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⁽¹⁾ Text with EEA relevance.

EN

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⁽¹⁾ Text with EEA relevance.

II

(Non-legislative acts)

REGULATIONS

COMMISSION DELEGATED REGULATION (EU) 2022/1299

of 24 March 2022

supplementing Directive 2014/65/EU of the European Parliament and of the Council with regard to regulatory technical standards specifying the content of position management controls by trading venues

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

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

Having regard to Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU ⁽¹⁾, and in particular Article 57(8), fourth subparagraph, thereof,

Whereas:

- (1) Directive (EU) 2021/338 of the European Parliament and of the Council ⁽²⁾ sets out amendments to Article 57 of Directive 2014/65/EU as regards position management controls.
- (2) In accordance with those amendments to Article 57 of Directive 2014/65/EU, trading venues which trade commodity derivatives have to have in place and apply effective position management controls to prevent and address disorderly trading, support orderly pricing and settlement conditions and ensure the efficiency of markets.
- (3) Effective position management controls include for example legal arrangements to obtain and use data of end position holders and parent undertakings as well as technical arrangements, such as reports and metrics to construct for example a position dashboard. Therefore, effective position management controls should be closely intertwined with and rely on the ongoing monitoring by the trading venue.
- (4) In order to ensure that the price discovery process is not unduly influenced by the existence of a position and to identify the build-up of concentrations of positions that could result in price distortion, market manipulation or other abusive trading practices, trading venues should be aware of large positions held by end position holders and parent undertakings in physically settled commodity derivatives and the reasons for holding those positions. As the actual supply of the underlying physical commodity is restricted to a finite supply, physically settled commodity derivatives are more susceptible to disorderly trading practices such as market squeezes or market cornering where counterparties would make use of a dominant position to secure the price of a commodity derivative, or of the underlying commodity, at an artificial level. Therefore, large positions should be identified in commodity derivatives that are physically settled by design as well as in commodity derivatives that can be physically settled at the option of the buyer or the seller.

⁽¹⁾ OJ L 173, 12.6.2014, p. 349.

⁽²⁾ Directive (EU) 2021/338 of the European Parliament and of the Council of 16 February 2021 amending Directive 2014/65/EU as regards information requirements, product governance and position limits, and Directives 2013/36/EU and (EU) 2019/878 as regards their application to investment firms, to help the recovery from the COVID-19 crisis (OJ L 68, 26.2.2021, p. 14).

- (5) The determination of what constitutes a large position should be made by trading venues taking into account the size and composition of the market in question. For that purpose, trading venues should establish qualitative or quantitative criteria that are used to identify such large exposures and should have procedures in place to identify all positions held by any person which exceed such pre-determined accountability levels. Quantitative and qualitative criteria could be, amongst others, the size of the total open interest in the commodity derivative, the share of the position of the position holder, the volatility of the markets and the characteristics of the underlying commodity market. Where such levels are exceeded, the trading venue should seek to understand the rationale for the build-up of that large position. To that end, the trading venue should assess whether it needs to request additional information from the person holding that large position, considering in particular how frequently the positions held by that person exceed the accountability levels and the extent to which the accountability levels are exceeded. Such information could include, amongst other, positions in related products, the economic reason for the open position and the activity in a related underlying commodity market. Based on the information already available or gathered through the request for information, the trading venue should take appropriate actions where necessary.
- (6) It is important that the accountability levels set remain adequate and effective to serve their intended purpose and that the competent authority is informed of the methodology used for setting and updating those accountability levels.
- (7) This Regulation is based on the draft regulatory technical standards submitted to the Commission by the European Securities and Markets Authority.
- (8) The European Securities and Markets Authority has conducted open public consultations on the draft regulatory technical standards on which this Regulation is based, analysed the potential related costs and benefits and requested the advice of the Securities and Markets Stakeholder Group established in accordance with Article 37 of Regulation (EU) No 1095/2010 of the European Parliament and of the Council ⁽³⁾,

HAS ADOPTED THIS REGULATION:

Article 1

General monitoring obligations

Trading venues shall have arrangements in place for the ongoing monitoring of positions held by end position holders and parent undertakings in each commodity derivative traded on their trading venues.

Article 2

Accountability levels

1. As part of their position management controls, trading venues offering trading in commodity derivatives shall set accountability levels in the spot month as defined in Article 2(3) of Commission Delegated Regulation 2022/1301 ⁽⁴⁾ and in the other months as defined in Article 2(4) of Delegated Regulation 2022/1301 for commodity derivatives made available for trading that are physically settled or can be physically settled.
2. For the purpose of paragraph 1, an accountability level is the level of the net position held in a commodity derivative by an end position holder or parent undertaking that, when exceeded, may trigger a request for additional information by the trading venue in accordance with paragraph 3.

⁽³⁾ Regulation (EU) No 1095/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Securities and Markets Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/77/EC (OJ L 331, 15.12.2010, p. 84).

⁽⁴⁾ Commission Delegated Regulation (EU) 2022/1301 of 31 March 2022 amending the regulatory technical standards laid down in Delegated Regulation (EU) 2020/1226 as regards the information to be provided in accordance with the STS notification requirements for on-balance-sheet synthetic securitisations (OJ L 197, xx.xx.2022, p. 10).

3. When a net position held by an end position holder or a parent undertaking in a commodity derivative referred to in paragraph 1 exceeds the accountability level set for the spot month or for the other months in accordance with paragraph 1 of this Article, the trading venue shall, where deemed appropriate obtain information as to the nature and purpose of the position held in that commodity derivative.

When assessing whether it is appropriate to obtain information, the trading venue shall take into account the frequency by which the accountability levels are exceeded by the same end position holder or parent undertaking, the magnitude of the excess and other relevant information already available.

Article 3

Review and reporting of accountability levels

1. Trading venues shall, on an annual basis, evaluate the adequacy and effectiveness of the accountability levels established pursuant to Article 2(1).
2. A trading venue shall communicate to its competent authority the methodology used for setting the accountability levels referred to in Article 2(1).
3. A trading venue shall inform its competent authority on an annual basis of the number of instances where accountability levels have been exceeded, of any requests for additional information made in accordance with Article 2(3) and of any actions taken in accordance with Article 2(4).

Article 4

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

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

Done at Brussels, 24 March 2022.

For the Commission
The President
Ursula VON DER LEYEN

COMMISSION IMPLEMENTING REGULATION (EU) 2022/1300**of 24 March 2022****amending Implementing Regulation (EU) 2017/1093 laying down implementing technical standards with regard to the format of position reports by investment firms and market operators****(Text with EEA relevance)**

THE EUROPEAN COMMISSION,

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

Having regard to Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU ⁽¹⁾, and in particular Article 58(5), third subparagraph, thereof,

Whereas:

- (1) Directive (EU) 2021/338 of the European Parliament and of the Council ⁽²⁾ sets out amendments to Article 58 of Directive 2014/65/EU as regards position reporting.
- (2) In accordance with those amendments to Article 58 of Directive 2014/65/EU, position reporting is no longer to apply to securities referred to in Article 4(1), point 44, point (c), of that Directive, which relate to a commodity or an underlying as referred to in Section C.10 of Annex I to that Directive. Therefore, references to those categories of derivatives in the implementing technical standards laid down in Commission Implementing Regulation (EU) 2017/1093 ⁽³⁾ should be deleted.
- (3) Implementing Regulation (EU) 2017/1093 should therefore be amended accordingly.
- (4) This Regulation is based on the draft implementing technical standards submitted to the Commission by the European Securities and Markets Authority.
- (5) The European Securities and Markets Authority has conducted open public consultations on the draft implementing technical standards on which this Regulation is based, analysed the potential related costs and benefits and requested the advice of the Securities and Markets Stakeholder Group established in accordance with Article 37 of Regulation (EU) No 1095/2010 of the European Parliament and of the Council ⁽⁴⁾,

HAS ADOPTED THIS REGULATION:

Article 1

Annex II to Implementing Regulation (EU) 2017/1093 is amended in accordance with the Annex to this Regulation.

Article 2

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

⁽¹⁾ OJ L 173, 12.6.2014, p. 349.

⁽²⁾ Directive (EU) 2021/338 of the European Parliament and of the Council of 16 February 2021 amending Directive 2014/65/EU as regards information requirements, product governance and position limits, and Directives 2013/36/EU and (EU) 2019/878 as regards their application to investment firms, to help the recovery from the COVID-19 crisis (OJ L 68, 26.2.2021, p. 14).

⁽³⁾ Commission Implementing Regulation (EU) 2017/1093 of 20 June 2017 laying down implementing technical standards with regard to the format of position reports by investment firms and market operators (OJ L 158, 21.6.2017, p. 16).

⁽⁴⁾ Regulation (EU) No 1095/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Securities and Markets Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/77/EC (OJ L 331, 15.12.2010, p. 84).

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

Done at Brussels, 24 March 2022.

For the Commission
The President
Ursula VON DER LEYEN

ANNEX

Table 2 of Annex II to Implementing Regulation (EU) 2017/1093 is replaced by the following:

Table 2

Table of fields to be reported for all positions across all maturities of all contracts for the purposes of Article 2

FIELD	DETAILS TO BE REPORTED	FORMAT FOR REPORTING
Date and time of report submission	Field to be populated with the date and time on which the report is submitted.	{DATE_TIME_FORMAT}
Report reference number	Field to be populated with the unique identifier given by the submitter unambiguously identifying the report to both submitter and receiving competent authority.	{ALPHANUM-52}
Date of the trading day of the reported position	Field to be populated with the date on which the reported position is held at the close of the trading day on the relevant trading venue.	{DATEFORMAT}
Report status	<p>Indication as to whether the report is new or a previously submitted report is cancelled or amended.</p> <p>Where a previously submitted report is cancelled or amended, a report which contains all the details of the original report and using the original Report Reference Number should be sent and the "Report status" should be flagged as "CANC".</p> <p>For amendments a new report that contains all the details of the original report and using the original Report Reference Number with all necessary details amended should be sent and the "Report status" should be flagged as "AMND".</p>	<p>"NEWT" – New</p> <p>"CANC" – Cancellation</p> <p>"AMND" – Amendment</p>
Reporting entity ID	The identifier of the reporting investment firm. Field to be populated with the Legal Entity Identifier code (LEI) for legal entities or {NATIONAL_ID} for natural persons not having an LEI.	{LEI} or {NATIONAL_ID} – Natural persons
Position holder ID	Field to be populated with the Legal Entity Identifier code (LEI) for legal entities or {NATIONAL_ID} for natural persons not having an LEI. (Note: if the position is held as a proprietary position of the reporting firm, this field shall be identical to field "Reporting entity ID").	{LEI} or {NATIONAL_ID} – Natural persons

Email address of position holder	Email address for notifications of position-related matters.	{ALPHANUM-256}
Ultimate parent entity ID	Field to be populated with the Legal Entity Identifier code (LEI) for legal entities or {NATIONAL_ID} for natural persons not having an LEI. Note: this field may be identical to field "Reporting entity ID" or "Position holder ID" if the ultimate parent entity holds its own positions, or makes its own reports.	{LEI} or {NATIONAL_ID} – Natural persons
Email address of ultimate parent entity	Email address for correspondence in relation to aggregated positions.	{ALPHANUM-256}
Parent of collective investment scheme status	Field to report on whether the position holder is a collective investment undertaking that makes investment decisions independently from its parent as set out by Article 4(2) of Commission Delegated Regulation (EU) 2022/1301 (*).	"TRUE" – the position holder is a collective investment undertaking that makes independent investment decisions "FALSE" – the position holder is not a collective investment undertaking that makes independent investment decisions
Identification code of contract traded on trading venues	Identifier of the commodity derivative, emission allowance or derivative thereof. See field "Trading venue identifier" for treatment of OTC contracts that are economically equivalent to contracts that are traded on trading venues.	{ISIN}
Venue product code	Field to be populated with a unique and unambiguous alphanumeric identifier utilised by the trading venue grouping together contracts with different maturities and strike prices in the same product.	{ALPHANUM-12}
Trading venue identifier	Field to be populated with the ISO 10383 segment MIC for positions reported in respect of on-venue contracts. Where the segment MIC does not exist, use the operating MIC. Use MIC code "XXXX" for off-venue positions in economically equivalent OTC contracts. Use MIC code "XOFF" for listed derivatives or emission allowances traded off-exchange.	{MIC}

Position type	Field to report whether the position is in either futures, options, emission allowances or derivatives thereof or any other contract type.	<p>“OPTN” – Options, including separately tradable options on FUTR or OTHR types, excluding products where the optionality is only an embedded element</p> <p>“FUTR” – Futures</p> <p>“EMIS” – Emission allowances and derivatives thereof</p> <p>“OTHR” – any other contract type</p>
Position maturity	Indication of whether the maturity of the contract comprising the reported position relates to the spot month or to all other months. Note: separate reports are required for spot months and all other months.	<p>“SPOT” – spot month, including all positions in position types EMIS</p> <p>“OTHR” – all other months</p>
Position quantity	<p>Field to be populated with the net position quantity held in the commodity derivative, emission allowances or derivatives thereof expressed either in lots, when the position limits are expressed in lots, or units of the underlying.</p> <p>This field should be populated with a positive number for long positions and a negative number for short positions.</p>	{DECIMAL-15/2}
Notation of the position quantity	This field shall be populated with the units used to report the position quantity.	<p>“LOTS” – if the position quantity is expressed in lots</p> <p>{ALPHANUM-25} – a description of the units used if the position quantity is expressed in units of the underlying</p> <p>“UNIT” – if the position quantity is expressed in units</p>
Delta equivalent position quantity	<p>If the Position Type is “OPTN” or an option on “EMIS”, then this field shall contain the delta-equivalent quantity of the position reported in the “Position Quantity” field.</p> <p>This field should be populated with a positive number for long calls and short puts and a negative number for long puts and short calls.</p>	{DECIMAL-15/2}

Indicator of whether the position is risk reducing in relation to commercial activity	Field to report whether the position is risk reducing in accordance with Article 7 of Delegated Regulation (EU) 2022/1301.	"TRUE" – the position is risk reducing "FALSE" – the position is not risk reducing
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(*) Commission Delegated Regulation (EU) 2022/1301 of 31 March 2022 amending the regulatory technical standards laid down in Delegated Regulation (EU) 2020/1226 as regards the information to be provided in accordance with the STS notification requirements for on-balance-sheet synthetic securitisations (OJ L 197, xx.xx.2022, p. 10).'

COMMISSION DELEGATED REGULATION (EU) 2022/1301**of 31 March 2022****amending the regulatory technical standards laid down in Delegated Regulation (EU) 2020/1226 as regards the information to be provided in accordance with the STS notification requirements for on-balance-sheet synthetic securitisations**

THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EU) 2017/2402 of the European Parliament and of the Council of 12 December 2017 laying down a general framework for securitisation and creating a specific framework for simple, transparent and standardised securitisation, and amending Directives 2009/65/EC, 2009/138/EC and 2011/61/EU and Regulations (EC) No 1060/2009 and (EU) No 648/2012 ⁽¹⁾, and in particular Article 27(6), third subparagraph thereof,

Whereas:

- (1) Commission Delegated Regulation (EU) 2020/1226 ⁽²⁾ specifies the information that securitisation parties have to provide to the European Securities and Markets Authority (ESMA) in accordance with the simple, transparent and standardised (STS) notification requirements for traditional true sale securitisations laid down in Articles 19 to 22 and Articles 23 to 26 of Regulation (EU) 2017/2402.
- (2) Regulation (EU) 2021/557 of the European Parliament and of the Council ⁽³⁾ amended Regulation (EU) 2017/2402 by extending the STS securitisation framework to on-balance-sheet synthetic securitisations. Accordingly, it is necessary to specify the information that originators have to submit to ESMA to comply with the STS notification requirements for on-balance-sheet synthetic securitisations.
- (3) To provide investors, potential investors and competent authorities with a comparative overview of all types of STS securitisations, it is appropriate to ensure consistency across all the STS notifications. Therefore, the information that originators must submit regarding compliance with the STS requirements set out in Articles 26b to 26e of Regulation (EU) 2017/2402 should follow similar standards and level of detail as those set forth in Annexes I, II and III to Delegated Regulation (EU) 2020/1226. In particular, a simple confirmation of compliance is sufficient for some criteria, while others require additional information. It is therefore necessary to distinguish between those STS criteria for which a simple confirmation is sufficient and those for which a concise explanation or a detailed explanation is necessary.
- (4) On-balance-sheet synthetic securitisations where no prospectus must be drawn up in accordance with Regulation (EU) 2017/1129 of the European Parliament and of the Council ⁽⁴⁾ allow parties to enter into securitisation transactions without disclosing sensitive commercial information. It is therefore appropriate to restrict the information to be published of the STS notifications of such securitisations to non-sensitive commercial information.

⁽¹⁾ OJ L 347 28.12.2017, p. 35.

⁽²⁾ Commission Delegated Regulation (EU) 2020/1226 of 12 November 2019 supplementing Regulation (EU) 2017/2402 of the European Parliament and of the Council and laying down regulatory technical standards specifying the information to be provided in accordance with the STS notification requirements (OJ L 289, 3.9.2020, p. 285).

⁽³⁾ Regulation (EU) 2021/557 of the European Parliament and of the Council of 31 March 2021 amending Regulation (EU) 2017/2402 laying down a general framework for securitisation and creating a specific framework for simple, transparent and standardised securitisation to help the recovery from the COVID-19 crisis (OJ L 116, 6.4.2021, p. 1).

⁽⁴⁾ Regulation (EU) 2017/1129 of the European Parliament and of the Council of 14 June 2017 on the prospectus to be published when securities are offered to the public or admitted to trading on a regulated market, and repealing Directive 2003/71/EC (OJ L 168, 30.6.2017, p. 12).

- (5) To facilitate access to information relevant to the STS requirements, originators should be allowed to refer to any relevant prospectus drawn up for an on-balance-sheet synthetic securitisation in accordance with Regulation (EU) 2017/1129 or other relevant underlying documentation as referred to in Article 7(1), point (b) of Regulation (EU) 2017/2402. Additionally, originators should be allowed to refer to any other document relating to the investors and originators, the credit protection agreement, the third-party verification agent and, where available, the transaction documentation backing the credit linked notes.
- (6) In order to improve the transparency and consistency of information between interrelated fields and to clarify specific features of certain securitisations, including master trust securitisations, it is necessary to clarify the information to be reported under the columns 'Field name' and 'Content to be reported' for certain fields in Annexes I, II and III to Delegated Regulation (EU) 2020/1226.
- (7) Delegated Regulation (EU) 2020/1226 should therefore be amended accordingly.
- (8) This Regulation is based on the draft regulatory technical standards submitted to the Commission by ESMA.
- (9) ESMA has conducted open public consultations on the draft regulatory technical standards on which this Regulation is based, analysed the potential related costs and benefits and requested the advice of the Securities and Markets Stakeholder Group established in accordance with Article 37 of Regulation (EU) No 1095/2010 of the European Parliament and of the Council ⁽⁵⁾,

HAS ADOPTED THIS REGULATION:

Article 1

Amendments to Delegated Regulation (EU) 2020/1226

Delegated Regulation (EU) 2020/1226 is amended as follows:

(1) Article 1 is amended as follows:

(a) in paragraph 1, the following point (d) is added:

'(d) where the securitisation is an on-balance-sheet synthetic securitisation, the information specified in Annex IV to this Regulation.');

(b) in paragraph 2, the following point (d) is inserted:

'(d) where the securitisation is an on-balance-sheet synthetic securitisation, the information specified in fields STSSY2, STSSY10, STSSY12 and STSSY13 of Annex IV to this Regulation.');

(2) Article 2 is amended as follows:

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

'Where the following documents include information relevant to the STS notification, a reference to the relevant parts of those documents may be provided in the additional information column in Annexes I, II, III or IV to this Regulation and, where such information is provided, that documentation shall be clearly identified.');

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

'(c) any other document with information relevant to the STS notification, including, for on-balance-sheet synthetic securitisations, documents related to any originator, any investor, the credit protection agreement, the third-party verification agent referred to in Article 26e(4) of Regulation (EU) 2017/2402, and, where available, the documentation supporting the credit linked notes referred to in Article 26e(10), fifth subparagraph, of Regulation (EU) 2017/2402.');

⁽⁵⁾ Regulation (EU) No 1095/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Securities and Markets Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/77/EC (OJ L 331 15.12.2010, p. 84).

- (3) Annexes I, II and III are amended as set out in Annex I to this Regulation.
- (4) Annex IV, as set out in Annex II to this Regulation, is added.

Article 2

Entry into force

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

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

Done at Brussels, 31 March 2022.

For the Commission
The President
Ursula VON DER LEYEN

ANNEX I

Annexes I, II and III to Delegated Regulation (EU) 2020/1226 are amended as follows:

(1) Annex I is amended as follows:

(a) in the table 'General information', the rows corresponding to field codes STSS 4 and STSS17 are replaced by the following:

'STSS4	N/A	Unique identifier	The unique identifier assigned by the reporting entity in accordance with Article 11(1) of Commission Delegated Regulation (EU) 2020/1224 (*). Where more than one STS notification is notified using this unique securitisation identifier, a statement explaining why this is the case.	N/A
STSS17	Article 27(3)	Originator (or original lender) is a credit institution	A 'Yes' or 'No' statement as to whether the originator or original lender is a credit institution, or an investment firm established in the Union.	N/A

(*) Commission Delegated Regulation (EU) 2020/1224 of 16 October 2019 supplementing Regulation (EU) 2017/2402 of the European Parliament and of the Council with regard to regulatory technical standards specifying the information and the details of a securitisation to be made available by the originator, sponsor and SSPE (OJ L 289, 3.9.2020, p. 1).;

(b) in the table 'Specific information', the rows corresponding to field codes STSS21 and STSS22 are replaced by the following:

'STSS21	Article 20(2)	Subject to severe clawback		√		A concise explanation on whether any of the severe clawback provisions referred to in Article 20(2), points (a) or (b), of Regulation (EU) 2017/2402 are found in the securitisation.	Item 3.3 of Annex 19 of Delegated Regulation (EU) 2019/980
STSS22	Article 20(3)	Exemption for clawback provisions in national insolvency laws	√			A confirmation of whether the clawback provisions referred to in Article 20(3) of Regulation (EU) 2017/2402 apply.	Item 3.3 of Annex 19 of Delegated Regulation (EU) 2019/980'

(2) Annex II is amended as follows:

(a) in the table 'General information', the rows corresponding to field codes STSAT4 and STSAT17 are replaced by the following:

'STSAT4	N/A	Unique identifier	The unique identifier assigned by the reporting entity in accordance with Article 11(1) of Delegated Regulation (EU) 2020/1224. Where more than one STS notification is issued for this unique securitisation identifier, a statement explaining why this is the case.	N/A
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STSAT17	Article 27(3)	Originator (or original lender) is a credit institution	A 'Yes' or 'No' statement as to whether the originator or original lender is a credit institution, or an investment firm established in the Union.	N/A'
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- (b) in the table 'Specific information', the rows corresponding to field codes STSAT21 and STSAT22 are replaced by the following:

'STSAT21	Article 24(2)	Subject to severe clawback		√		A concise explanation on whether any of the severe clawback provisions referred to in Article 24(2), points (a) or (b), of Regulation (EU) 2017/2402 are found in the securitisation.	Item 3.3 of Annex 19 of Delegated Regulation (EU) 2019/980
STSAT22	Article 24(3)	Exemption for clawback provisions in national insolvency laws	√			A confirmation of whether the clawback provisions referred to in Article 24(3) of Regulation (EU) 2017/2402 apply.	Item 3.3 of Annex 19 of Delegated Regulation (EU) 2019/980'

- (3) in Annex III, in the table 'General information', the row corresponding to field code STSAP4 is replaced by the following:

'STSAP4	N/A	Unique identifier	The unique identifier assigned by the reporting entity in accordance with Article 11(1) of Delegated Regulation (EU) 2020/1224. Where more than one STS notification is issued for this unique securitisation identifier, a statement explaining why this is the case.	N/A'
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ANNEX II

‘ANNEX IV

Information to be submitted to ESMA pursuant to Articles 26b to 26e of Regulation (EU) 2017/2402 regarding on-balance-sheet securitisations

General information

Field code	Article of Regulation (EU) 2017/2402	Field name	Content to be reported	Additional information
STSSY1	Article 27(1), third subparagraph	First contact point	Legal Entity Identifier (LEI) of the entity designated as the first contact point and name of the relevant competent authority.	Item 3.2 of Annex 19 of Delegated Regulation (EU) 2019/980
STSSY2	N/A	Notification date	The date of notification to ESMA.	N/A
STSSY3	N/A	Instrument identification code	Where available, the international security identification code (ISIN) or codes. If no ISIN is available, then any other unique securities code (including the credit linked notes), where available.	Where available under Item 3.1 of Annex 19 of Delegated Regulation (EU) 2019/980
STSSY4	N/A	Legal Entity Identifier (LEI)	The LEI of the originator(s) and sponsor(s) and, where available, original lender(s) and SSPE(s).	Item 4.2 of Annex 9 of Delegated Regulation (EU) 2019/980
STSSY5	Article 31(3)	Protection seller	The LEI, the name, the country of establishment of the initial protection seller(s) and the name of the competent authority.	N/A
STSSY6	N/A	Notification identifier	Where reporting an update, the unique reference number assigned by ESMA to the previously notified STS notification.	N/A
STSSY7	N/A	Unique identifier	The unique identifier assigned by the reporting entity in accordance with Article 11(1) of Delegated Regulation (EU) 2020/1224	N/A
STSSY8	N/A	Securitisation Repository	If applicable, the name of the registered securitisation repository.	N/A
STSSY9	Article 18, second subparagraph, and Article 27(3)	Country of establishment	The country of establishment of the originator(s), sponsor(s), original lender(s) and SSPE(s).	N/A

STSSY10	N/A	Synthetic securitisation classification	The type of synthetic securitisation: — synthetic securitisation with funded credit protection; — synthetic securitisation with unfunded credit protection.	N/A
STSSY11	N/A	Synthetic securitisation with unfunded credit protection	Name of the protection seller (government or supra national institution with a risk weight of 0 %)	N/A
STSSY12	N/A	Credit Protection Agreement used	The type of credit protection agreement used: — Credit derivatives; — Financial guarantees	N/A
STSSY13	N/A	Underlying exposures classification	The type of underlying exposures including: 1) Trade finance exposures 2) Small and Medium Enterprise (SMEs) loans 3) Consumer lending 4) Large corporates loans 5) Mix of SMEs and large corporates loans 6) Commercial real estate exposures 7) Others.	N/A
STSSY14	N/A	Issue date	The closing date of the transaction and, if different, the date at which the protection agreement comes into effect.	N/A
STSSY15	Article 27(2), second subparagraph	Authorised third party verifier – statement	Where an authorised third party has provided STS verification services in accordance with Article 27(2) of Regulation (EU) 2017/2402, a statement that compliance with the STS criteria was confirmed by that authorised third party.	N/A
STSSY16	Article 27(2), second subparagraph	Authorised third party verifier – country of establishment	Where an authorised third party has provided STS verification services in accordance with Article 27(2) of Regulation (EU) 2017/2402, the third party's name and country of establishment.	N/A
STSSY17	Article 27(2), second subparagraph	Authorised third party verifier – competent authority	Where an authorised third party has provided STS verification services in accordance with Article 27(2) of Regulation (EU) 2017/2402, the name of the competent authority that has authorised it.	N/A

STSSY18	Article 27(5)	STS status	If applicable, a reasoned notification by the originator that the synthetic securitisation is no longer to be considered as STS.	N/A
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Specific information

Field code	Article of Regulation (EU) 2017/2402	Field name	Confirmation	Concise explanation	Detailed explanation	Content to be reported	Additional information
STSSY19	Article 26b(1), first subparagraph	The originator is a supervised entity in the Union	√			Confirmation that the originator is an entity that is authorised or licenced in the Union.	N/A
STSSY20	Article 26b(1), second subparagraph	Originator applying the purchased third party's exposures policies		√		A concise explanation that the policies for credit, collection, debt workout and servicing which the originator applies to a third party's exposures that the originator has purchased on its own account and then securitised, and which must not be less stringent than those that the originator applies to comparable exposures that have not been purchased.	N/A
STSSY21	Article 26b(2)	Underlying exposures' origination		√		A concise explanation that the underlying exposures are originated as part of the core business activity of the originator.	N/A
STSSY22	Article 26b(3) first subparagraph	Assets held on originator's balance sheet at transaction closing	√			A confirmation that, at the closing of a transaction, the underlying exposures are held on the balance sheet of the originator or of an entity that belongs to the same group as the originator.	N/A
STSSY23	Article 26b(3) second subparagraph	Group category	√			For the purposes of field STSSY22, a confirmation of which of the following two groups is the relevant one:	N/A

						<p>(a) a group of legal entities that is subject to prudential consolidation in accordance with Chapter 2 of the Title II of Part One of Regulation (EU) No 575/2013;</p> <p>(b) a group as defined in Article 212(1), point (c), of Directive 2009/138/EC ⁽¹⁾</p>	
STSSY24	Article 26b(4)	No further hedging of originator's exposure	√			A confirmation that the originator does not hedge its exposure to the credit risk of the underlying exposures of the securitisation beyond the protection obtained through the credit protection agreement.	N/A
STSSY25	Article 26b(5)	Credit protection agreement meeting Article 249 of Regulation (EU) No 575/2013	√			A confirmation that the credit protection agreement complies with the credit risk mitigation rules laid down in Article 249 of Regulation (EU) No 575/2013.	N/A
STSSY26	Article 26b(5)	Credit protection agreement meeting other credit mitigation rules		√		Where Article 249 of Regulation (EU) No 575/2013 is not applicable, a concise explanation that compliance with requirements that are no less stringent than the requirements set out in that Article is ensured.	N/A
STSSY27	Article 26b(6), point (a)	Representations and warranties – Legal title to the underlying exposures		√		A concise explanation of the originator's representations and warranties that the originator or an entity of the group to which the originator belongs has full legal and valid title to the underlying exposures and their associated ancillary rights.	N/A

⁽¹⁾ Directive 2009/138/EC of the European Parliament and of the Council of 25 November 2009 on the taking-up and pursuit of the business of Insurance and Reinsurance (OJ L 335, 17.12.2009, p. 1).

STSSY28	Article 26b(6), point (b)	Representations and warranties – Originator keeps the credit risk of the underlying assets		√		A concise explanation of the originator's representations and warranties that, where the originator is a credit institution as defined in Article 4(1), point (1), of Regulation (EU) No 575/2013, or an insurance undertaking as defined in Article 13, point (1), of Directive 2009/138/EC, the originator or an entity which is included in the scope of supervision on a consolidated basis keeps the credit risk of the underlying exposures on its balance sheet.	N/A
STSSY29	Article 26b(6), point (c)	Representations and warranties – Exposure compliance with eligibility criteria		√		A concise explanation of the originator's representations and warranties that each underlying exposure complies, at the date it is included in the securitised portfolio, with the eligibility criteria and with all conditions, other than the occurrence of a credit event as referred to in Article 26e(1) of Regulation (EU) 2017/2402, for a credit protection payment in accordance with the credit protection agreement contained within the securitisation documentation.	Item 2.2.8 of Annex 19 of Delegated Regulation (EU) 2019/980
STSSY30	Article 26b(6), point (d)	Representations and warranties – Legal and enforceable obligation to the obligor		√		A concise explanation of the originator's representations and warranties that, to the best of the originator's knowledge, the contract for each underlying exposure contains a legal, valid, binding and enforceable obligation on the obligor to pay the sums of money specified in that contract.	Item 2.2.8 of Annex 19 of Delegated Regulation (EU) 2019/980

STSSY31	Article 26b(6), point (e)	Representations and warranties – Underwriting criteria		√		A concise explanation of the originator's representations and warranties that the underlying exposures comply with underwriting criteria that are no less stringent than the standard underwriting criteria that the originator applies to similar exposures that are not securitised.	Item 2.2.8 of Annex 19 of Delegated Regulation (EU) 2019/980
STSSY32	Article 26b(6), point (f)	Representations and warranties – No obligors in material breach or default		√		A concise explanation of the originator's representations and warranties that, to the best of the originator's knowledge, none of the obligors are in material breach or default of any of their obligations in respect of an underlying exposure on the date on which that underlying exposure is included in the securitised portfolio exposures.	Item 2.2.8 of Annex 19 of Delegated Regulation (EU) 2019/980
STSSY33	Article 26b(6), point (g)	Representations and warranties – No false information in transaction documentation		√		A concise explanation of the originator's representations and warranties that, to the best of the originator's knowledge, the transaction documentation does not contain any false information on the details of the underlying exposures.	Item 2.2.8 of Annex 19 of Delegated Regulation (EU) 2019/980
STSSY34	Article 26b(6), point (h)	Representations and warranties – Enforceability or collectability of the underlying exposures		√		A concise explanation of the originator's representations and warranties that at the closing of the transaction or when an underlying exposure is included in the securitised portfolio, the contract between the obligor and the original lender in relation to that underlying exposure has not been amended in such a way that the enforceability or collectability of that underlying exposure has been affected.	Item 2.2.8 of Annex 19 of Delegated Regulation (EU) 2019/980

STSSY35	Article 26b(7), first subparagraph	Eligibility criteria which do not allow for active portfolio management of the underlying exposures on a discretionary basis		√		A concise explanation that the underlying exposures meet predetermined, clear and documented eligibility criteria that do not allow for active portfolio management of those exposures on a discretionary basis.	Section 2 of Annex 19 of Delegated Regulation (EU) 2019/980
STSSY36	Article 26b(7), second subparagraph	Exemption to the prohibition of active portfolio management		√		For the purposes of field STSSY35, a concise explanation that the substitution of exposures that are in breach of representations or warranties or, where the securitisation includes a replenishment period, the addition of exposures that meet the defined replenishment conditions are not to be considered active portfolio management.	Section 2 of Annex 19 of Delegated Regulation (EU) 2019/980
STSSY37	Article 26b(7), third subparagraph	Exposure added after the closing date of the transaction meeting eligibility criteria		√		A concise explanation that any exposure added after the closing date of the transaction meets eligibility criteria that are no less stringent than those applied in the initial selection of the underlying exposures.	Section 2 of Annex 19 of Delegated Regulation (EU) 2019/980
STSSY38	Article 26b(7), fourth subparagraph, point (a)	Fully repaid exposure		√		Where the underlying exposures is to be removed from the transaction, a concise explanation that it has been fully repaid or matured otherwise.	Section 2 of Annex 19 of Delegated Regulation (EU) 2019/980
STSSY39	Article 26b(7), fourth subparagraph, point (b)	Underlying exposures disposed of		√		Where the underlying exposure is to be removed from the transaction, a concise explanation that it has been disposed of during the ordinary course of the business of the originator, provided that such disposal does not constitute implicit support as referred to in Article 250 of Regulation (EU) No 575/2013.	Section 2 of Annex 19 of Delegated Regulation (EU) 2019/980

STSSY 40	Article 26b(7), fourth subparagraph, point (c)	Not credit driven amendment		√		Where the underlying exposure is to be removed from the transaction, a concise explanation that it is subject to an amendment that is not credit driven, such as refinancing or restructuring of debt, and which occurs during the ordinary course of servicing of that underlying exposure.	Section 2 of Annex 19 of Delegated Regulation (EU) 2019/980
STSSY 41	Article 26b(7), fourth subparagraph, point (d)	Eligibility criteria not met		√		Where the underlying exposure is to be removed from the transaction, a concise explanation that it did not meet the eligibility criteria at the time it was included in the transaction.	Section 2 of Annex 19 of Delegated Regulation (EU) 2019/980
STSSY 42	Article 26b(8), first subparagraph	Homogeneity of assets			√	A detailed explanation of how the securitisation is backed by a pool of underlying exposures that are homogeneous in terms of asset type. For that purpose, reference shall be made to Commission Delegated Regulation (EU) 2019/1851 ⁽²⁾ .	Item 2.2.7 of Annex 19 of Delegated Regulation (EU) 2019/980
STSSY 43	Article 26b(8), first subparagraph	Only one asset type			√	A detailed explanation of how the pool of underlying exposures comprises only one asset type.	Item 2.2.7 of Annex 19 of Delegated Regulation (EU) 2019/980
STSSY 44	Article 26b(8), second subparagraph	Obligations that are contractually binding and enforceable		√		A concise explanation that the underlying exposures referred to in field STSSY42 contain obligations that are contractually binding and enforceable, with full recourse to debtors and, where applicable, guarantors.	Item 2.2.7 of Annex 19 of Delegated Regulation (EU) 2019/980

⁽²⁾ Commission Delegated Regulation (EU) 2019/1851 of 28 May 2019 supplementing Regulation (EU) 2017/2402 of the European Parliament and of the Council with regard to regulatory technical standards on the homogeneity of the underlying exposures in securitisation (OJ L 285, 6.11.2019, p. 1).

STSSY 45	Article 26b(8), third subparagraph	Defined periodic payment			√	A detailed explanation on how the underlying exposures referred to in field STSSY42 have defined periodic payment streams, the instalments of which may differ in their amounts, relating to rental, principal or interest payments, or to any other right to receive income from assets supporting such payments.	Item 2.2.7 of Annex 19 of Delegated Regulation (EU) 2019/980
STSSY 46	Article 26b(8), third subparagraph	Proceeds from the sale of assets			√	A detailed explanation of whether and how the underlying exposures referred to in field STSSY42 may also generate proceeds from the sale of any financed or leased assets.	Item 2.2.7 of Annex 19 of Delegated Regulation (EU) 2019/980
STSSY 47	Article 26b(8), fourth subparagraph	No transferable securities			√	A detailed explanation of how the underlying exposures do not include transferable securities, as defined in Article 4(1), point (44), of Directive 2014/65/EU of the European Parliament and of the Council ⁽³⁾ , other than corporate bonds that are not listed on a trading venue.	Item 2.2.7 of Annex 19 of Delegated Regulation (EU) 2019/980
STSSY 48	Article 26b(9)	No re-securitisation	√			A confirmation that the underlying exposures do not include any securitisation positions.	Item 2.2 of Annex 19 of Delegated Regulation (EU) 2019/980
STSSY 49	Article 26b(10), first subparagraph	Underwriting standards disclosed to potential investors	√			A confirmation that the underwriting standards pursuant to which the underlying exposures are originated and any material changes from prior underwriting standards are fully disclosed to potential investors without undue delay.	Item 2.2.7 of Annex 19 of Delegated Regulation (EU) 2019/980

⁽³⁾ Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU (OJ L 173, 12.6.2014, p. 349).

STSSY 50	Article 26b(10), first subparagraph	Full recourse to an obligor	√			A confirmation that the underlying exposures are underwritten with full recourse to an obligor that is not an SSPE.	Item 2.2.7 of Annex 19 of Delegated Regulation (EU) 2019/980
STSSY 51	Article 26b(10), first subparagraph	Underwriting standards – No third parties	√			A confirmation that no third parties are involved in the credit or underwriting decisions concerning the underlying exposures.	Item 2.2.7 of Annex 19 of Delegated Regulation (EU) 2019/980
STSSY 52	Article 26b(10), second subparagraph	Underwriting standards – Residential loans	√			In the case of securitisations where the underlying exposures are residential loans, a confirmation that the pool of loans does not include any loan that was marketed and underwritten on the premise that the loan applicant, or, where applicable, intermediaries were made aware that the information provided, might not be verified by the lender.	Item 2.2.7 of Annex 19 of Delegated Regulation (EU) 2019/980
STSSY 53	Article 26b(10), third subparagraph	Underwriting standards – Borrower assessment	√			Confirmation that the assessment of the borrower's creditworthiness meets the requirements set out in Article 8 of Directive 2008/48/EC of the European Parliament and of the Council ⁽⁴⁾ or Article 18(1) to (4), point (a), of Article 18(5) and Article 18(6), of Directive 2014/17/EU of the European Parliament and of the Council ⁽⁵⁾ , or where applicable, equivalent requirements in third countries.	Item 2.2.7 of Annex 19 of Delegated Regulation (EU) 2019/980
STSSY 54	Article 26b(10), fourth subparagraph	Originator or original lender expertise	√			Confirmation that the originator or original lender have expertise in originating exposures of a similar nature to those securitised.	Item 2.2.7 of Annex 19 of Delegated Regulation (EU) 2019/980

⁽⁴⁾ Directive 2008/48/EC of the European Parliament and of the Council of 23 April 2008 on credit agreements for consumers and repealing Council Directive 87/102/EEC (OJ L 133, 22.5.2008, p. 66).

⁽⁵⁾ Directive 2014/17/EU of the European Parliament and of the Council of 4 February 2014 on credit agreements for consumers relating to residential immovable property and amending Directives 2008/48/EC and 2013/36/EU and Regulation (EU) No 1093/2010 (OJ L 60, 28.2.2014, p. 34).

STSSY 55	Article 26b(11), point (a)	No exposures at default		√	<p>A concise explanation that the underlying exposures do not include, at the time of selection, exposures in default within the meaning of Article 178(1) of Regulation (EU) No 575/2013, or exposures to a credit-impaired debtor or guarantor, who to the best of the originator's or original lender's knowledge have been declared insolvent or had a court grant his creditors a final non-appealable right of enforcement or material damages as a result of a missed payment within 3 years prior to the date of the origination or has undergone a debt-restructuring process with regard to his non-performing exposures within 3 years prior to the date of the selection of the underlying exposures, except where (i) a restructured underlying exposure has not presented new arrears since the date of the restructuring, which must have taken place at least 1 year prior to the date of the selection of the underlying exposures; or (ii) the information provided by the originator in accordance with Article 7(1), first subparagraph, point (a) and point (e)(i), of Regulation (EU) 2017/2402 explicitly sets out the proportion of restructured underlying exposures, the time and details of the restructuring and their performance since the date of the restructuring. In case any of those two exceptions apply, provide a concise explanation thereof.</p>	Item 2.2.8 of Annex 19 of Delegated Regulation (EU) 2019/980
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STSSY 56	Article 26b(11), point (b)	No adverse credit history		√		A concise explanation that the underlying exposures do not include, at the time of selection, exposures in default within the meaning of Article 178(1) of Regulation (EU) No 575/2013, or exposures to a credit-impaired debtor or guarantor, who to the best of the originator's or original lender's knowledge, were, at the time of origination of the underlying exposure, where applicable, on a public credit registry of persons with adverse credit history or, where there is no such public credit registry, another credit registry that is available to the originator or the original lender;	N/A
STSSY 57	Article 26b(11), point (c)	Risk of non-payment is not higher than for non-securitisation exposures		√		Concise explanation that the underlying exposures do not include, at the time of selection, exposures in default within the meaning of Article 178(1) of Regulation (EU) No 575/2013, or exposures to a credit-impaired debtor or guarantor who to the best of the originator's or original lender's knowledge have a credit assessment or a credit score indicating that the risk of contractually agreed payments not being made is significantly higher than for comparable exposures held by the originator which are not securitised.	N/A
STSSY 58	Article 26b(12)	At least one payment made at the time of inclusion of the underlying assets	√			A confirmation that debtors have, at the time of the inclusion of the underlying exposures, made at least one payment, except where: (a) the securitisation is a revolving securitisation, backed by exposures payable in a single instalment or having a maturity of less than 1 year, including without limitation monthly payments on revolving credits; or	Items 3.3 and 3.4.6 of Annex 19 of Delegated Regulation (EU) 2019/980

						(b) the exposure represents the refinancing of an exposure that is already included in the transaction. In case any of those two exceptions apply, please provide a concise explanation thereof.	
STSSY 59	Article 26c(1)	Compliance with risk retention requirements			√	A detailed explanation of how the originator or original lender satisfy the risk retention requirements in accordance with Article 6 of Regulation (EU) 2017/2402.	Item 3.1 of Annex 9 and Item 3.4.3 of Annex 19 of Delegated Regulation (EU) 2019/980
STSSY 60	Article 26c(2), first subparagraph	Mitigation of interest rates and currency risks	√			Confirmation that: (a) the interest rate and currency risks arising from a securitisation and their possible effects on the payments to the originator and the investors are described in the transaction documentation, (b) those risks are appropriately mitigated and any measures taken to that effect is disclosed to investors.	Items 3.4.2 and 3.8 of Annex 19 of Delegated Regulation (EU) 2019/980
STSSY61	Article 26c(2), first subparagraph	Credit protection collateral and credit protection payment denominated in same currency	√			A confirmation that any collateral securing the obligations of the investor under the credit protection agreement is denominated in the same currency in which the credit protection payment is denominated.	Items 3.4.2 and 3.8 of Annex 19 of Delegated Regulation (EU) 2019/980

STSSY 62	Article 26c(2), second subparagraph	SSPE's liabilities equal or less than the SSPE's income		√		A concise explanation that, in the case of a securitisation using a SSPE, the amount of liabilities of the SSPE concerning the interest payments to the investors shall at each payment date be equal to or be less than the amount of the SSPE's income from the originator and any collateral arrangements.	Items 3.4.2 and 3.8 of Annex 19 of Delegated Regulation (EU) 2019/980
STSSY 63	Article 26c(2), third subparagraph	No derivatives used except for hedging interest or currency risks	√			A confirmation that the pool of underlying exposures does not include derivatives except for the purpose of hedging interest rate or currency risks of the underlying exposures.	Items 3.4.2 and 3.8 of Annex 19 of Delegated Regulation (EU) 2019/980
STSSY 64	Article 26c(2), third subparagraph	Using derivatives based on common standards		√		A concise explanation that, in case the exception referred to in field number STSSY63 applies, any derivative used is underwritten and documented according to commonly accepted standards.	Items 3.4.2 and 3.8 of Annex 19 of Delegated Regulation (EU) 2019/980
STSSY 65	Article 26c(3), first and second subparagraph	Referenced interest payments based on generally used interest rates without complex formulae or derivatives		√		A concise explanation, in case of any referenced interest rate payments in relation to the transaction, on which of the following the referenced interest rate payments are based on: (a) generally used market interest rates, or generally used sectoral rates reflective of the cost of funds and do not reference complex formulae or derivatives; or (b) income generated by the collateral securing the obligations of the investor under the protection agreement.	Item 2.2.2 and 2.2.13 of Annex 19 of Delegated Regulation (EU) 2019/980

						A concise explanation that any referenced interest payments due under the underlying exposures is based on generally used market interest rates, or generally used sectoral rates reflective of the cost of funds which do not reference complex formulae or derivatives	
STSSY 66	Article 26c(4), first subparagraph	Enforcement event without prejudice for investor's enforcement action		√		A concise explanation that the investor is permitted to take enforcement action following the occurrence of an enforcement event in respect of the originator.	Item 3.4.5 of Annex 19 of Delegated Regulation (EU) 2019/980
STSSY 67	Article 26c(4), second subparagraph	Enforcement of the credit protection agreement- No amount of cash shall be trapped in the SSPE		√		In the case of a securitisation using a SSPE, where an enforcement or termination notice of the credit protection agreement is delivered, a concise explanation that no amount of cash is trapped in the SSPE beyond what is necessary to ensure the operational functioning of that SSPE, the payment of the protection payments for defaulted underlying exposures that are still being worked out at the time of the termination, or the orderly repayment of investors in accordance with the contractual terms of the securitisation.	Item 3.4.5 of Annex 19 of Delegated Regulation (EU) 2019/980
STSSY 68	Article 26c(5), first subparagraph	Losses allocated in order of seniority		√		A concise explanation that losses are allocated to the holders of a securitisation position in the order of seniority of the tranches, starting with the most junior tranche.	Item 3.4.5 of Annex 19 of Delegated Regulation (EU) 2019/980
STSSY 69	Article 26c(5), second subparagraph	Sequential amortisation		√		A concise explanation that the sequential amortisation is applied to all tranches to determine the outstanding amount of the tranches at each payment date, starting from the most senior tranche.	Item 3.4.5 of Annex 19 of Delegated Regulation (EU) 2019/980

STSSY 70	Article 26c(5), third subparagraph	Non-sequential priority of payments		√		By way of derogation from field STSSY 69, a concise explanation that transactions which feature non-sequential priority of payments include triggers related to the performance of the underlying exposures resulting in the priority of payments reverting the amortisation to sequential payments in order of seniority.	Item 3.4.5 of Annex 19 of Delegated Regulation (EU) 2019/980
STSSY 71	Article 26c(5), third subparagraph, point (a)	Performance-related triggers			√	Detailed explanation of the mandatory performance-related trigger referred to in field STSSY70, which is either the increase in the cumulative amount of defaulted exposures or the increase in the cumulative losses greater than a given percentage of the outstanding amount of the underlying portfolio.	Item 3.4.5 of Annex 19 of Delegated Regulation (EU) 2019/980
STSSY 72	Article 26c(5), third subparagraph, point (b)	Performance-related triggers			√	Detailed explanation of the additional backward-looking performance trigger referred to in field STSSY70.	Item 3.4.5 of Annex 19 of Delegated Regulation (EU) 2019/980
STSSY 73	Article 26c(5), third subparagraph, point (c)	Performance-related triggers			√	Detailed explanation of forward-looking performance trigger referred to in field STSSY70.	Item 3.4.5 of Annex 19 of Delegated Regulation (EU) 2019/980
STSSY 74	Article 26c(5) seventh subparagraph	Amount of collateral equal to the amount of tranches being amortised		√		Concise explanation that, as tranches amortise, the amount of the collateral equal to the amount of the amortisation of those tranches is returned to the investors, provided the investors have collateralised those tranches.	Item 3.4.5 of Annex 19 of Delegated Regulation (EU) 2019/980

STSSY 75	Article 26c(5), eighth subparagraph	Credit event occurred and amount of credit protection available at any payment date		√		A concise explanation that, where a credit event as referred to in fields STSSY100 or STSSY101 has occurred in relation to underlying exposures and the debt workout for those exposures has not been completed, then the amount of credit protection remaining at any payment date is at least equivalent to the outstanding nominal amount of those underlying exposures, minus the amount of any interim payment made in relation to those underlying exposures.	Item 3.4.5 of Annex 19 of Delegated Regulation (EU) 2019/980
STSSY 76	Article 26c(6), point (a)	Early amortisation provisions or triggers – Credit quality		√		Where a securitisation is a revolving securitisation, a concise explanation that the transaction documentation includes appropriate early amortisation provisions or triggers for termination of the revolving period in case of a deterioration in the credit quality of the underlying exposures to or below a predetermined threshold.	Items 2.3 and 2.4 of Annex 19 of Delegated Regulation (EU) 2019/980
STSSY 77	Article 26c(6), point (b)	Early amortisation provisions or triggers – Losses		√		Where a securitisation is a revolving securitisation, a concise explanation that the transaction documentation includes appropriate early amortisation provisions or triggers for termination of the revolving period in case of a rise in losses above a predetermined threshold;	Items 2.3 and 2.4 of Annex 19 of Delegated Regulation (EU) 2019/980
STSSY 78	Article 26c(6), point (c)	Early amortisation provisions or triggers – New exposures		√		Where a securitisation is a revolving securitisation, concise explanation that the transaction documentation includes appropriate early amortisation provisions or triggers for termination of the revolving period in case of a failure to generate sufficient new underlying exposures that meet the predetermined credit quality during a specified period.	Items 2.3 and 2.4 of Annex 19 of Delegated Regulation (EU) 2019/980

STSSY 79	Article 26c(7), point (a)	Contractual obligations, duties and responsibilities – Servicer		√		A concise explanation that the transaction documentation clearly specifies the contractual obligations, duties and responsibilities of the servicer.	Item 3.2 of Annex 19 of Delegated Regulation (EU) 2019/980
STSSY 80	Article 26c(7), point (a)	Contractual obligations, duties and responsibilities – Trustee		√		A concise explanation that the transaction documentation clearly specifies the contractual obligations, duties and responsibilities of the trustee and other ancillary service providers, as applicable.	Item 3.2 of Annex 19 of Delegated Regulation (EU) 2019/980
STSSY 81	Article 26c(7), point (a)	Contractual obligations, duties and responsibilities – Third-party verification agent		√		A concise explanation that the transaction documentation clearly specifies the contractual obligations, duties and responsibilities of the third-party verification agent referred to in field STSSY126.	Item 3.2 of Annex 19 of Delegated Regulation (EU) 2019/980
STSSY 82	Article 26c(7), point (b)	Replacement of service providers in the event of their default or insolvency		√		A concise explanation that the transaction documentation clearly specifies the provisions that ensure the replacement of the servicer, trustee, other ancillary service providers or the third-party verification agent referred to in field STSSY126 in the event of default or insolvency of either of those service providers, where those service providers differ from the originator, in a manner that does not result in the termination of the provision of those services.	Item 3.2 of Annex 19 of Delegated Regulation (EU) 2019/980
STSSY 83	Article 26c(7), point (c)	Servicing procedures		√		A concise explanation that the transaction documentation clearly specifies the servicing procedures that apply to the underlying exposures at the closing date of the transaction and thereafter and the circumstances under which those procedures may be modified.	Item 3.4.6 of Annex 19 of Delegated Regulation (EU) 2019/980

STSSY 84	Article 26c(7), point (d)	Servicing standards		√		A concise explanation that the transaction documentation clearly specifies the servicing standards that the servicer is obliged to adhere to in servicing the underlying exposures during the entire life of the securitisation.	Item 3.4.6 of Annex 19 of Delegated Regulation (EU) 2019/980
STSSY 85	Article 26c(8), first subparagraph	Required expertise from the servicer		√		A concise explanation that the servicer has expertise in servicing exposures of a similar nature to the securitised exposures.	Item 3.4.6 of Annex 19 of Delegated Regulation (EU) 2019/980
STSSY 86	Article 26c(8), first subparagraph	Well documented and adequate policies, procedures and risk management controls in place	√			A confirmation that the servicer has well-documented and adequate policies, procedures and risk-management controls relating to the servicing of exposures.	Item 3.4.6 of Annex 19 of Delegated Regulation (EU) 2019/980
STSSY 87	Article 26c(8), second subparagraph	Servicing procedures at least as stringent as the ones applied to similar not securitised exposures	√			A concise explanation that the servicer applies servicing procedures to the underlying exposures that are at least as stringent as the ones applied by the originator to similar exposures that are not securitised.	Item 3.4.6 of Annex 19 of Delegated Regulation (EU) 2019/980
STSSY 88	Article 26c(9)	Reference register in place			√	A detailed explanation of how the originator maintains an up-to-date reference register to identify the underlying exposures at all times.	N/A
STSSY 89	Article 26c(9)	Reference register – Content		√		A concise explanation that the reference register referred to in Field STSSY 88 identifies the reference obligors, the reference obligations from which the underlying exposures arise, and, for each underlying exposure, the nominal amount that is protected and that is outstanding.	N/A

STSSY 90	Article 26c(10)	Timely resolution of conflicts between different classes of investors	√			A confirmation that the transaction documentation includes clear provisions that facilitate the timely resolution of conflicts between different classes of investors.	Items 3.4.7 and 3.4.8 of Annex 19 of Delegated Regulation (EU) 2019/980
STSSY 91	Article 26c(10)	SSPE – Voting rights clearly defined	√			A confirmation that in the case of a securitisation using a SSPE, voting rights are clearly defined and allocated to bondholders and the responsibilities of the trustee and other entities with fiduciary duties to investors are clearly identified.	N/A
STSSY 92	Article 26d(1)	Historical Default and Loss Performance Data	√			A confirmation that data on static and dynamic historical default and loss performance such as delinquency and default data (covering a period of at least 5 years) for substantially similar exposures to those being securitised, and the sources of those data and the basis for claiming similarity are made available to potential investors before pricing.	Item 2.2.2 of Annex 19 of Delegated Regulation (EU) 2019/980
STSSY 93	Article 26d(2)	Sample of the underlying exposures subject to external verification	√			A confirmation that a sample of the underlying exposures is subject to external verification prior to the closing of the transaction by an appropriate and independent party, including verification that the underlying exposures are eligible for credit protection under the credit protection agreement.	N/A
STSSY 94	Article 26d(3)	Availability of a liability cash flow model to potential investors	√			A confirmation that before the pricing of the securitisation, the originator makes available to potential investors a liability cash flow model which precisely represents the contractual relationship between the underlying exposures and the payments flowing between the originator,	N/A

						investors, other third parties and, where applicable, the SSPE, and that after pricing, that model is made available to investors on an ongoing basis and to potential investors upon request.	
STSSY 95	Article 26d(4), first subparagraph	Publication on environmental performance of underlying exposures consisting of residential loans or auto loans or leases		√		In the case of a securitisation where the underlying exposures are residential loans or auto loans or leases and unless the exception in field STSSY 96 is applied, a concise explanation that the originator makes available information related to the environmental performance of the assets financed by the loans, as part of the information disclosed pursuant to Article 7(1), first subparagraph, point (a), of Regulation (EU) 2017/2402.	N/A
STSSY 96	Article 26d(4), second subparagraph	Derogation from the requirement to publish environmental performance of underlying exposures consisting of residential loans or car loans or leases		√		In case the originator decides to derogate from the requirement in field STSSY 95, a concise explanation that the originator publishes the available information related to the principal adverse impacts of the assets financed by the underlying exposures on sustainability factors.	N/A
STSSY97	Article 26d(5)	Originator responsible for compliance with Article 7 of Regulation (EU) 2017/2402	√			A confirmation that the originator is responsible for compliance with Article 7 of Regulation (EU) 2017/2402.	N/A
STSSY 98	Article 26d(5)	Information on Article 7(1)(a) of Regulation (EU) 2017/2402 available to potential investors	√			A confirmation that the information required by Article 7(1), first subparagraph, point (a), of Regulation (EU) 2017/2402 is made available to potential investors before pricing upon request.	N/A

STSSY 99	Article 26d(5)	Information on Article 7(1), points (b), (c) and(d) of Regulation (EU) 2017/2402 available to potential investors at least in draft or initial form	√			A confirmation that the information required by Article 7(1), first subparagraph, points (b), (c) and (d), of Regulation (EU) 2017/2402 is made available before pricing at least in draft or initial form and then the final documentation is made available to investors at the latest 15 days after the closing of the transaction.	N/A
STSSY 100	Article 26e(1), first subparagraph, point (a)	Credit events and use of guarantees		√		Where the transfer of risk is achieved by the use of guarantees, a concise explanation that the credit protection agreement covers at least the credit events referred to in Article 215(1), point (a), of Regulation (EU) No 575/2013.	N/A
STSSY 101	Article 26e(1), first subparagraph, point (b)	Credit events and use of credit derivatives		√		Where the transfer of risk is achieved by the use of credit derivatives, a concise explanation that the credit agreement covers at least the credit events referred to in Article 216(1), point (a), of Regulation (EU) No 575/2013.	N/A
STSSY 102	Article 26e(1), second subparagraph	Credit protection agreement documented		√		A concise explanation that all credit events are documented.	N/A
STSSY 103	Article 26e(1), third subparagraph	Forbearance measures do not preclude the triggering of eligible credit events		√		A concise explanation that the forbearance measures within the meaning of Article 47b of Regulation (EU) No 575/2013 that are applied to the underlying exposures do not preclude the triggering of eligible credit events.	N/A

STSSY 104	Article 26e(2), first subparagraph	Credit protection payment based on the actual realised loss and standard recovery policies and procedures		√		A concise explanation that, following the occurrence of a credit event, the credit protection payment is calculated based on the actual realised loss suffered by the originator or the original lender, as worked out in accordance with their standard recovery policies and procedures for the relevant exposure types and recorded in their financial statements at the time the payment is made.	N/A
STSSY 105	Article 26e(2) first subparagraph	Credit protection payment payable within a specified period of time		√		A concise explanation that the final credit protection payment is payable within a specified period of time after the debt workout for the relevant underlying exposure where the debt workout has been completed before the scheduled legal maturity or early termination of the credit protection agreement.	N/A
STSSY 106	Article 26e(2), first subparagraph	Interim credit protection payment at the latest 6 months after a credit event		√		In cases where the debt workout of the losses for the relevant underlying exposure has not been completed by the end of the six-month period referred to in the second paragraph of Article 26e(2) of Regulation (EU) 2017/2402, a concise explanation that an interim credit protection payment is made at the latest 6 months after the occurrence of a credit event as referred to in fields STSSY100 and STSSY101.	N/A
STSSY 107	Article 26e(2), second subparagraph, points (a) and (b)	Interim credit protection payment higher than the applicable expected loss amount		√		A concise explanation that the interim credit protection payment is at least the higher of the following:	N/A

						<p>(a) the expected loss amount that is equivalent to the impairment recorded by the originator in its financial statements in accordance with the applicable accounting framework at the time the interim payment is made on the assumption that the credit protection agreement does not exist and does not cover any losses; or,</p> <p>(b) where applicable, the expected loss amount as determined in accordance with Chapter 3 of Title II of Part Three, of Regulation (EU) No 575/2013.</p>	
STSSY 108	Article 26e(2), third subparagraph	Terms of the interim credit protection payment		√		Where an interim credit protection payment is made, a concise explanation that the final credit protection payment referred to in field STSSY106 is made in order to adjust the interim settlement of losses to the actual realised loss.	N/A
STSSY 109	Article 26e(2), fourth subparagraph	Method for calculation of interim and final credit protection payments		√		A concise explanation that the method for the calculation of interim and final credit protection payments is specified in the credit protection agreement.	N/A
STSSY 110	Article 26e(2), fifth subparagraph	Credit protection payment proportional to the share of the outstanding nominal amount		√		A concise explanation that the credit protection payment is proportional to the share of the outstanding nominal amount of the corresponding underlying exposure that is covered by the credit protection agreement.	N/A

STSSY 111	Article 26e(2), sixth subparagraph	Enforceability of the credit protection payment		√		A concise explanation that the right of the originator to receive the credit protection payment is enforceable.	N/A
STSSY 112	Article 26e(2), sixth subparagraph	Amount payable under the credit protection agreement by investors is set out in the credit protection agreement.		√		A concise explanation that the amounts payable by investors under the credit protection agreement are clearly set out in the credit protection agreement and limited.	N/A
STSSY 113	Article 26e(2), sixth subparagraph	Calculation of the amounts in all circumstances		√		A concise explanation that it is possible to calculate the amounts payable by the investors under the credit protection agreement in all circumstances.	N/A
STSSY 114	Article 26e(2), sixth subparagraph	Investors payments circumstances set out under the credit protection agreement.		√		A concise explanation that the credit protection agreement clearly sets out the circumstances under which investors are required to make payments.	N/A
STSSY 115	Article 26e(2), sixth subparagraph	Third-party verification agent's assessment of circumstances triggering investors payments		√		A concise explanation that the third-party verification agent referred to in field STSSY126 assesses whether the circumstances set out in the credit protection agreement under which investors are required to make payments have occurred.	N/A
STSSY 116	Article 26e(2), seventh subparagraph	Credit protection payment calculated at individual underlying exposure level.		√		A concise explanation that the amount of the credit protection payment is calculated at the level of the individual underlying exposure for which a credit event has occurred.	N/A

STSSY 117	Article 26e(3), first subparagraph	Specification of maximum extension period for the debt workout process		√		A concise explanation that the credit protection agreement specifies the maximum extension period that applies for the debt workout for the underlying exposures in relation to which a credit event as referred to in Article 26e(1) of Regulation (EU) 2017/2402 has occurred, but where the debt workout has not been completed upon the scheduled legal maturity or early termination of the credit protection agreement.	N/A
STSSY 118	Article 26e(3), first paragraph	Extension period less than 2 years		√		A concise explanation that the extension period referred to in field STSSY 117 is no longer than 2 years.	N/A
STSSY 119	Article 26e(3), first paragraph	Final credit protection payment based on the originator's final loss estimate		√		A concise explanation that the credit protection agreement provides that, by the end of the extension period referred to in field number STSSY 117, a final credit protection payment is made on the basis of the originator's final loss estimate that is recorded by the originator in its financial statements at that time on the assumption that the credit protection agreement does not exist and does not cover any losses.	N/A
STSSY 120	Article 26e(3), second subparagraph	Termination of the credit protection agreement		√		In the event that the credit protection agreement is terminated, a concise explanation that the debt workout continues in respect of any outstanding credit events that occurred prior to that termination in the same way as that described in the first subparagraph of Article 26e(3) of Regulation (EU) 2017/2402.	N/A

STSSY 121	Article 26e(3), third subparagraph	Credit protection premiums contingent on the outstanding nominal amount		√		A concise explanation that the credit protection premiums to be paid under the credit protection agreement are structured as contingent on the outstanding nominal amount of the performing securitised exposures at the time of the payment and reflect the risk of the protected tranche.	N/A
STSSY 122	Article 26e(3), third subparagraph	Credit protection agreement not stipulating mechanisms that may avoid or reduce the actual allocation of losses to the investors		√		A concise explanation that, for the purposes of field STSSY117, the credit protection agreement does not stipulate guaranteed premiums, upfront premium payments, rebate mechanisms or other mechanisms that may avoid or reduce the actual allocation of losses to the investors or return part of the paid premiums to the originator after the maturity of the transaction.	N/A
STSSY 123	Article 26e(3), fourth subparagraph	Derogation for upfront premium payments		√		By way of derogation from fields STSSY121 and STSSY122, where the guarantee scheme is specifically provided for in the national law of a Member State and benefits from a counter-guarantee of any of the entities listed in Article 214(2), points (a) to (d), of Regulation (EU) No 575/2013, a concise explanation that the upfront premium payments are allowed, provided State aid rules are complied with.	N/A
STSSY 124	Article 26e(3), fifth subparagraph	Description of the credit protection premium in the transaction documentation		√		A concise explanation that the transaction documentation describes how the credit protection premium and any note coupons, if any, are calculated in respect of each payment date over the entire life of the securitisation.	N/A

STSSY 125	Article 26e(3), sixth subparagraph	Enforceability of the investor rights		√		A concise explanation that the rights of the investors to receive credit protection premiums are enforceable.	N/A
STSSY 126	Article 26e(4), first subparagraph	Appointment of a third-party verification agent before the closing date of the transaction	√			A confirmation that, before the closing date of the transaction, the originator appoints a third-party verification agent.	N/A
STSSY 127	Article 26e(4), first subparagraph, point (a)	Third party verification agent check – Credit event notice specified in the terms of the credit protection agreement	√			A confirmation that the third-party verification agent, referred to in field STSSY 126, verifies for each of the underlying exposures for which a credit event notice is given, that it is a credit event as specified in the terms of the credit protection agreement.	N/A
STSSY 128	Article 26e(4), first subparagraph, point (b)	Third party verification agent check – Underlying exposure included in the reference portfolio	√			For each of the underlying exposures for which a credit event notice is given, a confirmation that the third-party verification agent referred to in field STSSY 126 verifies that the underlying exposure was included in the reference portfolio at the time of the occurrence of the credit event concerned.	N/A
STSSY 129	Article 26e(4) first subparagraph, point (c)	Third party verification agent check – Eligible criteria met at the time of inclusion in the reference portfolio	√			For each of the underlying exposures for which a credit event notice is given, a confirmation that the third-party verification agent referred to in field STSSY126 verifies that the underlying exposure met the eligibility criteria at the time of its inclusion in the reference portfolio.	N/A

STSSY 130	Article 26e(4), first subparagraph, point (d)	Third party verification agent check – Compliance with the replenishment conditions	√			For each of the underlying exposures for which a credit event notice is given, a confirmation that the third-party verification agent referred to in field STSSY126 verifies that, where an underlying exposure has been added to the securitisation as a result of a replenishment, such a replenishment complied with the replenishment-conditions.	N/A
STSSY 131	Article 26e(4), first subparagraph, point (e)	Third party verification agent check – Losses consistent with originator's profit and loss statement	√			For each of the underlying exposures for which a credit event notice is given, a confirmation that the third-party verification agent referred to in field STSSY126 verifies that the final loss amount is consistent with the losses recorded by the originator in its profit and loss statement.	N/A
STSSY 132	Article 26e(4), first subparagraph, point (f)	Third party verification agent check – Losses correctly allocated to investors	√			For each of the underlying exposures for which a credit event notice is given, a confirmation that the third-party verification agent referred to in field STSSY126 verifies that, at the time the final credit protection payment is made, the losses in relation to the underlying exposures have correctly been allocated to the investors.	N/A
STSSY 133	Article 26e(4), second subparagraph	Third-party verification agent independent from originators, investors and (where applicable) the SSPE		√		A concise explanation that the third-party verification agent referred to in field STSSY126 is independent from the originator and investors, and, where applicable, from the SSPE.	N/A

STSSY 134	Article 26e(4), second subparagraph	Appointment of the third-party verification agent by the closing date		√		A concise explanation that the third-party verification agent referred to in field STSSY126 has accepted the appointment as third-party verification agent by the closing date of the transaction.	N/A
STSSY 135	Article 26e(4), third subparagraph	Third-party verification agent's check made on a sample basis		√		A concise explanation that the third-party verification agent referred to in field STSSY126 performs the verification on a sample basis instead of on the basis of each individual underlying exposure for which credit protection payment is sought.	N/A
STSSY 136	Article 26e(4), third subparagraph	Possibility for investors to require the third-party verification agent to check any underlying exposure		√		A concise explanation of whether and how investors may request the verification of the eligibility of any particular underlying exposure where they are not satisfied with the sample-basis verification.	N/A
STSSY 137	Article 26e(4), fourth subparagraph	Possibility for the third-party verifier agent to have access to all relevant information		√		A concise explanation that the originator includes a commitment in the transaction documentation to provide the third-party verification agent referred to in field STSSY126 with all the information necessary to verify the requirements set out in points (a) to (f) of the first subparagraph of Article 26e(4) of Regulation (EU) 2017/2402.	N/A
STSS 138	Article 26e(5), first subparagraph, points (a) to (f)	Termination events		√		A concise explanation that the originator may not terminate a transaction prior to its scheduled maturity for any other reason than the events listed in Article 26e(5), points (a) to (f), of Regulation (EU) 2017/2402.	N/A

STSS 139	Article 26e(5), second subparagraph	Transaction documentation – Call rights		√		A concise explanation that the transaction documentation specifies that any of the call rights referred to in Article 26e(5), first subparagraph, points (d) and (e), of Regulation (EU) 2017/2402 are included in the transaction concerned and how such call rights are structured.	N/A
STSS 140	Article 26e(5), third subparagraph	Transaction documentation – Time call not structured to avoid allocating losses to credit enhancements positions		√		For the purposes of Article 26e(5), first subparagraph, point (d), of Regulation (EU) 2017/2402, a concise explanation that the time call is not structured to avoid allocating losses to credit enhancement positions or other positions held by investors and is not otherwise structured to provide credit enhancement.	N/A
STSS 141	Article 26e(5), fourth subparagraph	Time call		√		Where a time call is included in the transaction, a concise explanation that the requirements referred to in STSS139 and STSS 140 are fulfilled, including with a justification of the use of the time call and a plausible account showing that the reason to exercise the call is not a deterioration in the quality of the underlying assets.	N/A
STSS 142	Article 26e(5), fifth subparagraph	Funded credit protection – Collateral return to investors in order of the seniority of the tranches		√		In the case of funded credit protection, a concise explanation that, upon termination of the credit protection agreement, the collateral is returned to investors in order of the seniority of the tranches subject to the provisions of the relevant insolvency law, as applicable to the originator.	N/A

STSS 143	Article 26e(6)	Termination of transaction by investors upon failure to pay the credit protection premium		√		A concise explanation that investors may not terminate a transaction prior to its scheduled maturity for any other reason than a failure to pay the credit protection premium or any other material breach of contractual obligations by the originator.	N/A
STSSY 144	Article 26e(7), point (a)	Amount of synthetic excess spread to investors specified in transaction documentation and expressed as a fixed percentage of the total outstanding portfolio balance		√		Where the originator commits synthetic excess spread, which is available as credit enhancement for the investors, a concise explanation that the amount of the synthetic excess spread that the originator commits to using as credit enhancement at each payment period is specified in the transaction documentation and expressed as a fixed percentage of the total outstanding portfolio balance at the start of the relevant payment period (fixed synthetic excess spread).	N/A
STSSY 145	Article 26e(7), point (b)	Unused synthetic excess spread to be returned to originator		√		Where the originator commits synthetic excess spread, which is available as credit enhancement for the investors, a concise explanation that the synthetic excess spread which is not used to cover credit losses that materialise during each payment period is returned to the originator.	N/A
STSSY 146	Article 26e(7), point (c)	Originators using Internal-Ratings-Based approach – Total committed amount per year not higher than the one-year regulatory expected loss amounts		√		Where the originator commits synthetic excess spread, which is available as credit enhancement for the investors, a concise explanation that, for originators using the Internal-Ratings-Based Approach referred to in Article 143 of Regulation (EU) No 575/2013, the total committed amount per year is not higher than the one-year regulatory expected	N/A

						loss amounts on all underlying exposures for that year, calculated in accordance with Article 158 of that Regulation.	
STSSY 147	Article 26e(7), point (d)	Originators not using Internal-Ratings-Based approach – calculation of the one-year expected loss of the underlying portfolio be clearly determined in the transaction documentation		√		Where the originator commits synthetic excess spread, which is available as credit enhancement for the investors, a concise explanation that for originators not using the Internal-Ratings Based Approach referred to in Article 143 of Regulation (EU) No 575/2013, the calculation of the one-year expected loss of the underlying portfolio is clearly determined in the transaction documentation.	N/A
STSSY 148	Article 26e(7), point (e)	Synthetic excess spread conditions laid down in transaction documentation		√		Where the originator commits synthetic excess spread, which is available as credit enhancement for the investors, a concise explanation that the transaction documentation specifies the conditions laid down in Article 26e(7) of Regulation (EU) 2017/2402.	N/A
STSS 149	Article 26e(8), points (a), (b) and(c)	Credit protection used		√		A concise explanation of which of the following forms the credit protection agreement complies with: (a) guarantee meeting the requirements set out in Chapter 4 of Title II of Part Three of Regulation (EU) No 575/2013, by which the credit risk is transferred to any of the entities listed in Article 214(2), points (a) to (d), of Regulation (EU) No 575/2013, provided that the exposures to the investor qualify for a 0 % risk weight under Chapter 2 of Title II of Part Three, of that Regulation;	N/A

						<p>(b) a guarantee meeting the requirements set out in Chapter 4 of Title II, Part Three of Regulation (EU) No 575/2013, which benefits from a counter-guarantee of any of the entities referred to in point (a) of this paragraph;</p> <p>(c) another credit protection not referred to in points (a) and (b) above in the form of a guarantee, a credit derivative or a credit linked notes that meet the requirements set out in Article 249 of Regulation (EU) No 575/2013, provided that the obligations of the investor are secured by collateral meeting the requirements laid down in paragraphs 9 and 10 of Article 26e of Regulation (EU) 2017/2402.</p>	
STSSY 150	Article 26e(9), first subparagraph, point (a)	Enforceability of the originator's right to use the collateral to meet the protection payment obligations of the investors through appropriate collateral arrangements			√	Where a credit protection referred to in Article 26e(8), point (c), of Regulation (EU) 2017/2402 is used, a detailed explanation of how the right of the originator to use the collateral to meet protection payment obligations of the investors is enforceable and how the enforceability of that right is ensured through appropriate collateral arrangements.	N/A
STSSY 151	Article 26e(9), first subparagraph, point (b)	Investors' right to receive any unused collateral when securitisation is unwound or as tranches amortise			√	Where a credit protection referred to in Article 26e(8), point (c), of Regulation (EU) 2017/2402 is used, a concise explanation that the right of the investors, when the securitisation is unwound or as the tranches amortise, to the return of any collateral that has not been used to meet protection payments is enforceable.	N/A

STSSY 152	Article 26e(9), first subparagraph, point (c)	Collateral invested in securities – Eligibility criteria and custody arrangement specified in transaction documentation			√	Where a credit protection referred to in Article 26e(8), point (c), of Regulation (EU) 2017/2402 is used, a detailed explanation of how, where the collateral is invested in securities, the transaction documentation sets out the eligibility criteria and custody arrangement for the securities.	N/A
STSSY 153	Article 26e(9) second subparagraph	Investors exposed to originator's credit risk			√	A concise explanation that the transaction documentation specifies whether investors remain exposed to the credit risk of the originator.	N/A
STSSY 154	Article 26e(9) third subparagraph	Legal opinion confirming the enforceability of the credit protection in all jurisdictions	√			A confirmation that the originator has obtained an opinion from a qualified legal counsel confirming the enforceability of the credit protection in all relevant jurisdictions.	N/A
STSSY155	Article 26e(10), first subparagraph, point (a)	High quality collateral – 0 % risk-weighted debt securities			√	Where a credit protection is provided in accordance with Article 26e(10), point (a), of Regulation (EU) 2017/2402 in the form of 0 % risk-weighted debt securities referred to in Chapter 2 of Title II of Part Three of Regulation (EU) No 575/2013, a concise explanation that all of the following conditions are met: (i) those debt securities have a remaining maximum maturity of 3 months which is no longer than the remaining period up to the next payment date (ii) those debt securities can be redeemed into cash in an amount equal to the outstanding balance of the protected tranche;	N/A

						(iii) those debt securities are held by a custodian independent of the originator and the investors;	
STSSY 156	Article 26e(10), first subparagraph, point (b)	High quality collateral – cash with a third-party credit institution with a credit quality step 3 or above		√		Where a credit protection is provided in accordance with Article 26e(10), point (b), of Regulation (EU) 2017/2402, a concise explanation of the collateral arrangement giving the originator and the investor recourse to a collateral in the form of cash held with a third-party credit institution with credit quality step 3 or above in line with the mapping set out in Article 136 of Regulation (EU) No 575/2013.	N/A
STSSY 157	Article 26e(10), second subparagraph	Derogation – collateral in the form of cash on deposit with the originator			√	Where the derogation from Article 26e(10), first subparagraph of Regulation (EU) 2017/2402 is used, a detailed explanation of the collateral arrangement, and the investor consent thereof, giving only the originator recourse to high quality collateral in the form of cash on deposit with the originator, or one of its affiliates.	N/A
STSSY 158	Article 26e(10), third subparagraph	Collateral in the form of cash on deposit with the originator – permission by competent authority			√	A detailed explanation of the consent by the competent authorities designated pursuant to Article 29(5) of Regulation (EU) 2017/2402 that collateral may be in the form of cash on deposit with the originator, or one of its affiliates, if the originator or one of its affiliates qualifies for a credit quality step 3 provided that market difficulties, objective impediments related to the credit quality step assigned to the Member State of the institution or significant potential concentration problems in the Member State concerned due to the	N/A

						application of the minimum credit quality step 2 requirement referred to in Article 26e(10), second subparagraph, of Regulation (EU) 2017/2402 can be documented.	
STSSY 159	Article 26e(10), fourth subparagraph	Transfer of collateral where third-party credit institution or originator no longer satisfies the minimum credit quality step			√	A detailed explanation of how the collateral is transferred in compliance with Article 26e(10), fourth subparagraph, of Regulation (EU) 2017/2402 where the collateral was held in the form of cash on deposit with an institution that no longer satisfies the minimum credit quality step.	N/A
STSSY 160	Article 26e(10), fifth subparagraph	Compliance with collateral requirements in the case of investments in credit linked notes issued by the originator	√			A confirmation that there is an investment in credit linked notes issued by the originator, in accordance with Article 218 of Regulation (EU) No 575/2013.	N/A

COMMISSION DELEGATED REGULATION (EU) 2022/1302**of 20 April 2022****supplementing Directive 2014/65/EU of the European Parliament and of the Council with regard to regulatory technical standards for the application of position limits to commodity derivatives and procedures for applying for exemption from position limits****(Text with EEA relevance)**

THE EUROPEAN COMMISSION,

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

Having regard to Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU ⁽¹⁾, and in particular Article 57(1), sixth subparagraph, Article 57(3), fifth subparagraph, and Article 57(12), third subparagraph, thereof,

Whereas:

- (1) Directive (EU) 2021/338 of the European Parliament and of the Council ⁽²⁾ provides for amendments to Article 57 of Directive 2014/65/EU as regards, among other things, position limits, which also include new related empowerments.
- (2) In order to improve the stability and integrity of financial markets in the Union, a methodology should be specified for calculating position limits to commodity derivatives in a harmonised manner. The methodology should prevent regulatory arbitrage and promote consistency whilst providing competent authorities with sufficient flexibility to take into account the variations among different commodity derivatives markets and the markets in the underlying commodities. The methodology for calculating the limits should allow competent authorities to balance the objectives of setting limits at a level sufficiently low to prevent persons holding positions in those commodity derivatives from abusing or distorting the market against the objectives of supporting orderly pricing and settlement arrangements, developing new commodity derivatives and enabling commodity derivatives to continue to support the functioning of commercial activities in the underlying commodity market.
- (3) A number of concepts stemming from Directive 2014/65/EU and technical terms used in this Regulation should be defined to ensure a uniform understanding.
- (4) Long and short positions of market participants in a given commodity derivative should be netted off against each other to determine the effective size of a position a market participant controls at any point in time. The size of a position held through an option contract or a commodity derivative traded on the same trading venue that is a sub-set of the principal contract should be calculated on a delta equivalent basis. To allow for a comprehensive, centralised and representative overview of a person's activity, and to prevent circumventing the objective of the position limit set for the principal contract, the aggregate position held by a person in a commodity derivative traded on a trading venue should also include the position resulting from the disaggregation of the components of a spread contract admitted to trading as a single tradable instrument on the same trading venue and the positions in commodity derivatives traded on the same trading venue that are a sub-set of the principal contract with regards to their size (so-called minis), or pricing period maturity, such as balance-of-the-month (so-called balmos) contracts.
- (5) Directive 2014/65/EU requires that any positions held by third parties on behalf of a person is to be included in the calculation of that person's position limit and for position limits to be applied at both an entity level and at a group level. It is therefore necessary to aggregate positions at a group level. It is appropriate to only provide for aggregation at the group level if a parent undertaking can control the use of positions. Accordingly, parent undertakings should aggregate positions held by their subsidiaries with any positions that the parent undertaking holds directly, in addition to the subsidiaries aggregating their own positions. Such aggregation can lead to positions calculated at the

⁽¹⁾ OJ L 173, 12.6.2014, p. 349.

⁽²⁾ Directive (EU) 2021/338 of the European Parliament and of the Council of 16 February 2021 amending Directive 2014/65/EU as regards information requirements, product governance and position limits, and Directives 2013/36/EU and (EU) 2019/878 as regards their application to investment firms, to help the recovery from the COVID-19 crisis (OJ L 68, 26.2.2021, p. 14).

level of the parent undertaking which are larger or, due to a netting of long and short positions held by different subsidiaries, lower than at individual subsidiary level. Positions should not be aggregated at the level of the parent undertaking if the positions are held by collective investment undertakings which hold those positions on behalf of their investors rather than on behalf of their parent undertakings in cases where the parent undertaking cannot control the use of those positions for its own benefit.

- (6) The amendments set out in Directive (EU) 2021/338 require that position limits apply to critical or significant commodity derivatives that are traded on trading venues, and to their economically equivalent OTC ('EEOCT') contracts. Critical or significant derivatives are commodity derivatives with an open interest of at least 300 000 lots on average over a one-year period. Due to the critical importance of agricultural commodities for citizens, agricultural commodity derivatives and their EEOCT contracts remain under the position limit regime below 300 000 lots. The liquidity threshold from which position limits start to apply to agricultural commodity derivatives is to be specified in this Regulation and should only be considered as trading in significant volume on a trading venue if they exceed the liquidity threshold for a sufficient period of time.
- (7) Where an over-the-counter ('OTC') contract is valued on the same underlying commodity that is deliverable at the same location and with the same contractual conditions and if it is having a highly correlated economic outcome to a contract traded on a trading venue, it should be deemed economically equivalent regardless of small differences in the contractual specifications concerning the lot sizes and the date of delivery. Differences in post-trade risk management arrangements, such as clearing arrangements, should not be barriers to declaring such contracts as economically equivalent. In order to prevent inappropriate netting of potentially dominant positions traded on a trading venue by the use of bilateral arrangements in OTC contracts and to ensure an efficient operation of the position limits regime in practice, it is necessary for commodity derivatives traded OTC to be considered economically equivalent to trading venue contracts only in limited circumstances. To deter avoidance of position limits and to enhance the integrity of the position limit regime it is necessary that a definition of an economically equivalent OTC contract is narrowly framed so that it does not permit a person to net an OTC position against multiple other positions. Furthermore, discretion in the consistent choice of positions against which an OTC position is netted should be limited to the specific circumstances where such an OTC contract is economically equivalent to more than one commodity derivative traded on a trading venue in the Union.
- (8) In order to establish which positions in commodity derivatives are objectively measurable as reducing risks directly relating to commercial activity, certain criteria should be provided, including the use of the accounting definition of a hedging contract based on International Financial Reporting Standards (IFRS) rules. That accounting definition should be also available to non-financial entities even though they do not apply IFRS rules at an entity level.
- (9) Additionally, non-financial entities should be able to use risk management techniques to mitigate the overall risks arising from their commercial activity or that of their group including risks arising from several geographic markets, products, time horizons or entities (that is, macro or portfolio hedging). Likewise, financial entities within predominantly commercial groups should be able to use risk management techniques to mitigate the overall risks arising from the commercial activity of the non-financial entities of the group. When a non-financial entity or a financial entity uses macro or portfolio hedging, it may not be able to establish a one-to-one link between a specific position in a commodity derivative and a specific risk arising from the commercial activity that the commodity derivative is intended to hedge. A non-financial entity or a financial entity may also use a non-equivalent commodity derivative to hedge a specific risk arising from commercial activity of the non-financial entity where an identical commodity derivative is not available or where a more closely correlated commodity derivative does not have sufficient liquidity (that is, proxy hedging). In such cases, risk management policies and systems should be able to prevent non-hedging transactions from being categorised as hedging and should be able to provide for a sufficiently disaggregate view of the hedging portfolio so that speculative components are identified and counted towards the position limits. Positions should not qualify as reducing risks related to commercial activity solely on the grounds that they have been included as part of a risk-reducing portfolio on an overall basis.

- (10) A risk may evolve over time and, in order to adapt to the evolution of the risk, commodity derivatives initially executed for reducing risk related to commercial activity may have to be offset through the use of additional commodity derivative contracts that close out those commodity derivative contracts that have become unrelated to the commercial risk. Additionally, the evolution of a risk that has been addressed by the entering into of a position in a commodity derivative for the purpose of reducing risk should not subsequently give rise to the re-evaluation of that position as not being a privileged transaction from the beginning.
- (11) Financial and non-financial entities should be able to apply for the exemption in relation to hedging of commercial activities before entering into a position. The application should give the competent authority a clear and concise overview of the commercial activities of the non-financial entities in respect of an underlying commodity that are intended to be hedged, the associated risks and how commodity derivatives are utilised to mitigate those risks. Position limits apply at all times to agricultural commodity derivatives and to critical or significant commodity derivatives, and should the exemption ultimately not be granted by the competent authority, the financial or the non-financial entity, as the case may be, should reduce any position in excess of a limit accordingly and could face supervisory measures in respect of a breach of a limit. Financial and non-financial entities should re-assess their activities periodically to ensure that the continued application of the exemption is justified.
- (12) Financial and non-financial entities should be able to apply for the exemption in relation to positions resulting from the mandatory provision of liquidity on trading venues before those transactions are undertaken. The application should give the competent authority a clear and concise overview of the mandatory liquidity provision framework under which those persons operate, the person's activities in the trading of commodity derivatives in accordance with the written agreement entered into with the trading venue and of the resulting open positions. Position limits apply at all times to agricultural commodity derivatives and to critical or significant commodity derivatives, and should the exemption ultimately not be granted by the competent authority, the non-financial or financial entity should reduce any position in excess of a limit accordingly and could face supervisory measures in respect of a breach of a limit. Non-financial and financial entities should re-assess their activities periodically to ensure that the continued application of the exemption is justified.
- (13) The spot month period, which is the time period immediately before delivery at expiry, is specific to each commodity derivative and may not correspond to exactly one month. Spot month contracts should therefore refer to the contract that is the next contract in that commodity derivative to mature. Restricting the positions a person may hold in the period during which delivery of the physical commodity is to be made limits the quantity of the underlying deliverable supply each person may make or take delivery of, thereby preventing the accumulation of dominant positions by individuals which may enable them to squeeze the market through restricting access to the commodity. The standard baseline for the spot month position limit for both physically and cash settled commodity derivatives should therefore be computed as a percentage of the deliverable supply estimate. Competent authorities should be able to implement a schedule of decreasing position limits ranging from the point in time when a contract becomes a spot month contract until maturity in order to more precisely ensure that position limits are adequately set throughout the spot month period and to ensure orderly settlement.
- (14) Where there is relatively little derivative trading compared with the deliverable supply of a commodity, open interest will be smaller in comparison with deliverable supply. In such circumstances, even using the lowest percentage of the deliverable supply in the methodology may not allow the competent authorities to set a spot month limit that is consistent with the objective of ensuring orderly pricing and settlement conditions and preventing market abuse. To ensure that those objectives are met in all circumstances, when the deliverable supply for a commodity derivative is substantially higher than the total open interest to such extent that the spot month limit based on deliverable supply would deprive the requirement for competent authorities to apply position limits of any effect, competent authorities should, as a fall back methodology, determine the baseline figure for the spot month limit in that commodity derivative as a percentage of the total open interest in that commodity derivative and then proceed with the relevant adjustment factors.

- (15) Crops in agricultural products can be subject to high volatility due to weather conditions. It is therefore appropriate that the reference period for the determination of deliverable supply in agricultural commodity derivatives extends beyond the reference period used for the determination of deliverable supply in other commodity derivatives.
- (16) The other months' position limit is applied across all maturities other than the spot month. The standard baseline for the other months' position limits for both physically and cash settled commodity derivatives should be computed as a percentage of the total open interest. The distribution of positions across the other months' of a commodity contract is often concentrated in the months closest to maturity. Therefore, total open interest provides a more appropriate baseline for setting position limits than using a figure averaged across all maturities. As open interest may change significantly over a short period of time, the open interest should be calculated by the competent authorities over a period of time that adequately reflects the commodity derivative trading characteristics. That reference period should notably account for seasonality of trading of a contract.
- (17) To ensure that the position limits established by competent authorities are based on a comprehensive representation of the overall open positions held in a commodity derivative, the open interest calculated by the competent authority should include both the outstanding positions on the trading venue where the commodity derivative is traded and the outstanding positions in economically equivalent OTC contracts reported to the competent authority.
- (18) The standard baseline of 25 % of deliverable supply and of open interest has been set with reference to the experience of other markets and other jurisdictions. The baseline should be adjusted by competent authorities to enable it to be reduced to 5 % of deliverable supply and open interest, or 2,5 % in the case of some agricultural commodity derivatives, and to be increased up to 35 % of deliverable supply and open interest should the characteristics of the market require it in order to support the orderly settlement and functioning of the contract and its underlying market. Since any adjustment to the baseline figure applies only where, and for so long as, objective characteristics of the market require it, temporary adjustments to the baseline should be therefore possible. Competent authorities should ensure that an adjustment downwards of the baseline is effected whenever it is necessary to prevent dominant positions and to support orderly pricing in the commodity derivative and in the underlying commodity. For derivatives without a tangible underlying the deliverable supply cannot be used to establish a position limit. Therefore, competent authorities should be able to enhance or adjust the methodologies to determine position limits for these commodity derivatives based on different parameters like the use of open interest also for the spot month.
- (19) There may be circumstances where a commodity derivative newly admitted to trading on a trading venue was formerly traded on one or more trading venues in the Union or in third countries. In order to allow for the smooth transfer of the commodity derivative the open interest in the commodity derivative formerly traded on the other trading venue(s) should be taken into account by the competent authority when establishing the initial position limits for the newly admitted to trading commodity derivative. Other circumstances may arise, for example, where two commodity derivatives are traded on the same trading venue and due to a slight difference in their characteristics, such as a change in the underlying index or bidding zone, the open interest in the older contracts is expected to quickly move to the more recent contract. When establishing the position limits for the more recent contract, the competent authority should take into account the open interest in the older contract to allow for the smooth development of the more recent contract.
- (20) Certain commodity derivatives, in particular based on power and gas, provide that the underlying be delivered constantly over a specified period of time such as day, month, or year. Moreover, certain contracts with longer delivery periods such as year or quarter may be automatically substituted by related contracts of shorter delivery periods such as quarter or month (so-called cascading contracts). In those cases, a spot month position limit for the contract to be substituted prior to delivery would be inappropriate, as such limit would not cover the expiry and physical delivery or cash settlement of the contract. To the extent that delivery periods of contracts for the same underlying overlap, a single position limit should apply to all the related contracts in order to properly take into account the positions across those contracts which may potentially be delivered. To facilitate that, related contracts should be measured in units of the underlying and aggregated and netted accordingly.

- (21) For certain agricultural commodity derivatives, which have a material impact on consumer food prices, the methodology should enable a competent authority to set a baseline and position limit beneath the minimum of the general range, where it finds evidence of speculative activity impacting significantly on prices.
- (22) The competent authority should assess whether the factors listed under Article 57(3) of Directive 2014/65/EU necessitate adjustment of the baseline in order to set the final level of the position limit. The assessment should take into account those factors as relevant for the particular commodity derivative in question. The methodologies should provide a direction of how to set the limit without taking away the ultimate decision on an appropriate position limit for a commodity derivative from the competent authority in order to prevent market abuse. The factors should give important indications to the competent authorities and to the European Securities and Markets Authority, to facilitate forming their opinions and ensuring an adequate alignment of position limits across the Union.
- (23) Position limits should not create barriers to the development of new agricultural commodity derivatives and should not prevent less liquid sections of the agricultural commodity derivative markets from working adequately. The methodology should take into account the time required to develop and attract liquidity to both new and existing commodity derivatives and, in particular, for agricultural commodity derivatives that may support risk management in bespoke or immature markets or seek to develop new hedging arrangements in new commodities. Equally, there are agricultural commodity derivative contracts which may never attract sufficient participants or liquidity to enable the effective application of position limits without the risk of participants regularly and inadvertently breaching the limit and consequently disrupting the pricing and settlement of those commodity derivatives. In order to address those risks to the efficient functioning of markets, the position limit for the spot month and for other months should be set at a fixed level of 10 000 lots until the open interest in the agricultural commodity derivative exceeds a threshold of 20 000 lots.
- (24) The number, composition and role of market participants in a commodity derivative can influence the nature and the size of positions that certain market participants hold in the market. For some commodity derivatives, certain market participants might hold a large position which reflects their role in the buying and selling of, and the delivery of, the commodity when they are on the opposite side of the market to the majority of other market participants providing liquidity or risk management services for the underlying commodity market.
- (25) The supply, use, access to, and availability of the underlying commodity are characteristics of the underlying commodity market. Through the assessment of more granular components of those characteristics, such as perishability of the commodity and method of transportation, the competent authority should be able to determine the flexibility of the market and adjust position limits appropriately.
- (26) There may be a large discrepancy between open interest and deliverable supply for some commodity derivatives. That may occur where there is relatively little derivative trading compared with the deliverable supply, in which case open interest will be smaller in comparison with deliverable supply, or, for example, where a particular commodity derivative is widely used to hedge many different risk exposures and deliverable supply is therefore smaller in comparison with open interest. Such significant discrepancies between open interest and deliverable supply justify adjustments from the baseline applicable to the other months' limit upwards or downwards, in order to avoid a disorderly market when the spot month approaches. More specifically, when open interest is significantly higher than deliverable supply, the other months' limit should be adjusted downwards to avoid a cliff-edge effect with the spot month limit that is based on deliverable supply. It would not be appropriate to adjust the spot month limit upward in such circumstances considering the risk of market cornering. When deliverable supply is significantly higher than open interest, the other months' limit should be adjusted upwards to avoid the risk of unduly constraining trading. As deliverable supply is significantly higher than open interest, the spot month limit based on deliverable supply that results from the baseline is expected to exceed the open positions held by market participants in the spot month. To ensure that the spot month limit does prevent market participant to build a dominant position and that the objectives of preventing market abuse and ensuring orderly pricing, as required by Article 57(1) of Directive 2014/65/EU, are effectively achieved, the spot month limit should, on the contrary, be adjusted downwards when based on deliverable supply.

- (27) With the same objective of limiting disorderly markets as the spot month approaches because of large discrepancies between calculations of deliverable supply and open interest, deliverable supply should be defined to include any substitute grades or types of a commodity that can be delivered in settlement of a commodity derivative contract under the terms of that contract.
- (28) Article 57(1), (3) and (12) of Directive 2014/65/EU empowers the Commission to adopt the methodology for the calculation and application of position limits in order to establish a harmonised position limits regime across commodity derivatives traded on trading venues and EOTC contracts. Article 57(1) requires a methodology for calculation that competent authorities are to apply in establishing position limits for commodity derivatives. Article 57(1) also requires the determination of a procedure for applying for the liquidity provision exemption and for the risk reducing exemption for financial entities, that are part of a predominantly commercial group. Article 57(3) requires the specification of how competent authorities should take into account factors when establishing the spot month position limits and other months' position limits for physically settled and cash settled commodity derivatives. Article 57(12) requires the determination of how the position limits methodology should be applied, for example, in the aggregation of positions within a group, when a position may be qualified as reducing risk or when a firm may use a hedging exemption. The content of the rules is substantively linked, since they are closely related to the methodology for establishing position limits. In the interests of simplicity and transparency, as well as to facilitate the application of the rules and avoid duplication, they should be laid down in a single act rather than in a number of cross-referenced separate acts.
- (29) This Regulation is based on the draft regulatory technical standards submitted to the Commission by the European Securities and Markets Authority.
- (30) The European Securities and Markets Authority has conducted open public consultations on the draft regulatory technical standards on which this Regulation is based, analysed the potential related costs and benefits and requested the advice of the Securities and Markets Stakeholder Group established in accordance with Article 37 of Regulation (EU) No 1095/2010 of the European Parliament and of the Council ⁽³⁾.
- (31) Commission Delegated Regulation (EU) 2017/591 ⁽⁴⁾ supplements Directive 2014/65/EU with regard to regulatory technical standards for the application of position limits to commodity derivatives. This Regulation replaces that Delegated Regulation, taking into account the amendments of Directive 2014/65/EU brought by Directive (EU) 2021/338, which set out new provisions regarding hedging exemptions for liquidity provisioning and for financial entities that are part of a predominantly non-financial group, empowering the Commission to adopt a delegated act specifying the criteria for liquidity provision exemption and for the risk-reducing exemption for financial entities. Furthermore, the notion of 'same commodity contract' was deleted and securities derivatives no longer in scope. Finally, the calculation of open interest was clarified and the methodology for new and less liquid agricultural commodity derivative contracts was simplified. Therefore, Delegated Regulation (EU) 2017/591 should be repealed and replaced by this Regulation,

⁽³⁾ Regulation (EU) No 1095/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Securities and Markets Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/77/EC (OJ L 331, 15.12.2010, p. 84).

⁽⁴⁾ Commission Delegated Regulation (EU) 2017/591 of 1 December 2016 supplementing Directive 2014/65/EU of the European Parliament and of the Council with regard to regulatory technical standards for the application of position limits to commodity derivatives (OJ L 87, 31.3.2017, p. 479).

HAS ADOPTED THIS REGULATION:

CHAPTER I

GENERAL PROVISIONS

Article 1

Subject matter

This Regulation lays down rules for the calculation of the net position held by a person in a commodity derivative, the methodology for calculating the position limits on the size of that position and the procedures for applying for exemptions to position limits.

Article 2

Definitions

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

(1) 'financial entity' means any of the following:

- (a) an investment firm authorised in accordance with Directive 2014/65/EU;
- (b) a credit institution authorised in accordance with Directive 2013/36/EU of the European Parliament and of the Council ⁽⁵⁾;
- (c) an insurance undertaking as defined in Article 13, point (1), of Directive 2009/138/EC of the European Parliament and of the Council ⁽⁶⁾;
- (d) a reinsurance undertaking as defined in Article 13, point (4), of Directive 2009/138/EC;
- (e) an undertaking for collective investment in transferable securities (UCITS) and, where relevant, its management company, authorised in accordance with Directive 2009/65/EC of the European Parliament and of the Council ⁽⁷⁾;
- (f) an institution for occupational retirement provision within the meaning of Article 6, point (1), of Directive (EU) 2016/2341 of the European Parliament and of the Council ⁽⁸⁾;
- (g) an alternative investment fund managed by managers of alternative investment funds (AIFMs) authorised or registered in accordance with Directive 2011/61/EU of the European Parliament and of the Council ⁽⁹⁾;
- (h) a central counterparty (CCP) authorised in accordance with Regulation (EU) No 648/2012 of the European Parliament and of the Council ⁽¹⁰⁾;
- (i) a central securities depository authorised in accordance with Regulation (EU) No 909/2014 of the European Parliament and of the Council ⁽¹¹⁾;

⁽⁵⁾ Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC (OJ L 176, 27.6.2013, p. 338).

⁽⁶⁾ Directive 2009/138/EC of the European Parliament and of the Council of 25 November 2009 on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II) (OJ L 335, 17.12.2009, p. 1).

⁽⁷⁾ Directive 2009/65/EC of the European Parliament and of the Council of 13 July 2009 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS) (OJ L 302, 17.11.2009, p. 32).

⁽⁸⁾ Directive 2016/2341 of the European Parliament and of the Council of 14 December 2016 on the activities and supervision of institutions for occupational retirement provision (IORPs) (OJ L 354, 23.12.2016, p. 37).

⁽⁹⁾ Directive 2011/61/EU of the European Parliament and of the Council of 8 June 2011 on Alternative Investment Fund Managers and amending Directives 2003/41/EC and 2009/65/EC and Regulations (EC) No 1060/2009 and (EU) No 1095/2010 (OJ L 174, 1.7.2011, p. 1).

⁽¹⁰⁾ Regulation (EU) No 648/2012 of the European Parliament and of the Council of 4 July 2012 on OTC derivatives, central counterparties and trade repositories (OJ L 201, 27.7.2012, p. 1).

⁽¹¹⁾ Regulation (EU) No 909/2014 of the European Parliament and of the Council of 23 July 2014 on improving securities settlement in the European Union and on central securities depositories and amending Directives 98/26/EC and 2014/65/EU and Regulation (EU) No 236/2012 (OJ L 257, 28.8.2014, p. 1).

- (2) 'non-financial entity' means a legal or natural person other than a financial entity;
- (3) 'spot month contract' means the commodity derivative contract in relation to a particular underlying commodity whose maturity is the next to expire in accordance with the rules set by the trading venue;
- (4) 'other months' contract' means any commodity derivative contract that is not a spot month contract;
- (5) 'lot' means the unit of trading used by the trading venue on which the commodity derivative trades representing a standardised quantity of the underlying commodity.

A third-country entity shall be considered a financial entity where its authorisation would be required under any of the legal acts of the Union referred to in point (1) of the first paragraph if that entity was based in the Union and subject to Union law.

A third-country entity shall be considered a non-financial entity where its authorisation would not be required under any of the legal acts of the Union referred to in point (1) of the first subparagraph if that entity was based in the Union and subject to Union law.

CHAPTER II

METHOD FOR CALCULATING THE SIZE OF THE NET POSITION OF A PERSON

Article 3

Aggregation and netting of positions in a commodity derivative

1. The net position of a person in a commodity derivative shall be the aggregation of the following:
 - (a) its positions held in that commodity derivative traded on a trading venue and in economically equivalent OTC contracts pursuant to Article 6;
 - (b) where the commodity derivative is an agricultural commodity derivative traded in significant volume in accordance with Article 5, its position held in agricultural commodity derivatives based on the same underlying and sharing the same characteristics, traded in significant volumes on other trading venues and subject to the position limits set by the central competent authority;
 - (c) where the commodity derivative is a critical or significant contract, its positions held in critical or significant contracts based on the same underlying and sharing the same characteristics, traded on other trading venues and subject to the position limits set by the central competent authority.
2. The positions held in a commodity derivative traded on a trading venue referred to in paragraph 1, point (a), shall include the positions held in the disaggregated components of a spread contract and in other closely related commodity derivatives traded on the same trading venue that are a fraction of the value of a corresponding standard futures contract or whose pricing period is defined as the selected start date to the end of the contract month of the standard commodity derivative.
3. Where a person holds both long and short positions in any of the commodity derivatives referred to in paragraphs 1 and 2, the person shall net those positions to determine its net position for that commodity derivative.
4. Positions held by a non-financial entity in commodity derivatives that are objectively measurable as reducing risks in accordance with Article 7(1) and (3), as approved by the competent authority pursuant to Article 8(5) on the basis of Article 8(1) and (2), shall not be aggregated for the purposes of comparing the net position of that non-financial entity with the limits for that commodity derivative.

5. Positions held by a financial entity in commodity derivatives that are objectively measurable as reducing risks in accordance with Article 7(2) and (4), as approved by the competent authority pursuant to Article 8(5) on the basis of Article 8(3) and (4), shall not be aggregated for the purposes of comparing the net position of that financial entity with the limits for that commodity derivative.

6. Positions held by a person in commodity derivatives that result from transactions undertaken on trading venues to fulfil liquidity provision obligations in accordance with Article 10, as approved by the competent authority pursuant to Article 9, shall not be aggregated for the purposes of comparing the net position of that person with the limits for that commodity derivative.

7. A person shall determine separately the net position it holds in a commodity derivative for both the spot month contracts and the other months' contracts.

Article 4

Method of calculating positions for legal entities within a group

1. A parent undertaking shall determine its net position by aggregating the following positions in accordance with Article 3:

- (a) its own net position;
- (b) the net positions of each of its subsidiary undertakings.

2. By way of derogation from paragraph 1, the parent undertaking of a collective investment undertaking or, where the collective investment undertaking has appointed a management company, the parent undertaking of that management company, shall not aggregate the positions in commodity derivatives in any collective investment undertaking where it does not in any way influence the investment decisions in respect of opening, holding or closing those positions.

Article 5

Significant volumes

1. An agricultural commodity derivative shall be considered to be traded in a significant volume on a trading venue when the trading in the agricultural commodity derivative on that trading venue over a consecutive three month period exceeds an average daily open interest of 20 000 lots in the spot month and other months combined.

2. The trading venue where the largest volume of trading in commodity derivatives based on the same underlying and sharing the same characteristics takes place shall be the trading venue that over 1 year has the largest average daily open interest.

Article 6

OTC contracts economically equivalent to commodity derivatives traded on trading venues

An OTC derivative shall be considered economically equivalent to a commodity derivative traded on a trading venue where it has identical contractual specifications, terms and conditions, excluding different lot size specifications, delivery dates diverging by less than 1 calendar day and different post trade risk management arrangements.

Article 7

Positions qualifying as reducing risks directly related to commercial activities

1. A position held by a non-financial entity in a commodity derivative traded on trading venues or in economically equivalent OTC contracts pursuant to Article 6 qualifies as reducing risks directly relating to the commercial activities of that non-financial entity in accordance with Article 57(1), second subparagraph, point (a), of Directive 2014/65/EU where by itself, or in combination with other derivatives in accordance with paragraph 3 of this Article ('position in a portfolio of commodity derivatives'), the position meets one of the following criteria:

- (a) it reduces the risks arising from the potential change in the value of assets, services, inputs, products, commodities or liabilities that the non-financial entity or its group owns, produces, manufactures, processes, provides, purchases, merchandises, leases, sells, or incurs or reasonably anticipates owning, producing, manufacturing, processing, providing, purchasing, merchandising, leasing, selling or incurring in the normal course of its business;
- (b) it qualifies as a hedging contract pursuant to International Financial Reporting Standards (IFRS) adopted in accordance with Article 3 of Regulation (EC) No 1606/2002 of the European Parliament and Council ⁽¹²⁾.

2. A position held by a financial entity in an agricultural commodity derivative, in a critical or significant commodity derivative traded on trading venues or in economically equivalent OTC contracts pursuant to Article 6 qualifies as reducing risks directly related to the commercial activities of the non-financial entities of a predominantly commercial group in accordance with Article 57(1), second subparagraph, point (b), of Directive 2014/65/EU where by itself, or in combination with other derivatives in accordance with paragraph 3 of this Article (position in a portfolio of commodity derivatives), the position meets one of the criteria mentioned in paragraph 1, points (a) or (b), of this Article.

3. For the purposes of paragraph 1, a position qualifying as risk-reducing taken on its own or in combination with other derivatives is one for which the non-financial entity or the person holding the position on behalf of that entity:

- (a) contains the following in its internal policies:
 - (i) the types of commodity derivatives included in the portfolios used to reduce risks directly relating to commercial activity and their eligibility criteria;
 - (ii) the link between the portfolio and the risks that the portfolio is mitigating;
 - (iii) the measures adopted to ensure that the positions concerning those commodity derivatives serve no other purpose than covering risks directly related to the commercial activities of the non-financial entity, and that any position serving a different purpose can be clearly identified;
- (b) is able to provide a sufficiently disaggregated view of the portfolios in terms of class of commodity derivative, underlying commodity, time horizon and any other relevant factors.

4. For the purposes of paragraph 2, a position qualifying as risk-reducing taken on its own or in combination with other derivatives is one for which the financial entity complies with the conditions set out in paragraph 3, points (a) and (b).

Article 8

Application for the exemption from position limits for positions qualifying as reducing risks directly related to commercial activities

1. A non-financial entity holding a qualifying position in an agricultural commodity derivative or in a critical or significant commodity derivative shall apply for the exemption referred to in Article 57(1), second subparagraph, point (a), of Directive 2014/65/EU to the competent authority which sets the position limit for that commodity derivative.

2. The person referred to in paragraph 1 shall submit to the competent authority the following information which demonstrates how the position reduces risks directly relating to the non-financial entity's commercial activity:

- (a) a description of the nature and value of the non-financial entity's commercial activities in the commodity to which the commodity derivative for which an exemption is sought is relevant;

⁽¹²⁾ Regulation (EC) No 1606/2002 of the European Parliament and of the Council of 19 July 2002 on the application of international accounting standards (OJ L 243, 11.9.2002, p. 1).

- (b) a description of the nature and value of the non-financial entity's activities in the trading of and positions held in the relevant commodity derivatives traded on trading venues and in their economically equivalent OTC contracts;
- (c) a description of the nature and size of the exposures and risks in the commodity which the non-financial entity has or expects to have as a result of its commercial activities and which are or would be mitigated by the use of commodity derivatives;
- (d) an explanation of how the non-financial entity's use of commodity derivatives directly reduces its exposure and risks in its commercial activities.

3. A financial entity holding a qualifying position in an agricultural commodity derivative or in a critical or significant commodity derivative shall apply for the exemption referred to in Article 57(1), second subparagraph, point (b), of Directive 2014/65/EU to the competent authority which sets the position limit for that commodity derivative.

4. The person referred to in paragraph 3 shall submit to the competent authority:

- (a) appropriate information which demonstrates that the parent undertaking has entrusted to the financial entity the trading of commodity derivatives traded on a trading venue and their economically equivalent OTC contracts to reduce the exposure and risks in the commercial activities of the non-financial entities of the predominantly commercial group;
- (b) the following information which demonstrates how the position reduces risks directly relating to the commercial activity of the non-financial entities of the same predominantly commercial group:
 - (i) a description of the nature and value of the non-financial entities' commercial activities in the commodity to which the commodity derivative for which an exemption is sought is relevant;
 - (ii) a description of the nature and size of the exposures and risks in the commodity which the non-financial entities have or expect to have as a result of the non-financial entities' commercial activities which are or would be mitigated by the use of commodity derivatives;
 - (iii) a description of the nature and value of the financial entity's activities in the trading of and positions held in the relevant commodity derivatives traded on trading venues and in their economically equivalent OTC contracts;
 - (iv) an explanation of how the financial entity's use of commodity derivatives directly reduces the exposure and risks in the non-financial entities' commercial activities.

5. The competent authority shall approve or reject the application within 21 calendar days after it has received the application and shall notify the applicant of its approval or rejection of the exemption.

6. The non-financial entity shall notify the competent authority if there is a significant change to the nature or value of the non-financial entity's commercial activities or its trading activities in commodity derivatives and the change is relevant to the information set out in paragraph 2, point (b), and shall submit a new application for the exemption if it wishes to continue to use it.

7. The financial entity shall notify the competent authority if there is a change to the information set out in paragraph 4, point (a), or a significant change to the nature or value of the non-financial entity's commercial activities or the financial entity's trading activities in commodity derivatives and the change is relevant to the information set out in paragraph 4, point (b)(iii), and shall submit a new application for the exemption if it wishes to continue to use it.

*Article 9***Application for the exemption from position limits for mandatory liquidity provision**

1. A person holding a qualifying position in an agricultural commodity derivative or a critical or significant commodity derivative shall apply for the exemption referred to in Article 57(1), second subparagraph, point (c), of Directive 2014/65/EU to the competent authority which sets the position limit for that commodity derivative.
2. The person referred to in paragraph 1 shall submit to the competent authority the following information which demonstrates how the positions result from transactions entered into to fulfil obligations to provide liquidity in that commodity derivative on a trading venue as referred to in Article 2(4), fourth subparagraph, point (c), of Directive 2014/65/EU.
 - (a) the list of commodity derivatives in which that person provides liquidity on a trading venue in accordance with points (b) and (c) of this paragraph;
 - (b) the provisions under which that person is required by a regulatory authority to provide liquidity in a commodity derivative on a trading venue or the written agreement signed with the trading venue setting out the liquidity provision obligations to be met by the person on the trading venue per commodity derivative;
 - (c) a description of the nature and value of the person's mandatory liquidity provision activities in the relevant commodity derivative and of the expected resulting positions thereof;
 - (d) any position limit that may have been set in its internal policy per commodity derivative for such mandatory liquidity provision.
3. The competent authority shall approve or reject the application within 21 calendar days after it has received the application and shall notify the person of its approval or rejection of the exemption.
4. The person shall notify the competent authority if there is a significant change to the nature or value of the person's trading activities in commodity derivatives and the change is relevant to the information set out in paragraph 2, and shall submit a new application for the exemption if it wishes to continue to use it.

*Article 10***Positions qualifying as resulting from mandatory liquidity provision**

1. For the purpose of Article 9(1), a position held by a person in an agricultural or a critical or significant commodity derivative traded on a trading venue qualifies as resulting from transactions undertaken to fulfil mandatory liquidity provision obligations where the position directly results from transactions in a commodity derivative undertaken in compliance with obligations required by regulatory authorities in accordance with Union law or with national laws, regulations and administrative provisions, or the written agreement entered into with the trading venue and identified as such by the trading venue.
2. For the purpose of Article 9(1), a qualifying position resulting from mandatory liquidity provision is one for which the person holding the position contains the following in its internal policies:
 - (a) the types of commodity derivatives included in the portfolios in which mandatory liquidity provision is provided;
 - (b) the link between the position held in a commodity derivative and the transactions undertaken to fulfil mandatory liquidity provisions in that derivative in accordance with paragraph 1 of this Article;
 - (c) the measures adopted to ensure that any position not resulting from transactions undertaken to fulfil mandatory liquidity provision or serving a different purpose can be clearly identified.

CHAPTER III

METHODOLOGY FOR COMPETENT AUTHORITIES TO CALCULATE POSITION LIMITS

SECTION 1

Determination of baseline figures*Article 11***Methodology for determining the baseline figure for spot month limits**

1. Competent authorities shall determine a baseline figure for the spot month position limit in an agricultural commodity derivative or a critical or significant commodity derivative by calculating 25 % of the deliverable supply for that commodity derivative. Where the deliverable supply is substantially higher than the total open interest, competent authorities shall determine the baseline figure for the spot month limit by calculating 25 % of the open interest in that commodity derivative.

That baseline figure shall be specified in lots.

2. Where a competent authority establishes different position limits for different times within the spot month period, those position limits shall decrease on an incremental basis towards the maturity of the commodity derivative and shall take into account the position management arrangements of the trading venue.

3. By way of derogation from paragraph 1, competent authorities shall determine the baseline figure for the spot month position limit for any commodity derivative with an underlying that qualifies as food intended for human consumption with a total combined open interest in spot month and other months' contracts exceeding 50 000 lots over a consecutive 3-month period by calculating 20 % of the deliverable supply in that commodity derivative. Where deliverable supply is substantially higher than total open interest, competent authorities shall determine the baseline figure for the spot month limit for such a commodity derivative by calculating 20 % of the open interest in that commodity derivative.

*Article 12***Deliverable supply**

1. Competent authorities shall calculate the deliverable supply for an agricultural commodity derivative or a critical or significant commodity derivative by identifying the quantity of the underlying commodity that can be used to fulfil the delivery requirements of the commodity derivative.

2. Competent authorities shall determine the deliverable supply for a commodity derivative referred to in paragraph 1 by reference to the average monthly amount of the underlying commodity available for delivery based on the most recent available data covering:

- (a) a 1-year period immediately preceding the determination for a critical or significant commodity derivative;
- (b) a 1 to 5-year period immediately preceding the determination for an agricultural commodity derivative.

3. In order to identify the quantity of the underlying commodity meeting the conditions of paragraph 1, competent authorities shall take into account the following criteria:

- (a) the storage arrangements for the underlying commodity;
- (b) the factors that may affect the supply of the underlying commodity.

*Article 13***Methodology for determining the baseline figure for other months' limits**

1. Competent authorities shall determine a baseline figure for the other months' position limit in an agricultural commodity derivative or a critical or significant commodity derivative by calculating 25 % of the open interest in that commodity derivative.
2. That baseline shall be specified in lots.

*Article 14***Open interest**

1. Competent authorities shall calculate the net open interest in an agricultural commodity derivative or a critical or significant commodity derivative by aggregating the number of lots of that commodity derivative that are outstanding on trading venues and reported positions in economically equivalent OTC contracts over a representative period of time. Competent authorities shall calculate the net open interest in that commodity derivative based on position reporting data.
2. By way of derogation from paragraph 1, when trading in a commodity derivative is transferred from one Union trading venue to another, or a third country trading venue to a Union trading venue, following a merger, business transfer or other corporate event or from one or more existing commodity derivatives to a commodity derivative newly admitted to trading on the same trading venue or in other similar circumstances, the competent authority shall calculate the open interest in that commodity derivative by taking into account the open interest on the former venue or in the former commodity derivatives. After a 6-month period, the competent authority shall calculate the open interest in accordance with paragraph 1.

*Article 15***Methodology for determining the baseline figure in respect of certain commodity derivatives**

1. By way of derogation from Article 11, competent authorities shall determine the baseline figure for the spot month position limits for critical or significant cash settled spot month commodity derivatives which are included under Section C, point (10), of Annex I to Directive 2014/65/EU and which have no measurable deliverable supply of their underlying commodities by calculating 25 % of the open interest in those commodity derivatives.
2. By way of derogation from Articles 11 and 13, where a commodity derivative provides that the underlying is delivered constantly over a specified period of time, the baseline figures calculated pursuant to Articles 11 and 13 shall apply to related commodity derivatives for the same underlying to the extent that their delivery periods overlap. The baseline figure shall be specified in units of the underlying.

SECTION 2

Factors relevant for the calculation of position limits*Article 16***Assessment of factors**

Competent authorities shall set the spot month and other months' position limits for an agricultural commodity derivative or a critical or significant commodity derivative by taking the baseline figure determined in accordance with Articles 11, 13 and 15 and adjusting it according to the potential impact of the factors referred to in Articles 18 to 21 on the integrity of the market for that derivative and for its underlying commodity to either of the following limits:

- (a) between 5 % and 35 %;
- (b) between 2,5 % and 35 %, for any derivative contract with an underlying that qualifies as food intended for human consumption with a total combined open interest in spot month and other months' contracts exceeding 50 000 lots over a consecutive 3-month period.

Article 17

New and less liquid agricultural commodity derivatives

1. By way of derogation from Article 16, for agricultural commodity derivatives traded on a trading venue with a total combined open interest in spot month and other months' contracts not exceeding 20 000 lots over a consecutive 3-month period, competent authorities shall set the spot month and other months' limit of positions held in those commodity derivatives at 10 000 lots.
2. The trading venue shall notify the competent authority when the total open interest of any commodity derivative referred to in paragraph 1 reaches 20 000 lots over a consecutive 3-month period. Competent authorities shall review the position limit upon receiving such notifications.

Article 18

Deliverable supply in the underlying commodity

Where the deliverable supply in the underlying commodity can be restricted or controlled or if the level of deliverable supply is low relative to the amount required for orderly settlement, competent authorities shall adjust the spot month position limit downwards. Competent authorities shall assess the extent to which that deliverable supply is used also as the deliverable supply for other commodity derivatives.

Article 19

The overall open interest

1. Where there is a large volume of overall open interest, competent authorities shall adjust the position limit downwards.
2. Where the open interest is significantly higher than the deliverable supply, competent authorities shall adjust the other months' position limit downwards.
3. Where the open interest is significantly lower than the deliverable supply, competent authorities shall adjust the other months' position limit upwards and, except where the baseline figure for the spot month limit is based on the open interest, shall adjust the spot month position limit downwards.

Article 20

The number of market participants

1. Where the daily average number of market participants holding a position in the commodity derivative over a period of one year is high, the competent authority shall adjust the position limit downwards.
2. By way of derogation from Article 16, competent authorities shall adjust the position limit upwards and set the spot month and other months' position limit between 5 % and 50 % of the reference amount if:
 - (a) the average number of market participants holding a position in the commodity derivative in the period leading up to the setting of the position limit is lower than 10; or

- (b) where the commodity derivative is an agricultural commodity derivative with a net open interest below 300 000 lots, the number of investment firms acting as a market maker in accordance with Article 4(1), point (7), of Directive 2014/65/EU in the commodity derivative at the time the position limit is set or reviewed is lower than three.

For the purposes of the first subparagraph, competent authorities may establish different position limits for different times within the spot month period, the other months' period or for both periods.

Article 21

Characteristics of the underlying commodity market

1. Competent authorities shall take into account how the characteristics of the underlying commodity market impact on the functioning and trading of the commodity derivative and on the size of the positions held by market participants, including having regard to the ease and speed of access which market participants have to the underlying commodity.
2. The assessment of the underlying commodity market referred to in paragraph 1 shall take into account the following criteria:
 - (a) whether there are restrictions on the supply of the commodity, including the perishability of the deliverable commodity;
 - (b) the method of transportation and delivery of the physical commodity, including the following:
 - (i) whether the commodity can be delivered to specified delivery points only;
 - (ii) the capacity constraints of specified delivery points;
 - (c) the structure, organisation and the operation of the market, including the seasonality present in extractive and agricultural commodity markets whereby physical supply fluctuates over the calendar year;
 - (d) the composition and role of market participants in the underlying commodity market, including consideration of the number of market participants which provide specific services that enable the functioning of the underlying commodity market such as risk management, delivery, storage, or settlement services;
 - (e) macroeconomic or other related factors that influence the operation of the underlying commodity market including the delivery, storage, and settlement of the commodity;
 - (f) the characteristics, physical properties and lifecycles of the underlying commodity.

Article 22

Repeal

Delegated Regulation (EU) 2017/591 is repealed.

References to Delegated Regulation (EU) 2017/591 shall be construed as references to this Regulation and shall be read in accordance with the correlation table in the Annex to this Regulation.

*Article 23***Entry into force and application**

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

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

Done at Brussels, 20 April 2022.

For the Commission
The President
Ursula VON DER LEYEN

ANNEX

Correlation table

Delegated Regulation (EU) 2017/591	This Regulation
Article 1	Article 1
Article 2	Article 2
Article 3(1)	Article 3(1), point (a)
–	Article 3(1), points (b) and (c)
–	Article 3(2)
Article 3(2)	Article 3(3)
Article 3(3)	Article 3(4)
–	Article 3(5) and (6)
Article 3(4)	Article 3(7)
Article 4	Article 4
Article 5(1)	–
Article 5(2)	Article 5(1)
Article 5(3)	Article 5(2)
Article 6	Article 6
Article 7(1)	Article 7(1)
–	Article 7(2)
Article 7(2)	Article 7(3)
–	Article 7(4)
Article 8(1) and (2)	Article 8(1) and (2)
–	Article 8(3) and (4)
Article 8(3)	Article 8(5)
Article 8(4)	Article 8(6)
–	Article 8(7)
–	Article 9
–	Article 10
Article 9(1)	Article 11(1)
Article 9(2)	Article 11(2)
Article 9(3)	Article 11(3)
Article 9(4)	Article 11(4)
Article 10(1)	Article 12(1)
–	Article 12(2)
Article 10(2)	–
Article 10(3)	Article 12(3)

Article 11(1)	Article 13(1)
Article 11(2)	Article 13(2)
Article 12	–
–	Article 14
Article 13(1)	Article 15(1)
Article 13(2)	–
Article 13(3)	Article 15(2)
Article 14	Article 16
–	Article 17(1)
Article 15(1)	–
Article 15(2)	Article 17(2)
Article 16	–
Article 17	Article 18
Article 18(1) and (2)	Article 19(1) and (2)
–	Article 19(3)
Article 18(3)	–
Article 19(1)	Article 20(1)
Article 19(2), first subparagraph, point (a)	Article 20(2), first subparagraph, point (a)
–	Article 20(2), first subparagraph, point (b)
Article 19(2), first subparagraph, point (b)	–
Article 19(2), second subparagraph	Article 20(2), second subparagraph
Article 20	Article 21
Article 21	–
–	Article 22
Article 22	Article 23

COMMISSION DELEGATED REGULATION (EU) 2022/1303**of 25 April 2022****amending Regulation (EU) 2019/787 of the European Parliament and of the Council as regards the definition of and requirements for ethyl alcohol of agricultural origin**

THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EU) 2019/787 of the European Parliament and of the Council of 17 April 2019 on the definition, description, presentation and labelling of spirit drinks, the use of the names of spirit drinks in the presentation and labelling of other foodstuffs, the protection of geographical indications for spirit drinks, the use of ethyl alcohol and distillates of agricultural origin in alcoholic beverages, and repealing Regulation (EC) No 110/2008 ⁽¹⁾, and in particular Article 8(1) thereof,

Whereas:

- (1) Article 5 of Regulation (EU) 2019/787 provides for the definition of and the requirements for ethyl alcohol of agricultural origin, also referred to by the industry as agricultural alcohol, neutral alcohol or rectified alcohol. That technical definition and those requirements have been carried over without any substantial change from those laid down in point 1 of Annex I to Regulation (EC) No 110/2008 of the European Parliament and of the Council ⁽²⁾.
- (2) The definition and the requirements for ethyl alcohol of agricultural origin provided for in Article 5 of Regulation (EU) 2019/787 result however partly outdated from a technical and scientific point of view. In particular, the maximum levels of certain residues need to be brought in line with the technical parameters currently used by the industry and by most laboratories of analysis. The technological progress in this field justifies thus the need for an amendment of that definition and those requirements.
- (3) The references to 'total acidity', 'volatile bases containing nitrogen' and 'dry extract' provided for in Article 5, point (d)(i), (vi) and (vii), of Regulation (EU) 2019/787 are no longer relevant as they are not normally used as process technical parameters, since the presence of such residues in an alcohol with a strength of 96 % by volume is negligible and it is unlikely to be found in an ethyl alcohol of agricultural origin.
- (4) Concerning 'esters', 'aldehydes' and 'higher alcohols', the maximum levels provided for in Article 5, point (d)(ii), (iii) and (iv), of Regulation (EU) 2019/787 lack specificity and require currently wet chemistry methods, which are not defined in Union law. A more precise definition of the substances to which the residue limits apply would improve the results of the analyses to be carried out on ethyl alcohol of agricultural origin with methods such as gas chromatography and would be beneficial for analysts since many of the older analysis techniques require the use of dangerous chemicals.
- (5) In particular, it is appropriate to limit esters to 'ethyl acetate' only. While many esters can be formed in the fermentation process, the one that exists in the highest concentration is ethyl acetate, while any other esters potentially present in ethyl alcohol of agricultural origin are unlikely to be detectable by employing standard analytical techniques and contribute in a negligible way to the total amount of esters. The measurement of ethyl acetate should be based on the reference method set out in Commission Regulation (EC) No 2870/2000 ⁽³⁾ as this is an established method currently used for the analysis of a number of spirit drinks.

⁽¹⁾ OJ L 130, 17.5.2019, p. 1.

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

⁽³⁾ Commission Regulation (EC) No 2870/2000 of 19 December 2000 laying down Community reference methods for the analysis of spirit drinks (OJ L 333, 29.12.2000, p. 20).

- (6) Similarly, the main contributing aldehyde to the total aldehydes is 'acetaldehyde'. It is therefore appropriate to only use acetaldehyde as the parameter in this determination. Since acetaldehyde is in equilibrium with 1,1 diethoxyethane, that is the two molecules are both present and they convert one into each other due to the chemical physical conditions, it is also necessary to count the fraction of acetaldehyde contained in the acetal. The measurement of acetaldehyde should be based on the reference method set out in Regulation (EC) No 2870/2000 as this is an established method currently used for the analysis of a number of spirit drinks.
- (7) Higher alcohols are present in substantial amounts after fermentation. However, only a small amount of higher alcohols is present in ethyl alcohol of agricultural origin since higher alcohols are easily distilled because of the higher boiling points. The measurement of the higher alcohol should be based on the reference method set out in Regulation (EC) No 2870/2000 as this is an established method currently used for the analysis of a number of spirit drinks.
- (8) Concerning 'furfural', the current requirement that it is not detectable refers to a wet chemistry method that is no longer used in most Member States, thus preventing uniform and defined analysis methods and results. Since currently there is no defined reference method for the analysis of furfural in ethyl alcohol of agricultural origin, it is appropriate to define a threshold that can be achieved with the different methods that are currently used in most laboratories in the Member States, that are more precise since the original inclusion of that requirement. The measurement of furfural should be based on the liquid chromatography method for wood compounds set out in Regulation (EC) No 2870/2000.
- (9) Moreover, for the sake of completeness and in line with the definition of distillate of agricultural origin laid down in Article 4, point (7), of Regulation (EU) 2019/787, it is appropriate to provide that ethyl alcohol of agricultural origin is the result of the distillation, after alcoholic fermentation, of agricultural products.
- (10) Regulation (EU) 2019/787 should therefore be amended accordingly,

HAS ADOPTED THIS REGULATION:

Article 1

Article 5 of Regulation (EU) 2019/787 is replaced by the following:

'Article 5

Definition of and requirements for ethyl alcohol of agricultural origin

For the purposes of this Regulation, ethyl alcohol of agricultural origin is a liquid which complies with the following requirements:

- (a) it has been obtained through alcoholic fermentation, followed by distillation exclusively of agricultural products listed in Annex I to the Treaty;
- (b) it has no detectable taste other than that of the raw materials used in its production;
- (c) its minimum alcoholic strength by volume is 96,0 %;
- (d) its maximum levels of residues do not exceed the following:
 - (i) ethyl acetate: 1,3 grams per hectolitre of 100 % vol. alcohol;
 - (ii) acetaldehyde (sum of ethanal and 1,1-diethoxyethane): 0,5 grams per hectolitre of 100 % vol. alcohol;
 - (iii) higher alcohols (sum of: propan-1-ol, butan-1-ol, butan-2-ol, 2- methylpropan-1-ol, 2-methylbutan- 1-ol and 3-methylbutan-1-ol): 0,5 grams per hectolitre of 100 % vol. alcohol;
 - (iv) methanol: 30 grams per hectolitre of 100 % vol. alcohol;
 - (v) furfural: 0,5 grams per hectolitre of 100 % vol. alcohol.

Article 2

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

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

Done at Brussels, 25 April 2022.

For the Commission
The President
Ursula VON DER LEYEN

COMMISSION IMPLEMENTING REGULATION (EU) 2022/1304**of 20 July 2022****approving non-minor amendments to the specification for a name entered in the register of protected designations of origin and protected geographical indications ('Valašský frgál' (PGI))**

THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EU) No 1151/2012 of the European Parliament and of the Council of 21 November 2012 on quality schemes for agricultural products and foodstuffs ⁽¹⁾, and in particular Article 52(2) thereof,

Whereas:

- (1) Pursuant to the first subparagraph of Article 53(1) of Regulation (EU) No 1151/2012, the Commission has examined Czechia's application for the approval of amendments to the specification for the protected geographical indication 'Valašský frgál', registered under Commission Implementing Regulation (EU) No 1263/2013 ⁽²⁾.
- (2) Since the amendments in question are not minor within the meaning of Article 53(2) of Regulation (EU) No 1151/2012, the Commission published the amendment application in the *Official Journal of the European Union* ⁽³⁾ as required by Article 50(2)(a) of that Regulation.
- (3) As no statement of opposition under Article 51 of Regulation (EU) No 1151/2012 has been received by the Commission, the amendments to the specification should be approved,

HAS ADOPTED THIS REGULATION:

*Article 1*The amendments to the specification published in the *Official Journal of the European Union* regarding the name 'Valašský frgál' (PGI) are hereby approved.*Article 2*This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

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

Done at Brussels, 20 July 2022.

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

⁽¹⁾ OJ L 343, 14.12.2012, p. 1.

⁽²⁾ Commission Implementing Regulation (EU) No 1263/2013 of 28 November 2013 entering a name in the register of protected designations of origin and protected geographical indications [Valašský frgál (PGI)] (OJ L 326, 6.12.2013, p. 5).

⁽³⁾ OJ C 134, 25.3.2022, p. 40.

COMMISSION IMPLEMENTING REGULATION (EU) 2022/1305**of 25 July 2022****imposing a definitive anti-dumping duty on imports of molybdenum wire originating in the People's Republic of China following an expiry review pursuant to Article 11(2) of Regulation (EU) 2016/1036 of the European Parliament and of the Council**

THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EU) 2016/1036 of the European Parliament and of the Council of 8 June 2016 on protection against dumped imports from countries not members of the European Union ⁽¹⁾ ('the basic Regulation'), and in particular Article 11(2) thereof,

Whereas:

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

- (1) Anti-dumping measures on imports of molybdenum wire from the People's Republic of China (the 'PRC' or 'China' or 'the country concerned') were originally imposed in 2010 by Council Implementing Regulation (EU) No 511/2010 ⁽²⁾ ('the original measures'). The investigation leading to the original measures is referred to as 'the original investigation'. The original measures took the form of an ad valorem duty rate of 64,3 %.
- (2) In 2012 and 2013, following two anti-circumvention investigations, the original measures were first extended to imports of molybdenum wire consigned from Malaysia ⁽³⁾ and, secondly, to imports of molybdenum wire from the PRC containing by weight at least 97 % of molybdenum, of which the maximum cross-sectional dimension exceeds 1,35 mm but does not exceed 4,0 mm ⁽⁴⁾. On 30 October 2015, following a third anti-circumvention investigation, the measures were extended to molybdenum wire containing by weight at least 97 % of molybdenum, with a maximum cross-sectional dimension that exceeds 4,0 mm but does not exceed 11,0 mm ⁽⁵⁾.

⁽¹⁾ OJ L 176, 30.6.2016, p. 21.

⁽²⁾ Council Implementing Regulation (EU) No 511/2010 of 14 June 2010 imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of certain molybdenum wires originating in the People's Republic of China (OJ L 150, 16.6.2010, p. 17).

⁽³⁾ Council Implementing Regulation (EU) No 14/2012 of 9 January 2012 extending the definitive anti-dumping duty imposed by Implementing Regulation (EU) No 511/2010 on imports of certain molybdenum wires originating in the People's Republic of China to imports of certain molybdenum wires consigned from Malaysia, whether declared as originating in Malaysia or not and terminating the investigation in respect of imports consigned from Switzerland (OJ L 8, 12.1.2012, p. 22).

⁽⁴⁾ Council Implementing Regulation (EU) No 871/2013 of 2 September 2013 extending the definitive anti-dumping duty imposed by Implementing Regulation (EU) No 511/2010 on imports of molybdenum wire, containing by weight at least 99,95 % of molybdenum, of which the maximum cross-sectional dimension exceeds 1,35 mm but does not exceed 4,0 mm, originating in the People's Republic of China to imports of molybdenum wire, containing by weight at least 97 % of molybdenum, of which the maximum cross-sectional dimension exceeds 1,35 mm but does not exceed 4,0 mm, originating in the People's Republic of China (OJ L 243, 12.9.2013, p. 2).

⁽⁵⁾ Commission Implementing Regulation (EU) 2015/1952 of 29 October 2015 extending the definitive anti-dumping duty imposed by Council Implementing Regulation (EU) No 511/2010 on imports of molybdenum wire, containing by weight at least 99,95 % of molybdenum, of which the maximum cross-sectional dimension exceeds 1,35 mm but does not exceed 4,0 mm, originating in the People's Republic of China to imports of molybdenum wire, containing by weight at least 97 % of molybdenum, of which the maximum cross-sectional dimension exceeds 4,0 mm but does not exceed 11,0 mm, originating in the People's Republic of China (OJ L 284, 30.10.2015, p. 100).

- (3) The measures currently in force were imposed on 30 June 2016, by Commission Implementing Regulation (EU) 2016/1046 ⁽⁶⁾ following an expiry review ('previous expiry review').

1.2. Request for an expiry review

- (4) Following the publication of a notice of impending expiry ⁽⁷⁾, the European Commission ('the Commission') received a request for a review pursuant to Article 11(2) of the basic Regulation.
- (5) The request was submitted on 23 March 2021 by Plansee SE ('the applicant'), that represents more than 25 % of the total Union production of certain molybdenum wires, on behalf of the Union industry of molybdenum wire, in the sense of Article 5(4) of the basic Regulation. The request for review was based on the grounds that the expiry of the measures would be likely to result in continuation or recurrence of dumping and recurrence of injury to the Union industry.

1.3. Initiation of an expiry review

- (6) Having determined, after consulting the Committee established by Article 15(1) of the basic Regulation, that sufficient evidence existed for the initiation of an expiry review, on 28 June 2021 the Commission initiated an expiry review with regard to imports into the Union of molybdenum wire originating in the PRC on the basis of Article 11(2) of the basic Regulation. It published a Notice of Initiation in the *Official Journal of the European Union* ⁽⁸⁾ ('the Notice of Initiation').

1.4. Review investigation period and period considered

- (7) The investigation of continuation or recurrence of dumping covered the period from 1 January 2020 to 31 December 2020 ('review investigation period'). The examination of trends relevant for the assessment of the likelihood of a continuation or recurrence of injury covered the period from 1 January 2017 to the end of the review investigation period ('the period considered').

1.5. Interested parties

- (8) In the Notice of Initiation, interested parties were invited to contact the Commission in order to participate in the investigation. In addition, the Commission specifically informed the applicant as well as the second known Union producer, known users and the authorities of the PRC, about the initiation of the expiry review and invited them to participate.
- (9) Interested parties had an opportunity to comment on the initiation of the expiry review and to request a hearing with the Commission and/or the Hearing Officer in trade proceedings.

1.6. Sampling

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

(a) *No sampling of Union producers*

- (11) In the Notice of Initiation, the Commission did not apply sampling but invited the two known Union producers, namely Plansee SE and Osram GmbH, to provide questionnaire replies within the specified period.

⁽⁶⁾ OJ L 170, 29.6.2016, p. 19.

⁽⁷⁾ OJ C 327, 5.10.2020, p. 18.

⁽⁸⁾ OJ C 251, 28.6.2021, p. 17.

(b) *Sampling of importers*

- (12) To decide whether sampling was necessary and, if so, to select a sample, the Commission asked unrelated importers to provide the information specified in the Notice of Initiation.
- (13) No importers came forward to provide the information requested in the Notice of Initiation.

(c) *Sampling of producers in China*

- (14) To decide whether sampling was necessary and, if so, to select a sample, the Commission asked all known producers of molybdenum wire in the PRC to provide the information specified in the Notice of Initiation. In addition, it asked the Mission of the People's Republic of China to the European Union to identify other producers, if any, that could be interested in participating in the investigation. However, no response was provided.
- (15) Consequently, the Commission informed the authorities of the PRC that absent cooperation it intended to resort to the use of facts available under Article 18 of the basic Regulation when examining the continuation or recurrence of dumping. The authorities of the PRC did not respond.

1.7. Replies to the questionnaire

- (16) Questionnaires for Union producers, as well as those for importers, users and producers in the PRC were made available online on the day of the initiation.
- (17) The Commission sent a questionnaire concerning the existence of significant distortions in the PRC within the meaning of Article 2(6a)(b) of the basic Regulation to the Government of the People's Republic of China ('GOC').
- (18) A questionnaire reply was received from one Union producer, Plansee SE, which is also the applicant and represents [86-94 %] of the total sales of the Union industry on the Union market.
- (19) On 24 June 2021, the sole other Union producer expressed the wish to remain neutral in the investigation and did not provide a reply to the questionnaire.
- (20) Neither the GOC nor any producer in the PRC provided a questionnaire reply.
- (21) A macroeconomic questionnaire was also sent to Plansee SE on 15 November 2021, to which the reply was received by the Commission on 29 November 2021.

(a) *Verification*

- (22) The Commission sought and verified all the information deemed necessary for the determination of likelihood of continuation or recurrence of dumping and injury and of the Union interest. One verification visit pursuant to Article 16 of the basic Regulation was carried out at the premises of the Union producer Plansee SE, Austria.

(b) *Subsequent procedure*

- (23) On 9 June 2022, the Commission disclosed the essential facts and considerations on the basis of which it intended to maintain the anti-dumping duties in force.
- (24) All parties were granted a period within which they could make comments on the disclosure. No comments were received.

2. PRODUCT UNDER REVIEW AND LIKE PRODUCT

2.1. Product under review

- (25) The product under review is the same as in the original investigation and previous expiry review, namely molybdenum wire, containing by weight at least 99,95 % of molybdenum, of which the maximum cross-sectional dimension exceeds 1,35 mm but does not exceed 4,0 mm, falling under CN code ex 8102 96 00 ('product under review').
- (26) The product under review originating in the PRC, not consigned from Malaysia, currently falls under TARIC code 8102 96 00 19. The product under review consigned from Malaysia, whether declared as originating in Malaysia or not, currently falling under TARIC code 8102 96 00 11, was not investigated as it was not part of the product definition in the original investigation.
- (27) Molybdenum wire is mainly used in the automotive industry, for example in synchronising rings of cars with manual gearboxes.

2.2. Like product

- (28) As established in the original investigation, the product under review and the like product are identical in terms of physical, chemical and technical characteristics, as well as in the previous expiry review. This expiry review investigation confirmed that the following products have the same basic physical, chemical and technical characteristics as well as the same basic uses:
- the product under review, originating in China, not consigned from Malaysia;
 - the product produced and sold on the domestic market of China; and
 - the product produced and sold in the Union by the Union industry.
- (29) These products are therefore considered to be like products within the meaning of Article 1(4) of the basic Regulation.

3. DUMPING

3.1. Preliminary remarks

- (30) During the review investigation period, imports of molybdenum wires from the PRC continued albeit at lower levels than in the review investigation period of the previous expiry review.
- (31) As mentioned in recital (20), no producer from the PRC cooperated in the investigation.
- (32) Therefore, on 16 July 2021 the Commission informed the authorities of the PRC that due to the absence of cooperation, the Commission may apply Article 18 of the basic Regulation concerning the findings with regard to the PRC. The Commission did not receive any comments concerning its intention to resort to the use of facts available under Article 18 of the basic Regulation.
- (33) Consequently, in accordance with Article 18(1) of the basic Regulation, the findings in relation to the likelihood of continuation or recurrence of dumping were based on facts available, in particular the information contained in the request for the expiry review combined with other sources of information, such as statistics on imports and exports (Comext (Eurostat)), Dun & Bradstreet ⁽⁹⁾, Global Trade Atlas ('GTA') ⁽¹⁰⁾.

⁽⁹⁾ Dun & Bradstreet (D&B): <https://sso.dnb.com/>

⁽¹⁰⁾ <https://www.gtis.com/gta/>

3.2. Continuation of dumping of imports during the review investigation period

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

- (34) Given the sufficient evidence available at the initiation of the investigation tending to show with regard to the PRC the existence of significant distortions within the meaning of point (b) of Article 2(6a) of the basic Regulation, the Commission initiated the investigation on the basis of Article 2(6a) of the basic Regulation.
- (35) In order to obtain information, it deemed necessary for its investigation with regard to the alleged significant distortions, the Commission sent a questionnaire to the GOC. In addition, in point 5.3.2 of the Notice of Initiation, the Commission invited all interested parties to make their views known, submit information and provide supporting evidence regarding the application of Article 2(6a) of the basic Regulation within 37 days of the date of publication of the Notice of Initiation in the *Official Journal of the European Union*.
- (36) No questionnaire reply was received from the GOC and no submission on the application of Article 2(6a) of the basic Regulation was received within the deadline. Subsequently, on 16 July 2021 the Commission informed the GOC that it would use facts available in accordance with Article 18 of the basic Regulation for the determination of the existence of the significant distortions in the PRC.
- (37) In point 5.3.2 of the Notice of Initiation, the Commission specified that, in view of evidence available at the time of initiation, a possible representative country for the purpose of determining the normal value based on undistorted prices or benchmarks pursuant to Article 2(6a)(a) of the basic Regulation for the PRC was Turkey. The Commission further stated that it would examine other possibly appropriate representative countries in accordance with the criteria set out in Article 2(6a)(a) first indent of the basic Regulation.
- (38) On 10 March 2021, the Commission issued the first note for the file ('the First Note') and informed interested parties on the relevant sources it intended to use for the determination of the normal value. In that note, the Commission provided a list of all factors of production such as raw materials, labour and energy used in the production of molybdenum wires. With regard to the choice of a representative country the Commission noted that the product under review was only produced in a handful of countries worldwide ⁽¹⁾ and that only Thailand was identified as a country with the same level of economic development as the PRC. However, with regard to Thailand, sufficient information on company level necessary to establish selling, general and administrative expenses (SG&A) and profit was not readily available.
- (39) Given that neither the Commission, nor the applicant, could identify a representative country with the same level of economic development as the PRC where the product under review was produced and for which all necessary information was readily available, the Commission attempted to find a suitable representative country with the same level of economic development as the PRC where there was production of a similar product, in the same general category or sector, but was unable to identify any such product. In addition, no interested party had suggested a suitable representative country with the same level of economic development as the PRC where there was production of the product under review, or production of a similar product. The Commission therefore exceptionally suggested in the First Note, in addition to Thailand, also India as a possible source to establish undistorted prices and costs and invited interested parties to comment. Only the applicant commented on this note.
- (40) On 29 October 2021, by a second note ('the Second Note'), the Commission informed the interested parties on the relevant sources it intended to use for the determination of the normal value, with India as an appropriate source and invited interested parties to comment. No comments were received.

⁽¹⁾ Austria, China, Germany, India, Thailand and USA.

3.2.2. Normal value

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

3.2.3. Existence of significant distortions

3.2.3.1. Normal Value

- (44) In recent investigations concerning the tungsten sector in the PRC ⁽¹²⁾, the Commission found that significant distortions in the sense of Article 2(6a)(b) of the basic Regulation were present. Most producers of molybdenum products also process tungsten in their plants. Moreover, tungsten and molybdenum have similar chemical properties and industrial uses. As further discussed below, in addition to the systemic significant distortions affecting all factors of production in the PRC, the investigation revealed that in the Chinese planning and guidance documents tungsten and molybdenum are usually mentioned together. The Commission concluded in this investigation that, based on the evidence available, the application of Article 2(6a) of the basic Regulation was appropriate.
- (45) In those recent investigations on tungsten, the Commission found that there is substantial government intervention in the PRC resulting in a distortion of the effective allocation of resources in line with market principles. ⁽¹³⁾ In particular, in addition to the systemic distortions affecting the Chinese economy, the Commission concluded that in the tungsten sector, not only does a substantial degree of ownership by the GOC persists in the sense of Article 2(6a)(b), first indent of the basic Regulation ⁽¹⁴⁾ but the GOC is also in a position to interfere with prices and costs through State presence in firms in the sense of Article 2(6a)(b), second indent of the basic Regulation. ⁽¹⁵⁾ The Commission further found that the State's presence and intervention in the financial markets, as well as in the provision of raw materials and inputs, have an additional distorting effect on the market. Indeed, overall, the system of planning in the PRC results in resources being concentrated in sectors designated as strategic or otherwise politically important by the GOC, rather than being allocated in line with market forces ⁽¹⁶⁾. Moreover, the

⁽¹²⁾ Commission Implementing Regulation (EU) 2019/1267 of 26 July 2019 imposing a definitive anti-dumping duty on imports of tungsten electrodes originating in the People's Republic of China following an expiry review under Article 11(2) of Regulation (EU) 2016/1036 (OJ L 200, 29.7.2019, p. 4).

⁽¹³⁾ Commission Implementing Regulation (EU) 2019/1267, recitals 95-96.

⁽¹⁴⁾ Commission Implementing Regulation (EU) 2019/1267, recitals 56-60.

⁽¹⁵⁾ Commission Implementing Regulation (EU) 2019/1267, recitals 61-64.: While the right to appoint and to remove key management personnel in SOEs by the relevant State authorities, as provided for in the Chinese legislation, can be considered to reflect the corresponding ownership rights, CCP cells in enterprises, state owned and private alike, represent another important channel through which the State can interfere with business decisions. According to the PRC's company law, a CCP organisation is to be established in every company (with at least three CCP members as specified in the CCP Constitution) and the company shall provide the necessary conditions for the activities of the party organisation. In the past, this requirement appears not to have always been followed or strictly enforced. However, since at least 2016 the CCP has reinforced its claims to control business decisions in SOEs as a matter of political principle. The CCP is also reported to exercise pressure on private companies to put 'patriotism' first and to follow party discipline. In 2017, it was reported that party cells existed in 70 % of some 1.86 million privately owned companies, with growing pressure for the CCP organisations to have a final say over the business decisions within their respective companies. These rules are of general application throughout the Chinese economy, across all sectors, including to the producers of [the product under review] and the suppliers of their inputs.

⁽¹⁶⁾ Commission Implementing Regulation (EU) 2019/1267, recitals 65-73.

Commission concluded that the Chinese bankruptcy and property laws do not work properly in the sense of Article 2(6a)(b), fourth indent of the basic Regulation, thus generating distortions in particular when maintaining insolvent firms afloat and when allocating land use rights in the PRC. ⁽¹⁷⁾ In the same vein, the Commission found distortions of wage costs in the tungsten sector in the sense of Article 2(6a)(b), fifth indent of the basic Regulation, ⁽¹⁸⁾ as well as distortions in the financial markets in the sense of Article 2(6a)(b), sixth indent of the basic Regulation, in particular concerning access to capital for corporate actors in the PRC. ⁽¹⁹⁾

- (46) Like in the previous investigation concerning the tungsten sector in the PRC, the Commission examined in the present investigation on molybdenum whether it was appropriate or not to use domestic prices and costs in the PRC, in view of the existence of significant distortions within the meaning of point (b) of Article 2(6a) of the basic Regulation. The Commission did so on the basis of the evidence available on the file, including the evidence contained in the request, as well as in the Commission's report on significant distortions in China ⁽²⁰⁾ (the Report), which relies on publicly available sources. That analysis covered the examination of the substantial government interventions in the PRC's economy in general, but also the specific market situation in the relevant sector including the product under review. The Commission further supplemented these evidentiary elements with its own research on the various criteria relevant to confirm the existence of significant distortions in the PRC as also found by its previous investigations in this respect.
- (47) The request in this case referred to the Report, in particular to the influence of the Chinese state into the non-ferrous metals including the molybdenum industry via the 13th 5-Year Plan for the Economic and Social Development of the People's Republic of China (13th 5-Year General Plan) and the 13th 5-Year Plan for the Non-Ferrous Metals Industry (13th 5-Year Non-Ferrous Plan). Moreover, the request mentions that based on the Made in China 2025 initiative, the molybdenum industry is eligible to receive considerable state funding. The request mentions specific financial funds created by the Chinese state to support the molybdenum industry (China Development Bank, the National Integrated Circuit Fund, the Advanced Manufacturing Fund, different local funds established by the local governments and funding to support and restructure manufacturers provided by China Reform Holdings). The request further lists as an example two companies in the molybdenum industry that benefitted from state funding: Jiduicheng Molybdenum and Xiamen Tungsten, the mother company of Xiamen Honglu Tungsten.
- (48) In the molybdenum sector, a substantial degree of ownership and control by the GOC persists in the sense of Article 2(6a)(b), second indent of the basic Regulation. Many of the largest producers are owned by the State. Since there was no cooperation from Chinese producers of the product under review, the exact ratio of the private to state-owned molybdenum wire producers could not be determined. However, the investigation revealed that in the molybdenum wire sector a number of large producers are state owned enterprises ('SOEs'). These include Jinduicheng Molybdenum, Xiamen Honglu Tungsten, Chengdu Hongbo Industrial and Luoyang Hi-tech Molybdenum & Tungsten Material.
- (49) As to the GOC being in a position to interfere with prices and costs through State presence in firms in the sense of Article 2(6a)(b), second indent of the basic Regulation, the Commission established during the investigation the existence of personal connections between producers of the product under review and the Chinese Communist Party ('CCP'), such as CCP members among the senior management or members of the board of directors in a number of companies manufacturing the product under review. As an example, in Jinduicheng Molybdenum, the Chairman of the Board of Administrators is at the same time Party Committee Secretary, General Manager is also Party Committee Deputy Secretary and the Secretary to the Discipline Commission serves at the same time as Party Committee Deputy Secretary ⁽²¹⁾. In Xiamen Honglu Tungsten, the chairman of the board of the holding company SOE Xiamen Tungstene is a CCP member ⁽²²⁾. Both public and privately owned enterprises in the molybdenum wire sector are subject to policy supervision and guidance.

⁽¹⁷⁾ Commission Implementing Regulation (EU) 2019/1267, recitals 74-77.

⁽¹⁸⁾ Commission Implementing Regulation (EU) 2019/1267, recitals 78-80.

⁽¹⁹⁾ Commission Implementing Regulation (EU) 2019/1267, recitals 81-91.

⁽²⁰⁾ Commission staff working document SWD(2017) 483 final/2, 20.12.2017, available at: https://trade.ec.europa.eu/doclib/docs/2017/december/tradoc_156474.pdf

⁽²¹⁾ See company website for details: <http://www.jdcmmc.com/INFO-Single/010102.shtml>

⁽²²⁾ https://vip.stock.finance.sina.com.cn/corp/view/vCI_CorpManagerInfo.php?stockid=600549 &Pcode = 30011851&Name=%BB%C6%B3%A4%B8%FD

- (50) The following examples illustrate the above trend of an increasing level of intervention by the GOC in the molybdenum wire sector. Many producers of the product under review explicitly emphasise Party building activities on their websites, have party members in the company management and underline their affiliation to the CCP. The investigation revealed Party building activities in a number of molybdenum wire producers, including Chengdu Hongbo Industrial. Another manufacturer, Jinduicheng Molybdenum, states the following on their website on the subject of party building ⁽²³⁾: “The meeting pointed out that in 2019, the company’s Party committee conscientiously implemented the various requirements of the Party Committee of Shaanxi Non Ferrous Metals Group. (...) [the Company’s Party Committee] focussed on central work and the political leadership promoted high quality development; [and] continued to strictly control management.”
- (51) Xiamen Honglu Tungsten is another molybdenum wire producer with a Party Committee. According to the articles of association of the holding company SOE Xiamen Tungsten, Article 96: “[t]he Company establishes the Committee of the Communist Party of China of Xiamen Tungsten Industry Co., Ltd. (hereinafter referred to as the Party Committee of the Company) and the Disciplinary Inspection Committee of the Communist Party of China Xiamen Tungsten Industry Co., Ltd. (hereinafter referred to as the Disciplinary Committee of the Company).” According to Article 98 of the articles of association, “[t]he Party Committee of the company shall perform its duties in accordance with the “Party Constitution” and other intra-party regulations: (1) Ensure supervision of the principles and policies of the Party and the State, and implement the decisions and arrangements of the Party Central Committee, the State Council, the Provincial Party Committee and the Provincial Government in the company; (2) Further combine the principles of the Party’s management of cadres with the compliance with law of the selection of business managers by the board of directors [...]; (3) Study and discuss the company’s reform, development and stability, major business management matters and major issues concerning the personal interests of employees, and put forward opinions and suggestions; [...] (5) Strengthen the building of grass-roots Party organizations and Party members teams in the enterprise;” ⁽²⁴⁾.
- (52) Furthermore, policies discriminating in favour of domestic producers or otherwise influencing the market in the sense of Article 2(6a)(b), third indent of the basic Regulation are in place in the molybdenum sector. The molybdenum industry is mentioned in a number of guiding documents, demonstrating that the companies producing molybdenum wire are subject of GOC’s support ⁽²⁵⁾ This is confirmed in the numerous plans, directives and other documents focused on molybdenum, which are issued at national, regional and municipal level. Molybdenum is mentioned for example in the following documents:
- 13th five year plan (“FYP”) on mineral resources;
 - 13th FYP for the nonferrous metals industry;
 - National mineral resources plan 2016-2020;
 - 2016 *Catalogue of key high tech fields supported by the State* ⁽²⁶⁾, molybdenum is mentioned in Section IV.1.3 New materials – Rare earths;
 - 2019 version of the Guiding Catalogue for industry structural adjustment, molybdenum is mentioned in Part II: restricted industries, Section 7.1-non ferrous metals page 87;

Guiding Opinions on Expanding Investment in Strategic Emerging Industries and Cultivating and Strengthening New Growth Points and Growth Poles, No 1409 [2020] of the National Development and Reform Commission ⁽²⁷⁾, stipulating: “Implement an action plan for innovation and development of new materials, improve the technological level of mining, smelting and deep processing of rare earths, vanadium-titanium, tungsten-molybdenum, lithium, rubidium-caesium, graphite and other specific resources”.

⁽²³⁾ <http://www.jdcmmc.com/INFO/10282.shtml>

⁽²⁴⁾ Xiamen Tungsten articles of association: http://file.finance.sina.com.cn/211.154.219.97:9494/MRGG/CNSESH_STOCK/2021/2021-5/2021-05-29/7288169.PDF

⁽²⁵⁾ See China Report, chapters on 13th FYP for mineral resources and 13th FYP for the nonferrous metals industry, pages 267-282.

⁽²⁶⁾ http://kj.quanzhou.gov.cn/wsbs/xgxz/201703/t20170322_431820.htm

⁽²⁷⁾ https://www.ndrc.gov.cn/xxgk/zcfb/tz/202009/t20200925_1239582.html

Molybdenum is furthermore subject to local regulation, at the provincial or municipal level. For example:

- the 2017 Heilongjiang Province's Implementing Opinion on structural adjustments and efficiency gains in the non-ferrous metals industry ⁽²⁸⁾, provides the following: “Molybdenum industry chain: Focus on the large and small Xing'an Mountains, raise the level of development and utilization of Luming molybdenum mine and develop downstream smelting as well as refined and deep processing products as soon as possible. Promote the preliminary work of the Molybdenum Mine at Chalukou, Daxingan Mountains, and the early development and utilization of resources. Strengthen organization and coordination, focus on the construction of molybdenum smelting projects in Tieli Mineral Resources Intensive Processing Industry Park and Jiagedaqi Mining Economy Industry Park, and develop key technologies such as molybdenum powder preparations, nano-molybdenum trioxide preparations, molybdenum alloy metallurgy, welding, and industrial catalysts recovery and use; develop deep processed products such as molybdenum iron, molybdenum oxide, molybdenum acid plating, molybdenum bars, molybdenum wires, molybdenum metal ultra-fine powder coating products, ammonium molybdate; create molybdenum mining and dressing -molybdenum smelting-molybdenum processing industry chain. The Yichun Municipal Government and the Daxingan Regional Administration take the lead respectively.”
- Shaanxi Province's 13th five-year plan on economic and social development ⁽²⁹⁾ states on page 31-32: “Reform and upgrade traditional industries: promote the deep processing of precious metals such as titanium, molybdenum, aluminium” and further: “Make Weinan (Shaanxi) the capital of molybdenum”.
- NDRC 2020 catalogue of encouraged industries in the Western regions ⁽³⁰⁾ lists the following as encouraged industries in the Sichuan province: “tungsten and molybdenum products and tungsten and molybdenum wire materials”.

- (53) As can be seen from the above examples, the GOC guides the development of the molybdenum sector in accordance with a broad range of policy tools and directives and controls virtually every aspect in the development and functioning of the sector. Thus, the molybdenum wire industry benefits from governmental guidance and intervention concerning the main raw material, namely molybdenum oxide.
- (54) In addition to the above, the molybdenum wire producers are also beneficiaries of state subsidies, which clearly indicates the interest of the state in this sector. During the investigation, the Commission established that a number of molybdenum wire producers benefited from direct state subsidies. These include Xiamen Honglu Tungsten ⁽³¹⁾ and Luoyang Hi-tech Molybdenum & Tungsten Material ⁽³²⁾.
- (55) In sum, the GOC has measures in place to induce operators to comply with the public policy objectives of supporting encouraged industries, including the production of molybdenum as the main raw materials used in the manufacturing of the product under review. Such measures impede market forces from operating freely.
- (56) The present investigation has not revealed any evidence that the discriminatory application or inadequate enforcement of bankruptcy and property laws according to Article 2(6a)(b), fourth indent of the basic Regulation in the sector referred to above in recital (45) would not affect the manufacturers of the product under review.
- (57) The molybdenum sector is also affected by the distortions of wage costs in the sense of Article 2(6a)(b), fifth indent of the basic Regulation, as also referred to above in recital (45). Those distortion affect the sector both directly (when producing the product under review or the main inputs), as well as indirectly (when having access to capital or inputs from companies subject to the same labour system in the PRC).

⁽²⁸⁾ <https://www.hlj.gov.cn/n200/2017/0525/c75-10829703.html>

⁽²⁹⁾ <https://www.ndrc.gov.cn/fggz/fzzlgh/dfzgh/201606/P020191104643472060002.pdf>

⁽³⁰⁾ http://www.gov.cn/gongbao/content/2021/content_5598119.htm

⁽³¹⁾ See page 238 of the 2020 annual report of the holding company Xiamen Tungsten http://file.finance.sina.com.cn/211.154.219.97:9494/MRGG/CNESH_STOCK/2021/2021-3/2021-03-31/7001827.PDF(accessed 16 May 2022).

⁽³²⁾ See page 139 of the 2020 annual report.

- (58) Moreover, no evidence was submitted in the present investigation demonstrating that the molybdenum sector is not affected by the government intervention in the financial system in the sense of Article 2(6a)(b), sixth indent of the basic Regulation, as also referred to above in recital (45). Therefore, the substantial government intervention in the financial system leads to the market conditions being severely affected at all levels.
- (59) Finally, the Commission recalls that in order to produce the product under review, a number of inputs is needed. When the producers of the product under review purchase or contract for these inputs, the prices paid (and which are recorded as their costs) are exposed to the same systemic distortions mentioned before. For instance, suppliers of inputs employ labour that is subject to the distortions; they may borrow money that is subject to the distortions on the financial sector/capital allocation; and they are subject to the planning system that applies across all levels of government and sectors.
- (60) As a consequence, not only the domestic sales prices of the product under review are not appropriate for use within the meaning of Article 2(6a)(a) of the basic Regulation, but all the input costs (including raw materials, energy, land, financing, labour, etc.) are also affected because their price formation is affected by substantial government intervention, as described in Parts A and B of the Report. Indeed, the government interventions described in relation to the allocation of capital, land, labour, energy and raw materials are present throughout the PRC. This means, for instance, that an input that in itself was produced in the PRC by combining a range of factors of production is exposed to significant distortions. The same applies for the input to the input and so forth.
- (61) No evidence or argument that would contradict the above-mentioned findings has been adduced by the GOC or the exporting producers in the present investigation.
- (62) In sum, the evidence available showed that prices or costs of the product under review, including the costs of raw materials, energy and labour, are not the result of free market forces because they are affected by substantial government intervention within the meaning of Article 2(6a)(b) of the basic Regulation as shown by the actual or potential impact of one or more of the relevant elements listed therein. On that basis, and in the absence of any cooperation from the GOC, the Commission concluded that it is not appropriate to use domestic prices and costs to establish the normal value in this case. Consequently, the Commission proceeded to construct the normal value exclusively on the basis of costs of production and sale reflecting undistorted prices or benchmarks in accordance with Article 2(6a)(a) of the basic Regulation, as discussed in the following section.

3.2.4. Representative country

3.2.4.1. General remarks

- (63) The choice of the representative country shall, where appropriate, be based on the following criteria pursuant to Article 2(6a) of the basic Regulation:
- A level of economic development similar to China. For this purpose, the Commission used countries with a gross national income per capita similar to China on the basis of the database of the World Bank ⁽³³⁾;
 - Production of the product under review in that country ⁽³⁴⁾;
 - Availability of readily available data in the representative country.
 - Where there is more than one possible representative country, preference should be given, where appropriate, to the country with an adequate level of social and environmental protection.

⁽³³⁾ World Bank Open Data – Upper Middle Income, <https://data.worldbank.org/income-level/upper-middle-income>

⁽³⁴⁾ If there is no production of the product under review in any country with a similar level of development, production of a product in the same general category and/or sector of the product under review may be considered.

- (64) As explained in recitals (38)-(40) the Commission issued two notes for the file on the sources for the determination of the normal value. These notes described the facts and evidence underlying the relevant criteria, and addressed the comments received by the parties on these elements and on the relevant sources. In the Second Note, the Commission informed interested parties of its intention to consider India as an appropriate source in the present case if the existence of significant distortions pursuant to Article 2(6a) of the basic Regulation would be confirmed.

3.2.4.2. A level of economic development similar to the PRC

- (65) In the First Note on production factors, the Commission identified India and Thailand. Thailand is classified by the World Bank as an upper-middle income country and at the same level of economic development as the PRC according to the World Bank. However, the Commission could only identify one producer of molybdenum wire in Thailand and the necessary information on company level was not readily available. India is classified as a lower-middle income country by the World Bank. The Commission found at least 18 Indian companies with partial production of molybdenum wire and decided therefore to further assess whether, exceptionally, India could be used as a source for establishing undistorted cost and prices.
- (66) Only the applicant commented on that Note and, whilst not objecting to the use of India to establish undistorted costs and prices, claimed that also Austria, Germany and USA could be appropriate countries. However, the Commission noted that those countries are qualified by the World Bank as high-income countries. India, on the other hand is qualified as a low-middle income country and has thus a level of economic development inferior to the one of the PRC in low-middle income countries, such as India, factors of production are likely to be cheaper than in countries with a higher level of economic development, such as the PRC. This is likely to result in a normal value and therefore a dumping margin that is understated. However, since the current investigation is an expiry review where the question is whether dumping is likely to continue or recur irrespective of the actual level, the Commission considered that India could exceptionally be considered an appropriate source for the undistorted costs and prices although the ensuing calculation of normal value would likely be underestimated. In this respect, the Commission noted that the normal value established on the basis of this very conservative approach already showed significant dumping as concluded in recital (87) below. The Commission concluded that it was therefore not necessary to explore other alternatives.

3.2.4.3. Availability of relevant data in India

- (67) The Commission carefully analysed all relevant data available in the file for the factors of production in India and noted the following:
- There were imports of the input that, as established in the First and the Second Note, is necessary for the production of the product under review.
 - The industrial electricity tariff for the review investigation period was available in the form of data provided by the Maharashtra Electricity Regulatory Commission ⁽³⁵⁾.
 - The labour data in India published by its Labour Bureau (i.e. the report “Indian Labour Statistics 2017”) ⁽³⁶⁾, in Maharashtra, which is a representative State in India.
 - WebFill Ltd, producer of the product under review in India has readily available financial statements that could be used as a proxy to determine an undistorted and reasonable amount for selling, general and administrative expenses (SG&A) and profit.

3.2.4.4. Conclusion on India as an appropriate source

- (68) In view of the above analysis, India was exceptionally considered as an appropriate source within the meaning of Article 2(6a)(a) of the basic Regulation for undistorted costs and prices. The Company WebFill Ltd was selected as an appropriate source for the necessary financial data. Furthermore, the Commission decided that, in order to

⁽³⁵⁾ <https://www.merc.gov.in/>

⁽³⁶⁾ <http://www.labourbureaunew.gov.in/showdetail>

construct the normal value, to use GTA to establish the undistorted cost for molybdenum oxide, which is the raw material necessary to produce the product under review. In addition, the Commission stated that it would use the Indian official data for establishing undistorted costs of labour ⁽³⁷⁾ and energy ⁽³⁸⁾

3.2.5. Factors of production

- (69) Considering all the information based on the request and subsequent information submitted by the applicant and interested parties, the following factors of production and their sources have been identified in order to determine the normal value in accordance with Article 2(6a)(a) of the basic Regulation:

Table 1

Factors of production of molybdenum wires

Factor of Production	Commodity Code	Source of data	EUR/kg of produced Molybdenum wire
Raw materials			
Molybdenum oxide	28 25 70 10	Global Trade Alert (GTA) ⁽³⁹⁾	32,44
Consumables			
Tools, spare parts, supplies, maintenance, leasing costs, infrastructure and depreciation	[N/A]	Financial accounts	Percentage of manufacturing costs
Labour			
Labour	[N/A]	National statistics (Labour bureau of India data on Maharashtra) and cross-checked against World Bank data.	0,06
Energy			
Electricity	[N/A]	National/State-level statistics (Maharashtra Electricity Regulatory Commission).	2,71

3.2.5.1. Raw materials

- (70) In order to establish the undistorted price of raw materials as delivered at the gate of an Indian producer, the Commission used as a basis the weighted average import price to India as reported in the GTA. An import price in India was determined as a weighted average of unit prices of imports from all third countries excluding the PRC and countries that are not members of the WTO, listed in Annex 1 of Regulation (EU) 2015/755 of the European Parliament and the Council ⁽⁴⁰⁾. The Commission decided to exclude imports from the PRC into the appropriate country as it concluded that it is not appropriate to use domestic prices and costs in the PRC due to the existence of significant distortions in accordance with Article 2(6a)(b) of the basic Regulation. Given that there is no evidence showing that the same distortions do not equally affect products intended for export, the Commission considered that the same distortions affected export prices.

⁽³⁷⁾ <https://labour.gov.in/annual-reports> http://labourbureau.gov.in/Report_PBLS_2017.pdf

⁽³⁸⁾ <https://www.ciicovid19update.in/uploads/1/3/1/3/131362769/maharashtra.pdf>

⁽³⁹⁾ <http://www.gtis.com/gta/secure/default.cfm>

⁽⁴⁰⁾ Regulation (EU) 2015/755 of the European Parliament and of the Council of 29 April 2015 on common rules for imports from certain third countries (OJ L 123, 19.5.2015, p. 33).

- (71) Similarly, import data on imports in India from non-WTO members listed in Annex 1 of Regulation (EU) 2015/755 were also excluded. Article 2(7) of the basic Regulation considers that domestic prices in those countries cannot be used for the purpose of determining normal value and, in any event, such import data was negligible. After excluding the PRC, the imports from other third countries remained representative.
- (72) In order to establish the normal value according to the Commission's methodology, the import duties of the factors of production and other materials imported into India, as well as the domestic transport costs should normally be added to these import prices. Considering the nature of this expiry review investigation, which is focused on finding whether dumping continued during the review investigation period rather than finding its exact magnitude, the Commission decided that adjustments for import duties and domestic transport were unnecessary, as such adjustments would only result in increasing the normal value and hence of the dumping margin which is already significant.

3.2.5.2. Labour

- (73) The Indian Labour Bureau ⁽⁴¹⁾ publishes detailed information on wages in different economic sectors across India. The Commission used the available statistics and according to the latest available published analysis (2017) of labour data in India, the yearly minimum average earnings in Industrial sector NIC code 25 "Manufacture of fabricated metal products, except machinery and equipment" according to the Annexure-A of the report were 118 191 INR/year. The Periodic Labour Force Surveys by the Ministry of Statistics show that the yearly average wage in India during the closest period preceding the review investigation period was some 207 780 INR/year (see regular wage/salary employee data on page A-265 and A-266 (372-373) of the "Annual Report, PLFS, 2018-19" ⁽⁴²⁾). In light of the above, the Commission considered a labour cost of 207 780 INR/year as established above. This amount is equivalent to 2 800 USD/year and is higher than the average salary in India including the agricultural sector ⁽⁴³⁾, which holds around half of the employment, and is in which amounted to 2 130 USD/year in 2019 according to the World Bank data ⁽⁴⁴⁾.

3.2.5.3. Electricity

- (74) India is composed of 28 States and 8 Union Territories ⁽⁴⁵⁾, out of which seven States host more than 70 % of Indian factories and industrial manufacturing industry. Amongst the seven States with more industries, Maharashtra is a representative State for the purpose of this investigation because it is one of the States hosting overall a bigger share of factories. On this basis, the Commission used the electricity price statistics published by the Maharashtra Electricity Regulatory Commission ⁽⁴⁶⁾. During the review investigation period in Maharashtra, the industrial electricity tariff amounted to 8,50 INR/kWh, i.e. 0,10 EUR/kWh as shown in the Maharashtra Electricity Regulatory Commission's publication ⁽⁴⁷⁾.

3.2.5.4. Manufacturing overhead costs, SG&A, profits and depreciation

- (75) According to Article 2(6a)(a), second subparagraph of the basic Regulation, *'the constructed normal value shall include an undistorted and reasonable amount for administrative, selling and general costs and for profits'*. In addition, a value for manufacturing overhead costs needs to be established to cover costs not included in the factors of production referred to above.
- (76) In order to establish an undistorted value of the manufacturing overheads and given the absence of cooperation from the Chinese exporting producers, the Commission used facts available in accordance with Article 18 of the basic Regulation. Therefore, based on the data of the request, the Commission established the ratio of

⁽⁴¹⁾ <https://labour.gov.in/annual-reports>

⁽⁴²⁾ https://cse.azimpremjiversity.edu.in/wp-content/uploads/2019/06/Annual_Report_PLFS_2018_19_HL.pdf

⁽⁴³⁾ <http://datatopics.worldbank.org/jobs/country/india>

⁽⁴⁴⁾ <https://data.worldbank.org/indicator/>

⁽⁴⁵⁾ <https://www.india.gov.in/india-glance/profile>

⁽⁴⁶⁾ <https://www.merc.gov.in/>

⁽⁴⁷⁾ <https://www.ciicovid19update.in/uploads/1/3/1/3/131362769/maharashtra.pdf>

manufacturing overheads to the total manufacturing and labour costs. This percentage was then applied to the undistorted value of the cost of manufacturing to obtain the undistorted value of manufacturing overheads, depending on the model produced.

- (77) For establishing an undistorted and reasonable amount for manufacturing overheads, SG&A, profit and depreciation, the Commission relied on the financial data for 2020-2021 for WebFill Ltd as extracted from Dun & Bradstreet and details of financial statement available on the same company website ⁽⁴⁸⁾. According to Article 2(6a)(a) of the basic Regulation, “*the constructed normal value shall include an undistorted and reasonable amount for administrative, selling and general costs and for profits*”. In addition, a value for manufacturing overhead costs needs to be established to cover costs not included in the factors of production referred to above.

3.2.6. Calculation of the normal value

- (78) On the basis of the above, the Commission constructed the normal value of the product under review on an ex-works basis in accordance with Article 2(6a)(a) of the basic Regulation.
- (79) First, the Commission established the undistorted manufacturing costs. In the absence of cooperation by the exporting producers, the Commission relied on the information provided by the applicant in the review request on the usage of each factor (materials and labour) for the production of molybdenum wire. These consumption rates provided by the applicant were verified during the verification. The Commission then multiplied the usage factors by the undistorted costs per unit as observed in India as the source for determining the normal value under Article 2(6)(a) of the basic Regulation.
- (80) Once the undistorted manufacturing cost established, the Commission applied the manufacturing overheads, SG&A, profit and depreciation. They were determined based on the financial statements of WebFill Ltd (see Section 3.2.3.1). The Commission added the following items to the undistorted cost of manufacturing:
- Manufacturing overheads and depreciation, (see recitals (75) and (76)), which accounted in total for 17 % of the costs of materials based on the data in the request;
 - SG&A and other costs, which accounted for 16,3 % of the cost of materials for WebFill Ltd; and
 - Profits amounting to 4,8 % of the total cost of production based on the profits achieved by WebFill Ltd.

3.2.7. Export price

- (81) As a consequence of non-cooperation, export prices were established on the basis of the facts available in accordance with Article 18 of the basic Regulation. The Commission used import data on Chinese imports reported in the database established pursuant to Article 14(6) of the basic Regulation (‘Article 14(6) database’) to determine export prices.
- (82) Given the relatively low volumes of Chinese imports (less than 1 % of Union consumption) the Commission analysed whether those prices could be considered reliable and representative. In this respect the Commission noted that the Chinese average export price to the Union was within the same price range as Chinese exports to other main third country destinations (see recital (92) below). Furthermore, whilst prices to the Union were at the lower end of the price range, the Commission considered that those prices, albeit based on low volumes, were sufficiently reliable and representative to form the basis for establishing an export price for the purpose of a dumping calculation.

⁽⁴⁸⁾ WebFill Limited Annual Report 2021 (WebFillindia.com)

- (83) As these prices are reported on a Cost, Insurance, Freight ("CIF") basis, they were adjusted to an ex-works level by deducting an appropriate amount for transportation and insurance costs between the PRC and the Union border. In the absence of cooperation from the Chinese exporting producers, the Commission used the same percentage for adjustment as in the original anti-dumping investigation ⁽⁴⁹⁾ (1,84 %).

3.2.8. Comparison

- (84) The Commission compared the constructed normal value established in accordance with Article 2(6a)(a) of the basic Regulation and the export price on an ex-works basis as established above.
- (85) Given the lack of cooperation from the Chinese exporting producers, the product types exported from the PRC could not be determined. Therefore, a comparison per product type was not possible.

3.2.9. Dumping margin

- (86) The Commission recalled that the dumping margin was established by comparing a constructed normal value based on data from India as appropriate source under Article 2(6a) of the basic Regulation with the average statistical Chinese export prices to the Union, adjusted back to ex-works level.
- (87) The Commission calculated a dumping margin based on the data available of 44,98 %.
- (88) The Commission therefore concluded that dumping continued during the review investigation period.

4. LIKELIHOOD OF CONTINUATION OF DUMPING

- (89) Further to the finding of the existence of dumping during the review investigation period, the Commission investigated, in accordance with Article 11(2) of the basic Regulation, the likelihood of continuation of dumping, should the measures be allowed to lapse. The following additional elements were analysed:
- (1) production capacity and spare capacity in China;
 - (2) the attractiveness of the Union market;
 - (3) the relationship between export prices to third countries and the price level in the Union; and
 - (4) circumvention practices.

4.1. Production capacity and spare capacity in China

- (90) According to the request Chinese producers have production capacity of approximately 3 500 tonnes per year, i.e. over 19 times the entire Union consumption.
- (91) In the absence of cooperation from the PRC the Commission estimated the spare production capacity in China on the basis of its finding in the previous expiry review investigation. In that investigation the Commission found that the capacity utilisation rate was approximately 20-25 %. In the absence of any indication to the contrary the Commission assumed that the capacity utilisation remains similar for this review investigation period. Given that the estimated production capacity of molybdenum wire in the PRC is around 3 500 tonnes, the Commission estimated that the spare capacity amounts to at least 2 500 tonnes which is more than fifteen times the consumption in the Union.

⁽⁴⁹⁾ Commission Regulation (EU) No 1247/2009 of 17 December 2009 imposing a provisional anti-dumping duty on imports of certain molybdenum wires originating in the People's Republic of China (OJ L 336, 18.12.2009, p. 16).

4.2. Relation between export prices to third countries and the price level in the Union

- (92) Absent cooperation from Chinese producers the Commission analysed Chinese pricing behaviour on the basis of trade statistics. The Chinese prices to the main export destinations, other than the Union, i.e., India, Korea and Vietnam, ranged from 28 to 41 euro/kg, whilst Chinese export prices to the EU was 33,80 euro/kg during the review investigation period (see recital (107) below). These prices are significantly lower than the prices on the Union market during charged by the Union industry the review investigation period. In fact, the average sales price of Chinese exporting producers to all countries other than the Union was 40 euro/kg, which is around [25-35]% lower than the average price on the Union market.

4.3. Attractiveness of the Union market

- (93) As explained in recitals (150) – (152) the Union market is attractive in terms of size and prices.

4.4. Circumvention practices

- (94) In 2012 and 2013 two anti-circumvention investigations found circumvention being carried out either by transshipment or by a slight modification to the product. First, imports of molybdenum wire consigned from Malaysia⁽⁵⁰⁾ and, secondly, imports of molybdenum wire from the PRC containing by weight at least 97 % of molybdenum, of which the maximum cross-sectional dimension exceeds 1,35 mm but does not exceed 4,0 mm⁽⁵¹⁾. On 30 October 2015, following a third anti-circumvention investigation, the measures were extended to molybdenum wire containing by weight at least 97 % of molybdenum, with a maximum cross-sectional dimension that exceeds 4,0 mm but does not exceed 11,0 mm⁽⁵²⁾. These efforts to circumvent the measures in force show how attractive the Union market is for the Chinese producers of the product under review.

4.5. Conclusion

- (95) The investigation has shown dumping in the review investigation period and that this dumping is likely to continue if the measures are allowed to lapse. If the measures lapse, dumped imports would likely enter the Union market in significant quantities given the available spare capacities in China and possible re-direction of sales from other third countries to the Union given the higher prices on the Union market.

⁽⁵⁰⁾ Council Implementing Regulation (EU) No 14/2012 of 9 January 2012 extending the definitive anti-dumping duty imposed by Implementing Regulation (EU) No 511/2010 on imports of certain molybdenum wires originating in the People's Republic of China to imports of certain molybdenum wires consigned from Malaysia, whether declared as originating in Malaysia or not and terminating the investigation in respect of imports consigned from Switzerland (OJ L 8, 12.1.2012, p. 22).

⁽⁵¹⁾ Council Implementing Regulation (EU) No 871/2013 of 2 September 2013 extending the definitive anti-dumping duty imposed by Implementing Regulation (EU) No 511/2010 on imports of molybdenum wire, containing by weight at least 99,95 % of molybdenum, of which the maximum cross-sectional dimension exceeds 1,35 mm but does not exceed 4,0 mm, originating in the People's Republic of China to imports of molybdenum wire, containing by weight at least 97 % of molybdenum, of which the maximum cross-sectional dimension exceeds 1,35 mm but does not exceed 4,0 mm, originating in the People's Republic of China (OJ L 243, 12.9.2013, p. 2).

⁽⁵²⁾ Commission Implementing Regulation (EU) 2015/1952 of 29 October 2015 extending the definitive anti-dumping duty imposed by Council Implementing Regulation (EU) No 511/2010 on imports of molybdenum wire, containing by weight at least 99,95 % of molybdenum, of which the maximum cross-sectional dimension exceeds 1,35 mm but does not exceed 4,0 mm, originating in the People's Republic of China to imports of molybdenum wire, containing by weight at least 97 % of molybdenum, of which the maximum cross-sectional dimension exceeds 4,0 mm but does not exceed 11,0 mm, originating in the People's Republic of China (OJ L 284, 30.10.2015, p. 100).

5. INJURY

5.1. Definition of the Union industry (UI) and Union production

- (96) The Union industry did not undergo major structural changes since the original investigation and the last expiry review. The like product was manufactured by two producers in the Union during the period considered. They constitute the 'Union industry' within the meaning of Article 4(1) of the basic Regulation.
- (97) The total Union production during the review investigation period was established at around [198 000-232 000] kg. The Commission established the figure based on the macroeconomic questionnaire filled in by the applicant.
- (98) As the data relating to the injury assessment was primarily derived from the sole cooperating Union producer, or, where applicable, estimated by it for the non-cooperating other Union producer, some figures are given in an indexed form or as ranges due to the confidential nature of the data that they are based on.

5.2. Union consumption

- (99) The total Union consumption during the review investigation period was established at [148 000-174 000] kg. The Commission established the figure on the basis of all the available information concerning the Union industry: i) taking into account the total EU sales of the Union Industry as given by the applicant in its response to the macroeconomic questionnaire and ii) adding the import volumes into the EU as shown in Article 14(6) database.
- (100) Union consumption developed as follows:

Table 2

Union consumption (in kg)

	2017	2018	2019	Review investigation period
Total Union consumption	[208 000-243 000]	[207 000-242 000]	[157 000-184 000]	[148 000-174 000]
<i>Index</i>	100	99	76	72

Source: verified macro- and microeconomic questionnaire replies and Article 14(6) database.

- (101) Throughout the period considered the Union consumption recorded a pronounced drop of 28 % in comparison with 2017. More specifically, it dropped 1 percentage point in 2018 and then lost 23 percentage points in 2019 and a further 4 percentage points in the review investigation period.
- (102) The decrease in Union consumption of molybdenum wire, noted since the original investigation as well as during the period considered, can be mainly explained by the technological developments in the automotive industry and the gradual domination of automatic gears over manual gears, which is the main application for molybdenum wires.

5.3. Imports from the country concerned

5.3.1. Volume and market share of the imports from the country concerned

- (103) The Commission established the volume of imports from the PRC into the Union on the basis of data available in the Article 14(6) database. The market share of the imports was established on the basis of said volume of imports as percentage of the total Union consumption.

(104) Imports into the Union from the country concerned developed as follows:

Table 3

Import volume (kg) and market share

	2017	2018	2019	Review Investigation period
Volume of imports from the country concerned (kg)	[190-220]	[160-190]	[250-290]	[520-610]
<i>Index</i>	100	84	130	271
Market share	0,1 %	0,1 %	0,2 %	0,4 %
<i>Index</i>	100	84	172	380

Source: Article 14(6) database and verified macroeconomic questionnaire reply.

(105) Although the import volumes from the PRC into the EU increased by 171 % throughout the period considered, the volumes of the product under review are low and the market share of Chinese imports remained below 1 % in the review investigation period.

5.3.2. *Prices of the imports from the country concerned and price undercutting*

(106) Due to the non-cooperation of the Chinese exporting producers, the Commission established the prices of imports on the basis of the volumes and values of the product under review concerning the PRC as reported in the Article 14(6) database.

(107) The average price of imports into the Union from the country concerned developed as follows:

Table 4

Import prices (EUR/kg)

	2017	2018	2019	Review investigation period
PRC	79,05	60,40	33,65	33,80
<i>Index</i>	100	76	43	43

Source: Art. 14.6 database.

(108) Between 2017 and 2019, the average import price of the product under review from the PRC into the Union decreased continuously and sharply, dropping by 57 %, then remaining at the same level for the review investigation period. Though the volumes are low, the trend is consistent through a number of years and also contrary to the trend of the raw material price, the increasing prices of molybdenum oxide especially between 2017 and 2018-2019 ⁽³³⁾.

(109) The average import price undercut the Union industry average price by [52-67 %] during the review investigation period.

(110) Due to the lack of cooperation from the Chinese exporting producers, the product types exported from the PRC to the Union could however not be determined, therefore, a comparison on a per-type basis was not possible.

⁽³³⁾ As shown in Annex 25 of the request of the expiry review and in the following source: <https://tradingeconomics.com/commodity/molybden>

5.4. Imports from third countries other than the PRC

- (111) The (aggregated) volume of imports into the Union as well as the market share and price trends for imports of molybdenum wire from other third countries developed as follows:

Table 5

Imports from third countries

Country		2017	2018	2019	Review investigation period
Total of all third countries except the PRC	Volume (kg)	[340-400]	[240-280]	[90-110]	[380-450]
	<i>Index</i>	100	69	27	112
	Market share	0,2 %	0,1 %	0,1 %	0,3 %
	<i>Index</i>	100	70	36	157
	Average price (EUR/kg)	134,40	96,23	96,14	147,59
	<i>Index</i>	100	72	72	110

Source: Article 14(6) database and verified macroeconomic questionnaire reply.

- (112) Throughout the period considered, the volume of imports of molybdenum wire from third countries other than the PRC combined were lower than the volume of imports of molybdenum wire from the PRC alone during the same period and remained far below 1 % market share. Very small quantities came from India and from Hong Kong, Ukraine and the USA. Import prices from all third countries were much higher than the ones charged by the exporting producers in the PRC and by the Union industry. This is likely due to these being specialised niche products sold in small quantities.

5.5. Economic situation of the Union industry

5.5.1. General remarks

- (113) The assessment of the economic situation of the Union industry included an evaluation of all economic indicators having a bearing on the state of the Union industry during the period considered.
- (114) The datasets available to the Commission for the injury determination differed for the macroeconomic and the microeconomic injury indicators. For the macroeconomic indicators, the Commission relied on data contained in the questionnaire reply of Plansee SE and estimated by it for the other Union producer in the macro questionnaire reply. For the microeconomic indicators, the Commission relied on the data contained in the questionnaire reply of Plansee SE. Given that Plansee SE represented in the review investigation period around [86-94] % of total Union sales, the Commission considered that both sets of data are representative of the economic situation of the Union industry.
- (115) The macroeconomic indicators are: production, production capacity, capacity utilisation, sales volume, market share, growth, employment, productivity, magnitude of the dumping margin, and recovery from past dumping.

- (116) The microeconomic indicators are: average unit prices, unit cost, labour costs, inventories, profitability, cash flow, investments, return on investments, and ability to raise capital.

5.5.2. Macroeconomic indicators

5.5.2.1. Production, production capacity and capacity utilisation

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

Table 6

Production, production capacity and capacity utilisation

	2017	2018	2019	Review investigation period
Production volume (kg) (<i>index</i>)	100	111	75	70
Production capacity (kg) (<i>index</i>)	100	100	85	80
Capacity utilisation (<i>index</i>)	100	111	88	87

Source: verified macro- and microeconomic questionnaire replies.

- (118) The production volume decreased by 30 % during the period considered. More specifically, it increased by 11 percentage points in 2018, then decreased by 36 percentage points in 2019 and by a further 5 percentage points in the review investigation period. This decrease was the result of the decrease in Union consumption as explained in recital (102) above.
- (119) The production capacity also decreased overall by 20 % over the period considered, mainly because of the decrease in market demand and the subsequent switch of the production lines to different products, as the same production line is used for different product types, including the product under review.
- (120) The parallel decrease of the production volume and the production capacity during the period considered resulted in a moderate decrease in the capacity utilisation, that is by 13 % during the period considered.

5.5.2.2. Sales volume and market share

- (121) The Union industry's sales volume and market share developed over the period considered as follow

Table 7

Sales volume (in kg) and market share

	2017	2018	2019	Review investigation period
Sales (<i>index</i>)	100	99	76	71
Market share	99,7 %	99,8 %	99,8 %	99,4 %
<i>Index</i>	100	100	100	100
Captive market sales	0	0	0	0

Source: verified macro- and microeconomic questionnaire replies.

- (122) Total sales of the Union industry on the Union market decreased considerably, by 29 %, during the period considered. In particular, sales remained relatively stable from 2017 through to 2018 and then declined by 23 percentage points in 2019 and by a further 5 percentage points in the review investigation period. The reason for this drop was the contraction of the market demand in the Union, as explained in recital (102) above.
- (123) Due to the effects of the anti-dumping measures in place against the PRC imports of the product under review, and of the fact that no other country except the EU and the PRC have a considerable production of the product under review, the Union industry's market share remained dominant through the period considered at 99,4 %.

5.5.2.3. Growth

- (124) As both the Union consumption and the sales volume of the Union industry decreased by 29 % during the period considered, market share remained unchanged.

5.5.2.4. Employment and productivity

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

Table 8

Employment and productivity

	2017	2018	2019	Review investigation period
Number of employees (<i>index</i>)	100	133	125	125
Productivity (<i>index</i>)	100	94	67	64

Source: verified macro- and microeconomic questionnaire replies.

- (126) Employment of the Union industry increased by 25 % in the period considered. However, productivity decreased by 36 % over the same period, because of the drop in the market demand and the subsequent drop in production.

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

- (127) As explained in recitals from (86) to (88), the dumping margin established was just below 45 %. Therefore, the Commission concluded that dumping continued during the review investigation period. In the previous expiry review the Union industry showed signs of recovery from the effects of past dumping. During the period considered of the current expiry review investigation, the recovery process continued as demonstrated in particular by the fact that profits were at healthy levels throughout the whole period, as set out below, even though the market was shrinking.

5.5.3. Microeconomic indicators

5.5.3.1. Prices and factors affecting prices

- (128) The average unit sales prices of Plansee SE to unrelated customers in the Union developed over the period considered as follows:

Table 9

Sales prices and cost of production in the Union (EUR/kg)

	2017	2018	2019	Review investigation period
Average unit sales price in the Union on the total market (<i>index</i>)	100	99	108	100
Unit cost of production (<i>index</i>)	100	107	118	100

Source: Verified questionnaire reply.

- (129) The Union industry's average unit sales price to unrelated customers in the Union remained stable over the period considered, with the exception of 2019 when the average price went up by 8 percentage points in comparison with 2017.
- (130) The average cost of production of the Union industry remained relatively stable over the period considered, although intermittently, in 2018, the unit cost increased by 7 percentage points and in 2019 by another 11 percentage points in comparison with 2017.

5.5.3.2. Labour costs

- (131) The average labour costs of the Union industry developed over the period considered as follows:

Table 10

Average labour costs per employee

	2017	2018	2019	Review investigation period
Average labour costs per employee – <i>index (EUR)</i>	100	142	114	115

Source: Verified questionnaire reply.

- (132) The average labour costs per employee increased by 15 % over the period considered, however with a sharp intermittent increase of 42 % in 2018.

5.5.3.3. Inventories

- (133) Stock levels of the Union industry developed over the period considered as follows:

Table 11

Inventories

	2017	2018	2019	Review investigation period
Closing stocks – <i>index (kg)</i>	100	72	142	115
Closing stocks as a percentage of production – <i>index</i>	100	57	171	144

Source: Verified questionnaire reply.

- (134) Inventories represented only a very small percentage of total production during the period considered. This factor was therefore not considered meaningful for the assessment of the economic situation of the Union industry.

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

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

Table 12

Profitability, cash flow, investments and return on investments

	2017	2018	2019	Review investigation period
Profitability of sales in the Union to unrelated customers – <i>index (% of sales turnover)</i>	100	56	45	83
Cash flow <i>index (EUR)</i>	100	87	61	112
Investments <i>index (EUR)</i>	100	728	2 772	4 901
Return on investments – <i>index</i>	100	30	38	60

Source: Verified questionnaire reply.

- (136) The Commission established the profitability of the Union industry by expressing the pre-tax net profit of the sales of the like product to unrelated customers in the Union as a percentage of the turnover of those sales.
- (137) The profitability of the Union industry dropped from 2017 to 2018 by 44 percentage points, then in 2019 decreased a further 9 percentage points and finally increased during the review investigation period 38 percentage points. All in all, profitability decreased by 17 % during the period considered.
- (138) Although the profitability dropped during the period considered, it remained at high levels.
- (139) The net cash flow is the ability of the Union producers to self-finance their activities. The trend in net cash flow developed positively during the period considered, however in comparison with 2017, in 2018 it was 13 % lower, in 2019 39 % lower and in the review investigation period it ended up 12 % higher.
- (140) The investments increased substantially in comparison with 2017 and especially during 2019 and the review investigation period, mainly because of the upgrade of a production line of Plansee SE.
- (141) The return on investments is the profit in percentage of the net book value of investments. The return on investment from the production and sale of the like product decreased over the period considered. However, there was a more pronounced decrease through the years 2018 and 2019 and the indicator recovered considerably ending up 40 % lower than in 2017.

5.6. Conclusion on injury

- (142) During the period considered, the Union consumption decreased by 29 % and, although the market share of the Union industry was close to 100 %, this decline in demand had a negative impact on a number of injury indicators.

- (143) Although profitability remained at healthy levels in the review investigation period, it fell by 17 % during the period considered and some of the other injury indicators like production, production capacity, capacity utilization and sales volume experienced a negative development during the period considered. Specifically, the production volume dropped by 30 %, the production capacity by 20 %, the capacity utilisation by 13 % and the sales volume by 29 %, all of which due to the contracting market demand in the Union. Other indicators, such as number of employees (by 25 %) and cash flow (by 12 %), improved over the period considered.
- (144) The volume of imports from the PRC or from other countries into the Union were very low. In the previous expiry review the market share of the imports from China increased mainly due to circumvention practices that had stopped in the meantime following the imposition of anti-circumvention measures in 2013 and 2015.
- (145) On the basis of the above, the Commission concluded that the Union industry did not suffer material injury within the meaning of Article 3(5) of the basic Regulation during the review investigation period.
- (146) Therefore, the Commission further examined the likelihood of recurrence of injury originally caused by dumped imports from the PRC if the measures were repealed.

6. LIKELIHOOD OF RECURRENCE OF INJURY

- (147) The Commission concluded in recitals (145) that the Union industry did not suffer material injury during the review investigation period. Therefore, the Commission assessed, in accordance with Article 11(2) of the basic Regulation, whether there would be a likelihood of recurrence of injury if the measures were allowed to lapse.
- (148) In this regard, the Commission examined the production capacity and spare capacity in the PRC, the attractiveness of the Union market as well as the likely price levels of imports from the PRC in the absence of anti-dumping measures and their possible impact on the Union industry.

6.1. Production capacity and spare capacity in the PRC

- (149) Based on the request, the PRC producers have a production capacity of approximately 3 500 tonnes per year, over 19 times higher than the Union consumption.

6.2. Attractiveness of the Union market and pricing behaviour in third countries

- (150) The Union market is attractive in terms of its size and prices as well as due to the importance of the EU automotive industry. In the past Chinese producers repeatedly showed their interest in the Union market by attempting to circumvent the anti-dumping measures. Also, average import prices from the PRC to the Union were lower than the export prices from the PRC to other countries during the review investigation period.
- (151) In the absence of significant quantities sold by Chinese exporting producers to the Union, the Commission also analysed their pricing behaviour when exporting to third countries. The PRC producers sell on average at prices which are [28-37] % lower than the average price charged by the Union industry. Consequently, exporting producers have strong incentive to redirect their sales to the Union market should the measures be allowed to lapse.
- (152) The Union market is hence considered very attractive for Chinese producers, and it can be concluded that available spare capacities in China would, at least partially, be used to significantly increase exports to the Union market at dumped prices should the measures expire.

6.3. Possible scenarios in the case of lapsing of measures

- (153) The attractiveness of the Union market, as described in recitals (93) and (150), would probably lead to a significant increase of dumped imports from the PRC. As molybdenum wire is a rather homogenous product in terms of quality, the price level is the most important factor when deciding on whether to buy from the Union producers or from the Chinese exporting producers. Furthermore, and as analysed in the previous expiry review, the sudden decrease in Chinese imports in response to the anti-dumping and anti-circumvention measures indicates that customers can easily switch to the supplier with the most competitive price (i.e. from the Chinese exporting producers to the Union producers or vice-versa in case the measure lapse).
- (154) For these reasons, the Union industry will then be likely forced to either reduce its sales prices at the expense of their profitability or to keep the sales prices level and most likely lose sales volume and market share to the Chinese exporters. A combination of these scenarios seems even more realistic. Ultimately, this would lead to downward price pressure, losses and the imports from the PRC likely regaining their pre-measures market share.
- (155) To assess quantitatively the likely impact of imports from the PRC on the financial situation of the Union industry, the Commission performed a simulation. Two scenarios were modelled, namely a surge of imports from the PRC (i) at the level of the PRC import volumes during the investigation period of the original case in 2009 (i.e. from 1 April 2008 to 31 March 2009), but at the same price level as charged to unrelated customers by the Union industry and (ii) at the level of the PRC exporting producers' market share during the investigation period of the original case back in 2009, while undercutting the Union industry's prices by 15 %. Given that the exporting producers' prices to third countries were on average [28-37] % lower than the prices charged by the Union industry during the review investigation period, the figure chosen for undercutting (15 %) is very conservative since the actual undercutting found was [52-67] % during the review investigation period. Moreover, for the determination of the hypothetical cost of production, the Commission took into account the share of the fixed costs to the total costs of production of the sampled Union producers.
- (156) In the first scenario, the profitability of the Union industry would fall to – [15 – 24] %.

In the second scenario, the profitability of the Union Industry would even fall to –[25 – 33] %.

- (157) In both conservative scenarios, the impact of Chinese imports would render the Union industry highly unprofitable.
- (158) On this basis, the Commission concluded that the absence of measures would in all likelihood result in a significant increase of dumped imports from the PRC at injurious prices, which will lead to recurrence of material injury.

7. UNION INTEREST

- (159) In accordance with Article 21 of the basic Regulation, the Commission examined whether maintaining the existing anti-dumping measures would be against the interest of the Union as a whole. The determination of the Union interest was based on an appreciation of all the various interests involved, including those of the Union industry, importers and users.
- (160) All interested parties were given the opportunity to make their views known pursuant to Article 21(2) of the basic Regulation.
- (161) On this basis, the Commission examined whether, despite the conclusions on the likelihood of continuation of dumping and recurrence of injury, compelling reasons existed which would lead to the conclusion that it was not in the Union interest to maintain the existing measures.

7.1. Interest of the Union industry

- (162) The anti-dumping measures in force had a positive effect on the Union industry and allowed it to recover from the past dumping during the review investigation period.

- (163) However, should the measures be allowed to lapse, the Commission concluded that there is a strong likelihood of recurrence of injury given the attractiveness of the Union market, the spare capacities available in the PRC, the pricing behaviour of the exporting producers in the PRC and the history of circumvention.
- (164) The Commission thus concluded that maintaining the anti-dumping measures on imports of the product under review originating in the PRC is in the interest of the Union industry.

7.2. Interest of unrelated importers, traders and users

- (165) The Commission invited unrelated importers, traders and users to come forward but did not receive any questionnaire reply.
- (166) The Commission did not receive any comments indicating that maintaining the measures would have a significant negative impact on the importers and users, outweighing the positive impact of the measures on the Union industry.
- (167) Therefore, the Commission concluded that maintaining the measures would not have any important impact on importers, traders and users of the Union.

7.3. Conclusion on Union interest

- (168) In view of the above, the Commission concluded that there are no compelling reasons of Union interest against maintaining the existing measures on imports of the product under review originating in the PRC. Maintaining measures would be in the interest of the Union industry and would not harm the situation of users and importers in the Union.

8. FINAL PROVISIONS

- (169) It follows from the above considerations that, under Article 11(2) of the basic Regulation, the anti-dumping measures applicable to imports of certain molybdenum wires originating in the PRC, imposed by Regulation (EU) 2016/1046 should be maintained. As a consequence, the extension of the measures following anti-circumvention investigations mentioned in recital (2) should also be maintained.
- (170) In view of Article 109 of Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council ⁽⁵⁴⁾, when an amount is to be reimbursed following a judgment of the Court of Justice of the European Union, the interest to be paid should be the rate applied by the European Central Bank to its principal refinancing operations, as published in the C series of the *Official Journal of the European Union* on the first calendar day of each month.
- (171) The measures provided for in this regulation are in accordance with the opinion of the Committee established by Article 15(1) of Regulation (EU) 2016/1036,

HAS ADOPTED THIS REGULATION:

Article 1

1. A definitive anti-dumping duty is hereby imposed on imports of molybdenum wire, containing by weight at least 99,95 % of molybdenum, of which the maximum cross-sectional dimension exceeds 1,35 mm but does not exceed 4,0 mm, originating in the People's Republic of China, not consigned from Malaysia, currently falling under CN code ex 8102 96 00 (TARIC code 8102 96 00 19).

⁽⁵⁴⁾ 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).

2. The rate of the definitive anti-dumping duty applicable to the net, free-at-Union-frontier price, before duty, of the product described in paragraph 1 shall be 64,3 %.

Article 2

The duty set out in Article 1(2) is hereby extended to imports of molybdenum wire, containing by weight at least 99,95 % of molybdenum, of which the maximum cross-sectional dimension exceeds 1,35 mm but does not exceed 4,0 mm, currently falling under CN code ex 8102 96 00 (TARIC code 8102 96 00 11), consigned from Malaysia, whether declared as originating in Malaysia or not.

Article 3

The duty set out in Article 1(2) is hereby extended to imports into the Union of molybdenum wire, containing by weight at least 97 % but less than 99,95 % of molybdenum, of which the maximum cross-sectional dimension exceeds 1,35 mm but does not exceed 4,0 mm, originating in the People's Republic of China, currently falling within CN code ex 8102 96 00 (TARIC code 8102 96 00 30).

Article 4

The duty set out in Article 1(2) is hereby extended to imports of molybdenum wire, containing by weight at least 97 % of molybdenum, of which the maximum cross-sectional dimension exceeds 4,0 mm but does not exceed 11,0 mm originating in the People's Republic of China, currently falling under CN code ex 8102 96 00 (TARIC codes 8102 96 00 20 and 8102 96 00 40).

Article 5

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

Article 6

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, 25 July 2022.

For the Commission
The President
Ursula VON DER LEYEN

COMMISSION IMPLEMENTING REGULATION (EU) 2022/1306**of 25 July 2022****amending Annexes V and XIV to Implementing Regulation (EU) 2021/404 as regards the entries for the United Kingdom and the United States in the lists of third countries authorised for the entry into the Union of consignments of poultry, germinal products of poultry and fresh meat of poultry and game birds****(Text with EEA relevance)**

THE EUROPEAN COMMISSION,

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

Having regard to 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') ⁽¹⁾, and in particular Articles 230(1) and 232(1) and (3) thereof.

Whereas:

- (1) Regulation (EU) 2016/429 requires that consignments of animals, germinal products and products of animal origin must come from a third country or territory, or zone or compartment thereof, listed in accordance with Article 230(1) of that Regulation in order to enter the Union.
- (2) Commission Delegated Regulation (EU) 2020/692 ⁽²⁾ lays down the animal health requirements with which consignments of certain species and categories of animals, germinal products and products of animal origin from third countries or territories, or zones thereof, or compartments thereof, in the case of aquaculture animals, must comply with in order to enter the Union.
- (3) Commission Implementing Regulation (EU) 2021/404 ⁽³⁾ establishes the lists of third countries, or territories, or zones or compartments thereof, from which the entry into the Union of the species and categories of animals, germinal products and products of animal origin falling within the scope of Delegated Regulation (EU) 2020/692 is permitted.
- (4) More particularly, Annexes V and XIV to Implementing Regulation (EU) 2021/404 set out the lists of third countries, or territories, or zones thereof authorised for the entry into the Union, respectively, of consignments of poultry, germinal products of poultry, and of fresh meat from poultry and game birds.
- (5) The United Kingdom have submitted updated information on the epidemiological situation on its territory in relation to five outbreaks of highly pathogenic avian influenza in poultry establishments: one outbreak near Buckfastleigh, Teignbridge, Devon, England, United Kingdom, confirmed on 22 December 2021; three outbreaks near Woodbridge, East Suffolk, Suffolk, England, United Kingdom confirmed on 20, 27 and 30 March 2022; and one outbreak near Ilminster, South Somerset, England, United Kingdom confirmed on 8 April 2022. The United Kingdom have also submitted information on the measures it has taken to prevent the further spread of that

⁽¹⁾ OJ L 84, 31.3.2016, p. 1.

⁽²⁾ Commission Delegated Regulation (EU) 2020/692 of 30 January 2020 supplementing Regulation (EU) 2016/429 of the European Parliament and of the Council as regards rules for entry into the Union, and the movement and handling after entry of consignments of certain animals, germinal products and products of animal origin (OJ L 174, 3.6.2020, p. 379).

⁽³⁾ Commission Implementing Regulation (EU) 2021/404 of 24 March 2021 laying down the lists of third countries, territories or zones thereof from which the entry into the Union of animals, germinal products and products of animal origin is permitted in accordance with Regulation (EU) 2016/429 of the European Parliament and of the Council (OJ L 114, 31.3.2021, p. 1).

disease. In particular, following those outbreak of highly pathogenic avian influenza, the United Kingdom have implemented a stamping out policy in order to control and limit the spread of that disease. In addition, the United Kingdom have completed the requisite cleaning and disinfection measures following the implementation of the stamping out policy on those infected poultry establishments on its territory.

- (6) Moreover, the United States have submitted updated information on the epidemiological situation on its territory in relation to twelve outbreaks of highly pathogenic avian influenza in certain poultry establishments in the States of Kentucky, South Dakota and Texas confirmed between 12 December 2021 and 3 April 2022. The United States have also submitted information on the measures it has taken to prevent the further spread of that disease. In particular, following those outbreak of highly pathogenic avian influenza, the United States have implemented a stamping out policy in order to control and limit the spread of that disease. In addition, the United States have completed the requisite cleaning and disinfection measures following the implementation of the stamping out policy on those infected poultry establishments on its territory.
- (7) The Commission has evaluated the information submitted by the United Kingdom and the United States and concluded that the highly pathogenic avian influenza outbreaks in those poultry establishments have been cleared and that there is no longer any risk associated with the entry into the Union of poultry commodities from the zones of the United Kingdom and the United States from which the entry into the Union of poultry commodities was suspended due to these outbreaks.
- (8) Annexes V and XIV to Implementing Regulation (EU) 2021/404 should be therefore amended to take account of the current epidemiological situation as regards highly pathogenic avian influenza in the United Kingdom and the United States.
- (9) Taking into account the current epidemiological situation in the United Kingdom and the United States as regards highly pathogenic avian influenza and the serious risk of its introduction into the Union, the amendments to be made to Implementing Regulation (EU) 2021/404 by this Regulation should take effect as a matter of urgency.
- (10) The measures provided for in this Regulation are in accordance with the opinion of the Standing Committee on Plants, Animals, Food and Feed,

HAS ADOPTED THIS REGULATION:

Article 1

Annexes V and XIV to Implementing Regulation (EU) 2021/404 are amended in accordance with the Annex to this Regulation.

Article 2

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

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

Done at Brussels, 25 July 2022.

For the Commission
The President
Ursula VON DER LEYEN

Annexes V and XIV to Implementing Regulation (EU) 2021/404 are amended as follows:

(1) Annex V is amended as follows:

(a) Part 1 is amended as follows:

(i) in the entry for the United Kingdom, the rows for the zone GB-2.77 are replaced by the following:

‘GB United Kingdom	GB-2.77	Breeding poultry other than ratites and productive poultry other than ratites	BPP	N, P1		22.12.2021	22.7.2022
		Breeding ratites and productive ratites	BPR	N, P1		22.12.2021	22.7.2022
		Poultry intended for slaughter other than ratites	SP	N, P1		22.12.2021	22.7.2022
		Ratites intended for slaughter	SR	N, P1		22.12.2021	22.7.2022
		Day-old chicks other than ratites	DOC	N, P1		22.12.2021	22.7.2022
		Day-old chicks of ratites	DOR	N, P1		22.12.2021	22.7.2022
		Less than 20 heads of poultry other than ratites	POU-LT20	N, P1		22.12.2021	22.7.2022
		Hatching eggs of poultry other than ratites	HEP	N, P1		22.12.2021	22.7.2022
		Hatching eggs of ratites	HER	N, P1		22.12.2021	22.7.2022
		Less than 20 hatching eggs of poultry other than ratites	HE-LT20	N, P1		22.12.2021	22.7.2022’

(ii) in the entry for the United Kingdom, the rows for the zones GB-2.110 and GB-2.111 are replaced by the following:

‘GB United Kingdom	GB-2.110	Breeding poultry other than ratites and productive poultry other than ratites	BPP	N, P1		20.3.2022	22.7.2022
		Breeding ratites and productive ratites	BPR	N, P1		20.3.2022	22.7.2022
		Poultry intended for slaughter other than ratites	SP	N, P1		20.3.2022	22.7.2022
		Ratites intended for slaughter	SR	N, P1		20.3.2022	22.7.2022
		Day-old chicks other than ratites	DOC	N, P1		20.3.2022	22.7.2022
		Day-old chicks of ratites	DOR	N, P1		20.3.2022	22.7.2022

		Less than 20 heads of poultry other than ratites	POU-LT20	N, P1		20.3.2022	22.7.2022
		Hatching eggs of poultry other than ratites	HEP	N, P1		20.3.2022	22.7.2022
		Hatching eggs of ratites	HER	N, P1		20.3.2022	22.7.2022
		Less than 20 hatching eggs of poultry other than ratites	HE-LT20	N, P1		20.3.2022	22.7.2022
	GB-2.111	Breeding poultry other than ratites and productive poultry other than ratites	BPP	N, P1		27.3.2022	22.7.2022
		Breeding ratites and productive ratites	BPR	N, P1		27.3.2022	22.7.2022
		Poultry intended for slaughter other than ratites	SP	N, P1		27.3.2022	22.7.2022
		Ratites intended for slaughter	SR	N, P1		27.3.2022	22.7.2022
		Day-old chicks other than ratites	DOC	N, P1		27.3.2022	22.7.2022
		Day-old chicks of ratites	DOR	N, P1		27.3.2022	22.7.2022
		Less than 20 heads of poultry other than ratites	POU-LT20	N, P1		27.3.2022	22.7.2022
		Hatching eggs of poultry other than ratites	HEP	N, P1		27.3.2022	22.7.2022
		Hatching eggs of ratites	HER	N, P1		27.3.2022	22.7.2022
		Less than 20 hatching eggs of poultry other than ratites	HE-LT20	N, P1		27.3.2022	22.7.2022'

(iii) in the entry for the United Kingdom, the rows for the zone GB-2.113 are replaced by the following:

GB United Kingdom	GB-2.113	Breeding poultry other than ratites and productive poultry other than ratites	BPP	N, P1		30.3.2022	22.7.2022
		Breeding ratites and productive ratites	BPR	N, P1		30.3.2022	22.7.2022
		Poultry intended for slaughter other than ratites	SP	N, P1		30.3.2022	22.7.2022
		Ratites intended for slaughter	SR	N, P1		30.3.2022	22.7.2022
		Day-old chicks other than ratites	DOC	N, P1		30.3.2022	22.7.2022
		Day-old chicks of ratites	DOR	N, P1		30.3.2022	22.7.2022

		Less than 20 heads of poultry other than ratites	POU-LT20	N, P1		30.3.2022	22.7.2022
		Hatching eggs of poultry other than ratites	HEP	N, P1		30.3.2022	22.7.2022
		Hatching eggs of ratites	HER	N, P1		30.3.2022	22.7.2022
		Less than 20 hatching eggs of poultry other than ratites	HE-LT20	N, P1		30.3.2022	22.7.2022'

(iv) in the entry for the United Kingdom, the rows for the zone GB-2.117 are replaced by the following:

'GB United Kingdom	GB-2.117	Breeding poultry other than ratites and productive poultry other than ratites	BPP	N, P1		8.4.2022	22.7.2022
		Breeding ratites and productive ratites	BPR	N, P1		8.4.2022	22.7.2022
		Poultry intended for slaughter other than ratites	SP	N, P1		8.4.2022	22.7.2022
		Ratites intended for slaughter	SR	N, P1		8.4.2022	22.7.2022
		Day-old chicks other than ratites	DOC	N, P1		8.4.2022	22.7.2022
		Day-old chicks of ratites	DOR	N, P1		8.4.2022	22.7.2022
		Less than 20 heads of poultry other than ratites	POU-LT20	N, P1		8.4.2022	22.7.2022
		Hatching eggs of poultry other than ratites	HEP	N, P1		8.4.2022	22.7.2022
		Hatching eggs of ratites	HER	N, P1		8.4.2022	22.7.2022
		Less than 20 hatching eggs of poultry other than ratites	HE-LT20	N, P1		8.4.2022	22.7.2022'

(v) in the entry for the United States, the following rows for the zones US-2.5 and US-2.6 are replaced by the following:

'US United States	US-2.5	Breeding poultry other than ratites and productive poultry other than ratites	BPP	N, P1		12.2.2022	22.7.2022
		Breeding ratites and productive ratites	BPR	N, P1		12.2.2022	22.7.2022
		Poultry intended for slaughter other than ratites	SP	N, P1		12.2.2022	22.7.2022
		Ratites intended for slaughter	SR	N, P1		12.2.2022	22.7.2022

		Day-old chicks other than ratites	DOC	N, P1		12.2.2022	22.7.2022
		Day-old chicks of ratites	DOR	N, P1		12.2.2022	22.7.2022
		Less than 20 heads of poultry other than ratites	POU-LT20	N, P1		12.2.2022	22.7.2022
		Hatching eggs of poultry other than ratites	HEP	N, P1		12.2.2022	22.7.2022
		Hatching eggs of ratites	HER	N, P1		12.2.2022	22.7.2022
		Less than 20 hatching eggs of poultry other than ratites	HE-LT20	N, P1		12.2.2022	22.7.2022
	US-2.6	Breeding poultry other than ratites and productive poultry other than ratites	BPP	N, P1		15.2.2022	22.7.2022
		Breeding ratites and productive ratites	BPR	N, P1		15.2.2022	22.7.2022
		Poultry intended for slaughter other than ratites	SP	N, P1		15.2.2022	22.7.2022
		Ratites intended for slaughter	SR	N, P1		15.2.2022	22.7.2022
		Day-old chicks other than ratites	DOC	N, P1		15.2.2022	22.7.2022
		Day-old chicks of ratites	DOR	N, P1		15.2.2022	22.7.2022
		Less than 20 heads of poultry other than ratites	POU-LT20	N, P1		15.2.2022	22.7.2022
		Hatching eggs of poultry other than ratites	HEP	N, P1		15.2.2022	22.7.2022
		Hatching eggs of ratites	HER	N, P1		15.2.2022	22.7.2022
		Less than 20 hatching eggs of poultry other than ratites	HE-LT20	N, P1		15.2.2022	22.7.2022'

(vi) in the entry for the United States, the following rows for the zone US-2.15 are replaced by the following:

US United States	US-2.15	Breeding poultry other than ratites and productive poultry other than ratites	BPP	N, P1		5.3.2022	22.7.2022
		Breeding ratites and productive ratites	BPR	N, P1		5.3.2022	22.7.2022
		Poultry intended for slaughter other than ratites	SP	N, P1		5.3.2022	22.7.2022
		Ratites intended for slaughter	SR	N, P1		5.3.2022	22.7.2022

		Day-old chicks other than ratites	DOC	N, P1		5.3.2022	22.7.2022
		Day-old chicks of ratites	DOR	N, P1		5.3.2022	22.7.2022
		Less than 20 heads of poultry other than ratites	POU-LT20	N, P1		5.3.2022	22.7.2022
		Hatching eggs of poultry other than ratites	HEP	N, P1		5.3.2022	22.7.2022
		Hatching eggs of ratites	HER	N, P1		5.3.2022	22.7.2022
		Less than 20 hatching eggs of poultry other than ratites	HE-LT20	N, P1		5.3.2022	22.7.2022'

(vii) in the entry for the United States, the following rows for the zones US-2.24 are replaced by the following:

US United States	US-2.24	Breeding poultry other than ratites and productive poultry other than ratites	BPP	N, P1		12.3.2022	22.7.2022
		Breeding ratites and productive ratites	BPR	N, P1		12.3.2022	22.7.2022
		Poultry intended for slaughter other than ratites	SP	N, P1		12.3.2022	22.7.2022
		Ratites intended for slaughter	SR	N, P1		12.3.2022	22.7.2022
		Day-old chicks other than ratites	DOC	N, P1		12.3.2022	22.7.2022
		Day-old chicks of ratites	DOR	N, P1		12.3.2022	22.7.2022
		Less than 20 heads of poultry other than ratites	POU-LT20	N, P1		12.3.2022	22.7.2022
		Hatching eggs of poultry other than ratites	HEP	N, P1		12.3.2022	22.7.2022
		Hatching eggs of ratites	HER	N, P1		12.3.2022	22.7.2022
		Less than 20 hatching eggs of poultry other than ratites	HE-LT20	N, P1		12.3.2022	22.7.2022'

(viii) in the entry for the United States, the following rows for the zone US-2.31 are replaced by the following:

US United States	US-2.31	Breeding poultry other than ratites and productive poultry other than ratites	BPP	N, P1		18.3.2022	22.7.2022
		Breeding ratites and productive ratites	BPR	N, P1		18.3.2022	22.7.2022
		Poultry intended for slaughter other than ratites	SP	N, P1		18.3.2022	22.7.2022
		Ratites intended for slaughter	SR	N, P1		18.3.2022	22.7.2022
		Day-old chicks other than ratites	DOC	N, P1		18.3.2022	22.7.2022
		Day-old chicks of ratites	DOR	N, P1		18.3.2022	22.7.2022
		Less than 20 heads of poultry other than ratites	POU-LT20	N, P1		18.3.2022	22.7.2022
		Hatching eggs of poultry other than ratites	HEP	N, P1		18.3.2022	22.7.2022
		Hatching eggs of ratites	HER	N, P1		18.3.2022	22.7.2022
		Less than 20 hatching eggs of poultry other than ratites	HE-LT20	N, P1		18.3.2022	22.7.2022'

(ix) in the entry for the United States, the following rows for the zone US-2.36 are replaced by the following:

US United States	US-2.36	Breeding poultry other than ratites and productive poultry other than ratites	BPP	N, P1		22.3.2022	22.7.2022
		Breeding ratites and productive ratites	BPR	N, P1		22.3.2022	22.7.2022
		Poultry intended for slaughter other than ratites	SP	N, P1		22.3.2022	22.7.2022
		Ratites intended for slaughter	SR	N, P1		22.3.2022	22.7.2022
		Day-old chicks other than ratites	DOC	N, P1		22.3.2022	22.7.2022
		Day-old chicks of ratites	DOR	N, P1		22.3.2022	22.7.2022
		Less than 20 heads of poultry other than ratites	POU-LT20	N, P1		22.3.2022	22.7.2022
		Hatching eggs of poultry other than ratites	HEP	N, P1		22.3.2022	22.7.2022

		Hatching eggs of ratites	HER	N, P1		22.3.2022	22.7.2022
		Less than 20 hatching eggs of poultry other than ratites	HE-LT20	N, P1		22.3.2022	22.7.2022'

(x) in the entry for the United States, the following rows for the zone US-2.40 are replaced by the following:

US United States	US-2.40	Breeding poultry other than ratites and productive poultry other than ratites	BPP	N, P1		23.3.2022	22.7.2022
		Breeding ratites and productive ratites	BPR	N, P1		23.3.2022	22.7.2022
		Poultry intended for slaughter other than ratites	SP	N, P1		23.3.2022	22.7.2022
		Ratites intended for slaughter	SR	N, P1		23.3.2022	22.7.2022
		Day-old chicks other than ratites	DOC	N, P1		23.3.2022	22.7.2022
		Day-old chicks of ratites	DOR	N, P1		23.3.2022	22.7.2022
		Less than 20 heads of poultry other than ratites	POU-LT20	N, P1		23.3.2022	22.7.2022
		Hatching eggs of poultry other than ratites	HEP	N, P1		23.3.2022	22.7.2022
		Hatching eggs of ratites	HER	N, P1		23.3.2022	22.7.2022
		Less than 20 hatching eggs of poultry other than ratites	HE-LT20	N, P1		23.3.2022	22.7.2022'

(xi) in the entry for the United States, the following rows for the zone US-2.42 are replaced by the following:

US United States	US-2.42	Breeding poultry other than ratites and productive poultry other than ratites	BPP	N, P1		24.3.2022	22.7.2022
		Breeding ratites and productive ratites	BPR	N, P1		24.3.2022	22.7.2022
		Poultry intended for slaughter other than ratites	SP	N, P1		24.3.2022	22.7.2022
		Ratites intended for slaughter	SR	N, P1		24.3.2022	22.7.2022
		Day-old chicks other than ratites	DOC	N, P1		24.3.2022	22.7.2022
		Day-old chicks of ratites	DOR	N, P1		24.3.2022	22.7.2022

		Less than 20 heads of poultry other than ratites	POU-LT20	N, P1		24.3.2022	22.7.2022
		Hatching eggs of poultry other than ratites	HEP	N, P1		24.3.2022	22.7.2022
		Hatching eggs of ratites	HER	N, P1		24.3.2022	22.7.2022
		Less than 20 hatching eggs of poultry other than ratites	HE-LT20	N, P1		24.3.2022	22.7.2022'

(xii) in the entry for the United States, the following rows for the zones US-2.51 and US-2.52 are replaced by the following:

US United States	US-2.51	Breeding poultry other than ratites and productive poultry other than ratites	BPP	N, P1		27.3.2022	22.7.2022
		Breeding ratites and productive ratites	BPR	N, P1		27.3.2022	22.7.2022
		Poultry intended for slaughter other than ratites	SP	N, P1		27.3.2022	22.7.2022
		Ratites intended for slaughter	SR	N, P1		27.3.2022	22.7.2022
		Day-old chicks other than ratites	DOC	N, P1		27.3.2022	22.7.2022
		Day-old chicks of ratites	DOR	N, P1		27.3.2022	22.7.2022
		Less than 20 heads of poultry other than ratites	POU-LT20	N, P1		27.3.2022	22.7.2022
		Hatching eggs of poultry other than ratites	HEP	N, P1		27.3.2022	22.7.2022
		Hatching eggs of ratites	HER	N, P1		27.3.2022	22.7.2022
		Less than 20 hatching eggs of poultry other than ratites	HE-LT20	N, P1		27.3.2022	22.7.2022
	US-2.52	Breeding poultry other than ratites and productive poultry other than ratites	BPP	N, P1		27.3.2022	22.7.2022
		Breeding ratites and productive ratites	BPR	N, P1		27.3.2022	22.7.2022
		Poultry intended for slaughter other than ratites	SP	N, P1		27.3.2022	22.7.2022
		Ratites intended for slaughter	SR	N, P1		27.3.2022	22.7.2022
		Day-old chicks other than ratites	DOC	N, P1		27.3.2022	22.7.2022
		Day-old chicks of ratites	DOR	N, P1		27.3.2022	22.7.2022

		Less than 20 heads of poultry other than ratites	POU-LT20	N, P1		27.3.2022	22.7.2022
		Hatching eggs of poultry other than ratites	HEP	N, P1		27.3.2022	22.7.2022
		Hatching eggs of ratites	HER	N, P1		27.3.2022	22.7.2022
		Less than 20 hatching eggs of poultry other than ratites	HE-LT20	N, P1		27.3.2022	22.7.2022'

(xiii) in the entry for the United States, the following rows for the zone US-2.71 are replaced by the following:

US United States	US-2.71	Breeding poultry other than ratites and productive poultry other than ratites	BPP	N, P1		1.4.2022	22.7.2022
		Breeding ratites and productive ratites	BPR	N, P1		1.4.2022	22.7.2022
		Poultry intended for slaughter other than ratites	SP	N, P1		1.4.2022	22.7.2022
		Ratites intended for slaughter	SR	N, P1		1.4.2022	22.7.2022
		Day-old chicks other than ratites	DOC	N, P1		1.4.2022	22.7.2022
		Day-old chicks of ratites	DOR	N, P1		1.4.2022	22.7.2022
		Less than 20 heads of poultry other than ratites	POU-LT20	N, P1		1.4.2022	22.7.2022
		Hatching eggs of poultry other than ratites	HEP	N, P1		1.4.2022	22.7.2022
		Hatching eggs of ratites	HER	N, P1		1.4.2022	22.7.2022
		Less than 20 hatching eggs of poultry other than ratites	HE-LT20	N, P1		1.4.2022	22.7.2022'

(xiv) in the entry for the United States, the following rows for the zone US-2.86 are replaced by the following:

US United States	US-2.86	Breeding poultry other than ratites and productive poultry other than ratites	BPP	N, P1		3.4.2022	22.7.2022
		Breeding ratites and productive ratites	BPR	N, P1		3.4.2022	22.7.2022
		Poultry intended for slaughter other than ratites	SP	N, P1		3.4.2022	22.7.2022
		Ratites intended for slaughter	SR	N, P1		3.4.2022	22.7.2022

		Day-old chicks other than ratites	DOC	N, P1		3.4.2022	22.7.2022
		Day-old chicks of ratites	DOR	N, P1		3.4.2022	22.7.2022
		Less than 20 heads of poultry other than ratites	POU-LT20	N, P1		3.4.2022	22.7.2022
		Hatching eggs of poultry other than ratites	HEP	N, P1		3.4.2022	22.7.2022
		Hatching eggs of ratites	HER	N, P1		3.4.2022	22.7.2022
		Less than 20 hatching eggs of poultry other than ratites	HE-LT20	N, P1		3.4.2022	22.7.2022'

(2) in Annex XIV, Part 1 is amended as follows:

(i) in the entry for the United Kingdom, the rows for the zone GB-2.77 are replaced by the following:

'GB United Kingdom	GB-2.77	Fresh meat of poultry other than ratites	POU	N, P1		22.12.2021	22.7.2022
		Fresh meat of ratites	RAT	N, P1		22.12.2021	22.7.2022
		Fresh meat of game birds	GBM	P1		22.12.2021	22.7.2022'

(ii) in the entry for the United Kingdom, the rows for the zones GB-2.110 and GB-2.111 are replaced by the following:

'GB United Kingdom	GB-2.110	Fresh meat of poultry other than ratites	POU	N, P1		20.3.2022	22.7.2022
		Fresh meat of ratites	RAT	N, P1		20.3.2022	22.7.2022
		Fresh meat of game birds	GBM	P1		20.3.2022	22.7.2022
	GB-2.111	Fresh meat of poultry other than ratites	POU	N, P1		27.3.2022	22.7.2022
		Fresh meat of ratites	RAT	N, P1		27.3.2022	22.7.2022
		Fresh meat of game birds	GBM	P1		27.3.2022	22.7.2022'

(iii) in the entry for the United Kingdom, the rows for the zone GB-2.113 are replaced by the following:

'GB United Kingdom	GB-2.113	Fresh meat of poultry other than ratites	POU	N, P1		30.3.2022	22.7.2022
		Fresh meat of ratites	RAT	N, P1		30.3.2022	22.7.2022
		Fresh meat of game birds	GBM	P1		30.3.2022	22.7.2022'

(iv) in the entry for the United Kingdom, the rows for the zone GB-2.117 are replaced by the following:

'GB United Kingdom	GB-2.117	Fresh meat of poultry other than ratites	POU	N, P1		8.4.2022	22.7.2022
		Fresh meat of ratites	RAT	N, P1		8.4.2022	22.7.2022
		Fresh meat of game birds	GBM	P1		8.4.2022	22.7.2022'

(v) in the entry for the United States, the following rows for the zones US-2.5 and US-2.6 are replaced by the following::

'US United States	US-2.5	Fresh meat of poultry other than ratites	POU	N, P1		12.2.2022	22.7.2022
		Fresh meat of ratites	RAT	N, P1		12.2.2022	22.7.2022
		Fresh meat of game birds	GBM	P1		12.2.2022	22.7.2022
	US-2.6	Fresh meat of poultry other than ratites	POU	N, P1		15.2.2022	22.7.2022
		Fresh meat of ratites	RAT	N, P1		15.2.2022	22.7.2022
		Fresh meat of game birds	GBM	P1		15.2.2022	22.7.2022'

(vi) in the entry for the United States, the following rows for the zone US-2.15 are replaced by the following:

'US United States	US-2.15	Fresh meat of poultry other than ratites	POU	N, P1		5.3.2022	22.7.2022
		Fresh meat of ratites	RAT	N, P1		5.3.2022	22.7.2022
		Fresh meat of game birds	GBM	P1		5.3.2022	22.7.2022'

(vii) in the entry for the United States, the following rows for the zone US-2.24 are replaced by the following:

'US United States	US-2.24	Fresh meat of poultry other than ratites	POU	N, P1		12.3.2022	22.7.2022
		Fresh meat of ratites	RAT	N, P1		12.3.2022	22.7.2022
		Fresh meat of game birds	GBM	P1		12.3.2022	22.7.2022'

(viii) in the entry for the United States, the following rows for the zone US-2.31 are replaced by the following:

'US United States	US-2.31	Fresh meat of poultry other than ratites	POU	N, P1		18.3.2022	22.7.2022
		Fresh meat of ratites	RAT	N, P1		18.3.2022	22.7.2022
		Fresh meat of game birds	GBM	P1		18.3.2022	22.7.2022'

(ix) in the entry for the United States, the following rows for the zone US-2.36 are replaced by the following:

‘US United States	US-2.36	Fresh meat of poultry other than ratites	POU	N, P1		22.3.2022	22.7.2022
		Fresh meat of ratites	RAT	N, P1		22.3.2022	22.7.2022
		Fresh meat of game birds	GBM	P1		22.3.2022	22.7.2022’

(x) in the entry for the United States, the following rows for the zone US-2.40 are replaced by the following:

‘US United States	US-2.40	Fresh meat of poultry other than ratites	POU	N, P1		23.3.2022	22.7.2022
		Fresh meat of ratites	RAT	N, P1		23.3.2022	22.7.2022
		Fresh meat of game birds	GBM	P1		23.3.2022	22.7.2022’

(xi) in the entry for the United States, the following rows for the zone US-2.42 are replaced by the following:

‘US United States	US-2.42	Fresh meat of poultry other than ratites	POU	N, P1		24.3.2022	22.7.2022
		Fresh meat of ratites	RAT	N, P1		24.3.2022	22.7.2022
		Fresh meat of game birds	GBM	P1		24.3.2022	22.7.2022’

(xii) in the entry for the United States, the following rows for the zones US-2.51 and US-2.52 are replaced by the following:

‘US United States	US-2.51	Fresh meat of poultry other than ratites	POU	N, P1		27.3.2022	22.7.2022
		Fresh meat of ratites	RAT	N, P1		27.3.2022	22.7.2022
		Fresh meat of game birds	GBM	P1		27.3.2022	22.7.2022
	US-2.52	Fresh meat of poultry other than ratites	POU	N, P1		27.3.2022	22.7.2022
		Fresh meat of ratites	RAT	N, P1		27.3.2022	22.7.2022
		Fresh meat of game birds	GBM	P1		27.3.2022	22.7.2022’

(xiii) in the entry for the United States, the following rows for the zone US-2.71 are replaced by the following:

‘US United States	US-2.71	Fresh meat of poultry other than ratites	POU	N, P1		1.4.2022	22.7.2022
		Fresh meat of ratites	RAT	N, P1		1.4.2022	22.7.2022
		Fresh meat of game birds	GBM	P1		1.4.2022	22.7.2022’

(xiv) in the entry for the United States, the following rows for the zone US-2.86 are replaced by the following:

‘US United States	US-2.86	Fresh meat of poultry other than ratites	POU	N, P1		3.4.2022	22.7.2022
		Fresh meat of ratites	RAT	N, P1		3.4.2022	22.7.2022
		Fresh meat of game birds	GBM	P1		3.4.2022	22.7.2022’

DECISIONS

COMMISSION IMPLEMENTING DECISION (EU) 2022/1307

of 22 July 2022

establishing a watch list of substances for Union-wide monitoring in the field of water policy pursuant to Directive 2008/105/EC of the European Parliament and of the Council

(notified under document C(2022) 5098)

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

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

Having regard to Directive 2008/105/EC of the European Parliament and of the Council of 16 December 2008 on environmental quality standards in the field of water policy, amending and subsequently repealing Council Directives 82/176/EEC, 83/513/EEC, 84/156/EEC, 84/491/EEC, 86/280/EEC and amending Directive 2000/60/EC of the European Parliament and of the Council ⁽¹⁾, and in particular Article 8b(5), first subparagraph, thereof,

Whereas:

- (1) Article 8b(1) of Directive 2008/105/EC provides for the establishment of a watch list of substances for which Union-wide monitoring data are to be gathered for the purpose of supporting future prioritisation exercises in accordance with Article 16(2) of Directive 2000/60/EC of the European Parliament and of the Council ⁽²⁾. The first such watch list was to include an indication of the monitoring matrices and possible methods of analysis not entailing excessive costs for each substance.
- (2) The substances in the watch list are to be selected from amongst those for which the information available indicates that they may pose a significant risk, at Union level, to or via the aquatic environment, but for which monitoring data are insufficient to come to a conclusion on the actual risk posed. Highly toxic substances, used in many Member States and discharged to the aquatic environment but not or rarely monitored, should be considered for inclusion in the watch list. That selection process should take into account information as itemised in Article 8b(1), points (a) to (e), of Directive 2008/105/EC, giving particular consideration to emerging pollutants.
- (3) The monitoring of the substances in the watch list should generate high-quality data on their concentrations in the aquatic environment, fit for the purpose of supporting, in a separate review exercise according to Article 16(4) of Directive 2000/60/EC, the risk assessments that underpin the identification of priority substances. In that review, substances found to pose a significant risk should be considered for inclusion in the priority substances list. An environmental quality standard would then also be set which Member States would have to meet. The proposal of a substance for inclusion in the priority substances list would be subject to an impact assessment.
- (4) The first watch list of substances was set out in Commission Implementing Decision (EU) 2015/495 ⁽³⁾ and contained ten substances or groups of substances, together with an indication of the monitoring matrix, possible analytical methods not entailing excessive costs, and maximum acceptable method detection limits.

⁽¹⁾ OJ L 348, 24.12.2008, p. 84.

⁽²⁾ Directive 2000/60/EC of the European Parliament and of the Council of 23 October 2000 establishing a framework for Community action in the field of water policy (OJ L 327, 22.12.2000, p. 1).

⁽³⁾ Commission Implementing Decision (EU) 2015/495 of 20 March 2015 establishing a watch list of substances for Union-wide monitoring in the field of water policy pursuant to Directive 2008/105/EC of the European Parliament and of the Council (OJ L 78, 24.3.2015, p. 40).

- (5) According to Article 8b(2) of Directive 2008/105/EC, the Commission is to update the watch list every two years. When updating the list, the Commission is to remove any substance for which a risk-based assessment as referred to in Article 16(2) of Directive 2000/60/EC can be concluded without additional monitoring data.
- (6) The watch list was updated in 2018 as set out in Commission Implementing Decision (EU) 2018/840 ⁽⁴⁾ by the removal of five substances and the addition of three, such that the list contained eight substances or groups of substances.
- (7) The watch list was further updated in 2020 as set out in Commission Implementing Decision (EU) 2020/1161 ⁽⁵⁾ by the removal of five substances or groups of substances and the addition of six, such that the list contained nine substances or groups of substances.
- (8) According to Article 8b(2) of Directive 2008/105/EC, the duration of a continuous watch list monitoring period for any individual substance shall not exceed four years. Therefore the watch-list monitoring obligation for the three substances or groups of substances that had been on the list since 2018, namely metaflumizone, amoxicillin and ciprofloxacin, ceased in 2022. The monitoring data obtained will be considered in the context of the prioritisation exercise referred to in Article 16(2) of Directive 2000/60/EC.
- (9) On the basis of the monitoring data obtained for the other six substances or groups of substances since 2020, namely sulfamethoxazole, trimethoprim, venlafaxine and its metabolite O-desmethylvenlafaxine, the group of tenazole compounds (the pharmaceuticals clotrimazole, fluconazole and miconazole and the pesticides imazalil, ipconazole, metconazole, penconazole, prochloraz, tebuconazole and tetraconazole) and the fungicides famoxadone and dimoxystrobin, the Commission concluded that insufficient high-quality monitoring data had been obtained, and that, therefore, those substances or groups of substances should remain on the watch list.
- (10) During 2021, the Commission gathered data on a range of other substances that could be included in the watch list. It took into account the different types of relevant information referred to in Article 8b(1) of Directive 2008/105/EC, and consulted experts from Member States and stakeholder groups. Substances for which doubt exists about their toxicity, or for which the sensitivity, reliability or comparability of the available monitoring methods are not adequate, should not be included in the watch list. The fungicide azoxystrobin, the herbicide diflufenican, the insecticide and veterinary pharmaceutical fipronil, the antibiotics clindamycin and ofloxacin, the human pharmaceutical metformin and its metabolite guanlylurea, and a group of three sunscreen agents (butyl methoxydibenzoylmethane, also known as avobenzene; octocrylene; and benzophenone-3, also known as oxybenzone) were identified as suitable candidates. The addition of the pharmaceuticals is consistent with the EU Strategic Approach to Pharmaceuticals in the Environment ⁽⁶⁾, and the inclusion of the two antibiotics is also consistent with the European One Health Action Plan against Antimicrobial Resistance (AMR) ⁽⁷⁾, which supports the use of the watch list to 'improve knowledge of the occurrence and spread of antimicrobials in the environment'.
- (11) In accordance with Article 8b(1) of Directive 2008/105/EC, the Commission identified possible methods of analysis for the proposed substances. For the substances retained on the list, the method detection limit should be, for each substance, including each individual substance in a group, at least as low as the substance-specific predicted no-effect concentration in the relevant matrix. For the newly-added substances, the method quantification limit should be, for each substance, including each individual substance in a group, at least as low as the substance-specific predicted no-effect concentration in the relevant matrix.

⁽⁴⁾ Commission Implementing Decision (EU) 2018/840 of 5 June 2018 establishing a watch list of substances for Union-wide monitoring in the field of water policy pursuant to Directive 2008/105/EC of the European Parliament and of the Council and repealing Commission Implementing Decision (EU) 2015/495 (OJ L 141, 7.6.2018, p. 9).

⁽⁵⁾ Commission Implementing Decision (EU) 2020/1161 of 4 August 2020 establishing a watch list of substances for Union-wide monitoring in the field of water policy pursuant to Directive 2008/105/EC of the European Parliament and of the Council (OJ L 257, 6.8.2020, p. 32).

⁽⁶⁾ Communication from the Commission to the European Parliament, the Council and the European Economic and Social Committee, European Union Strategic Approach to Pharmaceuticals in the Environment (COM(2019) 128 final).

⁽⁷⁾ Communication from the Commission to the Council and the European Parliament A European One Health Action Plan against Antimicrobial Resistance (AMR) (COM(2017) 339 final).

- (12) Sulfamethoxazole and trimethoprim are commonly, but not always, used in combination because of their claimed synergistic effects; they can and should continue to be analysed together even though they are not grouped together in the list. Venlafaxine and its metabolite are grouped because of their potentially additive effects; they can and should continue to be analysed together. The azole substances are grouped because they have the same mode of action and could also have additive effects; they can and should also continue to be analysed together.
- (13) Azoxytrobin is included alongside dimoxystrobin because it has the same mode of action; these substances can and should be analysed together. Metformin and its metabolite could have additive effects; they can and should be analysed together. The three sunscreen agents are grouped because they have the same mode of action and could have additive effects, they too can and should be analysed together.
- (14) The analytical methods specified in the watch list are not considered to entail excessive costs. If new information leads in the future to a decrease in the predicted no-effect concentration for any of the newly added substances, the maximum acceptable method quantification limit for those substances may have to be lowered as long as they remain on the list.
- (15) Article 8b of Directive 2008/105/EC specifies, inter alia, the conditions and modalities for the monitoring of the substances included in the watch list and for the reporting of the monitoring results by the Member States. It specifies in particular that, in selecting the representative monitoring stations, the monitoring frequency and the timing for each substance, Member States are to take into account the use patterns and possible occurrence of the substance. Even though the minimum monitoring frequency is once per year, Member States should consider, for all the substances, a monitoring frequency of at least twice per year to take account of their fluctuating usage, to ensure that data of sufficiently high quality are collected, and that the watch-list mechanism can thus provide properly effective support to subsequent risk-assessment processes.
- (16) For comparability, all substances should be monitored in whole water samples.
- (17) For reasons of legal clarity, the Annex to Implementing Decision (EU) 2020/1161 should be replaced in its entirety. Implementing Decision (EU) 2020/1161 should therefore be repealed.
- (18) The measures provided for in this Decision are in accordance with the opinion of the Committee established by Article 21(1) of Directive 2000/60/EC.

HAS ADOPTED THIS DECISION:

Article 1

The watch list of substances for Union-wide monitoring referred to in Article 8b of Directive 2008/105/EC is set out in the Annex to this Decision.

Article 2

Implementing Decision (EU) 2020/1161 is repealed.

Article 3

This Decision is addressed to the Member States.

Done at Brussels, 22 July 2022.

For the Commission
Virginijus SINKEVIČIUS
Member of the Commission

ANNEX

Watch list of substances for Union-wide monitoring as set out in Article 8b of Directive 2008/105/EC

Name of substance/group of substances	CAS number ⁽¹⁾	EU number ⁽²⁾	Indicative analytical method ⁽³⁾ ⁽⁴⁾	Maximum acceptable method detection or quantification limit (ng/l)
Sulfamethoxazole ⁽⁵⁾	723-46-6	211-963-3	SPE-LC-MS-MS	100 ⁽¹¹⁾
Trimethoprim ⁽⁵⁾	738-70-5	212-006-2	SPE-LC-MS-MS	100 ⁽¹¹⁾
Venlafaxine and O-desmethylvenlafaxine ⁽⁶⁾	93413-69-5 93413-62-8	618-944-2 700-516-2	SPE-LC-MS-MS	6 ⁽¹¹⁾
<i>Azole compounds</i> ⁽⁷⁾			SPE-LC-MS-MS	
Clotrimazole	23593-75-1	245-764-8		20 ⁽¹¹⁾
Fluconazole	86386-73-4	627-806-0		250 ⁽¹¹⁾
Imazalil	35554-44-0	252-615-0		800 ⁽¹¹⁾
Ipconazole	125225-28-7	603-038-1		44 ⁽¹¹⁾
Metconazole	125116-23-6	603-031-3		29 ⁽¹¹⁾
Miconazole	22916-47-8	245-324-5		200 ⁽¹¹⁾
Penconazole	66246-88-6	266-275-6		1 700 ⁽¹¹⁾
Prochloraz	67747-09-5	266-994-5		161 ⁽¹¹⁾
Tebuconazole	107534-96-3	403-640-2		240 ⁽¹¹⁾
Tetraconazole	112281-77-3	407-760-6		1 900 ⁽¹¹⁾
Dimoxystrobin <u>Azoxystrobin</u> ⁽⁸⁾	149961-52-4 <u>131860-33-8</u>	604-712-8 <u>603-524-3</u>	SPE-LC-MS-MS	32 ⁽¹¹⁾ <u>200</u> ⁽¹²⁾
Famoxadone	131807-57-3	603-520-1	SPE-LC-MS-MS	8,5 ⁽¹¹⁾
Diflufenican	83164-33-4	617-446-2	SPE-LC-MS-MS	10 ⁽¹²⁾
Fipronil	120068-37-3	424-610-5	SPE-HPLC-MS-MS	0,77 ⁽¹²⁾
Clindamycin	18323-44-9	242-209-1	SPE-LC-MS-MS	44 ⁽¹²⁾
Ofloxacin	82419-36-1	680-263-1	SPE-UPLC-MS-MS	26 ⁽¹²⁾
Metformin and Guanylurea ⁽⁹⁾	657-24-9 141-83-3	211-517-8 205-504-6	SPE-LC-MS-MS	156 000 ⁽¹²⁾ 100 000 ⁽¹²⁾
<i>Sunscreen agents</i> ⁽¹⁰⁾				
Butyl methoxydibenzoyl-methane	70356-09-1	274-581-6	SPE-LC-MS-MS/ESI	3 000 ⁽¹²⁾
Octocrylene	6197-30-4	228-250-8		266 ⁽¹²⁾
Benzophenone-3	131-57-7	205-031-5		670 ⁽¹²⁾

(¹) Chemical Abstracts Service

(²) European Union number – not available for all substances

(³) To ensure comparability of results from different Member States, all substances shall be monitored in whole water samples.

(⁴)

Extraction methods:

SPE – solid-phase extraction

Analytical methods:

HPLC-MS-MS – High-performance liquid chromatography (tandem) triple quadrupole mass spectrometry

LC-MS-MS – Liquid chromatography (tandem) triple quadrupole mass spectrometry

LC-MS-MS/ESI – Liquid chromatography (tandem) triple quadrupole mass spectrometry with positive electrospray ionisation

UPLC-MS-MS – Ultra-performance liquid chromatography (tandem) triple quadrupole mass spectrometry

(⁵) Sulfamethoxazole and trimethoprim, although not grouped, shall be analysed together in the same samples but reported as individual concentrations.

(⁶) Venlafaxine and O-desmethylenlafaxine shall be analysed together in the same samples but reported as individual concentrations.

(⁷) Theazole compounds shall be analysed together in the same samples but reported as individual concentrations.

(⁸) Dimoxystrobin and azoxystrobin shall be analysed together in the same samples but reported as individual concentrations.

(⁹) Metformin and guanylurea shall be analysed together in the same samples but reported as individual concentrations.

(¹⁰) The sunscreen agents shall be analysed together in the same samples but reported as individual concentrations.

(¹¹) Maximum acceptable detection limit

(¹²) Maximum acceptable quantification limit

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