated steel ⁽⁴⁸⁾, tube or pipe fittings, of iron or steel ⁽⁴⁹⁾. The Commission established that, following the exclusion of imports from the PRC and countries which are not members of the WTO, only Malaysia had imports in sufficiently representative quantities of all the three factors of production concerned during the investigation period. On this basis, the Commission informed in the Second Note that when constructing the normal value the Commission intends to use costs of these inputs based on imports to Malaysia.
- (91) Subsequently, in the Second Note, the Commission updated the list of factors of production based on the comments of the parties and information submitted by the cooperating exporting producer in the questionnaire reply.
- (92) Following the Second Note, Changshu Longteng Special Steel Co., Ltd. claimed that the Malaysian import volume of nitrogen and oxygen and the Turkish import volume of argon were not representative because the import volumes were significantly lower than their actual consumption of those raw materials. Furthermore, Changshu Longteng Special Steel Co., Ltd. stated that for each of those raw materials there are some supplying countries with unreasonably high unit prices and high transport costs.
- (93) The Commission rejected this claim since the representativity of import volumes was assessed based on absolute quantity of import volumes. The fact that these volumes were not at the same levels as the consumption of those raw materials of the exporting producer did not change the conclusion that the absolute volumes of these imports were considered representative.
- (94) In the Second Note, the Commission also informed the interested parties that due to the large number of factors of production of the cooperating exporting producer that provided complete information and the negligible weight of some of the raw materials in the total cost of production, these negligible items were grouped under 'consumables'. Further, the Commission informed that it would calculate the percentage of the consumables on the total cost of raw materials and apply this percentage to the recalculated cost of raw materials when using the established undistorted benchmarks in the appropriate representative country.

Undistorted costs and benchmarks

Factors of production

- (95) Considering all the information submitted by the interested parties and collected during the verification visits, the following factors of production and their sources have been identified in order to determine the normal value in accordance with Article 2(6a)(a) of the basic Regulation:

⁽⁴⁵⁾ Commission Implementing Regulation (EU) 2020/353 of 3 March 2020 imposing a definitive anti-dumping duty and definitively collecting the provisional duty imposed on imports of steel road wheels originating in the People's Republic of China (OJ L 65, 4.3.2020, p. 9).

⁽⁴⁶⁾ Commission Implementing Regulation (EU) 2020/1408 of 6 October 2020 imposing a definitive anti-dumping duty and definitively collecting the provisional duty imposed on imports of certain hot rolled stainless steel sheets and coils originating in Indonesia, the People's Republic of China and Taiwan (OJ L 325, 7.10.2020, p. 26).

⁽⁴⁷⁾ OJ L 450, 16.12.2021, p. 59.

⁽⁴⁸⁾ Commission Implementing Regulation (EU) 2019/687 of 2 May 2019 imposing a definitive anti-dumping duty on imports of certain organic coated steel products originating in the People's Republic of China following an expiry review pursuant to Article 11(2) of Regulation (EU) 2016/1036 of the European Parliament and of the Council (OJ L 116, 3.5.2019, p. 5).

⁽⁴⁹⁾ Commission Implementing Regulation (EU) 2022/95 of 24 January 2022 imposing a definitive anti-dumping duty on imports of certain tube and pipe fittings, of iron or steel, originating in the People's Republic of China, as extended to imports of certain tube and pipe fittings, of iron or steel consigned from Taiwan, Indonesia, Sri Lanka and the Philippines, whether declared as originating in these countries or not, following an expiry review pursuant to Article 11(2) of Regulation (EU) 2016/1036 of the European Parliament and of the Council (OJ L 16, 25.1.2022, p. 36).

Table 1

Factors of production of steel bulb flats

Factor of Production	HS code	Source of data that the Commission intends to use	Undistorted value
Raw materials			
Limestone	252100	GTA for Malaysia	0,243 CNY/kg
Iron ore	260111	GTA for Türkiye	0,83 CNY/kg
Sintered iron ore	260112	GTA for Türkiye	1,28 CNY/kg
Coal	270111	GTA for Türkiye	1,53 CNY/kg
Coke/Coke powder	270400	GTA for Türkiye	3,35 CNY/kg
Carbon powder	280300	GTA for Türkiye	10,08 CNY/kg
Pure Tourmaline	284910	GTA for Türkiye	8,67 CNY/kg
Ferro-manganese	720211	GTA for Türkiye	10,68 CNY/kg
Ferro-silicon	720221	GTA for Türkiye	15,86 CNY/kg
Silico-manganese	720230	GTA for Türkiye	11,76 CNY/kg
Ferro-chromium	720241	MB-FEC-0005	8,97 CNY/kg
Ferro-molybdenum	720270	GTA for Türkiye	160,64 CNY/kg
Ferro-titanium	720291	GTA for Türkiye	43,32 CNY/kg
Ferro-vanadium	720292	GTA for Türkiye	190,12 CNY/kg
Ferro-niobium	720293	GTA for Türkiye	176,27 CNY/kg
Ferro-aluminium	720299	GTA for Türkiye	19,24 CNY/kg
Steel scraps	720410	GTA for Türkiye	2,15 CNY/kg
Aluminium	760110	GTA for Türkiye	19,67 CNY/kg
Argon	280421	GTA for Türkiye	7,30 CNY/m ³
Nitrogen	280430	GTA for Malaysia	5,85 CNY/m ³
Oxygen	280440	GTA for Malaysia	2,46 CNY/m ³
Water costs		Price of water as charged by Izmir Metropolitan Municipality for industrial users	8,25 CNY/m ³
Labour			
Labour costs		Turkish Statistical Institute (based on hourly average labour cost in the manufacturing sector)	37,03 CNY/hour
Energy			
Electricity		Turkish Statistical Institute – price of electricity for industrial users	0,60 CNY/kWh
Natural gas		Turkish Statistical Institute – price of gas for industrial users	2,75 CNY/m ³

3.1.2.3. Raw materials

- (96) In order to establish the undistorted price of raw materials as delivered at the gate of a representative country producer, the Commission used as a basis the weighted average import price to Türkiye and for nitrogen, oxygen and limestone to Malaysia as reported in GTA and Metal Bulletin's independent industry benchmark for Ferrochromium to which import duties and transport costs were added. An import price in the representative country was determined as a weighted average of unit prices of imports from all third countries excluding the PRC and countries which are not members of the WTO, listed in Annex 1 of Regulation (EU) 2015/755 of the European Parliament and the Council ⁽⁵⁰⁾. The Commission decided to exclude imports from the PRC into the representative country as it concluded in Section 3.3.1 above that it is not appropriate to use domestic prices and costs in the PRC due to the existence of significant distortions in accordance with Article 2(6a)(b) of the basic Regulation. Given that there is no evidence showing that the same distortions do not equally affect products intended for export, the Commission considered that the same distortions affected export prices. After excluding the imports into the representative country from China and non-market economy countries, the Commission found that imports of the main raw materials from other third countries remained representative.
- (97) The Commission deviated from the above-described methodology for a limited number of raw materials.
- (98) As indicated in recital 88, the Commission decided to use the Metal Bulletin (Fastmarkets' prices) for establishing the benchmark of ferrochromium.
- (99) As indicated in recital 90, for limestone, nitrogen and oxygen the Commission decided to use cost of these inputs based on imports to Malaysia, excluding imports from the PRC and countries which are not members of the WTO.
- (100) The Commission expressed the transport cost incurred by the cooperating exporting producer for the supply of raw materials as a percentage of the actual cost of such raw materials and then applied the same percentage to the undistorted cost of the same raw materials in order to obtain the undistorted transport cost. The Commission considered that, in the context of this investigation, the ratio between the exporting producer's raw material and the reported transport costs could be reasonably used as an indication to estimate the undistorted transport costs of raw materials when delivered to the company's factory.
- (101) For a number of factors of production, the actual costs incurred by the cooperating exporting producer represented a negligible share (cumulatively around 3,3 %) of total raw material costs in the review investigation period. As the value used for these had no appreciable impact on the dumping margin calculations, regardless of the source used, the Commission decided to include those costs into consumables as explained in the recital 94.

Labour

- (102) The Commission used the statistics published by the Turkish Statistical Institute ⁽⁵¹⁾. This institute publishes detailed information on labour costs in different economic sectors in Türkiye. The Commission established the benchmark based on hourly average labour costs for 2020 for the economic activity 'Manufacture of basic metals' NACE code 24 according to NACE Rev.2 classification. The values were further adjusted for inflation using the domestic consumer price index ⁽⁵²⁾ to reflect the costs for the investigation period.

⁽⁵⁰⁾ Regulation (EU) 2015/755 of the European Parliament and of the Council of 29 April 2015 on common rules for imports from certain third countries (OJ L 123, 19.5.2015, p. 33). Article 2(7) of the basic Regulation considers that domestic prices in those countries cannot be used for the purpose of determining normal value.

⁽⁵¹⁾ <https://data.tuik.gov.tr/Bulten/Index?p=Labour-Cost-Statistics-2020-37495>

⁽⁵²⁾ <https://data.tuik.gov.tr/Bulten/Index?p=Consumer-Price-Index-January-2023-49655>.

Energy

- (103) The Commission used the average industrial electricity and gas prices for industrial users in Türkiye published by the Turkish Statistical Institute ⁽⁵³⁾ for the period from July 2021 to June 2022, net of VAT.

Water

- (104) The Commission used the water tariff charged by Directorate-General of Izmir Metropolitan Municipality that is responsible for water supply, sewage collection and treatment in Izmir Metropolitan Municipality where representative company of the product under investigation is located. The information enables to identify tariffs applicable for the industry and benchmark would be average monthly tariff for the investigation period, net of VAT ⁽⁵⁴⁾.
- (105) Regarding water, Changshu Longteng Special Steel Co., Ltd. considered the benchmark used, namely water costs in Izmir not to be representative because Changshu Longteng Special Steel Co., Ltd. is located in a rural area with easy access to water and thus the water cost of Changshu Longteng Special Steel Co. cannot be compared to a tourist city in Türkiye.
- (106) The Commission used as benchmark water tariff for industrial use in the region where the producer of the product under investigation, Kocaer Çelik Sanayi, is located in Türkiye. Furthermore, the selected region has a well-developed industrial base. Consequently, the Commission rejected this claim.

Manufacturing overhead costs, SG&A and profits

- (107) According to Article 2(6a)(a) of the basic Regulation, *'the constructed normal value shall include an undistorted and reasonable amount for administrative, selling and general costs and for profits'*. In addition, a value for manufacturing overhead costs needs to be established to cover costs not included in the factors of production referred to above.
- (108) The manufacturing overheads incurred by the cooperating exporting producer were expressed as a share of the costs of manufacturing actually incurred by the exporting producer. This percentage was applied to the undistorted costs of manufacturing.
- (109) For establishing an undistorted and reasonable amount for SG&A and profit the Commission relied on the financial data of Kocaer Çelik Sanayi in 2022, as extracted from the Orbis database.

3.1.3. Calculation

- (110) On the basis of the above, the Commission constructed the normal value per product type on an ex-works basis in accordance with Article 2(6a)(a) of the basic Regulation.
- (111) First, the Commission established the undistorted manufacturing costs. The Commission applied the undistorted unit costs to the actual consumption of the individual factors of production of the cooperating exporting producer. These consumption rates provided by the cooperating exporting producer were verified during the remote cross-check. The Commission multiplied the usage factors by the undistorted costs per unit observed in the representative country or by other undistorted costs per unit identified in the table above.
- (112) Second, to arrive at a total undistorted manufacturing cost was established, the Commission applied the manufacturing overheads. Manufacturing overheads incurred by the cooperating exporting producers were increased by the costs of consumables referred to in recital 101 and subsequently expressed as a share of the costs of manufacturing actually incurred by each of the exporting producers. This percentage was applied to the undistorted costs of manufacturing.

⁽⁵³⁾ <https://data.tuik.gov.tr/Bulten/Index?p=Electricity-and-Natural-Gas-Prices-Period-I-January-June,-2022-45567>.

⁽⁵⁴⁾ https://www.izsu.gov.tr/YuklenenDosyalar/AtikSuTarifeleri/Tarifeler_01092022.jpg.

- (113) Finally, the Commission added SG&A and profit which were expressed as a percentage of the cost of goods sold and applied to the undistorted total cost of manufacturing (i.e. SG&A amounted to 10,98 % and profit amounted to 8,8 %).
- (114) On that basis, the Commission constructed the normal value per product type on an ex-works basis in accordance with Article 2(6a)(a) of the basic Regulation.

3.1.4. *Export price*

- (115) The cooperating exporting producer exported to the Union directly to independent customers.
- (116) The export price was therefore the price actually paid or payable for the product concerned when sold for export to the Union, in accordance with Article 2(8) of the basic Regulation.

3.1.5. *Comparison*

- (117) The Commission compared the normal value and the export price of the cooperating exporting producer on an ex-works basis per product type.
- (118) Where justified by the need to ensure a fair comparison, the Commission adjusted the normal value and/or the export price for differences affecting prices and price comparability, in accordance with Article 2(10) of the basic Regulation. Adjustments were made for transport, insurance, handling, loading costs, customs duty, credit costs and bank charges.

3.1.6. *Dumping margin*

- (119) For the exporting producer, the Commission compared the weighted average normal value of each type of the like product with the weighted average export price of the corresponding type of the product concerned, in accordance with Article 2(11) and (12) of the basic Regulation.
- (120) The level of cooperation in this case was high, because the exports of the cooperating exporting producer constituted all the imports during the IP. Changshu Longteng Special Steel Co. claimed that there was another exporting producer in the PRC of the product concerned. However, no other company came forward, and the Commission did not identify additional exports in the import statistics. On this basis, the Commission considered it appropriate to establish the dumping margin for non-cooperating exporting producers at the same level as that of the cooperating company.
- (121) On this basis, the provisional weighted average dumping margin expressed as a percentage of the CIF Union frontier price, duty unpaid, is as follows:

Company	Provisional dumping margin
Changshu Longteng Special Steel Co., Ltd.	14,7 %
All other companies	14,7 %

3.2. **Türkiye**

3.2.1. *Normal value*

- (122) The Commission first examined whether the total volume of domestic sales for the exporting producer Özkan Demir was representative, in accordance with Article 2(2) of the basic Regulation. The domestic sales are representative if the total domestic sales volume of the like product to independent customers on the domestic market per exporting producer represented at least 5 % of its total export sales volume of the product concerned to the Union during the investigation period. On this basis, the total sales by Özkan Demir of the like product on the domestic market were representative.

- (123) The Commission subsequently identified the product types sold domestically that were identical or comparable with the product types sold for export to the Union for the exporting producer with representative domestic sales.
- (124) The Commission then examined whether Özkan Demir's sales on its domestic market for each product type that is identical or comparable with a product type sold for export to the Union were representative, in accordance with Article 2(2) of the basic Regulation. The domestic sales of a product type are representative if the total volume of domestic sales of that product type to independent customers during the investigation period represents at least 5 % of the total volume of export sales of the identical or comparable product type to the Union. The Commission established that for a small number of product types that were exported to the Union during the investigation period, there were either no domestic sales at all, or the domestic sales of that product type were below 5 % in volume and thus not representative.
- (125) The Commission next defined the proportion of profitable sales to independent customers on the domestic market for each product type during the investigation period in order to decide whether to use actual domestic sales for the calculation of the normal value, in accordance with Article 2(4) of the basic Regulation.
- (126) The normal value is based on the actual domestic price per product type, irrespective of whether those sales are profitable or not, if:
- (a) the sales volume of the product type, sold at a net sales price equal to or above the calculated cost of production, represented more than 80 % of the total sales volume of this product type; and
 - (b) the weighted average sales price of that product type is equal to or higher than the unit cost of production.
- (127) In this case, the normal value is the weighted average of the prices of all domestic sales of that product type during the IP.
- (128) The normal value is the actual domestic price per product type of only the profitable domestic sales of the product types during the IP, if:
- (a) the volume of profitable sales of the product type represents 80 % or less of the total sales volume of this type; or
 - (b) the weighted average price of this product type is below the unit cost of production.
- (129) The analysis of domestic sales showed that [50-70] % of all domestic sales were profitable and that the weighted average sales price was higher than the cost of production.
- (130) For the product types for which sales were overall profitable, the normal value was calculated either as a weighted average of the prices of all domestic sales during the IP (recitals 126 and 127) or as a weighted average of the profitable sales only (recital 128) depending of the volume of profitable sales.
- (131) For the product types for which (1) sales were overall not profitable or (2) there were no or insufficient sales on the domestic market and where there was no specific information about market prices for those product types not sold by Özkan Demir on the domestic market, the Commission constructed the normal value in accordance with Article 2(3) and (6) of the basic Regulation.
- (132) Normal value was constructed by adding the following to the average cost of production of the like product of the cooperating exporting producer during the investigation period:
- (a) the weighted average SG&A expenses incurred by the cooperating exporting producer on domestic sales of the like product, in the ordinary course of trade, during the IP; and

(b) the weighted average profit realised by the cooperating exporting producer on domestic sales of the like product, in the ordinary course of trade, during the investigation period.

(133) For the product types not sold in representative quantities on the domestic market, the average SG&A expenses and profit of transactions made in the ordinary course of trade on the domestic market for those types were added. For the product types not sold at all on the domestic market, the weighted average SG&A expenses and profit of all transactions made in the ordinary course of trade on the domestic market were added.

3.2.2. *Export price*

(134) The exporting producer exported to the Union directly to independent customers.

(135) The export price was therefore the price actually paid or payable for the product concerned when sold for export to the Union, in accordance with Article 2(8) of the basic Regulation.

3.2.3. *Comparison*

(136) The Commission compared the normal value and the export price of the exporting producer on an ex-works basis.

(137) Where justified by the need to ensure a fair comparison, the Commission adjusted the normal value and/or the export price for differences affecting prices and price comparability, in accordance with Article 2(10) of the basic Regulation. Adjustments were made for transport, insurance, handling and loading, packing expenses, credits costs and bank charges, commissions, rebates and other allowances.

(138) The Commission identified currency conversion issues during the investigation period. Article 2(10)(j) of the basic Regulation provides that the date of sale should be the date of invoice, and that the date of contract, purchase order or order confirmation might be used if these more appropriately establish the material terms of sale. Firstly, the Commission considered the exchange rate fluctuation of the Turkish Lira (and overall significant fall against the Euro ⁽⁵⁵⁾). Secondly, the Commission considered the price setting practices of the Turkish exporting producer, by which the material terms of sale were settled at the time of the purchase order rather than at the date of invoice, both for domestic ⁽⁵⁶⁾ and export sales. The Commission therefore used the exchange rate on the date of the purchase order to convert the normal value and the export price into Turkish Lira.

3.2.4. *Dumping margin*

(139) For the cooperating exporting producer, the Commission compared the weighted average normal value of each type of the like product with the weighted average export price of the corresponding type of the product concerned, in accordance with Article 2(11) and (12) of the basic Regulation.

(140) On this basis, the provisional weighted average dumping margin expressed as a percentage of the CIF Union frontier price, duty unpaid is 13,6 %

(141) The level of cooperation in this case is high because the exports of the cooperating exporting producer constituted all the exports to the Union from Türkiye during the IP, as the investigation indicated that it was the sole exporting producer of the product concerned. On this basis, the Commission considered it appropriate to establish the dumping margin for non-cooperating exporting producers at the same level as that of the cooperating company.

⁽⁵⁵⁾ From 1 euro = 10.6809 Turkish Lira in first month of the IP (October 2021), to 1 euro = 18,1465 Turkish Lira in last month of the IP (i.e. +70 % overall). Sources: The European Central Bank, DG Budget, Pacific Exchange Rate Service.

⁽⁵⁶⁾ Domestic sales were made in foreign currency.

- (142) The provisional dumping margins, expressed as a percentage of the CIF Union frontier price, duty unpaid, are as follows:

Company	Provisional dumping margin
Türkiye Özkan Demir Çelik Sanayi A.Ş	13,6 %
All other companies	13,6 %

4. INJURY

4.1. Definition of the Union industry and Union production

- (143) According to the information available to the Commission, the like product was manufactured by three producers in the Union until 2020, and two during the rest of the period considered and the investigation period. They constitute the 'Union industry' within the meaning of Article 4(1) of the basic Regulation.
- (144) The Commission could not disclose the data regarding volume of imports, market share and import prices from the PRC and Türkiye as it is market sensitive and confidential under Article 19 of the basic Regulation, given the limited number of the parties operating on the Union market (two Union producers, one exporting producer from Türkiye and one exporting producer from China). The disclosure of this information could allow parties to calculate back company-specific confidential data. The Commission therefore provided this information in ranges and indexes, which gave sufficient meaningful information to all interested parties to understand the Commission's analysis and conclusions and provide comments in this regard. The data was also provided in the form of meaningful trends so that all interested parties could defend their interests. The Commission could not disclose the method for creating the ranges as this would allow the parties to retrieve the exact numbers from the ranges.
- (145) The total Union production during the investigation period was established at around [15 000-18 000] tonnes. The Commission established the Union production on the basis of all the available information concerning the Union industry, such as the information provided by the complainant, the estimations made in the complaint and statistical data from Eurostat. As indicated in recital 17, the complainant was the sole cooperating Union producer, representing [75-85] % of the total Union production of the like product during the investigation period.

4.2. Union consumption

- (146) The Commission established the Union consumption on the basis of the total Union industry's sales of steel bulb flats in the Union plus total imports into the Union from third countries. The methodology for estimating imports is explained in detail in Section 4.3.2 below.
- (147) As also explained in recitals 11 and 12, there were three Union producers during the period considered: Losal (the complainant), Olifer and Laminorul. Olifer did not cooperate in the investigation and Laminorul applied for bankruptcy in 2019. The sales volumes of Olifer and Laminorul in the Union during the period considered were therefore based on the estimation made in the complaint. ⁽⁵⁷⁾ Laminorul sold steel bulb flats in the Union during the period considered only in 2019 and 2020, which accounted for around [18-22] % and [4-7] % respectively of total sales by the Union industry of the product under investigation in those years. For the sales in 2021 and the investigation period, all sales by the Union industry were considered to be the product under investigation. For the previous years, it was considered that 75 % of Laminorul's sales concerned the product under investigation, while the remaining 25 % of sales concerned steel bulb flats of larger widths that are not part of the product scope. The Commission considered that these assumptions, based on the complainant's market knowledge, provided a reasonable estimate which was needed to calculate the Union consumption. The sales volumes for the complainant were obtained from its questionnaire reply and verified on spot.

⁽⁵⁷⁾ Annexes F.7.9 and H.9.1 of the complaint.

(148) Union consumption developed as follows:

Table 2

Union consumption (tonnes)

	2019	2020	2021	Investigation period
Total Union consumption	[70 000-75 000]	[42 000-46 000]	[44 000-48 000]	[47 000-51 000]
Index (2019 = 100)	100	60	63	68

Source: Complaint, questionnaire reply complainant, cooperating exporting producers and Eurostat.

(149) Union consumption decreased by 32 % during the period considered. After an initial large drop of 40 % in 2020, consumption increased again somewhat in the following years. The drop in 2020 coincided with the year when the Union was hit hardest by the Covid-19 pandemic and can largely be attributed to the associated 'lockdowns' when the factories of both the steel bulb flats producers and users were temporarily closed down. In addition, as explained in recital 29, steel bulb flats are primarily used in the shipbuilding industry. In the Union, most of the product concerned is used in the production of cruise ships and other luxury vessels, as well as military vessels. One of the consequences of the Covid-19 pandemic was a slowdown in the orders for and production of luxury vessels, which had a strong impact on the production of steel bulb flats. Although consumption has increased since 2020, it is still far from the pre-pandemic level.

4.3. Imports from the countries concerned

4.3.1. Cumulative assessment of the effects of imports from the countries concerned

(150) The Commission examined whether imports of steel bulb flats originating in the countries concerned should be assessed cumulatively, in accordance with Article 3(4) of the basic Regulation.

(151) The margin of dumping established in relation to the imports from China and Türkiye was above the de minimis threshold laid down in Article 9(3) of the basic Regulation. The volume of imports from each of the countries concerned was not negligible within the meaning of Article 5(7) of the basic Regulation. Market shares in the investigation period were [4,0-6,0] % and [53,0-58,0] % respectively.

(152) The conditions of competition between the dumped imports from China and Türkiye and the like product were similar. More specifically, the imported products competed with each other and with the steel bulb flats produced in the Union because they have to comply with the same technical standards and have to be certified by the same institutions before they qualify for their intended end-use. Steel bulb flats from all sources are sold through the same sales channels and to similar categories of customers. Shipbuilders use the same steel bulb flats for the same purpose and differentiate only on the technical aspects of the product (e.g. width, length, steel grade etcetera), not the origins of the product.

(153) Therefore, all the criteria set out in Article 3(4) of the basic Regulation were met and imports from China and Türkiye were examined cumulatively for the purposes of the injury determination.

4.3.2. Volume and market share of the imports from the countries concerned

- (154) The Commission established the volume of imports from China and Türkiye on the basis of the verified data of the cooperating exporting producers. The verified data from these producers was considered more accurate than the Eurostat data, since Eurostat reports all imports falling under the CN code for steel bulb flats. This code also includes steel bulb flats with dimensions falling outside the product scope of this investigation.
- (155) The market share of the imports was established on the basis of the share that these imports represented of the total Union consumption. As explained in recital 146, Union consumption was based on the Union industry's sales of steel bulb flats in the Union plus total imports into the Union from third countries. The volume of imports from other third countries, as also shown in Table 3 below, was established on the basis of Eurostat data. To estimate which part of these imports related to the product concerned, the Commission followed the assumptions explained in section C.1.1.1 of the complaint. The complainant estimated that 25 % of imports from the United Kingdom were related to the product under investigation in 2019 and 2020, and 45 % in the other years when the known producer in the United Kingdom had expanded its steel bulb flats product range. The complainant further estimated that 75 % of imports from all other countries was related to the product under investigation. Based on the available information, the Commission considered these assumptions a reasonable estimate of the imports of the product under investigation.
- (156) Imports into the Union from the countries concerned developed as follows:

Table 3

Import volume (tonnes) and market share

	2019	2020	2021	Investigation period
Volume of imports from the PRC	[1 200-1 600]	[800-1 200]	[2 800-3 200]	[2 000-2 400]
<i>Index</i>	100	68	204	151
Volume of imports from Türkiye	[37 000-41 000]	[23 000-27 000]	[24 000-28 000]	[24 000-28 000]
<i>Index</i>	100	65	66	67
Volume of imports from the countries concerned	[38 200-42 600]	[23 800-28 200]	[26 800-31 200]	[26 000-30 400]
<i>Index</i>	100	65	71	70
Market share PRC (%)	[1,1-3,1]	[1,4-3,4]	[6,0-8,0]	[4,0-6,0]
<i>Index</i>	100	113	324	223
Market share Türkiye (%)	[53,0-58,0]	[57,0-62,0]	[55,0-60,0]	[53,0-58,0]
<i>Index</i>	100	107	104	99
Market share countries concerned (%)	[54,1-61,1]	[58,4-65,4]	[61,0-68,0]	[57,0-64,0]
<i>Index</i>	100	107	112	104

Source: Complaint, questionnaire reply complainant, cooperating exporting producers and Eurostat.

(157) The volume of imports from the countries concerned decreased between 2019 and the IP by 30 %, dropping sharply in 2020 before making a partial recovery until the investigation period. At the same time, their market share increased by 4 %. The decrease in the import volumes from the countries concerned coincided with a decrease in Union consumption of 32 % during the same period, as explained in recital 149. As the countries concerned were able to maintain and even increase their market share in a time of decreasing consumption, this increase in market share was to the detriment of other market participants, especially the Union industry. During the investigation period the market share of the countries concerned dropped again by eight percent as compared with 2021, but remained at a higher level than their market share in 2019. This drop in market share for the countries concerned was largely related to a significant increase in sales from the complainant to one important client during the investigation period. However, the information available to the Commission did not show that this increase was structural or that this trend would continue after the investigation period.

4.3.3. Prices of the imports from the countries concerned, price undercutting and price suppression

(158) The Commission established the prices of imports on the basis of the verified data of the cooperating exporting producers, in line with the determination of import volumes as explained in recitals 154-155. Price undercutting of the imports was established on the basis of data from the cooperating exporting producers and the cooperating Union producer.

(159) The weighted average price of imports into the Union from the countries concerned developed as follows:

Table 4

Import prices (EUR/tonne)

	2019	2020	2021	Investigation period
PRC	[800-900]	[800-900]	[850-1 000]	[1 000-1 200]
<i>Index</i>	100	95	108	133
Türkiye	[700-800]	[700-800]	[850-1 000]	[1 000-1 200]
<i>Index</i>	100	92	119	139

Source: Cooperating exporting producers.

(160) Import prices increased by 33 % and 39 % for China and Türkiye, respectively. This increase was largely caused by the increase in raw materials and energy prices following the Covid-19 pandemic and more recently during the investigation period, by the ongoing war in Ukraine. However, during the period considered, Union sales prices increased even more, by 46 %.

(161) The Commission determined the price undercutting during the investigation period by comparing:

- (1) the weighted average sales prices per product type of the cooperating Union producer charged to unrelated customers on the Union market, adjusted to an ex-works level; and
- (2) the corresponding weighted average prices per product type of the imports from the cooperating exporting producers in China and Türkiye to the first independent customer on the Union market, established on a Cost, insurance, freight (CIF) basis, with appropriate adjustments for post-importation costs.

- (162) The price comparison was made on a type-by-type basis for transactions at the same level of trade, duly adjusted where necessary, and after deduction of rebates and discounts. The result of the comparison was expressed as a percentage of the cooperating Union producer's theoretical turnover during the investigation period. It showed a weighted average undercutting margin of 6,5 % for China and 11,1 % for Türkiye by the imports on the Union market.
- (163) In addition, the Commission established the existence of price suppression. Indeed, as shown in Table 8, the Union industry was selling below the cost of production throughout the period concerned. Due to the significant price pressure caused by the low-priced dumped imports, the Union industry was prevented from increasing its sales prices to achieve a profitable situation, resulting in losses during the entire period considered. In particular, the Commission found underselling of 21,7 % for China and 30,0 % for Türkiye.

4.4. Economic situation of the Union industry

4.4.1. General remarks

- (164) In accordance with Article 3(5) of the basic Regulation, the examination of the impact of the dumped imports on the Union industry included an evaluation of all economic indicators having a bearing on the state of the Union industry during the period considered.
- (165) For the injury determination, the Commission distinguished between macroeconomic and microeconomic injury indicators. The Commission evaluated the macroeconomic indicators on the basis of data contained in the complaint and the verified data of the cooperating Union producer. The data related to all Union producers which were producing and selling the product concerned on the Union market during the period considered. As explained in recital 147 there were three Union producers in the beginning of the period considered, of which only two remained during the investigation period due to the bankruptcy of Laminorul. The Commission evaluated the microeconomic indicators on the basis of data contained in the questionnaire reply from the cooperating Union producer. Both sets of data were found to be representative of the economic situation of the Union industry as a whole, in particular because the cooperating Union producer accounted for more than 75 % of the total Union production in the investigation period.
- (166) The macroeconomic indicators are: production, production capacity, capacity utilisation, sales volume, market share, growth, employment, productivity, magnitude of the dumping margin, and recovery from past dumping.
- (167) The microeconomic indicators are: average unit prices, unit cost, labour costs, inventories, profitability, cash flow, investments, return on investments, and ability to raise capital.

4.4.2. Macroeconomic indicators

4.4.2.1. Production, production capacity and capacity utilisation

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

Table 5

Production, production capacity and capacity utilisation

	2019	2020	2021	Investigation period
Production volume (tonnes)	[25 000-30 000]	[12 500-15 500]	[13 500-17 000]	[15 000-18 000]

<i>Index</i>	100	51	56	60
Production capacity (tonnes)	[65 000-85 000]	[48 000-63 000]	[39 000-52 000]	[39 000-52 000]
<i>Index</i>	100	74	61	61
Capacity utilisation (%)	[33-39]	[22-27]	[30-36]	[32-38]
<i>Index</i>	100	69	91	98

Source: Complaint and verified data complainant.

- (169) The production volume of the Union industry decreased during the period considered. This was in part due to the aforementioned bankruptcy of Laminorul, but the production volumes for the two remaining companies also showed a sharp decrease in 2020. ⁽⁵⁸⁾ Although production volumes moved upward again in the following years, during the IP the production volume was still far below that in 2019. This decrease during the period considered is also in line with the decrease in Union consumption during the same years.
- (170) Production capacity also decreased during the period considered, due to the bankruptcy of Laminorul. The production capacity for the two remaining companies remained stable during the period considered. However, the capacity utilisation rate decreased by 2 % during the period considered, up from a sharp decrease in 2020 due to the decline in consumption and related production volumes in the wake of the Covid-19 pandemic, as explained in recital 149. For the two remaining companies, the capacity utilisation rate went even further down between 2019 and the investigation period. ⁽⁵⁹⁾

4.4.2.2. Sales volume and market share

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

Table 6

Sales volume and market share

	2019	2020	2021	Investigation period
Sales volume on the Union market (tonnes)	[25 000-29 000]	[11 000-15 000]	[12 000-16 000]	[15 000-19 000]
<i>Index</i>	100	47	51	62
Market share (%)	[35-40]	[27-32]	[28-33]	[32-37]
<i>Index</i>	100	77	82	91

Source: Complaint, questionnaire reply complainant, cooperating exporting producers and Eurostat.

⁽⁵⁸⁾ This trend was also confirmed in Table 5 of the complainant's response to the questionnaire for Union producers, in the version for inspection by interested parties (Tron document t22.006788).

⁽⁵⁹⁾ This trend was also confirmed in Table 7 of the complainant's response to the questionnaire for Union producers, in the version for inspection by interested parties (Tron document t22.006788).

(172) The sales volume of the Union industry on the Union market went down by 38 % during the period considered, dropping sharply in 2020 before making a partial recovery until the investigation period. During the same period, the market share of the Union industry decreased by 9 %. The downward trend in sales volumes, albeit slightly less steep, is also observed when looking at the two remaining companies only, though they regained some market share in 2021 and the investigation period. ⁽⁶⁰⁾ The drop in market share and Union sales volumes in 2020 coincided with the bankruptcy of Laminorul. Although Union consumption, imports and sales volumes all decreased in 2020 due to the impact of the Covid-19 pandemic, as explained in recital 149, part of the sales volumes previously attributed to Laminorul were replaced by imports rather than by sales of other Union producers. This is evident from the data in Tables 3 and 6, which show that the market share of China and Türkiye went up in 2020 while at the same time the Union industry lost market share. Since 2020 the Union industry was able to recover some of the lost market share, but has not reached the level of before 2020.

4.4.2.3. Growth

(173) As explained in recitals 169 and 170 above, the production volume and capacity utilisation rate of the Union industry decreased during the period considered, which resulted in higher fixed costs per unit of production. At the same time, the demand for steel bulb flats decreased significantly in 2020, before recovering somewhat up until the investigation period. In this context of decreased consumption, the Union industry lost significant sales volumes and market share. It was able to regain some of its sales volumes and market share only at the expense of its sales prices which remained consistently below the Union industry's cost of production, as explained below in section 4.4.3.1. Therefore, the growth perspectives of the Union industry have also deteriorated.

4.4.2.4. Employment and productivity

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

Table 7

Employment and productivity

	2019	2020	2021	Investigation period
Number of employees	[250-300]	[130-160]	[130-160]	[130-160]
Index	100	53	54	52
Productivity (tonne/employee)	[100-110]	[95-105]	[103-113]	[115-125]
Index	100	97	103	115

Source: Complaint, verified data complainant and Orbis van Dijk ⁽⁶¹⁾.

(175) Employment in the sector followed the same trend as production and consumption on the Union market and dropped drastically by 48 % throughout the period considered. This was mainly caused by the bankruptcy of Laminorul, but employment also went down for the complainant, although it recovered somewhat from its lowest point in 2020 until the investigation period. ⁽⁶²⁾ This decrease followed the downward trend observed for Union consumption in 2020 and the limited recovery in consumption until the investigation period.

⁽⁶⁰⁾ This trend was also confirmed in Table 12 of the complainant's response to the questionnaire for Union producers, in the version for inspection by interested parties (Tron document t22.006788).

⁽⁶¹⁾ Orbis database, provided by Bureau Van Dijk (<https://orbis.bvdinfo.com>).

⁽⁶²⁾ This trend was also confirmed in Table 29 of the complainant's response to the questionnaire for Union producers, in the version for inspection by interested parties (Tron document t22.006788).

(176) At the same time, productivity increased by 15 % between 2019 and the investigation period. However, this figure is influenced by the fact that Laminorul had laid off a large part of their staff in 2019, but still had sales in 2019 and, to a lesser extent, 2020. Productivity for the two remaining Union producers decreased throughout the period considered. ⁽⁶³⁾ A declining productivity of the two remaining Union producers points to an increased labour cost per tonne of steel bulb flats produced.

4.4.2.5. Magnitude of the dumping margin and recovery from past dumping

(177) All dumping margins were significantly above the de minimis level. The impact of the magnitude of the actual margins of dumping on the Union industry was substantial, given the volume and prices of imports from the countries concerned.

(178) This is the first anti-dumping investigation regarding the product concerned. Therefore, no data were available to assess the effects of possible past dumping.

4.4.3. Microeconomic indicators

4.4.3.1. Prices and factors affecting prices

(179) The average unit sales prices of the cooperating Union producer to unrelated customers in the Union developed over the period considered as follows:

Table 8

Sales prices in the Union

	2019	2020	2021	Investigation period
Average unit sales price in the Union (EUR/tonne)	[850-950]	[850-950]	[1 000-1 150]	[1 200-1 400]
<i>Index</i>	100	100	118	146
Unit cost of production (EUR/tonne)	[950-1 050]	[950-1 050]	[1 100-1 250]	[1 300-1 500]
<i>Index</i>	100	100	121	141

Source: Verified data complainant.

(180) The average sales prices of the cooperating Union producer increased during the period considered by 46 %, while the unit cost of production increased to a slightly lesser extent with 41 % during the same period. However, throughout the entire period considered, sales prices were consistently below the average cost of production. This meant that the Union producer was not able to increase its sales prices to a level which would cover the increased cost of production.

⁽⁶³⁾ This trend was also confirmed in summary table of the complainant's response to the questionnaire for Union producers, in the version for inspection by interested parties (Tron document t22.006788).

- (181) The sales of the like product in the Union market were based on either framework contracts with customers that fixed the quantities and prices for the following period (ranging from a year to a few months), or based on quotes and spot prices. The cooperating Union producer therefore had a margin to increase sales prices in the context of increasing raw material and energy prices at the time of renegotiating contracts or offering quotes. However, it did not manage to do so to the extent required during the period considered because of price pressure by imports which continued coming in in high volumes. This led to a continuous loss-making situation of the cooperating Union producer, as explained in Section 4.4.3.4 below.

4.4.3.2. Labour costs

- (182) The average labour costs of the cooperating Union producer developed over the period considered as follows:

Table 9

Average labour costs per employee

	2019	2020	2021	Investigation period
Average labour costs per employee (EUR)	[48 000-53 000]	[45 000-50 000]	[45 000-50 000]	[53 000-58 000]
Index	100	94	94	112

Source: Verified data complainant.

- (183) The average labour cost per employee increased by 12 % during the period considered. This was linked to the decrease in the number of employees without a similar decrease in the fixed costs.

4.4.3.3. Inventories

- (184) Stock levels of the cooperating Union producer developed over the period considered as follows:

Table 10

Inventories

	2019	2020	2021	Investigation period
Closing stocks (tonne)	[2 000-2 500]	[1 600-2 100]	[2 000-2 500]	[2 300-2 800]
Index	100	82	104	117
Closing stocks as a percentage of production	[11-14]	[14-17]	[15-18]	[16-19]
Index	100	129	136	141

Source: Verified data complainant.

- (185) Inventories first decreased by 18 % in 2020 before increasing throughout the rest of the period considered to reach a level of 17 % higher than in 2019. The closing stocks as a percentage of production increased throughout the period considered and reached between 16 and 19 % of the yearly production. This situation had a negative impact on the financial situation of the cooperating Union producer.

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

- (186) Profitability, cash flow, investments and return on investments of the cooperating Union producer developed over the period considered as follows:

Table 11

Profitability, cash flow, investments and return on investments

	2019	2020	2021	Investigation period
Profitability of sales in the Union to unrelated customers (% of sales turnover)	[(- 11)-(- 7)]	[(- 10,5)-(- 6,5)]	[(- 10)-(- 6)]	[(- 6)-(- 3)]
<i>Index</i>	- 100	- 94	- 91	- 46
Cash flow (EUR)	[700 000-800 000]	[(- 700 000)-(- 600 000)]	[(- 1 700 000)-(- 1 400 000)]	[25 000-30 000]
<i>Index</i>	100	- 84	- 208	4
Investments (EUR)	[1 000 000-1 200 000]	[1 250 000-1 450 000]	[600 000-700 000]	[650 000-750 000]
<i>Index</i>	100	122	60	64
Return on investments (%)	[(- 51)-(- 46)]	[(- 28)-(- 23)]	[(- 26)-(- 21)]	[(- 18)-(- 13)]
<i>Index</i>	- 100	- 53	- 51	- 35

Source: Verified data complainant.

- (187) The Commission established the profitability of the cooperating Union producer by expressing the pre-tax net profit of the sales of the like product to unrelated customers in the Union as a percentage of the turnover of those sales. The cooperating Union producer managed to reduce its losses during the period considered, but remained loss-making throughout the entire period. The fact that it reduced its losses in the investigation period compared to previous years, was largely due to its increased ability, associated with the adaptation of its commercial strategy, to renegotiate and adapt its prices to the increased costs of energy and raw material. However, due to the continued price pressure from low priced imports from the countries concerned, which even managed to increase their already very high market share throughout the period considered, the cooperating Union producer was not able to reflect all costs in the prices to their customers.
- (188) The net cash flow is the ability of the Union producers to self-finance their activities. The trend in net cash flow developed downwards until the investigation period with a negative cash flow in 2020 and 2021, and upwards again during the investigation period to an overall decrease of 96 % throughout the period considered. This negative trend showed that the cooperating Union producer experienced difficulties to self-finance its activities, which was a further indication of its deteriorated financial situation.
- (189) The return on investments is the profit in percentage of the net book value of investments. The cooperating Union producer continuously invested to improve the efficiency of its production facilities, such as the acquisition of new shot-blasting and painting machinery to enable performing those parts of the production process in-house which were previously outsourced, thereby improving efficiency and reducing lead times. However, its ability to invest was limited due to its continuously loss-making situation. In addition, the return on investment, though improving throughout the period considered, remained negative during the entire period. Therefore, the cooperating Union producer was not able to generate enough profits in order to cover its investments.

- (190) The cooperating Union producer' ability to raise capital was affected by its negative financial situation. The continued losses and the net cash flow pointed to serious concerns as regards its liquidity situation and its ability to raise capital to finance its operating activity and needed investments.

4.4.4. Conclusion on injury

- (191) The Union industry was injured throughout the entire period considered. The consistently lossmaking situation of the Union industry throughout that period coincided with significant volumes of imports from the countries concerned at prices below the Union industry's costs of production. As discussed in section 4.3.3, the Union industry's prices were significantly undercut and suppressed by the imports from the countries concerned.
- (192) During a period of an overall decrease of Union consumption and following some recovery after an initial significant decrease of steel bulb flats sales in the Union in 2020, the increase of import volumes from the countries concerned exceeded the increase of Union sales volumes on the Union market. After an initial drop of 35 % in 2020, import volumes from the countries concerned increased to levels of 70 % of the 2019 import volumes. The Union industry's sales volumes experienced an initial drop of 53 % and recovered to levels of only 62 % of the 2019 sales volumes.
- (193) At the same time, sales prices increased for both the Union industry and the two countries concerned. However, while the Union industry was consistently unable of increasing its price level to achieve a profitable situation, the difference between Union industry sales prices and import prices from both countries concerned increased. Union prices increased by 46 % during the period considered, while import prices increased by 33 % from the PRC and by 39 % from Türkiye during the same period. This meant that, despite price increases for both imports and Union sales, the prices of imports from the two countries concerned put increasing price pressure on the sales prices of the Union industry. As a result, even though the Union industry was forced to continue selling at losses, it lost market share to the countries concerned between 2019 and the investigation period. Although the Union industry regained some of its lost market share during the investigation period, it has not reached the level of 2019. As explained in recital 157, the increase in market share during the investigation period was not of a structural nature but largely linked to a temporary increase in orders from a particular client.
- (194) Almost all injury indicators showed an overall negative trend throughout the period considered. Production, production capacity and capacity utilisation all deteriorated, in line with decreased sales volumes and market share. Initially the indicators developed negatively in 2020, mainly caused by the Covid-19 pandemic and the bankruptcy of Laminorul as explained in recitals 149, 160, 170 and 172. Since 2020 the Union was able to recover to a certain extent as demand for steel bulb flats and Union consumption increased again in the wake of the Covid-19 pandemic. However, although the injury indicators showed improvement since 2020, during the investigation period they were all still far below the pre-2020 levels. Due to the continued large volumes and market shares of dumped imports from the countries concerned, which are priced below the Union industry's costs of production, the latter has not been able to recover to the extent necessary to achieve a stable and profitable financial situation.
- (195) During the period considered, net investments decreased by 36 % while the return on investment remained negative. The cash flow fluctuated drastically during the period considered and was largely negative or close to zero since 2020. This affected the ability of the Union industry to self-finance its operations.
- (196) The number of employees decreased during the same period by 48 %, largely caused by the bankruptcy of Laminorul in 2020, but a similar downward trend was also visible for the other Union producers. At the same time, productivity decreased (when not taking into account the sales by Laminorul as explained in recital 176), resulting in a higher labour cost per tonne of steel bulb flats.
- (197) As set out above, economic indicators such as profitability, cash flow and return on investment were negative during the period considered. This affected the ability of the Union industry to self-finance operations, to make necessary investments and to raise capital, thus impeding its growth and even threatening its survival.

- (198) On the basis of the above, the Commission concluded at this stage that the Union industry suffered material injury within the meaning of Article 3(5) of the basic Regulation.

5. CAUSATION

- (199) In accordance with Article 3(6) of the basic Regulation, the Commission examined whether the dumped imports from the countries concerned caused material injury to the Union industry. In accordance with Article 3(7) of the basic Regulation, the Commission also examined whether other known factors could at the same time have injured the Union industry. The Commission ensured that any possible injury caused by factors other than the dumped imports from the countries concerned was not attributed to the dumped imports. These factors were imports from other third countries, the export performance of the Union industry, the Covid-19 pandemic affecting Union consumption, the increase in energy prices and an alleged lack of product diversification.

5.1. Effects of the dumped imports

- (200) The Commission examined the evolution of the volume of imports from the countries concerned and their impact on the Union industry as required by Article 3(6) of the basic Regulation.

5.1.1. *Quantity and market share of the dumped imports from the countries concerned*

- (201) The import quantities from the countries concerned decreased during the period considered by 30 %. This decrease, as explained in recital 157, coincided with a similar decrease in Union consumption, mainly brought on by the Covid-19 pandemic and the resulting decrease in demand for shipbuilding and the related inputs such as steel bulb flats. However, as explained in recitals 192-193, the observed increase in import volumes after 2020 was greater than that of Union sales volumes during the same period.
- (202) In 2020 the Union industry lost market share, mainly due to the demise of Laminorul. As shown in Tables 3 and 6, the market share previously held by Laminorul went partly to Türkiye and China. The countries concerned continuously increased their market share between 2019 and 2021. During the investigation period, the countries concerned again lost part of the market share they had gained in the previous years to the benefit of the Union industry. However, although the Union industry was able to regain some of the market share it had lost in 2020, it has yet to reach the pre-2020 levels. The market share of imports from the countries concerned increased from [54,1-61,1] % in 2019 to [57,0-64,0] % in the IP, i.e. an increase of 4 %, while the Union industry lost market share during the same period. Consequently, there has been a significant increase in dumped imports within the meaning of Article 3(3) of the basic Regulation.

5.1.2. *Price of the dumped imports from the countries concerned and price effect*

- (203) Furthermore, these imports were made at prices significantly lower than those of the Union industry over the entire period considered. Although the Union industry was able to increase its prices throughout the period considered to cater partially for increased raw material and input prices, it was not able to increase its prices to the full extent necessary to cover its production costs. At the same time, while import prices from both China and Türkiye also increased throughout the period considered, this was to a lesser extent than those of the Union industry and starting from a lower price level. Indeed, the average import price from both China and Türkiye was consistently below the Union industry's costs of production throughout the entire period considered.
- (204) The price pressure exerted by the low-priced imports from both China and Türkiye meant that the Union industry had no choice but to follow that price setting to try and regain some of the sales volumes it lost in 2020, in a period of decreased consumption and increasing production costs. Although the Union industry managed to increase its sales volumes after 2020 to 62 % of the 2019 levels in the investigation period, it was not able to do so to the same extent as the increase of the Union consumption (which was at 68 % of the 2019 levels in the investigation period) and imports from the countries concerned (at 70 % of the 2019 levels). This in turn resulted in a continuous loss-making situation for the cooperating Union producer throughout the period considered. During the same period other financial indicators such as return on investment and cash flow showed a similarly negative development. Although return on investment improved during the period considered it remained consistently negative throughout, while cash flow recovered in the investigation period to only 4 % of the 2019 level.

5.1.3. Causal link between the dumped imports from China and Türkiye, and the material injury of the Union industry

- (205) The deterioration of the economic situation of the Union industry coincided with a significant presence of dumped imports from the countries concerned. In a context of a shrinking market, the increased market share of imports from the countries concerned combined with their low average sales prices had a negative impact on the Union industry's financial situation. Although the Union industry was able to recover until the investigation period to a certain extent from the decrease in sales volumes and market share which happened in 2020, it was not able to increase their sales prices enough to fully cover the strongly increased production costs, because of the increased presence of dumped imports of the product concerned from the countries concerned. Therefore, the low-priced imports from the countries concerned thus caused price suppression.
- (206) In view of the above considerations, the Commission provisionally established that the material injury suffered by the Union industry was caused by the dumped imports from the countries concerned within the meaning of Article 3(6) of the basic Regulation. Such injury had both volume and price effects.

5.2. Effects of other factors

5.2.1. Imports from third countries

- (207) The volume of imports from other third countries developed over the period considered as follows:

Table 12

Imports from third countries

Country		2019	2020	2021	Investigation period
United Kingdom	Volume (tonne)	[2 000-2 400]	[2 800-3 200]	[1 000-1 400]	[1 700-2 100]
	<i>Index</i>	100	140	51	84
	Market share (%)	[2,0-4,0]	[5,0-7,0]	[1,5-3,5]	[2,5-4,5]
	Average price	[700-800]	[650-750]	[800-950]	[1 150-1 350]
	<i>Index</i>	100	93	110	167
Other third countries	Volume (tonne)	[0-10]	[300-600]	[200-500]	[100-400]
	<i>Index</i>	100	11 295	8 086	6 324
	Market share (%)	[0,0-0,5]	[1,0-1,5]	[0,5-1,0]	[0,3-0,8]
	Average price	[1 100-1 200]	[1 100-1 200]	[700-850]	[1 100-1 300]
	<i>Index</i>	100	101	73	104
Total of all third countries except the countries concerned	Volume (tonne)	[2 000-2 400]	[3 100-3 800]	[1 200-1 900]	[1 800-2 500]
	<i>Index</i>	100	162	66	97

	Market share (%)	[2,0-4,5]	[6,0-8,5]	[2,0-4,5]	[2,8-5,3]
	Average price	[700-800]	[700-800]	[800-950]	[1 150-1 350]
	<i>Index</i>	100	100	109	165

Source: Complaint, questionnaire reply complainant, cooperating exporting producers and Eurostat.

- (208) During the period considered, the only other third country from which significant volumes of steel bulb flats were imported into the Union was the United Kingdom. However, the steel bulb flats produced in the United Kingdom was only partly the product under investigation. British Steel, the only known steel bulb flats producer in the United Kingdom, produced only steel bulb flats of 200 mm width and upwards in 2019, 180 mm width and upwards from 2020, and currently also 160 mm and upwards.⁽⁶⁴⁾ As explained in recital 154, the statistical information for steel bulb flats available in Eurostat for the period considered includes all sizes of steel bulb flats, not only the product under investigation. Based on information provided in the complaint, the Commission estimated the part of the import volumes registered in Eurostat which were related to the product concerned in the different years.
- (209) As set out in recitals 157 and 172, imports from the countries concerned as well as Union industry sales volumes went down significantly in 2020, before making a partial recovery in the following years. At the same time, imports from the United Kingdom went up by 40 % in 2020, dropped to only half of the 2019 volume in 2021 and increased again to a level of 16 % below its 2019 volumes. The cooperating user explained that the producer in the United Kingdom produces steel bulb flats (and exports) on an irregular basis and only when they do not allocate their production capacity to other products.
- (210) The observed increases and decreases in volumes for imports from the United Kingdom did not correspond to a parallel decrease and increase in imports from the countries concerned or the Union industry sales. In addition, import prices from the United Kingdom were well above the price level of imports of steel bulb flats from the countries concerned, and close to the Union industry's prices during the investigation period.
- (211) In light of the above and in view of the large import volumes at low prices from the countries concerned as compared with those from other third countries, the Commission provisionally concluded that imports from other third countries did not attenuate the causal link between the injury suffered by the Union industry and the dumped imports from the countries concerned.

5.2.2. Export performance of the Union industry

- (212) The volume of exports of the Union industry developed over the period considered as follows:

Table 13

Export performance of Union producers

	2019	2020	2021	Investigation period
Export volume (tonnes)	[1 700-2 100]	[1 600-2 000]	[800-1 000]	[300-500]
<i>Index</i>	100	93	46	17

⁽⁶⁴⁾ See complaint Annex F.7.8, available in the open file, and the British Steel bulb flats brochure, available here: <https://britishsteel.co.uk/what-we-do/special-profiles/bulb-flats/> (last accessed on 14 April 2023).

Average price (EUR/tonne)	[800-900]	[700-800]	[1 200-1 350]	0 (*)
Index	100	94	161	0 (*)

Source: Eurostat, complaint and verified data complainant for export volumes, average price from complainant.

(*) The complainant did not have any exports during the investigation period.

- (213) The exports of the Union industry continuously decreased since 2019 to negligible volumes in the investigation period. The Union industry pointed to the worldwide fall in consumption following the Covid-19 pandemic as a cause for this decrease, as well as the competition of especially Turkish low-priced exports which took place not only on the domestic market but also on third country markets.
- (214) Exports were only a small part of the Union industry's overall sales, accounting for [5-9] % of its production in 2019 and decreased to [3-1] % during the investigation period. Therefore, although the decline in export performance could have contributed to the injury suffered by the Union industry, as also alleged by the Government of Türkiye in their comments on initiation, the Commission provisionally concluded that, considering the high share of Union sales compared to export sales during the entire period considered, the decrease in export sales did not attenuate the causal link between the dumped imports from the countries concerned and the injury suffered by the Union industry.

5.2.3. Covid-19 pandemic and decreased consumption

- (215) In their comments on initiation, the Government of Türkiye, Özkan and Fincantieri all pointed to the Covid-19 pandemic and the parallel decrease in consumption as having contributed to or caused the injury suffered by the Union industry. As shown in Table 2, the Union consumption of steel bulb flats decreased by 32 % during the period considered, which was indeed mainly linked to the Covid-19 pandemic, as set out in recital 149. However, at the same time, the Union industry sales on the Union market dropped even further, by 38 %. In addition, an injurious situation caused by significant volume of imports at prices below the Union industry's cost of production already existed in 2019, while the Covid-19 pandemic began to have an impact only as of 2020. Therefore, rather than a cause of the Union industry's injurious situation, the Covid-19 pandemic and the resulting decrease in Union consumption of steel bulb flats should be seen as an exacerbating factor in 2020.
- (216) On that basis, the Commission provisionally concluded that the evolution of Union consumption did not attenuate the causal link between the dumped imports and the injury suffered by the Union industry.

5.2.4. Increase in energy prices

- (217) The Government of Türkiye claimed that the increase in energy prices since the end of 2021, and especially in 2022 due to the military aggression by the Russian Federation against Ukraine, affected the Complainant's injurious situation and should not be attributed to imports from the countries concerned.
- (218) However, as shown in Table 8, the Union industry was able to increase their sales prices from [1 000-1 150] euro to [1 200-1 400] euro between 2021 and the investigation period. This increase of around 24 % exceeded the increase in cost of production during the same period, indicating that the increase in cost or energy prices could be passed on to the customers. Nevertheless, the Union industry was still not able to increase its sales prices to fully cover its total cost of production, due to the price pressure exerted by the continued low priced imports from the countries concerned.

- (219) As explained in recitals 163, 180 and 181 above, the Union industry was unable to adequately adjust its sales prices to achieve a profitable situation during the entire period considered. Since this pattern was observed during a long period of time, it could not be explained only by the increase of energy costs in the investigation period. This impossibility to adjust sales prices coincides in time with the increase in market share of the dumped imports from the countries concerned at significant levels of undercutting, suppressing the Union industry's sales prices, which prevented the Union industry to return to a profitable situation.
- (220) Therefore, the Commission provisionally concluded that the evolution of energy prices could not be a cause of the injury suffered by the Union industry.

5.2.5. Product diversification

- (221) Özkan claimed that the injury to the Union industry was partly caused by the fact that it is general practice in the shipbuilding sector to purchase all various sizes and types of steel bulb flats for a given project from one and the same source, for easier traceability. As the Union industry only produced up to 204 mm width of steel bulb flats it did not have, according to Özkan, the competitive advantage that Özkan had since it produced all sizes of steel bulb flats.
- (222) However, the Commission found no evidence of the alleged shipbuilders' practice to buy all steel bulb flats from one source, nor did Özkan provide such evidence. On the contrary, the cooperating user and an unrelated importer both provided submissions in which they pointed to the necessity to have a diversified source of supply, instead of relying on one supplier only. The user also indicated that they generally purchased steel bulb flats on a stock basis, that all steel bulb flats of the same size could be used interchangeably independent of their source, and that purchases were not linked to a specific project.
- (223) In addition, the Union industry has invested in product diversification over the last years by expanding their range of steel bulb flats sizes during the period considered. In this respect, Fincantieri pointed in its comments to a passage in the complaint where the complainant stated that '*it is cheaper to produce up to 180mm nominal width size*'. Fincantieri therefore questioned the complainant's decision to invest in the production of larger sizes and claimed it contributed to the Union industry's weak profits.
- (224) However, contrary to the above, both the complaint and the verified data of the complainant showed that the production of larger sizes of steel bulb flats is more economical, as it requires less rolling and is more time efficient. In paragraph 1.3 of the complaint it also stated that '*smaller is the size of the bulb flat, higher is the cost*'. This would indicate that the diversification strategy of the Union industry in the past would have a positive contribution to its profitability situation rather than contribute to the injury suffered.
- (225) The Commission therefore provisionally concluded that the alleged lack of diversification in steel bulb flats types by the Union industry was not such that it would attenuate the causal link between the dumped imports and the injury suffered by the Union industry.

5.3. Conclusion on causation

- (226) There was an overall deterioration of the Union industry's financial situation between 2019 and the investigation period. This deterioration was especially marked in 2020, after which the situation improved to a certain extent until the investigation period. However, at the end of the period concerned the Union industry was still lossmaking and had still not been able to recover to the levels experienced before 2020. These negative circumstances coincided in time with an increased market share of imports of steel bulb flats from the countries concerned, which were made at dumped prices, that increased but less than those of the Union industry during the period considered, as mentioned in Section 5.1 above.

- (227) The Commission distinguished and separated the effects of all known factors on the situation of the Union industry from the injurious effects of the dumped imports. The effect of imports from other third countries, the export performance of the Union industry, the Covid-19 pandemic affecting Union consumption, the increase in energy prices and an alleged lack of product diversification on the Union industry's negative developments in terms of production volumes, sales prices and profitability was only limited.
- (228) On the basis of the above, the Commission concluded at this stage that the dumped imports from the countries concerned caused material injury to the Union industry and that the other factors, either individually or collectively, were not sufficient to attenuate the causal link between the dumped imports and the material injury.

6. LEVEL OF MEASURES

- (229) To determine the level of the measures, the Commission examined whether a duty lower than the margin of dumping would be sufficient to remove the injury caused by dumped imports to the Union industry.

6.1. Injury margin

- (230) The injury would be removed if the Union Industry were able to obtain a target profit by selling at a target price in the sense of Articles 7(2c) and 7(2d) of the basic regulation.
- (231) In accordance with Article 7(2c) of the basic Regulation, for establishing the target profit, the Commission took into account the following factors: the level of profitability before the increase of imports from the countries concerned, the level of profitability needed to cover full costs and investments, research and development (R & D) and innovation, and the level of profitability to be expected under normal conditions of competition. Such profit margin should not be lower than 6 %.
- (232) The cooperating Union producer was loss-making during the entire period considered. The complainant proposed a target profit of 7,4 %, based on the profit achieved on its other product lines in 2019. However, the Commission considered that the other product lines concerned automotive hinges and special profiles, which are higher priced, more complex and customer specialized products. The profit margin was therefore provisionally established at 6 % in accordance with Article 7(2c) of the basic Regulation.
- (233) On this basis, the non-injurious price is [1 300] – [1 600] euro per tonne of steel bulb flats, resulting from applying the above-mentioned profit margin of 6 % to the cost of production during the investigation period of the cooperating Union producer.
- (234) The Commission then determined the injury margin level on the basis of a comparison of the weighted average import price of the cooperating exporting producers in the countries concerned, as established for the price undercutting calculations, with the weighted average non-injurious price of the like product sold by the cooperating Union producer on the Union market during the investigation period. Any difference resulting from this comparison was expressed as a percentage of the weighted average import CIF value.
- (235) The injury elimination level for 'all other companies' is defined in the same manner as the dumping margin for these companies (see recitals 120 for the PRC and recital 141 for Türkiye).

Country	Company	Provisional dumping margin (%)	Provisional injury margin (%)
The PRC	Changshu Longteng Special Steel Co., Ltd.	14,7 %	21,7 %
	All other companies	14,7 %	21,7 %
Türkiye	Türkiye Özkan Demir Çelik Sanayi A.Ş	13,6 %	30,0 %
	All other companies	13,6 %	30,0 %

6.2. Conclusion on the level of measures

- (236) Following the above assessment provisional anti-dumping duties should be set as below in accordance with Article 7(2) of the basic Regulation:

Country	Company	Provisional anti-dumping duty
The People's Republic of China	Changshu Longteng Special Steel Co., Ltd.	14,7 %
	All other companies	14,7 %
Türkiye	Türkiye Özkan Demir Çelik Sanayi A.Ş.	13,6 %
	All other companies	13,6 %

7. UNION INTEREST

- (237) Having decided to apply Article 7(2) of the basic Regulation, the Commission examined whether it could clearly conclude that it was not in the Union interest to adopt measures in this case, despite the determination of injurious dumping, in accordance with Article 21 of the basic Regulation. The determination of the Union interest was based on an appreciation of all the various interests involved, including those of the Union industry, importers and users.

7.1. Interest of the Union industry

- (238) There are two companies producing steel bulb flats in the Union. They employ [130-160] workers directly, and are located in Spain and Italy. In 2019 there was still one additional Union producer, located in Romania. Consequently, the total direct employment in steel bulb flats in 2019 was almost twice the number of employees during the investigation period.
- (239) The investigation established that the Union industry has suffered material injury caused by the dumped imports from the countries concerned during the investigation period. The imposition of measures would allow the Union industry to maintain its market share, increase production and capacity utilisation, increase prices to cover the costs of production and achieve a level of profitability which would be expected under normal conditions of competitions. That would lead the Union industry to return to a sustainable situation and allow it to make future investments.
- (240) The non-imposition of measures would likely lead to a further loss of market share and deterioration of profitability, which was already negative throughout the period considered. This would possibly cause additional closures of production facilities and dismissals thus endangering the viability of the Union industry. This is especially pertinent in light of the fact that there are currently only two Union producers left, which are both small- and medium sized enterprises.
- (241) The Commission therefore provisionally concluded that the imposition of provisional anti-dumping measures on imports of steel bulb flats originating in the countries concerned would be in the interest of the Union industry.

7.2. Interest of users and unrelated importers

- (242) During the investigation only one unrelated importer, Baglietto, came forward and provided a questionnaire reply. Unfortunately, despite several revisions of the questionnaire reply, the amount of information that remained incomplete, including the narrative part of the reply, was such that the reply was too deficient to be accepted in the investigation. The importer agreed that it would instead provide a submission on injury and Union interest. In its submission, Baglietto opposed the anti-dumping measures, as it claimed that such measures would limit availabilities of steel bulb flats in the Union and could thus effectively create a duopoly or monopoly situation on the Union market.

- (243) Two users also came forward and provided questionnaire replies. The reply by one user was too deficient to be accepted in the investigation, while the reply of the user Fincantieri was accepted and verified on spot. Fincantieri is the largest shipbuilding company in the Union and therefore one of the most important users of the product under investigation.
- (244) Fincantieri claimed, first, that the imposition of anti-dumping measures would virtually close the market to imports of steel bulb flats and risk causing a shortage of supply, especially for the steel bulb flats sizes of 160 – 200 mm width, which was produced by only one Union producer. Second, the user argued that the imposition of measures would exacerbate the lack of availability on the Union market. According to Fincantieri, the Union industry does not have sufficient capacity to satisfy the need of the entire shipbuilding sector. Additionally, supplies by the Union industry were faced with delays and logistical issues during the investigation period, which had forced Fincantieri to resort to imports from the countries concerned. Third, Fincantieri stated that apart from the countries concerned there are no other reliable alternative providers of steel bulb flats.
- (245) In addition to the importer and user, the Government of Türkiye also argued that the imposition of anti-dumping measures would lead to a monopolistic situation on the Union market. At the same the Government of Türkiye pointed to the existing safeguard measures on imports of steel products, including steel bulb flats, which in their opinion already sufficiently protect the Union industry.
- (246) In essence, the main arguments put forward by the user, importer and the Government of Türkiye all related to the fact that parties fear the risk of shortage of supply and facing a monopolistic situation on the Union market if anti-dumping measures are imposed. However, the aim and intended effect of imposing anti-dumping measures is never to close the Union market for imports from third countries. The goal is to remove the trade distorting effects of injurious dumping and thus restore competition and a level playing field for Union producers. The fact that the Union industry did not operate at full capacity throughout the period considered suggested that Union producers could sell more steel bulb flats on the Union market.
- (247) In addition, there was no indication that importers or users will not be able to absorb the price increase that would result from the imposition of anti-dumping measures. The information provided by Baglietto did not allow determining the possibility for the absorption of the proposed anti-dumping duty by importers.
- (248) However, the verified data and statements of the cooperating user clearly showed that an increased cost of steel bulb flats would not be to the detriment of users. Steel bulb flats from the countries concerned represented less than 10 % of the user's total purchases of steel bulb flats in the investigation period. In addition, the cost of steel bulb flats accounted for a negligible part of Fincantieri's overall cost of production (less than 0,5 %) for all products that incorporate steel bulb flats. Therefore, any impact of the increased cost of steel bulb flats on Fincantieri's sizeable profit margin is expected to be very limited.
- (249) Moreover, regarding a potential lack of sources of supply, if anti-dumping measures were not imposed, this would be to the detriment of the Union industry's financial situation and may lead the two remaining Union producers to re-assess their investment strategies and focus on their other, currently more profitable production lines, effectively terminating Union production of steel bulb flats.
- (250) Under such circumstances, Union importers and users of steel bulb flats would become fully dependent on imports from third countries which concerned, according to all parties, in effect only China and Türkiye. In order not to become dependent on imports only from a very limited number of third country suppliers, a diversified source of supply remains necessary, including sources of supply within the Union. Imposing anti-dumping duties, which would restore competition and a level playing field for Union producers, would ensure the diversification and the possibility of supply source choice which all parties asked for.
- (251) In light of the above, the claims with regard to a potential lack of supply sources and a possible duopoly/monopoly situation were provisionally rejected.

- (252) As mentioned in recital 245, the Government of Türkiye made the additional argument that the Union industry is already protected via the safeguard measures currently in place against steel products, including steel bulb flats. ⁽⁶⁵⁾ However, safeguard measures are temporary and have a different rationale and objective than that of anti-dumping measures. Therefore, this claim related to the safeguard measures was provisionally rejected.

7.3. Conclusion on Union interest

- (253) On the basis of the above, the Commission concluded that there were no compelling reasons that it was not in the Union interest to impose measures on imports of steel bulb flats originating in China and Türkiye at this stage of the investigation.

8. PROVISIONAL ANTI-DUMPING MEASURES

- (254) On the basis of the conclusions reached by the Commission on dumping, injury, causation, level of measures and Union interest, provisional measures should be imposed to prevent further injury being caused to the Union industry by the dumped imports.
- (255) Provisional anti-dumping measures should be imposed on imports of steel bulb flats originating in the People's Republic of China and Türkiye, in accordance with the lesser duty rule in Article 7(2) of the basic Regulation. The Commission compared the injury margins and the dumping margins (recitals 229 – 236 above). The amount of the duties was set at the level of the lower of the dumping and the injury margins.
- (256) On the basis of the above, the provisional anti-dumping duty rates, expressed on the CIF Union border price, customs duty unpaid, should be as follows:

Country	Company	Provisional anti-dumping duty
The People's Republic of China	Changshu Longteng Special Steel Co., Ltd.	14,7 %
	All other companies	14,7 %
Türkiye	Türkiye Özkan Demir Çelik Sanayi A.Ş	13,6 %
	All other companies	13,6 %

- (257) To ensure a proper enforcement of the anti-dumping duties, the anti-dumping duty for all other companies should apply not only to the non-cooperating exporting producers in this investigation, but to the producers which did not have exports to the Union during the investigation period.

9. INFORMATION AT PROVISIONAL STAGE

- (258) In accordance with Article 19a of the basic Regulation, the Commission informed interested parties about the planned imposition of provisional duties. This information was also made available to the general public via DG TRADE's website. Interested parties were given three working days to provide comments on the accuracy of the calculations specifically disclosed to them.
- (259) The Turkish exporting producer Özkan Demir commented that domestic sales quantities had been erroneously rounded off, leading to a higher margin of dumping. After analysis, the Commission accepted this claim and corrected the error by using non-rounded off figures. It resulted in a change of the provisional anti-dumping margin from 14,3 % to 13,6 %.

⁽⁶⁵⁾ Commission Implementing Regulation (EU) 2022/978 of 23 June 2022 amending Implementing Regulation (EU) 2019/159 imposing a definitive safeguard measure on imports of certain steel products (OJ L 167, 24.6.2022, p. 58).

(260) The Chinese exporting producer Changshu Longteng also provided comments, but these were not related to the accuracy of the calculations. These comments will therefore be dealt with at the definitive stage of the investigation.

10. FINAL PROVISIONS

(261) In the interests of sound administration, the Commission will invite the interested parties to submit written comments and/or to request a hearing with the Commission and/or the Hearing Officer in trade proceedings within a fixed deadline.

(262) The findings concerning the imposition of provisional duties are provisional and may be amended at the definitive stage of the investigation,

HAS ADOPTED THIS REGULATION:

Article 1

1. A provisional anti-dumping duty is imposed on imports of non-alloy steel bulb flats in the range up to 204 mm width, currently falling under CN code ex 7216 50 91 (TARIC code 7216 50 91 10) and originating in the People's Republic of China and Türkiye.

2. The rates of the provisional anti-dumping duty applicable to the net, free-at-Union-frontier price, before duty, of the product described in paragraph 1 and produced by the companies listed below shall be as follows:

Country	Company	Provisional anti-dumping duty	TARIC additional code
The People's Republic of China	Changshu Longteng Special Steel Co., Ltd.	14,7 %	899J
The People's Republic of China	All other companies	14,7 %	8999
Türkiye	Türkiye Özkan Demir Çelik Sanayi A.Ş	13,6 %	899K
Türkiye	All other companies	13,6 %	8999

3. The release for free circulation in the Union of the product referred to in paragraph 1 shall be subject to the provision of a security deposit equivalent to the amount of the provisional duty.

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

Article 2

1. Interested parties shall submit their written comments on this regulation to the Commission within 15 calendar days of the date of entry into force of this Regulation.

2. Interested parties wishing to request a hearing with the Commission shall do so within 5 calendar days of the date of entry into force of this Regulation.

3. Interested parties wishing to request a hearing with the Hearing Officer in trade proceedings are invited to do so within 5 calendar days of the date of entry into force of this Regulation. The Hearing Officer may examine requests submitted outside this time limit and may decide whether to accept such requests if appropriate.

Article 3

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

Article 1 shall apply for a period of six months.

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

Done at Brussels, 11 July 2023.

For the Commission
The President
Ursula VON DER LEYEN

ACTS ADOPTED BY BODIES CREATED BY INTERNATIONAL AGREEMENTS

DECISION No 1/2023 OF THE JOINT COMMITTEE ESTABLISHED BY THE EURO-MEDITERRANEAN AVIATION AGREEMENT BETWEEN THE EUROPEAN UNION AND ITS MEMBER STATES, OF THE ONE PART, AND THE GOVERNMENT OF THE STATE OF ISRAEL, OF THE OTHER PART

of 4 July 2023

replacing Annex IV to the Euro-Mediterranean Aviation Agreement between the European Union and its Member States, of the one part, and the government of the State of Israel, of the other part [2023/1445]

THE JOINT COMMITTEE,

Having regard to the Euro-Mediterranean Aviation Agreement between the European Union and its Member States, of the one part, and the government of the State of Israel, of the other part ⁽¹⁾, and in particular Article 27(6) thereof,

HAS DECIDED AS FOLLOWS:

Sole Article

Annex IV to the Euro-Mediterranean Aviation Agreement between the European Union and its Member States, of the one part, and the government of the State of Israel, of the other part, is replaced by the text in the Annex to this Decision as from 1 August 2023.

Done at Tel Aviv, on 4 July 2023.

For the Joint Committee

The Head of the European Union Delegation
Klaus GEIL

The Head of the Delegation of the government of Israel
Ishay DON-YEHIYA

⁽¹⁾ OJ L 208, 2.8.2013, p. 3.

ANNEX

ANNEX IV

RULES RELATING TO CIVIL AVIATION

The equivalent regulatory requirements and standards of European Union legislation referred to in this Agreement shall be delivered on the basis of the following acts. Where necessary, specific adaptations for each individual act are set out hereafter. The equivalent regulatory requirements and standards shall be applicable in accordance with Annex VI unless otherwise specified in this Annex or in Annex II on Transitional Provisions.

A. AVIATION SAFETY

A.1 List of air carriers subject to an operating ban

Israel shall, at the earliest possible, take measures corresponding to those taken by the EU Member States on the basis of the list of air carriers which are subject to an operating ban due to safety reasons.

The measures will be taken according to the relevant rules regarding the establishment and publication of a list of air carriers, which are subject to an operating ban and the information requirements to air passengers of the identity of the air carrier operating the flights on which they travel, established in the following EU legislation:

Regulation (EC) No 2111/2005 of the European Parliament and of the Council of 14 December 2005 on the establishment of a Community list of air carriers subject to an operating ban within the Community and on informing air transport passengers of the identity of the operating air carrier, and repealing Article 9 of Directive 2004/36/EC (Text with EEA relevance), OJ L 344, 27.12.2005, p. 15, as amended by:

- Regulation (EU) 2018/1139 of 4 July 2018, OJ L 212, 22.8.2018, p. 1;
- Regulation (EU) 2019/1243 of 20 June 2019, OJ L 198, 25.7.2019, p. 241.

Relevant provisions: Articles 1 to 13, Annex

Commission Regulation (EC) No 473/2006 of 22 March 2006 laying down implementing rules for the Community list of air carriers which are subject to an operating ban within the Community referred to in Chapter II of Regulation (EC) No 2111/2005 of the European Parliament and of the Council (Text with EEA relevance), OJ L 84, 23.3.2006, p. 8.

Relevant provisions: Articles 1 to 6, Annexes A to C

Commission Regulation (EC) No 474/2006 of 22 March 2006 establishing the Community list of air carriers which are subject to an operating ban within the Community referred to in Chapter II of Regulation (EC) No 2111/2005 of the European Parliament and of the Council (Text with EEA relevance), OJ L 84, 23.3.2006, p. 14, as regularly amended by Commission Regulations.

Relevant provisions: Articles 1 to 3, Annexes A to B

In case a measure raises serious concerns for Israel, Israel may suspend its application and shall, without undue delay, refer the matter to the Joint Committee pursuant to Article 22(11), point (f), of this Agreement.

A.2 Accident/incident investigation and occurrence reporting**A.2.1: Regulation (EU) No 996/2010**

Regulation (EU) No 996/2010 of the European Parliament and of the Council of 20 October 2010 on the investigation and prevention of accidents and incidents in civil aviation and repealing Directive 94/56/EC (Text with EEA relevance), OJ L 295, 12.11.2010, p. 35, as amended by:

- Regulation (EU) No 376/2014 of 3 April 2014, OJ L 122, 24.4.2014, p. 18;
- Regulation (EU) 2018/1139 of 4 July 2018, OJ L 212, 22.8.2018, p. 1.

Relevant provisions: Articles 1 to 5, Articles 8 to 18(2), Articles 20, 21, 23, Annex.

NB:

Commission Implementing Decision (EU) 2019/1128 of 1 July 2019 on access rights to safety recommendations and responses stored in the European Central Repository and repealing Decision 2012/780/EU (Text with EEA relevance), OJ L 177, 2.7.2019, p. 112.

A.2.2: Regulation (EU) No 376/2014

Regulation (EU) No 376/2014 of the European Parliament and of the Council of 3 April 2014 on the reporting, analysis and follow-up of occurrences in civil aviation, amending Regulation (EU) No 996/2010 of the European Parliament and of the Council and repealing Directive 2003/42/EC of the European Parliament and of the Council and Commission Regulations (EC) No 1321/2007 and (EC) No 1330/2007 (Text with EEA relevance), OJ L 122, 24.4.2014, p. 18, as amended by:

- Regulation (EU) 2018/1139 of 4 July 2018, OJ L 212, 22.8.2018, p. 1.

Relevant provisions: Articles 1 to 7; Article 9(3); Article 10(2) to (4); Article 11(1) and (7); Article 13 with the exception of paragraph 9; Articles 14 to 16; Articles 21 to 23; Article 24(3), Annexes I to III.

Commission Delegated Regulation (EU) 2020/2034 of 6 October 2020 supplementing Regulation (EU) No 376/2014 of the European Parliament and of the Council as regards the common European risk classification scheme (Text with EEA relevance), OJ L 416, 11.12.2020, p. 1.

Commission Implementing Regulation (EU) 2015/1018 of 29 June 2015 laying down a list classifying occurrences in civil aviation to be mandatorily reported according to Regulation (EU) No 376/2014 of the European Parliament and of the Council (Text with EEA relevance), OJ L 163, 30.6.2015, p. 1.

Relevant provisions: Articles 1 to 2, Annexes I to V.

B. AIR TRAFFIC MANAGEMENT

BASIC REGULATIONS

Section A:

B.1: Regulation (EC) No 549/2004

Regulation (EC) No 549/2004 of the European Parliament and of the Council of 10 March 2004 laying down the framework for the creation of the single European sky (the framework Regulation) (Text with EEA relevance), OJ L 96, 31.3.2004, p. 1, as amended by:

- Regulation (EC) No 1070/2009 of 21 October 2009, OJ L 300, 14.11.2009, p. 34.

Relevant provisions: Article 1(1) to (3), Article 2, Article 4(1) to (4), Articles 9, 10, Article 11(1), (2), (3)(b) and (d), (4) to (6), Article 13.

In order to implement the requirements of Article 11 of Regulation (EC) No 549/2004, Israel shall develop and put in place a national performance scheme including:

- National performance targets in the key performance areas of safety, environment, capacity and cost-efficiency. The targets shall be set by a governmental mechanism after taking into account input from the national supervisory authority;
- A performance plan consistent with the performance targets and including information on ATM investments, in particular those relating to the alignment with SESAR deployment plans including common projects. The performance plan shall be drawn up by the air navigation service provider after consultation of airspace users;

The consistency of the performance plan with the national performance targets shall be assessed by the national supervisory authority, which, in case of inconsistency, may decide to issue a recommendation that the ANSP propose revised performance targets and appropriate measures. Where the national supervisory authority finds that the revised performance targets and appropriate measures are not adequate, it may decide that the ANSP take corrective measures.

The reference period for the performance scheme shall be decided by Israel and will be reported to the Joint Committee.

The national supervisory authority shall carry out regular assessments of the achievement of the performance targets.

B.2: Regulation (EC) No 550/2004

Regulation (EC) No 550/2004 of the European Parliament and of the Council of 10 March 2004 on the provision of air navigation services in the single European sky (the service provision Regulation) (Text with EEA relevance), OJ L 96, 31.3.2004, p. 10, as amended by:

— Regulation (EC) No 1070/2009 of 21 October 2009, OJ L 300, 14.11.2009, p. 34.

Relevant provisions: Article 2(1), (2), and (4) to (6), Article 4, Article 7(1), (2), (4) to (5), and (7), Article 8(1), (3), and (4), Articles 9, 10, 11, Article 12(1) to (4), Article 18(1) and (2), Annex II

B.3: Regulation (EC) No 551/2004

Regulation (EC) No 551/2004 of the European Parliament and of the Council of 10 March 2004 on the organisation and use of the airspace in the single European sky (the airspace Regulation) (Text with EEA relevance), OJ L 96, 31.3.2004, p. 20, as amended by:

— Regulation (EC) No 1070/2009 of 21 October 2009, OJ L 300, 14.11.2009, p. 34.

Relevant provisions: Article 1, Article 3a, Article 4, Article 6(1) to (5), and (7), Article 7(1) and (3), Article 8

B.4: Regulation (EC) No 552/2004

Regulation (EC) No 552/2004 of the European Parliament and of the Council of 10 March 2004 on the interoperability of the European Air Traffic Management network (the interoperability Regulation) (Text with EEA relevance), OJ L 96, 31.3.2004, p. 26, as amended by:

— Regulation (EC) No 1070/2009 of 21 October 2009, OJ L 300, 14.11.2009, p. 34.

Relevant provisions: Articles 1 to 3, Article 4(2), Article 5 to 6a, Article 7(1), Article 8, Annexes I to V

NB: This Regulation (552/2004) has been repealed by Regulation (EU) 2018/1139 with effect from 11 September 2018. However, Articles 4, 5, 6, 6a and 7 of that Regulation and Annexes III and IV thereto shall continue to apply until the date of application of the delegated acts referred to in Article 47 of this Regulation and insofar as those acts cover the subject matter of the relevant provisions of Regulation (EC) No 552/2004, and in any case not later than 12 September 2023.

Regulations No 549/2004 to 552/2004 amended by Regulation (EC) No 1070/2009 of the European Parliament and of the Council of 21 October 2009 amending Regulations (EC) No 549/2004, (EC) No 550/2004, (EC) No 551/2004 and (EC) No 552/2004 in order to improve the performance and sustainability of the European aviation system.

B.5: Regulation (EU) 2018/1139

Regulation (EU) 2018/1139 of the European Parliament and of the Council of 4 July 2018 on common rules in the field of civil aviation and establishing a European Union Aviation Safety Agency, and amending Regulations (EC) No 2111/2005, (EC) No 1008/2008, (EU) No 996/2010, (EU) No 376/2014 and Directives 2014/30/EU and 2014/53/EU of the European Parliament and of the Council, and repealing Regulations (EC) No 552/2004 and (EC) No 216/2008 of the European Parliament and of the Council and Council Regulation (EEC) No 3922/91 (Text with EEA relevance.), OJ L 212, 22.8.2018, p. 1, as amended by:

— Commission Delegated Regulation (EU) 2021/1087 of 7 April 2021, OJ L 236, 5.7.2021, p. 1.

Relevant provisions: Articles 1 to 3, 40 to 54, Annex VIII

Section B:**B.2: Regulation (EC) No 550/2004**

Regulation (EC) No 550/2004 of the European Parliament and of the Council of 10 March 2004 on the provision of air navigation services in the single European sky (the service provision Regulation) (text with EEA relevance), OJ L 96, 31.3.2004, p. 10, as amended by:

— Regulation (EC) No 1070/2009 of 21 October 2009, OJ L 300, 14.11.2009, p. 34.

Relevant provisions: Article 2(3), Article 7(6) and (8), Article 8(2) and (5), Article 9a(1) to (5), Article 13

B.3: Regulation (EC) No 551/2004

Regulation (EC) No 551/2004 of the European Parliament and of the Council of 10 March 2004 on the organisation and use of the airspace in the single European sky (the airspace Regulation) (text with EEA relevance), OJ L 96, 31.3.2004, p. 20, as amended by:

— Regulation (EC) No 1070/2009 of 21 October 2009, OJ L 300, 14.11.2009, p. 34.

Relevant provisions: Article 3, Article 6(6)

Regulations No 549/2004 to 552/2004 amended by Regulation (EC) No 1070/2009 of the European Parliament and of the Council of 21 October 2009 amending Regulations (EC) No 549/2004, (EC) No 550/2004, (EC) No 551/2004 and (EC) No 552/2004 in order to improve the performance and sustainability of the European aviation system.

B.5: Regulation (EU) 2018/1139

Regulation (EU) 2018/1139 of the European Parliament and of the Council of 4 July 2018 on common rules in the field of civil aviation and establishing a European Union Aviation Safety Agency, and amending Regulations (EC) No 2111/2005, (EC) No 1008/2008, (EU) No 996/2010, (EU) No 376/2014 and Directives 2014/30/EU and 2014/53/EU of the European Parliament and of the Council, and repealing Regulations (EC) No 552/2004 and (EC) No 216/2008 of the European Parliament and of the Council and Council Regulation (EEC) No 3922/91 (Text with EEA relevance.), OJ L 212, 22.8.2018, p. 1, as amended by:

— Commission Delegated Regulation (EU) 2021/1087 of 7 April 2021, OJ L 236, 5.7.2021, p. 1.

Relevant provisions: Articles 1 to 3, 40 to 54, Annex VIII

IMPLEMENTING RULES

The following acts will be applicable and relevant unless otherwise specified in Annex VI with respect to the equivalent regulatory requirements and standards relating to the 'Basic Regulations':

Service provision (Regulation (EC) No 550/2004)

Commission Implementing Regulation (EU) 2017/373 of 1 March 2017 laying down common requirements for providers of air traffic management/air navigation services and other air traffic management network functions and their oversight, repealing Regulation (EC) No 482/2008, Implementing Regulations (EU) No 1034/2011, (EU) No 1035/2011 and (EU) 2016/1377 and amending Regulation (EU) No 677/2011 (text with EEA relevance), OJ L 62, 8.3.2017, p. 1, as amended by:

— Commission Implementing Regulation (EU) 2020/469 of 14 February 2020, OJ L 104, 3.4.2020, p. 1, as amended by:

— Commission Implementing Regulation (EU) 2020/1177 of 7 August 2020, OJ L 259, 10.8.2020, p. 12.

— Commission Implementing Regulation (EU) 2021/1338 of 11 August 2021, OJ L 289, 12.8.2021, p. 12.

— Commission Implementing Regulation (EU) 2022/938 of 26 July 2022, OJ L 209, 10.8.2022, p. 1.

Israel may keep its meteorological services provider as a governmental body.

Commission Implementing Regulation (EU) No 409/2013 of 3 May 2013 on the definition of common projects, the establishment of governance and the identification of incentives supporting the implementation of the European Air Traffic Management Master Plan (Text with EEA relevance), OJ L 123, 4.5.2013, p. 1, as amended by:

— Commission Implementing Regulation (EU) 2021/116 of 1 February 2021, OJ L 36, 2.2.2021, p. 10.

Commission Implementing Regulation (EU) 2021/116 of 1 February 2021 on the establishment of the Common Project One supporting the implementation of the European Air Traffic Management Master Plan provided for in Regulation (EC) No 550/2004 of the European Parliament and of the Council, amending Commission Implementing Regulation (EU) No 409/2013 and repealing Commission Implementing Regulation (EU) No 716/2014 (Text with EEA relevance), OJ L 36, 2.2.2021, p. 10.

Airspace (Regulation (EC) No 551/2004)

Commission Regulation (EU) No 255/2010 of 25 March 2010 laying down common rules on air traffic flow management (Text with EEA relevance), OJ L 80, 26.3.2010, p. 10, as amended by:

— Commission Implementing Regulation (EU) No 923/2012 of 26 September 2012, OJ L 281, 13.10.2012, p. 1, as amended by:

— Commission Implementing Regulation (EU) 2020/886 of 26 June 2020, OJ L 205, 29.6.2020, p. 14,

— Commission Implementing Regulation (EU) 2020/469 of 14 February 2020, OJ L 104, 3.4.2020, p. 1, as amended by:

— Commission Implementing Regulation (EU) 2020/1177 of 7 August 2020, OJ L 259, 10.8.2020, p. 12,

— Commission Implementing Regulation (EU) 2016/1006 of 22 June 2016, OJ L 165, 23.6.2016, p. 8,

— Commission Implementing Regulation (EU) 2017/2159 of 20 November 2017, OJ L 304, 21.11.2017, p. 45.

Commission Implementing Regulation (EU) No 923/2012 of 26 September 2012 laying down the common rules of the air and operational provisions regarding services and procedures in air navigation and amending Implementing Regulation (EU) No 1035/2011 and Regulations (EC) No 1265/2007, (EC) No 1794/2006, (EC) No 730/2006, (EC) No 1033/2006 and (EU) No 255/2010 (Text with EEA relevance), OJ L 281, 13.10.2012, p. 1, as amended by:

— Commission Regulation (EU) 2015/340 of 20 February 2015, OJ L 63, 6.3.2015, p. 1,

— Commission Implementing Regulation (EU) 2016/1185 of 20 July 2016, OJ L 196, 21.7.2016, p. 3,

— Commission Implementing Regulation (EU) 2020/469 of 14 February 2020, OJ L 104, 3.4.2020, p. 1, as amended by:

— Commission Implementing Regulation (EU) 2020/1177 of 7 August 2020, OJ L 259, 10.8.2020, p. 12,

— Commission Implementing Regulation (EU) 2020/886 of 26 June 2020, OJ L 205, 29.6.2020, p. 14.

Commission Regulation (EC) No 2150/2005 of 23 December 2005 laying down common rules for the flexible use of airspace (Text with EEA relevance), OJ L 342, 24.12.2005, p. 20.

Commission Implementing Regulation (EU) 2019/123 of 24 January 2019 laying down detailed rules for the implementation of air traffic management (ATM) network functions and repealing Commission Regulation (EU) No 677/2011 (Text with EEA relevance), OJ L 28, 31.1.2019, p. 1.

Interoperability Regulation (EC) No 552/2004

Commission Regulation (EC) No 262/2009 of 30 March 2009 laying down requirements for the coordinated allocation and use of Mode S interrogator codes for the single European sky (text with EEA relevance), OJ L 84, 31.3.2009, p. 20, as amended by:

— Commission Implementing Regulation (EU) 2016/2345 of 14 December 2016, OJ L 348, 21.12.2016, p. 11.

Commission Regulation (EC) No 633/2007 of 7 June 2007 laying down requirements for the application of a flight message transfer protocol used for the purpose of notification, coordination and transfer of flights between air traffic control units (text with EEA relevance), OJ L 146, 8.6.2007, p. 7, as amended by:

— Commission Regulation (EU) No 283/2011 of 22 March 2011, OJ L 77, 23.3.2011, p. 23.

Commission Regulation (EC) No 1033/2006 of 4 July 2006 laying down the requirements on procedures for flight plans in the pre-flight phase for the single European sky (Text with EEA relevance), OJ L 186, 7.7.2006, p. 46, as amended by:

— Commission Implementing Regulation (EU) No 923/2012 of 26 September 2012, OJ L 281, 13.10.2012, p. 1, as amended by:

— Commission Implementing Regulation (EU) 2020/886 of 26 June 2020, OJ L 205, 29.6.2020, p. 14,

— Commission Implementing Regulation (EU) 2020/469 of 14 February 2020, OJ L 104, 3.4.2020, p. 1, as amended by:

— Commission Implementing Regulation (EU) 2020/1177 of 7 August 2020, OJ L 259, 10.8.2020, p. 12,

— Commission Implementing Regulation (EU) No 428/2013 of 8 May 2013, OJ L 127, 9.5.2013, p. 23,

— Commission Implementing Regulation (EU) 2016/2120 of 2 December 2016, OJ L 329, 3.12.2016, p. 70,

— Commission Implementing Regulation (EU) 2018/139 of 29 January 2018, OJ L 25, 30.1.2018, p. 4.

Commission Regulation (EC) No 1032/2006 of 6 July 2006 laying down requirements for automatic systems for the exchange of flight data for the purpose of notification, coordination and transfer of flights between air traffic control units (Text with EEA relevance), OJ L 186, 7.7.2006, p. 27, as amended by:

Commission Regulation (EC) No 30/2009 of 16 January 2009, OJ L 13, 17.1.2009, p. 20.

Commission Implementing Regulation (EU) No 1206/2011 of 22 November 2011 laying down requirements on aircraft identification for surveillance for the single European sky (Text with EEA relevance), OJ L 305, 23.11.2011, p. 23, as amended by:

Commission Implementing Regulation (EU) 2020/587 of 29 April 2020, OJ L 138, 30.4.2020, p. 1.

Commission Implementing Regulation (EU) No 1207/2011 of 22 November 2011 laying down requirements for the performance and the interoperability of surveillance for the single European sky (Text with EEA relevance), OJ L 305, 23.11.2011, p. 35, as amended by:

Commission Implementing Regulation (EU) No 1028/2014 of 26 September 2014, OJ L 284, 30.9.2014, p. 7,

Commission Implementing Regulation (EU) 2017/386 of 6 March 2017, OJ L 59, 7.3.2017, p. 34,

Commission Implementing Regulation (EU) 2020/587 of 29 April 2020, OJ L 138, 30.4.2020, p. 1.

Commission Regulation (EC) No 29/2009 of 16 January 2009 laying down requirements on data link services for the single European sky (Text with EEA relevance), OJ L 13, 17.1.2009, p. 3, as amended by:

Commission Implementing Regulation (EU) 2015/310 of 26 February 2015, OJ L 56, 27.2.2015, p. 30,

Commission Implementing Regulation (EU) 2019/1170 of 8 July 2019, OJ L 183, 9.7.2019, p. 6,

Commission Implementing Decision (EU) 2019/2012 of 29 November 2019, OJ L 312, 3.12.2019, p. 95,

Commission Implementing Regulation (EU) 2020/208 of 14 February 2020, OJ L 43, 17.2.2020, p. 72.

The Joint Committee shall take a Decision on the date starting from which Israel must apply requirements and standards equivalent to Regulation (EC) No 29/2009. Until such Decision is adopted by the Joint Committee, Regulation (EC) No 29/2009 shall be considered as not being part of this Annex for the purposes of the evaluation provided for in point 5 of Annex II.

ATM/ANS requirements stemming from Regulation (EU) 2018/1139

Commission Regulation (EU) 2015/340 of 20 February 2015 laying down technical requirements and administrative procedures relating to air traffic controllers' licences and certificates pursuant to Regulation (EC) No 216/2008 of the European Parliament and of the Council, amending Commission Implementing Regulation (EU) No 923/2012 and repealing Commission Regulation (EU) No 805/2011 (Text with EEA relevance), OJ L 63, 6.3.2015, p. 1.

Israel shall not be required to establish medical aerial centres as institutions. The equivalency assessment shall focus on the actual requirements for aeromedical examiners and medical standards.

Commission Implementing Regulation (EU) 2017/373 of 1 March 2017 laying down common requirements for providers of air traffic management/air navigation services and other air traffic management network functions and their oversight, repealing Regulation (EC) No 482/2008, Implementing Regulations (EU) No 1034/2011, (EU) No 1035/2011 and (EU) 2016/1377 and amending Regulation (EU) No 677/2011 (Text with EEA relevance), OJ L 62, 8.3.2017, p. 1, as amended by:

Commission Implementing Regulation (EU) 2020/469 of 14 February 2020, OJ L 104, 3.4.2020, p. 1, as amended by:

— Commission Implementing Regulation (EU) 2020/1177 of 7 August 2020, OJ L 259, 10.8.2020, p. 12.

Commission Implementing Regulation (EU) 2021/1338 of 11 August 2021, OJ L 289, 12.8.2021, p. 12.

Commission Implementing Regulation (EU) 2022/938 of 26 July 2022, OJ L 209, 10.8.2022, p. 1.

Israel shall not be required to establish a provider of Communication, navigation or surveillance services (CNS) that is independent from the provider(s) of other air navigation services (ANSP), and to certify it independently from other ANSP provider(s). When certifying the ANSP who is also responsible for the provision of CNS, Israel shall verify if requirements provided for in Article 6 a-c and Annex VIII to Regulation (EU) 2017/373 are met, and shall not be required to verify the independence of the CNS provider from the provider(s) of other air navigation services.

C. ENVIRONMENT

C.1: Regulation (EU) No 598/2014

Regulation (EU) No 598/2014 of the European Parliament and of the Council of 16 April 2014 on the establishment of rules and procedures with regard to the introduction of noise-related operating restrictions at Union airports within a Balanced Approach and repealing Directive 2002/30/EC, OJ L 173, 12.6.2014, p. 65.

Relevant provisions: Articles 3, 4, 5, 6, 8, 10, Annex I and II

Directive 2002/49/EC of the European Parliament and of the Council of 25 June 2002 relating to the assessment and management of environmental noise, OJ L 189, 18.7.2002, p. 12, as amended by:

Regulation (EC) No 1137/2008 of 22 October 2008, OJ L 311, 21.11.2008, p. 1,

Commission Directive (EU) 2015/996 of 19 May 2015, OJ L 168, 1.7.2015, p. 1,

Regulation (EU) 2019/1010 of 5 June 2019, OJ L 170, 25.6.2019, p. 115,

Regulation (EU) 2019/1243 of 20 June 2019, OJ L 198, 25.7.2019, p. 241,
Commission Directive (EU) 2020/367 of 4 March 2020, OJ L 67, 5.3.2020, p. 132.
Relevant provisions: as necessary for the correct application of Regulation (EU) No 598/2014.

C.2: Directive 2006/93/EC

Directive 2006/93/EC of the European Parliament and of the Council of 12 December 2006 on the regulation of the operation of aeroplanes covered by Part II, Chapter 3, Volume 1 of Annex 16 to the Convention on International Civil Aviation, second edition (1988) (codified version) (Text with EEA relevance), OJ L 374, 27.12.2006, p. 1.

Relevant provisions: Articles 1 to 3, 5

D. AIR CARRIER LIABILITY

D.1: Council Regulation (EC) No 2027/97

Council Regulation (EC) No 2027/97 of 9 October 1997 on air carrier liability in respect of the carriage of passengers and their baggage by air, OJ L 285, 17.10.1997, p. 1, as amended by:

Regulation (EC) No 889/2002 of 13 May 2002, OJ L 140, 30.5.2002, p. 2.

Relevant provisions: Article 2(1)(a) and (c) to (g), Articles 3 to 6

E. CONSUMER RIGHTS AND PROTECTION OF PERSONAL DATA

E.2: Regulation (EU) 2016/679

Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) (Text with EEA relevance), OJ L 119, 4.5.2016, p. 1.

Relevant provisions: Where relevant for civil aviation.

E.3: Regulation (EC) No 261/2004

Regulation (EC) No 261/2004 of the European Parliament and of the Council of 11 February 2004 establishing common rules on compensation and assistance to passengers in the event of denied boarding and of cancellation or long delay of flights, and repealing Regulation (EEC) No 295/91 (Text with EEA relevance), OJ L 46, 17.2.2004, p. 1.

Relevant provisions: Articles 1 to 16

E.4: Regulation (EC) No 1107/2006

Regulation (EC) No 1107/2006 of the European Parliament and of the Council of 5 July 2006 concerning the rights of disabled persons and persons with reduced mobility when travelling by air (Text with EEA relevance), OJ L 204, 26.7.2006, p. 1.

Relevant provisions: Article 1(1), Articles 2 to 16, Annexes I to II

F. SOCIAL ASPECTS

F.1: Council Directive 2000/79/EC

Council Directive 2000/79/EC of 27 November 2000 concerning the European agreement on the organisation of working time of mobile workers in civil aviation concluded by the Association of European Airlines (AEA), the European Transport Workers' Federation (ETF), the European Cockpit Association (ECA), the European Regions Airline Association (ERA) and the International Air Carrier Association (IACA) (Text with EEA relevance), OJ L 302, 1.12.2000, p. 57.

Relevant provisions: Clause 1(1) and Clauses 2 to 9 of the Annex'

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