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I

(Legislative acts)

REGULATIONS

REGULATION (EU) 2023/606 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of 15 March 2023

amending Regulation (EU) 2015/760 as regards the requirements pertaining to the investment policies and operating conditions of European long-term investment funds and the scope of eligible investment assets, the portfolio composition and diversification requirements and the borrowing of cash and other fund rules

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to the proposal from the European Commission,

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

Having regard to the opinion of the European Economic and Social Committee ⁽¹⁾,Acting in accordance with the ordinary legislative procedure ⁽²⁾,

Whereas:

- (1) Since the adoption of Regulation (EU) 2015/760 of the European Parliament and of the Council ⁽³⁾ only a few European long-term investment funds (ELTIFs) have been authorised. The aggregate size of net assets of those funds was estimated at approximately EUR 2 400 000 000 in 2021.
- (2) The available market data indicate that the development of the ELTIF segment has not scaled up as expected, despite the Union's focus on promoting long-term finance in the Union.
- (3) Certain characteristics of the ELTIF market, including the low number of funds, the small net asset size, the low number of jurisdictions in which ELTIFs are domiciled and a portfolio composition that is skewed towards certain eligible investment categories, demonstrate the concentrated nature of that market, both geographically and in terms of investment type. Moreover, there appears to be a lack of awareness and financial literacy, as well as, most importantly, low levels of trust and reliability as regards the finance industry, that need to be overcome in order to make ELTIFs more accessible and popular among retail investors. It is therefore necessary to review the functioning of the legal framework for the operation of ELTIFs in order to ensure that more investments are channelled to businesses in need of capital and to long-term investment projects.

⁽¹⁾ OJ C 290, 29.7.2022, p. 64.

⁽²⁾ Position of the European Parliament of 15 February 2023 (not yet published in the Official Journal) and decision of the Council of 7 March 2023.

⁽³⁾ Regulation (EU) 2015/760 of the European Parliament and of the Council of 29 April 2015 on European long-term investment funds (OJ L 123, 19.5.2015, p. 98).

- (4) At present, the objective of Regulation (EU) 2015/760 is to channel capital towards European long-term investments in the Union's real economy. As a result, it can occur that a majority of ELTIF assets and investments, or the main revenue or profit generation of such assets and investments, is located within the Union. However, long-term investments in projects, undertakings, and infrastructure projects in third countries can also bring capital to ELTIFs and benefit the Union's economy. Such benefits can originate in multiple ways, including through investments that promote the development of border regions, that enhance commercial, financial and technological cooperation and that facilitate investments in environmental and sustainable energy projects. Indeed, certain long-term assets and investments that benefit the Union's real economy will unavoidably be located in third countries, such as subsea fibre optic cables that connect Europe with other continents, the construction of liquefied natural gas terminals and related infrastructure, or cross-border investments in renewable energy installations and facilities that contribute to the resilience of the electrical grid and the energy security of the Union. Since investments in third-country qualifying portfolio undertakings and eligible assets can bring benefits to investors and managers of ELTIFs, as well as to the economies, infrastructure, climate and environmental sustainability and citizens of such third countries, Regulation (EU) 2015/760 should not prevent a majority of ELTIF assets and investments, or the main revenue or profit generation of such assets and investments, from being located in a third country.
- (5) Accordingly, and also having regard to ELTIFs' potential to facilitate long-term investments in, amongst others, energy, transport and social infrastructure, and job creation, and to contribute to the achievement of the European Green Deal, Regulation (EU) 2015/760 should be amended so that its objective is to facilitate the raising and channelling of capital towards long-term investments in the real economy, including towards investments that promote the European Green Deal and other priority areas, and to ensure that capital flows are directed towards projects that put the Union's economy on a path towards smart, sustainable and inclusive growth.
- (6) It is necessary to enhance the flexibility of asset managers to invest in broad categories of real assets. Real assets should therefore be deemed to form a category of eligible assets, provided that those real assets have value due to their nature or substance. Such real assets include immovable property, such as communication, environment, energy or transport infrastructure, social infrastructure, including retirement homes or hospitals, as well as infrastructure for education, health and welfare support or industrial facilities, installations, and other assets, including intellectual property, vessels, equipment, machinery, aircraft or rolling stock.
- (7) Investments in commercial property, facilities or installations for education, counselling, research, development, including infrastructure and other assets that give rise to economic or social benefit, sports, or housing, including housing for senior residents or social housing, should also be deemed to be eligible investments in real assets due to the capacity of such assets to contribute to the objective of smart, sustainable and inclusive growth. To enable the realisation of investment strategies in areas where direct investments in real assets are not possible or are uneconomical, eligible investments in real assets should also comprise investments in water rights, forest rights, building rights and mineral rights.
- (8) Eligible investment assets should be understood to exclude works of art, manuscripts, wine stocks, jewellery or other assets, which do not in themselves represent long-term investments in the real economy.
- (9) It is necessary to increase the attractiveness of ELTIFs for asset managers and broaden the range of investment strategies available to managers of ELTIFs so as to avoid any undue limitation of the scope of the eligibility of assets and investment activities of ELTIFs. The eligibility of real assets should not depend on their nature and objectives, or upon environmental, social or governance matters and related sustainability disclosures and similar conditions, which are already covered by Regulations (EU) 2019/2088 ⁽⁴⁾ and (EU) 2020/852 ⁽⁵⁾ of the European Parliament and of the Council. Nevertheless, ELTIFs remain subject to the obligations stemming from Regulation (EU) 2019/2088 on sustainability-related disclosures. In particular, when ELTIFs either promote environmental or social characteristics or have sustainable investment as their objective, they are to comply with the disclosure requirements set out in Article 8 or 9 of Regulation (EU) 2019/2088, as applicable, which each contain detailed transparency requirements for pre-contractual disclosures.

⁽⁴⁾ Regulation (EU) 2019/2088 of the European Parliament and of the Council of 27 November 2019 on sustainability-related disclosures in the financial services sector (OJ L 317, 9.12.2019, p. 1).

⁽⁵⁾ 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, and amending Regulation (EU) 2019/2088 (OJ L 198, 22.6.2020, p. 13).

- (10) In order to encourage private capital flows towards more environmentally sustainable investments, it should be clarified that ELTIFs are also able to invest in green bonds. At the same time, it should also be ensured that ELTIFs target long-term investments and that the requirements of Regulation (EU) 2015/760 regarding eligible investment assets are observed. Therefore, green bonds that comply with those eligibility requirements and that are issued pursuant to a Regulation of the European Parliament and of the Council on European green bonds should be expressly included in the list of eligible investment assets.
- (11) In order to improve access of investors to more up-to-date and complete information on the ELTIF market, it is necessary to increase the granularity and the timeliness of the central public register provided for in Regulation (EU) 2015/760. That register should therefore contain additional information to the information that it already contains including, and where available, the Legal Entity Identifier (LEI) and the national code identifier of the ELTIF, the name, address and the LEI of the manager of the ELTIF, the International Securities Identification Number (ISIN code) of the ELTIF and of each separate unit or share class, the competent authority of the ELTIF and the home Member State of that ELTIF, the Member States where the ELTIF is marketed, whether the ELTIF can be marketed to retail investors or solely to professional investors, the date of authorisation of the ELTIF, and the date on which the marketing of the ELTIF commenced.
- (12) Investments by ELTIFs can be conducted through the participation of intermediary entities, including special purpose vehicles and securitisation or aggregator vehicles or holding companies. At present, Regulation (EU) 2015/760 requires that investments in equity or quasi-equity instruments of qualifying portfolio undertakings only take place where those undertakings are majority-owned subsidiaries, which substantially limits the scope of the eligible asset base. ELTIFs should therefore, in general, have the possibility of conducting minority co-investment in investment opportunities. That possibility should give ELTIFs additional flexibility in implementing their investment strategies, attract more promoters of investment projects and increase the range of possible eligible target assets, all of which are essential for the implementation of indirect investment strategies.
- (13) Due to concerns that fund-of-funds strategies can give rise to investments that would not fall within the scope of eligible investment assets, Regulation (EU) 2015/760 at present contains restrictions on investments in other funds throughout the life of an ELTIF. Fund-of-funds strategies are, however, a common and very effective way of obtaining rapid exposure to illiquid assets, in particular in respect of real estate and in the context of fully paid-in capital structures. It is therefore necessary to give ELTIFs the possibility of investing in other funds, to enable them to ensure a faster deployment of capital. Facilitating fund-of-funds investments by ELTIFs would also allow reinvestment of excess cash into funds, as different investments with distinct maturities might lower the cash drag of an ELTIF. It is therefore necessary to expand the eligibility of fund-of-funds strategies for managers of ELTIFs beyond investments in European venture capital funds (EuVECAs) or European social entrepreneurship funds (EuSEFs). The categories of collective investment undertakings in which ELTIFs can invest should thus be broadened to include undertakings for collective investment in transferable securities (UCITS) and also EU alternative investment funds (EU AIFs) managed by EU AIF managers (EU AIFMs). However, in order to ensure effective investor protection, it is also necessary to provide that where an ELTIF invests in other ELTIFs, in EuVECAs, in EuSEFs, in UCITS or EU AIFs managed by EU AIFMs, those collective investment undertakings should also invest in eligible investments and have not themselves invested more than 10 % of their capital in any other collective investment undertaking. In order to prevent circumvention of those rules and to ensure that ELTIFs comply on an aggregate portfolio basis with Regulation (EU) 2015/760, the assets and cash borrowing position of ELTIFs should be combined with those of the collective investment undertakings in which ELTIFs have invested in order to assess ELTIFs' compliance with the portfolio composition and diversification requirements, and with the borrowing limits.
- (14) At present, Regulation (EU) 2015/760 requires that eligible investment assets, where those assets are individual real assets, have a value of at least EUR 10 000 000. Real asset portfolios, however, are often composed of a number of individual real assets which have a value of significantly less than EUR 10 000 000. The requirement for a minimum value of individual real assets should therefore be removed. It is expected that the removal of that unnecessary requirement will contribute to the diversification of investment portfolios and boost more effective investments in real assets by ELTIFs, while also allowing for different levels of development of long-term investment instruments in the Member States to be taken into consideration.

- (15) It is necessary to extend the scope of eligible investment assets and promote the investments of ELTIFs in securitised assets. It should therefore be clarified that, where the underlying assets consist of long-term exposures, eligible investment assets should also include simple, transparent and standardised securitisations as referred to in Article 18 of Regulation (EU) 2017/2402 of the European Parliament and of the Council ⁽⁶⁾. Those long-term exposures comprise securitisations of residential loans that are secured by one or more mortgages on residential immovable property (residential mortgage-backed securities), commercial loans that are secured by one or more mortgages on commercial immovable property, corporate loans, including loans which are granted to small- and medium-sized enterprises, and trade receivables or other underlying exposures that the originator considers form a distinct asset type, provided that the proceeds from securitising those trade receivables or other underlying exposures are used for financing or refinancing long-term investments.
- (16) At present, Regulation (EU) 2015/760 prevents investments by ELTIFs in credit institutions, investment firms, insurance undertakings and other financial undertakings. However, innovative recently authorised financial undertakings such as FinTechs could play an important role in promoting digital innovation, the overall efficiency of Union financial markets and job creation, and in contributing to the resilience and stability of Union financial infrastructure and the capital markets union. Such financial undertakings design, develop or offer innovative products or technologies that aim to automate or improve existing business models, processes, applications and products, or result in new ones, and thereby benefit Union financial markets, financial institutions and the provision of financial services to financial institutions, businesses or consumers. Such financial undertakings also render specific regulatory, supervisory or oversight processes more efficient and effective, or modernise regulatory, supervisory or oversight compliance functions across financial or non-financial institutions. It is therefore desirable to amend Regulation (EU) 2015/760 in order to permit ELTIFs to invest in innovative recently authorised financial undertakings. As the area is dynamic and rapidly evolving, ELTIFs should be allowed to invest in financial undertakings, other than financial holding companies or mixed-activity holding companies, that are regulated entities authorised or registered more recently than five years before the date of the initial investment.
- (17) At present, Regulation (EU) 2015/760 requires that qualifying portfolio undertakings, where those qualifying undertakings are admitted to trading on a regulated market or on a multilateral trading facility, have a market capitalisation of no more than EUR 500 000 000. However, many listed companies with a low market capitalisation have a limited liquidity which prevents managers of ELTIFs from building, within a reasonable time, a sufficient position in such listed companies, and as a result narrows the range of available investment targets. In order to provide ELTIFs with a better liquidity profile, the market capitalisation of the listed qualifying portfolio undertakings in which ELTIFs can invest should therefore be increased from a maximum of EUR 500 000 000 to a maximum of EUR 1 500 000 000. To avoid potential changes to the eligibility of such investments due to currency fluctuations or other factors, the determination of the market capitalisation threshold should be made only at the time of the initial investment.
- (18) In order to ensure the transparency and integrity of investments in assets located in third countries for investors, managers of ELTIFs and competent authorities, the requirements in respect of investments in third-country qualifying portfolio undertakings should be aligned to the standards laid down in Directive (EU) 2015/849 of the European Parliament and of the Council ⁽⁷⁾. They should also be aligned to the standards set out in the common action undertaken by the Member States as regards non-cooperative jurisdictions for tax purposes, reflected in the Council conclusions on the revised EU list of non-cooperative jurisdictions for tax purposes.
- (19) Managers of ELTIFs that hold a stake in a portfolio undertaking might place their own interests ahead of those of investors in the ELTIF. To avoid such conflicts of interest, and to ensure sound corporate governance, Regulation (EU) 2015/760 requires that an ELTIF only invests in assets that are unrelated to the manager of the ELTIF, unless the ELTIF invests in units or shares of other collective investment undertakings that are managed by the manager of the ELTIF. It is, however, established market practice that one or several investment vehicles of the asset manager

⁽⁶⁾ Regulation (EU) 2017/2402 of the European Parliament and of the Council of 12 December 2017 laying down a general framework for securitisation and creating a specific framework for simple, transparent and standardised securitisation, and amending Directives 2009/65/EC, 2009/138/EC and 2011/61/EU and Regulations (EC) No 1060/2009 and (EU) No 648/2012 (OJ L 347, 28.12.2017, p. 35).

⁽⁷⁾ Directive (EU) 2015/849 of the European Parliament and of the Council of 20 May 2015 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, amending Regulation (EU) No 648/2012 of the European Parliament and of the Council, and repealing Directive 2005/60/EC of the European Parliament and of the Council and Commission Directive 2006/70/EC (OJ L 141, 5.6.2015, p. 73).

co-invest alongside another fund that has a similar objective and strategy as that of the ELTIF. Such co-investments by the EU AIFM and other affiliate entities that belong to the same group allow for the attraction of larger pools of capital for investments in large-scale projects. For that purpose, asset managers typically invest in parallel with the ELTIF in a target entity and structure their investments through co-investment vehicles. As part of the asset management mandate, portfolio managers and senior staff of the asset managers are typically required or expected to co-invest in the same fund that they manage. It is therefore appropriate to specify that the provisions on conflicts of interest should not prevent a manager of an ELTIF or an undertaking that belongs to the same group from co-investing in that ELTIF or from co-investing with that ELTIF in the same asset. In order to ensure that effective investor protection safeguards are in place, where such co-investments take place, managers of ELTIFs should put in place organisational and administrative arrangements in accordance with the requirements laid down in Directive 2011/61/EU of the European Parliament and of the Council (*) designed to identify, prevent, manage and monitor conflicts of interest and ensure that such conflicts of interest are adequately disclosed.

- (20) To prevent conflicts of interest, avoid transactions that do not take place on commercial terms and ensure sound corporate governance, Regulation (EU) 2015/760 does not allow the staff of the manager of an ELTIF and of undertakings that belong to the same group as the manager of the ELTIF to invest in that ELTIF or to co-invest with the ELTIF in the same asset. It is, however, established market practice that the staff of the manager of an ELTIF and of other affiliate entities that belong to the same group, which co-invest alongside the manager of the ELTIF, including the portfolio managers and senior staff responsible for the key financial and operational decisions of the manager of the ELTIF, are often required or expected due to the nature of the asset management mandate to co-invest in the same fund or the same asset in order to promote the alignment of financial incentives of those staff and the investors. It is therefore appropriate to specify that the provisions on conflicts of interest should not prevent the staff of the manager of an ELTIF or of undertakings that belong to that group from co-investing in their personal capacity in that ELTIF and from co-investing with the ELTIF in the same asset. In order to ensure that effective investor protection safeguards are in place, where such co-investments by the staff take place, managers of ELTIFs should put in place organisational and administrative arrangements designed to identify, prevent, manage and monitor conflicts of interest and ensure that such conflicts of interest are adequately disclosed.
- (21) The rules for ELTIFs are almost identical for both professional and retail investors, including rules on the use of leverage, on the diversification of assets and composition of the portfolios, on concentration limits and on limits on the eligible assets and investments. However, professional and retail investors have different time horizons, risk tolerances and investment needs as well as different capabilities to analyse investment opportunities. Indeed, professional investors have a higher risk tolerance than retail investors, are able to perform thorough analyses of investment possibilities and due diligence of assets and their valuation, and might, due to their nature and activities, have different return objectives compared to retail investors. Despite that, and because of the almost identical rules and the resulting high administrative burden and associated costs for ELTIFs intended for professional investors, asset managers have to date been reluctant to offer tailored products to professional investors. It is therefore appropriate to provide for specific rules for ELTIFs that are marketed solely to professional investors, in particular with regard to the diversification and composition of the portfolio concerned, the concentration limits and the borrowing of cash.
- (22) At present, Regulation (EU) 2015/760 requires that ELTIFs invest at least 70 % of their capital in eligible investment assets. That high investment limit for eligible investment assets in ELTIFs' portfolios was initially established in view of the focus of ELTIFs on long-term investments and the contribution such investments were expected to make to the financing of sustainable growth of the Union's economy. Given the illiquid and idiosyncratic nature of certain eligible investment assets within ELTIFs' portfolios, however, it can prove difficult and costly for managers of ELTIFs to manage the liquidity of ELTIFs, honour redemption requests, enter into borrowing arrangements, and execute other elements of ELTIFs' investment strategies pertaining to the transfer, valuation and pledging of such eligible investment assets. Lowering the limit for eligible investment assets would therefore enable managers of ELTIFs to better manage the liquidity of ELTIFs. Only eligible investment assets of ELTIFs other than collective investment undertakings and eligible investment assets of collective investment undertakings in which ELTIFs have invested should be combined for the purpose of assessing compliance by those ELTIFs with the investment limit for eligible investment assets.

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

- (23) The existing diversification requirements of Regulation (EU) 2015/760 were introduced in order to ensure that ELTIFs can withstand adverse market circumstances. However, those provisions have proven to be too burdensome because in practice they mean that ELTIFs are, on average, required to make 10 distinct investments. In relation to investment in projects or large-scale infrastructure, the requirement to make 10 investments per ELTIF can be difficult to achieve, and costly in terms of transactional costs and capital allocation. To reduce transaction and administrative costs for ELTIFs, and ultimately their investors, ELTIFs should therefore be able to pursue more concentrated investment strategies and thus have exposures to fewer eligible assets. It is therefore necessary to adjust the diversification requirements for ELTIFs' exposures to single qualifying portfolio undertakings, single real assets, collective investment undertakings and certain other eligible investment assets, contracts and financial instruments. That additional flexibility in the portfolio composition of ELTIFs and the reduction in the diversification requirements should not materially affect the capacity of ELTIFs to withstand market volatility, since ELTIFs typically invest in assets that do not have a readily available market quotation, that might be highly illiquid, and that frequently have long-term maturity or a longer time horizon.
- (24) Unlike retail investors, professional investors have, in certain circumstances, a longer time horizon, distinct financial returns objectives, more expertise, higher risk tolerance to adverse market conditions and higher capacity to absorb losses. It is therefore necessary to establish for such professional investors a differentiated set of investor protection measures and to remove the diversification requirements for ELTIFs that are marketed solely to professional investors.
- (25) In order to better use the expertise of managers of ELTIFs and because of the benefits of diversification, in certain cases it can be beneficial for ELTIFs to invest all or almost all of their assets in the diversified portfolio of a master ELTIF. ELTIFs should therefore be allowed to pool their assets and make use of master-feeder structures by investing in master ELTIFs.
- (26) Leverage is frequently used to enable the day-to-day operation of an ELTIF and to carry out a specific investment strategy. Moderate amounts of leverage can, where adequately controlled, amplify returns without incurring or exacerbating excessive risks. In addition, leverage can frequently be used by a variety of collective investment undertakings to gain additional efficiencies or operational results. Since the borrowing of cash is at present limited in Regulation (EU) 2015/760 to 30 % of the value of the capital of ELTIFs, managers of ELTIFs might be unable to successfully pursue certain investment strategies, including in the case of investments in real assets, where using higher levels of leverage is an industry norm or is otherwise required to achieve attractive risk-adjusted returns. It is therefore appropriate to increase the flexibility of managers of ELTIFs to raise further capital during the life of an ELTIF. At the same time, it is desirable to enhance the management of leverage and to promote a greater consistency with Directive 2011/61/EU with respect to borrowing policy by replacing capital with net asset value as the appropriate point of reference for determining the borrowing of cash limit, which should be accompanied by improvements to the rectification policy. In view of the possible risks that leverage can entail, ELTIFs that can be marketed to retail investors should be permitted to borrow cash amounting to no more than 50 % of the net asset value of the ELTIF. The 50 % limit is appropriate given the overall borrowing of cash limits common for funds investing in real assets with a similar liquidity and redemption profile.
- For ELTIFs marketed to professional investors, however, a higher leverage limit should be permitted, because professional investors have a higher risk tolerance than retail investors. The borrowing of cash limit for ELTIFs that are marketed solely to professional investors should therefore be extended to no more than 100 % of the ELTIF's net asset value. Moreover, to date, Regulation (EU) 2015/760 does not offer the manager of an ELTIF the possibility of rectifying the investment position, within an appropriate period of time, in cases where the ELTIF infringes the leverage limit and the infringement is beyond the control of the manager of the ELTIF. Taking into account the volatility of the net asset value as a reference value and the interests of the investors in the ELTIF, it should therefore be specified that the provisions on rectification in Regulation (EU) 2015/760 apply also to borrowing limits.
- (27) To provide ELTIFs with wider investment opportunities, ELTIFs should be able to borrow in the currency in which the manager of the ELTIF expects to acquire the asset. It is, however, necessary to mitigate the risk of currency mismatches and thus to limit the currency risk for the investment portfolio. ELTIFs should therefore appropriately hedge their currency exposure.

- (28) ELTIFs should be able to encumber their assets to implement their borrowing strategy. In order to further increase the flexibility of ELTIFs in executing their borrowing strategy, borrowing arrangements should not constitute borrowing where that borrowing is fully covered by investors' capital commitments.
- (29) Given the increase of the maximum limits for the borrowing of cash by ELTIFs and the removal of certain limits on the borrowing of cash in foreign currencies, investors should have more comprehensive information on the borrowing strategies and limits employed by ELTIFs. It is therefore appropriate to require managers of ELTIFs to expressly disclose the borrowing limits in the prospectus of the ELTIF concerned.
- (30) At present, Regulation (EU) 2015/760 provides that investors in an ELTIF are able to request the winding down of that ELTIF where their redemption requests, made in accordance with the ELTIF's redemption policy, have not been satisfied within one year from the date on which those requests were made. Given the long-term orientation of ELTIFs and the often idiosyncratic and illiquid asset profile of ELTIFs' portfolios, the entitlement of any investor or group of investors to request the winding down of an ELTIF can be disproportionate and detrimental to both the successful execution of the ELTIF's investment strategy and the interests of other investors or groups of investors. It is therefore appropriate to remove the possibility for investors to require the winding down of an ELTIF where that ELTIF is unable to satisfy redemption requests.
- (31) At present, Regulation (EU) 2015/760 is unclear about the criteria to assess the redemption percentage in any given period of time, and about the minimum information to be provided to competent authorities about the possibility of redemptions. Given the central role of the European Supervisory Authority (European Securities and Markets Authority) (ESMA) in the application of Regulation (EU) 2015/760 and its expertise in relation to securities and securities markets, it is appropriate to entrust ESMA with the drawing up of draft regulatory technical standards specifying the circumstances in which the life of an ELTIF is considered compatible with the life-cycles of each of the individual assets of the ELTIF; the criteria to determine the minimum holding period; the minimum information to be provided to the competent authority of the ELTIF; the requirements to be fulfilled by the ELTIF in relation to its redemption policy and liquidity management tools; and the criteria to assess the redemption percentage. It should be noted that where the rules or instruments of incorporation of an ELTIF provide for the possibility of redemptions during the life of that ELTIF, the provisions on liquidity risk management and liquidity management tools set out in Directive 2011/61/EU apply.
- (32) At present, Regulation (EU) 2015/760 requires that the rules or instruments of incorporation of an ELTIF do not prevent units or shares of the ELTIF from being admitted to trading on a regulated market or on a multilateral trading facility. Despite that possibility, managers of ELTIFs, as well as investors and market participants, have hardly used the secondary trading mechanism for the trading of units or shares of ELTIFs. To promote the secondary trading of ELTIF units or shares, it is appropriate to allow managers of ELTIFs to provide for the possibility of an early exit of ELTIF investors during the life of the ELTIF. In order to ensure the effective functioning of such a secondary trading mechanism, an early exit should be possible only where the manager of the ELTIF has put in place a policy for matching potential investors and exit requests. That policy should, amongst others, specify the transfer process, the role of the manager of the ELTIF or the fund administrator, the periodicity and duration of the liquidity window during which the units or shares of the ELTIF can be exchanged, the rules determining the execution price and pro-rata conditions, the disclosure requirements, and the fees, costs and charges and other conditions related to such a liquidity window mechanism. ESMA should be entrusted with the drawing up of draft regulatory technical standards specifying the circumstances for the use of matching, including the information that ELTIFs are required to disclose to investors.
- (33) In order to avoid any misunderstanding by retail investors regarding the legal nature of, and the potential liquidity allowed for by, the secondary trading mechanism, the distributor or, when directly offering or placing units or shares of an ELTIF to a retail investor, the manager of the ELTIF should issue a clear written alert to retail investors that the availability of a matching mechanism does not guarantee the matching or entitle retail investors to exiting or redeeming their units or shares of the ELTIF concerned. That written alert should be part of a single written alert that also informs retail investors that the ELTIF product might not be fit for retail investors that are unable to sustain such a long-term and illiquid commitment, where the life of an ELTIF offered or placed to retail investors exceeds 10 years. When presented in marketing communication to retail investors, the availability of a matching mechanism should not be promoted as a tool that guarantees liquidity upon request.

- (34) At present, Regulation (EU) 2015/760 requires ELTIFs to adopt an itemised schedule for the orderly disposal of their assets to redeem investors' units or shares after the end of the life of the ELTIF. That Regulation also requires ELTIFs to disclose that itemised schedule to the competent authority of the ELTIF. Those requirements subject managers of ELTIFs to substantial administrative and compliance burdens, without bringing a corresponding increase in investor protection. In order to alleviate those burdens without diminishing investor protection, ELTIFs should inform the competent authority of the ELTIF about the orderly disposal of their assets in order to redeem investors' units or shares after the end of the life of the ELTIF, and only provide the competent authority of the ELTIF with an itemised schedule where they are expressly asked to do so by that competent authority.
- (35) The prospectus of a feeder ELTIF can contain highly relevant information for investors, which enables them to better assess the potential risks and benefits of an investment. It is therefore appropriate to require that, in the case of a master-feeder structure, the prospectus of the feeder ELTIF should contain disclosures on the master-feeder structure, the feeder ELTIF and the master ELTIF, and a description of all remuneration or reimbursement of costs payable by the feeder ELTIF.
- (36) Adequate disclosure of fees and charges is critically important for the evaluation of an ELTIF as a potential investment target by investors. Such disclosure is also important where the ELTIF is marketed to retail investors in the case of master-feeder structures. It is therefore appropriate to require the manager of an ELTIF to include in the annual report of the feeder ELTIF a statement on the aggregate charges of the feeder ELTIF and the master ELTIF. Such requirement is expected to contribute to the protection of investors against being charged unjustified additional costs as a result of subscription and redemption fees potentially charged by the master ELTIF to the feeder ELTIF.
- (37) Regulation (EU) 2015/760 requires the manager of an ELTIF to disclose in the ELTIF prospectus information about fees related to investing in that ELTIF. Regulation (EU) No 1286/2014 of the European Parliament and of the Council ⁽⁹⁾, however, also contains requirements concerning the disclosure of fees. In order to increase transparency on fee structures, the requirement laid down in Regulation (EU) 2015/760 should be aligned with the requirement laid down in Regulation (EU) No 1286/2014.
- (38) At present, Regulation (EU) 2015/760 requires managers of ELTIFs to set up local facilities in each Member State where they intend to market ELTIFs. While the requirements to perform certain tasks for investors across all Member States remain in place, the requirement to set up local facilities has, however, subsequently been removed by Directive (EU) 2019/1160 of the European Parliament and of the Council ⁽¹⁰⁾ as regards UCITS and alternative investment funds marketed to retail investors, since such local facilities create additional costs and friction in respect of the cross-border marketing of ELTIFs. In addition, the preferred method of contact with investors has shifted from physical meetings at local facilities to direct interaction between fund managers or distributors and investors by electronic means. Removing that requirement from Regulation (EU) 2015/760 for all ELTIF investors would hence be consistent with Directive (EU) 2019/1160 and the contemporary methods of marketing of financial products, and could promote the attractiveness of ELTIFs for asset managers, who would no longer be required to incur costs stemming from the operation of local facilities. That requirement should therefore be removed.
- (39) Since units and shares of ELTIFs are financial instruments, the product governance rules of Directive 2014/65/EU of the European Parliament and of the Council ⁽¹¹⁾ apply where ELTIFs are marketed with the provision of investment services. However, an ELTIF's units or shares can also be purchased without the provision of investment services. To cover those cases, Regulation (EU) 2015/760 at present requires managers of ELTIFs to develop an internal assessment process for ELTIFs marketed to retail investors. The current regime is inspired by the product

⁽⁹⁾ Regulation (EU) No 1286/2014 of the European Parliament and of the Council of 26 November 2014 on key information documents for packaged retail and insurance-based investment products (PRIIPs) (OJ L 352, 9.12.2014, p. 1).

⁽¹⁰⁾ Directive (EU) 2019/1160 of the European Parliament and of the Council of 20 June 2019 amending Directives 2009/65/EC and 2011/61/EU with regard to cross-border distribution of collective investment undertakings (OJ L 188, 12.7.2019, p. 106).

⁽¹¹⁾ Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU (OJ L 173, 12.6.2014, p. 349).

governance rules of Directive 2014/65/EU but contains several differences that are not justified and could reduce investor protection. It should therefore be specified that the product governance rules laid down in Directive 2014/65/EU apply. The references to Directive 2014/65/EU are to be understood as entailing the application of the delegated acts supplementing that Directive.

- (40) At present, Regulation (EU) 2015/760 requires distributors or managers of ELTIFs to carry out a suitability assessment in respect of retail investors. However, that requirement is already provided for in Article 25 of Directive 2014/65/EU. Having a duplicate requirement creates an additional layer of administrative burden leading to higher costs for retail investors and is a strong disincentive for managers of ELTIFs to offer new ELTIFs to retail investors. It is therefore necessary to remove that duplicate requirement from Regulation (EU) 2015/760.
- (41) In order to ensure a high level of protection of retail investors, a suitability assessment should be carried out irrespective of whether the units or shares of ELTIFs are acquired by retail investors from distributors or managers of ELTIFs or via the secondary market. In accordance with Article 25(2) of Directive 2014/65/EU, the suitability assessment should comprise information on the expected duration and purpose of the investment and the retail investor's risk tolerance, as part of the information on the retail investor's investment objectives and financial situation, including their ability to bear losses. The results of the assessment should be communicated to the retail investors in the form of a statement on suitability, in accordance with Article 25(6) of Directive 2014/65/EU.
- (42) In addition, in cases where the result of the suitability assessment is that an ELTIF is not suitable for a retail investor and such investor nevertheless wishes to proceed with the transaction, the express consent of that retail investor should be obtained before the distributor or manager of the ELTIF proceeds with the transaction.
- (43) Regulation (EU) 2015/760 also requires distributors or managers of ELTIFs to provide appropriate investment advice when marketing ELTIFs to retail investors. The lack of precision in Regulation (EU) 2015/760 as to what constitutes appropriate investment advice and the lack of a cross-reference to the definition of investment advice in Directive 2014/65/EU have led to a lack of legal certainty and confusion among distributors and managers of ELTIFs. In addition, the obligation to provide investment advice requires external distributors to be authorised under Directive 2014/65/EU when marketing ELTIFs to retail investors. That creates unnecessary impediments to the marketing of ELTIFs to such investors and also subjects ELTIFs to stricter requirements than those for the distribution of other complex financial products, including the requirements for securitisations laid down in Regulation (EU) 2017/2402 and for subordinated eligible liabilities laid down in Directive 2014/59/EU of the European Parliament and of the Council ⁽¹²⁾. It is therefore not necessary to require distributors and managers of ELTIFs to provide retail investors with such investment advice. Moreover, given the importance of having a level playing field among financial products when such products are marketed to end investors, and of ensuring that this Regulation contains, amongst others, effective investor protection safeguards, ELTIFs should not be subject to unnecessary administrative and regulatory burden.
- (44) To ensure effective supervision of the application of the requirements related to the marketing of ELTIFs to retail investors, the distributor or, when directly offering or placing units or shares of an ELTIF to a retail investor, the manager of the ELTIF should be subject to the record-keeping rules of Directive 2014/65/EU.
- (45) In the event that the marketing or placing of ELTIFs to retail investors is done through a distributor, such distributor should comply with the applicable requirements of Directive 2014/65/EU and Regulation (EU) No 600/2014 of the European Parliament and of the Council ⁽¹³⁾. In order to ensure legal certainty and avoid duplication, where a retail investor has been provided with investment advice under Directive 2014/65/EU, the requirement to provide a suitability assessment should be considered to be fulfilled.

⁽¹²⁾ Directive 2014/59/EU of the European Parliament and of the Council of 15 May 2014 establishing a framework for the recovery and resolution of credit institutions and investment firms and amending Council Directive 82/891/EEC, and Directives 2001/24/EC, 2002/47/EC, 2004/25/EC, 2005/56/EC, 2007/36/EC, 2011/35/EU, 2012/30/EU and 2013/36/EU, and Regulations (EU) No 1093/2010 and (EU) No 648/2012 of the European Parliament and of the Council (OJ L 173, 12.6.2014, p. 190).

⁽¹³⁾ Regulation (EU) No 600/2014 of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Regulation (EU) No 648/2012 (OJ L 173, 12.6.2014, p. 84).

- (46) It is established market practice that the portfolio managers and senior staff of the manager of an ELTIF are required or expected to invest in ELTIFs managed by that same manager of the ELTIF. Such persons are presumed to be financially sophisticated and well-informed about the ELTIF, meaning that it would be superfluous to require them to undergo a suitability assessment for investments in the ELTIF. It is therefore appropriate not to require distributors or managers of ELTIFs to carry out a suitability assessment for such individuals.
- (47) At present, for potential retail investors whose financial instrument portfolio does not exceed EUR 500 000, Regulation (EU) 2015/760 requires an initial minimum investment in one or more ELTIFs of EUR 10 000 and requires that such investors do not invest an aggregate amount exceeding 10 % of their financial instrument portfolio in ELTIFs. When applied together, the EUR 10 000 initial minimum investment and the 10 % limit on aggregate investment create a significant obstacle to investments in ELTIFs for retail investors, which conflicts with the goal of ELTIFs to establish a retail alternative investment fund product. It is therefore necessary to remove the EUR 10 000 initial minimum investment requirement and the 10 % limit on aggregate investment.
- (48) At present, Regulation (EU) 2015/760 requires investors to be treated equally and prohibits preferential treatment of individual investors or groups of investors, or the granting of specific economic benefits to those investors. ELTIFs can, however, have several classes of units or shares with slightly or substantially distinct conditions as regards the fees, legal structure, marketing rules and other requirements. In order to take those differences into account, those requirements should only apply to individual investors or groups of investors that invest in the same class or classes of ELTIFs.
- (49) In order to give managers of ELTIFs sufficient time to adapt to the requirements of this Regulation, including the requirements pertaining to the marketing of ELTIFs to investors, this Regulation should start to apply nine months after its entry into force.
- (50) Due to the potentially illiquid nature of eligible assets and the long-term orientation of ELTIFs, ELTIFs can experience difficulties in complying with any changes to the fund rules and regulatory requirements introduced during their life-cycle, without affecting the trust and confidence of their investors. It is therefore necessary to provide for transitional rules in respect of those ELTIFs that were authorised before the entry into application of this Regulation. However, such ELTIFs should also be able to choose to be subject to this Regulation provided that the competent authority of the ELTIF is notified accordingly.
- (51) Since the objectives of this Regulation, namely, to ensure an effective legal framework for the operation of ELTIFs throughout the Union and to promote long-term finance by raising and channelling capital towards long-term investments in the real economy in line with the Union objective of smart, sustainable and inclusive growth, cannot be sufficiently achieved by the Member States but can rather, by reason of the scale and effects of this Regulation, be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve those objectives.
- (52) Regulation (EU) 2015/760 should therefore be amended accordingly,

HAVE ADOPTED THIS REGULATION:

Article 1

Amendments to Regulation (EU) 2015/760

Regulation (EU) 2015/760 is amended as follows:

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

‘2. The objective of this Regulation is to facilitate the raising and channelling of capital towards long-term investments in the real economy, including towards investments that promote the European Green Deal and other priority areas, in line with the Union objective of smart, sustainable and inclusive growth.’;

(2) Article 2 is amended as follows:

(a) point (6) is replaced by the following:

‘(6) ‘real asset’ means an asset that has an intrinsic value due to its substance and properties;’

(b) in point (7), the following point is inserted:

‘(ca) a reinsurance undertaking as defined in Article 13, point (4), of Directive 2009/138/EC;’

(c) the following points are inserted:

‘(14a) ‘simple, transparent and standardised securitisation’ means a securitisation that complies with the conditions set out in Article 18 of Regulation (EU) 2017/2402 of the European Parliament and of the Council (*);

(14b) ‘group’ means a group as defined in Article 2, point (11), of Directive 2013/34/EU of the European Parliament and of the Council (**);

(*) Regulation (EU) 2017/2402 of the European Parliament and of the Council of 12 December 2017 laying down a general framework for securitisation and creating a specific framework for simple, transparent and standardised securitisation, and amending Directives 2009/65/EC, 2009/138/EC and 2011/61/EU and Regulations (EC) No 1060/2009 and (EU) No 648/2012 (OJ L 347, 28.12.2017, p. 35).

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

(d) the following points are added:

‘(20) ‘feeder ELTIF’ means an ELTIF, or an investment compartment thereof, which has been approved to invest at least 85 % of its assets in units or shares of another ELTIF or investment compartment of an ELTIF;

(21) ‘master ELTIF’ means an ELTIF, or an investment compartment thereof, in which another ELTIF invests at least 85 % of its assets in units or shares.’;

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

‘3. The competent authorities of the ELTIFs shall, on a quarterly basis, inform ESMA of authorisations granted or withdrawn pursuant to this Regulation and of any changes to the information about an ELTIF that is set out in the central public register referred to in the second subparagraph.

ESMA shall keep an up-to-date central public register identifying for each ELTIF authorised under this Regulation:

(a) the Legal Entity Identifier (LEI) and national code identifier of the ELTIF, where available;

(b) the name and address of the manager of the ELTIF and, where available, the LEI of that manager;

(c) the ISIN codes of the ELTIF and each separate unit or share class, where available;

(d) the LEI of the master ELTIF, where available;

(e) the LEI of the feeder ELTIF, where available;

(f) the competent authority of the ELTIF and the home Member State of the ELTIF;

(g) the Member States where the ELTIF is marketed;

(h) whether the ELTIF can be marketed to retail investors or can be marketed solely to professional investors;

(i) the date of the authorisation of the ELTIF;

- (j) the date on which the marketing of the ELTIF commenced;
- (k) the date of the last update by ESMA of the information about the ELTIF.

The central public register shall be made available in electronic format.’;

(4) Article 5 is amended as follows:

(a) in paragraph 1, the second subparagraph is replaced by the following:

‘The application for authorisation as an ELTIF shall include all of the following:

- (a) the fund rules or instruments of incorporation;
- (b) the name of the proposed manager of the ELTIF;
- (c) the name of the depositary and, where requested by the competent authority of an ELTIF that can be marketed to retail investors, the written agreement with the depositary;
- (d) where the ELTIF can be marketed to retail investors, a description of the information to be made available to investors, including a description of the arrangements for dealing with complaints submitted by retail investors;
- (e) where applicable, the following information on the master-feeder structure of the ELTIF:
 - (i) a declaration that the feeder ELTIF is a feeder of the master ELTIF;
 - (ii) the fund rules or instruments of incorporation of the master ELTIF and the agreement between the feeder ELTIF and the master ELTIF, or the internal rules on the conduct of business, referred to in Article 29(6);
 - (iii) where the master ELTIF and the feeder ELTIF have different depositaries, the information-sharing agreement referred to in Article 29(7);
 - (iv) where the feeder ELTIF is established in a Member State other than the home Member State of the master ELTIF, an attestation by the competent authority of the home Member State of the master ELTIF that the master ELTIF is an ELTIF provided by the feeder ELTIF.’;

(b) in paragraph 2, second subparagraph, the introductory part is replaced by the following:

‘Without prejudice to paragraph 1, an EU AIFM that applies to manage an ELTIF established in another Member State shall provide the competent authority of the ELTIF with the following documentation.’;

(c) paragraph 3 is replaced by the following:

‘3. Applicants shall be informed within two months from the date of submission of a complete application whether authorisation as an ELTIF has been granted.’;

(d) in paragraph 5, second subparagraph, point (b) is replaced by the following:

‘(b) where the ELTIF can be marketed to retail investors, a description of the information to be made available to retail investors, including a description of the arrangements for dealing with complaints submitted by retail investors.’;

(5) Article 10 is replaced by the following:

‘Article 10

Eligible investment assets

1. An asset as referred to in Article 9(1), point (a), shall only be eligible for investment by an ELTIF where it falls into one of the following categories:

(a) equity or quasi-equity instruments which have been:

- (i) issued by a qualifying portfolio undertaking as referred to in Article 11 and acquired by the ELTIF from that qualifying portfolio undertaking or from a third party via the secondary market;

- (ii) issued by a qualifying portfolio undertaking as referred to in Article 11 in exchange for an equity or quasi-equity instrument previously acquired by the ELTIF from that qualifying portfolio undertaking or from a third party via the secondary market;
 - (iii) issued by an undertaking in which a qualifying portfolio undertaking as referred to in Article 11 holds a capital participation in exchange for an equity or quasi-equity instrument acquired by the ELTIF in accordance with point (i) or (ii) of this point (a);
- (b) debt instruments issued by a qualifying portfolio undertaking as referred to in Article 11;
- (c) loans granted by the ELTIF to a qualifying portfolio undertaking as referred to in Article 11 with a maturity that does not exceed the life of the ELTIF;
- (d) units or shares of one or several other ELTIFs, EuVECAs, EuSEFs, UCITS and EU AIFs managed by EU AIFMs provided that those ELTIFs, EuVECAs, EuSEFs, UCITS and EU AIFs invest in eligible investments as referred to in Article 9(1) and (2) and have not themselves invested more than 10 % of their assets in any other collective investment undertaking;
- (e) real assets;
- (f) simple, transparent and standardised securitisations where the underlying exposures correspond to one of the following categories:
- (i) assets listed in Article 1, point (a)(i), (ii) or (iv), of Commission Delegated Regulation (EU) 2019/1851 (*);
 - (ii) assets listed in Article 1, point (a)(vii) or (viii), of Delegated Regulation (EU) 2019/1851, provided that the proceeds from the securitisation bonds are used for financing or refinancing long-term investments;
- (g) bonds issued, pursuant to a Regulation of the European Parliament and of the Council on European green bonds, by a qualifying portfolio undertaking as referred to in Article 11.

The limit laid down in point (d) of the first subparagraph shall not apply to feeder ELTIFs.

2. For the purpose of determining compliance with the investment limit laid down in Article 13(1), investments by ELTIFs in units or shares of ELTIFs, EuVECAs, EuSEFs, UCITS and EU AIFs managed by EU AIFMs shall only be taken into account to the extent of the amount of the investments of those collective investment undertakings in the eligible investment assets referred to in paragraph 1, first subparagraph, points (a), (b), (c), (e), (f) and (g), of this Article.

For the purpose of determining compliance with the investment limit and the other limits laid down in Article 13 and Article 16(1), the assets and the cash borrowing position of an ELTIF and of the other collective investment undertakings in which that ELTIF has invested shall be combined.

The determination of compliance with the investment limit and the other limits laid down in Article 13 and Article 16(1) in accordance with this paragraph shall be carried out on the basis of information updated on at least a quarterly basis and, where that information is not available on a quarterly basis, on the basis of the most recent available information.

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

(6) in Article 11, paragraph 1 is replaced by the following:

‘1. A qualifying portfolio undertaking shall be an undertaking that fulfils, at the time of the initial investment, the following requirements:

(a) it is not a financial undertaking, unless:

- (i) it is a financial undertaking that is not a financial holding company or a mixed-activity holding company; and
- (ii) that financial undertaking has been authorised or registered more recently than 5 years before the date of the initial investment;

(b) it is an undertaking which:

- (i) is not admitted to trading on a regulated market or on a multilateral trading facility; or
- (ii) is admitted to trading on a regulated market or on a multilateral trading facility and has a market capitalisation of no more than EUR 1 500 000 000;

(c) it is established in a Member State, or in a third country provided that the third country:

- (i) is not identified as high-risk third country listed in the delegated act adopted pursuant to Article 9(2) of Directive (EU) 2015/849 of the European Parliament and of the Council (*);
- (ii) is not mentioned in Annex I to the Council conclusions on the revised EU list of non-cooperative jurisdictions for tax purposes.

(*) Directive (EU) 2015/849 of the European Parliament and of the Council of 20 May 2015 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, amending Regulation (EU) No 648/2012 of the European Parliament and of the Council, and repealing Directive 2005/60/EC of the European Parliament and of the Council and Commission Directive 2006/70/EC (OJ L 141, 5.6.2015, p. 73).’;

(7) Article 12 is replaced by the following:

‘Article 12

Conflicts of interest

1. An ELTIF shall not invest in an eligible investment asset in which the manager of the ELTIF has or takes a direct or indirect interest, other than by holding units or shares of the ELTIFs, EuSEFs, EuVECAs, UCITS or EU AIFs that the manager of the ELTIF manages.

2. An EU AIFM managing an ELTIF and undertakings that belong to the same group as that EU AIFM, and their staff, may co-invest in that ELTIF and co-invest with the ELTIF in the same asset provided that the manager of the ELTIF has put in place organisational and administrative arrangements designed to identify, prevent, manage and monitor conflicts of interest and provided that such conflicts of interest are adequately disclosed.’;

(8) Articles 13, 14, 15 and 16 are replaced by the following:

‘Article 13

Portfolio composition and diversification

1. An ELTIF shall invest at least 55 % of its capital in eligible investment assets.

2. An ELTIF shall invest no more than:

- (a) 20 % of its capital in instruments issued by, or loans granted to, any single qualifying portfolio undertaking;
- (b) 20 % of its capital in a single real asset;

- (c) 20 % of its capital in units or shares of any single ELTIF, EuVECA, EuSEF, UCITS or EU AIF managed by an EU AIFM;
 - (d) 10 % of its capital in assets referred to in Article 9(1), point (b), where those assets have been issued by any single body.
3. The aggregate value of simple, transparent and standardised securitisations in an ELTIF portfolio shall not exceed 20 % of the value of the capital of the ELTIF.
4. The aggregate risk exposure to a counterparty of the ELTIF stemming from over-the-counter (OTC) derivative transactions, repurchase agreements, or reverse repurchase agreements shall not exceed 10 % of the value of the capital of the ELTIF.
5. By way of derogation from paragraph 2, point (d), an ELTIF may raise the 10 % limit referred to therein to 25 % where bonds are issued by a credit institution that has its registered office in a Member State and that is subject by law to special public supervision designed to protect bond-holders. In particular, sums deriving from the issue of those bonds shall be invested in accordance with the law in assets which, during the whole period of validity of the bonds, are capable of covering claims attaching to the bonds and which, in the event of failure of the issuer, would be used on a priority basis for the reimbursement of the principal and payment of the accrued interest.
6. Companies which are included in the same group for the purposes of consolidated accounts, as regulated by Directive 2013/34/EU or in accordance with recognised international accounting rules, shall be regarded as a single qualifying portfolio undertaking or a single body for the purpose of calculating the limits referred to in paragraphs 1 to 5 of this Article.
7. The investment limits set out in paragraphs 2 to 4 shall not apply where ELTIFs are marketed solely to professional investors. The investment limit set out in paragraph 2, point (c), shall not apply where an ELTIF is a feeder ELTIF.

Article 14

Rectification of investment positions

In the event that an ELTIF infringes the portfolio composition and diversification requirements laid down in Article 13 or the borrowing limits set out in Article 16(1), point (a), and the infringement is beyond the control of the manager of the ELTIF, the manager of the ELTIF shall, within an appropriate period of time, take such measures as are necessary to rectify the position, taking due account of the interests of the investors in the ELTIF.

Article 15

Concentration limits

1. An ELTIF may acquire no more than 30 % of the units or shares of a single ELTIF, EuVECA, EuSEF, UCITS or of an EU AIF managed by an EU AIFM. That limit shall not apply where ELTIFs are marketed solely to professional investors, nor shall it apply to a feeder ELTIF investing in its master ELTIF.
2. The concentration limits laid down in Article 56(2) of Directive 2009/65/EC shall apply to investments in the assets referred to in Article 9(1), point (b), of this Regulation, except where ELTIFs are marketed solely to professional investors.

Article 16

Borrowing of cash

1. An ELTIF may borrow cash provided that such borrowing fulfils all of the following conditions:
- (a) it represents no more than 50 % of the net asset value of the ELTIF in the case of ELTIFs that can be marketed to retail investors, and no more than 100 % of the net asset value of the ELTIF in the case of ELTIFs marketed solely to professional investors;
 - (b) it serves the purpose of making investments or providing liquidity, including to pay costs and expenses, provided that the holdings in cash or cash equivalent of the ELTIF are not sufficient to make the investment concerned;

- (c) it is contracted in the same currency as the assets to be acquired with the borrowed cash, or in another currency where currency exposure has been appropriately hedged;
- (d) it has a maturity no longer than the life of the ELTIF.

When borrowing cash, an ELTIF may encumber assets to implement its borrowing strategy.

Borrowing arrangements that are fully covered by investors' capital commitments shall not be considered to constitute borrowing for the purposes of this paragraph.

2. The manager of the ELTIF shall specify in the prospectus of the ELTIF whether the ELTIF intends to borrow cash as part of the ELTIF's investment strategy and, if so, shall also specify therein the borrowing limits.

3. The borrowing limits to be specified in the prospectus as referred to in paragraph 2 shall only apply as from the date specified in the rules or instruments of incorporation of the ELTIF. That date shall be no later than three years after the date on which the marketing of the ELTIF commenced.

4. The borrowing limits referred to in paragraph 1, point (a), shall be temporarily suspended where the ELTIF raises additional capital or reduces its existing capital. Such suspension shall be limited in time to the period that is strictly necessary taking due account of the interests of the investors in the ELTIF and, in any case, shall last no longer than 12 months.;

- (9) in Article 17(1), the first subparagraph is replaced by the following:

'1. The portfolio composition and diversification requirements laid down in Article 13 shall:

- (a) apply by the date specified in the rules or instruments of incorporation of the ELTIF;
- (b) cease to apply once the ELTIF starts to sell assets in order to redeem investors' units or shares after the end of the life of the ELTIF;
- (c) be temporarily suspended where the ELTIF raises additional capital or reduces its existing capital, so long as such a suspension lasts no longer than 12 months.;

- (10) Article 18 is replaced by the following:

'Article 18

Redemption of units or shares of ELTIFs

1. Investors in an ELTIF shall not be able to request the redemption of their units or shares before the end of the life of the ELTIF. Redemptions to investors shall be possible as from the day following the date of the end of the life of the ELTIF.

The rules or instruments of incorporation of the ELTIF shall clearly indicate a specific date for the end of the life of the ELTIF and may provide for the right to extend temporarily the life of the ELTIF and the conditions for exercising such a right.

The rules or instruments of incorporation of the ELTIF and disclosures to investors shall lay down the procedures for the redemption of units or shares and the disposal of assets, and state clearly that redemptions to investors shall be possible as from the day following the date of the end of life of the ELTIF.

2. By way of derogation from paragraph 1 of this Article, the rules or instruments of incorporation of an ELTIF may provide for the possibility of redemptions during the life of the ELTIF provided that all of the following conditions are fulfilled:

- (a) redemptions are not granted before the end of a minimum holding period or before the date specified in Article 17(1), point (a);
- (b) at the time of authorisation and throughout the life of the ELTIF, the manager of the ELTIF is able to demonstrate to the competent authority of the ELTIF that the ELTIF has in place an appropriate redemption policy and liquidity management tools that are compatible with the long-term investment strategy of the ELTIF;
- (c) the redemption policy of the ELTIF clearly indicates the procedures and conditions for redemptions;

- (d) the redemption policy of the ELTIF ensures that redemptions are limited to a percentage of the assets of the ELTIF referred to in Article 9(1), point (b);
- (e) the redemption policy of the ELTIF ensures that investors are treated fairly and redemptions are granted on a pro rata basis if the requests for redemptions exceed the percentage referred to in point (d) of this subparagraph.

The condition of a minimum holding period referred to in point (a) of the first subparagraph shall not apply to feeder ELTIFs investing in their master ELTIFs.

3. The life of an ELTIF shall be consistent with the long-term nature of the ELTIF and shall be compatible with the life-cycles of each of the individual assets of the ELTIF, measured according to the illiquidity profile and economic life-cycle of the asset and the stated investment objective of the ELTIF.

4. Investors shall always have the option to be repaid in cash.

5. Repayment in kind out of an ELTIF's assets shall be possible only where all of the following conditions are met:

- (a) the rules or instruments of incorporation of the ELTIF offer that possibility, provided that all investors are treated fairly;
- (b) the investor asks in writing to be repaid through a share of the assets of the ELTIF;
- (c) no specific rules restrict the transfer of those assets.

6. ESMA shall develop draft regulatory technical standards specifying the circumstances in which the life of an ELTIF is considered compatible with the life-cycles of each of the individual assets of the ELTIF, as referred to in paragraph 3.

ESMA shall also develop draft regulatory technical standards specifying the following:

- (a) the criteria to determine the minimum holding period referred to in paragraph 2, first subparagraph, point (a);
- (b) the minimum information to be provided to the competent authority of the ELTIF under paragraph 2, first subparagraph, point (b);
- (c) the requirements to be fulfilled by the ELTIF in relation to its redemption policy and liquidity management tools, referred to in paragraph 2, first subparagraph, points (b) and (c); and
- (d) the criteria to assess the percentage referred to in paragraph 2, first subparagraph, point (d), taking into account amongst others the ELTIF's expected cash flows and liabilities.

ESMA shall submit the draft regulatory technical standards referred to in the first and second subparagraphs to the Commission by 10 January 2024.

Power is delegated to the Commission to supplement this Regulation by adopting the regulatory technical standards referred to in the first and second subparagraphs in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010.;

(11) Article 19 is amended as follows:

(a) paragraph 2 is replaced by the following:

‘2. The rules or instruments of incorporation of an ELTIF shall not prevent investors from freely transferring their units or shares to third parties other than the manager of the ELTIF, subject to the applicable regulatory requirements and the conditions set out in the prospectus of the ELTIF.’;

(b) the following paragraph is inserted:

‘2a. The rules or instruments of incorporation of an ELTIF may provide for the possibility, during the life of the ELTIF, of full or partial matching of transfer requests of units or shares of the ELTIF by exiting investors with transfer requests by potential investors, provided that all of the following conditions are fulfilled:

- (a) the manager of the ELTIF has a policy for matching requests which clearly sets out all of the following:
 - (i) the transfer process for both existing and potential investors;

- (ii) the role of the manager of the ELTIF or the fund administrator in conducting transfers and in matching requests;
- (iii) the periods of time during which existing and potential investors are able to request the transfer of units or shares of the ELTIF;
- (iv) the rules determining the execution price;
- (v) the rules determining the pro-rata conditions;
- (vi) the timing and the nature of the disclosure of information with respect to the transfer process;
- (vii) the fees, costs and charges, if any, related to the transfer process;
- (b) the policy and procedures for matching the requests of the ELTIF's exiting investors with those of potential investors ensure that investors are treated fairly and that, where there is a mismatch between existing and potential investors, matching is carried out on a pro rata basis;
- (c) the matching of requests allows the manager of the ELTIF to monitor the liquidity risk of the ELTIF and the matching is compatible with the long-term investment strategy of the ELTIF.;
- (c) the following paragraph is added:

'5. ESMA shall develop draft regulatory technical standards specifying the circumstances for the use of matching provided for in paragraph 2a, including the information that ELTIFs need to disclose to investors.

ESMA shall submit the draft regulatory technical standards referred to in the first subparagraph to the Commission by 10 January 2024.

Power is delegated to the Commission to supplement this Regulation by adopting the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010.;

- (12) in Article 21, paragraph 1 is replaced by the following:

'1. An ELTIF shall inform the competent authority of the ELTIF of the orderly disposal of its assets in order to redeem investors' units or shares after the end of the life of the ELTIF, at the latest one year before the date of the end of the life of the ELTIF. Upon the request of the competent authority of the ELTIF, the ELTIF shall submit to the competent authority of the ELTIF an itemised schedule for the orderly disposal of its assets.;

- (13) in Article 22, paragraph 3 is replaced by the following:

'3. An ELTIF may reduce its capital on a pro rata basis in the event of a disposal of an asset during the life of the ELTIF, provided that such disposal is duly considered by the manager of the ELTIF to be in the investors' interests.;

- (14) Article 23 is amended as follows:

- (a) in paragraph 3, point (b) is replaced by the following:

'(b) information to be disclosed by collective investment undertakings of the closed-end type in accordance with Regulation (EU) 2017/1129 of the European Parliament and of the Council (*);

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

- (b) the following paragraph is inserted:

'3a. The prospectus of a feeder ELTIF shall contain the following information:

- (a) a declaration that the feeder ELTIF is a feeder of a master ELTIF and as such permanently invests 85 % or more of its assets in units or shares of that master ELTIF;

- (b) the investment objective and policy of the feeder ELTIF, including the risk profile and whether the performance of the feeder ELTIF and the master ELTIF are identical, or to what extent and for which reasons they differ;
- (c) a brief description of the master ELTIF, its organisation, its investment objective and policy, including the risk profile, and an indication of how the prospectus of the master ELTIF can be obtained;
- (d) a summary of the agreement entered into between the feeder ELTIF and the master ELTIF or of the internal rules on the conduct of business referred to in Article 29(6);
- (e) how the unit- or shareholders may obtain further information on the master ELTIF and the agreement entered into between the feeder ELTIF and the master ELTIF referred to in Article 29(6);
- (f) a description of all remuneration or reimbursement of costs payable by the feeder ELTIF by virtue of its investment in units or shares of the master ELTIF, as well as of the aggregate charges of the feeder ELTIF and the master ELTIF.;

(c) in paragraph 5, the following subparagraph is added:

‘Where the ELTIF is marketed to retail investors, the manager of the ELTIF shall include in the annual report of the feeder ELTIF a statement on the aggregate charges of the feeder ELTIF and the master ELTIF. The annual report of the feeder ELTIF shall indicate how the annual report of the master ELTIF can be obtained.’;

(15) in Article 25, paragraph 2 is replaced by the following:

‘2. The prospectus shall disclose an overall cost ratio of the ELTIF.’;

(16) Article 26 is deleted;

(17) Article 27 is replaced by the following:

‘Article 27

Internal assessment process for ELTIFs that can be marketed to retail investors

The manager of an ELTIF, the units or shares of which can be marketed to retail investors, shall be subject to the requirements laid down in Article 16(3), second to fifth and seventh subparagraphs, of Directive 2014/65/EU and in Article 24(2) of that Directive.’;

(18) Article 28 is deleted;

(19) in Article 29, the following paragraphs are added:

‘6. In the case of a master-feeder structure, the master ELTIF shall provide the feeder ELTIF with all documents and information necessary for the latter to meet the requirements of this Regulation. For that purpose, the feeder ELTIF shall enter into an agreement with the master ELTIF.

The agreement referred to in the first subparagraph shall be made available, on request and free of charge, to all unit- or shareholders. In the event that both the master ELTIF and the feeder ELTIF are managed by the same manager of the ELTIF, the agreement may be replaced by internal rules on the conduct of business ensuring compliance with the requirements of this paragraph.

7. Where the master ELTIF and the feeder ELTIF have different depositaries, those depositaries shall enter into an information-sharing agreement in order to ensure the fulfilment of the duties of both depositaries. The feeder ELTIF shall not invest in units or shares of the master ELTIF until such agreement has become effective.

Where they comply with the requirements of this paragraph, neither the depositary of the master ELTIF nor that of the feeder ELTIF shall be found to infringe any rules that restrict the disclosure of information or relate to data protection where such rules are provided for in a contract or in a law, regulation or administrative provision. Such compliance shall not give rise to any liability on the part of such depositary or any person acting on its behalf.

The feeder ELTIF or, where applicable, the manager of the feeder ELTIF, shall be in charge of communicating to the depositary of the feeder ELTIF any information about the master ELTIF that is required for the completion of the duties of the depositary of the feeder ELTIF. The depositary of the master ELTIF shall immediately inform the competent authorities of the home Member State of the master ELTIF, of the feeder ELTIF or, where applicable, of the manager and of the depositary of the feeder ELTIF, of any irregularities it detects with regard to the master ELTIF that are deemed to have a negative impact on the feeder ELTIF.’;

(20) Article 30 is replaced by the following:

‘Article 30

Specific requirements concerning the distribution and marketing of ELTIFs to retail investors

1. The units or shares of an ELTIF may only be marketed to a retail investor where an assessment of suitability has been carried out in accordance with Article 25(2) of Directive 2014/65/EU and a statement on suitability has been provided to that retail investor in accordance with Article 25(6), second and third subparagraphs, of that Directive.

The assessment of suitability referred to in the first subparagraph of this paragraph shall be carried out irrespective of whether the units or shares of the ELTIF are acquired by the retail investor from the distributor or the manager of the ELTIF, or via the secondary market in accordance with Article 19 of this Regulation.

The express consent of the retail investor indicating that the investor understands the risks of investing in an ELTIF shall be obtained where all of the following conditions are met:

- (a) the assessment of suitability is not provided in the context of investment advice;
- (b) the ELTIF is considered not suitable for the retail investor on the basis of the assessment of suitability carried out pursuant to the first subparagraph;
- (c) the retail investor wishes to proceed with the transaction despite the fact that the ELTIF is considered not suitable for that investor.

The distributor or, when directly offering or placing units or shares of an ELTIF to a retail investor, the manager of the ELTIF shall establish a record as referred to in Article 25(5) of Directive 2014/65/EU.

2. The distributor or, when directly offering or placing units or shares of an ELTIF to a retail investor, the manager of the ELTIF shall issue a clear written alert informing the retail investor about the following:

- (a) where the life of an ELTIF that is offered or placed to retail investors exceeds 10 years, that the ELTIF product might not be fit for retail investors that are unable to sustain such a long-term and illiquid commitment;
- (b) where the rules or instruments of incorporation of an ELTIF provide for the possibility of the matching of units or shares of the ELTIF as referred to in Article 19(2a), that the availability of such a possibility does not guarantee or entitle the retail investor to exit or redeem its units or shares of the ELTIF concerned.

3. Paragraphs 1 and 2 shall not apply where the retail investor is a member of senior staff, or a portfolio manager, director, officer, or an agent or employee of the manager of the ELTIF, or of an affiliate of the manager of the ELTIF, and has sufficient knowledge about the ELTIF.

4. A feeder ELTIF shall disclose in its marketing communications that it permanently invests 85 % or more of its assets in units or shares of the master ELTIF.

5. The rules or instruments of incorporation of an ELTIF marketed to retail investors in the relevant class of units or shares shall provide that all investors benefit from equal treatment and that no preferential treatment or specific economic benefit is granted to individual investors or groups of investors within the relevant class or classes.

6. The legal form of an ELTIF marketed to retail investors shall not lead to any further liability for the retail investor or require any additional commitments on behalf of such an investor, apart from the original capital commitment.

7. Retail investors shall be able, during the subscription period and during a period of two weeks after the signature of the initial commitment or subscription agreement of the units or shares of the ELTIF, to cancel their subscription and have the money returned without penalty.

8. The manager of an ELTIF marketed to retail investors shall establish appropriate procedures and arrangements to deal with retail investor complaints, which shall allow retail investors to file complaints in the official language or one of the official languages of their Member State.;

(21) Article 31, paragraph 4 is amended as follows:

(a) points (a) and (b) are replaced by the following:

‘(a) the prospectus of the ELTIF; and

(b) the key information document of the ELTIF in the event that it is marketed to retail investors.’;

(b) point (c) is deleted;

(22) in Article 34, paragraph 2 is replaced by the following:

‘2. ESMA’s powers in accordance with Directive 2011/61/EU shall also be exercised with respect to this Regulation and in compliance with Regulation (EU) 2018/1725 of the European Parliament and of the Council (*).

(*) Regulation (EU) 2018/1725 of the European Parliament and of the Council of 23 October 2018 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data, and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC (OJ L 295, 21.11.2018, p. 39).;

(23) Article 37 is replaced by the following:

‘Article 37

Review

1. The Commission shall review the application of this Regulation and shall analyse at least the following elements:

(a) the extent to which ELTIFs are marketed in the Union, including whether the AIFMs referred to in Article 3(2) of Directive 2011/61/EU might have an interest in marketing ELTIFs;

(b) the application of provisions on the authorisation of ELTIFs, as set out in Articles 3 to 6;

(c) whether the provisions on the central public register of ELTIFs as laid down in Article 3 should be updated;

(d) whether the list of eligible assets and investments, the portfolio composition and diversification requirements, the concentration rules and the limits regarding the borrowing of cash should be updated;

(e) the impact of the application of the investment limit for eligible investment assets laid down in Article 13(1) on asset diversification;

(f) whether the provisions concerning conflicts of interest laid down in Article 12 should be updated;

(g) the application of Article 18 and the impact of that application on the redemption policy and the life of ELTIFs;

(h) whether the transparency requirements laid down in Chapter IV are appropriate;

(i) whether the provisions concerning the marketing of units or shares of ELTIFs laid down in Chapter V are appropriate and ensure an effective protection of investors, including retail investors;

- (j) whether ELTIFs have made a significant contribution to achieving Union objectives such as those set out in the European Green Deal and in other priority areas.

2. Based on the review referred to in paragraph 1 of this Article, the Commission shall by 10 April 2030, and after consulting ESMA, submit to the European Parliament and to the Council a report assessing the contribution of this Regulation and of ELTIFs to the completion of the capital markets union and to the achievement of the objectives set out in Article 1(2). The report shall be accompanied, where appropriate, by a legislative proposal.’;

(24) the following article is inserted:

‘Article 37a

Review of sustainability aspects of ELTIFs

By 11 January 2026, the Commission shall carry out an assessment and submit a report to the European Parliament and to the Council accompanied, where appropriate, by a legislative proposal, regarding at least the following:

- (a) whether the creation of an optional designation of “ELTIF marketed as environmentally sustainable” or “green ELTIF” is feasible, and in particular:
 - (i) whether such designation should be reserved to ELTIFs that are financial products having sustainable investment as their objective as referred to in Article 9 of Regulation (EU) 2019/2088 of the European Parliament and of the Council (*);
 - (ii) whether such designation should be reserved to ELTIFs that invest all or a significant part of their eligible assets or total assets into sustainable activities and, if so, how the significant part is to be defined;
 - (iii) whether sustainable activities can be linked to the sustainability criteria set out in the delegated acts adopted pursuant to Articles 10(3), 11(3), 12(2), 13(2), 14(2) and 15(2) of Regulation (EU) 2020/852 of the European Parliament and of the Council (**);
- (b) whether there should be a general obligation for ELTIFs to comply in their investment decisions with the principle of “do no significant harm” within the meaning of Article 2a of Regulation (EU) 2019/2088, or whether that obligation should be limited to ELTIFs marketed as environmentally sustainable or green ELTIFs, in the eventuality that such an optional designation is considered feasible;
- (c) whether there is any potential to improve the framework for ELTIFs by contributing more significantly to the objectives of the European Green Deal, without undermining the nature of ELTIFs.

(*) Regulation (EU) 2019/2088 of the European Parliament and of the Council of 27 November 2019 on sustainability-related disclosures in the financial services sector (OJ L 317, 9.12.2019, p. 1).

(**) 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, and amending Regulation (EU) 2019/2088 (OJ L 198, 22.6.2020, p. 13).’.

Article 2

Entry into force and application

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

It shall apply from 10 January 2024.

ELTIFs authorised in accordance with and complying with the provisions of Regulation (EU) 2015/760 applicable before 10 January 2024 shall be deemed to comply with this Regulation until 11 January 2029. ELTIFs authorised in accordance with and complying with the provisions of Regulation (EU) 2015/760 applicable before 10 January 2024, which do not raise additional capital, shall be deemed to comply with this Regulation.

Notwithstanding the third subparagraph, an ELTIF authorised before 10 January 2024 may choose to be subject to this Regulation, provided that the competent authority of the ELTIF is notified thereof.

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

Done at Strasbourg, 15 March 2023.

For the European Parliament
The President
R. METSOLA

For the Council
The President
J. ROSWALL

REGULATION (EU) 2023/607 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL**of 15 March 2023****amending Regulations (EU) 2017/745 and (EU) 2017/746 as regards the transitional provisions for certain medical devices and *in vitro* diagnostic medical devices****(Text with EEA relevance)**

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 114 and Article 168(4), point (c), thereof,

Having regard to the proposal from the European Commission,

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

Having regard to the opinion of the European Economic and Social Committee ⁽¹⁾,

After consulting the Committee of the Regions,

Acting in accordance with the ordinary legislative procedure ⁽²⁾,

Whereas:

- (1) Regulations (EU) 2017/745 ⁽³⁾ and (EU) 2017/746 ⁽⁴⁾ of the European Parliament and of the Council establish a new regulatory framework to ensure the smooth functioning of the internal market as regards medical devices and *in vitro* diagnostic medical devices, taking as a base a high level of protection of health for patients and users. At the same time, Regulations (EU) 2017/745 and (EU) 2017/746 set high standards of quality and safety for medical devices and *in vitro* diagnostic medical devices in order to meet common safety concerns as regards such devices. Furthermore, both Regulations significantly reinforce key elements of the previous regulatory framework set out in Council Directives 90/385/EEC ⁽⁵⁾ and 93/42/EEC ⁽⁶⁾ and Directive 98/79/EC of the European Parliament and of the Council ⁽⁷⁾, such as the supervision of notified bodies, risk classification, conformity assessment procedures, clinical evidence requirements, vigilance and market surveillance, and introduce provisions ensuring transparency and traceability in respect of medical devices and *in vitro* diagnostic medical devices.
- (2) Due to the impact of the COVID-19 pandemic, the date of application of Regulation (EU) 2017/745 was postponed by one year to 26 May 2021 by Regulation (EU) 2020/561 of the European Parliament and of the Council ⁽⁸⁾, while 26 May 2024 was maintained as the end date of the transitional period by which certain devices that continue to comply with Directive 90/385/EEC or Directive 93/42/EEC can lawfully be placed on the market or put into service.

⁽¹⁾ Opinion of 24 January 2023 (not yet published in the Official Journal).

⁽²⁾ Position of the European Parliament of 16 February 2023 (not yet published in the Official Journal) and decision of the Council of 7 March 2023.

⁽³⁾ Regulation (EU) 2017/745 of the European Parliament and of the Council of 5 April 2017 on medical devices, amending Directive 2001/83/EC, Regulation (EC) No 178/2002 and Regulation (EC) No 1223/2009 and repealing Council Directives 90/385/EEC and 93/42/EEC (OJ L 117, 5.5.2017, p. 1).

⁽⁴⁾ Regulation (EU) 2017/746 of the European Parliament and of the Council of 5 April 2017 on *in vitro* diagnostic medical devices and repealing Directive 98/79/EC and Commission Decision 2010/227/EU (OJ L 117, 5.5.2017, p. 176).

⁽⁵⁾ Council Directive 90/385/EEC of 20 June 1990 on the approximation of the laws of the Member States relating to active implantable medical devices (OJ L 189, 20.7.1990, p. 17).

⁽⁶⁾ Council Directive 93/42/EEC of 14 June 1993 concerning medical devices (OJ L 169, 12.7.1993, p. 1).

⁽⁷⁾ Directive 98/79/EC of the European Parliament and of the Council of 27 October 1998 on *in vitro* diagnostic medical devices (OJ L 331, 7.12.1998, p. 1).

⁽⁸⁾ Regulation (EU) 2020/561 of the European Parliament and of the Council of 23 April 2020 amending Regulation (EU) 2017/745 on medical devices, as regards the dates of application of certain of its provisions (OJ L 130, 24.4.2020, p. 18).

- (3) Also due to the impact of the COVID-19 pandemic, the transitional period provided for in Regulation (EU) 2017/746 was already extended by Regulation (EU) 2022/112 of the European Parliament and of the Council ⁽⁹⁾.
- (4) Despite the steady increase in the number of notified bodies designated in accordance with Regulation (EU) 2017/745, the overall capacity of notified bodies is still not sufficient to ensure the conformity assessment of the large number of devices covered by certificates issued in accordance with Directive 90/385/EEC or Directive 93/42/EEC before 26 May 2024. It appears that a large number of manufacturers, especially small and medium-sized enterprises, are not sufficiently prepared to demonstrate compliance with the requirements of Regulation (EU) 2017/745, in particular when the complexity of those new requirements is taken into account. Therefore, it is very likely that many devices that can lawfully be placed on the market in accordance with the transitional provisions provided for in Regulation (EU) 2017/745 will not be certified in accordance with that Regulation before the end of the transitional period, which leads to the risk of shortages of medical devices in the Union.
- (5) In light of reports from healthcare professionals about the imminent risk of shortages of devices, it is necessary, as a matter of urgency, to extend the validity of certificates issued in accordance with Directives 90/385/EEC and 93/42/EEC and to extend the transitional period during which devices that are in conformity with those Directives can lawfully be placed on the market. The extension should be of sufficient duration to give notified bodies the time needed to carry out the conformity assessments required of them. The extension aims to ensure a high level of public health protection, including patient safety and an avoidance of shortages of medical devices needed for the smooth functioning of healthcare services, without lowering current quality or safety requirements.
- (6) The extension should be subject to certain conditions to ensure that only devices that are safe and for which the manufacturers have taken certain steps to transition towards compliance with Regulation (EU) 2017/745 will benefit from the additional time.
- (7) To ensure a progressive transition to Regulation (EU) 2017/745, the appropriate surveillance regarding devices benefiting from the transitional period should eventually be transferred from the notified body that issued the certificate in accordance with Directive 90/385/EEC or Directive 93/42/EEC to a notified body designated under Regulation (EU) 2017/745. For reasons of legal certainty, the notified body designated under Regulation (EU) 2017/745 should not be responsible for conformity assessment and surveillance activities carried out by the notified body that issued the certificate.
- (8) As regards the period needed to allow manufacturers and notified bodies to carry out the conformity assessment in accordance with Regulation (EU) 2017/745 of medical devices that are covered by a certificate or a declaration of conformity that was issued in accordance with Directive 90/385/EEC or Directive 93/42/EEC, a balance should be struck between the limited available capacity of notified bodies and ensuring a high level of patient safety and public health protection. Therefore, the length of the transitional period should depend on the risk class of the medical devices concerned, so that the period is shorter for devices belonging to a higher risk class and longer for devices belonging to a lower risk class.
- (9) Contrary to Directives 90/385/EEC and 93/42/EEC, Regulation (EU) 2017/745 requires the involvement of a notified body in the conformity assessment of class III custom-made implantable devices. Due to insufficient notified body capacity and the fact that manufacturers of custom-made devices are often small or medium-sized enterprises which lack access to a notified body under Directives 90/385/EEC and 93/42/EEC, a transitional period should be provided for, during which class III custom-made implantable devices can lawfully be placed on the market or put into service without a certificate issued by a notified body.

⁽⁹⁾ Regulation (EU) 2022/112 of the European Parliament and of the Council of 25 January 2022 amending Regulation (EU) 2017/746 as regards transitional provisions for certain *in vitro* diagnostic medical devices and the deferred application of conditions for in-house devices (OJ L 19, 28.1.2022, p. 3).

- (10) Article 120(4) of Regulation (EU) 2017/745 and Article 110(4) of Regulation (EU) 2017/746 prohibit the further making available on the market or putting into service of devices which are placed on the market by the end of the applicable transitional period and which are still in the supply chain one year after the end of that transitional period. To prevent the unnecessary disposal of safe medical devices and *in vitro* diagnostic medical devices that are still in the supply chain, thus adding to the imminent risk of shortages of such devices, such further making available on the market or putting into service of such devices should be unlimited in time.
- (11) Regulations (EU) 2017/745 and (EU) 2017/746 should therefore be amended accordingly.
- (12) Since the objectives of this Regulation, namely to address risks of shortages of medical devices and *in vitro* diagnostic medical devices in the Union, cannot be sufficiently achieved by the Member States but can rather, by reason of their scale and effects, be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union ("TEU"). In accordance with the principle of proportionality as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve those objectives.
- (13) This Regulation is being adopted in view of the exceptional circumstances arising from an imminent risk of shortages of medical devices and the associated risk of a public health crisis. In order to attain the intended effect of amending Regulations (EU) 2017/745 and (EU) 2017/746 and to ensure availability of devices whose certificates have already expired or are due to expire before 26 May 2024, to provide legal certainty for economic operators and healthcare providers, and for reasons of consistency as regards the amendments to both Regulations, this Regulation should enter into force as a matter of urgency on the day of its publication in the *Official Journal of the European Union*. For the same reasons, it is also considered to be appropriate to invoke the exception to the eight-week period provided for in Article 4 of Protocol No 1 on the role of national Parliaments in the European Union, annexed to the TEU, to the Treaty on the Functioning of the European Union and to the Treaty establishing the European Atomic Energy Community,

HAVE ADOPTED THIS REGULATION:

Article 1

Amendments to Regulation (EU) 2017/745

Regulation (EU) 2017/745 is amended as follows:

(1) Article 120 is amended as follows:

(a) in paragraph 2, the second subparagraph is replaced by the following:

‘Certificates issued by notified bodies in accordance with Directives 90/385/EEC and 93/42/EEC from 25 May 2017 that were still valid on 26 May 2021 and that have not been withdrawn afterwards shall remain valid after the end of the period indicated on the certificate until the date set out in paragraph 3a of this Article applicable for the relevant risk class of the devices. Certificates issued by notified bodies in accordance with those Directives from 25 May 2017 that were still valid on 26 May 2021 and that have expired before 20 March 2023 shall be considered to be valid until the dates set out in paragraph 3a of this Article only if one of the following conditions is fulfilled:

(a) before the date of expiry of the certificate, the manufacturer and a notified body have signed a written agreement in accordance with Section 4.3, second subparagraph, of Annex VII to this Regulation for the conformity assessment in respect of the device covered by the expired certificate or in respect of a device intended to substitute that device;

- (b) a competent authority of a Member State has granted a derogation from the applicable conformity assessment procedure in accordance with Article 59(1) of this Regulation or has required the manufacturer, in accordance with Article 97(1) of this Regulation, to carry out the applicable conformity assessment procedure.;

- (b) paragraph 3 is replaced by the following:

‘3. By way of derogation from Article 5 and provided the conditions set out in paragraph 3c of this Article are met, devices referred to in paragraphs 3a and 3b of this Article may be placed on the market or put into service until the dates set out in those paragraphs.

3a. Devices which have a certificate that was issued in accordance with Directive 90/385/EEC or Directive 93/42/EEC and that is valid by virtue of paragraph 2 of this Article may be placed on the market or put into service until the following dates:

- (a) 31 December 2027, for all class III devices, and for class IIb implantable devices except sutures, staples, dental fillings, dental braces, tooth crowns, screws, wedges, plates, wires, pins, clips and connectors;
- (b) 31 December 2028, for class IIb devices other than those covered by point (a) of this paragraph, for class IIa devices, and for class I devices placed on the market in sterile condition or having a measuring function.

3b. Devices for which the conformity assessment procedure pursuant to Directive 93/42/EEC did not require the involvement of a notified body, for which the declaration of conformity was drawn up prior to 26 May 2021 and for which the conformity assessment procedure pursuant to this Regulation requires the involvement of a notified body, may be placed on the market or put into service until 31 December 2028.

3c. Devices referred to in paragraphs 3a and 3b of this Article may be placed on the market or put into service until the dates referred to in those paragraphs only if the following conditions are met:

- (a) those devices continue to comply with Directive 90/385/EEC or Directive 93/42/EEC, as applicable;
- (b) there are no significant changes in the design and intended purpose;
- (c) the devices do not present an unacceptable risk to the health or safety of patients, users or other persons, or to other aspects of the protection of public health;
- (d) no later than 26 May 2024, the manufacturer has put in place a quality management system in accordance with Article 10(9);
- (e) no later than 26 May 2024, the manufacturer or the authorised representative has lodged a formal application with a notified body in accordance with Section 4.3, first subparagraph, of Annex VII for conformity assessment in respect of a device referred to in paragraph 3a or 3b of this Article or in respect of a device intended to substitute that device, and, no later than 26 September 2024, the notified body and the manufacturer have signed a written agreement in accordance with Section 4.3, second subparagraph, of Annex VII.

3d. By way of derogation from paragraph 3 of this Article, the requirements of this Regulation relating to post-market surveillance, market surveillance, vigilance, registration of economic operators and of devices shall apply to devices referred to in paragraphs 3a and 3b of this Article in place of the corresponding requirements in Directives 90/385/EEC and 93/42/EEC.

3e. Without prejudice to Chapter IV and paragraph 1 of this Article, the notified body that issued the certificate referred to in paragraph 3a of this Article shall continue to be responsible for the appropriate surveillance in respect of the applicable requirements relating to the devices it has certified, unless the manufacturer has agreed with a notified body designated in accordance with Article 42 that the latter shall carry out such surveillance.

No later than 26 September 2024, the notified body that has signed the written agreement referred to in paragraph 3c, point (e), of this Article shall be responsible for the surveillance in respect of the devices covered by the written agreement. Where the written agreement covers a device intended to substitute a device which has a certificate that was issued in accordance with Directive 90/385/EEC or Directive 93/42/EEC, the surveillance shall be conducted in respect of the device that is being substituted.

The arrangements for the transfer of the surveillance from the notified body that issued the certificate to the notified body designated in accordance with Article 42 shall be clearly defined in an agreement between the manufacturer and the notified body designated in accordance with Article 42 and, where practicable, the notified body that issued the certificate. The notified body designated in accordance with Article 42 shall not be responsible for conformity assessment activities carried out by the notified body that issued the certificate.

3f. By way of derogation from Article 5, class III custom-made implantable devices may be placed on the market or put into service until 26 May 2026 without a certificate issued by a notified body in accordance with the conformity assessment procedure referred to in Article 52(8), second subparagraph, provided that no later than 26 May 2024, the manufacturer or the authorised representative has lodged a formal application with a notified body in accordance with Section 4.3, first subparagraph, of Annex VII for conformity assessment, and, no later than 26 September 2024, the notified body and the manufacturer have signed a written agreement in accordance with Section 4.3, second subparagraph, of Annex VII.;

(c) paragraph 4 is replaced by the following:

‘4. Devices lawfully placed on the market pursuant to Directives 90/385/EEC and 93/42/EEC prior to 26 May 2021, and devices lawfully placed on the market from 26 May 2021 pursuant to paragraphs 3, 3a, 3b and 3f of this Article, may continue to be made available on the market or put into service.’;

(2) Article 122 is amended as follows:

(a) in the first paragraph, the introductory wording is replaced by the following:

‘Without prejudice to Article 120(3) to (3e) and (4) of this Regulation, and without prejudice to the obligations of the Member States and manufacturers as regards vigilance and to the obligations of manufacturers as regards the making available of documentation, under Directives 90/385/EEC and 93/42/EEC, those Directives are repealed with effect from 26 May 2021, with the exception of:’;

(b) the second paragraph is replaced by the following:

‘As regards the devices referred to in Article 120(3) to (3e) and (4) of this Regulation, the Directives referred to in the first paragraph of this Article shall continue to apply to the extent necessary for the application of those paragraphs.’;

(3) in Article 123(3), point (d), the 24th indent is replaced by the following:

‘— Article 120(3d).’.

Article 2

Amendments to Regulation (EU) 2017/746

Regulation (EU) 2017/746 is amended as follows:

(1) in Article 110, paragraph 4 is replaced by the following:

‘4. Devices lawfully placed on the market pursuant to Directive 98/79/EC prior to 26 May 2022, and devices lawfully placed on the market from 26 May 2022 pursuant to paragraph 3 of this Article may continue to be made available on the market or put into service.’;

(2) in Article 112, the second paragraph is replaced by the following:

‘As regards the devices referred to in Article 110(3) and (4) of this Regulation, Directive 98/79/EC shall continue to apply to the extent necessary for the application of those paragraphs.’.

*Article 3***Entry into force**

This Regulation shall enter into force on the day 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 Strasbourg, 15 March 2023.

For the European Parliament

The President

R. METSOLA

For the Council

The President

J. ROSWALL

II

(Non-legislative acts)

INTERNATIONAL AGREEMENTS

**Information relating to the entry into force of the Arrangement between the European Community
and the Republic of Iceland and the Kingdom of Norway on the modalities of those states'
participation in the European Agency for the Management of Operational Cooperation at the
External Borders of the Member States of the European Union**

The Arrangement between the European Community and the Republic of Iceland and the Kingdom of Norway on the modalities of those states' participation in the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union will enter into force on 7 April 2023, the procedure provided for in Article 9(1) of the Arrangement having been completed on 7 March 2023.

REGULATIONS

COMMISSION IMPLEMENTING REGULATION (EU) 2023/608

of 17 March 2023

amending Implementing Regulations (EU) 2020/761 and (EU) No 2020/1988 as regards the management system of some tariff quotas following the agreement between the European Union and New Zealand as a consequence of the United Kingdom's withdrawal from the European Union

THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EU) No 1308/2013 of the European Parliament and of the Council of 17 December 2013 establishing a common organisation of the markets in agricultural products and repealing Council Regulations (EEC) No 922/72, (EEC) No 234/79, (EC) No 1037/2001 and (EC) No 1234/2007 ⁽¹⁾, and in particular Article 187 and Article 223(3) thereof,

Whereas:

- (1) Commission Implementing Regulation (EU) 2020/761 ⁽²⁾ lays down the rules for the management of import and export tariff quotas for agricultural products managed by a system of import and export licences and provides for specific rules.
- (2) Commission Implementing Regulation (EU) 2020/1988 ⁽³⁾ lays down the rules for the administration of import tariff quotas designed to be used following the chronological order of dates of acceptance of customs declarations ('first come, first served' principle).
- (3) The Agreement in the form of an Exchange of Letters between the European Union and New Zealand pursuant to Article XXVIII of the General Agreement on Tariffs and Trade (GATT) 1994 relating to the modification of concessions on all the tariff rate quotas included in the EU schedule CLXXV as a consequence of the United Kingdom's withdrawal from the European Union, concluded by Council Decision (EU) 2022/2524 ⁽⁴⁾, amends the conditions applicable to imports from New Zealand under certain tariff quotas. In particular, it amends the quantities of tariff quotas with order numbers 09.0147, 09.2013, 09.2109, 09.2110 and 09.4454. Moreover, it modifies the product description and CN codes of tariff quotas with order numbers 09.4182, 09.4195 and 09.4514, and repeals the rules on the monitoring of the weight and fat content of butter originating in New Zealand.

⁽¹⁾ OJ L 347, 20.12.2013, p. 671.

⁽²⁾ Commission Implementing Regulation (EU) 2020/761 of 17 December 2019 laying down rules for the application of Regulations (EU) No 1306/2013, (EU) No 1308/2013 and (EU) No 510/2014 of the European Parliament and of the Council as regards the management system of tariff quotas with licences (OJ L 185, 12.6.2020, p. 24).

⁽³⁾ Commission Implementing Regulation (EU) 2020/1988 of 11 November 2020 laying down rules for the application of Regulations (EU) No 1308/2013 and (EU) No 510/2014 of the European Parliament and of the Council as regards the administration of import tariff quotas in accordance with the 'first come, first served' principle (OJ L 422, 14.12.2020, p. 4).

⁽⁴⁾ Council Decision (EU) 2022/2524 of 12 December 2022 on the conclusion, on behalf of the Union, of the Agreement between the European Union and New Zealand pursuant to Article XXVIII of the General Agreement on Tariffs and Trade (GATT) 1994 relating to the modification of concessions on all the tariff rate quotas included in the EU schedule CLXXV as a consequence of the United Kingdom's withdrawal from the European Union (OJ L 328, 22.12.2022, p. 59).

- (4) The new rules on monitoring of the weight and content of butter should be reflected in Parts A1 to A6 of Part A of Annex XIV.5 to Implementing Regulation (EU) 2020/761, and in particular in the templates for the IMA1 certificates for tariff quotas with order numbers 09.4182, 09.4195, 09.4514, 09.4515, 09.4521, and 09.4522.
- (5) The amendments made by that Agreement should be reflected in Annexes to Implementing Regulations (EU) 2020/761 and (EU) No 2020/1988. The amendments to Implementing Regulation (EU) 2020/761 should apply as of the entry into force of this Regulation. However, the additional quantity for high quality beef under tariff quota 09.4454 should be made available as of the tariff quota period starting on 1 July 2023. Moreover, the amendments to the product description and CN codes for tariff quotas 09.4182, 09.4195 and 09.4514 should apply on the first day after the 90-day period following the publication of this Regulation. The amendments to Implementing Regulation (EU) 2020/1988 should apply from 1 July 2023.
- (6) The measures provided for in this Regulation are in accordance with the opinion of the Committee for the Common Organisation of Agricultural Markets,

HAS ADOPTED THIS REGULATION:

Article 1

Amendments to Implementing Regulation (EU) 2020/761

Implementing Regulation (EU) 2020/761 is amended as follows:

- (1) in Article 50, paragraphs 3 and 4 are deleted;
- (2) Article 51 is deleted;
- (3) Annexes VIII, IX and XIV.5 are amended in accordance with Annex I to this Regulation.

Article 2

Amendment to Implementing Regulation (EU) 2020/1988

Annex I to Implementing Regulation (EU) 2020/1988 is amended in accordance with Annex II to this Regulation.

Article 3

Entry into force and application

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

However:

- (a) point 1 of Annex I shall apply from 1 July 2023;
- (b) point 2(a)(i) and (ii), point (2)(b), and point (3) of Annex I shall apply as from the first day after the 90-day period that follows the publication of this Regulation in the *Official Journal of the European Union*;
- (c) Article 2 shall apply from 1 July 2023.

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

Done at Brussels, 17 March 2023.

For the Commission
The President
Ursula VON DER LEYEN

ANNEX I

Annexes VIII, IX and XIV.5 to Implementing Regulation (EU) 2020/761 are amended as follows:

- (1) in Annex VIII, in the table relating to the tariff quota with order number 09.4454, the row 'Quantity in kg' is replaced by the following:

'Quantity in kg'	1 102 000 kg product weight'
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- (2) Annex IX is amended as follows:

- (a) the tables relating to the tariff quotas with order numbers 09.4182 and 09.4195 are amended as follows:

- (i) the row 'Product description' is replaced by the following:

'Product description'	Butter'
------------------------------	---------

- (ii) the row 'CN codes' is replaced by the following:

'CN codes'	0405 10'
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- (iii) the row 'Specific conditions' is replaced by the following:

'Specific conditions'	In accordance with Articles 50, 53 and 54 of this Regulation'
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- (b) the table relating to the tariff quota with order number 09.4514 is amended as follows:

- (i) the row 'Product description' is replaced by the following:

'Product description'	Cheddar'
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- (ii) the row 'CN codes' is replaced by the following:

'CN codes'	0406 90 21'
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- (3) Parts A1 to A6 of Part A of Annex XIV.5 are replaced by the following:

PART A. IMPORT QUOTAS WITH IMA 1 CERTIFICATES

A1 – TEMPLATE OF IMA 1 CERTIFICATE FOR TARIFF QUOTAS WITH ORDER NUMBERS 09.4514, 09.4515, 09.4521, 09.4522

1. Seller	2. Serial N° of issue	ORIGINAL
3. Buyer	CERTIFICATE for the entry of certain milk products under certain headings or subheadings of the Combined Nomenclature	
4. Number and date of invoice	5. Country of origin	6. Member State of destination

IMPORTANT

- A. A separate certificate must be made out for each form of presentation of each product.
 B. The certificate must be in an official language of the Union. It may also contain a translation into the official language or one official language of the exporting country.
 C. The certificate must be made out in accordance with the Union provisions in force.
 D. The original, and where appropriate, a copy of the certificate, must be presented to the customs office in the Union at the time when the product is being put into free circulation.

7. Marks, numbers, quantity and kind of packages: detailed description of product and particulars of its form of presentation.	8. Gross weight (kg)	9. Net weight (kg)						
10. Raw material used								
11. Fat content by weight (%), in the dry matter ⁽¹⁾								
13. Fat content, by weight (%) ⁽¹⁾								
14. Ripening period ⁽¹⁾								
16. Observations: (a) tariff quota with order number 09.4... (b) intended for processing ⁽²⁾								
17. IT IS HEREBY CERTIFIED: that the particulars set out above are accurate and comply with the Union provisions in force.								
18. Issuing body	Place <table border="1" style="margin-left: auto; margin-right: auto;"> <tr> <td style="width: 20%; height: 30px;"></td> <td style="width: 20%; height: 30px;"></td> <td style="width: 20%; height: 30px;"></td> </tr> <tr> <td style="text-align: center;">Year</td> <td style="text-align: center;">Month</td> <td style="text-align: center;">Day</td> </tr> </table> (Signature and stamp of issuing body)					Year	Month	Day
Year	Month	Day						

⁽¹⁾ Only for tariff quota with order number 09.4521
⁽²⁾ Delete as appropriate

A2 –

TEMPLATE OF IMA 1 CERTIFICATE FOR TARIFF QUOTAS WITH ORDER NUMBERS 09.4195 AND 09.4182

1. Seller	2. Serial N° of issue	ORIGINAL
3. Buyer	CERTIFICATE for the entry of certain New Zealand butter subject to the tariff quota referred to under quota order number 09.4195 and 09.4182	
4. Number and date of invoice	5. Country of origin	New Zealand

IMPORTANT

- A. A separate certificate must be made out for each form of presentation of each product.
 B. The certificate must be in an official language of the Union. It may also contain a translation into the official language or one official language of the exporting country.
 C. The certificate must be made out in accordance with the Union provisions in force.
 D. The original, and where appropriate, a copy of the certificate together with its corresponding import licence and a declaration for release for free circulation must be presented to the customs office in the Union at the time when the product is being released into free circulation.

7. Marks, numbers, number and kind of packages, detailed CN description and 8 digits CN code of the product and particulars of its form of presentation. — See product identification list attached reference: — CN Code — Factory registration N°	8. Gross weight (kg)	9. Net weight (kg) (n° cartons) (kg/carton)	
10.Raw material used			
16.Observations: tariff quota with order number 09.4...			
17.IT IS HEREBY CERTIFIED that the particulars set out above are accurate and comply with the Union provisions in force.	Year	Month	Day
18.Issuing body	Place:		
	Year	Month	Day
	Valid until:		
	Year	Month	Day
(Signature and stamp of issuing body)			

A3 – **DEFINITIONS AND RULES FOR THE COMPLETION AND VERIFICATION OF IMA 1 CERTIFICATES ISSUED FOR TARIFF QUOTAS WITH ORDER NUMBERS 09.4182 AND 09.4195**

Definitions

For the purposes of Annex XIV.5, Part A, the following definitions apply:

- (a) “producer” means a single production plant or factory in which butter is produced for export to the Union under the tariff quotas with order numbers 09.4182 and 09.4195;
- (b) “cypher” means the quantity of butter produced according to one product-purchasing specification in one production plant during a single manufacturing run;
- (c) “lot” means a quantity of butter covered by an IMA 1 certificate presented to the competent customs authority for entry for free circulation under the tariff quotas with order numbers 09.4182 and 09.4195;
- (d) “competent authorities” means the authorities in the Member States responsible for controls on imported products;

- (e) “product identification list” means a list which identifies, for each lot, the quota number of its corresponding IMA 1 certificate, the production plant or factory and the cypher or cyphers, and which provides a description of the butter. It may also identify the specification to which the butter was manufactured, the production season, the number of cartons corresponding to each cypher, the total number of cartons, the nominal weight of the cartons, the exporter’s serial number, the means of transport from New Zealand to the Union and the voyage number.

Completion and verification of the IMA 1 certificate

An IMA 1 certificate shall cover butter manufactured according to one product-purchasing specification in one plant. It may cover more than one cypher of the same product-purchasing specification from the same plant.

The IMA 1 certificate shall be considered to be duly completed and authenticated by an issuing body listed in Part A6, only if it contains all the following information:

- (a) in box 1, the name and address of the seller;
- (b) in box 2, the serial number of issue identifying the country of origin, the import arrangements, the product, the quota year and the individual certificate number, starting again from one each year;
- (c) in box 4, the number and date of the invoice;
- (d) in box 7:
 - reference to the product identification list (product ID list), which must be attached,
 - the CN code,
 - the factory registration number,
 - the arithmetic mean of the tare weight of the wrapper;
- (e) in box 8, the gross weight in kilograms;
- (f) in box 9:
 - the net nominal weight per carton,
 - the total net weight in kilograms,
 - the number of cartons;
- (g) in box 10: from milk or cream;
- (h) in box 16: “New Zealand butter quota for ...[year] in accordance with Implementing Regulation (EU) .../...”;
- (i) in box 17:
 - the date of issue and, where appropriate, the last day of validity,
 - signature and stamp of the issuing body;
- (j) in box 18, exact address and contact details of the issuing body.

A4 – **CIRCUMSTANCES UNDER WHICH AN IMA 1 CERTIFICATE OR PART THEREOF MAY BE CANCELLED, AMENDED, REPLACED OR CORRECTED**

Cancellation of the IMA 1 certificate when full duty is due and paid for non-compliance with compositional requirements

Where full duty is paid on a lot because the maximum fat content requirement is not complied with, the corresponding IMA 1 certificate may be cancelled and the IMA 1 issuing body may add the quantities concerned to those for which IMA 1 certificates may be issued for the same quota year.

Product destroyed or rendered unfit for sale

IMA 1 issuing bodies may cancel an IMA 1 certificate or part thereof for a quantity covered by it which is destroyed or rendered unfit for sale in circumstances beyond the control of the exporter. Where part of the quantity covered by an IMA 1 certificate is destroyed or rendered unfit for sale, a replacement certificate may be issued for the remaining quantity. The replacement certificate shall be valid only up to the same date as the original. In this case, box 17 of the replacement IMA 1 certificate shall contain the words “valid up to 00.00.0000”.

Where all or part of the quantity covered by an IMA 1 certificate is destroyed or rendered unfit for sale due to circumstances beyond the exporters’ control, the IMA 1 issuing body may add these quantities to those for which IMA 1 certificates may be issued for the same quota year.

Change of Member State of destination

When the exporter is obliged to change the Member State of destination indicated on an IMA 1 certificate before a corresponding import licence is issued, the original IMA 1 certificate may be amended by the IMA 1 issuing body. Such an amended original IMA 1 certificate, duly authenticated and appropriately identified by the issuing body, may be presented to the licensing authority and to the customs authorities.

Clerical or technical error

When a clerical or technical error is discovered on an IMA 1 certificate before a corresponding import licence is issued, the original certificate may be corrected by the issuing body. Such a corrected original IMA 1 certificate may be presented to the licensing authority and to the customs authorities.

Exceptional circumstances when a product intended for import in a given year becomes unavailable

When, in exceptional circumstances beyond the control of the exporter, a product intended for import in a given year becomes unavailable and the only means of filling the quota, in the light of normal shipping time from the country of origin, is to replace it with a product originally intended for import the following year, the issuing body may issue a new IMA 1 certificate for the replacement quantity, between the sixth and the tenth calendar day after giving due notification to the Commission of the details of the IMA 1 certificate or part thereof to be cancelled for the year concerned and of the first IMA 1 certificate or part thereof issued for the following year to be cancelled.

If the Commission considers that this provision does not apply to the circumstances of the case concerned, it may object within seven calendar days, stating the reason for its objection. Where the quantity to be replaced is greater than that covered by the first IMA 1 certificate issued for the following year, the required quantity may be obtained by cancelling additional IMA 1 certificates, in sequence, or part thereof as necessary.

All quantities in respect of which IMA 1 certificates or part thereof have been cancelled for the year concerned shall be added to the quantities for which IMA 1 certificates may be issued for that quota year.

All quantities brought forward from the following quota year for which an IMA 1 certificate or certificates have been cancelled shall be added back to the quantities for which IMA 1 certificates may be issued for that quota year.

A5 – RULES FOR COMPLETING IMA 1 CERTIFICATES

In addition to boxes 1, 2, 4, 5, 9, 17 and 18 of the IMA 1 certificate, the following must be completed:

- (a) As regards Cheddar cheeses falling within CN code ex 0406 90 21 and listed under tariff quota with order number 09.4521:
 - box 7, by specifying “whole Cheddar cheeses”,
 - box 10, by specifying “exclusively home-produced cows’ milk”,
 - box 11, by specifying “at least 50 %”,
 - box 14, by specifying “at least three months”,
 - box 16, by specifying the period for which the quota is valid;
- (b) As regards Cheddar cheeses falling within CN code 0406 90 21 and listed under tariff quota with order number 09.4514:
 - box 10, by specifying “exclusively home-produced cows’ milk”;
- (c) As regards Cheddar cheeses intended for processing falling within CN code ex 0406 90 01 and listed under tariff quotas with order numbers 09.4515 and 09.4522:
 - box 7, by specifying “whole Cheddar cheeses”,
 - box 10, by specifying “exclusively home-produced cows’ milk”,
 - box 16, by specifying the period for which the quota is valid;
- (d) As regards cheeses for processing falling within CN code 0406 90 01 and listed under tariff quotas with order numbers 09.4515 and 09.4522:
 - box 10, by specifying “exclusively home-produced cows’ milk”,
 - box 16, by specifying the period for which the quota is valid.

A6 – ISSUING BODIES FOR IMA 1 CERTIFICATES

Third country	CN code and product description		Issuing body	
			Name	Location
Australia	0406 90 01	Cheddar and other cheese for processing Cheddar	Australian Quarantine Inspection Service Department of Agriculture, Fisheries and Forestry	PO Box 60
	0406 90 21			World Trade Centre Melbourne VIC 3005 Australia Tel. (61 3) 92 46 67 10 Fax (61 3) 92 46 68 00
New Zealand	0405 10	Butter	Ministry for Primary Industries	Pastoral House 25 The Terrace PO Box 2526 Wellington 6140 Tel. +64 4 894 0100 Fax + 64 4 894 0720 www.mpi.govt.nz
	0406 90 01	Cheese for processing		
	0406 90 21	Cheddar		

ANNEX II

Annex I to Implementing Regulation (EU) 2020/1988 is amended as follows:

- (1) in the section under the heading 'Tariff quotas in the sector of milk and milk products', in the table relating to the tariff quota with order number 09.0147, the row 'Quantity' is replaced by the following:

Quantity	62 917 000 kg'
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- (2) in the section under the heading 'Tariff quotas in the sector of sheepmeat and goatmeat', in the table relating to the tariff quotas with order numbers 09.2109, 09.2110 and 09.2013, the row 'Quantity' is replaced by the following:

Quantity	125 769 000 kg of carcass weight equivalent'
-----------------	--

COMMISSION IMPLEMENTING REGULATION (EU) 2023/609**of 17 March 2023****reimposing a definitive anti-dumping duty on imports of electric bicycles originating in the People's Republic of China as regards Giant Electric Vehicle (Kunshan) Co., Ltd following the judgment of the General Court in case T-242/19**

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⁾ ('basic anti-dumping Regulation'), and in particular Articles 9(4) and 14(1) thereof,

Whereas:

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

- (1) By Commission Implementing Regulation (EU) 2019/73 ⁽²⁾, the European Commission imposed anti-dumping duties on imports of electric bicycles ('e-bikes'), originating in the People's Republic of China ('the contested Regulation').

1.2. The Judgement of the General Court of the European Union

- (2) Giant Electric Vehicle (Kunshan) Co., Ltd ('Giant' or 'the applicant') challenged the contested Regulation before the General Court of the European Union ('the General Court'). On 27 April 2022, the General Court issued its judgment in case T-242/19 ⁽³⁾ regarding the contested Regulation ('the judgment').
- (3) The General Court found that the Commission was not obliged to determine price undercutting margins and that it was entitled to base its injury analysis and, therefore, the causal link, on other price phenomena listed in Article 3(3) of the basic anti-dumping Regulation, such as significant depression of Union industry prices or prevention of price increases to a notable extent. However, since the Commission relied on the calculation of price undercutting in the context of Article 3(3), the General Court found that, by taking into account in relation to the prices of Union producers certain elements which it had deducted from the applicant's prices (or were not present as regards OEM ⁽⁴⁾ sales since the downstream marketing of the product concerned ⁽⁵⁾ was carried out by the independent buyer), the Commission did not make a fair comparison when calculating the applicant's price undercutting margin. The General Court noted that that methodological error found had the effect of identifying undercutting of the Union industry's prices, the importance or existence of which had not been properly established.
- (4) Considering the importance the Commission had attached to the existence of price undercutting in its finding of injury and in its conclusion on the causal link between the dumped imports and that injury, the General Court found that the error in the calculation of price undercutting was sufficient to invalidate the Commission's analysis of the respective causal link, existence of which is an essential element for the imposition of measures.

⁽¹⁾ OJ L 176, 30.6.2016, p. 21.

⁽²⁾ Commission Implementing Regulation (EU) 2019/73 of 17 January 2019 imposing a definitive anti-dumping duty and definitively collecting the provisional duty imposed on imports of electric bicycles originating in the People's Republic of China (OJ L 16, 18.1.2019, p. 108).

⁽³⁾ Case T-242/19 *Giant Electric Vehicle Kunshan Co. Ltd. v European Commission*, ECLI:EU:T:2022:259.

⁽⁴⁾ Original Equipment Manufacturer.

⁽⁵⁾ As defined in the contested Regulation.

- (5) Finally, the General Court noted that irrespective of the application by analogy of Article 2(9) of the basic anti-dumping Regulation for the purposes of assessing the existence of injury within the meaning of Article 3 of that Regulation, the unfair nature of the comparison found under the second part of that plea vitiated, in any event, the Commission's analysis under those provisions ⁽⁶⁾.
- (6) The General Court also noted that the injury elimination level was determined on the basis of a comparison involving the weighted average import price of the sampled exporting producers, duly adjusted for importation costs and customs duties, as had been established for the price undercutting calculation ⁽⁷⁾. It consequently held that it cannot be ruled out that, were it not for the methodological error relating to the undercutting of the applicant's prices, the injury margin of the Union industry would have been established at a level even lower than that established in the contested Regulation and lower still than the dumping margin established therein. In that case, in accordance with Article 9(4) of the basic anti-dumping Regulation, the amount of the respective duty should be reduced to a rate which would be adequate to remove the injury ⁽⁸⁾.
- (7) In light of the above, the General Court annulled the contested Regulation in so far as Giant was concerned.

1.3. Implementation of the General Court's Judgment

- (8) Article 266 of the Treaty on the Functioning of the European Union ("TFEU") provides that the Institutions must take the necessary measures to comply with its judgments. In case of annulment of an act adopted by the Institutions in the context of an administrative procedure, such as the anti-dumping investigation in this case, compliance with the General Court's judgement consists of the replacement of the annulled act by a new act, in which the illegality identified by the Court is eliminated ⁽⁹⁾.
- (9) According to the case-law of the Court of Justice, the procedure for replacing the annulled act may be resumed at the very point at which the illegality occurred ⁽¹⁰⁾. That implies in particular that in a situation where an act concluding an administrative procedure is annulled, that annulment does not necessarily affect the preparatory acts, such as the initiation of the anti-dumping procedure. In a situation where for instance a Regulation imposing definitive anti-dumping measures is annulled, that means that subsequent to the annulment, the anti-dumping proceeding is still open, because the act concluding the anti-dumping proceeding has disappeared from the Union legal order ⁽¹¹⁾, except if the illegality occurred at the stage of initiation.
- (10) In the present case, the General Court annulled the contested Regulation for one reason, namely, that the Commission failed to make a fair comparison in the price undercutting analysis at the same level of trade when determining the existence of significant undercutting. According to the General Court, this error also tainted the causation analysis and potentially the injury margin as regards the applicant.
- (11) The remaining findings and conclusions in the contested Regulation which were not contested, or which were contested but not examined by the General Court, remain valid and are not affected by this reopening ⁽¹²⁾.

⁽⁶⁾ Case T-242/19 *Giant Electric Vehicle Kunshan Co. Ltd. v European Commission*, ECLI:EU:T:2022:259, paragraph 126.

⁽⁷⁾ Case T-242/19 *Giant Electric Vehicle Kunshan Co. Ltd. v European Commission*, ECLI:EU:T:2022:259, paragraph 122.

⁽⁸⁾ Case T-242/19 *Giant Electric Vehicle Kunshan Co. Ltd. v European Commission*, ECLI:EU:T:2022:259, paragraph 123.

⁽⁹⁾ Joined cases 97, 193, 99 and 215/86 *Asteris AE and others and Hellenic Republic v Commission*, ECLI:EU:C:1988:199, paragraphs 27 and 28; and Case T-440/20 *Jindal Saw v European Commission*, ECLI:EU:T:2022:318, paragraph 115.

⁽¹⁰⁾ Case C-415/96 *Spain v Commission*, ECLI:EU:C:1998:533, paragraph 31; Case C-458/98 P *Industrie des Poudres Sphériques v Council*, ECLI:EU:C:2000:531, paragraphs 80 to 85; Case T-301/01 *Alitalia v Commission*, ECLI:EU:T:2008:262, paragraphs 99 and 142; Joined Cases T-267/08 and T-279/08 *Région Nord-Pas de Calais v Commission*, ECLI:EU:T:2011:209, paragraph 83.

⁽¹¹⁾ Case C-415/96 *Spain v Commission* [1998] ECR I-6993, paragraph 31; Case C-458/98 P *Industrie des Poudres Sphériques v Council*, ECLI:EU:C:2000:531, paragraphs 80 to 85.

⁽¹²⁾ Case T-650/17, *Jinan Meide Casting Co. Ltd.*, ECLI:EU:T:2019:644, paras. 333–342.

- (12) Following the General Court's judgment, on 6 July 2022 the Commission published a notice ('the re-opening notice') re-opening the original investigation concerning imports of electric bicycles originating in the People's Republic of China ('PRC') that led to the adoption of the contested Regulation, insofar as it concerns Giant and to resume the investigation at the point at which the irregularity occurred ⁽¹³⁾.
- (13) The re-opening was limited in scope to the implementation of the judgment of the General Court with regard to Giant.
- (14) On 6 July 2022, the Commission also made imports of electric bicycles, originating in the PRC, manufactured by Giant, subject to registration and instructed national customs authorities to wait until the outcome of the re-examination is published in the *Official Journal of the European Union* before deciding on any claims for reimbursement of the annulled duties ('the registration Regulation') ⁽¹⁴⁾.
- (15) The Commission informed interested parties of the re-opening and invited them to make their views known in writing and to request a hearing within the time-limit set out in the re-opening notice.
- (16) One interested party, Giant, requested a hearing within the time-limit set out in the re-opening notice and was granted the opportunity to be heard.
- (17) Following final disclosure, both Giant and the EBMA requested hearings and were granted the opportunity to be heard.
- (18) No interested party requested a hearing with the Hearing Officer in trade proceedings.

1.4. Procedural steps for the implementation of the General Court's Judgment

- (19) Following the reopening, the Commission sent information requests to the sampled Union producers and their related trading companies.
- (20) Replies to the information requests were received from all the sampled Union producers.
- (21) The Commission conducted verification visits pursuant to Article 16 of the basic anti-dumping Regulation at the premises of the following companies:
 - Accell Group (Heerenveen, The Netherlands);
 - Prophete GmbH & Co. KG (Rheda-Wiedenbruck, Germany);
 - Derby Cycle Holding GmbH (Cloppenburg, Germany);
 - Koninklijke Gazelle NV (Dieren, The Netherlands).

1.5. Investigation period

- (22) This investigation covers the period from 1 October 2016 to 30 September 2017 ('the investigation period'). The examination of trends relevant for the assessment of injury covers the period from 1 January 2014 to the end of the investigation period ('the period considered').

2. COMMENTS FROM INTERESTED PARTIES ON THE REOPENING OF THE INVESTIGATION

- (23) The Commission received comments specific to the reopening of the investigation from Giant and the importer Rad Power Bikes NL.

⁽¹³⁾ Notice of reopening of the anti-dumping and anti-subsidy investigations with regard to Commission Implementing Regulation (EU) 2019/73 and Commission Implementing Regulation (EU) 2019/72 imposing measures on imports of electric bicycles from the People's Republic of China following the judgments of 27 April 2022 in cases T-242/19 and T-243/19 (OJ C 260, 6.7.2022, p. 5).

⁽¹⁴⁾ Commission Implementing Regulation (EU) 2022/1162 of 5 July 2022 making imports of electric bicycles originating in the People's Republic of China subject to registration following the reopening of the investigations in order to implement the judgments of 27 April 2022 in cases T-242/19 and T-243/19, with regard to Implementing Regulation (EU) 2019/73 and Implementing Regulation (EU) 2019/72 (OJ L 179, 6.7.2022, p. 38).

- (24) Giant claimed that, pursuant to Article 6(9) of the basic anti-dumping Regulation, for proceedings initiated pursuant to Article 5(9), an investigation should, whenever possible, be concluded within one year. In any event, such investigations must, in all cases, be concluded within 15 months of initiation, in accordance with the findings made pursuant to Article 8 for undertakings or the findings made pursuant to Article 9 for definitive action. Giant further argued that Article 5.10 of the WTO Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 ('WTO Anti-Dumping Agreement') provides that investigations must, except in special circumstances, be concluded within one year, and in no case more than 18 months, after their initiation. Giant argued that the mandatory and absolute nature of the time limits set in Article 5.10 of the WTO Anti-Dumping Agreement was confirmed on several occasions by the WTO Appellate Body and the WTO panels, in particular, in *EC – Fasteners*, where the WTO Appellate Body stated that Article 5.10 requires that investigations be completed within 12 months or in special circumstances, no more than 18 months⁽¹⁵⁾ and in *Morocco – Hot-Rolled Steel (Turkey)*⁽¹⁶⁾, where the panel held that Article 5.10 allows for no exceptions in adherence to the time limits set out in that provision. Giant further argued that the Notice of reopening explicitly recognises that the current proceeding is the continuation of the original investigation and since the original anti-dumping investigation was initiated on 20 October 2017, in order to comply with the mandatory deadline in Article 6(9) of the basic anti-dumping Regulation, the investigation had to be completed by 20 January 2019. In consequence, Giant argued, the reopening of the original investigation in July 2022 resulted in extending the investigation beyond the mandatory time limit for concluding investigations set out in Article 6(9) of the basic anti-dumping Regulation and is also inconsistent with the time limits set out in Article 5.10 of the WTO Anti-Dumping Agreement.
- (25) The Commission noted that, according to settled case-law⁽¹⁷⁾, the 15 months deadline to conclude an investigation provided for in Article 6(9) of the basic anti-dumping Regulation does not apply to situations where a proceeding is reopened following a court judgment. Thus, Article 6(9) covers only the initial procedures and not those procedures that have been reopened following a judgment of annulment or invalidity. The WTO cases cited by Giant appear to be irrelevant since they do not put into question that Article 5.10 of the WTO Anti-Dumping Agreement extends beyond original investigations. Therefore, this claim is rejected.
- (26) Giant also argued that the Commission is not entitled to reopen the original anti-dumping investigation as regards Giant, as the substantive error found by the General Court not only affected the investigation in relation to Giant, but also the overall injury and causation analyses which relied, at least in part, on the findings in relation to Giant. Giant further argued that in order to comply with the General Court's judgment in case T-242/19, the Commission was not entitled to reopen the original investigation, but should repeal the anti-dumping measures on e-bikes in so far as Giant was concerned. Rad Power Bikes NL also argued that the General Court's findings would require the Commission to rescind the measures imposed.
- (27) The Commission disagreed with those claims that it would not be possible to reopen an investigation to cure an illegality found by the European Courts. In fact, the General Court found in *Jindal*⁽¹⁸⁾ that the Commission can re-open an investigation, resume it at the point at which the illegality occurred, correct the irregularity and re-impose measures during the period of application of the regulation at issue, even in the case of a substantive/methodological error. The Commission also failed to see how any of the WTO provisions or case law cited by Giant would support its assertions in that they do not deal with correction of illegalities after a court case.

⁽¹⁵⁾ Appellate Body Report, *EC – Fasteners*, para. 611. Also Appellate Body Report in *US – Hot-Rolled Steel* (para. 73), where the Appellate Body indicated that the time limits for concluding investigations set out in Article 5.10 are 'mandated' under the Anti-Dumping Agreement and the Panel Report in *US – Softwood Lumber V* (para. 7.333), where the panel described these time limits as 'strict'. See also Panel Reports, *Ukraine – Passenger Cars*, fn 277; *EU – Footwear (China)*, para. 7.832; *EC – Salmon (Norway)*, para. 7.802; *US – 1916 Act (Japan)*, para. 6.255.

⁽¹⁶⁾ Panel Report, *Morocco – Hot-Rolled Steel (Turkey)*, para. 7.72 and 7.74.

⁽¹⁷⁾ Joined Cases C-283/14, *Eurologistik*, and C-284/14, *GLS*, ECLI:EU:C:2016:57, para. 61.

⁽¹⁸⁾ Case T-300/16 *Jindal Saw and Jindal Saw Italia v Commission*.

- (28) Moreover, in this re-opened investigation, as explained in sections 3 and 4, the Commission has corrected the methodological error, as required by the General Court in its judgement in case T-242/19, by revising the undercutting calculations of Giant. The Commission has also recalculated the injury elimination level of Giant by removing the same methodological error. Given the General Court's conclusion that this issue also affects the overall injury and causality findings, the Commission has revised its analysis of both injury and causality as explained below in sections 3 and 4. Therefore, the Commission considered that its revised findings fully comply with the General Court's judgement in case T-242/19. Since the revised findings led to the duty level being reduced but not eliminated, it was therefore unnecessary to repeal the anti-dumping measures on e-bikes as far as Giant is concerned. The Commission, therefore, rejected those arguments.
- (29) Giant also argued that, should the Commission continue the reopened investigation, it must also correct all other errors challenged by Giant before the General Court. In particular, Giant argued that the Commission must correct the errors relating to its dumping margin calculations (including its MET claim and normal value assessment). Giant claimed that a fair comparison had not been ensured in accordance with Article 2(10) of the basic anti-dumping Regulation.
- (30) The Commission rejected this argument. In the General Court's conclusion in paragraph 125 of the judgement in Case T-242/19, the General Court found that the regulation should be annulled, as far as it concerns Giant, because the methodological error found in the calculation of price undercutting was liable to call into question the legality of the contested Regulation by invalidating the Commission's analysis of injury and causality. The Court did not consider it necessary to examine or assess the merits of any other claims put forward by the applicant. As indicated in recitals (8) and (11), Article 266 TFEU provides that the Institutions must take the necessary measures to comply with the General Court's judgments and the remaining findings and conclusions in the contested Regulation which were not contested, or which were contested but not examined by the General Court, remain fully valid. Therefore, since the scope of the reopened investigation is not to review the entire case but to address the specific errors found by the General Court, the Commission did not find it necessary to review the dumping margin of Giant.
- (31) Giant further pointed out that in both the original and the reopened investigations, the Commission had not fully disclosed the information necessary for it to evaluate whether a fair comparison had been made between Giant's export prices and those of the Union industry. Therefore, Giant requested that, in the context of the re-opened investigation, the Commission should disclose relevant information concerning the sales channels of the sampled Union producers.
- (32) Although the Commission maintained its position on confidentiality of the specific details of the sales made by the Union industry on the Union market, the Commission considered it appropriate to inform Giant about the following: the four sampled Union producers sold around 46 % of their sales volume through related traders. A total of 10 related traders sold e-bikes to unrelated companies, in addition to the direct sales made by the sampled producers. Therefore, the direct sales represented around 54 % of the Union sales volume.
- (33) Giant argued that, contrary to what the Commission suggested in its Notice of reopening, the Commission was required to carry out a fair comparison between the prices of the imported e-bikes and the prices of e-bikes sold by the Union producers on the Union market. Giant argued that, pursuant to Articles 3(2) and 3(3) of the basic anti-dumping Regulation, there is a positive obligation on the Commission to carry out such a price comparison, which can be between the prices of the imported e-bikes and the Union industry's actual prices, to examine the price impact of the imports concerned. This fair comparison should take into account the correct point of competition of the sales prices concerned. It should also take into account differences in whether such sales were of branded products or on an OEM level.
- (34) The Commission took account of the arguments made by Giant and the comments in the General Court's judgment in its revised undercutting, injury, causality and injury elimination analysis and findings in sections 3 and 4 below.

- (35) Giant also pointed out that the registration Regulation explicitly recognised that ‘the final liability for payment of anti-dumping and countervailing duties ... will emanate from the findings of the re-examination’ ⁽¹⁹⁾ and therefore, according to Giant, it follows that any final liability can only apply to future imports, i.e. products which enter free circulation after the time when such duties enter into force. Giant argued that the above position is supported by the Opinion of the Advocate General in Case C-458/98 (*IPS*) as well as the views expressed in the past by the Commission itself ⁽²⁰⁾. Therefore, Giant argued that any recalculated duties could only be imposed with respect to future imports of e-bikes produced by Giant, i.e. e-bikes which will enter free circulation *after* the publication of the Regulations re-imposing the duties. Giant further argued that the re-imposition of recalculated duties with respect to past imports would also be contrary to the nature of the anti-dumping duties, which are not punitive measures aimed to compensate for past injury suffered by the Union industry but are a means of forestalling future injury ⁽²¹⁾.
- (36) The Court of Justice has consistently held that Article 10(1) of the basic anti-dumping Regulation ⁽²²⁾ does not preclude the re-imposition of anti-dumping duties on imports that were made during the period of application of the regulations declared to be invalid ⁽²³⁾. Consequently, as explained in recital (14) of the registration Regulation, the resumption of the administrative procedure and the eventual re-imposition of duties cannot be considered as contrary to the rule of non-retroactivity ⁽²⁴⁾. Consequently, Giant’s claim that the duties cannot be re-imposed on imports which entered free circulation prior to the publication of the (future) Commission Implementing Regulation was rejected.
- (37) Rad Power Bikes NL commented that it imported products from other Chinese exporters, which were similar to those imported from Giant and that these imports were subject to duties which were calculated and imposed on the basis of the relevant injury elimination level. It therefore argued that when recalculating the applicable duties for Giant, the Commission must also revise and reduce the applicable duty rates for the other Chinese exporters subject to the duties, both for those granted individual duty rates and for the other non-sampled cooperating Chinese exporters.
- (38) As explained in recital (30), the scope of the reopened investigation is not to review the entire findings of the contested Regulation, but to implement the specific findings made by the General Court in so far as they concern Giant. The General Court did not annul the contested Regulation as regards other exporting producers. Therefore, the Commission did not find it necessary or appropriate to revise its original findings for the other Chinese exporters subject to the duties. The Commission, therefore, rejected that argument.
- (39) In their comments following the final disclosure Giant reiterated its claims questioning the legality of the re-imposition of Giant’s revised anti-dumping duties retroactively as stated in recital (35). However, as no new arguments were raised, the rejection of its claim was confirmed.

3. RE-EXAMINATION OF GIANT’S UNDERCUTTING MARGIN AND THE INJURY FINDINGS

3.1. Determination of undercutting with respect to Giant

- (40) As noted in recital (3), the General Court found that, since the Commission relied on the calculation of price undercutting in the context of Article 3(3) of the basic anti-dumping Regulation, by taking into account in relation to the prices of Union producers certain elements which it had deducted from Giant’s prices (or were not present as regards OEM sales), the Commission did not make a fair comparison when calculating Giant’s price undercutting margin. Therefore, the importance or existence of such undercutting had not been properly established.

⁽¹⁹⁾ Registration Regulation, recital 22.

⁽²⁰⁾ Case C-458/98 P, *Industrie des poudres sphériques v Council*, Opinion of Advocate General Cosmas, ECLI:EU:C:2000:138, para. 77.

⁽²¹⁾ Case C-458/98 P, *Industrie des poudres sphériques v Council*, Opinion of Advocate General Cosmas, ECLI:EU:C:2000:138, para. 76.

⁽²²⁾ OJ L 176, 30.6.2016, p. 21.

⁽²³⁾ C-256/16 *Deichmann*, ECLI:EU:C:2018:187, paragraphs 77 and 78 and C-612/16, *C & J Clark International Ltd v Commissioners for Her Majesty’s Revenue & Customs*, judgment of 19 June 2019, paragraph 57.

⁽²⁴⁾ Case C-256/16 *Deichmann SE v Hauptzollamt Duisburg*, para 79 and Case C-612/16, *C & J Clark International Ltd v Commissioners for Her Majesty’s Revenue & Customs*, judgment of 19 June 2019, paragraph 58.

- (41) As explained in recital (155) of Commission Implementing Regulation (EU) 2018/1012 ⁽²⁵⁾ ('the provisional Regulation') the Commission determined the price undercutting during the investigation period by comparing:
- the weighted average sales prices per product type of the four sampled Union producers charged to unrelated customers on the Union market, adjusted to an ex-works level; and
 - the corresponding weighted average prices per product type of the imports from the sampled exporting producers in the PRC to the first independent customer on the Union market, established on a CIF basis with appropriate adjustments for customs duties of 6 % and importation costs; as mentioned at recitals (94) to (96) of the contested Regulation, where sales were made via related traders, the export prices were adjusted in accordance with Article 2(9) of the basic anti-dumping Regulation by analogy. The selling, general and administrative ('SG&A') expenses of the related trader and the profit of a sample of unrelated importers (9 % of the sales price) were deducted.
- (42) In order to ensure a fair comparison between Giant's prices and the prices of the Union producers, the Commission recalculated the undercutting margin of Giant by adjusting the weighted average sales prices of the sampled Union producers referred to in recital (41) in two respects.
- (43) Firstly, where sales were made by the sampled Union producers via related traders, a deduction was made from the sales price to independent customers (of all types) to account for the actual SG&A expenses of the trader concerned and profits of 9 %. For one Union producer, a particular arrangement similar to tolling was identified. In this case, where the costs of the related trader concerned production activities, those costs were not deducted. The profit level used in this calculation is the same profit level established for the application of Article 2(9) of the basic anti-dumping Regulation in recital (109) of the provisional Regulation ⁽²⁶⁾ to the sampled exporting producers, and which was calculated from the cooperating unrelated importers.
- (44) Secondly, where it was necessary to compare prices at an OEM level, a further deduction of 2,3 % was made to the relevant Union industry prices to account for design, marketing and research and development (R & D) costs. This deduction was established as outlined in recitals (59) to (72) of the contested Regulation.
- (45) No further adjustment was deemed necessary for the level of trade, in the sense of type of customer, because the investigation found that there is no consistent and distinct price difference between sales to traders and retailers in the Union.
- (46) In their comments following final disclosure Giant argued that the comparison between its export prices and those of the Union industry should be made at the point of the first sale to an unrelated customer, without adjustments for SG&A and profit on both sides of the calculation. Giant claimed that this approach was followed by the Commission when implementing the General Court's judgment in the Jindal case. Giant argued that by using this method a fair comparison would be achieved.
- (47) The Commission recalled that the comparison between the exporting producer's and the Union industry's prices in the Jindal case was made at the level of unrelated customers due to the particular circumstances in that case, where the market was geographically divided and competition took place at the level of tenders. Each case is implemented on the basis of its specific facts and circumstances, in light of the particular judgment. Giant has failed to explain why the circumstances in this case would warrant the same approach as in the Jindal case and why the approach followed by the Commission is inconsistent with the Court's judgment. The Commission further noted that the export prices in the original investigation were adjusted, where appropriate, for SG&A of the related traders and a notional profit, in accordance with the Commission's practice of applying the same methodology as under Article 2(9) of the basic Regulation by analogy. This approach was explicitly confirmed by the Court of Justice in the Hansol Judgment ⁽²⁷⁾, which highlighted that it falls within the broad discretion the Commission enjoys in the application of Article 3(2) of the basic Regulation. The claim was, therefore, rejected.

⁽²⁵⁾ Commission Implementing Regulation (EU) 2018/1012 of 17 July 2018 imposing a provisional anti-dumping duty on imports of electric bicycles originating in the People's Republic of China and amending Implementing Regulation (EU) 2018/671 (OJ L 181, 18.7.2018, p. 7).

⁽²⁶⁾ Commission Implementing Regulation (EU) 2018/1012 of 17 July 2018 imposing a provisional anti-dumping duty on imports of electric bicycles originating in the People's Republic of China and amending Implementing Regulation (EU) 2018/671 (OJ L 181, 18.7.2018, p. 7).

⁽²⁷⁾ Judgment of 12 May 2022, C-260/20 P, Hansol, para. 105.

- (48) Giant further argued that, in the alternative to the claim described in recital (46), for the Union industry's sales made directly to retailers, the Commission should make additional deductions from the Union producer's sales prices for SG&A and profits corresponding to the internal sales departments.
- (49) However, the Commission recalled that the approach outlined in recitals (42) to (45) ensured a fair comparison by adjusting the export prices and those of the Union industry in the same manner for the same sales channels by using the same methodology. This meant that both, the export prices and the Union industry's sales prices were adjusted for SG&A and profit if sales were made via related traders, whereas direct sales were not adjusted. Adjusting the Union industry direct sales prices as suggested by Giant would therefore create an asymmetry to the disadvantage of the Union industry in relation to the export prices from Giant for their corresponding sales, because no such deductions were made to the sales of Giant's producing entity in China for direct sales. This would also be contrary to the judgment of the General Court for the same reasons of asymmetry the Court relied on when it ruled in favour of Giant. In addition, the Commission noted that further adjustments in respect of design, marketing as well as research and development ('R&D') costs and the level of trade have already been made, where appropriate, as explained at recitals (44) and (45), to ensure full symmetry between the respective situations of Giant and the Union industry, in compliance with the judgment. Therefore, this claim was rejected.
- (50) Giant also claimed that its OEM sales should be compared with Union industry sales prices which had been subject to SG&A and profit deductions where appropriate.
- (51) The Commission confirmed that this approach was followed.
- (52) In their comments following the final disclosure, the Union industry argued that the disclosure of the calculations of revised Union industry prices was incorrect because of the methodology employed to incorporate credit notes. The Union producers claimed that this affected both the calculation of net prices and the adjustments of SG&A and profit.
- (53) The Commission evaluated whether the revised methodology, suggested by the sampled Union producers, had any impact on the undercutting and underselling margins. As a consequence, the Commission revised its calculations, which had, however no material impact on those margins. The revised calculations were disclosed to the sampled Union producers and the fact that calculations were revised was also disclosed to Giant and the other interested parties on 10 February 2023. The parties were granted a period to comment.
- (54) In its comments of 13 February 2023 the Union industry pointed out an error in the calculations of the credit notes for one Union producer. Following the correction of this error the undercutting margin of Giant was 11,5 %. The new calculations were disclosed to all interested parties on 14 February 2023 and the parties were granted a further period of time to comment. No further comments were received.
- (55) Also in its comments of 13 February 2023 the Union industry claimed that in its treatment of credit notes the Commission should have only calculated the SG&A and profit amounts based on the EXW value of each sale transaction. However, bearing in mind the SG&A was calculated per ebike and the profit margin was calculated on the invoice value, this claim was rejected.
- (56) The Union industry claimed during the hearing that for all sales where the Commission deducted the profit of the related importer from the Union industry sales prices, the profit rate of 9 % was too high as it was much higher than the target profit established in the original investigation (4,3 %). The claim further explained that the 9 % profit rate was not justified by 'any information on the case file' of the reopened investigation. Giant made a comment to rebut this claim stating that it was not appropriate to change the profit rate applied because there were no grounds to overturn the notional profit rate calculated in the original investigation.

- (57) The rate for target profit and a notional rate for the profit of a related importer were both set in the original investigation (based on data on the case file) and were not scrutinised by the General Court or mentioned in the Judgment which led to the reopening of this investigation. Therefore, the Commission is not bound to re-investigate this matter in the current implementation. In addition, the target profit (i.e. the profit achievable by the Union industry for domestic sales under normal conditions of competition) and the profit of a trader (a notional amount covering profit normally borne by an importer) are two separate concepts and are governed by different provisions of the basic Regulation. A direct comparison between the two concepts is therefore inappropriate and irrelevant to the setting of either profit margin. This claim was therefore rejected.
- (58) The Union industry also claimed that the SG&A and profit deduction was not warranted because of the relationship between two of the Union producers and their related traders. In particular, it was stated that no SG&A and profit should be deducted from the sales price of the sales made via certain traders as the producer was operating under a tolling agreement. The Union industry supplied agreements between the relevant production and sales companies to support their claim.
- (59) Regarding the producer that is also mentioned in recital (43), it had a particular arrangement 'similar to tolling'. The Commission reviewed the exact terms of this arrangement and concluded that a contract manufacturing system was operational, rather than a tolling agreement, and that both the producer and the related trader had SG&A costs. The agreement also demonstrated a contractual relationship between related parties. The Commission maintained therefore that it was not appropriate to fully exclude SG&A and profit deductions from this producer's sales prices via related parties. The Commission did take into account SG&A costs which were associated to costs incurred typically at the related trader and not those for functions normally associated with a producer. Furthermore, the producer concerned had SG&A costs relating to its direct sales. The Commission therefore concluded that SG&A and profit should be deducted from the sales price of the related trader and rejected this claim.
- (60) For the second producer, the Union industry also submitted an agreement between the producer and the related trader to support its claim that the Commission should not deduct SG&A and profit from the sales prices of its related traders. Giant submitted a rebuttal to this argument stating that the approach for the Union industry should be the same as the approach applied to Giant.
- (61) In examining this matter the Commission noted that the agreement submitted for this second producer was also not a tolling agreement, but a manufacturing agreement between related parties, defining the roles of the producer and the related trader and included other clauses such as the methodology for the calculation of transfer prices. The agreement did not confirm that during the IP of the original investigation e-bikes were manufactured under a tolling agreement, or any other arrangement which would mean that it was not appropriate to deduct SG&A costs from the sales prices of the related traders. In fact the agreement demonstrated a contractual relationship between related parties. A related trader also acted as a producer, and it sold e-bikes directly to the market as well as via other related traders. This claim was, therefore, rejected.
- (62) The Union industry also claimed that the sales of one Union producer should be adjusted upwards or not taken into account in the price comparison because they related to sales to supermarket chains and online platforms, rather than other types of retail customers.
- (63) The Commission did not consider it appropriate to exclude such sales because the sample of Union producers selected in the original investigation was deemed to be representative of the Union industry. In addition, in recital (45) it was confirmed that further adjustments to prices, beyond those already made, were not appropriate for different types of customers.
- (64) The Union industry claimed that its OEM sales should not be compared with the export sales unless an adjustment was made to its prices to ensure a fair comparison.

- (65) The Commission noted that the volume of OEM sales by the Union industry was very low and the majority of such sales were not used in the undercutting and underselling calculations because there was no match to an imported type. Therefore, it was concluded that an adjustment for the Union industry's OEM sales should not be considered further as the issue would have no material impact on the undercutting and underselling margins.
- (66) Consequently, the revised undercutting margin during the original investigation period for Giant of 11,5 % is confirmed.

3.2. Determination of undercutting with respect to other Chinese exporters

- (67) In case T-242/19, the General Court noted that the methodological error found, which meant that the Commission did not make a fair comparison in the calculation of Giant's undercutting margin, is likely also to have a bearing on the calculation of price undercutting established in respect of the other sampled exporting producers ⁽²⁸⁾.
- (68) In order to ensure a fair comparison between the prices of the other sampled exporting producers and the prices of the Union producers, the Commission also recalculated the undercutting margins of the other sampled exporting producers, taking into account the issues referred to in recitals (41) to (44).
- (69) The result of the comparisons showed an average undercutting margin for imports from the sampled exporters (including Giant) of 17,1 %. Bearing in mind the revision to the undercutting margin of Giant explained at recital (53) above this figure was confirmed at 17,0 %.

3.3. Revised conclusion on injury

- (70) The Commission noted that following the correction of the methodological error relating to the calculation of price undercutting identified by the General Court in case T-242/19 ⁽²⁹⁾, the levels by which Chinese imports have undercut the Union industry's prices have decreased to 17,0 % on average as mentioned in recital (69). Although the levels of undercutting have decreased, there has still clearly been significant price undercutting by the dumped imports from the PRC.
- (71) The Commission's findings with regard to the other injury indicators as mentioned in recitals (200) to (205) of the provisional Regulation and recitals (141) to (156) of the contested Regulation, remain fully valid.
- (72) Taking into account the revised significant undercutting margins referred to in recital (70) and the evidence of the negative development of nearly all injury indicators explained in recitals (200) to (205) of the provisional Regulation and recitals (141) to (156) of the contested Regulation, the Commission concluded that the Union industry suffered material injury within the meaning of Article 3(5) of the basic anti-dumping Regulation.

4. CAUSATION

- (73) The Commission further examined whether there would still be a causal link between the dumped imports and the injury suffered by the Union producers, in view of the revised undercutting margins for imports from the sampled Chinese exporting producers.
- (74) Notwithstanding the reduction in the undercutting margin for all sampled Chinese exporters, this did not alter the fact that imports from the sampled Chinese exporters were undercutting the Union industry's sales prices to a significant extent. Thus, the revised undercutting margins did not alter the original finding made by the Commission about the existence of the causal link between the injury suffered by the Union producers and the dumped imports from the PRC, in recital (223) of the provisional Regulation and confirmed in recital (168) of the contested Regulation.

⁽²⁸⁾ Case T-242/19, *Giant Electric Vehicle Kunshan v Commission*, ECLI:EU:T:2022:259, para 113.

⁽²⁹⁾ Case T-242/19, *Giant Electric Vehicle Kunshan v Commission*, ECLI:EU:T:2022:259, para 113.

- (75) The revised undercutting margins also did not alter the analysis and findings concerning other causes of injury as presented in section 5.2 of the provisional Regulation and 5.2 of the definitive Regulation.
- (76) In the absence of any further comments, the Commission concluded that the material injury to the Union industry was caused by the dumped imports from the PRC and the other factors, considered individually or collectively, did not attenuate the causal link between the injury and the dumped imports.

5. RE-EXAMINATION OF THE INJURY MARGIN WITH RESPECT TO GIANT

- (77) Bearing in mind the comments of the General Court in paragraph (123) of the Judgement in case T-242/19, the Commission also recalculated the injury elimination level of Giant.
- (78) In the original investigation the Commission determined the injury elimination level during the investigation period by comparing:
- the weighted average target prices per product type of the four sampled Union producers charged to unrelated customers on the Union market, adjusted to an ex-works level;
 - the corresponding weighted average prices per product type of the imports from the sampled exporting producers in the PRC to the first independent customer on the Union market, established on a CIF basis with appropriate adjustments for customs duties of 6 % and importation costs; where sales were made via related traders, the export prices were adjusted in accordance with Article 2(9) of the basic anti-dumping Regulation by analogy. The SG&A costs of the related trader and the profit of a sample of unrelated importers (9 % of the sales price) were deducted; and
 - where the export prices related to OEM sales, the Union industry target prices were reduced by 2,3 % reflecting the R & D and marketing costs of the sampled Union industry producers, which were not reflected in prices of OEM sales of Giant.
- (79) In order to ensure a fair comparison between Giant's prices and the prices of the Union producers, the Commission recalculated the injury elimination level of Giant by adjusting the weighted average target prices of the sampled Union producers referred to in recital (78).
- (80) Where sales were made by the sampled Union producers via related traders, a deduction was made from the price to independent customers to account for the actual SG&A expenses of the traders and profits of 9 %. The SG&A amount varied according to the trader concerned. Where the costs of the related trader concerned did not relate to the marketing of products, but to production activities (such as production planning and sourcing of raw materials), these costs were not deducted because they did not relate to the normal functions of a related trader marketing the products in the Union market. The profit level used in this calculation is the profit level established in the original investigation for the cooperating unrelated importers.
- (81) No further adjustment was deemed necessary to account for the OEM/branding level as this adjustment, amounting to 2,3 %, had already been made.
- (82) No further adjustment was deemed necessary for the level of trade in the sense of type of customer because the investigation found that there is no consistent and distinct price difference between sales to traders and retailers in the Union.
- (83) The claims made by both Giant and the Union industry in their comments to the final disclosure in respect of the undercutting calculation at section 3 apply equally to the underselling margins in this section.
- (84) In the light of the treatment of the comments raised by interested parties the underselling margin for Giant is 13,8 %.

6. DEFINITIVE MEASURES

- (85) In view of the conclusions reached by the Commission in this re-opened anti-dumping investigation, a definitive anti-dumping duty should be re-imposed on the imports of the product concerned at the level of the lower of the dumping and the injury margins found, in accordance with the lesser duty rule.
- (86) It is noted that an anti-subsidy investigation was carried out in parallel with the anti-dumping investigation. Pursuant to Article 24(1) of Regulation (EU) 2016/1037 of the European Parliament and of the Council ⁽³⁰⁾, in view of the use of the lesser duty rule and the fact that the definitive subsidy rates are lower than the injury elimination level, it is appropriate to impose a definitive countervailing duty at the level of the established definitive subsidy rates and then impose a definitive anti-dumping duty up to the relevant injury elimination level.
- (87) On the basis of the above, the definitive anti-dumping duty rates, expressed on the CIF Union border price, customs duty unpaid, should be as follows:

Definitive measures

Company	Dumping margin	Subsidy rate	Injury elimination level	Countervailing duty	Anti-dumping duty
Giant Electric Vehicle (Kunshan) Co., Ltd	32,8 %	3,9 %	13,8 %	3,9 %	9,9 %

- (88) The revised level of anti-dumping duty applies without any temporal interruption since the entry into force of the provisional Regulation (namely as of 19 July 2018) ⁽³¹⁾. Customs authorities are instructed to collect the appropriate amount on imports concerning Giant Electric Vehicle (Kunshan) Co., Ltd and refund any excess amount collected so far (namely 10,8 %) in accordance with the applicable customs legislation.
- (89) All interested parties were informed of the essential facts and considerations on the basis of which it was intended to re-impose a definitive anti-dumping duty on imports of e-bikes from the PRC from the exporting producer Giant Electric Vehicle (Kunshan) Co., Ltd.
- (90) In view of Article 109 of Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council ⁽³²⁾, when an amount is to be reimbursed following a judgment of the Court of Justice of the European Union, the interest to be paid should be the rate applied by the European Central Bank to its principal refinancing operations, as published in the C series of the *Official Journal of the European Union* on the first calendar day of each month.
- (91) The measures provided for in this regulation are in accordance with the opinion of the Committee established by Article 15(1) of Regulation (EU) 2016/1036,

⁽³⁰⁾ Regulation (EU) 2016/1037 of the European Parliament and of the Council of 8 June 2016 on protection against subsidised imports from countries not members of the European Union (OJ L 176, 30.6.2016, p. 55).

⁽³¹⁾ Commission Implementing Regulation (EU) 2018/1012 of 17 July 2018 imposing a provisional anti-dumping duty on imports of electric bicycles originating in the People's Republic of China and amending Implementing Regulation (EU) 2018/671 (OJ L 181, 18.7.2018, p. 7).

⁽³²⁾ Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council of 18 July 2018 on the financial rules applicable to the general budget of the Union, amending Regulations (EU) No 1296/2013, (EU) No 1301/2013, (EU) No 1303/2013, (EU) No 1304/2013, (EU) No 1309/2013, (EU) No 1316/2013, (EU) No 223/2014, (EU) No 283/2014, and Decision No 541/2014/EU and repealing Regulation (EU, Euratom) No 966/2012 (OJ L 193, 30.7.2018, p. 1).

HAS ADOPTED THIS REGULATION:

Article 1

1. A definitive anti-dumping duty is hereby imposed on imports of cycles, with pedal assistance, with an auxiliary electric motor, currently falling under CN codes 8711 60 10 and ex 8711 60 90 (TARIC code 8711 60 90 10), originating in the People's Republic of China, and manufactured by Giant Electric Vehicle (Kunshan) Co., Ltd as of 19 July 2018.
2. The rate of the definitive anti-dumping duty applicable to the net, free-at-Union-frontier price, before duty, of the products described in paragraph 1 and manufactured by Giant Electric Vehicle (Kunshan) Co., Ltd shall be 9,9 % (TARIC additional code C383).

Article 2

Any definitive anti-dumping duty paid by Giant Electric Vehicle (Kunshan) Co., Ltd pursuant to Implementing Regulation (EU) 2019/73 in excess of the definitive anti-dumping duty established in Article 1 shall be repaid or remitted.

The repayment or remission shall be requested from national customs authorities in accordance with the applicable customs legislation. Any reimbursement that took place following the General Court's ruling in case T-242/19 *Giant* shall be recovered by the authorities which made the reimbursement up to the amount set out in Article 1(2).

Article 3

The definitive anti-dumping duty imposed by Article 1 shall also be collected on imports registered in accordance with Article 1 of Implementing Regulation (EU) 2022/1162 making imports of electric bicycles originating in the People's Republic of China subject to registration following the reopening of the investigations in order to implement the judgments of 27 April 2022 in cases T-242/19 and T-243/19, with regard to Commission Implementing Regulation (EU) 2019/73 and Commission Implementing Regulation (EU) 2019/72 ⁽³³⁾.

Article 4

Customs authorities are directed to discontinue the registration of imports, established in accordance with Article 1(1) of Implementing Regulation (EU) 2022/1162, which is hereby repealed.

Article 5

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

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

Done at Brussels, 17 March 2023.

For the Commission
The President
Ursula VON DER LEYEN

⁽³³⁾ Commission Implementing Regulation (EU) 2019/72 of 17 January 2019 imposing a definitive countervailing duty on imports of electric bicycles originating in the People's Republic of China (OJ L 16, 18.1.2019, p. 5).

COMMISSION IMPLEMENTING REGULATION (EU) 2023/610**of 17 March 2023****reimposing a definitive countervailing duty on imports of electric bicycles originating in the People's Republic of China as regards Giant Electric Vehicle (Kunshan) Co., Ltd following the judgment of the General Court in case T-243/19**

THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EU) 2016/1037 of the European Parliament and of the Council of 8 June 2016 on protection against subsidised imports from countries not members of the European Union ⁽¹⁾ ('the basic anti-subsidy Regulation'), and in particular Article 15 and Article 24(1) thereof,

Whereas:

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

- (1) By Regulation (EU) 2019/72 ⁽²⁾, the European Commission imposed countervailing duties on imports of electric bicycles ('e-bikes'), originating in the People's Republic of China ('the contested Regulation').

1.2. The Judgement of the General Court of the European Union

- (2) Giant Electric Vehicle (Kunshan) Co., Ltd ('Giant' or 'the applicant', or 'GEV') challenged the contested Regulation before the General Court of the European Union ('the General Court'). On 27 April 2022, the General Court issued its judgment in case T-243/19 ⁽³⁾ regarding the contested Regulation ('the judgment').
- (3) The General Court found that the Commission was not obliged to determine price undercutting margins and that it was entitled to base its injury analysis and, therefore, the causal link, on other price phenomena listed in Article 8(2) of the basic anti-subsidy Regulation, such as significant depression of Union industry prices or prevention of price increases to a notable extent. However, since the Commission relied on the calculation of price undercutting in the context of Article 8(2), the General Court found that, by taking into account, in relation to the prices of Union producers, certain elements which it had deducted from the applicant's prices (or were not present as regards OEM ⁽⁴⁾ sales since the downstream marketing of the product concerned ⁽⁵⁾ was carried out by the independent buyer), the Commission did not make a fair comparison when calculating the applicant's price undercutting margin. The General Court noted that that methodological error found had the effect of identifying undercutting of the Union industry's prices, the importance or existence of which had not been properly established.
- (4) Considering the importance the Commission had attached to the existence of price undercutting in its finding of injury and in its conclusion on the causal link between the subsidised imports and that injury, the General Court found that the error in the calculation of price undercutting was sufficient to invalidate the Commission's analysis of the respective causal link, existence of which is an essential element for the imposition of measures.

⁽¹⁾ OJ L 176, 30.6.2016, p. 55.

⁽²⁾ Commission Implementing Regulation (EU) 2019/72 of 17 January 2019 imposing a definitive countervailing duty on imports of electric bicycles originating in the People's Republic of China (OJ L 16, 18.1.2019, p. 5).

⁽³⁾ Case T-243/19 *Giant Electric Vehicle Kunshan Co., Ltd v European Commission*, EU:T:2022:260.

⁽⁴⁾ Original Equipment Manufacturer.

⁽⁵⁾ As defined in the regulations at issue.

- (5) Finally, the General Court noted that irrespective of the application by analogy of Article 2(9) of Regulation (EU) 2016/1036 of the European Parliament and of the Council ⁽⁶⁾ on protection against dumped imports from countries not members of the European Union ('basic anti-dumping Regulation') for the purposes of assessing the existence of injury within the meaning of Article 8 of the basic anti-subsidy Regulation, the unfair nature of the comparison found under the second part of that plea vitiated, in any event, the Commission's analysis under those provisions ⁽⁷⁾.
- (6) The General Court also noted that the injury elimination level was determined on the basis of a comparison involving the weighted average import price of the sampled exporting producers, duly adjusted for importation costs and customs duties, as had been established for the price undercutting calculation ⁽⁸⁾. It consequently held that it cannot be ruled out that, were it not for the methodological error relating to the undercutting of the applicant's prices, the injury margin of the Union industry would have been established at a level even lower than that established in the contested Regulation and lower still than the amount of countervailable subsidies established therein. In that case, in accordance with Article 15(1) of the basic anti-subsidy Regulation, the amount of the respective duty should be reduced to a rate which would be adequate to remove the injury ⁽⁹⁾.
- (7) In light of the above, the General Court annulled the contested Regulation in so far as Giant was concerned.

1.3. Implementation of the General Court's Judgment

- (8) Article 266 of the Treaty on the Functioning of the European Union ('TFEU') provides that the Institutions must take the necessary measures to comply with its judgments. In case of annulment of an act adopted by the Institutions in the context of an administrative procedure, such as the anti-subsidy investigation in this case, compliance with the General Court's judgement consists in the replacement of the annulled act by a new act, in which the illegality identified by the Court is eliminated ⁽¹⁰⁾.
- (9) According to the case-law of the Court of Justice, the procedure for replacing the annulled act may be resumed at the very point at which the illegality occurred ⁽¹¹⁾. That implies in particular that in a situation where an act concluding an administrative procedure is annulled, that annulment does not necessarily affect the preparatory acts, such as the initiation of the anti-subsidy procedure. In a situation where for instance a Regulation imposing definitive countervailing measures is annulled, that means that subsequent to the annulment, the anti-subsidy proceeding is still open, because the act concluding the anti-subsidy proceeding has disappeared from the Union legal order ⁽¹²⁾, except if the illegality occurred at the stage of initiation.
- (10) In the present case, the General Court annulled the contested Regulation for one reason, namely, that the Commission failed to make a fair comparison in the price undercutting analysis at the same level of trade when determining the existence of significant undercutting. According to the General Court, this error also tainted the causation analysis and potentially the injury margin as regards the applicant.

⁽⁶⁾ 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 (OJ L 176, 30.6.2016, p. 21).

⁽⁷⁾ Case T-243/19 *Giant Electric Vehicle Kunshan Co., Ltd v European Commission*, EU:T:2022:260, paragraph 118.

⁽⁸⁾ Case T-243/19 *Giant Electric Vehicle Kunshan Co., Ltd v European Commission*, EU:T:2022:260, paragraph 114.

⁽⁹⁾ Case T-243/19 *Giant Electric Vehicle Kunshan Co., Ltd v European Commission*, EU:T:2022:260, paragraph 115.

⁽¹⁰⁾ Joined cases 97, 193, 99 and 215/86 *Asteris AE and others and Hellenic Republic v Commission* [1988] ECR 2181, paragraphs 27 and 28; and Case T-440/20 *Jindal Saw v European Commission*, EU:T:2022:318, paragraph 115.

⁽¹¹⁾ Case C-415/96 *Spain v Commission* [1998] ECR I-6993, paragraph 31; Case C-458/98 P *Industrie des Poudres Sphériques v Council* [2000] I-8147, paragraphs 80 to 85; Case T-301/01 *Alitalia v Commission* [2008] II-1753, paragraphs 99 and 142; Joined Cases T-267/08 and T-279/08 *Région Nord-Pas de Calais v Commission* [2011] II-0000, paragraph 83.

⁽¹²⁾ Case C-415/96 *Spain v Commission* [1998] ECR I-6993, paragraph 31; Case C-458/98 P *Industrie des Poudres Sphériques v Council* [2000] I-8147, paragraphs 80 to 85.

- (11) The remaining findings and conclusions in the contested Regulation which were not contested, or which were contested but not examined by the General Court remain valid and are not affected by this reopening ⁽¹³⁾.
- (12) Following the General Court's judgment, on 6 July 2022 the Commission published a notice ('the re-opening notice') re-opening the original investigation concerning imports of electric bicycles originating in the PRC, that led to the adoption of the contested Regulation, insofar as it concerns Giant Electric Vehicle (Kunshan) Co., Ltd and to resume the investigation at the point at which the irregularity occurred ⁽¹⁴⁾.
- (13) The re-opening was limited in scope to the implementation of the judgment of the General Court with regard to Giant.
- (14) On 6 July 2022, the Commission also made imports of electric bicycles, originating in the PRC, manufactured by Giant Electric Vehicle (Kunshan) Co., Ltd, subject to registration and instructed national customs authorities to wait until the outcome of the re-examination is published in the *Official Journal of the European Union* before deciding on any claims for reimbursement of the annulled duties ('the registration Regulation') ⁽¹⁵⁾.
- (15) The Commission informed interested parties of the re-opening and invited them to make their views known in writing and to request a hearing within the time-limit set out in the re-opening notice.
- (16) One interested party, Giant, requested a hearing within the time-limit set out in the re-opening notice and was granted the opportunity to be heard.
- (17) Following final disclosure, both Giant and the EBMA requested hearings and were granted the opportunity to be heard.
- (18) No interested party requested a hearing with the Hearing Officer in trade proceedings.

1.4. Procedural steps for the implementation of the General Court's Judgment

- (19) Following the reopening, the Commission sent information requests to the sampled Union producers and their related trading companies.
- (20) Replies to the information requests were received from all the sampled Union producers.
- (21) The Commission conducted verification visits pursuant to Article 26 of the basic anti-subsidy Regulation at the premises of the following companies:
 - Accell Group (Heerenveen, the Netherlands);
 - Prophete GmbH & Co. KG (Rheda-Wiedenbruck, Germany);
 - Derby Cycle Holding GmbH (Cloppenburg, Germany);
 - Koninklijke Gazelle NV (Dieren, the Netherlands).

⁽¹³⁾ Case T-650/17, Jinan Meide Casting Co., Ltd, ECLI:EU:T:2019:644, paragraphs 333-342.

⁽¹⁴⁾ Notice of reopening of the anti-dumping and anti-subsidy investigations with regard to Commission Implementing Regulation (EU) 2019/73 and Commission Implementing Regulation (EU) 2019/72 imposing measures on imports of electric bicycles from the People's Republic of China following the judgments of 27 April 2022 in cases T-242/19 and T-243/19 (OJ C 260, 6.7.2022, p. 5).

⁽¹⁵⁾ Commission Implementing Regulation (EU) 2022/1162 of 5 July 2022 making imports of electric bicycles originating in the People's Republic of China subject to registration following the reopening of the investigations in order to implement the judgments of 27 April 2022 in cases T-242/19 and T-243/19, with regard to Implementing Regulation (EU) 2019/73 and Implementing Regulation (EU) 2019/72 (OJ L 179, 6.7.2022, p. 38).

1.5. Investigation period

- (22) This investigation covers the period from 1 October 2016 to 30 September 2017 ('the investigation period'). The examination of trends relevant for the assessment of injury covered the period from 1 January 2014 to the end of the investigation period ('the period considered').

2. COMMENTS FROM INTERESTED PARTIES ON THE REOPENING OF THE INVESTIGATION

- (23) The Commission received comments specific to the reopening of the investigation from Giant and the importer Rad Power Bikes NL.
- (24) Giant claimed that pursuant to Article 11(9) of the basic anti-subsidy Regulation, for proceedings initiated pursuant to Article 10(11), an investigation should, whenever possible, be concluded within one year. In any event, such investigations must, in all cases, be concluded within 13 months of initiation, in accordance with the findings made pursuant to Article 13 for undertakings or the findings made pursuant to Article 15 for definitive action. Giant further argued that Article 11.11 of the WTO Agreement on Subsidies and Countervailing Measures ('WTO SCM Agreement') provides that investigations must, except in special circumstances, be concluded within one year, and in no case more than 18 months, after their initiation.
- (25) Giant argued that the mandatory nature of the time limits was confirmed in the context of the WTO SCM Agreement ⁽¹⁶⁾.
- (26) Giant further argued that the Notice of reopening explicitly recognises that the current proceeding is the continuation of the original investigation and since the original anti-subsidy investigation was initiated on 21 December 2017, in order to comply with the mandatory deadline in Article 11(9) of the basic anti-subsidy Regulation, the investigation had to be completed by 20 January 2019. In consequence, they argued, the reopening of the original investigation in July 2022 results in extending the investigation beyond the mandatory time limit for concluding investigations set out in Article 11(9) of the basic anti-subsidy Regulation and is also inconsistent with the time limits set out in Article 11.11 of the WTO SCM Agreement.
- (27) The Commission rejected this argument. According to settled case-law relating to the analogous provision in the basic anti-dumping Regulation, the deadline to conclude an original investigation does not apply to situations where a proceeding is reopened following a court judgment. Thus, Article 11(9) covers only the initial procedures and not those procedures that have been reopened following a judgment of annulment or invalidity. The WTO case cited by Giant appears to be irrelevant since it does not put into question that Article 11.11 of the WTO SCM extends beyond original investigations.
- (28) Giant also argued that the Commission is not entitled to reopen the original anti-subsidy investigation as regards Giant, as the substantive error found by the General Court not only affected the investigation in relation to Giant, but also the overall injury and causation analyses which relied, at least in part, on the findings in relation to Giant. Giant further argued that in order to comply with the General Court's judgment in case T-243/19, the Commission was not entitled to reopen the original investigation, but should repeal the countervailing measures on e-bikes in so far as Giant was concerned.
- (29) Rad Power Bikes NL also argued that the General Court's findings would require the Commission to rescind the measures imposed.
- (30) The Commission disagreed with those claims that it would not be possible to reopen an investigation to cure an illegality found by the European Courts. In fact, the General Court found in *Jindal* ⁽¹⁷⁾ that the Commission can re-open an investigation, resume it at the point at which the illegality occurred, correct the irregularity and re-impose measures during the period of application of the regulation at issue, even in the case of a substantive/methodological error. The Commission also failed to see how any of the WTO provisions or case law cited by Giant would support its assertions in that they do not deal with correction of illegalities after a court case.

⁽¹⁶⁾ Panel Report, *Mexico – Olive Oil*, paragraphs 7.121 and 7.123.

⁽¹⁷⁾ Case T-300/16 *Jindal Saw and Jindal Saw Italia v Commission*.

- (31) Moreover, in this re-opened investigation, as explained in Sections 3 and 4, the Commission has corrected the methodological error, as required by the General Court in its judgement in case T-243/19, by revising the undercutting calculations of Giant. The Commission has also recalculated the injury elimination level of Giant by removing the same methodological error. Given the General Court's conclusion that this issue also affects the overall injury and causality findings, the Commission has revised its analysis of both injury and causality as explained below in Sections 3 and 4. Therefore, the Commission considered that its revised findings fully comply with the General Court's judgement in case T-243/19. Since the revised findings led to the duty level being reduced but not eliminated, it was therefore not necessary to repeal the countervailing measures on e-bikes as far as Giant is concerned. The Commission, therefore, rejected these arguments.
- (32) Giant also argued that, should the Commission continue the reopened investigation, it must also correct all other errors challenged by Giant before the General Court. In particular, Giant argued that in the context of the reopened anti-subsidy investigation, the Commission should also address the errors it made with respect to the assessment of subsidies and more specifically: (i) its finding that a subsidy was granted through the GEV's purchase of engines and batteries; (ii) its calculation of the subsidy amount whereby the Commission wrongfully included benefits which were unrelated to e-bikes released for free circulation in the EU; (iii) its finding that the use of bank acceptance notes constitutes a financial contribution within the meaning of Article 3(1) of the basic anti-subsidy Regulation; (iv) its finding relating to the benefit allegedly conferred by the use of bank acceptance notes; (v) its finding relating to the specificity of the alleged subsidy granted through bank acceptance notes, and (vi) its finding that GEV obtained a benefit through the acquisition of land use rights.
- (33) The Commission rejected this argument. In the General Court's conclusion in paragraph 117 of the judgement in Case T-243/19, the General Court found that the regulation should be annulled, as far as it concerns Giant, because the methodological error found in the calculation of price undercutting was liable to call into question the legality of the contested Regulation by invalidating the Commission's analysis of injury and causality. The Court did not consider it necessary to examine or assess the merits of any other claims put forward by the applicant. As indicated in recitals (8) and (11), Article 266 TFEU provides that the Institutions must take the necessary measures to comply with the General Court's judgments and the remaining findings and conclusions in the contested Regulation which were not contested, or which were contested but not examined by the General Court, remain fully valid. Therefore, since the scope of the reopened investigation is not to review the entire case, but to implement the specific errors found by the General Court, the Commission did not find it necessary to review the subsidy margin of Giant.
- (34) Giant further pointed out that in both the original and the reopened investigations, the Commission had not fully disclosed the information necessary for it to evaluate whether a fair comparison had been made between Giant's export prices and those of the Union industry. Therefore, Giant requested that, in the context of the re-opened investigation, the Commission should disclose relevant information concerning the sales channels of the sampled Union producers.
- (35) Although the Commission maintained its position on confidentiality of the specific details of the sales made by the Union industry on the Union market, the Commission considered it appropriate to inform Giant about the following. The four sampled Union producers sold around 46 % of their sales volume through related traders. A total of 10 related traders sold e-bikes to unrelated companies, in addition to the direct sales made by the sampled producers. Therefore, the direct sales represented around 54 % of the Union sales volume.
- (36) Giant argued that contrary to what the Commission suggested in its Notice of reopening, the Commission was required to carry out a fair comparison, between the prices of the imported e-bikes and the prices of e-bikes sold by the Union producers on the Union market. Giant argued that, pursuant to Article 8(1) and (2) of the basic anti-subsidy Regulation, there is a positive obligation on the Commission to carry out such a price comparison, which can be between the prices of the imported e-bikes and the Union industry's actual prices, to examine the price impact of the imports concerned. This fair comparison should take into account the correct point of competition of the sales prices concerned. It should also take into account differences in whether such sales were of branded products or on an OEM level.

- (37) The Commission took account of the arguments made by Giant and the comments in the General Court's judgment in its revised undercutting, injury, causality and injury elimination analysis and findings in Sections 3 and 4 below.
- (38) Giant also pointed out that the registration Regulation explicitly recognised that 'the final liability for payment of anti-dumping and countervailing duties ... will emanate from the findings of the re-examination' ⁽¹⁸⁾ and therefore, according to Giant, it follows that any final liability can only apply to future imports, i.e. products which enter free circulation after the time when such duties enter into force. Giant argued that the above position is supported by the Opinion of the Advocate General in Case C-458/98 (*IPS*) as well as the views expressed in the past by the Commission itself ⁽¹⁹⁾. Therefore, Giant argued that any recalculated duties could only be imposed with respect to future imports of e-bikes produced by Giant, i.e. e-bikes which will enter free circulation *after* the publication of the Regulations re-imposing the duties. Giant further argued that the re-imposition of recalculated duties with respect to past imports would also be contrary to the nature of the countervailing duties, which are not punitive measures aimed to compensate for past injury suffered by the Union industry but are a means of forestalling future injury ⁽²⁰⁾.
- (39) The Court of Justice has consistently held that Article 10(1) of the basic anti-dumping Regulation does not preclude the re-imposition of anti-dumping duties on imports that were made during the period of application of the regulations declared to be invalid ⁽²¹⁾. The Commission considers that those findings apply equally to countervailing duties since also Article 16 of the basic anti-subsidy Regulation currently in force does not preclude acts from re-imposing countervailing duties on imports that were made during the period of application of the regulations declared to be invalid. Consequently, as explained in recital (14) of the registration Regulation, the resumption of the administrative procedure and the eventual re-imposition of duties cannot be considered as contrary to the rule of non-retroactivity ⁽²²⁾. Consequently, Giant's claim that the duties cannot be re-imposed on imports which entered free circulation prior to the publication of the (future) Commission Implementing Regulation was rejected.
- (40) Rad Power Bikes NL commented that it imported products from other Chinese exporters, which were similar to those imported from Giant and that these imports were subject to duties which were calculated and imposed on the basis of the relevant injury elimination level. It therefore argued that when recalculating the applicable duties for Giant, the Commission must also revise and reduce the applicable duty rates for the other Chinese exporters subject to the duties, both for those granted individual duty rates and for the other non-sampled cooperating Chinese exporters.
- (41) As explained in recital (33), the scope of the reopened investigation is not to review the entire findings of the contested Regulation, but to implement the specific findings made by the General Court, in so far as they concern Giant. The General Court did not annul the contested Regulation as regards other exporting producers. Therefore, the Commission did not find it necessary or appropriate to revise its original findings for the other Chinese exporters subject to the duties. The Commission, therefore, rejected that argument.
- (42) In their comments following the final disclosure Giant reiterated its claims regarding the legality of the re-imposition of Giant's revised countervailing duties retroactively as stated in recital (38). However, as no new arguments were raised, the rejection of its claim is confirmed.

⁽¹⁸⁾ Registration Regulation, recital 22.

⁽¹⁹⁾ Case C-458/98 P, *Industrie des poudres sphériques v Council*, Opinion of Advocate General Cosmas, ECLI:EU:C:2000:138, paragraph 77.

⁽²⁰⁾ Case C-458/98 P, *Industrie des poudres sphériques v Council*, Opinion of Advocate General Cosmas, ECLI:EU:C:2000:138, paragraph 76.

⁽²¹⁾ C-256/16 *Deichmann*, EU:C:2018:187, paragraphs 77 and 78 and C-612/16, *C & J Clark International Ltd v Commissioners for Her Majesty's Revenue & Customs*, judgment of 19 June 2019, paragraph 57.

⁽²²⁾ Case C-256/16 *Deichmann SE v Hauptzollamt Duisburg*, paragraph 79 and Case C-612/16, *C & J Clark International Ltd v Commissioners for Her Majesty's Revenue & Customs*, judgment of 19 June 2019, paragraph 58.

3. RE-EXAMINATION OF GIANT'S UNDERCUTTING MARGIN AND THE INJURY FINDINGS

3.1. Determination of undercutting with respect to Giant

- (43) As noted in recital (3), the General Court found that since the Commission relied on the calculation of price undercutting in the context of Article 8(2) of the basic anti-subsidy Regulation, by taking into account in relation to the prices of Union producers certain elements which it had deducted from Giant's prices (or were not present as regards OEM sales), the Commission did not make a fair comparison when calculating Giant's price undercutting margin. Therefore, the importance or existence of such undercutting had not been properly established.
- (44) As explained in recital (610) of the contested Regulation, the Commission determined the price undercutting during the investigation period by comparing:
- the weighted average sales prices per product type of the four sampled Union producers charged to unrelated customers on the Union market, adjusted to an ex-works level; and
 - the corresponding weighted average prices per product type of the imports from the sampled exporting producers in the PRC to the first independent customer on the Union market, established on a CIF basis with appropriate adjustments for customs duties of 6 % and importation costs; as mentioned at recitals (616) to (618) of the contested Regulation, where sales were made via related traders, the export prices were adjusted in accordance with Article 2(9) of the basic anti-dumping Regulation by analogy. The selling, general and administrative ('SG&A') expenses of the related trader and the profit of a sample of unrelated importers (9 % of the sales price) were deducted.
- (45) In order to ensure a fair comparison between Giant's prices and the prices of the Union producers, the Commission recalculated the undercutting margin of Giant by adjusting the weighted average sales prices of the sampled Union producers referred to in recital (44) in two respects.
- (46) Firstly, where sales were made by the sampled Union producers via related traders, a deduction was made from the sales price to independent customers (of all types) to account for the actual SG&A expenses of the trader and profits (9 %). For one Union producer, a particular arrangement similar to tolling was identified. In this case, where the costs of the related trader concerned production activities, those costs were not deducted. The profit level used in this calculation is the same profit level established for the application of Article 2(9) of the basic anti-dumping Regulation by analogy mentioned in recitals (616) to (618) of the contested Regulation to the sampled exporting producers, and which was calculated from the cooperating unrelated importers.
- (47) Secondly, where it was necessary to compare prices at an OEM level, a further deduction of 2,3 % was made to the relevant Union industry prices to account for design, marketing and research and development (R & D) costs. This deduction was established as outlined in recital (771) of the contested Regulation.
- (48) No further adjustment was deemed necessary for the level of trade in the sense of type of customer because the investigation found that there is no consistent and distinct price difference between sales to traders and retailers in the Union.
- (49) In their comments following final disclosure Giant argued that the comparison between its export prices and those of the Union industry should be made at the point of the first sale to an unrelated customer, without adjustments for SG&A and profit on both sides of the calculation. Giant claimed that this approach was followed by the Commission when implementing the General Court's judgment in the Jindal case. Giant argued that by using this method a fair comparison would be achieved.
- (50) The Commission recalled that the comparison between the exporting producer's and the Union industry's prices in the Jindal case was made at the level of unrelated customers due to the particular circumstances in that case, where the market was geographically divided and competition took place at the level of tenders. Each case is implemented on the basis of its specific facts and circumstances in light of the particular judgment. Giant has failed to explain why the circumstances in this case would warrant the same approach as in the Jindal case and why the approach followed by the Commission is inconsistent with the Court's judgment. The Commission further noted that the export prices in the original investigation were adjusted, where appropriate, for SG&A of the related traders and a notional profit, in accordance with the Commission's practice of applying the same methodology as under Article 2(9) of the basic anti-dumping Regulation by analogy. This approach was explicitly confirmed by the Court of Justice in the Hansol Judgment ⁽²³⁾, which highlighted that it falls within the broad discretion the Commission enjoys in the application of Article 3(2) of the basic anti-dumping Regulation. The claim was, therefore, rejected.

⁽²³⁾ Judgment of 12 May 2022, C-260/20 P, Hansol, paragraph 105.

- (51) Giant further argued that, in the alternative to the claim described in recital (49), for the Union industry's sales made directly to retailers, the Commission should make additional deductions from the Union producer's sales prices for SG&A and profits corresponding to the internal sales departments.
- (52) However, the Commission recalled that the approach outlined in recitals (46) to (48) ensured a fair comparison by adjusting the export prices and those of the Union industry in the same manner for the same sales channels by using the same methodology. This meant that both, the export prices and the Union industry's sales prices were adjusted for SG&A and profit if sales were made via related traders, whereas direct sales were not adjusted. Adjusting the Union industry direct sales prices as suggested by Giant would therefore create an asymmetry to the disadvantage of the Union industry in relation to the export prices from Giant for their corresponding sales, because no such deductions were made to the sales of Giant's producing entity in China for direct sales. This would also be contrary to the judgment of the General Court for the same reasons of asymmetry the Court relied on when it ruled in favour of Giant. In addition, the Commission noted that further adjustments in respect of design, marketing as well as research and development ('R&D') costs and the level of trade have already been made, where appropriate, as explained at recitals (47) and (48), to ensure full symmetry between the respective situations of Giant and the Union industry, in compliance with the judgment. Therefore, this claim was rejected.
- (53) Giant also claimed that its OEM sales should be compared with Union industry sales prices which had been subject to SG&A and profit deductions where appropriate.
- (54) The Commission confirmed that this approach was followed.
- (55) In their comments following the final disclosure, the Union industry argued that the disclosure of the calculations of revised Union industry prices was incorrect because of the methodology employed to incorporate credit notes. The Union producers claimed that this affected both the calculation of net prices and the adjustments of SG&A and profit.
- (56) The Commission evaluated whether the revised methodology, suggested by the sampled Union producers, had any impact on the undercutting and underselling margins. As a consequence, the Commission revised its calculations, which had, however no material impact on those margins. The revised calculations were disclosed to the sampled Union producers and the fact that calculations were revised was also disclosed to Giant. These parties were granted a period to comment.
- (57) In its comments of 13 February 2023 the Union industry pointed out an error in the calculations of the credit notes for one Union producer. Following the correction of this error the undercutting margin of Giant was 11,5 %. The new calculations were disclosed to all interested parties on 14 February 2023 and the parties were granted a further period of time to comment. No further comments were received.
- (58) Also in its comments of 13 February 2023 the Union industry claimed that, in its treatment of credit notes, the Commission should have only calculated the SG&A and profit amounts based on the EXW value of each sale transaction. However, bearing in mind the SG&A was calculated per e-bike and the profit margin was calculated on the invoice value, this claim was rejected.
- (59) The Union industry claimed during the hearing that for all sales where the Commission deducted the profit of the related importer from the Union industry sales prices, the profit rate of 9 % was too high as it was much higher than the target profit established in the original investigation (4,3 %). The claim further explained that the 9 % profit rate was not justified by 'any information on the case file' of the reopened investigation. Giant made a comment to rebut this claim stating that it was not appropriate to change the profit rate applied because there were no grounds to overturn the notional profit rate calculated in the original investigation.

- (60) The rate for target profit and a notional rate for the profit of a related importer were both set in the original investigation (based on data on the case file) and were not scrutinised by the General Court or mentioned in the Judgment which led to the reopening of this investigation. Therefore, the Commission is not bound to re-investigate this matter in the current implementation. In addition, the target profit (i.e. the profit achievable by the Union industry for domestic sales under normal conditions of competition) and the profit of a trader (a notional amount covering profit normally borne by an importer) are two separate concepts and are governed by different provisions of the basic Regulation. A direct comparison between the two concepts is therefore inappropriate and irrelevant to the setting of either profit margin. This claim was therefore rejected.
- (61) The Union industry also claimed that the SG&A and profit deduction was not warranted because of the relationship between two of the Union producers and their related traders. In particular, it was stated that no SG&A and profit should be deducted from the sales price of the sales made via certain traders as the producer was operating under a tolling agreement. The Union industry supplied agreements between the relevant production and sales companies to support their claim.
- (62) Regarding the producer that is also mentioned in recital (61), it had a particular arrangement 'similar to tolling'. The Commission reviewed the exact terms of this arrangement and concluded that a contract manufacturing system was operational, rather than a tolling agreement, and that both the producer and the related trader had SG&A costs. The agreement also demonstrated a contractual relationship between related parties. The Commission maintained therefore that it was not appropriate to fully exclude SG&A and profit deductions from this producer's sales prices via related parties. The Commission did take into account SG&A costs which were associated to costs incurred typically at the related trader and not those for functions normally associated with a producer. Furthermore, the producer concerned had SG&A costs relating to its direct sales. The Commission therefore concluded that SG&A and profit should be deducted from the sales price of the related trader and rejected this claim.
- (63) For the second producer, the Union industry also submitted an agreement between the producer and the related trader to support its claim that the Commission should not deduct SG&A and profit from the sales prices of its related traders. Giant submitted a rebuttal to this argument stating that the approach for the Union industry should be the same as the approach applied to Giant.
- (64) In examining this matter the Commission noted that the agreement submitted for this second producer was also not a tolling agreement, but a manufacturing agreement between related parties, defining the roles of the producer and the related trader and included other clauses such as the methodology for the calculation of transfer prices. The agreement did not confirm that during the IP of the original investigation e-bikes were manufactured under a tolling agreement, or any other arrangement which would mean that it was not appropriate to deduct SG&A costs from the sales prices of the related traders. In fact the agreement demonstrated a contractual relationship between related parties. A related trader also acted as a producer, and it sold e-bikes directly to the market as well as via other related traders. This claim was, therefore, rejected.
- (65) The Union industry also claimed that the sales of one Union producer should be adjusted upwards or not taken into account in the price comparison because they related to sales to supermarket chains and online platforms, rather than other types of retail customers.
- (66) The Commission did not consider it appropriate to exclude such sales because the sample of Union producers selected in the original investigation was deemed to be representative of the Union industry. In addition, in recital (48) it was confirmed that further adjustments to prices, beyond those already made, were not appropriate for different types of customers.
- (67) The Union industry claimed that its OEM sales should not be compared with the export sales unless an adjustment was made to its prices to ensure a fair comparison.

- (68) The Commission noted that the volume of OEM sales by the Union industry was very low and the majority of such sales were not used in the undercutting and underselling calculations because there was no match to an imported type. Therefore, it was concluded that an adjustment for the Union industry's OEM sales should not be considered further as the issue would have no material impact on the undercutting and underselling margins.
- (69) Consequently, the revised undercutting margin during the original investigation period for Giant of 11,5 % is confirmed.

3.2. Determination of undercutting with respect to other Chinese exporters

- (70) In case T-243/19, the General Court noted that the methodological error found, which meant that the Commission did not make a fair comparison in the calculation of Giant's undercutting margin, is likely also to have a bearing on the calculation of price undercutting established in respect of the other sampled exporting producers ⁽²⁴⁾.
- (71) In order to ensure a fair comparison between the prices of the other sampled exporting producers and the prices of the Union producers, the Commission also recalculated the undercutting margins of the other sampled exporting producers, taking into account the issues referred to in recitals (44) to (47).
- (72) The result of the comparisons showed an average undercutting margin for imports from the sampled exporters (including Giant) of 17,1 %. Bearing in mind the revision to the undercutting margin of Giant explained at recital (56) above this figure was finally confirmed at 17,0 %.

3.3. Revised conclusion on injury

- (73) The Commission noted that following the correction of the methodological error relating to the calculation of price undercutting identified by the General Court in case T-243/19 ⁽²⁵⁾, the levels by which Chinese imports have undercut the Union industry's prices have decreased to 17,0 % on average as mentioned in recital (72). Although the levels of undercutting have decreased, there has still clearly been significant price undercutting by the dumped imports from the PRC.
- (74) The Commission's findings with regard to the other injury indicators as mentioned in recitals (681) to (693) of the contested Regulation, remain fully valid.
- (75) Taking into account the revised significant undercutting margins referred to in recital (73) and the evidence of the negative development of nearly all injury indicators explained in recitals (630) to (680) of the contested Regulation, the Commission concluded that the Union industry suffered material injury within the meaning of Article 8(4) of the basic anti-subsidy Regulation.

4. CAUSATION

- (76) The Commission further examined whether there would still be a causal link between the dumped imports and the injury suffered by the Union producers, in view of the revised undercutting margins for imports from the sampled Chinese exporting producers.
- (77) Notwithstanding the reduction in the undercutting margin for all sampled Chinese exporters, this did not alter the fact that imports from the sampled Chinese exporters were undercutting the Union industry's sales prices to a significant extent. Thus, the revised undercutting margins did not alter the original finding made by the Commission about the existence of the causal link between the injury suffered by the Union producers and the subsidised imports from the PRC in recital (718) of the contested Regulation.
- (78) The revised undercutting margins also did not alter the analysis and findings concerning other causes of injury as presented in Section 5.2 of the contested Regulation.

⁽²⁴⁾ Case T-243/19, *Giant Electric Vehicle Kunshan v Commission*, ECLI:EU:T:2022:259, paragraph 113.

⁽²⁵⁾ Case T-243/19, *Giant Electric Vehicle Kunshan v Commission*, ECLI:EU:T:2022:259, paragraph 82.

- (79) In the absence of any further comments, the Commission concluded that the material injury to the Union industry was caused by the dumped imports from the PRC and the other factors, considered individually or collectively, did not attenuate the causal link between the injury and the subsidised imports.

5. RE-EXAMINATION OF THE INJURY MARGIN WITH RESPECT TO GIANT

- (80) Bearing in mind the comments of the General Court in paragraph (115) of the Judgement in case T-243/19, the Commission also recalculated the injury elimination level of Giant.
- (81) In the original investigation the Commission determined the injury elimination level during the investigation period by comparing:
- the weighted average target prices per product type of the four sampled Union producers charged to unrelated customers on the Union market, adjusted to an ex-works level;
 - the corresponding weighted average prices per product type of the imports from the sampled exporting producers in the PRC to the first independent customer on the Union market, established on a CIF basis with appropriate adjustments for customs duties of 6 % and importation costs; where sales were made via related traders, the export prices were adjusted in accordance with Article 2(9) of the basic anti-dumping Regulation by analogy. The SG&A costs of the related trader and the profit of a sample of unrelated importers (9 % of the sales price) were deducted; and
 - where the export prices related to OEM sales, the Union industry target prices were reduced by 2,3 % reflecting the R & D and marketing costs of the sampled Union industry producers, which were not reflected in prices of OEM sales of Giant.
- (82) In order to ensure a fair comparison between Giant's prices and the prices of the Union producers, the Commission recalculated the injury elimination level of Giant by adjusting the weighted average target prices of the sampled Union producers referred to in recital (81).
- (83) Where sales were made by the sampled Union producers via related traders, a deduction was made from the price to independent customers to account for the actual SG&A expenses of the traders and profits (9 %). The SG&A amount varied according to the trader concerned. Where the costs of the related trader concerned did not relate to the marketing of products, but to production activities (such as production planning and sourcing of raw materials), these costs were not deducted because they did not relate to the normal functions of a related trader marketing the products in the Union market. The profit level used in this calculation is the profit level established in the original investigation for the cooperating unrelated importers.
- (84) No further adjustment was deemed necessary to account for the OEM/branding level as this adjustment, amounting to 2,3 %, had already been made.
- (85) No further adjustment was deemed necessary for the level of trade in the sense of type of customer because the investigation found that there is no consistent and distinct price difference between sales to traders and retailers in the Union.
- (86) The claims made by both Giant and the Union industry in their comments to final disclosure in respect of the undercutting calculation at Section 3 apply equally to the underselling margins in this section.
- (87) In the light of the treatment of the comments raised by interested parties the revised underselling margin for Giant is 13,8 %.

6. DEFINITIVE COUNTERVAILING MEASURES

6.1. Injury elimination level

- (88) On the basis of the conclusions reached by the Commission on subsidisation, injury and causation in this re-opened anti-subsidy investigation, a definitive countervailing duty shall be re-imposed on imports of the product concerned originating in China and manufactured by Giant.

- (89) Given that the re-established injury margin for Giant (13,8 %) is higher than the subsidy amount (3,9 %), in accordance with the applicable rules in the original investigation, the countervailing duty rate should be set at the level of the amount of subsidisation. Accordingly, the re-imposed countervailing duty rate for Giant is as follows:

Definitive countervailing duty

Company	Amount of subsidisation	Injury elimination level	Countervailing duty rate
Giant Electric Vehicle (Kunshan) Co., Ltd	3,9 %	13,8 %	3,9 %

- (90) The level of countervailing duty resulting from this investigation, which did not change compared to the level of countervailing duties imposed pursuant to the contested Regulation, applies without any temporal interruption since the entry into force of the contested Regulation (namely, as of 19 January 2019 onwards). Customs authorities are instructed to collect the appropriate amount on imports concerning Giant Electric Vehicle (Kunshan) Co., Ltd.
- (91) All interested parties were informed of the essential facts and considerations on the basis of which it was intended to re-impose a definitive countervailing duty on imports of e-bikes from the PRC from the exporting producer Giant Electric Vehicle (Kunshan) Co., Ltd.
- (92) In view of Article 109 of Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council ⁽²⁶⁾, when an amount is to be reimbursed following a judgment of the Court of Justice of the European Union, the interest to be paid should be the rate applied by the European Central Bank to its principal refinancing operations, as published in the C series of the *Official Journal of the European Union* on the first calendar day of each month.
- (93) The measures provided for in this regulation are in accordance with the opinion of the Committee referred to in Article 25(1) of the basic anti-subsidy Regulation,

HAS ADOPTED THIS REGULATION:

Article 1

1. A definitive countervailing duty is hereby imposed on imports of cycles, with pedal assistance, with an auxiliary electric motor, currently falling under CN codes 8711 60 10 and ex 8711 60 90 (TARIC code 8711 60 90 10), originating in the People's Republic of China and manufactured by Giant Electric Vehicle (Kunshan) Co., Ltd as of 19 January 2019.
2. The rates of the definitive countervailing duty applicable to the net, free-at-Union-frontier price, before duty, of the product described in paragraph 1 and manufactured by Giant Electric Vehicle (Kunshan) Co., Ltd shall be 3,9 % (TARIC additional code C383).

Article 2

The definitive countervailing duty imposed by Article 1 shall also be collected on imports registered in accordance with Article 1 of Implementing Regulation (EU) 2022/1162 making imports of electric bicycles originating in the People's Republic of China subject to registration following the reopening of the investigations in order to implement the judgments of 27 April 2022 in cases T-242/19 and T-243/19, with regard to Implementing Regulation (EU) 2019/73 and Implementing Regulation (EU) 2019/72.

⁽²⁶⁾ Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council of 18 July 2018 on the financial rules applicable to the general budget of the Union, amending Regulations (EU) No 1296/2013, (EU) No 1301/2013, (EU) No 1303/2013, (EU) No 1304/2013, (EU) No 1309/2013, (EU) No 1316/2013, (EU) No 223/2014, (EU) No 283/2014, and Decision No 541/2014/EU and repealing Regulation (EU, Euratom) No 966/2012 (OJ L 193, 30.7.2018, p. 1).

Article 3

Customs authorities are directed to discontinue the registration of imports, established in accordance with Article 1(1) of Implementing Regulation (EU) 2022/1162, which is hereby repealed.

Article 4

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, 17 March 2023.

For the Commission
The President
Ursula VON DER LEYEN

COMMISSION IMPLEMENTING REGULATION (EU) 2023/611**of 17 March 2023****amending Regulation (EC) No 88/97 on the authorisation of the exemption of imports of certain bicycle parts originating in the People's Republic of China from the extension by Council Regulation (EC) No 71/97 of the anti-dumping duty imposed by Council Regulation (EEC) No 2474/93**

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'),

Having regard to Council Regulation (EC) No 71/97 of 10 January 1997 extending the definitive anti-dumping duty imposed by Regulation (EEC) No 2474/93 on bicycles originating in the People's Republic of China to imports of certain bicycle parts from the People's Republic of China, and levying the extended duty on such imports registered under Regulation (EC) No 703/96 ⁽²⁾, and in particular Article 3 thereof,

Whereas:

- (1) An anti-dumping duty ('the extended duty') currently applies on imports into the Union of essential bicycle parts originating in the People's Republic of China ('the PRC') as a result of the extension by Regulation (EC) No 71/97.
- (2) Pursuant to Article 3 of Regulation (EC) No 71/97 an exemption scheme should be established in order to authorise the exemption of imports of essential bicycle parts which do not circumvent the anti-dumping duty ('the Exemption Scheme'). That Exemption Scheme is governed by Article 13(4) of the basic Regulation. The Exemption Scheme exempts assemblers that are found not to be engaged in practices circumventing the anti-dumping measure on bicycles to import Chinese bicycle parts free of anti-dumping duty.
- (3) The legal framework for operating the Exemption Scheme was provided for in Commission Regulation (EC) No 88/97 ⁽³⁾ ('the Exemption Regulation') as amended by Regulation (EU) No 512/2013 ⁽⁴⁾, Implementing Regulation (EU) 2015/831 ⁽⁵⁾ and Implementing Regulation (EU) 2020/1296 ⁽⁶⁾.
- (4) As provided for in recital (44) of Regulation (EC) No 71/97, the Commission keeps the exemption system constantly under review so that it can be adapted where necessary to take account of the experience acquired through the operation of that system.
- (5) The purpose of this Commission Implementing Regulation amending the Exemption Regulation is to adapt and improve the latter based on the most recent experiences and developments that occurred subsequent to the latest amendment by Implementing Regulation (EU) 2020/1296.

⁽¹⁾ OJ L 176, 30.6.2016, p. 21.

⁽²⁾ OJ L 16, 18.1.1997, p. 55.

⁽³⁾ Commission Regulation (EC) No 88/97 of 20 January 1997 on the authorisation of the exemption of imports of certain bicycle parts originating in the People's Republic of China from the extension by Council Regulation (EC) No 71/97 of the anti-dumping duty imposed by Council Regulation (EEC) No 2474/93 (OJ L 17, 21.1.1997, p. 17).

⁽⁴⁾ Commission Regulation (EU) No 512/2013 of 4 June 2013 amending Regulation (EC) No 88/97 on the authorisation of the exemption of imports of certain bicycle parts originating in the People's Republic of China from the extension by Council Regulation (EC) No 71/97 of the anti-dumping duty imposed by Council Regulation (EEC) No 2474/93 (OJ L 152, 5.6.2013, p. 1).

⁽⁵⁾ Commission Implementing Regulation (EU) 2015/831 of 28 May 2015 updating the list of parties exempted from the extended anti-dumping duty on certain bicycle parts originating in the People's Republic of China pursuant to Regulation (EC) No 88/97 following the screening initiated by Commission Notice 2014/C 299/08 (OJ L 132, 29.5.2015, p. 32).

⁽⁶⁾ Commission Implementing Regulation (EU) 2020/1296 of 16 September 2020 amending Regulation (EC) No 88/97 on the authorisation of the exemption of imports of certain bicycle parts originating in the People's Republic of China from the extension by Council Regulation (EC) No 71/97 of the anti-dumping duty imposed by Council Regulation (EEC) No 2474/93 (OJ L 303, 17.9.2020, p. 20).

- (6) In order to enhance legal certainty and transparency, the definition of 'assembler' should be added and other formal adjustments should be introduced to streamline the wording of the Exemption Regulation and update the references to other acts of the Union to their latest version, including the TARIC structure set out in Annex III.
- (7) Moreover, Annex I listing parties under examination pursuant to Article 6 of the exemption Regulation and Annex II listing parties exempted pursuant to Article 7 of the exemption Regulation should be updated. However, at the moment of the adoption of this Regulation the parties listed under TARIC additional code 8605, A576 and C009 are subject to re-assessment of the exemption authorisation granted to them respectively. The outcome of this re-assessment will be subject to a separate legal act.
- (8) Under the Exemption Scheme, as set out in Article 5(2) of the Exemption Regulation, the competent authorities of the Member States may make the suspension of payment of the extended duty subject to the provision of a guarantee of the extended duty. However, this provision is not compulsory and from the experience acquired through the implementation of the Exemption Scheme, the Commission notes that this creates potential problems of discrimination and gaps as regards enforcement of the provisions of the Exemption Regulation.
- (9) Against this background, the Commission considers it necessary to introduce a compulsory provision of a guarantee in case a suspension is granted ensuring equal treatment and proper enforcement.
- (10) Furthermore, when the applicant withdraws the request for exemption ('the request'), or the request is subsequently held inadmissible or rejected, the extended duty subject to suspension may not be recovered. In particular, the effects of the withdrawal of the request are not specifically regulated in the Exemption Regulation as amended. The Commission considers that the compulsory provision of the guarantee should ensure the recovery of the extended duty also in cases of subsequent inadmissibility, rejection and withdrawal of the request.
- (11) Moreover, the Commission considers it appropriate to regulate expressly the effects of the withdrawal of the request. Therefore, in case of withdrawal, the request should be considered not to have been lodged and the suspension of the payment of the extended duty should be lifted. This approach would be similar to Article 5(8) of the basic Regulation.
- (12) In conjunction therewith, the Commission further considers it appropriate to underline the provisional effects of the suspension, compared to the longer-term effects of the exemption. To this end, references to exemption should be coupled or replaced by references to suspension, where needed.
- (13) Having reviewed the experience acquired in operating the Exemption Scheme, the Commission considers it necessary to introduce certain amendments to ensure its proper functioning and enforcement.
- (14) Firstly, the Commission notes that the Exemption Regulation provides for the possibility to apply again for the Exemption Scheme after 12 months from the rejection of a request or from the revocation of the exemption. This timeframe is not long enough to align the assembly operation with the conditions to benefit from the Exemption Scheme, notably those listed in Articles 4, 5 and 8.
- (15) Therefore, the Exemption Regulation should provide for a longer timeframe of at least 36 months before an applicant can re-submit a request for exemption. Moreover, the 36-month foreclosure period should apply also in respect to requests rejected at the admissibility stage.
- (16) Furthermore, the Commission notes that it is essential to have the possibility to verify that exempted parties comply with anti-circumvention rules with respect to imports of essential bicycle parts.

- (17) Therefore, the Exemption Regulation should oblige exempted parties or parties under examination to keep record of the essential bicycle parts delivered to them, and of the use made of those parts, for a period longer than the 3 years currently provided, corresponding to at least 5 years. This timeframe would encompass the duration of anti-circumvention investigations and other proceedings in different policy areas, such as customs or anti-fraud proceedings.
- (18) With respect to enforcement, the Commission notes that, when a review of the exempted party is initiated, the exemption remains in place during the review proceedings. In case the exemption is revoked, the extended duty which has not been paid during the review cannot be recovered.
- (19) Therefore, in such a case, the Exemption Regulation should specify that the imports of essential bicycle parts of the parties under review should be subject to registration during the period the review investigation is carried out, pending the results of that review, to ensure that, should the review result in a revocation of the exemption, measures may subsequently be applied against those imports from the date of such registration.
- (20) The Commission further notes that, when an exempted party is found to be misdeclaring the Chinese origin of products, this has a direct impact on the compliance with the obligations of exempted parties, notably the obligations under Article 8 of the Exemption Regulation.
- (21) Therefore, in such instances, the Exemption Scheme should provide for the initiation of a review of the exemption granted to a party found to have misdeclared the Chinese origin of imported bicycle parts.
- (22) In addition, repeated customs misdeclarations of any bicycle parts by an exempted party should result in the revocation of the exemption.
- (23) An exemption should also be revoked when an exempted party is found to engage in practices circumventing the extended duty, inter alia, by undermining the remedial effects of the duty by importing significant quantities. Article 14(c) of the Exemption Regulation implies that the remedial effects of the duty will be undermined when 300 or more units per type of essential bicycle parts are either declared for free circulation by a party or are delivered to it.
- (24) To ensure legal certainty and transparency, this threshold should be made explicit in the Exemption Regulation.
- (25) The Commission further considers it appropriate to clarify the interpretation of the threshold established in Article 14(c). In this respect, the threshold of less than 300 units per type of essential bicycle parts on a monthly basis should refer to the monthly average of units per type of essential bicycle parts during periods of 12 months starting from the date of entry into force of the relevant end-use authorisation. In any case, the total of one or more periods cannot be longer than the validity period of the relevant end-use authorisation.
- (26) In relation to end-use authorisations granted by the relevant authorities of the Member States, the Commission notes that an exempted party which does not reach the threshold for the application of the Exemption Scheme mentioned above would still benefit from the exemption granted, despite not meeting one of the requirements for the admissibility of the request.
- (27) Therefore, the Exemption Regulation should allow for the revocation of exemptions for parties whose imports are below the threshold indicated in Article 14(c) of the Exemption Regulation.
- (28) Moreover, a party under examination can under the current rules apply for an end-use authorisation and benefit from both statuses, despite the fact that the two tools are mutually exclusive.
- (29) Therefore, the category of parties eligible for an end-use authorisation should exclude both an exempted party and a party under examination under the Exemption Scheme.

- (30) The Commission further considers it useful to recall that Regulation (EU) No 512/2013 as referred to in recital (3) clarified that bicycle parts used for the assembly of bicycles fitted with an auxiliary motor are subject neither to the anti-dumping duty nor to the extended anti-dumping duty and therefore, the assembly operations of such bicycles remain outside the scope of Regulation (EC) No 71/97 and consequently of the Exemption Regulation.
- (31) For reasons of legal certainty and in accordance with the procedures regulating implementing acts, including in trade defence proceedings, the Exemption Regulation should state that the decision concluding the review investigation should be a Commission regulation adopted in accordance with the examination procedure referred to in Article 5 of Regulation (EU) No 182/2011 of the European Parliament and of the Council ⁽⁷⁾.
- (32) In accordance with the principle of sound administration, the amendments to the Exemption Regulation provided for in this Regulation are to apply as soon as possible to all new and to all pending investigations.
- (33) Regulation (EC) No 88/97 should therefore be amended accordingly.
- (34) The measures provided for in this Regulation are in accordance with the opinion of the Committee established by Article 15(1) of the basic Regulation,

HAS ADOPTED THIS REGULATION:

Article 1

Regulation (EC) No 88/97 is amended as follows:

- (1) in Article 1, the definitions of ‘extended duty’, ‘assembly operation’ and ‘exempted party’ are replaced by the following respectively:
- ‘— “extended duty” means the anti-dumping duty imposed by Regulation (EEC) No 2474/93, as extended by Article 2 of Regulation (EC) No 71/97 (hereinafter “the Reference Regulation”), and as maintained by subsequent Regulations,’
 - ‘— “assembly operation” means an operation in which essential bicycle parts are brought in for the assembly or completion of bicycles or of bicycle parts,’
 - ‘— “exempted party” means any party whose assembly operations have been found to fall outside the scope of Article 13(2) of Regulation (EU) 2016/1036 ^(*) and which has been exempted pursuant to Article 7 or 12 of this Regulation,
- (*) 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 (OJ L 176, 30.6.2016, p. 21).’
- (2) the definition of ‘assembler’ is added to Article 1 as follows:
- ‘— “assembler” means any party that performs an assembly operation.’;
- (3) the definition of ‘the remedial effect of measures’ is added to Article 1 as follows:
- ‘— “the remedial effects of the duty are being undermined”, as referred to in Article 13(2)(c) of Regulation (EU) 2016/1036, in terms of quantities, means that, on a monthly basis, sales of the products resulting from the assembly operations exceed 299 bicycles or 299 units of a single type of essential bicycle parts.’;
- (4) the title of Article 2 is replaced by the following:

‘Article 2

Exemption and suspension of imports from the extended duty’;

⁽⁷⁾ Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by Member States of the Commission’s exercise of implementing powers (OJ L 55, 28.2.2011, p. 13).

- (5) Article 2(2) is replaced by the following:

‘2. The payment of the extended duty on imports of essential bicycle parts shall be suspended where they are declared for free circulation by, or on behalf of, a party under examination.’;

- (6) the address indicated in Article 3(1) is replaced by the following:

‘European Commission
Directorate-General for Trade
Directorate G Trade Defence
Rue de la Loi/Wetstraat 200
1049 Bruxelles/Brussel
BELGIQUE/BELGIË
Email: trade-bicycle-parts@ec.europa.eu’;

- (7) Article 3(2) is replaced by the following:

‘2. Upon receipt of a request, the Commission shall acknowledge receipt forthwith.’;

- (8) Article 4(1)(b) is replaced by the following:

‘(b) it provides *prima facie* evidence that the applicant’s assembly operations fall outside the scope of Article 13(2) of Regulation (EU) 2016/1036; and’;

- (9) Article 4(1)(c) is replaced by the following:

‘(c) the applicant has not, within the 36 months preceding the request, been refused authorisation of exemption pursuant to this Article or Article 7(3) or (4), or had an exemption revoked pursuant to Article 10.’;

- (10) Article 4(4) is replaced by the following:

‘4. Where a request is held inadmissible, it shall be rejected by a Decision in accordance with the procedure referred to in Article 13(4) of Regulation (EU) 2016/1036.’;

- (11) Article 5 is replaced by the following:

‘Article 5

Suspension of payment of the duties

1. As from the date of receipt of a request that has been declared admissible pursuant to Article 4, and pending a decision on its merits pursuant to Articles 6 and 7, payment of the customs debt in respect of the extended duty pursuant to Article 2(1) of the Reference Regulation shall be suspended in respect of any imports of essential bicycle parts declared for free circulation by the party under examination. A period of not less than 6 months prior to the receipt of the request is taken into consideration in order to establish *prima facie* compliance with the conditions set out in Article 4(1) and (2).

2. The competent authorities of the Member States shall make the suspension of payment of the extended duty subject to the provision of a guarantee of the extended duty in accordance with Title III, chapter 2 of the Union Customs Code (*), in the event that the request is subsequently held inadmissible pursuant to Article 4(4), withdrawn pursuant to Article 7(5), or rejected pursuant to Article 7(3) or (4).

(*) Regulation (EU) No 952/2013 of the European Parliament and of the Council of 9 October 2013 laying down the Union Customs Code (OJ L 269, 10.10.2013, p. 1).’;

- (12) Article 6(2) is replaced by the following:

‘2. Any party under examination shall ensure that, at any time, essential bicycle parts which it declares for free circulation are either used in its assembly operations, or assembly of other products, destroyed, or re-exported. It shall keep records of the essential bicycle parts delivered to it – and of the use made of them. These records shall be retained for 5 years from the date of suspension. The records and any necessary additional evidence and information shall be communicated to the Commission upon request.’;

(13) Article 7 is replaced by the following:

'Article 7

Decision

1. Where the facts as finally ascertained show that the applicant's assembly operations do not fall within the scope of Article 13(2) of Regulation (EU) 2016/1036, the applicant's exemption from the extended duty shall be authorised in accordance with the procedure referred to in Article 13(4) of Regulation (EU) 2016/1036.
2. The decision shall have retroactive effect as from the date of receipt of the duly substantiated request referred to in Article 4(1). The applicant's customs debt pursuant to Article 2(1) of the Reference Regulation shall be considered void from that date.
3. Where the criteria for exemption are not fulfilled, the request shall be rejected in accordance with the procedure referred to in Article 13(4) of Regulation (EU) 2016/1036 and the suspension of the payment of the extended duty referred to in Article 5 shall be lifted.
4. Any breach of obligations under Article 6(2) or any false declaration relating to a decision may constitute a reason for rejecting the request.
5. Where a request for exemption is withdrawn, it shall be considered not to have been lodged and the suspension of the payment of the extended duty referred to in Article 5 shall be lifted.;

(14) Article 8(1)(a) is replaced by the following:

'(a) its assembly operations remain outside the scope of Article 13(2) of Regulation (EU) 2016/1036;'

(15) Article 8(2) is replaced by the following:

'2. An exempted party shall keep records of the essential bicycle parts of which it receives deliveries and of the use made of them. It shall retain those records and appropriate supporting evidence for 5 years. Those records shall be made available to the Commission on request.'

(16) Article 9 is replaced by the following:

'Article 9

Review

1. The Commission may on its own initiative review the situation of an exempted party to verify that it respects its obligations under Article 8, including any matters related thereto.
2. A review shall consist of an examination covering a period which may be shorter than 6 months.
3. A review shall be initiated by Commission regulation after informing Member States. As of the date of the initiation of the review, imports from the party under review shall be registered pursuant to Article 14(5) of the basic Regulation, to ensure that, should the review result in a revocation of the exemption, measures may subsequently be applied against those imports from the date of such registration.
4. If an exempted party engages in customs misdeclaration of essential bicycle parts of Chinese origin, the Commission may initiate a review within the meaning of the first paragraph.
5. Investigations shall be carried out by the Commission. The Commission may be assisted by customs authorities and the investigation shall be concluded by Commission regulation acting in accordance with the examination procedure referred to in Article 15(3) of Regulation (EU) 2016/1036.;

(17) Article 10 is replaced by the following:

‘Article 10

Revocation of an exemption

An exemption shall be revoked in accordance with the procedure referred to in Article 13(4) of Regulation (EU) 2016/1036, after the exempted party has been given an opportunity to comment:

- where a review has shown that the exempted party’s assembly operations fall within the scope of Article 13(2) of Regulation (EU) 2016/1036, or
- where the exempted party is not using essential bicycle parts for the assembly operations in quantities above the threshold set out in Article 14(c), including where the party has been wound up or has otherwise ceased its assembly operations, or
- at any rate, in the event of a repeated customs misdeclaration of any bicycle part, or
- in the event of a breach of the party’s obligations pursuant to Article 8, or
- in the event of a lack of cooperation after the adoption of the exemption decision.’;

(18) Article 13 is replaced by the following:

‘Article 13

Procedural provisions

The relevant provisions of Regulation (EU) 2016/1036 concerning:

- the conduct of investigations (Article 6(2), (3), (4) and (5)),
- verification visits (Article 16),
- non-cooperation (Article 18), and
- confidentiality (Article 19),

shall apply to examinations pursuant to this Regulation.’;

(19) the first paragraph of Article 14 is replaced by the following:

‘Where imports of essential bicycle parts are declared for free circulation by a person other than an exempted party or a party under examination pursuant to Article 5, as from the date of entry into force of the Reference Regulation, they shall be exempted from the application of the extended duty if declared in accordance with the TARIC structure in Annex III and subject to the conditions laid down in Article 254 of the Union Customs Code, which shall be applicable *mutatis mutandis*, where:’;

(20) Article 14(b) is replaced by the following:

‘(b) the essential bicycle parts are delivered to another holder of an authorisation for the end-use procedure within the meaning of Article 254 of the Union Customs Code; or’;

(21) the first sentence of Article 14(c) is replaced by the following:

‘on a monthly basis, less than 300 units per type of essential bicycle parts are, on average, either declared for free circulation by a party or are delivered to it. The time limit to calculate that average will not exceed 12 months, whereby the first period starts from the date of entry into force of the concerned end-use authorisation, and will in no case exceed its period of validity.’;

(22) Article 15(2) is replaced by the following:

‘2. Where the parties referred to in paragraph 1 are found to have declared for free circulation or received deliveries of quantities of essential bicycle parts above the threshold set out in Article 14(c), or where they fail to cooperate with the examination, they shall no longer be presumed to fall outside the scope of Article 13(2) of Regulation (EU) 2016/1036, and any exemption authorisation granted to such parties shall be revoked retrospectively. After the party concerned has been given an opportunity to comment, those findings shall be notified to the competent authorities of the Member States.’;

- (23) in Article 15(3) the word 'may' is replaced by 'shall';
- (24) in Article 18 the word '*Communities*' is replaced by '*Union*';
- (25) Annexes I, II and III are replaced by Annexes I, II and III to this Regulation;
- (26) Annex IV is repealed.

Article 2

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

It shall apply to all exempted parties as of its entry into force. For the avoidance of doubt, the obligations introduced pursuant to Article 1(15) only apply to records held by previously exempted parties 24 months after the entry into force of this Regulation.

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

Done at Brussels, 17 March 2023.

For the Commission
The President
Ursula VON DER LEYEN

ANNEX I

Parties under examination

TARIC additional code	Name	Address	Date of effect
C557	Berria Bike SL	Calle Blasco de Garay 19, 02600 Villarrobledo, Spain	30.3.2022
C720	Propain Bicycles GmbH	Schachenstraße 39, 88267 Vogt, Germany	1.7.2021
C860	Profil Bicycles CZ s.r.o.	Hněvotín 31, 783 47 Hněvotín, Czechia	20.2.2022
C863	Decathlon Sp. Z.o.o.	ul. Geodezyjna 76, 03-290 Warszawa, Poland	21.3.2022

ANNEX II

Updated list of exempted parties

TARIC additional code	Name	Address	Date of effect
8005	Gruppo Bici S.p.A.	Via Pitagora 15, 47521 Cesena (FO), Italy	27.2.1998
8062	Nikos Maniatopoulos S.A.	Kosti Palama & Solonos, 26504 Agios Vasileios-Patras, Greece	22.1.1997
8065	Arcade Cycles	78 Impasse Philippe Gozola ZA Acti Est Parc Eco, 85000 La Roche-sur-Yon, France	27.1.1997
8068	Cicli Esperia S.p.a.	Viale Enzo Ferrari 8/10/12 30014 Cavarzere (VE), Italy	30.1.1997
8069	Orbea S. Coop Ltd.	Poligono Industrial Goitondo s/n, 48269 Mallabia-Bizkaia, Spain	31.1.1997
8071	Yakari S.p.A.	Via Kennedy 44, 25028 Verolanuova (BS), Italy	6.2.1997
8073	Van den Berghe N.V.	Industriepark noord 24, 9100 Sint-Niklaas, Belgium	11.2.1997
8075	Alpina di Montevicchi Manolo & C. s.a.s.	Via Archimede 485, 47521 Cesena (FO), Italy	13.2.1997
8078	Jan Janssen Fietsen B.V.	Voltweg 11, 4631SR Hoogerheide, Netherlands	19.2.1997
8079	F.I.V. Edoardo Bianchi S.p.A.	Via delle Battaglie 5, 24047 Treviglio (BG), Italy	20.2.1997
8080	Etablissements Savoye et Cie	Rue de l'industrie, 01470 Serrières de Briord, France	5.3.1997
8081	Scout s.n.c	Via Pogliano 36, 20020 Lainate (MI), Italy	6.3.1997
8082	Órbita-Bicicletas Portuguesas Lda	Rua da Fonta Nova 616, Povia da Carvalha, 3750-720 Recardães, Portugal	12.3.1997
8083	Établissements René Valdenaire S.A.	Rue des Poncées, 88200Saint-les-Remiremont, France	13.3.1997
8084	Schiano S.r.l.	Via Viggiano 44, 80020 Frattaminore (NA), Italy	14.3.1997
8085	Decathlon Produzione Italia S.r.l.	Via Buonarroto 39, 20145 Milano, Italy	3.4.1997
8088	Denver S.r.l.	Via Primo Maggio 32, 12025 Dronero (CN), Italy	28.2.1997
8091	Azor Bike B.V.	Marconistraat 7a, 7903AG Hoogeveen, Netherlands	30.6.1997

8205	Cicli Frera S.n.c. di Antonio e Vittorio Fontana & C.	Viale dell'industria 6, 35020 Arzergrande (PD), Italy	18.2.1998
8296	Inter bike – Importação e Exportação Lda	Zona Industrial de Vagos Lote 27, PO Box 132, 3840 385 Vagos, Portugal	17.6.1998
8328	Giant Europe Manufacturing B.V.	Pascallaan 66, 8218 Lelystad, Netherlands	10.7.1997
8330	NV Minerva	Schoebroekstraat 38, 3583 Paal-Beringen, Belgium	9.7.1997
8489	Cycle-Union GmbH	An der Schmiede 4, 26135 Oldenburg, Germany	6.1.1998
8490	ZPG GmbH & Co. KG	Ludwig-Hüttner Straße 5-7, 95679 Waldershof, Germany	16.3.1998
8491	Thompson	Lessensestraat 110, 9500 Geraardsbergen, Belgium	22.4.1998
8522	Flanders NV	Daalkouterlaan 1, 9550 Herzele, Belgium	30.9.1997
8523	Ghost-Bikes GmbH	An der Tongrube 3, 95652 Waldsassen, Germany	19.9.1997
8524	Kurt Gudereit GmbH & Co. KG Fahrradfabrik	Am Strebkamp 14, 33607 Bielefeld, Germany	22.9.1997
8604	Giubilato Cicli S.r.l.	Via Pavane 6/A, 36065 Mussolente (VI), Italy	27.11.2003
8605	Cicli Elios S.r.l. ⁽⁹⁾	Via G. Ferraris 996/1030, 45021 Badia Polesine (RO), Italy	15.10.1998
8609	Koninklijke Gazelle N.V.	Wilhelminaweg 8, 6951BP Dieren, Netherlands	29.6.2005
8612	Tecno Bike S.r.l.	Via del Lavoro 22, 61029 Canavaccio di Urbino (PU), Italy	13.1.1999
8624	Berg Toys B.V.	Stevinlaan 2, 6716WB Ede, Netherlands	12.3.1999
8748	All Bike' s S.r.l.	Via Caduti sul Don 15, 12020 Villar S. Costanzo (CN), Italy	28.10.1997
8749	Bikkel Bikes Group B.V.	Magnesiumstraat 45, 6031RV Nederweert, Netherlands	18.11.1997
8750	Ludo N.V.	Karel Van Miertstraat 7, 3070 Kortenberg, Belgium	24.11.1997
8767	Planer'Fun S.A.	les 4 chevaliers, Rond-point de la Republique, 17180 Périgny, France	12.2.1998
8768	Cyclopodilatiki S.A.	Minotaurou 16, 54627 Thessaloniki, Greece	9.2.1998
8973	Fahrradfabrik Schauuff GmbH & Co. KG	Wässerscheidt 56, 53424 Remagen, Germany	24.1.1997
8979	W.S.B. Hi-Tech Bicycle Europe B.V.	De Roef 15, 9206AK Drachten, Netherlands	5.2.1997

8981	Olmo Giuseppe S.p.A.	Via Poggi 22, 17015 Celle Ligure (SV), Italy	6.7.1998
8983	Mandelli s.r.l.	Via Tommaso Grossi 5, 20841 Carate Brianza (MB), Italy	12.2.1997
A045	Simplon Fahrrad GmbH	Oberer Achdamm 22, 6971 Hard, Austria	29.9.1999
A087	Bottecchia Cicli S.r.l.	Viale Enzo Ferrari, 15/17 30014 Cavarzere (VE), Italy	10.8.2005
A088	Cicli Adriatica S.r.l. Uninominale	Via Toscana 13, 61122 Pesaro (PS), Italy	14.12.1999
A090	Intersens Bikes & Parts B.V.	Bedrijvenpark Twente 170, 7602KE Almelo, Netherlands	10.12.1999
A162	Fratelli Zanoni S.r.l.	Via Castiglioni 27, 20010 Arluno (MI), Italy	7.3.2000
A163	Speedcross s.r.l.	Corso Italia 20, 20020 Vanzaghella (MI), Italy	30.3.2000
A167	Cicli Olympia S.r.l.	Via Galileo Galilei 12/A, 35028 Piove di Sacco (PD), Italy	30.5.2000
A168	EGC s.r.l.	Corso Ventidue Marzo 32/1, 20135 Milano (MI), Italy	19.5.2000
A172	Lenardon Lida	Via Provinciale 5, 33098 San Martino al Tagliamento (PN), Italy	3.5.2000
A201	Kokotis A. Bros S.A.	5th klm of Larissa-Falani, 41500 Larissa, Greece	3.7.2000
A221	GTA My Bicycle s.a.a.	Via Borgo Rossi 22, 35028 Piove di Sacco (PD), Italy	5.12.2001
A227	IKO Sportartikel Handels GmbH	Kufsteiner Strasse 72, 83064 Raubling, Germany	7.9.2000
A231	Velomarche di Giunta Giancarlo & C. s.n.c.	Via Piemonte 5/7, 61022 fraz. Montecchio, Vallefoglia (PS), Italy	13.12.2000
A232	Fabbrica Biciclette Trubbiani S.r.l.	Via Arno,1, Santa Maria in Selva, 62010 Treia (MC), Italy	3.1.2001
A233	VICINI di Vicini Ottavio e Figli s.n.c.	via dell'Artigianato 284, 47521 Cesena (FO), Italy	1.1.2000
A247	AT Zweirad GmbH	Zur Steinkuhle 2, 48341 Altenberge, Germany	15.1.2001
A249	F.A.R.A.M. S.r.l.	Località Nucleo Industriale, 02015 Cittaducale (RI), Italy	22.2.2001
A271	Cicli Lombardo S.p.A.	Via Roma 223, 91012 Buseto Palizzolo (TP), Italy	23.5.2001
A288	Paul Lange & Co. OHG	Hofener Strasse 114, 70372 Stuttgart, Germany	27.4.2000
A320	RGVS Ibérica Unipessoal Lda	Rua Central de Mandim-Barca, Castelo da Maia, 4475-023 Maia, Portugal	22.5.2001

A326	Cicli Casadei S.r.l.	Via dei Mestieri 23, 44020 fraz. San Giuseppe, Comacchio (FE), Italy	1.1.2002
A327	Dino Bikes S.p.A.	Via Cuneo 11, 12011 Borgo San Dalmazzo (CN), Italy	1.1.2002
A346	Diamant Fahrradwerke GmbH	Schönaicher Straße 1, 09232 Hartmannsdorf, Germany	1.9.2001
A359	Biciclasse C.S. S.r.l.	Localita' Staglioni Area Industriale SNC, 84020 Oliveto Citra (SA), Italy	1.3.2002
A360	G.F.M. Bike di Franco Ingarao	Contrada Consolazione, 94011 Agira (EN), Italy	18.3.2002
A377	F.A.A.C. s.n.c. di Sbrissa F.lli & C.	Via Monte Antelao 11, 31037 Loria (TV), Italy	23.4.2002
A384	Toim S.L.	Calle Rio Jarama 90, Poligono Industrial de Toledo 45007 Toledo, Spain	7.5.2002
A402	Cicli Roveco di Veronese Paolo & C. s. a.s.	Via Umberto I 508, 45023 Costa Di Rovigo (RO), Italy	12.1.2002
A403	Telai Olagnero S.r.l.	Strada Valle Maira 141, 12020 Roccabruna (CN), Italy	18.7.2002
A407	Sangal – Indústria de Veículos Lda	Rua do Serrado, Apartado 21, 3781-908 Sangalhos, Portugal	15.10.2001
A412	Atala S.p.A.	Via della Guerrina 108, 20900, Monza (MB), Italy	23.9.2002
A413	Norta N.V.	Stradsestraat 39, 2250 Olen, Belgium	24.9.2002
A415	Böttcher Fahrräder GmbH	Waldstraße 3, 25746 Wesseln, Germany	7.3.2001
A432	Star Due S.r.l.	Via De Gasperi 55, 31010 fraz. Coste, Maser (TV), Italy	31.1.2003
A436	Motomur S.L.	Avda. Castillo de la asomada 6, 30120 El Palmar (Murcia), Spain	11.2.2003
A445	Star Ciclo, Montagem Comercialização de Bicicletas Lda	Zona industrial de Barro 402, 3750-353 Águeda, Portugal	13.5.2003
A469	Kettler Alu-Rad GmbH	Longericher Straße 2, 50739 Köln, Germany	20.6.2003
A485	SFM GmbH	Strawinskystraße 27b, 90455 Nürnberg, Germany	4.6.2003
A487	IMACYCLES – Acessorios Para Bicicletas e Motociclos Lda	Zona Industrial de Oiã, Apartado 117 Lote 5, Oiã 3770 059 Oliveira do Bairro, Portugal	25.9.2003
A500	Bicicletas de Castilla y León S.L.	Barrio Gimeno 5, 09001 Burgos, Spain	9.10.2003
A533	Special Bike Società Cooperativa	Via Nizza 20, 71042, Cerignola (FG), Italy	22.1.2008

A534	Accell Hunland Kft.	Parkoló tér 1, 5091 Tószeg, Hungary	1.5.2004
A535	BELVE s.r.o.	Holubyho 295, 916 01 Stará Turá, Slovakia	4.5.2004
A536	Bike Fun International s.r.o.	Areál Tatry 1445/2, 74221 Kopřivnice, Czechia	1.5.2004
A537	BPS Bicycle Industrial s.r.o.	Šumavská 779/2, 787 01 Šumperk, Czechia	1.5.2004
A539	IB Sp. z o.o. Zakład Pracy Chronionej	ul. Miłośników Podhala 1, 34-425 Biały Dunajec, Poland	1.5.2004
A540	Ideal Europe Sp. z o.o.	Ul. Bohaterów walk nad bzurą 2, 99-300 Kutno, Poland	1.5.2004
A542	Biuro Ekonomiczno-Handlowe Jan Zasada Sp. z o.o.	ul. Fabryczna 6, 98-300 Wieluń, Poland	1.5.2004
A543	KROSS S.A.	ul. Leszno 46, 06-300 Przasnysz, Poland	1.5.2004
A545	Neuzer Kerékpár Kereskedelmi és Szolgáltató Kft.	Mátyás király u. 45, 2500 Esztergom, Hungary	1.5.2004
A546	OLPRAN Spol. s.r.o.	Libušina 526/101, 772-11 Olomouc- Chválkovice, Czechia	1.5.2004
A547	UAB Baltik Vairas	Pramonės g. 3, 78138 Šiauliai, Lithuania	1.5.2004
A548	FHMM Sp. z o.o.	ul. Ciecholowicka 29, 55-120 Oborniki Śląskie, Poland	1.5.2004
A551	Kellys Bicycles s.r.o.	Slnecná cesta 374, 922 01 Veľké Orvište, Slovakia	1.5.2004
A552	Master Bike s.r.o.	Sadová 2205/2, 789 01 Zábřeh, Czechia	1.5.2004
A553	Novus Bike s.r.o.	Vančurova 2985/20, 746 01 Předměstí Opava, Czechia	1.5.2004
A554	Olimpia Kerékpár Kft.	Ostorhegy u 4, 1164 Budapest, Hungary	1.5.2004
A555	Csepel Bicycle Manufacturing and Sales Company LTD	Duna Lejáró 7, 1211 Budapest, Hungary	1.5.2004
A556	UNIBIKE K. Orłowska, P. Drobotowski Sp.J.	ul. Przemysłowa 28B, 85-758 Bydgoszcz, Poland	1.5.2004
A557	KENZEL s.r.o.	Novozámocká 182, 94701 Hurbanovo, Slovakia	1.5.2004
A558	4EVER s.r.o.	Moravská 842, Butovice, 742 13 Studénka, Czechia	1.5.2004
A565	Romet Sp. z o.o.	Podgrodzie 32 C, 39-200 Dębica, Poland	1.6.2005
A566	Zweirad Paulsen	Industriestraße 30, 49565, Bramsche, Germany	22.6.2004
A571	Sprick Rowery Sp. z o.o.	ul. Zachodnia 76, 66-200 Świebodzin, Poland	7.6.2004

A576	N.V. Race Productions ^(*)	Beverlosesteenweg 85, 3583 Beringen, Belgium	15.9.2004
A586	Tolin Przedsiębiorstwo Prywatne Jerzy Topolski	Łęg Witoszyn 5a, 87-811 Fabianki, Poland	10.9.2004
A589	Bike Mate s.r.o.	Dlhá 248/43, 905 01 Senica, Slovakia	8.10.2004
A605	Bohemia Bike a.s.	Pujmanové 1753/10a Nusle, 140 00 Praha 4, Czechia	8.11.2004
A616	Koliken MAGYAR-CSEH és SZLOVÁK Kereskedelmi Korlátolt Felelősségű Társaság	Széchenyi u. 103, 6400 Kiskunhalas, Hungary	8.11.2004
A630	CULT d.o.o.	Tržaška cesta 77, 1370 Logatec, Slovenia	24.1.2005
A662	CREDAT Holding a.s.	Priemyselný areál 3415, 946 03 Kolárovo, Slovakia	10.2.2005
A664	Maxbike s.r.o.	Svatoplukova 2771/1, 700 30 Vitkovice, Ostrava, Czechia	3.1.2005
A668	PFIFF Vertriebs GmbH	Wilhelmstrasse 49-51, 49610 Quakenbrück, Germany	6.4.2005
A686	Cycling Sports Group Europe B.V.	Hanzeport 27, 7575DB Oldenzaal, Netherlands	21.6.2005
A697	Artur Nowak Firma Wielobranż Mexller	ul. Romera 4/20, 42-215 Częstochowa, Poland	22.9.2005
A726	Unibike OEM Factory S.A.	Zona Industrial de Oiã Lote C21, Oiã 3770 059 Oliveira do Barrio, Portugal	10.11.2005
A730	Alubike – Bicicletas S.A.	Zona Industrial de Aveiro Sul, lote 11, Mamodeiro, Aveiro Concelho, Freguesia, 3810 783 Aveiro, Portugal	12.12.2005
A732	Bonaventure BVBA	Stoomtuigstraat 16, 8830 Hooglede, Belgium	19.1.2006
A737	Prestige Rijwielen N.V.	Zuiderdijk 25, 9230 Wetteren, Belgium	16.2.2006
A745	Skeppshultcykeln AB	Storgatan 78, 333 03 Skeppshult, Sweden	29.3.2005
A746	TRENGA DE Vertriebs GmbH	Großmoordamm 63-67, 21079 Hamburg, Germany	10.5.2006
A774	Stevens Vertriebs GmbH	Asbrookdamm 35, 22115 Hamburg, Germany	3.7.2006
A776	Ing. Jaromír Březina	Foglarova 2896/11, 787 01 Šumperk, Czechia	20.7.2006
A777	Goldbike – Industria de Bicicletas Lda	Rua das Flores, 3780 594 Poutena-Vilarinho do Bairro, Anadia, Portugal	9.8.2006
A778	Puky GmbH & Co. KG	Fortunastraße 11, 42489 Wülfrath, Germany	21.8.2006

A781	Look Cycle International S.A.	27 rue du Docteur Léveillé, 58000 Nevers, France	14.9.2006
A794	TG Supplies GmbH	Gablonzer Straße 10, 76185 Karlsruhe, Germany	6.11.2006
A810	CROSS Ltd	Hadji Dimitar Street 1, 3400 Montana, Bulgaria	1.1.2007
A811	Balkanvelo AD	Mizia Boulevard 1, 5500 Lovech, Bulgaria	1.1.2007
A812	Maxcom	Golyamokonarsko Shose Str. 1, 4204 Tsaratsovo, Plovdiv, Bulgaria	1.1.2007
A813	Leader-96 Ltd	Sedyanka 19, 4003 Plovdiv, Bulgaria	1.1.2007
A814	Velomania Ltd	Dimitar Nestorov Street bl. 120, 1612 Sofia, Bulgaria	1.1.2007
A815	Robifir Bike Ltd.	Kosta Bosilkov Street 3A, 2700 Blagoevgrad, Bulgaria	1.1.2007
A817	Eurosport DHS SA	Santuhalm Street 35A, 330004 Judet Hunedoara Deva, Romania	1.1.2007
A824	Fratelli Schiano S.r.l.	Via Ferdinando Del Carretto 26, 80133 Napoli, Italy	31.1.2007
A825	Helkama Velox Oy	Santalantie 22, 10960 Hanko Pohjoinen, Finland	29.1.2007
A826	Rijwielen en bromfietsen L'Avenir	Posthoornstraat 1, 2500 Lier, Belgium	21.3.2007
A838	KOVL spol. sro	Choceradská 3042/20, 14100 Praha 4, Czechia	29.3.2007
A849	Euro Bike Products	ul. Ostrowska 498, 498A, 61-324 Poznań, Poland	6.8.2007
A850	Radsportvertrieb Ditmar Bayer GmbH	Zum Acker 1, 56244 Freirachdorf, Germany	25.6.2007
A856	Canyon Bicycles GmbH	Karl-Tesche-Straße 12, 56073 Koblenz, Germany	4.12.2007
A894	Winora Staiger GmbH	Max-Planck-Straße 6, 97526 Sennfeld, Germany	19.1.1997
A896	S.C. Madirom Prod S.r.l.	Bd. Liviu Rebreanu nr. 130, 300748 Timișoara, Timiș, Romania	11.8.2008
A897	ROSE Bikes GmbH	Schersweide 4, 46395 Bocholt, Germany	16.9.2008
A963	Wilier Triestina S.p.A.	Via Fratel M. Venzo 11, 36028 Rossano Veneto (VI), Italy	3.11.2009
A966	Skilledbike Sp. z o.o.	Brzezna 420, 33-386 Podęgorzkie, Poland	22.1.2010
A967	Unicykel AB	Aröds Industriväg 14, 422 43 Hisings Backa, Sweden	11.1.2010

A968	JETLANE S.A.S.	4 boulevard de Mons, 59650 Villeneuve d'Ascq, France	18.2.2010
A970	Sintema Sport S.r.l.	Via delle Valli 7, 20847 Albiate (MB), Italy	22.2.2010
A979	New Metelli di Metelli Maria Rosa & C. s.a.s.	Via Trento 68, 25030 Trenzano (BS), Italy	13.4.2010
A984	Blue Factory Team S.L.	Calle Nicolás Copérnico 4, Elche Parque Empresarial, 03203 Elche-Alicante, Spain	16.7.2010
A991	Maxtec Ltd	Golyamokonarsko shose Str. 1, 4204 Tsaratsovo, Plovdiv, Bulgaria	15.10.2010
A993	Kwasny & Diekhöner GmbH	Herforder Straße 331, 33609 Bielefeld, Germany	5.7.2011
B294	Etablissements Th. Brasseur S.A.	Rue des Steppes 13, 4000 Liège, Belgium	29.5.2012
B934	C2g-engineering GmbH	Schlesische Straße 27, 10997, Berlin, Germany	16.12.2013
B935	Longway Poland Sp. z o.o.	ul. Parzniewska 4a, 05-800, Pruszków, Poland	16.12.2013
B936	BBF Bike GmbH	Carena Allee 8, 15366, Hoppegarten, Germany	14.1.2014
B940	Solo International Oy	Komeetankatu 1, 02210 Espoo, Finland	26.7.2013
B960	In Cycles – Montagem e Comércio de Bicicletas Lda	Zona Industrial de Barrô Norte/Sul, N.º 976, Fracção A/B e D, AP. 52, 3750-353 Barrô Águeda, Portugal	2.5.2014
B963	Panex Dinamic d.o.o.	Dr.Tome Bratkovića 1, 40000 Čakovec, Croatia	13.8.2014
C001	Cicli Europa S.r.l.	34 Via Portella Bifuto, 93017 San Cataldo (CL), Italy	10.11.2014
C002	OLYMPIQUE SARL	ZA Les Epalits, 42610 Saint-Romain-le-Puy, France	28.10.2014
C003	Interbike Spółka z o.o.	ul. Śląska 6/5, 42-200 Częstochowa, Poland	18.12.2014
C004	Accell Nederland B.V.	Industrieweg 4, 8444AR Heerenveen, Netherlands	20.4.1996
C005	Cycles France Loire	Avenue de l'industrie, 42160 Saint-Cyprien, France	20.4.1996
C006	Cycles Lapierre	6-10 Rue Edmond Voisenet, 21000 Dijon Cedex, France	28.1.1997
C007	Cycleurope Industries	161 Rue Gabriel Péri, 10100 Romilly-sur-Seine, France	20.4.1996

C008	Cycleurope Sverige AB (mentioned as Monrak Crescent)	c/o Monark AB, 432 82 Varberg, Sweden	19.1.1997
C009	Derby Cycle Werke GmbH ^(*)	Siemensstraße 1-3, 49661 Cloppenburg, Germany	19.1.1997
C010	Engelbert Meyer GmbH	Hauptstraße 31, 49692 Cappeln, Germany	19.1.1997
C011	Esmaltina – Auto ciclos S.A.	Rua do Salgueiro 47, 3780-103 Sangalhos, Portugal	27.1.1997
C012	Fratelli Masciaghi S.p.A.	Via Gramsci 10, 20900 Monza (MB), Italy	29.1.1997
C013	KTM Fahrrad GmbH	Harlochner straß 13, 5230 Mattighofen, Austria	30.1.1997
C014	Manufacture Française Du Cycle	27 rue Marcel Brunelière, 44270 Machecoul, France	20.4.1996
C015	MBM S.r.l.	Via Emilia Levante 1671/73/75, 47521 Cesena (FC), Italy	29.1.1997
C016	Montana S.r.l.	Via Domenico Rossi 70, 12060 Magliano Alpi (CN), Italy	30.1.1997
C017	Panther International GmbH	Alter Postweg 190, 32584 Löhne, Germany	20.4.1996
C018	Promiles	4 Boulevard de Mons, 59650 Villeneuve d'Ascq, France	20.4.1996
C019	Prophete GmbH & Co. KG	Lindenstrasse 50, 33378 Rheda-Wiedenbrück, Germany	19.1.1997
C020	TNT Cycles S.L.	C/Mosquerola 61-63, 17180 Vilablareix (Girona), Spain	19.1.1997
C021	Kuisle & Kuisle GmbH	Gewerbe Straße 14, 87675 Stötten, Germany	17.2.2015
C053	Trans- Rower Roman Tylec	Dąbie 54d, 39-311 Zdzierzec, Poland	1.7.2015
C102	Uno Bike B.V.	Bovendijk 213, 3045PD Rotterdam, Netherlands	24.11.2015
C128	Slavomir Sladek Velosprint S	Trnavská 40, 949 01, Nitra, Slovakia	14.4.2016
C202	Vanmoof B.V.	Mauritskade 55, 1092AD Amsterdam, Netherlands	1.1.2018
C307	Merida Polska Sp. Z o.o.	ul. M.C. Skłodowskiej 35, 41-800 Zabrze, Poland	14.6.2017
C311	Juan Luna Cabrera	Calle Alhama 64, 14900 Lucena (Cordoba), Spain	4.10.2017
C481	FJ Bikes Europe Unipessoal, Lda	Praça do Município 8, Sala 1D, 3750 111 Águeda, Portugal	8.5.2018
C492	MOTOKIT Veiculos e Acessórios Lda	Rua Alto do Vale do Grou 36 3750-870 Borralha/Águeda, Portugal	25.9.2020

C527	FIRMA ADAM Adam Ziętek	Muchy 56, 63-524 Czajków, Poland	29.8.2019
C559	Northtec sp. z.o.o.	ul. Dworcowa 15a, 43-502 Czechowice-Dziedzice, Poland	27.7.2020
C560	Giant Gyártó Hungary Kft.	Jedlik Ányos utca 1, 3200 Gyöngyös, Hungary	15.7.2020

ANNEX III

TARIC structure

8714 91 10	--- Frames: ---- Painted, anodized, polished and/or lacquered: ----- Originating in or consigned from China: ⁽¹⁾ — in quantities below 300 units per month or to be transferred to a party in quantities below 300 units per month, or — to be transferred to another holder of an end-use authorisation or to exempted parties ⁽²⁾
8714 91 10 21	----- Constructed from carbon fibres and artificial resin, for use in the manufacture of bicycles (including e-bikes)
8714 91 10 25	----- Frame, constructed from aluminium or aluminium and carbon fibres and artificial resin, for the use in the manufacture of bicycles (including electric bicycles)
8714 91 10 29	----- Other ----- Other ⁽²⁾ ⁽³⁾
8714 91 10 31	----- Constructed from carbon fibres and artificial resin, for use in the manufacture of bicycles (including e-bikes)
8714 91 10 35	----- Frame, constructed from aluminium or aluminium and carbon fibres, for the use in the manufacture of bicycles (including e-bikes)
8714 91 10 39	----- Other ----- Other
8714 91 10 70	----- Frame, constructed from aluminium or aluminium and carbon fibres, for the use in the manufacture of bicycles (including e-bikes)
8714 91 10 75	----- Constructed from carbon fibres and artificial resin, for use in the manufacture of bicycles (including e-bikes)
8714 91 10 89	----- Other
8714 91 30	--- Front forks: ---- Painted, anodized, polished and/or lacquered: ----- Originating in or consigned from China: ⁽¹⁾ — in quantities below 300 units per month or to be transferred to a party in quantities below 300 units per month; or — to be transferred to another holder of an end-use authorisation or to exempted parties ⁽²⁾
8714 91 30 25	----- Front forks, except rigid (non-telescopic) front forks made entirely of steel, for use in the manufacture of bicycles (including electric bicycles)
8714 91 30 29	----- Other ----- Other ⁽²⁾ ⁽³⁾
8714 91 30 35	----- Front forks, except rigid (non-telescopic) front forks made entirely of steel, for use in the manufacture of bicycles (including electric bicycles)
8714 91 30 39	----- Other ----- Other
8714 91 30 72	----- Front forks, except rigid (non-telescopic) front forks made entirely of steel, for use in the manufacture of bicycles (including electric bicycles)
8714 91 30 89	----- Other

	--- Free-wheel sprocket-wheels:
8714 93 00 11	----- Originating in or consigned from China: ⁽¹⁾ — in quantities below 300 units per month or to be transferred to a party in quantities below 300 units per month, or — to be transferred to another holder of an end-use authorisation or to exempted parties ⁽²⁾
8714 93 00 19	----- Other ⁽²⁾ ⁽³⁾
	----- Other brakes:
8714 94 20 91	----- Originating in or consigned from China: ⁽¹⁾ — in quantities below 300 units per month or to be transferred to a party in quantities below 300 units per month, or — to be transferred to another holder of an end-use authorisation or to exempted parties ⁽²⁾
8714 94 20 99	----- Other ⁽²⁾ ⁽³⁾
8714 94 90	--- Parts:
	---- Brake levers:
8714 94 90 11	----- Originating in or consigned from China: ⁽¹⁾ — in quantities below 300 units per month or to be transferred to a party in quantities below 300 units per month, or — to be transferred to another holder of an end-use authorisation or to exempted parties ⁽²⁾
8714 94 90 19	----- Other ⁽²⁾ ⁽³⁾
8714 94 90 90	----- Other
8714 96 30	--- Crank-gear:
8714 96 30 10	----- Originating in or consigned from China: ⁽¹⁾ — in quantities below 300 units per month or to be transferred to a party in quantities below 300 units per month, or — to be transferred to another holder of an end-use authorisation or to exempted parties ⁽²⁾
8714 96 30 90	----- Other ⁽²⁾ ⁽³⁾
8714 99 10	--- Handlebars:
	----- Originating in or consigned from China: ⁽¹⁾ — in quantities below 300 units per month or to be transferred to a party in quantities below 300 units per month, or — to be transferred to another holder of an end-use authorisation or to exempted parties ⁽²⁾
8714 99 10 20	----- Bicycle handlebars: — with or without integrated stem, — either made out of carbon fibres and synthetic resin or made of aluminium, for use in the manufacture of bicycles (including electric bicycles)
8714 99 10 29	----- Other
	----- Other ⁽²⁾ ⁽³⁾
8714 99 10 89	----- Bicycle handlebars: — with or without integrated stem, — either made out of carbon fibres and synthetic resin or made of aluminium, for use in the manufacture of bicycles (including electric bicycles)
8714 99 10 99	----- Other

8714 99 50	--- Deraileur gears: ---- Originating in or consigned from China: ⁽¹⁾ — in quantities below 300 units per month or to be transferred to a party in quantities below 300 units per month, or — to be transferred to another holder of an end-use authorisation or to exempted parties ⁽²⁾
8714 99 50 11	----- Deraileur gears, consisting of: — rear deraileur and mounting articles, — with or without front deraileur, for use in the manufacture of bicycles (including electric bicycles)
8714 99 50 19	----- Other ---- Other ⁽²⁾ ⁽³⁾
8714 99 50 91	---- Deraileur gears, consisting of: — rear deraileur and mounting articles, — with or without front deraileur, for use in the manufacture of bicycles (including electric bicycles)
8714 99 50 99	----- Other

8714 99 90	--- Other, parts: ---- Complete wheels with or without tubes, tyres and sprockets:
8714 99 90 11	---- Originating in or consigned from China: ⁽¹⁾ — in quantities below 300 units per month or to be transferred to a party in quantities below 300 units per month, or — to be transferred to another holder of an end-use authorisation or to exempted parties ⁽²⁾
8714 99 90 19	----- Other ⁽²⁾ ⁽³⁾
8714 99 90 30	---- Seat posts, for use in the manufacture of bicycles (including electric bicycles)
8714 99 90 40	---- Stem for bicycle handlebars, for use in the manufacture of bicycles (including electric bicycles)
8714 99 90 89	---- Other

⁽¹⁾ The rules for end-use control (Article 254 of Regulation No 952/2013) shall apply *mutatis mutandis*.

⁽²⁾ The exempted parties whose assembly operations do not constitute circumvention since they fall outside the scope of Article 13(2) of Regulation (EU) 2016/1036 are the following: (see Annex II).

⁽³⁾ The parties under examination concerning the criteria of Article 13(2) of Regulation (EU) 2016/1036, for which the anti-dumping duty is suspended pending a Commission decision and from which a security shall be requested by the competent authorities of the Member States, are the following: (see Annex I).

COMMISSION IMPLEMENTING REGULATION (EU) 2023/612**of 17 March 2023****amending Implementing Regulation (EU) No 307/2012 as regards certain procedures for the Union assessment of the safety of a substance or group of substances under scrutiny****(Text with EEA relevance)**

THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EC) No 1925/2006 of the European Parliament and of the Council of 20 December 2006 on the addition of vitamins and minerals and of certain other substances to foods ⁽¹⁾, and in particular Article 8(6) thereof,

Whereas:

- (1) Regulation (EC) No 1925/2006 harmonises the national rules in Member States on the addition of vitamins and minerals and of certain other substances to foods.
- (2) Commission Implementing Regulation (EU) No 307/2012 ⁽²⁾ lays down, in particular, implementing rules for the application of the procedure referred to in Article 8(4) and (5) of Regulation (EC) No 1925/2006 concerning the safety assessment by the European Food Safety Authority ('the Authority') of the substances under scrutiny listed in Part C of Annex III thereto.
- (3) To demonstrate the safety of a particular substance under scrutiny contained in the list in Part C of Annex III to Regulation (EC) No 1925/2006, food business operators and other interested parties may submit to the Authority within 24 months from the entry into force of a decision listing the substance in Part C of that Annex, a file containing the scientific data for evaluation.
- (4) Under Article 6(1) of Regulation (EU) No 307/2012, the Authority is to give its opinion on the submitted files within 9 months from the date of receipt of a valid file. Where multiple files are submitted for the evaluation of the same substance or group of substances, and since each file is assessed independently from the other files, the Authority may not be able to consider the totality of the safety data submitted for the assessment of that substance or group of substances placed under scrutiny. The individual assessment of each file may therefore lead to several incomplete and possibly inconsistent opinions on the same substance or group of substances. In view of the above, it is necessary to amend Regulation (EU) No 307/2012, to allow the Authority to initiate the risk assessment on a substance or group of substances listed in Part C of Annex III to Regulation (EC) No 1925/2006 only at the end of the 24-month period following the entry into force of the decision listing that substance or group of substances in Part C of that Annex and to issue a single opinion on files submitted as regards the same substance or group of substances.
- (5) Regulation (EU) No 307/2012 should therefore be amended accordingly.
- (6) The measures provided for in this Regulation are in accordance with the opinion of the Standing Committee on Plants, Animals, Food and Feed,

⁽¹⁾ OJ L 404 30.12.2006, p. 26.

⁽²⁾ Commission Implementing Regulation (EU) No 307/2012 of 11 April 2012 establishing implementing rules for the application of Article 8 of Regulation (EC) No 1925/2006 of the European Parliament and of the Council on the addition of vitamins and minerals and of certain other substances to foods (OJ L 102, 12.4.2012, p. 2).

HAS ADOPTED THIS REGULATION:

Article 1

Amendments to Regulation (EU) No 307/2012

Article 6 of Regulation (EU) No 307/2012 is replaced by the following:

'Article 6

Opinion of the Authority

1. The Authority shall assess the validity of each file submitted under Article 5 of this Regulation within 30 days from its receipt.
2. The Authority shall give its opinion on the files it considers valid under Article 5 of this Regulation within nine months from the end of the 24-month period referred to in Article 5(2) of this Regulation.
3. Where multiple files on the same substance or group of substances are submitted in accordance with Article 5 of this Regulation, the Authority shall issue a single opinion on those files.
4. The Authority may request from the food business operator or the interested party to provide additional information to their file within 15 days from the date of receipt of the Authority's request.

Where the Authority requests additional information, including information with regard to the conditions of use of the substance in a food or in a category of foods and the purpose of that use, it may extend the time limit referred to in paragraph 2.

The time limit may be extended only once by up to three months. That time limit shall include the time set in the first subparagraph for the food business operator or any interested party to provide the requested information.

5. Where the Authority extends the time limit in accordance with paragraph 4, it shall inform thereof all food business operators or interested parties that have submitted the file with regard to the same substance or group of substances and the Commission.

The Authority shall make the additional information provided in accordance with paragraph 4 available to the Commission and to the Member States.'

Article 2

Entry into force

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

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

Done at Brussels, 17 March 2023.

For the Commission
The President
Ursula VON DER LEYEN

DECISIONS

POLITICAL AND SECURITY COMMITTEE DECISION (CFSP) 2023/613.

of 14 March 2023

on the appointment of the Head of Mission of the European Union CSDP mission in Mali (EUCAP Sahel Mali) (EUCAP Sahel Mali/1/2023)

THE POLITICAL AND SECURITY COMMITTEE,

Having regard to the Treaty on European Union, and in particular Article 38, third paragraph, thereof,

Having regard to Council Decision 2014/219/CFSP of 15 April 2014 on the European Union CSDP mission in Mali (EUCAP Sahel Mali) ⁽¹⁾, and in particular Article 7(1) thereof,

Whereas:

- (1) Pursuant to Article 7(1) of Decision 2014/219/CFSP, the Political and Security Committee (PSC) is authorised, in accordance with Article 38, third paragraph, of the Treaty, to take the relevant decisions concerning the political control and strategic direction of the European Union CSDP mission in Mali (EUCAP Sahel Mali), including the decision to appoint a Head of Mission.
- (2) On 8 December 2020, the PSC adopted Decision (CFSP) 2020/2199 ⁽²⁾ appointing Mr. Hervé FLAHAUT as Head of Mission of EUCAP Sahel Mali from 1 January 2021.
- (3) On 10 January 2023, the Council adopted Decision (CFSP) 2023/96 ⁽³⁾ extending the mandate of EUCAP Sahel Mali until 31 January 2025.
- (4) On 20 February 2023, the High Representative of the Union for Foreign Affairs and Security Policy proposed the appointment of Mr Peter KOLDING as Head of Mission of EUCAP Sahel Mali until 31 January 2024,

HAS ADOPTED THIS DECISION:

Article 1

Mr Peter KOLDING is hereby appointed as Head of Mission of the European Union CSDP mission in Mali (EUCAP Sahel Mali) from 11 April 2023 to 31 January 2024.

Article 2

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

It shall apply from 11 April 2023.

⁽¹⁾ OJ L 113, 16.4.2014, p. 21.

⁽²⁾ Political and Security Committee Decision (CFSP) 2020/2199 of 8 December 2020 on the appointment of the Head of Mission of the European Union CSDP mission in Mali (EUCAP Sahel Mali) (EUCAP Sahel Mali/2/2020) (OJ L 434, 23.12.2020, p. 54).

⁽³⁾ Council Decision (CFSP) 2023/96 of 10 January 2023 amending Decision 2014/219/CFSP on the European Union CSDP Mission in Mali (EUCAP Sahel Mali) (OJ L 8, 11.1.2023, p. 2).

Done at Brussels, 14 March 2023.

For the Political and Security Committee
The Chairperson
D. PRONK

POLITICAL AND SECURITY COMMITTEE DECISION (CFSP) 2023/614**of 14 March 2023****on the appointment of the EU Mission Force Commander for the European Union military partnership mission in Niger (EUMPM Niger) (EUMPM Niger/1/2023)**

THE POLITICAL AND SECURITY COMMITTEE,

Having regard to the Treaty on European Union, and in particular Article 38 thereof,

Having regard to Council Decision (CFSP) 2022/2444 of 12 December 2022 on a European Union military partnership mission in Niger (EUMPM Niger) ⁽¹⁾, and in particular Article 5(1) thereof,

Whereas:

- (1) Pursuant to Article 5(1) of Decision (CFSP) 2022/2444, the Council authorised the Political and Security Committee (PSC) to take the relevant decisions concerning, *inter alia*, the appointment of the European Union military partnership mission in Niger (EUMPM Niger) Mission Force Commander (the 'EU Mission Force Commander').
- (2) On 2 February 2023, the Italian military authorities proposed the appointment of Colonel Antonio D'AGOSTINO as the first EU Mission Force Commander from 1 March 2023.
- (3) On 7 February 2023, the Mission Commander for EUMPM Niger supported this nomination.
- (4) On 10 February 2023, the European Union Military Committee agreed to recommend that the PSC appoint Colonel Antonio D'AGOSTINO as the EU Mission Force Commander from 1 March 2023.
- (5) A decision on the appointment of Colonel Antonio D'AGOSTINO should be taken,

HAS ADOPTED THIS DECISION:

Article 1

Colonel Antonio D'AGOSTINO is hereby appointed as the EU Mission Force Commander of the European Union military partnership mission in Niger (EUMPM Niger) from 1 March 2023.

Article 2

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

It shall apply from 1 March 2023.

Done at Brussels, 14 March 2023.

For the Political and Security Committee
The Chairperson
D. PRONK

⁽¹⁾ OJ L 319, 13.12.2022, p. 86.

POLITICAL AND SECURITY COMMITTEE DECISION (CFSP) 2023/615**of 14 March 2023****on the appointment of the EU Mission Force Commander of the European Union military mission to contribute to the training of Somali security forces (EUTM Somalia) and repealing Decision (CFSP) 2022/170 (EUTM Somalia/1/2023)**

THE POLITICAL AND SECURITY COMMITTEE,

Having regard to the Treaty on European Union, and in particular Article 38 thereof,

Having regard to Council Decision 2010/96/CFSP of 15 February 2010 on a European Union military mission to contribute to the training of Somali security forces ⁽¹⁾, and in particular Article 5 thereof,

Whereas:

- (1) Pursuant to Article 5(1) of Decision 2010/96/CFSP, the Council authorised the Political and Security Committee (PSC), in accordance with Article 38 of the Treaty on European Union, to take the relevant decisions concerning the political control and strategic direction of the European Union military mission to contribute to the training of Somali security forces (EUTM Somalia), including decisions on the appointment of the EU Mission Force Commander.
- (2) On 8 February 2022, the PSC adopted Decision (CFSP) 2022/170 ⁽²⁾ appointing Brigadier General Roberto VIGLIETTA as the EU Mission Force Commander of EUTM Somalia.
- (3) On 29 November 2022, the Italian military authorities proposed the appointment of Brigadier General Fulvio POLI to succeed Brigadier General Roberto VIGLIETTA as the EU Mission Force Commander of EUTM Somalia.
- (4) On 9 December 2022, the European Union Military Committee agreed to recommend that the PSC appoint Brigadier General Fulvio POLI as the EU Mission Force Commander of EUTM Somalia.
- (5) A decision on the appointment of Brigadier General Fulvio POLI should be taken and Decision (CFSP) 2022/170 should be repealed,

HAS ADOPTED THIS DECISION:

Article 1

Brigadier General Fulvio POLI is hereby appointed as the EU Mission Force Commander of the European Union military mission to contribute to the training of Somali security forces (EUTM Somalia) from 23 March 2023.

Article 2

Decision (CFSP) 2022/170 is hereby repealed.

Article 3

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

⁽¹⁾ OJ L 44, 19.2.2010, p. 16.

⁽²⁾ Political and Security Committee Decision (CFSP) 2022/170 of 8 February 2022 on the appointment of the EU Mission Force Commander of the European Union military mission to contribute to the training of Somali security forces (EUTM Somalia) and repealing Decision (CFSP) 2020/1072 (EUTM Somalia/1/2022) (OJ L 28, 9.2.2022, p. 17).

It shall apply from 23 March 2023.

Done at Brussels, 14 March 2023.

For the Political and Security Committee
The Chairperson
D. PRONK

COMMISSION DECISION (EU) 2023/616**of 17 March 2023****amending Decision 2005/37/EC as regards the tasks performed by the European Technical and Scientific Centre (ETSC)**

THE EUROPEAN COMMISSION,

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

Having regard to Council Decision 2003/861/EC ⁽¹⁾ of 8 December 2003 concerning analysis and cooperation with regard to counterfeit euro coins, and in particular Article 1 thereof,

Having regard to Council Decision 2003/862/EC ⁽²⁾ of 8 December 2003 extending the effects of Decision 2003/861/EC concerning analysis and cooperation with regard to counterfeit euro coins to those Member States which have not adopted the euro as their single currency, and in particular Article 1 thereof,

Whereas:

- (1) The European Technical and Scientific Centre (the 'ETSC') is established within the Commission's Directorate-General for Economic and Financial Affairs (DG ECFIN), in accordance with Article 1 of Commission Decision 2005/37/EC ⁽³⁾.
- (2) Pursuant to Article 7(2) of Council Regulation (EC) No 1338/2001 ⁽⁴⁾, the competent national authorities, the Commission and the European Central Bank are to cooperate to protect the euro against counterfeiting, by means of exchanging information and ensuring mutual assistance.
- (3) The ETSC performs its tasks in Brussels. Some of its tasks are carried out at the French Coin National Analysis Centre, established within the French Mint in Pessac.
- (4) Pursuant to Article 2 of Decision 2005/37/EC, the ETSC is to coordinate the implementation of the authentication procedures as required by Regulation (EU) No 1210/2010 of the European Parliament and of the Council ⁽⁵⁾.
- (5) The ETSC uses the available technical equipment in order to perform preliminary, non-destructive analysis of counterfeit euro coins. That includes, inter alia, microscopic, visual and technical analysis of counterfeit euro coins seized by Member States, preparation of the relevant technical documents and research using dedicated IT databases to identify common characteristics with already existing and classified categories of counterfeit euro coins.
- (6) It is necessary that the ETSC also perform advanced, non-destructive analysis with a view to identifying in a timely manner high quality counterfeit euro coins, defining their technical features and assessing promptly the threat level they pose. That type of advanced non-destructive analysis would enable the ETSC to take the appropriate, timely and effective policy decisions to tackle emerging threats and inform law enforcement authorities of emerging threats as part of the anti-counterfeiting strategy. To that end, the ETSC should be able to acquire the appropriate technical equipment for performing such advanced non-destructive analysis. Under the applicable financial regulations, the expenses related to technical equipment made available and to the personnel of the ETSC should be charged to the general budget of the European Union.

⁽¹⁾ OJ L 325, 12.12.2003, p. 44.

⁽²⁾ OJ L 325, 12.12.2003, p. 45.

⁽³⁾ Commission Decision 2005/37/EC of 29 October 2004 establishing the European Technical and Scientific Centre (ETSC) and providing for coordination of technical actions to protect euro coins against counterfeiting. (OJ L 19, 21.1.2005, p. 73).

⁽⁴⁾ Council Regulation (EC) No 1338/2001 of 28 June 2001 laying down measures necessary for the protection of the euro against counterfeiting (OJ L 181, 4.7.2001, p. 6).

⁽⁵⁾ Regulation (EU) No 1210/2010 of the European Parliament and of the Council of 15 December 2010 concerning authentication of euro coins and handling of euro coins unfit for circulation (OJ L 339, 22.12.2010, p. 1).

- (7) The ETSC performs complementary, non-destructive analysis at the French Mint for finalising the classification of new types of counterfeit euro coins. On an *ad hoc* basis, the ETSC also performs complementary destructive analysis using the specialised technical equipment at the French Mint.
- (8) Therefore, Decision 2005/37/EC should be amended accordingly,

HAS ADOPTED THIS DECISION:

Article 1

Amendments

Decision 2005/37/EC is amended as follows:

- (1) in Article 2, the following point (e) is added:

‘e) perform advanced and non-destructive analysis of high quality counterfeit euro coins to inform Europol and law enforcement authorities of emerging threats’;

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

‘Article 3

1. In accomplishing its functions, the ETSC shall carry out a preliminary technical analysis in Brussels, and a complementary analysis may be carried out at the French Coin National Analysis Centre established within the French Mint.

2. DG ECFIN shall make available to the ETSC the appropriate technical equipment in order to carry out non-destructive analysis in Brussels with a view to identifying and responding in a timely manner to upcoming threats related to high quality counterfeit euro coins.

3. The ETSC shall use the personnel and equipment of the French Mint for the necessary complementary analysis carried out in its premises. The French authorities shall place the appropriate personnel and equipment at the disposal of the ETSC as a priority. The French authorities shall be responsible for the maintenance of the technical equipment at the French Mint.

4. The costs for ETSC personnel and the necessary technical equipment for carrying out its tasks in Brussels shall be charged to the Union budget. The expenses related to the costs of ETSC personnel's missions to Pessac and justified sundry minor expenses that may occur while using the technical equipment at the laboratory of the French Mint shall be covered by the Union budget.

5. DG ECFIN may define, in cooperation with the French Mint, the administrative modalities applicable to the ETSC, when using the technical equipment of the French Mint.’;

- (3) in Article 4, the first paragraph is replaced by the following:

‘The Commission shall coordinate the necessary actions to protect euro coins against counterfeiting and ensure an effective and uniform implementation of the authentication procedures in the euro area, inter alia, through periodic meetings with Europol and counterfeit coin experts.’.

Article 2

Entry into force

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

Done at Brussels, 17 March 2023.

For the Commission
The President
Ursula VON DER LEYEN

COMMISSION IMPLEMENTING DECISION (EU) 2023/617**of 17 March 2023****terminating the anti-subsidy proceeding concerning imports of fatty acid originating in Indonesia**

THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EU) 2016/1037 of the European Parliament and of the Council of 8 June 2016 on protection against subsidised imports from countries not members of the European Union ⁽¹⁾, and in particular Article 14(1) thereof,

Whereas:

1. PROCEDURE**1.1. Initiation of an anti-subsidy proceeding**

- (1) On 31 March 2022, the European Commission ('the Commission') received a complaint pursuant to Article 10 of Regulation (EU) 2016/1037 ('the basic Regulation') lodged by the Coalition against Unfair Trade in Fatty Acid ('the complainant').
- (2) On 13 May 2022, after holding consultations with the Government of Indonesia on 12 May 2022, the Commission initiated an anti-subsidy proceeding concerning imports of fatty acid originating in Indonesia. It published a Notice of Initiation in the *Official Journal of the European Union* (the 'Notice of Initiation') ⁽²⁾.

1.2. Anti-dumping proceeding

- (3) On 30 November 2021, the Commission initiated an anti-dumping proceeding concerning imports of fatty acid originating in Indonesia. It published a Notice of Initiation in the *Official Journal of the European Union* ⁽³⁾.
- (4) On 19 January 2023, by Regulation (EU) 2023/111 ⁽⁴⁾, the Commission imposed anti-dumping duties on imports of fatty acid originating in Indonesia ranging from 15.2 % to 46.4 %.

1.3. Investigation period and period considered

- (5) The investigation of subsidisation and injury covered the period from 1 October 2020 to 30 September 2021 ('the investigation period'). The examination of trends relevant for the assessment of injury covered the period from 1 January 2018 to the end of the investigation period ('the period considered').

1.4. Interested parties

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

⁽¹⁾ OJ L 176, 30.6.2016, p. 55.

⁽²⁾ Notice of initiation of an anti-subsidy proceeding concerning imports of fatty acid originating in Indonesia (OJ C 195, 13.5.2022, p. 11).

⁽³⁾ Notice of initiation of an anti-dumping proceeding concerning imports of fatty acid originating in Indonesia (OJ C 482, 30.11.2021, p. 5).

⁽⁴⁾ Commission Implementing Regulation (EU) 2023/111 of 18 January 2023 imposing a definitive anti-dumping duty on imports of fatty acid originating in Indonesia (OJ L 18, 19.1.2023, p. 1).

2. PRODUCT UNDER INVESTIGATION

- (8) The product subject to this investigation is fatty acids with a carbon chain length of C6, C8, C10, C12, C14, C16 or C18 with an iodine value below 105g/100g and with a ratio of free fatty acids to triglycerides (degree of split – DoS) of at least 97 %, including:
- single fatty acid (also referred to as ‘pure cut’); and
 - blends containing a combination of two or more carbon chain lengths (‘the product under investigation’).

3. WITHDRAWAL OF THE COMPLAINT

- (9) In its letter to the Commission of 3 October 2022, the complainant withdrew its complaint.
- (10) Withdrawal of an anti-subsidy complaint is governed by Article 14(1) of the basic Regulation, which provides that ‘(w)here the complaint is withdrawn, proceedings may be terminated unless such termination would not be in the Union interest’. As noted by the General Court in *Philips Lighting Poland and Philips Lighting v Council* ⁽³⁾, the Union institutions enjoy a wide discretion to continue or terminate an investigation following a withdrawal.
- (11) The investigation had not brought to light any considerations demonstrating that such termination would not be in the Union interest.

4. CONCLUSION AND DISCLOSURE

- (12) The Commission therefore considered that the proceeding should be terminated.
- (13) Interested parties were informed accordingly and were granted an opportunity to submit comments.
- (14) The Commission received no comments that would lead to the conclusion that such termination would not be in the Union interest.
- (15) This Decision is in accordance with the opinion of the Committee referred to in Article 25(1) of the basic Regulation,

HAS ADOPTED THIS DECISION:

Article 1

The anti-subsidy proceeding concerning imports of fatty acid originating in Indonesia is hereby terminated.

Article 2

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

Done at Brussels, 17 March 2023.

For the Commission
The President
Ursula VON DER LEYEN

⁽³⁾ Judgment of 11 July 2013, *Philips Lighting Poland and Philips Lighting v Council*, T-469/07, EU:T:2013:370, para. 87.

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