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New obligations for companies and additional investigatory powers for the European Commission: The EU's Foreign Subsidies Regulation enters into force

On 12 January 2023, *Regulation (EU) 2022/2560 of the European Parliament and of the Council of 14 December 2022 on foreign subsidies distorting the internal market* (hereinafter, Distorting Foreign Subsidies Regulation) entered into force. Previously, only subsidies granted to businesses by EU Member States were subject to close scrutiny, while subsidies granted by non-EU Governments to undertakings operating in the internal market were not scrutinised. Therefore, the new Regulation aims at addressing the potential distortive effects of foreign subsidies in the EU Single Market and closing the regulatory gap. The Distorting Foreign Subsidies Regulation introduces new rules and procedures for the European Commission (hereinafter, Commission) to investigate foreign subsidies and for redressing distortions on the internal market, as well as related obligations for economic operators. While the scope of the Regulation is already clearly specified, key rules have yet to be developed by the EU and will be part of future implementing acts. As well as introducing new obligations for businesses, the new rules aim at creating a level playing field for businesses operating in the EU internal market.

Addressing a regulatory gap

In March 2019, the Council of the EU (hereafter, Council) recognised the need to address the distortive effect that foreign subsidies can have on the functioning of the EU Single Market "*by providing their recipients with an unfair advantage to acquire companies or obtain public procurement contracts in the EU*". On 10 March 2020, the Commission published its Communication *A New Industrial Strategy for Europe*, in which it announced the adoption of a *White Paper on levelling the playing field as regards foreign subsidies*. The *White Paper* had noted that subsidies granted by non-EU Governments to undertakings operating in the internal market had an increasingly negative impact on competition on the EU Single Market, but that they fell outside of EU State aid control. Additionally, the *White Paper* had found that current trade defence rules in the EU concern only exports of goods from third countries, but did not address distortions caused in the internal market by foreign subsidies.

The Commission considered that there appears to be a regulatory gap, when foreign subsidies take the form of financial flows facilitating acquisitions of EU companies, when they directly support the operation of a company in the EU, or when they facilitate bidding in a public procurement procedure. Consequently, on 5 May 2021, the Commission published a *Proposal for a Regulation of the European Parliament and of the Council on foreign subsidies distorting the internal market* (see *Trade Perspectives*, Issue No.10 of 22 May 2021). The final text was adopted by the European Parliament and the Council in November 2022.

The new rules aimed at redressing distorting foreign subsidies

The Distorting Foreign Subsidies Regulation establishes rules and procedures for investigating foreign subsidies "*that distort the internal market and for redressing such distortion*". Such distortion "*can arise with respect to any economic activity, and in particular in concentrations and public procurement procedures*". Article 1 of the Regulation states that the Regulation addresses *"foreign subsidies granted to an undertaking, including a public undertaking which is directly or indirectly controlled by the State, engaging in an economic activity in the internal market*" and that "*an undertaking acquiring control of or merging with an undertaking established in the Union or an undertaking participating in a public procurement procedure in the Union is considered to be engaging in an economic activity in the internal market*".

The rules apply to all companies that are active in the EU and that have received any form of financial contribution, direct or indirect, from a third country when such financial contribution "*confers a benefit on an undertaking engaging in an economic activity in the internal market and which is limited, in law or in fact, to one or more undertakings or industries*". The Regulation defines '*financial contribution*' very broadly, as the definition includes the following: 1) The transfer of funds or liabilities, such as capital injections and loans; 2) Foregoing of revenue that is otherwise due, such as tax exemptions or the granting of special or exclusive rights; and 3) The supply of goods or services. According to the Regulation, financial contributions can come from a central government, as well as from public authorities or private entities "*whose actions can be attributed to the third country*".

If a foreign subsidy "*is liable to improve the competitive position of an undertaking in the internal market*" and "*actually or potentially negatively affects competition in the internal market*", a distortion in the internal market must be deemed to exist. The Distorting Foreign Subsidy Regulation establishes five indicators to determine whether a subsidy causes a distortion of the internal market, namely: 1) Its amount; 2) Its nature; 3) The situation of the undertaking; 4) The level and evolution of economic activity of the undertaking on the internal market; and 5) The purpose and conditions attached to the foreign subsidy, as well as its use on the internal market. Additionally, the Regulation sets certain thresholds with the objective of helping the Commission determine whether or not a subsidy is deemed to distort competition in the EU internal market, namely: 1) A subsidy is not be considered distortive, where the total amount of a foreign subsidy does not exceed the amount of *de minimis* aid as defined in Article 3(2) of *Regulation (EU) No 1407/2013 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to de minimis aid* (*i.e.*, EUR 200,000) per third country over any consecutive period of three years; 2) A foreign subsidy is to be considered unlikely to distort the internal market, where a foreign subsidy does not exceed EUR 4 million per undertaking over any consecutive period of three years, and 3) "*A foreign subsidy may be considered not to distort the internal market to the extent that it is aimed at making good the damage caused by natural disasters or exceptional occurrences*". Finally, the Regulation lists five categories of foreign subsidies that are considered "*most likely*" to distort the internal market, such as "*a foreign subsidy directly facilitating a concentration*".

New Obligations

The Distorting Foreign Subsidies Regulation requires undertakings to notify to the Commission any concentration and public procurement contracts that may benefit from a foreign subsidy. The Regulation further enables the Commission to initiate inquiries and start investigations into other forms of subsidies.

With respect to undertakings to a concentration agreement, such as mergers, they must notify such concentration to the Commission if it meets the criteria set by Article 20 of the Regulation. Before a concentration agreement may be concluded and implemented, the Commission must communicate to the parties on whether the concentration is deemed to distort the internal market. The Commission has 25 working days from the date of notification to review and provide a communication to the undertakings. If the Commission decides to initiate an in-depth investigation, the revision period is extended to 90 working days. The review can be extended by another 15 working days if the investigated undertaking offers commitments to the Commission, such as the repayment of a subsidy and access to infrastructure.

With respect to public procurement, the Regulation states that "*foreign subsidies that cause or risk causing a distortion in a public procurement procedure shall be understood as foreign subsidies that enable an economic operator to submit a tender that is unduly advantageous in relation to the works*". A notifiable foreign financial contribution in a public procurement procedure is deemed to arise where: 1) The estimated value of the public procurement or framework agreement net of VAT "*is equal to or greater than EUR 250 million*"; and 2) "*the economic operator, including its subsidiary companies without commercial autonomy, its holding companies, and, where applicable, its main subcontractors and suppliers* (…) *was granted aggregate financial contributions in the three years prior to notification or, if applicable, the updated notification, equal to or greater than EUR 4 million per third country*". The Regulation establishes that undertakings participating in a public procurement procedure must list the received financial contributions in a declaration to be attached to the public procurement tender. The Commission then has 20 working days to review the public procurement procedure, which can be extended by 10 working days. During the review period, the Commission must either start an in-depth investigation, which must not exceed 110 working days, with a maximum extension of 20 days, or communicate to the undertaking that the received financial contribution does not distort the internal market. Undertakings that do not report their foreign financial contributions or those considered as benefitting from distortive subsidies can be disqualified from public procurement tenders.

While the new notification obligations are clearly spelled out, there is no clarity yet regarding the form, content, and procedural details of the notifications of concentrations and foreign financial contributions and the declaration of no foreign financial contribution in public procurement procedures. These important details will only become clear once the Commission has developed and published the related Implementing Acts that are to be adopted during the second quarter of 2023.

New investigatory powers for the Commission and redressive measures

Importantly, the Distorting Foreign Subsidies Regulation confers new investigatory powers to the Commission to determine whether a foreign subsidy might risk or cause distortions to the internal market and whether, as a consequence, redressive measures would be needed.

There are three investigatory powers conferred to the Commission: 1) *Ex officio* review: On its own initiative, the Commission may review a transaction or a public procurement procedure on the basis of the information received from any source, including "*Member States, a natural or legal person or an association*". If the Commission were to find that this information contains sufficient evidence of the existence of a distortive subsidy, it would conduct a preliminary review. During this review, the Commission can request information and conduct inspections, but may not take redressive measures or accept commitments from undertakings; 2) In-depth investigations: If, during a preliminary review, the Commission were to consider that it has sufficient evidence of a foreign distortive subsidy, it may initiate an in-depth investigation. In such case, the Commission must notify the undertaking under investigation and the relevant EU Member State. During this stage, the Commission may request information and conduct inspections and may also impose redressive measures or accept commitments based on the result of an in-depth investigation. The Regulation provides a list of possible redressive measures, such as reducing the capacity or market presence of the subsidised entity and

repayment of the foreign subsidy. The list of such measures is not exhaustive and the actual measure will depend on the individual case; and 3) Market investigations: The Commission may investigate a particular sector for a particular type of economic activity or based on a particular subsidy instrument that may distort the internal market.

Ensuring compliance

The Distorting Foreign Subsidies Regulation entered into force on 12 January 2023 and, according to its Article 54(2), shall, for the most part, apply from 12 July 2023. Companies should ensure compliance with the forthcoming notification obligations and, for instance, establish a system to monitor subsidies that may fall within the scope of the Regulation. Important details have yet to be adopted through Implementing Acts and businesses should engage with their respective authorities and call on the Commission to adopt such Implementing Acts well before the obligations will start to apply.

Indonesia enacts an emergency regulation to replace *Law No. 11 of 2020 on Job Creation* after the Law was deemed "*conditionally unconstitutional*"

On 30 December 2022, Indonesia's President Joko "*Jokowi*" Widodo enacted an "*emergency" Government Regulation in Lieu of Law* (*i.e., Peraturan Pemerintah Pengganti Undang-Undang*, in short *Perppu)* to revoke and replace the contentious *Law No. 11 of 2020 concerning Job Creation* (hereinafter, *Job Creation Law*), namely *Government Regulation in Lieu of Law No. 2 of 2022 concerning Job Creation* (hereinafter, *Perppu No. 2/2022*). The *Perppu No. 2/2022* was issued as a response to the Decision of Indonesia's Constitutional Court of 25 November 2021, which ruled that the *Job Creation Law* that had been enacted on 2 November 2020, is "*conditionally unconstitutional*". Instead of merely replacing the *Job Creation Law*, the *Perppu No. 2/2022* introduced substantive changes regarding a number of issues, such as *halal* certification, employment, and taxation. The Government of Indonesia has been criticised by civil society groups for rushing the enactment of the "*emergency regulation*" as a way to "*bypass proper debate in parliament*", which is especially noteworthy given that the Constitutional Court's findings focussed on a lack of transparency and participation.

Overview of Indonesia's Job Creation Law

The *Job Creation Law,* which had entered into force on 2 November 2020, is also known as Indonesia's first "*Omnibus Law*", as it addresses various regulatory issues under a single *'Umbrella Act*'. The *Job Creation Law* is a very detailed, complex, and comprehensive legal framework consisting of 15 chapters and 186 articles that effectively revised 76 laws in key sectors, governing areas such as labour, investment, and the environment. The *Job Creation Law* aimed at improving the ease of doing business in Indonesia and at attracting investment, thereby boosting job opportunities and economic growth. To date, the Government of Indonesia issued 51 implementing regulations, putting in place detailed rules regarding certain novelties introduced by the *Job Creation Law*, such as *Government Regulation No. 5 Year 2021 concerning Organization of Risk-Based Business Licensing*, which introduced the notion of '*risk-based business licensing*' (see *Trade Perspectives*, Issue No.14 of 16 July 2021).

Since its deliberation by Indonesia's House of Representatives, the *Job Creation Law* had been subject of heated debate among the general public, specifically with respect to the provisions affecting labour rights and environmental protection. Labour organisations, trade unions, and other civil society organisations claimed that the Law put the interests and demands of foreign investors and businesses above the interests of local workers, communities, and the environment. Some of the most contentious amendments under the *Job Creation Law* had concerned employment law, such as the reduction in severance benefits for employees and the removal of mandatory paid leave. With regard to environmental protection, the *Job Creation Law*, *inter alia*, revised the rules for environmental impact assessments,

making it mandatory only for high-risk investments and, arguably, having a negative impact on the environment, potentially even allowing further deforestation or environmental degradation.

The Constitutional Court's ruling

Various academics, members of civil society, and civil movements had criticised the lack of transparency in the law-making process for the *Job Creation Law*, arguing that the Government of Indonesia had not sufficiently engaged with the public in discussing the content of the Law. In November 2020, Indonesia's Constitutional Court received petitions from six applicants to carry out a judicial review of the *Job Creation Law*. On 25 November 2021, the Constitutional Court issued *Decision No. 91/PUU-XVIII/2020*, which declared that the *Job Creation Law* was "*conditionally unconstitutional*".

Indonesia's Constitutional Court held that the *Job Creation Law* was "*formally and procedurally flawed*", as the formulation of the Law was not conducted "*in accordance with the prevailing procedures*". For instance, the *Job Creation Law* had undergone various substantive changes even after it was jointly approved by the President and the House of Representatives. With respect to the principle of transparency, the presiding judge highlighted that the legislators "*did not provide optimal space for public participation*". More specifically, while meetings had been held with various community groups, such meetings did not discuss the text of the *Job Creation Law* and the regulatory changes contained therein.

Therefore, Indonesia's Constitutional Court ordered the Government to correct and amend the *Job Creation Law* by "*restarting*" the law-making process with public participation. Failure to amend the Law through due process, within two years following the Court's decision, which means by November 2023, would render the Law "*permanently unconstitutional*" and would result in the reinstatement of all laws amended and repealed by the *Job Creation Law*. The Constitutional Court also ordered the Government to suspend all actions and policies that are strategic in nature and that have broad implications, including the issuance of new implementing regulations related to the *Job Creation Law*.

Overview of the Perppu No. 2/2022

In view of the Constitutional Court's decision, on 30 December 2022, Indonesia's President *Jokowi* enacted *Government Regulation in Lieu of Law No. 2 of 2022* an "*emergency regulation*" to revoke and replace the *Job Creation Law.* According to Article 22(1) of the *1945 Constitution of the Republic of Indonesia*, the President has the right to have recourse to a *Government Regulation in Lieu of Law* only in a "*compelling situation*". There are three objective conditions for the issuance of a *Government Regulation in Lieu of Law*: 1) The urgent need to swiftly resolve certain legal issues; 2) The existence of a legal vacuum whereby the required law to resolve the relevant legal issues does not exist or the existing law is inadequate to address the issues; and 3) The legal vacuum cannot be overcome by making laws in the usual manner as it would take quite a long time, while the urgent situation requires the issues to be quickly resolved.

The Government of Indonesia claims that the *Perppu No. 2/2022* responds to the "*urgent need to fill the legal vacuum to deal with the uncertainty of global economic conditions which have an impact on inflation and rising food prices*". While the *Perppu No. 2/2022* has entered into force, it still needs to be ratified by Indonesia's House of Representatives. Reportedly, the House of Representatives will decide whether to approve *Perppu No. 2/2022* into Law in early 2023. Approving it would mean that the *Perppu No. 2/2022* would become a regular law, while rejecting it would mean that it must be revoked and declared null and void. All existing implementing regulations of the *Job Creation Law* remain valid as long as they are not in conflict with the *Perppu No.2/2022.*

Changes relating to halal certification and labour regulation

While the *Perppu No. 2/2022* is almost identical in content compared to the *Job Creation Law,* it introduces additional changes to employment regulations and other trade-related aspects, such as *halal* certification.

With respect to *halal* certification (*i.e.,* proof that the product follows *Sharia* law), the *Perppu No. 2/2022* introduces new provisions simplifying the *halal* certification procedures. First, the *Perppu No. 2/2022* mandates the establishment of a *Halal Product Certification Committee* by December 2023 at the latest, which will have the same authority as the *Indonesian Ulema Council*, notably to determine the *halal* status of products of micro and small businesses. Second, no charge will be incurred to obtain *halal* certification from the *Halal Products Certification Committee* for cooperatives and small and micro enterprises, and such certification will be issued within one business day following the conclusion of the *halal* product evaluation. Third, the *halal* certification would remain valid for as long as the component and/or production method of the certified product does not change. Furthermore, to provide transparency in monitoring *halal* products, the *Perppu No. 2/2022* mandates the establishment of integrated electronic-based *halal* product assurance services, which will connect the authorities in charge of *halal* certification.

With respect to employment and labour law, the *Perppu No. 2/2022* amends the rules on outsourcing and on minimum wage. The *Job Creation Law* did not provide for any restriction on the types of work that could be outsourced, which meant that outsourcing could be done for all types of work. The *Perppu 2/2022* provides that not all types of work may be outsourced, while the types of work that may be outsourced still have to be determined in a forthcoming Government Regulation.

Finally, the *Perppu No. 2/2022* provides adjustments to the calculations of the minimum wage, which is to be calculated based on three variables, namely economic growth, inflation, and, as added by the *Perppu No. 2/2022*, certain indexes. According to Indonesia's Labour Party, the *Perppu No. 2/2022* contains provisions that are unclear and that would be detrimental to workers. Notably, the Labour Party notes that the variables to determine the minimum wage, especially the reference to '*certain indexe*s' that are yet to be defined, is unclear and does not provide sufficient transparency and predictability for workers. The Labour Party is reportedly considering to request a judicial review of the *Perppu No. 2022* and is waiting for the implementing Government Regulations to decide on further steps.

Reactions to the Perppu No. 2/2022

According to Indonesia's Coordinating Minister for Political, Legal and Security Affairs, *Mahfud MD*, the enactment of *Perppu No. 2/2022* as an emergency regulation was needed, as the ordinary process to comply with the Constitutional Court's decision "*would take too long*"*,* and if this were not carried out urgently, Indonesia "*would be left behind in anticipating the global situation*". One of the applicants having sought the judicial review of the *Job Creation Law* noted that the Government should focus on improving the *Job Creation Law* rather than issuing an emergency Government Regulation simply replacing it. The *Association of Indonesian Trade Unions* claimed that the *Perppu No. 2/2022* was issued due to the "*Government's failure to comply with the Constitutional Court's decision to make improvements within two years, and instead forced the implementation of the Job Creation Law through Perppu No. 2/2022*". The Government of Indonesia's decision to issue the *Perppu No. 2/2022*, instead of "*restarting*" the law-making process with increased transparency and public participation, as the Constitutional Court had ordered, appears inconsistent with the Constitutional Court's decision requiring more public participation and transparency.

As under the *Job Creation Law*, various provisions contained in the *Perppu No. 2/2022* are unclear and need to be further clarified in forthcoming implementing regulations. It remains to be seen whether or not the Government of Indonesia will take into account the public feedback and provide clarity and transparency, notably in the context of the employment-related

implementing regulations. Businesses and other stakeholders should closely monitor any updates, as well as the state-of-play of the *Perppu No. 2/2022* within Indonesia's House of Representatives. Given the controversy surrounding the *Job Creation Law*, the shortcut via a *Government Regulation in Lieu of Law* is more than questionable and looks poised to lead to further legal uncertainty and commercial unpredictability for businesses, traders, and investors.

The EU lowers the maximum levels for dioxins and dioxin-like PCBs for milk and dairy products and sets new maximum levels for meat products

On 1 January 2023, *Commission Regulation (EU) 2022/2002 of 21 October 2022 amending Regulation (EC) No 1881/2006 as regards maximum levels of dioxins and dioxin-like PCBs in certain foodstuffs* entered into force. *Regulation 2022/2002* amends the maximum permitted levels of dioxins and dioxin-like polychlorinated biphenyls (hereinafter, PCBs) in certain foods. The amendments to the maximum limits of dioxin and dioxin-like PCBs followed the scientific opinion adopted by the *European Food Safety Authority* (hereinafter, ESFA) in 2018 regarding the *Risks to animal and public health related to the presence of dioxins and dioxin-like PCBs in feed and food*. This article provides an overview of the rules on dioxins and dioxin-like PCBs, reviews the EFSA's scientific opinion, and discusses the importance of monitoring and compliance for the industry.

Dioxins and PCBs

Dioxins are highly toxic compounds produced as by-products in some manufacturing processes, notably herbicide production and paper bleaching. Dioxin-like PCBs had numerous industrial applications before being banned in the EU in the 1980s. Twelve PCBs are referred to as "*dioxin-like PCBs*", as they share toxicological properties with dioxins. Dioxins and dioxin-like PCBs are toxic chemicals that persist in the environment for years and accumulate at low levels in the food chain, usually in the fatty tissues of animals. According to the EFSA, the presence of dioxins and PCBs in food and feed has declined in the last 30 years thanks to the efforts of public authorities and industry.

Approximately 90% of the total human exposure to this group of environmental pollutants is due to the consumption of contaminated food. In the 90s and early part of the 21st century, these groups of pollutants were repeatedly in the focus of public attention, especially in relation to their occurrence in food and animal feed. Examples of these so-called "*dioxin scandals*" with transnational relevance are the Belgian feed dioxin crisis in 1999, the buffalo milk mozzarella crisis in 2007/2008 in Italy, and, most recently, in early 2011 in Germany, where technical fats contaminated with PCBs entered the feed chain (see *TradePerspectives*, Issue No. 2 of 28 January 2011).

According to Article 1 of *Commission Regulation (EC) No 1881/2006 setting maximum levels for certain contaminants in foodstuffs*, the foodstuffs listed in the Annex shall not be placed on the market where they contain a contaminant listed in the Annex, which, *inter alia*, lists dioxins and dioxin-like PCBs, at a level exceeding the maximum level set out in the Annex. According to Recital 50 of *Regulation (EC) No 1881/2006*, "*Dioxins as referred to in this Regulation cover a group of 75 polychlorinated dibenzo-p-dioxin (PCDD) congeners* [*i.e.*, "*relatives*"] *and 135 polychlorinated dibenzofuran (PCDF) congeners, of which 17 are of toxicological concern. Polychlorinated biphenyls (PCBs) are a group of 209 different congeners which can be divided into two groups according to their toxicological properties: 12 congeners exhibit toxicological properties similar to dioxins and are therefore often termed dioxin-like PCBs. The other PCBs do not exhibit dioxin-like toxicity but have a different toxicological profile*".

An interesting provision is Article 7 of *Commission Regulation (EC) No 1881/2006*, which establishes derogations to the principle in Article 1 that the foodstuffs listed in the Annex are not to be placed on the market where they contain a contaminant listed in the Annex at a level exceeding the maximum level set out in the Annex. Notably, Finland, Sweden and Latvia may

authorise the placing on their markets of wild caught salmon (*Salmo salar*), of wild caught herring larger than 17 cm (*Clupea harengus*), wild caught char (*Salvelinus* spp.), wild caught river lamprey (*Lampetra fluviatilis*), and wild caught trout (*Salmo trutta*), as well as products thereof originating in the Baltic region and intended for consumption in their territory with levels of dioxins and/or dioxin-like PCBs and/or non-dioxin-like PCBs higher than those set out in point 5.3 of the Annex, provided that a system is in place to ensure that consumers are fully informed of the dietary recommendations with regard to the restrictions on the consumption of wild caught salmon, herring, char, river lamprey, and trout from the Baltic region and products thereof by identified vulnerable sections of the population in order to avoid potential health risks. Essentially, the derogations are backed by risk assessments, noting that the benefits of eating contaminated fish, for instance with respect to their Omega 3s content, outweigh the risks posed by dioxins and dioxin-like PCBs.

Changing the maximum permitted levels of dioxins and dioxin-like PCBs

Through *Commission Regulation (EU) 2022/2002*, the EU lowered the maximum levels of dioxins and dioxin-like PCBs for milk and dairy products, extended the rules to cover all poultry eggs except goose eggs, and set new maximum levels for meat products.

The amendments to the maximum limits of dioxin and dioxin-like PCBs followed the scientific opinion adopted by the *European Food Safety Authority* (ESFA) in 2018 on the *Risks to animal and public health related to the presence of dioxins and dioxin-like PCBs in feed and food*. In the opinion, the EFSA recommends "*re-evaluating the World Health Organisation (WHO) 2005-TEFs (Toxic Equivalence Factors), the aim of which was to harmonize TEFs for dioxin and dioxin-like compounds on an international level*". The WHO is currently performing a review of the WHO 2005-Toxic Equivalence Factors, which is expected to be completed in 2023. Pending the completion of that review and in order to provide for a high level of human health protection in the meantime, the Commission considered it appropriate to establish maximum levels for dioxins and for the sum of dioxins and dioxin-like PCBs for foodstuffs not yet covered by EU legislation and for which occurrence data have been recently made available in the EFSA's database, such as meat and meat products from caprine animals (*i.e.*, goats), horse, rabbit, wild boar, game birds and venison, as well as liver of caprine animals, horse and game birds, and to extend the existing maximum level for hen eggs to all poultry eggs with the exception of goose eggs. Furthermore, the Commission notes that, given that not only muscle meat from appendages of crabs and crab-like crustaceans is consumed, but also muscle meat from the abdomen of such crustaceans, in particular mitten crab, it is appropriate that the exception be deleted and that the maximum levels now also apply to the muscle meat of the abdomen of these crustaceans.

In addition, taking into account the available occurrence data and the importance of ensuring a high level of human health protection, in particular for vulnerable groups of the population, such as children, the Commission considered it appropriate to already lower the maximum levels for dioxins and the sum of dioxins and dioxin-like PCBs in milk and dairy products. Section 5 of the Annex to *Commission Regulation (EC) No 1881/2006* on '*Dioxins and PCBs*' was, therefore, amended accordingly. Maximum levels, for example, in mixed animal fats and vegetable oils and fats remain unchanged, since they were already lowered in *Commission Regulation (EU) No 1259/2011 amending Regulation (EC) No 1881/2006 as regards maximum levels for dioxins, dioxin-like PCBs and non dioxin-like PCBs in foodstuffs*.

Considerations in practice: monitoring and compliance

Since 2011, the issue of dioxins and PCBs in food or feed has not really been in the focus of public attention. In 2022 and, so far in 2023, a total of six notifications of products exceeding the maximum levels of dioxins were notified on the EU's Rapid Alert System for Food and Feed (RASFF), notably in soy protein hydrolysate for feed from India; in fatty acid distillate (feed) from Germany; in corn oil (feed) from Poland; in copper sulphate pentahydrate (feed) from Thailand; in refined fish oil from China; and in palm fatty acids (animal feed) from Germany.

In 2011, reacting to the PCB in feed incident in Germany, according to an article published by *Eurofins Food & Feed Testing laboratories,* "*reporting obligations were introduced* [in Germany] *for analytical service providers and a notification obligation for food and feed business operators regarding dioxins and PCBs*". These measures may have led to more awareness along the value chain for food and feed. The increasing rates of testing of food and feed at laboratories, requested by food and feed business operators, also points to a more intensive monitoring of these environmental pollutants, which allows increased dioxin and/or PCB concentration levels to be detected earlier and causative sources to be identified and addressed. The monitoring of dioxins and PCBs in food and feed is, therefore, essential in order to avoid further local or even global events with increased dioxin and/or PCB concentrations.

The new maximum levels established in *Commission Regulation (EU) 2022/2002* apply since 1 January 2023. *Commission Regulation (EU) 2022/2002* notes that a reasonable period should be provided to allow for food business operators to adapt to the new maximum levels. Taking into account that certain foodstuffs covered by the Regulation have a long shelf life, Article 2 provides that "*Foodstuffs listed in the Annex that were lawfully placed on the market before 1 January 2023, may remain on the market until their date of minimum durability or use-by-date*". EU Member States, third countries, and food business operators must ensure that their products comply with the new requirements for maximum levels of dioxins and dioxin-like PCBs in foodstuffs.

Recently adopted EU legislation

Trade Law

- *Council Decision (CFSP) 2023/191 of 27 January 2023 amending Decision 2014/512/CFSP concerning restrictive measures in view of Russia's actions destabilising the situation in Ukraine*

- *Council Decision (EU) 2023/187 of 23 January 2023 on the position to be adopted on behalf of the European Union within the Sanitary and Phytosanitary Sub-Committee established by the Association Agreement between the European Union and the European Atomic Energy Community and their Member States, of the one part, and Georgia, of the other part, as regards the modification of Annex XI-B to that Agreement*

Trade Remedies

- *Commission Implementing Regulation (EU) 2023/148 of 20 January 2023 accepting a request for new exporting producer treatment with regard to the definitive anti-dumping measures imposed on imports of ceramic tableware and kitchenware originating in the People's Republic of China and amending Implementing Regulation (EU) 2019/1198*

- *Commission Implementing Regulation (EU) 2023/185 of 27 January 2023 initiating a 'new exporter' review of Implementing Regulation (EU) 2021/607 imposing a definitive anti-dumping duty on imports of citric acid originating in the People's Republic of China for one Chinese exporting producer, repealing the duty with regard to imports from that exporting producer and making these imports subject to registration*

Customs Law

- *Commission Implementing Regulation (EU) 2023/174 of 26 January 2023 amending Implementing Regulation (EU) 2019/1793 on the temporary increase of official controls and emergency measures governing the entry into the Union of certain goods from*

certain third countries implementing Regulations (EU) 2017/625 and (EC) No 178/2002 of the European Parliament and of the Council (Text with EEA relevance)

Food Law

- *Commission Regulation (EU) 2023/173 of 26 January 2023 amending Annexes II and III to Regulation (EC) No 396/2005 of the European Parliament and of the Council as regards maximum residue levels for 1-methyl-3-(trifluoromethyl)-1H-pyrazole-4-carboxamide (PAM), cycloxydim, cyflumetofen, cyfluthrin, metobromuron and penthiopyrad in or on certain products (Text with EEA relevance)*

- *Commission Delegated Regulation (EU) 2023/166 of 26 October 2022 correcting the French language version of Annex III to Regulation (EC) No 853/2004 of the European Parliament and of the Council laying down specific hygiene rules for food of animal origin (Text with EEA relevance)*

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