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## Contents

### I *Legislative acts*

#### REGULATIONS

- ★ **Regulation (EU) 2022/2379 of the European Parliament and of the Council of 23 November 2022 on statistics on agricultural input and output, amending Commission Regulation (EC) No 617/2008 and repealing Regulations (EC) No 1165/2008, (EC) No 543/2009 and (EC) No 1185/2009 of the European Parliament and of the Council and Council Directive 96/16/EC <sup>(1)</sup>** ..... 1

#### DIRECTIVES

- ★ **Directive (EU) 2022/2380 of the European Parliament and of the Council of 23 November 2022 amending Directive 2014/53/EU on the harmonisation of the laws of the Member States relating to the making available on the market of radio equipment <sup>(1)</sup>** ..... 30
- ★ **Directive (EU) 2022/2381 of the European Parliament and of the Council of 23 November 2022 on improving the gender balance among directors of listed companies and related measures <sup>(1)</sup>** .... 44

### II *Non-legislative acts*

#### REGULATIONS

- ★ **Commission Regulation (EU) 2022/2382 of 1 December 2022 establishing a fisheries closure for undulate ray in Union waters of 9 for vessels flying the flag of Portugal** ..... 60
- ★ **Commission Regulation (EU) 2022/2383 of 6 December 2022 amending Regulation (EU) No 582/2011 as regards the emissions type-approval of heavy duty vehicles using pure biodiesel <sup>(1)</sup>** ..... 63

<sup>(1)</sup> Text with EEA relevance.

EN

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

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

## DECISIONS

- ★ **Council Decision (EU) 2022/2384 of 25 November 2022 on the approval, on behalf of the European Union, of the modification of the Union's Schedule of Specific Commitments under the General Agreement on Trade in Services (GATS) to incorporate Annex 1 to the Declaration on the Conclusion of Negotiations on Services Domestic Regulation** ..... 71
- ★ **Council Implementing Decision (EU) 2022/2385 of 6 December 2022 amending Implementing Decision 2013/805/EU authorising the Republic of Poland to introduce measures derogating from point (a) of Article 26(1) and Article 168 of Directive 2006/112/EC on the common system of value added tax** ..... 87
- ★ **Commission Implementing Decision (EU) 2022/2386 of 5 December 2022 concerning the extension of the actions permitting the making available on the market and use of the biocidal product Biobor JF in accordance with Regulation (EU) No 528/2012 of the European Parliament and of the Council** (*notified under document C(2022) 8673*) ..... 89

## I

*(Legislative acts)*

## REGULATIONS

**REGULATION (EU) 2022/2379 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL****of 23 November 2022****on statistics on agricultural input and output, amending Commission Regulation (EC) No 617/2008 and repealing Regulations (EC) No 1165/2008, (EC) No 543/2009 and (EC) No 1185/2009 of the European Parliament and of the Council and Council Directive 96/16/EC****(Text with EEA relevance)**

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 338(1) thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Acting in accordance with the ordinary legislative procedure <sup>(1)</sup>,

Whereas:

- (1) A transparent, comprehensive and reliable statistical knowledge base is necessary to design, implement, monitor, evaluate and review Union policies related to agriculture, in particular the common agricultural policy (CAP), including rural development measures, as well as Union policies relating to, inter alia, the environment, climate change adaptation and mitigation, land use, regions, public health, food safety, plant protection, sustainable use of pesticides, veterinary medicinal usage and the sustainable development goals of the United Nations. Those statistics can also be useful for the purposes of monitoring and assessment of the impact of agriculture on pollinators and vital soil organisms.
- (2) The collection of statistical data, in particular on agricultural input and output, should aim, inter alia, to inform an evidence-based decision-making process with updated, high-quality and accessible data, in particular the data necessary for the development of agro-environmental indicators, and to support and evaluate the progress of the European Green Deal with the related Farm to Fork Strategy and the Biodiversity Strategy, the zero pollution action plan and the action plan for organic production in the Union, and future CAP reforms. A key element for the achievement of the European Green Deal objectives is the transition towards multifunctional agriculture capable of producing safe and sufficient food while providing positive environmental outputs.
- (3) High-quality harmonised, coherent and comparable statistical data are important for the assessment of the state and trends of agricultural input and output in the Union in order to provide meaningful and precise data on the environmental and economic impact of agriculture and on the pace of the transition to more sustainable agricultural practices. The data collected should also relate to the functioning of markets and food security, so as to ensure access to sufficient and high-quality food, and to the assessment of the sustainability as well as the

<sup>(1)</sup> Position of the European Parliament of 4 October 2022 (not yet published in the Official Journal) and decision of the Council of 8 November 2022.

environmental, economic and social impacts and performance of Union and national policies, as well as to the assessment of the sustainability and impact of the development of new business models. Those data include, but are not limited to, livestock and meat statistics, the production and use of eggs and the production and use of milk and milk products. Statistics on the area, yield and production of arable crops, vegetables, permanent crops and grasslands and commodity balances are also important. Moreover, statistics on the sales and use of plant protection products, fertilisers and veterinary medicinal products, in particular antibiotics in feeding stuffs, are needed.

- (4) An international evaluation of agricultural statistics led to the creation of a global strategy of the Food and Agriculture Organization of the United Nations for improving agricultural and rural statistics. That global strategy was endorsed by the United Nations Statistical Commission in 2010. European agricultural statistics should, where appropriate, follow the recommendations of that global strategy.
- (5) Regulation (EC) No 223/2009 of the European Parliament and of the Council <sup>(2)</sup> establishes a legal framework for the development, production and dissemination of European statistics based on common statistical principles. That Regulation sets out quality criteria and refers to the need to minimise the response burden on survey respondents and to contribute to the more general objective of reducing the administrative burden.
- (6) The Strategy for Agricultural Statistics for 2020 and beyond, endorsed by the European Statistical System Committee (ESSC) in November 2015, envisages the adoption of two framework regulations covering all aspects of Union legislation on agricultural statistics, with the exception of economic accounts for agriculture (EAA). This Regulation is one of those two framework regulations and should complement the framework regulation which has already been adopted, namely Regulation (EU) 2018/1091 of the European Parliament and of the Council <sup>(3)</sup>.
- (7) European statistics on agricultural input and output are currently collected, produced and disseminated on the basis of a number of legal acts. The current legal framework does not provide proper consistency across the different statistical domains, nor does it promote an integrated approach towards the development, production and dissemination of agricultural statistics designed to cover the economic and environmental aspects of agriculture. This Regulation should replace those legal acts for the purposes of harmonisation and comparability of information and, to ensure consistency and coordination across European agricultural statistics, facilitate the integration and streamlining of the corresponding statistical processes and enable a more holistic approach. It is therefore necessary to repeal those legal acts, namely Regulations (EC) No 1165/2008 <sup>(4)</sup>, (EC) No 543/2009 <sup>(5)</sup> and (EC) No 1185/2009 <sup>(6)</sup> of the European Parliament and of the Council and Council Directive 96/16/EC <sup>(7)</sup>. The numerous related European Statistical System's (ESS) agreements and 'gentlemen's agreements' between the national statistical institutes (NSIs) and the Commission (Eurostat) on data transmission should be integrated into this Regulation where there has been evidence that the data fulfil user needs, that the agreed methodology works and that the data are of appropriate quality.

<sup>(2)</sup> Regulation (EC) No 223/2009 of the European Parliament and of the Council of 11 March 2009 on European statistics and repealing Regulation (EC, Euratom) No 1101/2008 of the European Parliament and of the Council on the transmission of data subject to statistical confidentiality to the Statistical Office of the European Communities, Council Regulation (EC) No 322/97 on Community Statistics, and Council Decision 89/382/EEC, Euratom establishing a Committee on the Statistical Programmes of the European Communities (OJ L 87, 31.3.2009, p. 164).

<sup>(3)</sup> Regulation (EU) 2018/1091 of the European Parliament and of the Council of 18 July 2018 on integrated farm statistics and repealing Regulations (EC) No 1166/2008 and (EU) No 1337/2011 (OJ L 200, 7.8.2018, p. 1).

<sup>(4)</sup> Regulation (EC) No 1165/2008 of the European Parliament and of the Council of 19 November 2008 concerning livestock and meat statistics and repealing Council Directives 93/23/EEC, 93/24/EEC and 93/25/EEC (OJ L 321, 1.12.2008, p. 1).

<sup>(5)</sup> Regulation (EC) No 543/2009 of the European Parliament and of the Council of 18 June 2009 concerning crop statistics and repealing Council Regulations (EEC) No 837/90 and (EEC) No 959/93 (OJ L 167, 29.6.2009, p. 1).

<sup>(6)</sup> Regulation (EC) No 1185/2009 of the European Parliament and of the Council of 25 November 2009 concerning statistics on pesticides (OJ L 324, 10.12.2009, p. 1).

<sup>(7)</sup> Council Directive 96/16/EC of 19 March 1996 on statistical surveys of milk and milk products (OJ L 78, 28.3.1996, p. 27).

- (8) The statistics required in accordance with Commission Regulation (EC) No 617/2008 <sup>(8)</sup> have been collected within the ESS, meeting some but not all of its quality standards. Those statistics support Union and national policies in the longer term and should be integrated as European statistics to ensure the availability and quality of the data. In order to avoid double reporting from the Member States, the statistical requirements under that Regulation should be deleted.
- (9) A large part of the agricultural area at Union level consists of grasslands. The production of those areas was not considered to be important in the past, so no production data have been included in crop statistics. As the impact of grasslands and ruminants on the environment has become more important due to climate change, statistics on grassland production including animal grazing are now needed.
- (10) For the purposes of European agricultural statistics, the feasibility of maximising the use of pre-existing data collected under CAP obligations, without creating new obligations and administrative burden, should be assessed.
- (11) For the purposes of harmonisation and comparability of information on agricultural input and output with information on the structure of agricultural holdings and to further implement the Strategy for Agricultural Statistics for 2020 and beyond, this Regulation should complement Regulation (EU) 2018/1091.
- (12) Regulation (EC) No 138/2004 of the European Parliament and of the Council <sup>(9)</sup> does not cover agricultural price statistics, but their availability and coherence with the EAA should be ensured. Statistics on agricultural input and output should therefore cover statistics on agricultural input prices that are coherent with the EAA. In order to allow EAA calculations and comparable price indices, agricultural output price data need to be available in Member States.
- (13) In light of the European Green Deal, the CAP and the objective of reducing dependence on pesticides, it is important to provide for high-quality annual statistics on the use of plant protection products in relation to environmental, health and economic issues. The lack of electronic records of the professional use of plant protection products, which could be used for statistical purposes, at Union level is a major obstacle to increasing the periodicity of data collection on the use of plant protection products in agriculture from once every five years to once per year. In order to give the NSIs time to prepare for the production of annual statistics on the use of plant protection products on a permanent basis, provision should be made in this Regulation for a transitional regime.
- (14) Data regarding the placing on the market and use of pesticides to be submitted pursuant to Directive 2009/128/EC of the European Parliament and of the Council <sup>(10)</sup> and Regulation (EC) No 1107/2009 of the European Parliament and of the Council <sup>(11)</sup> should be used in accordance with the relevant provisions of that Directive and of that Regulation for the purposes of the requirements of this Regulation. The data disseminated on plant protection products should include the active substances placed on the market and used in agricultural activities by crop and its related treated areas.
- (15) Comparable statistics from all Member States on agricultural input and output are important to determine the development of the CAP and to monitor the CAP's implementation through the national Strategic Plans in view of the CAP's contribution to the targets of the European Green Deal. Standard classifications and common definitions should therefore be used insofar as possible for variables.

<sup>(8)</sup> Commission Regulation (EC) No 617/2008 of 27 June 2008 laying down detailed rules for implementing Regulation (EC) No 1234/2007 as regards marketing standards for eggs for hatching and farmyard poultry chicks (OJ L 168, 28.6.2008, p. 5).

<sup>(9)</sup> Regulation (EC) No 138/2004 of the European Parliament and of the Council of 5 December 2003 on the economic accounts for agriculture in the Community (OJ L 33, 5.2.2004, p. 1).

<sup>(10)</sup> Directive 2009/128/EC of the European Parliament and of the Council of 21 October 2009 establishing a framework for Community action to achieve the sustainable use of pesticides (OJ L 309, 24.11.2009, p. 71).

<sup>(11)</sup> Regulation (EC) No 1107/2009 of the European Parliament and of the Council of 21 October 2009 concerning the placing of plant protection products on the market and repealing Council Directives 79/117/EEC and 91/414/EEC (OJ L 309, 24.11.2009, p. 1).

- (16) The coherence, comparability and interoperability of the data and the uniformity of the reporting formats are prerequisites for the preparation of European agricultural statistics, in particular as regards the efficiency of the collection, processing and dissemination procedures and the quality of the results.
- (17) The data needed to compile statistics should be collected in a manner that minimises costs and administrative burden on respondents, including farmers, small and medium-sized enterprises and Member States. It is therefore necessary to identify possible owners of sources of the required data and ensure that those sources can be used for statistics.
- (18) The data sets to be transmitted cover several statistical domains. In order to maintain a flexible approach that allows the statistics to be adapted when data requirements change, only the domains, topics and detailed topics should be specified in the basic regulation, with the detailed data sets specified by means of implementing acts. The collection of the detailed data sets should not impose significant additional costs which result in a disproportionate and unjustified burden on respondents and on Member States.
- (19) A variable in a data set for European statistics on agricultural input and output can include several dimensions, such as organic farming and regional level dimensions. The organic farming dimension refers to production and products in accordance with the principles set out in Regulation (EU) 2018/848 of the European Parliament and of the Council <sup>(12)</sup>. The regional level dimension should be provided in accordance with Regulation (EC) No 1059/2003 of the European Parliament and of the Council <sup>(13)</sup>. In order to decrease the burden on Member States when providing data under this Regulation and to ensure predictability as to which data are to be collected, the detailed topics and the applicable dimensions should be specified in the Annex to this Regulation. In that Annex, the word 'applicable' should be introduced with respect to the detailed topics for which the organic farming or regional level dimension, or both, is required.
- (20) Organic production is becoming increasingly important as an indicator of sustainable agricultural production systems. Statistical data on organic production are essential to monitor progress of the action plan for organic production in the Union. It is therefore necessary to ensure that available statistics on organic production, including data specifying certified or under conversion production areas, are consistent with other agricultural production statistics by integrating those into the data sets. Those organic production statistics should also be coherent with, and use, the administrative data produced under Regulation (EU) 2018/848.
- (21) The gross nutrient balance is one of the most widely used agri-environmental indicators. It is described in the Eurostat/OECD common methodology as the calculated difference between the total quantity of nutrient inputs entering an agricultural system and the quantity of nutrient outputs leaving that agricultural system. Despite its importance, not all Member States provide the data on gross nutrient balance voluntarily to the Commission (Eurostat). It is therefore essential for the gross nutrient balance to be incorporated into this Regulation.
- (22) Veterinary medicinal products are an important input to agriculture. It is important to avoid duplication of work and to optimise the use of existing information that is capable of being used for statistical purposes. To that end, and with a view to providing easily accessible and useful information to Union citizens and other stakeholders on sales and use of veterinary medicinal products, including the use of antimicrobial medicinal products in food-producing animals, the relevant available statistics, under Regulation (EU) 2019/6 of the European Parliament and of the Council <sup>(14)</sup>, should be disseminated by the Commission (Eurostat). To that effect, appropriate cooperation agreements on statistical activities should be established between the Commission and relevant entities, including at international level.

<sup>(12)</sup> Regulation (EU) 2018/848 of the European Parliament and of the Council of 30 May 2018 on organic production and labelling of organic products and repealing Council Regulation (EC) No 834/2007 (OJ L 150, 14.6.2018, p. 1).

<sup>(13)</sup> Regulation (EC) No 1059/2003 of the European Parliament and of the Council of 26 May 2003 on the establishment of a common classification of territorial units for statistics (NUTS) (OJ L 154, 21.6.2003, p. 1).

<sup>(14)</sup> Regulation (EU) 2019/6 of the European Parliament and of the Council of 11 December 2018 on veterinary medicinal products and repealing Directive 2001/82/EC (OJ L 4, 7.1.2019, p. 43).

- (23) Biocidal products constitute an important input in agriculture, for instance in veterinary hygiene and animal feed. Active substances authorised in plant protection products are often used in biocidal products. Regulation (EC) No 1185/2009 already identified the need to collect statistics on biocidal products for informed, science-based policies in the areas of agriculture, the environment, public health and food safety. Taking into consideration that the work programme for the systematic examination of all existing active substances contained in biocidal products under Regulation (EU) No 528/2012 of the European Parliament and of the Council <sup>(15)</sup> is still ongoing, with only 35 % of the related work completed, it is still premature to include biocidal products in the scope of this Regulation. As soon as the examination of active substances for use in biocidal products is finalised, the Commission should consider extending the coverage of this Regulation to include such products.
- (24) In accordance with Regulation (EC) No 1059/2003, territorial units should be defined in accordance with the Nomenclature of Territorial Units for Statistics (NUTS) classification. In order to limit the burden on Member States, regional data requirements should not exceed the requirements established by previous Union legislation unless new regional levels have come into existence in the meantime. Consequently, it is appropriate to allow regional statistical data for Germany to be provided for the NUTS 1 territorial units only.
- (25) It should be possible to collect data on ad hoc subjects related to agricultural input and output at a specific time in order to supplement the data collected on a regular basis with additional data on subjects that require more information, emerging phenomena or innovations. The need for such additional data should, however, be duly justified.
- (26) In order to decrease the administrative burden on Member States, exemptions from certain regular transmissions of data should be allowed if a Member State's contributions to the EU total for those data are low or the observed phenomenon is insignificant in relation to the total production in that particular Member State.
- (27) In order to improve the efficiency of the statistical production processes within the ESS and to reduce the administrative burden on respondents, NSIs and other national authorities should have the right to access and use, promptly and free of charge, any administrative data that are needed for public purposes, irrespective of whether they are held by public, semi-public or private bodies. NSIs and other national authorities should also be able to integrate those administrative data with statistics to the extent that such data are necessary for developing, producing and disseminating European agricultural statistics, in accordance with Article 17a of Regulation (EC) No 223/2009.
- (28) Member States or responsible national authorities should endeavour to modernise data collection modes insofar as possible. The use of digital solutions and land monitoring tools, such as the Union's Earth observation programme Copernicus and remote sensors, should be promoted. Agricultural data are increasingly generated through digital farming practices, where the farmer remains the primary data source.
- (29) In order to ensure flexibility and to reduce the administrative burden on respondents, NSIs and other national authorities, Member States should be allowed to use statistical surveys, administrative records and any other sources, methods or innovative approaches, including scientifically-based and well-documented methods such as imputation, estimation and modelling. The quality, and in particular the accuracy, timeliness and comparability of statistics based on those sources, should always be ensured.
- (30) Regulation (EC) No 223/2009 includes provisions on the transmission of data from Member States to the Commission (Eurostat) and on the use of such data, including on the transmission and protection of confidential data. Measures taken in accordance with this Regulation are to ensure that confidential data are transmitted and used exclusively for statistical purposes in accordance with Articles 21 and 22 of Regulation (EC) No 223/2009.

<sup>(15)</sup> Regulation (EU) No 528/2012 of the European Parliament and of the Council of 22 May 2012 concerning the making available on the market and use of biocidal products (OJ L 167, 27.6.2012, p. 1).

- (31) Regulation (EC) No 223/2009 provides for a reference framework for European statistics and requires Member States to comply with the statistical principles and quality criteria specified in that Regulation. Quality reports are essential for assessing, improving and communicating the quality of European statistics. The ESSC has endorsed the single integrated metadata structure as the ESS standard for quality reporting, thereby helping to satisfy, through uniform standards and harmonised methods, the statistical quality requirements laid down in Article 12(3) of that Regulation. That ESS standard is to contribute to the harmonisation of quality assurance and reporting under this Regulation.
- (32) In accordance with Regulation (EC) No 223/2009, the data collected and the quality reports transmitted by the Member States under this Regulation should be disseminated by the Commission (Eurostat).
- (33) In accordance with the objectives of this Regulation and where new data requirements or improvements to data sets covered by this Regulation are needed, the Commission should assess their feasibility by launching feasibility and pilot studies, where necessary.
- (34) An impact assessment of the Strategy for Agricultural Statistics for 2020 and beyond was carried out in 2016 in accordance with the principle of sound financial management in order to focus the statistical programme established by this Regulation on the need for effectiveness in achieving the objectives and in order to incorporate budgetary constraints.
- (35) Since the objective of this Regulation, namely the systematic production of European statistics on agricultural input and output in the Union, cannot be sufficiently achieved by the Member States because a coordinated approach is required, but can rather, by reason of consistency and comparability, be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve that objective.
- (36) In order to take into account emerging data needs mainly stemming from new developments in agriculture, from revised legislation and from changing policy priorities, the power to adopt acts in accordance with Article 290 of the Treaty on the Functioning of the European Union (TFEU) should be delegated to the Commission in respect of amending the detailed topics listed in this Regulation, amending the transmission frequencies, reference periods and the applicability of the dimensions of detailed topics, and specifying the information to be provided by Member States on an ad hoc basis for the collection of ad hoc data as laid down in this Regulation. When adopting such delegated acts, the Commission should take into account aspects such as cost and administrative burden on respondents and Member States. It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level, and that those consultations be conducted in accordance with the principles laid down in the Interinstitutional Agreement of 13 April 2016 on Better Law-Making <sup>(16)</sup>. In particular, to ensure equal participation in the preparation of delegated acts, the European Parliament and the Council receive all documents at the same time as Member States' experts, and their experts systematically have access to meetings of Commission expert groups dealing with the preparation of delegated acts.
- (37) In order to ensure uniform conditions for the implementation of this Regulation, implementing powers should be conferred on the Commission with a view to specifying the coverage requirements, the data sets linked to the topics and detailed topics listed in the Annex and the technical elements of the data to be provided, to establishing the lists and descriptions of the variables and other practical arrangements for the collection of ad hoc data, further specifying each transmission frequency of the data sets, defining the deadlines for transmitting the data and the transmission frequencies concerned, the variables and the relevant thresholds on the basis of which Member States may be exempted from sending specific data, further specifying the reference periods, setting out the practical arrangements for, and contents of, the quality reports, specifying the coverage requirements as regards the transitional regime for data on the detailed topic of use of plant protection products in agriculture, and granting

<sup>(16)</sup> OJ L 123, 12.5.2016, p. 1.



derogations to Member States. Those powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council <sup>(17)</sup>. When exercising those powers, the Commission should take into account aspects such as cost and administrative burden on respondents and Member States.

- (38) Where the implementation of this Regulation would require major adaptations to the national statistical system of a Member State, the Commission should, in duly justified cases and for a limited period of time, be able to grant derogations to the Member State concerned. Such major adaptations may arise in particular from the need to adapt the data collection systems to include the new data requirements, including the access to administrative sources and other relevant sources.
- (39) Funding should be required from both Member States and the Union in order to support the implementation of this Regulation. Provision should therefore be made for a Union financial contribution in the form of grants.
- (40) The financial interests of the Union should be protected through proportionate measures throughout the expenditure cycle, including the prevention, detection and investigation of irregularities, the recovery of funds lost, wrongly paid or incorrectly used and, where appropriate, administrative and financial penalties.
- (41) This Regulation should apply without prejudice to Directive 2003/4/EC of the European Parliament and of the Council <sup>(18)</sup> and Regulations (EC) No 1367/2006 <sup>(19)</sup> and (EC) No 1049/2001 <sup>(20)</sup> of the European Parliament and of the Council and in compliance with statistical confidentiality in accordance with Regulation (EC) No 223/2009.
- (42) Collaboration and coordination between the authorities within the framework of the ESS should be strengthened to ensure coherence and comparability of European agricultural statistics produced in accordance with the principles laid down in Article 338(2) TFEU. Data are also collected by Union bodies other than those referred to in this Regulation and by other organisations. Cooperation between such bodies and organisations and those involved in the ESS should therefore be reinforced in order to take advantage of synergies.
- (43) The ESSC has been consulted,

HAVE ADOPTED THIS REGULATION:

#### *Article 1*

#### **Subject matter**

This Regulation establishes an integrated framework for aggregated European statistics relating to the input and output of agricultural activities, as well as the intermediate use of such output within agriculture and its collection and processing.

<sup>(17)</sup> Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by Member States of the Commission's exercise of implementing powers (OJ L 55, 28.2.2011, p. 13).

<sup>(18)</sup> Directive 2003/4/EC of the European Parliament and of the Council of 28 January 2003 on public access to environmental information and repealing Council Directive 90/313/EEC (OJ L 41, 14.2.2003, p. 26).

<sup>(19)</sup> Regulation (EC) No 1367/2006 of the European Parliament and of the Council of 6 September 2006 on the application of the provisions of the Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters to Union institutions and bodies (OJ L 264, 25.9.2006, p. 13).

<sup>(20)</sup> Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents (OJ L 145, 31.5.2001, p. 43).

*Article 2***Definitions**

For the purposes of this Regulation, the definitions of ‘agricultural holding’, ‘common land agricultural unit’, ‘livestock unit’ and ‘utilised agricultural area’, as laid down in Article 2, points (a), (b), (d) and (e), of Regulation (EU) 2018/1091, respectively, apply.

In addition, the following definitions shall apply:

- (1) ‘agricultural activity’ means the economic activities undertaken in agriculture in accordance with Regulation (EC) No 1893/2006 of the European Parliament and of the Council <sup>(21)</sup> falling within the scope of groups A.01.1, A.01.2, A.01.3, A.01.4, A.01.5 or within the scope of the ‘maintenance of agricultural land in good agricultural and environmental condition’ of group A.01.6 in the economic territory of the Union, either as its primary or secondary activity; regarding activities of class A.01.49, only the activities ‘Raising and breeding of semi-domesticated or other live animals’ with the exception of raising of insects, and ‘Bee-keeping and production of honey and beeswax’ are included;
- (2) ‘dairy enterprise’ means an enterprise or agricultural holding that purchases milk or, in certain cases, milk products, in order to transform them into milk products; it includes also enterprises that collect milk or cream in order to transfer it in whole or in part, without any processing, to other dairy enterprises;
- (3) ‘slaughterhouse’ means an officially registered and approved enterprise with permission to slaughter and dress animals, the meat of which is intended for human consumption;
- (4) ‘hatchery’ means an enterprise for incubating eggs, hatching and supplying chicks;
- (5) ‘observation unit’ means an identifiable entity about which data can be obtained;
- (6) ‘domain’ means one or several data sets that cover particular topics;
- (7) ‘topic’ means the content of the information to be collected about the observation units; each topic covers one or more detailed topics;
- (8) ‘detailed topic’ means the detailed content of the information to be collected about the observation units related to a topic; each detailed topic covers one or more variables;
- (9) ‘plant protection products’ means products, in the form in which they are supplied to the user, consisting of, or containing, active substances, as referred to in Article 2(2) of Regulation (EC) No 1107/2009, safeners, as referred to in Article 2(3), point (a), of that Regulation or synergists, as referred to in Article 2(3), point (b), of that Regulation, and intended for one of the uses described in Article 2(1) of that Regulation;
- (10) ‘data set’ means one or several aggregated variables organised in a structured form;
- (11) ‘variable’ means a characteristic of an observation unit that may assume more than one of a set of values;
- (12) ‘pre-checked data’ means data verified by the Member States, based on agreed common validation rules, wherever available;
- (13) ‘ad hoc data’ means data that are of a particular interest for users at a specific point in time but that are not included in the regular data sets;
- (14) ‘administrative data’ means data generated by a non-statistical source, usually held by a public or private body, the main aim of which is not to provide statistics;
- (15) ‘metadata’ means information that is needed to use and interpret statistics and which describes data in a structured way;
- (16) ‘professional user’ means any person who uses plant protection products in the course of their professional activities, including operators, technicians, employers and self-employed persons, in the farming sector.

<sup>(21)</sup> Regulation (EC) No 1893/2006 of the European Parliament and of the Council of 20 December 2006 establishing the statistical classification of economic activities NACE Revision 2 and amending Council Regulation (EEC) No 3037/90 as well as certain EC Regulations on specific statistical domains (OJ L 393, 30.12.2006, p. 1).

*Article 3***Statistical population and observation units**

1. The statistical population to be described shall consist of statistical units such as agricultural holdings, common land agricultural units, enterprises providing goods and services related to agricultural activities or buying or collecting products from agricultural activities, and enterprises processing those agricultural products, especially hatcheries, dairy enterprises and slaughterhouses.
2. The observation units to be represented in the statistical frame shall be the statistical units referred to in paragraph 1 and, depending on the statistics to be reported, the following:
  - (a) land used for agricultural activity;
  - (b) animals used for agricultural activity;
  - (c) imports and exports of products from agricultural activities by non-agricultural enterprises;
  - (d) transactions and flows of production factors, of goods and services to and from agricultural activities.

*Article 4***Coverage requirements**

1. The statistics shall be representative of the statistical population that they describe.
2. For the domain of animal production statistics as referred to in Article 5(1), point (a), the data shall cover 95 % of the livestock units of each Member State and the related activities or outputs.
3. For the domain of crop production statistics as referred to in Article 5(1), point (b), the data shall cover 95 % of the total utilised agricultural area, excluding kitchen gardens, of each Member State and the related production volumes.
4. For the topic of nutrients in fertilisers for agriculture referred to in Article 5(1), point (d)(i), of this Regulation, the data shall cover the fertilising products as defined in Article 2, point (1) of Regulation (EU) 2019/1009 of the European Parliament and of the Council <sup>(22)</sup> and 95 % of the total utilised agricultural area, excluding kitchen gardens, of each Member State and the related production volumes.
5. For the domain of statistics on plant protection products as referred to in Article 5(1), point (e), the coverage shall be as follows:
  - (a) for the detailed topic of plant protection products placed on the market as referred to in the Annex to this Regulation, the data shall cover all plant protection products placed on the market as defined in Article 3, point 9, of Regulation (EC) No 1107/2009;
  - (b) for the detailed topic of use of plant protection products in agriculture as referred to in the Annex to this Regulation, the data shall cover at least 85 % of the use in an agricultural activity by professional users as defined in Article 3, point (1) of Directive 2009/128/EC, in each Member State. The data from each Member State shall relate to a list of crops containing a common part for all Member States. That common part, together with the permanent grasslands, shall cover at least 75 % of the total utilised agricultural area at Union level. As soon as Union legislation requiring professional users of plant protection products to transmit their records on the use of such products in electronic format to national competent authorities becomes applicable, the coverage of the use in an agricultural activity shall increase to 95 %, starting from the reference year following the date on which that Union legislation becomes applicable.

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<sup>(22)</sup> Regulation (EU) 2019/1009 of the European Parliament and of the Council of 5 June 2019 laying down rules on the making available on the market of EU fertilising products and amending Regulations (EC) No 1069/2009 and (EC) No 1107/2009 and repealing Regulation (EC) No 2003/2003 (OJ L 170, 25.6.2019, p. 1).

6. The Commission may adopt implementing acts to further specify the coverage requirements referred to in paragraphs 2 to 5 of this Article. In the event that those specifications are updated, the Commission shall take into account economic and technical trends. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 19(2) at least 12 months before the beginning of the relevant reference year.

## Article 5

### Regular data requirements

1. The statistics related to the input and output of agricultural activities shall cover the following domains and topics:
  - (a) animal production statistics
    - (i) livestock and meat,
    - (ii) eggs and chicks,
    - (iii) milk and milk products;
  - (b) crop production statistics
    - (i) crop area and production,
    - (ii) crop balances,
    - (iii) grasslands;
  - (c) agricultural price statistics
    - (i) agricultural price indices,
    - (ii) absolute input prices,
    - (iii) agricultural land prices and rents;
  - (d) statistics on nutrients
    - (i) nutrients in fertilisers for agriculture,
    - (ii) nutrient balances;
  - (e) statistics on plant protection products
    - (i) plant protection products.
2. The detailed topics, their corresponding transmission frequencies and reference periods as well as their organic and regional dimensions shall be as set out in the Annex.
3. The data shall be transmitted to the Commission (Eurostat) in the form of aggregated data sets.
4. The data on organic production and products that comply with Regulation (EU) 2018/848 shall be integrated into the data sets.
5. Regional data shall be provided at NUTS 2 level as defined in Regulation (EC) No 1059/2003. By way of exception, those data may be provided only by NUTS 1 territorial units for Germany.
6. Where a variable has low or zero prevalence in a Member State, the values of that variable may be excluded from the transmitted data sets, if the Member State concerned has duly justified its exclusion to the Commission (Eurostat).
7. Relevant price information on agricultural input and output, including the characteristics and weights of the goods and services, shall be collected by Member States for compiling comparable price indices and for the variables necessary for the economic accounts for agriculture covered by Regulation (EC) No 138/2004.
8. The Commission is empowered to adopt delegated acts in accordance with Article 17 amending, in order to add, delete or modify detailed topics, including their description, as set out in the Annex.

When exercising its power to adopt delegated acts referred to in the first subparagraph, the Commission shall ensure that:

- (a) the delegated acts are duly justified and do not impose significant additional burden or costs on the Member States or on the respondents;
- (b) over a period of five consecutive years, not more than four detailed topics are amended, out of which not more than one is new;
- (c) feasibility studies as set out in Article 11 are launched, where necessary, and their results are duly taken into account.

9. The Commission is empowered to adopt delegated acts in accordance with Article 17 amending the transmission frequencies, reference periods and the applicability of the dimensions of detailed topics as set out in the Annex.

When exercising its power to adopt delegated acts referred to in the first subparagraph, the Commission shall ensure that:

- (a) the delegated acts are duly justified and do not impose significant additional burden or costs on the Member States or on the respondents;
- (b) feasibility studies as set out in Article 11 are launched, and their results are duly taken into account.

10. The Commission shall adopt implementing acts to define the data sets to be transmitted to the Commission (Eurostat). Those implementing acts shall specify the following technical elements of the data to be provided, where appropriate:

- (a) the list of variables;
- (b) the description of variables, including:
  - (i) the characteristics of the observation unit,
  - (ii) the measurement unit for the characteristics of the observation unit,
  - (iii) the organic and regional dimensions for the characteristics of the observation unit;

a variable is counted as a combination of a characteristic of an observation unit with the corresponding measurement unit and one of its dimensions;

- (c) the observation units;
- (d) the precision requirements;
- (e) the methodological rules;
- (f) the deadlines for transmitting the data, taking into account the necessary time to produce national data complying with the quality criteria defined in Article 12(1) of Regulation (EC) No 223/2009 and the need to minimise the administrative burden and costs on the Member States and the respondents; the deadlines for transmitting the data shall not be modified before 1 January 2030.

Where the Commission identifies the need to modify the deadlines for transmitting the data, it shall launch feasibility studies as set out in Article 11 of this Regulation and the results of those feasibility studies shall be duly taken into account. When modifying the deadlines for transmitting the data, those deadlines shall not be reduced by more than 20 % of the days which separate the end of the reference period from the deadline for transmitting the data as set out in the first implementing act adopted pursuant to this paragraph, unless the reduction of the deadline for transmitting the data is solely due to the introduction of an innovative approach or the use of new digital data sources, such as Earth observation or big data, available in all Member States.

Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 19(2) at least 12 months before the beginning of the relevant reference year.

11. Where the Commission has adopted a delegated act pursuant to paragraph 8 or 9, except a delegated act amending the organic dimension, the implementing act referred to in paragraph 10 may modify, replace or add a maximum of 90 variables in total over a period of five consecutive years. That maximum limit shall not, however, apply to variables related to the domain of statistics on plant protection products.

12. Member States shall transmit pre-checked data and related metadata using a technical format specified by the Commission (Eurostat) for each data set. The single entry point services shall be used to transmit the data to the Commission (Eurostat).

#### *Article 6*

##### **Ad hoc data requirements**

1. The Commission is empowered to adopt delegated acts in accordance with Article 17, supplementing this Regulation by specifying the information to be provided by Member States on an ad hoc basis, where, within the scope of this Regulation, the collection of additional information is deemed necessary for the purpose of addressing additional statistical needs. Those delegated acts shall specify:

- (a) the topics and detailed topics related to the domains specified in Article 5 to be provided in the ad hoc data collection and the reasons for such additional statistical needs;
- (b) the reference periods.

2. When exercising the power to adopt delegated acts referred to in paragraph 1, the Commission shall justify the data needs, shall assess the feasibility of collecting the required data, using input from relevant experts, and shall ensure that no significant additional burden or costs are imposed on the Member States or on the respondents.

3. The Commission is empowered to adopt delegated acts referred to in paragraph 1 starting from the reference year 2024 and with a minimum of two years between each ad hoc data collection, starting from the deadline for transmitting the data of the latest ad hoc data collection.

4. The Commission shall adopt implementing acts to provide:

- (a) a list of variables, not exceeding 50 variables;
- (b) the description of variables, including all of the following:
  - (i) the characteristics of the observation unit,
  - (ii) the measurement unit for the characteristics of the observation unit,
  - (iii) the organic and regional dimensions for the characteristics of the observation unit;

a variable is counted as a combination of a characteristic of an observation unit with the corresponding measurement unit and one of its dimensions;

- (c) the precision requirements;
- (d) the deadlines for transmitting the data;
- (e) the observation units;
- (f) the description of the reference period as set out in the delegated act referred to in paragraph 1.

Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 19(2) at least 12 months before the beginning of the relevant reference year.

#### *Article 7*

##### **Transmission frequency of the data sets**

1. The transmission frequency of the data sets shall be as set out in the Annex. The Commission may adopt implementing acts to further specify each transmission frequency.

2. A Member State may be exempted from sending specific data with the transmission frequencies set out in the Annex for predefined variables in the event that the impact of that Member State on the EU total of those variables is limited.

The Commission may adopt implementing acts setting out the deadlines for transmitting the data and the transmission frequencies concerned, the variables and the relevant thresholds on the basis of which the first subparagraph may be applied. Those thresholds shall be set out in such a way that their application does not reduce the information on the expected EU total of the corresponding variable by more than 5 %. The thresholds shall be revised by the Commission (Eurostat) so that they correspond to the trends of EU totals.

3. For production statistics, a Member State may be exempted from transmissions of specific data for predefined variables in the event that the impact of the variable is limited in relation to the agricultural production at national or regional level. The Commission may adopt implementing acts setting out thresholds for those variables.

4. The implementing acts referred to in paragraphs 1, 2 and 3 of this Article shall be adopted in accordance with the examination procedure referred to in Article 19(2) at least 12 months before the beginning of the relevant reference year.

#### Article 8

#### Data sources and methods

1. For the purpose of obtaining statistics related to the input and output of agricultural activities, Member States shall use one or more of the following data sources and methods, provided that the data allow for the production of statistics that meet the quality requirements laid down in Article 10:

- (a) statistical surveys or other statistical data collection methods;
- (b) the administrative data sources specified in paragraph 2 of this Article;
- (c) other administrative data sources based on national law, other sources, methods or innovative approaches, such as digital tools and remote sensors.

2. As regards paragraph 1, point (b), of this Article, Member States may use any data from the following sources:

- (a) the integrated administration and control system established by Regulation (EU) 2021/2116 of the European Parliament and of the Council <sup>(23)</sup>, the system for the identification and registration of bovine animals established by Regulation (EC) No 1760/2000 of the European Parliament and of the Council <sup>(24)</sup>, the system for the identification and registration of certain species of kept terrestrial animals required under Regulation (EU) 2016/429 of the European Parliament and of the Council <sup>(25)</sup>, the vineyard register established in accordance with Article 145 of Regulation (EU) No 1308/2013 of the European Parliament and of the Council <sup>(26)</sup>, the organic farming registers set up pursuant to Regulation (EU) 2018/848 or any other relevant administrative data of adequate quality for statistical purposes as described in Article 10(3) of this Regulation, defined in Union law;
- (b) the records kept in electronic format and referred to in Article 67 of Regulation (EC) No 1107/2009; or
- (c) any other relevant administrative data sources provided that such data allow for the production of statistics that meet the quality requirements laid down in Article 10 of this Regulation.

<sup>(23)</sup> Regulation (EU) 2021/2116 of the European Parliament and of the Council of 2 December 2021 on the financing, management and monitoring of the common agricultural policy and repealing Regulation (EU) No 1306/2013 (OJ L 435, 6.12.2021, p. 187).

<sup>(24)</sup> Regulation (EC) No 1760/2000 of the European Parliament and of the Council of 17 July 2000 establishing a system for the identification and registration of bovine animals and regarding the labelling of beef and beef products and repealing Council Regulation (EC) No 820/97 (OJ L 204, 11.8.2000, p. 1).

<sup>(25)</sup> Regulation (EU) 2016/429 of the European Parliament and of the Council of 9 March 2016 on transmissible animal diseases and amending and repealing certain acts in the area of animal health (Animal Health Law) (OJ L 84, 31.3.2016, p. 1).

<sup>(26)</sup> Regulation (EU) No 1308/2013 of the European Parliament and of the Council of 17 December 2013 establishing a common organisation of the markets in agricultural products and repealing Council Regulations (EEC) No 922/72, (EEC) No 234/79, (EC) No 1037/2001 and (EC) No 1234/2007 (OJ L 347, 20.12.2013, p. 671).

3. Member States which decide to use the sources, methods or innovative approaches referred to in paragraph 1, point (c), shall inform the Commission (Eurostat) during the year preceding the reference year during which the source, method or innovative approach will be used, and shall provide details concerning the quality of the data obtained.

4. National authorities responsible for complying with this Regulation shall have the right to access and use, promptly and free of charge, data, including individual data on enterprises and agricultural holdings in administrative records compiled on their national territory pursuant to Article 17a of Regulation (EC) No 223/2009. The national authorities and the owners of the administrative records shall establish the necessary cooperation mechanisms for such access. That access shall also be granted in cases where the competent authority has delegated tasks to be carried out on its behalf to private or semi-public bodies.

#### *Article 9*

##### **Reference period**

1. The information collected under this Regulation shall refer to a single reference period that is common to all Member States by means of a reference to the situation during a specified timeframe.

2. The reference period for each detailed topic shall be as specified in the Annex. The first reference periods shall begin in calendar year 2025.

3. For the topic of agriculture price indices referred to in Article 5(1), point (c)(i), Member States shall, every five years, rebase the indices using as base years the years ending with a 0 or a 5.

4. The Commission may adopt implementing acts to further specify the reference periods. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 19(2) at least 12 months before the beginning of the relevant reference period.

#### *Article 10*

##### **Quality requirements and quality reporting**

1. Member States shall take the necessary measures to ensure the quality of the data and metadata transmitted.

2. Member States shall ensure that the data obtained using the sources and methods laid down in Article 8 give accurate estimates on the statistical population defined in Article 3 at national level, and, where required, at regional level.

3. For the purpose of this Regulation, the quality criteria defined in Article 12(1) of Regulation (EC) No 223/2009 shall apply.

4. The Commission (Eurostat) shall assess the quality of the data and metadata transmitted to it in a transparent and verifiable way.

5. For the purpose of paragraph 4, each Member State shall transmit to the Commission (Eurostat), for the first time by 30 June 2028, and every three years thereafter, quality reports describing the statistical processes for the data sets transmitted during the period, including in particular:

- (a) metadata describing the methodology used and how technical specifications were achieved by reference to those laid down by this Regulation;
- (b) information on compliance with the coverage requirements set out in Article 4, including their development and update.



6. By way of derogation from paragraph 5 of this Article, for the topic of agricultural price indices referred to in Article 5(1), point (c)(i), the quality reports shall be transmitted every five years together with the weights and rebased indices, as well as the corresponding separate methodological reports. The first transmission for the quality report on the topic of agricultural price indices shall not be before 31 December 2028.

7. The Commission may adopt implementing acts setting out the practical arrangements for the quality reports and their contents. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 19(2) and shall not impose a significant additional burden or costs on the Member States.

8. Member States shall, where necessary, inform the Commission (Eurostat) about any relevant information or changes with regard to the implementation of this Regulation that could significantly influence the quality of the transmitted data.

9. At the request of the Commission (Eurostat), Member States shall provide necessary additional clarification to evaluate the quality of the statistical data.

#### *Article 11*

##### **Feasibility and pilot studies**

1. In accordance with the objectives of this Regulation and where new regular data requirements or the need for major improvement in the current regular data requirements are identified, the Commission (Eurostat) may launch feasibility studies in order to evaluate, where necessary:

- (a) the availability and quality of appropriate new data sources;
- (b) the development and the implementation of new statistical techniques;
- (c) the financial impact and burden on respondents.

2. Within each particular feasibility study, the Commission (Eurostat) shall assess whether the new statistics can be produced by using the information available in the relevant administrative sources at Union level and shall enhance the use of existing data in accordance with Article 17a of Regulation (EC) No 223/2009.

3. Within a particular feasibility study, the Commission (Eurostat) may, where necessary, launch pilot studies, to be carried out by Member States. The objective of those pilot studies shall be to test the implementation of new requirements in Member States with different methods of statistical production by conducting that implementation on a smaller scale.

4. The Commission (Eurostat), in cooperation with experts from the Member States and the main users of the data sets, shall evaluate the results of the feasibility studies and, where applicable, of pilot studies, accompanied, where appropriate, by proposals for introducing new regular data requirements or improvements referred to in paragraph 1. Following that evaluation, the Commission shall prepare a report on the findings of the feasibility and pilot studies. Those reports shall be made public.

5. While preparing a delegated act referred to in Article 5(8) or (9), the Commission shall duly take into account the results of the feasibility and pilot studies, in particular the feasibility of implementation of new data requirements in all Member States.

#### *Article 12*

##### **Dissemination of data**

1. Without prejudice to Regulation (EC) No 1367/2006 and in accordance with Regulation (EC) No 223/2009, the Commission (Eurostat) shall disseminate online and free of charge the data transmitted to it in accordance with Articles 5 and 6 of this Regulation.

2. The Commission (Eurostat) shall disseminate, in full respect of commercial and statistical confidentiality, aggregated statistics, falling within the scope of this Regulation, on veterinary medicinal products derived from data provided for in Article 55(2) and Article 57(2) of Regulation (EU) 2019/6.

#### Article 13

##### Union contribution

1. As regards the implementation of this Regulation, the Union shall provide grants from the Single Market Programme established by Regulation (EU) 2021/690 of the European Parliament and of the Council <sup>(27)</sup> and in accordance with Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council <sup>(28)</sup> to the NSIs and other national authorities referred to in Article 5(2) of Regulation (EC) No 223/2009 for:

- (a) covering the implementation costs of ad hoc data collections;
- (b) building the capacity for using administrative sources to compile statistics required by this Regulation;
- (c) carrying out sample surveys to collect data on the use of plant protection products in agriculture for the reference year 2026;
- (d) developing methodologies and innovative approaches to adapt data collection systems, including digitally-based solutions, to the requirements of this Regulation;
- (e) carrying out the feasibility and pilot studies referred to in Article 11;
- (f) covering the costs of developing and implementing methods to reduce the deadlines for transmitting the data.

2. The Union financial contribution under this Article shall not exceed 95 % of the eligible costs.

3. The amount of the Union financial contribution under this Article shall be established in accordance with the rules of the Single Market Programme as part of the annual budgetary procedure, subject to the availability of funding. The budgetary authority shall determine the appropriation available each year.

#### Article 14

##### Transitional regime for data on the detailed topic of use of plant protection products in agriculture

1. For the years 2025, 2026 and 2027, the following transitional rules shall apply for the detailed topic of use of plant protection products in agriculture as referred to in the Annex:

- (a) by way of derogation from Article 7(1) and Article 9(2), there shall be only one transmission of data for the reference year 2026;
- (b) by way of derogation from Article 4(5), point (b), the data shall cover a common list of crops for all Member States providing information on the use of plant protection products in support of the relevant Union policies; that common list of crops shall, together with the permanent grasslands, cover 75 % of the utilised agricultural area at Union level.

<sup>(27)</sup> Regulation (EU) 2021/690 of the European Parliament and of the Council of 28 April 2021 establishing a programme for the internal market, competitiveness of enterprises, including small and medium-sized enterprises, the area of plants, animals, food and feed, and European statistics (Single Market Programme) and repealing Regulations (EU) No 99/2013, (EU) No 1287/2013, (EU) No 254/2014 and (EU) No 652/2014 (OJ L 153, 3.5.2021, p. 1).

<sup>(28)</sup> Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council of 18 July 2018 on the financial rules applicable to the general budget of the Union, amending Regulations (EU) No 1296/2013, (EU) No 1301/2013, (EU) No 1303/2013, (EU) No 1304/2013, (EU) No 1309/2013, (EU) No 1316/2013, (EU) No 223/2014, (EU) No 283/2014, and Decision No 541/2014/EU and repealing Regulation (EU, Euratom) No 966/2012 (OJ L 193, 30.7.2018, p. 1).

The Commission shall adopt implementing acts further specifying the coverage requirements referred to in point (b) of the first subparagraph of this paragraph. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 19(2) at least 12 months before the beginning of the relevant reference year.

2. From the reference year 2028 onwards, in the absence of Union legislation requiring professional users of plant protection products to keep records on the use of such products in electronic format, that is applicable 12 months before the beginning of a reference year for which data are to be transmitted, the following applies:

- (a) by way of derogation from Article 7(1), the transmission frequency shall be every two years;
- (b) by way of derogation from Article 4(5), point (b), transitional rules referred to in paragraph 1, point (b), of this Article shall continue to apply.

#### Article 15

### Protection of the financial interests of the Union

1. The Commission shall take appropriate measures to ensure that, when actions financed under this Regulation are implemented, the financial interests of the Union are protected by preventive measures against fraud, corruption and any other illegal activities, by effective checks and, if irregularities are detected, by the recovery of the amounts wrongly paid and, where appropriate, by effective, proportionate and dissuasive administrative and financial penalties.

2. The Commission or its representatives and the Court of Auditors shall have the power of audit, on the basis of documents and on-the-spot checks, over all grant beneficiaries, contractors and subcontractors who have received Union funds under this Regulation.

3. The European Anti-Fraud Office (OLAF) may carry out investigations, including on-the-spot checks and inspections, in accordance with the provisions and procedures laid down in Regulation (EU, Euratom) No 883/2013 of the European Parliament and of the Council <sup>(29)</sup> and Council Regulation (Euratom, EC) No 2185/96 <sup>(30)</sup> with a view to establishing whether there has been fraud, corruption or any other illegal activity affecting the financial interests of the Union in connection with a grant agreement or grant decision or contract funded under this Regulation.

4. Without prejudice to paragraphs 1, 2 and 3, cooperation agreements with third countries and with international organisations, contracts, grant agreements and grant decisions resulting from the implementation of this Regulation shall contain provisions expressly empowering the Commission, the Court of Auditors and OLAF to conduct such audits and investigations, in accordance with their respective competences.

#### Article 16

### Derogations

1. Where the application of this Regulation or of the implementing measures and delegated acts adopted pursuant to it necessitates major adaptations of a national statistical system of a Member State, the Commission may adopt implementing acts granting derogations to the Member State concerned for a maximum duration of three years. No derogation shall be granted from the transitional rules for the detailed topic of use of plant protection products in agriculture referred to in Article 14(1).

<sup>(29)</sup> Regulation (EU, Euratom) No 883/2013 of the European Parliament and of the Council of 11 September 2013 concerning investigations conducted by the European Anti-Fraud Office (OLAF) and repealing Regulation (EC) No 1073/1999 of the European Parliament and of the Council and Council Regulation (Euratom) No 1074/1999 (OJ L 248, 18.9.2013, p. 1).

<sup>(30)</sup> Council Regulation (Euratom, EC) No 2185/96 of 11 November 1996 concerning on-the-spot checks and inspections carried out by the Commission in order to protect the European Communities' financial interests against fraud and other irregularities (OJ L 292, 15.11.1996, p. 2).

The relevant Member State shall submit a duly reasoned request for such a derogation to the Commission within three months of the date of the entry into force of the act concerned, explaining what major adaptations of the national statistical system are needed and providing an estimated timeline for such adaptations.

The impact of derogations granted under this Article on the comparability of Member States' data or on the calculation of the required timely and representative European aggregates shall be kept to a minimum. The burden on respondents and Member States shall be taken into account by the Commission when granting the derogation.

2. The implementing acts referred to in paragraph 1 of this Article shall be adopted in accordance with the examination procedure referred to in Article 19(2).

#### Article 17

##### Exercise of the delegation

1. The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article.
2. The power to adopt delegated acts referred to in Article 5(8) and (9) and Article 6(1) shall be conferred on the Commission for a period of five years from 27 December 2022. The Commission shall draw up a report in respect of the delegation of power not later than nine months before the end of the five-year period. The delegation of power shall be tacitly extended for periods of an identical duration, unless the European Parliament or the Council opposes such extension not later than three months before the end of each period.
3. The delegation of power referred to in Article 5(8) and (9) and Article 6(1) may be revoked at any time by the European Parliament or by the Council. A decision to revoke shall put an end to the delegation of the power specified in that decision. It shall take effect on the day following that of the publication of the decision in the *Official Journal of the European Union* or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.
4. Before adopting a delegated act, the Commission shall consult experts designated by each Member State in accordance with the principles laid down in the Interinstitutional Agreement of 13 April 2016 on Better Law-Making.
5. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.
6. A delegated act adopted pursuant to Article 5(8) and (9) and Article 6(1) shall enter into force only if no objection has been expressed either by the European Parliament or by the Council within a period of two months of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by two months at the initiative of the European Parliament or of the Council.

#### Article 18

##### Reporting

By 31 December 2029 and every five years thereafter, the Commission shall submit a report on the implementation of this Regulation to the European Parliament and the Council.

#### Article 19

##### Committee procedure

1. The Commission shall be assisted by the European Statistical System Committee established by Regulation (EC) No 223/2009. That committee shall be a committee within the meaning of Regulation (EU) No 182/2011.
2. Where reference is made to this paragraph, Article 5 of Regulation (EU) No 182/2011 shall apply.

*Article 20***Amendments to Regulation (EC) No 617/2008**

Regulation (EC) No 617/2008 is amended as follows:

- (1) in Article 8, paragraphs 3, 4 and 5 are deleted;
- (2) Article 11 is deleted;
- (3) Annexes III and IV are deleted.

*Article 21***Repeal**

1. Regulations (EC) No 1165/2008, (EC) No 543/2009 and (EC) No 1185/2009 and Directive 96/16/EC are repealed with effect from 1 January 2025 without prejudice to the obligations set out in those legal acts concerning the transmission of data and metadata, including quality reports, with regard to reference periods that fall, in whole or in part, before that date.
2. References to the repealed acts shall be construed as references to this Regulation.

*Article 22***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*.

It shall apply from 1 January 2025.

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

Done at Strasbourg, 23 November 2022.

*For the European Parliament*  
*The President*  
R. METSOLA

*For the Council*  
*The President*  
M. BEK

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## ANNEX

## DOMAINS, TOPICS AND DETAILED TOPICS, AND TRANSMISSION FREQUENCIES, REFERENCE PERIODS AND DIMENSIONS PER DETAILED TOPIC

## (a) Animal production statistics

Topic	Detailed topics	Transmission frequencies	Reference periods	Dimensions	
				Organic farming	Regional level
Livestock and meat	Livestock populations The data shall cover the number of animals held by agricultural holdings on the territory of a Member State on the reference date or on average over the reference period.	Twice per year	Date in the period May/June		
			Date in the period November/December	Applicable	Applicable
		Annually	Date in the period November/December	Applicable	Applicable
			Year	Applicable	Applicable
		Three times per decade	Year		
	Meat production The data shall cover the weights of the carcasses and numbers of the animals slaughtered on the territory of a Member State during the reference period, whether in slaughterhouses or not, and that are fit for human consumption.	Monthly	Month		
		Annually	Year	Applicable	
	Animal delivery The data shall cover the gross indigenous production (GIP) forecast, meaning the number of animals expected to be delivered by the framework of agricultural holdings of a Member State, either abroad or to the slaughterhouses in the Member State.	Twice per year	Four quarters		
		Twice per year	Three half years		
		Annually	Two half years		

Topic	Detailed topics	Transmission frequencies	Reference periods	Dimensions	
				Organic farming	Regional level
Eggs and chicks	Eggs for consumption The data shall cover the number of eggs for consumption collected on the agricultural holdings in a Member State during the reference period. Those eggs may be delivered to packing centres, directly sold to consumers or agri-food industry, consumed on the agricultural holding or lost after leaving the agricultural holding.	Annually	Year	Applicable	
		Three times per decade	Year	Applicable	
	Eggs for hatching and farmyard poultry chicks The data shall cover the number of eggs placed in incubation and the number of chicks produced in the hatcheries of a Member State with a capacity of over 1 000 eggs and during the reference period, as well as the numbers of chicks imported to or exported by that Member State.	Monthly	Month		
	Structure of hatcheries The data shall cover the structure of the hatcheries, described by the numbers of hatcheries in a Member State and their capacity broken down by capacity classes during the reference period.	Annually	Year		

Topic	Detailed topics	Transmission frequencies	Reference periods	Dimensions	
				Organic farming	Regional level
Milk and milk products	Milk produced and used on the agricultural holdings The data shall cover the quantity of milk from cows, ewes, goats and buffaloes produced on, and the quantities of dairy products directly used (not delivered to a dairy enterprise in the Member State), by the agricultural holdings of a Member State during the reference period.	Annually	Year	Applicable	Applicable
	Milk availabilities to the dairy sector The data shall cover the quantity of milk collected by the dairy enterprises of a Member State during the reference period from agricultural holdings, whether or not they are located in that Member State. They shall also cover the quantity of milk and dairy materials available to the dairy sector, such as the quantities of collected milk, of imported milk and dairy materials, and of other dairy products collected from agricultural holdings, by the dairy enterprises of a Member State during the reference period.	Annually	Year	Applicable	



Topic	Detailed topics	Transmission frequencies	Reference periods	Dimensions	
				Organic farming	Regional level
	<p>Uses of milk and dairy materials by the dairy sector and resulting products</p> <p>The data shall cover the quantities of whole and skimmed milk used by the dairy enterprises of a Member State during the reference period for processing the various dairy products or, in the case of dairy material, of the quantities of whole and skimmed milk equivalent. Those quantities may be directly measured or estimated based on the milk fat and milk protein contents of the dairy products (output) or on the milk fat and milk protein contents of the dairy materials (input).</p>	Annually	Year	Applicable	
	<p>Monthly uses of cows' milk by the dairy sector</p> <p>The data shall cover the quantities of dairy products (or of butter equivalent, in the case of total butter and other yellow fat dairy products) processed from cows' milk that were produced by the dairy enterprises in a Member State during the reference period, excluding dairy materials.</p>	Monthly	Month		
	<p>Structure of the dairy enterprises</p> <p>The data shall cover the number of dairy enterprises in a Member State in operation on 31 December of the reference year, classified according to the volumes of the relevant products collected, treated or produced.</p>	Three times per decade	Year		

## (b) Crop production statistics

Topic	Detailed topics	Transmission frequencies	Reference periods	Dimensions	
				Organic farming	Regional level
Crop area and production	Arable crops and permanent grassland The data shall cover early estimates and final statistics on the areas, production and yield of the arable agricultural crops and permanent grasslands, grown to be harvested mainly in the reference period, on the agricultural holdings in the Member States.	Sub-annually	Year		
		Annually	Year	Applicable	Applicable
	Horticulture excluding permanent crops The data shall cover early estimates and final statistics on the areas, production and yield of the horticultural crops grown to be harvested in the reference period on the agricultural holdings in the Member States.	Sub-annually	Year		
		Annually	Year	Applicable	
	Permanent crops The data shall cover early estimates and final statistics on the areas, production and yield of the permanent agricultural crops grown to be harvested mainly in the reference period on the agricultural holdings in the Member States.	Sub-annually	Year		
		Annually	Year	Applicable	Applicable

Topic	Detailed topics	Transmission frequencies	Reference periods	Dimensions	
				Organic farming	Regional level
Crop balances	Cereal balances The data shall cover the supplies, uses and stocks of the main cereals and the first level resulting products in the Member States during the reference period.	Annually	Year		
	Oil seed balances The data shall cover the supplies, uses and stocks of the main oil seeds in the Member States during the reference period.	Annually	Year		
Grasslands	Management of grasslands The data shall cover the areas of permanent and temporary grasslands classified by age, cover, and management in the Member States during the reference period.	Three times per decade	Year		

## (c) Agricultural price statistics

Topic	Detailed topics	Transmission frequencies	Reference periods	Dimensions	
				Organic farming	Regional level
Agricultural price indices	Early and achieved indices The data shall provide agricultural price indices that represent the changes in the absolute prices of agricultural products and inputs in the Member State during the reference period, by comparison with the base year.	Quarterly	Quarter		
		Annually	Year		
	Weights and rebased indices The data necessary to allow early and achieved indices to be rebased.	Every five years	Quarter		
			Year		

Topic	Detailed topics	Transmission frequencies	Reference periods	Dimensions	
				Organic farming	Regional level
Absolute input prices	Fertilisers The data set shall cover the average purchase prices for the fertiliser products and the related country weighting values.	Annually	Year		
		Every five years <sup>(1)</sup>	Year		
	Feeding stuff The data set shall cover the purchase prices for feeding stuffs and the related country weighting values.	Annually	Year		
		Every five years <sup>(1)</sup>	Year		
	Energy The data set shall cover the purchase prices for energy products used in agriculture and the related country weighting values.	Annually	Year		
		Every five years <sup>(1)</sup>	Year		
Agricultural land prices and rents	Agricultural land prices The data set shall cover the average selling price of agricultural land as reflected in transactions in the Member State during the reference period.	Annually	Year		
	Agricultural land rents The data set shall cover the average rental price for agricultural land in the Member State over the reference period.	Annually	Year		

<sup>(1)</sup> This refers to the transmission frequency of the related country weighting values.

## (d) Statistics on nutrients

Topic	Detailed topics	Transmission frequencies	Reference periods	Dimensions	
				Organic farming	Regional level
Nutrients in fertilisers for agriculture	Inorganic fertilisers for agriculture The data shall cover the quantities of nutrients in the inorganic fertilisers used in agriculture during the reference period in a Member State.	Annually	Year		
	Organic fertilisers for agriculture The data shall cover the organic fertilisers (excluding animal manure) used in agriculture during the reference period in a Member State and the respective nutrient content coefficients.	Every three years	Year		
Nutrient balances	Crop and forage nutrient contents coefficients The data shall cover the nutrient content coefficients representing the average amount of nutrients in a tonne of harvested produce of a crop.	Every five years	Year		
	Crop residue volumes and nutrient content coefficients The data shall cover the average annual quantities of crop residues and the respective nutrient content coefficients.	Every five years	Year		
	Biological nitrogen fixation coefficients The data shall cover the biological nitrogen fixation coefficients for leguminous crops and legume grass mixtures.	Every five years	Year		

Topic	Detailed topics	Transmission frequencies	Reference periods	Dimensions	
				Organic farming	Regional level
	Atmospheric nitrogen deposition coefficients The data shall cover the atmospheric nitrogen deposition coefficients per hectare of utilised agricultural area.	Every five years	Year		
	Seed nutrient content coefficients The data shall cover the nutrient content coefficients in the seeds per hectare of planted area.	Every five years	Year		
	Livestock nutrient excretion coefficients The data shall cover the coefficients of nutrients excreted by animals used for agricultural activity.	Every five years	Year		
	Livestock manure withdrawal volumes and nutrient content coefficients The data shall cover the average annual manure withdrawals and the respective nutrient content coefficients.	Every five years	Year		

## (e) Statistics on plant protection products

Topic	Detailed topics	Transmission frequencies	Reference periods	Dimensions	
				Organic farming	Regional level
Plant protection products	Plant protection products placed on the market The data shall cover all active substances in all plant protection products placed on the market in a Member State during the reference period, including those that are placed on the market under a parallel trade permit and/or under emergency authorisations.	Annually	Year		

Topic	Detailed topics	Transmission frequencies	Reference periods	Dimensions	
				Organic farming	Regional level
	Use of plant protection products in agriculture The data shall cover the crop areas on agricultural holdings in a Member State treated with plant protection products and the quantities of all active substances used during the reference period, including those used under an emergency authorisation.	Annually	Year	Applicable	

# DIRECTIVES

## DIRECTIVE (EU) 2022/2380 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of 23 November 2022

**amending Directive 2014/53/EU on the harmonisation of the laws of the Member States relating to the making available on the market of radio equipment**

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 114 thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Economic and Social Committee <sup>(1)</sup>,

Acting in accordance with the ordinary legislative procedure <sup>(2)</sup>,

Whereas:

- (1) One of the objectives of Directive 2014/53/EU of the European Parliament and of the Council <sup>(3)</sup> is to ensure the proper functioning of the internal market. Pursuant to Article 3(3), point (a), of that Directive, one of the essential requirements that radio equipment is to comply with is that it interworks with accessories, in particular with common chargers. In that respect, Directive 2014/53/EU indicates that interoperability between radio equipment and accessories such as chargers simplifies the use of radio equipment and reduces unnecessary waste and costs and that developing a common charger for particular categories or classes of radio equipment is necessary, in particular for the benefit of consumers and other end-users.
- (2) Since 2009, efforts have been made at Union level to limit the fragmentation of the market for charging interfaces for mobile phones and similar items of radio equipment. Although recent voluntary initiatives have increased the level of convergence of charging devices, which are the external power supply part of chargers, and decreased the number of different charging solutions available on the market, those initiatives do not fully meet the Union policy objectives of ensuring consumer convenience, reducing electronic waste (e-waste) and avoiding fragmentation of the market for charging devices.
- (3) The Union is committed to boosting the efficient use of resources by moving to a clean, circular economy through the introduction of initiatives such as Directive 2012/19/EU of the European Parliament and of the Council <sup>(4)</sup> and more recently through the introduction of the European Green Deal, as set out by the Commission in its communication of 11 December 2019. This Directive is aimed at reducing the e-waste generated by the sale of radio equipment, and at reducing the extraction of raw materials and the CO<sub>2</sub> emissions generated by the production, transportation and disposal of chargers, thereby promoting a circular economy.

<sup>(1)</sup> OJ C 152, 6.4.2022, p. 82.

<sup>(2)</sup> Position of the European Parliament of 4 October 2022 (not yet published in the Official Journal) and decision of the Council of 24 October 2022.

<sup>(3)</sup> Directive 2014/53/EU of the European Parliament and of the Council of 16 April 2014 on the harmonisation of the laws of the Member States relating to the making available on the market of radio equipment and repealing Directive 1999/5/EC (OJ L 153, 22.5.2014, p. 62).

<sup>(4)</sup> Directive 2012/19/EU of the European Parliament and of the Council of 4 July 2012 on waste electrical and electronic equipment (WEEE) (OJ L 197, 24.7.2012, p. 38).



- (4) The Commission's Circular Economy Action Plan, set out in its communication of 11 March 2020, provided for initiatives throughout the entire life cycle of products, targeting their design, promoting circular economy processes, fostering sustainable consumption, and aiming to ensure that the resources used are kept in the Union economy for as long as possible.
- (5) The Commission completed an impact assessment, which has shown that the internal market is not exploiting its full potential as continuing fragmentation of the market for charging interfaces and charging communication protocols for mobile phones and other similar radio equipment is resulting in a lack of consumer convenience and an increase in e-waste.
- (6) Interoperability between radio equipment and accessories, such as chargers, is hampered as there are different charging interfaces for certain categories or classes of radio equipment that use wired charging, such as handheld mobile phones, tablets, digital cameras, headphones or headsets, handheld videogame consoles, portable speakers, e-readers, keyboards, mice, portable navigation systems, earbuds and laptops. In addition, there are several types of fast charging communication protocols for which a minimum level of performance is not always guaranteed. As a result, Union action is required to promote a common degree of interoperability and the provision of information relating to the charging characteristics of radio equipment to consumers and other end-users. It is therefore necessary to introduce suitable requirements in Directive 2014/53/EU regarding the charging communication protocols, the charging interfaces, i.e. charging receptacle, of certain categories or classes of radio equipment, as well as the information to be provided to consumers and other end-users regarding the charging characteristics of those categories or classes of radio equipment, such as information about the minimum and maximum power required to charge the radio equipment. The minimum power should express the sum of the power required by the radio equipment to maintain operation and the minimum power required by its battery to start charging. The maximum power should express the sum of the power required by the radio equipment to maintain operation and the power required to achieve the maximum charging speed.
- (7) The absence of harmonisation of the charging interfaces and charging communication protocols may lead to substantial differences between the Member States' laws, regulations, administrative provisions or practices regarding the interoperability of mobile phones and similar categories or classes of radio equipment with their charging devices, and regarding the supply of radio equipment without charging devices.
- (8) The size of the internal market in rechargeable mobile phones and similar categories or classes of radio equipment, the proliferation of different types of charging devices for such radio equipment, the lack of interoperability between radio equipment and charging devices and the significant cross-border trade in those products, call for stronger legislative action at Union level rather than either action at national level or voluntary measures, in order to achieve the smooth functioning of the internal market, while ensuring consumer convenience and reducing environmental waste.
- (9) It is therefore necessary to harmonise the charging interfaces and charging communication protocols for specific categories or classes of radio equipment that are recharged by means of wired charging. It is also necessary to provide the basis for adaptation to any future scientific and technological progress or market developments, which will be continuously monitored by the Commission. In particular, the introduction of harmonisation of the charging interfaces and charging communication protocols should in the future also be considered with respect to radio equipment that could be charged by any means other than wired charging, including charging by means of radio waves (wireless charging). Furthermore, the inclusion of additional categories or classes of radio equipment that are recharged by means of wired charging should be systematically considered in the context of the future adaptation of the harmonised charging solutions, provided that the integration of the harmonised charging solutions for such additional categories or classes of radio equipment is technically feasible. Harmonisation should pursue the objectives of ensuring consumer convenience, reducing environmental waste and avoiding fragmentation of the market among different charging interfaces and charging communication protocols as well as among any initiatives at national level, which might cause barriers to trade in the internal market. The future adaptation of the harmonisation of the charging interfaces and charging communication protocols should continue to pursue those objectives by ensuring that it incorporates the most appropriate technical solutions for charging interfaces and charging communication protocols for any means of charging. The harmonised charging solutions should reflect the most appropriate combination of achieving market acceptance as well as meeting the objectives of ensuring consumer convenience, reducing environmental waste and avoiding market fragmentation. Relevant technical standards fulfilling those objectives and having been developed at European or international level should

primarily be used for the selection of such charging solutions. In exceptional cases where there is a need to introduce, add or modify an existing technical specification in the absence of publicly available European or international standards that fulfil those objectives, the Commission should be able to set out other technical specifications, provided that those technical specifications have been developed in line with the criteria of openness, consensus and transparency, and that they meet the requirements of neutrality and stability, as referred to in Annex II to Regulation (EU) No 1025/2012 of the European Parliament and of the Council <sup>(9)</sup>. All the relevant sectoral stakeholders represented in the Commission Expert Group on Radio Equipment need to be involved in the process throughout the adaptation of the harmonised charging solutions.

- (10) Such harmonisation would, however, be incomplete if it were not combined with requirements regarding the combined sale of radio equipment and its chargers, and regarding the information to be provided to consumers and other end-users. A fragmentation of approaches among the Member States with respect to the marketing of the categories or classes of radio equipment concerned and their charging devices would hamper cross-border trade in those products, for example by obliging economic operators to repackage their products depending on the Member State in which the products are to be supplied. That would in turn result in increased inconvenience for consumers and would generate unnecessary e-waste, thus offsetting the benefits derived from the harmonisation of the charging interfaces and charging communication protocols. It is therefore necessary to impose requirements to ensure that consumers and other end-users are not obliged to purchase a new charging device with each purchase of a new mobile phone or similar item of radio equipment. Unbundling the sale of charging devices from the sale of radio equipment would provide sustainable, available, attractive and convenient choices for consumers and other end-users. Drawing on the experience of the application of the requirements, the emerging market trends and technological developments, the Commission should consider an extension of the requirement related to the supply of charging devices together with the radio equipment to cables and/or the introduction of mandatory unbundling in order to ensure that the objectives of ensuring consumer convenience and reducing environmental waste are pursued in the most effective manner. To ensure the effectiveness of such requirements, consumers and other end-users should receive the necessary information regarding the charging characteristics when purchasing a mobile phone or similar item of radio equipment. A dedicated pictogram would enable consumers and other end-users to determine whether or not a charging device is included with the radio equipment before the purchase. The pictogram should be displayed in the case of all forms of supply, including by means of distance selling.
- (11) It is technically feasible to define USB Type-C as the common charging receptacle for the relevant categories or classes of radio equipment, in particular because they are already capable of integrating such a receptacle. The USB Type-C technology, which is in global use, was adopted at international standardisation level and has been transposed into the European system by the European Committee for Electrotechnical Standardization (Cenelec) under European Standard EN IEC 62680-1-3:2021 'Universal serial bus interfaces for data and power – Part 1-3: Common components – USB Type-C® Cable and Connector Specification'.
- (12) USB Type-C is a technology that is already common to many categories or classes of radio equipment as it provides high-quality charging and data transfer. The USB Type-C charging receptacle, when combined with the USB Power Delivery charging communication protocol, is capable of providing up to 100 Watts of power and therefore leaves ample room for further development of fast charging solutions, while also allowing the market to cater for low-end devices that do not need fast charging. Mobile phones and similar radio equipment that support fast charging can incorporate the USB Power Delivery features as described in European Standard EN IEC 62680-1-2:2021 'Universal serial bus interfaces for data and power – Part 1-2: Common components – USB Power Delivery specification'. USB specifications are the subject of continuous development. In that regard, the USB Implementers Forum developed an updated version of the USB Power Delivery specification, which enables powers of up to 240 Watts to be supported.

<sup>(9)</sup> Regulation (EU) No 1025/2012 of the European Parliament and of the Council of 25 October 2012 on European standardisation, amending Council Directives 89/686/EEC and 93/15/EEC and Directives 94/9/EC, 94/25/EC, 95/16/EC, 97/23/EC, 98/34/EC, 2004/22/EC, 2007/23/EC, 2009/23/EC and 2009/105/EC of the European Parliament and of the Council and repealing Council Decision 87/95/EEC and Decision No 1673/2006/EC of the European Parliament and of the Council (OJ L 316, 14.11.2012, p. 12).

Adaptations have also been made to the USB Type-C specification, which will extend the requirements for connectors and cables to accommodate powers of up to 240 Watts. This will allow radio equipment requiring such levels of power to be considered for potential inclusion in the list of radio equipment covered by this Directive.

- (13) With respect to charging by means other than wired charging, divergent solutions could be developed in the future, which could have negative impacts on interoperability, on consumer convenience and on the environment. Whilst it is premature to impose specific requirements on such solutions at this stage, the Commission should take action towards promoting and harmonising such solutions to avoid future fragmentation of the internal market.
- (14) Directive 2014/53/EU should be amended in order to include provisions regarding charging interfaces and charging communication protocols. The categories or classes of radio equipment specifically covered by the new provisions should be further detailed in a new annex to that Directive. Within those categories or classes of radio equipment, only radio equipment with a removable or embedded rechargeable battery is concerned. As regards digital cameras, the radio equipment concerned is any digital photo and video camera, including action cameras. Digital cameras designed exclusively for the audiovisual sector or the security and surveillance sector should not be required to integrate the harmonised charging solution. As regards earbuds, the radio equipment concerned is considered together with its dedicated charging case or box, given that earbuds are rarely or never dissociated from their charging case or box due to their specific size and shape. The charging case or box for that specific type of radio equipment is not considered part of the charging device. As regards laptops, the radio equipment concerned is any computer that is portable, including laptops, notebooks, ultraportables, hybrids or convertibles and netbooks.
- (15) Directive 2014/53/EU should also be amended in order to introduce requirements regarding the supply of certain categories or classes of radio equipment without charging devices. The categories or classes of radio equipment concerned, as well as the specifications relating to charging solutions, should be specified in a new annex to that Directive.
- (16) Directive 2014/53/EU provides for information to be included in the instructions accompanying radio equipment and, therefore, additional information requirements should be inserted in the relevant article of that Directive. The content of the new requirements should be specified in a new annex to that Directive. Certain information should be provided in visual form for all forms of supply, including by means of distance selling. A dedicated label indicating the specifications relating to charging capabilities and compatible charging devices would enable consumers and other end-users to determine the most appropriate charging device needed to charge their radio equipment. In order to provide a source of useful reference throughout the life cycle of the radio equipment, the information on the specifications relating to the charging capabilities and the compatible charging devices should also be included in the instructions and safety information accompanying the radio equipment. It should be possible to adapt those information requirements in the future in order to reflect any changes to the labelling requirements, in particular for charging devices, which could be introduced under Directive 2009/125/EC of the European Parliament and of the Council <sup>(6)</sup>. Those information requirements should, in particular, reflect the development of the harmonised charging solutions and should be adapted accordingly. In that context, the inclusion of a system of colour codes could also be considered.
- (17) Taking into consideration that importers and distributors could also supply radio equipment directly to consumers and other end-users, they should be subject to obligations identical to those applicable to manufacturers in relation to the information to be supplied or displayed. All economic operators should be required to fulfil the obligation in relation to the pictogram indicating whether or not a charging device is included with the radio equipment when making radio equipment available to consumers and other end-users. Importers and distributors could thus offer

<sup>(6)</sup> Directive 2009/125/EC of the European Parliament and of the Council of 21 October 2009 establishing a framework for the setting of ecodesign requirements for energy-related products (OJ L 285, 31.10.2009, p. 10).

bundles, which would include the radio equipment and its charging device, even when such radio equipment is supplied without a charging device by the manufacturer, provided that the importers and distributors would also offer consumers and other end-users the possibility of acquiring the radio equipment without any charging device.

- (18) Directive 2014/53/EU sets out conformity assessment procedures. It should be amended in order to add references to new essential requirements. Manufacturers should thus have the choice of using an internal production control procedure in order to demonstrate compliance with the new essential requirements.
- (19) In order to ensure that national market surveillance authorities have the procedural means to enforce compliance with the new requirements regarding the harmonised charging interfaces and charging communication protocols, as well as those regarding the supply of radio equipment subject to such harmonisation, Directive 2014/53/EU should be adapted accordingly. In particular, an explicit reference to the lack of compliance with the essential requirements, which also include the new provisions as to specifications relating to charging capabilities and to compatible charging devices, should be included. Given that those new provisions are in respect of interoperability aspects, the objective would be to avoid divergent interpretations as to whether the procedure laid down in Directive 2014/53/EU could also be triggered in respect of radio equipment which does not present a risk to the health or safety of persons or to other aspects of public interest protection.
- (20) Directive 2014/53/EU sets out instances of formal non-compliance. Given that this Directive introduces new requirements applicable to certain categories or classes of radio equipment, Directive 2014/53/EU should be amended in order to allow for effective enforcement by the national market surveillance authorities of compliance with the new requirements.
- (21) Directive 2014/53/EU should also be amended in order to adjust the references contained therein to the new requirements introduced by this Directive.
- (22) It is necessary to ensure the minimum common interoperability between radio equipment and the charging devices for such radio equipment, and to address any future market developments, such as the emergence of new categories or classes of radio equipment in relation to which a significant degree of fragmentation of the charging interfaces and charging communication protocols takes place, and any developments in charging technology. It is also necessary to reflect future amendments to labelling requirements, such as for charging devices or cables, or other technological progress. The power to adopt acts in accordance with Article 290 of the Treaty on the Functioning of the European Union should therefore be delegated to the Commission in respect of amending categories or classes of radio equipment and the specifications relating to the charging interfaces and charging communication protocols for each of them and amending the information requirements regarding the charging interfaces and charging communication protocols. It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level, and that those consultations be conducted in accordance with the principles laid down in the Interinstitutional Agreement of 13 April 2016 on Better Law-Making <sup>(7)</sup>. In particular, to ensure equal participation in the preparation of delegated acts, the European Parliament and the Council receive all documents at the same time as Member States' experts, and their experts systematically have access to meetings of Commission expert groups dealing with the preparation of delegated acts.
- (23) Directive 2014/53/EU should therefore be amended accordingly.
- (24) Economic operators should be provided with sufficient time to proceed with the necessary adaptations to radio equipment falling within the scope of this Directive, which they intend to place on the Union market,

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<sup>(7)</sup> OJ L 123, 12.5.2016, p. 1.

HAVE ADOPTED THIS DIRECTIVE:

#### Article 1

Directive 2014/53/EU is amended as follows:

(1) Article 3 is amended as follows:

(a) in paragraph 3, first subparagraph, point (a) is replaced by the following:

‘(a) radio equipment interworks with accessories other than the charging devices for the categories or classes of radio equipment, specified in Part I of Annex Ia, which are specifically referred to in paragraph 4 of this Article;’;

(b) the following paragraph is added:

‘4. Radio equipment falling within the categories or classes specified in Part I of Annex Ia shall be so constructed that it complies with the specifications relating to charging capabilities set out in that Annex for the relevant category or class of radio equipment.’

With respect to radio equipment capable of being recharged by means of wired charging, the Commission is empowered to adopt delegated acts in accordance with Article 44 to amend Part I of Annex Ia in the light of scientific and technological progress or market developments in order to ensure a minimum common interoperability between radio equipment and its charging devices, as well as to improve consumer convenience, to reduce environmental waste and to avoid market fragmentation, by:

(a) modifying, adding or removing categories or classes of radio equipment;

(b) modifying, adding or removing technical specifications, including references and descriptions, in relation to the charging receptacle(s) and charging communication protocol(s), for each category or class of radio equipment concerned.

The Commission shall continuously assess market developments, market fragmentation and technological progress with a view to identifying categories or classes of radio equipment capable of being recharged by means of wired charging for which the inclusion in Part I of Annex Ia would lead to significant consumer convenience and reduction of environmental waste.

The Commission shall submit a report on the assessment referred to in the third subparagraph to the European Parliament and to the Council, for the first time by 28 December 2025 and every 5 years thereafter, and shall adopt delegated acts pursuant to the second subparagraph, point (a), accordingly.

With respect to radio equipment capable of being recharged by means other than wired charging, the Commission is empowered to adopt delegated acts in accordance with Article 44 in order to amend Part I of Annex Ia in the light of scientific and technological progress or market developments in order to ensure a minimum common interoperability between radio equipment and its charging devices, as well as to improve consumer convenience, to reduce environmental waste and to avoid market fragmentation, by:

(a) introducing, modifying, adding or removing categories or classes of radio equipment;

(b) introducing, modifying, adding or removing technical specifications, including references and descriptions, in relation to charging interface(s) and charging communication protocol(s), for each category or class of radio equipment concerned.

The Commission shall, in accordance with Article 10(1) of Regulation (EU) No 1025/2012, and by 28 December 2024, request one or more European standardisation organisations to draft harmonised standards laying down technical specifications for the charging interface(s) and charging communication protocol(s) for radio equipment capable of being recharged by means other than wired charging. In accordance with the procedure laid down in Article 10(2) of Regulation (EU) No 1025/2012, the Commission shall consult the committee set up under Article 45(1) of this Directive. The requirements as to the content of the requested harmonised standards shall be based on an assessment carried out by the Commission of the current state of wireless charging technologies for radio equipment, covering in particular market developments, market penetration, market fragmentation, technological performance, interoperability, energy efficiency and charging performance.

When preparing the delegated acts referred to in this Article with respect to radio equipment capable of being recharged by means of wired charging, as well as with respect to radio equipment capable of being recharged by means other than wired charging, the Commission shall take into account the degree of market acceptance of the technical specifications under consideration, the resulting consumer convenience and the extent of the reduction of environmental waste and market fragmentation that can be expected from such technical specifications. Technical specifications that are based on relevant available European or international standards shall be deemed to meet the objectives set out in the previous sentence. However, where such European or international standards do not exist, or where the Commission determines, based on its technical assessment, that they do not meet those objectives in an optimal manner, the Commission may set out other technical specifications which better meet those objectives.’;

- (2) the following Article is inserted:

*‘Article 3a*

Possibility for consumers and other end-users to acquire certain categories or classes of radio equipment without a charging device

1. Where an economic operator offers to consumers and other end-users the possibility to acquire the radio equipment referred to in Article 3(4) together with a charging device, the economic operator shall also offer the consumers and other end-users the possibility of acquiring that radio equipment without any charging device.
2. Economic operators shall ensure that the information on whether or not a charging device is included with the radio equipment referred to in Article 3(4) is displayed in a graphic form using a user-friendly and easily accessible pictogram as set out in Part III of Annex Ia when such radio equipment is made available to consumers and other end-users. The pictogram shall be printed on the packaging or affixed to the packaging as a sticker. When the radio equipment is made available to consumers and other end-users, the pictogram shall be displayed in a visible and legible manner and, in the case of distance selling, close to the price indication.

The Commission is empowered to adopt delegated acts in accordance with Article 44 in order to amend Part III of Annex Ia as a consequence of amendments to Parts I and II of that Annex, or as a consequence of future amendments to labelling requirements, or in the light of technological progress, by introducing, modifying, adding or removing any graphic or textual elements.’;

- (3) in Article 10, paragraph 8 is replaced by the following:

‘8. Manufacturers shall ensure that the radio equipment is accompanied by instructions and safety information. Instructions shall include the information required to use radio equipment in accordance with its intended use. Such information shall include, where applicable, a description of accessories and components, including software, which allow the radio equipment to operate as intended. Such instructions and safety information, as well as any labelling, shall be clear, understandable and intelligible.

The following information shall also be included in the instructions in the case of radio equipment intentionally emitting radio waves:

- (a) frequency band(s) in which the radio equipment operates;

- (b) maximum radio-frequency power transmitted in the frequency band(s) in which the radio equipment operates.

In the case of radio equipment referred to in Article 3(4), the instructions shall contain information on the specifications relating to the radio equipment's charging capabilities and the compatible charging devices, as set out in Part II of Annex Ia. In addition to being included in the instructions, when the manufacturers make such radio equipment available to consumers and other end-users, the information shall be also displayed on a label, as set out in Part IV of Annex Ia. The label shall be printed in the instructions and on the packaging or affixed to the packaging as a sticker. In the absence of packaging, the sticker with the label shall be affixed to the radio equipment. When the radio equipment is made available to consumers and other end-users, the label shall be displayed in a visible and legible manner and, in the case of distance selling, close to the price indication. Where the size or nature of the radio equipment does not allow otherwise, the label may be printed as a separate document accompanying the radio equipment.

The instructions and safety information referred to in the first, second and third subparagraphs of this paragraph shall be in a language which can be easily understood by consumers and other end-users, as determined by the Member State concerned.

The Commission is empowered to adopt delegated acts in accordance with Article 44 in order to amend Parts II and IV of Annex Ia, as a consequence of amendments to Part I of that Annex, or as a consequence of future amendments to labelling requirements, or in the light of technological progress, by introducing, modifying, adding or removing any details in relation to the information, graphic or textual elements, as set out in this Article.;

- (4) in Article 12(4), the following subparagraph is added:

'When making the radio equipment referred to in Article 3(4) available to consumers and other end-users, importers shall ensure that:

- (a) such radio equipment displays, or is supplied with, a label in accordance with Article 10(8), third subparagraph;
- (b) that label is displayed in a visible and legible manner and, in the case of distance selling, close to the price indication.;

- (5) in Article 13(2), the following subparagraph is added:

'When making the radio equipment referred to in Article 3(4) available to consumers and other end-users, distributors shall ensure that:

- (a) such radio equipment displays, or is supplied with, a label in accordance with Article 10(8), third subparagraph;
- (b) that label is displayed in a visible and legible manner and, in the case of distance selling, close to the price indication.;

- (6) in Article 17(2), introductory part, the words 'Article 3(1)' are replaced by the words 'Article 3(1) and (4)';

- (7) Article 40 is amended as follows:

- (a) the title is replaced by the following:

'Procedure at national level for dealing with radio equipment presenting a risk or not in compliance with essential requirements';

- (b) in paragraph 1, the first subparagraph is replaced by the following:

'Where the market surveillance authorities of a Member State have sufficient reason to believe that radio equipment covered by this Directive presents a risk to the health or safety of persons or to other aspects of public interest protection covered by this Directive, or that it does not comply with at least one of the applicable essential requirements set out in Article 3, they shall carry out an evaluation in relation to the radio equipment concerned covering all relevant requirements laid down in this Directive. The relevant economic operators shall cooperate as necessary with the market surveillance authorities for that purpose.;

(8) in Article 43, paragraph 1 is amended as follows:

(a) the following points are inserted after point (f):

‘(fa) the pictogram as referred to in Article 3a(2), or the label as referred to in Article 10(8), has not been drawn up correctly;

(fb) the label as referred to in Article 10(8) does not accompany the radio equipment concerned;

(fc) the pictogram or the label is not affixed or displayed in accordance with Article 3a(2) or Article 10(8), respectively;’;

(b) point (h) is replaced by the following:

‘(h) the information referred to in Article 10(8), the EU declaration of conformity referred to in Article 10(9) or the information on usage restrictions referred to in Article 10(10) does not accompany the radio equipment;’;

(c) point (j) is replaced by the following:

‘(j) Article 3a(1) or Article 5 is not complied with.’;

(9) Article 44 is amended as follows:

(a) in paragraph 2, the following sentence is inserted after the first sentence:

‘The power to adopt delegated acts referred to in Article 3(4), Article 3a(2), second subparagraph, and Article 10(8), fifth subparagraph, shall be conferred on the Commission for a period of 5 years from 27 December 2022’;

(b) in paragraph 3, the first sentence is replaced by the following:

‘The delegation of power referred to in Article 3(3), second subparagraph, Article 3(4), Article 3a(2), second subparagraph, Article 4(2), Article 5(2) and Article 10(8), fifth subparagraph, may be revoked at any time by the European Parliament or by the Council.’;

(c) the following paragraph is inserted:

‘3a. Before adopting a delegated act, the Commission shall consult experts designated by each Member State in accordance with the principles laid down in the Interinstitutional Agreement of 13 April 2016 on Better Law-Making (\*).

(\*) OJ L 123, 12.5.2016, p. 1.’;

(d) paragraph 5 is replaced by the following:

‘5. A delegated act adopted pursuant to Article 3(3), second subparagraph, Article 3(4), Article 3a(2), second subparagraph, Article 4(2), Article 5(2) or Article 10(8), fifth subparagraph, shall enter into force only if no objection has been expressed either by the European Parliament or by the Council within a period of 2 months of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by 2 months at the initiative of the European Parliament or of the Council.’;

(10) in Article 47, the following paragraph is added:

‘3. By 28 December 2026, the Commission shall submit to the European Parliament and the Council a report on the impact of the possibility to acquire radio equipment without any charging device and without cables, particularly with regard to consumer convenience, the reduction of environmental waste, behavioural changes and the development of market practices. That report shall be accompanied, if appropriate, by a legislative proposal to amend this Directive to introduce mandatory unbundling of the sale of charging devices and cables from the sale of radio equipment.’;

(11) the text set out in the Annex to this Directive is inserted as Annex Ia.



*Article 2*

1. Member States shall adopt and publish, by 28 December 2023, the laws, regulations and administrative provisions necessary to comply with this Directive. They shall immediately communicate the text of those measures to the Commission.

They shall apply those measures from 28 December 2024 for the categories or classes of radio equipment referred to in Part I, points 1.1 to 1.12 of Annex Ia, and from 28 April 2026 for the categories or classes of radio equipment referred to in Part I, point 1.13 of Annex Ia.

When Member States adopt those measures, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such reference is to be made.

2. Member States shall communicate to the Commission the text of the main measures of national law which they adopt in the field covered by this Directive.

*Article 3*

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

*Article 4*

This Directive is addressed to the Member States.

Done at Strasbourg, 23 November 2022.

*For the European Parliament*  
*The President*  
R. METSOLA

*For the Council*  
*The President*  
M. BEK

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## ANNEX

## ANNEX Ia

## SPECIFICATIONS AND INFORMATION RELATING TO CHARGING APPLICABLE TO CERTAIN CATEGORIES OR CLASSES OF RADIO EQUIPMENT

## Part I

**Specifications relating to charging capabilities**

1. The requirements set out in points 2 and 3 of this Part shall apply to the following categories or classes of radio equipment:
  - 1.1. handheld mobile phones;
  - 1.2. tablets;
  - 1.3. digital cameras;
  - 1.4. headphones;
  - 1.5. headsets;
  - 1.6. handheld videogame consoles;
  - 1.7. portable speakers;
  - 1.8. e-readers;
  - 1.9. keyboards;
  - 1.10. mice;
  - 1.11. portable navigation systems;
  - 1.12. earbuds;
  - 1.13. laptops.
2. In so far as they are capable of being recharged by means of wired charging, the categories or classes of radio equipment referred to in point 1 of this Part shall:
  - 2.1. be equipped with the USB Type-C receptacle, as described in the standard EN IEC 62680-1-3:2021 “Universal serial bus interfaces for data and power – Part 1-3: Common components – USB Type-C® Cable and Connector Specification”, and that receptacle shall remain accessible and operational at all times;
  - 2.2. be capable of being charged with cables which comply with the standard EN IEC 62680-1-3:2021 “Universal serial bus interfaces for data and power – Part 1-3: Common components – USB Type-C® Cable and Connector Specification”.
3. In so far as they are capable of being recharged by means of wired charging at voltages higher than 5 Volts, currents higher than 3 Amperes or powers higher than 15 Watts, the categories or classes of radio equipment referred to in point 1 of this Part shall:
  - 3.1. incorporate the USB Power Delivery, as described in the standard EN IEC 62680-1-2:2021 “Universal serial bus interfaces for data and power – Part 1-2: Common components – USB Power Delivery specification”;
  - 3.2. ensure that any additional charging protocol allows for the full functionality of the USB Power Delivery referred to in point 3.1, irrespective of the charging device used.

## Part II

**Information on specifications relating to charging capabilities and the compatible charging devices**

In the case of radio equipment falling within the scope of Article 3(4), first subparagraph, the following information shall be indicated in accordance with the requirements set out in Article 10(8), and may be made available in addition by means of QR codes or similar electronic solutions:

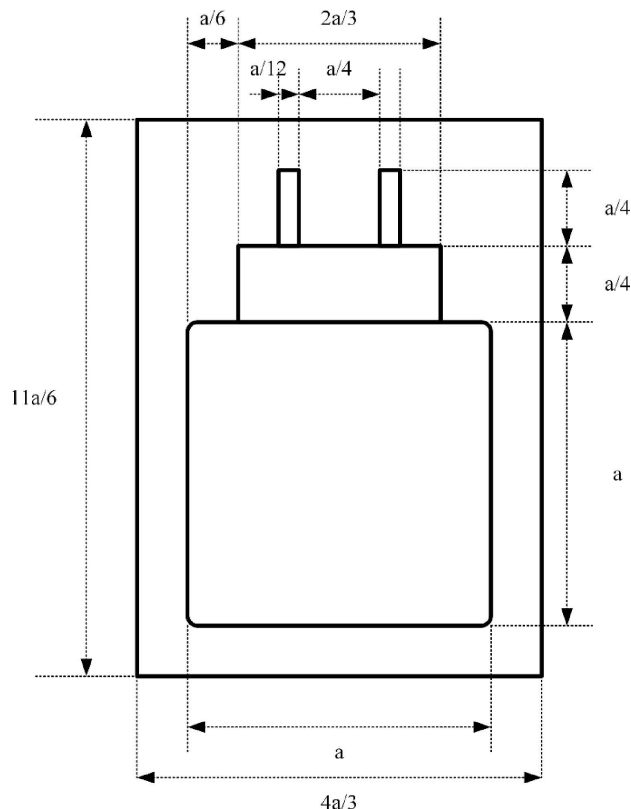
- (a) in the case of all categories or classes of radio equipment which are subject to the requirements set out in Part I, a description of the power requirements of the wired charging devices that can be used with that radio equipment, including the minimum power required to charge the radio equipment, and the maximum power required to charge the radio equipment at the maximum charging speed expressed in Watts by displaying the text: “the power delivered by the charger must be between min [xx] Watts required by the radio equipment, and max [yy] Watts in order to achieve the maximum charging speed”. The number of Watts shall express, respectively, the minimum power required by the radio equipment, and the maximum power required by the radio equipment to achieve the maximum charging speed;
- (b) in the case of radio equipment which is subject to the requirements set out in point 3 of Part I, a description of the specifications relating to charging capabilities of the radio equipment, in so far as it is capable of being recharged by means of wired charging at voltages higher than 5 Volts or currents higher than 3 Amperes or powers higher than 15 Watts, including an indication that the radio equipment supports the USB Power Delivery charging protocol by displaying the text “USB PD fast charging” and an indication of any other supported charging protocol by displaying its name in text format.

## Part III

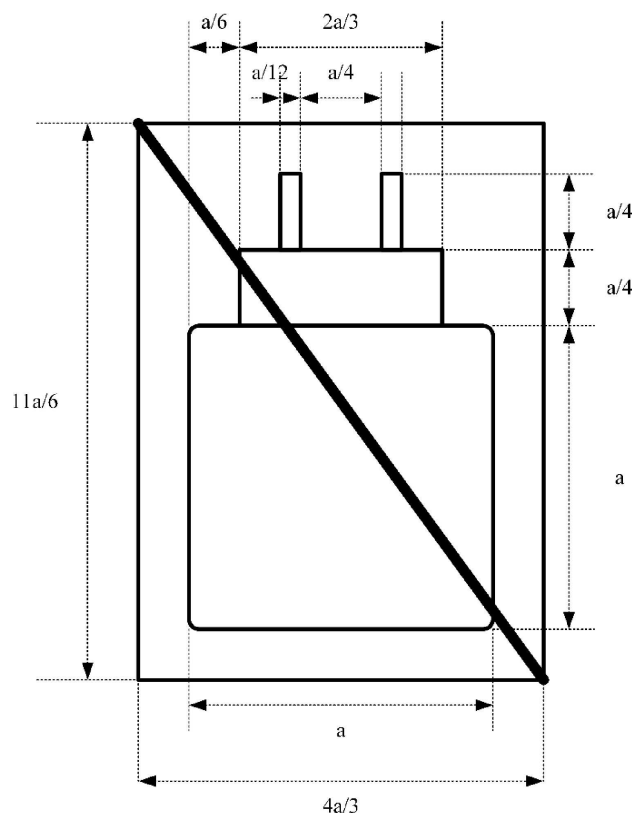
**Pictogram indicating whether or not a charging device is included with the radio equipment**

1. The pictogram shall have the following formats:

- 1.1. If a charging device is included with the radio equipment:



1.2. If no charging device is included with the radio equipment:

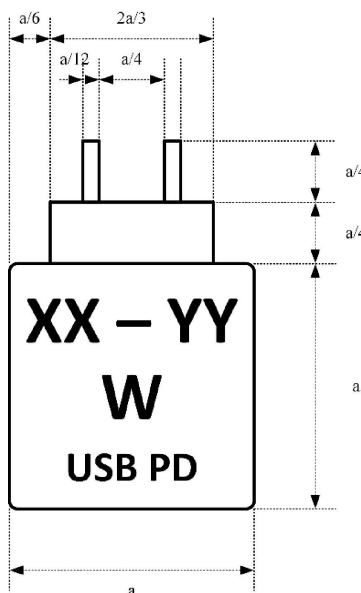


2. The pictogram may vary in appearance (e.g. as to its colour, solid or hollow, line thickness), provided that it remains visible and legible. If the pictogram is reduced or enlarged, the proportions set out in the drawings in point 1 of this Part shall be maintained. The dimension "a" referred to in point 1 of this Part shall be greater than or equal to 7 mm, irrespective of the variation.

#### Part IV

#### Content and format of the label

1. The label shall have the following format:



2. The letters “XX” shall be replaced by the figure corresponding to the minimum power required by the radio equipment to charge, which determines the minimum power that a charging device needs to supply to charge the radio equipment. The letters “YY” shall be replaced by the figure corresponding to the maximum power required by the radio equipment to achieve maximum charging speed, which determines the power that a charging device needs to supply at least to achieve that maximum charging speed. The abbreviation “USB PD” (USB Power Delivery) shall be displayed if the radio equipment supports that charging communication protocol. “USB PD” is a protocol that negotiates the fastest delivery of current from the charging device to the radio equipment without shortening the battery lifetime.
  3. The label may vary in appearance (e.g. as to its colour, solid or hollow, line thickness), provided that it remains visible and legible. If the label is reduced or enlarged, the proportions set out in the drawing in point 1 of this Part shall be maintained. The dimension “a” referred to in point 1 of this Part shall be greater than or equal to 7 mm, irrespective of the variation.’
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**DIRECTIVE (EU) 2022/2381 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL**  
**of 23 November 2022**  
**on improving the gender balance among directors of listed companies and related measures**  
**(Text with EEA relevance)**

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 157(3) thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national Parliaments,

Having regard to the opinion of the European Economic and Social Committee, <sup>(1)</sup>

Having regard to the opinion of the Committee of the Regions, <sup>(2)</sup>

Acting in accordance with the ordinary legislative procedure <sup>(3)</sup>,

Whereas:

- (1) Under Article 2 of the Treaty on European Union (TEU), equality is a founding value of the Union and is common to the Member States in a society in which equality between women and men prevails. Under Article 3(3) TEU, the Union is to promote equality between women and men.
- (2) Article 157(3) of the Treaty on the Functioning of the European Union (TFEU) confers upon the European Parliament and the Council the power to adopt measures to ensure the application of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation.
- (3) With a view to ensuring full equality in practice between men and women in working life, Article 157(4) TFEU permits positive action by allowing Member States to maintain or adopt measures providing for specific advantages in order to make it easier for the underrepresented sex to pursue a vocational activity or to prevent or compensate for disadvantages in professional careers. Article 23 of the Charter of Fundamental Rights of the European Union (the 'Charter') provides that equality between women and men is to be ensured in all areas and that the principle of equality cannot prevent the maintenance or adoption of measures providing for specific advantages in favour of the underrepresented sex.
- (4) The European Pillar of Social Rights, which was jointly proclaimed by the European Parliament, the Council, and the Commission in 2017, incorporates among its principles equality of treatment and opportunities between women and men, including regarding participation in the labour market, terms and conditions of employment and career progression.
- (5) Achieving gender equality in the workplace requires a comprehensive approach, which also includes fostering gender-balanced decision-making within companies at all levels, as well as closing the gender pay gap. Ensuring equality in the workplace is also a key prerequisite for reducing poverty among women.

<sup>(1)</sup> OJ C 133, 9.5.2013, p. 68.

<sup>(2)</sup> OJ C 218, 30.7.2013, p. 33.

<sup>(3)</sup> Position of the European Parliament of 20 November 2013 (OJ C 436, 24.11.2016, p. 225) and position of the Council at first reading of 17 October 2022 (not yet published in the Official Journal). Position of the European Parliament of 17 October 2022 (OJ C 433, 15.11.2022, p. 14).

- (6) Council Recommendation 84/635/EEC <sup>(4)</sup> recommended that Member States take steps to ensure that positive action includes, as far as possible, actions having a bearing on active participation by women in decision-making bodies. Council Recommendation 96/694/EC <sup>(5)</sup> recommended that Member States encourage the private sector to increase the presence of women at all levels of decision-making, in particular by the adoption, or within the framework, of equality plans and positive action programmes.
- (7) This Directive is aimed at ensuring the application of the principle of equal opportunities between women and men and achieving a gender-balanced representation among top management positions by establishing a set of procedural requirements concerning the selection of candidates for appointment or election to director positions based on transparency and merit.
- (8) In recent years the Commission has presented several reports taking stock of the situation concerning gender equality in economic decision-making. It has encouraged listed companies to increase the number of members of the underrepresented sex on their boards by means of self-regulatory measures and to make concrete voluntary commitments in that regard. In its communication of 5 March 2010 entitled 'A Strengthened Commitment to Equality between Women and Men – A Women's Charter', the Commission underlined that women still do not have full access to the sharing of power and decision-making in political and economic life and in the public and private sectors, and reaffirmed its commitment to using its powers to pursue a fairer representation of women and men in positions of power in public life and the economy. Improving the gender balance in decision-making was one of the priorities set by the Commission in its communication of 21 September 2010 entitled 'Strategy for equality between women and men 2010-2015'. Achieving gender balance in decision-making and politics is one the priorities set out in the Commission's communication of 5 March 2020 entitled 'A Union of Equality: Gender Equality Strategy 2020-2025'.
- (9) In its conclusions of 7 March 2011 on European Pact for Gender Equality (2011-2020), the Council acknowledged that gender equality policies are vital to economic growth, prosperity and competitiveness. It reaffirmed its commitment to closing the gender gaps with a view to meeting the objectives of the Europe 2020 Strategy, especially in three areas of great relevance to gender equality, namely employment, education and promoting social inclusion. It also urged action to promote the equal participation of women and men in decision-making at all levels and in all fields, in order to make full use of all talents. In that regard, making use of all available talent, knowledge and ideas would enrich the diversity of human resources and improve business prospects.
- (10) In its communication of 3 March 2010 entitled 'Europe 2020: A strategy for smart, sustainable and inclusive growth' (the 'Europe 2020 Strategy'), the Commission recognised that increasing women's labour market participation is a precondition for boosting growth and for tackling demographic challenges in Europe. The Europe 2020 Strategy set a headline target of reaching an employment rate of at least 75 % for the Union population aged between 20 and 64 years by 2020. It is important that a clear commitment be made to eliminate the persisting gender pay gap and that a reinforced effort be made to tackle all barriers to women's participation in the labour market, including the existing 'glass ceiling' phenomenon. The Porto Declaration, which was signed by the Heads of State or Government on 8 May 2021 <sup>(6)</sup>, welcomed the new Union headline targets on jobs, skills and poverty reduction and the revised social scoreboard proposed by the Commission in its communication of 4 March 2021 entitled 'The European Pillar of Social Rights Action Plan'. That Action Plan provides that, in order to achieve the overall goal of an employment rate of at least 78 % among the Union population aged between 20 and 64 years by 2030, it is necessary to strive to at least halve the gender employment gap compared to 2019. Enhancing women's participation in economic decision-making, on boards in particular, is expected to have a positive spill-over effect on women's employment in the companies concerned and throughout the whole economy. In the aftermath of the COVID-19 crisis, gender equality and inclusive leadership matter more than ever, in line with the need to make full use of the available pool of talent, of both women and men. Research has shown that inclusion and diversity enable recovery and resilience. They are of vital importance in ensuring the Union's economic competitiveness, encouraging innovation and enhancing professional standards on boards.

<sup>(4)</sup> Council Recommendation 84/635/EEC of 13 December 1984 on the promotion of positive action for women (OJ L 331, 19.12.1984, p. 34).

<sup>(5)</sup> Council Recommendation 96/694/EC of 2 December 1996 on the balanced participation of women and men in the decision-making process (OJ L 319, 10.12.1996, p. 11).

<sup>(6)</sup> <https://www.consilium.europa.eu/en/press/press-releases/2021/05/08/the-porto-declaration/>

- (11) The European Parliament, in its resolution of 6 July 2011 on women and business leadership, urged companies to attain the critical threshold of 30 % female membership of management bodies by 2015 and 40 % by 2020. It called on the Commission, if the steps taken by companies and the Member States were found to be inadequate, to propose legislation by 2012, including quotas. It would be important that such legislation be implemented on a temporary basis and serve as a catalyst for change and for rapid reforms designed to eliminate persisting gender inequalities and stereotypes in economic decision-making. The European Parliament reiterated that call for legislation in its resolutions of 13 March 2012 and 21 January 2021.
- (12) It is important that Union institutions, bodies, offices and agencies lead by example when it comes to gender equality by, inter alia, setting objectives for a gender-balanced representation at all levels of management. Particular attention needs to be given to policies for the recruitment of senior management. Therefore, in its communication of 5 March 2020 entitled 'A Union of Equality: the Gender Equality Strategy 2020-2025' the Commission emphasised that Union institutions, bodies, offices and agencies should ensure gender balance in leadership positions. In its communication of 5 April 2022 entitled 'A new Human Resources Strategy for the Commission', the Commission committed to ensuring full gender equality at all levels of its management by 2024. The Commission will monitor progress and report regularly in that regard on its website. The Commission further shares best practices with other Union institutions, bodies, offices and agencies and will report on the situation of gender balance in leadership positions in those institutions, bodies, offices and agencies on its website. The European Parliament, in its Bureau decision of 13 January 2020, has agreed on setting targets for gender balance in senior and middle management positions for 2024. The European Parliament will continue to monitor the progress at all levels of its management and aims to lead by example. The Council committed, in its Diversity and Inclusion Strategy 2021-2024, to achieving gender equality in management positions of its General Secretariat (GSC) with a 45 to 55 % margin at the latest by the end of 2026. The GSC's Action Plan for Gender Equality in Management sets out measures to achieve that objective.
- (13) It is important that companies and businesses foster, support and develop female talent at all levels and throughout their careers in order to ensure that qualified women are provided with opportunities to hold board and management positions.
- (14) In order to promote gender equality and support the participation of women in decision-making, Directive (EU) 2019/1158 of the European Parliament and of the Council <sup>(7)</sup>, which promotes work-life balance for parents and carers, provides that Member States take the necessary measures to ensure an equal sharing of caring responsibilities between women and men by means of parental, paternity and carers' leave, alongside the existing maternity leave. That Directive also provides for the right to request flexible working arrangements.
- (15) The appointment of women as directors is hampered by a number of specific factors which can be overcome not only by means of binding rules but also by means of educational initiatives and incentives to promote good practices. First, it is essential to heighten awareness in business schools and universities of the benefits of gender equality in making companies more competitive. It is also necessary to encourage a regular turnover of directors and to introduce positive measures to promote and reward efforts by Member States and companies to adopt a more decisive approach to such changes in top economic decision-making bodies at all levels.
- (16) The Union has a large pool of highly qualified women, which is constantly growing as evidenced by the fact that 60 % of university graduates are female. Achieving gender balance on boards is essential for an efficient use of that existing pool, which is key to addressing the Union's demographic and economic challenges. Thus, the under-representation of women on boards is a missed opportunity for Member States' economies in general and for their development and growth. Making full use of the existing pool of female talent would also improve the return on education for both individuals and the public sector. It is widely acknowledged that the presence of women on boards improves corporate governance, as team performance and the quality of decision-making are enhanced by a more diverse and collective mind-set incorporating a wider range of perspectives. Numerous studies have shown that diversity leads to a more proactive business model, more balanced decisions and enhanced professional standards on boards that better reflect societal realities and consumer needs. It also encourages innovation.

<sup>(7)</sup> Directive (EU) 2019/1158 of the European Parliament and of the Council of 20 June 2019 on work-life balance for parents and carers and repealing Council Directive 2010/18/EU (OJ L 188, 12.7.2019, p. 79).



Numerous studies have also shown that there is a positive relationship between gender diversity at top management level and a company's financial performance and profitability, resulting in substantial long-term sustainable growth. Achieving gender balance on boards is therefore vitally important for ensuring the Union's competitiveness in a globalised economy and would offer a comparative advantage vis-à-vis third countries.

- (17) Increasing the representation of women on boards not only affects the women appointed to boards, but also contributes to attracting female talent to the company and ensuring a greater presence of women at all levels of management and in the workforce. Therefore, a higher share of women on boards is likely to have a positive impact on closing both the gender employment gap and the gender pay gap.
- (18) Despite evidence of the beneficial impact of gender balance on companies themselves and on the economy in general, and despite the existing Union law prohibiting sex discrimination and the existing Union-level actions encouraging self-regulation, women continue to be vastly underrepresented in the highest decision-making bodies of companies throughout the Union. Statistics show that the proportion of women involved in top-level business decision-making remains very low. If one half of the talent pool is not even considered for leadership positions, the very process and quality of appointments could be compromised, leading to increased distrust of business power structures and possibly to a reduction in the efficient use of available human capital. It is important that the make-up of society is faithfully reflected in corporate decision-making and that the potential of the entire population of the Union is utilised. According to the European Institute for Gender Equality, in 2021, women accounted for an average of 30,6 % of the members of boards in the largest listed companies and for only 8,5 % of chairpersons. That indicates unfair and discriminatory under-representation of women, thereby clearly undermining the Union principles of equal opportunities and equal treatment of women and men in the fields of employment and occupation. Measures to encourage career progression for women at all levels of management should therefore be introduced and reinforced, and particular attention should be paid to ensuring that that is the case in listed companies, due to the significant economic and social responsibility of such companies. In addition, it is important that Union bodies, offices and agencies lead by example when it comes to redressing existing gender imbalances within the composition of their own management boards.
- (19) The proportion of women on boards has increased very slowly over recent years. The rate of improvement has varied among Member States and has led to highly divergent results. Much more significant progress was noted in those Member States where binding measures have been introduced. That divergence is likely to increase given the very different approaches to improving gender balance on boards. Therefore, Member States are encouraged to share information about the effective measures taken and policies adopted at national level, and to exchange best practices, with a view to supporting progress across the Union towards achieving a more balanced representation of women and men on boards.
- (20) The scattered and divergent regulation or the absence of regulation at national level as regards the gender balance on boards of listed companies not only leads to discrepancies in the number of women among non-executive directors and to different rates of improvement across Member States, but it also poses barriers to the internal market by imposing divergent corporate governance requirements on listed companies in the Union. Those differences in legal and self-regulatory requirements for the composition of boards can lead to practical complications for listed companies operating across borders, in particular when establishing subsidiaries or in mergers and acquisitions, and for candidates for director positions.
- (21) Gender imbalances within companies are greater at more senior levels. Furthermore, many of those women who are represented at senior management level are to be found in fields such as human resources and communication, while men at a senior level are more likely to be employed in general management or line management within the company. As the main pool for recruitment to director positions is comprised largely of candidates with senior management experience, it is vital that the number of women advancing to such management positions within companies be increased.

- (22) One of the main factors enabling this Directive to be correctly implemented is the effective application of criteria, to be set in advance and with full transparency, for the selection of directors, with candidates' qualifications, knowledge and skills being considered on an equal basis, regardless of their gender.
- (23) The current lack of transparency in the selection process and qualification criteria for director positions in most Member States represents a significant barrier to greater gender balance among directors and negatively affects both the board candidates' careers and freedom of movement and investor decisions. Such a lack of transparency prevents potential candidates for director positions from applying to boards where their qualifications would be most required and from challenging gender-biased appointment decisions, thus restricting their freedom of movement within the internal market. On the other hand, investors might have investment strategies that require that information linked also to the expertise and competence of directors be provided. More transparency in the qualification criteria and the selection process for directors enables investors to better assess the company's business strategy and to take informed decisions. It is therefore important that board appointment procedures be clear and transparent and that candidates be assessed objectively on their individual merits, regardless of their gender.
- (24) While this Directive does not aim to harmonise national laws on the selection process and qualification criteria for director positions in detail, the introduction of certain minimum requirements for listed companies without balanced gender representation relating to the selection of candidates for appointment or election to director positions on the basis of a transparent and clearly defined selection process and an objective comparative assessment of their qualifications in terms of suitability, competence and professional performance is necessary for achieving gender balance. Only a binding measure at Union level can effectively help to ensure a competitive level-playing field throughout the Union and avoid practical complications in business life.
- (25) The Union should therefore aim to increase the presence of women on boards in all Member States, in order to boost economic growth, encourage labour market mobility, strengthen the competitiveness of listed companies and achieve effective gender equality on the labour market. That aim should be pursued by laying down minimum requirements with regard to positive action in the form of binding measures. Those binding measures should seek to achieve a quantitative objective for the gender composition of boards, in view of the fact that Member States and third countries which have chosen that or a similar method have achieved the best results in reducing the under-representation of women in economic decision-making positions.
- (26) It is important that each listed company develop a gender equality policy in order to achieve a more balanced gender representation at all levels. Such policies might include the nomination of both a female candidate and a male candidate for key positions, mentoring schemes and career development guidance for women, and human-resources strategies designed to encourage diverse recruitment.
- (27) Listed companies have a particular economic importance, visibility and impact on the market as a whole. Such companies set standards for the wider economy and their practices can be expected to be followed by other types of companies. The public nature of listed companies justifies their being regulated to a greater extent in the public interest.
- (28) The measures provided for in this Directive should apply to listed companies.
- (29) This Directive should not apply to micro, small and medium-sized enterprises (SMEs).
- (30) For the purposes of this Directive, the Member State competent to regulate matters covered by this Directive should be the Member State in which the listed company in question has its registered office. This Directive does not affect national rules determining the law applicable to companies for matters not governed by this Directive.
- (31) There are various systems of board structures for listed companies in the Member States, the main distinction being between a dual system with both a management board and a supervisory board and a unitary system combining the management and supervisory functions in a single board. There are also mixed systems, which feature aspects of both systems or give companies an option between different models. This Directive should apply to all board systems existing in the Member States.

- (32) All board systems distinguish, *de jure* or *de facto*, between executive directors, who are involved in the daily management of the company, and non-executive directors who perform a supervisory function and are not involved in the daily management of the listed company. This Directive aims to improve the gender balance among both categories of directors. In order to strike the right balance between the need to increase the gender balance of boards and the need to minimise interference with the day-to-day management of a company, this Directive distinguishes between those two categories of director.
- (33) In several Member States, a certain proportion of the non-executive directors can or must, pursuant to national law or practice, be appointed or elected by the companies' workforce, by employee organisations or by both. The quantitative objectives laid down in this Directive should also apply to such directors. However, because some non-executive directors are employee representatives, the Member States should establish the means for ensuring that those objectives are achieved, with due regard to the specific rules for the election or designation of employee representatives as laid down in national law and with respect for the freedom of vote in the election of employee representatives. Given the differences between Member States' national company law, it should be possible for Member States to apply the quantitative objectives separately to shareholder representatives and employee representatives.
- (34) Member States should subject listed companies either to the objective of having boards on which members of the underrepresented sex hold at least 40 % of non-executive director positions by 30 June 2026 or, alternatively, since it is important that listed companies increase the proportion of the underrepresented sex in all decision-making positions, to the objective of having boards on which members of the underrepresented sex hold at least 33 % of all director positions by 30 June 2026, regardless of whether they are executive or non-executive, with a view to promoting a more balanced gender representation among all directors.
- (35) The objectives of having boards on which members of the underrepresented sex hold at least 40 % of non-executive director positions or at least 33 % of all director positions concern the overall gender balance among directors and do not interfere with the concrete choice of individual directors from a wide pool of male and female candidates in each individual case. In particular, this Directive does not exclude any particular candidates for director positions, nor does it impose any individual directors on listed companies or shareholders. The decision on the appropriate directors thus remains with the listed companies and the shareholders.
- (36) Due to their nature, it is appropriate that public undertakings which fall under the scope of this Directive serve as a model for the private sector. Member States exercise a dominant influence over public undertakings within the meaning of Article 2, point (b), of Commission Directive 2006/111/EC <sup>(8)</sup> which are listed on a regulated market. Due to that dominant influence, Member States have the instruments at their disposal to bring about the necessary change more rapidly.
- (37) Determining the number of director positions necessary to achieve the objectives laid down in this Directive requires further specification since, given the size of most boards, it is not possible mathematically to reach the exact proportion of 40 % or, where applicable, 33 %. Therefore, the number of director positions necessary to meet the objectives laid down in this Directive should be the number closest to the proportion of 40 % or, where applicable, 33 %, and in both cases should not exceed 49 %.

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<sup>(8)</sup> Commission Directive 2006/111/EC of 16 November 2006 on the transparency of financial relations between Member States and public undertakings as well as on financial transparency within certain undertakings (OJ L 318, 17.11.2006, p. 17).

- (38) In its case-law <sup>(9)</sup> on positive action and the compatibility thereof with the principle of non-discrimination based on sex, which also is laid down in Article 21 of the Charter, the Court of Justice of the European Union (the 'Court of Justice') accepted that priority can in certain cases be given to the underrepresented sex in selection for employment or promotion, provided that the candidate of the underrepresented sex is equally qualified as compared with the competitor of the other sex in terms of suitability, competence and professional performance, that the priority is not automatic and unconditional but can be overridden if reasons specific to an individual candidate of the other sex tilt the balance in that candidate's favour, and that the application of each candidate is the subject of an objective assessment which specifically applies all the selection criteria to the individual candidates.
- (39) Member States should ensure that those listed companies on whose boards members of the underrepresented sex hold less than 40 % of non-executive director positions or less than 33 % of all director positions, including both executive and non-executive directors, as applicable, select the best qualified candidates for appointment or election to those positions on the basis of a comparative assessment of the qualifications of candidates by applying clear, neutrally formulated and unambiguous criteria established in advance of the selection process, with a view to improving gender balance on boards. Examples of types of selection criteria that listed companies could apply include professional experience in managerial or supervisory tasks, international experience, multidisciplinary, leadership, communication skills, networking abilities and knowledge in specific relevant areas such as finance, financial oversight or human resources management.
- (40) When selecting candidates for appointment or election to director positions, priority should be given to the equally qualified candidate of the underrepresented sex. Such priority should not, however, constitute an automatic and unconditional preference. There might be exceptional cases where an objective assessment concerning the specific situation of an equally qualified candidate of the other sex might override the preference which should, otherwise, be accorded to the candidate of the underrepresented sex. Such an overriding of preference could take place, for instance, where broader diversity policies apply at national or company level for the selection of directors. The overriding of the application of positive action should nevertheless remain exceptional, be based on a case-by-case assessment and be duly justified by objective criteria which should not, in any event, discriminate against the underrepresented sex.
- (41) In Member States where the requirements laid down in this Directive relating to the selection of candidates for appointment or election to director positions are applicable, listed companies on whose boards members of the underrepresented sex hold at least 40 % of non-executive director positions or at least 33 % of all director positions, as applicable, should not be obliged to comply with those requirements.
- (42) The methods of selecting candidates for appointment or election to director positions differ from one Member State to another and from one listed company to another. They might involve the pre-selection of candidates to be presented to the shareholders' assembly, for example by a nomination committee or by executive search firms. The requirements for the selection of candidates for appointment or election to director positions should be met at the appropriate stage of the selection process in accordance with national law and the articles of association of the listed companies concerned, including prior to the election of a candidate by shareholders, for example while preparing a shortlist. In that respect, this Directive establishes minimum standards only for selecting candidates for appointment or election to director positions, making it possible to apply the conditions provided for by the case-law of the Court of Justice with a view to allowing for gender equality and achieving the objective of a more balanced representation of women and men on boards of listed companies. This Directive does not unduly interfere with the day-to-day management of listed companies, since they maintain the freedom to select candidates on the basis of qualifications or other objective relevant considerations.

<sup>(9)</sup> Judgment of the Court of Justice of 17 October 1995, *Kalanke v Freie Hansestadt Bremen*, C-450/93, ECLI:EU:C:1995:322; judgment of the Court of Justice of 11 November 1997, *Marschall v Land Nordrhein-Westfalen*, C-409/95, ECLI:EU:C:1997:533; judgment of the Court of Justice of 28 March 2000, *Badeck and Others*, C-158/97, ECLI:EU:C:2000:163; judgment of the Court of Justice of 6 July 2000, *Abrahamsson and Anderson*, C-407/98, ECLI:EU:C:2000:367.

- (43) In view of the objectives of this Directive as regards gender balance, listed companies should be required at the request of a candidate for appointment or election to a director position, to inform that candidate of the qualification criteria upon which the selection was based, the objective comparative assessment of the candidates under those criteria and, where relevant, the specific considerations exceptionally tilting the balance in favour of a candidate who is not of the underrepresented sex. A requirement to provide such information might imply a limitation to the right to respect for private life and to the right to the protection of personal data that are recognised, respectively, by Articles 7 and 8 of the Charter. However, such limitations are necessary and, in conformity with the principle of proportionality, genuinely meet recognised objectives of general interest. They are therefore in line with the requirements for such limitations laid down in Article 52(1) of the Charter and with the relevant case-law of the Court of Justice. Such limitations should be applied in compliance with Regulation (EU) 2016/679 of the European Parliament and of the Council <sup>(10)</sup>.
- (44) Where a candidate of the underrepresented sex for appointment or election to a director position establishes facts, before a court or other competent authority, from which it can be presumed that that candidate was as equally qualified as the selected candidate of the other sex, the listed company should be required to demonstrate the correctness of the choice.
- (45) While this Directive seeks to establish minimum requirements in the form of binding measures to improve the gender composition of boards, it is important, in accordance with the principle of subsidiarity, to recognise the legitimacy of different approaches and to acknowledge the effectiveness of certain existing national measures, already adopted in this policy area, which have shown satisfactory results. In some Member States, efforts to ensure a more balanced representation of women and men on boards have thus already been made through the adoption of binding measures that are considered equally effective to those laid down in this Directive. Those Member States should be able to suspend the application of the requirements laid down in this Directive relating to the selection of candidates for appointment or election to director positions and, where relevant, those relating to the establishment of individual quantitative objectives, provided that the conditions for a suspension set out in this Directive are fulfilled. In such cases, where Member States have introduced such binding measures by way of national law, the rounding rules set out in this Directive with regard to the specific number of directors should be applied *mutatis mutandis* for the purpose of assessing those national measures under this Directive. In a Member State where such suspension applies, the objectives laid down in this Directive should be deemed to be attained and thus the objectives laid down in this Directive in relation to non-executive directors or all directors do not replace and are not added to the relevant national measures.
- (46) With a view to improving the gender balance among directors involved in daily management tasks, listed companies should be required to set individual quantitative objectives regarding a more balanced representation of both sexes among executive directors, with the aim of achieving such objectives by the date set out in this Directive. Those objectives should help companies to achieve tangible progress as compared with their current situation. That obligation should not apply to listed companies which pursue the objective of 33 % relating to all directors, whether executive or non-executive.
- (47) Member States should require listed companies to provide, on a yearly basis, information on the gender composition of their boards and on the measures taken with a view to achieving the objectives laid down in this Directive to the competent authorities in order to enable them to assess the progress made by each listed company towards achieving gender balance among directors. Listed companies should publish such information in an appropriate and easily accessible manner on their websites and include it in their annual reports. Where a listed company has not achieved the applicable quantitative objectives, it should include in such information a description of the concrete measures that it has taken so far or intends to take in the future in order to achieve the objectives laid down in this Directive. In order to avoid unnecessary administrative burden and duplication of efforts, the information on gender balance on boards to be reported pursuant to this Directive should form part, where applicable, of the

<sup>(10)</sup> 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) (OJ L 119, 4.5.2016, p. 1).

corporate governance statement of listed companies, in accordance with applicable Union law and, in particular, Directive 2013/34/EU of the European Parliament and of the Council <sup>(1)</sup>. Where Member States have suspended the application of Article 6 pursuant to Article 12, the reporting obligations set out in this Directive should not apply, provided that the national law of those Member States provides for reporting obligations that ensure that information regarding the progress made by listed companies towards achieving a more balanced representation of women and men on their boards is regularly published.

- (48) The requirements relating to the selection of candidates for appointment or election to director positions, the obligation to set a quantitative objective in relation to executive directors and reporting obligations should be enforced by penalties which are effective, proportionate and dissuasive, and Member States should ensure that adequate administrative or judicial procedures are available for that purpose. Such penalties might include fines or the possibility for a judicial body to annul a decision concerning the selection of directors or to declare it null and void. Without prejudice to national law on the imposition of penalties, as long as listed companies comply with those obligations, they should not be penalised for failing to attain the quantitative objectives concerning the representation of women and men among directors. Penalties should not be applied to listed companies themselves if under national law a given action or omission is not attributable to the company, but to other natural or legal persons such as individual shareholders. It should be possible for Member States to apply penalties other than those listed in the non-exhaustive list of penalties set out in this Directive, especially in cases of serious and repeated infringements by a listed company related to the obligations laid down in this Directive. Member States should ensure that, in the performance of public contracts and concessions, listed companies comply with applicable obligations relating to social and labour law, in accordance with applicable Union law.
- (49) Member States or listed companies should be able to introduce or maintain more favourable measures to ensure a more balanced representation of women and men.
- (50) Member States should designate bodies for the promotion, analysis, monitoring and support of gender balance on boards. Furthermore, information campaigns and the sharing of best practices would significantly contribute to the raising of awareness of the issue among all listed companies and encourage them to achieve gender balance proactively. In particular, Member States are encouraged to put in place policies to support and incentivise SMEs to improve significantly the gender balance at all levels of management and on boards.
- (51) This Directive respects fundamental rights and observes the principles recognised by the Charter. In particular, it contributes to the fulfilment of the principle of equality between women and men (Article 23 of the Charter) and the freedom to choose an occupation and the right to engage in work (Article 15 of the Charter). This Directive seeks to ensure full respect for the right to an effective remedy and to a fair trial (Article 47 of the Charter). The limitations on the exercise of the freedom to conduct a business (Article 16 of the Charter) and of the right to property (Article 17(1) of the Charter) respect the essence of that freedom and that right and are necessary and proportionate. It is possible to make limitations only if they genuinely meet objectives of general interest recognised by the Union or the need to protect the rights and freedoms of others.
- (52) While some Member States have taken regulatory action or encouraged self-regulation with mixed results, the majority of Member States have not taken action or indicated their willingness to act in a way that would bring about sufficient improvement. Projections based on a comprehensive analysis of all available information on past and current trends and intentions show that Member States acting individually will not achieve a balanced representation of women and men among directors across the Union in line with the objectives laid down in this Directive at any point in the foreseeable future. Inaction in this area slows down the pursuit of gender equality in the workplace more generally, including in terms of closing the gender pay gap, which results in part from vertical segregation. In the light of those circumstances and given the growing discrepancies between Member States in terms of the representation of women and men on boards, the gender balance on boards across the Union can only

<sup>(1)</sup> Directive 2013/34/EU of the European Parliament and of the Council of 26 June 2013 on the annual financial statements, consolidated financial statements and related reports of certain types of undertakings, amending Directive 2006/43/EC of the European Parliament and of the Council and repealing Council Directives 78/660/EEC and 83/349/EEC (OJ L 182, 29.6.2013, p. 19).

be improved by means of a common approach, and the potential for gender equality, competitiveness and growth can be better achieved through coordinated action at Union level rather than by means of national initiatives of varying scope, ambition and effectiveness. Since the objective of this Directive, namely to achieve a more balanced representation of women and men among the directors of listed companies by establishing effective measures that aim to accelerate progress towards gender balance, while allowing listed companies sufficient time to make the necessary arrangements for that purpose, cannot be sufficiently achieved by the Member States but can rather, by reason of the scale and effects of action, be better achieved at Union level, the Union may adopt measures in accordance with the principle of subsidiarity as set out in Article 5 TEU. In accordance with the principle of proportionality, as set out in that Article, this Directive is limited to setting common objectives and principles and does not go beyond what is necessary in order to achieve that objective. Member States are given sufficient freedom to determine how the objectives laid down in this Directive should best be achieved taking national circumstances into account, in particular rules and practices concerning recruitment to boards. This Directive does not interfere with the possibility for listed companies to appoint the most qualified directors, and it grants a flexible framework and provides for a sufficiently long period of adaptation.

- (53) Member States should cooperate with the social partners and civil society in order to efficiently inform them about the significance, transposition and implementation of this Directive.
- (54) In accordance with the principle of proportionality, the objectives to be achieved by listed companies should be limited in time and should remain in force only until sustainable progress has been made in the gender composition of boards. For that reason, the Commission should regularly review the application of this Directive and report to the European Parliament and the Council. Furthermore, this Directive provides for a date on which it will expire. The Commission should assess, in its review, whether there is a need to extend the duration of this Directive beyond that date.
- (55) In accordance with the Joint Political Declaration of Member States and the Commission of 28 September 2011 on explanatory documents, <sup>(12)</sup> Member States have undertaken to accompany, in justified cases, the notification of their transposition measures with one or more documents explaining the relationship between the components of a directive and the corresponding parts of national transposition instruments. With regard to this Directive, the legislator considers the transmission of such documents to be justified,

HAVE ADOPTED THIS DIRECTIVE:

#### *Article 1*

#### **Purpose**

This Directive aims to achieve a more balanced representation of women and men among the directors of listed companies by establishing effective measures that aim to accelerate progress towards gender balance, while allowing listed companies sufficient time to make the necessary arrangements for that purpose.

#### *Article 2*

#### **Scope**

This Directive applies to listed companies. This Directive does not apply to micro, small and medium-sized enterprises (SMEs).

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<sup>(12)</sup> OJ C 369, 17.12.2011, p. 14.

### Article 3

#### Definitions

For the purposes of this Directive, the following definitions apply:

- (1) 'listed company' means a company which has its registered office in a Member State and whose shares are admitted to trading on a regulated market within the meaning of Article 4(1), point (21), of Directive 2014/65/EU in one or more Member States;
- (2) 'board' means an administrative, management or supervisory body of a listed company;
- (3) 'director' means a member of a board, including a member who is an employees' representative;
- (4) 'executive director' means a member of a unitary board who is engaged in the daily management of a listed company or, in the case of a dual board system, a member of the board which carries out the management functions of a listed company;
- (5) 'non-executive director' means a member of a unitary board other than an executive director or, in the case of a dual board system, a member of the board which carries out the supervisory functions of a listed company;
- (6) 'unitary board' means a single board that carries out both the management and supervisory functions of a listed company;
- (7) 'dual board system' means a system in which the management and supervisory functions of a listed company are carried out by separate boards;
- (8) 'micro, small and medium-sized enterprise' or 'SME' means a company which employs less than 250 persons and has an annual turnover not exceeding EUR 50 million or an annual balance sheet total not exceeding EUR 43 million, or, for an SME having its registered office in a Member State whose currency is not the euro, the equivalent amounts in the currency of that Member State.

### Article 4

#### Applicable law

The Member State competent to regulate matters covered by this Directive in respect of a given listed company shall be the Member State in which that company has its registered office. The applicable law shall be the law of that Member State.

### Article 5

#### Objectives with regard to gender balance on boards

1. Member States shall ensure that listed companies are subject to either of the following objectives, to be reached by 30 June 2026:
  - (a) members of the underrepresented sex hold at least 40 % of non-executive director positions;
  - (b) members of the underrepresented sex hold at least 33 % of all director positions, including both executive and non-executive directors.
2. Member States shall ensure that listed companies which are not subject to the objective laid down in paragraph 1, point (b), set individual quantitative objectives with a view to improving the gender balance among executive directors. Member States shall ensure that such listed companies aim to achieve such individual quantitative objectives by 30 June 2026.
3. The number of non-executive director positions deemed necessary to achieve the objective laid down in paragraph 1, point (a), shall be the number closest to the proportion of 40 %, but not exceeding 49 %. The number of all director positions deemed necessary to achieve the objective laid down in paragraph 1, point (b), shall be the number closest to the proportion of 33 %, but not exceeding 49 %. Those numbers are set out in the Annex.



*Article 6***Means to achieve the objectives**

1. Member States shall ensure that listed companies which do not achieve the objectives referred to in Article 5(1), point (a) or (b), as applicable, adjust the process for selecting candidates for appointment or election to director positions. Those candidates shall be selected on the basis of a comparative assessment of the qualifications of each candidate. For that purpose, clear, neutrally formulated and unambiguous criteria shall be applied in a non-discriminatory manner throughout the entire selection process, including during the preparation of vacancy notices, the pre-selection phase, the shortlisting phase and the establishment of selection pools of candidates. Such criteria shall be established in advance of the selection process.
2. As regards the selection of candidates for appointment or election to director positions, Member States shall ensure that, when choosing between candidates who are equally qualified in terms of suitability, competence and professional performance, priority is given to the candidate of the underrepresented sex unless, in exceptional cases, reasons of greater legal weight, such as the pursuit of other diversity policies, invoked within the context of an objective assessment which takes into account the specific situation of a candidate of the other sex and which is based on non-discriminatory criteria, tilt the balance in favour of the candidate of the other sex.
3. Member States shall ensure that, at the request of a candidate who was considered during selection of candidates for appointment or election to a director position, listed companies are obliged to inform that candidate of the following:
  - (a) the qualification criteria upon which the selection was based;
  - (b) the objective comparative assessment of the candidates under those criteria; and
  - (c) where relevant, the specific considerations exceptionally tilting the balance in favour of a candidate who is not of the underrepresented sex.
4. Member States shall take the necessary measures, in accordance with their national judicial systems, to ensure that where an unsuccessful candidate of the underrepresented sex establishes facts, before a court or other competent authority, from which it may be presumed that that candidate was as equally qualified as the candidate of the other sex who was selected for appointment or election to a director position, it is for the listed company to prove that there has been no breach of Article 6(2).

This paragraph shall not prevent Member States from introducing rules of evidence which are more favourable to plaintiffs.

5. Where the process for selecting candidates for appointment or election to director position is made through a vote of shareholders or employees, Member States shall require listed companies to ensure that voters are properly informed regarding the measures provided for in this Directive, including penalties for non-compliance by the listed company.

*Article 7***Reporting**

1. Member States shall require listed companies to provide information to the competent authorities, once a year, about the gender representation on their boards, distinguishing between executive and non-executive directors and regarding the measures taken with a view to achieving the applicable objectives laid down in Article 5(1) and, where applicable, the objectives set in accordance with Article 5(2). Member States shall require listed companies to publish that information in an appropriate and easily accessible manner on their websites. On the basis of the information provided, Member States shall publish and regularly update, in an easily accessible and centralised manner, a list of the listed companies that have achieved either of the objectives laid down in Article 5(1).

2. Where a listed company has not achieved one of the objectives laid down in Article 5(1) or, where applicable, the objectives set in accordance with Article 5(2), the information referred to in paragraph 1 of this Article shall include the reasons for not achieving the objectives and a comprehensive description of the measures which the listed company has already taken or intends to take in order to achieve them.
3. Where applicable, the information referred to in paragraphs 1 and 2 of this Article shall also be included in the company's corporate governance statement, in accordance with the relevant provisions of Directive 2013/34/EU.
4. The obligations set out in paragraphs 1 and 2 of this Article shall not apply in a Member State which has suspended the application of Article 6 pursuant to Article 12 where national law provides for reporting obligations that ensure the regular publication of information regarding the progress made by listed companies towards a more balanced representation of women and men on their boards.

#### *Article 8*

##### **Penalties and additional measures**

1. Member States shall lay down rules on penalties applicable to infringements by listed companies of the national provisions adopted pursuant to Article 5(2) and Articles 6 and 7, as applicable, and shall take all necessary measures to ensure that they are implemented. In particular, Member States shall ensure that adequate administrative or judicial procedures are available to enable the obligations deriving from this Directive to be enforced. The penalties shall be effective, proportionate and dissuasive. Such penalties may comprise fines or the possibility for a judicial body to annul a decision concerning the selection of directors made contrary to the national provisions adopted pursuant to Article 6 or to declare it null and void. Member States shall, by 28 December 2024, notify the Commission of those rules and of those measures and shall notify it, without delay, of any subsequent amendment affecting them.
2. Listed companies may be held liable only for acts or omissions which can be attributed to them in accordance with national law.
3. Member States shall ensure that, in the performance of public contracts and concessions, listed companies comply with applicable obligations relating to social and labour law, in accordance with applicable Union law.

#### *Article 9*

##### **Minimum requirements**

Member States may introduce or maintain provisions which are more favourable than those laid down in this Directive to ensure a more balanced representation of women and men in respect of listed companies incorporated in their national territory.

#### *Article 10*

##### **Bodies for the promotion of gender balance in listed companies**

Member States shall designate one or more bodies for the promotion, analysis, monitoring and support of gender balance on boards. For that purpose, Member States may designate, for example, the equality bodies they have designated pursuant to Article 20 of Directive 2006/54/EC of the European Parliament and of the Council <sup>(13)</sup>.

<sup>(13)</sup> Directive 2006/54/EC of the European Parliament and of the Council of 5 July 2006 on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation (OJ L 204, 26.7.2006, p. 23).

*Article 11***Transposition**

1. Member States shall adopt and publish, by 28 December 2024 the laws, regulations and administrative provisions necessary to comply with this Directive. They shall immediately inform the Commission thereof.

When Member States adopt those measures, they shall contain a reference to this Directive or shall be accompanied by such reference on the occasion of their official publication. The methods of making such reference shall be laid down by Member States.

2. Member States which have suspended the application of Article 6 pursuant to Article 12 shall immediately communicate to the Commission the information demonstrating that the conditions laid down in Article 12 are fulfilled.

3. Member States shall communicate to the Commission the text of the main provisions of national law which they adopt in the field covered by this Directive.

*Article 12***Suspension of the application of Article 6**

1. A Member State may suspend the application of Article 6 and, where relevant, Article 5(2), where, by 27 December 2022, the following conditions have been fulfilled in that Member State:

- (a) members of the underrepresented sex hold at least 30 % of the non-executive director positions or at least 25 % of all director positions in listed companies; or
- (b) that Member State's national law:
  - (i) requires that members of the underrepresented sex hold at least 30 % of non-executive director positions or at least 25 % of all director positions in listed companies;
  - (ii) includes effective, proportionate and dissuasive enforcement measures in the event of non-compliance with the requirements referred to in point (i); and
  - (iii) requires that all listed companies not covered by that national law set individual quantitative objectives for all director positions.

Where a Member State has suspended the application of Article 6 and, where relevant, Article 5(2) on the basis of either of the conditions set out in the first subparagraph of this paragraph, the objectives laid down in Article 5(1) shall be deemed to have been achieved in that Member State.

2. For the purpose of assessing the fulfilment of the conditions for a suspension on the basis of paragraph 1, first subparagraph, point (a) or (b), the number of director positions required shall be the number closest to the proportion of 30 % of non-executive directors or 25 % of all director positions, but not exceed 39 %. That shall also be the case where, pursuant to national law, the quantitative objectives laid down in Article 5 are applied separately to shareholder representatives and employee representatives.

3. Where, in a Member State which has suspended the application of Article 6 and, where relevant, Article 5(2) pursuant to paragraph 1 of this Article, the conditions set out in paragraph 1 of this Article are no longer fulfilled, Article 6 and, where relevant, Article 5(2) shall apply at the latest six months after such conditions ceased to be fulfilled.

### Article 13

#### Review

1. By 29 December 2025, and every two years thereafter, Member States shall communicate to the Commission a report on the implementation of this Directive. Such a report shall include comprehensive information about the measures taken with a view to achieving the objectives laid down in Article 5(1), information provided in accordance with Article 7 and, where applicable, representative information about individual quantitative objectives set by listed companies pursuant to Article 5(2).

2. Member States which have suspended the application of Article 6 and, where relevant, Article 5(2) pursuant to Article 12 shall include in the reports mentioned in paragraph 1 of this Article information showing whether and how the conditions laid down in Article 12 are fulfilled and whether they continue to make progress towards a more balanced representation between women and men among non-executive director positions or all director positions in listed companies.

By 29 December 2026, and every two years thereafter, the Commission shall issue a specific report ascertaining, inter alia, whether and how the conditions laid down in Article 12(1) are fulfilled and, as applicable, whether the Member States have resumed the application of Article 6 and Article 5(2), in accordance with Article 12(3).

3. By 31 December 2030, and every two years thereafter, the Commission shall review the application of this Directive and report to the European Parliament and to the Council. The Commission shall evaluate in particular whether the objectives of this Directive have been achieved.

4. In its report referred to in paragraph 3 of this Article, the Commission shall assess whether, in the light of developments in the representation of women and men on boards at different levels of decision-making throughout the economy and taking into account whether the progress made is sufficiently sustainable, this Directive is an efficient and effective instrument for increasing the gender balance on boards. On the basis of that assessment, the Commission shall consider whether there is a need to extend the duration of this Directive beyond 31 December 2038 or whether there is a need to amend it, for instance by extending its scope to non-listed companies which do not fall within the definition of SMEs or by revising the conditions set out in Article 12(1), first subparagraph, point (a), so as to ensure continued progress towards a more balanced representation between women and men among executive and non-executive director positions or all director positions in listed companies.

### Article 14

#### Entry into force and expiry

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

It shall expire on 31 December 2038.

### Article 15

#### Addressees

This Directive is addressed to the Member States.

Done at Strasbourg, 23 November 2022.

*For the European Parliament*  
The President  
R. METSOLA

*For the Council*  
The President  
M. BEK

## ANNEX

## TARGET NUMBERS OF DIRECTORS OF THE UNDERREPRESENTED SEX

Number of positions on the board	Minimum number of non-executive directors of the underrepresented sex necessary to meet the objective of 40 % (Article 5(1), point (a))	Minimum number of directors of the underrepresented sex necessary to meet the objective of 33 % (Article 5(1), point (b))
1	-	-
2	-	-
3	1 (33,3 %)	1 (33,3 %)
4	1 (25 %)	1 (25 %)
5	2 (40 %)	2 (40 %)
6	2 (33,3 %)	2 (33,3 %)
7	3 (42,9 %)	2 (28,6 %)
8	3 (37,5 %)	3 (37,5 %)
9	4 (44,4 %)	3 (33,3 %)
10	4 (40 %)	3 (30 %)
11	4 (36,4 %)	4 (36,4 %)
12	5 (41,7 %)	4 (33,3 %)
13	5 (38,4 %)	4 (30,8 %)
14	6 (42,9 %)	5 (35,7 %)
15	6 (40 %)	5 (33,3 %)
16	6 (37,5 %)	5 (31,3 %)
17	7 (41,2 %)	6 (35,3 %)
18	7 (38,9 %)	6 (33,3 %)
19	8 (42,1 %)	6 (31,6 %)
20	8 (40 %)	7 (35 %)
21	8 (38,1 %)	7 (33,3 %)
22	9 (40,1 %)	7 (31,8 %)
23	9 (39,1 %)	8 (34,8 %)
24	10 (41,7 %)	8 (33,3 %)
25	10 (40 %)	8 (32 %)
26	10 (38,5 %)	9 (34,6 %)
27	11 (40,7 %)	9 (33,3 %)
28	11 (39,3 %)	9 (32,1 %)
29	12 (41,4 %)	10 (34,5 %)
30	12 (40 %)	10 (33,3 %)

## II

*(Non-legislative acts)*

## REGULATIONS

**COMMISSION REGULATION (EU) 2022/2382****of 1 December 2022****establishing a fisheries closure for undulate ray in Union waters of 9 for vessels flying the flag of Portugal**

THE EUROPEAN COMMISSION,

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

Having regard to Council Regulation (EC) No 1224/2009 of 20 November 2009 establishing a Union control system for ensuring compliance with the rules of the common fisheries policy <sup>(1)</sup>, and in particular Article 36(2) thereof,

Whereas:

- (1) Council Regulation (EU) 2022/109 <sup>(2)</sup> lays down quotas for 2022.
- (2) According to the information received by the Commission, catches of the stock of undulate ray in Union waters of 9 by vessels flying the flag of or registered in Portugal have exhausted the quota allocated for 2022.
- (3) It is therefore necessary to prohibit certain fishing activities for that stock,

HAS ADOPTED THIS REGULATION:

*Article 1***Quota exhaustion**

The fishing quota allocated to Portugal for the stock of undulate ray in Union waters of 9 for 2022 referred to in the Annex shall be deemed to be exhausted from the date set out in that Annex.

*Article 2***Prohibitions**

1. Fishing for the stock referred to in Article 1 by vessels flying the flag of or registered in Portugal shall be prohibited from the date set out in the Annex. In particular it shall be prohibited to search for fish, shoot, set or haul a fishing gear for the purpose of fishing that stock.

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<sup>(1)</sup> OJ L 343, 22.12.2009, p. 1.

<sup>(2)</sup> Council Regulation (EU) 2022/109 of 27 January 2022 fixing for 2022 the fishing opportunities for certain fish stocks and groups of fish stocks applicable in Union waters and for Union fishing vessels in certain non-Union waters (OJ L 21, 31.1.2022, p. 1).

2. Transshipping, retaining on board, processing on board, transferring, caging, fattening and landing of fish and fishery products from that stock caught by those vessels shall remain authorised for catches taken prior to that date.
3. Unintended catches of species from that stock by those vessels shall be brought and retained on board the fishing vessels, recorded, landed and counted against quotas in accordance with Article 15 of Regulation (EU) No 1380/2013 of the European Parliament and of the Council <sup>(3)</sup>.

#### *Article 3*

#### **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, 1 December 2022.

*For the Commission,  
On behalf of the President,  
Virginijus SINKEVIČIUS  
Member of the Commission*

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<sup>(3)</sup> Regulation (EU) No 1380/2013 of the European Parliament and of the Council of 11 December 2013 on the Common Fisheries Policy, amending Council Regulations (EC) No 1954/2003 and (EC) No 1224/2009 and repealing Council Regulations (EC) No 2371/2002 and (EC) No 639/2004 and Council Decision 2004/585/EC (OJ L 354, 28.12.2013, p. 22).

## ANNEX

No	12/TQ109
Member State	Portugal
Stock	RJU/9-C.
Species	Undulate ray ( <i>Raja undulata</i> )
Zone	Union waters of 9
Closing date	19.11.2022



**COMMISSION REGULATION (EU) 2022/2383****of 6 December 2022****amending Regulation (EU) No 582/2011 as regards the emissions type-approval of heavy duty vehicles using pure biodiesel****(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 595/2009 of the European Parliament and of the Council of 18 June 2009 on type-approval of motor vehicles and engines with respect to emissions from heavy duty vehicles (Euro VI) and on access to vehicle repair and maintenance information and amending Regulation (EC) No 715/2007 and Directive 2007/46/EC and repealing Directives 80/1269/EEC, 2005/55/EC and 2005/78/EC <sup>(1)</sup>, and in particular Articles 4(3) and 5(4) and Article 12 thereof,

Whereas:

- (1) Vehicles type-approved in the EU need to be able to run on pure biodiesel and on different blends of biodiesel and fossil fuels in case of need.
- (2) In accordance with Article 3 of Commission Regulation (EU) No 582/2011 <sup>(2)</sup>, type-approval of motor vehicles and engines with regard to emissions requires that the manufacturer ensures compliance with the specifications of reference fuels set out in Annex IX to that Regulation used for type-approval testing.
- (3) Pure biodiesel (FAME B100) is not listed in Annex IX to Regulation (EU) No 582/2011 as a reference fuel for the emission type-approval of heavy duty vehicles. Type-approval testing needs to be duplicated on both diesel (B7) as well as pure biodiesel (B100) in order to demonstrate compliance with emissions requirements. To minimise duplication of testing and to facilitate the certification for the use of pure biodiesel and biodiesel blends (such as FAME B20/B30), it is necessary to introduce the specifications for pure biodiesel as a reference fuel, based on relevant international and European standards. Demonstrating compliance with the emission testing requirements for a B100 type-approval should be allowed by emission testing of the parent engine on pure biodiesel. While for the necessary in-service conformity testing any biofuel blend may be chosen.
- (4) For the approval of vehicles with an approved engine an addendum for the specifications of the type-approval certificate is necessary.
- (5) Commission Regulation (EU) No 582/2011 should therefore be amended accordingly.
- (6) The measures provided for in this Regulation are in accordance with the opinion of the Technical Committee – Motor Vehicles,

HAS ADOPTED THIS REGULATION:

*Article 1*

Annexes I, II and IX to Regulation (EU) No 582/2011 are amended in accordance with the Annex to this Regulation.

<sup>(1)</sup> OJ L 188, 18.7.2009, p. 1.

<sup>(2)</sup> Commission Regulation (EU) No 582/2011 of 25 May 2011 implementing and amending Regulation (EC) No 595/2009 of the European Parliament and of the Council with respect to emissions from heavy duty vehicles (Euro VI) and amending Annexes I and III to Directive 2007/46/EC of the European Parliament and of the Council (OJ L 167, 25.6.2011, p. 1).

*Article 2*

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

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

Done at Brussels, 6 December 2022.

*For the Commission*  
*The President*  
Ursula VON DER LEYEN

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## ANNEX

(1) Annex I to Regulation (EU) No 582/2011 is amended as follows:

(a) in point 1.1.2 the introductory sentence is replaced by the following:

'If the manufacturer permits the engine family to run on market fuels that do not comply either with Directive 98/70/EC of the European Parliament and of the Council (\*), or with CEN standard EN 228:2012 in the case of unleaded petrol or CEN standard EN 590:2013 in the case of diesel or CEN standard EN 14214:2012+A2:2019 in the case of FAME B100, such as paraffinic fuel (CEN standard EN 15940) or others, the manufacturer shall, in addition to the requirements in point 1.1.1, comply with the following requirements:

(\*) Directive 98/70/EC of the European Parliament and of the Council of 13 October 1998 relating to the quality of petrol and diesel fuels and amending Council Directive 93/12/EEC (OJ L 350, 28.12.1998, p. 58).';

(b) after point 1.3 the following point is added:

**'1.4. Requirements on B100 type-approval**

1.4.1. The type-approval of a B100 family with a parent engine tested on FAME B100 shall be extended to all family members and biodiesel blends with a FAME content that exceeds that of FAME B30 (CEN standard EN 16709), without further testing. The type-approval may be extended to biodiesel blends with a lower FAME content, if the requirements of this regulation are also satisfied for these blends without making any adjustments to the vehicle. In such a case the manufacturer shall declare the biodiesel blends the engine family is capable of running on in point 3.2.2.1 of the Information Document as set out in Part 1 of Appendix 4. If the approval authority determines that the submitted application is not fully representative, biodiesel blends other than FAME B100 may be selected by the approval authority and tested.;

(c) the following point 3.2.1.7 is inserted:

'3.2.1.7. In the case of a B100 type-approval, the approval mark shall contain 'B100' after the national symbol.;

(d) in Appendix 4 PART 1 point 3.2.2.2 is replaced by the following:

'3.2.2.2. Heavy duty vehicles Diesel/Petrol/LPG/NG-H/NG-L/NG-HL/Ethanol (ED95)/Ethanol (E85)/LNG/LNG<sub>20</sub>/B100 (\*) (\*);

(e) in the Addendum to Appendix 5 point 1.1.5 is replaced by the following:

'1.1.5. Category of engine: Diesel/Petrol/LPG/NG-H/NG-L/NG-HL/Ethanol (ED95)/Ethanol (E85)/LNG/LNG<sub>20</sub>/B100 (\*)';

(f) point 8 of Appendix 6 is replaced by the following:

'8. Signature:

Attachment: Information package.

Test report.

Addendum';

(g) the following Addendum is added to Appendix 6:

*'Addendum*

**to EC type-approval certificate No ...**

1. ADDITIONAL INFORMATION

1.1. Particulars to be completed in relation to the type-approval of a vehicle with an approved engine installed:

1.1.1. Make of engine (name of undertaking):

WHSC test (if applicable) <sup>(10)</sup> <sup>(d5)</sup>							
DF	CO	THC	NMHC <sup>(d4)</sup>	NO <sub>x</sub>	PM Mass	NH <sub>3</sub>	PM Number
Mult/add <sup>(1)</sup>							
Emissions	CO (mg/kWh)	THC (mg/kWh)	NMHC <sup>(d4)</sup> (mg/kWh)	NO <sub>x</sub> (mg/kWh)	PM Mass (mg/kWh)	NH <sub>3</sub> ppm	PM Number (#/kWh)
Test result							
Calculated with DF							
CO <sub>2</sub> mass emission: ... g/kWh							
Fuel consumption ... g/kWh							

## 1.4.2. WHTC test

Table 5

**WHTC Test**

WHTC test <sup>(10)</sup> ( <sup>d5</sup> )								
DF	CO	THC	NMHC <sup>(d4)</sup>	CH <sub>4</sub> <sup>(d4)</sup>	NO <sub>x</sub>	PM Mass	NH <sub>3</sub>	PM Number
Mult/add <sup>(1)</sup>								
Emissions	CO (mg/kWh)	THC (mg/kWh)	NMHC <sup>(d4)</sup> (mg/kWh)	CH <sub>4</sub> <sup>(d4)</sup> (mg/kWh)	NO <sub>x</sub> (mg/kWh)	PM Mass (mg/kWh)	NH <sub>3</sub> ppm	PM Number (#/kWh)
Cold start								
Hot start w/o regeneration								
Hot start with regeneration <sup>(1)</sup>								
k <sub>r,u</sub> (mult/add) <sup>(1)</sup>								
k <sub>r,d</sub> (mult/add) <sup>(1)</sup>								
Weighted test result								
Final test result with DF								
CO <sub>2</sub> mass emission: ... g/kWh								
Fuel consumption: ... g/kWh								

## 1.4.3. Idle test

Table 6

**Idle test**

Test	CO value (% vol.)	Lambda <sup>(1)</sup>	Engine speed (min <sup>-1</sup> )	Engine oil temperature (°C)
Low idle test		N/A		
High idle test				

## 1.4.4. PEMS demonstration test

Table 6a

**PEMS demonstration test**

Vehicle type (e.g. M <sub>3</sub> , N <sub>3</sub> and application e.g. rigid or articulated truck, city bus)						
Vehicle description (e.g. vehicle model, prototype)						
Pass-fail results (%)	CO	THC	NMHC	CH <sub>4</sub>	NO <sub>x</sub>	PM number
Work window conformity factor <sup>(1)</sup>						
CO <sub>2</sub> mass window conformity factor <sup>(1)</sup>						
Trip information	Urban		Rural		Motorway	
Shares of time of the trip characterised by urban, rural and motorway operation as described in point 4.5 of Annex II to Regulation (EU) No 582/2011						
Shares of time of the trip characterised by accelerating, decelerating, cruising and stop as described in point 4.5.5 of Annex II to Regulation (EU) No 582/2011						
	Minimum			Maximum		
Work window average power (%)						
CO <sub>2</sub> mass window duration (s)						
Work window: percentage of valid windows						
CO <sub>2</sub> mass window: percentage of valid windows						
Fuel consumption consistency ratio						

## 1.5 Power measurement

## 1.5.1. Engine power measured on test bench

Table 7

**Engine power measured on test bench**

Measured engine speed (rpm)							
Measured fuel flow (g/h)							
Measured torque (Nm)							
Measured power (kW)							
Barometric pressure (kPa)							
Water vapour pressure (kPa)							

Intake air temperature (K)							
Power correction factor							
Corrected power (kW)							
Auxiliary power (kW) (1)							
Net power (kW)							
Net torque (Nm)							
Corrected specific fuel consumption (g/kWh)							

1.5.2. Additional data, e.g. the power correction factor for each fuel declared (if applicable);

(h) in the Addendum to Appendix 7 point 1.1.5 is replaced by the following:

‘1.1.5. Category of engine: Diesel/Petrol/LPG/NG-H/NG-L/NG-HL/Ethanol (ED95)/Ethanol (E85)/LNG/LNG<sub>20</sub>/B100 (1);

(2) in Annex II, point 4.4.2, the following sentence is added:

‘In the case of a B100 type-approval, approval authorities may request to test the vehicle on biodiesel with any FAME content.’;

(3) in Annex IX, under the heading ‘Technical data on fuels for testing compression ignition and dual-fuel engines’, the following table is inserted after the table ‘Type: Diesel (B7)’:

**‘Type: pure Biodiesel (B100) for compression ignition engines**

Parameter	Unit	Limits		Test method
		Minimum	Maximum	
FAME content	% (m/m)	96,5	–	EN 14103
Density at 15 °C	kg/m <sub>3</sub>	860	900	EN ISO 3675 EN ISO 12185
Viscosity at 40 °C (1)	mm <sup>2</sup> /s	3,50	5,00	EN ISO 3104 EN 16896
Flash point	°C	101	–	EN ISO 2719 EN ISO 3679 (2)
Cetane number (3)	–	51,0	–	EN ISO 5165 EN 15195 EN 16715 EN 17155
Copper strip corrosion (3 h at 50 °C)	Rating	class 1		EN ISO 2160
Oxidation stability (at 110 °C)	h	8,0	–	EN 14112 EN 15751
Acid value	mg KOH/g	–	0,50	EN 14104
Iodine value	g iodine/100 g	–	120	EN 14111 EN 16300
Linolenic acid methyl ester	% (m/m)	–	12,0	EN 14103
Polyunsaturated (≥ 4 double bonds) methyl esters	% (m/m)	–	1,00	EN 15779

Methanol content	% (m/m)	–	0,20	EN 14110
Monoglyceride content	% (m/m)	–	0,70	EN 14105
Diglyceride content	% (m/m)	–	0,20	EN 14105
Triglyceride content	% (m/m)	–	0,20	EN 14105
Free glycerol	% (m/m)	–	0,02	EN 14105 EN 14106
Total glycerol	% (m/m)	–	0,25	EN 14105
Water content	% (m/m)	–	0,050	EN ISO 12937
Total contamination	mg/kg	–	24	EN 12662
Sulphated ash content	% (m/m)	–	0,02	ISO 3987
Sulphur content	mg/kg	–	10,0	EN ISO 20846 EN ISO 20884 EN ISO 13032
Group I metals (Na+K)	mg/kg	–	5,0	EN 14108 EN 14109 EN 14538
Group II metals (Ca+Mg)	mg/kg	–	5,0	EN 14538
Phosphorus content	mg/kg	–	4,0	EN 14107 EN 16294

(<sup>1</sup>) If CFPP is – 20 °C or lower, the viscosity shall be measured at – 20 °C. The measured value shall not exceed 48 mm<sup>2</sup>/s. In this case, the standard test methods are applicable without the precision data owing to non-Newtonian behaviour in a two-phase system.

(<sup>2</sup>) A 2 ml sample and apparatus equipped with a thermal detection device shall be used.

(<sup>3</sup>) The determination of derived cetane number for FAME is not included in the precision determinations of some test methods.’



# DECISIONS

## COUNCIL DECISION (EU) 2022/2384

of 25 November 2022

**on the approval, on behalf of the European Union, of the modification of the Union's Schedule of Specific Commitments under the General Agreement on Trade in Services (GATS) to incorporate Annex 1 to the Declaration on the Conclusion of Negotiations on Services Domestic Regulation**

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 91, Article 100(2) and Article 207(4), first subparagraph in conjunction with Article 218(6)(a)(v) thereof,

Having regard to the proposal from the European Commission,

Having regard to the consent of the European Parliament <sup>(1)</sup>,

Whereas:

- (1) At the 11th Ministerial Conference of the World Trade Organization (WTO), a group of 59 WTO Members, including the Union, issued a Joint Ministerial Statement on Services Domestic Regulation whereby they launched a plurilateral initiative to negotiate disciplines on services domestic regulation.
- (2) The Commission conducted negotiations in consultation with the Committee established under Article 207(3) of the Treaty. The number of participants in this plurilateral Joint Statement Initiative increased to 67 WTO Members over time.
- (3) On 2 December 2021, the participants in those negotiations issued a Declaration on the Conclusion of Negotiations on Services Domestic Regulation (the 'Declaration'), which announced the successful conclusion of the negotiations. The participants noted the conclusion of negotiations on the Reference Paper on Services Domestic Regulation, which is set out in Annex 1 to the Declaration. They also welcomed the GATS Schedules of Specific Commitments which were submitted by WTO Members as their contributions to finalise the negotiations and which were attached to the Declaration as Annex 2.
- (4) The participants to the Declaration intend to incorporate the disciplines specified in Annex 1 to the Declaration as additional commitments into their GATS Schedules of Specific Commitments, in accordance with Section 1 of that Annex. In accordance with paragraph 5 of the Declaration, the participants aim to submit their GATS Schedules of Specific Commitments for certification, pursuant to the Procedures for the Certification of Rectifications or Improvements to Schedules of Specific Commitments, within 12 months of the date of the Declaration, subject to the completion of any required domestic procedures.
- (5) In accordance with the Declaration, the Union should submit to the WTO the necessary modifications to its GATS Schedule of Specific Commitments, as set out in the Union's Pre-Finalisation Schedule of Specific Commitments.
- (6) The incorporation of the disciplines specified in Annex 1 to the Declaration as additional commitments into the Union's GATS Schedule of Specific Commitments should therefore be approved on behalf of the Union,

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<sup>(1)</sup> Consent of 10 November 2022 (not yet published in the Official Journal).

HAS ADOPTED THIS DECISION:

*Article 1*

The incorporation of the disciplines specified in Annex 1 to the Declaration on the Conclusion of Negotiations on Services Domestic Regulation into the Union's GATS Schedule of Specific Commitments is hereby approved on behalf of the European Union.

The text of the Declaration and the Union's Pre-Finalisation Schedule of Specific Commitments is attached to this Decision.

*Article 2*

The Commission is hereby authorised to submit to the WTO the necessary modifications to the Union's GATS Schedule of Specific Commitments, as set out in the Union's Pre-Finalisation Schedule of Specific Commitments.

*Article 3*

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

Done at Brussels, 25 November 2022.

*For the Council*  
*The President*  
J. SÍKELA

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**WT/L/1129 of 2 December 2021****DECLARATION ON THE CONCLUSION OF NEGOTIATIONS ON SERVICES DOMESTIC REGULATION**

This Declaration is being issued at the request of Albania; Argentina; Australia; Bahrain, Kingdom of; Brazil; Canada; Chile; China; Colombia; Costa Rica; El Salvador; European Union; Hong Kong, China; Iceland; Israel; Japan; Kazakhstan; Korea, Republic of; Liechtenstein; Mauritius; Mexico; Moldova, Republic of; Montenegro; New Zealand; Nigeria; North Macedonia; Norway; Paraguay; Peru; Philippines; Russian Federation; Saudi Arabia, Kingdom of; Singapore; Switzerland; The Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu; Thailand; Turkey; Ukraine; United Kingdom; United States; Uruguay.

1. The following Members of the World Trade Organization ("WTO")

Albania  
Argentina  
Australia  
Bahrain, Kingdom of  
Brazil  
Canada  
Chile  
China  
Colombia  
Costa Rica  
El Salvador  
European Union  
Hong Kong, China  
Iceland  
Israel  
Japan  
Kazakhstan  
Korea, Republic of  
Liechtenstein  
Mauritius  
Mexico  
Moldova, Republic of  
Montenegro  
New Zealand  
Nigeria  
North Macedonia  
Norway  
Paraguay  
Peru  
Philippines  
Russian Federation  
Saudi Arabia, Kingdom of  
Singapore  
Switzerland  
The Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu

Thailand

Turkey

Ukraine

United Kingdom

United States

Uruguay

hereafter referred to as the "Participants",

in continuance of the commitment announced on 13 December 2017 at the 11<sup>th</sup> Session of the Ministerial Conference of the World Trade Organization (WT/MIN(17)/61), and reaffirmed on 23 May 2019 (WT/L/1059), and in ongoing recognition of the importance of good regulatory practice in facilitating trade in services,

hereby announce the successful conclusion of the negotiations in the Joint Initiative on Services Domestic Regulation.

2. The Participants note the conclusion of negotiations on the Reference Paper on Services Domestic Regulation (INF/SDR/2, of 26 November 2021, Annex 1).
  3. The Participants welcome the Schedules of Specific Commitments (INF/SDR/3/Rev.1, of 2 December 2021, Annex 2) which were submitted as their contributions to finalize the negotiations.
  4. The Participants intend to incorporate the disciplines in the Reference Paper as additional commitments into their GATS Schedules, in accordance with Section I of the Reference Paper.
  5. Subject to the completion of any required domestic procedures, the Participants aim to submit their Schedules of Specific Commitments for certification, in accordance with the Procedures for the Certification of Rectifications or Improvements to Schedules of Specific Commitments (S/L/84, of 14 April 2000), within twelve months of the date of this Declaration.
  6. Within six months of the date of this Declaration, the Participants intend to convene to provide an update on their progress in completing any required domestic procedures and assess whether their Schedules of Specific Commitments can be submitted for certification earlier than the timeframe specified in paragraph 5.
  7. The Participants welcome any other WTO Member to join this Declaration with a view to incorporating the disciplines in the Reference Paper as additional commitments into its GATS Schedule, in accordance with Section I of the Reference Paper.
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## ANNEX 1

INF/SDR/2 of 26 November 2021

**JOINT INITIATIVE ON SERVICES DOMESTIC REGULATION****REFERENCE PAPER ON SERVICES DOMESTIC REGULATION**

## SECTION I

1. Members have agreed to the disciplines on Services Domestic Regulation in this Reference Paper ("disciplines") with the objective of elaborating upon the provisions of the General Agreement on Trade in Services ("Agreement"), pursuant to paragraph 4 of Article VI of the Agreement. <sup>(1)</sup>
2. Members recognize the difficulties which may be faced by service suppliers, particularly those of developing country Members, in complying with measures relating to licensing requirements and procedures, qualification requirements and procedures, and technical standards of other Members and in particular, the specific difficulties which may be faced by service suppliers from least-developed country Members.
3. Members recognize the right to regulate, and to introduce new regulations, on the supply of services within their territories in order to meet their policy objectives.
4. Members further recognize the existence of asymmetries with respect to the degree of development of services regulations in different countries, especially in the case of developing and least-developed country Members.
5. The disciplines shall not be construed to prescribe or impose any particular regulatory provisions regarding their implementation.
6. The disciplines shall not be construed as diminishing any obligations of Members under the Agreement.

**Sectoral Coverage and Scheduling Modalities**

7. Members shall inscribe the disciplines in Section II in their Schedules as additional commitments under Article XVIII of the Agreement. Members may choose to inscribe the alternative disciplines in Section III for their commitments in financial services.
8. The disciplines inscribed pursuant to paragraph 7 of this Section apply where specific commitments are undertaken. In addition, Members are encouraged to inscribe in their Schedules additional sectors to which the disciplines apply.
9. Members may exclude the discipline set out in paragraph 22 (d) of Section II and paragraph 19 (d) of Section III from the additional commitments scheduled under paragraph 7 of this Section.

**Development***Transitional Periods for Developing Country Members*

10. A developing country Member may designate specific disciplines for implementation on a date after a transitional period of no longer than 7 years following the entry into force of these disciplines. The scope of the designation may be limited to individual services sectors or subsectors. The transitional periods shall be inscribed in the respective Schedules of specific commitments. A developing country Member requiring an extended transitional period for implementation shall submit a request in accordance with relevant procedures. <sup>(2)</sup> Members shall give sympathetic consideration to granting such requests, taking into account the specific circumstances of the Member submitting the request.

<sup>(1)</sup> Members recognize that further disciplines may be developed pursuant to paragraph 4 of Article VI of the Agreement.

<sup>(2)</sup> Relevant procedures include requests for a Waiver in accordance with paragraph 3 (b) of Article IX of the Marrakesh Agreement, or invocation of Article XXI of the GATS.

*Participation of Least-Developed Country Members*

11. Least-developed country Members shall inscribe the disciplines pursuant to paragraph 7 of this Section in their Schedules of specific commitments, no later than 6 months in advance of their graduation from least-developed country status. Least-developed country Members may, at that time, designate transitional periods pursuant to paragraph 10 of this Section. Least-developed country Members are nonetheless encouraged to apply these disciplines before their graduation, to the extent consistent with their individual implementation capacity.

*Technical Assistance and Capacity Building*

12. Developed and developing country Members, in a position to do so, are encouraged to provide specific technical assistance and capacity building to developing and in particular least-developed country Members, upon their request and on mutually agreed terms and conditions, aimed, *inter alia*, at:
  - (a) developing and strengthening institutional and regulatory capacities to regulate the supply of services and to implement these disciplines, especially provisions and sectors to which transitional periods apply;
  - (b) assisting service suppliers of developing and in particular least-developed country Members to meet the relevant requirements and procedures in export markets;
  - (c) facilitating the establishment of technical standards and facilitating participation of developing and in particular least-developed country Members facing resource constraints in the relevant international organizations; and
  - (d) assisting, through public or private bodies and relevant international organizations, service suppliers of developing and in particular least-developed country Members in building their supply capacity and in complying with domestic regulation.

## SECTION II – DISCIPLINES ON SERVICES DOMESTIC REGULATION

**Scope of the Disciplines**

1. These disciplines apply to measures by Members relating to licensing requirements and procedures, qualification requirements and procedures, and technical standards affecting trade in services.
2. These disciplines do not apply to any terms, limitations, conditions, or qualifications set out in a Member's Schedule pursuant to Articles XVI or XVII of the Agreement.
3. For the purpose of these disciplines, "authorization" means the permission to supply a service, resulting from a procedure to which an applicant must adhere in order to demonstrate compliance with licensing requirements, qualification requirements, or technical standards.

**Submission of Applications**

4. Each Member shall, to the extent practicable, avoid requiring an applicant to approach more than one competent authority for each application for authorization. If a service is within the jurisdiction of multiple competent authorities, multiple applications for authorization may be required.

### Application Timeframes

5. If a Member requires authorization for the supply of a service, it shall ensure that its competent authorities to the extent practicable permit submission of an application at any time throughout the year. <sup>(3)</sup> If a specific time period for applying exists, the Member shall ensure that the competent authorities allow a reasonable period for the submission of an application.

### Electronic Applications and Acceptance of Copies

6. If a Member requires authorization for the supply of a service, it shall ensure that its competent authorities:
  - (a) taking into account their competing priorities and resource constraints, endeavour to accept applications in electronic format; and
  - (b) accept copies of documents, that are authenticated in accordance with the Member's domestic laws and regulations, in place of original documents, unless the competent authorities require original documents to protect the integrity of the authorization process.

### Processing of Applications

7. If a Member requires authorization for the supply of a service, it shall ensure that its competent authorities:
  - (a) to the extent practicable, provide an indicative timeframe for processing of an application;
  - (b) at the request of the applicant, provide without undue delay information concerning the status of the application;
  - (c) to the extent practicable, ascertain without undue delay the completeness of an application for processing under the Member's domestic laws and regulations;
  - (d) if they consider an application complete for processing under the Member's domestic laws and regulations, <sup>(4)</sup> within a reasonable period of time after the submission of the application ensure that:
    - (i) the processing of the application is completed; and
    - (ii) the applicant is informed of the decision concerning the application, <sup>(5)</sup> to the extent possible in writing; <sup>(6)</sup>
  - (e) if they consider an application incomplete for processing under the Member's domestic laws and regulations, within a reasonable period of time, to the extent practicable:
    - (i) inform the applicant that the application is incomplete;
    - (ii) at the request of the applicant, identify the additional information required to complete the application, or otherwise provide guidance on why the application is considered incomplete; and
    - (iii) provide the applicant with the opportunity <sup>(7)</sup> to provide the additional information that is required to complete the application;

however, if none of the above is practicable, and the application is rejected due to incompleteness, ensure that they so inform the applicant within a reasonable period of time; and

<sup>(3)</sup> Competent authorities are not required to start considering applications outside of their official working hours and working days.

<sup>(4)</sup> Competent authorities may require that all information is submitted in a specified format to consider it "complete for processing".

<sup>(5)</sup> Competent authorities may meet this requirement by informing an applicant in advance in writing, including through a published measure, that lack of response after a specified period of time from the date of submission of an application indicates acceptance of the application or rejection of the application.

<sup>(6)</sup> "In writing" may include in electronic form.

<sup>(7)</sup> Such opportunity does not require a competent authority to provide extensions of deadlines.

- (f) if an application is rejected, to the extent possible, either upon their own initiative or upon request of the applicant, inform the applicant of the reasons for rejection and, if applicable, the procedures for resubmission of an application; an applicant should not be prevented from submitting another application <sup>(8)</sup> solely on the basis of a previously rejected application.
8. The competent authorities of a Member shall ensure that authorization, once granted, enters into effect without undue delay, subject to applicable terms and conditions. <sup>(9)</sup>

### Fees

9. Each Member shall ensure that the authorization fees <sup>(10)</sup> charged by its competent authorities are reasonable, transparent, based on authority set out in a measure, and do not in themselves restrict the supply of the relevant service.

### Assessment of Qualifications

10. If a Member requires an examination for authorization for the supply of a service, that Member shall ensure that its competent authorities schedule such an examination at reasonably frequent intervals and provide a reasonable period of time to enable applicants to request to take the examination. Having regard to the cost, administrative burden, and the integrity of the procedures involved, Members are encouraged to accept requests in electronic format to take such examinations, and to consider, to the extent practicable, the use of electronic means in other aspects of examination processes.

### Recognition

11. Where professional bodies of Members are mutually interested in establishing dialogues on issues relating to recognition of professional qualifications, licensing or registration, the relevant Members should consider supporting the dialogue of those bodies where requested and appropriate.

### Independence

12. If a Member adopts or maintains measures relating to the authorization for the supply of a service, the Member shall ensure that its competent authorities reach and administer their decisions in a manner independent from any supplier of the service for which authorization is required. <sup>(11)</sup>

### Publication and Information available

13. If a Member requires authorization for the supply of a service, further to Article III of the Agreement, the Member shall promptly publish, <sup>(12)</sup> or otherwise make publicly available in writing, the information necessary for service suppliers or persons seeking to supply a service to comply with the requirements and procedures for obtaining, maintaining, amending and renewing such authorization. Such information shall include, *inter alia*, where it exists:
- (a) the requirements and procedures;
  - (b) contact information of relevant competent authorities;
  - (c) fees;

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<sup>(8)</sup> Competent authorities may require that the content of such an application has been revised.

<sup>(9)</sup> Competent authorities are not responsible for delays due to reasons outside their competence.

<sup>(10)</sup> Authorization fees do not include fees for the use of natural resources, payments for auction, tendering or other non-discriminatory means of awarding concessions, or mandated contributions to universal service provision.

<sup>(11)</sup> For greater certainty, this provision does not mandate a particular administrative structure; it refers to the decision-making process and administering of decisions.

<sup>(12)</sup> For purposes of these disciplines, "publish" means to include in an official publication, such as an official journal, or on an official website. Members are encouraged to consolidate electronic publications into a single portal



- (d) technical standards;
- (e) procedures for appeal or review of decisions concerning applications;
- (f) procedures for monitoring or enforcing compliance with the terms and conditions of licenses or qualifications;
- (g) opportunities for public involvement, such as through hearings or comments; and
- (h) indicative timeframes for processing of an application.

### **Opportunity to Comment and Information before Entry into Force**

14. To the extent practicable and in a manner consistent with its legal system for adopting measures, each Member <sup>(13)</sup> shall publish in advance:
  - (a) its laws and regulations of general application it proposes to adopt in relation to matters falling within the scope of paragraph 1 of this Section; or
  - (b) documents that provide sufficient details about such a possible new law or regulation to allow interested persons and other Members to assess whether and how their interests might be significantly affected.
15. To the extent practicable and in a manner consistent with its legal system for adopting measures, each Member is encouraged to apply paragraph 14 of this Section to procedures and administrative rulings of general application it proposes to adopt in relation to matters falling within the scope of paragraph 1 of this Section.
16. To the extent practicable and in a manner consistent with its legal system for adopting measures, each Member shall provide interested persons and other Members a reasonable opportunity to comment on such proposed measures or documents published under paragraphs 14 or 15 of this Section.
17. To the extent practicable and in a manner consistent with its legal system for adopting measures, each Member shall consider comments received under paragraph 16 of this Section. <sup>(14)</sup>
18. In publishing a law or regulation referred to in paragraph 14 (a) of this Section, or in advance of such publication, to the extent practicable and in a manner consistent with its legal system for adopting measures, a Member is encouraged to explain the purpose and rationale of the law or regulation.
19. Each Member shall, to the extent practicable, endeavour to allow reasonable time between publication of the text of a law or regulation referred to in paragraph 14 (a) of this Section and the date on which service suppliers must comply with the law or regulation.

### **Enquiry Points**

20. Each Member shall maintain or establish appropriate mechanisms for responding to enquiries from service suppliers or persons seeking to supply a service regarding the measures referred to in paragraph 1 of this Section. <sup>(15)</sup> A Member may choose to address such enquiries through either the enquiry and contact points established under Articles III and IV of the Agreement or any other mechanisms as appropriate.

<sup>(13)</sup> Paragraphs 14 to 17 of this Section recognize that Members have different systems to consult interested persons and other Members on certain measures before their adoption, and that the alternatives set out in paragraph 14 of this Section reflect different legal systems

<sup>(14)</sup> This provision is without prejudice to the final decision of a Member that adopts or maintains any measure for authorization for the supply of a service.

<sup>(15)</sup> It is understood that resource constraints may be a factor in determining whether a mechanism for responding to enquiries is appropriate.

## Technical Standards

21. Each Member shall encourage its competent authorities, when adopting technical standards, to adopt technical standards developed through open and transparent processes, and shall encourage any body, including relevant international organizations, <sup>(16)</sup> designated to develop technical standards to use open and transparent processes.

## Development of Measures

22. If a Member adopts or maintains measures relating to the authorization for the supply of a service, the Member shall ensure that:
  - (a) such measures are based on objective and transparent criteria; <sup>(17)</sup>
  - (b) the procedures are impartial, and that the procedures are adequate for applicants to demonstrate whether they meet the requirements, if such requirements exist;
  - (c) the procedures do not in themselves unjustifiably prevent the fulfilment of requirements; and
  - (d) such measures do not discriminate between men and women. <sup>(18)</sup>

## SECTION III – ALTERNATIVE DISCIPLINES ON SERVICES DOMESTIC REGULATION FOR FINANCIAL SERVICES

### Scope

1. These disciplines apply to measures by Members relating to licensing requirements and procedures, and qualification requirements and procedures affecting trade in financial services, as defined in the GATS Annex on Financial Services.
2. These disciplines do not apply to any terms, limitations, conditions, or qualifications set out in a Member's Schedule pursuant to Articles XVI or XVII of the Agreement.
3. For the purpose of these disciplines, "authorization" means the permission to supply a service, resulting from a procedure to which an applicant must adhere in order to demonstrate compliance with licensing requirements, or qualification requirements.

### Application Timeframes

4. If a Member requires authorization for the supply of a service, it shall ensure that its competent authorities to the extent practicable permit submission of an application at any time throughout the year. <sup>(19)</sup> If a specific time period for applying exists, the Member shall ensure that the competent authorities allow a reasonable period for the submission of an application.

### Electronic Applications and Acceptance of Copies

5. If a Member requires authorization for the supply of a service, it shall ensure that its competent authorities:
  - (a) taking into account their competing priorities and resource constraints, endeavour to accept applications in electronic format; and

<sup>(16)</sup> The term "relevant international organizations" refers to international bodies whose membership is open to the relevant bodies of at least all Members of the WTO.

<sup>(17)</sup> Such criteria may include, inter alia, competence and the ability to supply a service, including to do so in a manner consistent with a Member's regulatory requirements, such as health and environmental requirements. Competent authorities may assess the weight to be given to each criterion.

<sup>(18)</sup> Differential treatment that is reasonable and objective, and aims to achieve a legitimate purpose, and adoption by Members of temporary special measures aimed at accelerating de facto equality between men and women, shall not be considered discrimination for the purposes of this provision.

<sup>(19)</sup> Competent authorities are not required to start considering applications outside of their official working hours and working days.

- (b) accept copies of documents, that are authenticated in accordance with the Member's domestic laws and regulations, in place of original documents, unless the competent authorities require original documents to protect the integrity of the authorization process.

### Processing of Applications

- 6. If a Member requires authorization for the supply of a service, it shall ensure that its competent authorities:
    - (a) to the extent practicable, provide an indicative timeframe for processing of an application;
    - (b) at the request of the applicant, provide without undue delay information concerning the status of the application;
    - (c) to the extent practicable, ascertain without undue delay the completeness of an application for processing under the Member's domestic laws and regulations;
    - (d) if they consider an application complete for processing under the Member's domestic laws and regulations, <sup>(20)</sup> within a reasonable period of time after the submission of the application ensure that:
      - (i) the processing of the application is completed; and
      - (ii) the applicant is informed of the decision concerning the application, <sup>(21)</sup> to the extent possible in writing; <sup>(22)</sup>
    - (e) if they consider an application incomplete for processing under the Member's domestic laws and regulations, within a reasonable period of time, to the extent practicable:
      - (i) inform the applicant that the application is incomplete;
      - (ii) at the request of the applicant, identify the additional information required to complete the application, or otherwise provide guidance on why the application is considered incomplete; and
      - (iii) provide the applicant with the opportunity <sup>(23)</sup> to provide the additional information that is required to complete the application;

however, if none of the above is practicable, and the application is rejected due to incompleteness, ensure that they so inform the applicant within a reasonable period of time; and

  - (f) if an application is rejected, to the extent practicable, either upon their own initiative or upon request of the applicant, inform the applicant of the reasons for rejection and, if applicable, the procedures for resubmission of an application; an applicant should not be prevented from submitting another application <sup>(24)</sup> solely on the basis that an application had been previously rejected.
- 7. The competent authorities of a Member shall ensure that authorization, once granted, enters into effect without undue delay, subject to applicable terms and conditions. <sup>(25)</sup>

<sup>(20)</sup> Competent authorities may require that all information is submitted in a specified format to consider it "complete for processing".

<sup>(21)</sup> Competent authorities may meet this requirement by informing an applicant in advance in writing, including through a published measure, that lack of response after a specified period of time from the date of submission of an application indicates acceptance of the application or rejection of the application.

<sup>(22)</sup> "In writing" may include in electronic form.

<sup>(23)</sup> Such opportunity does not require a competent authority to provide extensions of deadlines.

<sup>(24)</sup> Competent authorities may require that the content of such an application has been revised.

<sup>(25)</sup> Competent authorities are not responsible for delays due to reasons outside their competence.

## Fees

8. Each Member shall ensure that its competent authorities, with respect to authorization fees <sup>(26)</sup> they charge, provide applicants with a schedule of fees or information on how fee amounts are determined.

## Assessment of Qualifications

9. If a Member requires an examination for authorization for the supply of a service, that Member shall ensure that its competent authorities schedule such an examination at reasonably frequent intervals and provide a reasonable period of time to enable applicants to request to take the examination. Having regard to the cost, administrative burden, and the integrity of the procedures involved, Members are encouraged to accept requests in electronic format to take such examinations, and to consider, to the extent practicable, the use of electronic means in other aspects of examination processes.

## Independence

10. If a Member adopts or maintains measures relating to the authorization for the supply of a service, the Member shall ensure that its competent authorities reach and administer their decisions in a manner independent from any supplier of the service for which authorization is required. <sup>(27)</sup>

## Publication and Information available

11. If a Member requires authorization for the supply of a service, further to Article III of the Agreement and paragraphs 6 and 8 of this Section, the Member shall promptly publish, <sup>(28)</sup> or otherwise make publicly available in writing the information necessary for service suppliers or persons seeking to supply a service to comply with the requirements and procedures for obtaining, maintaining, amending and renewing such authorization. Such information shall include, *inter alia*, where it exists:
- (a) the requirements and procedures;
  - (b) contact information of relevant competent authorities;
  - (c) procedures for appeal or review of decisions concerning applications;
  - (d) procedures for monitoring or enforcing compliance with the terms and conditions of licenses or qualifications; and
  - (e) opportunities for public involvement, such as through hearings or comments.

## Opportunity to Comment and Information before Entry into Force

12. To the extent practicable and in a manner consistent with its legal system for adopting measures, each Member <sup>(29)</sup> shall publish in advance:
- (a) its laws and regulations of general application it proposes to adopt in relation to matters falling within the scope of paragraph 1 of this Section; or
  - (b) documents that provide sufficient details about such a possible new law or regulation to allow interested persons and other Members to assess whether and how their interests might be significantly affected.

<sup>(26)</sup> Authorization fees do not include fees for the use of natural resources, payments for auction, tendering or other non-discriminatory means of awarding concessions, or mandated contributions to universal service provision.

<sup>(27)</sup> For greater certainty, this provision does not mandate a particular administrative structure; it refers to the decision-making process and administering of decisions.

<sup>(28)</sup> For purposes of these disciplines, "publish" means to include in an official publication, such as an official journal, or on an official website. Members are encouraged to consolidate electronic publications into a single portal.

<sup>(29)</sup> Paragraphs 12 to 15 of this Section recognize that Members have different systems to consult interested persons and other Members on certain measures before their adoption, and that the alternatives set out in paragraph 12 of this Section reflect different legal systems.

13. To the extent practicable and in a manner consistent with its legal system for adopting measures, each Member is encouraged to apply paragraph 12 of this Section to procedures and administrative rulings of general application it proposes to adopt in relation to matters falling within the scope of paragraph 1.
14. To the extent practicable and in a manner consistent with its legal system for adopting measures, each Member shall provide interested persons and other Members a reasonable opportunity to comment on such proposed measures or documents published under paragraphs 12 or 13 of this Section.
15. To the extent practicable and in a manner consistent with its legal system for adopting measures, each Member shall consider comments received under paragraph 14 of this Section. <sup>(30)</sup>
16. In publishing a law or regulation referred to in paragraph 12 (a) of this Section, or in advance of such publication, to the extent practicable and in a manner consistent with its legal system for adopting measures, a Member is encouraged to explain the purpose and rationale of the law or regulation.
17. Each Member shall, to the extent practicable, endeavour to allow reasonable time between publication of the text of a law or regulation referred to in paragraph 12 (a) of this Section and the date on which service suppliers must comply with the law or regulation.

### Enquiry Points

18. Each Member shall maintain or establish appropriate mechanisms for responding to enquiries from service suppliers or persons seeking to supply a service regarding the measures referred to in paragraph 1 of this Section. <sup>(31)</sup> A Member may choose to address such enquiries through either the enquiry and contact points established under Articles III and IV of the Agreement or any other mechanisms as appropriate.

### Development of Measures

19. If a Member adopts or maintains measures relating to the authorization for the supply of a service, the Member shall ensure that:
  - (a) such measures are based on objective and transparent criteria; <sup>(32)</sup>
  - (b) the procedures are impartial, and that the procedures are adequate for applicants to demonstrate whether they meet the requirements, if such requirements exist;
  - (c) the procedures do not in themselves unjustifiably prevent fulfilment of requirements; and
  - (d) such measures do not discriminate between men and women. <sup>(33)</sup>

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<sup>(30)</sup> This provision is without prejudice to the final decision of a Member that adopts or maintains any measure for authorization for the supply of a service.

<sup>(31)</sup> It is understood that resource constraints may be a factor in determining whether a mechanism for responding to enquiries is appropriate.

<sup>(32)</sup> Such criteria may include, inter alia, competence and the ability to supply a service, including to do so in a manner consistent with a Member's regulatory requirements. Competent authorities may assess the weight to be given to each criterion.

<sup>(33)</sup> Differential treatment that is reasonable and objective, and aims to achieve a legitimate purpose, and adoption by Members of temporary special measures aimed at accelerating de facto equality between men and women, shall not be considered discrimination for the purposes of this provision.

## ANNEX 2

## INF/SDR/3/Rev.1 of 2 December 2021

## JOINT INITIATIVE ON SERVICES DOMESTIC REGULATION SCHEDULES OF SPECIFIC COMMITMENTS

## Revision (\*)

This document contains a list of the Schedules of Specific Commitments concerning services domestic regulation disciplines.

	MEMBER	DATE OF SUBMISSION	DOCUMENT SYMBOL
1.	<b>Albania</b>	22.11.2021	INF/SDR/IDS/ALB/Rev.1
2.	<b>Argentina</b>	29.10.2021	INF/SDR/IDS/ARG
3.	<b>Australia</b>	19.10.2021	INF/SDR/IDS/AUS/Rev.1
4.	<b>Bahrain, Kingdom of</b>	To be submitted no later than 31 March 2022	
5.	<b>Brazil</b>	12.11.2021	INF/SDR/IDS/BRA/Rev.1
6.	<b>Canada</b>	22.10.2021	INF/SDR/IDS/CAN/Rev.1
7.	<b>Chile</b>	29.10.2021	INF/SDR/IDS/CHL/Rev.1
8.	<b>China</b>	29.10.2021	INF/SDR/IDS/CHN/Rev.1
9.	<b>Colombia</b>	29.10.2021	INF/SDR/IDS/COL/Rev.1
10.	<b>Costa Rica</b>	17.11.2021	INF/SDR/IDS/CRI/Rev.1
11.	<b>El Salvador</b>	To be submitted no later than 31 March 2022	
12.	<b>European Union</b>	29.10.2021	INF/SDR/IDS/EU/Rev.1
13.	<b>Hong Kong, China</b>	02.11.2021	INF/SDR/IDS/HKG/Rev.1
14.	<b>Iceland</b>	29.10.2021	INF/SDR/IDS/ISL/Rev.1
15.	<b>Israel</b>	29.10.2021	INF/SDR/IDS/ISR/Rev.1
16.	<b>Japan</b>	28.10.2021	INF/SDR/IDS/JPN/Rev.1
17.	<b>Kazakhstan</b>	<b>26.11.2021</b>	<b>INF/SDR/IDS/KAZ/Rev.1</b>
18.	<b>Korea, Republic of</b>	28.10.2021	INF/SDR/IDS/KOR/Rev.1
19.	<b>Liechtenstein</b>	10.11.2021	INF/SDR/IDS/LIE/Rev.1
20.	<b>Mauritius</b>	27.10.2021	INF/SDR/IDS/MUS/Rev.1
21.	<b>Mexico</b>	01.11.2021	INF/SDR/IDS/MEX/Rev.1
22.	<b>Moldova, Republic of</b>	29.10.2021	INF/SDR/IDS/MDA/Rev.1
23.	<b>Montenegro</b>	16.11.2021	INF/SDR/IDS/MNE/Rev.1
24.	<b>New Zealand</b>	29.10.2021	INF/SDR/IDS/NZL/Rev.1
25.	<b>Nigeria</b>	23.11.2021	INF/SDR/IDS/NGA/Rev.1
26.	<b>North Macedonia</b>	16.11.2021	INF/SDR/IDS/MDK/Rev.1
27.	<b>Norway</b>	28.10.2021	INF/SDR/IDS/NOR/Rev.1

(\*) This revision is to add El Salvador to the list of Schedules of Specific Commitments.

28.	<b>Paraguay</b>	19.11.2021	INF/SDR/IDS/PRY/Rev.1
29.	<b>Peru</b>	17.11.2021	INF/SDR/IDS/PER/Rev.1
30.	<b>Philippines</b>	To be submitted no later than 28 February 2022	
31.	<b>Russian Federation</b>	To be submitted no later than 28 February 2022	
32.	<b>Saudi Arabia, Kingdom of</b>	22.11.2021	INF/SDR/IDS/KSA/Rev.1
33.	<b>Singapore</b>	03.11.2021	INF/SDR/IDS/SGP/Rev.1
34.	<b>Switzerland</b>	01.11.2021	INF/SDR/IDS/CHE/Rev.1
35.	<b>The Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu</b>	27.10.2021	INF/SDR/IDS/TPKM/Rev.1
36.	<b>Thailand</b>	25.11.2021	INF/SDR/IDS/THA
37.	<b>Turkey</b>	28.10.2021	INF/SDR/IDS/TUR/Rev.1
38.	<b>Ukraine</b>	05.11.2021	INF/SDR/IDS/UKR/Rev.1
39.	<b>United Kingdom</b>	27.10.2021	INF/SDR/IDS/GBR
40.	<b>United States</b>	22.10.2021	INF/SDR/IDS/USA
41.	<b>Uruguay</b>	29.10.2021	INF/SDR/IDS/URY/Rev.1

INF/SDR/IDS/EU/Rev.1

## JOINT INITIATIVE ON SERVICES DOMESTIC REGULATION COMMUNICATION FROM THE EUROPEAN UNION

### *Pre-Finalisation Schedule of Specific Commitments*

The following communication dated 29 October 2021 was received from the delegation of the European Union.

1. The European Union submits the attached draft Schedule as its contribution to the finalisation of the negotiations in the Joint Initiative on Services Domestic Regulation.
2. This Schedule reflects the European Union's scheduling approach in accordance with Section I of document INF/SDR/1.

### EUROPEAN UNION PRE-FINALISATION SCHEDULE OF SPECIFIC COMMITMENTS

This text supplements the entries relating to the Horizontal Commitments contained in the following documents:

- European Union: GATS/SC/157 (7 May 2019);
- Bulgaria: GATS/SC/122 (21 May 1997), GATS/SC/122/S1 (11 April 1997), GATS/SC/122/S2 (26 February 1998);
- Romania: GATS/72 (15 April 1994), GATS/SC/72/S1 (11 April 1997), GATS/SC/72/S2 (26 February 1998);
- Croatia: GATS/SC/130 (22 December 2000).

**PRE-FINALISATION SCHEDULE OF SPECIFIC COMMITMENTS – EUROPEAN UNION**

Modes of Supply: (1) Cross-border supply (2) Consumption abroad (3) Commercial presence (4) Presence of natural persons

Sector or Sub-sector	Limitations on Market Access	Limitations on National Treatment	Additional Commitments
I. HORIZONTAL COMMITMENTS			
ALL SECTORS INCLUDED IN THIS SCHEDULE			<p>The European Union undertakes as additional commitments the disciplines contained in Section II of document INF/SDR/1 for all sectors included in this schedule, except for financial services.</p> <p>The European Union undertakes as additional commitments the disciplines contained in Section III of document INF/SDR/1 for financial services sectors included in this schedule.</p>



**COUNCIL IMPLEMENTING DECISION (EU) 2022/2385****of 6 December 2022****amending Implementing Decision 2013/805/EU authorising the Republic of Poland to introduce measures derogating from point (a) of Article 26(1) and Article 168 of Directive 2006/112/EC on the common system of value added tax**

THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax <sup>(1)</sup>, and in particular Article 395(1), first subparagraph, thereof,

Having regard to the proposal from the European Commission,

Whereas:

- (1) Article 168 of Directive 2006/112/EC establishes a taxable person's right to deduct value added tax (VAT) charged on supplies of goods and services received by them for the purposes of their taxed transactions. Article 26(1), point (a), of that Directive lays down that, when a business asset is put to use for the private purposes of the taxable person or their staff or, more generally, for purposes other than those of their business, this is to be considered as a service for consideration which, subsequently, is subject to VAT.
- (2) Council Implementing Decision 2013/805/EU <sup>(2)</sup> authorises Poland to limit to 50 % the right to deduct VAT on the purchase, intra-Community acquisition, importation, hire or leasing of certain motorised road vehicles and on expenditure related thereto, where such vehicles are not entirely used for business purposes, and to relieve taxable persons from having to treat non-business use of such vehicles as a supply of services in accordance with Article 26(1), point (a), of Directive 2006/112/EC (the 'special measures').
- (3) Implementing Decision 2013/805/EU is to expire on 31 December 2022.
- (4) By letter registered with the Commission on 18 February 2022, Poland requested authorisation to continue to apply the special measures for a further period until 31 December 2025.
- (5) In accordance with Article 3, second paragraph, of Implementing Decision 2013/805/EU, Poland submitted to the Commission, together with the request, a report on the application of the special measures, including a review of the percentage limitation applied on the right to deduct VAT. Based on that report, Poland maintains that a rate of 50 % is still justified. It also maintains that the derogation from the requirement in Article 26(1)(a) of Directive 2006/112/EC is still necessary to avoid double taxation. Those special measures are justified by the need to simplify the procedure for collecting VAT and to prevent tax evasion resulting from incorrect record keeping and false tax declarations.
- (6) In accordance with Article 395(2), second subparagraph, of Directive 2006/112/EC, the Commission transmitted the request made by Poland to the other Member States, by letter dated 15 March 2022. By letter dated 16 March 2022, the Commission notified Poland that it had all the information necessary for the appraisal of the request.
- (7) The application of the special measures beyond 31 December 2022, will only have a negligible effect on the overall amount of tax revenue Poland collects at the stage of final consumption and will not adversely affect the Union's own resources accruing from VAT.

<sup>(1)</sup> OJ L 347, 11.12.2006, p. 1.

<sup>(2)</sup> Council Implementing Decision 2013/805/EU of 17 December 2013 authorising the Republic of Poland to introduce measures derogating from point (a) of Article 26(1) and Article 168 of Directive 2006/112/EC on the common system of value added tax (OJ L 353, 28.12.2013, p. 51).

- (8) It is therefore appropriate to extend the authorisation set out in Implementing Decision 2013/805/EU. The extension of the special measures should be limited in time to allow the Commission to evaluate their effectiveness and the appropriateness of the percentage limitation applied on the right to deduct VAT.
- (9) Poland should therefore be authorised to continue to apply the special measures until 31 December 2025.
- (10) In the case that Poland considers that the special measures are necessary beyond the date of expiry of Implementing Decision 2013/805/EU, and in order to ensure timely examination of any request to extend the special measures, it is necessary to lay down requirements for such a request.
- (11) Implementing Decision 2013/805/EU should be therefore amended accordingly,

HAS ADOPTED THIS DECISION:

*Article 1*

Article 3 of Implementing Decision 2013/805/EU is replaced by the following:

*'Article 3*

This Decision shall expire on 31 December 2025.

Any request for an extension of the authorisation provided for in this Decision shall be submitted to the Commission by 31 March 2025. Such request shall be accompanied by a report including a review of the percentage limitation applied on the right to deduct VAT on the basis of this Decision.'

*Article 2*

This Decision shall take effect on the day of its notification.

*Article 3*

This Decision is addressed to the Republic of Poland.

Done at Brussels, 6 December 2022.

*For the Council*  
*The President*  
Z. STANJURA

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**COMMISSION IMPLEMENTING DECISION (EU) 2022/2386****of 5 December 2022****concerning the extension of the actions permitting the making available on the market and use of the biocidal product Biobor JF in accordance with Regulation (EU) No 528/2012 of the European Parliament and of the Council***(notified under document C(2022) 8673)***(Only the English, Estonian, Finnish, French, German, Hungarian, Maltese, Spanish and Swedish texts are authentic)**

THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EU) No 528/2012 of the European Parliament and of the Council of 22 May 2012 concerning the making available on the market and use of biocidal products <sup>(1)</sup>, and in particular Article 55(1), third subparagraph, thereof,

Whereas:

- (1) On 31 March 2022, the French Ministry of Ecological Transition ('the French competent authority') adopted a decision, in accordance with Article 55(1), first subparagraph, of Regulation (EU) No 528/2012, to permit the making available on the market for, and use by, professional users of the biocidal product Biobor JF for antimicrobial treatment of aircraft fuel tanks and fuel systems until 31 October 2022 ('the action'). The French competent authority informed the Commission and the competent authorities of the other Member States of the action and the justification for it, in accordance with Article 55(1), second subparagraph, of that Regulation.
- (2) Similar actions, concerning permits granted until 31 October 2022, were taken in 7 other Member States, as follows: on 5 May 2022 by the Hungarian National Public Health Centre ('the Hungarian competent authority'), on 6 May 2022 by the Environment Agency of Luxembourg ('the Luxembourgish competent authority'), on 8 May 2022 by the Finnish Safety and Chemicals Agency ('the Finnish competent authority'), on 15 May 2022 by Malta Competition and Consumer Affairs Authority ('the Maltese competent authority'), on 21 June 2022 by the Estonian Health Board ('the Estonian competent authority'), on 1 July 2022 by the Spanish Ministry of Health ('the Spanish competent authority'), and on 25 July 2022 by the Federal Austrian Ministry of Climate Action, Environment, Energy, Mobility, Innovation and Technology ('the Austrian competent authority'). The competent authorities of those Member States informed the Commission and the competent authorities of the other Member States of the actions and the justifications for them, in accordance with Article 55(1), second subparagraph, of Regulation (EU) No 528/2012.
- (3) According to the information provided by those competent authorities, the actions were necessary in order to protect public health. Microbiological growth can develop in aircraft fuel tanks, especially at the water-fuel interface, where microbiological organisms can use water for oxygen and fuel for nutrition. Microbiological contamination of aircraft fuel tanks and fuel systems can lead to malfunctions of the aircraft engine and endanger its airworthiness, thereby putting at risk the safety of passengers and crew. The prevention and treatment of microbiological contamination, when detected, are therefore crucial in order to avoid operational problems of aircraft.
- (4) Biobor JF contains 2,2'-(1-methyltrimethylenedioxy)bis-(4-methyl-1,3,2-dioxaborinane) (CAS number 2665-13-6) and 2,2'-oxybis (4,4,6-trimethyl-1,3,2-dioxaborinane) (CAS number 14697-50-8) as active substances. Biobor JF is a biocidal product of product-type 6, namely 'preservative for products during storage', as defined in Annex V to Regulation (EU) No 528/2012. 2,2'-(1-methyltrimethylenedioxy)bis-(4-methyl-1,3,2-dioxaborinane) and 2,2'-oxybis (4,4,6-trimethyl-1,3,2-dioxaborinane) have not been evaluated for use in biocidal products of product-type 6. As

<sup>(1)</sup> OJ L 167, 27.6.2012, p. 1.

those substances are not listed in Annex II to Commission Delegated Regulation (EU) No 1062/2014 <sup>(2)</sup>, they are not included in the work programme for the systematic examination of all existing active substances contained in biocidal products, referred to in Regulation (EU) No 528/2012. Article 89 of that Regulation therefore does not apply to those active substances and they have to be assessed and approved before biocidal products containing them can be authorised also at national level.

- (5) On 23 May 2022, the Commission received a reasoned request from the French competent authority to allow the extension of its action in accordance with Article 55(1), third subparagraph, of Regulation (EU) No 528/2012. Similar requests were received on 27 July 2022 from the Austrian competent authority, on 24 August 2022 from the Estonian competent authority, on 25 August 2022 from the Spanish competent authority, on 29 August 2022 from the Finnish competent authority, on 9 September 2022 from the Luxembourgish competent authority, on 31 August 2022 from the Maltese competent authority and on 20 September 2022 from the Hungarian competent authority. Those reasoned requests were made on the basis of concerns that air transport safety might continue to be endangered by microbiological contamination of aircraft fuel tanks and fuel systems after 31 October 2022 and the claim that Biobor JF is essential in order to control such microbiological contamination.
- (6) According to the information provided by the concerned competent authorities, the only alternative biocidal product recommended by aircraft and aircraft engine manufacturers for the treatment of microbiological contamination (Kathon™ FP 1.5) was withdrawn from the market in March 2020 due to severe behaviour anomalies in aircraft engines that were noticed after the treatment with that product. Biobor JF is therefore the only available product for that use recommended by aircraft and aircraft engine manufacturers.
- (7) As indicated by the concerned competent authorities, the mechanical treatment of microbiological contamination of aircraft fuel tanks and fuel systems is not always possible and procedures recommended by engine manufacturers require the treatment with a biocidal product even when mechanical cleaning is possible. Moreover, mechanical treatment would expose workers to toxic gases and should therefore be avoided.
- (8) According to the information provided to the Commission, the manufacturer of Biobor JF has taken steps towards a future regular authorisation of the product. An application for approval of the active substances that Biobor JF contains is expected to be submitted in mid-2023. The approval of the active substances and subsequent authorisation of the biocidal product would constitute a permanent solution for the future, but a significant amount of time would be needed for the completion of those procedures.
- (9) The lack of control of microbiological contamination of aircraft fuel tanks and fuel systems might endanger the air transport safety and that danger cannot be adequately contained by using another biocidal product or by other means. It is therefore appropriate to allow the competent authorities concerned to extend their actions.
- (10) As the actions expired on 31 October 2022, this Decision should apply retroactively.
- (11) The measures provided for in this Decision are in accordance with the opinion of the Standing Committee on Biocidal Products,

HAS ADOPTED THIS DECISION:

#### *Article 1*

The Estonian Health Board, the Spanish Ministry of Health, the French Ministry of Ecological Transition, the Environment Agency of Luxembourg, the Hungarian National Public Health Centre, Malta Competition and Consumer Affairs Authority, the Federal Austrian Ministry of Climate Action, Environment, Energy, Mobility, Innovation and Technology and the Finnish Safety and Chemicals Agency may extend until 4 May 2024 the actions to permit the making available on the market for, and use by, professional users of the biocidal product Biobor JF for antimicrobial treatment of aircraft fuel tanks and fuel systems.

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

*Article 2*

This Decision is addressed to:

- (1) the Estonian Health Board;
- (2) the Spanish Ministry of Health;
- (3) the French Ministry of Ecological Transition;
- (4) the Environment Agency of Luxembourg;
- (5) the Hungarian National Public Health Centre;
- (6) Malta Competition and Consumer Affairs Authority;
- (7) the Federal Austrian Ministry of Climate Action, Environment, Energy, Mobility, Innovation and Technology;
- (8) the Finnish Safety and Chemicals Agency.

It shall apply from 1 November 2022.

Done at Brussels, 5 December 2022.

*For the Commission*  
Stella KYRIAKIDES  
*Member of the Commission*

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