



MARKET TRANSPARENCY – QUESTIONS AND ANSWERS

IN RELATION TO AMENDING REGULATION (EU) 2022/791 – CEREALS, OILSEEDS, OILSEED MEALS AND OILS, CERTIFIED SEEDS - AND TO CERTAIN HORIZONTAL ISSUES

This updated questions and answers note can be divided into two broad areas:

(1) horizontal issues (pertaining to Regulation (EU) 2017/1185 as well as to its amending Regulation (EU) 2019/1746 and amending Regulation (EU) 2022/791);

(2) Methodological issues (implementation of Regulation (EU) 2022/791).

(1) horizontal issues (pertaining to Regulation (EU) 2017/1185 as well as to its amending Regulation (EU) 2019/1746 and amending Regulation (EU) 2022/791)

What if operators refuse to provide data? Are operators only required to provide data on a voluntary basis?

The Regulation clearly establishes an obligation on operators to provide the data requested from them by Member States. Article 7 (3) states: "*Member States shall take the necessary measures to ensure that the economic operators concerned provide them with the information required within the appropriate time limits. Economic operators shall provide Member States*

with the information necessary to comply with the information requirements laid down in this Regulation". Note that the same point clarifies that Member States have a responsibility to ensure that operators provide the data that is required of them. The Regulation applies directly and does not need to be incorporated into national law, and so this obligation exists from the time the Regulation and its amendments entered into force.

Is there a need to transpose the amending Regulation into Member State law? What legal steps should the Member States take following the Regulation (EU) 2022/791 amendments?

EU Regulations are binding in their entirety and are directly applicable in EU Member States (see <https://europa.eu/>). As such, Regulations do not need to be incorporated into national law, and no further legal action is needed on the part of Member States. Still, Member States may want to create a national law (if e.g., MSs want to introduce penalties on operators for non-compliance, which are not established in the Regulation). Note that the Regulation applies to Member States (and to operators) regardless of whether Member States introduce related national laws. The Regulation has precedence over such national laws.

(2) Methodological issues (Implementing Regulation (EU) 2022/791)

Why are data on grain stocks and certified seed needed?

These reporting requirements were introduced in response to Russia's aggression against Ukraine, and its resulting major disruption to agricultural markets. It is important to understand what are the EU's stock availabilities in this context, not least to have an informed market policy response. With the continuation of the war in Ukraine, with warnings of a possible economic downturn further affecting EU consumers' food purchasing power next year (2023), and with uncertainties around production (prospects of continuing high fertilisers prices, possibility of a second year in a row of large-scale weather impacts on EU production), the need for data on stocks to prepare policy responses remains pressing, now and in case of future crises.

What is it meant by 'relevant producers, wholesalers and operators' in the Regulation?

This means all such entities. The Regulation seeks to obtain "*up-to-date information on levels of stocks of cereals, oilseeds and rice, including production and levels of stocks of certified seeds*" (Recital 4), so to have a complete, accurate, and timely understanding of the level of stocks in each Member State (see also Art. 7). This requires that all stocks are identified. However, Member States may want to approach this process of identification with a principle of proportionality in mind: for example, an accurate survey of the largest operators, and an expert-based estimate of stocks held by SMEs or at farm level (e.g. in consultation with sector association experts).

Beyond conducting surveys, can Member States use extrapolation or multiplying by a factor as a method to determine monthly stock levels? What about using expert judgement?

Article 7 (1) reads: "*Member States shall take the necessary steps to ensure that information notified is relevant to the market concerned, accurate and complete*". In terms of accuracy, different methods offer different levels of assurance. Survey methods can be highly accurate (e.g., monthly surveys), but they can also be more resource-intensive than other methods. Keeping in mind a principle of proportionality, the Commission suggests that Member States use surveys to capture the bulk of the stocks in the market, including by targeting these surveys to the largest operators. For the remaining stock levels, for example those held by SMEs in the supply chain or by smaller farms, the Commission suggests that Member States use expert judgement, for example drawing on the knowledge of industry associations, to establish a credible estimate. These two methods taken together should be implemented in such a way as to be able to provide accurate estimates of the relevant stocks of the product. For example, this means it would not generally be appropriate to survey a small part of the market and to use expert judgement to cover the vast majority of the market. Extrapolation is not a good method from an accuracy perspective unless it can be demonstrated with a high degree of confidence that the base from which the extrapolation is made is statistically equivalent to the

proportion of the data that the extrapolation is meant to cover - however, to be able to make such a qualitative assessment credibly there must be a good level of understanding of the market, which will then fall back on the need described above for expert judgement for data that is not covered by a survey. The Commission does not recommend the use of extrapolation or simple factor multiplication to determine the levels of missing data. Note also the Eurostat requirements for data collection on stocks, which may help as a starting point for implementing the requirements of [Regulation \(EU\) 2022/791](#).

Should Member States notify stocks for food or for feed? What about for other uses?

The full quantities of the stocks of the relevant products should be included, regardless of their intended use. If, in addition to the regular stock notifications, your Member State would also wish to notify stocks by use to the Commission, this possibility is foreseen under Art. 8 of Regulation (EU) 2017/1185 ('Additional information').

Can Member States exclude stocks meant for processing? Can these stocks already be considered as 'used' as they are intended for processing?

The Regulation text makes clear that the stocks held by "*relevant producers, wholesalers and operators*" should be communicated, regardless of intended destination use – as such, also stocks ultimately meant for processing should be included in the data reporting.

How should stocks kept in farms be included? What about stocks kept by SME operators in the food supply chain?

It is acceptable as a methodology to use different methods to establish the level of stocks - or other data- for different-sized operators (proportionality in the analysis). For example, a Member State may survey all the largest operators, knowing that they keep the majority of the stocks in their market, and use estimates (e.g. based on discussions with sector representatives) to establish the remaining stocks levels for smaller operators. The methods together should provide an accurate

representation of the situation. These choices should be explained in the Art. 9 methodological forms.

There is no production of a product that is compulsory to notify in my Member State. How can this be addressed?

Note that regardless of whether a Member State produces a certain product, it can still hold stocks of that product (obtained through imports). If the Member State authority determines that the Member State does not have stocks of a certain product, as imports are negligible on top of not producing it for example, it can fill in zero or leave the field empty in the relevant Commission reporting system form.

How should imports be addressed? For example, goods may still be on a ship still at sea. Should such 'stocks' be counted?

In relation to imports, only those products that are within the Member State market at the time of the communication should be considered within the terms of the Regulation (i.e., goods that have cleared customs and entered the market).

Will the Commission publish the Member States' stocks and seed data?

Data publication is still something under consideration – the Commission needs to assess whether the data is reliable enough for publication, and whether it should be aggregated. The Commission will discuss these issues with the Member States in the Common Market Organisation Committee, as more data become available.

In my Member State, seed stocks are kept in bags with a certain number of individual units of seed (i.e., stocks are not immediately available in weight). How can I report these data?

For Member States facing this issue there the Commission will adapt the specific Member State's Commission reporting system form to allow reporting in bags of certain quantities of seed (and has asked Member

States to provide a conversion factor to weight.; conversion to weight is necessary to be able to use the data in practice.

In my Member State, complete data on the requirements for certified seed under 1d.(a) and (b) are available well before the deadline in the Regulation. Can my Member State complete the relevant form(s) before the deadline?

Yes, and this would be particularly useful in the food security context of the Regulation (EU) 2022/791 amendment. NB in the Regulation the deadline is 'by ...'. The Commission reporting system will be open well in advance of the deadline should you wish to send your information earlier.

For the 'quantities of harvested seed for certification' (1d. (b)) - do Member States have to report exactly the harvested seed for certification?

No. Just the quantities of seed actually certified is acceptable.

For the 'area accepted for certification' requirement (1d. (a)) - do Member States have to report the actual 'area harvested in that year'?

No. Just the area accepted for certification is acceptable (does not have to be the actual area harvested).

In relation with grain stocks, there is a marginal part of the market that is direct sales in my Member States - can we exclude this part of the market from the monthly stocks notifications?

If a part of a Member State market is so small that its exclusion is not likely to significantly affect overall monthly stock level notifications, then the Member State can safely not count that part of the market. This should be explained and justified in the relevant Art. 9 methodological form. The Commission will judge whether the exclusion of part of the market is justified on a case-by-case basis, on the grounds of the information provided and of statistics available to the Commission.

Do Member States need to provide the detailed information for monthly rice stocks as presented in the European Commission reporting system ISAMM form (406)? This level of disaggregation is very difficult to obtain.

Member States can report the totals and not the detail per CN code. Member States can just fill out the totals numbers in the form.

In relation with grain stocks and data on certified seed, which types of products should be reported? The Regulation only speaks in general terms ('common wheat', etc.). Can the Commission produce a 'technical fiche' explaining the type of product to report?

The amending Regulation (EU) 2022/791 asks for the monthly level of stocks of rice, certain cereals, oilseeds, oilseed meals and oils, without specifying further distinctions in terms of (sub)varieties, quality levels, etc. As such, all relevant varieties and qualities should be reported as an aggregate (without distinction). For example, 'common wheat' stocks can be understood to mean all stocks of common wheat (high-quality wheat, medium quality, feed quality, etc.).

For cereals, the Commission and Member States agreed that reporting of stocks of common wheat, durum wheat, barley and maize should be mandatory while reporting stocks of oats, rye, triticale, sorghum and other cereals can be done on a voluntary basis.