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II

(Non-legislative acts)

INTERNATIONAL AGREEMENTS

COUNCIL DECISION (EU) 2022/1165

of 27 June 2022

on the signing, on behalf of the Union, and provisional application of the Agreement between the European Union and the Republic of Moldova on the carriage of freight by road

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 91, in conjunction with Article 218(5), thereof,

Having regard to the proposal from the European Commission,

Whereas:

- (1) On 2 June 2022, the Council authorised the opening of negotiations with the Republic of Moldova on an Agreement between the European Union and the Republic of Moldova on the carriage of freight by road (hereinafter, the 'Agreement').
- (2) The negotiations were successfully concluded on 15 June 2022.
- (3) In view of the important disruptions in the transport sector in the Republic of Moldova caused by the war of aggression undertaken by Russia against Ukraine, it is necessary for operators from the Republic of Moldova to find alternative transit routes by road through the European Union and to find new markets to export their goods.
- (4) Given that permits granted in the framework of the European Conference of Ministers of Transport multilateral quota system within the International Transport Forum and existing bilateral agreements with the Republic of Moldova do not allow for the necessary flexibility for road haulage operators from the Republic of Moldova to increase and plan ahead their operations through and with the European Union, it is crucial to liberalise the transport of freight by road for bilateral operations as well as for transit.
- (5) In view of the exceptional and unique circumstances that necessitate the signature and provisional application of the Agreement and in accordance with the Treaties, it is appropriate for the Union to exercise temporarily the relevant shared competence conferred upon it by the Treaties. Any effect of this Decision on the division of competences between the Union and the Member States should be strictly limited in time. The competence exercised by the Union on the basis of this Decision and of the Agreement should therefore be exercised only during the period of application of the Agreement. Accordingly, the shared competence thus exercised will cease to be exercised by the Union as soon as the Agreement ceases to apply. Without prejudice to other Union measures, and subject to compliance with those Union measures, that competence will, in accordance with Article 2(2) of the Treaty on the Functioning of the European Union (TFEU), again be exercised by the Member States thereafter. Furthermore, it is recalled that, as set out in Protocol No 25 on the exercise of shared competence annexed to the Treaty on European Union and to the TFEU, the scope of the exercise of the competence of the Union in this Decision covers only those elements governed by this Decision and the Agreement and does not cover the whole area. The exercise of Union competence by this Decision is without prejudice to the respective competences of the Union and of the Member States in relation to any ongoing or future negotiations for, or signature or conclusion of, international agreements with any other third country in that area.

- (6) Therefore, the Agreement, which is limited in time, with a possibility for renewal, subject to a decision by the Joint Committee established by the Agreement which should follow the adoption of a Council Decision defining the position of the Union in that regard, should be urgently signed on behalf of the European Union, subject to its conclusion at a later date.
- (7) In order to start deploying the beneficial effects of the Agreement on the carriage of freight as soon as possible, the Agreement should be applied provisionally in accordance with Article 12 thereof,

HAS ADOPTED THIS DECISION:

Article 1

The signing, on behalf of the Union, of the Agreement between the European Union and the Republic of Moldova on the carriage of freight by road, is hereby authorised, subject to the conclusion of the said Agreement ⁽¹⁾.

Article 2

1. The exercise of Union competence pursuant to this Decision and the Agreement shall be limited to the period of application of the Agreement. Without prejudice to other Union measures, and subject to compliance with those Union measures, after the end of that period of application the Union shall immediately cease to exercise that competence and the Member States shall again exercise their competence in accordance with Article 2(2) TFEU.
2. The exercise of Union competence pursuant to this Decision and the Agreement shall be without prejudice to the competence of the Member States concerning any ongoing or future negotiations for, or signature or conclusion of, international agreements related to the carriage of goods by road with any other third country, and with the Republic of Moldova with respect to the period after the Agreement has ceased to apply.
3. The exercise of the competence by the Union referred to in paragraph 1 covers only the elements governed by this Decision and the Agreement.
4. This Decision and the Agreement are without prejudice to the respective competences of the Union and the Member States in the area of carriage of goods by road with regard to elements other than those governed by this Decision and the Agreement.

Article 3

The President of the Council is hereby authorised to designate the person(s) empowered to sign the Agreement on behalf of the Union.

Article 4

The Agreement shall be applied on a provisional basis, in accordance with Article 12 thereof, as from the date of its signature, pending the completion of the procedures necessary for its entry into force.

⁽¹⁾ See page 4 of this Official Journal.

Article 5

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

Done at Luxembourg, 27 June 2022.

For the Council

The President

A. PANNIER-RUNACHER

**AGREEMENT between The European Union and the Republic of Moldova on the Carriage of Freight
by Road**

THE EUROPEAN UNION,

hereinafter also referred to as "the Union",

of the one part,

and

THE REPUBLIC OF MOLDOVA,

of the other part,

hereinafter referred to individually as a "Party" and collectively as the "Parties",

ACKNOWLEDGING the important disruptions faced by the transport sector in the Republic of Moldova following Russia's war of aggression against Ukraine,

RECOGNISING the unavailability of essential transport routes through Ukraine for Moldovan exports and the urgent need to protect supply chains and food security by using alternative routes from the Republic of Moldova via the territory of the European Union,

DESIRING to support the Moldovan society and economy, by allowing Union and Moldovan road haulage operators to carry out freight transport operations to and through the Moldovan territory when needed, and by enabling the Republic of Moldova to further adjust its economic and transport patterns in order to respond to the impact on international markets of Russia's war of aggression,

NOTING that the current system based on a limited number of Member States' permits does not allow the necessary flexibility for Moldovan road haulage operators to increase their operations through and with the Union,

DETERMINED to ensure for the future that the conditions of market access in transport of goods by road between the Parties currently available to road transport operators established in any of the Parties will in any case not be more restrictive as compared to the situation currently existing,

DETERMINED to help the Moldovan economy by liberalising transit and bilateral international carriage operations between the Union and the Republic of Moldova to allow for the necessary transport of goods and to give the same reciprocal rights to both Parties to carry out transit and bilateral international carriage operations between those territories,

NOTING that in Annex X of the Association Agreement between the European Union and the European Atomic Energy Community and their Member States and the Republic of Moldova (hereinafter the "Association Agreement") the Republic of Moldova undertakes to gradually approximate its road transport legislation to the Union legislation and international instruments enumerated in that Annex,

DESIRING to subject the provisions of this Agreement to the dispute settlement chapter of the Association Agreement,

RECOGNISING the impossibility of anticipating the duration of the impact of the Russian war of aggression on the transport sector and infrastructures in Ukraine which also affect Moldovan operators, for which reason the Parties shall, at the latest three months before the expiry of this Agreement, consult within the Joint Committee in order to assess the need for its renewal,

ACKNOWLEDGING that the European Agreement concerning the work of crews of vehicles engaged in international road transport (AETR) will ensure that the transport operations under this Agreement respect drivers' working conditions, fair competition and not jeopardise road safety,

HAVE AGREED AS FOLLOWS:

Article 1

Objectives

1. The aim of this Agreement is to temporarily facilitate road freight transport between and through the territory of the European Union and the Republic of Moldova by granting additional rights of transit and carriage of goods between the Parties to operators established in one of the Parties following the repercussions of Russia's war of aggression against Ukraine and the significant disruptions it brings for the road transport sector in the Republic of Moldova.
2. This Agreement shall not be construed as having the effect of diminishing or otherwise rendering the conditions of market access to international road transport services between the Parties more restrictive as compared to the situation existing on the day preceding the date of entry into force of this Agreement.

Article 2

Scope

This Agreement shall apply to the transit and international carriage of goods by road between the Parties for hire or reward and is without prejudice to the application of the rules established by the European Conference of Ministers of Transport multilateral quota system within the International Transport Forum. The carriage of goods by road within a Member State of the European Union or between Member States of the European Union is outside the scope of this Agreement. Transit through the territory of the other Party for the carriage of goods between third countries is not covered by this Agreement.

Article 3

Definitions

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

- (1) 'party of establishment' means the Party in which the road haulage operator is established;
- (2) 'road haulage operator' means any natural or legal person engaged in the transport of freight with a commercial purpose established in a Party in conformity with the law of that Party and authorised by the same Party to carry out the international transport of goods for hire or reward by means either of motor vehicles or combinations of vehicles;
- (3) 'vehicle' means a motor vehicle registered in one of the Parties, or a coupled combination of vehicles the motor vehicle of which at least is registered in one of the Parties, used exclusively for the carriage of goods;
- (4) 'transit' means the movement of vehicles, without loading or unloading goods, in the territory of a Party by a road haulage operator established in the other Party;
- (5) 'bilateral international carriage' means laden journeys with a vehicle, from the territory of the Party of establishment to the territory of the other Party, and *vice versa*, with or without transit through the territory of a third country.

Article 4

Access to road transport services

Road haulage operators shall be entitled to carry out the following road haulage operations:

- (a) laden journeys undertaken by a vehicle the point of departure and the point of arrival of which are in the territory of two different Parties, with or without transit through the territory of a third country;

- (b) laden journeys undertaken by a vehicle from the territory of the Party of establishment to the territory of the same Party with transit through the territory of the other Party;
- (c) laden journeys undertaken by a vehicle to or from the territory of the Party of establishment to a third country with transit through the territory of the other Party;
- (d) unladen journeys undertaken by a vehicle in conjunction with the journeys referred to in points (a), (b) and (c).

Article 5

Duration

1. This Agreement shall apply until 31 March 2023.
2. At the latest three months before the expiry of the Agreement, the Parties shall consult in order to assess the need for its renewal. For this purpose, the Parties shall consult within the Joint Committee as set out in Article 6(2).

Article 6

Joint Committee

1. A Joint Committee is hereby established. It shall supervise and monitor the application and implementation of this Agreement and periodically review the functioning of this Agreement in light of its objectives.
2. The Joint Committee shall be convened at the request of either of its co-chairs. It shall also be convened at the latest three months before the expiry of the Agreement, in order to assess and decide the need for the continuation of this Agreement in accordance with Article 5(2). The Joint Committee shall take a decision on such continuation, including the duration thereof, as appropriate, in accordance with paragraph 5 of this Article.
3. The Joint Committee shall be composed of representatives of the Parties. The representatives of the Member States of the European Union may attend the meetings of the Joint Committee as observers.
4. The Joint Committee shall be chaired in turn by a representative of the European Union and a representative of the Republic of Moldova.
5. The Joint Committee shall adopt its decisions by consensus. The decisions shall be binding on the Parties, which shall take all necessary measures to implement them.
6. The Joint Committee shall adopt its rules of procedure.

Article 7

Dispute settlement ⁽¹⁾

When a dispute arises between the Parties concerning the interpretation and application of this Agreement, the provisions of Chapter 14 of Title V of the Association Agreement shall apply *mutatis mutandis*.

Article 8

Fulfilment of obligations

1. Each Party is fully responsible for the observance of all provisions of this Agreement.

⁽¹⁾ For the avoidance of doubt, neither this Article nor this Agreement shall be construed as conferring rights or imposing obligations which can be directly invoked before the domestic courts of the Parties.

2. Each Party shall ensure that all necessary measures are taken to give effect to the provisions of this Agreement, including their observance at all levels of government, as well as by persons exercising delegated governmental authority. Each Party shall act in good faith to ensure that the objectives set out in this Agreement are attained.

3. This Agreement is a specific agreement within the meaning of Article 458(1) of the Association Agreement. A Party may take appropriate measures relating to this Agreement in the event of a particularly serious and substantial violation of any of the obligations described in Article 2(1) of the Association Agreement as essential elements, which threatens international peace and security so as to require an immediate reaction. Such appropriate measures shall be taken in accordance with Article 455 of the Association Agreement.

Article 9

Safeguard measures

1. Either Party may take appropriate safeguard measures if it considers that transport operations carried out by road haulage operators of the other Party pose a threat to road safety. Safeguard measures shall be taken in full respect of international law, shall be proportionate and limited with regard to their scope and duration to what is strictly necessary in order to remedy the situation or maintain the balance of this Agreement. Priority shall be given to such measures that least disturb the functioning of this Agreement.

2. The Party concerned shall, before entering into consultations, notify the measures taken to the other Party and shall provide all relevant information.

3. The Parties shall immediately enter into consultations in the Joint Committee with a view to finding a mutually acceptable solution.

4. Any action taken under the terms of this Article shall be suspended, as soon as the Party at fault complies with the provisions of this Agreement or when the threat to road safety ceases to exist.

Article 10

Territorial application

1. This Agreement shall apply, of the one part, to the Territory in which the Treaty on the European Union and the Treaty on the Functioning of the European Union apply and under the conditions laid down in those Treaties, and, of the other part, to the territory of the Republic of Moldova.

2. The application of this Agreement is temporarily suspended in those areas in which the Government of the Republic of Moldova does not exercise effective control. Its application may be resumed following a Decision of the Association Council, or an Association Joint Committee decision confirming that the Republic of Moldova is able to ensure full compliance with this Agreement.

Article 11

Termination

1. Either Party may, at any time, give notice in writing, through diplomatic channels, to the other Party of its decision to terminate this Agreement. The Agreement shall be terminated two weeks after such notification, unless the notifying Party indicates a later date for such notification to take effect. In the latter case, the date shall not be more than two months after the date of the notification.

2. Road haulage operators whose vehicle is in the territory of the other Party upon expiry of this Agreement shall be allowed to transit through the territory of that Party to return to the territory of the Party where they are established.

3. For greater certainty, the date of notification referred to in paragraph 1 means the date the notification is delivered to the other Party.

4. The expiry pursuant to Article 5, or the termination of this Agreement pursuant to paragraph 1 of this Article, shall not have the effect of restricting the conditions for market access in road transport services between the Parties as compared to the situation existing on the day before the date of entry into force of this Agreement. To that effect, in the absence of a subsequent agreement between the Parties, the market access entitlements set under the bilateral agreements existing between Member States of the European Union and the Republic of Moldova on that day shall apply again as of the date of expiry or termination of this Agreement.

Article 12

Entry into force and provisional application

1. The Parties shall ratify or approve this Agreement in accordance with their own procedures. This Agreement shall enter into force on the day on which the Parties have notified each other of the completion of their respective internal legal procedures necessary for this purpose.
2. Notwithstanding paragraph 1, the Union and the Republic of Moldova agree to provisionally apply this Agreement as from the day of its signature.
3. For the purposes of the relevant provisions of this Agreement, any reference in such provisions to the "date of entry into force of this Agreement" shall be understood to the "date from which this Agreement is provisionally applied" in accordance with paragraph 1 of this Article.

Done in duplicate in the Bulgarian, Croatian, Czech, Danish, Dutch, English, Estonian, Finnish, French, German, Greek, Hungarian, Irish, Italian, Latvian, Lithuanian, Maltese, Polish, Portuguese, Romanian, Slovak, Slovenian, Spanish and Swedish languages, each of these texts being equally authentic.

IN WITNESS WHEREOF, the undersigned Plenipotentiaries, duly authorised to this effect, have signed this Agreement.

Съставено в Лион на двадесет и девети юни две хиляди двадесет и втора година.

Hecho en Lyon, el veintinueve de junio de dos mil veintidós.

V Lyonu dne dvacátého devátého června dva tisíce dvacet dva.

Udfærdiget i Lyon, den niogtyvende juni to tusind og toogtyve.

Geschehen zu Lyon am neunundzwanzigsten Juni zweitausendzweiundzwanzig.

Kahe tuhande kahekümne teise aasta juunikuu kahekümne üheksandal päeval Lyonis.

Έγινε στη Λυών, στις είκοσι εννέα Ιουνίου δύο χιλιάδες είκοσι δύο.

Done at Lyon on the twenty-ninth day of June in the year two thousand and twenty two.

Fait à Lyon, le vingt-neuf juin deux mille vingt-deux.

Arna dhéanamh i Lyon, an naoú lá is fiche de Mheitheamh sa bhliain dhá mhíle fiche a dó.

Sastavljeno u Lyonu dvadeset i devetog lipnja godine dvije tisuće dvadeset i druge.

Fatto a Lione, addì ventinove giugno duemilaventidue.

Lionā, divi tūkstoši divdesmit otrā gada divdesmit devītajā jūnijā.

Priimta du tūkstančiai dvidešimt antrų metų birželio dvidešimt devintą dieną Lione.

Kelt Lyonban, a kétezerhuszonkettedik év június havának huszonkilencedik napján.

Magħmul f'Lyon, fid-disgħa u għoxrin jum ta' Ġunju fis-sena elfejn u tnejn u għoxrin.

Gedaan te Lyon, negenentwintig juni tweeduizend tweeëntwintig.

Sporządzono w Lyonie dnia dwudziestego dziewiątego czerwca roku dwa tysiące dwudziestego drugiego.

Feito em Lião, em vinte e nove de junho de dois mil e vinte e dois.

Întocmit la Lyon, la douăzeci și nouă iunie două mii douăzeci și doi.

V Lyone dvadsiateho deviateho júna dvetisícdvadsaťdva

V Lyonu, devetindvajsetega junija dva tisoč dvaindvajset.

Tehty Lyonissa kahdentenakymmenentenäyhdeksäntenä päivänä kesäkuuta vuonna kaksituhattakaksikymmentäkaksi.

Som skedde i Lyon den tjugonionde juni tjugohundratjugotvå.

Za Европейския съюз
Por la Unión Europea
Za Evropskou unii
For Den Europæiske Union
Für die Europäische Union
Euroopa Liidu nimel
Για την Ευρωπαϊκή Ένωση
For the European Union
Pour l'Union européenne
Thar ceann an Aontais Eorpaigh
Za Europejsku uniju
Per l'Unione europea
Eiropas Savienības vārdā –
Europos Sąjungos vardu
Az Európai Unió részéről
Ghall-Unjoni Ewropea
Voor de Europese Unie
W imieniu Unii Europejskiej
Pela União Europeia
Pentru Uniunea Europeană
Za Európsku úniu
Za Evropsko unijo
Euroopan unionin puolesta
För Europeiska unionen

За Република Молдова
Por la República de Moldavia
Za Moldavskou republiku
For Republikken Moldova
Für die Republik Moldau
Moldova Vabariigi nimel
Για τη Δημοκρατία της Μολδαβίας
For the Republic of Moldova
Pour la République de Moldavie
Thar ceann Phoblacht na Moldóive
Za Republiku Moldovu
Per la Repubblica di Moldova
Moldovas Republikas vārdā –
Moldovas Respublikos vardu
A Moldovai Köztársaság részéről
Ghar-Repubblika tal-Moldova
Voor de Republiek Moldavië
W imieniu Republiki Moldawii
Pela República da Moldávia
Pentru Republica Moldova
Za Moldavskú republiku
Za Republiko Moldavijo
Moldovan tasavallan puolesta
För Republiken Moldavien

REGULATIONS

COMMISSION IMPLEMENTING REGULATION (EU) 2022/1166

of 6 July 2022

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

THE EUROPEAN COMMISSION,

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

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

After consulting the Line Regulation Committee,

Whereas:

- (1) Commission Regulation (EC) No 1480/2004 ⁽²⁾ provides for specific rules concerning goods arriving from the areas not under the effective control of the Government of Cyprus in the areas in which the Government exercises effective control, including with respect to phytosanitary inspections of and reporting on plants, plant products and other objects listed in Annex V, Part B, to Council Directive 2000/29/EC ⁽³⁾. For that purpose, Article 3 of that Regulation contains references to that Directive.
- (2) Regulation (EU) 2016/2031 of the European Parliament and of the Council ⁽⁴⁾, which provides the basis for Union rules on protective measures against pests of plants, repealed Directive 2000/29/EC. That Regulation empowers the Commission to establish a list of the plants, plant products and other objects for which a phytosanitary certificate for introduction into the Union territory is necessary.
- (3) Commission Implementing Regulation (EU) 2019/2072 ⁽⁵⁾ lists plants, plant products and other objects for which a phytosanitary certificate for introduction into the Union territory is necessary, amongst which those previously listed in Annex V, part B, to Directive 2000/29/EC.

⁽¹⁾ OJ L 161, 30.4.2004, p. 128.

⁽²⁾ Commission Regulation (EC) No 1480/2004 of 10 August 2004 laying down specific rules concerning goods arriving from the areas not under the effective control of the Government of Cyprus in the areas in which the Government exercises effective control (OJ L 272, 20.8.2004, p. 3).

⁽³⁾ Council Directive 2000/29/EC of 8 May 2000 on protective measures against the introduction into the Community of organisms harmful to plants or plant products and against their spread within the Community (OJ L 169, 10.7.2000, p. 1).

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

⁽⁵⁾ Commission Implementing Regulation (EU) 2019/2072 of 28 November 2019 establishing uniform conditions for the implementation of Regulation (EU) 2016/2031 of the European Parliament and the Council, as regards protective measures against pests of plants, and repealing Commission Regulation (EC) No 690/2008 and amending Commission Implementing Regulation (EU) 2018/2019 (OJ L 319, 10.12.2019, p. 1).

- (4) It is therefore appropriate to amend Regulation (EC) No 1480/2004 in order to replace the references to Directive 2000/29/EC by references to Implementing Regulation (EU) 2019/2072.
- (5) It is also necessary to update all references to the provisions concerning the plant passports.
- (6) As, according to Article 4(4) of Regulation (EC) No 866/2004, the goods crossing the line are to be subject to the requirements and undergo the checks as required by the Union phytosanitary legislation as set out in Annex II to that Regulation, the inspections should aim to ascertain that the respective goods are free from the Union quarantine pests listed in Annex II to Implementing Regulation (EU) 2019/2072, comply with the thresholds for the presence of Union regulated non-quarantine pests listed in Annex IV to that Regulation, and comply with the requirements for introduction into the Union set out in Annex VII to that Regulation.
- (7) Regulation (EC) No 1480/2004 should therefore be amended accordingly,

HAS ADOPTED THIS REGULATION:

Article 1

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

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

'Article 3

Phytosanitary inspection and reporting

1. Independent phytosanitary experts appointed by the Commission, deployed under the Technical Assistance and Information Exchange instrument (TAIEX), and operating in coordination with the Turkish Cypriot Chamber of Commerce for the implementation of Regulation (EC) No 866/2004 ("the experts"), shall inspect all goods consisting of plants, plant products and other objects listed in Part A and Part B of Annex XI to Commission Implementing Regulation (EU) 2019/2072 (*) at the stages of production, of harvest and of marketing, to ascertain that they:

- (a) are free from the Union quarantine pests listed in Annex II to Regulation (EU) 2019/2072;
- (b) comply with the thresholds for the presence of Union regulated non-quarantine pests listed in Annex IV to Regulation (EU) 2019/2072;
- (c) comply with the requirements for introduction into the Union set out in Annex VII to that Regulation; and
- (d) comply with the measures to prevent the presence of regulated non-quarantine pests on specific plants for planting set out in Annex V to Regulation (EU) 2019/2072.

Where relevant, they shall also inspect all plants, plant products and other objects listed in Annex XII to Implementing Regulation (EU) 2019/2072, to ascertain that they are free from the respective protected zone quarantine pests listed in Annex III to that Regulation.

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

3. If the experts, to the best of their knowledge and as far as can be determined, establish that the relevant plants, plant products or other objects in the consignment comply with the requirements of paragraphs 1 and 2 and with the relevant requirements and checks as set out in Annex II to Regulation (EC) No 866/2004, they shall:

- (a) establish a report of their findings, filled in completely and duly signed by at least one of the experts, using the form provided for in Annex III to this Regulation; and

(b) add that report, as a supplement, to the accompanying document referred to in Article 2 of this Regulation.

The experts shall not issue “Reports of Phytosanitary inspection” in respect of plants intended for planting, including tubers of *Solanum tuberosum* L intended for planting.

4. The experts shall consequently seal the lorries or other means of transport in such a way as to prevent any opening of the consignment until it crosses the line.

Commodities covered by this Article may only be moved across the line if points (a) and (b) of paragraph 3 are fulfilled.

5. Upon arrival in the areas in which the Government of the Republic of Cyprus exercises effective control, the competent authorities shall examine the consignment. Where applicable, the “Report of phytosanitary inspection” shall be replaced by a plant passport provided for Article 79(1) or Article 80(1) of Regulation (EU) 2016/2031 of the European Parliament and of the Council (**).

(*) Commission Implementing Regulation (EU) 2019/2072 of 28 November 2019 establishing uniform conditions for the implementation of Regulation (EU) 2016/2031 of the European Parliament and the Council, as regards protective measures against pests of plants, and repealing Commission Regulation (EC) No 690/2008 and amending Commission Implementing Regulation (EU) 2018/2019 (OJ L 319, 10.12.2019, p. 1).

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

(2) the fourth, fifth and sixth indents under point 10 of the model provided for in Annex III are replaced by the following:

- are considered to be free from Union quarantine pests listed in Annex II and, where appropriate, protected zone quarantine pests listed in Annex III, and comply with the thresholds concerning the presence of Union regulated non-quarantine pests listed in Annex IV to Regulation (EU) 2019/2072.
- In the case of potatoes, that the potatoes in the consignment were grown directly from seed potatoes certified in one of the Member States or from seed potatoes certified in any other country for which the entry into the Union of potatoes intended for planting is not prohibited pursuant to Annex VI of Implementing Regulation (EU) 2019/2072.”

Article 2

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

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

Done at Brussels, 6 July 2022.

For the Commission
The President
Ursula VON DER LEYEN

COMMISSION IMPLEMENTING REGULATION (EU) 2022/1167**of 6 July 2022****amending Implementing Regulation (EU) 2021/633 imposing a definitive anti-dumping duty on imports of monosodium glutamate originating in the People's Republic of China and in Indonesia following an expiry review pursuant to Article 11(2) of Regulation (EU) 2016/1036 of the European Parliament and of the Council following a partial interim review**

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(3) thereof,

Whereas:

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

- (1) By Council Regulation (EC) No 1187/2008 ⁽²⁾, the Council imposed definitive anti-dumping duties on imports of monosodium glutamate ('MSG') originating in the People's Republic of China ('China', the 'PRC' or the 'country concerned') ('the original investigation').
- (2) On 21 January 2015, following an expiry review in accordance with Article 11(2) of the basic Regulation, pursuant to Commission Implementing Regulation (EU) 2015/83 ⁽³⁾, the Commission decided to maintain the measures as established in the original investigation.
- (3) On 14 April 2021, following a second expiry review in accordance with Article 11(2) of the basic Regulation, pursuant to Commission Implementing Regulation (EU) 2021/633 ⁽⁴⁾, the Commission decided to maintain the level of the anti-dumping duties as established in the original investigation and as confirmed by Commission Implementing Regulation (EU) 2015/83.
- (4) The definitive anti-dumping duties currently in force range from 33,8 % to 39,7 %.

1.2. Name change request

- (5) In January 2019, a Chinese exporting producer, Tongliao Meihua Bio-Tech Co., Ltd allegedly changed its name to Tongliao Meihua Biological Sci-Tech Co., Ltd.
- (6) The company is one of the two related exporting producers pertaining to Meihua Group, together with Hebei Meihua MSG Group Co., Ltd, that currently benefits from an individual duty rate of 33,8 % under TARIC additional code A883. Tongliao Meihua Biological Sci-Tech Co., Ltd requested therefore to reflect the change of its name for the application of the existing individual duty rate of 33,8 %.
- (7) The supporting documentation provided by Tongliao Meihua Biological Sci-Tech Co., Ltd to justify the request showed, however, that the Meihua Group underwent an important structural reorganisation well beyond a simple name change. Therefore, it was considered that the individual dumping margin established for the original entities (Hebei Meihua MSG Group Co., Ltd and Tongliao Meihua Bio-Tech Co., Ltd or 'Meihua Group') under TARIC additional code A883 may no longer be appropriate.

⁽¹⁾ OJ L 176, 30.6.2016, p. 21.

⁽²⁾ OJ L 322, 2.12.2008, p. 1.

⁽³⁾ OJ L 15, 22.1.2015, p. 31.

⁽⁴⁾ OJ L 132, 19.4.2021, p. 63.

- (8) Based on the above, the Commission considered that there was sufficient evidence that the circumstances leading to the imposition of the existing measures on the two related exporting producers of Meihua Group during the original investigation had changed. It further concluded that that these changes were of a lasting nature.

1.3. Initiation of a partial interim review

- (9) Based on the information mentioned in recital 8, on 24 January 2022, the Commission decided on its own initiative to initiate a partial interim review of the anti-dumping measures applicable to imports of monosodium glutamate originating in China pursuant to Article 11(3) of the basic Regulation and published a Notice initiating a partial interim review in the *Official Journal of the European Union* (the 'Notice of Initiation') ⁽⁵⁾. A Corrigendum to the Notice of Initiation of 24 January 2022 was published on 22 March 2022 ⁽⁶⁾.
- (10) The partial interim review was limited in scope to the examination of dumping as far as the two Chinese exporting producers of Meihua Group, Tongliao Meihua Bio-Tech Co., Ltd and Hebei Meihua MSG Group Co., Ltd (TARIC additional code A883), were concerned.

1.4. Review investigation period

- (11) The investigation of dumping covered the period from 1 January 2021 to 31 December 2021 ('the review investigation period').

1.5. Interested parties

- (12) In the Notice of Initiation, interested parties were invited to contact the Commission in order to participate in the review. In addition, the Commission specifically informed the two exporting producers of Meihua Group, the sole Union producer, and the Government of China about the initiation of the review and invited them to participate.
- (13) Interested parties had an opportunity to comment on the initiation of the review and to request a hearing with the Commission and/or the Hearing Officer in trade proceedings.

1.5.1. Questionnaire replies

- (14) The Commission sent questionnaires to the two exporting producers of Meihua Group and to the authorities of the country concerned. The Commission did not receive any questionnaire replies, neither from the two exporting producers of Meihua Group nor from the authorities of the country concerned.

2. PRODUCT SUBJECT TO THIS REVIEW AND LIKE PRODUCT

- (15) The product subject to this review is the same as in the original investigation and in the following reviews mentioned in recitals 2 and 3, i.e. monosodium glutamate originating in the People's Republic of China and currently falling under CN code ex 2922 42 00 (TARIC code 2922 42 00 10).
- (16) As in the original investigation and the following reviews mentioned in recitals 2 and 3, the Commission found that the product produced in the PRC and exported into the Union and the product produced and sold in the Chinese domestic market have the same basic physical, technical and chemical characteristics and the same basic end-uses. They were therefore considered to be like products within the meaning of Article 1(4) of the basic Regulation.

⁽⁵⁾ OJ C 35, 24.1.2022, p. 12.

⁽⁶⁾ OJ C 129, 22.3.2022, p. 18.

3. NON-COOPERATION

- (17) As mentioned in recital 14, on 24 January 2022, the Commission sent the questionnaire for exporting producers to the two known Chinese exporting producers of Meihua Group and the questionnaire on the existence of significant distortions within the meaning of Article 2(6a)(b) of the basic Regulation to the Government of China. The Commission did not receive any reply nor any other reaction from either of the exporting producers or from the authorities of the country concerned.
- (18) By letter of 7 April 2022, the Commission informed the two known Chinese exporting producers of Meihua Group that, in absence of cooperation and in accordance with Article 18 of the basic Regulation, findings would be made based on facts available and invited them to comment. No comments were received from either of the two exporting producers of Meihua Group. No explanation was given for this lack of cooperation.
- (19) Likewise, the Commission informed the Mission of the People's Republic of China to the European Union that it intended to apply Article 18(1) of the basic Regulation and base its findings with regard to dumping of the two exporting producers of Meihua Group and the existence of significant distortions on the facts available in the file. It invited the Mission of the People's Republic of China to the European Union to comment. The Commission received no comments.
- (20) Given the absence of cooperation, the Commission considered that the partial interim review proceeding should be decided based on facts available in this investigation. Regarding the specific situation of the Meihua Group, the Commission relied on the relevant evidence submitted in the context of the request for a name change, which led to the initiation of the interim review.
- (21) In its request for a change of name, it appeared that one of the exporting producers within the Meihua Group, namely Tongliao Meihua Bio-Tech Co., Ltd, changed its name to Tongliao Meihua Biological Sci-Tech Co., Ltd. However, according to the documentation provided in support to the name change application, the Commission further considered that the changes within the Meihua Group went well beyond a name change.
- (22) First, the applicant informed the Commission that in 2008 the other exporter of the Meihua Group, i.e. Hebei Meihua MSG Group Co., Ltd, had also changed its name. The current name of this company is Meihua Holdings Group Co., Ltd. The applicant explained that Meihua Holdings Group Co., Ltd did not notify the Commission of this fact because, at that time, the Meihua Group was reorganizing its business to form a group of companies and the outcome of this reorganization was not very clear, especially for the sale activity. In the documentation submitted in support of the name change application, the applicant stated that Meihua Holdings Group Co., Ltd started to sell the product concerned only on the domestic market.
- (23) Second, the applicant added that Meihua Group International Trading (Hong Kong) Limited ('Meihua Hong Kong') was incorporated to the group in 2012 and conducts the export business. Therefore, the current exporter of the product concerned would be Meihua Hong Kong. According to the applicant, Meihua Hong Kong is exporting MSG to the Union using TARIC additional code A883.
- (24) To conclude, in 2011 Tongliao Meihua Biological Sci-Tech Co., Ltd incorporated with another producer of the product concerned, Xinjiang Meihua Amino Acid Co., Ltd. The applicant declared that in 2016 Xinjiang Meihua Amino Acid Co., Ltd also sold the product concerned to the Union through Meihua Hong Kong.

4. CONCLUSION AND DISCLOSURE

- (25) For the reasons outlined in recitals 21 to 24, it appeared that Meihua Group to which the duty applies underwent a structural reorganisation. This reorganisation created a new entity, consisting of a group of companies, which included an exporting producer (Xinjiang Meihua Amino Acid Co., Ltd) and a related trader (Meihua Hong Kong) that were never reported to nor investigated by the EU. Therefore the Commission could not simply assume that the current dumping margin applicable to Hebei Meihua MSG Group Co., Ltd and Tongliao Meihua Bio-Tech Co., Ltd was still valid.

- (26) Given the complete lack of cooperation from the exporting producers, the Commission was prevented from examining the actual composition of the entities on which the original duty applied, whether the duty rate would still be relevant for the new organisational structure of the Meihua Group or whether a new dumping calculation would be warranted and if so the level thereof.
- (27) In those circumstances, and on the basis of facts available, the Commission could only conclude that the Meihua Group (composed by Tongliao Meihua Bio-Tech Co., Ltd and Hebei Meihua MSG Group Co., Ltd) to which an individual duty rate under TARIC additional code A883 was allocated, no longer exist as such. The group appears to be composed of other exporting producers. Therefore, the above-mentioned duty rate and TARIC additional code should be removed.
- (28) For the reasons recalled above, the Commission is not in a position to establish an individual duty rate and company specific TARIC additional code for the newly created entity. Exports made by the newly created entity, if any, would then be subject to the rate applicable for 'All other companies' under TARIC additional code A999.
- (29) Interested parties were informed accordingly and were granted an opportunity to submit comments.
- (30) The Commission received no comments.
- (31) Therefore, Article 1(2) of Commission Implementing Regulation (EU) 2021/633 should be amended accordingly.
- (32) This Regulation is in accordance with the opinion of the Committee established by Article 15(1) of the basic Regulation,

HAS ADOPTED THIS REGULATION:

Article 1

Article 1(2) of Implementing Regulation (EU) 2021/633 is amended as follows:

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

Country	Company	Anti-dumping duty (%)	TARIC additional code
The PRC	Fujian Province Jianyang Wuyi MSG Co. Ltd	36,5	A884
The PRC	All other companies	39,7	A999’

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, 6 July 2022.

For the Commission
The President
Ursula VON DER LEYEN

DECISIONS

COUNCIL DECISION (EU) 2022/1168

of 4 July 2022

authorising the opening of negotiations on a status agreement between the European Union and the Islamic Republic of Mauritania on operational activities carried out by the European Border and Coast Guard Agency in the Islamic Republic of Mauritania

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular points (b) and (d) of Article 77(2), point (c) of Article 79(2), and paragraphs (3) and (4) of Article 218 thereof,

Having regard to the recommendation from the European Commission,

Whereas:

- (1) In circumstances requiring the deployment of border management teams from the standing corps of the European Border and Coast Guard to a third country where the members of the teams will exercise executive powers, Article 73(3) of Regulation (EU) 2019/1896 of the European Parliament and of the Council ⁽¹⁾ on the European Border and Coast Guard calls for a status agreement to be concluded by the Union with the third country concerned on the basis of Article 218 of the Treaty on the Functioning of the European Union (TFEU).
- (2) Negotiations should be opened with a view to concluding an international agreement with the Islamic Republic of Mauritania on actions carried out by the European Border and Coast Guard Agency in the territory of the Islamic Republic of Mauritania.
- (3) This Decision constitutes a development of the provisions of the Schengen *acquis* in which Ireland does not take part, in accordance with Council Decision 2002/192/EC ⁽²⁾. Ireland is therefore not taking part in the adoption of this Decision and is not bound by it or subject to its application.
- (4) In accordance with Articles 1 and 2 of Protocol No 22 on the position of Denmark, annexed to the Treaty on European Union and to the TFEU, Denmark is not taking part in the adoption of this Decision and is not bound by it or subject to its application,

HAS ADOPTED THIS DECISION:

Article 1

The Commission is hereby authorised to negotiate, on behalf of the Union, a status agreement between the European Union and the Islamic Republic of Mauritania on operational activities carried out by the European Border and Coast Guard Agency in the territory of the Islamic Republic of Mauritania.

⁽¹⁾ Regulation (EU) 2019/1896 of the European Parliament and of the Council of 13 November 2019 on the European Border and Coast Guard and repealing Regulations (EU) No 1052/2013 and (EU) 2016/1624 (OJ L 295, 14.11.2019, p. 1).

⁽²⁾ Council Decision 2002/192/EC of 28 February 2002 concerning Ireland's request to take part in some of the provisions of the Schengen *acquis* (OJ L 64, 7.3.2002, p. 20).

Article 2

The negotiations shall be conducted on the basis of the negotiating directives of the Council set out in the addendum to this Decision, and in consultation with the appropriate Working Party of the Council.

Article 3

This Decision is addressed to the Commission.

Done at Brussels, 4 July 2022.

For the Council
The President
M. BEK

COUNCIL DECISION (EU) 2022/1169**of 4 July 2022****authorising the opening of negotiations on a status agreement between the European Union and the Republic of Senegal on operational activities carried out by the European Border and Coast Guard Agency in the Republic of Senegal**

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular points (b) and (d) of Article 77(2), point (c) of Article 79(2), and paragraphs (3) and (4) of Article 218 thereof,

Having regard to the recommendation from the European Commission,

Whereas:

- (1) In circumstances requiring the deployment of border management teams from the standing corps of the European Border and Coast Guard to a third country where the members of the teams will exercise executive powers, Article 73(3) of Regulation (EU) 2019/1896 of the European Parliament and of the Council ⁽¹⁾ on the European Border and Coast Guard calls for a status agreement to be concluded by the Union with the third country concerned on the basis of Article 218 of the Treaty on the Functioning of the European Union (TFEU).
- (2) Negotiations should be opened with a view to concluding an international agreement with the Republic of Senegal on actions carried out by the European Border and Coast Guard Agency in the territory of the Republic of Senegal.
- (3) This Decision constitutes a development of the provisions of the Schengen *acquis* in which Ireland does not take part, in accordance with Council Decision 2002/192/EC ⁽²⁾. Ireland is therefore not taking part in the adoption of this Decision and is not bound by it or subject to its application.
- (4) In accordance with Articles 1 and 2 of Protocol No 22 on the position of Denmark, annexed to the Treaty on European Union and to the TFEU, Denmark is not taking part in the adoption of this Decision and is not bound by it or subject to its application,

HAS ADOPTED THIS DECISION:

Article 1

The Commission is hereby authorised to negotiate, on behalf of the Union, a status agreement between the European Union and the Republic of Senegal on operational activities carried out by the European Border and Coast Guard Agency in the territory of the Republic of Senegal.

Article 2

The negotiations shall be conducted on the basis of the negotiating directives of the Council set out in the addendum to this Decision, and in consultation with the appropriate Working Party of the Council.

⁽¹⁾ Regulation (EU) 2019/1896 of the European Parliament and of the Council of 13 November 2019 on the European Border and Coast Guard and repealing Regulations (EU) No 1052/2013 and (EU) No 2016/1624 (OJ L 295, 14.11.2019, p. 1).

⁽²⁾ Council Decision 2002/192/EC of 28 February 2002 concerning Ireland's request to take part in some of the provisions of the Schengen *acquis* (OJ L 64, 7.3.2002, p. 20).

Article 3

This Decision is addressed to the Commission.

Done at Brussels, 4 July 2022.

For the Council
The President
M. BEK

III

(Other acts)

EUROPEAN ECONOMIC AREA

EFTA SURVEILLANCE AUTHORITY DECISION No 280/21/COL

of 13 December 2021

amending the procedural and substantive rules in the field of State aid by introducing new Guidelines on criteria for the analysis of the compatibility with the internal market of State aid to promote the execution of important projects of common European interest [2022/1170]

THE EFTA SURVEILLANCE AUTHORITY ('ESA'),

Having regard to the Agreement on the European Economic Area ('the EEA Agreement'), in particular to Articles 61 to 63 and Protocol 26,

Having regard to the Agreement between the EFTA States on the Establishment of a Surveillance Authority and a Court of Justice ('the Surveillance and Court Agreement'), in particular to Article 24 and Article 5(2)(b),

Whereas:

Under Article 24 of the Surveillance and Court Agreement, ESA shall give effect to the provisions of the EEA Agreement concerning State aid.

Under Article 5(2)(b) of the Surveillance and Court Agreement, ESA shall issue notices or guidelines on matters dealt with in the EEA Agreement, if that Agreement or the Surveillance and Court Agreement expressly so provides or if ESA considers it necessary.

On 25 November 2021, the European Commission adopted a revised Communication on criteria for the analysis of the compatibility with the internal market of State aid to promote the execution of important projects of common European interest ('the Guidelines') ⁽¹⁾.

The Guidelines are also of relevance for the European Economic Area ('EEA').

Uniform application of the EEA State aid rules is to be ensured throughout the EEA in line with the objective of homogeneity established in Article 1 of the EEA Agreement.

According to Section General Paragraph II of Annex XV to the EEA Agreement, ESA, after consultation with the European Commission, is to adopt acts corresponding to those adopted by the European Commission.

The Guidelines may refer to certain European Union policy instruments and to certain European Union legal acts that have not been incorporated into the EEA Agreement. With a view to ensuring uniform application of State aid provisions and equal conditions of competition throughout the EEA, ESA will generally apply the same points of reference as the European Commission when assessing the compatibility of aid with the functioning of the EEA Agreement.

⁽¹⁾ C(2021) 8481 final (OJ C 528, 30.12.2021, p. 10).

Having consulted the European Commission,

Having consulted the EFTA States,

HAS ADOPTED THIS DECISION:

Article 1

1. The substantive rules in the field of State aid are amended by introducing new Guidelines on criteria for the analysis of the compatibility with the internal market of State aid to promote the execution of important projects of common European interest. The Guidelines are annexed to this Decision and form an integral part of it.
2. The Guidelines will replace the existing guidelines for the analysis of the compatibility with the functioning of the EEA Agreement of state aid to promote the execution of important projects of common European interest ⁽²⁾ with effect from 1 January 2022.

Article 2

ESA will apply the Guidelines, with the following adaptations where applicable, including, but not limited to, the following:

- (a) If there is a reference to 'Member State(s)', ESA reads it as a reference to 'EFTA State(s)' ⁽³⁾, or where appropriate 'EEA State(s)'.
- (b) If there is a reference to the 'European Commission', ESA reads it as a reference to the 'EFTA Surveillance Authority'.
- (c) If there is a reference to 'the Treaty' or 'TFEU', ESA reads it as a reference to 'the EEA Agreement'.
- (d) If there is a reference to Article 107 TFEU or sections of that Article, ESA reads it as a reference to Article 61 of the EEA Agreement and the corresponding sections of that Article.
- (e) If there is a reference to Article 108 TFEU or sections of that Article, ESA reads it as a reference to Article 1 of Part 1 of Protocol 3 of the Surveillance and Court Agreement and the corresponding sections of that Article.
- (f) If there is a reference to the wording '(in-)compatible with the internal market', ESA reads it as '(in-)compatible with the functioning of the EEA Agreement'.
- (g) If there is a reference to the wording 'within (or outside) the Union', ESA reads it as 'within (or outside) the EEA'.
- (h) If there is a reference to 'intra-Union trade', ESA reads it as a reference to 'intra-EEA trade'.
- (i) If the Guidelines set out that they will be applied to 'all sectors of economic activity', ESA applies them to 'all sectors of economic activity or parts of sectors of economic activity falling within the scope of the EEA Agreement'.
- (j) If there is a reference to Commission Notices or Guidelines, ESA reads it as a reference to the corresponding ESA Guidelines.

⁽²⁾ EFTA Surveillance Authority Decision No 84/16/COL of 27 April 2016 amending, for the hundredth-and-first time, the procedural and substantive rules in the field of State aid by introducing new Guidelines for the analysis of the compatibility with the functioning of the EEA Agreement of State aid to promote the execution of important projects of common European interest [2017/267] (OJ L 39, 16.2.2017, p. 49), and EEA Supplement No 11, 16.2.2017, p. 1.

⁽³⁾ The 'EFTA States' refers to Iceland, Liechtenstein and Norway.

Done in Brussels, 13 December 2021.

For the EFTA Surveillance Authority

Bente ANGELL-HANSEN
President
Responsible College Member

Högni S. KRISTJÁNSSON
College Member

Stefan BARRIGA
College Member

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

COMMUNICATION FROM THE COMMISSION**Criteria for the analysis of the compatibility with the internal market of State aid to promote the execution of important projects of common European interest****1. INTRODUCTION**

1. This Communication gives guidance on the assessment of public financing of important projects of common European interest (IPCEIs) under Union State aid rules.
2. IPCEIs can make a very important contribution to sustainable economic growth, jobs, competitiveness and resilience for industry and the economy in the Union and strengthen its open strategic autonomy, by enabling breakthrough innovation and infrastructure projects through cross-border cooperation and with positive spill-over effects on the internal market and the society as a whole.
3. IPCEIs make it possible to bring together knowledge, expertise, financial resources and economic actors from across the Union, in a bid to address important market or systemic failures or societal challenges that could not otherwise be addressed. They are designed to bring together the public and private sectors to undertake large-scale projects of significant benefit to the Union and its citizens.
4. IPCEIs can underpin all policies and actions that seek to achieve common European objectives, in particular the European Green Deal ⁽¹⁾, the Digital Strategy ⁽²⁾ and the Digital Decade ⁽³⁾, the New Industrial Strategy for Europe ⁽⁴⁾ and its update ⁽⁵⁾, the European Strategy for Data ⁽⁶⁾ and Next Generation EU ⁽⁷⁾. IPCEIs can also contribute to a sustainable recovery following serious economic disturbances such as those caused by the COVID-19 pandemic and support efforts to strengthen the Union's social and economic resilience.
5. Taking into account the updated New Industrial Strategy and the Small and Medium-sized Enterprise (SME) Strategy ⁽⁸⁾, it is important that SMEs and start-ups can participate in IPCEIs and benefit from them. The Commission will take into account in its assessment any circumstances which indicate that the notified aid is less likely to unduly distort competition, for example due to its amount.

⁽¹⁾ Communication from the Commission to the European Parliament, the European Council, the Council, the European Economic and Social Committee and the Committee of the Regions – 'The European Green Deal', COM(2019) 640 final, 11 December 2019.

⁽²⁾ Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions – 'Shaping Europe's digital future', COM(2020) 67 final, 19 February 2020.

⁽³⁾ Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions – '2030 Digital Compass: the European way for the Digital Decade', COM(2021) 118 final, 9 March 2021.

⁽⁴⁾ Communication from the Commission to the European Parliament, the European Council, the Council, the European Economic and Social Committee and the Committee of the Regions – 'A New Industrial Strategy for Europe', COM(2020) 102 final, 10 March 2020.

⁽⁵⁾ Communication from the Commission to the European Parliament, the European Council, the Council, the European Economic and Social Committee and the Committee of the Regions – 'Updating the 2020 New Industrial Strategy: Building a stronger Single Market for Europe's recovery', COM(2021) 350 final, 5 May 2021.

⁽⁶⁾ Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions – 'A European strategy for data', COM(2020) 66 final, 19 February 2020.

⁽⁷⁾ Communication from the Commission to the European Parliament, the European Council, the Council, the European Economic and Social Committee and the Committee of the Regions – 'Europe's moment: Repair and Prepare for the Next Generation', COM(2020) 456 final, 27 May 2020.

⁽⁸⁾ Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions – 'An SME Strategy for a sustainable and digital Europe', COM(2020) 103 final, 10 March 2020.

6. The deployment of IPCEIs often requires a significant participation from public authorities whenever the market would not otherwise finance such projects. This Communication sets out the rules that apply where public financing of such projects constitutes State aid, in order for State aid for IPCEIs to be considered to be compatible with the internal market. Notably, the rules aim at ensuring that such aid will not to an undue extent adversely affect trading conditions between Member States, and at limiting the effects of such aid on trade and competition to the minimum necessary.
7. Article 107(3), point (b) of the Treaty on the Functioning of the European Union provides that aid to promote the execution of an important project of common European interest may be considered to be compatible with the internal market. Accordingly, this Communication sets out guidance on the criteria the Commission will apply for assessing State aid granted to promote the execution of IPCEIs. It first sets out its scope and then provides a list of criteria the Commission will use to assess the nature and the importance of IPCEIs for the purposes of applying Article 107(3), point (b) of the Treaty. It then explains how the Commission will assess the compatibility of the public financing of IPCEIs with State aid rules.
8. This Communication does not exclude the possibility that aid to promote the execution of IPCEIs may also be found compatible with the internal market on the basis of other Treaty provisions, in particular Article 107(3), point (c) of the Treaty. However, those Treaty provisions may not fully address the relevance, specificities and features of IPCEIs. These may require specific eligibility, compatibility and procedural rules, as set out in this Communication.

2. SCOPE

9. The Commission will apply the principles set out in this Communication to IPCEIs in all sectors of economic activity.
10. Those principles do not apply to:
 - (a) measures consisting of aid for undertakings in difficulty, as defined in the rescue and restructuring guidelines ⁽⁹⁾ or any successor guidelines, with the exception of undertakings which were not in difficulty on 31 December 2019 but became undertakings in difficulty on or after 1 January 2020 for as long as the Temporary Framework ⁽¹⁰⁾ is applied;
 - (b) measures consisting of aid for undertakings which are subject to an outstanding recovery order following a previous Commission decision declaring aid illegal and incompatible with the internal market;
 - (c) aid measures that constitute by themselves, by virtue of the conditions attached to them or of their financing method, a non-severable violation of Union law ⁽¹¹⁾, in particular:
 - (i) aid measures in accordance with which the granting of aid is subject to the obligation for the beneficiary to have its headquarters in the Member State concerned or be predominantly established in that Member State;
 - (ii) aid measures in accordance with which the granting of aid is subject to the obligation for the beneficiary to use nationally produced goods or national services;
 - (iii) aid measures restricting the possibility for the beneficiary to use the obtained research, development and innovation results in other Member States.

⁽⁹⁾ Guidelines on State aid for rescuing and restructuring non-financial undertakings in difficulty (OJ C 249, 31.7.2014, p. 1). As explained in paragraph 23 of those guidelines, given that its very existence is in danger, an undertaking in difficulty cannot be considered an appropriate vehicle for promoting other public policy objectives until such time as its viability is assured.

⁽¹⁰⁾ Communication from the Commission – Temporary framework for State aid measures to support the economy in the current COVID-19 outbreak (OJ C 91 I, 20.3.2020, p. 1), and its amendments.

⁽¹¹⁾ See for instance Case C-156/98 *Germany v Commission* [2000] ECLI:EU:C:2000:467, paragraph 78 and Case C-333/07 *Régie Networks v Rhone Alpes Bourgogne* [2008] ECLI:EU:C:2008:764, paragraphs 94 to 116.

3. ELIGIBILITY CRITERIA

11. In determining whether or not a project falls within the scope of Article 107(3), point (b) of the Treaty, the Commission will apply the criteria set out in Sections 3.1, 3.2 and 3.3 of this Communication.

3.1. Definition of a project

12. The aid proposal must concern a single project, which is clearly defined in respect of its objectives as well as the terms of its implementation, including its participants and its funding ⁽¹²⁾.
13. The Commission may also consider eligible an 'integrated project', that is to say, a group of single projects inserted in a common structure, roadmap or programme aiming at the same objective and based on a coherent systemic approach. The individual components of the integrated project may relate to separate levels of the supply chain but must be complementary and significantly add value in their contribution towards the achievement of the European objective ⁽¹³⁾.

3.2. Common European interest

3.2.1. General cumulative criteria

14. The project must represent a concrete, clear and identifiable important contribution to the Union's objectives or strategies and must have a significant impact on sustainable growth, for example by being of major importance for the European Green Deal, the Digital Strategy, the Digital Decade and European Strategy for Data, the New Industrial Strategy for Europe and its update, Next Generation EU, the European Health Union ⁽¹⁴⁾, the new European Research Area for research and innovation ⁽¹⁵⁾, the new Circular Economy Action Plan ⁽¹⁶⁾, or the Union's objective to become climate neutral by 2050, among others.
15. The project must demonstrate that it is designed to overcome important market or systemic failures, preventing the project from being carried out to the same extent or in the same manner in the absence of the aid, or societal challenges, which would not otherwise be adequately addressed or remedied.
16. Unless a smaller number is justified by the nature of the project ⁽¹⁷⁾, the project must ordinarily involve at least four Member States and its benefits must not be confined to the financing Member States, but extend to a wider part of the Union. The benefits of the project must be clearly defined in a concrete and identifiable manner ⁽¹⁸⁾.

⁽¹²⁾ In the case of research and development, when two or more projects are not clearly separable from each other and, in particular when they do not have independent probabilities of technological success, they must be considered as a single project.

⁽¹³⁾ Hereafter a single project and an integrated project are referred to as a 'project'.

⁽¹⁴⁾ Communication from the Commission to the European Parliament, the European Council, the Council, the European Economic and Social Committee and the Committee of the Regions – 'Building a European Health Union – preparedness and resilience', COM(2020) 724 final, 11 November 2020.

⁽¹⁵⁾ Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions – 'A new ERA for Research and Innovation', COM(2020) 628 final, 30 September 2020.

⁽¹⁶⁾ Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions – 'A new Circular Economy Action Plan for a cleaner and more competitive Europe', COM(2020) 98 final, 11 March 2020.

⁽¹⁷⁾ A smaller number of Member States, but not less than two, may be exceptionally justified in duly motivated circumstances, for example, if the project concerns interconnected research infrastructures, TEN-E and TEN-T projects that are of fundamentally transnational importance because they are part of a physically connected cross-border network or are essential to enhance cross-border traffic management or interoperability; or the project is financed from EU funds, in relation to which legal provisions on Member States' collaboration require a lower number of participating Member States. In all cases, projects must be designed in a transparent manner in line with point 17.

⁽¹⁸⁾ The mere fact that the project is carried out by undertakings in different countries, or that a research infrastructure is subsequently used by undertakings established in different Member States, is not sufficient for a project to qualify as an IPCEI. The Court has upheld the Commission's policy of considering that a project may be described as being of common European interest for the purposes of Article 107(3), point (b) when it forms part of a transnational European programme supported jointly by a number of governments of the Member States, or arises from concerted action by a number of Member States to combat a common threat. Joined Cases C-62/87 and 72/87 *Exécutf regional wallon and SA Glaverbel v Commission* [1988] ECLI:EU:C:1988:132, paragraph 22.

17. All Member States must be given a genuine opportunity to participate in an emerging project. Notifying Member States must demonstrate that all Member States were informed of the possible emergence of a project, for example by way of contacts, alliances, meetings, or match-making events, also involving SMEs and start-ups, and given opportunity to participate.
18. The benefits of the project must not be limited to the undertakings or to the sector concerned but must be of wider relevance and application to the economy or society in the Union through positive spillover effects (such as having systemic effects on multiple levels of the value chain, or up- or downstream markets, or having alternative uses in other sectors or modal shift) which are clearly defined in a concrete and identifiable manner.
19. The project must involve important co-financing by the beneficiary ⁽¹⁹⁾.
20. Member States must provide evidence as to whether the project complies with the principle of 'do no significant harm' within the meaning of Article 17 of Regulation (EU) 2020/852, or other comparable methodologies ⁽²⁰⁾. In the overall balancing of the positive effects of the aid against its negative effects on competition and trade, the Commission will consider compliance with this principle as an important factor in its assessment. In general, investments that do significant harm to environmental objectives within the meaning of Article 17 of Regulation (EU) 2020/852 are unlikely to have sufficient positive effects to outweigh their negative effects on competition and trade. The positive effects of a project in addressing important market or systemic failures or societal challenges that could not otherwise be addressed are in all cases subject to individualised assessment.

3.2.2. General positive indicators

21. In addition to the cumulative criteria in Section 3.2.1, the Commission will take positive note of the following suggested elements by Member States:
 - (a) the design of the project involves the Commission or any legal body to which the Commission has delegated its powers, such as the European Investment Bank and the European Investment Fund;
 - (b) the selection of the project involves the Commission or any legal body to which the Commission has delegated its power, provided that that body is acting for that purpose as an implementing structure;
 - (c) the governance structure of the project involves the Commission or any legal body to which the Commission has delegated its powers, and the participating Member States;
 - (d) the project involves important collaborative interactions in terms of number of partners, involvement of organisations from different sectors, or the involvement of undertakings of different sizes and, in particular, cooperation between large enterprises and SMEs, including start-ups, in different Member States and supports the development of more disadvantaged regions;
 - (e) the project involves co-funding or co-financing from a Union fund ⁽²¹⁾ in direct, indirect or shared management;
 - (f) the project involves a significant contribution by independent private investors ⁽²²⁾;
 - (g) the project addresses a clearly identified and significant strategic dependency.

⁽¹⁹⁾ When assessing the extent of co-financing, the Commission will take into account the specificities of certain sectors and of SMEs. In exceptional, and duly motivated circumstances, the Commission may consider that aid is justified even in the absence of important co-financing by the beneficiary.

⁽²⁰⁾ Regulation (EU) 2020/852 of the European Parliament and of the Council of 18 June 2020 on the establishment of a framework to facilitate sustainable investment (OJ L 198, 22.6.2020, p. 13). For measures which are identical to measures within Recovery and Resilience Plans as approved by the Council, their compliance with the 'Do no significant harm' principle is considered fulfilled as this has already been verified.

⁽²¹⁾ Union funding centrally managed by the institutions, agencies, joint undertakings or other bodies of the EU that is not directly or indirectly under the control of the Member State does not constitute State aid. State aid can be cumulated with financing from a Union fund provided that the condition in point 35 is complied with.

⁽²²⁾ Contribution of tangible and intangible assets, as well as land, must be accounted at market price.

3.2.3. Specific criteria

22. Research & Development & Innovation ('R & D&I') projects must be of a major innovative nature or constitute an important added value in terms of R & D&I in the light of the state of the art in the sector concerned ⁽²³⁾.
23. Projects comprising of first industrial deployment must allow for the development of a new product or service with high research and innovation content or the deployment of a fundamentally innovative production process. Regular upgrades without an innovative dimension of existing facilities and the development of newer versions of existing products do not qualify as first industrial deployment.
24. For the purpose of this Communication, first industrial deployment means the upscaling of pilot facilities, demonstration plants or of the first-in-kind equipment and facilities covering the steps subsequent to the pilot line including the testing phase and bringing batch production to scale, but not mass production or commercial activities ⁽²⁴⁾. The end of first industrial deployment is determined taking into account, inter alia, the relevant R & D&I-related performance indicators pointing at the ability to start mass production. First industrial deployment activities can be financed with State aid as long as the first industrial deployment follows on from an R & D&I activity and itself contains an important R & D&I component which constitutes an integral and necessary element for the successful implementation of the project. The first industrial deployment does not need to be carried out by the same entity that carried out the R & D&I activity, as long as that entity acquires the rights to use the results from the previous R & D&I activity, and the R & D&I activity and the first industrial deployment are both described in the project.
25. Infrastructure projects in the environmental, energy, transport, health or digital sectors, to the extent that they are not covered by points 22 and 23, must be of great importance for the environmental, climate, energy (including security of energy supply), transport, health, industrial or digital strategies of the Union or contribute significantly to the internal market, including, but not limited to those specific sectors, and can be supported for the period until becoming fully operational following construction.

3.3. Importance of the project

26. In order to qualify as an IPCEI, a project must be important quantitatively or qualitatively. It should be particularly important in size or scope or imply a very considerable level of technological or financial risk, or both. To determine the importance of a project, the Commission will take into account the criteria set out in Section 3.2.

4. COMPATIBILITY CRITERIA

27. When assessing the compatibility with the internal market of aid to promote the execution of an IPCEI on the basis of Article 107(3), point (b) of the Treaty, the Commission will take into account the criteria ⁽²⁵⁾ set out in Sections 4.1, 4.2 and 4.3 of this Communication.
28. The Commission will carry out, in the meaning of Section 4.2., a balancing test to assess whether the expected positive effects of the aid outweigh the possible negative effects.

⁽²³⁾ This might include, when relevant, progressively advancing towards the state of the art, to the extent that a participating project clearly and credibly aims at and describes how it will go beyond such state of the art.

⁽²⁴⁾ Limited sales, when necessary in the specific sector, related to the testing phase, including sample or feedback or certification sales, are excluded from the notion of "commercial activities".

⁽²⁵⁾ According to the Court of Justice, the Commission enjoys discretion as regards the assessment of the compatibility of IPCEIs. Joined Cases C-62/87 and 72/87 *Exécutif régional wallon and SA Glaverbel v Commission* [1988] ECLI:EU:C:1988:132, paragraph 21.

29. Taking into account the nature of the project, the Commission may consider that the presence of important market or systemic failures or societal challenges, as well as the contribution to a common European interest, can be presumed for the individual components of an integrated project where the project fulfils the eligibility criteria set out in Section 3.

4.1. Necessity and proportionality of the aid

30. The aid must not subsidise the costs of a project that an undertaking would anyhow incur and must not compensate for the normal business risk of an economic activity. Without the aid, the realisation of the project should be impossible, or should only be possible on a smaller scale, with a more narrow scope, or not with sufficient speed, or in a different manner that would significantly restrict its expected benefits ⁽²⁶⁾. Aid will only be considered proportionate if the same result could not be achieved with less aid.
31. The Member States must provide the Commission with adequate information concerning the aided project as well as a comprehensive description of the counterfactual scenario, which corresponds to the situation where no aid is awarded by any Member State ⁽²⁷⁾. The counterfactual scenario may consist in the absence of an alternative project, where evidence supports that this is the most likely counterfactual, or in an alternative project considered by the beneficiaries in their internal decision-making, and may relate to an alternative project that is wholly or partly carried out outside the Union. To demonstrate the credibility of the counterfactual scenario presented by the beneficiaries, the notifying Member States are invited to provide relevant internal documents of the beneficiaries, such as board presentations, analyses, reports and studies ⁽²⁸⁾.
32. In the absence of an alternative project, the Commission will verify that the aid amount does not exceed the minimum necessary for the aided project to be sufficiently profitable, for example by making it possible to achieve an internal rate of return corresponding to the sector or firm specific benchmark or hurdle rate. Normal rates of return required by the beneficiaries in other investment projects of a similar kind, their cost of capital as a whole or returns commonly observed in the industry concerned may also be used for this purpose. All relevant expected costs and benefits over the lifetime of the project must be considered.
33. The maximum permitted aid level will be determined with regard to the identified funding gap in relation to the eligible costs. If justified by the funding gap analysis, the aid intensity could cover all of the eligible costs. The funding gap refers to the difference between the positive and negative cash flows over the lifetime of the investment, discounted to their current value on the basis of an appropriate discount factor reflecting the rate of return necessary for the beneficiary to carry out the project, notably in view of the risks involved. The eligible costs are set out in the Annex ⁽²⁹⁾.
34. Where it is shown, for example by means of internal company documents, that the aid beneficiary faces a clear choice between carrying out either an aided project or an alternative one without aid, the Commission will compare the expected net present values of the investment in the aided project and the counterfactual project, account being taken of the probabilities of the different business scenarios occurring.

⁽²⁶⁾ The aid application must precede the starts of the works, which is either the start of construction works on the investment or the first firm commitment to order equipment or other commitment that makes the investment irreversible, whichever is the first in time. Buying of land and preparatory works such as obtaining permits and conducting preliminary feasibility studies are not considered as start of works.

⁽²⁷⁾ For projects by SMEs, the counterfactual scenario may consist in the absence of an alternative project as referred to in point 32.

⁽²⁸⁾ Where the information provided is covered by the obligation of professional secrecy, it is to be handled in accordance with Article 30 of Council Regulation (EU) 2015/1589 of 13 July 2015 laying down detailed rules for the application of Article 108 of the Treaty on the Functioning of the European Union (OJ L 248, 24.9.2015, p. 9).

⁽²⁹⁾ In case of an integrated project, the eligible costs must be detailed at the level of each individual project.

35. State aid to promote the execution of IPCEIs may be cumulated with Union funding or other State aid, provided that the total amount of public funding granted in relation to the same eligible costs does not exceed the most favourable funding rate laid down in the applicable rules of Union law.
36. As an additional safeguard to ensure that the State aid remains proportionate and limited to the necessary, the Commission may request the notifying Member State to implement a claw-back mechanism ⁽³⁰⁾. The claw-back mechanism should ensure a balanced distribution of additional gains when the project is more profitable than forecasted in the notified funding gap analysis and should apply only to those investments which reach, based on the *ex post* cash flow results and of State aid disbursements, a rate of return exceeding the beneficiaries' cost of capital. Any such claw-back mechanism should be clearly defined in advance in order to provide financial predictability for beneficiaries at the moment of decision-making on participation in the project. Such mechanism should be designed in such a way as to maintain strong incentives for beneficiaries to maximise their investment and project performance.
37. In its analysis, the Commission will take into consideration the following elements:
- (a) specification of intended change: the Member State must clearly specify the change in behaviour which is expected to result from the State aid, that is to say whether a new project will be triggered, or the size, scope, speed or cross-border dimension of a project will be enhanced. The change of behaviour has to be identified by comparing the expected outcome and level of intended activity with and without aid. The difference between the two scenarios shows the impact of the aid measure and its incentive effect;
 - (b) level of profitability: where a project would not in itself be sufficiently profitable for a private undertaking to undertake, but would generate important benefits for society, it is more likely that the aid has an incentive effect.
38. In order to address actual or potential direct or indirect distortions of international trade, the Commission may take account of the fact that, directly or indirectly, competitors located outside the Union have received, in the last three years, or are going to receive, aid of an equivalent intensity for similar projects. However, where distortions of international trade are likely to occur after more than three years, given the particular nature of the sector in question, the reference period may be extended accordingly. If at all possible, the Member State concerned will provide the Commission with sufficient information to enable it to assess the situation, in particular the need to take account of the competitive advantage enjoyed by a third country competitor. If the Commission does not have evidence concerning the awarded or proposed aid, it may also base its decision on circumstantial evidence. The Commission may also take appropriate action to address competition distortions arising from subsidies received outside the Union.
39. When gathering evidence, the Commission may use its investigative powers ⁽³¹⁾.
40. The choice of the aid instrument must be made with a view to the market failure or other important systemic failures which it seeks to address. For instance, where the underlying problem is lack of access to finance, Member States should normally resort to aid in the form of liquidity support, such as a loan or guarantee ⁽³²⁾. Where it is also necessary to provide the undertaking with a certain degree of risk-sharing, a repayable advance should normally be the aid instrument of choice. Repayable aid instruments will generally be considered as a positive indicator.
41. The selection of beneficiaries through a competitive, transparent and non-discriminatory procedure will be considered as a positive indicator.

⁽³⁰⁾ For projects by SMEs, no claw-back mechanism needs to be implemented unless in exceptional circumstances, in particular in consideration to the amounts of aid notified for such projects.

⁽³¹⁾ See Article 25 of Council Regulation (EU) 2015/1589 of 13 July 2015 laying down detailed rules for the application of Article 108 of the Treaty on the Functioning of the European Union (OJ L 248, 24.9.2015, p. 9).

⁽³²⁾ Aid in the form of guarantees must be limited in time, and aid in the form of loans must be subject to repayment periods.

4.2. Prevention of undue distortions of competition and balancing test

42. The Member States must provide evidence that the proposed aid measure constitutes the appropriate policy instrument to address the objective of the project. An aid measure will not be considered appropriate if other less distortive policy instruments or other less distortive types of aid instruments make it possible to achieve the same result.
43. For the aid to be compatible, the negative effects of the aid measure in terms of distortions of competition and impact on trade between Member States must be limited and outweighed by the positive effects in terms of contribution to the objective of common European interest.
44. In assessing the negative effects of the aid measure, the Commission will focus its analysis on the foreseeable impact the aid may have on competition between undertakings in the product markets concerned, including up- or downstream markets, and on the risk of overcapacity.
45. The Commission will assess the risk of market foreclosure and dominance. Projects involving the construction of an infrastructure ⁽³³⁾ must comply with principles of open and non-discriminatory access to the infrastructure and non-discriminatory pricing and network operation, including those laid down in Union law ⁽³⁴⁾.
46. The Commission will assess the potential negative effects on trade including the risk of a subsidy race between Member States, which may arise in particular with respect to the choice of a location.
47. In its assessment of the potential negative effects on trade, the Commission will consider whether aid is conditional on the relocation of a production activity or any other activity of the beneficiary from another Contracting Party to the EEA Agreement to the territory of the Member State granting the aid. Such a condition would appear to be harmful to the internal market, irrespective of the number of job losses actually incurred in the initial establishment of the beneficiary in the EEA, and unlikely to be compensated by any positive effects.

4.3. Transparency

48. Member States must ensure that the following information is published in the Commission's transparency award module or on a comprehensive State aid website, at national or regional level:
 - (a) the full text of the individual aid granting decision and its implementing provisions, or a link to it;
 - (b) the identity of the granting authority or authorities;
 - (c) the name and the identifier of each beneficiary, except business secrets and other confidential information in duly justified cases and subject to the Commission's agreement in accordance with Commission communication on professional secrecy in State aid decisions ⁽³⁵⁾;
 - (d) the aid instrument ⁽³⁶⁾, the aid element and, where different, the nominal amount of aid, expressed as the full amount in national currency granted to each beneficiary;
 - (e) the date of granting and the date of publication;
 - (f) the type of beneficiary (SME/large company/start-up);
 - (g) the region in which the beneficiary is located (at NUTS level II or below);

⁽³³⁾ For avoidance of doubt, pilot lines are not considered as infrastructures.

⁽³⁴⁾ Where the project involves an energy infrastructure, it shall be subject to the tariff and access regulation and to the unbundling requirements where required by internal market legislation.

⁽³⁵⁾ C(2003) 4582 (OJ C 297, 9.12.2003, p. 6).

⁽³⁶⁾ Grant/Interest rate subsidy; Loan/Repayable advances/Reimbursable grant; Guarantee; Tax advantage or tax exemption; Risk finance; Other. If the aid is granted through multiple aid instruments, the aid amount must be provided by instrument.

- (h) the principal economic sector in which the beneficiary has its activities (at NACE group level);
- (i) the objective of the aid.

49. The requirement to publish information applies with respect to individual aid awards exceeding EUR 100 000. Such information must be published after the decision to grant the aid has been taken, must be kept for at least 10 years and must be available to the general public without restrictions ⁽³⁷⁾.

5. NOTIFICATION, REPORTING AND APPLICATION

5.1. Notification obligation

50. According to Article 108(3) of the Treaty, Member States must notify the Commission in advance of any plans to grant or alter State aid, including aid for an IPCEI.
51. Member States involved in the same IPCEI are invited, whenever possible, to submit a common notification to the Commission including a joint text describing the IPCEI and demonstrating its eligibility.

5.2. Ex post evaluation and reporting

52. The execution of the project must be subject to regular reporting. Where appropriate, the Commission may ask for an *ex post* evaluation to be conducted.

5.3. Application

53. The Commission will apply the principles set out in this Communication from 1 January 2022.
54. It will apply those principles to all notified aid projects in respect of which it is called upon to take a decision on or after 1 January 2022, even where the projects were notified prior to that date.
55. In line with the Notice on the determination of the applicable rules for the assessment of unlawful State aid ⁽³⁸⁾, in the case of non-notified aid, the Commission will apply the principles set out in this Communication if the aid was granted on or after 1 January 2022, and the rules in force at the time when the aid was granted in all other cases.

⁽³⁷⁾ This information must be published within 6 months from the date of granting. In case of unlawful aid, Member States will be required to ensure the publication of this information *ex post* within 6 months from the date of the Commission decision. The information must be available in a format which allows data to be searched, extracted, and easily published on the internet, for instance in CSV or XML format.

⁽³⁸⁾ Commission notice on the determination of the applicable rules for the assessment of unlawful State aid (OJ C 119, 22.5.2002, p. 22).

ANNEX

ELIGIBLE COSTS

- (a) Feasibility studies, including preparatory technical studies, and the costs of obtaining the permissions necessary for the realisation of the project.
 - (b) Costs of instruments and equipment (including installations and transport vehicles) to the extent and for the period used for the project. If such instruments and equipment are not used for their full life for the project, only the depreciation costs corresponding to the life of the project, as calculated on the basis of good accounting practice, are considered as eligible.
 - (c) Costs of the acquisition (or construction) of buildings, infrastructure and land, to the extent and for the period used for the project. Where these costs are determined with regard to the commercial transfer value or the actually incurred capital costs, as opposed to the depreciation costs, the residual value of the land, building or infrastructure should be deducted from the funding gap, either *ex ante* or *ex post*.
 - (d) Costs of other materials, supplies and similar products necessary for the project.
 - (e) Costs for obtaining, validating and defending patents and other intangible assets. Costs of contractual research, knowledge and patents bought or licensed from outside sources at arm's length conditions, as well as costs of consultancy and equivalent services used exclusively for the project.
 - (f) Personnel and administrative costs (including overheads) directly incurred for the R & D&I activities, including those R & D&I activities related to first industrial deployment, or in the case of an infrastructure project, incurred during the construction of the infrastructure.
 - (g) In case of aid to a project of first industrial deployment, the capital and operating expenditures to the extent and for the period used for the project, as long as the industrial deployment follows on from an R & D&I activity and itself contains an important R & D&I component which constitutes an integral and necessary element for the successful implementation of the project. The operating expenditures must be related to such component of the project.
 - (h) Other costs may be accepted if justified, and where they are inextricably linked to the realisation of the project, to the exclusion of operating costs not covered by point (g).
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CORRIGENDA

Corrigendum to Regulation (EU) 2021/2115 of the European Parliament and of the Council of 2 December 2021 establishing rules on support for strategic plans to be drawn up by Member States under the common agricultural policy (CAP Strategic Plans) and financed by the European Agricultural Guarantee Fund (EAGF) and by the European Agricultural Fund for Rural Development (EAFRD) and repealing Regulations (EU) No 1305/2013 and (EU) No 1307/2013

(Official Journal of the European Union L 435 of 6 December 2021)

1. On page 116, Article 155(4), point (a)

for: ‘... and complies with Regulation (EU);’

read: ‘... and complies with Regulation (EU) 2021/2116;’.

2. On pages 150 to 152, Annex III, the line concerning GAEC 8 is replaced by the following:

		GAEC 8	— Minimum share of agricultural area devoted to non-productive areas or features¹ — Minimum share of at least 4 % of arable land at farm level devoted to non-productive areas and features, including land lying fallow. — Where a farmer commits to devote at least 7 % of his/her arable land to non-productive areas or features, including land lying fallow, under an enhanced eco-scheme in accordance with Article 31(6), the share to be attributed to compliance with this GAEC standard shall be limited to 3 %. — Minimum share of at least 7 % of arable land at farm level if this includes also catch crops or nitrogen fixing crops, cultivated without the use of plant protection products, of which 3 % shall be land lying fallow or non-productive features. Member States should use the weighting factor of 0,3 for catch crops. — Retention of landscape features — Ban on cutting hedges and trees during the bird breeding and rearing season — As an option, measures for avoiding invasive plant species	Maintenance of non-productive features and area to improve on-farm biodiversity
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to Commission Implementing Decision (EU) 2022/716 of 6 May 2022 on the approval of a Smart Diesel Fuel Heater for use in conventional combustion engine and certain hybrid electric passenger cars and light commercial vehicles as an innovative technology pursuant to Regulation (EU) 2019/631 of the European Parliament and of the Council

(Official Journal of the European Union L 133 of 10 May 2022)

On page 35, in Article 4:

for: 'eco-innovation code 37'

read: 'eco-innovation code 38'.

On page 39, in the Annex in point 3 in Formula 5:

$$\text{for: } C_{CO_2} = (\overline{P_{base}} - P_{eco}) \cdot \frac{V_{PeD} \cdot CF_D}{\eta_A \cdot v} \cdot UF.$$

$$\text{Read } C_{CO_2} = (\overline{P_{base}} - P_{eco}) \cdot \frac{V_{PeD} \cdot CF_D}{\eta_A \cdot v} \cdot UF \cdot \frac{1}{1000}$$

On page 40, in the Annex in point 4 in Formula 6:

$$\text{For } s_{\overline{P_{base}}} = \frac{\sqrt{\sum_{i=1}^n (P_{base_i} - \overline{P_{base}})^2}}{n(n-1)},$$

$$\text{read: } s_{\overline{P_{base}}} = \sqrt{\frac{\sum_{i=1}^n (P_{base_i} - \overline{P_{base}})^2}{n(n-1)}}$$

On page 40, in the Annex in point 4 in Formula 7:

$$\text{For } s_{C_{CO_2}} = \frac{V_{PeD} \cdot CF_D}{\eta_A \cdot v} \cdot UF \cdot s_{\overline{P_{base}}},$$

$$\text{read: } s_{C_{CO_2}} = \frac{V_{PeD} \cdot CF_D}{\eta_A \cdot v} \cdot UF \cdot s_{\overline{P_{base}}} \cdot \frac{1}{1000}$$

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